

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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: LOCAL MAP AMENDMENT : Case No. H-110
: ARTSPACE PROJECTS, INC. :
: :
: :
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A hearing in the above-entitled matter was held on January 8, 2016, commencing at 9:35 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn Robeson, Hearing Examiner

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ON BEHALF OF THE APPLICANT:		
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ELIZABETH C. ROGERS, ESQ.		
LERCH, EARLY & BREWER		
3 Bethesda Metro Center, Suite 460		
Bethesda, Maryland 20814		
WITNESSES:		
Karen Roper, Board of Directors East Silver Spring	10	
Citizens Association (ESSCA)		
Stacey Mickelson, Artspace	12	
1444 Rhode Island Avenue, Unit 1003		
Washington, D.C. 20005		
Josh Sloan, VIKI	22	
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John Maisto, BKV Group	46	
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Charles A. Irish, VIKI	57	
20251 Century Boulevard, Suite 400		
Germantown, Maryland 20874		
C. Craig Hedberg	72	
10440 Little Patuxent Parkway, Suite 900		
Columbia, Maryland 21044		
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1 say will be under oath and recorded for the record. The

2 transcript is available to the District Council. You may be

3 asked questions about your testimony, and the proceedings

4 follow a certain order, which is opening statements, the

5 Applicant's case, anything you want to say, and closing

6 statements. Are there any preliminary matters?

7 MS. HARRIS: We have several preliminary matters.

8 MS. ROBESON: Okay.

9 MS. HARRIS: So, the first one is we have our

10 Affidavit of Posting.

11 MS. ROBESON: Okay.

12 MS. HARRIS: So, we can submit that for the

13 record. And I think the -- this should be Exhibit 27.

14 MS. ROBESON: Okay. Thank you.

15 MS. HARRIS: You're welcome.

16 (Exhibit No. 27 was marked for

17 identification.)

18 MS. HARRIS: And then I would note that we had

19 submitted two other recent exhibits, Exhibit 24 and 25 --

20 MS. ROBESON: Right.

21 MS. HARRIS: -- and in submitting those we

22 realized two things, and so I have two other additional

23 exhibits to submit, one is that the cover sheet that we had

24 previously submitted had some binding elements on it, but

25 not all of the binding elements.

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1 P R O C E E D I N G S

2 MS. ROBESON: Calling the case of Local Map

3 Amendment H-110, application of Artspace Projects, Inc.,

4 requesting an amendment to the Local Map Amendment to re-

5 zone property located at 801 Sligo Avenue, Silver Spring,

6 Maryland from the R-60 to the CRNF Zone, and I'm not going

7 to add all the numbers to the end.

8 This hearing is conducted on behalf of the

9 Montgomery County District Council. My name is Lynn

10 Robeson, I'm the Hearing Examiner, I take all the evidence

11 and testimony in the case, and then parties have a right to

12 request oral argument before the District Council, but

13 there's no new evidence, so whatever you want to say you

14 should say it today.

15 All right. Can the parties identify themselves

16 for the record?

17 MS. HARRIS: Good morning, Pat Harris with Lerch,

18 Early & Brewer on behalf of the Applicant Artspace.

19 MS. ROBESON: Good morning.

20 MS. ROPER: I'm Karen Roper, I'm on the Board of

21 Directors of the East Silver Spring Citizens Association.

22 MS. ROBESON: Okay. Is there anyone else that is,

23 that wishes to testify that's not going to be called by the

24 Applicant? Okay, seeing none, these proceedings are

25 informal, but they do have certain formalities, and what you

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1 MS. ROBESON: Right.

2 MS. HARRIS: So, what we've done is we would like

3 to submit a revised cover sheet which eliminates the binding

4 elements on the cover sheet so they're only in one place,

5 which is on the Local Map Amendment Plan itself.

6 MS. ROBESON: Okay. Let's do that when it comes

7 to your case-in-chief --

8 MS. HARRIS: Okay.

9 MS. ROBESON: -- rather than --

10 MS. HARRIS: That's fine.

11 MS. ROBESON: -- doing it as a preliminary matter.

12 MS. HARRIS: Okay.

13 MS. ROBESON: Okay.

14 MS. HARRIS: And then similarly the model

15 covenants got revised, but --

16 MS. ROBESON: I was going to say that. I realized

17 that yesterday --

18 MS. HARRIS: Yes.

19 MS. ROBESON: -- that you're --

20 MS. HARRIS: So did we.

21 MS. ROBESON: -- a step ahead of me, so --

22 MS. HARRIS: Okay.

23 MS. ROBESON: -- that's good.

24 MS. HARRIS: Okay.

25 MS. ROBESON: Okay. Could you -- do you have an

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1 opening statement?
2 MS. HARRIS: Brief. A brief one, yes.
3 MS. ROBESON: Okay. What I was going to do rather
4 than, I don't know whether you're in opposition or --
5 MS. ROPER: I'm in support.
6 MS. ROBESON: You're in support. Okay.
7 MS. ROPER: We're working very closely with
8 Artspace in our community. I think you have --
9 MS. ROBESON: Yes.
10 MS. ROPER: -- a letter from ESSCA.
11 MS. ROBESON: I do. Okay. What I was going to
12 suggest is that if you had concerns that you would be able
13 to state those so the Applicant can address them, but if
14 you're in support --
15 MS. ROPER: Mine is more of an opening statement
16 type of thing.
17 MS. ROBESON: Well, I tell you what --
18 MS. ROPER: Or --
19 MS. ROBESON: -- what we could do is this, if it's
20 okay with you, you give your opening statement --
21 MS. HARRIS: Uh-huh.
22 MS. ROBESON: -- and then I will let her testify,
23 and that way we can, I think it'll be more streamlined to do
24 that.
25 MS. HARRIS: That makes perfect sense.

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1 MS. ROBESON: Okay. Ms. Harris.
2 OPENING STATEMENT
3 MS. HARRIS: Thank you. As I indicated before,
4 Pat Harris with Lerch, Early on behalf of the Applicant,
5 representing Artspace in connection with the Local Map
6 Amendment before you, H-110. This morning we'll be calling
7 four witnesses, it'll be Mr. Stacey Mickelson, who's
8 representing the Applicant, he's the Vice-President of
9 Government Affairs; then Mr. Josh Sloan who's the Land
10 Planner with VIKA; followed by the Architect John Maisto
11 with BKV Group Architects; Chuck Irish with VIKA, the Civil
12 Engineer; and then finally, Mr. Craig Hedberg who's our
13 Traffic Engineer.
14 The Local Map Amendment is a proposal to re-zone
15 the property from R-60 to CRNF 1.25 a maximum of 1.25 FAR,
16 though as you'll hear it's the total that we're recommending
17 is actually a little less than that. In accordance with
18 Section 59(5) of the Zoning Ordinance, and also, which
19 addresses local Floating Zones, and then also 59(7.2.1)(e),
20 which is a local amendment.
21 MS. ROBESON: Don't -- yes, just say 59(7).
22 MS. HARRIS: Yes. Okay. Got it.
23 MS. ROBESON: No, I'm joking. Go ahead.
24 MS. HARRIS: Or maybe the page number. No.
25 MS. ROBESON: Right.

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1 MS. HARRIS: The property is located at 801 Sligo
2 Avenue, and it involves seven lots, Lots 5 through L in the
3 subdivision, the Easley Subdivision in Block J, and there's
4 2.31 acres involved in this re-subdivision.
5 This Local Map Amendment presents a unique
6 opportunity, the property, and you'll hear more about this
7 through the testimony, but the property is currently owned
8 by the County in anticipation of the County re-locating the
9 police station there, the Third District, which they did in
10 fact do. The County issued what's called a RFQADP, which
11 stands for a request for qualifications and development
12 proposals, and in that proposal request there was a specific
13 request for, and I quote, "mixed income housing development,
14 including arts, live-work, multi-family, affordable rental,
15 and for sale housing that is compatible with the surrounding
16 residential neighborhood, and the goals stated in the
17 RFQADP." And the Applicant's testimony will get into
18 further detail on that.
19 As indicated by Exhibit 12 in the record, which is
20 the County authorization letter, Artspace was in fact the
21 entity that was selected to pursue the re-zoning of the
22 property.
23 I would finally note that ESSCA, the Silver Spring
24 Civic Association group, we've worked very closely with
25 them, and their letter is attached to the Staff Report,

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1 which is Exhibit 21. I think the Staff Report does a very
2 good job of presenting a comprehensive evaluation of the
3 property, we have Staff support, Planning Board support,
4 support from the community. As you can see, there's no
5 opposition in this case, so if it, in an effort to
6 streamline we are prepared to put all our witnesses on, and
7 they, but the level of detail, if the information is already
8 in the record, unless the Hearing Examiner so requests there
9 may be times where we just reference the Staff Report, as
10 opposed to going through detail on certain things.
11 MS. ROBESON: Thank you. I was going to make the
12 same request.
13 MS. HARRIS: Okay. Okay. Good, we're on the same
14 page.
15 MS. ROBESON: I have a couple of questions just
16 going through the file, but other than that, if your
17 witnesses want to adopt the findings of the Staff Report as
18 their own testimony, that's fine.
19 MS. HARRIS: Good. Okay. Thank you.
20 MS. ROBESON: All right?
21 MS. HARRIS: And with that, that's the end of our
22 closing, our --
23 MS. ROBESON: Okay.
24 MS. HARRIS: -- opening statement.
25 MS. ROPER: Opening.

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1 MS. HARRIS: Yes, got ahead of myself.
2 MS. ROBESON: Okay. What I'd like to do is hear
3 your testimony now --
4 MS. ROPER: Okay.
5 MS. ROBESON: -- if that's okay. And so, what I
6 need to do is swear you in, so you need to raise your right
7 hand.
8 (Witness sworn.)
9 MS. ROBESON: All right. Please state your name
10 and address for the record.
11 MS. ROPER: Karen Roper, 7911 Chicago Avenue,
12 Silver Spring, Maryland.
13 MS. ROBESON: Okay. Ms. Roper, why don't you tell
14 us what you have to say?
15 MS. ROPER: Okay. I am on the Board of Directors
16 for the East Silver Spring Citizens Association. This, I
17 think we're making history here because this is truly a
18 grassroots project. Five years ago our community, who we
19 developed a process where we call micro to macro, so we
20 engage all the property owners and residents around the
21 property, and we propose to the County Executive to have an
22 art component, to have studios, and when the RFP came out we
23 again worked very closely with the Staff to identify what
24 zones, what binding elements were needed. When Artspace was
25 chosen they picked up with us on that, and their design was

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1 so sensitive to the neighborhood that it didn't take much
2 for the neighbors surrounding that, and that would be on
3 Sligo, Grove, Twin Holly, and Silver Spring Avenue. More
4 than 40 neighbors were involved in this, they were satisfied
5 and happy with this, brought it to the broader ESSCA
6 community that voted I think, we, they did, they voted
7 unanimously to support this zone change.
8 MS. ROBESON: Okay. Now, just to clarify, you're
9 testifying as an -- it's --
10 MS. ROPER: I'm testifying as Chair of the --
11 MS. ROBESON: Well --
12 MS. ROPER: Yes.
13 MS. ROBESON: -- you have to be represented by
14 Counsel to testify on behalf of an organization. So, what
15 I'm saying is --
16 MS. ROPER: Then I'm an individual.
17 MS. ROBESON: -- you're -- that's -- I'm just
18 clarifying it for the record. But I appreciate the input.
19 MS. ROPER: Yes.
20 MS. ROBESON: Okay, is there anything else you'd
21 like to say?
22 MS. ROPER: No, that's about it.
23 MS. ROBESON: Okay. Questions of --
24 MS. HARRIS: No. Thank you.
25 MS. ROBESON: Okay. Go ahead, Ms. Harris.

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1 MS. HARRIS: Okay. So, we'll call our first
2 witness, which is Mr. Stacey Mickelson. Where would you
3 prefer for him to sit, here, or up there, or?
4 MS. ROBESON: Right there.
5 MS. HARRIS: Okay. Last time I was here that was
6 the hot seat, so --
7 MS. ROBESON: Oh.
8 MS. HARRIS: -- this is more friendly. Thank you.
9 MS. ROBESON: Well, we -- okay. Never mind. I
10 won't go into the last time we were -- okay. Go ahead.
11 MS. HARRIS: Thank you. Mr. Mickelson, can you
12 please state your full name, occupation, and your business
13 address for the record?
14 MR. MICKELSON: I will, thank you. Stacey Lee
15 Mickelson with Artspace Projects, Vice-President, location
16 250 North Third Avenue, Suite 400, Minneapolis, Minnesota
17 55401.
18 MS. HARRIS: And then can --
19 MS. ROBESON: Okay. Just a second. Please raise
20 your right hand.
21 (Witness sworn.)
22 MS. ROBESON: Okay. Go ahead.
23 MS. HARRIS: Thank you. Can you please provide a
24 little bit of background about your education and
25 professional background, and then also about Artspace

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1 itself?
2 MR. MICKELSON: Sure. I have a Bachelor of Arts
3 degree from a small university in North Dakota where I
4 served six years in the North Dakota House of
5 Representatives from 1994 to 2000, I retired at the age of
6 29, and came to work for Artspace and developed and created
7 for them the Government Affairs Division, of which I now
8 lead. As a side role within the organization I'm also a
9 team lead on the consulting and new projects division of the
10 organization, which is really the first introduction of my
11 company or my organization to a community, and we shepherd a
12 project through the initial phases of meetings with
13 communities, with mayors, and other political leaders to get
14 a project started.
15 Artspace is the largest real estate developer in
16 the nation that specifically designs spaces on behalf of
17 artists and arts organizations. To date we have about 40
18 projects in 13 communities across the -- sorry, 40 projects
19 in 23 communities across the United States. We have prior
20 experience on developing sites similar to this, one in
21 California, and another one in Washington State, we also
22 have a project that will be similar in design to this that
23 BKV Architects, who will be here testifying today, designed
24 for us in Elgin, Illinois, which is an adaptive reuse with
25 new construction on site, so we feel we're well suited to

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1 work on this site with the community.
2 MS. HARRIS: And can you please explain the
3 typical Artspace development, and what makes the residences
4 of the project so unique?
5 MR. MICKELSON: So, our projects are unique in
6 that we have an artist work model, and that we have based in
7 allowing more volume of space within each residence so that
8 the chosen artist who will live in the building has ample
9 room and space to break out and do whatever creative
10 activity that they're engaged in, so whether that be
11 painting, or dancing, or music, or clay, or photograph, or
12 film making, we allow them to have that in their space. And
13 the reason why we think that we are unique is that in that
14 extra volume of space we have wider corridors so big pieces
15 of art can be moved up and down a hallway, a larger
16 elevator, durable surfaces, a lot of attention is put to
17 ventilation, so there's natural cross-ventilation within
18 each of these facilities, each of these units, which also
19 helps with our operation costs on the utility side. So, we
20 take a lot of attention to those kinds of things.
21 MS. ROBESON: Do you, I'm just --
22 MR. MICKELSON: Yes.
23 MS. ROBESON: -- curious --
24 MR. MICKELSON: Yes.
25 MS. ROBESON: -- do you -- how does this finance?

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1 This has nothing -- I'm just interested --
2 MR. MICKELSON: Yes.
3 MS. ROBESON: -- how do you finance this?
4 MR. MICKELSON: So, very loosely I'll walk you
5 through what our pro-formas typically look like.
6 MS. ROBESON: Yes, I don't want to take too much
7 time --
8 MR. MICKELSON: No, no, no.
9 MS. ROBESON: -- because I want to get through the
10 hearing, but I am curious.
11 MR. MICKELSON: Because I could talk all day about
12 these things.
13 MS. ROBESON: Well, don't do that.
14 MR. MICKELSON: No, I won't. I promise you, for
15 all of us. So, typically our pro-forma model looks like an
16 80 percent stack of financing that comes from some federal,
17 state, or local resource already dedicated to housing or
18 community development, or economic development. And so, in
19 that 80 percent, 55, 60 percent of it comes from a low
20 income housing tax credit, either four or nine percent.
21 MS. ROBESON: The incentive.
22 MR. MICKELSON: Yes.
23 MS. ROBESON: Yes.
24 MR. MICKELSON: So, that's our base, and then --
25 MS. ROBESON: Okay.

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1 MR. MICKELSON: -- it'll be stacked too for CDBG
2 home and whatnot to get us to 80, the remaining 20 is
3 philanthropic, and some first mortgage to get us to closing.
4 MS. ROBESON: Okay. I just --
5 MR. MICKELSON: That's super-simple. It's harder
6 than that.
7 MS. ROBESON: There's -- I'm actually interested
8 because there -- anyway. I won't go into that. Go ahead.
9 MS. HARRIS: But I, but that's -- I'm glad you
10 asked that question because actually that does tie into one
11 component, which I'll just ask now, which is because there's
12 a State financing component to this, the timing is a little
13 sensitive, and I just think it would be helpful to
14 explain --
15 MS. ROBESON: Okay.
16 MS. HARRIS: -- why --
17 MS. ROBESON: Explain that.
18 MR. MICKELSON: We should talk about that. Yes.
19 It's -- in order for us to complete our goals and objectives
20 with the community and the County, and all the promises that
21 have been made in our RFQADP, there is a low income housing
22 tax credit application for the State of Maryland that is due
23 on August the 1st of this year. And so, we are in this
24 scramble to get everything in place, from architectural, to
25 all of the approvals and site plans, to get those pieces

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1 approved so we can submit them with that document.
2 MS. ROBESON: You have to have the site plan
3 approved?
4 MR. MICKELSON: Yes.
5 MS. ROBESON: By August 1st?
6 MR. MICKELSON: Yes.
7 MS. ROBESON: Okay.
8 MS. HARRIS: Thank you. And Ms. Roper touched on
9 this, but it may be helpful to just explain a little bit how
10 did Artspace come to find this site, and be the --
11 MR. MICKELSON: Yes.
12 MS. HARRIS: -- Applicant selected?
13 MR. MICKELSON: So, we were informed by the County
14 that there was a request for qualifications that had been
15 let, and in going through the RFQDP, which is a strange
16 thing to call it, but the RFQDP, which is the Request for
17 Qualifications and Development Proposal, that it
18 specifically was asking for all things that we knew that we
19 could deliver to the County, and so we felt really well
20 suited to submit that application, so that's how we found
21 out.
22 MS. HARRIS: And can you provide just a little bit
23 more detail about the affordable housing component?
24 MR. MICKELSON: That the, the units will be
25 capturing folks between 30 and 60 percent of the area median

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1 income, and so we will be dipping down pretty low, but it is
2 our goal always to try to bring as many people up with us as
3 we can. And so, 10 percent of the units will be to folks
4 below 30 percent if they show up in our pool of potential
5 applicants, and that we've also worked really closely with
6 the community to get by, and I think Karen touched on that
7 that, and she's taught us a little bit about, through their
8 model about this micro kind of way of developing is that
9 talking first to the people who immediately surround the
10 property and their concerns, and then working out in
11 concentric rings to introduce the idea and the concept to
12 the entire community eventually.

13 MS. ROBESON: Okay.

14 MS. HARRIS: Thank you. And can you explain what
15 currently Artspace's legal interest is in the property? Are
16 you the owner for the property?

17 MR. MICKELSON: Yes. We are -- I can.

18 MS. HARRIS: Okay.

19 MR. MICKELSON: We have a letter of authorization
20 from the Montgomery County, authorizing us to pursue
21 approvals for property, and upon approval of the site plan
22 securing the same financing we will close on the property,
23 so sometime after that. So, if you're not seeing a tax
24 credit application it's become awarded.

25 MS. ROBESON: Okay.

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1 MS. HARRIS: And then please just very briefly
2 explain the community outreach that has occurred.

3 MR. MICKELSON: So, again, going with Karen --

4 MS. ROBESON: You know, if it's okay, there's, we
5 have Ms. Roper's testimony --

6 MS. HARRIS: Okay.

7 MS. ROBESON: -- and there are some letters in the
8 record.

9 MS. HARRIS: Okay. So you're --

10 MR. MICKELSON: Perfect.

11 MS. HARRIS: -- okay with that?

12 MS. ROBESON: Yes, I'm --

13 MS. HARRIS: Certainly.

14 MS. ROBESON: Yes.

15 MR. MICKELSON: Very good. Okay.

16 MS. HARRIS: Okay. Then I really just have one
17 other question, and it's an operational question, which is
18 can you explain based on your experience of other projects
19 the loading and trash demands --

20 MR. MICKELSON: Sure.

21 MS. HARRIS: -- that a project like this would
22 generate?

23 MR. MICKELSON: Yes. So, trash removal occurs not
24 unlike any other site, probably twice a week, and we're
25 working with the architects to understand a little bit

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1 better about how that will work more perfectly for the site
2 for the least amount of disruption to residents within the
3 site, and exterior. Loading primarily will be for residents
4 who will be in and out, it'll probably be pretty heavy once
5 we get everybody moving in on that very first day, but after
6 that, these are very stable kinds of communities that we
7 create, and so the move-in and move-out is very minimal.

8 MS. ROBESON: Okay.

9 MS. HARRIS: Thank you. And Ms. Robeson, if it
10 would be helpful, we do have copies of the RFQADP, and
11 Artspace's response, and then the County letter indicating
12 the award that we can submit if you'd like.

13 MS. ROBESON: Aren't they in the record already?

14 MS. HARRIS: I don't believe they are. There is a
15 letter of authorization --

16 MS. ROBESON: Okay, that's what I saw.

17 MS. HARRIS: -- from the County. Yes.

18 MS. ROBESON: Okay. I'll take them in.

19 MS. HARRIS: Okay. So, the first one is the
20 RFQADP.

21 MR. MICKELSON: Do I have it?

22 MS. HARRIS: Yes. And then the second one is the
23 response.

24 MS. ROBESON: Okay. So, 28 will be the RFQADP; 29
25 will be the response.

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1 (Exhibit Nos. 28 and 29 were
2 marked for identification.)

3 MS. HARRIS: And then 20 --

4 MS. ROGERS: Thirty.

5 MS. ROBESON: Thirty.

6 MS. HARRIS: -- excuse me, 30 is a decision
7 memorandum.

8 MS. ROBESON: Okay.

9 (Exhibit No. 30 was marked for
10 identification.)

11 MS. HARRIS: Okay. There you go.

12 MS. ROBESON: Okay. Is this in the order?

13 MR. MICKELSON: The top one. Yes, that's the top
14 of 28, then --

15 MS. ROBESON: Okay.

16 MR. MICKELSON: -- 29 and 30.

17 MS. ROBESON: Okay.

18 MS. HARRIS: And I have no other questions for Mr.
19 Mickelson.

20 MS. ROBESON: Okay. You may be excused. Thank
21 you. Interesting.

22 MS. HARRIS: Our next witness is Mr. Josh Sloan --

23 MS. ROBESON: Okay.

24 MS. HARRIS: -- our Land Planner from VIKA. And
25 Mr. --

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1 MS. ROBESON: Wait, just a sec. Please raise your
2 right hand.
3 (Witness sworn.)
4 MS. ROBESON: Okay. Go ahead, Ms. Harris.
5 MS. HARRIS: Thank you. Can you please state your
6 full name and occupation for the record?
7 MR. SLOAN: Joshua Sloan, I'm the Director of
8 Planning and Landscape Architecture for VIKA in Maryland.
9 MS. HARRIS: And how long have you been with --
10 and what, can you describe a little bit of what you do in
11 that role?
12 MS. ROBESON: Okay. He has qualified --
13 MS. HARRIS: Yes.
14 MS. ROBESON: -- I believe as an expert witness
15 before here, unless --
16 MS. HARRIS: Yes.
17 MS. ROBESON: -- I hear any objections I'm going
18 to accept him as an, are you proffering him as what?
19 MS. HARRIS: And expert in Land Planning, and
20 Landscape --
21 MS. ROBESON: Landscape --
22 MS. HARRIS: -- Architecture. Yes.
23 MS. ROBESON: That's how he qualified before, so
24 I'll accept him --
25 MS. HARRIS: Okay.

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1 MS. ROBESON: -- as an expert in those fields.
2 MS. HARRIS: Okay. And I would note that his
3 resume is in the -- we are --
4 MS. ROBESON: Exactly.
5 MS. HARRIS: -- previously submitted it.
6 MS. ROBESON: Yes.
7 MS. HARRIS: Okay. Thank you.
8 MS. ROBESON: Now, I have one question for him
9 that drove me crazy yesterday. If you can approach, and
10 you're welcome to come, I tried to, I've tried, this is Map
11 4 and Map 5 of the East Silver Spring Master Plan, can you
12 please mark with -- here, you can -- or mark with the red
13 Sharpie where this property is on the Master Plan? I think
14 it's on the very edge.
15 MR. SLOAN: It is.
16 MS. ROBESON: It was driving me crazy. So, for
17 the record, Mr. Sloan is marking with the red pen the
18 location of the property on Map 4 and Map 5 of the East
19 Silver Spring Master Plan. Thank you. All right, now you
20 can go ahead.
21 MS. HARRIS: Okay. Thank you. Mr. Sloan, are you
22 familiar with this application, and if so, can you describe
23 whether you've gone out to the site, and what you've done to
24 initiate work on this project?
25 MR. SLOAN: Sure. So, given the little bit of

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1 confusion about the existing site I'll quickly note where it
2 is, and we've prepared a surrounding area that comports with
3 Staff's recommendation of the neighborhood for the re-
4 zoning.
5 MS. ROBESON: Okay. That is --
6 MR. SLOAN: So, this --
7 MS. ROBESON: This is a new exhibit, right?
8 MR. SLOAN: This is a new exhibit.
9 MS. HARRIS: Yes.
10 MS. ROBESON: Okay. Let's mark that --
11 MR. SLOAN: So, we're kind of skipping ahead a
12 little bit.
13 MS. ROBESON: -- as 31, surrounding area map.
14 (Exhibit No. 31 was marked for
15 identification.)
16 MS. ROBESON: Okay. Go ahead.
17 MR. SLOAN: So, I have visited the site several
18 times, and walked the neighborhood to become familiar with
19 the environmental and the architectural and land use
20 context. We are directly in the northwest corner of Sligo
21 Avenue and Grove. The neighborhood that's been established
22 goes to the west to Fenton, to the east to Chicago Avenue,
23 and then splitting the very long block between Grove and
24 Carroll at the east side of the R-10 Zoned property. In
25 between those, our property and that R-10 property to the

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1 east there is some townhouse development and single-family
2 housing. To the south the neighborhood is bound by Gist
3 Avenue, and to the north by Silver Avenue. So, that's the
4 location. The site is currently occupied by a vacant three-
5 story office building, and surface parking with minimal
6 landscape on it.
7 MS. ROBESON: Okay. How would you characterize,
8 Staff never really characterized, they delineated the
9 neighborhood but they didn't characterize it. How would you
10 characterize, for the purposes of determining compatibility
11 how would you characterize the neighborhood?
12 MR. SLOAN: It's a very interesting and diverse
13 neighborhood in terms of uses and architecture, and --
14 MS. ROBESON: Well, just land uses.
15 MR. SLOAN: -- buildings. In terms of land uses,
16 directly adjacent to the property, or confronting across the
17 rights-of-way you have one, two, three, three different
18 kinds of zoning, just a little bit further you have
19 additional types of zoning, so there are a number of
20 different uses, there are single-family homes, there are
21 townhouses, there are multi-family homes, there are offices,
22 there's a veterinarian, there are retail residential
23 services, so it's --
24 MS. ROBESON: Is it primarily residential in a
25 variety of units?

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1 MR. SLOAN: It's primarily residential with
2 different, three different unit types, at least, I don't
3 know if the R-10 is apartment or condo, I think it's
4 apartment, but it is primarily residential with some
5 neighborhood serving retail and restaurant kind of --
6 MS. ROBESON: Okay.
7 MR. SLOAN: -- uses.
8 MS. ROBESON: All right.
9 MR. SLOAN: So, it's what I would typically
10 characterize as an edge condition to an urban area.
11 MS. ROBESON: Okay. Thank you.
12 MS. HARRIS: Can you briefly describe the area
13 surrounding the surrounding area, just to put it in context
14 of the Silver Spring CBD?
15 MR. SLOAN: In larger context we're directly
16 adjacent to the Central Business District, and that is an
17 arts and entertainment district, so I think that's one of
18 the key attributes that this project brings to start
19 incorporating a little bit more of the arts in the
20 neighborhood adjacent to that arts and entertainment
21 district, and primarily why ESSCA and the County I think
22 wanted something like this. And then beyond that you've got
23 quite a large relatively dense R-60 zoned neighborhood, and
24 schools, and parks. I think that covers most of --
25 MS. HARRIS: And how far is it approximately from

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1 the Silver Spring Metro Station?
2 MR. SLOAN: It's I believe .7 miles or so.
3 MS. HARRIS: Okay.
4 MS. ROBESON: I think it, the statement says 2,500
5 feet or --
6 MR. SLOAN: So, it's somewhere between that and
7 around a half mile to the Metro.
8 MS. ROBESON: Right. Just outside a half mile.
9 MR. SLOAN: Yes.
10 MS. ROBESON: Go ahead.
11 MS. HARRIS: Then I think it may be helpful moving
12 on to a new exhibit, which is aerial, which we need to
13 introduce, as well. If you can just --
14 MS. ROBESON: Okay.
15 MS. HARRIS: -- get into a little bit more detail
16 about the specifics of the site itself.
17 MS. ROBESON: This will be 32, aerial photograph
18 of site.
19 (Exhibit No. 32 was marked for
20 identification.)
21 MR. SLOAN: Okay. So, looking at Exhibit 32,
22 which is an aerial that covers roughly primarily the block
23 that our property is situated in, which is bound by, of
24 course, Sligo on the south, Grove on the east, Fenton on the
25 west, and I think it's Silver Spring Avenue on the north.

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1 The site generally slopes from the southwest corner to the
2 northeast corner. There's a, the central office building
3 that I've talked about that was the former police station,
4 which has since moved near the center of the site, surface
5 parking surrounds it to the north and the east, and there is
6 a service drive that comes out to Sligo Avenue on, just to
7 the west of the building. There's also an entrance to the
8 parking on Sligo Avenue closer to Grove Street, and an
9 entrance to the parking off of Grove Street at the northwest
10 corner. There are very few plantings here, there are two
11 specimen trees that we'll have to mitigate for in the
12 future, and a bit of lawn in front of the building.
13 Otherwise, the frontage of the property is an existing
14 sidewalk that's directly abutting the curb, that's something
15 that we'll be upgrading to a much nicer pedestrian friendly
16 type walkway with the street trees and whatnot that we'll
17 probably talk about later.
18 There are no storm water facilities on site,
19 that's one of our primary concerns, taking care of that; and
20 I think I need to get into details about soils and things
21 like that that we've also looked at.
22 MS. ROBESON: No. Thank you.
23 MS. HARRIS: And what are the uses that are being
24 proposed and are they permitted in the Zoning Ordinance?
25 MR. SLOAN: The uses proposed are for multi-

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1 family, what's now called multi-unit living, townhouse
2 living, small retail and service establishment, and the
3 studio spaces, all of those under 59(3) are allowed.
4 MS. HARRIS: And what were the overall planning
5 concepts that went into the resulting plan?
6 MR. SLOAN: So, I think the Staff Report really,
7 it did look at the general land planning, and described it a
8 little bit, but just to broaden that, the way we look at
9 these kind of projects we typically put the --
10 MS. ROBESON: Who's we?
11 MR. SLOAN: We as designers --
12 MS. ROBESON: Okay.
13 MR. SLOAN: -- land planners, our firm, and the
14 architectural --
15 MS. ROBESON: Okay.
16 MR. SLOAN: -- team. We look at land use, we look
17 at environmental issues, transportation issues, and then
18 community resource type issues when we're thinking planning
19 broadly. And this in terms of land use is providing
20 residential primarily in a residential neighborhood with
21 ancillary retail, also something that the neighborhood has
22 and would like a little more of, and the artist spaces. So,
23 in terms of land use it was something that was a very good
24 fit for us to work with; in terms of transportation, we're
25 on a bus line, as noted, we're just over half a mile from

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1 their Staff Report, I agree with them, we need to have two
2 or more of the three, of the prerequisites in the three
3 categories.
4 MS. HARRIS: And I'd note that that's page 15 of
5 the Staff Report, which is --
6 MS. ROBESON: Right.
7 MS. HARRIS: -- Exhibit 21.
8 MS. ROBESON: I'm there.
9 MS. HARRIS: All right. I think it would be
10 helpful to explain just a little bit how the development
11 standards are handled in a Floating Zone, and how we're
12 handling them in this situation.
13 MR. SLOAN: So, I'm going to refer to the Floating
14 Zone plan itself, which I don't remember which exhibit this
15 is.
16 MS. ROBESON: Well --
17 MS. HARRIS: Twenty-five.
18 MS. ROBESON: -- this may be the time.
19 MS. HARRIS: Yes.
20 MS. ROBESON: Do you have a new FZP with
21 additional binding elements?
22 MS. HARRIS: Well, we submitted the, the lasted
23 FZP is the one that was submitted yesterday, so it's dated
24 January, it's Exhibit 25, and then we -- but what I would
25 like to submit --

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1 MS. ROBESON: Didn't you have one with a different
2 cover sheet or something?
3 MS. HARRIS: Right, we had a cover sheet, and so
4 what we'd like to do is submit the revised plan, the revised
5 cover sheet that eliminates the binding elements on the
6 cover sheet.
7 MS. ROBESON: Okay. So, it was the cover sheet --
8 MS. HARRIS: Yes.
9 MS. ROBESON: -- you were going to submit. Okay.
10 MS. HARRIS: If I can find where that is. Give me
11 one moment. Here is it.
12 MR. SLOAN: We find that whenever we duplicate
13 information on plans there's a, just one more chance --
14 MS. ROBESON: Yes, and then I have to --
15 MR. SLOAN: -- to see.
16 MS. ROBESON: -- certify --
17 MS. HARRIS: More than one.
18 MS. ROBESON: Yes. I hate that.
19 MS. HARRIS: So, that's revised cover sheet
20 eliminating the binding elements.
21 MS. ROBESON: Okay. So, this will be 33. Thirty-
22 three, revised FZP cover sheet.
23 (Exhibit No. 33 was marked for
24 identification.)
25 MS. HARRIS: And then I think what would also make

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1 sense to submit at this time is the revised model covenants,
2 which reflect the binding element also.
3 MS. ROBESON: That's fine. Revised model
4 covenants, that'll be 34.
5 (Exhibit No. 34 was marked for
6 identification.)
7 MS. HARRIS: Yes. Hold on one moment. Thank you.
8 Thank you.
9 MS. ROBESON: Okay.
10 MS. HARRIS: Okay. So, yes, I think in your, it
11 would be helpful to reference the latest Floating Zone Plan
12 which is Exhibit 25.
13 MS. ROBESON: Okay.
14 MR. SLOAN: Okay. So, the Floating Zone Plan lays
15 out the basic footprints of the buildings that are proposed,
16 the access points that are proposed but still being worked
17 out, and will be finalized at site plan.
18 MS. ROBESON: Well, does somebody, do you have a
19 witness who is going to testify about where you are in the
20 access points?
21 MS. HARRIS: Mr. -- yes, we are, that's Mr.
22 Hedberg and Mr. Irish.
23 MS. ROBESON: Irish.
24 MS. HARRIS: So, starting with Mr. Irish and then
25 Mr. Hedberg will supplement --

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1 MS. ROBESON: Okay.
2 MS. HARRIS: -- that.
3 MS. ROBESON: Because I need something to make
4 that finding.
5 MS. HARRIS: Yes.
6 MS. ROBESON: Okay. Go ahead.
7 MR. SLOAN: Okay. So, we'll put off the
8 conversation about the access point itself for now, and I'm
9 going to focus more on the development standards that we're
10 proposing.
11 So, the Floating Zones by their nature are quite
12 flexible in their application so that they can be molded for
13 the best fit between the development standards and the
14 binding elements. The density and height, as I noted, are
15 established by the zone that you're requesting. The
16 building setbacks, all of the building setbacks are
17 established by the Floating Zone Plan, and we have laid
18 those out on our data table basically proposing zero setback
19 from the public street, although that is further limited by
20 the binding elements which establishes the building line
21 from the curb, and that's a little bit different than, of
22 course, the building setbacks from the property line. And
23 we wanted to put that zero --
24 MS. ROBESON: And what is that difference?
25 MR. SLOAN: The difference is the, we basically,

1 we have a right-of-way for Grove, and we have a right-of-way
2 for Sligo, and Grove is not discussed anywhere in the Master
3 Plan in terms of its recommended right-of-way, and we're not
4 exactly sure where the final dedication line will be for
5 that right-of-way.

6 MS. ROBESON: I couldn't figure that out. I
7 couldn't figure out why you had zero setbacks when it looks
8 like --

9 MR. SLOAN: Right.

10 MS. ROBESON: -- you have setbacks.

11 MR. SLOAN: Right now it's a very small right-of-
12 way, and we may be dedicating significant portion, but still
13 being relatively far from the curb.

14 MS. ROBESON: Right.

15 MR. SLOAN: So, we wanted that flexibility just in
16 case we end up dedicating a lot of land, but our building
17 setback from the curb, what you actually see regardless of
18 all the paper lines that are approved is established by the
19 building elements on Sligo and Grove, and that was very
20 important to the community, and we wanted to respect that.
21 So, that's how we have differentiated between the two
22 things.

23 MS. ROBESON: Okay.

24 MR. SLOAN: And then from the side setbacks we
25 kept 15 feet from the side because we're actually proposing

1 a public access link to tie from Sligo through the block to
2 an approved but unbuilt access, pedestrian access that goes
3 all the way up to --

4 MR. MAISTO: Silver Spring.

5 MR. SLOAN: -- Silver Spring. So, that's the
6 setbacks, they're established by the plans --

7 MS. ROBESON: No interruptions from the peanut
8 gallery.

9 MR. MAISTO: Sorry.

10 MR. SLOAN: We're establishing those now as
11 minimums, they may be more than that when we get to site
12 plan. The lot size is another thing that's established by
13 the Floating Zone Plan, we have established a minimum for
14 our townhouses, their design is still in flux, we gave a
15 number that we think can accommodate the smallest we might
16 propose, but again, that's a minimum and we may propose
17 something different above that at time of site plan.

18 The only development standard that is established
19 by the Ordinance is the open space, and that's a 10 percent
20 open space requirement. We actually have two different
21 types of open space, we have common open space that's
22 required for the townhouses, and we work with Staff to
23 centralize that so it'll actually be allowed for us by all
24 of the residents in a central location above the parking
25 garage, but an amenity space for them. So, there will be 10

1 percent divided between the public and the private open
2 space. The public open space is primarily along our Sligo
3 Avenue front in front of the existing building, and then
4 it'll be sort of bracketed by this new proposed building to
5 the east, and then the townhouses and guest parking to the
6 west. And then there's some additional outdoor space that
7 we're kind of combining working together with. So, that 10
8 percent requirement is split between public and common open
9 space, it's being provided on site in the appropriate areas,
10 and beyond that 10 percent this, too, we have binding
11 elements to cover, a minimum amount of each to ensure that
12 the residents and the public have what is deemed an
13 appropriate amount --

14 MS. ROBESON: Okay.

15 MR. SLOAN: -- at a minimum.

16 MS. HARRIS: Thank you. And have you reviewed the
17 necessary findings set forth in Article 7 for a Local Map
18 Amendment?

19 MR. SLOAN: I have.

20 MS. HARRIS: I'm going to, the Staff Report
21 addresses these in detail, but I want to go through them
22 fairly quickly with you.

23 MS. ROBESON: Okay.

24 MS. HARRIS: So, Subsection A is that the plan
25 substantially conforms to the Master Plan, have you looked

1 at this, and if so, what is your opinion?

2 MR. SLOAN: It does substantially conform with the
3 Master Plan. The Master Plan recommended a higher intensity
4 zone than the R-60, so we're providing that density, but
5 we're providing it in a way that transitions from the
6 townhomes to multi-family as to you go west towards the CBD.

7 MS. ROBESON: I just have one question, when I
8 looked up the description of this specific property in the
9 Master Plan it said it was split zone, CBD 0.5, is it your
10 testimony that this particular site is entirely R-60?

11 MR. SLOAN: It is. I was confused by that, too.
12 It seemed like they were talking about a greater site --

13 MS. ROBESON: Right.

14 MR. SLOAN: -- that had a different property in
15 it, so I --

16 MS. ROBESON: Okay.

17 MR. SLOAN: -- don't know that --

18 MS. ROBESON: So, this site is all R-60 --

19 MR. SLOAN: This site is all R-60.

20 MS. ROBESON: -- and not CBD open?

21 MR. SLOAN: Yes.

22 MS. ROBESON: Okay. Go ahead.

23 MR. SLOAN: The other, other than the increase in
24 the housing, recommended housing density recommended by the
25 Master Plan, it also broadly hits a number of the other

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1 goals, the adaptive reuse of a building, the better
2 pedestrian environment, and the establishing transitional
3 uses at the edges of these neighborhoods while preserving a
4 general residential character for the area.
5 MS. HARRIS: And is it your opinion that the
6 project will be in the public interest?
7 MR. SLOAN: Yes.
8 MS. HARRIS: And --
9 MS. ROBESON: And because?
10 MR. SLOAN: For several reasons.
11 MS. ROBESON: We've always interpreted that's a
12 state law requirement --
13 MR. SLOAN: Right.
14 MS. ROBESON: -- that's mirrored in the Zoning
15 Ordinance, and we've always interpreted it as compliant with
16 County plans and policies, is it your opinion that this will
17 be compliant with County plans and policies?
18 MR. SLOAN: It is my opinion that it will be
19 compliant with plans and policies beyond the specific East
20 Silver Spring Master Plan, which is quite a list, 14 years
21 old, it's also much more in tune with the new Smart Growth
22 initiatives, the adaptive reuse, the more environmental site
23 design that we're going to be doing, the storm water,
24 additional tree canopy, walkability, in-fill development,
25 transit-oriented development that's also on existing

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1 infrastructure rather than require new infrastructure, those
2 general policies.
3 MS. HARRIS: Then is it consistent with the most
4 recent, which is the 2012 Housing Policy of the County?
5 MR. SLOAN: Is it. That specifically mentions the
6 need for more rental housing, and we'll have rental and for
7 sale housing, and more affordable housing, which as
8 described we'll have a significant amount of.
9 MS. ROBESON: Okay.
10 MS. HARRIS: Thank you. And I think for the
11 record we'd like to submit the relevant pages of the Master
12 Plan, and also the --
13 MS. ROBESON: That's fine.
14 MS. HARRIS: -- relevant pages of the Housing
15 Policy.
16 MS. ROBESON: Great.
17 MS. HARRIS: So, the Master Plan will be
18 Exhibit --
19 MS. ROBESON: Thirty-five.
20 MS. HARRIS: Yes, and the Housing Policy 36.
21 (Exhibit Nos. 35 and 36 were
22 marked for identification.)
23 MS. ROBESON: Thank you.
24 MS. HARRIS: Okay. The next finding is Subsection
25 C, which is satisfies the intent, purposes, and standards of

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1 the proposed zone.
2 MR. SLOAN: I think --
3 MS. HARRIS: Does the project accomplish that?
4 MR. SLOAN: Yes. I think we've covered those.
5 MS. HARRIS: Yes, you did. And then you touched
6 on this before, so I'll just ask, in terms of compatibility
7 is there anything you want to add in terms of the project
8 being compatible with the surrounding area?
9 MR. SLOAN: Just to, I guess, reiterate a couple
10 key things, one, the transitional location of this site
11 between the CBD and the R-60, and using very specific
12 building types that are existing in the neighborhood but
13 composed on this site to work as a transitional property
14 from the townhouses and the lower heights, to the multi-
15 family, stepping those up as you go to the west and the CBD.
16 Otherwise, I think we've covered most of it.
17 MS. HARRIS: Okay. Subsection E deals with
18 traffic, and Mr. Hedberg will address that. And so, the
19 final finding of this section is that it will not adversely
20 affect the surrounding area, and what is your opinion about
21 that?
22 MR. SLOAN: I do not think it'll adversely affect
23 the area, I think it will enhance it significantly, and I
24 think the excellent work between the Applicant and the
25 design team and the community really highlights how they

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1 desire this kind of use, and the way we've designed it with
2 them will enhance the community.
3 MS. HARRIS: Thank you. So, in summary is it your
4 professional opinion that the plan satisfies Subsections A,
5 B, C, D, and F of Section 7.2.1?
6 MR. SLOAN: Yes.
7 MS. HARRIS: And then in your professional opinion
8 does the Floating Zone Plan satisfy all the applicable Code
9 requirements?
10 MR. SLOAN: It does.
11 MS. HARRIS: And do you agree with the findings of
12 the Park and Planning Staff Report?
13 MR. SLOAN: I do.
14 MS. HARRIS: Is there anything else you'd like to
15 add with respect to this application?
16 MR. SLOAN: I guess only that this is a very
17 unique project that I think we've, and the two people before
18 me have heard, and in having visited arts based projects
19 they're pretty amazing, they become part of the fabric of
20 the community very quickly, and the way they work with the
21 community, the way they bring, you know, when I was doing
22 one of them they impromptu, you know, jazz, trumpet, and
23 singing, and walk through the galleries and things which are
24 a lot of cases their rooms. They really become a great
25 resource and local amenity, and it's very exciting to work

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1 on one.
2 MS. HARRIS: Thank you.
3 MS. ROBESON: Okay. Thank you, Mr. Sloan. You
4 are excused.
5 MS. HARRIS: And then our next witness will be
6 John Maisto, the Architect from --
7 MS. ROBESON: Okay.
8 MS. HARRIS: -- BKV Group.
9 MS. ROBESON: Mr. Maisto please -- yes, you're
10 ahead of me.
11 (Witness sworn.)
12 MS. ROBESON: Go ahead, Ms. Harris.
13 MS. HARRIS: Thank you. Can you please describe
14 your professional and educational background?
15 MR. MAISTO: Well, my full name is John Maisto,
16 for the record. BKV Group.
17 MS. ROBESON: And your address?
18 MR. MAISTO: It's, my business address is 1054
19 31st Street, Suite 410 in Washington, D.C.
20 MS. ROBESON: Okay, let me cut to the chase, your
21 resume is in the record, are you licensed to practice in
22 Maryland?
23 MR. MAISTO: Yes.
24 MS. ROBESON: Have you ever qualified as an expert
25 in any other proceeding?

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1 MR. MAISTO: Not in the State of Maryland, but in
2 Washington, D.C.
3 MS. ROBESON: Okay, and what kind of proceeding
4 was that?
5 MR. MAISTO: All types of zoning, PUD, Planned
6 Unit Development, re-zoning, Board of Zoning Appeals --
7 MS. ROBESON: Okay.
8 MR. MAISTO: -- BZA, and HPRV, Historic
9 Preservation --
10 MS. ROBESON: Okay. With that, and given that his
11 resume is in the record I'm going to qualify him as an
12 expert in architecture.
13 MS. HARRIS: Thank you.
14 MS. ROBESON: Go ahead.
15 MS. HARRIS: Are you familiar with the application
16 at hand?
17 MR. MAISTO: Yes.
18 MS. HARRIS: And can you please describe what your
19 responsibilities were in connection with this application?
20 MR. MAISTO: BKV Group was hired by Artspace to
21 produce the architectural design and work with the engineers
22 chosen on the site layout, particular focus was ensuring
23 compatibility with the neighboring context.
24 MS. HARRIS: And can you please describe the
25 community outreach, and others have touched on that, so you

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1 don't need to reiterate that, but more specifically what
2 changes to the plan were made as a result of that?
3 MR. MAISTO: Since the spring of 2015 almost a
4 year ago we engaged in meetings with ESSCA and Park and
5 Planning Staff, these meetings provided the guidance that we
6 needed to shape the current design. Since that spring of
7 2015 we've had several neighbor meetings, including an
8 actual walk around the site with the immediate neighbors on
9 a Sunday afternoon to discuss with the neighbors various
10 architectural elements, scale, massing, some architecture
11 101 with some people. It was educational both for them and
12 for me, as well. So, these meetings, you know, they
13 resulted in active design changes, and they continue, in
14 fact, we have two more meetings scheduled this month with
15 ESSCA, the immediate neighbors, and the overall ESSCA
16 neighborhood association.
17 MS. ROBESON: And what changes did you make a
18 result of these meetings?
19 MR. MAISTO: The -- I'm trying to remember the
20 specific changes. As you probably gathered from looking at
21 the exhibit of our, our original application, it was more of
22 a massing scheme --
23 MS. ROBESON: Okay.
24 MR. MAISTO: -- to demonstrate, you know, sort of
25 the overall massing of the project.

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1 MS. ROBESON: The transitional.
2 MR. MAISTO: Where we currently are is actually in
3 design detailing of the townhouses, and the piece that
4 fronts on Sligo Avenue. So, the townhouses on Grove, the
5 neighbors on Grove, and the townhouses that are right off of
6 Grove, those neighbors are concerned about how those present
7 themselves to that --
8 MS. ROBESON: Okay.
9 MR. MAISTO: -- street. And then on Sligo Avenue
10 there are several residences that are particularly concerned
11 with how the larger portions of the project present
12 themselves to those neighbors.
13 MS. ROBESON: Okay. All right.
14 MS. HARRIS: And can you please describe the basic
15 concepts that were applied when you, in developing the plan?
16 MR. MAISTO: What we tried to focus on was
17 contextual design as it relates to the existing conditions,
18 that's what contextual design is. So, moving back from the
19 west side on Fenton Street, and as you back toward the east
20 into the site you go from a central business district sort
21 of commercial scale, back into a more residential scale, you
22 know, and since the existing building, the police station,
23 has been there that site has sort of been a big open site
24 with an object building in it, not very contextual at all,
25 kind of isolating, actually, not very active other than the,

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1 obviously, the police work that was going on there. So, we
2 decided to use the building massing as a way to sort of
3 translate that transition from more dense to slightly less
4 dense, and certainly by scale, as well. And as it sort of
5 develops further and further by character, detail, et
6 cetera.

7 MS. ROBESON: Okay.

8 MS. HARRIS: And can you please, and it may be
9 helpful to reference Exhibit 25, explain the heights, the
10 proposed heights and how we, how those were derived?

11 MR. MAISTO: So, this is Exhibit 25 here?

12 MS. HARRIS: Yes.

13 MS. ROBESON: Yes.

14 MR. MAISTO: Okay. I just want to make sure that
15 I'm looking at the -- so, along Sligo Avenue the maximum
16 height is 60 feet, and I'll come back, the back of the
17 project, the north side, it is 50 feet, and then on Grove
18 Street the townhouses, maximum are 42 feet, those were
19 derived by both using the setback, the 45-degree angular
20 plain setback diagram, as well as pushing the buildings back
21 from the zero lot line to create more, as Mr. Sloan
22 mentioned, public space amenity on Sligo, and for Grove
23 those townhouses get a little bit more of a front yard, I
24 mean, it's not a big front yard, but it's just a little bit
25 more so that they're not right up against the street. We

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1 could be right up against the lot line, but we chose for
2 various reasons character, scale, density, et cetera, to
3 push them back, and that allows us those heights that are in
4 the binding elements.

5 MS. HARRIS: Okay. And when you referenced the
6 45-degree angle are you referring to the height
7 compatibility section of the Zoning Ordinance?

8 MR. MAISTO: That's correct. And --

9 MS. ROBESON: In Article 4?

10 MR. MAISTO: That's correct. The exhibit, and I
11 don't -- is this, has this been --

12 MS. HARRIS: It's not in the record, but we can
13 submit it if it would be helpful.

14 MR. MAISTO: This is an exhibit that we produced
15 with the civil engineers to demonstrate this.

16 MS. ROBESON: Okay. Why don't we just --

17 MR. MAISTO: Okay.

18 MS. HARRIS: Okay.
(Exhibit No. 37 was marked for
19 identification.)

20

21 MR. MAISTO: This is the Sligo Artspace building
22 setback illustrative diagram.

23 MS. ROBESON: I'm just going to say building
24 setback illustrative.

25 MR. MAISTO: There you go.

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1 MS. HARRIS: And so, the proposed design meets the
2 height compatibility section of Article 4 of the Zoning
3 Ordinance?

4 MR. MAISTO: That's correct.

5 MS. ROBESON: Okay.

6 MS. HARRIS: Is there anything else that you want
7 to add in terms of the development standards, be that
8 density, height, scale, massing, that goes to the overall
9 issue of how the project is compatible with the surrounding
10 area?

11 MR. MAISTO: Well, as Mr. Sloan indicated earlier,
12 density, height, setbacks, minimum lot size were all
13 established by the Floating Zone Plan with open space
14 requirements being dictated for Section 4.3. -- 4.5.3. .1.

15 MS. ROBESON: By the Code.

16 MR. MAISTO: By the Code. Thank you. Yes. There
17 you go. So --

18 MS. ROBESON: If there's one thing I could change
19 in the new Zoning Ordinance it would be the list of numbers.
20 Anyways -- no offense, Mr. Sloan. Go ahead.

21 MR. MAISTO: So, they meet the development
22 standards in that I think the intent of the standards is to
23 establish these densities as they relate to the context, so
24 clearly I think as we develop it further it'll be more
25 revealed just how true that is going from a higher density

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1 western side of the site to a lower density, lower scale,
2 eastern side, presenting on a fairly well used roadway,
3 Sligo Avenue, a public face to the project that in speaking
4 with the community will have an image not unlike, you know,
5 some of the more civic buildings in downtown Silver Spring.
6 You know, we've talked about the Silver Spring Library as an
7 iconic image, it won't be quite to the scale, obviously,
8 but --

9 MS. ROBESON: Right.

10 MR. MAISTO: -- similar types of efforts.

11 MS. ROBESON: Okay.

12 MS. HARRIS: And can you describe the parking for
13 this project?

14 MR. MAISTO: What I'd like to state is that the
15 parking when this project is completed will be no different
16 in terms of its effect on the community as it currently is,
17 or as the police station was used. In other words, there
18 was no parking on the side streets for that use, there will
19 be no parking on streets, everything will be handled on
20 site.

21 MS. ROBESON: Where is the parking, have you
22 designed a parking entrance?

23 MR. MAISTO: Schematically we have, so --

24 MS. ROBESON: Okay.

25 MR. MAISTO: -- you enter the site off on Sligo

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1 Avenue --
2 MS. ROBESON: Exactly.
3 MR. MAISTO: -- go down to the north --
4 MS. ROBESON: Yes.
5 MR. MAISTO: -- down to the north, and down,
6 physically down to a parking lot entrance under this portion
7 of the building.
8 MS. ROBESON: The building facing the northern
9 side of --
10 MR. MAISTO: Correct, the northern side of --
11 MS. ROBESON: Okay.
12 MR. MAISTO: The wing facing the north, because
13 this L-shaped building --
14 MS. ROBESON: Okay.
15 MR. MAISTO: -- connects to the police station, so
16 it's sort of a U-shape.
17 MS. ROBESON: Okay.
18 MR. MAISTO: But the parking will be in this
19 general area under the building and under the four-story
20 building.
21 MS. ROBESON: Okay.
22 MR. MAISTO: There is also surface parking near
23 the Sligo entrance for visitors and users of the studios,
24 and each townhouse will have a garage, and depending on how
25 much space we have perhaps even enough space for an on-grade

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1 spot right outside the garage.
2 MS. ROBESON: Okay.
3 MS. HARRIS: Thank you. And can you describe the
4 current proposed loading for the project?
5 MR. MAISTO: The current proposed loading is right
6 off of Sligo Avenue at the corner, at the southeast corner
7 of the site, which is directly adjacent to some commercial
8 scale buildings that face Fenton Avenue.
9 MS. ROBESON: Is that going to stay?
10 MR. MAISTO: We are working closely with the
11 community to relocate loading into the site, if possible,
12 because we are concerned, collectively, that that area is
13 essentially at the trail head of this --
14 MS. ROBESON: Right.
15 MR. MAISTO: -- proposed connection that's going
16 to connect to the Silver Spring Avenue --
17 MS. ROBESON: Right.
18 MR. MAISTO: -- approved walkway. We're also
19 proposing stoop entrances for some of the dwelling units
20 along this side as you go into the site, which is very well
21 received, creates a different sort of pedestrian scale at
22 that side.
23 MS. ROBESON: Okay.
24 MS. HARRIS: And is there anything else you'd like
25 to add in terms of the proposed architecture as it relates

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1 to the Zoning Code requirements, and the overall concept of
2 compatibility with the surrounding neighborhood?
3 MR. MAISTO: As it is early in the process for the
4 actual design of the articulation of the buildings, our
5 intention is to create a contextual modern, not overtly
6 traditional, but respectful style of architecture that the
7 neighbors can appreciate, and we've certainly been working
8 hard to include them in the process, as well as the future
9 users who will be artists and creative people to enjoy the
10 project.
11 MS. ROBESON: Okay.
12 MS. HARRIS: Thank you. No further questions.
13 MR. MAISTO: I have one --
14 MS. ROBESON: Okay.
15 MR. MAISTO: -- one statement, if I could add?
16 MS. HARRIS: Yes, you may.
17 MR. MAISTO: I used to live in this neighborhood
18 about a half mile east, I currently live about two miles
19 north, so Silver Spring is near and dear to my heart, so I'm
20 very excited to be working on this project with the team,
21 and to see the changes in the neighborhood is, you know,
22 something as an architect, it's a good thing to be doing.
23 MS. HARRIS: Okay. Thank you.
24 MR. MAISTO: Thank you very much.
25 MS. ROBESON: Thank you.

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1 MS. HARRIS: Mr. Irish is our next witness.
2 MS. ROBESON: Okay. Mr. Irish, please raise your
3 right hand.
4 (Witness sworn.)
5 MS. HARRIS: Mr. Irish is a very familiar face
6 before the Hearing --
7 MS. ROBESON: I reject him as an expert witness.
8 MR. IRISH: A lot of people do.
9 MS. ROBESON: No. I'm going to -- well, just for
10 the record, he has qualified as an expert in Civil
11 Engineering before this body before. His resume is in the
12 record, and I will qualify him as a expert in Civil
13 Engineering.
14 MR. IRISH: Thank you.
15 MS. HARRIS: Thank you. Are you familiar with the
16 subject application, Mr. Irish?
17 MR. IRISH: I am.
18 MS. HARRIS: And can you please describe what you
19 were asked to do in your --
20 MS. ROBESON: Yes, I did swear him in.
21 MR. IRISH: You did. She did.
22 UNIDENTIFIED MALE SPEAKER: Sorry.
23 MS. HARRIS: Can you please describe what you were
24 asked to do in the context of this case?
25 MR. IRISH: My role at VIKA is I run the Maryland

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1 office, which is about 65 people. This project, as every
2 project in Maryland, is under my ultimate direction.
3 Working with Josh and the other team members we prepared a
4 lot of the plans that are part of the application, and
5 include the Floating Zone Plan, and natural resource
6 inventory, existing conditions plan, the identification
7 plat, the fire access plan. We also contributed to the land
8 use report that was part of the application, and with
9 respect to that the civil engineering sections I looked at,
10 Josh was more focused on the land planning aspects of it.
11 MS. ROBESON: Right. I did read that, and I don't
12 think you need to go into storm water management, and,
13 because they were pretty clearly spelled out in the report,
14 or the NRIFSD, or the forest conservation, because that was
15 pretty clear from the report, unless there's something you
16 want to add. My real question, what I really want to know
17 is about where the access.
18 MS. HARRIS: And that was going to be my very next
19 question --
20 MS. ROBESON: Okay.
21 MS. HARRIS: -- so that's perfect.
22 MR. IRISH: Can I just -- did you write an exhibit
23 number on this, the Floating --
24 MS. HARRIS: That was 25. It's 30 --
25 MS. ROBESON: Sure, that's 25.

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1 MR. IRISH: Can I mark on this? Will it need a
2 new exhibit number?
3 MS. ROBESON: Well, now we're going to, you have
4 to cross 25 out, we're going to make it 38. Marked up site
5 plan.
6 (Exhibit No. 38 was marked for
7 identification.)
8 MR. IRISH: Before I talk specifically about the
9 proposal I want to talk a little bit about how DOT measures
10 driveway separation --
11 MS. ROBESON: Right.
12 MR. IRISH: -- and what they mean by that, and so
13 forth.
14 MS. ROBESON: Okay.
15 MR. IRISH: You've probably heard them say that
16 they'd like to see 100 feet between driveways.
17 MS. ROBESON: That's right.
18 MR. IRISH: They measure that, and they refer to
19 it as tangent to tangent, and what, I think the best way to
20 do that, you probably can't see the existing conditions
21 behind here, so what I'd like to do is just highlight in red
22 the two existing driveways --
23 MS. ROBESON: Okay.
24 MR. IRISH: -- and then you can see the proposed
25 driveways.

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1 MS. ROBESON: Okay. I didn't mean to make you
2 kneel.
3 MR. IRISH: That's okay.
4 MS. ROBESON: So, red is, I'm sorry, red is the
5 existing?
6 MR. IRISH: Red is the existing driveway, and as
7 you can see what I just highlighted, they come out to the,
8 as they approach the curb of the road they have a small
9 flare.
10 MS. ROBESON: Right.
11 MR. IRISH: The proposed driveways, driveway
12 which, entrance, which is in black here, has a large radius
13 fill-it.
14 MS. ROBESON: Right.
15 MR. IRISH: And that's I believe a 25-foot radius,
16 as opposed to maybe a five or seven-foot taper. So --
17 MS. ROBESON: Okay.
18 MR. IRISH: -- now the way they measure I'll mark
19 in blue, the existing, they measure tangent to tangent, so
20 you come around Grove Street to the intersection of Sligo
21 and where, where the fill-it meets the curb --
22 MS. ROBESON: I didn't --
23 MR. IRISH: -- that's one tangent.
24 MS. ROBESON: Okay.
25 MR. IRISH: And then if we're measuring to the

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1 existing you would go up to where the driveway flare meets
2 the curb.
3 MS. ROBESON: I see.
4 MR. IRISH: So, that dimension, I believe, is
5 about, maybe I think it was, that's 75 feet. Do you want me
6 to mark that on there or not?
7 MS. ROBESON: Yes, go ahead.
8 MR. IRISH: So, the proposed driveway it would
9 measure from this fill-it to this fill-it --
10 MS. ROBESON: So, it's --
11 MR. IRISH: -- so when I say that that's only 30
12 feet it implies to you that the road is 45 feet closer, when
13 in reality it's not because of the size of the fill-it.
14 MS. ROBESON: Okay. Because of the increased,
15 or --
16 MR. IRISH: Increased radius.
17 MS. ROBESON: -- is it in the increased radius?
18 Yes. Okay. I get it.
19 MR. IRISH: So --
20 MS. ROBESON: Now, is that too close to Grove
21 Street, is that what they're saying?
22 MR. IRISH: I don't believe the way we've shown it
23 is necessarily too close, but, and while we're talking about
24 that let me just point out the other side of the equation.
25 MS. ROBESON: Okay.

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1 MR. IRISH: This is Woodbury where --
2 MS. ROBESON: Yes.
3 MR. IRISH: -- I'm highlighting now.
4 MS. ROBESON: Okay.
5 MR. IRISH: And you can see the existing entrance
6 from Sligo into west, southwest corner of the site, and how
7 close that is to the proposed --
8 MS. ROBESON: And it doesn't tee up, or -- yes, I
9 do.
10 MR. IRISH: If they don't want them to align we'll
11 be --
12 MS. ROBESON: Right.
13 MR. IRISH: -- off set 100 feet tangent to
14 tangent.
15 MS. ROBESON: Right.
16 MR. IRISH: So, this one as many others in urban
17 environments do are far less than 100 feet.
18 MS. ROBESON: Right.
19 MR. IRISH: The reason that they want that is so
20 that vehicles don't have conflicting movements --
21 MS. ROBESON: Right.
22 MR. IRISH: -- which really is a problem when you
23 have high volume movements.
24 MS. ROBESON: Right.
25 MR. IRISH: This is a low volume site going to a

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1 low volume road, so for those reasons and this separation
2 not being that much closer to the, in reality, I mean,
3 because it's the vehicle to vehicle dimension that they're
4 really concerned about, they describe it as tangent
5 dimension, but vehicle to vehicle if we were to move the
6 entrance from where my pen is here between the two red lines
7 to here it is closer, but it's not that big a deal.
8 MS. ROBESON: Now --
9 MR. IRISH: However --
10 MS. ROBESON: Yes, go ahead.
11 MR. IRISH: -- we could move this entrance to
12 here. We'd rather not do it because it would take a little
13 space out of the public plaza, the way we would do it is
14 basically take these five townhouses, the visitor parking
15 spaces in this portion of the driveway, and just rotate it
16 about the point between the two blocks of townhouses, just
17 rotate it like that.
18 MS. ROBESON: When you say like that you're --
19 MR. IRISH: Clockwise.
20 MS. ROBESON: -- moving it west?
21 MR. IRISH: Moving it west, rotating it
22 clockwise --
23 MS. ROBESON: Just for the rhetoric.
24 MR. IRISH: -- about that point I described. And
25 which would result in having the driveway in essentially the

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1 same location it is today. The measured tangent dimension
2 would be less if we kept with the 2,500 foot fill-its we're
3 showing, we may be able to change in the process to the
4 tapers that exist today, something like that, so the
5 measurement would look better, but in reality it's not
6 making it better just to have a different number, it makes
7 it better if we move it to the west a little bit.
8 MS. ROBESON: If you move it to the west are you
9 still going to have the open space?
10 MR. IRISH: We will.
11 MS. ROBESON: Okay.
12 MR. IRISH: We will. The plan as currently drawn
13 has more than the minimum open space in this area --
14 MS. ROBESON: Uh-huh.
15 MR. IRISH: -- plus, if we were to make that
16 rotation there'd be some open space at the corner of Grove
17 and Sligo that we might not even bother counting, but it
18 would really be there.
19 MS. ROBESON: Okay. Now, is DOT raising any
20 issues with the loading, or is that more a neighborhood
21 issue?
22 MR. IRISH: I haven't heard issues from DOT on the
23 loading. Right now we're showing a loading space in exactly
24 the same location as the western --
25 MS. ROBESON: Where it is today.

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1 MR. IRISH: -- most driveway.
2 MS. ROBESON: Yes.
3 MR. IRISH: And we're working with the community
4 to, and our design to see if we can develop something that
5 would be more attractive and not necessarily off of Sligo.
6 But just like with shifting this, the entrance to the main
7 entrance to the project there's pros and cons to everything
8 you do, and while shifting that entrance to the west is good
9 from the standpoint of it creates more separation from Grove
10 Street --
11 MS. ROBESON: Right.
12 MR. IRISH: -- it, the downside is it does affect
13 the --
14 MS. ROBESON: Plaza.
15 MR. IRISH: -- the size of this space, won't
16 affect in terms of -- the minimum, but clearly it would make it
17 smaller.
18 MS. ROBESON: Right.
19 MR. IRISH: And this is a wonderful space. My
20 opinion is that as drawn it's a safe configuration. I've
21 worked with DOT on many projects, and I don't want to say
22 they routinely grant waivers because their process is they
23 want you to follow their codes, their standards, and their
24 policies, and just normal way they do things, and if there's
25 a reason you need to deviate from that they ask you to

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1 submit a modification request with supporting information as
2 to why you feel it's appropriate. And typically they'll
3 evaluate that, and if they agree with you they'll grant a
4 modification. I can't say 100 percent, but most of the ones
5 we submit they've granted because they do make sense.
6 MS. ROBESON: Okay. So, what you're saying is you
7 have the ability to comply with their standard, but you
8 think that it's unnecessary that the access shown is safe,
9 and -- okay, I understand. The access shown is safe as it
10 is, although it doesn't meet DOT's standards, but you could
11 accommodate the --
12 MR. IRISH: Their standard.
13 MS. ROBESON: -- their standard.
14 MR. IRISH: The correct area. Yes.
15 MS. HARRIS: And Mr. Irish, I think it may be
16 helpful to elaborate, are there mitigating characteristics,
17 or what are the characteristics that make you reach that
18 conclusion that it would be safe?
19 MR. IRISH: Well, as I mentioned, I couldn't find
20 published traffic values for Sligo or Grove, but clearly
21 they're low volume roads, there's very, there's not a lot of
22 traffic even during the peak hours.
23 MS. ROBESON: Is Sligo a, that's a County road,
24 right?
25 MR. IRISH: Yes, they both are.

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1 MS. ROBESON: Both are. Okay.
2 MR. IRISH: And a small right-of-way, narrow,
3 relatively narrow pavement. The -- several. If we were to
4 move -- well, if we look at the existing entrance it's 75
5 feet, so it's already less than 100.
6 MS. ROBESON: Right.
7 MR. IRISH: If we remove that to the 100 then it
8 will be less than 100 from the opposing street. So,
9 there's --
10 MS. ROBESON: Pick your poison.
11 MR. IRISH: Yes, there's really no way to get a
12 driveway between Woodbury and Grove and meet 100 feet on
13 either side. I would say it's pretty close to 100 percent
14 of urban projects we have to seek this right.
15 MS. ROBESON: Okay.
16 MR. IRISH: It's routine to seek it, and it's
17 usually granted. Our job is, you know, we look at it as we
18 have to design the site that works using professional
19 judgment, they have guidelines that they throw against
20 everything, whether it's a driveway entrance in Clarksburg,
21 or --
22 MS. ROBESON: Right.
23 MR. IRISH: -- a driveway entrance in an urban
24 area. So, the fact that there's relatively low volume of
25 traffic on both streets, we don't have that many in and out

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1 movements even in the peak hour, lead me to believe that it
2 would be safe a few feet closer to Grove than it already is
3 today.
4 MS. ROBESON: Okay.
5 MS. HARRIS: Does the topography play a part in
6 your finding of that?
7 MR. IRISH: Well, it could, in this case Sligo is,
8 if you were on it you would think it's relatively flat, and
9 it generally slopes from west to east in a relatively
10 continuous manner. So, from a site distance perspective for
11 as far as you need to see and beyond the road is straight,
12 horizontally, and relatively straight vertically --
13 MS. ROBESON: Right.
14 MR. IRISH: -- so there's, there aren't
15 obstructions to your ability to view the, any oncoming
16 traffic. The problem in the big -- the reason they want
17 separation is, in a situation like this is if a vehicle is
18 coming out of our driveway and wants to turn --
19 MS. ROBESON: Turning left?
20 MR. IRISH: -- left onto Grove and there's
21 somebody coming -- I'm sorry, left onto Sligo, and there's
22 another vehicle coming down Grove wanting to turn right you
23 have a smaller distance to see each other. But this area,
24 there's going to be plenty of visibility in this area, which
25 also contributes to the reason I feel it would be safe.

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1 MS. ROBESON: Okay. And I have one question about
2 fire access, it goes around the rear and the back, which I
3 thought was supposed to be landscaped, is there room for the
4 fire truck to -- I think that --
5 MR. IRISH: Let me, I have it in my briefcase, if
6 you don't mind me looking at it? I didn't believe it went
7 back there. The truck --
8 MS. ROBESON: It's 11(f). I have it. I was just
9 curious, and I know it's early in the process, but -- here
10 it is. I have it. Oh, did you find it? Yes.
11 MR. IRISH: So, this is a copy of the play you
12 have in your desk --
13 MS. ROBESON: Yes.
14 MR. IRISH: -- that's already in the record.
15 MS. ROBESON: 11(f).
16 MR. IRISH: The fire access is really the green,
17 that's where the fire truck would go.
18 MS. ROBESON: I see.
19 MR. IRISH: The red is showing a walkable path for
20 the firemen carrying their hose and --
21 MS. ROBESON: Okay.
22 MR. IRISH: -- equipment and whatnot.
23 MS. ROBESON: All right. Never mind.
24 MR. IRISH: Okay.
25 MS. ROBESON: No, I mean -- okay. Thanks. Okay,

1 go ahead, Ms. Harris.
 2 MS. HARRIS: Okay. And just a few more
 3 questions --
 4 MS. ROBESON: Thank you for the explanation.
 5 MS. HARRIS: -- of Mr. Irish. Can you address
 6 very briefly this sort of truncation and whether if the
 7 Applicant dedicates right-of-way and truncates the corner --
 8 sorry -- and truncates the corner, do you, is it your
 9 opinion that the plan still is safe and efficient?
 10 MR. IRISH: Absolutely. Let me just --
 11 MS. ROBESON: What do you mean truncate? Well --
 12 MR. IRISH: That's what I was going to do.
 13 MS. ROBESON: Okay.
 14 MR. IRISH: The, this --
 15 MS. ROBESON: Which corner, I guess is my --
 16 MR. IRISH: Well, they're talking about the
 17 southeast corner, which is the intersection of Grove and
 18 Sligo, and right now you've got five or six lots --
 19 MS. ROBESON: Right.
 20 MR. IRISH: -- that run north/south, and the
 21 property just comes to a point at that intersection. The
 22 County Code recommends that when you're dedicating a street
 23 right-of-way you go to that point of intersection, go back
 24 25 feet, set a point, go back 25 feet on the other road, set
 25 a point, and then connect the two, and that's what we refer

1 to as the truncation --
 2 MS. ROBESON: I see.
 3 MR. IRISH: It's called a 25-foot truncation.
 4 MS. ROBESON: Okay.
 5 MR. IRISH: In many cases that truncation, I mean,
 6 the reason for it is pretty much two-fold, one, to ensure
 7 you have adequate site distance at the corner, and secondly,
 8 to make sure that there's room for all the intersection
 9 stuff, streetlight poles, signal poles, trash cans, and the
 10 like. We'll dedicate whatever's necessary at that corner to
 11 get those things in, sight distance is not a problem. So --
 12 MS. ROBESON: Okay.
 13 MR. IRISH: -- the, we may end up with a
 14 truncation that's 20 feet --
 15 MS. ROBESON: Okay.
 16 MR. IRISH: -- and would be more than adequate.
 17 And as with the driveways, that's something that in urban
 18 areas is pretty routinely agreed to --
 19 MS. ROBESON: Okay.
 20 MR. IRISH: -- as long as we can prove that those
 21 other criteria are met.
 22 MS. ROBESON: Okay.
 23 MS. HARRIS: Thank you. And then one final
 24 question, which is does the proposed Floating Zone Plan
 25 conflict in any way with the County Capital Improvement

1 Program?
 2 MR. IRISH: No, it does not. It doesn't rely on
 3 it either.
 4 MS. ROBESON: Okay.
 5 MS. HARRIS: Thank you. No more questions for Mr.
 6 Irish.
 7 MS. ROBESON: Thank you.
 8 MR. IRISH: Thank you.
 9 MS. ROBESON: Thank you. You may be excused.
 10 MS. HARRIS: And then our final witness is Mr.
 11 Hedberg.
 12 MS. ROBESON: All right. He's not an expert
 13 either. He's never been here. No. Please raise your right
 14 hand, Mr. Hedberg.
 15 (Witness sworn.)
 16 MS. ROBESON: Okay. Go ahead, Ms. Harris.
 17 MS. HARRIS: Thank you. Can you please explain
 18 what you were asked to do in connection with this proposed
 19 plan?
 20 MR. HEDBERG: Yes. I was retained to develop the
 21 trip generation projected for the site, and then depending
 22 upon the results of that analysis determine the level of
 23 study that would be required under the LATR and TPAR
 24 guidelines. So, I undertook that trip generation analysis,
 25 basically, I used Park and Planning trip generation rates,

1 the ones that are contained in the LATR guidelines where
 2 available, and then for uses that were not represented in
 3 that database the instituted transportation engineers trip
 4 generation manual.
 5 MS. ROBESON: And then actual experience, right?
 6 MR. HEDBERG: Right. Yes. The aspect of actual
 7 experience came in relative to Artspace's current ongoing
 8 projects, and in this circumstance Artspace's experience is
 9 that between 15 and 20 percent of the studio units would be
 10 utilized by the residents of the residential units, and so I
 11 used the lower level, the 15 percent, as essentially like an
 12 internal trip --
 13 MS. ROBESON: Okay.
 14 MR. HEDBERG: -- characteristic, trips that are,
 15 wouldn't leave the site because they're living in the
 16 residential units, and they're working in the art studios.
 17 MS. ROBESON: Right.
 18 MR. HEDBERG: So, that lowered the trip generation
 19 rate for that particular percentage of the units. So, in
 20 this case we ended with 20 units, 20 studio units that would
 21 utilized by people living off site, and 10 units that would
 22 be utilized by artists that are housed on the site, and I
 23 crank that finding into developing the trip generation
 24 rates.
 25 MS. HARRIS: And what was your ultimate conclusion

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1 based on this information?
2 MR. HEDBERG: Right. Based on the information
3 that I have just outlined the trip generation, the net trip
4 generation projected for the site was under the 30-trip
5 limit, which is the criteria for satisfying the
6 transportation requirement by preparation of the traffic
7 statement. And my findings are essentially the same as what
8 Staff has concurred with in the Staff Report, and we're well
9 under 29 trips.
10 MS. HARRIS: So, in your opinion does the proposed
11 project satisfy the requirement of Subsection E, Section
12 7.2?
13 MR. HEDBERG: Yes. Because what we have done is
14 demonstrated compliance with the LATR, TPAR guidelines in
15 that if you generate fewer than 30 peak hour trips the
16 transportation statement is sufficient without having to
17 analyze the operation of external intersections.
18 MS. ROBESON: Okay.
19 MS. HARRIS: And then finally, on your reports you
20 had a page A-3 --
21 MR. HEDBERG: Right.
22 MS. HARRIS: -- and I think it may be helpful to
23 explain to the Hearing Examiner, that reference, the police
24 statement on Rugby Avenue in Bethesda, can you explain the
25 connection to this project?

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1 MR. HEDBERG: Right. The station relocation in
2 Bethesda utilized trip generation rates based on the new
3 facility for District 3 --
4 MS. ROBESON: Okay.
5 MR. HEDBERG: -- so --
6 MS. ROBESON: All right. I missed that.
7 MR. HEDBERG: Yes.
8 MS. ROBESON: Okay.
9 MR. HEDBERG: So, it would appear convoluted until
10 I guess I explained that. But, so I needed to get the trips
11 that would be associated with the activities of the District
12 3 station --
13 MS. ROBESON: Right.
14 MR. HEDBERG: -- and so, working with the
15 information that is on page A-3 of the Staff Report --
16 MS. ROBESON: Right.
17 MR. HEDBERG: -- for the Bethesda situation I
18 could calculate what would be the trips representing the
19 activity for District 3 for which we could take credit for
20 at this site.
21 MS. ROBESON: Okay. All right.
22 MS. HARRIS: Thank you. Is there anything else
23 that you would like to add in connection with this proposal?
24 MR. HEDBERG: Just a little bit more on this issue
25 on the driveways and why I think it's --

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1 MS. ROBESON: Yes.
2 MR. HEDBERG: -- safe and efficient. Referring to
3 Exhibit 38, the orientation of trips that we projected
4 dominant towards the east, towards the west, towards the
5 CBD, so, recognizing that then the trips exiting this site
6 would basically be right turns.
7 MS. ROBESON: So, they wouldn't have the
8 conflicting left turn movement?
9 MR. HEDBERG: Exactly. Yes. And going, entering
10 the site coming from the direction of the CBD we have
11 excellent sight distance to the east, and so, traffic would
12 not encounter conflict, would be able to see any oncoming
13 traffic whether it came from Grove or traffic from the site.
14 MS. ROBESON: Okay. That's helpful.
15 MR. HEDBERG: So, yes.
16 MS. ROBESON: Okay.
17 MR. HEDBERG: And as Mr. Irish mentioned, it's a
18 pretty low volume road --
19 MS. ROBESON: Okay.
20 MR. HEDBERG: -- Sligo Avenue, so --
21 MS. ROBESON: All right.
22 MR. HEDBERG: -- I just don't see that there would
23 be conflicts --
24 MS. ROBESON: Okay.
25 MR. HEDBERG: -- from a traffic perspective.

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1 MS. ROBESON: All right.
2 MS. HARRIS: Thank you.
3 MS. ROBESON: Thank you. Is that all you have?
4 MS. HARRIS: That concludes our witnesses.
5 MS. ROBESON: Okay.
6 MR. HEDBERG: All right.
7 MS. ROBESON: Thank you.
8 MR. HEDBERG: Thank you.
9 MS. ROBESON: You may be excused. Do you have --
10 Ms. Roper, did you have anything further based on what
11 you've heard? You're still in support?
12 MS. ROPER: Yes, I am.
13 MS. ROBESON: Okay.
14 MS. ROPER: Nothing further to say.
15 MS. HARRIS: Ms. Robeson, what we have done is
16 have, we do have signed and sealed --
17 MS. ROBESON: Perfect.
18 MS. HARRIS: -- copies of the Local Map Amendment,
19 which reflect the latest --
20 MS. ROBESON: The FCP?
21 MS. HARRIS: Yes.
22 MS. ROBESON: Yes.
23 MS. HARRIS: Yes.
24 MS. ROBESON: Okay.
25 MS. HARRIS: So, we could submit that --

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1 MS. ROBESON: That's good, that's helpful.
2 MS. HARRIS: -- as Exhibit 39.
3 MS. ROBESON: Thank you.
4 (Exhibit No. 39 was marked for
5 identification.)
6 MS. HARRIS: Thank you.
7 MS. ROBESON: Perfect. Okay. Do you have any
8 closing argument?
9 MS. HARRIS: No closing argument. I'd like to
10 request that Exhibits 1 through 39 be moved into the record.
11 MS. ROBESON: Okay.
12 (Exhibit Nos. 1 through 39
13 were received into evidence.)
14 MS. HARRIS: Be admitted into evidence. And I
15 note that I believe that all the information in the record,
16 the Staff Report, the Planning Board's recommendation, the
17 reports that were submitted in connection with the initial
18 application, the testimony you've heard today provides
19 sufficient evidence to conclude that the proposed
20 application meets the standards of Sections 59(5) and (7) --
21 MS. ROBESON: Okay.
22 MS. HARRIS: -- for the Floating Zone
23 requirements.
24 MS. ROBESON: All right.
25 MS. HARRIS: Thank you.

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1 MS. ROBESON: Now, are all these, do you consider
2 all these the Floating Zone Plan?
3 MS. HARRIS: No, that's, the Floating Zone Plan --
4 MS. ROGERS: Is one of them.
5 MS. ROBESON: Is the cover sheet, FZP-1 -- oh, I
6 see --
7 MS. HARRIS: FZP-4. But we --
8 MS. ROBESON: I'm sorry?
9 MS. HARRIS: It's in the bottom right hand corner
10 it says --
11 MS. ROBESON: FZP-4?
12 MS. HARRIS: Correct. But what we've done is
13 sign, what they've done is signed --
14 MS. ROBESON: I got you.
15 MS. HARRIS: -- and sealed each page.
16 MS. ROBESON: I see. Okay.
17 MS. HARRIS: But you may not need all of that.
18 MS. ROBESON: Yes, I just want to identify for the
19 report which one is the FZP. Okay, I see it, FZP-4. You
20 know what, I am going to mark -- I tell you what, I'm just
21 going to go in the order of the FZP and mark them A, B, C,
22 D --
23 MS. HARRIS: Okay.
24 MS. ROBESON: -- of 39, and then --
25 MS. HARRIS: Okay.

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1 MS. ROBESON: -- when I refer to it as the
2 approved plan it'll be 39D or something --
3 MS. HARRIS: Okay.
4 MS. ROBESON: -- like that. Okay?
5 MS. HARRIS: I've got it. That makes sense.
6 MS. ROBESON: All right. With that, let me do
7 this, we generally leave the record open for 10 days because
8 we don't get the transcript for 10 days, so --
9 MS. HARRIS: Okay.
10 MS. ROBESON: -- we let, we keep the record open
11 till the transcript comes in. And because the 10 days would
12 be the 18th, that's Martin Luther King, so January 19th,
13 that being said, I understand the timeline, so we will try,
14 you know, not to take the full amount of days to get the
15 decision out because you still have to go to the Council.
16 MS. HARRIS: That's appreciated.
17 MS. ROBESON: So, I am going to leave -- I need
18 the transcript in the record, so I'm going to leave the
19 record open till 1-19, January 19th, 2016, and we will do
20 what we can to get the decision out as quickly as possible,
21 okay?
22 MS. HARRIS: Thank you.
23 MS. ROBESON: Thank you very much for your
24 organized presentation.
25 MS. HARRIS: Thank you.

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1 (Whereupon, at 11:09 a.m., the hearing was
2 concluded.)
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Digitally signed by Paula Underwood

ELECTRONIC CERTIFICATE

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:

Local Map Amendment
Artspace Projects, Inc.
Case No. H-110

By:

Paula Underwood,
Transcriber

A				B
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