

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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APPLICATION OF SALVATORE R. PEPE : Case No. CU 17-01
FOR ACCESSORY APARTMENT :
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A hearing in the above-entitled matter was held on
October 21, 2016, commencing at 9:40 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue,
Rita Davidson Memorial Hearing Room, Rockville, Maryland
20850 before:

Lynn A. Robeson
Hearing Examiner

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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Salvatore Pepe	4	--	--	--
Cece Kinna	9	11	--	--
Eileen Finnegan	13	--	--	--

E X H I B I T S

Exhibit No.		Marked/Received
30A & B	Photos of Airbnb listing	14

1 MS. FLANAGAN: Will you take other comments also?
2 MS. ROBESON: Yes. Okay. So, we will -- the
3 order of proceeding is Mr. Pepe will go first. Then the
4 housing inspector goes, and then we will take other
5 testimony, so you're more than welcome to testify. Okay?
6 Mr. Pepe, would you kindly raise your right hand.
7 (Witness sworn.)
8 MS. ROBESON: Can you please, everyone please
9 identify yourselves for the record. We'll have you do it
10 when you come up. Okay, go ahead, Mr. Pepe.
11 MR. PEPE: My name is Salvatore Pepe. I am the
12 applicant in this matter and the address that I am seeking
13 the conditional use for accessory apartment of the property
14 is 1011 Schindler Drive, Silver Spring, Maryland 20903.
15 MS. ROBESON: Okay, thank you. And that's your
16 dwelling?
17 MR. PEPE: That's my dwelling, yes.
18 MS. KINNA: I'm Cece Kinna, I am a housing code
19 inspector with the Department of Housing and Community
20 Affairs, and I conducted the preliminary inspection for the
21 property.
22 MS. ROBESON: Okay. So, Mr. Pepe, have you
23 reviewed the Staff Report?
24 MR. PEPE: Yes.
25 MS. ROBESON: Do you agree with its findings of

P R O C E E D I N G S

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2 MS. ROBESON: I'm calling the case of OZAH Case
3 No. CU 17-01, application of Salvatore Pepe?
4 MR. PEPE: Yeah.
5 MS. ROBESON: Well, how do you say it?
6 MR. PEPE: I say it Pepe.
7 MS. ROBESON: Pepe, okay.
8 MR. PEPE: Yes.
9 MS. ROBESON: For an accessory apartment at 14010
10 Parkland Drive, Rockville, Maryland.
11 MR. PEPE: It's 1011 Schindler Drive.
12 MS. ROBESON: Yes.
13 MR. PEPE: In Silver Spring, Maryland.
14 MS. ROBESON: I just realized that. But thank you
15 for the correction. Okay. My name is Lynn Robeson, I'm the
16 hearing examiner and I'm going to be taking all your
17 evidence and testimony. I know she's been here, Ms. Kinna
18 has been here multiple times before, but I will just explain
19 it for your benefit.
20 It's an informal hearing, but there are certain
21 formalities. We take testimony under oath and subject to
22 cross-examination. What I'm going to do -- what we
23 generally do with these accessory apartments is, you have a
24 staff -- well, let me do this. Can you -- both parties
25 identify yourselves for the record?

1 fact and conclusions?
2 MR. PEPE: I do.
3 MS. ROBESON: Do you wish to adopt it as your own
4 testimony?
5 MR. PEPE: Yes. In addition to the case statement
6 that I also --
7 MS. ROBESON: The what?
8 MR. PEPE: In addition to the case statement that
9 I also prepared.
10 MS. ROBESON: Okay. Is that in the record?
11 MR. PEPE: Yes.
12 MS. ROBESON: Okay. And, have you looked at the
13 conditions of approval?
14 MR. PEPE: Yes.
15 MS. ROBESON: And, do you agree to abide by the
16 conditions of approval?
17 MR. PEPE: I do.
18 MS. ROBESON: All right. Is there anything -- the
19 Staff Report addresses the criteria for approval. If you
20 adopt it as your own testimony, that is your means of
21 addressing the legal standards. Is there anything else you
22 would like to add to that?
23 MR. PEPE: I believe that the case statement that
24 I provided and the Staff Report, the Technical Staff Report,
25 are very much in agreement, so I don't have anything to add.

Page 6

1 MS. ROBESON: Okay. Now, the case statement, that
2 is Exhibit 4, I believe?
3 MR. PEPE: Yes. Yes.
4 MS. ROBESON: Let me just ask you, how is parking
5 on your street?
6 MR. PEPE: Parking on my street is not permitted.
7 We have open parking with frontage of about 70 feet usually
8 per property, and as far as I know, and anytime we seek
9 parking on the street, which is rare because we have a
10 driveway, there is always ample parking for myself and
11 neighbors.
12 MS. ROBESON: Wait. Parking, but I thought you
13 said parking on the street is not permitted.
14 MR. PEPE: Parking on the street is permitted.
15 MS. ROBESON: Is?
16 MR. PEPE: It is not, sorry, not permit parking.
17 When I said not permitted --
18 MS. ROBESON: Oh, okay.
19 MR. PEPE: Yes. Not meaning not allowed. It is
20 not permit parking.
21 MS. ROBESON: Okay.
22 MR. PEPE: It is free parking.
23 MS. ROBESON: All right. And, can you describe
24 briefly why you think that the distance between the two does
25 not affect your neighborhood?

Page 7

1 MR. PEPE: Yes. So, as it stands right now, the
2 property that is within the 300 foot separation requirement
3 has a finding conditional use with the licensing and
4 registration unit. As far as I can tell already, they
5 haven't begun construction on the accessory apartment that
6 was approved, and even if they have, there haven't been any
7 additional -- there haven't been tenants in that property.
8 MS. ROBESON: Well, see, I have to go by not --
9 MR. PEPE: Yes.
10 MS. ROBESON: -- it's not done yet. I have to go
11 -- I have to assume, since it's approved, it's going to be
12 done. So, I still need you to address, assume it's
13 approved, why don't you think that that -- why do you think
14 that doesn't affect the character of the neighborhood?
15 MR. PEPE: Well, the character of the neighborhood
16 is predominantly residential, and the Staff Report and my
17 statement indicate that the appearance of the accessory
18 apartment for my property is not changed in any way, and it
19 is still maintained within the character of the neighborhood
20 as a result of having the accessory apartment in the
21 basement, because there is a rear entrance. There's a gated
22 side access to the back of the house. And, given that the,
23 in the Staff Report, the neighborhood has four out of, I
24 think, something like 150 houses that have a proposed or a
25 conditional use for an accessory apartment. That that low

Page 8

1 percentage means that there isn't, in my opinion, an
2 excessive concentration of that conditional use.
3 MS. ROBESON: Okay. I'm looking at your
4 statement, is there any difference between your statement
5 and what the Staff Report states?
6 MR. PEPE: Content wise? I wrote that statement
7 and submitted it early in the application process. I did
8 notice that some language, I think, was borrowed from my
9 statement when it comes to the Staff Report.
10 MS. ROBESON: Okay.
11 MR. PEPE: Some of the language did match, but I
12 did try and go off of previous --
13 MS. ROBESON: Well, let me just say substantively?
14 MR. PEPE: I don't think it does. As far as the
15 requirements and the on-site parking requirements according
16 to the Staff Report, with the addition of one due to the
17 accessory apartment, I don't think there are any
18 differences.
19 MS. ROBESON: Well, let me just say this. I
20 haven't compared the two. I looked at this and I looked at
21 that, but I -- if I find a substantive difference, do you
22 agree to be bound by the --
23 MR. PEPE: Staff Report?
24 MS. ROBESON: Yes.
25 MR. PEPE: Yes.

Page 9

1 MS. ROBESON: Okay. That's what I wanted to know.
2 All right. Are there any questions, and this may include
3 the gallery for Mr. Pepe? You have to come forward and
4 identify yourself for the record. Let me just say, that
5 this is not the time to testify. You will get a chance to
6 testify. It's only to ask questions about what he just
7 said. All right?
8 MS. FLANAGAN: I don't have questions. I just do
9 have some comments and testimony.
10 MS. ROBESON: Okay. Well then, since you're --
11 Mr. Pepe, could you move that micro-- no, not you move.
12 MR. PEPE: Oh, the microphone.
13 MS. ROBESON: Move the microphone. Your time for
14 testimony is not quite yet. Stay up here. I know you're
15 dying. But, we'll get to you. I promise we'll get you
16 there as quickly as possible. What I'd like to do is hear
17 from the housing inspector. Ms. Kinna, would you please
18 raise your right hand.
19 (Witness sworn.)
20 MS. ROBESON: Could you please describe your
21 inspection of the property?
22 MS. KINNA: Yes. The inspection was conducted on
23 October 12th. The apartment is located in the basement of
24 the residence and the entrance is from the rear side of the
25 apartment, so the front still appears to be a single family

Page 10

1 dwelling. The apartment's approximately 1177 gross square
2 feet, and the driveway measured 415 square feet, which
3 exceeds the requirement of 320 square feet. So there's
4 adequate parking for two vehicles off the street. There's
5 no garage. I did make a note that there is a gas furnace
6 and water heater in the unit that is actually off the living
7 room. So there can be no sleeping in the living area of the
8 apartment. It does have a separate bedroom, two separate
9 bedrooms. So, that wouldn't be an issue, but I wanted to
10 make them aware that there should be no sleeping right
11 outside of the utility closet.
12 MS. ROBESON: Because of the ventilation?
13 MS. KINNA: Right. Because of combustion air.
14 The only issues, I found one code violation, and that is a
15 deteriorated wood retaining wall alongside the driveway.
16 The only other issue that would need to be resolved is, the
17 apartment is existing and it appears that -- I could not
18 locate any permits for the work that was done. So they
19 would have to consult with Permitting Services and WSSC to
20 make sure all that -- everything is in compliance. So they
21 would need to get permits. You know, electrical, plumbing,
22 construction.
23 MS. ROBESON: Right. Do you -- go ahead.
24 Anything else?
25 MS. KINNA: That's it. That's it.

Page 11

1 MS. ROBESON: Okay. What's the total size of the
2 dwelling?
3 MS. KINNA: The total size is --
4 MS. ROBESON: I see slightly under 1200 square
5 feet.
6 MS. KINNA: Well that's for the apartment. But
7 for the entire dwelling, that would be -- I thought I had it
8 in here. I apologize. I usually put it on there.
9 MS. ROBESON: Right, but there's a cap. There's a
10 cap on the size of the apartment.
11 MS. KINNA: Right. It is.
12 MS. ROBESON: Well, I think it's in the Staff
13 Report.
14 MR. PEPE: I think the Staff Report says --
15 MS. KINNA: Roughly it would be 2400 square feet.
16 Tax records showing the above grade enclosed area 1210. So
17 with the basement in addition, I'd say 2420.
18 MS. ROBESON: Okay. All right. Does anyone have
19 any questions, just questions for the housing inspector?
20 MR. PEPE: Yes, I do have questions. So, the work
21 for finishing the basement was done prior to us owning the
22 house. When it comes to getting permits and making sure
23 that they checked with WSSC, can I do that if the permits
24 were not -- I guess I can do that if they weren't in my
25 name, I can just search for them and I have to obtain them,

Page 12

1 even if they predated our occupancy of the dwelling?
2 MS. KINNA: Yes, sir. They -- you would be
3 responsible for making sure that the work that was done even
4 before you moved in meets current compliance.
5 MS. ROBESON: Do you agree to that condition of
6 approval that?
7 MR. PEPE: Yes.
8 MS. ROBESON: Okay. Anything else?
9 MR. PEPE: If I find that there isn't a permit for
10 something --
11 MS. ROBESON: You're going to have to get one.
12 MR. PEPE: So everything be inspected?
13 MS. KINNA: Correct. That would be through
14 permitting services though.
15 MR. PEPE: Okay.
16 MS. ROBESON: Or WSSC.
17 MS. KINNA: Well, it would actually be through
18 both. Once WSSC approve it, they'll leave a sticker, and
19 then Montgomery County permitting will verify that.
20 MS. ROBESON: Okay, I get it. All right. Any
21 more questions?
22 MR. PEPE: No.
23 MS. ROBESON: Okay. With that, please -- now it's
24 your turn. Please identify yourself for the record?
25 MS. FINNEGAN: Thank you. My name is Eileen

Page 13

1 Finnegan. I live in Hillandale.
2 MS. ROBESON: Can you give your address?
3 MS. FINNEGAN: Yes. 10404 Sweetbriar Parkway. I
4 am not a --
5 MS. ROBESON: Okay, just a second. Can you raise
6 your right hand.
7 (Witness sworn.)
8 MS. ROBESON: Now you go.
9 MS. FINNEGAN: As best I know. I love caveats.
10 My interest in this is related to the fact that Mr. Pepe is
11 operating an Airbnb location. So, in fact, online both
12 rooms are advertised independently for rent, and they are
13 advertised for rent for less than 30 days. This brings up a
14 host of issues because currently in the County Code, in a
15 single family residential area, R-90, overnight rentals less
16 than 30 days are not allowed. Additionally, the rooms are
17 being offered at two people per room, which would be in
18 excess of the accessory apartment rules.
19 I printed out yesterday just the headers and
20 photos of the Airbnb advertisements.
21 MS. ROBESON: Well, show them to Mr. Pepe.
22 MS. FINNEGAN: So that you can see --
23 MS. ROBESON: And then, --
24 MS. FINNEGAN: The other part --
25 MS. ROBESON: No, just a second. Let's look at

Page 14

1 these. Mr. Pepe, do you have any problem that these are
2 inaccurate or?
3 MR. PEPE: They, the listing as stated there is
4 not inaccurate. We do not rent to anyone for less than 30
5 days as it stands. We have a listing --
6 MS. ROBESON: What do you mean as it stands?
7 MR. PEPE: So --
8 MS. ROBESON: Well, first, I'm going to mark these
9 as Exhibit 30 and 31. No, 30A and B, photos of listings on
10 Airbnb.
11 (Exhibit No. 30A and B were
12 marked for identification.)
13 MS. ROBESON: Okay, go ahead.
14 MR. PEPE: So we are well aware of the transient
15 dwelling rule given that there's a lot of -- there's a lot
16 of debate and some zoning text amendments being proposed for
17 this, we have been actively involved in finding how we can
18 fit and abide by all the rules. While the listings both
19 have two guests apiece, and have a minimum stay of one
20 night, we do not do either of those.
21 MS. ROBESON: Well, why do you list them then?
22 MR. PEPE: So, if you list for one night and
23 somebody is searching for a timeframe, then your listing
24 will show up. But if somebody, if you list the minimum stay
25 at 30 days, and somebody is searching for an available

Page 15

1 apartment in your area, and they don't put in a 30 day
2 requirement, say they just searched for a day, you know, a
3 year out, then your listing won't show up. So really it's
4 just a way in order to ensure that our listing is populated.
5 But we do not accept reservations for less than 30 days.
6 Our proximity to the FDA means that we host only Fellows,
7 and FDA rotation students that are pharmacy students. And
8 those are at least six weeks. So even though the listing
9 has those as a requirement, we do not, we do not cater to
10 anybody for less than 30 days in similar --
11 MS. ROBESON: Well, how do we enforce that? I
12 mean --
13 MR. PEPE: Understandable. Yes, it is very true.
14 We would be willing to change our minimum stay to 30 days,
15 if that makes most sense in order to do so. And one of the
16 other point was that this is, there are two guests per room
17 as a maximum occupancy. If there are two guests in any of
18 the rooms, the other room is not occupied. So, if somebody,
19 two students want to share a room --
20 MS. ROBESON: No, no, no. That's, that -- okay.
21 You have -- the limitation is two adults, period.
22 MR. PEPE: Yes. Right.
23 MS. ROBESON: So, you know, you can't caveat that
24 by -- you have to make your Airbnb listing consistent with
25 these conditions of approval, and you can't list occupancy.

Page 16

1 You know, the text amendment has -- I'm aware of it. It has
2 not been adopted.
3 MR. PEPE: Right.
4 MS. ROBESON: And it's been pending for quite a
5 while. So, whatever these conditions of approval are, you
6 must make your listing consistent with these conditions of
7 approval.
8 MR. PEPE: Okay. Understood. We will change both
9 of those things to have --
10 MS. ROBESON: Because the parking requirements,
11 which you want a waiver from, are based on the idea that
12 you're only going to have two people in there, and you only
13 need one parking space.
14 MR. PEPE: Absolutely.
15 MS. ROBESON: Okay.
16 MS. FINNEGAN: And, if I may? For any transient
17 lodging, and transient lodging in the county is defined at
18 up to six months. Not just 30 days, but up to six months.
19 It has to have a transient lodging license issued by health
20 and human services. So, Kenny Welch at HHS issues those
21 licenses for overnight accommodations up to six months, and
22 it is a requirement in the county to have licensing from HHS
23 on this, because it's considered more like a, I don't want
24 to say hotel --
25 MS. ROBESON: Hotel/Motel, yeah.

Page 17

1 MS. FINNEGAN: Exactly.
2 MS. ROBESON: There's health requirements which is
3 one thing that Bill was going to impose.
4 MS. FINNEGAN: Correct. The other part --
5 MS. ROBESON: Now, where -- do you know the
6 provision of the code that said transient lodging is six
7 months?
8 MS. FINNEGAN: I don't have the provision. I do
9 have an e-mail from Kenny Welch, informing me about the fact
10 that up to six months or no more than six months is the
11 requirement from HHS. This morning I was going to go online
12 and go to the HHS site, but you may or may not know, the
13 county has changed its website?
14 MS. ROBESON: I know.
15 MR. PEPE: Yes.
16 MS. FINNEGAN: None of the links work. Yes. So,
17 I think it's probably best to contact Mr. Welch and get that
18 information. But he has confirmed to me --
19 MS. ROBESON: Okay. Do you have his contact
20 information?
21 MS. FINNEGAN: Yes, I do have contact information
22 for Kenny Welch.
23 MS. ROBESON: And his name, his full name.
24 MS. FINNEGAN: It's Kenneth --
25 MS. KINNA: Can I answer a question also?

Page 18

1 MS. FINNEGAN: Just let her finish and then we'll
2 get back, because it's too confusing.
3 MS. KINNA: Okay, when she's done. Okay. This
4 just made me think of something that I'd like to put on the
5 record.
6 MS. ROBESON: Okay, that's fine. Kenneth Welch?
7 MS. FINNEGAN: Kenneth Welch, W-E-L-C-H. I have a
8 phone number of (240) 777-3840. And it is in --
9 MS. ROBESON: Do you have an e-mail?
10 MS. FINNEGAN: Yeah. kenneth dot --
11 MS. ROBESON: Oh, montgomerycountymd?
12 MS. FINNEGAN: Right, exactly. The other part of
13 the legislation that is pending, which may or may not, which
14 is another wrinkle to this, is that accessory apartments
15 will not be part of that legislation. Now, if in fact it's
16 more than 30 days, maybe that's a workaround, I don't know.
17 But, the legislation as it was written and as it is hung up
18 right now with Park and Planning, is that that Airbnb ZTA
19 would not cover accessory apartments.
20 MS. ROBESON: Okay. Well, I --
21 MS. FINNEGAN: But that's a future thing.
22 MS. ROBESON: Yeah. I have to apply the law as it
23 stands now.
24 MS. FINNEGAN: Right.
25 MS. ROBESON: So, that's what I'm going to do.

Page 19

1 MS. FINNEGAN: And I can appreciate that.
2 MS. ROBESON: Where do you live in relation to
3 this apartment?
4 MS. FINNEGAN: I live several blocks away across
5 New Hampshire Avenue. But, I'm a member, an active member,
6 of our citizens association and these are the types of
7 issues that we have followed. And so I have been active in
8 the Airbnb question because there are a lot of illegal
9 apartments now being used as Airbnb's, and there are some
10 issues dealing with those.
11 MS. ROBESON: Okay. Mr. Pepe, and I'm going to
12 get to you what you want to put on the record. Do either of
13 you have questions based on what you just heard? Just
14 questions?
15 MS. KINNA: I have, yeah, I have questions, but I
16 don't think they can be answered really by anybody here. I
17 think it's something that needs to be looked into. I am not
18 positive, but I don't believe you can do both, have the
19 rental facility license for the accessory apartment as well
20 as the transient certification. My understanding also, I
21 have dealt limitedly with the Airbnb's in the county, and I
22 was informed by Dave Burch, over at Permitting Services,
23 that they are not permitted period. Airbnb's are not legal
24 in Montgomery County. Even though they know they're around
25 there.

Page 20

1 MS. FINNEGAN: And collecting taxes.
2 MS. KINNA: But it's also requiring -- brief
3 explanation on the Airbnb website does tell people to check
4 out your local requirements.
5 MS. ROBESON: No, this is helpful. Okay. So
6 who's the person at DPS?
7 MS. KINNA: I spoke with Dave, D-A-V-E, B-U-R-C-H.
8 MS. ROBESON: Okay.
9 MS. KINNA: And it might be David on the
10 Montgomery County website.
11 MS. ROBESON: And he's at DPS?
12 MS. KINNA: Right. He is one of the supervisors
13 over there for Permitting Services. Which they may have an
14 e-mail, let me make sure I have the correct e-mail for you.
15 It is david.burch. B-U-R-C-H.
16 MS. ROBESON: Okay, thanks. That's helpful. Okay.
17 So what you're saying is, and I'm going to verify with
18 everyone, not that I don't trust anybody here, but that's
19 the way we have to do it.
20 MS. FINNEGAN: And we appreciate that.
21 MS. ROBESON: So you're saying Kenneth Welch at
22 HHS is saying that they don't define 30 days -- for what
23 purpose does Kenneth Welch --
24 MS. FINNEGAN: Kenneth Welch issues or his
25 department issues the license for transient lodging. And

Page 21

1 they issue licenses for one night up to six months worth of
2 nights, whatever that is. Currently, there's a second
3 issue, in the R-90 zone, overnight stays under 30 days are
4 not allowed. So he will not issue a transient license for
5 an area that's not allowed, which would be a single family
6 dwelling for overnight licenses. Or for less than 30 days.
7 But I would presume that he could issue a license for
8 anywhere from 30 days up to six months. But you'd have to
9 confirm that with him. In going to some of the Planning
10 Board, planning staff meetings on Airbnb's, I understand
11 that Mr. Welch has issued some cease and desist letters to
12 some Airbnb hosts operating in single family homes, because
13 they are operating for a night or a weekend or a week.
14 I also understand that in -- and this is a little
15 different because it's in an R-200, they are issuing a
16 license for transient services to a bed and breakfast
17 operating as an Airbnb in an R-200. But that's a different
18 zone. So, that's a different issue.
19 MS. ROBESON: Yeah, and that's a different -- that
20 has special regulations.
21 MS. FINNEGAN: But they're not doing it as a --
22 they're not --
23 MS. ROBESON: Doing it as a bed and breakfast?
24 They're doing it as a BNB?
25 MS. FINNEGAN: No, they're not. They're just

Page 22

1 doing it as rental homes. They're not -- they're not under
2 -- they have --
3 MS. ROBESON: Oh, group homes.
4 MS. FINNEGAN: Correct.
5 MS. ROBESON: Okay.
6 MS. FINNEGAN: So there are some differences. So,
7 yes, Robeson?
8 MS. ROBESON: Yes.
9 MS. FINNEGAN: Ms. Robeson, it does need to be
10 clarified. But it's my understanding that under 30 days in
11 a single family area, the answer is no to a transient
12 license. And the open question is, whether in fact HHS
13 would issue a transient license as required by law for a
14 single family home running 30 days to six months.
15 MS. KINNA: But I think all those -- I think the
16 transient factor also takes into consideration there's only
17 one kitchen in the home.
18 MS. ROBESON: I couldn't hear you.
19 MS. KINNA: It only takes into consideration
20 they're sharing the one kitchen in the home. It's not a
21 separate apartment. And I think that would need to be
22 clarified also then. Because I've heard of the transient in
23 the group homes they all share one kitchen.
24 MS. FINNEGAN: Right. You're living as a family
25 unit. This is different.

Page 23

1 MS. KINNA: So this is totally -- right.
2 MS. FINNEGAN: And that's why the ZTA, which Z-T-
3 A?
4 MS. ROBESON: What's the ZTA? Z-T-A? I thought
5 you said Zika.
6 MS. FINNEGAN: Some of us in the outside world
7 call it ZTA's as opposed to ZTAs. The ZTA tries to address
8 that by indicating that the Airbnb model will not be used in
9 accessory apartments. But there is a whole raft of
10 reasoning as to why that is the case, including affordable
11 housing.
12 MS. KINNA: Right.
13 MS. ROBESON: Yeah, I heard. Well, that's neither
14 here nor there. Don't we're not going to get into an Airbnb
15 discussion. I guess I'll have to -- I don't entirely
16 understand the role of HHS, but I will ask Mr. Welch to
17 explain it and what the rules are that govern these
18 transient licenses. And I will check with DPS, and I
19 appreciate everyone's input. Before I continue, Mr. Pepe,
20 do you have any questions of, you know, based on the
21 testimony that just came in?
22 MR. PEPE: No questions. One comment. I had seen
23 all of the things that you've referenced, and I agree that
24 clarification in some of these would be extremely helpful.
25 My understanding was also similar in that if you had an

Page 24

1 accessory apartment, you've gone through licensing and
2 you've got, you know, that as something to show. And that
3 you don't get issued --
4 MS. ROBESON: What does that mean?
5 MR. PEPE: Well, you don't get issued two
6 licenses. One for an accessory apartment, and one for
7 transient housing all at the same time, if you met the
8 greater than 30 days and had an accessory apartment license,
9 then that would work. Now that's my understanding from what
10 I've heard, but I don't know if that's, yeah, if it's --
11 MS. FINNEGAN: That's not what I have from Kenny
12 Welch.
13 MS. KINNA: I'm not with rental facility
14 licensing, they're part of our department. But my
15 understanding is you can't do both. You can't have the
16 transient certification licensing, so.
17 MS. ROBESON: Okay. But, I guess my question is,
18 what for zoning purposes is transient? If he, and again,
19 it's almost --
20 MS. KINNA: Good question.
21 MS. ROBESON: -- it's an enforcement problem too,
22 because how in the world is somebody going to check --
23 anyway.
24 MS. FINNEGAN: And you thought today was easy?
25 MS. ROBESON: Yeah, I did. But that's okay. I

Page 25

1 mean, it's a sticky -- I'm not dinging anybody. It's a
2 sticky issue. So, I guess I will go to the powers that be
3 and see if they can shed any light, and I do appreciate your
4 input, because everybody is going on a certain understanding
5 of what needs to be licensed as transient, and but you're
6 saying that they take the position that you can't have
7 transient in an accessory apartment?
8 MS. KINNA: Part of -- with Department of Housing
9 it includes certainly the rental facility licensing,
10 landlord tenant rights and obligations, the laws, I'm just
11 with basically the maintenance issues. However, I do
12 believe that, I just want to throw one more consideration
13 out there.
14 MS. ROBESON: Oh no.
15 MS. KINNA: I'm sorry. It might be -- I'm
16 wondering if part of the problem comes from the fact that
17 you're advertising on Airbnb, and maybe avoiding that entire
18 issue might help in narrowing down what you're trying to do.
19 Maybe, what is it, FDA right across the street you were
20 saying?
21 MR. PEPE: Yes.
22 MS. KINNA: I don't know if you can -- maybe
23 they'll allow you to individually post cards, apartment for
24 rent for up to two individuals, as opposed to advertising
25 temporary housing. I think you can --

Page 26

1 MS. ROBESON: Well, it is what it is no matter how
2 you -- now the Airbnb question, the Airbnb does raise
3 issues, because you're marketing not just to Fellows, you're
4 marketing to everybody.
5 MR. PEPE: To the public.
6 MS. KINNA: And it's fair housing.
7 MS. ROBESON: Well, yes, it's fair housing, yes.
8 If somebody wants to rent it, you have to rent it. I see
9 what you're saying. Maybe that is not such a bad idea. But
10 --
11 MS. FINNEGAN: That takes away the advertisement
12 issue, but it doesn't change the question of up to six
13 months. It doesn't change the operational issues. And one
14 issue that I have with calling it Airbnb, is that it's not
15 just Airbnb. It is all of the other platforms, it's
16 Craigslist --
17 MS. ROBESON: Home Away.
18 MS. FINNEGAN: It's Home Away. But it's also what
19 we find in the bus stops where you have, you know, pick off
20 this phone number and you can rent. And so, although Airbnb
21 is the premiere supplier of lovely apartments and lovely
22 rooms, this is really discussing a whole class of rooms and
23 rentals, and zoning issues.
24 MS. ROBESON: Okay. Well, I can't make this
25 global because it does just involve this accessory

Page 27

1 apartment, and I guess I need to be more clear on the role,
2 DPS position and HHS position on whether this is transient
3 or not. And any ideas maybe from them on how to enforce it.
4 I'm not trying to be hard on you, but my role is to apply
5 the law, and I need to know -- I have, I mean, I'm aware of
6 the legislation but that's not here yet. I have never heard
7 of, I know there's a definition in the zoning code of
8 transient, which is less than 30 days. I had not heard of
9 this HHS --
10 MS. FINNEGAN: Licensing.
11 MS. ROBESON: Licensing issue. Ms. Kinna, do you
12 have anything more to say or to shed light, or?
13 MS. KINNA: No. Just if you have any questions
14 with me, maybe it could involve landlord tenant law, don't
15 hesitate to give me a call and I'll try to find an answer
16 for you, because I think this isn't going to be a quick
17 turnaround. You're going to have questions after you talk
18 to -- you're going to have additional questions after you
19 talk to someone probably. So, if it's housing related, and
20 certainly, I'm more than happy to be your contact person to
21 find out whatever information you might need.
22 MS. ROBESON: Thank you. Mr. Pepe, you get the
23 last -- are you finished with what you had to say?
24 MS. FINNEGAN: I'm finished. I only have, well, I
25 have one thing to say, and that is, this really is a

Page 28

1 precedent or a potential precedent because I think there are
2 many of these out there. I know there are others in my
3 community, and I'm sure across the county. This is a very
4 common and problematic issue for some neighborhoods.
5 MS. ROBESON: Okay. Mr. Pepe, you get the last
6 word.
7 MR. PEPE: Sure. One last question that I have
8 is, in previous accessory apartment findings, I've read
9 through a lot of the transcripts as well as the examiner's
10 reports, this hadn't come up before, and I know this
11 probably had been brought to the foreground because of a lot
12 of the discussions that are happening with planning, and a
13 lot of the workshops and sessions that are occurring. But
14 is there -- how is there a way to then -- so the accessory
15 apartment license probably is maybe partially overlapping
16 with some of these, but also partially a separate issue.
17 And I'm wondering how I know how to navigate that? I mean,
18 any other previous accessory apartment presumably, if they
19 were doing the same thing, might not be -- might be
20 licensed, and might not be getting, you know, dinged for it?
21 Would this change then the way in which other folks would
22 also have to do things?
23 MS. ROBESON: Well, I mean, the bottom line is,
24 we've done many accessory apartments, and I don't recall the
25 Airbnb issue being raised. Just because we've done them and

Page 29

1 it wasn't raised, that doesn't mean it's not an issue. And,
2 my job is to (a) figure out the law, but my job is also to
3 apply the law. And so we do try to be fair, but you know, I
4 cannot recall -- I remember one, maybe one that was an
5 Airbnb, but they did six months. They advertised, but they
6 advertised and they entered into leases for longer than six
7 months. So, I -- and you're saying you would like, you
8 know, to do rentals that are six weeks. So, your situation
9 is different, and I am going to have to -- the way we do it,
10 after this, everybody -- did you sign-in with your e-mail?
11 MS. FINNEGAN: Yes.
12 MS. ROBESON: Okay. When I communicate with the
13 agencies, everybody's going to be cc'd. Everything is on
14 this record, so everybody's going to know, you know, what I
15 say and what the agencies say. What I'm going to have to do
16 is figure out in a minute, I don't have my calendar with me,
17 because I didn't think I would need it. What I'm going to
18 have to -- generally, we set timeframes for agency
19 responses, and then you get a chance. Everybody gets a
20 chance to comment on the agency responses. So, I'm going to
21 refer the question back to planning staff, that's one. Two,
22 Kenneth Welch, that's two, and to David Burch. And, I'm
23 going to ask them, you know, what is a transient dwelling?
24 Is this permitted? And what are the parameters of the
25 transient dwelling? And you'll be cc'd too, Ms. Kinna, in

1 case anything that goes on implicates your regulations.
 2 When I get the response back, I'll give everybody
 3 an opportunity to comment on whatever the agencies say. And
 4 then, I will write a report and decision. If you disagree
 5 with the decision, you have ten days to request oral
 6 argument before the Board of Appeals. All right? But
 7 everything, you're going to see everything that I say to the
 8 agencies. Everything that the agencies respond back. And
 9 then you're going to get a chance to, all of you file some
 10 additional comments. All right? Okay. Let's go off the
 11 record for five minutes, because I have to get my calendar,
 12 and I'm going to set a tentative schedule. Some of it has
 13 to depend on how quickly the agencies can respond. All
 14 right. Yes, Ms. Kinna?
 15 MS. KINNA: I'm sorry. Before we go off the
 16 record, I thought, do you want a contact with licensing and
 17 registration also? Rental facility licensing and
 18 registration?
 19 MS. ROBESON: Yes.
 20 MS. KINNA: Okay. Francene, F-R-A-N-C-E-N-E dot
 21 Hill, H-I-L-L. She's the manager for the rental facility
 22 licensing section.
 23 MS. ROBESON: Not that -- is it the class three,
 24 or she's --
 25 MS. KINNA: Well, they're a part of it. She's the

1 head of that section, because the class three goes that
 2 section also.
 3 MS. ROBESON: Okay.
 4 MS. KINNA: If it doesn't meet the requirements
 5 for the class three, then they get the referral to OZAH for
 6 the conditional use.
 7 MS. ROBESON: Okay.
 8 MS. FINNEGAN: And that's the office who got me
 9 eventually to Kenny Welch.
 10 MS. ROBESON: Okay. Well, that's -- okay. So, we
 11 will press onward. Now, I am going to take a five minute
 12 break because I need a calendar, and then we're going to set
 13 some timeframes. The agencies may request additional time,
 14 so I'm going to adjust it in writing, and you'll get to see
 15 all our correspondence. Okay? Anything else?
 16 MS. FINNEGAN: I am anxious --
 17 MS. ROBESON: You can't stay?
 18 MS. FINNEGAN: Yeah, I need to leave. Is it
 19 possible that you can just send or I'll just see your e-
 20 mails?
 21 MS. ROBESON: Okay.
 22 MS. FINNEGAN: I think that's fine.
 23 MS. ROBESON: All right. That's fine.
 24 MS. FINNEGAN: I trust and I trust that this will,
 25 in fact, be worked out.

1 MS. ROBESON: Well basically, I don't know at the
 2 moment how long I'm going to give the agencies. You'll get
 3 a week to respond. All right?
 4 MS. FINNEGAN: And will you be going to Greg Russ
 5 at Park and Planning? Is that the staff Park and Planning
 6 person?
 7 MS. ROBESON: No. He's the legislative drafter.
 8 I have to go back to the planner who wrote the report, who
 9 is Troy Leftwitch, and his boss.
 10 MS. FINNEGAN: Got it. Thank you. And I do thank
 11 you very much, and I'm sorry that --
 12 MS. ROBESON: Before you leave, Mr. Pepe, do you
 13 have any other questions?
 14 MR. PEPE: No.
 15 MS. ROBESON: Okay.
 16 MS. FINNEGAN: Thank you.
 17 MS. ROBESON: All right, we're going to go off the
 18 record for five minutes, and I'm going to go grab a
 19 calendar. Okay?
 20 (Whereupon a brief recess was taken.)
 21 MS. ROBESON: Well, I'm a little early, but, what
 22 I would like to do is this. I don't want the agencies, once
 23 we hit the holidays, Thanksgiving, it's, you know, people
 24 have vacations scheduled. So I'd like to wrap this up
 25 before Thanksgiving. I would like to give the agencies

1 until November 7th, Monday, November 7th to respond. And I
 2 would like to have any further comments due on 11/14. And I
 3 will put this in an e-mail, that's a week. Did you tell
 4 Park and Planning this was an Airbnb? Because usually they
 5 address this in their staff report.
 6 MR. PEPE: No. I hadn't mentioned it. Actually,
 7 the original inspection from DHCA, the notice posted on our
 8 door had mentioned that a neighbor had complained about an
 9 Airbnb rental. So that was the only information that --
 10 that was actually how I thought it came about.
 11 MS. ROBESON: I'm sure it did. It's just, usually
 12 they would have addressed the -- but that's okay. We're
 13 moving on. So, what I'm going to do is I'm going to adjourn
 14 the hearing but keep the record open. Just in case, I'll
 15 keep the record open for a few days, I'm going to build in a
 16 little flexibility in case the agencies can't respond. So,
 17 I'll keep the record open until 11/18. Okay. And so, we
 18 will go from there. So you will get a chance to respond,
 19 and we'll get everybody on board, hopefully, on the same
 20 wavelength, and let you know what you can and can't do. All
 21 right? Thank you very much.
 22 MR. PEPE: Thank you.
 23 (Whereupon, at 10:35 a.m., the hearing was
 24 concluded.)
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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
the attached pages represent an accurate transcript of the
electronic sound recording of the proceedings before the
Office of Zoning and Administrative Hearings for Montgomery
County in the matter of:

Application of Salvatore R. Pepe
for Accessory Apartment
Case No. CU 17-01

By:

Keena Lukacinsky, Transcriber

A				C
	advertisement (1) 26:11	19:3,19;22:21;24:1,6, 8;25:7,23;27:1;28:8, 15,18	30:2,8;32:8	
	advertisements (1) 13:20	apartments (7) 3:23;18:14,19;19:9; 23:9;26:21;28:24	bad (1) 26:9	calendar (4) 29:16;30:11;31:12; 32:19
abide (2) 5:15;14:18	advertising (2) 25:17,24	apartment's (1) 10:1	based (3) 16:11;19:13;23:20	call (2) 23:7;27:15
above (1) 11:16	Affairs (1) 4:20	apiece (1) 14:19	basement (4) 7:21;9:23;11:17,21	calling (2) 3:2;26:14
Absolutely (1) 16:14	affect (2) 6:25;7:14	apologize (1) 11:8	basically (2) 25:11;32:1	came (2) 23:21;33:10
accept (1) 15:5	affordable (1) 23:10	Appeals (1) 30:6	bed (2) 21:16,23	Can (23) 3:24;4:8;6:23;7:4; 10:7;11:23,24,25;13:2, 5,22;14:17;17:25;19:1, 16,18;25:3,22,25; 26:20;30:13;31:19; 33:20
access (1) 7:22	again (1) 24:18	appearance (1) 7:17	bedroom (1) 10:8	cap (2) 11:9,10
accessory (22) 3:9,23;4:13;7:5,17, 20,25;8:17;13:18; 18:14,19;19:19;23:9; 24:1,6,8;25:7;26:25; 28:8,14,18,24	agencies (11) 29:13,15;30:3,8,8, 13;31:13;32:2,22,25; 33:16	appears (2) 9:25;10:17	bedrooms (1) 10:9	cards (1) 25:23
accommodations (1) 16:21	agency (2) 29:18,20	applicant (1) 4:12	begun (1) 7:5	Case (10) 3:2,2;5:5,8,23;6:1; 23:10;30:1;33:14,16
according (1) 8:15	agree (5) 4:25;5:15;8:22;12:5; 23:23	application (2) 3:3;8:7	benefit (1) 3:19	cater (1) 15:9
across (3) 19:4;25:19;28:3	agreement (1) 5:25	apply (3) 18:22;27:4;29:3	best (2) 13:9;17:17	caveat (1) 15:23
active (2) 19:5,7	ahead (3) 4:10;10:23;14:13	approve (4) 19:1;20:20;23:19; 25:3	Bill (1) 17:3	caveats (1) 13:9
actively (1) 14:17	air (1) 10:13	approval (7) 5:13,16,19;12:6; 15:25;16:5,7	blocks (1) 19:4	cc'd (2) 29:13,25
actually (4) 10:6;12:17;33:6,10	Airbnb (21) 13:11,20;14:10; 15:24;18:18;19:8;20:3; 21:12,17;23:8,14; 25:17;26:2,2,14,15,20; 28:25;29:5;33:4,9	approved (3) 7:6,11,13	BNB (1) 21:24	cease (1) 21:11
add (2) 5:22,25	Airbnb's (4) 19:9,21,23;21:10	approximately (1) 10:1	Board (3) 21:10;30:6;33:19	Cece (1) 4:18
addition (4) 5:5,8;8:16;11:17	allow (1) 25:23	area (6) 10:7;11:16;13:15; 15:1;21:5;22:11	borrowed (1) 8:8	certain (2) 3:20;25:4
additional (4) 7:7;27:18;30:10; 31:13	allowed (4) 6:19;13:16;21:4,5	argument (1) 30:6	boss (1) 32:9	certainly (2) 25:9;27:20
Additionally (1) 13:16	almost (1) 24:19	around (1) 19:24	both (7) 3:24;12:18;13:11; 14:18;16:8;19:18; 24:15	certification (2) 19:20;24:16
address (5) 4:12;7:12;13:2;23:7; 33:5	alongside (1) 10:15	association (1) 19:6	bottom (1) 28:23	chance (5) 9:5;29:19,20;30:9; 33:18
addressed (1) 33:12	although (1) 26:20	assume (2) 7:11,12	bound (1) 8:22	change (5) 15:14;16:8;26:12,13; 28:21
addresses (1) 5:19	always (1) 6:10	available (1) 14:25	break (1) 31:12	changed (2) 7:18;17:13
addressing (1) 5:21	amendment (1) 16:1	Avenue (1) 19:5	breakfast (2) 21:16,23	character (3) 7:14,15,19
adequate (1) 10:4	amendments (1) 14:16	avoiding (1) 25:17	brief (2) 20:2;32:20	check (3) 20:3;23:18;24:22
adjourn (1) 33:13	ample (1) 6:10	aware (4) 10:10;14:14;16:1; 27:5	briefly (1) 6:24	checked (1) 11:23
adjust (1) 31:14	answered (1) 19:16	away (4) 19:4;26:11,17,18	brings (1) 13:13	citizens (1) 19:6
adopt (2) 5:3,20	anxious (1) 31:16		brought (1) 28:11	clarification (1) 23:24
adopted (1) 16:2	apartment (27) 3:9;4:13;7:5,18,20, 25;8:17;9:23,25;10:8, 17;11:6,10;13:18;15:1;	B	build (1) 33:15	clarified (2)
adults (1) 15:21		back (6) 7:22;18:2;29:21;	Burch (2) 19:22;29:22	
advertised (4) 13:12,13;29:5,6			B-U-R-C-H (2) 20:7,15	
			bus (1) 26:19	

<p>22:10,22 class (4) 26:22;30:23;31:1,5 clear (1) 27:1 closet (1) 10:11 code (5) 4:18;10:14;13:14; 17:6;27:7 collecting (1) 20:1 combustion (1) 10:13 comment (3) 23:22;29:20;30:3 comments (4) 4:1;9:9;30:10;33:2 common (1) 28:4 communicate (1) 29:12 Community (2) 4:19;28:3 compared (1) 8:20 complained (1) 33:8 compliance (2) 10:20;12:4 concentration (1) 8:2 concluded (1) 33:24 conclusions (1) 5:1 condition (1) 12:5 conditional (5) 4:13;7:3,25;8:2;31:6 conditions (5) 5:13,16;15:25;16:5,6 conducted (2) 4:20;9:22 confirm (1) 21:9 confirmed (1) 17:18 confusing (1) 18:2 consideration (3) 22:16,19;25:12 considered (1) 16:23 consistent (2) 15:24;16:6 construction (2) 7:5;10:22 consult (1) 10:19 contact (5) 17:17,19,21;27:20; 30:16</p>	<p>Content (1) 8:6 continue (1) 23:19 correction (1) 3:15 correspondence (1) 31:15 County (9) 12:19;13:14;16:17, 22;17:13;19:21,24; 20:10;28:3 cover (1) 18:19 Craigslis (1) 26:16 criteria (1) 5:19 cross-examination (1) 3:22 CU (1) 3:3 current (1) 12:4 currently (2) 13:14;21:2</p> <p style="text-align: center;">D</p> <p>Dave (2) 19:22;20:7 D-A-V-E (1) 20:7 David (2) 20:9;29:22 davidburch (1) 20:15 day (2) 15:1,2 days (19) 13:13,16;14:5,25; 15:5,10,14;16:18; 18:16;20:22;21:3,6,8; 22:10,14;24:8;27:8; 30:5;33:15 dealing (1) 19:10 dealt (1) 19:21 debate (1) 14:16 decision (2) 30:4,5 define (1) 20:22 defined (1) 16:17 definition (1) 27:7 Department (4) 4:19;20:25;24:14; 25:8 depend (1)</p>	<p>30:13 describe (2) 6:23;9:20 desist (1) 21:11 deteriorated (1) 10:15 DHCA (1) 33:7 difference (2) 8:4,21 differences (2) 8:18;22:6 different (6) 21:15,17,18,19; 22:25;29:9 dinged (1) 28:20 dinging (1) 25:1 disagree (1) 30:4 discussing (1) 26:22 discussion (1) 23:15 discussions (1) 28:12 distance (1) 6:24 done (8) 7:10,12;10:18;11:21; 12:3;18:3;28:24,25 door (1) 33:8 dot (2) 18:10;30:20 down (1) 25:18 DPS (4) 20:6,11;23:18;27:2 drafter (1) 32:7 Drive (3) 3:10,11;4:14 driveway (3) 6:10;10:2,15 due (2) 8:16;33:2 dwelling (10) 4:16,17;10:1;11:2,7; 12:1;14:15;21:6;29:23, 25 dying (1) 9:15</p> <p style="text-align: center;">E</p> <p>e- (1) 31:19 early (2) 8:7;32:21 easy (1)</p>	<p>24:24 Eileen (1) 12:25 either (2) 14:20;19:12 electrical (1) 10:21 else (4) 5:21;10:24;12:8; 31:15 e-mail (6) 17:9;18:9;20:14,14; 29:10;33:3 enclosed (1) 11:16 enforce (2) 15:11;27:3 enforcement (1) 24:21 ensure (1) 15:4 entered (1) 29:6 entire (2) 11:7;25:17 entirely (1) 23:15 entrance (2) 7:21;9:24 even (5) 7:6;12:1,3;15:8; 19:24 eventually (1) 31:9 everybody (6) 25:4;26:4;29:10,19; 30:2;33:19 everybody's (2) 29:13,14 everyone (2) 4:8;20:18 everyone's (1) 23:19 evidence (1) 3:17 Exactly (2) 17:1;18:12 examiner (1) 3:16 examiner's (1) 28:9 exceeds (1) 10:3 excess (1) 13:18 excessive (1) 8:2 Exhibit (3) 6:2;14:9,11 existing (1) 10:17 explain (2) 3:18;23:17</p>	<p>explanation (1) 20:3 extremely (1) 23:24</p> <p style="text-align: center;">F</p> <p>facility (5) 19:19;24:13;25:9; 30:17,21 fact (8) 5:1;13:10,11;17:9; 18:15;22:12;25:16; 31:25 factor (1) 22:16 fair (3) 26:6,7;29:3 family (7) 9:25;13:15;21:5,12; 22:11,14,24 far (3) 6:8;7:4;8:14 FDA (3) 15:6,7;25:19 feet (6) 6:7;10:2,2,3;11:5,15 Fellows (2) 15:6;26:3 few (1) 33:15 figure (2) 29:2,16 file (1) 30:9 find (5) 8:21;12:9;26:19; 27:15,21 finding (2) 7:3;14:17 findings (2) 4:25;28:8 fine (3) 18:6;31:22,23 finish (1) 18:1 finished (2) 27:23,24 finishing (1) 11:21 FINNEGAN (47) 12:25;13:1,3,9,22, 24;16:16;17:1,4,8,16, 21,24;18:1,7,10,12,21, 24;19:1,4;20:1,20,24; 21:21,25;22:4,6,9,24; 23:2,6;24:11,24;26:11, 18;27:10,24;29:11; 31:8,16,18,22,24;32:4, 10,16 first (2) 4:3;14:8 fit (1)</p>
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<p>14:18 five (3) 30:11;31:11;32:18 FLANAGAN (2) 4:1;9:8 flexibility (1) 33:16 folks (1) 28:21 followed (1) 19:7 foot (1) 7:2 foreground (1) 28:11 formalities (1) 3:21 forward (1) 9:3 found (1) 10:14 four (1) 7:23 Francene (1) 30:20 F-R-A-N-C-E-N-E (1) 30:20 free (1) 6:22 front (1) 9:25 frontage (1) 6:7 full (1) 17:23 furnace (1) 10:5 further (1) 33:2 future (1) 18:21</p>	<p>24:20 govern (1) 23:17 grab (1) 32:18 grade (1) 11:16 greater (1) 24:8 Greg (1) 32:4 gross (1) 10:1 group (2) 22:3,23 guess (5) 11:24;23:15;24:17; 25:2;27:1 guests (3) 14:19;15:16,17</p>	<p>13:1 hit (1) 32:23 holidays (1) 32:23 home (5) 22:14,17,20;26:17, 18 homes (4) 21:12;22:1,3,23 hopefully (1) 33:19 host (2) 13:14;15:6 hosts (1) 21:12 hotel (1) 16:24 Hotel/Motel (1) 16:25 house (2) 7:22;11:22 houses (1) 7:24 housing (12) 4:4,18,19;9:17; 11:19;23:11;24:7;25:8, 25;26:6,7;27:19 human (1) 16:20 hung (1) 18:17</p>	<p>individually (1) 25:23 individuals (1) 25:24 informal (1) 3:20 information (5) 17:18,20,21;27:21; 33:9 informed (1) 19:22 informing (1) 17:9 input (2) 23:19;25:4 inspected (1) 12:12 inspection (4) 4:20;9:21,22;33:7 inspector (4) 4:4,19;9:17;11:19 interest (1) 13:10 into (5) 19:17;22:16,19; 23:14;29:6 involve (2) 26:25;27:14 involved (1) 14:17 issue (17) 10:9,16;21:1,3,4,7, 18;22:13;25:2,18; 26:12,14;27:11;28:4, 16,25;29:1 issued (4) 16:19;21:11;24:3,5 issues (11) 10:14;13:14;16:20; 19:7,10;20:24,25; 25:11;26:3,13,23 issuing (1) 21:15</p>	<p>22;10:13,25;11:3,6,11, 15;12:2,13,17;17:25; 18:3;19:15;20:2,7,9, 12;22:15,19;23:1,12; 24:13,20;25:8,15,22; 26:6;27:11,13;29:25; 30:14,15,20,25;31:4 kitchen (3) 22:17,20,23</p>	
L					
<p>G</p> <p>gallery (1) 9:3 garage (1) 10:5 gas (1) 10:5 gated (1) 7:21 generally (2) 3:23;29:18 gets (1) 29:19 given (2) 7:22;14:15 global (1) 26:25 goes (3) 4:4;30:1;31:1 Good (1)</p>	<p>H</p> <p>Hampshire (1) 19:5 hand (3) 4:6;9:18;13:6 happening (1) 28:12 happy (1) 27:20 hard (1) 27:4 head (1) 31:1 headers (1) 13:19 health (2) 16:19;17:2 hear (2) 9:16;22:18 heard (6) 19:13;22:22;23:13; 24:10;27:6,8 hearing (4) 3:16,20;33:14,23 heater (1) 10:6 help (1) 25:18 helpful (3) 20:5,16;23:24 hesitate (1) 27:15 HHS (9) 16:20,22;17:11,12; 20:22;22:12;23:16; 27:2,9 Hill (1) 30:21 H-I-L-L (1) 30:21 Hillandale (1)</p>	<p>I</p> <p>idea (2) 16:11;26:9 ideas (1) 27:3 identification (1) 14:12 identify (4) 3:25;4:9;9:4;12:24 illegal (1) 19:8 implicates (1) 30:1 impose (1) 17:3 inaccurate (2) 14:2,4 include (1) 9:2 includes (1) 25:9 including (1) 23:10 independently (1) 13:12 indicate (1) 7:17 indicating (1) 23:8</p>	<p>J</p> <p>job (2) 29:2,2</p>	<p>K</p> <p>keep (3) 33:14,15,17 Kenneth (8) 17:24;18:6,7,10; 20:21,23,24;29:22 Kenny (5) 16:20;17:9,22;24:11; 31:9 kindly (1) 4:6 Kinna (39) 3:17;4:18,18;9:17,</p>	<p>landlord (2) 25:10;27:14 language (2) 8:8,11 last (3) 27:23;28:5,7 law (6) 18:22;22:13;27:5,14; 29:2,3 laws (1) 25:10 leases (1) 29:6 least (1) 15:8 leave (3) 12:18;31:18;32:12 Leftwitch (1) 32:9 legal (2) 5:21;19:23 legislation (4) 18:13,15,17;27:6 legislative (1) 32:7 less (7) 13:13,15;14:4;15:5, 10;21:6;27:8 letters (1) 21:11 license (10) 16:19;19:19;20:25; 21:4,7,16;22:12,13; 24:8;28:15 licensed (2) 25:5;28:20 licenses (5) 16:21;21:1,6;23:18; 24:6 licensing (11) 7:3;16:22;24:1,14, 16;25:9;27:10,11; 30:16,17,22 light (2) 25:3;27:12 limitation (1) 15:21 limitedly (1) 19:21 line (1) 28:23</p>

<p>links (1) 17:16</p> <p>list (4) 14:21,22,24;15:25</p> <p>listing (8) 14:3,5,23;15:3,4,8, 24;16:6</p> <p>listings (2) 14:9,18</p> <p>little (3) 21:14;32:21;33:16</p> <p>live (3) 13:1;19:2,4</p> <p>living (3) 10:6,7;22:24</p> <p>local (1) 20:4</p> <p>locate (1) 10:18</p> <p>located (1) 9:23</p> <p>location (1) 13:11</p> <p>lodging (5) 16:17,17,19;17:6; 20:25</p> <p>long (1) 32:2</p> <p>longer (1) 29:6</p> <p>look (1) 13:25</p> <p>looked (4) 5:12;8:20,20;19:17</p> <p>looking (1) 8:3</p> <p>lot (6) 14:15,15;19:8;28:9, 11,13</p> <p>love (1) 13:9</p> <p>lovely (2) 26:21,21</p> <p>low (1) 7:25</p> <p>Lynn (1) 3:15</p>	<p>28:2,24</p> <p>mark (1) 14:8</p> <p>marked (1) 14:12</p> <p>marketing (2) 26:3,4</p> <p>Maryland (3) 3:10,13;4:14</p> <p>match (1) 8:11</p> <p>matter (2) 4:12;26:1</p> <p>maximum (1) 15:17</p> <p>may (8) 9:2;16:16;17:12,12; 18:13,13;20:13;31:13</p> <p>maybe (9) 18:16;25:17,19,22; 26:9;27:3,14;28:15; 29:4</p> <p>mean (8) 14:6;15:12;24:4; 25:1;27:5;28:17,23; 29:1</p> <p>meaning (1) 6:19</p> <p>means (3) 5:20;8:1;15:6</p> <p>measured (1) 10:2</p> <p>meet (1) 31:4</p> <p>meetings (1) 21:10</p> <p>meets (1) 12:4</p> <p>member (2) 19:5,5</p> <p>mentioned (2) 33:6,8</p> <p>met (1) 24:7</p> <p>micro- (1) 9:11</p> <p>microphone (2) 9:12,13</p> <p>might (7) 20:9;25:15,18;27:21; 28:19,19,20</p> <p>minimum (3) 14:19,24;15:14</p> <p>minute (2) 29:16;31:11</p> <p>minutes (2) 30:11;32:18</p> <p>model (1) 23:8</p> <p>moment (1) 32:2</p> <p>Monday (1) 33:1</p>	<p>Montgomery (3) 12:19;19:24;20:10</p> <p>montgomerycountymd (1) 18:11</p> <p>months (12) 16:18,18,21;17:7,10, 10;21:1,8;22:14;26:13; 29:5,7</p> <p>more (9) 4:5;12:21;16:23; 17:10;18:16;25:12; 27:1,12,20</p> <p>morning (1) 17:11</p> <p>most (1) 15:15</p> <p>move (3) 9:11,11,13</p> <p>moved (1) 12:4</p> <p>moving (1) 33:13</p> <p>much (3) 5:25;32:11;33:21</p> <p>multiple (1) 3:18</p> <p>must (1) 16:6</p> <p>myself (1) 6:10</p>	<p>17:16</p> <p>nor (1) 23:14</p> <p>note (1) 10:5</p> <p>notice (2) 8:8;33:7</p> <p>November (2) 33:1,1</p> <p>number (2) 18:8;26:20</p>	<p>opportunity (1) 30:3</p> <p>opposed (2) 23:7;25:24</p> <p>oral (1) 30:5</p> <p>order (3) 4:3;15:4,15</p> <p>original (1) 33:7</p> <p>others (1) 28:2</p> <p>out (10) 7:23;13:19;15:3; 20:4;25:13;27:21;28:2; 29:2,16;31:25</p> <p>outside (2) 10:11;23:6</p> <p>over (2) 19:22;20:13</p> <p>overlapping (1) 28:15</p> <p>overnight (4) 13:15;16:21;21:3,6</p> <p>own (2) 5:3,20</p> <p>owning (1) 11:21</p> <p>OZAH (2) 3:2;31:5</p>
M		N		O
<p>mails (1) 31:20</p> <p>maintained (1) 7:19</p> <p>maintenance (1) 25:11</p> <p>makes (1) 15:15</p> <p>making (2) 11:22;12:3</p> <p>manager (1) 30:21</p> <p>many (2)</p>	<p>name (6) 3:15;4:11;11:25; 12:25;17:23,23</p> <p>narrowing (1) 25:18</p> <p>navigate (1) 28:17</p> <p>need (12) 7:12;10:16,21;16:13; 22:9,21;27:1,5,21; 29:17;31:12,18</p> <p>needs (2) 19:17;25:5</p> <p>neighbor (1) 33:8</p> <p>neighborhood (5) 6:25;7:14,15,19,23</p> <p>neighborhoods (1) 28:4</p> <p>neighbors (1) 6:11</p> <p>neither (1) 23:13</p> <p>New (1) 19:5</p> <p>night (4) 14:20,22;21:1,13</p> <p>nights (1) 21:2</p> <p>None (1)</p>	<p>offered (1) 13:17</p> <p>office (1) 31:8</p> <p>Once (2) 12:18;32:22</p> <p>one (23) 8:16;10:14;12:11; 14:19,22;15:15;16:13; 17:3;20:12;21:1;22:17, 20,23;23:22;24:6,6; 25:12;26:13;27:25; 28:7;29:4,4,21</p> <p>online (2) 13:11;17:11</p> <p>only (10) 9:6;10:14,16;15:6; 16:12,12;22:16,19; 27:24;33:9</p> <p>on-site (1) 8:15</p> <p>onward (1) 31:11</p> <p>open (5) 6:7;22:12;33:14,15, 17</p> <p>operating (4) 13:11;21:12,13,17</p> <p>operational (1) 26:13</p> <p>opinion (1) 8:1</p>	P	
<p>parameters (1) 29:24</p> <p>Park (4) 18:18;32:5,5;33:4</p> <p>parking (15) 6:4,6,7,9,10,12,13, 14,16,20,22;8:15;10:4; 16:10,13</p> <p>Parkland (1) 3:10</p> <p>Parkway (1) 13:3</p> <p>part (8) 13:24;17:4;18:12,15; 24:14;25:8,16;30:25</p> <p>partially (2) 28:15,16</p> <p>parties (1) 3:24</p> <p>pending (2) 16:4;18:13</p> <p>people (4) 13:17;16:12;20:3; 32:23</p> <p>Pepe (73) 3:3,4,6,6,7,8,11,13; 4:3,6,10,11,11,17,22, 24;5:2,5,8,11,14,17,23; 6:3,6,14,16,19,22;7:1, 9,15;8:6,11,14,23,25;</p>				

<p>9:3,11,12;11:14,20; 12:7,9,12,15,22;13:10, 21;14:1,3,7,14,22; 15:13,22;16:3,8,14; 17:15;19:11;23:19,22; 24:5;25:21;26:5;27:22; 28:5,7;32:12,14;33:6, 22</p> <p>per (3) 6:8;13:17;15:16</p> <p>percentage (1) 8:1</p> <p>period (2) 15:21;19:23</p> <p>permit (3) 6:16,20;12:9</p> <p>permits (4) 10:18,21;11:22,23</p> <p>permitted (6) 6:6,13,14,17;19:23; 29:24</p> <p>Permitting (5) 10:19;12:14,19; 19:22;20:13</p> <p>person (3) 20:6;27:20;32:6</p> <p>pharmacy (1) 15:7</p> <p>phone (2) 18:8;26:20</p> <p>photos (2) 13:20;14:9</p> <p>pick (1) 26:19</p> <p>planner (1) 32:8</p> <p>Planning (8) 18:18;21:9,10;28:12; 29:21;32:5,5;33:4</p> <p>platforms (1) 26:15</p> <p>please (6) 4:8,8;9:17,20;12:23, 24</p> <p>plumbing (1) 10:21</p> <p>point (1) 15:16</p> <p>populated (1) 15:4</p> <p>position (3) 25:6;27:2,2</p> <p>positive (1) 19:18</p> <p>possible (2) 9:16;31:19</p> <p>post (1) 25:23</p> <p>posted (1) 33:7</p> <p>potential (1) 28:1</p> <p>powers (1)</p>	<p>25:2</p> <p>precedent (2) 28:1,1</p> <p>predated (1) 12:1</p> <p>predominantly (1) 7:16</p> <p>preliminary (1) 4:20</p> <p>premiere (1) 26:21</p> <p>prepared (1) 5:9</p> <p>press (1) 31:11</p> <p>presumably (1) 28:18</p> <p>presume (1) 21:7</p> <p>previous (3) 8:12;28:8,18</p> <p>printed (1) 13:19</p> <p>prior (1) 11:21</p> <p>probably (4) 17:17;27:19;28:11, 15</p> <p>problem (3) 14:1;24:21;25:16</p> <p>problematic (1) 28:4</p> <p>proceeding (1) 4:3</p> <p>process (1) 8:7</p> <p>promise (1) 9:15</p> <p>property (7) 4:13,21;6:8;7:2,7,18; 9:21</p> <p>proposed (2) 7:24;14:16</p> <p>provided (1) 5:24</p> <p>provision (2) 17:6,8</p> <p>proximity (1) 15:6</p> <p>public (1) 26:5</p> <p>purpose (1) 20:23</p> <p>purposes (1) 24:18</p> <p>put (5) 11:8;15:1;18:4; 19:12;33:3</p>	<p>quickly (2) 9:16;30:13</p> <p>quite (2) 9:14;16:4</p>	<p>R</p>	<p>R-200 (2) 21:15,17</p> <p>R-90 (2) 13:15;21:3</p> <p>raft (1) 23:9</p> <p>raise (4) 4:6;9:18;13:5;26:2</p> <p>raised (2) 28:25;29:1</p> <p>rare (1) 6:9</p> <p>read (1) 28:8</p> <p>realized (1) 3:14</p> <p>really (4) 15:3;19:16;26:22; 27:25</p> <p>rear (2) 7:21;9:24</p> <p>reasoning (1) 23:10</p> <p>recall (2) 28:24;29:4</p> <p>recess (1) 32:20</p> <p>record (14) 3:25;4:9;5:10;9:4; 12:24;18:5;19:12; 29:14;30:11,16;32:18; 33:14,15,17</p> <p>records (1) 11:16</p> <p>refer (1) 29:21</p> <p>referenced (1) 23:23</p> <p>referral (1) 31:5</p> <p>registration (3) 7:4;30:17,18</p> <p>regulations (2) 21:20;30:1</p> <p>related (2) 13:10;27:19</p> <p>relation (1) 19:2</p> <p>remember (1) 29:4</p> <p>rent (7) 13:12,13;14:4;25:24; 26:8,8,20</p> <p>rental (7) 19:19;22:1;24:13; 25:9;30:17,21;33:9</p>	<p>rentals (3) 13:15;26:23;29:8</p> <p>Report (15) 4:23;5:19,24,24; 7:16,23;8:5,9,16,23; 11:13,14;30:4;32:8; 33:5</p> <p>reports (1) 28:10</p> <p>request (2) 30:5;31:13</p> <p>required (1) 22:13</p> <p>requirement (6) 7:2;10:3;15:2,9; 16:22;17:11</p> <p>requirements (6) 8:15,15;16:10;17:2; 20:4;31:4</p> <p>requiring (1) 20:2</p> <p>reservations (1) 15:5</p> <p>residence (1) 9:24</p> <p>residential (2) 7:16;13:15</p> <p>resolved (1) 10:16</p> <p>respond (6) 30:8,13;32:3;33:1, 16,18</p> <p>response (1) 30:2</p> <p>responses (2) 29:19,20</p> <p>responsible (1) 12:3</p> <p>result (1) 7:20</p> <p>retaining (1) 10:15</p> <p>reviewed (1) 4:23</p> <p>right (32) 4:6;5:18;6:23;7:1; 9:2,7,18;10:10,13,23; 11:9,11,18;12:20;13:6; 15:22;16:3;18:12,18, 24;20:12;22:24;23:1, 12;25:19;30:6,10,14; 31:23;32:3,17;33:21</p> <p>rights (1) 25:10</p> <p>ROBESON (121) 3:2,7,9,12,14,15;4:2, 8,15,22,25;5:3,7,10,12, 15,18;6:1,4,12,15,18, 21,23;7:8,10;8:3,10,13, 19,24;9:1,10,13,20; 10:12,23;11:1,4,9,12, 18;12:5,8,11,16,20,23; 13:2,5,8,21,23,25;14:6,</p>	<p>8,13,21;15:11,20,23; 16:4,10,15,25;17:2,5, 14,19,23;18:6,9,11,20, 22,25;19:2,11;20:5,8, 11,16,21;21:19,23; 22:3,7,8,9,18;23:4,13; 24:4,17,21,25;25:14; 26:1,7,17,24;27:11,22; 28:5,23;29:12;30:19, 23;31:3,7,10,17,21,23; 32:1,7,12,15,17,21; 33:11</p> <p>ROBISON (1) 3:5</p> <p>ROBSON (1) 22:5</p> <p>Rockville (1) 3:10</p> <p>role (3) 23:16;27:1,4</p> <p>room (5) 10:7;13:17;15:16,18, 19</p> <p>rooms (5) 13:12,16;15:18; 26:22,22</p> <p>rotation (1) 15:7</p> <p>Roughly (1) 11:15</p> <p>rule (1) 14:15</p> <p>rules (3) 13:18;14:18;23:17</p> <p>running (1) 22:14</p> <p>Russ (1) 32:4</p>
				<p>S</p>		
	<p>Q</p>				<p>Salvatore (2) 3:3;4:11</p> <p>same (3) 24:7;28:19;33:19</p> <p>saying (7) 20:17,21,22;25:6,20; 26:9;29:7</p> <p>schedule (1) 30:12</p> <p>scheduled (1) 32:24</p> <p>Schindler (2) 3:11;4:14</p> <p>search (1) 11:25</p> <p>searched (1) 15:2</p> <p>searching (2) 14:23,25</p> <p>second (3) 13:5,25;21:2</p> <p>section (3)</p>	

<p>30:22;31:1,2 seek (1) 6:8 seeking (1) 4:12 send (1) 31:19 sense (1) 15:15 separate (4) 10:8,8;22:21;28:16 separation (1) 7:2 Services (6) 10:19;12:14;16:20; 19:22;20:13;21:16 sessions (1) 28:13 set (3) 29:18;30:12;31:12 several (1) 19:4 share (2) 15:19;22:23 sharing (1) 22:20 shed (2) 25:3;27:12 show (4) 13:21;14:24;15:3; 24:2 showing (1) 11:16 side (2) 7:22;9:24 sign-in (1) 29:10 Silver (2) 3:13;4:14 similar (2) 15:10;23:25 single (6) 9:25;13:15;21:5,12; 22:11,14 site (1) 17:12 situation (1) 29:8 six (14) 15:8;16:18,18,21; 17:6,10,10;21:1,8; 22:14;26:12;29:5,6,8 size (3) 11:1,3,10 sleeping (2) 10:7,10 slightly (1) 11:4 somebody (6) 14:23,24,25;15:18; 24:22;26:8 someone (1) 27:19</p>	<p>sorry (4) 6:16;25:15;30:15; 32:11 space (1) 16:13 special (1) 21:20 spoke (1) 20:7 Spring (2) 3:13;4:14 square (5) 10:1,2,3;11:4,15 staff (17) 3:24;4:23;5:19,24, 24;7:16,23;8:5,9,16,23; 11:12,14;21:10;29:21; 32:5;33:5 standards (1) 5:21 stands (4) 7:1;14:5,6;18:23 stated (1) 14:3 statement (9) 5:5,8,23;6:1;7:17; 8:4,4,6,9 states (1) 8:5 Stay (5) 9:14;14:19,24;15:14; 31:17 stays (1) 21:3 sticker (1) 12:18 sticky (2) 25:1,2 still (3) 7:12,19;9:25 stops (1) 26:19 street (7) 6:5,6,9,13,14;10:4; 25:19 students (3) 15:7,7,19 subject (1) 3:21 submitted (1) 8:7 substantive (1) 8:21 substantively (1) 8:13 supervisors (1) 20:12 supplier (1) 26:21 sure (7) 10:20;11:22;12:3; 20:14;28:3,7;33:11 Sweetbriar (1)</p>	<p>13:3 sworn (3) 4:7;9:19;13:7</p> <p style="text-align: center;">T</p> <p>talk (2) 27:17,19 Tax (1) 11:16 taxes (1) 20:1 Technical (1) 5:24 temporary (1) 25:25 ten (1) 30:5 tenant (2) 25:10;27:14 tenants (1) 7:7 tentative (1) 30:12 testify (3) 4:5;9:5,6 testimony (8) 3:17,21;4:5;5:4,20; 9:9,14;23:21 thanks (1) 20:16 Thanksgiving (2) 32:23,25 though (3) 12:14;15:8;19:24 thought (6) 6:12;11:7;23:4; 24:24;30:16;33:10 three (3) 30:23;31:1,5 throw (1) 25:12 timeframe (1) 14:23 timeframes (2) 29:18;31:13 times (1) 3:18 today (1) 24:24 total (2) 11:1,3 totally (1) 23:1 transcripts (1) 28:9 transient (23) 14:14;16:16,17,19; 17:6;19:20;20:25;21:4, 16;22:11,13,16,22; 23:18;24:7,16,18;25:5, 7;27:2,8;29:23,25 tries (1)</p>	<p>23:7 Troy (1) 32:9 true (1) 15:13 trust (3) 20:18;31:24,24 try (3) 8:12;27:15;29:3 trying (2) 25:18;27:4 turn (1) 12:24 turnaround (1) 27:17 two (15) 6:24;8:20;10:4,8; 13:17;14:19;15:16,17, 19,21;16:12;24:5; 25:24;29:21,22 types (1) 19:6</p> <p style="text-align: center;">U</p> <p>under (5) 3:21;11:4;21:3;22:1, 10 Understandable (1) 15:13 Understood (1) 16:8 unit (3) 7:4;10:6;22:25 up (16) 4:10;9:14;13:13; 14:24;15:3;16:18,18, 21;17:10;18:17;21:1,8; 25:24;26:12;28:10; 32:24 use (5) 4:13;7:3,25;8:2;31:6 used (2) 19:9;23:8 usually (4) 6:7;11:8;33:4,11 utility (1) 10:11</p> <p style="text-align: center;">V</p> <p>vacations (1) 32:24 vehicles (1) 10:4 ventilation (1) 10:12 verify (2) 12:19;20:17 violation (1) 10:14</p>	<p style="text-align: center;">W</p> <p>Wait (1) 6:12 waiver (1) 16:11 wall (1) 10:15 wants (1) 26:8 water (1) 10:6 wavelength (1) 33:20 way (6) 7:18;15:4;20:19; 28:14,21;29:9 website (3) 17:13;20:3,10 week (3) 21:13;32:3;33:3 weekend (1) 21:13 weeks (2) 15:8;29:8 Welch (14) 16:20;17:9,17,22; 18:6,7;20:21,23,24; 21:11;23:16;24:12; 29:22;31:9 W-E-L-C-H (1) 18:7 welcome (1) 4:5 weren't (1) 11:24 What's (2) 11:1;23:4 Whereupon (2) 32:20;33:23 whole (2) 23:9;26:22 who's (1) 20:6 willing (1) 15:14 wise (1) 8:6 wish (1) 5:3 within (2) 7:2,19 Witness (3) 4:7;9:19;13:7 wondering (2) 25:16;28:17 wood (1) 10:15 word (1) 28:6 work (5) 10:18;11:20;12:3;</p>
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17:16;24:9 workaround (1) 18:16 worked (1) 31:25 workshops (1) 28:13 world (2) 23:6;24:22 worth (1) 21:1 wrap (1) 32:24 wrinkle (1) 18:14 write (1) 30:4 writing (1) 31:14 written (1) 18:17 wrote (2) 8:6;32:8 WSSC (4) 10:19;11:23;12:16, 18	33:2 11/18 (1) 33:17 1177 (1) 10:1 1200 (1) 11:4 1210 (1) 11:16 12th (1) 9:23 14010 (1) 3:9 150 (1) 7:24 17-01 (1) 3:3			
Y	2			
year (1) 15:3 yesterday (1) 13:19	3			
Z	30 (19) 13:13,16;14:4,9,25; 15:1,5,10,14;16:18; 18:16;20:22;21:3,6,8; 22:10,14;24:8;27:8			
Zika (1) 23:5 zone (2) 21:3,18 zoning (4) 14:16;24:18;26:23; 27:7 Z-T- (1) 23:2 ZTA (4) 18:18;23:2,4,7 Z-T-A (1) 23:4 ZTAs (1) 23:7 ZTA's (1) 23:7	300 (1) 7:2 30A (2) 14:9,11 31 (1) 14:9 320 (1) 10:3			
1	4			
10:35 (1) 33:23 1011 (2) 3:11;4:14 10404 (1) 13:3 11/14 (1)	4 (1) 6:2 415 (1) 10:2			
1	7			
10:35 (1) 33:23 1011 (2) 3:11;4:14 10404 (1) 13:3 11/14 (1)	70 (1) 6:7 777-3840 (1) 18:8 7th (2) 33:1,1			