

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
PETITION OF MICHAEL CHERVENAK : Case No. S-2878  
FOR GREENCOURT, LLC :  
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A hearing in the above-entitled matter was held on April 14, 2015, commencing at 9:45 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, Second Floor RDMHR, Rockville, Maryland 20850 before:

Lynn A. Robeson  
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:  
Soo Lee-Cho, Esq.  
Miller, Miller & Canby  
200-B Monroe Street  
Rockville, Maryland 20850  
301-762-5212

Expert Witness - Transportation Planner:  
Anne M. (Nancy) Randall  
Wells & Associates  
8730 Georgia Avenue, Suite 200  
Silver Spring, Maryland 20910  
301-448-1333

Expert Witness - Land Planner:  
David Ager  
Townscape Design, LLC  
6030 Daybreak Circle, Suite A150-109  
Clarksville, Maryland 21029  
410-531-2621

WITNESSES:

David Ager  
Jennifer Vargas  
Stephany Yu  
Nancy Randall

DIRECT

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EXHIBITS:

Exhibit No. 29  
Exhibit No. 30  
Exhibit No. 31  
Exhibit No. 32  
Exhibit No. 33  
Exhibit No. 34  
Exhibit No. 35  
Exhibit No. 36  
Exhibit No. 37

MARKED:

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1 as Exhibit 29.  
2 (Exhibit No. 29 was marked for  
3 identification.)  
4 MS. ROBESON: All right. Now, I did have, as you  
5 know, this is the time for you to give an opening statement,  
6 I did have some concerns about the application, I think I e-  
7 mailed some of them to you last week. I can either tell you  
8 now what my concerns are and you can address them in  
9 testimony, or I can raise them during the course of the  
10 hearing. If you have a preference?  
11 MS. LEE-CHO: If you would like to restate your  
12 concerns, or if there are additional from the e-mails we'll  
13 be happy to hear them now and prepare our testimony.  
14 MS. ROBESON: Okay. My concerns are how do I  
15 track, I tend to agree with Mr. Ager, yes, I do agree with  
16 you sometimes, Mr. Ager, I tend to agree with him that the  
17 zone doesn't prohibit office. My concern is given the  
18 language in the Master Plan how do I track, you know, what  
19 uses are in the office versus general office, and how do we  
20 track that as an implementation measure, because even though  
21 Mr. Ager is again correct that the zoning will remain  
22 Industrial, it does remove that inventory from the market  
23 for an unforeseeable period of time. So, that is one of my  
24 questions.  
25 Parking, I see Ms. Randall in the audience, and

P R O C E E D I N G S

1 MS. ROBESON: Calling the case of Greencourt, LLC,  
2 BOA Case No. S-2878, OZAH No. 1503, an application for a  
3 Special Exception for up to 50 percent of the floor area of  
4 development at 12358 Parklawn Drive, Rockville, Maryland to  
5 be used for general office. The property is on land in the  
6 ILF1 H50 Zone, and is also described as Lot 23, Block F,  
7 Washington Rockville Industrial Park.  
8 This is a hearing conducted on behalf of the Board  
9 of Appeals. My name is Lynn Robeson, I'm the Hearing  
10 Examiner, I'll be taking all the testimony and evidence in  
11 the case, I will write a report and recommendation which  
12 will go to the Board of Appeals. The Board of Appeals does  
13 not take any additional evidence, so whatever you have to  
14 say please say it here. Will the parties identify  
15 themselves for the record?  
16 MS. LEE-CHO: Good morning, for the record Soo  
17 Lee-Cho with the Law Firm of Miller, Miller and Canby on  
18 behalf of the Petitioner Greencourt, LLC.  
19 MS. ROBESON: All right. Is there anyone here in  
20 opposition to this application? Seeing none, do you have an  
21 affidavit of posting to submit?  
22 MS. LEE-CHO: I do. I believe the Hearing  
23 Examiner has the original, I have a copy.  
24 MS. ROBESON: Okay. All right. And that's marked

1 this is a procedural question, why is this coming under, why  
2 is the waiver under Section 59 5.4, 59E 5.4, and not 59E  
3 4.5, which is the waiver for Special Exceptions? There is a  
4 notice requirement under 4.5, so why should I not impose  
5 that notice requirement in this case?  
6 I also have another question for Ms. Randall, how  
7 much capacity, the Staff Report says that this will leave  
8 three percent capacity, I think it's the Parklawn Drive,  
9 Randolph Road intersection, what does that translate into as  
10 far as office industrial use?  
11 So, those were my -- and also, you know, I would  
12 like a definition, if we're going to enforce this we need  
13 some kind of definition I believe of research and  
14 development. I did pull some Code citations because even  
15 though research and development office is not defined in the  
16 2004 Code, research, development, and related activities is  
17 defined. So, why shouldn't we use that definition? And  
18 again, a lot of this concern is, arises from the  
19 recommendations in the Master Plan because I've got to find  
20 that this is consistent with the Master Plan. All right.  
21 Was that enough for you?  
22 MS. LEE-CHO: I think that's enough to get us  
23 started.  
24 MS. ROBESON: Okay. Now, would you like to make  
25 an opening statement?

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1 MS. LEE-CHO: I would. Just to get us started  
2 I'll use the Zoning Vicinity Map to orient you to the site.  
3 MS. ROBESON: What exhibit is that?  
4 MS. LEE-CHO: This is the Zoning Map, Zoning  
5 Vicinity Map, which is Exhibit 11A.  
6 MS. ROBESON: Okay. So, you're referring to, for  
7 the record you're referring to Exhibit 11A.  
8 MS. LEE-CHO: Exhibit 11A, the property is  
9 highlighted in yellow at the time the property was still  
10 identified on the Zoning Map as three separate parcels, they  
11 have since been platted as one. The property is at the time  
12 of Special Exception filing was zoned I-4, since October of  
13 last year it was rezoned to IL, but at the time, but at the  
14 time of filing the Special Exception application it was I-4,  
15 and that is the zone under which we are proceeding in this  
16 case, not the IL.  
17 It's 2.04 acres, and it has frontage both on  
18 Parklawn and Wilkins. It is a half mile from the Twinbrook  
19 Metro Station, and the Site Plan that was approved for the  
20 project was as under the TSDA, the Transit Station  
21 Development Area standards of the Twinbrook Sector Plan.  
22 There were several waivers done to the Site Plan approval,  
23 inclusive of a parking reduction and some setback  
24 reductions, as well.  
25 We are seeking approval of up to 50 percent of the

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1 gross floor area of the building, of the main, the principle  
2 building, which amounts to 54,347 square feet. The numbers  
3 in the record sometimes indicate 54,348, a difference, I  
4 know.  
5 MS. ROBESON: I noticed that you have one more  
6 foot of general office than --  
7 MS. LEE-CHO: Well, under the traffic study that  
8 was done actually the lower number is general office --  
9 MS. ROBESON: Okay.  
10 MS. LEE-CHO: -- and the higher number is -- but  
11 the Staff Report switched it, and I think even in my, one of  
12 my statements I switched it --  
13 MS. ROBESON: Okay.  
14 MS. LEE-CHO: -- unintentionally, but, so just to  
15 clear the record it's 54,347 --  
16 MS. ROBESON: Seven.  
17 MS. LEE-CHO: -- general.  
18 MS. ROBESON: Okay.  
19 MS. LEE-CHO: So, as indicated in our statement  
20 there is no physical change that would result to the  
21 Greencourt project as a result of this Special Exception, we  
22 are just talking about the type of uses that are to go into  
23 the building. It would just change the mix of R and D and  
24 general office. So, that's basically the entire case. I  
25 have David Ager here to testify, as well as the owner, sole

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1 member of Greencourt, LLC, Stephany Yu would like to make a  
2 statement, and then Nancy Randall will close us off covering  
3 the traffic analysis and parking issues.  
4 MS. ROBESON: Okay. I also have one more  
5 question, and this would be for Ms. Randall, or maybe the  
6 property owner, I noticed that the shuttle service proposed  
7 in your statement of operations is peak hour, morning, and  
8 evening, the condition recommended by Staff is peak hour,  
9 mid-day, and evening, and so I guess my question is which is  
10 it? Or which should it be? So, that was another issue I  
11 wanted to be addressed.  
12 MS. LEE-CHO: Okay.  
13 MS. ROBESON: And if it's mid-day where does it  
14 go, does it go back to Twinbrook, or to, you know,  
15 restaurants or something, and what, you know, what period of  
16 time?  
17 MS. LEE-CHO: Okay. Okay. I think we will have  
18 Nancy address that issue when it's her time. I would like  
19 to first call, if we're ready to go on --  
20 MS. ROBESON: Yes.  
21 MS. LEE-CHO: -- with the witnesses? Mr. Ager,  
22 who I think will help, hopefully help us eliminate the issue  
23 of the R and D general office distinction.  
24 MS. ROBESON: I have no doubt. Mr. Ager.  
25 MR. AGER: Good morning.

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1 MS. ROBESON: Please raise your right hand. You  
2 don't have to stand.  
3 (Witness sworn.)  
4 MS. ROBESON: All right. Go ahead, Ms. Cho.  
5 MS. LEE-CHO: Okay. Mr. Ager, for the record,  
6 would you please state your name and address?  
7 MR. AGER: My name is Dave Ager, I am Principal at  
8 Townscape Design located at 6030 Daybreak Circle, Suite A-  
9 150 in Clarksville, Maryland.  
10 MS. LEE-CHO: Would you please state your field of  
11 expertise?  
12 MR. AGER: I'm a landscape architect, certified  
13 planner, and also DMD. I have expertise in, I've worked  
14 about 33 years primarily in Montgomery County and Frederick  
15 County and other areas of Maryland, and I've, with a focus  
16 on conceptual design, town planning, urban design, and  
17 landscape architecture.  
18 MS. LEE-CHO: I have your resume, and I note that  
19 in your resume you indicated your experience in land  
20 planning, as well as functional areas of expertise in master  
21 planning and zoning analysis, is that correct?  
22 MR. AGER: That's correct.  
23 MS. LEE-CHO: Have you ever previously testified  
24 as an expert before?  
25 MR. AGER: Yes, I have.

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1 MS. ROBESON: I can answer that question.  
2 MS. LEE-CHO: Okay.  
3 MS. ROBESON: The answer is yes.  
4 MS. LEE-CHO: Okay.  
5 MS. ROBESON: So, what are you seeking to qualify  
6 him as? A land planner?  
7 MS. LEE-CHO: Land planning, urban design, with a  
8 specialty in master planning and zoning analysis.  
9 MS. ROBESON: Master planning in the sense of  
10 what?  
11 MS. LEE-CHO: Well, he has years of experience  
12 assisting jurisdictions in --  
13 MS. ROBESON: So, he does the master plans? So,  
14 that comes within, I'm going to leave it at land planner.  
15 MS. LEE-CHO: Land planning.  
16 MS. ROBESON: I think that's sufficient because --  
17 MS. LEE-CHO: Okay.  
18 MS. ROBESON: -- I don't like getting into kind of  
19 ill defined expertises, but land planner should be  
20 sufficient to get you there.  
21 MS. LEE-CHO: Okay. I have Mr. Ager's resume to  
22 enter into the record.  
23 MS. ROBESON: Okay. That'll be Exhibit 30.  
24 (Exhibit No. 30 was marked for  
25 identification.)

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1 MS. ROBESON: A very thick resume, which means  
2 we're getting older.  
3 MR. AGER: Unfortunately.  
4 MS. LEE-CHO: So, with that I presume Mr. Ager is  
5 accepted as an expert --  
6 MS. ROBESON: He is accepted as an expert in land  
7 planning.  
8 MS. LEE-CHO: -- in land planning? Thank you.  
9 Okay. Mr. Ager, could you begin, help us get started by  
10 helping us define the applicable neighborhood for this  
11 Special Exception?  
12 MR. AGER: Certainly. In the Technical Staff  
13 Report they identified the neighborhood, if I could refer  
14 to --  
15 MS. ROBESON: Certainly.  
16 MR. AGER: Yes. They refer to the neighborhood --  
17 MS. ROBESON: You're referring to 11A, correct?  
18 MR. AGER: 11A.  
19 MS. ROBESON: Okay.  
20 MR. AGER: Generally as Parklawn Drive to the  
21 north and to the east, Wilkins Avenue to the south, they  
22 didn't say it but they have an exhibit, I think it's  
23 Attachment 2 in the Staff Report, that outlines it along the  
24 railroad line, and then Twinbrook Parkway to the west. It's  
25 attached, yes, it's attachment to the Staff Report.

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1 MS. ROBESON: Thank you.  
2 MR. AGER: It's a graphic example.  
3 MS. ROBESON: Okay.  
4 MR. AGER: And I have a copy of it if you need it.  
5 And I agree with that general representation of the  
6 neighborhood.  
7 MS. ROBESON: Okay.  
8 MR. AGER: As an area. I would like to clarify  
9 that when the Staff characterized the neighborhood by use  
10 they failed to mention that the properties immediately to  
11 the west of the subject site are actually zoned CR 2.0, they  
12 made the general comment that the properties adjacent to the  
13 site are zoned I-4 in their Technical Staff Report, so I  
14 think we should clarify that for the record.  
15 MS. ROBESON: Okay. Are you talking across  
16 Wilkins Avenue?  
17 MR. AGER: I'm sorry. I apologize, yes, to the --  
18 MS. ROBESON: To the -- or to the --  
19 MR. AGER: -- west of the subject property, across  
20 Wilkins Avenue there's a, currently a vacant parking lot.  
21 MS. ROBESON: I see that. Yes. Okay.  
22 MR. AGER: That parking lot is part of the, a  
23 different area, it's not in area nine.  
24 MS. ROBESON: Okay.  
25 MR. AGER: I'm trying to remember the name of the

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1 area, in the Master Plan I could look up the reference.  
2 MS. ROBESON: That's okay, I --  
3 MR. AGER: But it's a higher density area, that  
4 property is planned for 145-foot height, 143-foot height,  
5 and 2.0 FAR.  
6 MS. ROBESON: Does that change your  
7 characterization of the neighborhood? How would you  
8 characterize the neighborhood?  
9 MR. AGER: Well, what it does, it clarifies the  
10 neighborhood in the sense that this site, as I mentioned in  
11 my report, is not just another I-4 property, generally, it  
12 has several characteristics that make it somewhat unique,  
13 one is it's within a quarter mile, within a half mile of the  
14 Metro, which is an important factor in the Twinbrook Plan;  
15 it is very close, within three to 500 feet of two of the  
16 major employers, HHS and FDA; and as I mentioned in my  
17 report I clarify that it is immediately confronting this  
18 particular property, which is of a higher density. And as  
19 we get into the discussion on the case one of the purposes  
20 of redevelopment of this property that's before you is to  
21 provide those sorts of incubator spaces, small uses, small  
22 employers, and support services for the larger employers in  
23 the area, and so this site is very conducive to that because  
24 of its proximity to those users.  
25 MS. ROBESON: But those users aren't necessarily

1 research and development users?  
2 MR. AGER: That is correct. That is correct. But  
3 at the same time the Master Plan, the 2009 Master Plan  
4 talked specifically, I can give a page reference, about  
5 incubator spaces, and support services in the area. They  
6 talked more than just --

7 MS. ROBESON: Okay.

8 MR. AGER: -- light industrial. And so, this is a  
9 site in the proximity to those uses, support for those goals  
10 and objectives.

11 MS. LEE-CHO: Just to clarify for the record since  
12 you mentioned the CR Zone, which is a zone that's in place  
13 today, but at the time of the filing of this Special  
14 Exception you note the Zoning Map behind you, the property  
15 that you reference which is the parking lot --

16 MR. AGER: Yes.

17 MS. LEE-CHO: -- could you just for the record  
18 clarify what zone that property --

19 MR. AGER: It's in the, in the, in the previous  
20 Zoning Ordinance it was zoned TMX-2.

21 MS. LEE-CHO: Okay. So, just moving on, you've  
22 already gotten into your land use report but could you  
23 restate exactly why you were engaged on this case?

24 MR. AGER: I was asked to offer expert opinion  
25 from a land use and planning perspective primarily because

1 the Staff was coming out with a denial of the application  
2 based upon primarily Master Plan consistency. The owner did  
3 not agree with that analysis, and I researched it and I  
4 agree with the owner's position that in fact this is  
5 consistent with the Master Plan, I do not agree with the  
6 Staff's opinion on that matter.

7 MS. LEE-CHO: Okay. And as I would note on page  
8 one of the Technical Staff Report it noted that while the  
9 application meets most of the technical requirements for  
10 general office use, the proposal to allow up to 50 percent  
11 floor area for general office does not conform to the goals,  
12 objectives, and land use recommendations of the Twinbrook  
13 Sector Plan. Just for the record could just clearly state  
14 what your conclusion and finding and your professional is in  
15 that regard?

16 MR. AGER: Yes. There were many aspects of the  
17 review that Technical Staff acknowledged that the plan was  
18 consistent with general conditions and other aspects of the  
19 Special Exception application. They, obviously they said  
20 that they disagree with the Master Plan consistency, and  
21 they made reference to several comments and quotes from the  
22 Master Plan. I disagree with that analysis, I believe that  
23 in fact this case is consistent with and furthers the goals  
24 of the Master Plan, I tried to outline it in the report, and  
25 we can go through it point by point if you wish. So --

1 MS. ROBESON: I think you -- well, I kind of need  
2 to know -- well, that's back to -- go ahead. Why don't  
3 you -- I do agree with you that it's not a prohibited use  
4 because it's a Special Exception. I am unclear as to I  
5 think you had some comments as to why this supports the R  
6 and D uses, is that your position that this will support the  
7 R and D uses whatever they may be, or --

8 MR. AGER: What I mentioned in the report is that  
9 this application and the ability to have general office on  
10 this property, limited general office, not 100 percent.

11 MS. ROBESON: Well, it's 50 percent, which, you  
12 know, is -- I'm glad it's the three, four, seven and not the  
13 three, four, eight. But it's a fair chunk. So, I guess, so  
14 is it -- I guess I don't know what you're proposing to do,  
15 and does it support the R and D function of the area, or  
16 does it not, is it just general office?

17 MR. AGER: No, I think it does support the nature  
18 and character of the area, and I think that a combination of  
19 research and development uses, light industrial uses,  
20 service uses, and general office uses is appropriate at this  
21 location, because, again, one of the Master Plan  
22 recommendations was, and I'll try to find them, point  
23 reference in the Master Plan, but I'm going to paraphrase at  
24 this point, that they're looking for not only uses that were  
25 incubator startup companies, which is one, potentially be a

1 general office use, that was a recommendation of the plan;  
2 they were also looking at support services was a  
3 recommendation of the plan, that could be included under a  
4 general office category, as well.

5 MS. ROBESON: And what would those types of uses  
6 be?

7 MR. AGER: Well, incubator, startup companies  
8 could be a variety of types of companies, they could be  
9 software companies that are, you know, look like a general  
10 office use, but they may have a research component; they  
11 might be other types of computer or healthcare related  
12 startup companies, you know, small companies that need small  
13 space. The other thing about the building which we could  
14 get into, as well, which I found interesting, is the nature  
15 and design of the building, it's really designed for  
16 innovation and collaborations, a lot of open space within  
17 the building and those sorts of things, so it's very  
18 interesting, it's not your classic center hall cubicle  
19 office building, so it's a different character. And the  
20 nature of the building is to do just that, is to attract  
21 these sorts of high tech companies, and that was another  
22 point, I'm glad we've had this discussion because it  
23 reminded me there was a reference of attracting high tech  
24 companies in the Twinbrook Sector Plan, general office at  
25 this location could do that, so that's another furtherance

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1 of the goal.  
2 MS. ROBESON: How would general office do that?  
3 MR. AGER: Well, high tech companies could fall  
4 under the general use category of general office, they may  
5 not have a manufacturing component to them or something like  
6 that, so they may, again, be supportive of a goal within the  
7 Master Plan, but not really necessarily a light industrial  
8 use. So, that would be supportive --  
9 MS. ROBESON: Okay.  
10 MR. AGER: -- of that recommendation in the plan.  
11 MS. LEE-CHO: So, maybe it might help at this  
12 point to enter into the record the Planning Board PowerPoint  
13 that we presented, a PowerPoint presentation we presented to  
14 the Planning Board that had some images of the building,  
15 floor plans that might assist in helping you visualize the  
16 project.  
17 MS. ROBESON: I guess my real concern, I will be  
18 happy to take it, maybe we should start with what's an R and  
19 D use versus what is the general office use, because I'm  
20 really trying to figure out how -- I'm confused.  
21 MS. LEE-CHO: I think let me enter this into the  
22 record, and then what I think I would like you to do, Mr.  
23 Ager, is to talk about the evolving nature of R and D office  
24 and how it is looking more like general --  
25 MS. ROBESON: Well, you can't tell him --

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1 MS. LEE-CHO: But we --  
2 MS. ROBESON: -- what to, I mean --  
3 MS. LEE-CHO: But the evolving nature of R and D  
4 office.  
5 MS. ROBESON: Well, you --  
6 MR. AGER: Ask the question.  
7 MS. LEE-CHO: Period.  
8 MS. ROBESON: Okay. Okay. I'm going to mark this  
9 as Exhibit 31, which is PowerPoint presented to Planning  
10 Board.  
11 (Exhibit No. 31 was marked for  
12 identification.)  
13 MS. LEE-CHO: And if you could use any images as  
14 you like out of that packet.  
15 MS. ROBESON: Are there page numbers on those  
16 packets?  
17 MR. AGER: No, there are not.  
18 MS. LEE-CHO: Unfortunately, there are not. I  
19 apologize.  
20 MS. ROBESON: Okay. Well, then I'm just going to  
21 mark I guess I'll do A, B, C, I hate doing that, but 31A is  
22 the title page, and then it just goes B, C. Okay. I have A  
23 through L, so it's 31A through L. All right.  
24 MS. LEE-CHO: So, Mr. Ager, if you'd like to  
25 proceed in helping us better understand the evolving nature

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1 of R and D office.  
2 MS. ROBESON: Well, just tell us about the nature.  
3 MR. AGER: Of the building, or the difference  
4 between office and R and D space, or the changes in R and D  
5 space? Would you like me to just have a general comment  
6 about --  
7 MS. ROBESON: Just comment on everything.  
8 MR. AGER: Okay.  
9 MS. ROBESON: And I won't interrupt you  
10 MR. AGER: In the Zoning Ordinance there's two  
11 definitions within the definition section, one for office  
12 general, and one for research, development, and related  
13 activities.  
14 MS. ROBESON: Now, which, are you in the 2004?  
15 MR. AGER: Yes, ma'am.  
16 MS. ROBESON: Okay.  
17 MR. AGER: Yes. And if I could for the record  
18 just read briefly those definitions. Office general is an  
19 office for the use of A) professional persons such as  
20 doctors, lawyers, accountants, et cetera, or B) general  
21 business offices such as insurance companies, trade  
22 associations, manufacturing companies, investment concerns,  
23 banks and trust companies, real estate companies, et cetera,  
24 but not including any kind of retail or wholesale store or  
25 warehouse except as otherwise provided herein.

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1 The second definition, research, development, and  
2 related activities, the first sentence reads study, research  
3 and experimentation in one or more scientific fields, such  
4 as life sciences, biomedical, research, communications,  
5 chemistry, computer science, electronics, medicine, and  
6 physics. Research and development also, this is the second  
7 sentence, research and development also includes the  
8 development of prototypes and the marketing of resultant  
9 products.  
10 So, and then it goes on, there's one other  
11 sentence that's not necessarily related here, but it says  
12 related activities include manufacturing, mixing,  
13 fermentation, treatment, assembly, packaging, and servicing  
14 of products. Supporting services such as administrative  
15 offices, educational facilities, libraries and data services  
16 are other examples of related activities. So, generally the  
17 difference between the two -- well, first of all, I think it  
18 can be said that there's a gray area between these two  
19 definitions, and there's some gray areas between these  
20 definitions and the use table, which we could talk about a  
21 little bit, as it relates to life sciences in the I-4 Zone.  
22 But first of all, the general difference is that there's a  
23 research component or experimentation component to the  
24 research and development related activities. They could  
25 look the same, they could physically have the same space,

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1 but, in today's market. I think, you know, 20, 30 years ago  
2 you would have the front office, so to speak, and then you  
3 would have the research and development occurring on site,  
4 well, two things have changed, one is that manufacturing and  
5 research component may or may not be on site, it may be at  
6 another place, another building, an adjacent building, I  
7 should say, within the area, it could be elsewhere within  
8 the country, or elsewhere within the world, and it's not  
9 unusual to have the office component here and the  
10 manufacturing site in Mexico or China or whatever, it's  
11 still one use. So, it's still a research and development  
12 activity.

13 The second difference or change, I guess, is that  
14 instead of having the test tubes and, you know, kind of the  
15 classical, you know, vision of what we thought research and  
16 development is today, research and development of the genome  
17 is on the computer, and, you know, there's a good, it's very  
18 similar in nature and character and look to a general office  
19 use, but it has, still has this research component. So,  
20 those are kind of the two big changes I see.

21 And the owner in an effort to attract the most  
22 talented and entrepreneurial type of businesses has  
23 specifically designed their building to attract these users,  
24 incubator, small users, all efficiencies than others.

25 MS. ROBESON: Now what is incubator? They're not

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1 necessarily R and D, are they?

2 MR. AGER: Yes, that's a term -- that's correct,  
3 that's a term that came out of the 2009 Twinbrook Master  
4 Plan, so I'm quoting from there, it's startup companies,  
5 basically, and it could be an R and D company, or it could  
6 be a company that's not R and D specifically.

7 MS. ROBESON: So, these -- I'm sorry to interrupt.

8 MR. AGER: That's okay.

9 MS. ROBESON: So, these incubators they could be  
10 either R and D or general office?

11 MR. AGER: Uh-huh.

12 MS. ROBESON: Okay. Keep going.

13 MR. AGER: The service companies, companies that  
14 serve the general public, which is also mentioned in the  
15 Twinbrook plan, could also be, have a research component, or  
16 they could not, you know, so they could be a general office  
17 use, but they both could still satisfy and further that goal  
18 within the Master Plan of having a service use. I think --

19 MS. ROBESON: One question.

20 MR. AGER: Sure.

21 MS. ROBESON: That's Master Plan conformance, but  
22 we're applying the definitions of research, development, and  
23 related activities in the 2004 Code, correct? So, those  
24 service uses which may meet the Master Plan goals are not  
25 necessarily R and D uses?

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1 MR. AGER: That's correct.

2 MS. ROBESON: Okay. Go ahead.

3 MR. AGER: I just wanted to conclude on the  
4 building design that again the goal and the vision of the  
5 owner is to attract businesses that are, essentially further  
6 the goals of the Master Plan. It's a unique site because  
7 although it's zoned light industrial, it has the permitted  
8 use of general office and other uses as listed in the Code,  
9 the 2004 Code; it also has the locational characteristics  
10 that are, it's close to the Metro location, it's close to  
11 the larger users within the area, and it's kind of, it's in,  
12 it can serve multiple functions, it can serve and meet  
13 multiple goals within the Master Plan.

14 So, the building, again, I'd like to just  
15 emphasize on 31D --

16 MS. ROBESON: It's a lot of letters.

17 MR. AGER: Yeah. C, D, all right, let me just say  
18 through 31G, there was renderings, perspectives, and floor  
19 plans of the proposed building, which is under construction  
20 at this time, these are representations that were provided  
21 at the site plan approval stage before the Planning Board,  
22 and then were also presented as in the context of the  
23 Special Exception case. So, the important point to note  
24 there is that whether we have a general office use or an R  
25 and D use the site itself, the signage, the building

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1 configuration doesn't change. So, the building has been  
2 designed for both uses, and it's very flexible.

3 MS. ROBESON: Kind of like a flex space.

4 MR. AGER: Well, in the kind of the modern version  
5 of flex space, where the old version of flex space was it  
6 could be office if you put up partitions, or it could be --

7 MS. ROBESON: Right. Right.

8 MR. AGER: Yeah. Yeah. But that's important,  
9 because it really goes to the question, it really isn't a  
10 big change, it's really, ability, one, to further those  
11 Master Plan goals that we talked about, but also it provides  
12 flexibility in the marketplace because there is this graying  
13 of the two areas, especially when it comes to things like  
14 computer research and development and software development  
15 is an example, it's a perfect example, it could look like an  
16 office but it may be under the categories that --

17 MS. ROBESON: R and D.

18 MR. AGER: -- we're dealing with, could be R and  
19 D.

20 MS. ROBESON: Do you have an opinion as to how,  
21 you know, given the fact, if these uses are graying but  
22 you're asking for 15, I'm concerned because the Master Plan  
23 wants to reserve, I think when they say we want to preserve  
24 the zoning of industrial when yes, this is a Special  
25 Exception so it is permitted, but it's a Special Exception

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1 because they want it limited, do you have an opinion as to  
2 how to enforce the 50 percent restriction? Who, you know,  
3 how would you do that?  
4 MR. AGER: Well, it's my understanding that the  
5 Department of Permitting Services is the gatekeeper, so to  
6 speak, when it comes to use and occupancy permits, and at  
7 that point there would have to be a decision on whether it's  
8 office, or research and development.  
9 MS. ROBESON: As defined in the -- so, you're  
10 adopting that, your position is research and development is  
11 based on the definition in the 2004 ordinance, correct?  
12 MR. AGER: That's correct.  
13 MS. ROBESON: Now --  
14 MR. AGER: Because that's what we're applying  
15 under.  
16 MS. ROBESON: Now, who monitors that, though? I  
17 mean, DPS is just going to say it's office, or it's R and D,  
18 how, you know, say somebody wants to enforce the 50 percent,  
19 who's going to tally it?  
20 MR. AGER: Well, there would be -- I'm not sure  
21 exactly how DPS does it, but I would assume that they have  
22 the tally, so to speak, at their office under, you know,  
23 under this, at this site, however they file their  
24 information there would be a U and O permit of X number of  
25 square feet that would have been classified as general

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1 office, another for research and development and that sort  
2 of thing as they go through the process of, you know,  
3 getting tenants for the building.  
4 MS. ROBESON: Okay. I, what I think I'm going to  
5 do is keep the record open, I'd like to send an e-mail to  
6 the people at DPS who do both the enforcement of Special  
7 Exceptions, and the use and occupancy permit, and get their  
8 input as to the best way to keep a running tally so it  
9 really does stay as closely as possible to the 50 percent.  
10 Okay?  
11 MS. LEE-CHO: Fifty, right? Not 15.  
12 MS. ROBESON: Yes, 50.  
13 MS. LEE-CHO: I keep hearing 15.  
14 MS. ROBESON: No, no. I'm 50.  
15 MR. AGER: No, no.  
16 MS. LEE-CHO: I would note that I do believe there  
17 is an annual Special Exception fee filing, I mean, there is  
18 a, Special Exceptions are required to pay an annual fee to  
19 DPS and they're regulated. So, there may be --  
20 MS. ROBESON: Well --  
21 MS. LEE-CHO: -- something tied to that, but --  
22 MS. ROBESON: Well, there is a fee. The second  
23 part is understaffed. Well, the other option is to have DPS  
24 file a report with the Board of Appeals, you know, have the  
25 Board retain jurisdiction just for the filing of a report,

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1 an annual report tallying the office versus R and D space.  
2 MS. LEE-CHO: I'd like to address one issue that  
3 I'm reminded of in this discussion, and that is under the  
4 previous Zoning Ordinance regime a property in the I-4 Zone,  
5 the only, isn't it correct that, how would a property in the  
6 I-4 Zone attain the ability to have general office use?  
7 MR. AGER: Well, it's through a Special --  
8 MS. LEE-CHO: Only by Special?  
9 MR. AGER: Only by Special Exception.  
10 MS. LEE-CHO: Only by Special?  
11 MR. AGER: Yeah.  
12 MS. LEE-CHO: And under the new Zoning Ordinance  
13 we have a certain percentage, but --  
14 MR. AGER: Yeah.  
15 MS. LEE-CHO: -- I guess my question is we've  
16 limited here to 50 percent --  
17 MS. ROBESON: What's your question?  
18 MR. AGER: Yeah. Yeah.  
19 MS. LEE-CHO: Are you aware of any limitation as  
20 to why we couldn't have asked for 100 percent on this  
21 particular site?  
22 MR. AGER: Uh-huh.  
23 MS. LEE-CHO: Under the previous zoning framework?  
24 MR. AGER: Right. No, there's no specific  
25 limitation to how much we could have asked for. What's

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1 interesting now, it's in the record in the written  
2 testimony, is that the new IL Zone, which is now the current  
3 zone on the property, specifically through the District Map  
4 Amendment was changed, the I-4 became the IL, and there was  
5 a grant by right of 35 percent general office was in there,  
6 so it was a recognition --  
7 MS. ROBESON: Right.  
8 MR. AGER: -- you know, that --  
9 MS. ROBESON: It kind of surprised me that you  
10 were coming in for a Special Exception for roughly 16,000  
11 square feet.  
12 MR. AGER: Well, that's the bottom line in the  
13 case.  
14 MS. ROBESON: Because that's a lot of money to  
15 spend for 16,000 square feet, but that's not an issue here.  
16 MR. AGER: That's the desire of the client to do  
17 that, in fact, the 16,000 or the 50 percent is actually in  
18 our specific situation there's, you know, the Overlay Zone,  
19 the --  
20 MS. ROBESON: And that's not even counting the  
21 1305 Restaurant, because also on this site --  
22 MR. AGER: That's separate, yeah.  
23 MS. ROBESON: -- there's a 1305 Restaurant --  
24 MR. AGER: Right.  
25 MS. ROBESON: -- and that's kind of --

1 MR. AGER: Separate from --  
 2 MS. ROBESON: -- another non-R and D use.  
 3 MR. AGER: That's correct, it was existing, yes,  
 4 it was a preexisting use. Right. But, go ahead.  
 5 MS. LEE-CHO: But are you aware of why we happened  
 6 upon the 50 percent number? Why that was, that is being  
 7 proposed here?  
 8 MR. AGER: Right. Yeah, the 50 percent, my  
 9 understanding is that the 50 percent was the relationship of  
 10 the building design, the parking provided, and the kind of  
 11 the adequate facilities nature of the transportation, which  
 12 Ms. Randall will discuss in the future. I mean, you could  
 13 have, I think, you know, you could have said it was 52  
 14 percent or, you know, 55 percent, or something like that  
 15 from that standpoint of that analysis, but it was decided  
 16 that 50 percent would be an appropriate limiting number for  
 17 the application.  
 18 MS. LEE-CHO: So, I just I guess going back to the  
 19 Master Plan limiting language, there's nothing in the Master  
 20 Plan per se that dictated the percentage in this particular  
 21 application?  
 22 MR. AGER: No, the Master Plan generally talked  
 23 about limiting general office uses within Area 9, which the  
 24 site is within, but it made no specific recommendations  
 25 relative to this property, made no specific recommendations

1 as to how much limitation there should or should not be, and  
 2 in fact, when you read the Technical Staff Report they  
 3 failed to make any analysis or recommendations as to  
 4 intents.  
 5 MS. ROBESON: Yes, I saw that.  
 6 MR. AGER: Yeah. So --  
 7 MS. ROBESON: Or I didn't see it.  
 8 MR. AGER: You didn't see it, actually. We didn't  
 9 see it either. So, there is no limiting factor with respect  
 10 to the Zoning Code or the Master Plan except the general  
 11 comment that there should be a limitation on general office  
 12 within this broader 103-acre area.  
 13 MS. LEE-CHO: And in your opinion do you think  
 14 that the Sector Plan goal in that regard has been  
 15 successful, or unsuccessful?  
 16 MR. AGER: Well, I think it's been quite  
 17 successful in the sense that in 1992, and again, these  
 18 Master Plans are linked with respect to this case, in 1992  
 19 there was specific discussion about changing from the I-1  
 20 Zone to the I-4 Zone to specifically limit general office  
 21 intrusion into this area, with the exception of the  
 22 opportunity for an application under a Special Exception,  
 23 which is what's before us now. Over that period of time  
 24 since that rezoning time frame, today there's been to my  
 25 knowledge very limited amount of additional office in that

1 area, so it has been successful.  
 2 The other point, I guess, is that in the future  
 3 that ability to go beyond what the IL Zone allows by the  
 4 District Map Amendment has taken away the ability to do a  
 5 Special Exception, so there won't, the Staff made a general  
 6 comment about potential erosion of the area --  
 7 MS. ROBESON: Yeah, and that's my concern --  
 8 MR. AGER: Yeah.  
 9 MS. ROBESON: -- and why I'm being so picky about,  
 10 you know, the difference between the two and how we're going  
 11 to monitor it.  
 12 MR. AGER: Yeah.  
 13 MS. ROBESON: So, go ahead.  
 14 MR. AGER: Well, the opportunity to go beyond  
 15 what's allowed in the zone as reorganized under the new Code  
 16 is not, there's no Special Exception opportunity, so there  
 17 won't be another case before you, we were the last one under  
 18 the old Code, we met the filing deadline, so there really  
 19 won't be an erosion, and there was this recognition, I  
 20 guess, by the County that a certain amount of office is  
 21 appropriate in the Industrial Zone because that need that  
 22 change across the board, so to speak.  
 23 MS. LEE-CHO: And maybe on that point could you  
 24 speak to, you know, the new zone does allow for across the  
 25 board 35 percent opportunity, but could you speak to --

1 MS. ROBESON: Okay.  
 2 MS. LEE-CHO: -- whether --  
 3 MS. ROBESON: You can't testify. Do you want to  
 4 ask him a question?  
 5 MS. LEE-CHO: I do.  
 6 MS. ROBESON: And just ask the question.  
 7 MS. LEE-CHO: Please speak to your opinion on, as  
 8 to whether all properties, can you please speak to your  
 9 opinion as to whether one property or another is better  
 10 suited for general office in this area?  
 11 MS. ROBESON: Good job.  
 12 MS. LEE-CHO: Sorry about that.  
 13 MR. AGER: If I could refer to the couple of  
 14 items. I think I'll refer to 31H, 31I, 31K to answer that  
 15 question. These are images from the 2009 Twinbrook Sector  
 16 Plan. I think you can actually read the page numbers at the  
 17 bottom. So, 31H is actually a reproduction of page 29 of  
 18 the Twinbrook Plan, the next one is page 12, et cetera.  
 19 What's important to note with respect to this particular  
 20 property within the context of the Twinbrook Sector Plan,  
 21 Area 90, light industrial area is proximity to, as we  
 22 mentioned earlier, Metro, proximity to the larger users,  
 23 within walking, I'm referring to 31E now, within walking  
 24 distance of the Metro, on 31J, and again, these are all  
 25 references from the County's document that we just simply

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1 placed the image of the site on, the site is located along  
2 what's referred to as a bike route, any major pedestrian  
3 connection, again, to, with the arrow indicating to the  
4 Metro site.  
5 MS. ROBESON: Okay.  
6 MR. AGER: And then finally on 31K this is an  
7 illustration from pages eight and nine of the Twinbrook  
8 Sector Plan, and it shows the site, it shows the County's  
9 illustrative representation of existing and future  
10 development in the area. Items one through five are listed  
11 in the Master Plan itself; items six through nine in the  
12 table we added for purposes of context for this site. The  
13 building, it's a little difficult to see, but the buildings  
14 in the light yellow are proposed, and the buildings that are  
15 white are existing.  
16 MS. ROBESON: I see it.  
17 MR. AGER: Okay.  
18 MS. ROBESON: I'm glad you clarified that because  
19 I didn't know, I didn't --  
20 MR. AGER: Yeah, they came up --  
21 MS. ROBESON: -- notice the difference.  
22 MR. AGER: That actually came up at the, at the  
23 Planning Board discussion, item number seven, for example,  
24 is the County's representation of potential future  
25 development on the parking lot just west of the subject site

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1 confronting the site on Wilkins Avenue.  
2 MS. ROBESON: So, that's yellow, too?  
3 MR. AGER: That's yellow, too. Yeah. It's a  
4 little --  
5 MS. ROBESON: Okay.  
6 MR. AGER: -- difficult to see.  
7 MS. ROBESON: Okay. Well, that's helpful to know.  
8 MR. AGER: Yeah. So, that's the old, that's the  
9 parking lot today with the addition of --  
10 MS. ROBESON: Right.  
11 MR. AGER: -- a future building. What's  
12 interesting to note is there's actually a yellow building  
13 south of our site, so there was actually, you know, and if  
14 you count the floors it's a five-story building. Now, I  
15 know it's illustrative, but it's also illustrative in the  
16 sense that it shows that the County had some level of intent  
17 for redevelopment at this site and around the site, and a  
18 five-story building is not necessarily light industrial.  
19 MS. ROBESON: What is that building, do you know?  
20 MR. AGER: There's an existing building there  
21 today, and I want to say it's three stories, and this  
22 illustration shows extension of that building vertically and  
23 to the south over the existing parking lot.  
24 MS. ROBESON: Do you know what use is going to be  
25 in there?

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1 MR. AGER: I don't. And again this is --  
2 MS. ROBESON: It's probably in the IL, though.  
3 MR. AGER: Yeah, it's in the IL Zone. That's  
4 correct, and that's important. So, the point I'm trying to  
5 make is that this is again a County document with a general  
6 visual graphic representation of some sort of building  
7 that's not light industrial, it's, you know, R and D, or  
8 it's general office, or something, combination within close  
9 proximity to our site.  
10 MS. ROBESON: Okay.  
11 MR. AGER: So --  
12 MS. ROBESON: Now, I am just going to say I see  
13 someone, a County person that has walked in, a very esteemed  
14 County person. I'm going to let you finish. Do you have  
15 anything you wish to say? Can you just say your name for  
16 the record at the moment?  
17 MS. VARGAS: Hi. I'm Jennifer Vargas, I am a  
18 Special Exception Inspector for Department of Permitting  
19 Services for Zoning and Site Plan Enforcement. So, I  
20 actually will be enforcing and inspecting this case.  
21 MR. AGER: Okay.  
22 MS. ROBESON: Do you have any -- I don't know if  
23 you were -- okay. I know you're on County time, so let me  
24 ask you something, have you formed an opinion as to how  
25 this, there's been testimony that sometimes it's difficult

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1 to tell the difference between R and D office and general  
2 office, but DPS will track it by occupancy permit, but I  
3 guess the question is even, is DPS equipped to -- okay.  
4 What I'd like you to do is think about this, are you going  
5 to track it, or do you, because the cut off is 50 percent  
6 general office, that's one question I have for you, are you  
7 going to keep tabs on this? Do you need it as a  
8 requirement, as a condition of approval in the Master Plan,  
9 and do you need the condition on the Site Plan so everybody  
10 is aware of the condition? Not now --  
11 MS. VARGAS: Okay.  
12 MS. ROBESON: -- because you're not, I haven't  
13 sworn you in yet.  
14 MS. VARGAS: Okay.  
15 MS. ROBESON: And I'm going to let Mr. Ager  
16 finish. But those are the questions I have.  
17 MS. VARGAS: Okay.  
18 MS. ROBESON: All right. Go ahead, Mr. Ager.  
19 MR. AGER: I think I summarized the building and  
20 the building's location and the importance of that to the  
21 case.  
22 MS. ROBESON: Are you sure that this is the last  
23 one coming through to your knowledge?  
24 MR. AGER: To my knowledge we are, we filed on the  
25 last date that you could file, and to my knowledge we were

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1 the last one, but I would ask others to confirm that. It's  
2 my understanding.  
3 MS. ROBESON: Okay.  
4 MS. LEE-CHO: Okay. Just looking at your land use  
5 report, is there anything you want to say further about  
6 second tier users, or do you believe you've covered --  
7 MR. AGER: Well, if I haven't covered it --  
8 MS. ROBESON: What is a second tier user? I don't  
9 understand that.  
10 MS. LEE-CHO: Would you like to further explain  
11 what a second tier --  
12 MR. AGER: Let me make sure I have the reference  
13 in --  
14 MS. LEE-CHO: I know.  
15 MR. AGER: -- front of me so I'm not misspeaking.  
16 Is it under market? Yes, secondary tier. Yeah.  
17 MS. LEE-CHO: Secondary tier.  
18 MR. AGER: In this context those are what I would  
19 consider like a startup company, people that aren't  
20 necessarily looking for large spaces, they're looking more  
21 like for a collaborative space. Small companies rely on  
22 other small companies to collaborate and, as referenced in  
23 the document, the 31B through D, the floor plans and the  
24 building representations show how there is a lot of open  
25 space, a lot of opportunity to interact between different

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1 parties, so it's conducive to those sorts of users. So,  
2 from that standpoint that's what I really consider kind of a  
3 start up small, small companies, those sorts of users.  
4 MS. LEE-CHO: Okay. I believe we've addressed the  
5 definition of R and D related activities and the general  
6 office use. At this point I was going to have Mr. Ager go  
7 through just the general conditions and his, you know, for  
8 the record, if --  
9 MS. ROBESON: That's fine.  
10 MS. LEE-CHO: -- you require that and you'd like  
11 to have that in the record. So, using the Technical Staff  
12 Report as sort of a reference, I'd like you to walk us  
13 through the necessary findings.  
14 MR. AGER: Sure. On page 11 of the Technical  
15 Staff Report, Staff has several references that are out of  
16 the 2004 Code as to the standards for evaluation, general  
17 conditions for approval, et cetera. The first item is  
18 inherent and non-inherent characteristics of the  
19 application. And as stated in the Staff Report, the  
20 inherent adverse effects are the physical and operational  
21 characteristics necessarily associated with particular use  
22 regardless of physical size or scale of operations. That's  
23 I believe a direct quote from the Code.  
24 The non-inherent adverse affects, again, I believe  
25 a quote from the Code are physical and operational

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1 characteristics not necessarily associated with a particular  
2 use or adverse affect created by unusual characteristics of  
3 the site. And the Staff notes with the exception of, well,  
4 the Staff notes that there is a, they use the term minimal  
5 change from the site plan approval, and they do not find  
6 any, with respect to inherent adverse affects, which is  
7 essentially the slight increase in number of employees, but  
8 they sense there's no change in the building or the site,  
9 they find that there are no non-inherent adverse affects,  
10 and I agree --  
11 MS. ROBESON: Okay.  
12 MR. AGER: -- I agree with their conclusion.  
13 MS. ROBESON: Let me do it this way, except for  
14 the finding as to Master Plan compliance do you agree with  
15 the conclusions and findings of the Technical Staff Report,  
16 except as corrected by you at this hearing, the 347 versus  
17 the 348 square feet, do you agree with them, or if you want  
18 to add something do you want to just go ahead and add what  
19 you wish to add?  
20 MR. AGER: Uh-huh. I do generally agree with  
21 everything, with the exception of their, you know, their  
22 findings with respect to the Master Plan. I do want to  
23 stipulate that their Staff Report did not include the zoning  
24 that was in place under the previous zoning condition for  
25 the adjoining property, nor did they make reference to the

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1 new zoning categories and how that changed things.  
2 MS. ROBESON: Okay.  
3 MR. AGER: So, generally speaking yes, with  
4 respect to these findings I agree with their findings, but  
5 there's other supportive evidence that I've added in my  
6 report and in testimony that supports our case that would be  
7 added here --  
8 MS. ROBESON: And that would be the CR zoning  
9 and --  
10 MR. AGER: The TMX 2 Zone to the CR 2.0 --  
11 MS. ROBESON: I understand.  
12 MR. AGER: -- with one, the lack of reference to  
13 that, the lack of Technical Staff analysis with respect to  
14 locational intensity variations within the overall area nine  
15 of the Twinbrook Plan.  
16 MS. ROBESON: Okay.  
17 MR. AGER: Things like that that are in the  
18 written testimony, so I just wanted to kind of highlight  
19 those, I guess.  
20 MS. ROBESON: Okay. All right. Thank you.  
21 MR. AGER: Yes.  
22 MS. LEE-CHO: So, with that it would take care of  
23 all of the --  
24 MS. ROBESON: Yes.  
25 MS. LEE-CHO: Okay. All right. Great.

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1 MR. AGER: Okay.  
2 MS. ROBESON: Mr. Ager, I do appreciate that, Ms.  
3 Vargas, I realized I probably put you on the spot. I don't  
4 know how familiar with this case you are, so what I'm going  
5 to do is send you an e-mail --  
6 MS. VARGAS: Okay.  
7 MS. ROBESON: -- I'm going to keep the record  
8 open, I'm going to send you an e-mail asking the question,  
9 and you can get back to me when, do you have a timeframe  
10 when you may be able to answer it, or --  
11 MS. VARGAS: I will definitely try to get back to  
12 you --  
13 MS. ROBESON: Now, I have to keep the record open  
14 10 days to get the transcript.  
15 MS. VARGAS: Okay. Well, I will definitely try to  
16 get them to you as soon as, what's tomorrow, Wednesday?  
17 Well, before COB Thursday, if not by the end of this week.  
18 MS. ROBESON: Well, I'll just say 10 days --  
19 MS. VARGAS: Okay.  
20 MS. ROBESON: -- and then, you know, you can check  
21 with the powers that be and --  
22 MS. VARGAS: Okay.  
23 MS. ROBESON: -- I'll send you the e-mail and all  
24 that kind of stuff.  
25 MS. VARGAS: I do want to --

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1 COURT REPORTER: Could I ask you to go up there?  
2 MS. ROBESON: Come up here.  
3 MS. VARGAS: Yes.  
4 COURT REPORTER: Thank you.  
5 MS. ROBESON: If you're going to speak I need to  
6 swear you in.  
7 MS. VARGAS: Okay.  
8 MS. ROBESON: Okay. Please raise your right hand.  
9 (Witness sworn.)  
10 MS. ROBESON: Ms. Cho, I'm taking her out of order  
11 just because I don't know how long she can be here, and can  
12 you please state your name and business address for the  
13 record, please?  
14 MS. VARGAS: My name is Jennifer Vargas, my  
15 business address is 255 Rockville Pike, Second Floor,  
16 Department of Permitting Services.  
17 MS. ROBESON: And what is your occupation?  
18 MS. VARGAS: I am the Code Enforcement Inspector  
19 for Special Exceptions for this case.  
20 MS. ROBESON: Okay. And what would you like to  
21 say? Oh, wait, did I swear you in?  
22 MS. LEE-CHO: Yes.  
23 MS. VARGAS: Yes.  
24 MS. ROBESON: Yes.  
25 MS. VARGAS: Okay. I would only like to say that

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1 any conditions that the Board does set forth for this case  
2 should also be applied for the site plan.  
3 MS. ROBESON: Okay.  
4 MS. VARGAS: Should also be on the site plan.  
5 MS. ROBESON: Included on the site plan.  
6 MS. VARGAS: Yes.  
7 MS. ROBESON: That's very helpful. Okay. Ms.  
8 Cho, do you have any questions for Ms. Vargas?  
9 MS. LEE-CHO: I guess I would like to understand a  
10 little bit more about what that that is her opinion. I have  
11 a differing opinion, so is this the appropriate time?  
12 MS. ROBESON: I know that, I do know that that has  
13 been DPS's policy because that's what they use to enforce.  
14 But I will let Ms. Vargas, can you explain, Ms. Vargas?  
15 MS. VARGAS: Currently we are going through a  
16 little bit of internal policy renovation, small word, but  
17 like the Hearing Examiner said that this is our policy to  
18 have a site plan that is also a Special Exception to have  
19 the conditions of the Special Exception within the site plan  
20 because they're cohesive, it makes it cohesive.  
21 MS. LEE-CHO: Well, that answers my question.  
22 MS. VARGAS: And also because more than likely the  
23 same conditions that are placed with a Special Exception are  
24 going to, are the same for the site plan.  
25 MS. LEE-CHO: Well, isn't it true that you have

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1 cases that are Special Exceptions only that do not have site  
2 plan components, how do you enforce those Special Exception  
3 cases only?  
4 MS. VARGAS: The ones that are only Special  
5 Exceptions have conditions on them, then we enforce the  
6 conditions.  
7 MS. LEE-CHO: Right. So, in this case we have a  
8 site plan approval and we have a subsequent Special  
9 Exception approval that adds a layer of an additional use --  
10 MS. VARGAS: Uh-huh.  
11 MS. LEE-CHO: -- what happens if the Special  
12 Exception, as, it's a layer, it can be abandoned, correct?  
13 MS. VARGAS: Uh-huh.  
14 MS. LEE-CHO: So, in, it's a hypothetical, but in  
15 that hypothetical what would you then do with the site plan  
16 amendment or a site plan?  
17 MS. VARGAS: Hypothetically speaking, to answer  
18 your question, if the Special Exception were to be abandoned  
19 the conditions will no longer apply.  
20 MS. LEE-CHO: So, here's my question, why cannot  
21 the site plan amendment and the Special Exception approval  
22 co-exist without intermingling?  
23 MS. VARGAS: I'm not exactly sure. If you can  
24 clarify that?  
25 MS. LEE-CHO: You have a site plan approval for

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1 the physical building setback --  
2 MS. ROBESON: Let me ask a question, but you can't  
3 testify, do you have a witness here to say why this is  
4 important to you?  
5 MS. LEE-CHO: No, it's a legal opinion. It's  
6 just --  
7 MS. ROBESON: Well, she's not an attorney --  
8 MS. LEE-CHO: Yes.  
9 MS. ROBESON: -- so she said that they wanted all  
10 the conditions, as I heard she wants all the conditions of,  
11 they want all the conditions on one document. So, she can't  
12 give you a legal opinion as to why, whether that's legally  
13 required or not. If you have factual questions you want to  
14 ask her, do you have any other factual questions?  
15 MS. LEE-CHO: I guess my only question was the  
16 hypothetical, and that it's sort of from DPS's  
17 perspective --  
18 MS. ROBESON: Well, she's not --  
19 MS. LEE-CHO: -- what would they do?  
20 MS. ROBESON: -- an, she hasn't been qualified as  
21 an expert, so you can ask her, you can't ask her  
22 hypotheticals, you can ask her, you can ask her about DPS  
23 processes, you can ask her, you know, you can ask her  
24 factual questions, but you can't ask hypotheticals because  
25 she --

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1 MS. LEE-CHO: Okay.  
2 MS. ROBESON: -- hasn't been qualified as an  
3 expert.  
4 MS. LEE-CHO: That's fine.  
5 MS. ROBESON: If you want to make a legal argument  
6 to me as to why this shouldn't be included, why there  
7 shouldn't be a condition of approval requiring an amendment  
8 then you can do that.  
9 MS. LEE-CHO: Now? Because I --  
10 MS. ROBESON: No.  
11 MS. LEE-CHO: Okay. I can submit that separately.  
12 MS. ROBESON: Yes.  
13 MS. LEE-CHO: I will do that.  
14 MS. ROBESON: Okay. Any other questions? Okay.  
15 So, what I'm going to do, Ms. Vargas, is unless I hear  
16 something different you may be getting an e-mail from me  
17 asking for who's going to keep tabs of this 50 percent  
18 requirement.  
19 MS. VARGAS: No problem.  
20 MS. ROBESON: Okay. Thank you for, I don't know  
21 if you expected to testify or not, but --  
22 MS. VARGAS: No, I wasn't, but it's fine.  
23 MS. ROBESON: Okay. Go ahead.  
24 MS. VARGAS: Also, I'll provide you with my  
25 business cards if you wish.

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1 MS. LEE-CHO: Terrific. Thank you.  
2 MS. ROBESON: Okay. Ms. Cho, go ahead.  
3 MS. LEE-CHO: I would just like to call Ms.  
4 Stephany Yu just for a brief statement.  
5 MS. ROBESON: Ms. Yu, please raise your right  
6 hand.  
7 (Witness sworn.)  
8 MS. ROBESON: All right. Go ahead, Ms. Cho.  
9 MS. LEE-CHO: Please state your name and address  
10 for the record.  
11 MS. YU: Okay. My name is Stephany Yu, you  
12 pronounced Yu, Y-U, and 15400 River Road, Germantown,  
13 Maryland.  
14 MS. LEE-CHO: And please state your position and  
15 role at Greencourt, LLC.  
16 MS. YU: I am the member, the owner of the  
17 Greencourt, LLC.  
18 MS. LEE-CHO: And just very briefly for the  
19 Hearing Examiner if you could state, you know, what type of  
20 work environment were you trying to achieve with Greencourt,  
21 the Greencourt project, and why you chose Twinbrook?  
22 MS. YU: Okay. Can permit to give myself a little  
23 bit, my background in order to clarify that?  
24 MS. ROBESON: Very well.  
25 MS. YU: Okay. I was born in China, I moved to

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1 United States 1990, I finished my college and master's  
2 degree in Shanghai, and since 1995 I travel back China to  
3 start my own business there. And I'm doing real estate  
4 development starting 1997. And I'm quite familiar with  
5 that, since 1999 till now I have helped China local  
6 governments to develop the city plan and mass development.  
7 So, a couple of years ago I, my husband was originally from  
8 Maryland, so he wants me, and the whole family moved back,  
9 so we're looking for the site which can hold as an office  
10 for us, so that's reason because my background I started  
11 city plan, I started Germantown city plan, Twinbrook city  
12 plan, Rockville city plan, and White Flint.  
13 So, after sitting there I say, I looked at this  
14 city plan, in fact, it feels like, be honest I feel there's  
15 some mistakes here, because as a city plan the whole idea  
16 behind the city plan is how do I, how do city attract the  
17 business moving to have to bring the prospected to the local  
18 peoples, create the job, that's the whole idea I think  
19 behind the city plan, and you have a, create a better living  
20 environment.  
21 I think the White Flint plan did a better job  
22 because they are put more of idea how do I attract the  
23 anchor company, and I create equal system to let the  
24 company, the smaller company grow. But in the Twinbrook,  
25 the whole idea, I look at that, I feel is basically some big

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1 developer they just buy some land and then they try to  
2 convert that land to other density use, but they haven't  
3 really considered say how other small company can use the  
4 opportunity as a big government agency moving, what kind of  
5 job they can provide, what kind of service they need. In  
6 this particular light industrial area the government, all  
7 this employee move in, maybe they need auto repair, but  
8 maybe once a month, a lot of things like restaurant, like  
9 even like daycare center, like exercise, gym, all this  
10 service orientate, which is more suited for the local  
11 smaller business owner is not really designed there.  
12 MS. LEE-CHO: And could you speak to your  
13 husband's business, because that might help understand.  
14 MS. YU: Yes. Okay. We are, both of us we work  
15 in China right now, I have the real estate developer and the  
16 investment company; my husband has a healthcare data  
17 company, and their history is he feels like he can do  
18 something for U.S. healthcare, perform and data  
19 transparency. So, in fact that's the reason we chose that  
20 place specific because it has in our opinion have such  
21 tremendous value there from the Board point of view, we have  
22 FDA there, we have all this healthcare, medicals, I don't  
23 know really know, just the drug, how do you, what's that, an  
24 institution?  
25 MR. AGER: Pharmacopia.

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1 MS. YU: Yes. Yes.  
2 MS. LEE-CHO: Pharmacopia.  
3 MS. YU: And all over the world people were used  
4 that as their benchmark, milestone to set up a policy to do  
5 our thing.  
6 MS. ROBESON: Okay.  
7 MS. YU: So, we set up this place we though it's  
8 we want to use that place to attract a lot of international  
9 investors and the study to associate with all the talents  
10 here to basically explore the idea and the technology to  
11 China and to Asia.  
12 MS. ROBESON: Okay.  
13 MS. YU: So, that's, you mentioned the incubator,  
14 so basically, my point is, a conclude is because the  
15 original Master Plan doesn't really pay a lot of attention  
16 to the small user, to the, create equal system for the  
17 business grown there, so that put us in the very kind of  
18 hard place. We come in as we want to use that as a data  
19 center, but later we find out if we want to attract a  
20 company coming in we need to get DPS approval to say whether  
21 you can come in or not. For instance, we are trying to  
22 attract one of the data companies design basically is a  
23 mobile phone application for healthcare, okay. How they  
24 define that, it's a data company, or it's just a design  
25 company? And then they design is basically we make, how do

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1 you measure your blood pressure, how do you measure your  
2 sugar level, you know, nice way. And another, we have  
3 another company is doing for senior living, it's like  
4 distance monitoring, and it's design company, but as a  
5 category I believe that fits as a general office, but they  
6 are, this is a design company most of is stop, they don't  
7 have a lot of experience, and they don't have money to hire  
8 lawyer to fight with DPS, so that's reason we want give us  
9 some other space of office space we can help them --  
10 MS. ROBESON: I understand.  
11 MS. YU: -- to move in, that's very simple. So,  
12 I'm frustrated because in the beginning I think if I go  
13 through all this site plan, if a site plan says okay, I'm  
14 fine, but now I realize I'm not fine. I needed to get  
15 approval from DPS and I don't know how they enforce, because  
16 I even don't know how do you put this company in the  
17 category of industrial, general office, or something. I  
18 just have no idea, so that's my problem.  
19 MS. LEE-CHO: Okay. Thank you.  
20 MS. YU: So, I think we ask for the flexibility we  
21 can compete in the market.  
22 MS. ROBESON: Okay.  
23 MS. LEE-CHO: Okay.  
24 MS. ROBESON: Well, we're trying to give you  
25 flexibility by giving you 50 percent general, if it's

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1 approved you would get 50 percent general office, but  
2 unfortunately the law says, you know, what uses you can  
3 have, and there has to be some way of monitoring it. So, I  
4 have faith in your attorney and DPS that we can come to a  
5 reasonable way of limiting the 50 percent because we do have  
6 to do that. I understand what you're saying, and it may be  
7 that more of this is research and development than, you  
8 know, you realize. So, but we do have to comply with what  
9 you've requested, so there has to be some way, I understand  
10 your frustration, but we do have to apply the laws as  
11 they're written.  
12 MS. LEE-CHO: Thank you, Ms. Yu.  
13 MS. YU: Thank you.  
14 MS. LEE-CHO: Thanks for your time.  
15 MS. ROBESON: Thank you very much, it was very  
16 interesting.  
17 MS. YU: Thank you.  
18 MS. LEE-CHO: Call Ms. Nancy Randall.  
19 MS. ROBESON: Okay, Ms. Randall. Please raise  
20 your right hand.  
21 (Witness sworn.)  
22 MS. ROBESON: Now, do you have a resume from --  
23 MS. RANDALL: I do.  
24 MS. ROBESON: And she has testified numerous times  
25 here as an expert, are you a Transportation Planner?

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1 MS. RANDALL: Yes.  
2 MS. ROBESON: Yes, as a Transportation Planner, so  
3 I don't see the need, especially as there's no opposition.  
4 I don't --  
5 MS. LEE-CHO: I appreciate the abbreviated  
6 process.  
7 MS. ROBESON: So, her resume is going to be  
8 Exhibit 32.  
9 (Exhibit No. 32 was marked for  
10 identification.)  
11 MS. LEE-CHO: Okay. So, with that, Ms. Randall is  
12 accepted as an expert in the field of transportation  
13 planning, and traffic engineering. Is that correct?  
14 MS. ROBESON: I'm sorry --  
15 MS. RANDALL: Transportation planning.  
16 MS. ROBESON: -- I have to keep track of all of  
17 it. Yes.  
18 MS. LEE-CHO: Yes. Okay.  
19 MS. ROBESON: She is accepted.  
20 MS. LEE-CHO: Okay. Ms. Randall, if you could  
21 start us off by briefly summarizing the scope of the initial  
22 study, the LATR study that was submitted in this case,  
23 please?  
24 MS. RANDALL: Yes. We prepared for this Special  
25 Exception application a LATR study.

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1 MS. LEE-CHO: And just the study is in two places,  
2 it's Exhibit 10, as well as it was resubmitted as Exhibit  
3 25B.  
4 MS. ROBESON: Okay. Is it different?  
5 MS. LEE-CHO: The same.  
6 MS. RANDALL: It's the same.  
7 MS. LEE-CHO: The same. Okay.  
8 MS. LEE-CHO: It's the same. I had forgotten  
9 about its previous submission.  
10 MS. ROBESON: Okay. Go ahead.  
11 MS. RANDALL: Okay. We had the typical scoping  
12 meeting with Staff with regards to the study area, study  
13 intersections, approved background development. We went  
14 through the completed process with them. Just for your  
15 information we have the intersection, we're all getting  
16 older, Wilkins Avenue and Parklawn Drive, the intersection,  
17 and that was to the north --  
18 MS. ROBESON: Right.  
19 MS. RANDALL: -- which you're familiar, Wilkins  
20 Avenue for lack of a better description is kind of horseshoe  
21 of a road.  
22 MS. ROBESON: Right.  
23 MS. RANDALL: So, it connects with Parklawn both  
24 north and south on the west side of Parklawn. So, our  
25 second intersection was Wilkins Avenue to the south of

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1 Parklawn, and then our third intersection was Randolph Road  
2 and Parklawn.  
3 We had a total of nine projects that were in the  
4 pipeline, approved developments, including this very site,  
5 which was previously approved for R and D space.  
6 MS. ROBESON: Oh, it was in the pipeline? I  
7 didn't realize.  
8 MS. RANDALL: Yes.  
9 MS. ROBESON: I didn't see that.  
10 MS. RANDALL: It was part of --  
11 MS. ROBESON: Okay.  
12 MS. RANDALL: It was part of the pipeline that  
13 Staff asked us to take a look at, what they were asking for  
14 was to take a look at the net increase in volume from the  
15 previous use that was on the site. As you're aware there  
16 were existing businesses on the property.  
17 MS. ROBESON: Right.  
18 MS. RANDALL: Then we went through and assigned  
19 the background trips to these three study intersections, we  
20 went through, did the analysis for existing levels of  
21 service, background levels of service, we added then the  
22 site trips to the network, and analyzed that to get the  
23 total future levels of service.  
24 In the analysis I think it's important to point  
25 out that both Parklawn Drive, Wilkins Avenue both north and

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1 south are operating well within the congestion standards,  
2 there is a congestion standard of 1,800 CLV.  
3 MS. ROBESON: Right.  
4 MS. RANDALL: And the highest CLV for either one  
5 of those intersections is under the total future conditions  
6 is 670. So, we're barely using 35 percent of the total  
7 capacity available for those two intersections.  
8 Parklawn Drive and Randolph Road, the highest  
9 during your total peak hour volume is 1,486; the CLV  
10 standard is 1,550 for that intersection. So, under total  
11 future conditions there's about four percent of remaining  
12 capacity.  
13 One more thought, though, a note that I think  
14 everyone needs to be aware of is that this intersection is  
15 going to be redesigned with the extension of Montrose  
16 Parkway East, which is a Capital Project.  
17 MS. ROBESON: What -- when -- okay, what status is  
18 it in the --  
19 MS. RANDALL: The status, it's under design, they  
20 purchased right-of-way, and construction is anticipated to  
21 start in 2019. The funding is there for --  
22 MS. ROBESON: I'm sorry, construction is going to  
23 start in 2019?  
24 MS. RANDALL: 2019. Yes.  
25 MS. ROBESON: Okay.

1 MS. RANDALL: Yes. So, this intersection will get  
 2 completely redesigned, and the volume of traffic that's on  
 3 that intersection will change dramatically and be reduced,  
 4 because Montrose East will replace basically Parklawn,  
 5 excuse me Randolph Road, sorry.  
 6 And you can see on figure seven they have acquired  
 7 the right-of-way, it's a green, straight green swath, this  
 8 is on page 16 of my Traffic Impact Study, which gives you a  
 9 larger aerial view.  
 10 MS. ROBESON: Can you wait one moment for me to  
 11 find that in the record? I can't remember which exhibit it  
 12 is.  
 13 MS. LEE-CHO: The traffic study?  
 14 MS. ROBESON: Yes.  
 15 MS. LEE-CHO: I have an extra copy if you'd like.  
 16 MS. ROBESON: Here it is, 25B. Okay. I'm sorry,  
 17 what page are you on?  
 18 MS. RANDALL: It's page 16, figure seven,  
 19 hopefully your copy is in color.  
 20 MS. ROBESON: It is.  
 21 MS. RANDALL: Good. There is a green swath that  
 22 runs just north of Randolph Road, which runs essentially  
 23 east --  
 24 MS. ROBESON: Yes.  
 25 MS. RANDALL: -- west on the page, there's a green

1 swath, and that is the Montrose extended, Montrose --  
 2 MS. ROBESON: Okay.  
 3 MS. RANDALL: -- East that's going to essentially  
 4 pull the volume off of Randolph Road and it --  
 5 MS. ROBESON: Okay.  
 6 MS. RANDALL: -- becomes, so I just wanted to give  
 7 you the close proximity and the orientation of that new --  
 8 MS. ROBESON: Okay.  
 9 MS. RANDALL: -- roadway. So, we went through and  
 10 did the standard LATR, all intersections are operating well  
 11 within the CLV standard; we also provided for the pedestrian  
 12 and bicycle impact statement, it's also contained within the  
 13 report. It should be noted that we are, we're on a bus  
 14 line, as well, there's a major bus route that is, runs along  
 15 Parklawn that goes directly up to the Metro station, those  
 16 buses, however, have between a 20-minute and a 30-minute  
 17 headway, not exactly super speedy, and that was --  
 18 MS. ROBESON: That's why the -- okay, the shuttle.  
 19 MS. RANDALL: That's why, you know, in terms of  
 20 changing, going from the R and D, straight R and D, which  
 21 some R and D users have odd hours depending upon what the R  
 22 and D use is, and that a shuttle wouldn't necessarily be as  
 23 beneficial for an R and D use, but with an office use with  
 24 typical, more typical hours then you can capture that  
 25 morning peak hour, that evening peak hour, also supply the

1 immediate neighborhood with that additional run to make it  
 2 so that it's running with, when you combine it with the  
 3 buses that currently run, there's a stop right by the site,  
 4 when you combine it with that you've now suddenly got a 15-  
 5 minute, 10-minute headway depending upon --  
 6 MS. ROBESON: Okay.  
 7 MS. RANDALL: -- and that was the purpose behind  
 8 this to --  
 9 MS. ROBESON: Okay.  
 10 MS. RANDALL: -- aid that along. So --  
 11 MS. LEE-CHO: While we're on that topic, do you  
 12 have an opinion about Staff's recommendation with regard to  
 13 adding a mid-day run?  
 14 MS. RANDALL: I don't know that the mid-day run is  
 15 necessarily going to, it's certainly not going to change  
 16 what happens during the peak times. The mid-day time, it's  
 17 a benefit, certainly, to the building attendees. To make it  
 18 up to Twinbrook, which as you know is a mixed use  
 19 development, there will be retail and restaurants that will  
 20 be up at that facility, I think it makes more sense rather  
 21 than making it a condition that they must run it for both  
 22 a.m., mid-day, and p.m. peak hour is to see what the  
 23 ridership is during the mid-day, economically does it make  
 24 sense to run it if you've only got one person on that  
 25 shuttle. And it becomes a really onerous thing, and that's

1 my concern, because when do you run it? What would make  
 2 sense is at lunchtime, and that's typically an hour and a  
 3 half, or two hour window at most, and then what do you do  
 4 with that particular employee for that, the rest of the time  
 5 that it's not running.  
 6 MS. ROBESON: Right.  
 7 MS. RANDALL: And whereby you can contract out  
 8 very easily with the morning and have that run, and then in  
 9 the afternoon.  
 10 MS. ROBESON: Okay.  
 11 MS. RANDALL: So --  
 12 MS. ROBESON: When you say the peak hour is that  
 13 the peak hour identified in your traffic study, is that when  
 14 it --  
 15 MS. RANDALL: No. I --  
 16 MS. ROBESON: -- we put a condition on what's the  
 17 evening and morning peak hour that the shuttle would run?  
 18 MS. RANDALL: I would recommend that the shuttle  
 19 run depending upon the hours of operation within the  
 20 building, of course, but I would recommend just based on  
 21 what we know today that it run at least a two hour window in  
 22 the morning and a two hour window in the afternoon because  
 23 you're going to have different start times, and the whole  
 24 idea here is to provide that service for the tenants. I  
 25 don't think that you need to run it for three hours in the

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1 morning or three hours in the afternoon.  
2 MS. ROBESON: Do you suggest, when writing a  
3 condition do you suggest picking specific hours, or how  
4 would you word --  
5 MS. RANDALL: I would not pick specific hours,  
6 rather I would say pick a two hour window --  
7 MS. ROBESON: In the peak period?  
8 MS. RANDALL: -- within the peak period --  
9 MS. ROBESON: Okay.  
10 MS. RANDALL: -- because that, again, it comes  
11 back to the businesses, when do they want to start? When  
12 are their employees coming to this place of business? You  
13 know, they may have an earlier start time, or they may have  
14 a slightly later start time. You know, if you're dealing  
15 with companies, as an example if you're dealing with daily  
16 companies out in California you're going to have slightly  
17 later start times --  
18 MS. ROBESON: Right.  
19 MS. RANDALL: -- so you can have a communication.  
20 MS. ROBESON: Right.  
21 MS. RANDALL: So, it's --  
22 MS. ROBESON: Or as Ms. Yu, is it Yu?  
23 MS. YU: Yes.  
24 MS. ROBESON: If you're dealing with international  
25 companies.

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1 MS. RANDALL: Exactly.  
2 MS. ROBESON: Okay.  
3 MS. RANDALL: So, I think it's important to have  
4 some flexibility in there rather than saying from 6:15 to  
5 8:15.  
6 MS. ROBESON: Okay. All right.  
7 MS. LEE-CHO: Did we answer where the shuttle  
8 goes? Could you expand upon that issue, please?  
9 MS. RANDALL: The intent was to get them to the  
10 Metro station, to Twinbrook Metro station. That way you get  
11 the quickest headway, and you serve the most, plus it  
12 supports what's going on in Twinbrook, and their intent of  
13 building up some of the commercial support services that are  
14 up by the Metro station, but it also has an opportunity to  
15 provide some of the services for some of the employers that  
16 are along this corridor, as well.  
17 MS. ROBESON: Well, that was my question, is this  
18 shuttle going to be open to everyone?  
19 MS. RANDALL: I think that this has to be a  
20 business decision, I don't think --  
21 MS. ROBESON: Okay. So, that's just --  
22 MS. RANDALL: -- that it needs --  
23 MS. ROBESON: Okay.  
24 MS. RANDALL: -- needs to be.  
25 MS. ROBESON: All right.

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1 MS. RANDALL: All right? And I think it's a  
2 matter of --  
3 MS. ROBESON: Not at this stage anyway.  
4 MS. RANDALL: Yes. Yes.  
5 MS. ROBESON: Okay.  
6 MS. RANDALL: I think that's a business decision.  
7 MS. ROBESON: All right.  
8 MS. RANDALL: You know, if they do then that helps  
9 potentially subsidize the shuttle.  
10 MS. ROBESON: The fares, yes.  
11 MS. RANDALL: Yes. Yes. Exactly. In addition to  
12 the standard LATR, the pedestrian, bicycle, we also looked  
13 at the Transportation Policy Review, they are required to  
14 make a payment which is equal to 25 percent of the impact  
15 tax for the project, as they were before, but this time with  
16 the changing use --  
17 MS. ROBESON: Okay.  
18 MS. RANDALL: -- which I believe right now both R  
19 and D and office are calculated the same, if memory serves.  
20 MS. ROBESON: Okay. All right. And I had one  
21 other question but it just --  
22 MS. LEE-CHO: I do have a --  
23 MS. ROBESON: Follow up?  
24 MS. LEE-CHO: -- question. Yes.  
25 MS. ROBESON: Sure. Go ahead.

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1 MS. LEE-CHO: The original LATR that was done, can  
2 you specify the square footage split that was studied,  
3 please?  
4 MS. RANDALL: Yes. In the original traffic impact  
5 study that we did at one time we were looking at more of a  
6 45/55 split, 55 percent office, 45 percent R and D. In  
7 going through that process, and working with Staff, and  
8 adjustments to the parking calculations we came back and  
9 asked for the 50/50 split. I provided to Ed Axler a revised  
10 trip generation table, when you go from 55 percent office  
11 down to 50 percent office we actually were generating fewer  
12 trips --  
13 MS. ROBESON: Okay.  
14 MS. RANDALL: -- that what was shown in this  
15 traffic impact study.  
16 MS. ROBESON: Okay. Is that in the record, that,  
17 is that what Ed --  
18 MS. LEE-CHO: I have the updated --  
19 MS. ROBESON: -- used?  
20 MS. LEE-CHO: -- trip generation table, Table 3  
21 which is not in the record yet, at least I haven't submitted  
22 it in the record, that I'd like to submit now.  
23 MS. ROBESON: Okay.  
24 MS. RANDALL: Yes.  
25 MS. ROBESON: Let's do that.

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1 MS. LEE-CHO: And in addition we have  
2 correspondence, copy of an e-mail from Mr. Ed Axler to Ms.  
3 Randall confirming his acceptance of this additional --  
4 MS. ROBESON: Okay. I will take that. He did, I  
5 don't know if you caught up with your e-mails but he did  
6 send me the confirmation that the County had reviewed it.  
7 Okay. Let me mark these, 33 is the revised, tell me what 33  
8 is.  
9 MS. LEE-CHO: It's the revised trip generation  
10 Table 3.  
11 MS. ROBESON: And that's based on the traffic  
12 split, a revised --  
13 MS. LEE-CHO: The reduced general office 50/50  
14 split.  
15 MS. ROBESON: Okay. So, that's 33.  
16 (Exhibit No. 33 was marked for  
17 identification.)  
18 MS. ROBESON: And 34 is an e-mail -- go ahead.  
19 MS. LEE-CHO: E-mail from Ed Axler to Ms.  
20 Randall --  
21 MS. ROBESON: Okay.  
22 MS. LEE-CHO: -- confirming her conclusion.  
23 MS. ROBESON: Well, I'm just going to put dated --  
24 MS. LEE-CHO: Yes.  
25 MS. ROBESON: -- December 29th --

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1 MS. LEE-CHO: Okay.  
2 MS. ROBESON: -- 2014 for the exhibit list. And  
3 then you can tell me what it is.  
4 (Exhibit No. 34 was marked for  
5 identification.)  
6 MS. LEE-CHO: Ms. Randall, could you --  
7 MS. RANDALL: Yes.  
8 MS. LEE-CHO: -- explain the e-mail?  
9 MS. RANDALL: With the change in the split of  
10 office to R and D, Ed and I spoke on the phone, then he sent  
11 me an e-mail so that I could respond to it so we had a  
12 record. He requested that I take a look at the change in  
13 trip generation between the 55/45 split versus the 50/50  
14 split.  
15 MS. ROBESON: Okay.  
16 MS. RANDALL: And I sent him the previous table of  
17 the 55 percent office/45 percent R and D --  
18 MS. ROBESON: Yes.  
19 MS. RANDALL: -- to the 50/50 split, and he  
20 conferred, or concurred that the 50/50 split would generate  
21 less traffic than what was contained in my LATR report, and  
22 therefore there was no impact, there was no need to revise  
23 my traffic impact study.  
24 MS. ROBESON: All right.  
25 MS. RANDALL: It was, my traffic impact study was

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1 overstating --  
2 MS. ROBESON: Okay.  
3 MS. RANDALL: -- the issue in terms of our impact  
4 on the road system. And going back to that issue of impact,  
5 the three percent that you mentioned --  
6 MS. ROBESON: Yes. Yes, yes.  
7 MS. RANDALL: -- in the Staff Report I do take  
8 exception with the way they calculated it. It is, based on  
9 the report we are at --  
10 MS. ROBESON: Your report.  
11 MS. RANDALL: Right.  
12 MS. ROBESON: The traffic study.  
13 MS. RANDALL: The traffic impact --  
14 MS. ROBESON: Yes.  
15 MS. RANDALL: -- study. Now, keep in mind that  
16 with this trip generation that number's going to come down a  
17 little bit.  
18 MS. ROBESON: Right.  
19 MS. RANDALL: Okay? But it is the percentage of  
20 remaining capacity to the, to the upper limit, so in the  
21 intersection of Parklawn and Randolph Road, forget that  
22 there's a Capital Project --  
23 MS. ROBESON: Right.  
24 MS. RANDALL: -- at the intersection of Randolph  
25 Road and Parklawn the limit is 1,550, and the CLV under this

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1 analysis, the highest one, is 1,486. Now, that includes  
2 everything, that includes the prior approval --  
3 MS. ROBESON: Right.  
4 MS. RANDALL: -- and this project, because that  
5 prior approval was part of our background development, okay?  
6 MS. ROBESON: You double-counted them?  
7 MS. RANDALL: No, we didn't double count, but we  
8 looked at it at two separate times, but the point being that  
9 we looked at the increase over and above what was previously  
10 there --  
11 MS. ROBESON: I see.  
12 MS. RANDALL: -- so in their calculation, however,  
13 when you look at the total 1,486 divided by 1,550 we're at  
14 almost five percent.  
15 MS. ROBESON: Okay.  
16 MS. RANDALL: Okay? And what they did was then  
17 try to subtract out the background, well, they shouldn't  
18 have done that, they should have added that.  
19 MS. ROBESON: Okay.  
20 MS. RANDALL: Okay? So, they were making it look  
21 worse than it is --  
22 MS. ROBESON: Okay.  
23 MS. RANDALL: -- in terms of our impact.  
24 MS. ROBESON: Okay. That's --  
25 MS. RANDALL: All right?

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1 MS. ROBESON: -- helpful. Thank you.  
2 MS. RANDALL: Yes. Yes. And I wasn't going to  
3 quibble about .3 percent --  
4 MS. ROBESON: Right.  
5 MS. RANDALL: -- but --  
6 MS. ROBESON: Right. Okay. Well, that's helpful  
7 since --  
8 MS. RANDALL: Yes.  
9 MS. ROBESON: -- I raised it. Thank you.  
10 MS. RANDALL: You're welcome. You're welcome. In  
11 addition to Staff conferring with our, this is at Maryland  
12 National Capital Park and Planning Staff --  
13 MS. ROBESON: Staff.  
14 MS. RANDALL: -- the State Highway Administration,  
15 as well as Montgomery County Department of Transportation  
16 reviewed our traffic impact studies and the parking analysis  
17 and provided that their letters, I believe are in the file  
18 and in the record.  
19 MS. ROBESON: Yes.  
20 MS. RANDALL: And they concurred with our  
21 findings.  
22 MS. ROBESON: Okay.  
23 MS. LEE-CHO: Just going back to the CLV capacity  
24 issue, does that answer the Hearing Examiner's question as  
25 to what does it translate in terms of office industrial use,

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1 does that --  
2 MS. RANDALL: I think it was, it goes to what the  
3 Staff was saying during the Planning Board hearing where  
4 they wanted, one of the criteria for office use is that the  
5 office use can't take up all of the capacity --  
6 MS. ROBESON: Right.  
7 MS. RANDALL: -- of the area, and, you know, they  
8 were looking at three percent as being --  
9 MS. ROBESON: Right.  
10 MS. RANDALL: -- that, pushing that limit.  
11 MS. ROBESON: Right, right.  
12 MS. RANDALL: And by the way they calculated it  
13 looked like we were coming up against that three percent,  
14 but --  
15 MS. ROBESON: Right.  
16 MS. RANDALL: -- they miscalculated it, and it  
17 should have been --  
18 MS. ROBESON: Okay.  
19 MS. RANDALL: -- backed away from it.  
20 MS. ROBESON: That's helpful.  
21 MS. RANDALL: So, not to mention the fact that it  
22 was dealing with a slightly higher number.  
23 MS. ROBESON: Right.  
24 MS. RANDALL: Yes. And there's a Capital Project,  
25 and it applies to all of the intersections, and all the

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1 other intersections have more than sufficient --  
2 MS. ROBESON: Yes. I think the --  
3 MS. RANDALL: -- capacity.  
4 MS. ROBESON: -- concern was the Special Exception  
5 standard limits you to something scheduled for completion  
6 within three years, I think.  
7 MS. RANDALL: Right. Right.  
8 MS. ROBESON: So, we're dealing both with the four  
9 percent, and --  
10 MS. RANDALL: Yes, three percent.  
11 MS. ROBESON: -- three, three percent.  
12 MS. RANDALL: Yes, three percent --  
13 MS. ROBESON: Yes.  
14 MS. RANDALL: -- is the limit, we're at four point  
15 something percent.  
16 MS. ROBESON: Yes. Okay.  
17 MS. RANDALL: Okay? So, there is excess capacity  
18 beyond what the limit is from the --  
19 MS. ROBESON: Okay.  
20 MS. RANDALL: -- Staff's perspective.  
21 MS. ROBESON: All right. That's very helpful.  
22 MS. RANDALL: Okay.  
23 MS. LEE-CHO: All right. Could you also address  
24 the comment in the Staff Report regarding the traffic  
25 management agreement that was executed under the site plan

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1 approval and whether that needs to be amended?  
2 MS. RANDALL: Yes. The traffic TAMG agreement was  
3 done for the original site plan, we're limited by that site  
4 plan in terms of its square footage, and it's not, it  
5 doesn't, it is not dependent upon the user within that  
6 building as to the types of things that you would do within  
7 a TMAG. A TMAG is the standard kind of thing. What we're  
8 accepting and have asked for for this Special Exception  
9 outside of the TMAG is the shuttle, which is that extra step  
10 that wouldn't be required by a TMAG. Now, if this Special  
11 Exception lapses, if you incorporate that shuttle into that  
12 you've changed the dynamic of this whole TMAG, it makes no  
13 sense because the users then in that particular building  
14 that shuttle may not work for them. It's the office use,  
15 that more 9:00 to 5:00 --  
16 MS. ROBESON: So, you want, you want this limited  
17 to the term of, the shuttle limited to the term of the  
18 Special Exception?  
19 MS. RANDALL: Exactly. Exactly. It is the  
20 Special Exception --  
21 MS. ROBESON: So, any condition relating to the  
22 shuttle would operate independent of the TMAG.  
23 MS. LEE-CHO: And would there be --  
24 MS. RANDALL: In conjunction, I don't like to say  
25 it, yes, it is independent.

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1 MS. ROBESON: No, I understand.  
2 MS. RANDALL: But it is in addition to all the  
3 standard things that we have to do within a TMAG, the bike  
4 share, the, you know, the various spaces, the giving the  
5 TMAG management team access to the employees to get them to  
6 sign up for Metro, all of those things will, won't be any  
7 different whether it's an office employee or an R and D  
8 employee, those things remain constant.  
9 MS. ROBESON: All right.  
10 MS. RANDALL: And it's this office --  
11 MS. ROBESON: Just out of curiosity, do the TMAGs  
12 now set a goal, or of a certain percentage of shared trips?  
13 MS. RANDALL: No, and we took no reduction in trip  
14 generation because of being within, unlike CR Zone --  
15 MS. ROBESON: Right.  
16 MS. RANDALL: -- where --  
17 MS. ROBESON: That was my question.  
18 MS. RANDALL: Yes. Unlike CR Zone, which we are  
19 within that same half-mile radius, unlike the CR Zone where  
20 you take a 50 percent --  
21 MS. ROBESON: Right.  
22 MS. RANDALL: -- reduction, or a 37 percent  
23 reduction in the case of White Flint for that first phase,  
24 but after a period of time you're supposed to meet that 50  
25 percent, no, we took no reduction --

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1 MS. ROBESON: Okay.  
2 MS. RANDALL: -- transit reduction for this  
3 property, nor did the prior application take any reduction  
4 of trips due to --  
5 MS. ROBESON: Okay.  
6 MS. RANDALL: -- proximity of Metro.  
7 MS. LEE-CHO: So, the Staff Report on page seven  
8 at the bottom indicates the TMAG must be updated to reflect  
9 the proposed change in land use, what is your opinion, do  
10 you agree with that statement, or disagree?  
11 MS. RANDALL: From a transportation point of view  
12 I see no need to do that, it's unnecessary.  
13 MS. ROBESON: I'm sorry, what page of the Staff  
14 Report are you on?  
15 MS. LEE-CHO: The bottom of page seven. The last  
16 phrase in that paragraph, or in that last sentence.  
17 MS. ROBESON: So, you don't -- it's hard to know  
18 whether that needs to be, it's not in the record, the TMA,  
19 the TMAG, so you're saying --  
20 MS. LEE-CHO: There is nothing in the TMAG that  
21 would apply differently to the office and R and D use that  
22 we're asking for, than what is already in the TMAG. There's  
23 nothing different --  
24 MS. ROBESON: So, the TMAG is just you have to do  
25 this to encourage ride share, you have to subsidize Metro

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1 fares.  
2 MS. LEE-CHO: Yes. Yes. So, it's already tied to  
3 the site plan, to the property, they have to do all of those  
4 things, there is no, it wouldn't apply a different thing  
5 with the TMAG from an R and D user to an office user, it's  
6 still the same plan, you know, I don't change anything, I  
7 still allow access in, I still provide subsidies, I do all  
8 of those same things.  
9 MS. ROBESON: Do you mind providing a copy of the  
10 TMAG --  
11 MS. LEE-CHO: Can I have the whole record?  
12 MS. ROBESON: -- just in the record of this case?  
13 MS. RANDALL: Yes, that'd be fine.  
14 MS. LEE-CHO: I actually have one.  
15 MS. RANDALL: Yes, she gave it to me. I left it  
16 over there.  
17 MS. ROBESON: You carry around TMAGs?  
18 MS. LEE-CHO: Well, I brought one.  
19 MS. RANDALL: She brought one, so I know I have it  
20 here, it's somewhere in this stack of paperwork. My  
21 apologies. I may be able to -- I don't think I would have  
22 put it back in there, but maybe I didn't. There it is, it's  
23 always the last thing.  
24 MS. ROBESON: Okay. I'm going to mark this as 35,  
25 which is the site plan transportation management agreement.

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1 (Exhibit No. 35 was marked for  
2 identification.)  
3 MS. LEE-CHO: This has attached to it the Planning  
4 Board resolution, do you want the complete --  
5 MS. ROBESON: Yes, I'll just take the complete.  
6 Thank you. Okay.  
7 MS. LEE-CHO: That was Exhibit 35?  
8 MS. ROBESON: Uh-huh.  
9 MS. LEE-CHO: Okay. Ms. Randall, could you  
10 discuss the parking memorandum dated December 12th, 2014  
11 that is in the record at Exhibit 19C.  
12 MS. RANDALL: Yes. The site currently has, as  
13 you're probably aware the site plan shows 123 parking spaces  
14 on the original site plan, we're not modifying, we're  
15 changing that site plan. We went through to figure out to  
16 what degree and what percentage a waiver would be necessary  
17 for that parking. And the parking is probably best  
18 summarized on the table on the back of my memo, this was the  
19 revised or amended parking analysis December 12th, where we  
20 look at the general office space, R and D space, the parking  
21 rates associated with them, and then the standard code  
22 requirements for those. Then we looked at the shared  
23 parking, as you can imagine the small restaurant space  
24 that's there is really serving the needs of the immediate  
25 community, providing a quick cup of coffee, lunch, that kind

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1 of thing. And then with that looked at the parking  
2 requirement with shared parking, we ended up with, a  
3 requirement of 236, we have on site 123 spaces, so we needed  
4 a 48 percent reduction in the total required. I think it's  
5 important to note that directly across the street, the CR  
6 Zone --  
7 MS. ROBESON: Directly across Wilkins?  
8 MS. RANDALL: Wilkins, the, because it's in the CR  
9 Zone they have a parking maximum, and they cannot exceed a  
10 certain level, and they're allowing up to and beyond under  
11 the Code that we're applying for as much as a 60 percent  
12 reduction in their parking in the CR Zone. Clearly, they  
13 recognized because of the proximity of Metro anything within  
14 a half mile of the Metro, which we are in, could, they don't  
15 need the excess parking, and in fact, it is  
16 counterproductive to what you're trying to do within the  
17 Metro station policy hearings. That's the whole reason for  
18 this. And again, going back to for this particular user and  
19 asking for this 50 percent reduction and waiver, i.e. the  
20 shuttle, again, it helps support in getting, not only  
21 getting individuals out of their automobiles, but providing  
22 that necessary headway that further gets not only this user  
23 but potentially other users --  
24 MS. ROBESON: Okay.  
25 MS. RANDALL: -- within a community. And there

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1 should be also noted there is on street parking along  
2 Wilkins, that on street parking is available if there is a  
3 guest or a visitor that comes in in the middle of the day,  
4 and those parking spaces are metered.  
5 MS. LEE-CHO: I just wanted to have you identify  
6 this exhibit, which is --  
7 MS. ROBESON: Is that the site plan?  
8 MS. LEE-CHO: This is the site plan.  
9 MS. RANDALL: Yes.  
10 MS. ROBESON: Uh-huh.  
11 MS. LEE-CHO: The Special Exception.  
12 MS. ROBESON: That's Exhibit --  
13 MS. LEE-CHO: 19D.  
14 MS. RANDALL: 19D.  
15 MS. ROBESON: Okay.  
16 MS. RANDALL: And this site plan shows the surface  
17 parking spaces adjacent to the building surrounding the  
18 entire property, as well as the garage parking spaces --  
19 MS. ROBESON: Okay.  
20 MS. RANDALL: -- which is also something else that  
21 the Sector Plan has been encouraging --  
22 MS. ROBESON: Okay.  
23 MS. RANDALL: -- by providing the garage parking.  
24 MS. LEE-CHO: Ms. Randall, if you could just note  
25 what was changed on the site plan.

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1 MS. RANDALL: What was changed is the parking  
2 analysis table.  
3 MS. ROBESON: Okay.  
4 MS. RANDALL: All right? That was updated --  
5 MS. ROBESON: You mean changed from the site plan,  
6 site plan.  
7 MS. LEE-CHO: Correct.  
8 MS. RANDALL: Exactly. To update the parking  
9 table based on the users.  
10 MS. ROBESON: Okay.  
11 MS. LEE-CHO: For the record could you just read  
12 note one under the development standards table.  
13 MS. RANDALL: You would ask for that.  
14 MS. ROBESON: I know.  
15 MS. RANDALL: Do you mind if I --  
16 MS. ROBESON: No.  
17 MS. RANDALL: Thank you. All development  
18 standards as depicted on this site plan for Special  
19 Exception are as approved by M-NCPPC in site plan number  
20 820130180, and are proposed to remain unchanged under  
21 Special Exception Case No. S-2878.  
22 MS. ROBESON: Thank you.  
23 MS. RANDALL: You're welcome.  
24 MS. LEE-CHO: All right. At this point, again, I  
25 have had Ms. Randall just go through all of the necessary

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1 findings, but if we could handle it the same way that we  
2 did --  
3 MS. ROBESON: Yes.  
4 MS. LEE-CHO: -- Mr. Ager?  
5 MS. ROBESON: Except for the differences you've  
6 had, that you've mentioned in your testimony regarding the  
7 percentage of capacity and any other things that you have  
8 pointed out do you agree with the Technical Staff's findings  
9 and conclusions?  
10 MS. RANDALL: I do.  
11 MS. ROBESON: Okay. Thank you.  
12 MS. LEE-CHO: How would the Hearing Examiner like  
13 to -- I do have an answer as far as why the parking waiver  
14 was applied for under 59G 5.4 as the code provides.  
15 MS. ROBESON: That's a legal issue, so I'll let  
16 you address that in closing.  
17 MS. LEE-CHO: Okay. Thank you.  
18 MS. ROBESON: Thank you. I've put you guys on the  
19 spot.  
20 MS. LEE-CHO: I think that concludes our case.  
21 MS. ROBESON: All right. What about, let's see,  
22 oh, we did add a quick public facilities by adopting the  
23 findings of the Technical Staff Report. Okay.  
24 MR. AGER: With noted exceptions.  
25 MS. ROBESON: With noted exceptions. That was Mr.

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1 Ager for the record. All right.  
2 MS. LEE-CHO: I guess just to close the loop  
3 completely, as far as --  
4 MS. ROBESON: Let me do this --  
5 MS. LEE-CHO: Okay.  
6 MS. ROBESON: -- let me ask Ms. Yu, do you agree  
7 with, except for what your experts have said today do you --  
8 come forward, please, you're still under oath. Just to  
9 cover the engineering stuff, do you agree with the findings  
10 and conclusions of the Technical Staff Report, except for  
11 what your experts said today?  
12 MS. YU: Regarding which part?  
13 MS. ROBESON: There are general standards of  
14 conditions of approval set forth in the Technical Staff  
15 Report, correct? So, except for where your experts have  
16 disagreed do you generally agree with what Staff, the Staff  
17 Report when they said they found that these standards have  
18 been met?  
19 MS. YU: I'm not quite getting this.  
20 MS. ROBESON: Okay. It's fine.  
21 MS. YU: It's hard for me.  
22 MS. ROBESON: Dave? Mr. Ager, can you come up?  
23 MR. AGER: Yes, we'll go through them one at a  
24 time.  
25 MS. ROBESON: No, you don't have to go through

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1 them one at a time, what I'm trying to do is cover the  
2 engineering stuff.  
3 MR. AGER: Sure.  
4 MS. LEE-CHO: Or development standards.  
5 MS. ROBESON: Do you have sufficient, you have  
6 done many, many --  
7 MR. AGER: Too many.  
8 MS. ROBESON: Too many. Okay. Do you have  
9 extensive experience in site plans?  
10 MR. AGER: Yes, I do.  
11 MS. ROBESON: Based on your review of the site  
12 plan have all the standards, including the engineering  
13 standard and the adequate public facilities relating to  
14 police, fire, storm water, water and sewer, have these all  
15 been met? Do you agree with the Technical Staff that these  
16 have been met, except as noted by you and Ms. Randall?  
17 MR. AGER: Right. Right. Let me just refer to  
18 the Staff Report just for --  
19 MS. ROBESON: Sure.  
20 MR. AGER: -- a second. Yes, I just reviewed the  
21 Staff's summary findings, and with the exception as noted  
22 yes, I do agree with their general findings. There is one  
23 minor thing that may be a typo in their Staff Report, item  
24 four, they make the reference to light industrial R and D,  
25 this project was actually approved for light industrial R

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1 and D office, I think there's a difference.  
2 MS. ROBESON: That is what the site plan says.  
3 MR. AGER: That's right, so I think that is  
4 important to note that it's a, you know, kind of unique, and  
5 that's in the context of their discussion about the harmony  
6 and the erosion of light industrial uses.  
7 MS. ROBESON: I understand.  
8 MR. AGER: So, again, I refer the Hearing Examiner  
9 to our written testimony on that issue.  
10 MS. ROBESON: Okay.  
11 MR. AGER: But with those exceptions I agree with  
12 the --  
13 MS. ROBESON: Okay.  
14 MR. AGER: -- findings.  
15 MS. ROBESON: That's good enough.  
16 MS. LEE-CHO: Thank you.  
17 MS. ROBESON: All right. Anything else, Ms. Cho?  
18 MS. LEE-CHO: No other than the closing and legal  
19 issues --  
20 MS. ROBESON: Okay.  
21 MS. LEE-CHO: -- that's all I have.  
22 MS. ROBESON: Thank you both to Ms. Randall and  
23 Mr. Ager, I did put you on the spot. It was very  
24 interesting to hear your concept, that was exciting. So, go  
25 ahead, Ms. Cho.

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1 MS. LEE-CHO: Okay. Just in closing, I did want  
2 to address, let me just suggest first why we proceeded on  
3 the parking waiver under 59E 5.4 as opposed to 4.5.  
4 MS. ROBESON: Okay.  
5 MS. LEE-CHO: 59E 4 deals with parking facility  
6 plans that are processed through the Department of  
7 Permitting Services and/or the Board of Appeals, and since  
8 this project had already gone through a full site plan  
9 approval process in which their full parking facility was  
10 analyzed and the setbacks set in the, frankly the internal  
11 partial part of the internal building was converted to a  
12 structured parking this did not require a wholesale review  
13 of the parking facilities plan, I did not feel that this  
14 fell under that, necessarily that category. And when I  
15 found the 5.4 provision, which allows the Board of Appeals  
16 to approve waivers to a new use in an existing building that  
17 seemed to be the right fit for what we were asking for. In  
18 essence, this is an approved parking plan, it's already  
19 approved, went through site plan, we are adding a new use, a  
20 different use mix that then warrants a reduction or we  
21 needed to justify a waiver request, and that's why we  
22 proceeded under 59E --  
23 MS. ROBESON: Okay.  
24 MS. LEE-CHO: -- 5.4. In light of the fact that  
25 we had no opposition during the site plan approval, no

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1 concerned resident or neighbor in the area --  
2 MS. ROBESON: Well, the notice requirements --  
3 MS. LEE-CHO: Right.  
4 MS. ROBESON: -- are much less under site plan  
5 approval. But --  
6 MS. LEE-CHO: So --  
7 MS. ROBESON: -- go ahead.  
8 MS. LEE-CHO: But I -- that is not the reason why  
9 we proceeded under --  
10 MS. ROBESON: Right.  
11 MS. LEE-CHO: -- 5.4, to avoid the notice, it was  
12 purely just it was the right thing --  
13 MS. ROBESON: Right.  
14 MS. LEE-CHO: -- for the use.  
15 MS. ROBESON: Thank you for addressing that.  
16 MS. LEE-CHO: Okay. And then just in closing I  
17 wanted to address our perspective in terms of whether the  
18 site plan, a site plan amendment is necessary, is that  
19 appropriate --  
20 MS. ROBESON: Yes.  
21 MS. LEE-CHO: -- at this time?  
22 MS. ROBESON: Absolutely.  
23 MS. LEE-CHO: As I alluded to, we really do see  
24 this as two separate pods, and not necessarily contradicting  
25 or invalidating one from the other. The site plan approval

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1 in our, for various aspects of it should stand as-is. I  
2 guess I can sort of understand the perspective of the Agency  
3 wanting to, you know, cross-check, make sure conditions  
4 overlap so that there's not lapse in enforcement, but in my  
5 13 years of practice I have never, I mean, Special  
6 Exceptions are very strictly enforced, and so there's no  
7 question in my mind that if a Special Exception has  
8 conditions of approval that in fact those will be enforced,  
9 whether there is an annual reporting requirement that  
10 requires a Special Exception holder to come back to the  
11 Board of Appeals to update the Board as far as, for instance  
12 as in a school situation, a private education would come  
13 back and report as to their enrollment status, there are  
14 mechanisms in place under the Special Exception regime that  
15 I think adequately serve the public in terms of maintaining  
16 the 50 percent. And the only reason why we would not object  
17 strongly, I mean, it's just to go back for a site plan  
18 amendment for some sort of bureaucratic cross-check we just  
19 didn't feel it necessary, there is no site change that is  
20 happening, physical change that is happening on this  
21 property as a result of this Special Exception approval,  
22 it's all internal to the build, there's not a tree being  
23 replaced, there is not a bollard, you know, being removed;  
24 there is no physical aspect that is impacted on the property  
25 by this Special Exception approval. So, from that

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1 perspective we just didn't see the need to go back to  
2 actually touch the site plan amendment, as an amendment.  
3 And are very comfortable having this Special Exception co-  
4 exist as, you know, a subsequent approval read together with  
5 the site plan, I just, I don't see a problem moving forward.  
6 So, that's basically our request that we not be required to  
7 go back for a site plan approval just because of the cost  
8 and time and effort of having to go through a site plan  
9 amendment.  
10 I did communicate my thoughts to the Council,  
11 Planning Board, General Counsel's Office, David Lieb, before  
12 this hearing, actually, subsequent to the Planning Board  
13 hearing, because at the Planning Board meeting this question  
14 was raised, and there were some comments made by the  
15 Planning Board members as to why a site plan amendment is  
16 necessary, some just didn't think, because there was no  
17 physical change that would result thought that it may be  
18 unnecessary for them to see it back. So, there was some  
19 discussion at the Planning Board level, it was essentially  
20 punted, you know, to --  
21 MS. ROBESON: Well, you can't testify in closing  
22 argument.  
23 MS. LEE-CHO: I'm just explaining why I sent this  
24 e-mail. So --  
25 MS. ROBESON: Well, is that e-mail in the record?

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1 MS. LEE-CHO: I'm going to, I'd like to --  
2 MS. ROBESON: Well, you can't submit evidence,  
3 because you're the attorney.  
4 MS. LEE-CHO: That's fine. I can communicate --  
5 MS. ROBESON: If you want to go back to Mr. Ager  
6 since it's a site plan issue, I mean, we can have him put it  
7 in the record. Do you want to do that?  
8 MS. LEE-CHO: In previous cases I've had the  
9 Hearing Examiner request all communications with Technical  
10 Staff and Park and Planning be entered into the record, so I  
11 didn't think this was going to be an issue as far as an  
12 evidentiary question as to whether it should go into the  
13 record.  
14 MS. ROBESON: Well, okay. But not in closing  
15 argument, because then nobody knows -- if you want it in,  
16 Mr. Ager, why don't you just come up? Can you please  
17 identify that document?  
18 MR. AGER: It's a copy of an e-mail from Soo Lee-  
19 Cho sent Tuesday, March 31st, 2015, and it's addressed to  
20 David Lieb at Park and Planning.  
21 MS. ROBESON: Okay. I'll take it in as 36.  
22 (Exhibit No. 36 was marked for  
23 identification.)  
24 MS. ROBESON: And you don't have to testify  
25 further to it.

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1 MS. LEE-CHO: Thank you.  
2 MS. RANDALL: Thirty-six.  
3 MS. LEE-CHO: Thirty-six, got it.  
4 MS. RANDALL: Okay. So, you'll mark it here?  
5 MS. LEE-CHO: Uh-huh.  
6 MS. ROBESON: You're getting a workout today, Mr.  
7 Ager.  
8 MR. AGER: Well, I need it, actually.  
9 MS. RANDALL: Multi-purpose.  
10 MS. ROBESON: Okay. And so, this e-mail explains  
11 your position to Counsel for Park and Planning as to why you  
12 don't need to get a site plan amendment?  
13 MS. LEE-CHO: That's correct. I was requested to  
14 submit my thoughts to him in writing. I have not received a  
15 response to this e-mail. And I do express in this e-mail  
16 that if a site plan amendment is required I do believe that  
17 a justification has to be expressed, or the Planning Board  
18 has to under 59G 1.22(b)(2), that a basis for the review has  
19 to be expressed --  
20 MS. ROBESON: Well, that's if no site plan is  
21 required.  
22 MS. LEE-CHO: No, if a site plan is required,  
23 the --  
24 MS. ROBESON: No, if there's no site plan required  
25 for the underlying use.

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1 MS. LEE-CHO: Which is this case.  
2 MS. ROBESON: No, you have a site plan required  
3 for the R and D use.  
4 MS. LEE-CHO: Okay. So, that's what I argue in  
5 here in that actually, the I-4 Zone is not a site planned  
6 zone, it didn't require a site plan. The only reason why  
7 there is a site plan in this case is because we utilized the  
8 transit station development area, special provisions of the  
9 I-4 Zone.  
10 MS. ROBESON: To get the parking waiver.  
11 MS. LEE-CHO: To get setback, you know, setback  
12 waivers --  
13 MS. ROBESON: Right.  
14 MS. LEE-CHO: -- and parking waivers. But under  
15 the 59D it's not an optional method site plan, the only time  
16 that the I-4 Zone you're treated as having a required for  
17 site plan is if you're proceeding under optional method.  
18 So, I read these provisions as we are not required to have a  
19 site plan under the Zoning Ordinance, this is not, even  
20 though we went through a site plan for purposes of whether  
21 we have to go back to site plan we're not a required site  
22 plan zone.  
23 MS. ROBESON: Okay. Well, I will certainly look  
24 carefully at your arguments.  
25 MS. LEE-CHO: Okay.

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1 MS. ROBESON: Anything else?  
2 MS. LEE-CHO: No, that would conclude our case.  
3 MS. ROBESON: Okay. Thank you very much. Thank  
4 you very much for coming. What I'm going to do is hold the  
5 record open for 10 days, I may solicit an opinion regarding  
6 the site plan amendment from both DPS, only, well, two  
7 reasons, I want to know, you know, I will ask DPS their  
8 position on whether they require a site plan amendment in  
9 order to enforce, and whether a site plan amendment is  
10 required absent a Special Exception condition requiring it  
11 is up to the Planning Board. But my concern as far as the  
12 Special Exception is the enforceability, and so I am going  
13 to check with them on that, and as part of my question to  
14 them I may CC the Planning Department because I didn't see  
15 all your arguments till today, so I'm going to look at them  
16 and see if I need to involve them in the question out of an  
17 abundance of caution, as well. But I am also going to  
18 contact DPS, I'm going to hold the record open for 10 days,  
19 well, actually I may do it for 15 days just to give them  
20 some additional time to respond. And try to work out the  
21 enforceability of the 50 percent, you know, how to track the  
22 50 percent R and D versus general office space, okay? So,  
23 with that --  
24 MS. LEE-CHO: And will I have an opportunity to --  
25 MS. ROBESON: Absolutely.

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1 MS. LEE-CHO: -- respond?  
2 MS. ROBESON: What I'm going to do is give them 10  
3 days to respond, and then give you five days to follow up on  
4 that response, unless you need additional time, if you need  
5 additional time I can make it 20, hold the record open for  
6 20 days.  
7 MS. LEE-CHO: Uh-huh. If I -- will your request  
8 specifically ask DPS to provide the basis for the site plan  
9 amendment, as opposed to them wanting it to be just part of  
10 the site plan, or you're just going to leave it open to  
11 that?  
12 MS. ROBESON: I'm not going to ask them the legal  
13 question because they aren't, they aren't lawyers. I am  
14 going -- and again, whether the site independent of the  
15 Special Exception, whether the site plan needs to be revised  
16 is a question for the Planning Board, my question is, or the  
17 legal department of Park and Planning, my question is  
18 whether it should be revised simply to incorporate the  
19 conditions of the Special Exception approval.  
20 MS. LEE-CHO: Isn't that the same result?  
21 MS. ROBESON: Well, I would, I don't know, because  
22 I don't know the Planning Department's position as to why it  
23 has to be revised, whether other calculations are affected,  
24 you know, it's hard for me to say why they are saying it has  
25 to be revised, I don't know, if that's what they're saying,

1 which I don't have that in writing anywhere, so it's  
2 premature to make for me to speak on behalf of the Planning  
3 Department.

4 MS. LEE-CHO: Okay.

5 MS. ROBESON: So, whether it has to be revised as  
6 far as the Special Exception is concerned is a matter that I  
7 am going to solicit, I may CC Park and Planning, but I'm not  
8 going to address the issue of whether independent of the  
9 Special Exception process the Park and Planning is going to  
10 require revision to the site plan.

11 MS. LEE-CHO: Understood.

12 MS. ROBESON: All right. Okay. With that I'm  
13 going to leave the record open for 20 days. Would you like  
14 20 days to give you time to respond to any comments that DPS  
15 and Park and Planning? And that would be Park and Planning  
16 and DPS within 10 days, and your response within 10 days.

17 MS. LEE-CHO: That should be fine. I would have  
18 been fine with 15, but that's fine.

19 MS. ROBESON: Well, whatever you prefer.

20 MS. LEE-CHO: I think my client would prefer the  
21 shorter time frame, so 15.

22 MS. ROBESON: All right. Okay. Thank you.

23 MS. LEE-CHO: Thank you.

24 MS. YU: Thank you.

25 MS. LEE-CHO: This is a disk.

1 MS. ROBESON: Just a second. Don't go off. What  
2 I'm taking in is a disk which, is this, can you tell me what  
3 this disk is?

4 MS. LEE-CHO: They are the resumes of Mr. Ager and  
5 Ms. Randall.

6 MS. ROBESON: Is that all that's on here?

7 MS. LEE-CHO: And the Table 3, the trip generation  
8 Table 3 --

9 MS. ROBESON: Okay.

10 MS. LEE-CHO: -- the additional --

11 MS. ROBESON: So, I'm going to mark this as  
12 Exhibit 37C, D of resumes and updated traffic trip, updated  
13 trip generation Table 3.

14 (Exhibit 37 was marked for  
15 identification.)

16 MS. ROBESON: Thank you all very much.

17 MS. LEE-CHO: Thank you.

18 MS. RANDALL: Thank you. It was good to see you  
19 again.

20 MS. ROBESON: Yes. Take care. Thank you, Mr.  
21 Ager, I know I gave you a hard time.

22 MR. AGER: No, that's okay, my pleasure. It's  
23 always a pleasure.

24 (Whereupon, at 12:01 p.m., the hearing was  
25 concluded.)

C E R T I F I C A T E

1  
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  
8 Petition of Michael Chervenak for Greencourt, LLC  
9 Special Exception No. S-2878  
10

11  
12 By:  
13  
14  
15  
16

17  
18 \_\_\_\_\_  
19 Paula Underwood, Transcriber  
20  
21  
22  
23  
24  
25

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