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Transcript of Hearing

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| <p style="text-align: center;">1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 TRANSCRIPT OF AUDIO-RECORDED</p> <p>8 HEARING FOR PETITION OF GLEN WAYE GARDENS</p> <p>9 CONDOMINIUM ASS'N ET AL., FOR THE JUDICIAL REVIEW OF</p> <p>10 THE DECISION OF THE MONTGOMERY COUNTY COUNCIL</p> <p>11 SITTING AS THE DISTRICT COUNCIL IN THE MATTER OF</p> <p>12 RESOLUTION NO. 20-616, LOCAL MAP AMENDMENT H-149.</p> <p>13 MAY 30, 2025</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job No.: 587887</p> <p>24 Pages: 1 - 73</p> <p>25 Transcribed by: Christian Naaden</p> | <p style="text-align: right;">3</p> <p>1 All right. I'll hear from the petitioners.</p> <p>2 MS. ROSENFELD: Thank you very much, Your</p> <p>3 Honor. Your Honor, there -- there are several issues</p> <p>4 that I would like to particularly highlight and</p> <p>5 bring to your attention here in oral argument today.</p> <p>6 I know you have the legal briefs that have been</p> <p>7 filed by all parties.</p> <p>8 The first, really, is a preliminary matter</p> <p>9 almost, which goes to the question of standing,</p> <p>10 whether or not the petitioners in this case have</p> <p>11 standing. And I would just like to note, for the</p> <p>12 record, that condo president, Vicki Vergagni, and a</p> <p>13 number of the petitioners are here in the courtroom</p> <p>14 today. The -- the argument has been put forward that</p> <p>15 the petitioners live too far away from the subject</p> <p>16 property to qualify for standing in this case.</p> <p>17 And I would like to bring to the Court's</p> <p>18 attention on page 3 of our brief that Maryland state</p> <p>19 law under the land use code, section 22-402A1,</p> <p>20 parties are entitled to file a petition for judicial</p> <p>21 review in connection with the final action of a</p> <p>22 district council zoning case if a person is</p> <p>23 aggrieved by the action, or if they appeared at the</p> <p>24 hearing in person by attorney, or in writing.</p> <p>25 So, appearing in the lower proceedings does</p> |
| <p style="text-align: center;">2</p> <p>1 P R O C E E D I N G S</p> <p>2 BAILIFF: All rise.</p> <p>3 THE COURT: Thanks, sir. Everyone, good</p> <p>4 afternoon. Please be seated.</p> <p>5 MALE: Think we're ready.</p> <p>6 BAILIFF: Calling civil case C-15-CV-24-</p> <p>7 5724 in the matter of Glen Waye Gardens Condominium</p> <p>8 Association, et al.</p> <p>9 THE COURT: Could I ask Counsel to identify</p> <p>10 themselves for the record, please?</p> <p>11 MS. ROSENFELD: Good afternoon, Your Honor.</p> <p>12 Michelle Rosenfeld here on behalf of all</p> <p>13 petitioners.</p> <p>14 THE COURT: Hi, good afternoon.</p> <p>15 MS. ROBINSON: Good afternoon, Your Honor.</p> <p>16 Elana Robinson, assistant county attorney,</p> <p>17 representing the county council sitting as the</p> <p>18 district council.</p> <p>19 THE COURT: Sure. Good afternoon.</p> <p>20 MR. GOLDSMITH: Good afternoon, Your Honor.</p> <p>21 Peter Goldsmith with law firm Lerch, Early & Brewer,</p> <p>22 here on behalf of Glenmont Forest Investors Limited</p> <p>23 Partnership.</p> <p>24 THE COURT: Great. Good afternoon. Nice to</p> <p>25 see you all. Please have a seat. One second, here.</p> | <p style="text-align: right;">4</p> <p>1 not -- is not dispositive as to whether or not you</p> <p>2 are eligible for standing. As it turns out, in this</p> <p>3 case, we have parties who both participated below,</p> <p>4 parties who are aggrieved, and parties who qualify</p> <p>5 as what is known as per se aggrieved under Maryland</p> <p>6 case law.</p> <p>7 And if you take a look at page 4 of the re-</p> <p>8 -- reply memorandum that we filed in figure one, you</p> <p>9 can see that there are people who live, members of -</p> <p>10 - residents of the Glen Way Condominium Association</p> <p>11 who live directly across the street from the subject</p> <p>12 property.</p> <p>13 The subject property in figure one, which</p> <p>14 is excerpted from the record, page 1,193, is</p> <p>15 outlined in red, and the Glen Way Condominium Gar-</p> <p>16 - Gardens is directly across the street from now --</p> <p>17 from that. Being a condominium complex, of course,</p> <p>18 there are people who live closer, and people who</p> <p>19 live more distant. But the people who live closest,</p> <p>20 in fact, are petitioners in this case, including</p> <p>21 petitioner James Johnston, who did participate in</p> <p>22 the proceedings below.</p> <p>23 And in figure two, you can see that James</p> <p>24 Johnston lives less -- less than 400 feet. We have</p> <p>25 other petitioners shown -- identified in figure</p> |

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| <p>5</p> <p>1 three who live 228 feet, and in figure four, some 2 live 1,000 or more feet away. 3 When you lo- -- review the case law, the 4 cases have consistently recognized property owners 5 within about 200 feet as being prima facie 6 aggrieved. They're simply presumed to be aggrieved 7 without needing to show more. 8 Property owners who are more distant, 200 9 to 1,000 feet, are what's called almost prima facie 10 aggrieved, which means that they need to show that 11 there are sort of plus factors. They need to 12 demonstrate that the proposed change in the -- in 13 the land use case at issue would have or could have 14 some impact on the use, enjoyment, and value of 15 those individuals' properties. 16 And so, when you look at this particular 17 development, the property boundary closest to the 18 Glen Way Gardens residence is, in fact, the si- -- 19 the side of the development that has the tallest 20 buildings. They are -- they are not the townhomes, 21 they're not the lower density, they're not 22 restricted at 45 feet. But, in fact, they range 23 between five and six stories on the northern and 24 western portions of the property. 25 So, clearly, the -- the people who are in</p> | <p>7</p> <p>1 and school capacity, and those -- those substantive 2 issues. 3 When the first individual stood to ask 4 questions of an expert witness, the hearing examiner 5 shut down that questioning immediately. And on page 6 9 of our reply brief, we go through that colloquy 7 fairly extensively, because I think -- I think it's 8 important to look at it from the perspective of 9 someone who -- who spends time in a courtroom or 10 administrative proceedings. 11 And so, the -- the hearing examiner said, 12 you can't do it from here. And the witness started 13 to say, can I ask? And then the hearing examiner 14 said, what I would ask of those in opposition that 15 there be one voice that asks questions. 16 So, there were differing people, differing 17 individuals with different concerns related to the 18 project, and the hearing examiner was asking them to 19 speak as if, for example, they were represented by 20 counsel, as if they spoke with one voice. 21 And there was a participant, Richard 22 Coffinger [ph], who noted objections. He said when 23 there -- they have different groups, you can't 24 expect them to speak with a single voice unless, and 25 then the hearing examiner interrupted him.</p> |
| <p>6</p> <p>1 the southernmost portion and even farther north of 2 the Glen Way Condominium properties are -- are 3 directly impacted by this -- by this project. And 4 that, of course, as well includes the 5 transportation, and school, and other impacts that 6 were generally discussed in the case. 7 So it's -- it's our position that, clearly, 8 under the prevailing case law, we have petitioners 9 withstanding and this -- this petition for judicial 10 review is properly before this Court. 11 Going into the next issue that I would like 12 to raise, there is a question about the availability 13 of cross-examination to the petitioners in this 14 case. And the hearing examiner, as far as -- as 15 we've laid out clearly in our brief, deprived the 16 petitioners in this case of the opportunity for 17 meaningful cross-examination. 18 The people who appeared, the witnesses who 19 appeared in opposition to this case, were a series 20 of individuals. They had a variety of interests. 21 Some were concerned about a potential road opening 22 that is not an issue in this case. Others were here 23 -- representatives of the condominium association, 24 who were here to testify at the hearing, raised 25 concerns about traffic, and stormwater management,</p> | <p>8</p> <p>1 And he went on to say, each group should 2 have a separate opportunity to raise the issues that 3 are important to them. And the hearing examiner went 4 on to say things like, this is going to take a 5 while, I want to make sure that this doesn't get out 6 of hand. 7 And Mr. Coffinger said, so how about after 8 the fact, if somebody has asked a question, and 9 another person starts to ask the same question, then 10 you hold back, but the individual, each individual 11 is allowed to ask the question, because there are 12 many, many questions that I've heard testified to 13 already today that should and could be asked. 14 And the hearing -- and he went on to say, 15 how about when it becomes the free-for-all, then you 16 announce it? And she cut him off, I'm about to try 17 that. And then he finished ahead of time. And she 18 said, so I'm trying to avoid that. 19 And as it went along, Mr. Coffinger -- 20 there -- there was extensive colloquy. I'm not going 21 to read this all to you, Your Honor. But the -- he - 22 - he noted his objections, he said there's problems 23 here with doing that. 24 And the hearing examiner basically said, 25 these are the two options, you know, you can ask</p> |

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| <p style="text-align: right;">9</p> <p>1 specific questions now, or have the applicant recall 2 the expert. And Mr. Coffinger -- Coffinger, a 3 layperson, said, I didn't know I was going to have a 4 difficult time, I can't, I've had enough arguing. 5 So, essentially, he made his objections in 6 the record, and the other participants, individual 7 opponents, heard all of his colloquy, and basically 8 at that point deferred to the fact that the hearing 9 was going to proceed. 10 The hearing did proceed. And at the ti- -- 11 so, this is a lengthy proceeding, there's a lot of 12 expert witnesses, there's a lot of time between when 13 the first witnesses testify, expert witnesses, and 14 then it's time for the individuals to present their 15 testimony. And by that time, there really was no 16 meaningful opportunity for them to appreciate that 17 that was the point in time at which they could say, 18 can we call back the experts and ask questions? 19 And I appreciate the fact that 20 administrative proceedings are often less formal 21 than court proceedings. However, in this case, they 22 really were derailed in the sense that they were not 23 given the opportunity at the appropriate time to 24 cross-examine the expert witnesses. 25 And I refer the Court to Ross mis- -- v.</p> | <p style="text-align: right;">11</p> <p>1 lunch, later in the day, to remember all those 2 questions that may have been in your mind and come 3 back and cross-examine the experts, it really denied 4 them of due process and fundamental fairness in this 5 particular proceeding. 6 And so for that reason, we think it's 7 appropriate to reverse and vacate the decision and, 8 at minimum, remand for the purpose of the 9 petitioners to have the opportunity to cross- 10 examine. 11 There also were some substantive issues. 12 And I know that this is a decision of the district 13 council, and we often think of the district council 14 as the county council sitting in its legislative 15 role. 16 That is not the role the council sits in in 17 this particular case. The council is sitting as an 18 administrative agency. Findings of fact are -- are 19 crucial to their ultimate decision. And their 20 findings of fact have to be supported by the 21 evidence of the record. There has to be substantial 22 evidence of record to justify the findings that they 23 make. 24 But more importantly, those findings have 25 to be reflected in the written decisions that are</p> |
| <p style="text-align: right;">10</p> <p>1 Mr. Lucky, which -- which clearly says that allowing 2 protestants, in this case the petitioners, to call 3 the applicants' witnesses and examine them was not 4 the substantial equivalent of the right to cross- 5 examine immediately after the direct testimony of 6 the witness has been concluded. 7 And in that case, the court said the denial 8 of cross-examination not only was error, but was 9 error that vitiated the proceedings, and therefore 10 prejudiced the protestants. And we submit that that 11 is exactly what happened in this case. That 12 procedurally, the individuals should have been 13 allowed to raise their cross-examination questions 14 at the close of each expert witness. 15 And just to underscore why this is so 16 prejudicial, there -- there were some people who 17 were there concerned about the opening of something 18 called Erskine Road to the eastern side of the 19 property. Those are not issues that concerned my 20 petitioner -- my -- my -- my clients. And so, trying 21 to encourage them to have one spokesperson really 22 was prejudicial to all of them. 23 And in addition to that, by using the 24 alternative method of saying, you can just wait 25 until after all the witnesses, maybe it was after</p> | <p style="text-align: right;">12</p> <p>1 available for you to review. It is not your 2 responsibility to go back, delve into the record, 3 look and see whether or not there is evidence to 4 support the conclusions that the district council 5 made. 6 And it's certainly, generally, beyond the 7 role -- purview of the Court to go back and make 8 independent fact-finding on -- on those substantive 9 issues. And there are -- there are three -- three 10 issues in particular that I would like to bring to 11 your attention. 12 One of them is with respect to the question 13 of the adequacy of schools. And so, you know, 14 there's been argument by the respondents that 15 schools are off the table, they're not something the 16 council needs to determine. 17 However, in the council's own resolution on 18 page 5, footnote three, the council cites to the -- 19 the -- the zoning ordinance, and it further says 20 that beyond roads, the adequacy of other facilities 21 is part of the council's determination that an 22 application will be in the public interest and that 23 it will be consistent with a coordinated and 24 systemic development of the regional district. 25 Well, what are public facilities? They're</p> |

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| <p>13</p> <p>1 roads, they're schools, they're water, they're 2 sewer. There's -- there's a vari- -- you know, the 3 things that your taxes go to pay for to support 4 public infrastructure. Schools, clearly, is -- is 5 one of those core components.</p> <p>6 So, in -- when the -- on page 5 of the 7 council resolution, it says, adequacy of public 8 facilities slash public interest. There is zero -- 9 zero mention of schools in the council's 10 determination of adequate public facilities. No 11 mention of schools whatsoever. And when you look at 12 the -- at the hearing examiner's report, likewise, 13 there's no mention of schools.</p> <p>14 Now, I'm going to categorize that just a 15 little bit. They talk about schools and how, at the 16 moment, there is capacity in the public school 17 system. What they do not do is make any evaluation 18 whatsoever that adding 2,700 new residential units 19 can be accommodated within the existing public 20 schools.</p> <p>21 And while there is a lot of discussion in 22 the context of the -- of the opposition filed by the 23 two respondents, that's -- that's a decision for a 24 later date. That's not the council's role at the 25 time of rezoning. And -- and again, I refer you to</p> | <p>15</p> <p>1 street confronting. And so, they are -- it's an 2 existing adjacent use at -- and approved adjacent 3 development.</p> <p>4 When you look at the council's resolution 5 on pages 4 and 5, the council specifically says that 6 the proposed development will be compatible with the 7 surrounding area because it provides generous 8 setbacks to the south and east, and the buildings 9 will step down in height approaching the detached 10 resi- -- residential neighborhood to the east. Glen 11 Way Gardens is to the north. It's not to the east.</p> <p>12 And when you look at this, all of the 13 analysis in terms of compatibility relates to the 14 neighborhood to the east and the opening of Erskine 15 -- Erskine Road, which is not -- doesn't -- does not 16 directly affect the petitioners, and is not an issue 17 that we're raising in this case.</p> <p>18 And when you look at the hearing examiner's 19 report, I'm referring you to record page 1,288, she 20 refers to the planning staff findings or recommended 21 findings. The proposed development will provide a 22 compatible relationship with the existing adjacent 23 residential development to the south and east, no 24 mention of the north.</p> <p>25 And the applicant's expert testified that</p> |
| <p>14</p> <p>1 the council's own language in footnote three that 2 says, the adequacy of other facilities is part of 3 the council's determination that an application will 4 be in the public interest.</p> <p>5 And so, if you look at the council's 6 resolution, if you look at the hearing examiner's 7 report, which is record 261 to record 1,307, there 8 is not a scintilla of information there evaluating 9 the adequacy of public schools in the context of 10 this proposed development.</p> <p>11 The -- one other significant finding is the 12 question of compatibility. And if we look at the 13 council resolution on page 4, there is about five 14 paragraphs starting on page four, compatibility with 15 adjacent uses and the surrounding area.</p> <p>16 And again, this is a finding that's 17 required under the zoning ordinance, and it's 18 section 7-2 da- -- 7.2.1.E2D. And it says, the 19 district council must find that the floating zone 20 plan will be compatible with existing and approved 21 adjacent development.</p> <p>22 And in our brief, we -- we explain how, 23 under the code, adjacent includes properties 24 confronting, side to side and behind. In this case, 25 my clients all live in the property across the</p> | <p>16</p> <p>1 the applicant -- and I'm reading now from page 1,289 2 of the record, the applicant seeks to create a 3 development framework, quote, setting the 4 compatibility edges along the eastern property line.</p> <p>5 So, again, there is nothing in the written 6 decisions of either the hearing examiner or the 7 district council that would allow you to make a 8 determination as to whether there's substantial 9 evidence of record to support a finding that there's 10 compatibility with the Glen Way Gardens community 11 to the north.</p> <p>12 And so, for that reason, the -- the 13 council's decision is arbitrary and capricious. And, 14 again, should be -- should be, in this instance, and 15 for the school's reasons as well, simply reversed 16 and vacated.</p> <p>17 The final -- the final point that I would 18 like to make is that when it comes to 19 transportation, again, it was clear, and this is in 20 the reply memorandum that we filed, that there were 21 numerous issues raised with respect to 22 transportation and pedestrian safety, and just 23 generally in terms of the compatibility findings 24 that are required. There was no -- no evaluation of 25 that.</p> |

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| <p style="text-align: right;">17</p> <p>1 Those transportation compatibility findings 2 were deferred for a later date. But we submit that 3 under the zoning code that's not -- that's not -- 4 the council doesn't have the authority to do that. 5 So we, in summary, clearly ar- -- argue 6 that we have the standing to be here before the 7 Court in the first instance, that procedurally my 8 clients were deprived of due process and a fair 9 proceeding before the hearing examiner because they 10 were deprived of meaningful and timely opportunity 11 for cross-examination. 12 And on the issue, in particular, of schools 13 and compatibility, as well as on transportation, the 14 -- the findings in the district council decision, 15 which incorporates and relies on the hearing 16 examiner report, neither one have the requisite 17 findings to allow this Court to find that there's 18 substantial evidence of record to support the 19 decision. We would ask that you reverse and vacate, 20 and -- and if appropriate, reverse and vacate and 21 remand for further proceedings. Thank you. 22 THE COURT: Okay. Thanks. Who would like to 23 go first? 24 MR. GOLDSMITH: I'll go first, Your Honor. 25 Again, Peter Goldsmith with the law firm by Lerch,</p> | <p style="text-align: right;">19</p> <p>1 witnesses who, for the most part, have been 2 practicing in Montgomery County for decades. 3 The petitioners only had two people 4 participate at the hearing, only one of whom 5 testified, and called no experts to counteract the - 6 - or to -- to counter the applicant's expert 7 witnesses. And the other 60 peti- -- 60 petitioners 8 who have signed on to the petition for judicial re- 9 -- review, for the most part, weren't even present. 10 This application for rezoning, again it's 11 called a local map amendment, is rooted in an 12 intense public process that began 15 years ago when 13 the county was evaluating the revitalization of the 14 Glenmont area around the -- the Glenmont -- the 15 Glenmont Metro station. And this is the -- the 16 planning process. And it's what I call -- what I 17 think of as the -- the first step in a five-step 18 process for a re- -- really complicated development. 19 THE COURT: Did you mean to say the 20 planning pro- -- you're talking about the floating 21 zone establishment? 22 MR. GOLDSMITH: So, the -- there's all 23 kinds of plans in -- in land use. This is the -- 24 what I call the -- we'll -- we'll call it the master 25 planning process, not to be confused with the other</p> |
| <p style="text-align: right;">18</p> <p>1 Early, and Brewer here on behalf of Glenmont Forest 2 Investors Limited Partnership. And they are the 3 applicant in this case. 4 The petitioners' claims fall into two 5 categories. First, they -- they are not preserved 6 for this Court's review, or they're not relevant for 7 the approval of a local map amendment for a floating 8 zone. Or they fall into both categories. 9 The petitioners are making claims that 10 there's not substantial evidence in the record to 11 support certain findings and conclusions of the 12 district council. However, there are 2,500 pages in 13 the record, and the substantial evidence test is a 14 very high burden. 15 And this rezoning application, and in this 16 case, it's known as a local map amendment, was fully 17 vetted by the Montgomery County Planning Department 18 planning -- planning technical planning staff, the 19 Montgomery County Planning Board of the National 20 Capital Park and Planning Commission. 21 The zoning hearing examiner had a full 22 evidentiary hearing, the district council, which is 23 the county council sitting in its zoning capacity, 24 who also held a very narrow appeals hearing. The 25 applicant at the evidentiary hearing called expert</p> | <p style="text-align: right;">20</p> <p>1 plans that I'm going to discuss. So -- 2 THE COURT: Right. 3 MR. GOLDSMITH: The -- the -- the master 4 planning processes ta- -- started 15 years ago, and 5 that's -- that's the -- the first phase. And it 6 culminated in what -- in the publication of a public 7 document known as the Glenmont Sector Plan. And that 8 sector plan is referred to throughout the -- 9 throughout the record. 10 And that sector plan makes several 11 recommendations. It talks about all the 12 infrastructure upgrades in the area, but it also 13 makes specific recommendations for particular 14 properties, including my client's property, the 15 Glenmont Forest Apartments property. And recommended 16 rezoning the property to a mixed-use property with - 17 - with high density residential, which is perfectly 18 appropriate for its transit-oriented location near 19 the -- the Glenmont Metro Station. 20 And my client and -- and their development 21 team, in putting together this rezoning for this 22 floating zone, followed that sector plan's 23 recommendation meticulously. And now, there's 24 rezoning to -- to the floating zone, and this is the 25 zoning phase, and this is where we are.</p> |

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| <p style="text-align: right;">21</p> <p>1 And I think it's -- I'm going through these 2 steps because I think it's -- it's helpful for the 3 Court to appreciate where -- where we are and where 4 we're going in order to address the petitioners' 5 claims. 6 And so, in this -- in the -- in the zoning 7 phase, you know, the -- for rezoning to a floating 8 zone, what that does, it -- it establishes a 9 framework or a skeleton for the project. It sets the 10 maximum density, not the final density. And it -- it 11 -- the applicant is also required to develop a 12 concept, which is illustrated in -- in an 13 illustration known as a floating zone plan, and 14 that's contained in the record at page 1,113. 15 And then, the next phase is the -- is the 16 sketch plan phase, which -- oh, I'm sorry. And then, 17 during -- during approval of the -- a floating zone, 18 there are six criteria that must be met. And that -- 19 those criteria are codified under 59.7.2.1.E.2. And 20 one of them is that this project must substantially 21 con- -- conform to the master plan, and this does. 22 And those six findings were addressed 23 extensively in the -- by the -- the Montgomery 24 County Planning staff in their planning -- or in 25 their staff report, which is in the record, by the</p> | <p style="text-align: right;">23</p> <p>1 - stormwater requirements. And the required findings 2 for -- for a preliminary plan are codified under -- 3 are 50.4.D of the Montgomery County Code. And 4 specifically says that we are supposed to put up -- 5 that that is when the final determination of 6 adequacy of public facilities is made. And in sec- - 7 - in part -- in section 50.4.2.A, it lists all the 8 agencies that evaluates the adequacy of public 9 facilities. 10 And at the preliminary plan, there will be 11 pub- -- there will be a public hearing and an 12 opportunity for -- for public comment, 13 participation, that happens before the Montgomery 14 County Planning Board. 15 And it makes sense at this time for public 16 facilities to be evaluated, because it's much later 17 in -- in the process when this -- when the 18 development comes into more focus. And then the 19 final phase is the site plan, which is when all the 20 details essentially are finalized. 21 And so, the -- the petitioners are making 22 an argument that there -- that there's insufficient 23 -- insufficiency, or the -- that there's not 24 sufficient evidence in the record for certain -- 25 certain findings that the district council made. And</p> |
| <p style="text-align: right;">22</p> <p>1 zoning hearing examiner's opinion, which is in the 2 record, and by the district council -- district 3 council's resolution, which is in the record. 4 The next step is called a sketch plan, 5 which adds a little more flesh to the -- to the 6 skeleton. And then the fourth step, which I think is 7 the most relevant future phase, is the preliminary 8 plan. And that's a subdivision plan that does two 9 things. 10 First, it establishes lot lines. And then 11 most importantly for -- for this case here, that is 12 when adequate public facilities are evaluated, 13 they're scrutinized. And that is set forth in 14 Article 50 of the Montgomery County Code. 15 That is the subdivision regulations, not to 16 be confused with the zoning ordinance, which is what 17 we're looking at here, and that's Article -- that's 18 Article 59. And when I -- when we're talking about 19 public facilities, I'm talking about roads, water 20 and sewer capacity, school capacity, bi- -- and the 21 bicycle and pedestrian facilities as well. It's also 22 the time when the applicant is required to submit 23 something called the stormwater concept plan. 24 That's when they -- they explain how 25 they're meeting stormwater -- modern stormwater or -</p> | <p style="text-align: right;">24</p> <p>1 again, they're either more appropriate to be -- be 2 evaluated at the preliminary plan phase, or they're 3 not preserved, or both. And on their merits, they 4 can be disposed of pretty quickly. 5 First, they're -- they are claiming that 6 the zoning hearing examiner erred when -- or, but 7 then ultimately the district council erred when they 8 didn't consider their community in -- when 9 determining whether this proposal is compatible with 10 the neighborhood. 11 But the actual finding is, again -- is 12 whether the floating zone is compatible with 13 existing and approved adjacent development. And it's 14 debatable whether their community is actually 15 adjacent to my client's property. 16 While it is relatively nearby, it's across 17 Randolph Road, where, at the narrowest in -- in this 18 area is six lanes, and it gets more complicated, and 19 there are additional lanes added because there's a 20 tunnel underneath Georgia Avenue that's right in 21 fro- -- that's right between our properties. And all 22 of the -- their entire community is across Randolph 23 Road. Most of their community is also behind the 24 Glenmont Shopping Center, which has an enormous 25 parking lot.</p> |

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| <p>25</p> <p>1 And it makes sense that the Glenmont Sector 2 Plan, and the zoning hearing examiner, and the 3 district council, in their analyses, focused mainly, 4 if not solely, on the community to the -- directly 5 to the east, because they're not only adjacent, 6 they're adjoining. 7 And this proposal could have allowed tall 8 buildings to overshadow some of the -- their single- 9 family homes, and there was -- there's a proposed -- 10 there's a recommended connection in the -- in the 11 Glenmont Sector Plan through their neighborhood. And 12 these -- and the -- the neighbors to the east, none 13 of whom are petitioners, were extremely vocal at the 14 hearing. 15 Unlike the petitioners, who only had one -- 16 one person testify, they had multiple people. And as 17 a result of that discussion, the shortest buildings 18 and least impactful development is, correctly, as 19 Ms. Rosenfeld said, to the east. But the 20 petitioners, the closest portion of the petitioners' 21 property, is also to the northeast. 22 And the northeast corner of this proposal, 23 as shown on the -- on the floating zone plan, will 24 have the least impactful development. And there is 25 even an option there for townhouses, not necessarily</p> | <p>27</p> <p>1 - to support findings for transportation advocacy. 2 And most of the -- the testimony, or most of the 3 allegations, really relate to pedestrian connections 4 and bicycle facilities. And that's not a relevant 5 inquiry in finding, in -- in approving a local map 6 amendment for a floating zone. 7 The transportation advocacy finding, the 8 one criterion that applies to that, is focused on 9 vehicular adequacy. And the applicant at the hearing 10 had a -- a transportation consultant who has been 11 practicing in Montgomery County for decades. She 12 submitted a 500-page transportation report, which is 13 in the record, that explains that this project meets 14 transportation, it meets that -- meets that finding. 15 And she also testified at the hearing and 16 explained at length that -- that this -- that 17 transportation is -- that a final determination on 18 transportation advocacy is made at the future 19 preliminary plan stage. 20 And so, finally, they -- the petitioners 21 make the claim that they were deprived of the right 22 of reasonable cross-examination. And there are two 23 problems with that argument. One, it's not preserved 24 for this Court's review. 25 And two, it's -- a simple reading of the</p> |
| <p>26</p> <p>1 apartment buildings. 2 Next, they -- they claim that there is 3 somehow insufficient evidence in the record to 4 support the finding that the schools are -- are 5 adequate. That, again, is irrelevant because schools 6 are tested during the preliminary plan of 7 subdivision phase. And that, of course, makes sense 8 because we'll have a much better idea of what this 9 proposal is. We'll have a better idea of what the 10 density is at that -- at that time. 11 And that -- and, in addition, that's also 12 not true. In -- at the hearing, Matt Leakan [ph], 13 the applicant's expert planner, explained that the 14 governing -- that this proposal, right now, 15 currently passes the governing schools test for all 16 three schools that serve this property. The 17 elementary school, the middle school, and the high 18 school. 19 And that expert testi- -- testimony was not 20 contradicted by any other expert testimony. And the 21 applicant also addressed this even further in their 22 submission, which is -- they refer to as the land 23 use report, and that's also in the record. 24 And then, finally, the -- the petitioners 25 claim that there is insufficient evidence in -- to -</p> | <p>28</p> <p>1 transcript reveals that the lone petitioner, Ms. 2 Vergagni, did not participate in a colloquy between 3 two non-petitioners, Lindsay Rowe [ph] and Richard 4 Coffinger, who -- who -- who spoke up at the 5 hearing, and had an exchange with the zoning hearing 6 exam- -- examiner about how the hearing was going to 7 be conducted. And administrative hearings can become 8 extremely unruly, especially zoning hearings. 9 And I used to be counsel to the Prince 10 George's County Planning Board, and the chair used 11 to rein in people all the time during -- during 12 zoning -- zoning hearings. And the zoning hearing 13 examiner was very clear that she did not want to 14 have a free-for-all. So she made this initial 15 suggestion that -- she made this initial suggestion 16 that there be -- let's have a spokesperson speak for 17 the entire group. 18 And Mr. Coffinger spoke up and said, I 19 don't think that's appropriate because there are 20 multiple groups. And -- and, of course, actually, 21 that made sense to me. And it made sense because 22 there were multiple groups. 23 There were people to -- who were there from 24 the neighborhood to the east, who actually live, and 25 -- and adjoin this property, and could be greatly</p> |

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| <p>29</p> <p>1 impacted by this project. And then there was Ms. 2 Vergagni, who was the -- the lone petitioner there. 3 She lived way on the other side of the -- of the 4 shopping center, more than 1,000 feet away, as 5 conceded in the petitioners' requirement. 6 And so, the zoning hearing examiner said, 7 okay, well, Mr. Coffinger, do you have any questions 8 for this witness? And she asked him that while the 9 witness was still on the stand. She gave him the 10 opportunity to ask the questions of the witness 11 while he was on the stand. Or, she said, your other 12 option is to wait, testify, and then we can recall 13 these witnesses at the end of the hearing. 14 He chose not to do either and ended up not 15 participating with the rest of the hearing. He 16 didn't even testify. So, Ms. Rowe said, in the 17 record, I have no -- this isn't cross-examin- -- an 18 -- a cross-examination, and I will wait to ask my 19 question. 20 So then, there was nobody else who spoke 21 up, and Mr. Coffinger never used the word, I object. 22 And none of the language that he uses could be 23 interpreted as a continuing objection or objection 24 at all. And the hearing examiner proceeded. 25 And unlike in the cases that are cited in</p> | <p>31</p> <p>1 - or participate, they waived their opportunity to - 2 - to their -- their right to cross-examination. 3 But even if they had spoken up or objected, 4 the hearing examiner did let Mr. Coffinger, the -- 5 the only vocal participant in the hearing regarding 6 the way the -- the -- the hearing was being 7 conducted, she was going to let him ask questions of 8 the witness while the witness was on the stand. 9 And so, for these reasons, we ask that the 10 Court affirm the decision of the district council. 11 And there's no reason to remand this case because 12 there's sufficient evidence in the record. And from 13 a public policy perspective, there are subsequent 14 phases, applications that will give -- that -- that 15 require public hearings and will allow additional 16 public participation. Thank you very much. 17 MS. ROBINSON: Thank you, Your Honor. And 18 again, Ilana Robinson on behalf of district council. 19 First, I think counsel for Glenmont Investors 20 provided an excellent summary of this land 21 development process. 22 I certainly don't want to repeat it, but I 23 do think it's worth emphasizing how extensive and 24 detail-oriented this process is. When a local map 25 amendment is submitted, it first goes to the</p> |
| <p>30</p> <p>1 the memorandum, Ms. Vergagni didn't speak up at all. 2 In Town of Somerset and Ross v. Mr. Lucky, in both 3 of those cases, the -- the dis- -- the -- the 4 counsel or the -- the board specifically said that 5 you have no right to cross-examination. And the 6 opposition objected at each -- after each witnesses 7 repeatedly. 8 And in the Ross v. Mr. -- Mr. Lucky case, 9 they actually told him that he couldn't even be a 10 party in the case, and he ended up ultimately 11 getting cross-examined by the other side. And that 12 didn't happen here. 13 Mis- -- and in the case of Hyson v. 14 Montgomery County, which both of those cases cite, 15 and the -- where it -- the then court of appeals, in 16 explaining why the opposition there waived their 17 right to cross-examination, explained that objecting 18 gives the -- the body governing the proceeding an 19 opportunity to correct the error or at least explain 20 what the error is. 21 And -- and it's also a matter of fairness. 22 The -- it -- it prevents somebody from waiving and 23 then alleging an error at a subsequent proceeding, 24 like this one, where the error can't be addressed. 25 And so, by petitioners either failing to object or -</p> | <p>32</p> <p>1 planning director. The planning director performs a 2 review and issues a report. That report is sent to 3 the planning board. 4 The planning board conducts a public 5 meeting and issues a separate report. That report is 6 then sent to the hearing examiner with the Office of 7 Zoning and Administrative Hearings, who then 8 conducts a separate public hearing and issues a 9 separate report. 10 That report is then sent to the district 11 council. The district council has the final 12 decision-making opportunity for local map 13 amendments. If a request for oral argument is 14 submitted to the council, then it conducts an oral 15 argument, as in the case here. 16 So, you have four reviews and three 17 hearings that occur. Now, in the council's decision, 18 it has -- in the -- to approve or deny the 19 application, it has to make six statutory necessary 20 findings, which you've already heard about. 21 Petitioners have raised concern about three of those 22 findings, which I'll touch base on in just a little 23 bit. 24 Now, if that process wasn't enough already, 25 it goes on from there. If the application receives</p> |

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| <p style="text-align: right;">33</p> <p>1 approval, as it did in this case, as you heard, it 2 then goes on to sketch plan, preliminary plan, and 3 then site plan. I could spend hours going into 4 detail about what is entitled, but addi- -- there's 5 additional hearings, there's additional reviews, 6 additional comments, state county agencies get 7 involved. It's very extensive. 8 We're not at this point here. But I think 9 it is relevant for Your Honor to understand that, 10 because petitioners are trying to claim that some 11 necessary findings that come later on in the stage, 12 such as the pre- -- preliminary plan stage, should 13 be tacked on to the council's decision. And that's 14 just not correct. 15 I think petitioners are intentionally and 16 incorrectly mixing up the statutory necessary 17 findings that the council needs to make versus the 18 statutory nec- -- necessary findings that come down 19 the line. 20 These concerns about pedestrian safety, 21 about walkability, about bicycles, they're not going 22 to go unnoticed. If you look at this process in the 23 totality, they are designed to be specifically 24 discussed, considered, planned for. They're just 25 being raised pe- -- prematurely at this point.</p> | <p style="text-align: right;">35</p> <p>1 argument was, was there enough evidence in the 2 record that the plan would generate traffic that 3 exceeds the volume? They make absolutely no argument 4 relating to volume at all. 5 Rather, they say that there was a lack of 6 evidence for pedestrian, bicycle, and transit 7 facilities. Again, these are going to be addressed. 8 They're going to be addressed down the line in the 9 preliminary stage. They are being raised prematurely 10 at this point. 11 However, even if Your Honor does find that 12 council should have considered the pedestrian, 13 bicycle, and transit facilities in its necessary 14 findings, that issue is not preserved on record. At 15 the oral argument, you had four topics that were 16 presented and subjects were reviewed -- 17 THE COURT: You're talking about before the 18 council? 19 MR. GOLDSMITH: I apologize? 20 THE COURT: You're talking about before the 21 council? 22 MR. GOLDSMITH: That's correct. And those 23 four topics were the proposed road connection to 24 Erskine Avenue, the alleged cross-examination issue, 25 the weight of the Bramwell [ph] engineering report,</p> |
| <p style="text-align: right;">34</p> <p>1 So, going into more specifics, petitioners 2 are claiming that the record, it lacks substantial 3 evidence relating to transportation adequacy, school 4 adequacy, and compatibility. I'm -- each of those 5 are not properly preserved for the record, which 6 I'll discuss in more detail as I tackle one by one. 7 So, the first has to do with 8 transportation. Of those six statutory necessary 9 findings, the only one that has to do with 10 transportation is little E in the cite that was 11 given multiple times. And that section says that the 12 council must find that the floating zone plan will 13 generate traffic that does not exceed the critical 14 lane volume or volume capacity ratio standard as 15 applicable under the planning board's LATR 16 guidelines. 17 The record has a over 500-page traffic 18 report expert testimony that was given. And all of 19 that concluded that the traffic estimated to be 20 generated by the proposed development will not have 21 detrimental impacts to the -- to the capacity, and 22 the traffic will remain within acceptable levels of 23 congestion. 24 So, really, what petitioners' question 25 should have been in respect to their transportation</p> | <p style="text-align: right;">36</p> <p>1 and the walkability from the proposed development to 2 the metro station. 3 Now, I suppose you could fit this 4 transportation issue under that last, the 5 walkability to the metro station. But I believe 6 that's a stretch, and again, completely irrelevant. 7 Because the only thing that the district council had 8 to consider was whether or not that vol- -- the tra- 9 -- the proposed traffic volume was going to exceed. 10 And you have absolutely no argument in front of you 11 claiming that -- claiming otherwise. 12 Now, moving on to the school adequacy. So, 13 this has a very similar argument. One, there's not 14 really a legal basis for saying that there wasn't a 15 finding made for school adequacy. The petitioners 16 ch- -- attempt to fit this under the statutory 17 finding of further public interest. So, the council 18 has to find that there's further public interest. 19 Again, this is a stretch. There's no 20 outwards -- outward requirement that the council has 21 to consider schools for public adequacy. There are - 22 - schools are discussed in the record. That's clear. 23 It's going to be addressed. It's going to be 24 addressed in preliminary stage. We're just not at 25 that point yet.</p> |

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| <p>37</p> <p>1 And again, even if Your Honor finds that 2 schools should have been more considered by council, 3 that issue was not properly preserved. It wasn't 4 part of those four topics that was up for oral 5 argument. 6 Now, moving on to the last argument for 7 whether there was substantial record -- substantial 8 evidence in the record that has to do with 9 compatibility with the gene- -- general 10 neighborhood. Petitioners are saying that the record 11 lacks finding to compatibility with respect to the 12 community to the north. 13 It's not clear exactly what the legal basis 14 is for this. I -- I think it fits most under the 15 little D, so -- which says that the council must 16 find that the plan will be compatible with existing 17 and approved adjacent development. 18 It's not even necessary to get into whether 19 there was substantial evidence. Because, again, this 20 was not a topic that was preserved for the record. 21 It wasn't under those four that was up for oral 22 argument. 23 But again, if Your Honor finds that it is 24 up for review, the council discusses compatibility 25 multiple times, numerous times throughout --</p> | <p>39</p> <p>1 administrative agency hearings. However, there has 2 to be some type of fundamental fairness with dealing 3 with the parties. 4 The -- with respect to cross-examination, 5 the correct standard is a reasonable right to cross- 6 examination. Counsel today -- counsel for 7 petitioners today kept -- mentioned a couple times 8 meaningful cross-examination. Well, that's not the 9 standard. 10 The standard wa- -- was there a reasonable 11 opportunity for cross-examination? What you have 12 here is no objection to how cross-examina- -- cross- 13 examination was had. So, this issue isn't properly 14 preserved for the record. 15 From the record and the transcript of that 16 hearing, of the hearing examiner's hearing, you have 17 an extremely lengthy discussion on how should we 18 conduct cross-examination? There was back and forth, 19 there was open dialogue. 20 The length of this con- -- the length of 21 the conversation goes to show that the hearing 22 examiner knew of the right, had no intention to deny 23 the right, but was simply trying to decide how to 24 best proceed based off of the nature, the amount of 25 people, and to just prevent disorderly conduct,</p> |
| <p>38</p> <p>1 throughout its report. And it finds that it's 2 compatible with all of the surrounding areas. And 3 that's in quote, all of the surrounding areas. This 4 is significant. 5 And I think what the most important point, 6 too, is that, as you heard, there was a 2013 7 Glenmont Sector Plan. In that plan, it specifically 8 envisioned this proposed development. It 9 specifically envisioned the future development from 10 multifamily to commercial, residential floating, 11 which is what you have here. This proposed 12 development aligns perfectly with what was 13 envisioned for this area. 14 And why that is significant is because this 15 sector plan included the neighborhood to the north. 16 The neighborhood to the north is a surrounding 17 property that was envisioned as a part of this 18 development. The council had every right to take the 19 position that this development conforms with the 20 sector plan and is therefore compatible with all of 21 those surrounding neighborhoods, including that 22 neighborhood to the north. 23 Lastly, moving forward with the cross- 24 examination issue. It's pretty common that strict 25 rules of evidence are not applicable in</p> | <p>40</p> <p>1 which she has every right to do. 2 The hearing examiner actually gave clear 3 instructions. She said to write down your questions. 4 It was mentioned by petitioners' counsel today that 5 it's unreasonable to have them remember on the top 6 of their head what questions they have that may have 7 happened earlier in the day in the hearing. 8 Well, she said, write down your questions. 9 She asked the expert witnesses, not asked them, she 10 told them that they have to remain. She gave 11 specific instructions on how this is going to 12 happen. And towards the end of the conversation, she 13 gave the decision. 14 She said, would you like to ask the 15 questions now while the witness is on the -- is 16 here? Not here, is -- just finished the testimony, 17 or do you want to wait until the end? And it was 18 agreed by everyone, we'll wait until the end, we'll 19 do it that way. 20 So, this was an agreement that was reached 21 after this lengthy discussion. There was no 22 objection made by any other person present. But 23 again, if Your Honor thinks that cross-examination 24 was properly preserved, I think the record is clear, 25 that reasonable cross-examination was provided to</p> |

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| <p style="text-align: right;">41</p> <p>1 the petitioners. And again, only two petitioners 2 were actually there, present at that hearing. 3 Again, the length of that conversation 4 really put all of the parti- -- all the participants 5 at that hearing on notice. Like, hey, cross- 6 examination is going to happen, if you have an issue 7 with it, speak up now. No one did. 8 And when it came time to do their cross- 9 examination, no one did it. The cases of Ross and 10 Town of Somerset, which were mentioned already 11 numer- -- numerous times, those cases are extremely 12 distin- -- distinguishable. There was an outright 13 denial of cross-examination. 14 A complete, may I cross-examine? And a 15 hearing examiner, no, you may not. We don't have 16 that here at all. Again, I just think that this 17 discussion itself is evidence enough that there was 18 no denial. It was just a matter of how do we conduct 19 this reasonably? 20 The standard today is whether the district 21 council's decision was arbitrary, capricious, based 22 on erroneous conclusion of law, which includes 23 whether there is substantial evidence in the record 24 to support its findings. Petitioners failed to show 25 how the district council made any error in making</p> | <p style="text-align: right;">43</p> <p>1 had enough arguing. 2 And -- and in -- putting yourself in Mr. 3 Coffinger's shoes, this wasn't just a question of 4 how did he want to move forward. She was presenting 5 this as, you know, she wanted one person to ask 6 questions for a bunch of people. He's -- he's a 7 layperson. 8 And given his statement, I didn't know I 9 was going to have a difficult time. I can't, I've 10 had enough arguing. You know, respecting the decorum 11 of the procedure and the -- and the hearing 12 examiner's clear effort to dissuade cross- 13 examination after each witness, he clearly preserved 14 that issue for appeal. 15 And it's -- it's a -- a case with multiple 16 participants, it's preserved in the record. It does 17 not have to be preserved by one of the petitioners 18 here today. It was an objection noted and preserved 19 in the record. 20 And, again, you -- you have the cases that 21 have been cited. It's our position that -- and -- 22 and I will stand corrected with respect to the 23 meaningful versus reasonable cross-exam -- 24 examination. It's our position that the petitioners 25 were not afforded reasonable opportunity for cross-</p> |
| <p style="text-align: right;">42</p> <p>1 its decision. The decision was legally correct, and 2 therefore we ask that Your Honor affirm the 3 decision. Thank you. 4 THE COURT: Okay. Last word. 5 MS. ROSENFELD: Thank you, Your Honor. 6 First of all, with respect to the question of cross- 7 examination, it -- it clearly was preserved. 8 You know, Mr. Coffinger made clear in -- in 9 the -- in the record, and you have, again, the full 10 colloquy in -- in our reply memorandum, made it 11 clear that he really did not accept the idea that 12 witnesses would be able to be questioned following - 13 - following completion of testimony, and when the 14 petitioners actually had the chance to present their 15 case and -- and ask questions. 16 And -- and, again, I'm going to ask that 17 you take a look at the -- the discussion before the 18 hearing examiner. And he -- he pressed the issue 19 over and over, and she kept -- the hearing examiner 20 continued to press her point as well. 21 And, you know, she concludes with, do you 22 want to ask specific questions of the witness, or do 23 you want to wait, present your testimony, like those 24 are the two options. And he says, I didn't know I 25 was going to have a difficult time, I can't, I've</p> | <p style="text-align: right;">44</p> <p>1 examination in the case. And so, it should be 2 remanded for that purpose. 3 With respect to the question of the basic 4 nature of our argument, I submit it's been 5 mischaracterized repeatedly to the Court. Our 6 argument is not that there is not substantial 7 evidence in the record. We don't know. 8 What we can say is that based on the 9 findings that are in the counsel resolution, and the 10 findings that are in the hearing examiner's opinion, 11 there are not sufficiently detailed findings on 12 certain elements for the Court to determine if 13 there's substantial evidence of record. 14 We can proffer that there's an extensive 15 transportation study. We can proffer that some 16 witness testified about this or that with respect to 17 schools. I submit that there is nothing in the 18 record of the written decisions that talks about 19 schools. 20 So, I just want to make sure that we're 21 very clear that we're -- we're -- we're -- we've -- 22 we've shown that it's the decisions that are 23 deficient, and that is why this case, at minimum, 24 needs to be remanded for further fact-finding. 25 Because it's not the role of the Court to read that</p> |

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| <p>45</p> <p>1 500-page transportation report, or to read hundreds 2 of pages of transcripts. 3 You -- it's -- it's -- it's the role of the 4 district council and the hearing examiner to make 5 sure that their opinions are clear in what evidence 6 they rely on in -- in reaching those conclusions. 7 And the reason why I refer you to both the 8 district council and the hearing examiner reports is 9 because the district council relies on the findings 10 of the hearing examiner in support of many -- many 11 of its conclusions. 12 So, I just want to make sure that the 13 record is very clear about our argument here. With 14 respect to the question of public facilities, for 15 example, schools, oh -- and I'd like to go back one 16 more moment to the cross-examination and the hearing 17 examiner's interest in -- in keeping control over 18 unruly parties. 19 I've been practicing zoning law for 30 20 years, I was a lead attorney for the planning board 21 for 17, I've appeared in countless hearings. I can 22 tell you that in Montgomery County, those hearings 23 don't delve into unruliness. 24 I mean, I -- they just -- they're -- 25 they're -- they're generally very -- there's a great</p> | <p>47</p> <p>1 Well, yes, it is. 2 Here's how adjacent is defined in the 3 zoning ordinance, being close to or nearby without 4 requiring the sharing of a common boundary. There's 5 no question that under the terms, the explicit terms 6 of the zoning code, that Glen Way Gardens is a 7 nearby -- or -- or adja- -- is -- is an adjacent 8 property. And so, the compatibility requirements of 9 se- -- subsection E to D definitely apply to their 10 property. 11 And finally, with respect to the question 12 of public interest, whether or not public facilities 13 -- and you've heard from all the parties now, I 14 think, that public facilities clearly include bikes, 15 transit, school, bi- -- you know, bike 16 transportation facilities, transit facilities, 17 schools, water, sewer, all of those public 18 facilities. 19 The suggestion was that the -- the zoning 20 code requirement, that the council find that the 21 proposed project further the public interest really 22 didn't include those public facility findings. I'm 23 going to read to you -- this is not me. This is the 24 county council's, the district council's own 25 language. And this is footnote three on page 5 of</p> |
| <p>46</p> <p>1 deal of decorum in those proceedings. So, you know, 2 I think that Counsel might have overstated the fears 3 of the hearing examiner as to how -- how -- just how 4 messy that proceeding might have gotten. It might 5 have gotten lengthy, but I don't think it would have 6 gotten unruly, based on my experience sitting in 7 those hearings rooms for -- for thousands of hours. 8 The -- the other point that I'd like to 9 make with respect to compatibility, there was a 10 suggestion that there's, you know, north versus 11 northwest, and, you know, they're kind of the same. 12 In -- in land use and zoning proceedings, 13 directionals are very precise. 14 And in fact, when you look at the -- the -- 15 the legal brief of Glenmont, while they contest a 16 number of our factual arguments, they in fact say 17 that when we referenced the Glen Way property as 18 being north of the subject property, that is one of 19 the few things that they conceded was true. And 20 that's on page 28 of their brief. 21 With respect to what is adjacent, adjacent 22 is defined in the zoning code and is referenced in 23 our reply brief on page 15. There's some question as 24 to whether or not because Glen Way Gardens is 25 located across the street, is that really adjacent?</p> | <p>48</p> <p>1 their resolu- -- resolution. And it's talking about 2 public facilities other than roads. 3 The adequacy of other facilities is part of 4 the council's determination that an application will 5 be, quote, in the public interest, end quote, and 6 that it, quote, will be consistent with coordinated 7 and systemic development of the regional district, 8 end quote, under state law. And they cite zoning 9 ordinance 59-7.2.1.E.2.B, which is exactly the 10 provision here that you heard really doesn't apply 11 in this case. 12 The county, the district council made that 13 explicit finding in its own decision. And then they 14 also cite a state law in -- in support of that. So, 15 Court's indulgence, just one moment, please. I'll 16 just -- one -- one brief point. 17 You know, you heard a lot of explanation 18 about what a lengthy process this is. You know, it 19 started with a sector plan and it's going to be 20 followed by a sketch plan, and preli- -- blah, blah, 21 blah. None of that's before the Court. The only 22 thing before the Court right now, the only step 23 before the Court right now, is the district 24 council's rezoning resolution. 25 And we support -- we submit that for the</p> |

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| <p style="text-align: right;">49</p> <p>1 reasons stated, that it's -- the district council's 2 decision is procedurally defective because it was 3 predicated on a hearing examiner proceeding that im- 4 -- improperly denied reasonable cross-examination by 5 the participants. 6 And that, beyond that, the findings in 7 particular with respect to compatibility and public 8 facilities, namely schools, were -- are -- are 9 unsupported by the -- by the findings in the record, 10 findings in the decisions, which are the only things 11 that this Court really is -- is charged with 12 considering. And for that, we would ask that you 13 reverse and vacate, or in the alternative, reverse 14 and remand. 15 THE COURT: Okay. Let me ask the 16 respondents a question. Do you agree, in terms of 17 standing, that the section of the land use code 18 22402A1 is pertinent? Says, judicial review of a 19 final action of the district council on an 20 application for an individual map amendment, or a 21 sectional map amendment may be requested by, one, a 22 person agreed by the action, or two, a person or 23 municipal corporation that appeared at the hearing 24 in person, by attorney, or in writing? 25 MS. ROBINSON: Yes, Your Honor. That is.</p> | <p style="text-align: right;">51</p> <p>1 MS. ROBINSON: Yes. And, you know, since 2 standing is brought up in your questioning, the 3 reason why the county put standing at issue was 4 because, really, you had two, three, wi- -- 5 including the condo association, who participated at 6 that hearing. And then you have 66 additional 7 petitioners. And the only statement in the petition 8 said that they were agreed without any further 9 explanation of how, why. Wa- -- 10 THE COURT: But it's an or. Petitioner 11 agreed, or -- 12 MS. ROBINSON: Correct, correct, Your 13 Honor. 14 THE COURT: -- appear at the hearing in 15 writing -- 16 MS. ROBINSON: Correct. 17 THE COURT: -- or by -- in person. 18 MS. ROBINSON: Correct, Your Honor. It is 19 an or. But I -- I think the county council had every 20 right to question the 66 other petitioners that were 21 added on. 22 THE COURT: Okay. 23 MS. ROBINSON: And in the -- 24 THE COURT: I -- I get that. 25 MS. ROBINSON: Okay. You're up. You're on</p> |
| <p style="text-align: right;">50</p> <p>1 THE COURT: All right. So, let me ask 2 another question then. If a person submitted a -- if 3 there was a submission to the hearing examiner by 4 someone in writing, and the hearing examiner's 5 record was transmitted to the council, would that 6 constitute appealing? Because it says, municipal 7 corporation, that a person that appeared at the 8 hearing in person, by attorney, or in writing. 9 MS. ROBINSON: Yes, Your Honor. 10 THE COURT: So, do you think the letter has 11 to be to the council? Or since the letter could have 12 been to the examiner, and the examiner's record is 13 transmitted to the council, would that constitute 14 participation in writing? 15 MS. ROBINSON: Yes, Your Honor. I do agree 16 with that. 17 THE COURT: Okay. So, there was a letter in 18 the record from the Glen Wayne Gardens Condominium 19 Association Board. Okay. That was transmitted as 20 part of the record to the council. 21 So, in effect, they participated, and in 22 effect appeared by writing, right? 23 MS. ROBINSON: That's correct. 24 THE COURT: Okay. So, as to standing, 25 that's a significant consideration.</p> | <p style="text-align: right;">52</p> <p>1 your feet. 2 MS. ROSENFELD: Oh, I just hadn't -- hadn't 3 been told I could sit down. So -- 4 THE COURT: No. That's fine. All right. So, 5 as to standing, the question is whether the 6 petitioners have standing. Petitioners Vergagni and 7 Johnston have standing as participants in the 8 proceeding. Glen Way Gardens Condominium 9 Association has standing as aggrieved, and in 10 addition, participated in writing. 11 As we just discussed in our Maryland land 12 use code section 22402A1, judicial review of a final 13 action of district council on an application for an 14 individual map amendment or sectional map amendment 15 may be requested by a person agreed by the action, 16 or person that appeared at the hearing in person by 17 attorney or in writing. 18 And Ms. Vergagni, Mr. Johnston, and the 19 Glen Way Condo Association meet that criteria. As 20 far as whether the hear- -- the participants of the 21 hearing before the hearing examiner were 22 impermissibly denied the right of cross-examination, 23 the Court is -- Court's answer to that is, no. 24 4.2 and 4.5 of the rules of procedure 25 governing the office of zoning and administrative</p> |

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| <p style="text-align: right;">53</p> <p>1 hearings permits the -- and provides the hearing 2 examiner with broad authority to exercise or -- 3 excuse me, broad discretion in choosing how to run 4 the hearing, and specifically how cross-examination 5 will be permitted. 6 The hearing examiner regulated the course 7 of the proceedings as permitted by the Office of 8 Zoning and administrative hearing rules of 9 procedure. That -- those rules provide only a, 10 quote, as was noted, quote, reasonable, close quote, 11 right to cross-examination. There's a case cited in 12 support of that too, Hyson versus Montgomery County 13 Council, 242 Maryland 55, 1966 case. 14 The record reflects that because there were 15 eight people who wanted to oppose the experts, the 16 hearing examiner modified the proceeding to allow 17 each person opposing the amendment to testify and to 18 call back the experts after the applicant finished 19 its case-in-chief. 20 In addition, the option of a designated one 21 person to conduct the cross-examination on behalf of 22 all was an offered alternative. However, as was 23 mentioned in the hearing today, that alternative 24 might not necessarily be acceptable to every 25 protestant because their interests aren't exactly</p> | <p style="text-align: right;">55</p> <p>1 That's the normal way of proceeding in court. 2 And the court is there to ensure that the 3 questioning is not repetitive, irrelevant, or 4 otherwise non-probative, and the questioning is 5 actually questioning rather than simply an 6 opportunity by a questioner to make speeches, which 7 frequently happens, especially with self-represented 8 people. 9 And the Court notes that, unlike court 10 proceedings, administrative hearings, in those, any 11 member of the public can show up and participate, 12 and conceivably, the number of participating members 13 of the public could be large. That's an important 14 distinction. 15 An examiner faced with that situation is 16 intentionally given latitude and discretion about 17 how to conduct a hearing. And the Court is not 18 prepared to say the examiner in this case abused her 19 discretion in the alternatives that she provided to 20 the participants at that hearing. 21 As far as whether there was substantial 22 evidence in the record to support the decision of 23 the county council, sitting as the district council 24 in review the report and findings of the hearing 25 examiner, and correlatively was its issuance of</p> |
| <p style="text-align: right;">54</p> <p>1 aligned, and they don't have the same points. 2 Another accommodation that was offered was 3 to submit questions in writing, which also seems to 4 be a sensible manner of proceeding when you have a 5 significant number of people that want to ask 6 questions of experts. 7 And this wasn't the preferred manner of 8 proceeding by the petitioners, but the Court is not 9 prepared to say that the examiner abused her 10 discretion. The examiner explained the decision to 11 proceed in this matter, and that's quoted on page 5 12 of the petitioners rule 7-207 memorandum. 13 The Court finds that the examiner's 14 decision to proceed in the manner she did was re- -- 15 was a reasonable accommodation under the 16 circumstances, and did not deprive the petitioners 17 of their right to cross-examine. 18 Would it be preferable for citizen 19 participants at a hearing to be able to designate a 20 representative or two to condu- -- conduct the 21 cross-examination? I would say, yes. At -- in a 22 trial, in a court, there are a number of parties in 23 general. If there are a number of parties in 24 general, each gets to question an expert witness 25 when the witness is called by the opposing party.</p> | <p style="text-align: right;">56</p> <p>1 resolution 20-616 approving amendments to the zoning 2 ordinance map, arbitrary and capricious. 3 Petitioners alleged deficient findings with 4 respect to the adequacy of transportation, school 5 adequacy, and compatibility with the general 6 neighborhood. As far as traffic adequacy, the 7 petitioners claim that the hearing examiner failed 8 to make legally required findings of transportation 9 adequacy. 10 In the application process, the applicant 11 must demonstrate that generated traffic, quote, does 12 not exceed the critical lane volume or volume slash 13 capacity ratio standard as applicable under the 14 planning board's LATR guidelines, or if the traffic 15 exceeds the applicable standard that the applicant 16 demonstrate an ability to mitigate such adverse 17 impacts. 18 The petitioners before the Court -- the 19 petition before the Court contains a general claim 20 or assertion that, quote, the uncontested evidence 21 in the record confirms that transportation 22 facilities are inadequate with respect to 23 pedestrian, bicycle, and transit facilities, and 24 that the vehicular transportation system is unsafe, 25 close quote.</p> |

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| <p>57</p> <p>1 And there's also an additional general 2 assertion that the public safety and welfare will be 3 eroded by the project. And there is a more specific 4 assertion that the council did not consider the 5 pedestrian concerns raised relating to the 6 pedestrian traffic and the shortcut to the Glenmont 7 Metro Station. 8 The general claims were not directly and 9 expressly raised in the argument before the council, 10 although the more specific concern about pedestrian 11 traffic and the shortcuts to Metro Station was 12 raised by Petitioner Ver- -- Ver- -- Vergagni. 13 The record reflects that there were 14 comments made about it during the hearing, and 15 correspondence was submitted to the examiner 16 outlining in some detail the concerns about the 17 anticipated problems related to both vehicle and 18 foot traffic, and the adequacy of measures to 19 address them. 20 Respondents argue that there was sufficient 21 evidence in the record to support the council's 22 finding regarding transportation adequacy. They 23 mentioned that there were multiple expert witnesses 24 who testified before the hearing examiner, including 25 a traffic engineer, and that the examiner had the</p> | <p>59</p> <p>1 memo is accurate -- are accurate, and the concerns 2 and points outlined, for example, in the letter to 3 the examiner submitted by Mr. Robbins [ph] on behalf 4 of the board of directors of Glen Wayes Gardens 5 Condominium Association are valid, which it appears 6 they might be, then the petitioners may well be able 7 to make their case about transportation inadequacy 8 at the preliminary plan stage. 9 The Court notes that, in their memo in 10 support of their contention, that there is evidence 11 in the record that the transportation facilities are 12 inadequate with respect to the pedestrian, bi- -- 13 bicycle, and transportation facilities, and 14 vehicular transportation system is unsafe. 15 The petitioners assert in support of that 16 that applicant's traffic expert Ann Randall [ph] 17 submitted a local area transportation review, LATR 18 study, that identified multiple unmitigated 19 deficiencies in sidewalk conditions, pedestrian 20 safety, and bicycle stress levels. 21 And in particular, they found that the 22 project lies within a, quote, high injury network, 23 close quote, with 531 crashes in the recent five 24 year period. The examina- -- the examiner, they 25 contend, made no findings that the deficiencies were</p> |
| <p>58</p> <p>1 benefit of the expert's reports that were submitted. 2 This is true. And because of that, it's 3 difficult to find that there was an absence of 4 substantial evidence to support the currently 5 expressed general concerns about transportation 6 adequacy. 7 The Court reviewed the testimony of the 8 applicant's traffic expert and is unable to agree 9 with the petitioners that there is insufficient 10 evidence to support the council's finding about 11 traffic adequacy, even though the petitioners and 12 the participants in the examiner hearing raised many 13 good points and arguments that are worthy of further 14 consideration. 15 The Court also takes note of the fact that 16 its ruling -- in its ruling about the sufficiency of 17 the evidence before the examiner and the council to 18 support the general transportation adequacy for 19 purposes of determining approval of the application 20 does not at all foreclose the ability of the 21 petitioners to raise issues about transportation 22 adequacy during the preliminary plan stage, which 23 comes after the council's approval of the local map 24 amendment application. 25 And if the assertions made in petitioners'</p> | <p>60</p> <p>1 mitigated or acceptable under the applicable 2 regulation. 3 However, I think there is substantial 4 evidence to the -- about traffic concerns the -- to 5 the point that I cannot conclude there is an 6 arbitrary and capricious action on behalf of either 7 the examiner or the council with regard to that 8 issue. So, those conditions that the petitioners 9 raised continue to be viable and can be addressed at 10 other stages of the process. 11 The petitioners claim, just for the sake of 12 completeness, I'll address this argument, that the 13 hearing examiner and planning board improperly 14 deferred mitigation measures to the preliminary 15 phase plan, and they argue that that deferral was 16 legally impermissible because the statute mandated 17 present findings. They cite the Maryland Reclamation 18 versus Harford County case, 342, Maryland 476. 19 Unless I missed something, I did not see 20 that that case supported that contention and it 21 appears that the traffic issues may be further 22 addressed at the preliminary plan phase. So, my 23 conclusion on this issue is that for purposes of the 24 application phase, which is what's before me, cannot 25 be said that there was no substantial evidence in</p> |

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| <p style="text-align: right;">61</p> <p>1 the record to support the examiner's finding adopted 2 by the council that the -- that adequate information 3 was presented by the applicant at the hearing 4 regarding transportation facilities. 5 As for school adequacy, the petitioners 6 argue that the record does not adequately support 7 the council's finding regarding school adequacy. 8 That is, to support a finding that schoo- -- that 9 the schools servicing the area in question are 10 adequate to accommodate the anticipated increase in 11 student population that will accompany the proposed 12 development to which the rezoning application or map 13 amendment application pertains. 14 The petitioners maintain that the council's 15 resolution is based upon the conclusory assertions 16 about school and infrastructure adequacy contained 17 in the application and in the examiner's findings. 18 They note that the council must find that the 19 rezoning would, quote, further the public interest, 20 close quote. 21 Inherent in this requirement is a finding 22 supported by substantial evidence in the record that 23 the public facilities will be adequate to 24 accommodate the proposed development being applied 25 for. The county clo- -- code makes clear that</p> | <p style="text-align: right;">63</p> <p>1 there would have been no need for it to have been 2 included in its proffered justification submission. 3 The issue of school adequacy was squarely 4 raised in the proceeding before the examiner. One 5 resident, Ce- -- Cecilia Castro, testified in the 6 proceedings and specifically raised concerns about 7 this. 8 She said, another issue or concern I have 9 is the overburdening of our schools, we have not 10 heard anything from MCPS representatives about how 11 the exponential increase in population density may 12 or may not impact the schools, but I can tell you 13 firsthand that the school my son attends is already 14 500 students above capacity, and they are expecting 15 the largest freshman class in September of 2024, 16 making it the third largest high school in 17 Montgomery County after Blair and Walter Johnson, so 18 my question is, how will the schools manage this 19 increase in population density when a lot of the 20 schools are, in the area, already at capacity or 21 nearing capacity? 22 Another resident, Petitioner Ms. Vergagni, 23 also specifically raised school-based concerns. At 24 the proceedings before the hearing examiner, her 25 expressed concerns appear at pages 233 to 235 of the</p> |
| <p style="text-align: right;">62</p> <p>1 schools are included in public facilities and 2 services, the adequacy of which must be determined. 3 In fact, as the council's decision itself 4 notes, which was repeatedly quoted today in footnote 5 three, in addition to consideration of traffic 6 issues and the need for adequate facilities to 7 address any such concerns, quote, the adequacy of 8 other facilities -- other facilities is part of the 9 council's determination that an application will be 10 in the public interest, and that it will be 11 consistent with coordinated and systematic 12 development of the regional district, close quote. 13 This is an admission that school facilities 14 are an important part of the required public 15 interest factor about which findings must be made at 16 the application stage. That school adequacy is a 17 required consideration at the application stage is 18 also virtually acknowledged by the respondent 19 applicant by virtue of its inclusion of that very 20 subject in the revised statement of justification 21 that's submitted to the examiner in connection with 22 the application proceedings. 23 If the applicant truly felt that school 24 adequacy was not a required element of the public 25 interest consideration at the application stage,</p> | <p style="text-align: right;">64</p> <p>1 transcript of the proceedings conducted before the 2 examiner on June 14th of 2024. Despite this, the 3 examiner's recommendations and the council's opinion 4 are devoid of any specific or identifiable 5 consideration, or even any mention of school 6 adequacy. 7 One of the respondents' witnesses at the 8 hearing before the examiner did testify that, quote, 9 the property is served by the Glennallan Elementary 10 School, Odessa Shannon Middle School, and John F. 11 Kennedy High School. The current FY24 subdivision 12 staging policy school tests indicate that all three 13 schools -- that all three school levels are 14 operating with adequate capacity. 15 As such, there is adequate school capacity 16 to accommodate the project. But this testimony went 17 unaddressed and unsighted by either the examiner or 18 the council, and even if it could be said that the 19 examiner and the council adopted this testimony 20 verbatim as its findings, it would be insufficient. 21 Again, respondents' revised statement of 22 justification simply says, probably quoting from 23 what was in the record, quote, the property is 24 served by Glennallan Elementary School, Odessa 25 Shannon Middle School, and John F. Kennedy High</p> |

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| <p style="text-align: right;">65</p> <p>1 School.</p> <p>2 The current FY- -- FY 2024 subdivision</p> <p>3 staging policy schools test indicates that all three</p> <p>4 school levels are operating at adequate capacity. As</p> <p>5 such, there is adequate school capacity to</p> <p>6 accommodate the project. This is a conclusory</p> <p>7 finding and statement without any supporting</p> <p>8 discussion or specific facts.</p> <p>9 The fact that the current schools are</p> <p>10 operating with capacity begs the all-important</p> <p>11 question as to how they could accommodate any</p> <p>12 increase in students that would inevitably attend,</p> <p>13 expansion of the area to be serviced by some 2,257</p> <p>14 multi- -- additional multifamily units, which the</p> <p>15 respondent themselves aptly characterized as -- as</p> <p>16 high-density.</p> <p>17 The record lacks sufficient evidence to</p> <p>18 support a finding that the schools are adequate to</p> <p>19 serve the future school-aged children who will live</p> <p>20 in the 2,275 new units. And it is difficult to</p> <p>21 understand how a likely increase in student</p> <p>22 population of arguably, if not demonstrably, al- --</p> <p>23 already overcrowded schools that serve the area in</p> <p>24 question could be determined to be in the public</p> <p>25 interest.</p> | <p style="text-align: right;">67</p> <p>1 deferred to the preliminary plan stage and that that</p> <p>2 is sufficient? Such an appro- -- approach cannot be</p> <p>3 countenanced.</p> <p>4 The council's conclusory finding is simply</p> <p>5 inadequate. There is no articulated supportive</p> <p>6 discussion to enable this Court to ascertain whether</p> <p>7 an adequate factual basis exists for a conclusion</p> <p>8 about school adequacy, which is undoubtedly a</p> <p>9 critical part of the required public interest</p> <p>10 consideration.</p> <p>11 Without that, any expressed conclusion</p> <p>12 about school adequacy, the examiner's and the</p> <p>13 council's determinations are arbitrary and</p> <p>14 capricious and without substantial evidentiary</p> <p>15 support regarding an important, if not critical,</p> <p>16 component of the public interest consideration and</p> <p>17 analysis.</p> <p>18 As stated in the governing case law, quote,</p> <p>19 the agency's decision, and in this case the council</p> <p>20 is the agency, must be precise and clear enough to</p> <p>21 allow for meaningful appellate review. If the agency</p> <p>22 fails to meet this basic requirement, the decision</p> <p>23 is considered arbitrary and the case must be</p> <p>24 remanded for the purpose of correcting the</p> <p>25 deficiency. That's the case that was cited in the</p> |
| <p style="text-align: right;">66</p> <p>1 Frankly, it's incomprehensible to the Court</p> <p>2 that an application for a zoning amendment of this</p> <p>3 magnitude could be approved without clear and</p> <p>4 specific detailed consideration of its effect on</p> <p>5 schools and the adequacy of schools to accommodate</p> <p>6 it.</p> <p>7 Certainly, a comparable level of detail and</p> <p>8 information provided to the examiner and the council</p> <p>9 regarding the adequacy of school facilities at the</p> <p>10 application stage should be provided and thoroughly</p> <p>11 considered, as was done with regard to the traffic</p> <p>12 issue.</p> <p>13 Much study and detail was provided with</p> <p>14 respect to the traffic issue at the applican- --</p> <p>15 application stage, and there was no comprehensible</p> <p>16 reason why the same was not done with respect to the</p> <p>17 school adequacy issue. There is no reconciling the</p> <p>18 two.</p> <p>19 If school concerns can simply be dealt with</p> <p>20 by dismissingly saying that they will be addressed</p> <p>21 at a later preliminary plan stage, as opposed to at</p> <p>22 the application approval stage, why couldn't the</p> <p>23 examiner, and the county council, or other -- or the</p> <p>24 other respondents simply represent that the issue of</p> <p>25 adequate traffic facilities will likewise be</p> | <p style="text-align: right;">68</p> <p>1 materials, one -- that were submitted at 109</p> <p>2 Maryland App 433, 1966.</p> <p>3 As far as the findings regarding</p> <p>4 compatibility with the surrounding neighborhood, as</p> <p>5 the petitioners point out, the council must make an</p> <p>6 express finding, quote, that the project is</p> <p>7 compatible with the existing uses in the general</p> <p>8 neighborhood, close quote.</p> <p>9 The petitioners argued that the record</p> <p>10 lacks any evidence to support a finding of</p> <p>11 compatibility with the larger community to the north</p> <p>12 of the property, which is where the petitioners</p> <p>13 live.</p> <p>14 On this point, the Court finds the</p> <p>15 petitioners are correct. The council's resolution</p> <p>16 only addressed compatibility with the neighborhood</p> <p>17 to the south and east by imposing maximum setbacks</p> <p>18 along boundaries and limiting the height of the</p> <p>19 apartment buildings along the eastern property line</p> <p>20 to 45 feet for a distance of 100 feet.</p> <p>21 All the petitioners, as mentioned, live</p> <p>22 north of the property, and the council's resolution</p> <p>23 confirms that the eight tallest buildings will be</p> <p>24 closer to the northern and western boundaries. The</p> <p>25 record is inadequate with respect to any finding of</p> |

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| <p style="text-align: right;">69</p> <p>1 compatibility with respect to the larger community 2 to the north of the property, i.e. the community 3 where the petitioners live, and who offered direct 4 testimony in connection with the compatibility 5 issues. 6 Any finding of compatibility with the 7 surrounding area, specifically the area to the north 8 where the petitioners live, is not supported by 9 substantial evidence. So, the Court will vacate the 10 county's resolution. 11 That would be resolution number 20-616, 12 which approved the application of Glenmont Forest 13 Investors, LP, seeking to rezone certain land 14 located at the southeast quadrant of the 15 intersection of Randolph Road and Georgia Avenue, 16 Silver Spring, Maryland, more specifically approving 17 map amendment H149. 18 The Court will remand the matter to the 19 council with instructions that the matter be 20 returned to the examiner for further proceedings to 21 further consider the issues of school adequacy and 22 compatibility with the surrounding neighborhood, 23 specifically the community to the north of the 24 proposed development. 25 Further proceedings consistent with this</p> | <p style="text-align: right;">71</p> <p>1 examiner to the council with respect to 2 compatibility with the larger community to the north 3 of the property. 4 And so that the council will have an 5 adequate record upon which to make re- -- any 6 required determination about this issue in 7 connection with its consideration of the 8 respondents' application. 9 At the further proceedings to be conducted 10 by the examiner, the examiner will make reasonable 11 accommodations for -- for the opportunities for 12 participants, permitted participants, to cross- 13 examine any experts called in those proceedings. 14 Which, and I hasten to add, the examiner in the 15 exercise of sound discretion and consistent with the 16 discretion to regulate the proceedings may deem 17 appropriate. 18 As far as the issue of adequacy of 19 transportation facilities, that is the concerns of 20 the petitioners regarding whether the transportation 21 fili- -- facilities are inadequate with respect to 22 pedestrian, bicycle, and transit facilities, and 23 that the vehicular transportation system is unsafe, 24 and whether the public safety and welfare will be 25 eroded by the project, and the pedestrian concerns</p> |
| <p style="text-align: right;">70</p> <p>1 Court's decision shall be conducted on remand. Those 2 proceedings shall include further consideration and 3 findings with regard to the issue of school adequacy 4 and compatibility with the community to the -- the 5 community to the north of the affected area. 6 With respect to the school adequacy, the 7 examiner is to permit further testimony and evidence 8 by the parties and other permitted participants 9 regarding that issue so that an adequate factual 10 basis can be developed to support recommendations 11 made by the examiner to the council consistent with 12 the evidence presented. 13 And so that the council will have an 14 adequate record upon which to make any required 15 determination about the issue in connection with its 16 consideration of the respondents' application and 17 the required public interest factor. 18 With respect to compatibility with the 19 surrounding neighborhood, the matter is also 20 remanded so that if they wish, further testimony and 21 evidence can be submitted regarding this issue by 22 the respondent, the petitioners, and any member of 23 the public withstanding, so that the -- or permitted 24 participant, so that an adequate factual basis can 25 be developed to support recommendations made by the</p> | <p style="text-align: right;">72</p> <p>1 raised relating to the pedestrian traffic and the 2 shortcuts to the Glenmont Metro Station. 3 Those issues are preserved and may be 4 addressed by the petitioners at other stages of the 5 process, including the preliminary plan stage. That 6 concludes my ruling, unless you have questions. 7 Okay. Thank you. 8 Interesting issue. Well-briefed, well- 9 presented. I want to commend the lawyers on that. 10 Okay. We'll stay in recess. 11 BAILIFF: All rise. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> |

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1 CERTIFICATE OF TRANSCRIBER

2 I, Chris Naaden, a transcriber, hereby declare
3 under penalty of perjury that to the best of my
4 ability from the audio recordings and supporting
5 information; and that I am neither counsel for,
6 related to, nor employed by any of the parties to
7 this case and have no interest, financial or
8 otherwise, in its outcome, the above 72 pages
9 contain a full, true and correct transcription of
10 the tape-recording that I received regarding the
11 event listed on the caption on page 1.

12
13 I further declare that I have no interest
14 in the event of the action.

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17 June 10, 2025

18 Chris Naaden

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20 (587887, Glen Waye Gardens Review Hearing, 5-30-25)

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