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Transcript of Hearing

Date: October 18, 2024

Case: Bennett Creek Animal Hospital (S-2659-A)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Hearing
Conducted on October 18, 2024

<p style="text-align: center;">1</p> <p style="text-align: center;">OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS FOR MONTGOMERY COUNTY, MARYLAND</p> <p>-----x</p> <p>In Re: :</p> <p>Bennett Creek Animal Hospital : Case No. S-2659-A</p> <p>-----x</p> <p style="text-align: center;">HEARING HEARING EXAMINER KATHLEE BYRNE Rockville, Maryland Friday, October 18, 2024 9:31 a.m.</p> <p>Job: 545000 Pages: 1 - 88 Transcribed by: Molly Bugher</p> <p style="text-align: center;">2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>ON BEHALF OF MONTGOMERY COUNTY OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS:</p> <p style="padding-left: 40px;">KATHLEEN BYRNE, HEARING OFFICER</p> <p>ON BEHALF OF THE APPLICANT:</p> <p style="padding-left: 40px;">JODY S. KLINE, ESQ. MILLER, MILLER & CANBY 200-B Monroe Street Rockville, MD 20850 Phone: (301) 762-5212</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">C O N T E N T S</p> <p style="text-align: right;">PAGE</p> <p>Transcript of Proceedings</p> <p style="padding-left: 40px;">Opening 7</p> <p style="padding-left: 40px;">Closing 83</p> <p>Testimony</p> <p style="padding-left: 40px;">Dr. Walcoff 11</p> <p style="padding-left: 40px;">Alan Clapp 25</p> <p style="padding-left: 40px;">Kevin Miller 36</p> <p style="padding-left: 40px;">Gerald Miller 44</p> <p style="padding-left: 40px;">Shahriar Etemadi 79</p> <p style="text-align: center;">E X H I B I T S</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Number</th> <th style="text-align: left;">Description</th> <th style="text-align: right;">Admitted</th> </tr> </thead> <tbody> <tr><td>1</td><td>Request for Major Mod to BOA.....</td><td style="text-align: right;">10</td></tr> <tr><td>1a</td><td>Application.....</td><td style="text-align: right;">10</td></tr> <tr><td>2</td><td>Statement of Justification.....</td><td style="text-align: right;">10</td></tr> <tr><td>3</td><td>Authorization Letter.....</td><td style="text-align: right;">10</td></tr> <tr><td>4</td><td>Zoning Vicinity Map.....</td><td style="text-align: right;">10</td></tr> <tr><td>5</td><td>Plat Map.....</td><td style="text-align: right;">10</td></tr> <tr><td>6</td><td>Existing Condition Plan.....</td><td style="text-align: right;">10</td></tr> <tr><td>7</td><td>Prior Special Exception Opinions.....</td><td style="text-align: right;">10</td></tr> <tr><td>8</td><td>Photos of Existing Conditions.....</td><td style="text-align: right;">10</td></tr> <tr><td>9</td><td>Special Exception Site Plan.....</td><td style="text-align: right;">10</td></tr> </tbody> </table> <p style="text-align: center;">4</p> <p style="text-align: center;">E X H I B I T S</p> <p style="text-align: center;">(Continued)</p> <table style="width: 100%; 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<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER: Good morning everyone.</p> <p>3 MR. KLINE: Good morning.</p> <p>4 UNIDENTIFIED SPEAKER: Good morning.</p> <p>5 HEARING EXAMINER: Welcome. My name is Kate Byrne. I'm</p> <p>6 the Hearing Examiner assigned to this matter. This is a</p> <p>7 public hearing for a major modification of a veterinary</p> <p>8 hospital. This matter was referred to OZAH for public</p> <p>9 hearing from the Board of Appeals via resolution on March 13,</p> <p>10 2024. As the Hearing Examiner, I will be listening to</p> <p>11 testimony, reviewing evidence on the application pursuant to</p> <p>12 the standard for evaluation as set forth in 59.7.7.1.B.1.</p> <p>13 I'll make a recommendation to the Board of Appeals on whether</p> <p>14 or not this major modification should be granted. If you</p> <p>15 disagree with my recommendation you may request oral argument</p> <p>16 before the Board of Appeals within 10 days after my</p> <p>17 recommendation is issued. Forgot to say, good morning, Mr.</p> <p>18 Court Reporter. We all good?</p> <p>19 COURT REPORTER: Yes.</p> <p>20 HEARING EXAMINER: All right. And we are on the record.</p> <p>21 So there we go. All right. Let's start with the parties.</p> <p>22 MR. KLINE: Thank you. Good morning. For the record my</p> <p>23 name is Jody Kline. I'm an attorney with the law firm of</p> <p>24 Miller, Miller & Canby with office at 200B Monroe Street,</p> <p>25 across the street from here, representing the Petitioner in</p>	<p style="text-align: right;">7</p> <p>1 that the sign remains on the -- posted it in a timely fashion</p> <p>2 and it remains on the property today. And I would ask that</p> <p>3 it be -- that be made a record -- an exhibit for the record.</p> <p>4 HEARING EXAMINER: All right. Because I believe our</p> <p>5 last exhibit was 26. So this would be Exhibit 27.</p> <p>6 MR. KLINE: Thank you.</p> <p>7 HEARING EXAMINER: And let's see. So I will let you</p> <p>8 finish up.</p> <p>9 MR. KLINE: Sure.</p> <p>10 HEARING EXAMINER: And then, we're going to check in</p> <p>11 with all the people, the two people that we have on Zoom.</p> <p>12 MR. KLINE: Well, the only thing I was really going to</p> <p>13 say is I have five witnesses to call. And I estimate we</p> <p>14 probably will take about three hours of your time, give or</p> <p>15 take something in that range.</p> <p>16 HEARING EXAMINER: Okay, okay.</p> <p>17 MR. KLINE: Everyone who is in the room is either going</p> <p>18 to be a witness in the case or is from my office sitting here</p> <p>19 to see how many mistakes I make in our presentation.</p> <p>20 HEARING EXAMINER: All right, sounds good.</p> <p>21 MR. KLINE: I won't make an opening statement because I</p> <p>22 know you're good at -- diligent about reviewing the record</p> <p>23 and everything. And there is quite a record on this. It</p> <p>24 goes back, as you can see, until 2007. But this is just the</p> <p>25 next step in the evolution of Bennett Creek Animal Hospital</p>
<p style="text-align: right;">6</p> <p>1 this case. And if I could make a clarification to the</p> <p>2 announcement you made at the beginning, we are actually</p> <p>3 proceeding under the pre-2014 zoning ordinance.</p> <p>4 HEARING EXAMINER: Right.</p> <p>5 MR. KLINE: So we are dealing with 59.G.1.21 rather than</p> <p>6 the 59.7, that you cited.</p> <p>7 HEARING EXAMINER: Well, 59.7.1.1.B referred back to any</p> <p>8 application prior to then.</p> <p>9 MR. KLINE: Gotcha. Fine, okay.</p> <p>10 HEARING EXAMINER: Because I'm right there with you. I</p> <p>11 was going to put them all in, but it was a lot of letters.</p> <p>12 So I knew that this one would get me there. Right there with</p> <p>13 you.</p> <p>14 MR. KLINE: So my first disclaimer would be bear with me</p> <p>15 since this is the first time I've ever been in this room and</p> <p>16 they have the screens on. And we had set our presentation up</p> <p>17 thinking we would be working off the easels, but I think I</p> <p>18 can -- everything I got for you is in the record someplace.</p> <p>19 So this gentleman is prepped, ready to help me try and find</p> <p>20 the right page so we can get it on the screen.</p> <p>21 HEARING EXAMINER: Excellent. I mean, we can use both.</p> <p>22 MR. KLINE: Very good, okay. I will begin though by</p> <p>23 offering an affidavit of posting --</p> <p>24 HEARING EXAMINER: Okay, perfect.</p> <p>25 MR. KLINE: -- signed by the Petitioner who verified</p>	<p style="text-align: right;">8</p> <p>1 that has been, you can see from the record and we are here</p> <p>2 today, extremely successful. And it's necessary to basically</p> <p>3 enhance the services and the size of the building in order to</p> <p>4 be able to take care of the pet care that's needed in the</p> <p>5 Clarksburg area, which is a growing suburb in Montgomery</p> <p>6 County. So that would be the extent of my opening remarks.</p> <p>7 And I'm ready to go whenever you are.</p> <p>8 HEARING EXAMINER: All right. Sounds good. The first</p> <p>9 thing we are going to do is we're going to check in with the</p> <p>10 individuals on Zoom. I know Condikeeley (phonetic</p> <p>11 throughout) is in our office so no need to check in with her.</p> <p>12 But I think we have another individual you said who's on</p> <p>13 Zoom</p> <p>14 COURT REPORTER: Mr. Peters.</p> <p>15 HEARING EXAMINER: Mr. Peters, if you could unmute and</p> <p>16 turn your camera on and let us know why you are here. Have</p> <p>17 you see him? The chat's been disabled so we can't do that.</p> <p>18 Would he be under participants? I don't know how to do it,</p> <p>19 so we're going to wait. He's not coming up? Let's see, is</p> <p>20 there another way to communicate with him? Or can you see</p> <p>21 him on just the Zoom monitor?</p> <p>22 COURT REPORTER: That's the problem.</p> <p>23 HEARING EXAMINER: That's the problem? It's not coming</p> <p>24 up? Let's give -- if you can, give Nick a call again. We</p> <p>25 probably should have road tested it with Sara or Condikeeley.</p>

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<p style="text-align: right;">9</p> <p>1 Oh, there you go. There they are. Mr. Peters, can you 2 unmute and say hello? Oh, now he's gone. There he is. I 3 see you're unmuted. All right. So Condikey can hear him. 4 We cannot. And he said he's with the Boy Scouts, right? 5 Thank you, Mr. Peters. Hang tight. We are going to see if 6 we can get you here in the room. Actually we could do this 7 another way. So Condikey and Mr. Peters, since you can 8 hear me and we can't hear you, Mr. Peters, are you here to 9 participate and testify? Or are you here as an observer? 10 All right, he said he is required to attend a public meeting 11 for his badge. Excellent. He is just an observer. All 12 right. So thank you Mr. Peters. We are not going to worry 13 about you talking and we appreciate you being here. And 14 thank you very much. All right. 15 MR. KLINE: Other than Doctor Walcoff, is there a 16 policeman that's watching him today. 17 MR. KLINE: No. No. 18 MR. KLINE: The badge is for what? 19 HEARING EXAMINER: Boy Scouts. 20 MR. KLINE: Oh, oh. 21 HEARING EXAMINER: Yeah, so he said he is with the Boy 22 Scouts and he is required to attend a public hearing for his 23 badge. All right. 24 MR. KLINE: Wonderful. 25 HEARING EXAMINER: All right, excellent. Well, thank</p>	<p style="text-align: right;">11</p> <p>1 MR. KLINE: I would like to call our first witness then, 2 Doctor Walcoff. Would you please come up here? 3 (Witness sworn.) 4 HEARING EXAMINER: And could you spell your first and 5 last name for us and for HEARING EXAMINER Reporter? 6 DR. WALCOFF: J-E-F-F-R-E-Y, W-A-L-C-O-F-F. 7 HEARING EXAMINER: Thank you. 8 MR. KLINE: Could you give us your business address, 9 please? 10 DR. WALCOFF: It's 22416 Frederick Road, Clarksburg, 11 Maryland, 20871. 12 MR. KLINE: And you're the Petitioner or the 13 CoPetitioner in this case along with your other CoPetitioner 14 sitting behind us, right? 15 DR. WALCOFF: Correct. 16 MR. KLINE: Okay, fine. Doctor Walcoff, if this 17 conditional -- I'm sorry, this special exception amendment is 18 approved, are you the person that will be responsible for 19 ensuring that any conditions of approval are implemented? 20 DR. WALCOFF: Yes. 21 MR. KLINE: Could you give us your email address and 22 telephone number where someone could reach you should a 23 question, come up about compliance? 24 DR. WALCOFF: Yes, it's JeffWalcoff@gmail.com. And my 25 phone number would be 301-788-7665.</p>
<p style="text-align: right;">10</p> <p>1 you. Thank you for attending and thank you for being an 2 observer. So we'll just make sure that next time we road 3 test it. And normally we do road test it, but I guess with 4 the screen distraction we didn't road test with people who 5 are here. So the other two people who are online are OZAH 6 staff. All right. So thank you very much, Mr. Peters. We 7 hope you enjoy observing our public hearing today. All 8 right. So basically everyone we need to hear from is in this 9 room. So let me make sure we've gone through -- we've done 10 our best with Zoom here this morning. And so preliminary 11 matters, have you had an opportunity to take a look at your 12 exhibit list? 13 MR. KLINE: Yes, ma'am. 14 HEARING EXAMINER: And all exhibits -- we just added 15 Exhibit 27. Do you have any additional exhibits you're going 16 to be adding today? 17 MR. KLINE: Not exhibit -- well, I'm going to display 18 exhibits that are contained in the staff report, but they are 19 already in the record. 20 HEARING EXAMINER: All right, already in the record. 21 All right. 22 MR. KLINE: So I would ask that all the exhibits be made 23 part of the record formally a part of the record. 24 HEARING EXAMINER: All right. All exhibits will be 25 admitted, all right. And we can go ahead and get started.</p>	<p style="text-align: right;">12</p> <p>1 MR. KLINE: This case is interesting in the sense that 2 it has two special exceptions covering the property, an 3 animal boarding facility. There is nothing about the S2660 4 that is affected by this proposal, correct? 5 DR. WALCOFF: Correct. 6 MR. KLINE: Are all the conditions that were recommended 7 in the staff report acceptable to the Applicant? 8 DR. WALCOFF: Yes. 9 MR. KLINE: And are you comfortable with leaving all 10 other conditions in previous approvals in place that aren't 11 altered in any way by this application? 12 DR. WALCOFF: Yes. 13 MR. KLINE: Fine, okay. What I would like to do Doctor 14 is give the Hearing Examiner a little bit of history since 15 you've been coming in here since 2007. And let's just talk 16 about what got you started, why you want to be in Clarksburg, 17 and how it started in 2007. 18 DR. WALCOFF: So Clarksburg, as you know, 15, 20 years 19 ago was beginning a very large growth of new residents, which 20 means new pets. And there wasn't a -- right in that area 21 where I'm located, the wasn't a veterinary hospital right by 22 there. So I decided that was a good place to put a 23 veterinary hospital. 24 MR. KLINE: And can you give us a sense of the distance 25 away where the closest animal hospitals might be for the</p>

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<p style="text-align: right;">13</p> <p>1 area?</p> <p>2 DR. WALCOFF: It's probably -- well, there is a small</p> <p>3 one about a mile and a half north, a very small one. And</p> <p>4 there is another smaller one about 3 miles south of there.</p> <p>5 And there is no other -- the next -- I would say the next</p> <p>6 larger one that is able to do more things, that's what I</p> <p>7 envision as a veterinary hospital, it's probably a good 5</p> <p>8 miles away. So it's a large area that didn't have a bigger</p> <p>9 hospital; a bigger hospital that would be able to do more</p> <p>10 things with our pets, hospitalizations, things like that</p> <p>11 that's more critical than just seeing it for exams and things</p> <p>12 like that.</p> <p>13 MR. KLINE: And you started with 3 veterinarians and 10</p> <p>14 staff, correct?</p> <p>15 DR. WALCOFF: No, I started -- when I started I started,</p> <p>16 it was just me, and probably had about seven staff. And then</p> <p>17 about a year and half later, that's when I hired my next</p> <p>18 veterinarian, my first veterinarian and then continued to</p> <p>19 grow my staff.</p> <p>20 MR. KLINE: I should have asked the question earlier.</p> <p>21 Your special exception approval in 2007 allowed you to have</p> <p>22 up to three veterinarians and 10 staff, correct?</p> <p>23 DR. WALCOFF: Yes. That's correct. That is correct.</p> <p>24 MR. KLINE: You returned to the Board of Appeals and the</p> <p>25 Hearing Examiner in 2017 for a fairly -- well, you did a</p>	<p style="text-align: right;">15</p> <p>1 back with general appointments. So they'll be like, well,</p> <p>2 you got to go somewhere else to get your care. Well, that</p> <p>3 somewhere else is an emergency practice. So what happens is,</p> <p>4 before us they would call VRA and they say sure, come in.</p> <p>5 And then after 10 or 15 of those, by 11:00 a.m. they are like</p> <p>6 no, we are at capacity, you can't come here.</p> <p>7 MR. KLINE: And VRA is what? Another facility?</p> <p>8 DR. WALCOFF: That's an emergency practice in</p> <p>9 Gaithersburg. It's a big one down in Gaithersburg, big</p> <p>10 emergency specialty practice. And so then people start</p> <p>11 calling around, what other practice can they go to. They</p> <p>12 will call -- there is one in Elk City, and there is a couple</p> <p>13 down in Rockville, one up in Frederick. And a lot of times</p> <p>14 they are at capacity, they are not seeing them, they can't do</p> <p>15 what is needed to do. And so having an emergency clinic has</p> <p>16 been great, but we are also towards that capacity, but we --</p> <p>17 so my idea is I want to build out the practice so I can have</p> <p>18 more exam rooms, so I can have a bigger surgery suite, so I</p> <p>19 can accommodate for the higher volume that's needed at all</p> <p>20 times during the day so we can accommodate these emergencies</p> <p>21 that --</p> <p>22 MR. KLINE: Let me interrupt you at this point in time.</p> <p>23 Could you pull up for me exhibit -- from the exhibit list,</p> <p>24 number 10 which is called architecture plan? And there</p> <p>25 should actually be two sheets in there, an A and a B maybe,</p>
<p style="text-align: right;">14</p> <p>1 minor amendment, but it was a fairly major modification. Can</p> <p>2 you explain what that involved?</p> <p>3 DR. WALCOFF: So in the area there is really no</p> <p>4 emergency hospital. There was one 15 miles south or 12 miles</p> <p>5 south at VRA in Gaithersburg and one about 15, 20 miles</p> <p>6 north, nothing in between. And it was something that was</p> <p>7 desperately needed because VRA wasn't able to -- or those two</p> <p>8 hospitals weren't able to handle the load that was needed to</p> <p>9 take care of the pets on an emergency capacity. And so I</p> <p>10 decided to open up an urgent care. I call it urgent care,</p> <p>11 but it really is more emergency. And it -- so we are able to</p> <p>12 see emergencies during the day. We are able to see</p> <p>13 emergencies at night and keep these sick patients overnight</p> <p>14 which most clinics won't and can't do. And it was just a</p> <p>15 huge void that was needed to take care of these animals.</p> <p>16 MR. KLINE: Has it been successful?</p> <p>17 DR. WALCOFF: I would like to think it is. We are very</p> <p>18 busy which I guess shows some sort of success. But the</p> <p>19 demand is even bigger than what we are able to provide right</p> <p>20 now because we are just on top of each other with the space</p> <p>21 that we have, we have a lot of employees. And we see a lot</p> <p>22 of general practice patients and we get calls all the time</p> <p>23 during the day that they want -- emergencies coming in.</p> <p>24 Because typically veterinary hospitals, veterinary clinics</p> <p>25 don't want to see an emergency when they are back to back, to</p>	<p style="text-align: right;">16</p> <p>1 number 10. Well, if you don't get it this time I will skip</p> <p>2 it. I can work around it.</p> <p>3 HEARING EXAMINER: All right. Since -- yeah, so let's</p> <p>4 see. And that was, let's see --</p> <p>5 MR. KLINE: It's Exhibit 10.</p> <p>6 HEARING EXAMINER: There it is, okay.</p> <p>7 MR. KLINE: Yeah, so these are the elevations. Could</p> <p>8 you go to the second sheet which is actually the floor plans?</p> <p>9 Keep going, one more. Great. Now can you rotate that 90</p> <p>10 degrees? Yeah, that's fine. We can work with that. Yeah,</p> <p>11 that's a better orientation. So Route 355 is to the east in</p> <p>12 this picture. The addition that's on the bottom or south</p> <p>13 side. And I was just going to ask Doctor Walcoff to just</p> <p>14 briefly describe that array of rooms along the bottom side</p> <p>15 that are all new.</p> <p>16 DR. WALCOFF: Yes.</p> <p>17 MR. KLINE: How they're going to be used, what's their</p> <p>18 function, and how does it integrate into the rest of the</p> <p>19 existing building?</p> <p>20 DR. WALCOFF: Right. So on the right side, the right</p> <p>21 half of it, you have six exam rooms. So currently I have</p> <p>22 four exam rooms which is a huge bottleneck. We need more</p> <p>23 exam rooms. So I'm adding six more and those are on the</p> <p>24 lower right, those six rooms there. And then increasing</p> <p>25 the -- I'm building a larger surgery suite which is right to</p>

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<p style="text-align: right;">17</p> <p>1 the left of those rooms. You can see there is two tables in 2 there. So I will have two tables in there which is -- a lot 3 of times we need to do two surgeries at once in order to get 4 things moving. It's much more efficient to have that. And 5 then to the left of that it's going to be three admin rooms. 6 Right now I have zero admin rooms. So we are -- the admin is 7 on top of the receptionist and it's all a big mess. And to 8 the left of that is a bigger break room. Right now I have a 9 room that's half that size for 50 some staff. So that 10 obviously is desperately needed. They need a place to sit 11 down and eat dinner and lunch and all that stuff. And then 12 to the left of that, that larger room in the corner is for my 13 associate doctors. I have six associate doctors which are 14 crammed into a room that has four desks right now, which one 15 of them is being used by my HR person. So obviously I need 16 adequate room for my doctors to have their own areas. 17 MR. KLINE: Okay, thank you. So this is the physical 18 change. In terms of staffing you would like to increase the 19 number of veterinarians in the building at any one time to 20 how many? 21 DR. WALCOFF: To five. 22 MR. KLINE: Five. And how many staff? You mentioned 23 you have a total of 50 staff. 24 DR. WALCOFF: Right. 25 MR. KLINE: How many in a maximum staffing level in the</p>	<p style="text-align: right;">19</p> <p>1 DR. WALCOFF: At one time -- 2 HEARING EXAMINER: At one time it was -- 3 DR. WALCOFF: Like who's in the building? 4 HEARING EXAMINER: Yeah, I think that was what was 5 confusing me a little bit because it looked like there were 6 55 staff and then like from the staff report it kind of 7 jumped around. So I just want to make sure I have the number 8 right. So it's 17 plus 5 at any given time? 9 DR. WALCOFF: Right. 10 HEARING EXAMINER: All right. So we are not going to 11 touch total staff? It's like that would be what you have on 12 site at any one time? 13 DR. WALCOFF: Right. 14 HEARING EXAMINER: Okay. 15 DR. WALCOFF: Some people are part-time. 16 HEARING EXAMINER: Right. 17 DR. WALCOFF: Yeah. 18 MR. KLINE: If we have Boy Scouts who want to walk dogs, 19 we could probably work something out there. 20 HEARING EXAMINER: All right, sounds good. Yeah, I just 21 needed to make sure I had that number right. 22 MR. KLINE: I understand. So Doctor Walcott, condition 23 number 4, says maximum 5 veterinarians, condition 5, maximum 24 17 staff persons. Parenthetically I'll add at any given 25 time, that would be an acceptable condition for you?</p>
<p style="text-align: right;">18</p> <p>1 building? 2 DR. WALCOFF: Well, 17 staff would be the maximum at one 3 time. 4 HEARING EXAMINER: So 17 staff and 5 vets? 5 DR. WALCOFF: Yeah, at one time would be the max. 6 HEARING EXAMINER: At one time? 7 DR. WALCOFF: Yeah. 8 HEARING EXAMINER: And then total overall staff? 9 DR. WALCOFF: Well, at one time it would be -- 10 HEARING EXAMINER: Well, I mean like, so is that it? 11 DR. WALCOFF: So that's what I'm saying, 17 at one time. 12 Because I have -- because we are open from 7:00 a.m. to 13 midnight. 14 HEARING EXAMINER: You have shifts? 15 DR. WALCOFF: So you have different shifts. So we said 16 I wouldn't need more than 17 staff at one time and five vets 17 at one time. 18 MR. KLINE: But the number you mention of 50 is the 19 total staff? 20 DR. WALCOFF: I have -- right now I have like 55, 57 21 people on my payroll. 22 HEARING EXAMINER: Was there something in the, either 23 the staff report or in a prior special modification that maps 24 the number of staff or identified the number of staff at any 25 one time?</p>	<p style="text-align: right;">20</p> <p>1 DR. WALCOFF: Yes. 2 MR. KLINE: One of the changes you (indiscernible) (3 22:32) is the parking. So your site plan shows 40 parking 4 spaces. In your opinion is that going to be adequate to 5 accommodate your staffing levels plus your patron levels? 6 DR. WALCOFF: Yes. 7 MR. KLINE: Elaborate on that if you would. 8 DR. WALCOFF: Well, right now every single day cars are 9 parked on grass next to the parking lot. It's a problem. 10 There's nothing I can do about it. We need more parking 11 period. Yeah, that -- there's nothing more to say about 12 that. At any one time there could be seven, eight clients 13 there and then I have my staff and my doctors and then you 14 have a delivery truck coming in. It's just a bottleneck. 15 MR. KLINE: In your opinion, 40 spaces should take care 16 of the demand you need for parking on-site? 17 DR. WALCOFF: Yes. Yeah. 18 MR. KLINE: Since I don't have a good aerial photograph, 19 just briefly orient the Hearing Examiner to what's north. 20 What's north of you? What's immediately north of you? 21 DR. WALCOFF: So north of me is a cemetery and a church. 22 It goes the whole length of the property. 23 MR. KLINE: And south of you is -- 24 DR. WALCOFF: South is -- 25 MR. KLINE: Southwest of you?</p>

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<p style="text-align: right;">21</p> <p>1 DR. WALCOFF: Right, is the tennis courts of a middle 2 school and the middle school is more to the west. 3 MR. KLINE: If the Hearing Examiner wanted to have a 4 sense of the character of the neighborhood, I could have you 5 pull up Exhibit 34. 6 HEARING EXAMINER: No, I've got the staff report in 7 front of me. 8 MR. KLINE: That's where I was going to go. 9 HEARING EXAMINER: So I was looking at page 6. 10 MR. KLINE: Figure 1 on page 6, exactly right. 11 HEARING EXAMINER: Of the staff report. 12 MR. KLINE: And there is a little notch in what I will 13 call the southern or southeast corner of the property that's 14 a single-family detached residence. 15 DR. WALCOFF: Yes. 16 MR. KLINE: At one time you owned that? 17 DR. WALCOFF: Right. 18 MR. KLINE: You sold it. And what's your relationship 19 with that property owner? Do they support this application? 20 DR. WALCOFF: They do. He's my HVAC guy. So I keep him 21 busy. 22 HEARING EXAMINER: Keeping it close. 23 DR. WALCOFF: Yeah. He's a very supportive, very nice 24 guy. 25 MR. KLINE: So in your opinion as the operator, do you</p>	<p style="text-align: right;">23</p> <p>1 amendment will do to provide pet care in the Clarksburg area? 2 DR. WALCOFF: It will be tremendous. It will be 3 tremendous. And you say the Clarksburg area, but really 4 where we get our clients is not just the Clarksburg area, but 5 we get clients from 30, 40 miles away. We get clients from 6 Annapolis, from Greenfield, from Northern Virginia, from 7 Frederick and 20 miles north of Frederick. So it's a 8 tremendous need that if we weren't there it would just be 9 more of a burden to the other emergency practices and to the 10 clients and to the animals. So it's really a need that we 11 are providing. 12 MR. KLINE: That concludes my questioning of Doctor 13 Walcott. Do you have some questions of your own? 14 HEARING EXAMINER: I think that I just want to get 15 clarity on staff. So when I look at the -- how the cars are 16 parked now in the staff report, essentially your parking is 17 just going to now be an extension of the existing parking? 18 DR. WALCOFF: So it's actually -- 19 HEARING EXAMINER: Like the access to the parking? 20 DR. WALCOFF: Right. It will still come in the same 21 way. And then as you go down -- right now when you go down 22 the parking, there's parking all the way down the building. 23 You make a left and that's where the additional parking -- 24 HEARING EXAMINER: Additional parking is going to be? 25 DR. WALCOFF: So it's going to be behind the building.</p>
<p style="text-align: right;">22</p> <p>1 feel this addition both operationally and physically will 2 have any effect on the character of the surrounding 3 neighborhood, neighborhood surrounding you? 4 DR. WALCOFF: No. 5 MR. KLINE: Is there anything about the use that would 6 be detrimental to the use, the peaceful enjoyment of 7 properties around you or cause an objectionable condition to 8 exist like noise which is one you typically think of a 9 veterinarian? 10 DR. WALCOFF: No. 11 MR. KLINE: Elaborate on why you say no. 12 DR. WALCOFF: Well, all we're doing is we're -- what 13 we're expanding are the rooms. And it's -- we will see the 14 same animals, the same dogs, the same cats which have had 15 zero impact in the surrounding area. So again, by adding a 16 few more an hour is not going to make any impact on the 17 surrounding area. Right now it doesn't. We get no 18 complaints about -- because there is no noise from there. 19 The only noise that you hear when you stand outside my clinic 20 is from 355, the road. That's the only -- and the band up 21 the road or the band over -- or the kids playing on the 22 soccer field. Dogs don't -- we don't keep the animals 23 outside so they're not out there barking. It's never an 24 issue. 25 MR. KLINE: What do you feel this special exception</p>	<p style="text-align: right;">24</p> <p>1 HEARING EXAMINER: Like around the corner? 2 DR. WALCOFF: Exactly. So behind the building which 3 when you stand on 355, you can see -- you almost can't even 4 see the first car parked there. So any car beyond that, you 5 don't see at all because it's up on a big hill. And so it 6 would be behind there. Visually nobody would be able to see 7 it unless you're standing in the parking lot. 8 HEARING EXAMINER: All right. So the drive in will 9 still be the same and you will just come around behind? 10 DR. WALCOFF: Yes. Yes, correct. 11 HEARING EXAMINER: All right. That's just -- I just 12 wanted to make sure that I have that right. 13 MR. KLINE: And our civil engineer when he gets to the 14 plan will get into a little bit more detail about it, that 15 and the effect it has on the forest conservation which is 16 kind of an interesting twist in this case. 17 HEARING EXAMINER: Right. That's -- I figured that 18 testimony might come later, but I just wanted to get your 19 take on that. 20 MR. KLINE: Yeah, it will come later, correct. Yes. 21 HEARING EXAMINER: We talked about -- you talked about 22 outdoor noise levels. So essentially nothing will change 23 because all you're doing is creating an expansion on the 24 inside. So the regular noise that you have is the noise it's 25 going to be on the inside. And there is no outside area for</p>

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1 the dogs other than people who come to your clinic obviously
2 walk their dogs on a leash?
3 DR. WALCOFF: Right.
4 HEARING EXAMINER: And patients that need to be walked
5 by your staff will be walked on a leash as needed?
6 DR. WALCOFF: Yes, correct.
7 HEARING EXAMINER: All right. And I think that's all I
8 had for you. Yeah.
9 MR. KLINE: Great.
10 HEARING EXAMINER: Thank you.
11 DR. WALCOFF: Thank you.
12 MR. KLINE: Thank you Doctor Walcoff. Mr. Clapp, would
13 you like to come up?
14 MR. CLAPP: Yes, sir.
15 HEARING EXAMINER: I'll swear you in. How about that?
16 (Witness sworn.)
17 HEARING EXAMINER: All right. And could you spell your
18 first and last name for HEARING EXAMINER Reporter?
19 MR. CLAPP: First name is Alan; A-L-A-N. Last name is
20 Clapp; C-L-A-P-P.
21 HEARING EXAMINER: Thank you.
22 MR. KLINE: Sir, could you pull up Exhibit 8, photos of
23 existing conditions? It should be one sheet with like six
24 photos on it. Because Mr. Clapp, what I want you to do is
25 have you start off by just orienting the Hearing Examiner

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1 what it looks like today because I've been told this is all
2 your work and you know it better than anybody else. Okay,
3 here we go. So on your right or in front of you are six
4 exhibits which I tried to set up with front, right side, left
5 side, and then wrapped around the back. So why don't you
6 just run through those and explain to the Hearing Examiner
7 what's there? This view is taken probably from the front of
8 the property, maybe all the way down to about 355 or close to
9 that.
10 MR. CLAPP: It's probably a little bit farther back from
11 355 because that's a pretty steep hill. But that is the
12 front and the main entrance to the animal hospital. And on
13 the right hand side, the wall you see there is the service
14 entrance and that's where the personnel working there go in
15 and out and deliveries and that sort of thing.
16 MR. KLINE: Could you scroll down to the next photo?
17 Great.
18 MR. CLAPP: And that's kind of a better view of the
19 right-hand side. That's all the parking extends down there
20 and that's where Doctor Walcoff was talking about the first
21 car. If something's in there you can see the rest of the
22 vehicles and that pretty well shows it right there because
23 they kind of disappear behind the first car.
24 MR. KLINE: The next photo please? Now this takes us to
25 the other side of the building, right?

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1 MR. CLAPP: Yeah, other side of the building. And this
2 is where we'll be coming out 20 something feet with the
3 addition. And that's the existing porch there on the end of
4 the building which we'll be enclosing and creating more space
5 for the exam room waiting area. So that's just a little bit
6 better detail than some of the others.
7 MR. KLINE: Could you get us to the next one?
8 MR. CLAPP: That's --
9 MR. KLINE: So we're continuing along the south side of
10 the building now?
11 MR. CLAPP: Yeah, and that's -- there is the surgery
12 center, the offices and that sort of thing is on the right
13 hand side here. The fence divides this space from the
14 easement that sits on the left-hand side. And this is all
15 you see on the left-hand side of the building because it's a
16 forestry easement and it's very dense.
17 MR. KLINE: Thank you. Next photo. I guess this is the
18 reverse view of the same location?
19 MR. CLAPP: Right, that's the -- looking towards the
20 back of the building. To the left is the dog boarding
21 facility and the rear entrance to the building. And that
22 fence will wind up being moved when we add on to the
23 building.
24 MR. KLINE: And the last photo?
25 MR. CLAPP: And that's the -- most all of the back of

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1 the building and to the left is part of the exercise area.
2 There is a greenhouse type structure back there where the
3 dogs are exercised. And all of this is just the air-
4 conditioning units and that sort of thing, and the rear
5 entrance to the facility.
6 MR. KLINE: Mr. Clapp, are you -- do you want to say
7 anything about this existing? Or can I take you to your
8 proposed? Sir, could you pull up Exhibit 10 again, the
9 architectural plans? In this case we are looking for the
10 elevations of the building which would be I guess up at the
11 top of that. And is it possible to rotate that? There you
12 go.
13 MR. CLAPP: There you go.
14 MR. KLINE: Mr. Clapp, this is your building. Tell us
15 what you did with it.
16 MR. CLAPP: Well, we tried to fit it into the lot, get
17 the handicap access that we had to have, and turn it into a
18 rather nice-looking structure, unusual I think for an animal
19 hospital. And it has a lot of residential character to it.
20 Instead of going with all storefront and glass, we had the
21 double hung windows and that sort of thing. And what we're
22 doing here is along the front, the entire front, we're
23 integrating the addition which is going to be to the left,
24 into the, what we call the wraparound porch which extends
25 from the main entrance where the semicircular glass fan is.

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1 And we're making that virtually an enclosed porch where the
2 waiting rooms will be, and going into the exam rooms to the
3 far left, the last two bays there. And those will be
4 casement windows instead of double hung because the way it
5 just composed it worked out to be very nicely -- a nice
6 composure. So we did that. There is stone and brick is the
7 main component to the walls on the façade. And we've got
8 planters out in the front which will be -- we will locate a
9 lot of plants and that sort of thing in there and break up
10 that large area of masonry. So it's going to be a very
11 attractive façade I believe when we get done with it.
12 MR. KLINE: And so you were talking about the lower of
13 the two views.
14 MR. CLAPP: Yeah.
15 MR. KLINE: The other one I guess is what? From the
16 north side?
17 MR. CLAPP: Yeah, that's from the back.
18 MR. KLINE: The back, okay.
19 MR. CLAPP: And the triangular space there with the two
20 legs on it, that's the dog exercise facility and the rest of
21 that is the boarding facility across the back.
22 MR. KLINE: Could you scroll down to the next view? I
23 think or to the -- yeah, there we go. Great.
24 MR. CLAPP: And that's --
25 MR. KLINE: So this would be from the south side of the

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1 building?
2 MR. CLAPP: Got in.
3 MR. KLINE: Show us what we got here.
4 MR. CLAPP: Well, that's going to be the main wall for
5 the addition, of course along the wall from front to rear.
6 And what you're looking at in here is the offices towards the
7 rear. The surgical center will be roughly in the middle and
8 then will have the existing façade plus the extension coming
9 southerly. And that will be more a waiting -- not waiting,
10 the exam rooms in that area of the building. And then where
11 the grade drops off there in the front, that's going to go
12 around to the lower entrance into the basement area.
13 MR. KLINE: And it looks -- what we can see in the lower
14 right-hand corner, that's the only exposed part in the
15 basement level that is exposed?
16 MR. CLAPP: Yes, because the grading there had to be
17 worked the way it's shown there now because we have some
18 storm water containment back in that area. So we needed to
19 raise the grade up and make it a little artificially higher
20 than it would have been otherwise.
21 MR. KLINE: And sir, could you take us down to the next
22 one which I believe are the floor plans? Yeah. So did you
23 want to add anything to Doctor Walcoff's testimony about the
24 space being added, and its function and how it integrates
25 with the existing building?

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1 MR. CLAPP: I think he did a pretty doggone good job and
2 he's been integrally involved in the layout of this and I
3 think what he explained was right on.
4 MR. KLINE: You've drawn up what he told you to do,
5 right?
6 MR. CLAPP: Yeah, that's exactly -- I tried to follow
7 his directions, yeah.
8 MR. KLINE: And one more scroll down. So we really
9 didn't touch on the basement; but what's the function of the
10 basement? It looks pretty -- an amenity.
11 MR. CLAPP: Yeah, it probably will be because it's --
12 mainly you will see somewhere right in the middle it looks
13 like you got a bunch of egg crates in there. Those are the
14 med gas bottles that will be there. And we have the stair
15 coming down from the area right near the doctors' space
16 there. And that comes into a secure storage where
17 medications and that sort of thing will be maintained. And
18 the rest of it is going to be for storage and for equipment,
19 different things of that nature.
20 MR. KLINE: And you mentioned that the building had a
21 residential character to it. And in your opinion is the
22 addition you just described to us in harmony with the
23 character of the surrounding neighborhood?
24 MR. CLAPP: I think so. You got such a variety in
25 there. You've got schools, you've got churches, you got

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1 single-family houses, smaller houses, bigger houses. There
2 is quite a mix in there. So no matter what you do you're
3 going to find something that's going to be an element in the
4 neighborhood that's existing already that you're going to
5 find on this building.
6 MR. KLINE: You were -- when we were talking earlier you
7 were telling me about other veterinary clinics you've worked
8 on. In your opinion does this proposed addition, would it
9 have any kind of an adverse effect on the surrounding
10 neighborhood based on your experience?
11 MR. CLAPP: No, not at all.
12 MR. KLINE: Any conditions which you can think would
13 exist that would be objectionable to the surrounding property
14 owners?
15 MR. CLAPP: No, because it's not going to be a big
16 intrusion on the building as it says because as you look at
17 it from the front, which is what everybody's going to see
18 unless they come in to the facility itself on the far side,
19 would really never see the expansion because it's so
20 secretive back in there with the forestry easement. And it's
21 just an extension, 20 something feet to the left of the
22 existing building. So it's very small when you come right
23 down to it.
24 MR. KLINE: The Montgomery County zoning ordinance
25 dealing with animal hospitals is replete with all of the

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1 different standards that are applicable to the containment of
2 noise.
3 MR. CLAPP: Yeah.
4 MR. KLINE: And I know you're familiar with that. Have
5 you had a chance to read Mr. Miller's report on what he
6 recommends as I guess I would say construction and material
7 design to try and contain that noise?
8 MR. CLAPP: Yeah, that was a big issue on the first one
9 we did here because we were having a boarding facility. And
10 the boarding facility does get a little loud from time to
11 time, but we have -- all the windows in there are either
12 double or triple glazed and a lot of them are lined in there
13 with the glass block. And we got everything in the world in
14 there to block the noise that would be generated from this.
15 And the funny thing is, is when you come right down to it the
16 ambient noise that you have from the traffic and everything
17 else is greater than the noise that's emitted from the animal
18 hospital itself. So it's interesting.
19 MR. KLINE: So your building permit package to
20 Montgomery County will incorporate the design recommendations
21 offered by Mr. Miller to contain the noise of the building to
22 reach the County's noise level standards?
23 MR. CLAPP: Yes. And again, the boarding facility is
24 the main area with noise because where we have the exam rooms
25 and the surgery, and doctor's offices, there's just not going

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1 to be any noise generated there.
2 MR. KLINE: That concludes my testimony of Mr. Clapp.
3 HEARING EXAMINER: Just a quick question. So no
4 modifications are anticipated for the boarding facility, just
5 for the hospital portion?
6 MR. CLAPP: No, that's not changing at all.
7 HEARING EXAMINER: Okay, all right. So essentially the
8 noise for the application before me for the changes to the
9 hospital, the noise issue comes from-- like I'm not looking
10 at the boarding facility at all for this? I'm only looking
11 at the hospital?
12 MR. CLAPP: Correct.
13 HEARING EXAMINER: Okay, I was just wondering.
14 MR. CLAPP: Yeah, that and the waiting room and then
15 offices and that sort of thing. Doctors don't make much
16 noise.
17 HEARING EXAMINER: All right.
18 MR. KLINE: Can I ask you to go back and overcome an
19 oversight on my part?
20 HEARING EXAMINER: Sure, go ahead.
21 MR. KLINE: It's the first question I should have asked
22 him. What's your profession?
23 MR. CLAPP: I'm an architect.
24 MR. KLINE: Have you ever qualified as an expert in the
25 field of architecture?

35

1 MR. CLAPP: Yeah.
2 MR. KLINE: Particularly to design veterinary clinics
3 before this Board or this Hearing Examiner or in any other
4 jurisdiction?
5 MR. CLAPP: Yes.
6 MR. KLINE: In this case in 2007? And any other time
7 down here in Montgomery County?
8 MR. CLAPP: Well, I was here, but nobody asked me any
9 questions. So I figured I must have done a pretty good job
10 because nobody had any questions.
11 MR. KLINE: You've been practicing architecture for how
12 many years?
13 MR. CLAPP: I opened my firm in 1981, the last century.
14 MR. KLINE: And have you handled other veterinary clinic
15 applications in other jurisdictions?
16 MR. CLAPP: Yes.
17 MR. KLINE: All right. I should have offered him as an
18 expert at the beginning of my questioning and would like,
19 based on the resume that's in your file and his testimony
20 today, as you can see he is knowledgeable on the subject, and
21 ask he be treated as an expert in the field of architecture.
22 HEARING EXAMINER: He is admitted as an expert in the
23 field of architecture.
24 MR. KLINE: Thank you.
25 MR. CLAPP: Okay. I will add that to my resume, Your

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1 Honor.
2 HEARING EXAMINER: There you go. Make sure you put that
3 in there.
4 MR. CLAPP: Anything else?
5 MR. KLINE: That's it.
6 MR. CLAPP: That's it? Thank you.
7 MR. KLINE: Thank you.
8 HEARING EXAMINER: Thank you.
9 MR. KLINE: Mr. Miller, would you like to join us,
10 please? This is Mr. Kevin Miller available to be sworn in.
11 (Witness sworn.)
12 HEARING EXAMINER: And because I made everybody else
13 spell their name, you're going to have to do the same. First
14 and last, please.
15 MR. K. MILLER: I understand. Kevin; K-E-V-I-N.
16 Miller; M-I-L-L-E-R.
17 HEARING EXAMINER: Thank you.
18 MR. K. MILLER: You're welcome. Good morning.
19 HEARING EXAMINER: Good morning.
20 MR. KLINE: Mr. Miller, could you give us the name of
21 your firm, please?
22 MR. K. MILLER: The firm is Miller, Beam & Paganelli.
23 And we reside at 10 -- 14020 South Lakes Drive in Reston,
24 Virginia.
25 HEARING EXAMINER: Thank you.

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1 MR. KLINE: And Mr. Miller, what is your profession?
2 MR. K. MILLER: I'm an acoustical consultant.
3 MR. KLINE: Have you ever qualified as an expert in
4 acoustics before the Hearing Examiner of Montgomery County,
5 or in any other jurisdiction?
6 MR. K. MILLER: Yes, for both.
7 MR. KLINE: Can you give us some examples?
8 MR. K. MILLER: Well, we've qualified for courts in the
9 whole Washington metropolitan area of DC, Maryland, Virginia.
10 We've qualified before and certainly here in this hearing
11 exam. And we've qualified as far away as Florida.
12 MR. KLINE: You have Mr. Miller's resume.
13 HEARING EXAMINER: I do.
14 MR. KLINE: Extended experience in the subject matter
15 and asked that he be named an expert in acoustic studies.
16 HEARING EXAMINER: He's admitted as an expert in
17 acoustic studies. Thank you.
18 MR. KLINE: Now you get to dazzle us with the science of
19 acoustics, which -- when today you said to me when you are at
20 a certain dBA level that's the equivalent of hearing a voice
21 from a mile away which makes -- which don't make sense to me.
22 So take what you know about the science of acoustics and
23 apply it to this case and give us the recommendations that
24 you offered to Doctor Walcoff and Mr. Clapp about how to
25 contain any noise that might occur from the use of the

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1 building.
2 MR. K. MILLER: Okay, I can get into as much detail as
3 you want, but most people start to glaze and not --
4 HEARING EXAMINER: That will happen.
5 MR. K. MILLER: And not to say that you wouldn't be able
6 to understand it, it just usually comes -- people just don't
7 want to. So I will give a quick overview. And then please
8 if you want me to go into more, I will be glad to. We go --
9 we did the original facility and we go about it the same way
10 we would do any project of this nature. We take what we
11 think is going to be the average to max average source levels
12 and we know this because we've done plenty of facilities like
13 this in the past, and we decide what that level is going to
14 be inside. So we assign a level. Not to say that that level
15 can't be exceeded. I have to say up front that you can
16 always say -- you can say this is my design level and then
17 find at one brief moment you get a dog that's louder and it's
18 going to create a higher level. That's brief and it's short.
19 So I'm just trying to be up front and say you have to start
20 with some reasonable design level. So we start with a design
21 level inside. We then calculate the performance of the
22 building envelope, which is a complex calculation. I won't
23 go into all of how we go about it, but it's complex. It's
24 not simple. Then we determine what the potential level
25 outdoors will be. And then if we are not meeting what our

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1 goal is, which in this case was the codes, then we have to
2 upgrade the building construction. Usually in a scenario
3 like this, the windows are the weaker link. So although the
4 windows will look normal because the architect does a
5 wonderful job of achieving that, we have upgraded the glazing
6 significantly so that the glazing will have a higher noise
7 isolation performance. And the windows represent only a
8 small portion of the total building face so we don't have to
9 have the window be as good as it alone would be if this was a
10 glass building. So then we have to do what's called a
11 composite calculation. The wall gives you X. The window
12 gives you Y. The roof gives you Z. Then you determine all
13 of those to how that collectively works and then you
14 determine with that what you need to achieve outside. We did
15 that. We went through that math and we upgraded the glazing.
16 In this case the side windows will have two panes of glass.
17 One will be regular glass and one will be -- and that's for
18 thermal. You have to have a thermal window anyway. But we
19 upgraded it to -- one of the panes is laminated glass because
20 that improves its isolation or noise reduction performance
21 substantially. And so the building face has been determined
22 to be adequate with these upgrades to achieve, generally
23 speaking, the design goals outside. Reaching the code of 50
24 at the property line is pretty straightforward. They
25 uniquely restrict 40 dB at 10 feet is an unusual requirement

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1 and we're saying, yeah, we're generally going to meet that,
2 but could a dog bark and exceed that? Yes. I'm not going to
3 say that couldn't happen. But generally speaking we expect
4 to meet it essentially most of the time. But keep in mind
5 also that at 10 feet at 40 dB outside, Rockville Pike has
6 been mentioned before. It's going to be louder than that and
7 you would have a hard-pressed time trying to even measure 40
8 dB around this building because it's going to be higher than
9 that almost all the time just because of the background noise
10 levels.
11 HEARING EXAMINER: So just to clarify, you -- based on
12 your calculations with the design of the building and the
13 lamination of the windows, the noise -- you are satisfied
14 that the noise level at the property line will not exceed --
15 MR. K. MILLER: Fifty.
16 HEARING EXAMINER: Fifty, okay.
17 MR. K. MILLER: Yes, that is correct. And the proof of
18 the pudding in this case is that they've been apparently
19 successfully running because we did design the original
20 building with the same philosophy. And as I understand they
21 have had zero complaints, which I would expect, but it's good
22 to hear that it's been successful for that long of a time.
23 In my experience with similar facilities, usually most
24 complaints come because they don't want it to be there to
25 begin with. If that's the case -- for not just noise, just

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<p style="text-align: right;">41</p> <p>1 in general.</p> <p>2 HEARING EXAMINER: Right.</p> <p>3 MR. K. MILLER: And they have apparently been successful</p> <p>4 there for quite a while. So I would further not expect any</p> <p>5 concern now because we have the same design philosophy. And</p> <p>6 so the same noise result should be the result around the</p> <p>7 perimeter. And so that's the approach we've taken.</p> <p>8 HEARING EXAMINER: Okay, that's helpful.</p> <p>9 MR. KLINE: What was the phraseology you use for the one</p> <p>10 dog barking for -- what was it? A short, brief moment?</p> <p>11 MR. K. MILLER: Right.</p> <p>12 MR. KLINE: Yeah, because I think the language even</p> <p>13 shows up in the county noise code as well. What was that</p> <p>14 phrase?</p> <p>15 MR. K. MILLER: Well, a dog barking briefly for a very</p> <p>16 brief moment is -- can reach very high levels if it's a big</p> <p>17 dog. But that's not a normal consistent experience. Again,</p> <p>18 one of the things, because of having done so many facilities</p> <p>19 like this in the past and having owned dogs myself, dogs just</p> <p>20 don't continuously usually bark all the time. You might find</p> <p>21 some, especially what I call yappers, but they're much lower</p> <p>22 in level. But generally speaking, dogs on leashes don't</p> <p>23 normally bark. And dogs will, in a true kennel facility,</p> <p>24 this isn't really a true kennel facility, where it's just a</p> <p>25 kennel, usually they will bark a lot for 5 or 10 minutes in</p>	<p style="text-align: right;">43</p> <p>1 move up. The window we talked about.</p> <p>2 HEARING EXAMINER: Mm-hmm.</p> <p>3 MR. K. MILLER: Because we said that's the weak</p> <p>4 link. Okay. That window will have a SCC rating -- you don't</p> <p>5 have to understand that but it's just an SCC rating of about</p> <p>6 35.</p> <p>7 HEARING EXAMINER: Okay.</p> <p>8 MR. K. MILLER: That means that it knocks sound</p> <p>9 down by about 30 dBA. But that -- it knocks down high</p> <p>10 frequency sounds, like 40 dB. But it knocks down low</p> <p>11 frequency sounds about 20 dB. So it's 20 dB different</p> <p>12 between the high and low frequencies as far as how well it</p> <p>13 contains sound. So that yappy sound is contained much more</p> <p>14 easily by the window than a woof.</p> <p>15 HEARING EXAMINER: That's interesting. Okay.</p> <p>16 MR. KEVIN MILLER: Does that make sense?</p> <p>17 HEARING EXAMINER: It totally makes sense now that</p> <p>18 you said it. Yeah.</p> <p>19 MR. KEVIN MILLER: Okay. And so it's easier for</p> <p>20 us to contain that yap sound than it -- even though the yap</p> <p>21 sound might be more annoying, right.</p> <p>22 HEARING EXAMINER: Right. Right. Right.</p> <p>23 MR. K. MILLER: Okay. But what gets out is the</p> <p>24 low woof. That's what we have a harder time containing.</p> <p>25 HEARING EXAMINER: Okay. That's interesting.</p>
<p style="text-align: right;">42</p> <p>1 the morning when somebody comes in to feed them and then they</p> <p>2 stop. And then you get that occasional bark until somebody</p> <p>3 comes in and feeds them in the afternoon.</p> <p>4 HEARING EXAMINER: So that's interesting to me,</p> <p>5 the yappers make lots of noise than the big dogs.</p> <p>6 MR. KEVIN MILLER: There's lots more --</p> <p>7 HEARING EXAMINER: Noise wise.</p> <p>8 MR. KEVIN MILLER: -- to us as an individual.</p> <p>9 HEARING EXAMINER: Right.</p> <p>10 MR. KEVIN MILLER: They sound louder. They sound</p> <p>11 louder.</p> <p>12 MR. KLINE: Yeah.</p> <p>13 MR. K. MILLER: Okay, when I take a sound level</p> <p>14 meter and actually measure the level, they're much lower.</p> <p>15 HEARING EXAMINER: That's interesting. Okay.</p> <p>16 MR. K. MILLER: Also, keep in mind and a good</p> <p>17 point, good question, we as humans are more sensitive to</p> <p>18 higher frequencies, hence the yapper assaults us more from a</p> <p>19 hearing standpoint because our ear is more sensitive to that.</p> <p>20 But the bigger dogs have a more powerful energy and it's more</p> <p>21 low in frequency. And from a designer standpoint, that's</p> <p>22 harder to control. Why? Because most building materials</p> <p>23 contain the high frequencies more easily than the low</p> <p>24 frequencies, so the low frequency gets out more easily</p> <p>25 through a building's envelope than the high frequencies that</p>	<p style="text-align: right;">44</p> <p>1 Okay. Thank you very much. I learned something new today.</p> <p>2 MR. KLINE: Like I said, I knew it was going to be</p> <p>3 interesting. I have no further questions of Mr. Miller.</p> <p>4 HEARING EXAMINER: That's perfect. You answered</p> <p>5 that question I needed to ask you about the noise level at</p> <p>6 the property line.</p> <p>7 MR. K. MILLER: Okay. Would you mind if Mr. Clapp</p> <p>8 and Mr. Miller went back to their --</p> <p>9 HEARING EXAMINER: They are 100 percent --</p> <p>10 MR. KLINE: Manasses and Frederick.</p> <p>11 HEARING EXAMINER: They can 100 percent go back to</p> <p>12 wherever they need to go. Thank you. You both are excused.</p> <p>13 MR. K. MILLER: Thank you.</p> <p>14 MR. KLINE: Thank you, Hearing Examiner.</p> <p>15 MR. CLAPP: And may you get your badge.</p> <p>16 HEARING EXAMINER: That's right. We're hoping for</p> <p>17 you to get your badge. So thanks for sticking it out with</p> <p>18 us.</p> <p>19 MR. KLINE: Mr. Lee Miller, can you join us,</p> <p>20 please?</p> <p>21 (Witness sworn.)</p> <p>22 HEARING EXAMINER: And because I made everybody</p> <p>23 else spell their names I'm going to have you spell your name</p> <p>24 as well.</p> <p>25 MR. G. MILLER: My first name is Gerald,</p>

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<p style="text-align: right;">45</p> <p>1 G-E-R-A-L-D. Last name, Miller, M-I-L-L-E-R. 2 HEARING EXAMINER: Thank you. 3 MR. KLINE: Mr. Miller, could you give us your 4 business address? 5 MR. G. MILLER: I can do that. My company is 6 Terra Solutions Engineering, we're located at 5216 Chairman's 7 Court, Suite 105, and that's in Frederick, Maryland. 8 MR. KLINE: I've been telling people you've got a 9 heavy load to carry today so what is your profession? 10 MR. G. MILLER: I am a civil engineer. I'm also 11 qualified in forest conservation and have been approved by 12 the state for that as well. 13 MR. G. MILLER: Ms. Byrne, your predecessor always 14 loved to tweak my expert witness if I said do you know what 15 your registration number is? You care about that? 16 HEARING EXAMINER: I do not care about the 17 registration number. 18 MR. KLINE: Well, I -- 19 HEARING EXAMINER: If someone were to ask me what 20 my bar number was I would be, like, I have no idea. 21 MR. KLINE: Great. I always thought it was not -- 22 it had no evidentiary value it was just she liked to do it to 23 throw people off a little bit. 24 HEARING EXAMINER: That sounds like a Lynn thing. 25 All right, I'm good.</p>	<p style="text-align: right;">47</p> <p>1 the existing condition plan. Just give us a quick overview 2 of where the features of the property are as it is today. 3 MR. G. MILLER: Okay. Well, what we have today is 4 we have the existing entrance located coming off of Route 355 5 here. 6 MR. KLINE: Can you give us a little orientation? 7 So Route 355 is diagonally? 8 MR. G. MILLER: Yeah, this plan is actually 9 oriented true north. 10 HEARING EXAMINER: Okay. 11 MR. G. MILLER: Sorry, there it doesn't show up. 12 It shows up on other plans that we prepared, but this should 13 be true north. So we'll have a western side or a 14 northwestern side that people had kind of referred to the 15 church and all next door being north, but they're actually 16 located I would say to the northwestern side. The north side 17 would be residential units along here. We have the school 18 wrapping completely around the eastern and southern side of 19 the property. Currently we have an existing forest 20 conservation area which is about .72 acres, so we've got 21 about three-quarters of an acre of forest left around. We 22 access the site here, but in the original site plans, which 23 might come up later in my discussion, the original design had 24 the entrance coming in here. 25 HEARING EXAMINER: Okay.</p>
<p style="text-align: right;">46</p> <p>1 MR. KLINE: Mr. Miller, we're going to be working 2 on the screen today so I'd like you to do the presentation 3 and to do so we'll have to be calling out, so should we start 4 with the existing conditions plan? Is that the -- 5 MR. G. MILLER: That would be great. 6 MR. KLINE: -- place to start? 7 MR. G. MILLER: Yeah. 8 MR. KLINE: Sir, could you pull up Exhibit 6? I 9 guess Mr. Miller can walk over and -- 10 HEARING EXAMINER: 100 percent. If it's easier 11 for you we can zoom in and you can walk over. 12 MR. G. MILLER: Yeah. 13 HEARING EXAMINER: We can do all kinds of things. 14 MR. G. MILLER: I think it would probably be 15 easier to explain a few things -- 16 MR. KLINE: So this is the point he's got to -- 17 HEARING EXAMINER: I think he should still -- I 18 think the court reporter will 100 percent be able to hear us 19 and I think these microphones are sensitive enough that we 20 should be able to -- those participating can -- 21 COURT REPORTER: They are. 22 HEARING EXAMINER: Yeah, they should be able to 23 hear him. 24 MR. KLINE: Very good. Mr. Miller, using what's 25 been -- showing up on the screen is the existing Exhibit 6,</p>	<p style="text-align: right;">48</p> <p>1 MR. G. MILLER: But they actually relocated the 2 entrance because there were some, I guess there was some 3 changes made and it's part of this subdivision, and my 4 company was not involved. This was with VIKA, another 5 engineering firm, at a different time. They basically needed 6 to -- they couldn't have two entrances. So what they did is 7 they kind of took the entrance that was going here and the 8 old entrance that went back to this property back here and 9 they consolidated the two and relocated the entrance here. 10 The way the site works right now is we have a high point in 11 the site right here and everything on -- from about here over 12 flows to the north side for stormwater management, things 13 like that. 14 MR. KLINE: And you said from here. Give us a 15 little bit of identification. 16 MR. G. MILLER: From the central -- let's say the 17 eastern central part of the site. This area tends to flow to 18 the back so this is our drainage patterns with this being the 19 high point. 20 HEARING EXAMINER: Okay. 21 MR. KLINE: So the rear of the building is sort of 22 on the ridge line? 23 MR. G. MILLER: It is on the ridge line and the 24 swale, the existing swale on this side most all of the 25 drainage actually goes towards the front of the site really,</p>

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1 is what ends up happening. And then, it wraps around and
2 would flow down Route 355 in this direction. So I think in
3 general that's what I'd say about the site quickly and get --
4 MR. KLINE: So why don't you go ahead and I'm
5 going to ask him to pull up the site plan, number 9, Exhibit
6 9, and while we're doing that I'll go back and finish up my
7 questioning about your qualifications. So have you ever
8 qualified as an expert in civil engineering and forest
9 conservation and preservation before a hearing examiner or
10 another similar body?
11 MR. G. MILLER: I'm trying to remember if we -- I
12 can't exactly remember what we did in 2007, but I did present
13 at that time, with the same certifications so I would say
14 I've probably done it here. I don't think in Frederick --
15 most of my presentations have been before the Planning
16 Commission and things like that. And you introduce yourself
17 and they don't really, technically, ask you to qualify. So I
18 don't think I've done it very many times but.
19 MR. KLINE: You have a civil engineering
20 certificate and a forest conservation license or certificate
21 whatever they call it?
22 MR. G. MILLER: Yes. I do. I'm a professional --
23 I've been doing this 37 years.
24 HEARING EXAMINER: How many times did you say you
25 testified before, like, the Planning Commission?

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1 MR. G. MILLER: Oh, probably close to 100, if not
2 in that range --
3 HEARING EXAMINER: Okay.
4 MR. G. MILLER: -- through my career.
5 HEARING EXAMINER: All right. Well, I --
6 MR. KLINE: I'd like to offer him as an expert in
7 civil engineering and in landscape architecture.
8 HEARING EXAMINER: He is so admitted in both.
9 MR. KLINE: Thank you. Having said that, you've
10 put up now what is the amended site plan. And I just want
11 you to -- well, I guess my -- am I correct in saying that the
12 things that are changing are the addition to the building,
13 the relocation -- the addition of parking and the relocation
14 of forest conservation easements? Are those the three sort
15 of major features that are shown on that drawing?
16 MR. G. MILLER: Yeah. Those would be the primary
17 changes and I'll explain some of the effects that that had.
18 MR. KLINE: So I think we've heard from Doctor
19 Walcoff and Mr. Clapp the building issues, but can you
20 highlight it in that -- I guess that's a brownish color?
21 MR. G. MILLER: Yeah. We highlighted that in
22 orange on this.
23 HEARING EXAMINER: So orange is the addition?
24 MR. G. MILLER: Yeah. And that's about a 2,800
25 square foot addition. If I give you any areas, please let me

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1 make sure you understand I'm usually talking in footprint
2 areas.
3 HEARING EXAMINER: Okay.
4 MR. G. MILLER: Not just square --
5 HEARING EXAMINER: Not square footage.
6 MR. G. MILLER: -- the floor plan, so I know that
7 when they talk about the floor plan they're adding 4,800
8 square feet. They're adding different square footages than I
9 might repeat. I just want to make sure people understand, I
10 think of the site more the impact to the land in one view.
11 HEARING EXAMINER: Okay. So the orange area then,
12 the 2,800 that --
13 MR. G. MILLER: 2,845.
14 HEARING EXAMINER: -- 2,845 that's -- would you
15 say that's, you know, essentially the square footage of that
16 orange area?
17 MR. G. MILLER: Yes.
18 HEARING EXAMINER: Like, if we were looking at it
19 flat?
20 MR. G. MILLER: Correct.
21 HEARING EXAMINER: Okay.
22 MR. G. MILLER: Correct.
23 HEARING EXAMINER: All right. That's good. You
24 said 28?
25 MR. G. MILLER: I think the addition's 2,845.

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1 HEARING EXAMINER: 2,845.
2 MR. G. MILLER: What we had known and used.
3 HEARING EXAMINER: Okay. And I know it's in the
4 documents somewhere too.
5 MR. KLINE: Yeah, actually just so we don't get
6 confused here. Do you recall what the square footage is of
7 the building for the -- the upper floor and --
8 HEARING EXAMINER: I have a note from staff that
9 says overall square footage of building is 4,833.
10 MR. KLINE: That's the entire building.
11 HEARING EXAMINER: That's the entire building.
12 And then, I have another number.
13 MR. G. MILLER: Well, actually, I would probably
14 need to clarify because that's not the square footage and
15 that's why I wanted to mention these things.
16 MR. KLINE: That's what --
17 HEARING EXAMINER: Yeah, that's --
18 MR. G. MILLER: I don't want to contradict things.
19 HEARING EXAMINER: Okay.
20 MR. KLINE: Well, the staff report and/or
21 information you gave the staff has the floor that Doctor
22 Walcott talked about at 2,675.
23 HEARING EXAMINER: 267 -- yeah.
24 MR. KLINE: Right. And then the lower level, the
25 basement level is 2,085.

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<p style="text-align: right;">53</p> <p>1 UNIDENTIFIED SPEAKER: We didn't have that 2 (indiscernible) 1:03:20. 3 MR. KLINE: Right. 4 MR. G. MILLER: Yeah. 5 HEARING EXAMINER: All right. 6 MR. G. MILLER: But that's where it always gets a 7 little confusing. Architects look at the rooms and the 8 inside, I get the total square footage, so that's why -- 9 HEARING EXAMINER: Okay. 10 MR. G. MILLER: One -- 11 MR. KLINE: So -- 12 MR. G. MILLER: -- I want to make sure I offer is 13 the -- 14 MR. KLINE: What number do you have that's 15 different than what we just talked about, and why? 16 MR. G. MILLER: Well, the building -- the existing 17 building is approximately 6,465 square feet. When you add 18 the 2,845 addition I think the footprint of the building is 19 about 9,325 feet total. 20 HEARING EXAMINER: Okay. 21 MR. G. MILLER: But there's obviously different 22 floors and things like that, and that would be the numbers 23 that we had used -- 24 MR. KLINE: Okay. 25 MR. G. MILLER: -- in our tables on the plan. So</p>	<p style="text-align: right;">55</p> <p>1 MR. G. MILLER: Because I don't want to have -- 2 HEARING EXAMINER: Agreed. 3 MR. G. MILLER: -- numbers misrepresented. 4 HEARING EXAMINER: No. Understood. Because I 5 would have gone back and looked at the transcript and then 6 looked at the staff report and been, like, well, now I'm not 7 sure which one is right. 8 MR. KLINE: Yeah. 9 HEARING EXAMINER: So I appreciate that -- for 10 understanding that, where you're coming from. 11 MR. G. MILLER: As far as -- do you want me to 12 explain this -- 13 MR. KLINE: Well -- 14 MR. G. MILLER: -- for this site or? 15 MR. KLINE: Well, what I think I'd like to do is 16 turn -- do the stormwater management and water quality. I 17 mean, I realize that every time you move something it's going 18 to impact it. 19 MR. G. MILLER: Yeah. 20 MR. KLINE: The building is the easiest thing to 21 correlate it to. So tell us about how you're providing 22 stormwater management to accommodate all of the changes that 23 are shown on this exhibit. 24 MR. G. MILLER: Yeah. Well, in the original 25 design, stormwater management was provided by primarily --</p>
<p style="text-align: right;">54</p> <p>1 I just want to make sure nobody's confused if we look at the 2 plan versus -- 3 MR. KLINE: Well, I'm confused now, but okay. 4 HEARING EXAMINER: I -- so -- 5 MR. G. MILLER: Sorry. 6 HEARING EXAMINER: No, that's all right. As long 7 as -- and I'm going to ask you this, Mr. Kline, you've had an 8 opportunity to take a look at the staff report? 9 MR. KLINE: Sure. 10 HEARING EXAMINER: Do you believe that the square 11 footage as identified in the staff report is accurate? 12 MR. KLINE: We -- those are -- we spent a lot of 13 time working with them. 14 HEARING EXAMINER: That's what I thought. 15 MR. KLINE: Yeah. 16 HEARING EXAMINER: That's what I thought so I 17 just -- 18 MR. KLINE: Yes, everything in the staff report is 19 accurate. 20 HEARING EXAMINER: Okay. All right. 21 MR. G. MILLER: But I think they look at total -- 22 HEARING EXAMINER: Yeah. They look at it based on 23 the criteria set forth in the codes. So they're -- 24 MR. G. MILLER: So they add that up. 25 MR. KLINE: Yeah.</p>	<p style="text-align: right;">56</p> <p>1 well, historically, there was going to be a facility up here. 2 That was not -- 3 MR. KLINE: And when you say up here, are you 4 talking about the -- 5 MR. G. MILLER: Yeah. 6 MR. KLINE: -- plan that they had? 7 MR. G. MILLER: Yes, they had a single facility 8 back in the very beginning of this, if you went back to 2004, 9 2007 when it had been approved, there was a different 10 entrance and a single facility but my company was involved 11 with that part. When VIKA did the engineering design and 12 because of knowing these changes, what they did is stormwater 13 management is provided through pervious pavement and there 14 was a swale that ran out here. So they -- 15 MR. KLINE: And let me just interrupt you. When 16 the Hearing Examiner reads the transcript, when she sees it 17 over here, she needs to know where that is. So you need to 18 give us a definition on this exhibit -- 19 MR. G. MILLER: Okay. 20 MR. KLINE: -- is the area in green, or left, or 21 something. 22 MR. G. MILLER: I'm sorry. Pervious pavement was 23 installed under the entire parking area and entrance 24 facility. Pervious pavement is kind of what it sounds like, 25 water can flow through it to a gravel system below. And they</p>

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1 even did some large underground areas which they used for --
2 it would be water retention. It's for ground water
3 infiltration back in. Those were highlighted in green. But
4 they had problems historically. And all pervious pavement
5 has been evolving for years and we're actually getting more
6 into the use of pervious concrete. But the pervious pavement
7 can actually break up over time a little bit, plus we use
8 snowplows and things like that, you can have a problem with
9 the pervious pavement. So the design they came back with,
10 this site has pervious pavement, and it had seven dry wells.
11 And a dry well is it basically a big pit that you dig. You
12 fill it full of stone and then you direct the roof drains
13 into that. You probably saw some of the pictures earlier.
14 HEARING EXAMINER: I did.
15 MR. G. MILLER: They are these --
16 HEARING EXAMINER: Like those big gutters coming
17 down on the side?
18 MR. G. MILLER: -- forks and all that was going
19 into those drywells. In the redesign to expand this facility
20 and to actually help Doctor Walcoff with this maintenance
21 issue, we redesigned the site as we went through this and
22 worked with the Department of Permitting Services and we came
23 up with the bio retention facilities, which I'm sure
24 everybody has seen now in parking lots and all that, where
25 all the water will run down into this low area. It fills up

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1 and it drains down over about a 24-hour period. Those will
2 have a planting soil material below that it infiltrates
3 through. That's how you get your water quality and things
4 like that. So this facility we came back and by doing it on
5 these two facilities we're going to also keep six of the
6 seven dry well facilities but obviously on this side where
7 we're doing the expansion one of them is lost. So in that
8 case what we do is we're picking everything up in these
9 ponds. We'll connect -- underground we'll connect these
10 systems and they'll basically flow out at a lower -- at a low
11 enough, you know, rate that they're going to meet the
12 discharge rates. We are also going to get water quality.
13 But the real benefit is we're going to be able to remove
14 the -- we're going to be able to overlay the pervious
15 pavement and make this facility look really nice because they
16 will come back and pave it all at one time. And we'll be
17 able to put all the stormwater now into these two larger
18 facilities. So that's the real change with stormwater. It's
19 still going to be all contained and conveyed off. And these
20 will be planted. They can even have plants in the bottom of
21 these.
22 HEARING EXAMINER: Where are you in the stormwater
23 management process with DPS?
24 MR. G. MILLER: We currently have a water quality
25 plan approval and we got approved -- I guess that's the point

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1 we're at now. We have the design, the initial concept has
2 been approved.
3 HEARING EXAMINER: Okay.
4 MR. G. MILLER: And we've got sealed plans which I
5 think we have submitted into the record.
6 MR. KLINE: Exhibit 14.
7 HEARING EXAMINER: Okay.
8 MR. G. MILLER: But of course, the next step after
9 getting this approval here we would go back and do the final
10 design and work through the sediment control phase.
11 HEARING EXAMINER: So you've gone as far as you
12 can go?
13 MR. G. MILLER: Yes.
14 HEARING EXAMINER: Until this point?
15 MR. G. MILLER: Correct.
16 HEARING EXAMINER: All right. Thank you.
17 MR. G. MILLER: And I think everything's -- by
18 doing some of the things here, expanding the parking, which
19 we are doing here, that L-shaped parking that wrapped around,
20 this is the expansion area that's being proposed.
21 MR. KLINE: So this is going -- so that's the
22 square to the southwest of the building itself?
23 MR. G. MILLER: Right. On the southern side of
24 the existing building. So we'll be wrapping this parking
25 into this area here on the southern side and picking up

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1 another, I think 17, spaces will fall right through there,
2 for part of the total of 40. So -- and what we did since we
3 had stormwater being located here, parking addition and
4 stormwater here. This area of existing forest conservation we
5 were able to maintain but we've also come in as part of this
6 plan and we're going to be adding this new section down here
7 will be a new area of forest conservation that we're
8 providing.
9 HEARING EXAMINER: Okay.
10 MR. KLINE: Okay. All right.
11 MR. G. MILLER: So I this --
12 MR. KLINE: Let me do this. Sir, could you pull
13 Exhibit 26, which is the staff report. And then, go to page
14 26, which is called figure 1, easement diagram. It's a busy
15 drawing. Yeah. All right. Mr. Miller, this exhibit and the
16 staff report, which I think, is a very good exhibit
17 showing -- so basically identify each of the levels and what
18 each of the different colors or symbol tells us.
19 MR. G. MILLER: Well, this eastern side of the
20 site you can see this Xd out area of forest conservation.
21 That's being proposed to be removed. On the southern side,
22 this area of course, conservation is also being proposed to
23 be removed. So those two actually would be coming out.
24 They're really maintaining or retaining this section of
25 forest conservation here and --

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<p>61</p> <p>1 MR. KLINE: In the southeast corner? 2 MR. G. MILLER: -- and here -- in the southern 3 side of the site, yes. 4 HEARING EXAMINER: Okay. 5 MR. G. MILLER: Up against existing Lot 8. We're 6 maintaining those two and we're creating a new area of forest 7 on this furthest south piece of the property, we're going to 8 be adding to that is what we're proposing to do. 9 MR. KLINE: And getting a little bit ahead, but 10 give us the net change in the forest conservation areas. I 11 realize you have a plan that's been approved but -- 12 MR. G. MILLER: Yes. 13 MR. KLINE: -- tell us what's the numbers? 14 MR. G. MILLER: Well, the existing site was 15 approved and with everything that was done at that time, we 16 have about three-quarters of an acre or .72 acres of existing 17 forest. We're going to be coming through and removing 18 about -- and these two areas we're going to be removing about 19 .37 acres, which would leave us about .35 acres in these two 20 areas here. So -- then we're going to come back and add 21 another .23 acres, another quarter acre to that. And that's 22 going to get us up to about half an acre, .58 acres of forest 23 will be retained. We will not actually get all the way back 24 to the .72 acres, the requirement. There's going to be a 25 deficit of about .14 acres. We're going to have to go</p>	<p>63</p> <p>1 HEARING EXAMINER: And you do not have it either, 2 yet? 3 MR. KLINE: I do not have it either, right. 4 HEARING EXAMINER: Then -- 5 MR. KLINE: But it will confirm the Planning 6 Board's approval, the same day we got the approval of the -- 7 the recommendation of the -- yeah. 8 HEARING EXAMINER: Well, you and I can talk -- 9 we'll leave the record open for 10 days. If it comes in 10 within the 10 days that the record is open if you wouldn't 11 mind forwarding it and I'll add it to the exhibit list. 12 MR. KLINE: You'll see it before I do. Mr. Beal 13 told me he thought it would be out by today. 14 HEARING EXAMINER: Okay. 15 MR. KLINE: But we'll see. But it -- they've 16 always been running behind the chairman's first letter. But 17 it will be here within the 10 days I'm sure. 18 HEARING EXAMINER: Okay. All right. Then, what 19 we'll do is we'll add that to our exhibit list and it will be 20 Exhibit 28 when it comes in. 21 MR. KLINE: That will be fine. Very good. Where 22 do I want to go. Okay. So you -- yeah. You probably pretty 23 much covered everything in terms of physical changes. Well, 24 so is there any changes to the rest of the parking lot 25 necessitated, other than what you're calling the resurfacing?</p>
<p>62</p> <p>1 offsite to get this credit. We're going to do banking 2 offsite. So actually to go offsite you need to get twice as 3 much. So we'll need to pick up .28 acres and that's part of 4 what the approved plan now shows. 5 MR. KLINE: Ms. Byrne, have you run into this 6 phenomenon before of forest banking and do you need a 7 background? 8 HEARING EXAMINER: No. I understand it. 9 MR. KLINE: Okay. 10 HEARING EXAMINER: It's pretty fascinating. 11 MR. KLINE: Right. 12 MR. G. MILLER: And that's how we'll get to our 13 total requirement. 14 MR. KLINE: So the Montgomery County plan -- staff 15 had recommended and the Montgomery County Planning Board has 16 approved a preliminary forest conservation plan with these 17 changes on it, correct? 18 MR. G. MILLER: Correct. 19 MR. KLINE: Ms. Byrne, I don't believe you 20 received a transmittal letter from the Planning Board? 21 HEARING EXAMINER: I have not -- I have not. Do 22 you -- 23 MR. KLINE: I know that Mr. Beal said it's coming, 24 but it takes a little longer to get that one as compared to 25 the earlier one.</p>	<p>64</p> <p>1 MR. G. MILLER: We've got the resurfacing and 2 primarily that will really make it as we resurface this whole 3 area, that's going to really bring the parking and driveway 4 up and it will make this site look really good. Plus, it 5 will remove the long term maintenance issue that I think 6 you've been having with the pervious pavement. So that was 7 one of the things we talked through as part of the design and 8 wanted to make that change. The major change was going to 9 the stormwater facilities, the two ponds instead. And I 10 should mention there is a -- a bioretention, there's a ditch 11 that went through here, the drainage ditch. We're upgrading 12 that to a bioretention -- a bio swale as well. Basically, it 13 needs some planting soil that has better infiltration, better 14 water quality. 15 HEARING EXAMINER: Functions kind of the same way? 16 Fills up, goes down? 17 MR. G. MILLER: Yeah. 18 MR. KLINE: Ms. Byrne, you probably noticed in 19 the staff report, there must have been five pages dealing 20 with the landscaping requirements -- 21 HEARING EXAMINER: Yes. 22 MR. KLINE: -- and other things being satisfied. 23 And we have a landscaping plan but I don't see it in the 24 exhibit list. I'm not sure if it didn't get to you or it 25 didn't get --</p>

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<p style="text-align: right;">65</p> <p>1 HEARING EXAMINER: Do you -- let's see. 2 MR. KLINE: Should I have Mr. Miller put it up on 3 the board? 4 HEARING EXAMINER: Absolutely. And then we'll 5 make sure that -- 6 MR. KLINE: Why don't you slide -- 7 MR. G. MILLER: Yeah, I'm going to bring it over. 8 HEARING EXAMINER: Yeah. And then, what we'll do 9 again with the record being open, if you wouldn't mind 10 emailing it again? 11 MR. KLINE: Sure. Sure. 12 HEARING EXAMINER: To Ms. Behanna and we'll make 13 sure that she gets that into the record. 14 MR. KLINE: Okay. 15 MR. G. MILLER: I think everybody can try to see 16 it. But I'll need to see it too. 17 HEARING EXAMINER: So the HVAC guy's going to be 18 loving life because he's going to be surrounded by trees. 19 MR. G. MILLER: Yes. 20 HEARING EXAMINER: Okay. 21 MR. KLINE: Yeah. Just give us a quick overview 22 because first of all, I think we discovered when we got into 23 this the -- what we had planted originally in 2007 or 2017, a 24 lot of it had died off. So this is a plan to basically 25 satisfy the zoning ordinance requirements today with the new</p>	<p style="text-align: right;">67</p> <p>1 HEARING EXAMINER: With the bulbs? 2 MR. G. MILLER: -- ornament. Yeah. 3 HEARING EXAMINER: Okay. 4 MR. G. MILLER: But we are going to be putting up 5 along the rear of the parking and along that eastern side, 6 we're going to have the screening fence in those locations, 7 and then we will have the other type of fencing would be 8 protecting the stormwater facility on the southern side. And 9 we do want to kind of keep people out of those areas. It's 10 not a fence you couldn't climb, but on the other hand, these 11 are not dangerous ponds either. They only fill up a foot 12 during a major storm. They overflow and they're only 13 inundated for about 24 hours. Other than that, for 14 landscaping we have added additional shade trees. They were 15 probably lost during construction and the relocation. The 16 original plan had more trees going out along the exiting 17 driveway. And those were not there now and that -- and I say 18 existing driveway. You have to think about a driveway up 19 along that northwestern side of the site. 20 HEARING EXAMINER: Okay. 21 MR. G. MILLER: Which they relocated the entrance. 22 So we've come back and added some trees to kind of fill that 23 area in now to give the front of the building some 24 landscaping that was either removed or lost. 25 MR. KLINE: Mr. Miller, the land use lawyer,</p>
<p style="text-align: right;">66</p> <p>1 plants and replace existing. So just give us an overview of 2 how it's all going to work. 3 MR. G. MILLER: Yeah. That is correct. We 4 actually went back to the original landscaping plan and 5 looked at what was on that plan and a lot of the planting 6 that would be on that northwestern side between us and the 7 church has probably died. So we're basically showing that 8 we're going to recreate or enhance that existing screening 9 along that side of the property. Since we're going to be 10 removing the storm water facility on the eastern side of the 11 property we're going to be planting screening there as well, 12 but we're also proposing a privacy fence. So we're going to 13 be doing fencing and screening along that side of the 14 property on that eastern side as well. 15 HEARING EXAMINER: So what we saw in the existing 16 conditions photo there was more of, like, that white split 17 rail-ish style and then there was more of the scalped board 18 on board, so what's the fence going to look like? 19 MR. G. MILLER: This is going to be more of the 20 taller full screening fence. 21 HEARING EXAMINER: Okay. 22 MR. G. MILLER: The other one is what you might 23 read on our plan. There's sections that we would have what 24 they call an estate fence, and those are the ones that are 25 just more like the picketed with a little bit of --</p>	<p style="text-align: right;">68</p> <p>1 suggests I should ask you a question about compliance with 2 each of the landscaping requirements in the staff report, 3 which I think there were about five pages worth. So suffice 4 it to say, does the landscaping plan that you're showing us 5 today that you're proposing satisfy all of the requirements 6 of Sections 59-E 2.7, 8.3, and 9.1 of the zoning ordinance 7 either the screening of canopy coverage, setbacks, all the 8 standards for landscaping with a commercial use and 9 residential zoning? 10 MR. G. MILLER: My understanding of the 11 combination of the screening, fencing and the landscaping 12 that we proposed originally and now have come back and 13 proposed a lot of the same and that we're enhancing does meet 14 these regulations. 15 MR. KLINE: Okay. Thank you. Could I ask you, 16 sir, to pull up our Exhibit 11, called lighting plan? Can 17 you bring your lighting plan up for us? 18 MR. KLINE: We actually -- 19 (Crosstalk) 1:21:14 20 MR. KLINE: Now we've got them up here. It's 21 okay. I'm going to ask you -- we're probably going to drop 22 those as they may block the Hearing Examiner's view. 23 UNIDENTIFIED SPEAKER: I'll show the second one 24 because that shows the lights. 25 HEARING EXAMINER: We can do both. Because I can</p>

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<p style="text-align: right;">69</p> <p>1 see them both now. However you want to -- whatever is -- 2 you're most comfortable with, I'm okay with. 3 MR. KLINE: Well -- 4 HEARING EXAMINER: Oh, okay. I see now. I can 5 see them both. I know exactly where we're going now. All 6 right. Thank you. 7 MR. KLINE: So we are installing some new lighting 8 fixtures, sir, is that correct? 9 MR. G. MILLER: Yes. 10 MR. KLINE: Okay. 11 MR. G. MILLER: Yes. 12 MR. KLINE: Why don't you tell us what they are, 13 what they look like, how they're going to work and then where 14 they're going to be located. 15 MR. G. MILLER: Well, I will say I'm not an expert 16 in lighting because I did not prepare these plans. But I do 17 understand the lighting plans and photometric plans. The 18 plan that's shown on the screen up above, that shows your 19 photometrics around the site. And I believe our electrical 20 engineer worked and has met the requirements for the 21 intensity and all. And what we're proposing, the type of 22 lighting we're going with is these LED lights that'll fully 23 shielded and will be downward casting. So those -- you're 24 seeing them all over now. That's the new thing we're using 25 but this is the lighting we're proposing. I unfortunately</p>	<p style="text-align: right;">71</p> <p>1 MR. KLINE: Mr. Miller, based on your professional 2 experience, in your opinion is the proposed use from an 3 engineering perspective in harmony with the character of the 4 surrounding neighborhood? And if so, why? 5 MR. G. MILLER: I think what's being proposed with 6 the architecture, the setbacks, we have some pretty good 7 setback around this property. I think everything -- the -- 8 visually the setbacks and the type of use, the way the site 9 lays out where you can barely see from 355 and even the 10 neighbors across the street, you don't really get a whole lot 11 of view of other -- anything except the front of the 12 building. I think it works real well with the residential 13 character of the neighborhood. 14 MR. KLINE: Is there anything about the proposed 15 use that would have an adverse effect on the use, enjoyment, 16 value or development of the surrounding properties? 17 MR. G. MILLER: Not that I'm aware of. The 18 history of the site, seeing the site for years, and being 19 involved with the project, I feel very comfortable that this 20 is a great use and there's actually a lot of history to 21 support that. 22 MR. KLINE: Can you envision any objectionable 23 condition that might occur on the site that would be 24 bothersome to surrounding properties? 25 MR. G. MILLER: No. No.</p>
<p style="text-align: right;">70</p> <p>1 can't tell you an extreme amount about the lighting itself 2 other than it is LED and it will be downward casting 3 lighting, and does meet our lighting intensities and all as I 4 understand it. 5 HEARING EXAMINER: Thank you. 6 MR. KLINE: So the photometric plan confirms that 7 the -- they're not over the 0.1 foot candles at the property 8 line from the property? 9 MR. G. MILLER: That's my understanding. 10 HEARING EXAMINER: That's the big question, so the 11 answer is -- so that substantially -- 12 MR. KLINE: 0.1 was -- 13 HEARING EXAMINER: 0.1. 14 MR. KLINE: Makes it pretty easy, right? 15 HEARING EXAMINER: Yes. 16 MR. KLINE: Well, since we're dealing with numbers 17 right now. The zoning ordinance does require us to basically 18 explain why we satisfy all the requirements for the use 19 itself and then the general standards for the zone. You've 20 got a table that's been incorporated into the staff report. 21 Do we comply with all the dimensional standards in the zoning 22 ordinance for this use and in this zone? 23 MR. G. MILLER: Yes. I've reviewed the tables on 24 those pages in the back of our staff report and yes, we do 25 meet the requirements.</p>	<p style="text-align: right;">72</p> <p>1 MR. KLINE: From an engineering point of view? 2 MR. G. MILLER: I think from an engineering point 3 of view I think we will even be enhancing some of the 4 potential issues. I think it's going to be an improvement. 5 MR. KLINE: So you would say that this proposed 6 use does not adversely affect the safety -- health, safety, 7 and welfare of neighbors, people working here or visitors to 8 the property? 9 MR. G. MILLER: No, I do not. 10 MR. KLINE: Okay. Will the property be served by 11 adequate public facilities and if you would, kind of run 12 through the list of those. 13 MR. G. MILLER: Well, existing water, sewer, and I 14 guess storm drainage run off, all those things are in place. 15 We have all the public utilities serving the site so I can't 16 think of anything that we are not -- is not already existing 17 that would become a problem because of the expansion. So no, 18 I don't think there's any problems. 19 MR. KLINE: And you have coordinated with the 20 Montgomery County Department of Fire and Rescue Services and 21 they have approved an emergency vehicle access plan? 22 MR. G. MILLER: Yeah. We have a fire access plan 23 approval. I have worked with the County Fire Marshall on 24 that and she had reviewed that with me and signed off on that 25 plan, which I could put up if we needed to discuss that.</p>

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1 HEARING EXAMINER: That's okay. So you received
2 approval?
3 MR. G. MILLER: Yes, we received a letter and a
4 signed agreement.
5 MR. KLINE: And I thought that was in the record
6 also, so could we leave the record open Ms. Bryne?
7 HEARING EXAMINER: Absolutely.
8 MR. KLINE: Yeah. That actually completes my
9 testimony or questions, Mr. Miller, if you have any?
10 HEARING EXAMINER: All right. Let me just go back
11 and look at a few things. I did have a question and Mr.
12 Kline, if you want to proffer this. Is the property in the
13 Clarksburg Special Protection area? Do you know?
14 MR. G. MILLER: Yes.
15 HEARING EXAMINER: All right.
16 MR. KLINE: There is an impervious issue, so thank
17 you for bringing that up.
18 HEARING EXAMINER: Okay.
19 MR. KLINE: Mr. Miller, can you address that?
20 Because that's what your water flow --
21 MR. G. MILLER: Yeah.
22 MR. KLINE: -- agreement was supposed to take care
23 of, yeah.
24 MR. G. MILLER: Yeah. We had worked with them and
25 they have some guidelines and this site actually is -- I'm

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1 trying to remember the numbers. We're -- we have -- we're
2 proposing approximately a -- we're going to a 38 percent
3 imperviousness. Originally it was 29. So in other words,
4 we're going to have 38 percent impervious approximately. 62
5 percent of this site is still going to remain in green space
6 and we are within the fine line of the guidelines that they
7 were wanting us to work within.
8 MR. KLINE: In Clarksburg we do not have a cap to
9 imperviousness?
10 MR. G. MILLER: No.
11 MR. KLINE: Right. So you don't exceed anything?
12 MR. G. MILLER: Not that I'm aware of.
13 HEARING EXAMINER: Okay. All right. And the
14 final approved forest conservation will have -- let's see. I
15 guess the final tree number, location, I think there was some
16 tree variance?
17 MR. G. MILLER: Well, there's mitigation.
18 HEARING EXAMINER: Is the mitigation -- is that
19 what we're talking about?
20 MR. G. MILLER: Yeah. We're going to be going --
21 HEARING EXAMINER: The offsite mitigation?
22 MR. G. MILLER: Yeah, that's where we have to
23 purchase --
24 HEARING EXAMINER: Okay.
25 MR. G. MILLER: -- .28 acres of the offsite

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1 forest.
2 HEARING EXAMINER: Just curious, did -- I mean,
3 and this really has no bearing it's just for my own
4 curiosity. So when you do purchase offsite is there a
5 requirement that you purchase it in the county or you
6 purchase it in Maryland? Or can it be -- because, like, wind
7 you can purchase in Colorado. You know what I mean? I'm
8 just curious. I don't know what the --
9 MR. G. MILLER: I have to confirm that with
10 Montgomery County.
11 HEARING EXAMINER: With the planning --
12 MR. G. MILLER: Because we've not done that for a
13 while. Frederick County has their own banking. I'm a little
14 more familiar with their banking system. But I have a
15 feeling that the answer is yes, we probably are purchasing
16 from the Montgomery County banking program. So I think the
17 answer is yes.
18 MR. KLINE: And then, I'm 99 percent sure that's
19 how -- or at least I've certainly never seen it going outside
20 the jurisdiction. And in fact, there has been a dearth of
21 available banks and so there has been payment has been taken
22 as the last option, granting money because they would prefer
23 to have the trees than to have money. But you can't always
24 find the banks. They're used up. And all the islands in the
25 Potomac River which was a preferred way of doing it in the

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1 past have all been taken up for forest banks now.
2 HEARING EXAMINER: Right. Yeah. I just -- just
3 my own curiosity.
4 MR. KLINE: Yeah. No, I think it has to stay
5 within this jurisdiction, or you pay a fee.
6 HEARING EXAMINER: Okay. All right. Sounds good.
7 And I think --
8 MR. KLINE: So I have no further questions for Mr.
9 Miller then.
10 HEARING EXAMINER: All right. I think that might
11 be it. Actually, just I think one quick question for Doctor
12 Wolcott. Is there a change in -- is your staff essentially
13 remaining the same or are you adding staff with this 17 plus
14 5? Or is it the same staff you have you just need more room
15 for the staff you have?
16 DR. WALCOTT: We definitely need more room for the
17 staff we have and we have projected we will be adding some
18 staff eventually.
19 HEARING EXAMINER: Okay. All right.
20 DR. WALCOTT: Like I said, my -- what I propose to
21 do open up emergency during the day as well, and so I have to
22 add another doctor, add some more staff to see the cats. So
23 we will be adding -- I'm happy with the limit.
24 HEARING EXAMINER: So you're happy with the limit
25 now and that will allow the -- I just want to make sure it's



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<p style="text-align: right;">77</p> <p>1 okay for you for the expansion. 2 DR. WALCOTT: Yes. 3 HEARING EXAMINER: Because now's the time. 4 DR. WALCOTT: Right. I mean -- so you know, as 5 far as these numbers -- 6 HEARING EXAMINER: You feel that -- 7 DR. WALCOTT: We will add room getting -- with the 8 cats, you know if it happens to be -- if you were, like say 9 you know what, go up to 6 doctors and 25 staff I'd be happy 10 to say okay. That sounds great with me. You know, I just 11 want -- I put a number that I -- 12 HEARING EXAMINER: Mr. Kline is now sweating 13 because all of the calculations for parking and everything 14 that he's done is based on these numbers. 15 MR. KLINE: Right. 16 HEARING EXAMINER: But like, I just -- 17 DR. WALCOTT: I knew that parking was -- parking 18 was an issue and with the -- Mr. Miller we put as many 19 spaces -- parking spaces as we felt we could, given the 20 restrictions of the forest conservation has to be there and 21 all that. We really went to what we could do there and I 22 said, okay, I'll be happy with 40. Would I be happier with a 23 higher number just in case for staff, sure that'd be great. 24 Will this be enough for the next couple of years? Yes. 25 HEARING EXAMINER: Okay.</p>	<p style="text-align: right;">79</p> <p>1 HEARING EXAMINER: Okay. All right. I think 2 those are all my questions. So what we'll do now -- 3 MR. KLINE: I have one more witness. 4 HEARING EXAMINER: Yeah, go ahead. 5 MR. KLINE: I just one last -- one more witness. 6 HEARING EXAMINER: Oh, you have one more witness. 7 Okay. Thank you. 8 MR. KLINE: You can't do a special exception in 9 Montgomery County without having traffic as a subject. 10 HEARING EXAMINER: Oh, that's right. How could I 11 forget traffic. 12 MR. KLINE: Mr. Etemadi. 13 HEARING EXAMINER: How could I forget the traffic? 14 (Witness sworn.) 15 HEARING EXAMINER: And could you spell your first 16 and last name for us and the court reporter? 17 MR. ETEMADI: First name S-H-A-H-R-I-A-R, last 18 name is E-T-E-M-A-D-I. 19 HEARING EXAMINER: Thank you. 20 MR. KLINE: And what is your profession, sir? 21 MR. ETEMADI: Traffic engineer, transportation and 22 traffic engineer. All of the above. 23 MR. KLINE: What's the name of your firm? 24 MR. ETEMADI: STS Consulting. 25 MR. KLINE: Have you ever qualified as an expert</p>
<p style="text-align: right;">78</p> <p>1 DR. WALCOTT: But in 5 years or 10 years, who 2 knows. You want us to say oh, staff would be a few more, I'm 3 happy to accept that. 4 HEARING EXAMINER: Well, I don't want to throw the 5 whole thing in dispute so I just want to make sure you're 6 okay. 7 DR. WALCOTT: We discussed it and I think that 8 number is a good number. 9 HEARING EXAMINER: Okay. That allows you to do 10 the things you want to do in the near future. 11 DR. WALCOTT: Correct. 12 HEARING EXAMINER: Okay. 13 DR. WALCOTT: Thank you. 14 HEARING EXAMINER: All right. 15 MR. KLINE: I thought you were actually asking him 16 what are you increasing from in 2017 and I was looking. So 17 when we started in 2007 we had 3 vets and 10 staff. We came 18 back in 2017 and I think we got up to 4 vets and 17 19 employees. And now, we're going to 5, but still staying at 20 the 17. 21 HEARING EXAMINER: Seventeen staff. All right. 22 So that one extra vet will help you do what you need to do 23 during the day? 24 MR. KLINE: And most of those essentially were for 25 the night shift for the emergency care.</p>	<p style="text-align: right;">80</p> <p>1 in traffic engineering are transportation planning before a 2 hearing examiner or the Board of Appeals or any other similar 3 body? 4 MR. ETEMADI: Yes. Numerous times before the 5 hearing examiner here. And the recent examples would be 6 Francisco Landscape in Montgomery County, the Remembrance 7 Park here again. And Liberty Yacht in Anne Arundel County. 8 HEARING EXAMINER: Okay. 9 MR. KLINE: I love having Mr. Etemadi as a witness 10 because all I have to do is just tee him up and let him go. 11 Mr. Etemadi, were you asked to prepare a traffic impact study 12 of the proposed use? 13 MR. ETEMADI: Yes. 14 MR. KLINE: Would you please tell us -- 15 HEARING EXAMINER: And I will qualify him as an 16 expert in traffic engineering. 17 MR. KLINE: Sorry. Thank you. 18 MR. ETEMADI: Okay. I was asked to take a look at 19 this proposed expansion. Basically, I looked at four things; 20 estimated site trip generation, site access and internal 21 circulation, transit service, and existing and planned 22 pedestrian and bicycling. So as part of a trip generation 23 calculation we have concluded that this proposed expansion 24 does not require a full traffic study. In order to meet the 25 requirements of the adequate public facilities for</p>

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<p style="text-align: right;">81</p> <p>1 transportation we had to do a traffic statement which is 2 basically a three or four page report on those four things 3 that that I mentioned before. So just go on? 4 MR. KLINE: Yes, sir. 5 MR. ETEMADI: Okay. So we calculated trip 6 generation as I said and the number of trips will be 7 generated during the peak hours with the 13 in the morning 8 and 13 in the afternoon, those are vehicular trips. Of 9 course when we calculated for the persons trip -- I'm sorry, 10 I made a mistake. Vehicular trips are 10 in the morning and 11 10 in the afternoon. And then, when we calculate persons 12 trip it's 13 in the afternoon and 13 in the morning peak 13 hours. And to do a full blown traffic study for a local area 14 transportation review, you have to meet at least 50 persons 15 trip during the peak hour and we don't have that. So it's 16 exempt from local area transportation. 17 HEARING EXAMINER: Okay. Thank you. 18 MR. KLINE: So you submitted a traffic statement? 19 MR. ETEMADI: Correct. 20 MR. KLINE: To Park and Planning Commission? 21 MR. ETEMADI: Yes. 22 MR. KLINE: And you concluded that the proposed 23 use can be accommodated by the capacity and the existing 24 transportation network surrounding the property? 25 MR. ETEMADI: Correct. Yes.</p>	<p style="text-align: right;">83</p> <p>1 HEARING EXAMINER: Absolutely. 2 MR. KLINE: If I really don't want to have to go 3 back and read all of the record, but when we first came in 4 here in 2007 there was some opposition to the proposal, and 5 it was a group of people who lived in Clarksburg who just 6 didn't like the direction Clarksburg was going and wanted to 7 minimize the amount of commercial uses on Route 355. And the 8 hearing examiner took a look at that and concluded that there 9 was -- and that this would fit within the standards for the 10 special exception and would probably be a use that would be 11 appreciated. When we came back in 2017 for the emergency 12 facility in the church next door was concerned, now are we 13 going to have people parking on Sundays and I think I wrote 14 in the statement of operations Doctor Walcoff met with them 15 and explained what he would do to basically put in fences so 16 the dogs wouldn't so that dogs wouldn't run on their 17 property, would basically police the use of the parking lot 18 and since 2017 there has never been a complaint filed about 19 the way we -- the way he does business. And it's been a 20 growing business as you heard today. So this is to kind of 21 address the evolution of the business and trying to address 22 the growth in Clarksburg and I think we've given you all the 23 evidence to show how it satisfies the criteria of the zoning 24 ordinance for this use. And we would ask that it be approved 25 with the conditions we deem to be acceptable.</p>
<p style="text-align: right;">82</p> <p>1 MR. KLINE: That's the punch line. 2 HEARING EXAMINER: Right. 3 MR. KLINE: It meets all the traffic standards of 4 the LAPR Guidelines? 5 MR. ETEMADI: Of course. Staff has reviewed the 6 traffic statement and they have approved it and they agreed 7 with our conclusion. 8 HEARING EXAMINER: Okay. Thank you. I mean, and 9 as a lay person who doesn't like to do the math when it comes 10 to traffic or acoustical, just from a practical standpoint 11 you're adding one veterinarian and visits are throughout the 12 day. So you're not going to have every single visit on the 13 calendar come in at 8 a.m. and leave at 5 p.m. so it makes 14 100 percent sense that there's no traffic impact based on the 15 use and the increase from what they had before and now. 16 MR. ETEMADI: Correct. The calculation basically 17 is based on so many studies that were done around the country 18 of the similar establishments. And based on that we came up 19 with the numbers that I have in the traffic statement how 20 that is calculated. 21 HEARING EXAMINER: Perfect. Thank you. 22 MR. ETEMADI: Sure. 23 HEARING EXAMINER: I have no further questions. 24 MR. KLINE: So that's my last witness. I will 25 probably just make a sort conclusory statement.</p>	<p style="text-align: right;">84</p> <p>1 HEARING EXAMINER: Okay. Sounds good. Mr. Kline, 2 what I would ask you or someone on your staff go back in, 3 take a look at the website, make sure that what we have on 4 the website for exhibits is what is included in the record. 5 So I want to make sure that -- 6 MR. KLINE: And I thought we had done that before. 7 HEARING EXAMINER: Yeah, take the -- drill down on 8 each one. I thought because the electronic copy needs to 9 match whatever we have for the paper copy. 10 MR. KLINE: Yes, I agree. 11 HEARING EXAMINER: And so now we've got the 12 addition of the exhibits, we've got 27 for the affidavit of 13 posting. We've got 28 will be the final forest conservation 14 when that comes in in the next couple of days. 15 MR. KLINE: Yes. 16 HEARING EXAMINER: So we know we need the 17 landscape plan. 18 MR. KLINE: Yes, ma'am. 19 HEARING EXAMINER: And what else were we missing? 20 MR. KLINE: I'm going to forward to you an 21 emergency vehicle access plan approved by the Montgomery 22 County Department of Fire and Rescue Services. 23 HEARING EXAMINER: All right. So I'm going to do 24 29 for the landscape plan and 30 for emergency vehicle. And 25 if there's anything else that you find, email both myself and</p>

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<p style="text-align: right;">85</p> <p>1 Sara Behanna and we will make sure that we add that to be 2 sure that's an exhibit and make sure we have it both in the 3 electronic file and in the -- 4 MR. KLINE: This is the emergency access plan. 5 HEARING EXAMINER: Oh, perfect. 6 MR. KLINE: Signed by Ms. Loloff (phonetic). 7 HEARING EXAMINER: Excellent. All right. And if 8 you still wouldn't mind sending it to us electronically? 9 MR. KLINE: Electronically, yes. 10 HEARING EXAMINER: Because then she'll have the 11 PDF and be able to upload it. 12 MR. KLINE: Okay. 13 HEARING EXAMINER: Okay. So with no further 14 witnesses that will complete the hearing. The record will 15 close in 10 days -- 16 MR. KLINE: Unless you don't get the letter from 17 Park and Planning. 18 HEARING EXAMINER: Great. We will keep it open 19 until we get the letter from Park and Planning, but we're 20 making an assumption it will come in the next couple of days. 21 We'll leave the record open 10 days in order for us to get 22 the transcript and you know, correspond back and forth if 23 there's any other documents that need to add to the 24 electronic document exhibit list. Once we receive the 25 transcripts -- I think I have - - I think it's 30 days.</p>	<p style="text-align: right;">87</p> <p>CERTIFICATE OF TRANSCRIBER</p> <p>1 I, Molly Bugher, do hereby certify that this 2 transcript was prepared from the digital audio recording of 3 the foregoing proceeding; that said transcript is a true and 4 accurate record of the proceedings to the best of my 5 knowledge, skills, and ability; and that I am neither counsel 6 for, related to, nor employed by any of the parties to the 7 case and have no interest, financial or otherwise, in its 8 outcome. 9 10  11 _____ 12 Molly Bugher, CDLT-161 13 October 29, 2024 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">86</p> <p>1 MR. KLINE: It is, yes. 2 HEARING EXAMINER: Yes, 30 days. It's either 30 3 or 45. We have so many -- 4 MR. KLINE: Zoning application is 45, special 5 exception permit is 30. 6 HEARING EXAMINER: 30. We've gotten so many LMAs. 7 MR. KLINE: You can have all the time you want. 8 You just have to ask for it. 9 HEARING EXAMINER: That's true, but I try to get 10 them done then. So essentially, 40 days from today within 11 that time frame you'll have the decision, the recommendation 12 that I'll send to the Board and you have 10 days within that 13 time that I forward my recommendation to the Board if you 14 disagree, to request oral argument. 15 MR. KLINE: Yes, we understand. 16 HEARING EXAMINER: And that's it. Thank you guys. 17 MR. KLINE: Thank you. 18 HEARING EXAMINER: We're off the record. 19 (Off the record.) 20 21 22 23 24 25</p>	<p style="text-align: right;">88</p> <p>CERTIFICATE OF COURT REPORTER-NOTARY PUBLIC</p> <p>1 I, Marcellous Grant, the officer before 2 whom the foregoing proceedings were taken, do 3 hereby certify that any witness(es) in the 4 foregoing proceedings were fully sworn; that 5 the proceedings were recorded by me and 6 thereafter reduced to typewriting by a 7 qualified transcriptionist; that said digital 8 audio recording of said proceedings are a true 9 and accurate record to the best of my 10 knowledge, skills, and ability; and that I am 11 neither counsel for, related to, nor employed 12 by any of the parties to this case and have no 13 interest, financial or otherwise, in its 14 outcome. 15 16 17 Notary Registration No.: 7929796 18 My Commission Expires: 7/31/25 19 20 21  22 _____ 23 Marcellous Grant, AAERT, CER 24 NOTARY PUBLIC FOR THE COMMONWEALTH OF VIRGINIA 25</p>

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