

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF : Case No. G-964
MONTROSE BAPTIST CHURCH :
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A hearing in the above-entitled matter was held on
December 11, 2015, commencing at 9:34 a.m., Office of Zoning
and Administrative Hearings, Stella B. Werner Council Office
Building, 100 Maryland Avenue, Second Floor, Rita Davidson
Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Robert R. Harris, Esq

Cynthia M. Bar, Esq.

Lerch Early & Brewer

3 Bethesda Metro Center, Suite 460

Bethesda, Maryland 20814

P R O C E E D I N G S

1 MR. GROSSMAN: This is public hearing in the
2 matter of Montrose Baptist Church, Local Map Amendment G-
3 964, an application for Local Map Amendment to the Zoning
4 Ordinance requesting reclassification from the existing R-60
5 and R-90 residential zones to the RT-15 or RT-12.5 Zones of
6 8.7617 acres, identified as lots 4, 5 and 32 in block 2 of
7 the Randolph Farms Subdivision, located at 5020, 5010 and
8 5100 Randolph Road in Rockville. All right. Located in the
9 Fourth Election District and they are subject to the 1992
10 North Bethesda Garrett Park Master Plan, currently located
11 on the property of the Montrose Baptist Church, the Montrose
12 Christian School and the Montrose Christian Child
13 Development Center. This application was filed April 29,
14 2014, and it's governed therefore by the ordinance in effect
15 on October 29, 2014.

17 My name is Martin Grossman, I am a Hearing
18 Examiner which means I will take evidence and write a report
19 and recommendation to the County Council sitting as District
20 Council which will take the final action on this
21 application. Will the parties identify themselves, please?

22 MR. HARRIS: Yes, good morning. For the record,
23 I'm Bob Harris, attorney for the applicant with Lerch, Early
24 Brewer, sitting behind me is Cindy Brewer --

25 MS. BAR: I wish.

C O N T E N T S

Witnesses: Direct Cross Redirect Recross
Brian Hooker 11
Andrew Brown
By Mr. Harris: 17
By Mr. Hooker: 26
Kevin Foster
By Mr. Harris: 29
Seth Churchill
By Mr. Harris: 77
Michael Lenhart
By Mr. Harris: 83

E X H I B I T S

Exhibit No. Marked/Received
1-43 Premarked/93
44 Affidavit of posting 7/93
45 Affidavit of mailing 7/93
46 Declaration of covenant 25/93
47 Aerial photograph of site 32/93
48 NRISFD 33/93
49 Surrounding area map 38/93
50 Zoning Map 42/93
51 Rendered Concept Plan 57/93
52 12/3/15 traffic statement 87/93

1 MR. HARRIS: I'm starting off bad.

2 MR. GROSSMAN: She's somebody anyway, right?

3 MR. HARRIS: Cindy Brewer, yes. Okay. Good
4 morning. I'm Bob Harris, Cindy Bar with Lerch Early Brewer
5 as well, who is shown as co-counsel on this.

6 MR. BROWN: I'm Andrew Brown. I live at address
7 8406 Irvington Avenue in Bethesda. I run a firm called
8 Stanford Properties. I'm appearing here today on behalf of
9 RRC/S Montrose, LLC and the Montrose Baptist Church.

10 MR. GROSSMAN: All right. All right. I see some
11 people in the audience. Is there anybody in the audience
12 who is not a witness to be called by the applicant who
13 wishes to be heard today? Yes, sir?

14 MR. HOOKER: My name is Brian Hooker, I'm the
15 president of the Randolph Civic Association in Randolph
16 Farms, which include Randolph Farms.

17 MR. GROSSMAN: Mr. Hooker, would you come forward
18 and take a seat at counsel table? Anybody else?
19 (No audible response.)

20 MR. GROSSMAN: Seeing no hands, Ms. Bar, you're
21 welcome to join us at counsel table too.

22 MS. BAR: Thank you. I have so many things back
23 here I'll just stay here. Thank you.

24 MR. GROSSMAN: All right. Okay. All right. And
25 Mr. Hooker, I see your letter in the file as Exhibit 40.

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1 You're here to testify on behalf of the Civic Association?
2 MR. HOOKER: That is correct.
3 MR. GROSSMAN: Okay. All right. Deal with a
4 couple of preliminary matters and let me explain a little
5 bit about the nature of the proceedings. The proceedings
6 here are formal, or a combination of formality and
7 informality. You have formal in the sense that we proceed
8 pretty much the way a courtroom does, all witnesses are
9 sworn in and subject to cross-examination. Everything is
10 taken down by a court report and we put the transcript on
11 our website when it arrives. The function is pretty much
12 the way you understand a courtroom, a little bit more
13 relaxed than a courtroom. We have rules of evidence which
14 are governed by the Administrative Procedures Act
15 formulation.
16 All right. As preliminary matters, I want to make
17 sure that I get electronic copies of any new filings that
18 are made, including any changes in reports or changes in
19 your diagrams or anything like that. In this case you don't
20 have a SDP, so it's not quite the same as most of the
21 others.
22 The affidavit of posting and mailing, you
23 indicated by e-mail that you would supply that.
24 MS. BAR: I already gave them to Sara.
25 MR. GROSSMAN: Okay. Well let's see if they're in

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1 the file.
2 MS. BAR: They should be in the file.
3 MR. GROSSMAN: No, not yet in the file.
4 MS. BAR: Do you want me to get them?
5 MR. HARRIS: Why don't you, yes, go check.
6 MR. GROSSMAN: Ms. Bar would you do that, please?
7 MR. HARRIS: Thank you, Cindy.
8 MR. GROSSMAN: Thank you. I appreciate that.
9 MS. BAR: Making it easier.
10 MR. GROSSMAN: While she's looking for that, if
11 the application is granted here, do you accept all the terms
12 for the Preliminary Plan that technical staff laid out in
13 its Attachment 4 to the Technical Staff Report which is
14 Exhibit 33?
15 MR. HARRIS: Yes, sir, we accept those terms and
16 conditions.
17 MR. GROSSMAN: Okay. All right. The affidavit of
18 posting will be Exhibit 43.
19 MR. HARRIS: 44?
20 MR. GROSSMAN: I'm sorry, 44.
21 (Hearing Exhibit No. 44 was
22 marked for identification.)
23 MR. GROSSMAN: And the affidavit of mailing will
24 be Exhibit 45.
25 (Hearing Exhibit No. 45 was

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1 marked for identification.)
2 MR. GROSSMAN: These are affidavits to ensure that
3 some notice requirements are kept. They include posting the
4 property and there's an affidavit of posting indicates that
5 it's been posted since the property was since the zoning
6 application was filed and an affidavit of mailing indicating
7 that the applicant has mailed to confronting and adjoining
8 property owners a notice that there was an application
9 pending. We also publish it in the newspaper under the old
10 Code, but we don't do that in the new Code, but under the
11 old Code in two newspapers of general circulation and we
12 send out a formal notice as well.
13 All right. Any other preliminary matters?
14 MR. HARRIS: I wanted to make a brief opening
15 statement, if I may?
16 MR. GROSSMAN: All right. You certainly may.
17 MR. HARRIS: Simply I really wanted to offer what
18 I'll call an apology to your office for some unusual aspects
19 of this case in terms of both the lengthy terms of the
20 filing, filed a year and a half ago and the unusual but not
21 unheard of absence of a schematic development plan. You'll
22 hear from Mr. Brown in testimony that a lot of this is
23 driven by the existing church on the site and issues that
24 they've had serious financial issues that have driven a
25 number of things and have limited the ability of the earlier

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1 contract purchaser to do anything to proceed. The lender
2 had control of the property, et cetera, and you'll hear a
3 little bit about that. But in any respect, Mr. Brown came
4 along in September and was able to work things out with the
5 lender so that this application could go forward.
6 In the meantime, both Mr. Baldwin who was
7 originally involved with the case and Mr. Brown now and I as
8 well have had many meetings with the community and we're
9 pleased to see a number of them here today. We've worked
10 with each of them in the past and we are anxious to take
11 this forward. It still will not have a schematic
12 development plan, we're intend to, you know, present it
13 without that. We recognize that we will be going through a
14 Detailed Site Plan process later on and we've committed to
15 the community to work with them in terms of you know, how
16 the site gets laid out at that time. So what you'll hear is
17 sort of the basic framework here today and we're pleased to
18 have the staff and the Planning Commission and the Planning
19 Board both strongly in support of this as well.
20 So that's how we'll present the case for you.
21 MR. GROSSMAN: All right, sir, you may proceed in
22 calling your first witness.
23 MR. HARRIS: Okay. The first witness is Andy
24 Brown.
25 MR. GROSSMAN: I guess I should ask, Mr. Hooker,

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1 do you have an opening statement you wanted to make and if
2 you do I mean what I would do is since you're here as a
3 witness rather than a counsel, I would swear you in now. If
4 you want to wait until you're going to be given the
5 opportunity to testify and state your position. Also when
6 the applicant completes its case, what do you prefer to do?
7 MR. HOOKER: I'll defer until after the
8 presentation.
9 MR. GROSSMAN: All right.
10 MR. HARRIS: I should offer one other thing that
11 it just dawned on me. I always want to be respectful of
12 citizen's time, I get paid to come here, they don't.
13 MR. GROSSMAN: Right.
14 MR. HARRIS: You know the normal process is, as
15 you know, you may not know, is for us to go through our case
16 which will take a few hours probably. At any point in time
17 if you need to leave and want to present your testimony, Mr.
18 Grossman it would be fine with us to interrupt our testimony
19 and do that.
20 MR. GROSSMAN: Certainly. We usually accommodate
21 citizen witnesses who wish to be heard out of turn, so
22 what's your pleasure on that, Mr. Hooker?
23 MR. HOOKER: A few hours?
24 MR. GROSSMAN: That's short by zoning hearing
25 standards that's very short.

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1 MR. HARRIS: There are a lot of technical things
2 that we have to put into the record, maybe two hours, I
3 don't know.
4 MR. HOOKER: Okay. Well, hearing that, maybe it
5 would be best to go ahead and if it's okay with everyone I
6 can give my testimony at the beginning and then you know,
7 stay as long as we're permitted to do so.
8 MR. HARRIS: Sure, that's perfectly fine.
9 MR. GROSSMAN: All right.
10 MR. HARRIS: Absolutely fine.
11 MR. GROSSMAN: All right. Then would you state
12 your full name and address, please?
13 MR. HOOKER: Sure. My name is Brian Hooker, Brian
14 Robert Hooker. I live at 5003 Macon Road in North Bethesda,
15 Maryland.
16 MR. GROSSMAN: Would you raise your right hand,
17 please? You swear or affirm to tell the truth, the whole
18 truth and nothing but the truth under penalty of perjury?
19 MR. HOOKER: I do.
20 MR. GROSSMAN: All right. You may proceed.
21 MR. HOOKER: Thank you. Thank you for the
22 opportunity to address you today and explain a little bit
23 about you know, the Randolph Civic Association and our
24 position on this project. As indicated, this project has
25 been under application for quite some time and we've been in

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1 communication with the potential developers and the
2 attorneys during that entire period.
3 I don't intend to, you know, restate everything
4 that's already in the letter, which is already in the
5 record. But I do want to say that you know we are
6 cautiously optimistic that this project will be, could be
7 good for our neighborhood, considering the existing facility
8 there now has been basically unable to maintain the property
9 you know through the years and we've had significant issues
10 through the years. There are two other residents on the
11 adjoining streets of Macon and Hunter's Lane who are in the
12 audience who could testify to that, as well.
13 One thing, through the time we have come to an
14 agreement in that we'd like to enter a covenant with the
15 developer to limit the number of units. That was one
16 concern that we had early on was limiting the number of
17 units earlier we were supporting the RT-12 and a half.
18 However, given the information we have, we decided to
19 support the RT-15 at the lower density, max build out of 109
20 units. We feel that this will also address some concerns we
21 have about potential overflow parking, allowing them to have
22 adequate parking so that we don't have spillover on
23 neighborhood streets. And we are also, you know, working to
24 try to restore perhaps some green space that perhaps you'll
25 see later at the, kind of in an unmaintained stream channel

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1 and county right-of-way at the end of Macon. And we feel
2 that some of the sacrifices we might make in the rezoning
3 can be restored through some of these other avenues, which
4 we fully recognize are not part of their property. It would
5 be part of, it's county property from what we understand.
6 So again you know we do plan to work very closely
7 with them, you know, throughout the next phases, in
8 particular the moving out of the concept into the Site Plan
9 development and we do take it seriously and you know it's
10 not, as I said, cautiously optimistic that this could very
11 well be a good thing for our neighborhood if done correctly.
12 So that's really all I wanted to state for the
13 record.
14 MR. GROSSMAN: I noticed in your letter and what
15 you repeated here that you were assuming that there would be
16 a covenant that would bind the applicant to no more than 109
17 units. I think that their proposal is up to 115 if I recall
18 and this has been evaluated in terms of compatibility by the
19 technical staff as it should be in the densest possible
20 development they could under the zone because they don't
21 have a specific plan that they're filing, that under the
22 standard method they're not required to. But I do want to
23 make sure you're aware of the fact that there is no covenant
24 that is part of this record as there would be if they were
25 under the optional method. And so whatever you have that's

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1 an agreement between your organization and the applicant is
2 not a binding zoning requirement here.
3 MR. HOOKER: Well that might be a good question. I
4 think the way the draft covenant was written is contingent
5 upon receiving the zone request. That if they are accepted
6 at the RT-15 then after that they would enter the covenant.
7 Now my understanding is that could be filed after
8 acceptance, is that?
9 MR. GROSSMAN: You could, that's a private
10 covenant you're talking about that could be filed at any
11 time. It wouldn't be binding on the council per se, in
12 terms of zoning, but it could be filed at any time and then
13 you would have whatever rights can be enforced privately you
14 would have under that covenant. It's just there is a
15 process when something is filed under the optional method
16 here, there is a process for also having a schematic
17 development plan which shows the number of units and having
18 a covenant that is filed in the land records that is
19 enforceable under zoning regulations to limit to whatever is
20 agreed to in that covenant.
21 I'm not saying that yours is less effective, I'm
22 just saying that it's not part of this process.
23 MR. HARRIS: It would be binding between the
24 property owner in perpetuity and you. Mr. Gross is simply
25 saying they're not a party to it.

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1 MR. HOOKER: Okay.
2 MR. HARRIS: It's between us as if you know.
3 MR. HOOKER: But it would be filed as if --
4 MR. HARRIS: It would be filed in the land records
5 and we intend to give Mr. Grossman a copy of it in this
6 record.
7 MR. HOOKER: And it would then transfer as part of
8 the land records?
9 MR. HARRIS: Absolutely. Absolutely.
10 MR. GROSSMAN: Yes, the distinction I'm making is --
11 MR. HOOKER: You're not assigning it, right.
12 MR. GROSSMAN: We don't assign them even in the
13 optional method, but they are part of the record and they're
14 enforceable when they're part of our process in the optional
15 method. They are then enforceable as part of Zoning
16 Ordinance. There is an enforcement process in the Zoning
17 Ordinance if there was noncompliance then it can revert
18 after a hearing, it could revert back to the old zone. So
19 there is an enforcement mechanism in that process.
20 That's not the process that you're pursuing here,
21 I'm not saying it's not enforceable in court or anything
22 like that, I'm just saying it's not part of our process.
23 MR. HOOKER: Okay.
24 MR. GROSSMAN: I just wanted to make sure you
25 understood that they weren't proposing at least here you

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1 weren't proposing 109 units, correct, Mr. Harris?
2 MR. HARRIS: Under the covenant we are.
3 MR. GROSSMAN: Okay. All right.
4 MR. HARRIS: Yes. Mr. Hooker is entirely correct,
5 that is what we've committed to and I've given him a copy of
6 the covenant signed by the property owner and it has those
7 terms and conditions in it. We will introduce that through
8 Mr. Brown's testimony into the record and I understand the
9 distinction between his type of a covenant and --
10 MR. GROSSMAN: Right. I think the materials you
11 have filed to date there was an assumption of 115, wasn't
12 there, units?
13 MR. HARRIS: You are correct in that regard. That
14 was what we were originally planning.
15 MR. GROSSMAN: Okay.
16 MR. HARRIS: In further discussions with the
17 community, we agreed to a reduced number of 109.
18 MR. GROSSMAN: Okay.
19 MR. HARRIS: But that is the number, yes.
20 MR. GROSSMAN: All right. Now do you wish to
21 cross-examine Mr. Hooker?
22 MR. HARRIS: No. No, thank you.
23 MR. GROSSMAN: All right. You have that option.
24 All right. And certainly thank you, Mr. Hooker. You're
25 welcome to stay and cross-examine their witnesses if you

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1 wish. You can remain at counsel table throughout the
2 proceeding, or if you other schedule calls you away, you're
3 welcome to do that. Whatever is your pleasure.
4 MR. HOOKER: Thank you.
5 MR. HARRIS: Thank you, Brian.
6 MR. GROSSMAN: Mr. Harris?
7 MR. HARRIS: Okay. The applicant would call Andy
8 Brown.
9 MR. GROSSMAN: All right. Mr. Brown, would you
10 raise your right hand, please? Do you swear or affirm to
11 tell the truth, the whole truth and nothing but the truth
12 under penalty of perjury?
13 MR. BROWN: I do.
14 MR. GROSSMAN: All right. You may proceed.
15 DIRECT EXAMINATION
16 MR. HARRIS: Mr. Brown, would you state your name
17 and address for the record, please?
18 MR. BROWN: Andrew Brown, 8406 Irvington Avenue,
19 Bethesda, Maryland.
20 MR. HARRIS: And I think you gave the name of your
21 business enterprise earlier, so I don't think you need to
22 restate that. In what respect are you appearing today on
23 behalf of the owner of the property, the Montrose Baptist
24 Church?
25 MR. BROWN: Yes, I'm appearing here today on

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1 behalf of RRC/S Montrose LLC, which is the optionee, which
2 is similar to a contract purchaser on behalf of the Montrose
3 Baptist Church.
4 MR. HARRIS: And do you have the Montrose Baptist
5 Church's authority to speak on their behalf here as the
6 applicant?
7 MR. BROWN: I do, and I believe that authority was
8 entered into the record.
9 MR. HARRIS: Yes.
10 MR. GROSSMAN: Yes, it was Exhibit 43-A.
11 MR. HARRIS: Okay. Can you provide us with some
12 of the background regarding Stanford Properties and the LLC?
13 MR. BROWN: Sure. So I started my firm in
14 Bethesda in 1991 called Stanford Properties to focus on
15 primarily retail, residential, and mixed-use projects. I've
16 developed and acquired 23 projects in the 24 years that I've
17 been in business as Stanford Properties. And I'd like to
18 take one minute and describe two properties which are
19 perhaps appropriate here.
20 One of the projects which I completed about 10
21 years ago in a joint venture with Archstone is called the
22 Colonnade at Kentlands. And in this I redeveloped a closed
23 big box retail store which was surrounded by a sea of
24 asphalt parking into about 300 unit condominium project,
25 wrapping a structure parking garage and with ground floor

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1 retail. I worked very closely with the Kentland Civic
2 Association, we had on the order of 50 citizen meetings.
3 The project was very well received by the City of
4 Gaithersburg, by the existing Kentland residents and by the
5 condominium owners themselves. And in the 10 years or so
6 since that project has been completed, several folks living
7 in Kentlands who have become empty nesters have moved out of
8 their houses and into the Colonnade.
9 A more recent project, it's called Market Square
10 at Frederick, which is a 50 acre mixed-use site up at the
11 north end of the City of Frederick at Route 355 and 26. And
12 here I developed a 200 unit townhouse project, 206 unit
13 apartment building and a town center retail project, which
14 is a combination of a traditional anchored retail center to
15 the rear but with six free standing retail buildings along
16 the main street and parking the rear. So it's really the
17 best of both retail formats.
18 Today, I'm appearing as a managing member of RRC/S
19 Montrose LLC which was formed specifically to redevelop this
20 site. I also sign documents as co-manager, I believe you
21 saw a document I signed that way. I call myself a co-
22 manager because there are four managing members of this
23 entity and each of us is empowered to bind the LLC.
24 MR. GROSSMAN: All right. And you have done so in
25 Exhibit 42-A which is in the record here.

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1 MR. BROWN: Yes. As I mentioned, RRC/S Montrose
2 had an option to purchase the property which we will
3 exercise assuming that the rezoning is ultimately approved
4 and at the conclusion of the entitlement process which
5 follows that.
6 MR. HARRIS: Okay. Thank you. Would you review
7 for us the site history and the basic background as to what
8 has triggered this application?
9 MR. BROWN: Yes. The church membership has been
10 shrinking for a number of years and many of its parishioners
11 are moving farther out into upper Montgomery County. The
12 church has found a new site in Clarksburg, closer to its
13 parish base which to relocate. But of course, the church
14 needs the funds from the sale of this property in order to
15 fund the new development in construction of its new
16 facility.
17 There, as you mentioned, an affiliated Montrose
18 Christian School, which operates on the property. The
19 building, the facility it operates in is outdated. It's
20 very expensive to maintain and it really doesn't meet
21 today's educational requirements.
22 And thirdly, a prior pastor of the church
23 embezzled somewhere in the order of one and a half million
24 dollars of tuition payments and this is the figure I
25 obtained from the FBI website and that happened several

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1 years ago and the church has really not recovered from that
2 financial setback. So the church is, as Mr. Harris
3 mentioned earlier, is really in hard financial straits and
4 it doesn't need to or want to operate in that location any
5 longer.
6 And as Brian's letter and Brian's testimony and
7 the Randolph Civic Association letter indicates, these
8 financial issues have led to the property not being
9 maintained very well over the past few years. There have
10 been many reports to the county by neighbors of lapses in
11 maintenance, including a bamboo fire which we just saw a
12 video of a little earlier.
13 I think that the townhouse project will be a much
14 better neighbor than the current institutional use, and I
15 will detail that a bit later on when I talk about our
16 interface with the RCA.
17 MR. HARRIS: Through your development experience
18 and experience with the Urban Land Institute, can you
19 discuss a little bit about the popularity of infill
20 development in particular this type of development?
21 MR. BROWN: I will. So at the same time that
22 Montrose Baptist Church parishioners were moving further out
23 into the county there are many home buyers who are attracted
24 to neighborhoods closer in and this is a perfect example of
25 that.

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1 We believe there will be three specific
2 demographic profiles that will be attracted to this site.
3 Young couples, both with and without children; empty nesters
4 and the larger suburban style houses that they don't utilize
5 fully anymore because their children have moved out; and
6 singles in the early and mid-stages of their careers.
7 We feel they will be attracted to, very attracted
8 to this particular site and sites like this, because of its
9 proximity to the job centers in Bethesda, Silver Spring,
10 Rockville and even downtown Washington. Walkable retail,
11 literally you have Loehmann's Plaza right next door to the
12 property, you have additional retail further west on
13 Randolph Road and down Boiling Brook Parkway. So the retail
14 is approximate, very convenient.
15 You have frequent, both Ride-On and Metro Bus
16 service passing directly by the site on Randolph Road and
17 you have good access to both the Twinbrook and White Flint
18 Metro Stations. All of these make this site very attractive
19 for what we call infill development.
20 MR. GROSSMAN: What is the distance to the metro
21 station?
22 MR. BROWN: I believe it's 1.2 miles to one
23 station and slightly further to another station. And I
24 can't tell you, Kevin --
25 MR. HARRIS: We will have Mr. Foster will speak

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1 more specifically about that.
2 MR. BROWN: Right. So just in closing about the
3 infill I would like to say that from a public policy
4 standpoint infill development in areas that are already well
5 served with existing infrastructure, the roads, the mass
6 transit, the sewer and water lines is a plus as opposed to
7 constructing that further out in greenfield areas. Mr.
8 Harris and I are both members of the Urban Land Institute
9 and the smart growth, this is a perfect example of smart
10 growth tenants and that's a big focus of the ULI and also on
11 many municipalities.
12 MR. HARRIS: Can you describe some of the
13 community outreach efforts and the evolution of the project?
14 MR. BROWN: I will. As you mentioned earlier,
15 another developer began this process back in the spring of
16 2014 at which time he began a series of meetings with the
17 RCA leadership and also the general community. The RCA
18 represents about 1,300 houses in the surrounding
19 neighborhoods, including Randolph Farms which is adjacent to
20 our property to the south and to the east. Mr. Baldwin left
21 his contract with the church, it fell apart I should say in
22 the late summer of this year and I became involved at that
23 time, September 2015. So I've really only been involved in
24 the project for 90 to 120 days. But since that time, we've
25 continued the dialogue that he started with the RCA. We

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1 held a meeting with their leadership and just last week we
2 had presentation at their larger general membership and I've
3 had communication with Mr. Hooker by e-mail and also by
4 phone.
5 So as you've heard, the RCA is frustrated with the
6 lack of maintenance of the property, there's also poor storm
7 water management in a couple of areas that the church
8 property is old and does not have current storm water
9 management practices and that's lead to some flooding in
10 some of the houses that abut it and incidents like the
11 bamboo fire, I believe are very frustrating for the
12 neighbors. And I very much appreciate the willingness of
13 the RCA to interface with us. We've listened carefully to
14 their concerns about the overall density. You've heard
15 about the covenant which we have had executed and are
16 willing to commit to and we're committed to working with
17 them further as we go through the entitlement process to
18 address things like unit orientation, adequate visitor
19 parking and the other numerous aspects of the development.
20 Let's see, we talked, we entered the covenant, the
21 letter --
22 MR. HARRIS: Let me interject here for a moment
23 and Mr. Grossman, what do I have marked as an exhibit.
24 MR. GROSSMAN: All right. This will be Exhibit
25 46.

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1 (Hearing Exhibit No. 46 was
2 marked for identification.)
3 MR. GROSSMAN: And it is a declaration of covenant
4 dated December 2, 2015, and that's by Montrose Baptist
5 Church, the owner of the subject property. It is executed
6 and it is notarized. And I take it it has not yet been
7 filed with the land records, I understand?
8 MR. HARRIS: No, we were waiting for this hearing
9 and at the conclusion of the hearing the intent is to record
10 it.
11 MR. GROSSMAN: Okay. If you wanted to be of
12 record that it's recorded, you'd have to do it while the
13 record is open. So because what gets to the Council is the
14 record.
15 MR. HARRIS: We would prefer that, what I would
16 suggest we do depending on how things go this morning here,
17 leave the record open a couple of days for us to get it
18 across the street to the courthouse and record it and then
19 report back to you.
20 MR. GROSSMAN: All right. I'll leave it open for
21 10 days.
22 MR. HARRIS: Okay.
23 MR. GROSSMAN: All right.
24 MR. HARRIS: Okay. Would you briefly describe the
25 covenants and the derivation of it, what lead to it?

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1 MR. BROWN: Yes. Well, the covenant, as you've
2 heard, limits development on the property in perpetuity to
3 109 lots, 109 townhouse lots and this came about in
4 conversations with Brian and my understanding of the
5 community's natural concern about too much density on the
6 site. I actually believe that the RT-15 Zone would allow as
7 many as 131 units, if you applied the 15 units per acre to
8 the gross tract area. And so we recognize the concerns of
9 the community and think this is a great compromise.

10 MR. HARRIS: Okay. I don't think we have anything
11 else for Mr. Brown, unless you have anything else you want
12 to add.

13 MR. BROWN: No, I just did want to say in closing
14 that I do believe our proposed development is appropriate
15 for the neighborhood and I think it has a more positive
16 impact on the surrounding community than the existing
17 institutional church and school and daycare use.

18 MR. GROSSMAN: Okay. I have no questions at this
19 time. So call your next witness. Come on up, Mr. Hooker.

20 CROSS-EXAMINATION

21 MR. HOOKER: Mr. Brown did detail a number of
22 concerns that they have addressed, you know, raised by the
23 RCA over the year, the one thing that I just wanted to get
24 on the record as well is the interest in making sure that
25 the intersection of Putnam and Macon Road remained closed.

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1 They have agreed to that, I just wanted to make sure that
2 that was.

3 MR. GROSSMAN: I'll take that as a cross-
4 examination question --

5 MR. HOOKER: I'm sorry.

6 MR. GROSSMAN: -- is that correct?

7 MR. BROWN: Yes, we do not have any interest in
8 reopening that or connecting that intersection.

9 MR. GROSSMAN: So the intersection of which roads
10 again?

11 MR. BROWN: Macon Road and Putnam Road.

12 MR. GROSSMAN: Macon Road and Putnam Road. Will
13 remain what?

14 MR. BROWN: Will remain not connected. Is that
15 the right terminology.

16 MR. GROSSMAN: And I think there was another
17 question.

18 MR. HOOKER: Sure. And is there any intention to
19 create any other opening to Macon Road from the new
20 development?

21 MR. BROWN: There is no intention to create any
22 new opening. No, it is our intent to reduce the number of
23 existing entrances to the property on Randolph Road. Not to
24 increase or create new entrances.

25 MR. GROSSMAN: If that's not in your covenant, his

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1 testimony here of what his intention is, is not binding in
2 the sense that there's nothing in the zoning process that
3 would enforce it. It's not part of a covenant here. You
4 may wish to appear in conjunction with the Preliminary Plan
5 or Site Plan review by the Planning Department to ensure
6 that your concerns are addressed.

7 MR. HOOKER: Yes. Thank you. We do intend to at
8 the Site Plan review restate those concerns. But restating
9 them throughout the process.

10 MR. HARRIS: Yes.

11 MR. HOOKER: Thank you.

12 MR. GROSSMAN: Thank you, Mr. Hooker.

13 MR. HARRIS: And we value the community's input on
14 this and certainly intend to abide by that. Thank you.
15 Okay. Anything else?

16 MR. BROWN: That covers it for me.

17 MR. HARRIS: All right. Moving along then, the
18 second witness is Mr. Kevin Foster.

19 MR. FOSTER: Over here?

20 MR. HARRIS: Yes.

21 MR. GROSSMAN: Good morning, Mr. Foster.

22 MR. FOSTER: Good morning.

23 MR. GROSSMAN: Would you state your full name and
24 your business address, please?

25 MR. FOSTER: Kevin Foster, business address is

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1 3909 National Drive, Suite 250, Burtonsville, Maryland.

2 MR. GROSSMAN: Would you raise your right hand,
3 please. Do you swear or affirm to tell the truth, the whole
4 truth and nothing but the truth under penalty of perjury?

5 MR. FOSTER: I do.

6 MR. GROSSMAN: All right. You may proceed, Mr.
7 Harris.

8 DIRECT EXAMINATION

9 MR. HARRIS: Quickly, I'm looking here, I think
10 Mr. Foster your resume has already been submitted to the
11 record, except I'm not finding it.

12 MS. BAR: It's part of the prehearing statement.

13 MR. HARRIS: It's part of the prehearing, thank
14 you.

15 MR. FOSTER: If not I brought copies.

16 MR. GROSSMAN: 34-C.

17 MR. HARRIS: 34-C. Great. Okay. Thank you. And
18 Mr. Foster, without going through your resume, perhaps we
19 can move this along. Have you been admitted as an expert in
20 land planning in this office before?

21 MR. FOSTER: Yes, I have.

22 MR. HARRIS: Okay. We would submit Mr. Foster as
23 an expert in land planning.

24 MR. GROSSMAN: All right. And based on Mr.
25 Foster's resume, I'll pull it out for a second, and the fact

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1 that he has testified before this body and qualified as an
2 expert previously, I accept him as an expert in land
3 planning. I presume that, or is that what you're offering
4 him as?
5 MR. HARRIS: Yes, sir.
6 MR. GROSSMAN: He's also, according to his resume,
7 registered landscape architect. So I wasn't sure --
8 MR. HARRIS: Right.
9 MR. GROSSMAN: -- what you're proffering him.
10 MR. HARRIS: I guess both, I don't know how much
11 testimony we'll have about landscaping, but in case he gets
12 into that he is an expert.
13 MR. GROSSMAN: And Mr. Foster, I know you've
14 appeared before me before, but I cannot recall the name of
15 the case, what case was that?
16 MR. FOSTER: The case before you, it was probably
17 back, it was, it might have been the Montgomery College of
18 Art and Design.
19 MR. GROSSMAN: Okay. MCAD, case yes, I recall
20 that. Okay.
21 MR. FOSTER: Yes. I'm trying to think, Sunrise
22 Senior Living.
23 MR. GROSSMAN: Okay. I recall that too. Okay.
24 MR. FOSTER: Because there were a number of cases,
25 I'm just not sure who the Hearing Examiner was.

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1 MR. GROSSMAN: Right, I was on those.
2 MR. FOSTER: Who was in front of me in those
3 cases.
4 MR. GROSSMAN: All right.
5 MR. FOSTER: And probably FAES as well, Advanced
6 Education and Sciences.
7 MR. GROSSMAN: I was in that one a long time ago,
8 yes. Right. All right. Thank you, sir. I have accepted
9 him as an expert in land use planning and in landscape
10 architecture.
11 MR. HARRIS: Okay. Mr. Foster, would you describe
12 the scope of work in which you engaged here?
13 MR. FOSTER: For this project, I was engaged
14 really from the very beginning working on site analysis of
15 the Montrose Christian site. We were also hired to do a
16 natural resources inventory, forestland delineation, concept
17 planning and land use analysis.
18 MR. HARRIS: And have you evaluated the site
19 through visits and through documents?
20 MR. FOSTER: Yes, I've been on the site many times
21 and evaluated the site.
22 MR. HARRIS: Can you please describe the site
23 conditions and if you have an exhibit to use for that --
24 MR. FOSTER: Sure, I'd like to probably introduce
25 a couple of exhibits into the record.

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1 MR. GROSSMAN: Yes.
2 MR. FOSTER: And first there will probably be two
3 that I use to really describe the site.
4 MR. GROSSMAN: All right. These have not been
5 previously marked?
6 MR. FOSTER: No.
7 MR. GROSSMAN: Okay. This will be Exhibit 47.
8 (Hearing Exhibit No. 47 was
9 marked for identification.)
10 MR. GROSSMAN: And would you describe what that
11 is?
12 MR. FOSTER: 47 is a Bing maps or a Microsoft
13 Corporation 2015 aerial photograph of the site of the
14 subject property.
15 MR. GROSSMAN: All right. So it's an aerial photo
16 of the subject property.
17 MR. FOSTER: And that was exhibit?
18 MR. GROSSMAN: 47.
19 MR. HARRIS: 47.
20 MR. GROSSMAN: And does it indicate when that was
21 taken?
22 MR. FOSTER: 2015.
23 MR. GROSSMAN: Okay. Taken in 2015. From your
24 knowledge does that accurately depict the subject site?
25 MR. FOSTER: Yes, it does.

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1 MR. HARRIS: All right. Does it include other
2 things around the subject site as well?
3 MR. FOSTER: It shows, typically it shows the
4 residential community to the north, east and south of the
5 property in Loehmann's Plaza to the west.
6 MR. GROSSMAN: All right. And I would also like
7 to introduce into the record for describing the subject
8 property, a copy of the accrued natural resources inventory
9 and forestland delineation.
10 MR. GROSSMAN: Okay. And that's not in the record
11 yet either? I think that might be.
12 MR. HARRIS: It might be.
13 MR. FOSTER: It probably is.
14 MR. GROSSMAN: Look and see.
15 MR. FOSTER: This is a copy of it.
16 MR. GROSSMAN: I don't see it mentioned --
17 MR. HARRIS: I don't see it either, Mr. Grossman.
18 MS. BAR: It might have been part of the Staff
19 Report.
20 MR. GROSSMAN: All right. Well let's have it
21 marked then. This will be Exhibit 48.
22 (Hearing Exhibit No. 48 was
23 marked for identification.)
24 MR. GROSSMAN: And that's the NRIFSD approved
25 when?

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1 MR. FOSTER: October 20, 2015.
2 MR. GROSSMAN: Okay.
3 MR. FOSTER: So I'm now referring to Exhibit 47.
4 MR. GROSSMAN: All right.
5 MR. FOSTER: The area in the center of the
6 photograph is outlined in red as the subject property. It's
7 8.78 acres of land, it includes Lots 4, 5 and 32 of Randolph
8 Farms and the rights-of-ways and part of Randolph Road,
9 Putnam Road, Randolph Road to the north, Putnam Road to the
10 west and Macon Road to the south. And previously there was
11 some discussions about varying Mr. Brown's testimony about
12 the connection between Putnam and Macon Road.
13 MR. GROSSMAN: Yes.
14 MR. FOSTER: If you notice in the corner you can
15 see that the paving does not connect between those two roads
16 today.
17 MR. GROSSMAN: I do see that.
18 MR. FOSTER: That's what was discussed. Those two
19 roads do not connect today and I think the community would
20 like that connection to remain the way it is.
21 MR. GROSSMAN: Remain disconnected.
22 MR. FOSTER: Right, remain disconnected.
23 MR. GROSSMAN: Disconnect the connection. Okay.
24 MR. FOSTER: So that there is no way to drive
25 through there.

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1 MR. GROSSMAN: Okay.
2 MR. FOSTER: Just for your information. So the
3 subject property is located basically south of Randolph
4 Road, and it's bordered by Randolph Farms community to the
5 east, single family detached houses, Hunters Lane to the
6 east, Macon Road single family detached houses to the south,
7 Randolph Road and the single family detached houses to the
8 north.
9 MR. GROSSMAN: And let me interrupt for a second.
10 And Mr. Hooker, your organization, the Randolph Civic
11 Association represents houses all to the north, east and
12 south of the property?
13 MR. HOOKER: Correct. The north side as well
14 that's Montrose Park that is also part of the Randolph Civic
15 Association area south and east.
16 MR. GROSSMAN: All right. Thank you.
17 MR. FOSTER: Okay. Now I'm referring to Exhibit
18 48, the approved NRIFSD, the subject property is split
19 zoned, the northern half of the property really adjacent to
20 Randolph Road is R-90, the southern half of the property is
21 zoned R-60. The property contains the Montrose Baptist
22 Church, the Montrose Christian School and Montrose Child
23 Development Center. It's operated for approximately 15
24 years, it has a student population of approximately 250
25 students in the school and 100 students in the child care.

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1 The building has approximately 88,000 square feet of
2 building area and there is approximately 160 onsite parking
3 spaces today on site.
4 The site slopes gently, or moderately from the
5 high points along Randolph Road, elevation approximately
6 350, the high point is on the northeast corner of the site,
7 the low point is on the southwest corner of the site down
8 near Macon Road or the elevation roughly 316. The NRI has
9 numerous trees located on the site. There is a larger stand
10 of trees located really in the southern, the southeastern
11 portion of the site around the playground. There is
12 scattered larger trees throughout the site. There is a
13 stand of bamboo.
14 MR. GROSSMAN: Where is that stand of bamboo? Can
15 you point to it?
16 MR. FOSTER: Yes. There is an existing house on
17 the eastern portion of the site and directly behind the
18 house where there was previously a batting cage, there's a
19 stand of bamboo next to a parking lot.
20 MR. GROSSMAN: Okay.
21 MR. FOSTER: And I think that's where the fire was
22 previously --
23 MR. GROSSMAN: Where the fire took place.
24 MR. FOSTER: -- in the year.
25 MR. GROSSMAN: Okay.

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1 MR. FOSTER: Yes. And then at the very eastern
2 portion of the site there is an existing parking lot, some
3 basketball courts, I think they may have been used for
4 tennis courts as well. So that's what's existing on site
5 today.
6 There are no environmental features on site, or a
7 few existing manmade steep slopes really some graded slopes
8 when Randolph Road were built up from to where some steep
9 slopes around some of the buildings. Those are shown in
10 gray on the NRIFSD, but they're not environmental features.
11 In the very southwest corner of the site there is offsite
12 below Macon Road, there is a small section of an existing
13 stream and there is a small portion of a stream buffer that
14 abuts the site, it doesn't really come onto to the site, but
15 there is a small piece of stream buffer that is adjacent to
16 the site.
17 MR. GROSSMAN: All right.
18 MR. HARRIS: Can you describe the surrounding area
19 as well?
20 MR. FOSTER: Sure. I'd like to use a couple of
21 other exhibits, one is a copy of the land use and
22 surrounding area map from the Staff Report and that was
23 figure 2 from the Staff Report.
24 MR. GROSSMAN: I have it as figure 3, but I see
25 there's a separate one that's figure. Okay.

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1 MR. FOSTER: Yes, I think figure 3 is the Zoning
2 Map.
3 MR. GROSSMAN: You're correct, figure 2. And by
4 the way, do you accept staff's definition of the surrounding
5 area?
6 MR. FOSTER: Yes, I do.
7 MR. GROSSMAN: All right. And would you, since I
8 don't think that's in the record as a full size plan, would
9 you mark that?
10 MR. HARRIS: Not as a separate document.
11 MR. GROSSMAN: Okay. So would you mark that as
12 exhibit, I've lost the exhibit list.
13 MR. FOSTER: 49, I think.
14 MR. GROSSMAN: There it is, yes, 49.
15 (Hearing Exhibit No. 49 was
16 marked for identification.)
17 MR. GROSSMAN: The surrounding area map. All
18 right.
19 MR. FOSTER: Okay. In evaluating this case, the
20 surrounding area was really defined by the transportation
21 network and some environmental features for the site. So
22 the surrounding neighborhood was really, it's the north
23 defined by the future right-of-way from Montrose Parkway,
24 that was a really clear defining element of the
25 neighborhood. Rock Creek Parkway to the east. Rocking

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1 Horse Road to the east. Boiling Brook Parkway to the south.
2 Parklawn Drive to the east.
3 Those elements combined were really clear in
4 defining really the surrounding area. In my original
5 analysis I was a little bit more conservative to the south
6 where I originally established my line, but then after
7 talking with staff and looking where staff brought their
8 line all the way down to Boiling Brook Parkway, I agreed
9 with where the staff brought their line all the way down to
10 include the Charles E. Smith Jewish Day School.
11 MR. GROSSMAN: All right.
12 MR. FOSTER: But so those are really the limits of
13 the surrounding area. It's really, it's about 150 acres
14 total, the surrounding area.
15 MR. GROSSMAN: Let me interrupt one second.
16 MR. FOSTER: Sure.
17 MR. GROSSMAN: Thank you, Mr. Foster. What is
18 done in the zoning case is the standards for evaluating a
19 zoning case under the standard method would be number one
20 that it will comport, the proposal would comport with the
21 intent and the regulations of the zone; number three, that
22 it is compatible with the uses around it; and three, that
23 it's in the public interest which includes Master Plan
24 compliance and various other things. And the surrounding
25 area definition goes to the question of compatibility. It

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1 is always helpful to have an area that you're comparing the
2 proposed use to, to see if it's compatible with the things
3 in that surrounding area. So that's why we go through that
4 exercise.
5 Go ahead, Mr. Foster.
6 MR. FOSTER: Okay. So just describe the
7 surrounding area then itself. The surrounding area is
8 really bifurcated in the middle by Randolph Road traveling
9 east/west and the subject property abuts Randolph Road which
10 is a fairly major transportation arterial in Montgomery
11 County. So it's a very major road.
12 So north of Randolph Road, single family detached
13 houses built in the 60's and 70's, one and a half, two story
14 houses. Mostly zoned R-60 and it's a very defined
15 neighborhood. It all exits out onto Randolph Road, because
16 of the future Montrose Parkway right-of-way and Rock Creek
17 Parkway they were very defining elements there.
18 There is a special exception, Randolph Medical
19 Building at the eastern end and then on the western end of
20 Randolph Road and the surrounding area there is a
21 multifamily R-20 apartment complex and a U-Haul light
22 industrial development on the corner at Parklawn and
23 Randolph Road. South of Randolph Road on the eastern end,
24 Randolph Farms single family development, is really the
25 eastern side. It's a mixture of R-60 and R-90. Again

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1 single family houses, 60's, 70's. There are some newer
2 houses in there. There is also includes the Rocking Horse
3 Center which is Montgomery County Public School. It's now
4 being used I think, Department of Montgomery County
5 government is now using that. There's also the Charles E.
6 Smith Jewish Day School. Those are all on residentially
7 zoned properties.
8 And then down just west of the site is Loehmann's
9 Plaza, which is a commercial shopping center. It has a
10 Safeway, I think has recently left the site, but so it
11 included a grocery store and then multiple retail shops, pad
12 sites, parking and further southwest of the site there was
13 two apartment complexes, Walnut Grove common name apartments
14 and then there's another single, or the Oxford Square
15 Apartments and right along Parklawn Drive there's also a
16 three story office building as part of the surrounding area.
17 MR. HARRIS: Okay. And would you describe the
18 zoning in the surrounding area?
19 MR. FOSTER: Sure. But to do that I'd like to
20 also introduce into the record I think this is figure 3 out
21 of the Staff Report.
22 MR. GROSSMAN: Yes.
23 MR. FOSTER: Which is the Zoning Map, which I
24 guess will be Exhibit 50.
25 MR. GROSSMAN: Yes, it is, Exhibit 50.

1 (Hearing Exhibit No. 50 was
 2 marked for identification.)
 3 MR. FOSTER: So then going back and looking again,
 4 when you look at the Zoning Map, you look at the surrounding
 5 area you can see a pretty clear diving inline in the
 6 surrounding area that the diving line kind of north/south.
 7 Everything on the right hand side, the single family, the
 8 school, the Charles E. Smith Day School, the previous school
 9 the subject property all residentially zoned all in the R-
 10 60, R-90 Zone. And then everything really west of that line
 11 more toward Parklawn are really either the multifamily or
 12 the commercial properties. So if we're looking at the
 13 western end of Randolph Road where the Oxford Square
 14 Apartments are, that's zoned R-20, 26 dwelling units an
 15 acre. We have the U-Haul self-storage facility at the
 16 corner of Randolph and Parklawn. That's in light
 17 industrial, FAR of 1 with a 50 foot building height. Just
 18 west of the subject property we have Loehmann's Plaza which
 19 is a CR 1.5 with a 75 foot building height, that would give
 20 you a density of you know somewhere between 35 and 40
 21 dwelling units an acre. We have the Walnut Grove
 22 Condominium Apartments that's R-20 with a 80 foot building
 23 height. That's roughly 26.5 dwelling units an acre. We
 24 have the Oxford Square Apartments, that's zoned R-30, that's
 25 17.7 dwelling units an acre, 35 foot building height. Then

1 we have the office building that's along Parklawn, that's
 2 employment office zoning, 75 foot building height with an
 3 FAR of 1.5.
 4 So I think you can clearly see there is a gradient
 5 of the zoning in the surrounding area. You know moving from
 6 left to right, the higher densities are all along Parklawn
 7 Drive moving over toward the White Flint area and
 8 residential zoning on the eastern portion of the site.
 9 MR. GROSSMAN: Right. Left to right in this case
 10 is moving from west to east?
 11 MR. FOSTER: Yes.
 12 MR. GROSSMAN: Okay.
 13 MR. HARRIS: Okay. Thank you. So based on the
 14 surrounding area that you've been describing, can you walk
 15 us through a little bit of your thinking as to the propriety
 16 of RT-15 Zoning for this property?
 17 MR. FOSTER: Well when we first started looking at
 18 this property, you know, part of the analysis you know when
 19 you start with a blind piece of ground is you know what's
 20 appropriate on the site, you know what is, what fits best
 21 for this piece. And so as we started looking at this, you
 22 know, especially when I'm now referring to Exhibit 50, you
 23 look at the zoning and that clear delineation between the
 24 residential and you know the higher density uses from east
 25 to west or west to east, that line, you know, is pretty

1 clear and you really can see that this site certainly was
 2 asking to be a residential use. So that was kind of the
 3 starting point that we were looking at. It was clear given
 4 all of the uses around here that we weren't talking about
 5 introducing a commercial use right here in the middle of
 6 this, really a single family residential neighborhood.
 7 But this was clearly a site that was an infill
 8 site. There's a lot going on here. There's a lot of
 9 existing density in this area. So you know this is clearly
 10 a site that's you know, going to be an infill, you know it's
 11 close to a big growth area in White Flint. You look at this
 12 site and you're like well, there are three bus lines that
 13 serve this site. Right, there are two Metro bus lines that
 14 have bus stops, you know, right along Randolph Road, there
 15 is a ride on bus stop right there. There is a future BRT
 16 bus line Master Plan for Randolph Road with a stop right at
 17 Parklawn and Randolph Road. So you know that's within 500
 18 feet of the site, basically there's supposed to be a BRT --
 19 MR. GROSSMAN: Within 500 feet and 500 years,
 20 right?
 21 MR. FOSTER: Could be. But there's clearly a spot
 22 for you know future transit. There is a future MARC station
 23 that's planned at Parklawn just south of this site. You
 24 know that's with 1,000 feet of this site, right at where
 25 Parklawn crosses the rail line. So if you look at this site

1 and say wow there's a tremendous amount of transit access to
 2 this site. Not to mention the close proximity to the Metro
 3 sites. You had asked previously how far are the Metro.
 4 MR. GROSSMAN: Yes.
 5 MR. FOSTER: White Flint Metro is approximately
 6 1.1 miles away on the road. It's about 3,300 feet direct
 7 line, but you can't fly there. But if you're on the road
 8 it's approximately 1.1 miles on the road. Twinbrook Metro
 9 is 1.3, 1.4, depending on which road you take. So but there
 10 is clearly, you know, close proximity to those and clear bus
 11 access. So you know so clearly this site was asking for a
 12 lot of you know, certainly or relatively higher density.
 13 So then we started looking at well if this is
 14 going to be an infill site and you know surrounded by single
 15 family houses, certainly townhouses are an appropriate use
 16 for this site. You know it has townhouses are an allowed use
 17 in the R-60 and R-90 Zone under the MPDU's, you know, and
 18 their compatible presumably with existing single family and
 19 what's an appropriate density is really what you're looking
 20 at. And as we started looking at plans, it became apparent
 21 as we're looking at higher densities, you know, trying to
 22 get a plan to work you then look at this particular site and
 23 the issues with this site and there are a couple of major
 24 issues with this site, one that there is a lot of right-of-
 25 way being dedicated with this site. Because if you look at

1 the, which I probably want to look at it as part of the
2 record, I'm not sure which in the record, this is the
3 identification plat.

4 MR. HARRIS: Exhibit 7.

5 MR. GROSSMAN: Okay.

6 MR. FOSTER: This is a copy of the ID plat.

7 MR. GROSSMAN: Okay.

8 MR. FOSTER: And what this demonstrates is the
9 area in gray around the perimeter of this plat, the plat
10 shows the subject property and what's in gray around the
11 perimeter is the area dedicated for public use for roads.
12 And it's 23, 24 percent of the site area is being dedicated
13 to public roads.

14 MR. GROSSMAN: It's already dedicated?

15 MR. FOSTER: Yes.

16 MR. GROSSMAN: Okay.

17 MR. FOSTER: And it can be used as calculation for
18 density but when you get into open space calculation you
19 can't count that area. So when you're looking at your site
20 design and you're laying out townhouses and you come up to
21 your open space calculation you have to use your gross tract
22 area when you're calculating your open space. Okay. And
23 for RT-8, 10, 12 and a half, you know, you're looking at 50
24 percent you know open space requirements or if you're in the
25 MPDU requirements, it can go down to 45 percent. But when

1 you're giving away, not giving away, but when you've used a
2 quarter of your site already for roads, that kind of
3 handicaps you in what you can do on the rest of the site
4 because of the open space requirements. Okay. So that's
5 kind of pointing you toward the RT-15 because of the lower
6 green space requirement. The RT-15 green space requirement
7 gives you a lot more flexibility in the overall design.

8 MR. GROSSMAN: Greater flexibility than what?

9 MR. FOSTER: Than the lower densities, than the
10 RT-12 and a half.

11 MR. GROSSMAN: All right.

12 MR. FOSTER: And so that was one of the criteria
13 we were looking at when we were looking at what density was
14 appropriate. And then the second thing that we started
15 looking at why the RT-15 was when we started getting into
16 looking at a plan, an actual Concept Plan, was what's the
17 appropriate amount of parking for townhouses because one of
18 the issues that we get into with townhouses in infill
19 developments is parking pressure on surrounding
20 neighborhoods. Because when you put higher density urban
21 style infill which is what these sites really want to be for
22 good urban planning is that you need visitor parking, you
23 know, you need even though there is transit available,
24 people still use cars. And what you don't want to do is put
25 a lot of townhouses or a lot of density and then all of that

1 extra parking that people still use spills over into the
2 residential community around it and creates parking pressure
3 on the existing residents.

4 So you have to provide enough internal parking on
5 your site to allow for that, you know, to have enough
6 parking. The problem is those parking spaces you can't
7 count as green area. Okay. So there's a sliding scale
8 then, basically. The more parking you provide to allow for
9 what would be a good plan, the more parking you provide the
10 less green space you can provide. But that RT-15 with the
11 lower green space requirement allows us the flexibility to
12 provide more parking, to provide a good plan and has the
13 flexibility to really help us to provide a good design for
14 sites like this.

15 MR. GROSSMAN: So how much parking are you
16 proposing for this site?

17 MR. FOSTER: Well in a Concept Plan which I guess
18 we're going to introduce here in a little bit, you know,
19 where we were looking at, you know, roughly three dwelling
20 units, three parking spaces per unit.

21 MR. GROSSMAN: Okay.

22 MR. FOSTER: Which is what was usually found to
23 be, you know, between the garage spaces, the driveway spaces
24 and the surface spaces is you know because you need visitor
25 spaces, you know you need some spaces for people that like

1 to use their garages for other things than parking, which
2 they tend to do.

3 MR. GROSSMAN: All right.

4 MR. FOSTER: But that's kind of where you end up.

5 MR. GROSSMAN: Okay.

6 MR. FOSTER: So those are really all of the
7 elements that kind of lend you toward getting to what is why
8 RT-15 seems to be the appropriate zone for this site.

9 MR. GROSSMAN: All right.

10 MR. HARRIS: And do you know the extent to which
11 the creation of the RT-15 Zone was based on principals like
12 that?

13 MR. FOSTER: Well it's my understanding that the
14 RT-15 Zone came about after, I think it was the Glenmont
15 Master Plan when I think planning staff really started to
16 realize there was a need for more urban, higher density,
17 infill you know development more than just suburban, you
18 know, townhouse development and there was the need for that
19 type of townhouse infill.

20 MR. HARRIS: And do you believe this is the type
21 of site that fits within the intent of the RT-15 Zone?

22 MR. FOSTER: I very much do. I think you know
23 being on a major thoroughfare, I think when we get into
24 looking at the purposes clauses, you know, of the RT Zones
25 and you know I think this site very much fits that.

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1 MR. HARRIS: Okay. Perhaps now we might turn to
 2 the Master Plan and its recommendations and how they would
 3 apply here.

4 MR. FOSTER: Okay. Well I reviewed the Master
 5 Plan, the 1992 North Bethesda Garret Park Master Plan and
 6 evaluated the compatibility with the proposed development,
 7 you know, in light of the recommendations in the plan. And
 8 I'd like to go through you know some of the specifics.

9 Now there is no specific recommendations in the
 10 plan for this property, although a specific recommendation
 11 in the Master Plan or the Sector Plan is not a requirement
 12 for reclassification of the RT Zone. In this case, I'd like
 13 to review the General Plan objections that were really
 14 covered on pages 33 and 34 of the Master Plan.

15 MR. GROSSMAN: Okay.

16 MR. FOSTER: Under 2.6 plan objectives on the page
 17 33, land use, protect and reinforce the integrity of the
 18 existing residential neighborhood. I mean clearly taking
 19 the subject property and replacing what is really now
 20 becoming an aging institutional use with a newer residential
 21 use is going to create a new residential edge into clearly a
 22 residential neighborhood. And is really going to, you know,
 23 reinforce the residential identity of this neighborhood.
 24 It's going to, you know, I think, really help the
 25 residential identity, create more residential streetscape,

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1 pedestrian connections, and certainly I think really protect
 2 and really almost create a buffer from Randolph Road for the
 3 residential community behind it.

4 Number 2, direct future development of the land
 5 nearest to metro stops and new transit stations into areas
 6 best served by transportation infrastructure. As I talked
 7 about earlier, I think the site is, you know, greatly served
 8 by transit between the bus service lines that currently are
 9 on Randolph Road, the BRT Master Plan service along Randolph
 10 Road with the station at Parklawn and Randolph, the MARC
 11 station that's proposed at Parklawn and the existing metro
 12 stations. I think this site is clearly an infill site that
 13 is well served by transit and is directly responding to this
 14 plan objective.

15 Number 3, preserve and increase the variety of
 16 housing stock including affordable housing. Clearly by
 17 looking at the surrounding area plan, there is currently no
 18 townhouses in this area. So by introducing townhouses
 19 you're going to be introducing a housing type that's not
 20 currently here. It's not available to the public in this
 21 area so you'll be introducing housing, you'll be increasing
 22 housing variety, the housing stock in the area and you'll be
 23 introducing affordable housing. We'll be providing 12 and a
 24 half percent MPDU's into this area.

25 Number 4, encourage a mixture of land uses in

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1 redeveloping areas to promote variety and vitality. In
 2 redeveloping this site, we're certainly going to be
 3 reengaging the streetscape and really adding a little bit of
 4 vitality. We're going to be certainly adding more residents
 5 to the area that can serve the Loehmann's Plaza, you know,
 6 the retail that's next door adding more night life, you
 7 know, I think it's certainly going to add a new mixture to
 8 the area and it would certainly help a lot of that retail
 9 that's down the street.

10 Number 5, encourage land use patterns that provide
 11 opportunities for housing and employment. You know with
 12 White Flint development very close by, all the employment
 13 down right along Parklawn, all of the transit that's clearly
 14 available, adding housing in this location, certainly
 15 provides housing and very close to employment. So you're
 16 certainly fulfilling that plan objective.

17 Under B, transportation, provide safe, attractive
 18 and efficient transportation system to serve recommended
 19 land use patterns for the planning area. Well, you know,
 20 we're providing, you know that transportation system you
 21 know that the county has provided, we're now providing the
 22 housing that feeds that system. As people that system in
 23 there has to be people there to pay for that system and use
 24 that system. So you know I think that clearly is helping
 25 that transportation system work.

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1 Two, reduce dependence on the automobile by
 2 expanding availability of transit services. You know by
 3 providing housing here, you're certainly reducing the
 4 dependence on automobiles. You know, you're providing
 5 walkability to retail right next door. You're providing
 6 direct access to the Metro sites.

7 Increase service to major employment and retail
 8 centers for non-work trips. That's clearly what you're
 9 doing by putting this housing, you know, right next to
 10 available retail and employment.

11 Number 3, provide comprehensive, safe or pleasant
 12 bicycle and pedestrian network as part of the transportation
 13 system. As this site gets developed as part of the Site
 14 Plan and Preliminary Plan development, you know, and as
 15 Staff Report also mentioned, you know, we're going to have
 16 to rebuild the pedestrian systems along Randolph Road,
 17 Putnam and Macon. All the sidewalks are going to have to be
 18 replaced, we're going to have upgrade all the handicap
 19 ramps. We're going to have to provide you know bike racks,
 20 we're going to have to provide a full pedestrian system
 21 within this redeveloped area. So we're certainly going to
 22 be providing you know safe bicycle and pedestrian network
 23 system for this area fulfilling these Master Plan needs.

24 Community facilities. Provide facilities to meet
 25 recreational, social and human service needs of the

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1 community particularly elderly and handicapped. You know
2 again as part of the Site Plan process, you know we'll have
3 to meet the recreational requirements that Park and Planning
4 has. That's meeting the recreational requirements for tots,
5 teens, adults, and the elderly, whether that's pedestrian
6 systems, sitting areas, tot lots, you know whatever it takes
7 to meet their requirements for everyone involved. So I
8 think that helps meet all of the community requirements as
9 part of this development.

10 Under environment, it talks about adopting land
11 use and transportation policies, implement noise attenuation
12 measures to reduce impact of noise on residential
13 neighborhoods.

14 When you develop a property like this that's on
15 Randolph Road, Randolph Road is a major traffic generator
16 and that traffic generates a tremendous amount of noise. By
17 developing this site, you know, if you look at the existing
18 development on the subject property, it's very sparse,
19 there's some buildings on one end of the property but the
20 majority of the development along Randolph Road is very
21 open. While townhouse development along this property is
22 going to be much denser, a lot more vertical, it's really
23 going to create more of a sound wall in effect, along
24 Randolph Road. So it's going to act more as a noise buffer
25 to the community behind it. I think it's really going to

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1 help buffer the community from Randolph Road from a noise
2 attenuation, you know, mode.

3 And as the developer, you know as part of the Site
4 Plan process, the developer has to deal with the noise
5 segment. You know we have noise requirements that the
6 developer has to deal with as far as you know how the units
7 are built and how they mitigate there's noise in those
8 units. But in effect by doing that, it also mitigates the
9 noise for the neighborhood.

10 Also under environment, adopt storm water
11 management erosion control policies to minimize flooding,
12 reduce erosion and improve storm water quality in the
13 streams flowing through the planning area.

14 You know this site virtually has no existing storm
15 water management. As this site gets redeveloped, you know,
16 it will have to abide by and provide either state of the art
17 storm water management for the entire site, providing
18 environmental site design, storm water management and
19 controlling all of the site run off for the whole site. So
20 what we'll be providing environmental benefit for the region
21 by redeveloping this site. So you know I think we're
22 clearly meeting the objectives of the Master Plan.

23 MR. HARRIS: Are you familiar with and if so, can
24 you explain how this project would conform with the housing
25 element of the General Plan?

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1 MR. FOSTER: Well I think you know this lists, you
2 know, this project will be providing certainly you know a
3 variety of housing for this neighborhood. It will be
4 providing, you know, additional affordable housing, you
5 know, for the county and it's certainly going to be
6 providing housing in an area where there's infrastructure
7 already available. As we get into, you know, some other
8 testimony, you know there is already you know road
9 infrastructure, school infrastructure, water and sewer
10 infrastructure, available. So you know this is clearly you
11 know one of those infilled places where housing really
12 should be targeted in the county.

13 MR. HARRIS: So do you have an opinion as to
14 whether overall this project will conform with the
15 recommendations in the North Bethesda Garret Park Master
16 Plan and the functional element of housing in the General
17 Plan?

18 MR. FOSTER: Yes, it will.

19 MR. HARRIS: Okay. There was some talk earlier
20 about a concept plan that has been presented and discussed
21 with the community. Do you have a copy of that plan with
22 you?

23 MR. FOSTER: Yes, I do.

24 MR. HARRIS: Mr. Grossman, recognizing that this
25 is not a schematic development plan and it's not a binding

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1 element here, nonetheless, given the extent of the
2 discussion we've had with the community about it, we'd like
3 to have this Concept Plan identified and presented as an
4 exhibit.

5 MR. GROSSMAN: All right. We'll call it a
6 Rendered Concept Plan.

7 MR. FOSTER: Exhibit 51?

8 MR. GROSSMAN: That will be Exhibit 51.
9 (Hearing Exhibit No. 51 was
10 marked for identification.)

11 MR. GROSSMAN: And it shows how many units are
12 shown on the rendered concept plan?

13 MR. FOSTER: 109.

14 MR. GROSSMAN: Okay. And Mr. Hooker this is not
15 binding in any way on them. This is just an illustration of
16 their thought process. When they go to Preliminary Plan and
17 Site Plan review then the specific plan, assuming that the
18 council approves the rezoning then a specific plan will be
19 discussed. Mr. Hooker, yes?

20 MR. HOOKER: I do have one question. You're also
21 planning to discuss the White Flint 2 Sector Plan in that
22 context of that? I know it's an ongoing process, but I
23 didn't know if that was something you were planning to
24 discuss.

25 MR. HARRIS: Mr. Grossman, we are aware that there

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1 is a planning effort that has stopped and started a couple
2 of times in terms of the second dimension of the White Flint
3 plan and to answer Mr. Hooker's question, as you're aware
4 and he's learning one of the findings that you have to make
5 is that it's, you know, consistent with the applicable
6 Master Plans which are the two we mentioned North Bethesda
7 Garret Park. Given that the White Flint 2 plan has not been
8 adopted yet, in fact no draft is even out, we're not
9 addressing its conformity with that. However, we do believe
10 that the apparent direction of that plan is entirely
11 consistent with the direction in which this proposal is
12 going as well. We think they feed off of one another. But
13 given that that's not adopted yet and not even in draft, we
14 can't really address it very specifically.

15 MR. GROSSMAN: Does the White Flint Sector Plan
16 that is in this process cover this area? Mr. Hooker is
17 shaking his head in the affirmative.

18 MR. HOOKER: Absolutely.

19 MR. HARRIS: Yes.

20 MR. GROSSMAN: Okay.

21 MR. HOOKER: White Flint 2.

22 MR. FOSTER: White Flint 2.

23 MR. HARRIS: Not the adopted White Flint.

24 MR. HOOKER: It's the White Flint 2 Sector Plan.

25 MR. GROSSMAN: Okay.

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1 MR. FOSTER: And even that's noted in the Staff
2 Report as well.

3 MR. GROSSMAN: Right. I mean the question that
4 comes up when there is a new Master Plan that is being
5 discussed or is in the process, the question that comes up
6 and is specifically raised in the Zoning Ordinance is
7 whether or not the project that is proposed for rezoning
8 should be delayed until the new Master Plan is completed.
9 Do you want to address that question, Mr. Harris?

10 MR. HARRIS: Yes, sir and I have given that some
11 thought. There is a provision in the County Code where if
12 it's really in the subdivision regulations as far as I
13 recall, where when there is a draft of a Master Plan out,
14 the Planning Board can defer action on a subdivision
15 application and the intent there is that if the subdivision
16 application is going in a direction different than the draft
17 of the Master Plan appears to be going in, they kind of call
18 a time out so that you know they're not inconsistent. In
19 this case, there is no draft of the plan out and beyond
20 that, we believe that all the direction in which the White
21 Flint 2 is going is again consistent with the direction of
22 this. So in reality we think that if this zoning is
23 approved, it will be incorporated into the White Flint 2
24 Master Plan really more than the vice versa.

25 MR. GROSSMAN: All right. Well, in addition to

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1 whatever may be in subdivision regulations there is
2 something in the old Zoning Ordinance, the one that governs
3 this project that gives the Hearing Examiner and the Council
4 the option of delaying if there are pending Master Plan
5 amendments. Do you want to address that, Mr. Hooker? If
6 you would step forward, so it's easier for the microphone to
7 pick you up.

8 MR. HOOKER: I mean one thing regarding the White
9 Flint 2 Sector Plan of which I've attended many of the
10 public meetings that have been held to date, there are
11 several elements that we've discussed in this area,
12 transportation being one, parks being another and just
13 general zoning. One thing I did want to point out that you
14 know has been raised is although we've stated before we're
15 not for opening the road to vehicular access, the east/west
16 access to White Flint 1 area is very important and that cul-
17 de-sac at Macon Road is a very important pedestrian and
18 bicycle access point. Two points further west including
19 Loehmann's Plaza and areas within the White Flint 1 Sector
20 Plan.

21 MR. GROSSMAN: You mean the area of Macon Road
22 that you don't want to be connected?

23 MR. HOOKER: Opened to vehicles. Right. But
24 there is an existing pedestrian staircase there and sidewalk
25 for bicycle access. So there is access points there, just

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1 not vehicular access.

2 MR. GROSSMAN: I think what I'm really asking you
3 is do you object to this process going on at this stage,
4 even though the White Flint 2 Master Plan is under
5 consideration?

6 MR. HOOKER: No, we do not object to it going
7 forward at this point. We do feel that the current
8 developers are engaged in that process and in general seems
9 to be supportive of elements that have been raised thus far
10 in the White Flint 2 Sector Plan. I just wanted to
11 recognize that that is a kind of almost a parallel process
12 that is ongoing in which we are making recommendations for
13 that area at the same time.

14 MR. GROSSMAN: Okay. I mean as long as this
15 process goes forward, the rezoning application it's going to
16 be governed by the current applicable Master Plans rather
17 one that's under consideration. That's the part of the
18 point of that.

19 MR. HOOKER: I understand.

20 MR. GROSSMAN: Okay.

21 MR. HOOKER: Thank you.

22 MR. HARRIS: Thank you. Two other points on that.
23 We understand the community's interest in White Flint 2 Plan
24 and we do support those interests, particularly the
25 connection, the absence of a connection at Macon and Putnam

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1 and the pedestrian connection through there we have
2 discussed with them and will be working with them in terms
3 of future improvements in that area. It's not on our
4 property so we don't control it, but we would like to work
5 with the community because it's in our mutual benefit.
6 And lastly as reflected by the Planning Board's
7 support for this and the planning staff's support, they too
8 believe that this can go forward at this point in time
9 irrespective of the ongoing work in the White Flint 2 Sector
10 Plan again because appear to be in conformity.
11 MR. GROSSMAN: Okay.
12 MR. HARRIS: So thank you. Let's see, where was
13 I? I guess we're down to the purpose clause of the RT Zone
14 and perhaps you could walk us through that.
15 MR. GROSSMAN: Before you turn to that --
16 MR. HARRIS: We were on that.
17 MR. GROSSMAN: Yes.
18 MR. HARRIS: That's where we were, yes. Yes. So
19 walk us through the Concept Plan a little bit and your
20 thinking as to how you believe this site would be developed
21 when it goes through the Preliminary Plan and Site Plan
22 process.
23 MR. FOSTER: Okay. So I'm now referring to
24 Exhibit 51 and the site would really be developed more as
25 urban townhouse project with townhouses facing Randolph Road

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1 to the north, Putnam Road to the west and Macon Road to the
2 south. And then there would be townhouses internally
3 disbursed in groups in the middle of the site, but not
4 basically facing the properties to the south. They would
5 basically be buffered to the properties to the south. And
6 all of the townhouses I imagine not all of them but the
7 majority of the townhouses would probably be rear garage
8 units so that you would have very attractive fronts facing
9 the streets. So you'd have front doors facing Randolph
10 Road, you'd have front doors facing Putnam, front doors
11 facing Macon Road. Internally they could be done either
12 with front load garages or rear load garages depending on
13 how it was done, but for the important element is the
14 streetscape how that's really done. So that you have a
15 really strong pedestrian connection along Randolph Road as
16 you're walking along Randolph Road and you have a really
17 clear sidewalk, seeing front doors, really strong
18 streetscape along all three frontages and that all of the
19 parking is internalized. All of your garage doors are
20 internalized so that the view from the surrounding
21 neighborhood is very controlled, so that you're not looking
22 at parking lots of garages and I think that's a very
23 important to the community.
24 One thing that really helps this project also from
25 the community helps itself I think from this project as

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1 well, is the depth of the adjoining lots. The majority of
2 the lots that are on Macon are very, very deep for R-60 lots
3 and R-90 lots. And they have kind of a built in buffer to
4 this project as well. So that kind of helps as well that
5 you know this project is not only providing a buffer to the
6 community from Randolph Road but there is also a built in
7 buffer that a lot of these existing lots already have from
8 any future development on this property.
9 MR. GROSSMAN: Where is the extra parking? Are
10 those one car or two car garages first of all?
11 MR. FOSTER: Well it depends, in this Concept Plan
12 has a mix of 16 foot wide units, 20 foot wide units, 22 foot
13 wide units, so the 20 and the 22 foot wide units are two car
14 garages and the 16 foot wide units are one car garage.
15 MR. GROSSMAN: Okay.
16 MR. FOSTER: Okay.
17 MR. GROSSMAN: So where is the extra parking for
18 and to make it up to three parking spaces per unit?
19 MR. FOSTER: So there are basically 62 surface
20 parking spaces. I'm now pointing to Exhibit 51, and there
21 is an internal alley system throughout the project and there
22 are parallel parking spaces along the majority of the alleys
23 and there are also head in parking spaces along some of the
24 alleys that have a total of 62 parking spaces.
25 MR. GROSSMAN: Okay.

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1 MR. FOSTER: There are also driveway spaces for
2 the majority of the units. So as the majority of the units
3 have two car garages, a lot of the units also have one or
4 two driveway parking spaces.
5 MR. GROSSMAN: Okay.
6 MR. FOSTER: So that's how you make up, but that's
7 where you end up giving up some green space --
8 MR. GROSSMAN: Yes.
9 MR. FOSTER: -- so there's driveway spaces.
10 MR. GROSSMAN: All right.
11 MR. FOSTER: That's where that comes from.
12 MR. GROSSMAN: All right.
13 MR. HARRIS: Okay. Then turning to the RT Zone
14 and the purpose clause, could you walk us through that
15 please?
16 MR. FOSTER: Sure. In the RT Zone there is
17 purpose clauses and in my professional opinion this rezoning
18 meets two of the three possible criteria for satisfying the
19 rezoning to RT in this area. The development, let's see --
20 MR. GROSSMAN: What does the Master Plan say in
21 terms of zoning for this area? What does it recommend for
22 zoning in this area?
23 MR. FOSTER: Generally it talks about R-60 and R-
24 90. There is no specific --
25 MR. GROSSMAN: Okay.

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1 MR. FOSTER: -- there's --
2 MR. GROSSMAN: Not for this site in particular --
3 MR. FOSTER: Right.
4 MR. GROSSMAN: -- but overall in this area it
5 calls for R-60 and R-90?
6 MR. FOSTER: Right. Single family.
7 MR. GROSSMAN: Okay. So I take it it's
8 recommended land use is also residential?
9 MR. FOSTER: Right. Just residential.
10 MR. GROSSMAN: Okay.
11 MR. HARRIS: Although currently today of course
12 while it's zoned residential it's an institutional use?
13 MR. FOSTER: Institutional use.
14 MR. GROSSMAN: I understand.
15 MR. FOSTER: Right.
16 MR. GROSSMAN: All right. I'm sorry, I
17 interrupted your discussion of the purpose clause.
18 MR. FOSTER: Right. All right. So I'd like to
19 review the purpose clauses and under Section 59-C-1.721
20 intent and purpose. Purpose of the RT Zone is to provide
21 suitable sites for townhouses. Under A, sections of the
22 county that are designated or appropriate for residential
23 developments at densities allowed in the RT Zone. So that
24 is the first section of the purpose clause. Now this
25 section is a determination, it's ultimately made by the

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1 District Council after reviewing all of the, you know,
2 expert testimony, recommendations of planning staff,
3 Planning Board and the findings of the Hearing Examiner, it
4 is to determine what is appropriate for residential
5 development in the RT Zone. And as I look at this, there is
6 a couple --
7 MR. GROSSMAN: What are you saying, you're passing
8 through designated because it's not designated?
9 MR. FOSTER: Right. There is no designation in
10 the Master Plan.
11 MR. GROSSMAN: Right. So now we're looking at
12 whether it's appropriate?
13 MR. FOSTER: Right.
14 MR. GROSSMAN: Okay.
15 MR. FOSTER: So it says either designation or is
16 appropriate.
17 MR. GROSSMAN: Right.
18 MR. FOSTER: So in my opinion, this is certainly
19 an appropriate site and that's what I'd like to first
20 discuss. And if you look at the Zoning Map, which is
21 Exhibit 50, and you look at the relative densities in the
22 surrounding area, you know, the R-60 and I'm now pointing to
23 the surrounding area and the general R-60 and R-90 areas on
24 the eastern portion of the surrounding area, those densities
25 are 4.8 to 7.2, generally in the R-60 Zone and the R-90

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1 Zone. So you compare those to what is on the eastern half
2 of the surrounding areas and you have --
3 MR. HARRIS: Western.
4 MR. FOSTER: Excuse me, the western. Thank you.
5 The western half of the surrounding area and they range from
6 R-30 at 17 dwelling units an acre; the R-20 at 26 dwelling
7 units an acre; the C-R Zone from 35 to 41 units an acre; R-
8 20 at 26 dwelling units an acre; and the industrial light at
9 FAR.1. So clearly when we're talking about the subject
10 property, the 15 dwelling units an acre that's clearly in
11 the middle of the range of those and seems to be a very
12 appropriate level as we look at what is a balance. Because
13 clearly we have, it's almost a tooth out of the mac and
14 we're looking at what we'll get into in a minute as a
15 transition. But we're looking at certainly what is
16 appropriate here and what is compatible for this area.
17 And then also looking at building heights is also
18 what is appropriate here. You know you look at you know the
19 majority of the surrounding area, the building height, 35
20 feet. To the west of our site the CR Zone at Loehmann's
21 Plaza 75 feet, R-20, 80 feet. You know R-30 is 35 feet.
22 The employment office 75 feet. Industrial light 50 feet,
23 again the R-20 at 80 feet.
24 When we get into what we're proposing which is RT-
25 15, we're back at 35 feet. So that is clearly compatible,

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1 clearly appropriate for this site being surrounded by R-60
2 and R-90.
3 MR. GROSSMAN: All right.
4 MR. FOSTER: We're not introducing something that
5 is out of the norm for what's around us. The second section
6 or B of the intended purpose clause. In locations in the
7 county where there is a need for a buffer or transitional
8 uses between commercial, industrial, or high intensity
9 apartment uses or low density one family uses. Well, in my
10 opinion, this site really fits, really both of those
11 requirements where it talks about a need for a buffer or a
12 transitional use. I think, in my opinion this site really
13 fills both of those requirements. And again I'll refer back
14 to Exhibit 50. This site first talking about transition.
15 As I just discussed with the densities and the building
16 heights, clearly this site is right along the transition
17 line, moving from west to east between the higher densities
18 to the west, lower densities to the east, this is clearly a
19 transition site between Loehmann's Plaza, the higher
20 residential densities, the R-30 sites and everything to the
21 west of this site. And the R-60 and R-90 to the east. So
22 this is clearly a transition site and was definitely the
23 intent of a zone like the RT-15 where we're coming in with a
24 15 dwelling units an acre, we're providing that transition.
25 We're providing that urban infill here to a site that has

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1 transit, really has the infrastructure where this density
2 wants to be, but is also not overburdening the existing
3 neighborhood.
4 But this site is also a buffer site. It's really
5 buffering not greatly but it still is providing some buffer
6 the existing neighborhood from Randolph Road. Somewhat of a
7 noise buffer, you know, the visual buffer. You know for
8 what it's creating, it's creating that you know residential
9 edge along Randolph Road that's not there today. So I think
10 it's main function I think is transition, but I think it
11 really can fulfill both segments of the Part B in the
12 purpose clauses.
13 MR. HARRIS: All right. And is it your
14 understanding that the purpose is to meet either part of A
15 or part of B?
16 MR. FOSTER: Yes.
17 MR. HARRIS: And do we in fact meet both of them?
18 MR. FOSTER: Yes, we do.
19 MR. HARRIS: All right. Let's jump ahead to
20 forest conservation briefly and ask if you have reviewed the
21 forest conservation requirements for this and believe that
22 the project will meet the forest conservation requirement.
23 MR. FOSTER: As part of the Preliminary Plan and
24 the Site Plan process, the project will have to obtain
25 forest conservation approval and in my opinion it will be

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1 able to.
2 MR. HARRIS: And was that the staff's opinion as
3 well?
4 MR. FOSTER: Yes.
5 MR. HARRIS: Let's look at public facilities for a
6 minute. First perhaps fire and rescue, parks and schools.
7 Have you looked at those issues?
8 MR. FOSTER: Yes, and also you know staff did as
9 well. There are two fire stations, the Rockville Volunteer
10 Fire Department, Kensington Volunteer Fire Department within
11 two miles of the site. There is District 4 Police facility
12 within four miles of the site. There are two parks, Rock
13 Creek Park, Randolph Hills Park within three-quarters of a
14 mile of the site. As far as schools are concerned, we did
15 receive a memo from Chris Bell of Montgomery County Public
16 Schools and based on those pupil generation rates Montgomery
17 County Public School staff said that 131 units would
18 generate 23 elementary school students, 8 middle school
19 students and 13 high school students and that schools would
20 be adequate. There will be a school facility payment
21 required for middle school and high school at this site.
22 MR. HARRIS: Okay. I should have asked you
23 earlier when you were going through the purpose clause of
24 the zone and the Master Plan as Mr. Grossman explained to
25 Mr. Hooker earlier, another finding that he has to make is

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1 that the proposed zoning is compatible with the
2 neighborhood. You talked a bit about that but do you have a
3 conclusion as to whether this would be compatible?
4 MR. FOSTER: No, I think this proposal would be
5 very compatible. You know in the R-60 and the R-90 Zone
6 townhouses are presumed to be compatible to begin with
7 because they are allowed under MPDU development and cluster
8 development. So what you're really talking about here is
9 what's compatible density, you know, mass, scale, density
10 here and I think when we look at this site with its location
11 on a major highway, where it is with transit, the existing
12 infrastructure, the buffer that's existing on those lots
13 behind it, what we're planning on doing to limit the
14 density, I think what we're planning to do here is very
15 compatible with the existing neighborhood.
16 MR. HARRIS: Okay. Another finding that he has to
17 make as you heard as well is that the project is in the
18 public interest. Have you looked at that and do you have
19 opinions in terms of public interest?
20 MR. FOSTER: Yes. In my opinion, I think it's
21 very much in the public interest and you know determining
22 the public interest District Council looks at the Master
23 Plan conformity, Planning Board staff recommendations,
24 Planning Board approval, impact on public facilities, impact
25 on the environment, public policy goals and you know this

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1 proposal in my opinion meets all of those criteria. This is
2 smart growth infill development, it's a type of development
3 that the county is going to see much more of in the future,
4 you know, with 4 percent green fields left and you know
5 nothing but parking lots left in the county, these type of
6 developments are going to be what is the future of
7 Montgomery County.
8 This is the replacement of a declining
9 institutional development and I think that's nothing but a
10 benefit for this community and that's certainly in the
11 public interest. By redeveloping this site, we're going to
12 be providing storm water management and that's certainly in
13 the public interest. Providing a new housing type in this
14 area that's currently not available, providing MPDU's that
15 are currently not available.
16 In reviewing the Staff Report, you know, this
17 certainly indicates that there is not going to be a traffic
18 impact that this site is actually reducing the traffic
19 impact compared to the existing school that's there today.
20 Public facilities that are around here are adequate so that
21 certainly seems like that's in the public interest. And
22 this project certainly advances many of the policies of the
23 North Bethesda Garret Park Master Plan, so I think that
24 certainly, you know, in the public interest.
25 MR. HARRIS: Okay. I don't -- get counsel from my

1 counsel here as to whether. Ultimately the Zoning Ordinance
2 requires townhouses to meet a design requirement under the
3 RT Zone. Can you opine as to whether this project can meet
4 those requirements?

5 MR. FOSTER: Yes, the zoning code has specific
6 design requirements for townhouses, they have road design
7 and setback requirements, green space requirements. They
8 all are reviewed as part of the Preliminary Plan and Site
9 Plan and in my opinion this site will meet those.

10 MR. HARRIS: Okay. Nothing further.

11 MR. GROSSMAN: And it also has other regulations
12 that development standards under 59-C-1.73. Will it be able
13 to meet the development standards that are listed in the
14 table?

15 MR. HARRIS: Here Kevin.

16 MR. FOSTER: Minimum tract area 20,000 square
17 feet, our site is 40,000 square feet, excuse me, we're
18 certainly larger than that. Maximum density with our
19 covenant we will be less than 15. All of the setbacks
20 whether it's from the perimeter property at 30 feet or any
21 of the public street or adjoining lots, we will be meeting
22 all of those. Maximum building height for the main
23 structure and for any accessory structures of 35 and 25, the
24 site will be meeting that. The minimum percentage of green
25 area which was a matter of discussion being the 30 feet, 30

1 percent, excuse me, we'll certainly be meeting that as well.

2 MR. GROSSMAN: All right. So you'll be meeting
3 all of the development standards in the Zoning Ordinance for
4 this development?

5 MR. FOSTER: Yes, we will.

6 MR. GROSSMAN: All right. And there is one other
7 provision that you didn't mention. Under the intent and
8 purpose clause, 59-C-1.721, there is a paragraph after B
9 about the intent of the RT Zone. Do you have any comment on
10 that?

11 MR. FOSTER: It's the intent of the RT Zone to
12 provide the maximum amount of freedom possible to design
13 townhouses in the groupings and layouts classified in that
14 zone, provide such developments and amenities normally
15 associated with less dense zones, zoning categories to
16 permit the greatest amount possible, freedom and type of
17 ownership, townhouses and townhouse developments to prevent
18 detrimental effects to the use and development of adjacent
19 properties or neighborhoods, to promote the health, safety
20 and morals and welfare of future inhabitants of the
21 district, the county as a whole.

22 Now I think that goes right to the heart of
23 everything we've been discussing about the flexibility of
24 this zone and what it allows us to design here and what it's
25 going to allow us to provide as far as protection of the

1 community and the benefits of this property that what it
2 will provide for the surrounding community.

3 MR. GROSSMAN: So you're saying it meets the
4 intent of the Code?

5 MR. FOSTER: Yes, I do.

6 MR. GROSSMAN: All right. Mr. Hooker, do you have
7 any questions of Mr. Foster?

8 MR. HOOKER: No.

9 MR. GROSSMAN: All right. I thank you, Mr.
10 Foster. Good to see you again.

11 MR. FOSTER: Thank you.

12 MR. GROSSMAN: All right. Let's take a five
13 minute break before we take our next witness --

14 MR. HARRIS: Sure.

15 MR. GROSSMAN: -- and come back at 11:35 a.m.

16 MR. HARRIS: Sure. Thank you.

17 (Off the record.)

18 (On the record.)

19 MR. GROSSMAN: We are back on the record. I ran
20 into Mr. Hooker as I was coming in here and he explained
21 that he was leaving for the day. Okay.

22 MR. HARRIS: The next witness, I've got the wrong
23 file here, Seth Churchill.

24 MR. GROSSMAN: Okay. Mr. Churchill, will you
25 state your full name and address, please?

1 MR. CHURCHILL: Seth Churchill, my business
2 address is 3909 National Drive, Suite 250, and that's
3 Burtonsville.

4 MR. GROSSMAN: Would you raise your right hand,
5 please? Do you swear or affirm to tell the truth, the whole
6 truth and nothing but the truth under penalty of perjury?

7 MR. CHURCHILL: I do.

8 MR. GROSSMAN: All right. You may proceed.

9 DIRECT EXAMINATION

10 MR. HARRIS: And here again I believe his resume
11 was submitted, I think with the operating statement
12 originally and Mr. Churchill have you been admitted as an
13 expert in civil engineering and storm water management and
14 related development matters before the Zoning and Hearing
15 Examiner's Office?

16 MR. CHURCHILL: Yes, I have.

17 MR. HARRIS: Okay.

18 MR. GROSSMAN: Yes, his resume is exhibit --
19 MS. BAR: 34-E.

20 MR. GROSSMAN: 34-E, all right. Okay.

21 MR. HARRIS: Okay. And so we would offer Mr.
22 Churchill's testimony as that of an expert in civil
23 engineering and storm water management.

24 MR. GROSSMAN: All right. And on what prior
25 occasions, Mr. Churchill, did you testify as an expert

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1 before this body?
2 MR. CHURCHILL: Many of the ones Kevin listed, the
3 Germantown Park project, FAES, Montgomery College Art and
4 Design, MCAD.
5 MR. GROSSMAN: Okay. Based on Mr. Churchill's
6 prior experience as an expert in civil engineering before
7 this body as well as the other descriptions in his resume I
8 accept him as an expert in civil engineering.
9 MR. HARRIS: Thank you. Would you describe the
10 civil engineering services that you provided in connection
11 with this?
12 MR. CHURCHILL: Certainly. We gathered
13 topographic information and utility information are the
14 primary things. Whatever is available through public
15 records and engineering surveys to study the existing
16 conditions of the site. And then to look at the surrounding
17 area, the utilities that are available in the area to make
18 sure that all civil engineering aspects of the site can be
19 addressed in the context of the proposed development.
20 MR. HARRIS: And have you visited and are you
21 familiar with the subject property in the surrounding area?
22 MR. CHURCHILL: Yes, I have been to the site and
23 studied.
24 MR. HARRIS: Can you give an overall description
25 of the site conditions?

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1 MR. CHURCHILL: Yes, referring back to --
2 MR. GROSSMAN: Are you looking for the NIRIFSD?
3 MR. CHURCHILL: Yes, it's on the back of the
4 Concept Plan, just flip it around there, back to Exhibit 48,
5 it's fully developed site, more than 50 percent impervious.
6 There is a split to the site as Kevin pointed out roughly
7 around the center of the eastern panhandle. A little bit of
8 drainage does go to the right and to the corners to the
9 north and to the south where there are existing storm drain
10 systems, but the vast majority of the site drains to the
11 west and down to the southwest corner where there is a storm
12 drain system, there must be because the water goes
13 somewhere. But it's kind of hard to see given the current
14 maintenance condition.
15 In walking the site, I haven't seen any evidence
16 of storm water management, but it's possible a very small
17 quality control devices on the site, but I haven't seen any
18 evidence of them. Sometimes they're just hidden under
19 standard manhole covers.
20 MR. HARRIS: And have you done a preliminary
21 evaluation of storm water management and how development of
22 the site would handle storm water?
23 MR. CHURCHILL: Yes, we're going to be able to
24 develop it fully compliant with the current codes, state and
25 county codes which call for ESD to the MEP, it's

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1 environmental site design to the maximum extent practicable.
2 MR. HARRIS: And can you describe how that would
3 be done under development scenario?
4 MR. CHURCHILL: In contrast to the old ways of
5 doing things where you concentrate the water you're going to
6 try and keep the proposed drainage pattern as diffused as
7 possible and pepper the site with small storm water
8 management features. Given a dense area like this where
9 there is no over land relief you will have to collect them
10 again into a system to feed them into the current drainage
11 system, rather than finding as many release points as
12 possible but many, many facilities throughout the site which
13 will improve the quality and quantity --
14 MR. HARRIS: And is it your --
15 MR. CHURCHILL: -- management.
16 MR. HARRIS: I'm sorry.
17 MR. CHURCHILL: Sorry.
18 MR. HARRIS: Is it your opinion that those devices
19 will meet the state and county storm water requirements?
20 MR. CHURCHILL: Absolutely.
21 MR. HARRIS: Have you evaluated the availability
22 of water, sewer, gas and other utilities to serve the
23 proposed development and what has been your conclusion?
24 MR. CHURCHILL: Yes. We've taken a look at all of
25 those, water and sewer are currently available to the site

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1 and as WSSC pointed out in the Park and Planning proceeding,
2 the change in zone will have a negligible effect on their
3 systems and require no upgrades. Telephone and electric and
4 telecommunications or cable TV are available on both, I
5 believe both Macon and Randolph Road, but certainly
6 available to the site easily and gas is visible throughout
7 the site already.
8 MR. HARRIS: I have no further questions.
9 MR. GROSSMAN: All right. I can't turn to Mr.
10 Hooker. And hold on one second. I can't recall was there a
11 report filed by you?
12 MR. CHURCHILL: No.
13 MR. GROSSMAN: Okay.
14 MR. HARRIS: There was a land use report --
15 MR. GROSSMAN: I know there was a land use report.
16 MR. HARRIS: -- submitted.
17 MR. GROSSMAN: And I have that.
18 MR. HARRIS: I don't remember, that addressed
19 public facilities at page 10 it looks like. Let's see that
20 roads, schools, public transit, yes, it addressed storm
21 drainage, storm management, public utilities, page 11,
22 actually.
23 MR. GROSSMAN: Right, I see that. And have you
24 reviewed that Mr. Churchill?
25 MR. CHURCHILL: The actual report, no. The

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1 contents of the report, I have reviewed them with Mr. Foster
2 in our office and the points that pertain to me directly are
3 pretty clearly as I have just stated.
4 MR. GROSSMAN: Okay. So the portion on page 11 of
5 the land use report regarding storm drainage and storm water
6 management and public utilities, you agree with?
7 MR. CHURCHILL: Yes.
8 MR. GROSSMAN: Okay. All right. And at what
9 stage will you be submitting, I presume you'll have to
10 submit a storm water management concept plan for review by
11 the Department of Permitting Services. When would you be
12 doing that?
13 MR. CHURCHILL: That has to be submitted prior to
14 the Preliminary Plan of Subdivision and approved prior to
15 that document going to the Planning Board.
16 MR. GROSSMAN: Okay. All right. I have no
17 further questions.
18 MR. HARRIS: Thank you.
19 MR. GROSSMAN: Thank you, sir.
20 MR. HARRIS: The last witness we have is Mike
21 Lenhart.
22 MR. GROSSMAN: Good morning, Mr. Lenhart.
23 MR. LENHART: Good morning.
24 MR. GROSSMAN: Would you state your full name and
25 business address, please?

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1 MR. LENHART: Yes, my name is Michael Lenhart,
2 with Lenhart Traffic Consulting at 331 Redwood Grove Court,
3 Millersville, Maryland 21108.
4 MR. GROSSMAN: Would you raise your right hand,
5 please? Do you swear or affirm to tell the truth, the whole
6 truth and nothing but the truth under penalty of perjury?
7 MR. LENHART: I do.
8 MR. GROSSMAN: All right. You may proceed, Mr.
9 Harris.
10 MR. HARRIS: Excuse me. Cindy, have we submitted
11 his resume as well?
12 MS. BAR: Yes.
13 MR. GROSSMAN: Yes.
14 MR. HARRIS: Okay. Thank you.
15 MR. GROSSMAN: It's Exhibit 34-D.
16 MR. HARRIS: Thank you.
17 DIRECT EXAMINATION
18 MR. HARRIS: And Mr. Lenhart, have you been
19 admitted as an expert in transportation and traffic
20 engineering before the Zoning Hearing Examiner here?
21 MR. LENHART: Yes, I have.
22 MR. HARRIS: Okay. Based on his resume and his
23 prior admission, Mr. Grossman, we'd offer him as an expert
24 in transportation planning and traffic engineering.
25 MR. GROSSMAN: And what did you testify, what case

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1 did you testify in?
2 MR. LENHART: Most recently Artis Assisted Living
3 Facility at 8301 River Road and Greenskeeper Landscaping on
4 Maryland 650.
5 MR. GROSSMAN: All right. Based on Mr. Lenhart's
6 previously having been accepted as expert before this body
7 and transportation planning and traffic engineering and his
8 resume indicating his expertise as such, I accept him as an
9 expert in transportation planning and traffic engineering.
10 MR. HARRIS: Okay. Are you familiar with this
11 zoning application and if so can you describe the
12 responsibilities you've had in terms of traffic and
13 transportation planning?
14 MR. LENHART: Yes. I am familiar with the
15 application and we have prepared a traffic statement to
16 satisfy the LATR and TPAR guidelines --
17 MR. GROSSMAN: That's Exhibit 11 that you're
18 referring to?
19 MR. HARRIS: 11, yes. And have you made a
20 personal inspection of the site?
21 MR. LENHART: Yes, I've visited this site on
22 numerous occasions.
23 MR. HARRIS: Can you describe the general traffic
24 circulation patterns that exist in the area of the site
25 today?

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1 MR. LENHART: Yes. The site currently, if I may
2 use the exhibit to refer to, what's this exhibit?
3 MR. HARRIS: Upper right.
4 MR. BROWN: That's not marked.
5 MR. HARRIS: That one wasn't marked.
6 MR. BROWN: No.
7 MR. LENHART: Exhibit 47 is an aerial photograph
8 of the site and surrounding area. The site currently has
9 two access points along Randolph Road, one is the east end
10 of the site and is generally more for a parking lot. The
11 western access on Randolph Road which is actually in the
12 center of the site is used for entrance to drop off foods to
13 the school and daycare. Folks enter that access, they drop
14 their kids off and toward the rear of the school and exit on
15 Putnam Road and then come back up Putnam Road to Randolph to
16 exit the site.
17 MR. HARRIS: Okay. Can you describe the results
18 of the traffic statement that you prepared?
19 MR. GROSSMAN: Yes, by the way I've noticed that
20 there's a traffic statement attached to the prehearing
21 submission which is dated October 27, 2015. That can't be
22 the same as Exhibit 11, I don't think.
23 MR. HARRIS: That's a good point.
24 MR. LENHART: Is Exhibit 11 the December 3rd?
25 MR. HARRIS: No, it would have maybe been before

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1 that.

2 MR. LENHART: We just prepared this December 3rd

3 to reflect 131 units which was the maximum density. Prior

4 to that the prior statement that we prepared was based on

5 130 units --

6 MR. HARRIS: Yeah.

7 MR. LENHART: -- and so we corrected it.

8 MS. BAR: Yes.

9 MR. HARRIS: Let me introduce then as an exhibit -

10 -

11 MS. BAR: It's part of the prehearing statement --

12 MR. GROSSMAN: Right.

13 MS. BAR: -- it's in that.

14 MR. GROSSMAN: Right. And that's exhibit, let me

15 see the specific --

16 MS. BAR: So 11 was the original one.

17 MR. GROSSMAN: Right.

18 MS. BAR: And the traffic statement is 34-B should

19 be the updated one.

20 MR. GROSSMAN: Okay. But that's 34-B.

21 MS. BAR: Yes, so --

22 MR. HARRIS: And that's no different than this

23 one, because this one has a different date.

24 MR. GROSSMAN: The 34-B one is dated October 27,

25 2015.

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1 MS. BAR: Okay. Sorry. All right. So yes, just

2 submit that one. Sorry. That's the 131. That was the 130,

3 the first.

4 MR. LENHART: December 3rd.

5 MR. GROSSMAN: Okay. So the traffic statement of

6 December 3, 2015.

7 MR. HARRIS: And just to explain what went on

8 here, there are a couple of technical corrections in terms

9 of the number of units. At one time we had said it was the

10 maximum under the zone of 130 and then staff corrected us

11 actually the arithmetic worked out to 131 so the statement

12 was corrected in that technical respect.

13 MR. GROSSMAN: Okay.

14 MR. HARRIS: But the substance remains the same.

15 MR. GROSSMAN: All right. So this will be Exhibit

16 52.

17 (Hearing Exhibit No. 52 was

18 marked for identification.)

19 MR. GROSSMAN: Is December 3, 2015 traffic

20 statement by Lenhart Traffic Consulting. Mr. Lenhart, have

21 your conclusions changed from your earlier traffic

22 statement?

23 MR. LENHART: No, only to the degree it was 130

24 units under the original statement now it's 131 for the

25 maximum density and so the trip changed by one trip.

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1 MR. GROSSMAN: Okay.

2 MR. LENHART: It's insignificant to the results of

3 the findings.

4 MR. GROSSMAN: All right.

5 MR. HARRIS: And what other results of your

6 findings?

7 MR. LENHART: We conducted, the traffic statement

8 included a trip generation report that evaluated the current

9 use and compared it to the proposed use. Current use has an

10 average student population of 250 students and 100 child

11 daycare. That would generate 278 morning peak hour trips

12 and 226 evening peak hour trips. The school actually has

13 approvals and in its history has had as many as 500

14 students, which would generate 475 morning peak hour trips

15 and 271 peak hour trips.

16 The proposed project with maximum density of 131

17 townhomes would generate 64 morning peak hour trips and 98

18 evening peak hour trips which is significantly fewer than

19 the existing school generates.

20 MR. GROSSMAN: All right. And based on that then

21 do you feel it's unnecessary under the LATR guidelines to

22 submit a full traffic study?

23 MR. LENHART: Yes. The subdivision staging policy

24 allows for properties that have been developed and vested

25 and used for more than 12 years to be considered as

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1 background development and that's been tested on other

2 cases. Staff in their Staff Report states the same, they

3 concurred that a traffic study is not required to satisfy

4 LATR.

5 MR. GROSSMAN: Okay. Go ahead.

6 MR. HARRIS: And so based on your analysis,

7 assuming it was 131 dwelling units, do you have conclusions

8 as to its effect on traffic capacity?

9 MR. LENHART: Yes, it would actually improve the

10 capacity because it would remove trips from the road

11 network. It would reduce the amount of traffic generated by

12 this property by 214 trips in the morning peak hour and 128

13 trips in the evening peak hour.

14 MR. HARRIS: And are you familiar with the

15 transportation policy area review requirements in the county

16 and if so, how do they apply to this project?

17 MR. LENHART: Yes. The site is located in the

18 North Bethesda policy area which is identified as adequate

19 under the roadway test and inadequate under the transit

20 test. Therefore, to satisfy the TPAR analysis, the project

21 when they move forward would be required to pay 25 percent,

22 a TPAR mitigation payment of 25 percent of the general

23 district transportation impact tax and that would satisfy

24 TPAR.

25 MR. HARRIS: Okay. And can you describe the

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1 current entrances to the site and how they function and how
2 you understand the development of the site would be accessed
3 under the Concept Plan that you saw?
4 MR. LENHART: Yes. I'm going to refer back to the
5 aerial photograph that is Exhibit 47, the proposed entrance
6 to the site, well the existing entrance to the school,
7 roughly in the center of the site would be closed and a
8 future entrance to the site in the vicinity of the existing
9 parking lot entrance toward the east end of the site, would
10 be rebuilt, maintained in that area. Along with a
11 connection to Putnam Road and so the site would have two
12 access points, one to Randolph Road, one to Putnam Road,
13 thereby eliminating one access point on Randolph Road.
14 MR. HARRIS: And assuming those access points are
15 approved as part of the subdivision and site plan process,
16 do you believe that access will be adequate and efficient?
17 MR. LENHART: Yes, I do.
18 MR. GROSSMAN: How about safe?
19 MR. LENHART: Yes. Yes, I do.
20 MR. GROSSMAN: Okay.
21 MR. LENHART: There is an existing two way left
22 turn lane along Randolph Road. Maryland law allows for left
23 turns to and from the roadway to utilize that two way left
24 turn lane. So in effect, people don't have to wait for gaps
25 in both directions on Randolph Road you can turn left into

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1 the two way left turn lane as a legal maneuver, and wait for
2 a gap then to be able to merge into traffic and I was at the
3 site this morning myself and I made that movement several
4 times myself out of the existing driveway on the east end of
5 the site which is gated, so I maneuvered into the access and
6 used the two way left turn lane to make that two stage
7 movement several times and it worked fine. It was minimal
8 delay in doing that.
9 MR. GROSSMAN: All right.
10 MR. HARRIS: And are you aware of any review by
11 the Park and Planning transportation staff as far as your
12 conclusion in traffic and if so do you agree with them?
13 MR. LENHART: Yes, I do. The staff has basically
14 came to the same conclusion that we did in terms of the
15 reduction of trips and made some general discussions about
16 right-of-way dedication along Randolph Road and Putnam Road
17 to satisfy the Master Plan requirements for those roadways,
18 sidewalk upgrades and things like that. Yes, I agree.
19 MR. HARRIS: Okay. No further questions.
20 MR. GROSSMAN: And under the current Concept Plan
21 will the internal roadways be safe, efficient and adequate?
22 MR. LENHART: Yes, I believe they would be. Yes.
23 MR. GROSSMAN: All right. For both vehicular and
24 pedestrian traffic?
25 MR. LENHART: Yes.

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1 MR. GROSSMAN: And bicycle traffic, we should add
2 on these days.
3 MR. LENHART: Yes. Absolutely.
4 MR. HARRIS: Nowadays, yes.
5 MR. GROSSMAN: All right.
6 MR. LENHART: Yes. I do, yes.
7 MR. GROSSMAN: All right. I have no further
8 questions.
9 MR. HARRIS: Thank you.
10 MR. LENHART: Thank you.
11 MR. HARRIS: Okay. That concludes our case.
12 Again, we will record that covenant if the record will stay
13 open for 10 days --
14 MR. GROSSMAN: Yes.
15 MR. HARRIS: -- we will get it submitted within
16 that period of time.
17 MR. GROSSMAN: All right. I'd also ask that you
18 submit today or at the latest, well let me see, tomorrow at
19 the latest, Monday, a CD containing all of the new exhibits,
20 texts as well as in text readable PDF for the text ones and
21 of course the image PDF's for the diagrammatic and
22 photographic ones.
23 MS. BAR: Yes, we will do that.
24 MR. GROSSMAN: Okay.
25 MR. HARRIS: Go ahead.

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1 MS. BAR: Can I just have one side bar --
2 MR. HARRIS: Yes, sure.
3 MS. BAR: -- real quick?
4 MR. GROSSMAN: Sure.
5 MR. HARRIS: Okay. We're fine.
6 MR. GROSSMAN: Okay.
7 MR. HARRIS: I think that's it. Thank you very
8 much.
9 MR. GROSSMAN: I presume that you want the
10 exhibits moved into evidence?
11 MR. HARRIS: Yes, that would be useful. Thank you
12 for reminding me. Yes.
13 MR. GROSSMAN: That's exhibits 1 through 52 and
14 their subparts.
15 (Hearing Exhibit Nos. 1-52
16 previously marked for
17 identification were
18 received into evidence.)
19 MR. GROSSMAN: And we'll also admit into evidence
20 the exhibit of the covenant that you plan to file and
21 presume the copy that you'll file with us will be stamped as
22 recorded in the land records?
23 MR. HARRIS: Yes.
24 MR. GROSSMAN: And that will be admitted as well.
25 MR. HARRIS: Yes, thank you.

1 MR. GROSSMAN: All right.

2 MR. HARRIS: Technically to clarify that, I think

3 the process in timing is they will give us a receipt when we

4 record it, they won't put the liber and folio on the

5 recorded document until a later point in time, some times

6 that happens within a week, sometimes it takes a little

7 longer. So I can provide you with a copy of the covenant

8 and the recordation, proof of recordation but it may not

9 have liber and folio.

10 MR. GROSSMAN: I think that would be sufficient,

11 especially since it's not a binding element in this case.

12 MR. HARRIS: Exactly. Yes. Right.

13 MR. GROSSMAN: If they return it prior to the 10

14 days, certainly file it, you know, with a stamped copy you

15 can file that and that would be accepted as an exhibit --

16 MR. HARRIS: Absolutely.

17 MR. GROSSMAN: -- in the record.

18 MR. HARRIS: Yes.

19 MR. GROSSMAN: All right.

20 MR. HARRIS: Thank you.

21 MR. GROSSMAN: Then this meetings is adjourned,

22 the record will close on the 21st of December, which I

23 believe is a Monday, am I correct about that?

24 MR. HARRIS: I think it is.

25 MR. GROSSMAN: Let me check the calendar just to

1 make sure I'm not closing on a weekend here. Yes, it's a

2 Monday. We can make it December 22nd.

3 MR. HARRIS: Okay.

4 MR. GROSSMAN: So the record will close on

5 December 22, 2015. All right.

6 MR. HARRIS: Thank you very much. Appreciate it.

7 MR. GROSSMAN: We are adjourned.

8 (Whereupon, at 12:02 p.m., the hearing was

9 concluded.)

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1 C E R T I F I C A T E

2 DEPOSITION SERVICES, INC., hereby certifies that

3 the attached pages represent an accurate transcript of the

4 electronic sound recording of the proceedings before the

5 Office of Zoning and Administrative Hearings for Montgomery

6 County in the matter of:

7 Petition of Montrose Baptist Church

8 Case No. G-694

9

10 By:

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15 _____

16 Diane Wilson, Transcriber

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<p style="text-align: center;">A</p>	<p>89:9 add (3) 26:12;52:7;92:1</p>	<p>affirmative (1) 58:17 affordable (3) 51:16,23;56:4</p>	<p>anchored (1) 19:14 Andrew (2) 5:6;17:18 Andy (2) 9:23;17:7</p>	<p>45:5,8 April (1) 4:14 architect (1) 30:7 architecture (1) 31:10 Archstone (1) 18:21 area (73)</p>
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