

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

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:
APPLICATION OF : Case No. CU 16-10
DOUGLAS LORD, MD :
FOR A MEDICAL CLINIC :
:
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A hearing in the above-entitled matter was held on May 16, 2016, commencing at 9:36 a.m., Office of Zoning and Administrative Hearings, Stella B. Werner Council Office Building, 100 Maryland Avenue, Second Floor, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin Grossman
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Phillip A. Hummel, Esq.

Erin E. Girard, Esq.

Linowes and Blocher, LLP

7200 Wisconsin Avenue, Suite 800

Bethesda, Maryland 20814

P R O C E E D I N G S

1 MR. GROSSMAN: Okay. Is the applicant ready to
 2 proceed?
 3 MS. GIRARD: Yes.
 4 MR. GROSSMAN: All right. Then I'll call the
 5 case. This is a public hearing in the matter of Dr. Carl
 6 Douglas Lord, CU16-10, an application for a medical clinical
 7 conditional use for up to four practitioners under Code
 8 Section 59.3.5.7.8.2, to validate an existing medical clinic
 9 on the site. The use will employ up to three doctors with a
 10 maximum of seven employees, including two doctors on site at
 11 any given time.
 12 The subject site is located at 11016 New Hampshire
 13 Avenue, Silver Spring and is subject to the 2014 White Oak
 14 Science Gateway Master Plan. The site consists of 18,591
 15 square feet described at Lots 10 and 11, Block B, in the
 16 Burnt Mills Subdivision, and it is in the R-90 Zone.
 17 This hearing is conducted on behalf of the Office
 18 of Zoning and Administrative Hearings. My name is Martin
 19 Grossman, I'm the Hearing Examiner which means I will take
 20 evidence here and write a decision in the case.
 21 Will the parties identify themselves, please?
 22 MR. HUMMEL: Good morning, Mr. Examiner, for the
 23 record, Phillip Hummel of Linowes and Blocher.
 24 MS. GIRARD: And I'm Erin Gerard also with Linowes
 25

T A B L E O F C O N T E N T S

	Page
Opening Statement by Phillip Hummel, Esq.	12
PLAINTIFF'S WITNESS:	
	DIRECT CROSS REDIRECT RECROSS
Carl Douglas Lord	14 -- -- --
Wilma Johnson	25 -- -- --
Mike Lenhart	35 -- -- --
William Landfair	45 -- -- --

E X H I B I T S

EXHIBIT NO.:	MARKED/RECEIVED	
Hearing Exhibit No. 28	11	--
Hearing Exhibit No. 29	34	--
Hearing Exhibit No. 30	44	--
Hearing Exhibit No. 1-30	--	92

Closing Argument by Mr. Hummel 89

1 and Blocher on behalf of the applicant.
 2 MR. GROSSMAN: All right. And I see there are
 3 people in the audience. Is there anybody in the audience
 4 who is not a witness to be called by you Mr. Hummel and Ms.
 5 Gerard?
 6 MS. GIRARD: Yes. Ms. Johnson.
 7 MR. GROSSMAN: They're all your witnesses?
 8 MR. HUMMEL: We have in the audience Dr. Lord's
 9 neighbor, Ms. Wilma Johnson of 920 Northwest Drive, who will
 10 be here to testify in support.
 11 MR. GROSSMAN: Okay. All right. Anybody else in
 12 the audience who wishes to be heard who is not a witness to
 13 be called by the applicant?
 14 (No audible response.)
 15 MR. GROSSMAN: Seeing no hands, let's proceed.
 16 Okay. And who are the witnesses you'll be calling today in
 17 addition to Ms. Johnson?
 18 MR. HUMMEL: We will start with, we have, excuse
 19 me, we have Dr. Lord, the petitioner. We have Mr. Mike
 20 Lenhart, Transportation Planner and Traffic Engineer. We
 21 have Mr. William Landfair, Land Planner.
 22 MR. GROSSMAN: Okay. So you plan four witnesses?
 23 MR. HUMMEL: Yes, sir.
 24 MR. GROSSMAN: Okay. All right. Let me explain a
 25 little bit about the nature of these proceedings. They are

Page 6

1 a combination of formality and informality and that we
2 operate pretty much the way a courtroom operates, except
3 that the rules of evidence are a bit more relaxed.
4 A court reporter takes everything down, all
5 witnesses are sworn in and subject to cross-examination.
6 This is an application for a conditional use which of course
7 is not a variance, it is a use that's permitted under the
8 Code, if certain specific requirements are met that are
9 spelled out in the Code, both general and specific to this
10 kind of conditional use.
11 All right. Let me turn to some preliminary
12 matters. April 25, 2016, the applicant filed a revised site
13 and landscaping plans showing proper parking setbacks,
14 screening and landscaping and a notice of the proposed
15 amendment was issued on April 27, 2016, it's Exhibit 25
16 along with a notice of requested parking waiver. The
17 applicant disputes the need for the parking waiver, parking
18 space waiver, actually, but has requested one to satisfy
19 recommendations of the technical staff. Having received no
20 opposition to that motion to amend it is granted.
21 All right. I'm going to hear from you now, I
22 don't know, counsel, Mr. Hummel, are you the one who is
23 going to lead the presentation?
24 MR. HUMMEL: Yes, Mr. Examiner.
25 MR. GROSSMAN: All right. Mr. Hummel, I will hear

Page 7

1 from you now on your argument as to the parking waiver,
2 parking space waiver and why it's not required.
3 MR. HUMMEL: So very briefly, DPS has confirmed in
4 writing that applicant's methodology of calculating required
5 parking based only on the area of the structure dedicated to
6 the conditional use is appropriate and DPS is the lead
7 agency for enforcing the Zoning Ordinance. We have, as you
8 mentioned, complied with recommendation condition 5 to
9 request the parking waiver and OZAH has the required notice.
10 Through the notice of application notice, motion to amend,
11 pardon me. Technical staff has recommended approval of the
12 parking waiver. If the Hearing Examiner determines that the
13 parking waiver is necessary, we request that the Hearing
14 Examiner follow that recommendation, but we do not believe
15 that it's necessary.
16 MR. GROSSMAN: All right. I saw the letter signed
17 off on by Mr. Niblock of DPS. I'm not sure I understand how
18 that works. They're carving up the building in which the
19 use is occurring and saying well, even though the whole
20 building is owned and occupied by the applicant, and a
21 portion of it is, I guess a cafeteria room or whatever and
22 some storage, which I presume the storage pertains to the
23 use, how you can say that that's not part of the use.
24 Especially when the Zoning Ordinance talks about gross floor
25 area, Section 6.2.3 of the Ordinance says the minimum number

Page 8

1 of vehicle and bicycle parking spaces required in all zones
2 is the sum of the number of spaces required for each
3 applicable land use and tables in Section 6.2.4.b and
4 Section 6.2.4.c unless the total number is reduced under
5 Section 6.2.3.1 and a use is defined as the purpose for
6 which the property or building on that property is designed,
7 arranged and intended and for which it may be used, occupied
8 or maintained.
9 It seems to me that the staff break room,
10 mechanical room, storage are all part of the use.
11 MR. HUMMEL: Well, we understand that the proposed
12 methodology is not explicitly in the Zoning Ordinance by
13 statute, but it is consistent with the long term practice at
14 DPS and they are the ones who interpret and enforce the
15 Zoning Ordinance.
16 MR. GROSSMAN: Well, I have to make the decision
17 based on what I think is the best interpretation of the law
18 and if DPS disagrees, then they'll have to follow whatever
19 ends up being the requirement. I just don't see how when
20 use is talked about in terms of the metric is gross floor
21 area, I don't see how you can carve it up that way.
22 Now if there were a tenant in the building doing
23 something else, I'd say that would be something that we
24 would have to consider. But if there's no tenant in the
25 building how can you carve it up and say no that's not part

Page 9

1 of the use?
2 MR. HUMMEL: Well, again those uses are, I guess
3 those functions aren't specifically explicitly associated
4 with the use itself and that they should be treated
5 separately. But we do consent with the proposed condition
6 to request a parking waiver which we did. So if it is
7 deemed appropriate to have a waiver necessary, we support
8 the recommendation of technical staff to approve the parking
9 waiver.
10 MR. GROSSMAN: I understand. I just wanted to
11 address that legal issue first. Is there anything else you
12 wish to say on that point, the legal issue?
13 MR. HUMMEL: No, sir.
14 MR. GROSSMAN: All right. Well, I find that I
15 disagree with DPS, I agree with technical staff at the
16 Planning Board and I find that in fact, the parking should
17 be based on the gross floor area unless there was some other
18 specific tenant use or specified use in there. And I don't
19 think that a storage room which is part of the use, and a
20 staff break room which is part of the use, I don't see how
21 that is not part of the use. So I agree with technical
22 staff on the issue and so the number of parking spaces that
23 would be required would be the higher number than you've
24 listed in your current Site Plan and based on the evidence
25 I'll determine whether or not I agree with the

Page 10

1 recommendations of the waiver.
2 But I think it was well that you decided to go
3 ahead and request that we include the notice of the waiver
4 in our amendment notice, because I think that that's part of
5 the statutory requirement.
6 Okay. And also in connection with this, if at the
7 end of this hearing, I would like you to submit a revised
8 Site Plan that lists the amount of parking spaces that are
9 required under my interpretation of the law. If you wish to
10 drop a footnote there saying that you disagree, I have no
11 problem with that. But I think that the Site Plan itself
12 should not say 18 spaces are required when in fact the
13 ruling is a greater number are required and if I decide a
14 waiver is appropriate as to spaces, then you should include
15 that as well indicated in the Site Plan.
16 Okay. All right. Technical staff and Exhibit 23
17 in the Planning Board and Exhibit 26 recommended certain
18 conditions for this conditional use. Do you accept those
19 conditions?
20 MR. HUMMEL: Yes, sir.
21 MR. GROSSMAN: As modified by the Planning Board,
22 there was a slight modification, you said?
23 MR. HUMMEL: Correct.
24 MR. GROSSMAN: They specified that you had to
25 follow your Landscape Plan.

Page 11

1 MR. HUMMEL: Correct.
2 MR. GROSSMAN: You'd have to do that in any event.
3 Okay. Also technical staff made findings in its report in
4 Exhibit 23. Do you adopt those findings other than this
5 disagreement on the legal issue of the parking space waiver?
6 Do you accept those findings as part of your case?
7 MR. HUMMEL: Yes, Mr. Examiner.
8 MR. GROSSMAN: All right. You have an affidavit
9 of posting executed?
10 MR. HUMMEL: Yes, we do.
11 MR. GROSSMAN: All right. Will you bring that
12 forward? Don't trip on any of the wires here. Thank you.
13 And while you're up, I also had my staff notify you that we
14 would need something from I take it's Ms. Lord, indicating
15 her since she's co-owner, indicating her consent to this
16 application. Do you have a document of that sort here?
17 MR. HUMMEL: Actually, we request that the record
18 remain open to allow Ms. Lord the opportunity to get the
19 form notarized. She wasn't able to do that based on the
20 late notice.
21 MR. GROSSMAN: Okay. All right. So the affidavit
22 of posting will be Exhibit 28.
23 (Hearing Exhibit No. 28 was
24 marked for identification.)
25 MR. GROSSMAN: I thought I gave you plenty of time

Page 12

1 to get that together. All right.
2 MS. GIRARD: We understand, she's been out of
3 town. Dr. Lord can talk to why we weren't able --
4 MR. GROSSMAN: I don't think --
5 MS. GIRARD: -- we think we can get it by
6 tomorrow, it was just a function of where she was.
7 MR. GROSSMAN: I'm going to leave the record open
8 for 10 days to let you file a revised Site Plan in any
9 event.
10 MS. GIRARD: Right. Certainly within that amount
11 of time.
12 MR. GROSSMAN: Okay. Any other preliminary
13 matters?
14 MR. HUMMEL: No, sir.
15 MR. GROSSMAN: Then shall we proceed with your
16 opening statement, if you wish to make one.
17 MR. HUMMEL: Very briefly.
18 OPENING STATEMENT
19 MR. HUMMEL: Mr. Examiner, we're here today on a
20 conditional use application to allow medical clinic for up
21 to four medical practitioners under Section 59.3.5.7.A of
22 the Montgomery County Zoning Ordinance. The subject
23 property is 11016 New Hampshire Avenue, Silver Spring, which
24 comprises Lots 11 and 12, Block B of the Burnt Mills Estate
25 Subdivision.

Page 13

1 We believe the evidence in the record as well as
2 the testimony you're about to hear will show that the
3 subject property has long been used for the practice of
4 medicine and is well integrated into the community. The
5 applicant is seeking to validate the existing use as a
6 medical clinic for up to four medical practitioners. The
7 applicant's abutting neighbor has supported the existing use
8 of the subject property's medical practice as well as the
9 proposed conditional use application.
10 The applicant is not proposing to expand the
11 existing structure, but will improve the safety and adequacy
12 of parking facilities, as well as provide enhanced
13 landscaping and screening. Although applicant is requesting
14 a number of vehicle parking design standard waivers and
15 alternative method of compliance for screening standards,
16 this is a function of applying the very detail standards of
17 a brand new Zoning Ordinance to a site and building that
18 have been in existence for over 50 years. In other words,
19 we're not starting from scratch here.
20 The technical staff supports the requested waivers
21 and alternative method of compliance and the proposed design
22 properly balances compliance with the provision of safe and
23 adequate parking facilities with compliance with the Zoning
24 Ordinance.
25 The Planning Board unanimously voted to approve

Page 14

1 technical staff's recommendation to approve the conditional
2 use application and the application meets all applicable
3 requirements for approval for a conditional use under the
4 Zoning Ordinance. And as mentioned before, the applicant
5 has had an opportunity to review the recommended conditions
6 of approval from technical staff as modified by the Planning
7 Board and consents to those conditions of approval.
8 MR. GROSSMAN: All right. Would you like to call
9 your first witness then?
10 MR. HUMMEL: We will call Dr. Carl Douglas Lord,
11 please. Stand there.
12 DR. LORD: Yes, sir. Hello.
13 MR. GROSSMAN: Good morning, Dr. Lord.
14 DR. LORD: Good morning.
15 MR. GROSSMAN: Would you raise your right hand,
16 please? Do you swear or affirm to tell the truth, the whole
17 truth and nothing but the truth under penalty of perjury?
18 DR. LORD: I do.
19 MR. GROSSMAN: All right. You may proceed.
20 MR. HUMMEL: Thank you, Mr. Examiner.
21 DIRECT EXAMINATION
22 MR. HUMMEL: Please state your name and address,
23 which you just did for the record, what is your occupation
24 and how long have you been engaged in this occupation?
25 DR. LORD: My address is 11, I mean 15814 Thistle

Page 15

1 Ridge Drive, Rockville, Maryland 20853. I've been a
2 physician since 1966, I've been practicing in Montgomery
3 County since July of 1970 as a physician.
4 MR. HUMMEL: And when did you purchase the subject
5 property?
6 DR. LORD: 1990.
7 MR. HUMMEL: And you also own property to the
8 south in the corner of New Hampshire Avenue and Northwest
9 Drive?
10 DR. LORD: I do.
11 MR. HUMMEL: And how long has the subject property
12 been used a medical practitioner's office?
13 DR. LORD: Since it, since the building was built
14 in 1957, Dr. Fridell (phonetic sp.) started there then he
15 sold it to Dr. Perez. They were OB/GYN, and OB/GYN and Dr.
16 Perez's wife was a pediatrician so they had a pediatrician
17 and OB/GYN office and I bought it directly from them.
18 MR. GROSSMAN: All right.
19 MR. HUMMEL: And did Dr. Perez have a use and
20 occupancy permit that was granted by the County in 1984?
21 DR. LORD: 1984, that's correct.
22 MR. HUMMEL: And you purchased the property in
23 1990, is that correct?
24 DR. LORD: Correct.
25 MR. GROSSMAN: I take it that's the use and

Page 16

1 occupancy permit that's attached to the Technical Staff
2 Report?
3 MR. HUMMEL: Yes.
4 MR. GROSSMAN: All right.
5 MR. HUMMEL: And have you ever received any
6 complaints from the County regarding the use of the property
7 for medical uses?
8 DR. LORD: Never had any complaints from the
9 County or anyone else.
10 MR. HUMMEL: Now moving onto the proposed
11 operations for the conditional use. What are the --
12 MR. GROSSMAN: Can we deal with the ownership
13 issue first as to who owns the property and --
14 DR. LORD: My wife and I.
15 MR. GROSSMAN: Okay.
16 MR. HUMMEL: I'm sorry. What are the proposed
17 hours of operation for the proposed conditional use?
18 DR. LORD: Mondays through Friday, 9:00 a.m. to
19 5:00 p.m.
20 MR. HUMMEL: And what is the maximum number of
21 doctors that will practice at the clinic?
22 DR. LORD: Maximum of four, but not at one time.
23 There will probably never be more than one or two there at
24 any given time.
25 MR. GROSSMAN: I understand from the Technical

Page 17

1 Staff Report that there would be only three doctors employed
2 and there would never be more than two there at any given
3 time of the seven employees who would be present. Is that
4 incorrect?
5 MR. HUMMEL: That's not incorrect, I believe
6 that's correct.
7 MR. GROSSMAN: Well Dr. Lord just testified there
8 would be a maximum of four doctors not three.
9 DR. LORD: Of, I mean, there's not even that many
10 at the present time, so we, we will not expand it. So at
11 this present time there is really only two right now. So a
12 maximum of three then is fine.
13 MR. GROSSMAN: Okay. I just want to make sure
14 we're consistent because you just had testified that four.
15 DR. LORD: I thought that's what the, anyway.
16 MR. GROSSMAN: Up to four is the particular
17 conditional use is entitled a medical clinic for up to four
18 practitioners, but the technical staff of the Planning Board
19 indicated in their Staff Report that your particular use
20 would be for a total of three doctors and only two would be
21 present at any given time.
22 DR. LORD: Usually two or one and most of the time
23 it would be one, but occasionally there might be two.
24 MR. GROSSMAN: Right. That's a maximum.
25 DR. LORD: Okay. Yeah.

Page 18

1 MR. GROSSMAN: I'm just saying the reason I --
2 DR. LORD: I understand.
3 MR. GROSSMAN: -- interjected myself you said four
4 when that differed from the staff.
5 DR. LORD: Okay. That's fine. I don't have a
6 problem.
7 MR. HUMMEL: Okay. Just to make clear for the
8 record. You agree with the condition to have a maximum of
9 three doctors practicing on this site?
10 DR. LORD: Yes, I do.
11 MR. HUMMEL: With a maximum of two on site at any
12 given time?
13 DR. LORD: Yes.
14 MR. GROSSMAN: The only reason for that kind of
15 limitation really is the parking space and compatibility
16 with the neighborhood. That's the only reason that --
17 DR. LORD: No, I understand.
18 MR. GROSSMAN: -- there would be limits of that
19 kind. Okay.
20 MR. HUMMEL: And Dr. Lord, what is the maximum
21 number of patients that will be seen on a given day?
22 DR. LORD: 50 would be the maximum. I doubt it
23 was, well I don't think we've ever had 50 but that would be
24 the absolute maximum.
25 MR. HUMMEL: And how and when will deliveries be

Page 19

1 made to the subject property?
2 DR. LORD: The usual, UPS, FedEx, the postal
3 service and from 9:00 a.m. to 5:00 p.m.
4 MR. HUMMEL: And when will trash and recycling
5 pickup occur?
6 DR. LORD: It's two days a week, I don't remember
7 which two days they are, but they come in and take it two
8 days a week. We have it done at two days.
9 MR. HUMMEL: And as part of this conditional use
10 application, are you proposing any modifications to the
11 existing structure?
12 DR. LORD: No. None whatsoever.
13 MR. HUMMEL: And you'll be modifying the parking?
14 DR. LORD: Whatever we need to do, we'll modify it
15 to meet the needs.
16 MR. HUMMEL: And providing additional landscaping
17 if required?
18 DR. LORD: Yes.
19 MR. HUMMEL: Okay.
20 DR. LORD: Right.
21 MR. HUMMEL: And have you talked to your neighbors
22 about the use of the subject property as a medical clinic?
23 DR. LORD: I have.
24 MR. HUMMEL: And do they support the use of the
25 subject property as a medical clinic?

Page 20

1 DR. LORD: Everyone we've talked to supported it
2 and Wilma is here to answer to that. She knows the
3 neighbors even better than I do.
4 MR. GROSSMAN: That's actually hearsay. If you're
5 introducing it as apparently you are, to prove the truth of
6 what's asserted therein, there is nobody here to object and
7 the standards for evidence here are a little bit more
8 relaxed, so we do allow some hearsay. I'm a little bit
9 reluctant to allow that kind of hearsay which is what all
10 the neighbors want kind of hearsay as opposed to them coming
11 here and saying it themselves. So I'm not going to allow
12 that broad a statement of what the neighbors are. You can
13 say whether or not any neighbor has protested to you
14 directly or supported you directly. Do you have --
15 DR. LORD: Well, Wilma has supported me directly
16 and as far as I know from talking to all the neighbors no
17 one has objected to anything.
18 MR. GROSSMAN: All right. I'll permit that.
19 Okay.
20 DR. LORD: Okay.
21 MR. HUMMEL: And in your opinion is the proposed
22 conditional use compatible with the surrounding
23 neighborhood?
24 DR. LORD: Yeah, the building is built like the
25 rest of the neighborhood, the building is a house, it

Page 21

1 started as a house and it fits in with the housing in the
2 neighborhood.
3 MR. GROSSMAN: All right. Yes, I saw that you
4 have introduced photographs, I think it's Exhibit 13 in case
5 of the neighborhood perhaps Dr. Lord could identify, unless
6 you plan to do it through somebody else, the photographs
7 that were submitted? You can have somebody else do it if
8 you prefer, but --
9 MR. HUMMEL: That's fine. Dr. Lord, what I have
10 in front of you is what's been marked for identification as
11 Exhibits 13A through F. If you could please just identify
12 these for the record, what each picture shows.
13 DR. LORD: Okay. This is from New Hampshire
14 Avenue facing the building is the first one showing the
15 Pepco building to the right of that.
16 MR. GROSSMAN: Okay. Which one is that? Is that
17 marked as 13A?
18 DR. LORD: Yes.
19 MR. GROSSMAN: Yes?
20 MR. HUMMEL: Yes.
21 MR. GROSSMAN: Okay. And 13A, did you take that
22 photograph Dr. Lord?
23 DR. LORD: I did.
24 MR. GROSSMAN: Okay. And when did you take it?
25 DR. LORD: I don't know, about five or six months

Page 22

1 ago probably.
2 MR. GROSSMAN: All right. And are all the
3 photographs you're holding that were Exhibit 13, are they
4 all ones taken by you about the same time?
5 DR. LORD: Yes.
6 MR. GROSSMAN: And do they all accurately reflect
7 the neighborhood?
8 DR. LORD: Yes.
9 MR. GROSSMAN: Okay. All right. Go ahead then.
10 DR. LORD: This is the one that's a little closer
11 up.
12 MR. GROSSMAN: What's the identification of that?
13 MR. HUMMEL: That's 13B.
14 MR. GROSSMAN: 13B. Okay.
15 DR. LORD: Okay.
16 MR. GROSSMAN: The closer up of what is it
17 depicting?
18 DR. LORD: It's the same thing from New Hampshire
19 Avenue, the front of the building.
20 MR. GROSSMAN: Okay.
21 DR. LORD: The next one is from the north --
22 MR. HUMMEL: That's 13C for the record.
23 MR. GROSSMAN: All right.
24 DR. LORD: -- north and the west side from --
25 MR. GROSSMAN: Okay.

Page 23

1 DR. LORD: -- looking at from the Pepco building.
2 And this is the back facing west, the back of the building.
3 MR. GROSSMAN: And is that --
4 MR. HUMMEL: 13D.
5 MR. GROSSMAN: 13D. Okay.
6 DR. LORD: And this is looking from the south to
7 the north from the south to the north on that side of the
8 building.
9 MR. HUMMEL: For the record, Dr. Lord is referring
10 to Exhibit 13E.
11 MR. GROSSMAN: Okay.
12 DR. LORD: Let's see what else we've got here.
13 And then this is the property from the front with the
14 building to the south of it showing both of them from New
15 Hampshire Avenue.
16 MR. GROSSMAN: Okay.
17 MR. HUMMEL: And for the record that's 13F.
18 MR. GROSSMAN: Okay. And there's also some
19 photographs in the Technical Staff Report which are
20 identified by captions, pages 5, 6 and 7 of the Technical
21 Staff Report. Would you take a look at those photographs,
22 Dr. Lord and tell me if those captions correctly describe
23 the pictures and they accurately depict the scene as it
24 exists now?
25 DR. LORD: Yes.

Page 24

1 MR. GROSSMAN: Okay.
2 DR. LORD: I'm looking, let me finish all of them.
3 MR. GROSSMAN: Sure.
4 DR. LORD: Yes.
5 MR. GROSSMAN: All right. You may proceed then.
6 MR. HUMMEL: And lastly, I believe I asked this
7 question before, but just to confirm for the record, you
8 consent with Planning Board's recommendations of conditions
9 of approval as modified by the Planning Board in this case?
10 DR. LORD: Yes, absolutely.
11 MR. HUMMEL: I have no more questions for Dr.
12 Lord.
13 MR. GROSSMAN: All right. I don't see anybody
14 here to brutalize you in cross-examination. I guess Ms.
15 Girard wouldn't want to do that, so that's all we have for
16 you. Thank you, Dr. Lord.
17 DR. LORD: All right.
18 (Discussion off the record.)
19 MR. HUMMEL: Next we'd like to call Ms. Wilma
20 Johnson.
21 MR. GROSSMAN: Good morning, Ms. Johnson.
22 MS. JOHNSON: Good morning.
23 MR. GROSSMAN: Thank you for taking your time to
24 come down here today and share your information with us.
25 Would you raise your right hand, please? Do you swear or

Page 25

1 affirm to tell the truth, the whole truth, and nothing but
2 the truth under penalty of perjury?
3 MS. JOHNSON: I do.
4 MR. GROSSMAN: All right. You may proceed.
5 DIRECT EXAMINATION
6 MR. HUMMEL: Very quickly, Ms. Johnson, just to
7 confirm for the record. I'm going to show you what's been
8 identified as Exhibit 24B which is the aerial of the area
9 from M.C. Atlas. Could you please come up here and describe
10 for us which property you own?
11 MS. JOHNSON: I'll try, I don't have my glasses
12 on, but this this looks like my house right here.
13 MR. HUMMEL: And can you just describe in words
14 for the record the number of your property?
15 MS. JOHNSON: The number?
16 MR. HUMMEL: The address number.
17 MS. JOHNSON: I'm sorry. 920 Northwest Drive.
18 MR. GROSSMAN: All right. And that's your home,
19 Ms. Johnson?
20 MS. JOHNSON: It most definitely is.
21 MR. GROSSMAN: All right. Okay. So it's the
22 second building in from New Hampshire Avenue onto the west
23 of New Hampshire Avenue on Northwest Drive?
24 MS. JOHNSON: That is correct, the second one.
25 MR. GROSSMAN: All right. Thank you.

Page 26

1 MR. HUMMEL: Thank you, Ms. Johnson. Now could
2 you just tell the Hearing Examiner if you support the
3 proposed conditional use applied for by Dr. Lord?
4 MS. JOHNSON: Yes, I do. I have resided at this
5 location since 1984 and have never had any issues with the
6 previous physician nor Dr. Lord.
7 MR. GROSSMAN: Okay.
8 MS. JOHNSON: In fact, if I ever had any problems,
9 he would definitely take care of it. So it's almost like to
10 me, and I don't want to talk too much, it's almost like to
11 me a safety feature because where there are people around
12 the likelihood, it diminishes the likelihood that someone
13 would try to break in. Not that there is, not that there
14 aren't any problems in the area, but one would be hesitant
15 when they see a lot of people around to go to someone's door
16 and try to get in.
17 MR. GROSSMAN: Okay. Are you a patient of Dr.
18 Lord's?
19 MS. JOHNSON: Yes, I am.
20 MR. GROSSMAN: Okay. All right.
21 MS. JOHNSON: I'm a patient at the facility not --
22 MR. GROSSMAN: Not necessarily Dr. Lord himself?
23 MS. JOHNSON: Right. That is correct.
24 MR. GROSSMAN: All right.
25 MR. HUMMEL: And Ms. Johnson, as part of the

Page 27

1 conditional use application as a function of the
2 requirements from Zoning, Dr. Lord is required to put a 6-
3 foot board-on-board wooden fence running along his rear
4 property line which abuts the property that you own at 920
5 Northwest Drive. Do you have any thoughts about the
6 inclusion of that 6-foot wooden fence?
7 MS. JOHNSON: Absolutely under no circumstances
8 should a 6-foot fence be erected. The primary reason is it
9 would be basically block me in, someone could be trying to
10 get in and you could not see. I would be, it's not
11 appropriate, not that high of a fence under no
12 circumstances, I can't do that.
13 MR. GROSSMAN: All right. How about a 4-foot high
14 fence?
15 MS. JOHNSON: Absolutely, I will agree.
16 MR. GROSSMAN: Okay.
17 MS. JOHNSON: No higher than that.
18 MR. GROSSMAN: I didn't actually realize that the
19 fence was an issue. When has that come up?
20 MS. GIRARD: Just recently. We, in talking to Dr.
21 Lord who has talked to Ms. Johnson, discovered that within
22 like the last week or two that she had concerns about that
23 fence. So that's why we wanted to elicit this testimony
24 here tonight, or today. We're perfectly amenable to
25 reducing the height of the fence to 4 feet in responses to

Page 28

1 Ms. Johnson's concerns. I think this is a little bit
2 unusual in that you know usually we were relying on the
3 fence for the screening, but she doesn't want that much
4 screening.
5 MR. GROSSMAN: Right.
6 MS. GIRARD: So we're amenable to reducing the
7 height of the fence, but --
8 MR. HUMMEL: Additionally, we're already
9 requesting an alternative method of compliance from the
10 screening requirements of Division 6.5, so we think that a
11 shorter fence could be wrapped into that request as well.
12 MR. GROSSMAN: I guess it could but my
13 recollection of those provisions is that when a fence is
14 used as part of the compliance a 4 foot fence is all that's
15 required, as I recall that particular provision. It doesn't
16 call for a 6-foot fence in the provision. Now it may have
17 been that the Planning Board staff may have felt that that
18 was more appropriate in terms of compatibility, but
19 apparently not from this witness's perspective. So I think
20 in that connection, that proposal would then have to be run
21 by technical staff as an amendment to the application and
22 get their input on it. So we have to have the record open
23 for a bit longer. But in any event, you clearly feel
24 strongly about it, so it certainly should be taken into
25 consideration. I believe that you're the only abutting

Page 29

1 residential property, is that correct, Mr. Hummel?
2 MR. HUMMEL: Yes, Mr. Examiner, that's correct.
3 MR. GROSSMAN: Because to the north you have a
4 Pepco facility which appears to be residential but really
5 isn't and then to the south you have another, as I
6 understand it, that's another medical clinic type of
7 building. Is it currently disused, Mr. Hummel? I didn't
8 hear your answer. You can't, you didn't answer, you shook
9 your head.
10 MS. GIRARD: Yes.
11 MR. GROSSMAN: You have to say yes, no, abstain,
12 whatever.
13 MR. HUMMEL: Of course. We understand that it was
14 used for a medical clinic use. The special exception was
15 revoked as abandoned. And we can bring Dr. Lord back up to
16 testify as to the current use of the property.
17 MR. GROSSMAN: Does Dr. Lord own that building as
18 well?
19 MR. HUMMEL: Yes, sir.
20 MR. GROSSMAN: All right. Well, yes, I mean I
21 would like to hear what it is, because it wasn't clear to me
22 in the Staff Report. The staff indicated that they didn't
23 think it was likely to be resumed as a residential use
24 because of the next door clinic and because it had been
25 operating as a clinic, but I don't know that they

Page 30

1 specifically said what was intended there. So yes, I would
2 like to hear from Dr. Lord about it.
3 MR. HUMMEL: Okay. And I have no more
4 questions for Ms. Johnson. Thank you very much --
5 MR. GROSSMAN: Hold on one second, Ms. Johnson.
6 Is there anything else that you would like to add about what
7 you would perceive as more or less compatible with your
8 particular property? I don't know if you've seen the plans,
9 have you seen the plans for this use?
10 MS. JOHNSON: No, I have not seen no more than
11 what has been mailed to me and I think I did see the plans
12 that were mailed to me.
13 MR. GROSSMAN: Okay. You don't have any other
14 objections, your only concern was the idea of you don't want
15 a 6-foot fence, you'd prefer a 4-foot fence?
16 MS. JOHNSON: That is it.
17 MR. GROSSMAN: Okay. All right. Once again,
18 thank you very much.
19 MS. JOHNSON: You're welcome.
20 MR. GROSSMAN: I appreciate your coming down here
21 to share your opinions and concerns. It always helps.
22 MS. JOHNSON: Thank you.
23 MR. GROSSMAN: Thank you.
24 (Discussion off the record.)
25 MR. HUMMEL: I would like to recall Dr. Lord.

Page 31

1 MR. GROSSMAN: You thought you got out of the hot
2 seat, huh, Dr. Lord?
3 DR. LORD: I don't think it's a hot seat, I'm just
4 here.
5 MR. GROSSMAN: Well, maybe we could heat it for
6 you.
7 MR. HUMMEL: So following up on the recent
8 discussion. Dr. Lord, can you tell us if you own the
9 property on the corner of Northwest Drive and New Hampshire
10 Avenue, which I believe is 924 Northwest Drive?
11 DR. LORD: Correct, I do.
12 MR. GROSSMAN: Immediately to the south of your
13 clinic building.
14 DR. LORD: Correct.
15 MR. GROSSMAN: Okay.
16 MR. HUMMEL: And can you tell us how that property
17 is currently being used?
18 DR. LORD: What, what, I bought it when it was,
19 actually there was a clinic there for a podiatrist office
20 and the County asked them to raise the ceiling an extra
21 foot, it was too low. A podiatrist bought the building and
22 built the building and had his practice there. He sold it
23 to another group. They said the, it was in the lower level
24 of the building and they said that you have to raise the
25 thing another foot and they said I can't do that so they

Page 32

1 sold it to me. And the whole area where that is has been
2 used for storage, medical records and stuff like that. And
3 there were some rental on the top floor, but there's no, I
4 don't have a lease that I mean it can be terminated at any
5 time. So basically it's mostly used for storage.
6 MR. GROSSMAN: All right. So you're saying it's
7 mostly used for storage, but there are renters there right
8 now?
9 DR. LORD: There are right now, but it's a month
10 to month and that can be terminated at any time if it's
11 necessary.
12 MR. GROSSMAN: Well, I'm not interested in kicking
13 anybody out of their home. I just wanted to have the record
14 indicate what's there because one of the questions here, one
15 of the primary questions for any proceeding like this is
16 compatibility with the neighborhood and so the question is
17 whether or not there's another residential establishment
18 right next to you, it would be a question of compatibility
19 with the use that you now have. But I'm not telling you to
20 tell them to get out.
21 DR. LORD: No, I mean is that it's mostly for
22 storage, over, over 50 percent of the building is like 60
23 percent is storage. We have medical records and medical
24 equipment and all that kind of stuff there. That's what the
25 main use was for and that's why I bought it.

Page 33

1 MR. GROSSMAN: All right.
2 DR. LORD: But there is also extra parking right
3 there also that could be used, if necessary in, in the front
4 of that building.
5 MR. GROSSMAN: Okay.
6 DR. LORD: Which is not being used by anyone.
7 MR. GROSSMAN: I think when you advised technical
8 staff of the proposal to have a 4 foot rather than a 6-foot
9 fence and you have the revised Site Plan which shows the
10 number of parking spaces required as the larger number, that
11 you should also let them know that there are renters in,
12 just so that the record is clear to them as well as to me as
13 to what exactly is the situation on the street.
14 MR. HUMMEL: Understood.
15 DR. LORD: Could I speak to that just a little
16 more?
17 MR. GROSSMAN: Sure.
18 DR. LORD: On this, where are the other pictures?
19 Here we go. If we look at the picture --
20 MR. HUMMEL: Dr. Lord is holding Exhibit 13.
21 DR. LORD: The last, the last one.
22 MR. HUMMEL: 13F.
23 DR. LORD: This is the one next door.
24 MR. GROSSMAN: Yes.
25 DR. LORD: And that's where the podiatrist office

Page 34

1 was and there's parking directly in front of that.
2 MR. GROSSMAN: Right.
3 DR. LORD: Which is never used because it's not
4 facing, this is facing New Hampshire rather than Northwest
5 Drive. So there's several parking spaces there that are
6 never used.
7 MR. GROSSMAN: Okay. Okay. Anything else?
8 MR. HUMMEL: No, sir.
9 MR. GROSSMAN: All right. Thank you, Dr. Lord.
10 DR. LORD: Okay.
11 MR. HUMMEL: Next we would like to call Mike
12 Lenhart.
13 (Discussion off the record.)
14 MR. GROSSMAN: Good morning, Mr. Lenhart.
15 MR. LENHART: Good morning.
16 MR. GROSSMAN: Would you raise your right hand,
17 please? Do you swear or affirm to tell the truth, the whole
18 truth and nothing but the truth under penalties of perjury?
19 MR. LENHART: I do.
20 MR. GROSSMAN: You may proceed.
21 MR. HUMMEL: I'd like to mark for identification,
22 I believe it's going to be Exhibit 29.
23 MR. GROSSMAN: Yes.
24 (Hearing Exhibit No. 29 was
25 marked for identification.)

Page 35

1 DIRECT EXAMINATION
2 MR. HUMMEL: For the record, Mr. Lenhart, can you
3 please just identify what this is?
4 MR. LENHART: That's a copy of my resume.
5 MR. HUMMEL: And as Mr. Lenhart has previously
6 testified before the Hearing Examiner as an expert in
7 transportation planning and traffic engineering, we'd like
8 to move him as an expert.
9 MR. GROSSMAN: All right. Yes, he's testified
10 before me in that capacity and other Hearing Examiners here
11 and based on his resume, Exhibit 29, and his previous
12 testimony as an expert, I accept him as an expert in traffic
13 engineering and transportation planning.
14 MR. HUMMEL: Thank you, Mr. Examiner. Mr.
15 Lenhart, are you familiar with the conditional use property
16 surrounding area and conditional use application number
17 CU16-10?
18 MR. LENHART: Yes.
19 MR. HUMMEL: And are you also familiar with
20 Montgomery County's White Oak Science Gateway Master Plan?
21 MR. LENHART: Yes.
22 MR. HUMMEL: Are you also familiar with the
23 Adequate Public Facilities Ordinance, Subdivision Station
24 Policy and The Local Area Transportation Review and
25 Transportation Policy Area Review Guidelines?

Page 36

1 MR. LENHART: Yes.
2 MR. HUMMEL: And as part of this application, have
3 you analyzed the suitability of the proposed conditional use
4 for the subject property, from a transportation planning and
5 traffic engineering standpoint?
6 MR. LENHART: Yes, I have.
7 MR. HUMMEL: And could you please review the
8 findings and conclusions of your transportation analysis
9 which are included in the record as Exhibit 9?
10 MR. LENHART: Certainly. We prepared a traffic
11 statement for this project dated October 22, 2015, and that
12 included an analysis of the two components of a traffic
13 statement which is LATR, the Local Area Transportation
14 Review and the TPAR, the Transportation Planning Area
15 Review. The LATR, we looked at the property, the existing
16 building it's been in use for a number of years. We looked
17 at it in terms of square footage and we looked at in terms
18 of the number of employees. The ITE or Institute for
19 Transportation Engineers has a trip generation manual they
20 give different methodologies to generate trips for medical
21 building. One is square footage, one is the number of
22 employees.
23 Based upon the square footage, the property would
24 generate 16 trips in the morning peak hour, 25 trips in the
25 evening peak hour. Based on the number of employees, the

Page 37

1 property would generate four trips in the morning peak hour
2 and seven trips in the evening peak hour.
3 The Staff Report basically only looked at the
4 square footage in their analysis because that is the worst
5 case scenario of the two and it doesn't presume any
6 restriction on the number of staff on the site. Really the
7 trip generation in my opinion is based upon the number of
8 employees, because that's what generates the ability to turn
9 over patients. And so seven employees, four morning trips,
10 six evening trips. If you just look at the square footage
11 of the building that assumes that he'd be able to get more
12 employees, more efficiency, higher turnover rates and that's
13 why that has a higher trip generation.
14 In either event, they both generate less than 30
15 peak hour trips. So the property would be exempt from the
16 LATR review.
17 MR. GROSSMAN: The LATR guidelines do not give
18 figures for a medical clinic? I noticed you use ITE.
19 MR. LENHART: I used ITE, that's correct. It's
20 the guidelines, LATR guidelines does not include medical,
21 and it has office, general office but not medical office.
22 MR. GROSSMAN: Okay. And the square footage upon
23 which you based your first set of figures, 16 a.m. trips and
24 25 p.m., was that the gross square footage of the building
25 or was that based on the determination of the square feet

Page 38

1 and the use that the applicant had argued for?
2 MR. LENHART: I believe that that was the gross
3 floor area of the building. I don't --
4 MR. GROSSMAN: Why don't you check it?
5 MR. LENHART: Let me check that.
6 MR. GROSSMAN: What is the gross floor area by the
7 way, Mr. Hummel, on the building?
8 MR. HUMMEL: The Staff Report notes that it's
9 approximately 6,500 square feet on page 4 of the Technical
10 Staff Report. If you go to exhibit, I'm sorry, it's
11 Attachment --
12 MS. GIRARD: 3.
13 MR. HUMMEL: -- Attachment 3 of the Staff Report,
14 it shows the areas that were counted for the use, for
15 determining parking areas not counted. So if you add up
16 those two numbers, it's approximately, I believe, 5,100
17 square feet. So the 6,500 square foot number is actually a
18 bit conservative.
19 MR. LENHART: Thank you for clarifying. I knew
20 that those numbers were in there, but yes, so we used the
21 gross floor area of the building.
22 MR. GROSSMAN: Okay.
23 MR. LENHART: Not the limited to the actual
24 conditional use.
25 MR. GROSSMAN: Not the medical portion that --

Page 39

1 MR. LENHART: Correct.
2 MR. GROSSMAN: -- applicant was talking about.
3 MR. LENHART: Correct.
4 MR. GROSSMAN: Okay. Well that's the more
5 conservative way.
6 MR. LENHART: That's correct.
7 MR. GROSSMAN: And so if I understand you, it's 16
8 a.m. using that and 25 p.m. and then using the number of
9 employees as the guide to how many trips would be generated,
10 you got four in the morning and seven in the evening, is
11 that correct?
12 MR. LENHART: That's correct.
13 MR. GROSSMAN: Okay. And both of those are below
14 the 30 which would be required for a full traffic study.
15 MR. LENHART: THE COURT:
16 MR. GROSSMAN: Okay.
17 MR. LENHART: And then the TPAR analysis, I concur
18 with the Staff Report that because this is not adding square
19 footage, it's an existing building that there is no TPAR
20 assessment on this property.
21 MR. GROSSMAN: Okay.
22 MR. HUMMEL: And Mr. Lenhart, you just mentioned
23 that you've reviewed the Technical Staff Report. Do you
24 agree with their review of the adequacy of public facilities
25 to serve the proposed conditional use regarding

Page 40

1 transportation?
2 MR. LENHART: Yes.
3 MR. HUMMEL: And finally, based on your analysis
4 from a transportation planning and traffic engineering
5 standpoint will the proposed development substantially
6 conform with the recommendations of the White Oak Science
7 Gateway Master Plan?
8 MR. LENHART: Yes, it will.
9 MR. GROSSMAN: What are those as they pertain to
10 traffic or parking?
11 MR. LENHART: Well, it's similar and consistent
12 with the LATR analysis.
13 MR. GROSSMAN: All right. I take it from the
14 reading of the Staff Report there is nothing, there is no
15 specific mention of this site in the Master Plan, is that
16 correct?
17 MR. LENHART: That's correct. Correct.
18 MR. GROSSMAN: Okay. All right.
19 MR. HUMMEL: And from a transportation planning
20 and traffic engineering standpoint is the proposed
21 conditional use harmonious with the surrounding
22 neighborhood?
23 MR. LENHART: Yes.
24 MR. HUMMEL: Can you please explain?
25 MR. LENHART: Well, the property is located along

Page 41

1 the southbound lanes of New Hampshire Avenue and there is a
2 service road along the frontage of the property that
3 provides access to and from the driveways. There are
4 commercial uses, essentially along New Hampshire Avenue to
5 the north of the property and you know I believe from a
6 transportation perspective it's very consistent and similar
7 experience as you travel south on New Hampshire Avenue in
8 terms of access driveways and land use.
9 MR. HUMMEL: And from a transportation planning
10 and traffic engineering standpoint will the proposed
11 conditional use be served by adequate public roads?
12 MR. LENHART: Yes.
13 MR. HUMMEL: And just briefly explain?
14 MR. LENHART: Well, I mean the main test here is
15 that the site is exempt and therefore passes the LATR and
16 the TPAR analysis which is really the test here for
17 adequacy.
18 MR. HUMMEL: And form a transportation planning
19 and traffic engineering standpoint will the proposed
20 conditional use cause undue harm to the neighborhood with
21 respect to traffic?
22 MR. LENHART: No, it will not. There is, the
23 property even as a commercial use is a very low traffic
24 generator. There are limitations on the number of doctors
25 that will be on site and number of employees that will be on

Page 46

1 clinics up to four medical practitioners conditional use in
2 particular?
3 MR. LANDFAIR: Yes.
4 MR. HUMMEL: And could you please review the
5 findings and conclusions of your land planning analysis
6 which is included in the record as Exhibit 8?
7 MR. LANDFAIR: Certainly. We'll start with a
8 description of the property and the existing use. I'm
9 referring to Exhibit 24B which is titled M.C. Atlas. It's
10 an aerial photograph. It shows the subject property on the
11 west side of New Hampshire Avenue. The property is
12 rectangular in shape and comprised of 18,591 square feet,
13 with approximately 150 feet of frontage along New Hampshire
14 Avenue. It's improved with a brick building, which was
15 originally constructed as a split level residence. It's
16 very similar in character to that of surrounding structures.
17 There is and had been used for a very long time as a
18 physician's office. There are 21 parking spaces currently
19 striped on the property today. Access has been described as
20 being from the service road running parallel with New
21 Hampshire Avenue.
22 The front yard is landscaped with two mature maple
23 trees and there is mature foundation plantings along the
24 front of the building as well as along the south side of the
25 structure. The building is approximately 6,500 square feet

Page 47

1 in size, with approximately 4,500 square feet devoted to the
2 medical office on the first and second floors of the
3 structure.
4 I'll now turn to defining the surrounding
5 neighborhood and will refer to Exhibit 24E1 which is titled
6 conditional use plan. The surrounding area or neighborhood
7 as we've defined it, is bound by Lockwood to the north, the
8 FDA Headquarters along the east side of New Hampshire Avenue
9 and Schindler Drive to the south which is just off of the
10 exhibit. To the west, we're defining the area as bound by
11 Babington and by those properties that are along the west
12 side of the New Hampshire Avenue.
13 MR. GROSSMAN: Is that different from the way it
14 was defined by the technical staff?
15 MR. LANDFAIR: It is defined, yes, it is
16 different. It's the same definition to the north, to the
17 east and to the south but staff carried the boundary of the
18 surrounding neighborhood further to the west to coincide
19 with Hoyle Avenue, Burnt Mills Avenue and Gatewood Avenues.
20 We, however, are comfortable with what we've defined
21 believing it to represent accurately those properties which
22 will be affected by sight, sound and traffic from the
23 subject property.
24 MR. GROSSMAN: But I also noticed on that exhibit
25 you've got a circle with a certain radius. That's not your

Page 48

1 defined?
2 MR. LANDFAIR: No, it's not. I should clarify
3 that's just giving a representation of walking distance,
4 it's a scale, if you will, just to show what walking
5 distance might be to nearby commercial areas and to a
6 majority of the residences within the defined neighborhood.
7 MR. GROSSMAN: And is there an exhibit that you
8 have submitted which has your defined proposed defined
9 neighborhood markup?
10 MR. LANDFAIR: The only definition of the
11 neighborhood of our neighborhood, is found in written form
12 in our land use report which is an exhibit on the record. I
13 will be happy though to include a drawing, if you will, that
14 would coincide with that defined neighborhood.
15 MR. GROSSMAN: Yes, I don't necessary disagree
16 with your definition or with staff's for that matter,
17 although theirs might be a little bit large. Do you have an
18 objection to using staff's definition of the neighborhood?
19 MR. HUMMEL: No, Mr. Examiner, we do not.
20 MR. GROSSMAN: Okay. Do you think that Mr.
21 Landfair, that staff's definition, I know it differs from
22 yours, but is inappropriate?
23 MR. LANDFAIR: It's a little broad but it
24 certainly includes those properties as do ours that would be
25 most impacted sight, sound and traffic. So I think it's

Page 49

1 acceptable.
2 MR. GROSSMAN: Okay. All right. Thank you.
3 MR. LANDFAIR: The subject property as has been
4 noted is zoned R-90 as are the properties to the north, to
5 the west and to the south. For the most part surrounding
6 buildings are very much similar in architectural style and
7 vernacular to the building on the subject property. And
8 this extends further to the south with those residences
9 along New Hampshire Avenue which are also zoned R-90 and
10 also zone RE-2. It should be noted that at the intersection
11 of McCeney Avenue and New Hampshire Avenue as shown here on
12 the exhibit, that there are two conditional uses existing
13 today. One is for a non-resident medical practitioner's
14 office and the other is for non-resident dental office. As
15 far as we know these are the only two conditional uses
16 within the defined neighborhood.
17 MR. GROSSMAN: Within your defined or within both
18 defined neighborhoods?
19 MR. LANDFAIR: To be honest, within my defined
20 neighborhood. I didn't confirm whether it was within the
21 broader definition of staff's.
22 MR. GROSSMAN: Okay.
23 MR. LANDFAIR: The main entrance for the FDA is
24 opposite Schindler Drive at the intersection of New
25 Hampshire Avenue. North of the FDA is an office building

Page 50

1 and a series of retail uses in the CR2.5 Zone. And on the
2 west side of New Hampshire Avenue south of Lockwood Drive
3 are townhouse style offices, an office building, office
4 supply store, other various commercial uses including a
5 drive-thru restaurant and a gas station. All of these are
6 located in the CRT1.5 Zone.

7 MR. HUMMEL: Mr. Landfair?
8 MR. LANDFAIR: Yes.
9 MR. HUMMEL: Sorry to interrupt. I'd like to show
10 you with respect to the Hearing Examiner's question
11 regarding the number of special exceptions in your defined
12 neighborhood versus what technical staff has defined as the
13 neighborhood. I'd just like to show you Technical Staff
14 Report page 8 and see if that informs your answer.

15 MR. LANDFAIR: So based on this exhibit found in
16 the Technical Staff Report they've confirmed that within
17 their broader defined neighborhood there are just those two
18 existing conditional uses.

19 MR. GROSSMAN: Okay.
20 MR. HUMMEL: Thank you.
21 MR. LANDFAIR: I'd like now to turn to the
22 proposal at hand. The conditional use will not require any
23 expansion of the existing building, which meets all of the
24 applicable development standards except for as has been
25 noted in the Staff Report and our land use report. The

Page 51

1 front yard setback which is 28.7 feet from the right-of-way
2 line. The setback requirement right now is 30 feet --
3 MS. MCLEOD: Right.
4 MR. LANDFAIR: -- for the zone. However, we
5 believe that this setback is legal and conforming based on
6 the fact that it complied with the 25 foot setback that was
7 in effect when the property was originally planted back in
8 the 1950's based on the 1954 Zoning Ordinance.

9 As has been testified by Dr. Lord, the conditional
10 use will actually result in reduced operations from a
11 maximum of four doctors with three on site at any given time
12 to a maximum of three doctors, with a maximum of two on
13 site. And I think in the record it stated that quite often
14 there will be more than one medical practitioner on site at
15 any given time.

16 The parking, the existing parking will be
17 extensively reconfigured, restriped. The pavement itself
18 will not be removed but it will be restriped to make for a
19 much safer, much more efficient parking arrangement. For
20 the most part, the parking spaces will be angled 60 degree
21 angle from the drive aisle as it wraps around the building
22 into the rear yard. We believe this will be a good, safe,
23 efficient flow of traffic.

24 At the same time in the front yard, we have
25 removed two spaces immediately adjacent to the main

Page 52

1 entrance. In part, we're doing this to improve the
2 aesthetics of the property but it also allows for a handicap
3 accessible parking space closest to that main entrance.

4 The landscaping, and I'm now referring to Exhibit
5 24E3, titled landscaping plan. The landscaping will be
6 extensively improved for the property. As I noted there is
7 a mature landscaping in the front of the property including
8 the two large maple trees and the foundation plantings. But
9 in addition, along the rear property line we're proposing
10 three canopy trees, three ornamental trees, 12 evergreen
11 trees and various shrubs along the rear property line. In
12 addition to a fence, a board-on-board fence which would be
13 located along that property line.

14 The plan currently shows that fence at being 6
15 feet 6 inches in height, but of course with the testimony of
16 Ms. Johnson, we'll be, we'll certainly look to revise that
17 to reduce the height of the fence to 4 feet.

18 MR. GROSSMAN: And in your opinion, would that
19 reduction of height in that fence having a 4-foot rather
20 than a 6-foot fence, how would that affect the
21 compatibility?

22 MR. LANDFAIR: I don't think it'll have any effect
23 on compatibility and I'm sensitive, I'm recently went
24 through this with my neighbors in terms of putting up a
25 fence in the rear yard and the height of the fence can be a

Page 53

1 sensitive issue, for immediate neighbors. In this case, the
2 purpose of a fence is primarily to mitigate the view of the
3 cars that are parked back there as well as the movements of
4 the cars within the drive aisle itself.

5 At 4 feet, the fence will be sufficient to
6 mitigate the headlights, not that the operations of the
7 office will extend beyond 5 o'clock, but it will be a
8 sufficient height to mitigate the view of these cars. And
9 further, as shown on the photometric plan the light fixtures
10 are designed to cut of the light off at the property line.
11 So whether there's a fence there or not, you'll still have
12 that light cutoff at 0.1 foot-candles at the property lines.
13 So it makes no difference whether that fence is 4 feet, 5
14 feet or 6 feet. So we're quite willing to reduce the height
15 and it will make for a friendlier view, certainly for Ms.
16 Johnson from her rear yard.

17 MR. GROSSMAN: Since you mentioned the lighting
18 plan, I had some difficulty, I mean I saw the photometrics
19 on the lighting plan but I had some difficulty finding where
20 the lights were.

21 MR. LANDFAIR: Right.
22 MR. GROSSMAN: Are they not designated on there?
23 Is there any exhibit that designates where the actual light
24 locations are?
25 MR. LANDFAIR: You know I think it may be simply

Page 54

1 be the photographs that are entered into the record. We are
2 not changing, we're not adding light fixtures, exterior
3 light fixtures or changing their locations in any way.
4 MR. GROSSMAN: I mean looking at the lighting
5 plan, LP3 --
6 MR. LANDFAIR: Right.
7 MR. GROSSMAN: -- and it does appear as you've
8 testified that it won't exceed the required 0.1 foot-candles
9 at the lot lines. And there is a listing of the luminary
10 schedules --
11 MR. LANDFAIR: Yes.
12 MR. GROSSMAN: -- and they're tagged A, B, C and
13 so on.
14 MR. LANDFAIR: Yes.
15 MR. GROSSMAN: And then I see very faintly on the
16 exhibit itself, I do see some letters --
17 MR. LANDFAIR: Yes.
18 MR. GROSSMAN: -- and do those letters represent
19 the location of those lights?
20 MR. LANDFAIR: They do and what we could do is we
21 could clarify that to tie it in so that it more directly
22 relates to what you see in the luminaire schedule. So that
23 a layperson or anyone could take a look at it and understand
24 better just how do the light fixtures correlate to what's in
25 the schedule.

Page 55

1 MR. GROSSMAN: Now since you have to amend the
2 Site Plan itself anyway, why don't you note the locations of
3 the lights on the Site Plan as well?
4 MR. LANDFAIR: Sure.
5 MR. GROSSMAN: And that would be helpful.
6 MR. LANDFAIR: Okay.
7 MR. GROSSMAN: They should be on the Site Plan in
8 any event.
9 MR. LANDFAIR: You're correct. And again the
10 numbers of light fixtures and their locations are not
11 changing. We are simply replacing the fixtures with modern
12 LED lamps and with cutoffs so that again there is no spread
13 of the light to the property line. I think four of the
14 fixtures will be on motion detectors, they're small flood
15 lights. But again those are motion detectors and they would
16 shut off after a period of time. But to get back to the --
17 MR. GROSSMAN: They're currently on motion
18 detectors?
19 MR. LANDFAIR: I don't believe they are currently
20 on motion detectors, but the new fixtures will have, four of
21 them will have motion detectors.
22 MR. GROSSMAN: My only concern would be that they
23 start flashing on if an animal crosses there or whatever in
24 the middle of the night --
25 MR. LANDFAIR: Right.

Page 56

1 MR. GROSSMAN: -- and wake up Ms. Johnson.
2 MR. LANDFAIR: Right. Right.
3 MR. GROSSMAN: Why are we going to motion
4 detectors if they don't have them on there now?
5 MR. LANDFAIR: I think it was recommended by the
6 lighting consultant that we were utilizing to put together
7 photometric plan, but I can consult back with them and ask
8 them if it's really needed given the nature of the use and
9 given our proximity to Ms. Johnson's property.
10 MR. GROSSMAN: What do you think about it?
11 MR. LANDFAIR: I kind of like them, but it is
12 dependent on how sensitive they are and how long they stay
13 on. In this case, you know if they stay on for a pronounced
14 period of time, I can see how that might be annoying to a
15 neighbor.
16 MR. GROSSMAN: I mean they have a security
17 benefit.
18 MR. LANDFAIR: Yes.
19 MR. GROSSMAN: Ms. Johnson, would you come forward
20 for a second? Do you understand the question we're
21 discussing now is they're proposing, right now the lights
22 around the facility they are not on motion sensors.
23 MS. JOHNSON: Correct.
24 MR. GROSSMAN: But there is a discussion now and a
25 proposal is to have at least some of them, I'm not sure how

Page 57

1 many --
2 MR. LANDFAIR: Four of them.
3 MR. GROSSMAN: -- four of them on motion sensors
4 which would make them go on if somebody were back there. I
5 don't know if that's agreeable to you or not. I mean it has
6 a benefit in terms of security, there's a detriment in terms
7 of lights potentially coming on in the middle of the night.
8 What's your feeling about that?
9 MS. JOHNSON: Unfortunately, it's not agreeable
10 because of the fact that a bug or a bird or some, something
11 else could go back with a motion detector. The ones that
12 are there now where it comes on when it gets dark and goes
13 off when it get, that's perfectly acceptable. But the light
14 if an animal, a bug or something flew by a motion detector,
15 it would light up.
16 MR. GROSSMAN: Yes, I don't think a bug would set
17 it off --
18 MS. JOHNSON: Yeah, it will --
19 MR. GROSSMAN: -- but I mean it is possible --
20 MS. JOHNSON: -- because I've got one in the
21 front.
22 MR. GROSSMAN: Okay. They're big bugs.
23 MS. JOHNSON: Yeah.
24 MR. LANDFAIR: You have bigger problems.
25 MR. GROSSMAN: Does anybody object to removing the

Page 58

1 motion sensors?
2 MR. HUMMEL: No, Mr. Examiner.
3 MR. GROSSMAN: All right. When you revise the
4 proposal, remove the motion sensors, since they're not on
5 there now and I can see where they would disturb the
6 abutting neighbor.
7 MR. LANDFAIR: That's fine, thank you.
8 MR. GROSSMAN: Okay. Thank you, Ms. Johnson.
9 MS. JOHNSON: Uh-huh.
10 MR. LANDFAIR: Well I've addressed lighting, I
11 guess. There are not environmental impacts to the property,
12 so we're not subject to forest conservation requirements.
13 But now turning to the waivers that we are seeking --
14 MR. GROSSMAN: Well, one other thing --
15 MR. LANDFAIR: Yes?
16 MR. GROSSMAN: -- before you get into waivers.
17 MR. LANDFAIR: Sure.
18 MR. GROSSMAN: And that is a little thing on
19 setbacks.
20 MR. LANDFAIR: Yes.
21 MR. GROSSMAN: I understand your discussion about
22 the one that's 28 point something feet --
23 MR. LANDFAIR: Yes.
24 MR. GROSSMAN: -- versus 30 and why that's --
25 MR. LANDFAIR: Right.

Page 59

1 MR. GROSSMAN: -- considered conforming. It used
2 to be, I think, called nonconforming --
3 MR. LANDFAIR: Right.
4 MR. GROSSMAN: -- but now it's conforming which is
5 a better way to say it, I think. But I also noticed there
6 was some difference in one page of the Staff Report in terms
7 of some of the setbacks versus what was on the Site Plan and
8 maybe it's because the Site Plan referenced the general
9 requirements for setbacks in the zone as did a table in the
10 Staff Report but there was also something else maybe it's
11 actually in the specific provisions that has some additional
12 setback requirements. Let me turn to that. Okay. Just so
13 we make sure we're all in the same page here. The minimum
14 setback, I'm looking at the clinic provision, 59.3.5.7.A --
15 MR. LANDFAIR: Right.
16 MR. GROSSMAN: -- .2.
17 MR. LANDFAIR: Right.
18 MR. GROSSMAN: Minimum setback from a lot that is
19 vacant or residential include the 40 feet --
20 MR. LANDFAIR: Right.
21 MR. GROSSMAN: -- minimum setback from all other
22 abutting lots is 20 feet. And I don't think that your Site
23 Plan mentions those requirements.
24 MR. LANDFAIR: It doesn't. It focuses on the
25 development standards for the zone and it also focuses on

Page 60

1 the parking setbacks as found for the conditional use
2 itself. It doesn't make reference to the 40 foot setback
3 that you're citing adjacent residential properties,
4 residential or vacant.
5 MR. HUMMEL: Mr. Hearing Examiner, I'm sorry to
6 interrupt but Mr. Landfair, if you could look at general
7 note 1 on Exhibit 24E Roman 2.
8 MR. LANDFAIR: I stand corrected. We may have
9 added this. Yes, this notes read per Section 59.3.5.7.A.2,
10 the minimum lot width at the front lot line is 100 feet.
11 Minimum setbacks from a lot that's vacant or residentially
12 improved is 40 feet, the minimum setback from all other
13 abutting lots is 20 feet. So --
14 MR. GROSSMAN: I didn't see that either when I --
15 MR. LANDFAIR: Yes. I think that was added later,
16 it may not have been on the original Site Plan and then a
17 discussion with staff reflecting their interest in having it
18 shown on the plan more clearly, we added it to the plan.
19 MR. GROSSMAN: And does it comply? Does this
20 proposal comply with those additional setbacks?
21 MR. LANDFAIR: Yes, it does.
22 MR. GROSSMAN: Okay. Even if the lot immediately
23 to the south is being used for some residential purpose
24 right now?
25 MR. LANDFAIR: Well historically it hasn't. If it

Page 61

1 is used for residential purposes, then right now we're shown
2 at 20 feet. So if it was strictly a residential use on the
3 south side, then we would not comply with that standard.
4 But historically that use has been nonresidential in nature.
5 MR. GROSSMAN: Right.
6 MR. LANDFAIR: And certainly it's improved with
7 pavement right up to the edge of that property.
8 MR. HUMMEL: Mr. Hearing Examiner, just one
9 question on this matter. Regarding the use of the property
10 on the corner, Mr. Landfair, would you agree that is in the
11 applicant's control how that property is used --
12 MR. LANDFAIR: Yes.
13 MR. HUMMEL: -- since he owns it?
14 MR. LANDFAIR: Yes. It's completely within his
15 control.
16 MR. GROSSMAN: But what is the logical conclusion
17 that you are implying, Mr. Hummel? Is that because it's in
18 his control that this particular setback provision does not
19 apply even if that's residentially used or is the
20 alternative suggestion we might consider, is whether that is
21 a residential use under the circumstances? I don't know, I
22 mean I haven't really thought about that. I first learned
23 that there were tenants there just now, so I haven't thought
24 about it, but I mean this setback provision specifies, get
25 the actual language here, minimum setback from a lot that is

Page 62

1 vacant or residentially improved is 40 feet. You're at 20
2 feet. The question is, is that residentially improved
3 within the meaning of the Zoning Ordinance?
4 MR. LANDFAIR: One could argue that that building
5 on the corner is actually not residentially improved true
6 enough it was probably built as a residence originally, but
7 for many years it's been used as a medical practitioner's
8 office and it's been configured as such with parking,
9 surface parking as well in support of that medical use.
10 MR. GROSSMAN: But if we're defining by its use --
11 MR. LANDFAIR: Right.
12 MR. GROSSMAN: -- which is what you're suggesting --
13 MR. LANDFAIR: Right.
14 MR. GROSSMAN: -- then don't you have to consider
15 the current use which is residential? I mean the other
16 alternative interpretation suggested that maybe because it's
17 all owned by Dr. Lord that this is not, it's not a factor.
18 I don't know I haven't really thought that out. Do you have
19 anything else to say about that?
20 MR. LANDFAIR: Well we, the question was going to
21 the content of zoning merger and that since the subject
22 property and the property to the south are both under common
23 ownership, it's appropriate to consider them as one parcel
24 for zoning so that one shouldn't have to setback from the
25 other since they're both owned by Dr. Lord.

Page 63

1 MR. GROSSMAN: Well I'd say that complicates this
2 whole thing a lot because then you'd have to stop and think
3 under zoning merger what impacts that would have on an
4 overall consideration of setbacks if you're considering it
5 as one lot. I mean that was kind of a hard fought issue
6 about 8 or 10 years and there's some case law on it. And I
7 don't know what that, I mean I haven't thought that out. I
8 mean I guess it's one of the possibilities, a zoning merger.
9 What do you think about that, Ms. Girard?
10 MS. GIRARD: Yes, I mean we, Phil and I have
11 actually had that conversation. I think that zoning merger
12 is one, I think almost more importantly and perhaps more
13 simply is that Dr. Lord you know he could have it used for
14 commercial purposes starting tomorrow. I mean there is no
15 tenancy, there is no lease or residential lease on it right
16 now and more than 50 percent and historically it's been used
17 for storage. So I think while he may have --
18 MR. GROSSMAN: I don't think you can kick people
19 out, I mean not give them any notice, even if he has the
20 right to ultimately evict them on a month to month, you have
21 to give them notice and so on.
22 MS. GIRARD: Right. But I'm just saying I think
23 that as this has come to light that it would be an issue, if
24 you took a hard line interpretation and said if there's any
25 residential use in that structure, you need to have a 40

Page 64

1 foot setback and obviously you can't comply with that in
2 this case, the buildings are where they are.
3 MR. GROSSMAN: Right.
4 MS. GIRARD: So I think it would behoove Dr. Lord
5 to ensure that the issue could go away with proper notice
6 with those tenants, but to just maintain that for commercial
7 purposes.
8 MR. GROSSMAN: Well, I'll tell you what, when you
9 submit what you're going to be submitting to technical
10 staff, I think you should note, I don't know were they ever
11 informed that there was a tenant in that building?
12 MS. GIRARD: I don't believe so. I think they
13 made the assumption because of the previous use and the
14 U&O's and use of storage that there was no tenancy going on.
15 MR. GROSSMAN: Well, then when you submit the
16 revised Site Plan to technical staff, please note that there
17 is a tenant to the south, however, cite your argument that
18 the building is essentially a commercial building and that
19 the tenancy is subject to being changed. But also that it
20 is owned by Dr. Lord as well.
21 MS. GIRARD: They certainly knew that fact.
22 MR. GROSSMAN: And there may also be a zoning
23 merger --
24 MS. GIRARD: Right.
25 MR. GROSSMAN: -- issue and whether or not under

Page 65

1 all these circumstances they consider that this setback
2 applies. I'm not sure that it was intended to. I don't
3 think they envisioned this situation when they wrote that
4 particular setback. So they obviously wanted to ensure that
5 the commercial use would not be impinging compatibility-wise
6 on nearby residences.
7 So let's raise that issues with technical staff.
8 I think we'll have to give them a little bit more time than
9 originally I thought we would to have them consider these
10 issues and see what they say. And it might be enough that
11 when the tenancy terminates, if it terminates that it's not
12 rented out in the future or something like that. I don't
13 know, I mean, I'm just thinking out loud about it. Anyway,
14 you can submit something, when you submit it to technical
15 staff of course submit a copy of whatever you submit to
16 staff, submit to my office too. All right.
17 MR. LANDFAIR: I would like now to turn back to
18 the waivers that have been requested.
19 MR. GROSSMAN: Okay.
20 MR. LANDFAIR: To start with, the number of
21 parking spaces as has been testified on the record, we are
22 basing our parking tally on the 4,500 square feet in the
23 building which is devoted to medical services.
24 Notwithstanding the fact that the discounted space does
25 provide some support to those medical services. We had

Page 66

1 based this approach on some informal precedent that had been
2 taken in the past by County DPS, but we recognize the
3 concerns that have been raised by staff, the Planning Board
4 and here today by the Hearing Examiner. So we're quite
5 willing to proceed with this waiver request and hopefully
6 it'll be supported.
7 MR. GROSSMAN: All right.
8 MR. LANDFAIR: The second waiver concerns the
9 drive aisle width. The majority of the parking spaces are
10 angled parking spaces from the drive aisle and they're
11 angled at 60 degrees. The Zoning Ordinance standard for the
12 drive aisle width is 18 feet to allow vehicles to maneuver
13 in and out of those spaces. We are proposing because of
14 some constraints and for the interest in providing generous
15 landscaping, we're proposing 14 and a half feet. Now this
16 14 and a half feet actually meets standards and
17 recommendations that are found in a published manual, it's
18 titled the APA Planning and Design Standards Manual, which
19 is a relatively new document. So we believe given that it
20 is consistent with what's found in that manual and given the
21 scope of the operations we feel that the width of the drive
22 aisle is sufficient to accommodate safe and easy access and
23 therefore the waiver could be supported.
24 MR. GROSSMAN: What is APA stand for?
25 MR. LANDFAIR: American Planning Association.

Page 67

1 MR. GROSSMAN: Okay.
2 MR. LANDFAIR: And I have a copy, I should have
3 brought it with me today, but I can provide an extract for
4 you.
5 MR. GROSSMAN: Okay. Yes, about whatever the
6 pages are that --
7 MR. LANDFAIR: Sure.
8 MR. GROSSMAN: -- specify that --
9 MR. LANDFAIR: Sure.
10 MR. GROSSMAN: -- and you know put the title, a
11 copy of the title page and the pages that specify --
12 MR. LANDFAIR: Sure.
13 MR. GROSSMAN: -- it and maybe you can send those
14 in when you do the other things you're submitting.
15 MR. LANDFAIR: Sure. That'll be fine. The third
16 waiver concerns parking setbacks for conditional uses in
17 residential zones. And these setbacks are in our case, 25
18 feet in the rear from the adjacent residential property. We
19 are actually, the drive aisle is something on the order of 6
20 feet and the parking spaces themselves are about 22 feet.
21 We looked at alternative parking means back there to provide
22 a greater setback, the only arrangement we could come up
23 with that would come close to meeting this prescribed
24 setback of 25 feet, would be a tandem parking arrangement
25 and we just felt that that was unworkable and it would be

Page 68

1 grossly inconvenient for the staff and patients and visitors
2 to the property. So again we feel that the way it's
3 oriented, the way it's laid out and with the angled parking
4 and the width of the drive aisle and maybe most importantly
5 with the landscaping and the fencing that will be provided
6 along the rear property line that we'll be able to
7 sufficiently mitigate any impact and that the waiver could
8 be supported.
9 Along the side of the property, the setback
10 requirement is 16 feet, the drive aisle on the north side of
11 the building is actually one about 1 foot from the property
12 line, but the parking spaces themselves are about 16 feet.
13 However, we feel that because of the fence that's proposed
14 along that north property line and because that use on the
15 other side of that fence is a nonresidential use, it's a
16 building associated with Pepco that we think it would be
17 acceptable.
18 MR. GROSSMAN: What's in the building that I'm
19 pointing to now which is next to Ms. Johnson's home?
20 MR. LANDFAIR: Well I think that is Ms. Johnson's
21 property.
22 MR. GROSSMAN: That is? Okay.
23 MR. LANDFAIR: Right.
24 MR. GROSSMAN: Well I see, I thought that was the
25 second building in was Ms. Johnson. Can you bring up the

Page 69

1 aerial photograph again?
2 MR. LANDFAIR: Sure.
3 MR. GROSSMAN: I see. Okay. Yes, you're correct.
4 So that's Ms. Johnson's home. And what's back along here?
5 MR. LANDFAIR: Just landscaped backyards.
6 MR. GROSSMAN: That's to the west of the site?
7 Landscaping from backyards?
8 MR. LANDFAIR: In backyards, yes. And then --
9 MR. GROSSMAN: Where are the homes?
10 MR. LANDFAIR: -- along the north side here there
11 is a tree line here which actually partially screens these
12 backyards from commercial uses to the north.
13 MR. GROSSMAN: What's in here? To the north?
14 MR. LANDFAIR: It's parking associated with
15 commercial businesses.
16 MR. GROSSMAN: Okay. And immediately to the north
17 there is a Pepco facility and then a little bit to the
18 northwest of the northwest corner --
19 MR. LANDFAIR: Right.
20 MR. GROSSMAN: -- what's along that?
21 MR. LANDFAIR: There's just some trees. But it's
22 mostly just grass and landscaping in the residential
23 backyards.
24 MR. GROSSMAN: Okay. Can you point to the closest
25 residence that is not Ms. Johnson's?

Page 70

1 MR. LANDFAIR: It would be the residence
2 immediately to the west of Ms. Johnson's, off Northwest
3 Drive.
4 MR. GROSSMAN: Okay. The reason I ask that
5 question is I just wonder whether or not it would be
6 appropriate to have a 6-foot fence from their standpoint
7 along that portion and a 4-fence near Ms. Johnson. Is that?
8 I don't know I mean I just don't know, I can't tell what the
9 Site Plan.
10 MR. LANDFAIR: Candidly, I think the 4 feet will
11 be sufficient to mitigate what we need to mitigate, which is
12 the comings and goings of vehicles in that back area.
13 MR. GROSSMAN: Okay.
14 MR. LANDFAIR: As well as a sense of activity that
15 you might get in that rear yard.
16 MR. GROSSMAN: All right. Okay.
17 MS. GIRARD: Can we just ask for clarification as
18 to where the Hearing Examiner was talking about having a 6-
19 foot fence?
20 MR. GROSSMAN: No, I was just raising the question
21 as to whether or not when let's say from the midpoint of the
22 building here to the north, it's to the west of the site,
23 but to the north of Ms. Johnson, you know, quite a bit to
24 the north and then along the exact northern border of the
25 site.

Page 71

1 MS. GIRARD: Okay.
2 MR. GROSSMAN: I just wondered whether there is
3 anything up there that would benefit by the 6-foot fence
4 more than the 4-foot fence before I change anything.
5 MR. LANDFAIR: Yes, I think our preference would
6 be to continue to hold to a 6-foot high fence along that
7 north property line to screen the use to the north, not that
8 they're impacted by our use, but --
9 MR. GROSSMAN: Right.
10 MR. LANDFAIR: -- it might be to benefit us, quite
11 frankly. I don't think we feel real strongly about it, but
12 we should get clarification now in terms of if we provide a
13 4-foot fence along the rear property line do we want to
14 extend that 4-foot fence along the north property line or do
15 we want to hold to the original proposal which was 6-feet 6.
16 MR. GROSSMAN: Well, what's the basis for a
17 preference for a 6-feet from your standpoint? I'm not sure
18 what --
19 MR. LANDFAIR: Well, the fence is there in the
20 first place, because of the setback and landscaping
21 requirements that are specific to the use, it's specific to
22 the parking facility for conditional use. And we want to
23 take as conservative approach with our design as possible.
24 So not knowing if somebody might object to the view from
25 that north side, and of course you will have passersby that

Page 72

1 are walking along the service drive and there is a sidewalk
2 in front of the Pepco facility. I suppose somebody might
3 take exception to the view that they would have along that
4 rear side.
5 MR. GROSSMAN: But there's no fence there now, is
6 that correct?
7 MR. LANDFAIR: But there's no fence there now, no.
8 MR. GROSSMAN: Mr. Hummel, do you have a feeling
9 about this?
10 MR. HUMMEL: We defer to the Hearing Examiner.
11 MR. GROSSMAN: That's not fair. I mean I'm just
12 trying to --
13 DR. LORD: May I ask a question?
14 MR. GROSSMAN: Dr. Lord, certainly.
15 DR. LORD: Where are you speaking of as far as,
16 can I come up here? Are you talking about between here and
17 the Pepco building?
18 MR. LANDFAIR: Right. Right.
19 DR. LORD: There is no fence there now.
20 MR. GROSSMAN: Right.
21 DR. LORD: Is there a reason to put one there?
22 MR. GROSSMAN: Well that's been proposed that
23 there would be a fence there, but your current proposal is
24 for a 6-foot fence along the perimeter both there, I take
25 it, is that correct?

Page 73

1 MR. LANDFAIR: I'm sorry, correct, yes.
2 MR. GROSSMAN: The current proposal calls for a
3 fence there --
4 MR. LANDFAIR: Right.
5 MR. GROSSMAN: -- a 6-foot fence along the
6 northern western and southern?
7 MR. LANDFAIR: No, nothing along the southern
8 property line.
9 MR. GROSSMAN: Okay.
10 DR. LORD: So you're talking about all the way
11 across here?
12 MR. GROSSMAN: Yes. All the way across the
13 northern property line.
14 DR. LORD: Is there a reason to do that? I mean
15 we can do it if you want, I mean --
16 MR. GROSSMAN: Well I guess that was what was, it
17 was proposed, that was what was proposed to staff --
18 MR. LANDFAIR: Right.
19 MR. GROSSMAN: -- and what staff agreed to.
20 MS. GIRARD: Right.
21 MR. GROSSMAN: But the idea of having it as a 4-
22 foot fence rather than a 6-foot fence comes from Ms. Johnson
23 and I think that makes sense from that standpoint.
24 DR. LORD: Right.
25 MR. GROSSMAN: The question of whether or not

1 there is a need to have it at 6 feet. Why don't you when
2 you submit your proposal note that except in the area of Ms.
3 Johnson's it could be a larger fence, but I guess the
4 applicant seeks now to comply with Ms. Johnson's wishes, as
5 the closest neighbor and have it 4-foot and it would make
6 sense to have it 4 feet all the way around, I guess.

7 MR. LANDFAIR: That would be perfectly fine.
8 Again, it's a --

9 MR. GROSSMAN: Okay.

10 MR. LANDFAIR: -- utility use on the other side.

11 MR. GROSSMAN: Right. Okay.

12 MR. LANDFAIR: I don't think anybody would object
13 to that.

14 MR. GROSSMAN: Okay.

15 MR. LANDFAIR: And we only suggested the fence in
16 the first place because we weren't technically meeting that
17 requirement, the setback requirement along that side.

18 MR. GROSSMAN: Right.

19 MR. LANDFAIR: So we wanted that to be there in
20 support of the waiver that we were seeking.

21 MR. GROSSMAN: Right. But I'm pretty sure that
22 the fence provision in the Code calls for in terms of the
23 landscaping calls for 4 feet rather than 6.

24 MR. LANDFAIR: Right. Right. We wanted to be
25 consistent along all sides.

1 MR. GROSSMAN: Right.

2 MR. LANDFAIR: You know it just looks better
3 sometimes.

4 MR. GROSSMAN: I think that would make sense, 4
5 feet.

6 MR. LANDFAIR: That's fine.

7 MR. GROSSMAN: Okay.

8 MR. LANDFAIR: Thank you. Turning to the next
9 waiver request, there are standards for parking lots located
10 in residential zones and particularly those associated with
11 conditional uses. There are three standards in particular
12 which we don't technically meet the full standard found in
13 the Zoning Ordinance. These relate back to landscaped
14 islands, tree canopy and perimeter planting.

15 With respect to the landscaped islands, we feel
16 that having to provide a landscaped island, particularly
17 internal landscaping around the parking lot would be an
18 unfair burden to us, given the number of parking spaces and
19 the nature of the use itself. And again, there's already
20 very mature landscaping in the front of the property, along
21 the side of the property, and we're providing extensive
22 landscaping and screening along the rear property line. So
23 in terms of overall landscaping, we feel that we're keeping
24 with the spirit of the Zoning Ordinance, if you will, if not
25 the full intent.

1 MR. GROSSMAN: All right.

2 MR. LANDFAIR: With respect to tree canopy, again
3 we come close but we're not fully satisfying the Zoning
4 Ordinance requirements, but we're providing, we're
5 maintaining two large mature trees in the front yard. We're
6 proposing three canopy trees as well as three ornamental
7 trees and evergreen trees along the rear property line. So
8 we feel we're again in keeping with the spirit of the Zoning
9 Ordinance.

10 And the perimeter planting, the requirements call
11 for 10 feet of perimeter planting. Along the rear property
12 line we have something on the order of 6, 7 feet. But
13 again, it's landscaped or will be landscaped fully and will
14 now have the 4-foot fence along there, so we feel that we're
15 in keeping with the spirit.

16 The requirement also requires perimeter planting
17 along the other sides of the property including the north
18 side and the east side along New Hampshire Avenue. However,
19 we simply don't have the room to do that and provide the
20 necessary parking and provide the drive aisles at a width
21 that will actually work for us. So we just, it would have a
22 grossly adverse effect on the parking that we could provide.
23 And so we feel that it's not necessary and again, we'll have
24 a fence along that north side which will help to mitigate
25 the view, if nothing else.

1 Finally, we are seeking relief through the
2 alternative method of compliance process with respect to the
3 screening that is mandated in the Zoning Ordinance for
4 parking facilities. This screening, it comes in two options
5 and the options provide certain widths of the landscaping
6 and certain planting treatments. And in our case, we simply
7 don't have the room do this but we feel that we have
8 provided generous landscaping. We have the fencing and we
9 think it will be in keeping with the spirit and the intent
10 and will do an adequate job of actually mitigating the
11 parking in the rear yard. So again we're going to seek
12 relief through the alternative method of compliance.

13 MR. HUMMEL: Thank you, Mr. Landfair. Could you
14 also please opine on the conditional use application's
15 conformance with the White Oak Science Gateway Master Plan?

16 MR. LANDFAIR: Yes. The Master Plan recommends or
17 supports the existing R-90 zoning for the property. It does
18 not specifically discuss the subject property in any way.
19 However, an important objective of the plan is to preserve
20 and protect the character of single family neighborhoods by
21 confirming existing uses and zoning, and certainly it does
22 so here.

23 We feel that the conditional use application
24 proposes to validate, to maintain the long standing use,
25 which has been a medical office on the property which has

Page 82

1 opinion will the proposed conditional use satisfy the
2 standards and requirements of the R-90 Zone?
3 MR. LANDFAIR: We believe that it will. The use
4 will satisfy the standards as has been noted, the front yard
5 setback of 28.7 feet does not meet the current setback
6 requirement of 30 feet. But nevertheless, we believe it's
7 legal and conforming, based on the fact that the original
8 setback at the time the property was platted was 25 feet.
9 MR. HUMMEL: And in your opinion will the proposed
10 conditional use satisfy the use standard for medical clinic
11 uses up to four practitioners from Section 59.3.5.7.A.2 of
12 the Zoning Ordinance?
13 MR. LANDFAIR: Yes, we believe the conditional use
14 will satisfy those standards. For example, the minimum lot
15 width of 150 feet is satisfied, the minimum setback of 40
16 feet from the adjacent residential use is satisfied. We've
17 discussed the nature of the use to the south, historically
18 it has been non-residential in nature and 20 foot setback
19 from that property is satisfied. So in total, yes, we
20 believe that we do meet those standards.
21 MR. HUMMEL: And in your opinion will the proposed
22 conditional use meet applicable general requirements under
23 Article 59-6 of the Zoning Ordinance?
24 MR. LANDFAIR: Yes. With the approval of the
25 waivers that we have requested and that I've previously

Page 83

1 described, we do believe that we will meet those minimal
2 standards and requirements.
3 MR. HUMMEL: And in your opinion will the proposed
4 conditional use substantially conform with the
5 recommendations to the applicable Master Plan?
6 MR. LANDFAIR: Yes. For the reasons previously
7 stated, the Master Plan supports the existing zoning. The
8 zoning allows this use as a conditional use. We believe we
9 are consistent with the important objectives of the plan
10 which include to preserve and protect the character of the
11 single family homes nearby. We believe that the conditional
12 use will validate and maintain the long term use that's been
13 on the property which has been found acceptable by the
14 community. The scope of the operations is being reduced and
15 so we believe it is going to provide an appropriate
16 transition for the neighbors.
17 MR. HUMMEL: Thank you. And in your opinion, Mr.
18 Landfair, is the proposed conditional use harmonious with
19 and will not alter the character of the surrounding
20 neighborhood?
21 MR. LANDFAIR: Yes, we believe it will be. Again,
22 the existing building as originally constructed as a
23 residence has an architectural style or vernacular that is
24 very similar to what's already found in the neighborhood.
25 We believe with the proposed landscaping and screening that

Page 84

1 we would be more harmonious with the immediate neighbors of
2 the neighborhood and that the screening even with a 4-foot
3 high fence along the rear property line will help contribute
4 to that.
5 MR. HUMMEL: And in your opinion will the proposed
6 conditional use when evaluated in conjunction with existing
7 and approved conditional uses in the neighboring residential
8 detached zone increase the number, intensity or scope of
9 conditional uses sufficiently to affect the area adversely
10 or alter the predominately residential nature of the area?
11 MR. LANDFAIR: Right. We don't believe that it
12 will affect the area adversely or alter the predominately
13 residential character of the area. There are only two
14 conditional uses within the defined neighborhood, so we
15 believe that this particular conditional use when compared
16 with what's already existing there and the fact that it's
17 consistent we believe with the recommendations of the Master
18 Plan will not affect that predominantly residential
19 character.
20 MR. HUMMEL: And in your opinion Mr. Landfair,
21 will the proposed conditional use be served by adequate
22 public facilities to serve the property?
23 MR. LANDFAIR: Yes. As previously noted we have
24 public water and sewer, we have transit nearby, we have
25 emergency services provided nearby as well.

Page 85

1 MR. HUMMEL: And in your opinion will the proposed
2 conditional use cause undue harm to the neighborhood as a
3 result of a non-inherent adverse effect alone or the
4 combination of inherent and a non-inherent adverse effect?
5 MR. LANDFAIR: No, we don't believe that there
6 will any such problems. No undue harm to the use, the
7 peaceful enjoyment of the surrounding neighborhood,
8 certainly not from noise, odors, dust, illumination or any
9 other elements or lack of parking or to the health or safety
10 or welfare of residents.
11 MR. HUMMEL: Thank you. I have no further
12 questions for Mr. Landfair.
13 MR. GROSSMAN: While I'm inclined to grant the
14 waivers that you've requested, there is an additional avenue
15 presented by the recent amendments to the Zoning Ordinance.
16 The Hearing Examiner only needs to apply Title 6
17 requirements to the extent necessary for compatibility. So
18 I have an additional question for you, Mr. Landfair. Are
19 these Title 6 requirements regarding parking and landscaping
20 from parking and so on necessary? Is the compliance with
21 them necessary for compatibility?
22 MR. LANDFAIR: To be honest, I'd have to refresh
23 myself in terms of what those Title 6 requirements are.
24 MR. GROSSMAN: Well the ones you've gone over --
25 MR. LANDFAIR: Right.

Page 86

1 MR. GROSSMAN: -- that require the Title 6
2 requirements we're talking about --
3 MR. LANDFAIR: Right.
4 MR. GROSSMAN: -- the ones for which you've
5 requested a waiver.
6 MR. LANDFAIR: The ones that I've cited already?
7 MR. GROSSMAN: Right. The ones you've requested a
8 waiver for --
9 MR. LANDFAIR: Yes.
10 MR. GROSSMAN: -- yes, it could be a waiver.
11 MR. LANDFAIR: Right.
12 MR. GROSSMAN: But it also a Hearing Examiner can
13 find that for compatibility purposes it's not necessary to
14 apply --
15 MR. LANDFAIR: For the actual waiver.
16 MR. GROSSMAN: -- those particular portions of
17 Division 6, I guess --
18 MR. LANDFAIR: Right.
19 MR. GROSSMAN: -- would be.
20 MR. LANDFAIR: Right. Right. We think there's
21 ample justification. We're very pleased with the layout,
22 what we're able to provide in terms of the parking, the
23 landscaping, the screening. We feel we are more than in
24 keeping with the intent of the Zoning Ordinance in terms of
25 establishing compatibility and harmony with the

Page 87

1 neighborhood. So I would say yes to that question.
2 MR. GROSSMAN: Yes, being that for compatibility
3 purposes it's not necessary to have strict compliance with
4 those provisions of Division 6?
5 MR. LANDFAIR: Yes, that's correct.
6 MR. GROSSMAN: Okay.
7 MR. HUMMEL: Just for the record, Mr. Hearing
8 Examiner, I believe the reason that remedy might not have
9 been available to us when the application was first filed.
10 I think that's a recent CTA that came in after.
11 MR. GROSSMAN: That's right. It was passed, it
12 became effective in December of 2015. But because of the
13 nature of amendments to the Zoning Ordinance they apply even
14 to a pending application and I take it there's no objection
15 to applying that?
16 MS. GIRARD: No, there's not.
17 MR. LANDFAIR: No, not at all.
18 MR. GROSSMAN: All right. There is one provision
19 that you didn't address --
20 MR. LANDFAIR: Yes.
21 MR. GROSSMAN: -- and maybe you still intended to,
22 is the office space suitability for the practice by the
23 profession must be unavailable in either the nearest
24 commercial residential or employment zone or the nearest
25 medical clinic office building constructed. And you had

Page 88

1 submitted something on it --
2 MR. HUMMEL: Correct.
3 MR. GROSSMAN: -- but I thought you might want to
4 address it with this witness.
5 MR. HUMMEL: Sure, we can ask. Mr. Landfair, are
6 you familiar with the letter from Frazier Forbes that was
7 included in applicant's motion to amend its conditional use
8 application?
9 MR. LANDFAIR: Yes, I am.
10 MR. HUMMEL: And have you read technical staff's
11 report in which they conclude on page 14, that staff has
12 confirmed the building has no vacancies using the CoStar
13 website?
14 MR. LANDFAIR: Yes, I'm aware of that finding.
15 MR. HUMMEL: So based on those two exhibits in the
16 record, would you conclude that there is compliance with the
17 zoning regulation identified by the Hearing Examiner just
18 now regarding the availability of office space?
19 MR. LANDFAIR: Yes, I would conclude that.
20 MR. GROSSMAN: That's a leading question for
21 direct examination, by the way. You're not supposed to be
22 leading the witness, but it's all right. All right.
23 Anything further from Mr. Landfair?
24 MR. HUMMEL: No, Mr. Examiner.
25 MR. GROSSMAN: All right. Thank you, Mr.

Page 89

1 Landfair.
2 MR. LANDFAIR: Thank you, sir.
3 (Discussion off the record.)
4 MR. GROSSMAN: Anything further? Any additional
5 witnesses?
6 MR. HUMMEL: No, Mr. Examiner.
7 MR. GROSSMAN: Okay. Do you wish to make a
8 closing statement argument?
9 MR. HUMMEL: Very briefly.
10 CLOSING ARGUMENT
11 MR. HUMMEL: So we understand that a number of
12 revisions need to be made to the application which we will
13 do, including revising the Site Plan, getting feedback from
14 technical staff on some issues, providing extract from the
15 APA recommendations regarding the width of drive aisles, and
16 some revisions need to be made to the lighting plan and of
17 course we will provide copies of all those materials to
18 OZHA.
19 MR. GROSSMAN: Yes, not so much the lighting, the
20 lighting plan you submitted is mostly photometric study,
21 with some dim references to the thing, but what you're going
22 to do on the Site Plan is actually note the locations of the
23 lighting facilities and you're also going to propose the 4-
24 foot fence Ms. Johnson requested and the elimination of the
25 motion detectors on the lighting, and are going to raise the

Page 90

1 question of that residential use to the south. Okay. And
2 the zoning merger issue you can raise. And of course, the
3 letter from Ms. Lord.
4 MR. HUMMEL: Correct, yes.
5 MS. GIRARD: Just a point of clarification. Do
6 you want the photometric plan? We will put the pictures on
7 the Site Plan, do you also want them more clearly shown on
8 the photometric plan?
9 MR. GROSSMAN: I don't think that really doesn't
10 matter to me --
11 MS. GIRARD: Okay.
12 MR. GROSSMAN: -- as long as the lighting
13 locations are specified, I mean not that it would hurt that
14 you could see where they are on it --
15 MS. GIRARD: Right. I just didn't want to give
16 you more paper than --
17 MR. GROSSMAN: -- but I didn't want to put you to
18 any more expense than is necessary, but there ought to be
19 something that clearly shows the location --
20 MS. GIRARD: Okay.
21 MR. GROSSMAN: -- of lighting facilities. And I
22 think the Site Plan is the most logical place for that.
23 MS. GIRARD: Okay.
24 MR. HUMMEL: And while we're on the topic of
25 lighting, Condition 8 proposed by technical staff and the

Page 91

1 Planning Board requires certification that there is adequate
2 lighting to promote safety during evening hours while also
3 ensuring illumination at the lot line will not exceed 0.1
4 foot-candles. We think that Mr. Landfair's testimony and
5 the letter from VIKA that's currently in the record as --
6 MS. GIRARD: 24G.
7 MR. HUMMEL: -- 24G, definitely show that there's
8 adequate lighting to promote safety after sunset, while
9 complying with the 0.1 foot-candle standard and just as a
10 practical matter the hours of operation which applicant
11 agrees to end at 5:00 p.m. So really we're only talking
12 about a very limited time of year when it would be dark
13 around the close of business.
14 MR. GROSSMAN: Okay. Also it occurs to me that
15 the fence itself, proposed fence which is listed as 6 feet 6
16 inches, by the way, which is shown, not just 6 feet but 6
17 feet 6 inches, is shown on the landscape details, so that
18 would have to be modified as well.
19 MS. GIRARD: Right.
20 MR. GROSSMAN: And I'm not sure if it's on the
21 Landscape Plan, let's see. I don't know that you can look
22 at the Landscape Plan itself to see if it has a specified on
23 the plan itself the height of the fence, I don't see it.
24 MR. LANDFAIR: It's not.
25 MR. GROSSMAN: Okay.

Page 92

1 MR. HUMMEL: So with that we want to thank Ms.
2 Forbes for her valuable assistance in ensuring today's
3 hearing was ready to proceed. We also want to thank the
4 Hearing Examiner for his close attention to this matter.
5 MR. GROSSMAN: You're more than welcome. Okay. I
6 presume you want to admit into evidence all of the exhibits,
7 that's Exhibits 1 through 30, and their subparts and the
8 additional exhibits, modified plans and additional exhibits
9 that you will be filing?
10 MR. HUMMEL: Yes, Mr. Examiner.
11 MR. GROSSMAN: All right. Then they will be
12 admitted.
13 (Plaintiff's Exhibit Nos. 1-30
14 previously marked for
15 identification were received
16 into evidence.)
17 MR. HUMMEL: Thank you.
18 MR. GROSSMAN: All right. Let's talk about when
19 we will close the record. So when do you want, how long do
20 you want to submit all this additional material to us and to
21 the technical staff?
22 MS. GIRARD: We're looking at --
23 MR. HUMMEL: We're looking at Mr. Landfair right
24 now.
25 MR. LANDFAIR: I think you had initially suggested

Page 93

1 10 days.
2 MR. GROSSMAN: I had. I just want to get, it's
3 fine with me whatever time you need is fine with me.
4 MR. LANDFAIR: I think 10 days is fine.
5 MR. GROSSMAN: Okay. So we're talking about,
6 today is the 16th, we're talking about the 26th to submit
7 the things and then we have to give technical staff time to
8 respond. I used to have a calendar up here, but it
9 disappeared. Hold on a second, let me pull one out.
10 (Discussion off the record.)
11 MR. GROSSMAN: There we go.
12 (Discussion off the record.)
13 MR. GROSSMAN: The additional submission will be
14 by May 26th and then let's say 10 days for a staff response.
15 Do you want an opportunity to respond after staff responds
16 too or is that not necessary?
17 MS. GIRARD: It depends on what staff says.
18 MR. HUMMEL: I think any response we could
19 formulate pretty quickly.
20 MS. GIRARD: Yes. If we just had one day, really
21 to respond to what staff says that should be sufficient.
22 MR. GROSSMAN: All right. So June 6th would be
23 the staff response and then why don't we give you until the
24 9th? We'll give you three days, how's that?
25 MS. GIRARD: Okay.

1 MR. HUMMEL: Thank you.
 2 MR. GROSSMAN: And then June 9th would be any
 3 response to staff and the closing of the record would be the
 4 same day.
 5 MS. GIRARD: Okay.
 6 MR. HUMMEL: That is agreeable to applicant.
 7 MR. GROSSMAN: Agreeable? Okay. All right then.
 8 Is there anything further that we have to address?
 9 MR. HUMMEL: No, sir.
 10 MS. GIRARD: I don't think so.
 11 MR. GROSSMAN: All right. Is this your first
 12 zoning hearing, Mr. Hummel?
 13 MR. HUMMEL: What gave that way, Mr. Examiner?
 14 MR. GROSSMAN: Not your conduct, you did fine. I
 15 hadn't seen you here before so that was my guess.
 16 MR. HUMMEL: I'm usually in the peanut galleries.
 17 MR. GROSSMAN: Congratulations. You did a good
 18 job.
 19 MR. HUMMEL: Thank you. I appreciate that.
 20 MR. GROSSMAN: Okay. Anything else? Anybody have
 21 anything further? No. All right. Then thank you, we are
 22 adjourned.
 23 MS. GIRARD: Thank you.
 24 MR. HUMMEL: Thank you.
 25 (Discussion off the record.)

1 (Whereupon, at 11:32 a.m., the hearing was
 2 concluded.)
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C E R T I F I C A T E

1
 2 DEPOSITION SERVICES, INC., hereby certifies that
 3 the attached pages represent an accurate transcript of the
 4 electronic sound recording of the proceedings before the
 5 Office of Zoning and Administrative Hearings for Montgomery
 6 County in the matter of:
 7 Application of Douglas Lord, MD, for a Medical Clinic
 8 Case No. CU16-10

By:

Diane Wilson, Transcriber

A	5:17;52:9,12 additional (10) 19:16;59:11;60:20; 85:14,18;89:4;92:8,8, 20;93:13 Additionally (1) 28:8 address (7) 9:11;14:22,25;25:16; 87:19;88:4;94:8 addressed (1) 58:10 adequacy (5) 13:11;39:24;41:17; 78:23;79:3 adequate (9) 13:23;35:23;41:11; 77:10;79:14;80:23; 84:21;91:1,8 adjacent (6) 51:25;60:3;67:18; 79:2;80:23;82:16 adjourned (1) 94:22 Administrative (1) 4:19 admission (1) 45:8 admit (1) 92:6 admitted (1) 92:12 adopt (1) 11:4 adopted (1) 45:19 adverse (4) 76:22;79:8;85:3,4 adversely (2) 84:9,12 advised (1) 33:7 aerial (3) 25:8;46:10;69:1 aesthetics (1) 52:2 affect (4) 52:20;84:9,12,18 affected (1) 47:22 affidavit (2) 11:8,21 affirm (4) 14:16;25:1;34:17; 44:21 aforementioned (1) 42:8 again (19) 9:2;30:17;42:1; 43:24;55:9,12,15;68:2; 69:1;74:8;75:19;76:2, 8,13,23;77:11;78:2; 80:18;83:21	agency (1) 7:7 ago (1) 22:1 agree (7) 9:15,21,25;18:8; 27:15;39:24;61:10 agreeable (4) 57:5,9;94:6,7 agreed (1) 73:19 agrees (1) 91:11 ahead (2) 10:3;22:9 aisle (9) 51:21;53:4;66:9,10, 12,22;67:19;68:4,10 aisles (2) 76:20;89:15 allotted (1) 81:11 allow (6) 11:18;12:20;20:8,9, 11;66:12 allows (2) 52:2;83:8 almost (3) 26:9,10;63:12 alone (1) 85:3 along (41) 6:16;27:3;40:25; 41:2,4;46:13,23,24; 47:8,11;49:9;52:9,11, 13;68:6,9,14;69:4,10, 20;70:7,24;71:6,13,14; 72:1,3,24;73:5,7;74:17, 25;75:20,22;76:7,11, 14,17,18,24;84:3 alter (3) 83:19;84:10,12 alternative (8) 13:15,21;28:9;61:20; 62:16;67:21;77:2,12 Although (2) 13:13;48:17 always (1) 30:21 amenable (2) 27:24;28:6 amend (4) 6:20;7:10;55:1;88:7 amendment (3) 6:15;10:4;28:21 amendments (2) 85:15;87:13 American (1) 66:25 amount (4) 10:8;12:10;81:13,18 ample (1) 86:21	analysis (8) 36:8,12;37:4;39:17; 40:3,12;41:16;46:5 analyzed (1) 36:3 angle (1) 51:21 angled (4) 51:20;66:10,11;68:3 animal (2) 55:23;57:14 annoying (1) 56:14 APA (3) 66:18,24;89:15 apologize (1) 44:25 apparently (2) 20:5;28:19 appear (1) 54:7 appears (1) 29:4 applicable (5) 8:3;14:2;50:24; 82:22;83:5 applicant (15) 4:2;5:1,13;6:12,17; 7:20;13:5,10,13;14:4; 38:1;39:2;74:4;91:10; 94:6 applicant's (4) 7:4;13:7;61:11;88:7 application (19) 4:7;6:6;7:10;11:16; 12:20;13:9;14:2,2; 19:10;27:1;28:21; 35:16;36:2;45:16; 77:23;87:9,14;88:8; 89:12 application's (2) 77:14;78:22 applied (1) 26:3 applies (1) 65:2 apply (4) 61:19;85:16;86:14; 87:13 applying (2) 13:16;87:15 appreciate (2) 30:20;94:19 approach (2) 66:1;71:23 appropriate (10) 7:6;9:7;10:14;27:11; 28:18;62:23;70:6;78:6; 80:22;83:15 approval (6) 7:11;14:3,6,7;24:9; 82:24 approve (3)	9:8;13:25;14:1 approved (2) 45:19;84:7 approximately (5) 38:9,16;46:13,25; 47:1 April (2) 6:12,15 architectural (2) 49:6;83:23 area (29) 7:5,25;8:21;9:17; 25:8;26:14;32:1;35:16, 24,25;36:13,14;38:3,6, 21;42:22;45:15,21; 47:6,10;70:12;74:2; 79:25;80:2;81:9;84:9, 10,12,13 areas (4) 38:14,15;48:5;79:15 aren't (2) 9:3;26:14 argue (1) 62:4 argued (1) 38:1 argument (4) 7:1;64:17;89:8,10 around (8) 26:11,15;42:19; 51:21;56:22;74:6; 75:17;91:13 arranged (1) 8:7 arrangement (3) 51:19;67:22,24 Article (1) 82:23 asserted (1) 20:6 assessment (1) 39:20 assistance (1) 92:2 associated (5) 9:3;68:16;69:14; 75:10;80:14 Association (1) 66:25 assumes (1) 37:11 assumption (1) 64:13 Atlas (2) 25:9;46:9 attached (1) 16:1 Attachment (2) 38:11,13 attention (1) 92:4 attractive (1) 80:11
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<p>audible (1) 5:14</p> <p>audience (4) 5:3,3,8,12</p> <p>availability (1) 88:18</p> <p>available (1) 87:9</p> <p>Avenue (28) 4:14;12:23;15:8; 21:14;22:19;23:15; 25:22,23;31:10;41:1,4, 7;43:2,17;46:11,14,21; 47:8,12,19,19;49:9,11, 11,25;50:2;76:18; 85:14</p> <p>Avenues (1) 47:19</p> <p>aware (1) 88:14</p> <p>away (1) 64:5</p>	<p>better (5) 20:3;54:24;59:5; 75:2;80:10</p> <p>beyond (1) 53:7</p> <p>bicycle (2) 8:1;43:15</p> <p>bicycles (1) 43:19</p> <p>big (1) 57:22</p> <p>bigger (1) 57:24</p> <p>Bill (1) 44:8</p> <p>bird (1) 57:10</p> <p>bit (11) 5:25;6:3;20:7,8;28:1, 23;38:18;48:17;65:8; 69:17;70:23</p> <p>Blocher (2) 4:24;5:1</p> <p>Block (3) 4:16;12:24;27:9</p> <p>Board (10) 9:16;10:17,21;13:25; 14:7;17:18;24:9;28:17; 66:3;91:1</p> <p>Board's (1) 24:8</p> <p>board-on-board (2) 27:3;52:12</p> <p>border (1) 70:24</p> <p>both (9) 6:9;23:14;37:14; 39:13;43:15;49:17; 62:22,25;72:24</p> <p>bought (4) 15:17;31:18,21; 32:25</p> <p>bound (2) 47:7,10</p> <p>boundary (1) 47:17</p> <p>brand (1) 13:17</p> <p>break (3) 8:9;9:20;26:13</p> <p>brick (1) 46:14</p> <p>briefly (4) 7:3;12:17;41:13; 89:9</p> <p>bring (3) 11:11;29:15;68:25</p> <p>broad (2) 20:12;48:23</p> <p>broader (2) 49:21;50:17</p> <p>brought (1) 67:3</p>	<p>brutalize (1) 24:14</p> <p>buffer (1) 80:22</p> <p>bug (3) 57:10,14,16</p> <p>bugs (1) 57:22</p> <p>building (62) 7:18,20;8:6,22,25; 13:17;15:13;20:24,25; 21:14,15;22:19;23:1,2, 8,14;25:22;29:7,17; 31:13,21,22,24;32:22; 33:4;36:16,21;37:11, 24;38:3,7,21;39:19; 42:19;46:14,24,25; 49:7,25;50:3,23;51:21; 62:4;64:11,18,18; 65:23;68:11,16,18,25; 70:22;72:17;79:11,18; 80:3,4,19;81:19;83:22; 87:25;88:12</p> <p>buildings (4) 49:6;64:2;79:11,25</p> <p>built (5) 15:13;20:24;31:22; 62:6;79:24</p> <p>burden (1) 75:18</p> <p>Burnt (3) 4:17;12:24;47:19</p> <p>bus (1) 79:2</p> <p>business (1) 91:13</p> <p>businesses (1) 69:15</p>	<p>32:4,10;35:2;40:24; 42:12;45:2;52:25;56:7, 14;58:5;63:18;65:14; 67:3,13;68:25;69:24; 70:17;72:16;73:15; 80:9;86:12;88:5;90:2; 91:21</p> <p>can't (3) 31:25;64:1;70:8</p> <p>Candidly (1) 70:10</p> <p>canopy (4) 52:10;75:14;76:2,6</p> <p>capacity (1) 35:10</p> <p>captions (2) 23:20,22</p> <p>care (1) 26:9</p> <p>Carl (2) 4:6;14:10</p> <p>carried (1) 47:17</p> <p>cars (3) 53:3,4,8</p> <p>carve (2) 8:21,25</p> <p>carving (1) 7:18</p> <p>case (15) 4:6,21;11:6;21:4; 24:9;37:5;53:1;56:13; 63:6;64:2;67:17;77:6; 81:10,12,19</p> <p>cause (2) 41:20;85:2</p> <p>ceiling (1) 31:20</p> <p>Center (1) 78:10</p> <p>certain (6) 6:8;10:17;47:25; 77:5,6;81:18</p> <p>Certainly (13) 12:10;28:24;36:10; 46:7;48:24;52:16; 53:15;61:6;64:21; 72:14;77:21;80:17; 85:8</p> <p>certification (1) 91:1</p> <p>change (1) 71:4</p> <p>changed (1) 64:19</p> <p>changing (3) 54:2,3;55:11</p> <p>character (7) 46:16;77:20;80:12; 83:10,19;84:13,19</p> <p>characteristic (1) 81:7</p> <p>characteristics (1)</p>	<p>81:1</p> <p>check (2) 38:4,5</p> <p>circle (1) 47:25</p> <p>circulate (1) 42:18</p> <p>circulation (1) 80:24</p> <p>circumstances (4) 27:7,12;61:21;65:1</p> <p>cite (1) 64:17</p> <p>cited (1) 86:6</p> <p>citing (1) 60:3</p> <p>clarification (3) 70:17;71:12;90:5</p> <p>clarify (2) 48:2;54:21</p> <p>clarifying (1) 38:19</p> <p>clear (3) 18:7;29:21;33:12</p> <p>clearly (4) 28:23;60:18;90:7,19</p> <p>clinic (17) 4:9;12:20;13:6; 16:21;17:17;19:22,25; 29:6,14,24,25;31:13, 19;37:18;59:14;82:10; 87:25</p> <p>clinical (1) 4:7</p> <p>clinics (1) 46:1</p> <p>close (5) 67:23;76:3;91:13; 92:4,19</p> <p>closer (2) 22:10,16</p> <p>closest (3) 52:3;69:24;74:5</p> <p>closing (3) 89:8,10;94:3</p> <p>Code (4) 4:8;6:8,9;74:22</p> <p>coincide (2) 47:18;48:14</p> <p>combination (2) 6:1;85:4</p> <p>comfortable (1) 47:20</p> <p>coming (3) 20:10;30:20;57:7</p> <p>comings (1) 70:12</p> <p>commercial (13) 41:4,23;48:5;50:4; 63:14;64:6,18;65:5; 69:12,15;78:8;80:7; 87:24</p>
B		C		
<p>Babington (1) 47:11</p> <p>back (17) 23:2,2;29:15;42:19, 20;51:7;53:3;55:16; 56:7;57:4,11;65:17; 67:21;69:4;70:12; 75:13;81:15</p> <p>backyards (5) 69:5,7,8,12,23</p> <p>balances (1) 13:22</p> <p>based (19) 7:5;8:17;9:17,24; 11:19;35:11;36:23,25; 37:7,23,25;40:3;45:10; 50:15;51:5,8;66:1; 82:7;88:15</p> <p>basically (3) 27:9;32:5;37:3</p> <p>basing (1) 65:22</p> <p>basis (1) 71:16</p> <p>became (1) 87:12</p> <p>behalf (2) 4:18;5:1</p> <p>behoove (1) 64:4</p> <p>believing (1) 47:21</p> <p>below (1) 39:13</p> <p>benefit (4) 56:17;57:6;71:3,10</p> <p>best (2) 8:17;80:9</p>	<p>cafeteria (1) 7:21</p> <p>calculating (1) 7:4</p> <p>calendar (1) 93:8</p> <p>call (8) 4:5;14:8,10;24:19; 28:16;34:11;44:7; 76:10</p> <p>called (3) 5:4,13;59:2</p> <p>calling (1) 5:16</p> <p>calls (3) 73:2;74:22,23</p> <p>came (1) 87:10</p> <p>can (36) 7:23;8:21,25;12:3,5; 16:12;20:12;21:7; 25:13;29:15;31:8,16;</p>	<p>cafe (1) 7:21</p> <p>calculating (1) 7:4</p> <p>calendar (1) 93:8</p> <p>call (8) 4:5;14:8,10;24:19; 28:16;34:11;44:7; 76:10</p> <p>called (3) 5:4,13;59:2</p> <p>calling (1) 5:16</p> <p>calls (3) 73:2;74:22,23</p> <p>came (1) 87:10</p> <p>can (36) 7:23;8:21,25;12:3,5; 16:12;20:12;21:7; 25:13;29:15;31:8,16;</p>	<p>cafe (1) 7:21</p> <p>calculating (1) 7:4</p> <p>calendar (1) 93:8</p> <p>call (8) 4:5;14:8,10;24:19; 28:16;34:11;44:7; 76:10</p> <p>called (3) 5:4,13;59:2</p> <p>calling (1) 5:16</p> <p>calls (3) 73:2;74:22,23</p> <p>came (1) 87:10</p> <p>can (36) 7:23;8:21,25;12:3,5; 16:12;20:12;21:7; 25:13;29:15;31:8,16;</p>	

<p>common (1) 62:22</p> <p>community (3) 13:4;78:2;83:14</p> <p>compared (1) 84:15</p> <p>compatibility (12) 18:15;28:18;32:16; 18:52:21,23;80:13; 85:17,21;86:13,25; 87:2</p> <p>compatibility-wise (1) 65:5</p> <p>compatible (4) 20:22;30:7;42:5; 80:11</p> <p>complaints (2) 16:6,8</p> <p>completely (1) 61:14</p> <p>compliance (11) 13:15,21,22,23;28:9, 14;77:2,12;85:20;87:3; 88:16</p> <p>complicates (1) 63:1</p> <p>complied (2) 7:8;51:6</p> <p>comply (5) 60:19,20;61:3;64:1; 74:4</p> <p>complying (1) 91:9</p> <p>components (1) 36:12</p> <p>comprised (1) 46:12</p> <p>comprises (1) 12:24</p> <p>concern (2) 30:14;55:22</p> <p>concerns (6) 27:22;28:1;30:21; 66:3,8;67:16</p> <p>conclude (3) 88:11,16,19</p> <p>concluded (1) 95:2</p> <p>conclusion (2) 42:4;61:16</p> <p>conclusions (2) 36:8;46:5</p> <p>concur (1) 39:17</p> <p>condition (5) 7:8;9:5;18:8;81:4; 90:25</p> <p>conditional (59) 4:8;6:6,10;7:6; 10:18;12:20;13:9;14:1, 3;16:11,17;17:17;19:9; 20:22;26:3;27:1;35:15, 16;36:3;38:24;39:25;</p>	<p>40:21;41:11,20;42:5; 45:16,25;46:1;47:6; 49:12,15;50:18,22; 51:9;60:1;67:16;71:22; 75:11;77:14,23;78:6, 22;79:9;82:1,10,13,22; 83:4,8,11,18;84:6,7,9, 14,15,21;85:2;88:7</p> <p>conditions (5) 10:18,19;14:5,7;24:8</p> <p>conduct (1) 94:14</p> <p>conducted (1) 4:18</p> <p>conducting (1) 79:12</p> <p>configuration (1) 79:19</p> <p>configured (1) 62:8</p> <p>confirm (3) 24:7;25:7;49:20</p> <p>confirmed (3) 7:3;50:16;88:12</p> <p>confirming (1) 77:21</p> <p>conform (2) 40:6;83:4</p> <p>conformance (1) 77:15</p> <p>conforming (4) 51:5;59:1,4;82:7</p> <p>Congratulations (1) 94:17</p> <p>conjunction (1) 84:6</p> <p>connection (2) 10:6;28:20</p> <p>consent (3) 9:5;11:15;24:8</p> <p>consents (1) 14:7</p> <p>conservation (1) 58:12</p> <p>conservative (3) 38:18;39:5;71:23</p> <p>consider (7) 8:24;61:20;62:14,23; 65:1,9;81:3</p> <p>consideration (2) 28:25;63:4</p> <p>considered (3) 59:1;78:5;79:17</p> <p>considering (1) 63:4</p> <p>consistent (9) 8:13;17:14;40:11; 41:6;66:20;74:25; 81:11;83:9;84:17</p> <p>consists (1) 4:15</p> <p>constraints (1) 66:14</p>	<p>constructed (3) 46:15;83:22;87:25</p> <p>consult (1) 56:7</p> <p>consultant (1) 56:6</p> <p>content (1) 62:21</p> <p>continue (1) 71:6</p> <p>contribute (1) 84:3</p> <p>control (3) 61:11,15,18</p> <p>conversation (1) 63:11</p> <p>co-owner (1) 11:15</p> <p>copies (1) 89:17</p> <p>copy (4) 35:4;65:15;67:2,11</p> <p>corner (5) 15:8;31:9;61:10; 62:5;69:18</p> <p>corrected (1) 60:8</p> <p>correctly (1) 23:22</p> <p>correlate (1) 54:24</p> <p>CoStar (1) 88:12</p> <p>counsel (1) 6:22</p> <p>counted (2) 38:14,15</p> <p>counterclockwise (1) 42:19</p> <p>County (7) 12:22;15:3,20;16:6, 9;31:20;66:2</p> <p>County's (1) 35:20</p> <p>course (8) 6:6;29:13;52:15; 65:15;71:25;81:8; 89:17;90:2</p> <p>court (2) 6:4;39:15</p> <p>courtroom (1) 6:2</p> <p>CR2.5 (1) 50:1</p> <p>crosses (1) 55:23</p> <p>cross-examination (2) 6:5;24:14</p> <p>crosswalks (1) 43:22</p> <p>CRT1.5 (1) 50:6</p> <p>CTA (1)</p>	<p>87:10</p> <p>CU16-10 (3) 4:7;35:17;45:16</p> <p>current (6) 9:24;29:16;62:15; 72:23;73:2;82:5</p> <p>currently (7) 29:7;31:17;46:18; 52:14;55:17,19;91:5</p> <p>cut (1) 53:10</p> <p>cutoff (1) 53:12</p> <p>cutoffs (1) 55:12</p>	<p>dependent (2) 56:12;81:9</p> <p>depends (1) 93:17</p> <p>depict (1) 23:23</p> <p>depicting (1) 22:17</p> <p>describe (3) 23:22;25:9,13</p> <p>described (3) 4:16;46:19;83:1</p> <p>description (1) 46:8</p> <p>design (4) 13:14,21;66:18; 71:23</p> <p>designated (1) 53:22</p> <p>designates (1) 53:23</p> <p>designed (3) 8:6;53:10;79:23</p> <p>detached (1) 84:8</p> <p>detail (1) 13:16</p> <p>details (1) 91:17</p> <p>detector (2) 57:11,14</p> <p>detectors (7) 55:14,15,18,20,21; 56:4;89:25</p> <p>determination (1) 37:25</p> <p>determine (1) 9:25</p> <p>determines (1) 7:12</p> <p>determining (1) 38:15</p> <p>detriment (1) 57:6</p> <p>developed (1) 80:7</p> <p>development (4) 40:5;45:25;50:24; 59:25</p> <p>devoted (3) 47:1;65:23;81:13</p> <p>didn't (9) 27:18;29:7,8,22; 49:20;60:14;87:19; 90:15,17</p> <p>differed (1) 18:4</p> <p>difference (2) 53:13;59:6</p> <p>different (3) 36:20;47:13,16</p> <p>differs (1) 48:21</p>
D				
		<p>dark (2) 57:12;91:12</p> <p>dated (1) 36:11</p> <p>day (3) 18:21;93:20;94:4</p> <p>days (9) 12:8;19:6,7,8,8;93:1, 4,14,24</p> <p>deal (1) 16:12</p> <p>December (1) 87:12</p> <p>decide (1) 10:13</p> <p>decided (1) 10:2</p> <p>decision (2) 4:21;8:16</p> <p>dedicated (1) 7:5</p> <p>deemed (1) 9:7</p> <p>defer (1) 72:10</p> <p>defined (18) 8:5;47:7,14,15,20; 48:1,6,8,8,14;49:16,17, 18,19;50:11,12,17; 84:14</p> <p>defining (3) 47:4,10;62:10</p> <p>definitely (3) 25:20;26:9;91:7</p> <p>definition (6) 47:16;48:10,16,18, 21;49:21</p> <p>degree (1) 51:20</p> <p>degrees (1) 66:11</p> <p>deliveries (1) 18:25</p> <p>dental (1) 49:14</p>		

<p>difficulty (2) 53:18,19</p> <p>dim (1) 89:21</p> <p>diminishes (1) 26:12</p> <p>DIRECT (6) 14:21;25:5;35:1; 43:13;45:1;88:21</p> <p>directly (6) 15:17;20:14,14,15; 34:1;54:21</p> <p>disagree (4) 9:15;10:10;48:15; 79:21</p> <p>disagreement (1) 11:5</p> <p>disagrees (1) 8:18</p> <p>disappeared (1) 93:9</p> <p>discounted (1) 65:24</p> <p>discovered (1) 27:21</p> <p>discuss (2) 77:18;78:22</p> <p>discussed (1) 82:17</p> <p>discussing (1) 56:21</p> <p>Discussion (11) 24:18;30:24;31:8; 34:13;56:24;58:21; 60:17;89:3;93:10,12; 94:25</p> <p>disputes (1) 6:17</p> <p>distance (2) 48:3,5</p> <p>disturb (1) 58:5</p> <p>disused (1) 29:7</p> <p>Division (3) 28:10;86:17;87:4</p> <p>doctors (10) 4:10,11;16:21;17:1, 8,20;18:9;41:24;51:11, 12</p> <p>document (2) 11:16;66:19</p> <p>doesn't (6) 28:3,15;37:5;59:24; 60:2;90:9</p> <p>don't (58) 6:22;8:19,21;9:18, 20;11:12;12:4;18:5,23; 19:6;21:25;24:13; 25:11;26:10;29:25; 30:8,13,14;31:3;32:4; 38:3,4;48:15;52:22; 55:2,19;56:4;57:5,16;</p>	<p>59:22;61:21;62:14,18; 63:7,18;64:10,12;65:2, 12;70:8,8;71:11;74:1, 12;75:12;76:19;77:7; 80:3,13;81:3,12;84:11; 85:5;90:9;91:21,23; 93:23;94:10</p> <p>done (2) 19:8;80:9</p> <p>door (3) 26:15;29:24;33:23</p> <p>doubt (1) 18:22</p> <p>Douglas (2) 4:7;14:10</p> <p>down (3) 6:4;24:24;30:20</p> <p>DPS (7) 7:3,6,17;8:14,18; 9:15;66:2</p> <p>Dr (115) 4:6;5:8,19;12:3; 14:10,12,13,14,18,25; 15:6,10,13,14,15,19, 21,24;16:8,14,18,22; 17:7,9,15,22,25;18:2,5, 10,13,17,20,22;19:2,6, 12,14,18,20,23;20:1, 15,20,24;21:5,9,13,18, 22,23,25;22:5,8,10,15, 18,21,24;23:1,6,9,12, 22,25;24:2,4,10,11,16, 17;26:3,6,17,22;27:2, 20;29:15,17;30:2,25; 31:2,3,8,11,14,18;32:9, 21;33:2,6,15,18,20,21, 23,25;34:3,9,10;51:9; 62:17,25;63:13;64:4, 20;72:13,14,15,19,21; 73:10,14,24</p> <p>drawing (1) 48:13</p> <p>Drive (26) 5:9;15:1,9;25:17,23; 27:5;31:9,10;34:5; 42:21;47:9;49:24;50:2; 51:21;53:4;66:9,10,12, 21;67:19;68:4,10;70:3; 72:1;76:20;89:15</p> <p>drive-thru (1) 50:5</p> <p>driveway (1) 42:18</p> <p>driveways (2) 41:3,8</p> <p>drop (1) 10:10</p> <p>during (1) 91:2</p> <p>dust (1) 85:8</p>	<p style="text-align: center;">E</p> <p>easily (1) 81:21</p> <p>east (5) 43:17,22;47:8,17; 76:18</p> <p>easy (1) 66:22</p> <p>edge (1) 61:7</p> <p>effect (6) 51:7;52:22;76:22; 81:16;85:3,4</p> <p>effective (1) 87:12</p> <p>efficiency (1) 37:12</p> <p>efficient (4) 43:6,10;51:19,23</p> <p>either (3) 37:14;60:14;87:23</p> <p>elements (1) 85:9</p> <p>elicit (1) 27:23</p> <p>elimination (1) 89:24</p> <p>else (15) 5:11;8:23;9:11;16:9; 21:6,7;23:12;30:6; 34:7;44:3;57:11;59:10; 62:19;76:25;94:20</p> <p>emergency (1) 84:25</p> <p>employ (1) 4:10</p> <p>employed (1) 17:1</p> <p>employees (11) 4:11;17:3;36:18,22, 25;37:8,9,12;39:9; 41:25;79:13</p> <p>employment (1) 87:24</p> <p>end (4) 10:7;42:16,18;91:11</p> <p>ends (1) 8:19</p> <p>enforce (1) 8:14</p> <p>enforcing (1) 7:7</p> <p>engaged (1) 14:24</p> <p>Engineer (1) 5:20</p> <p>engineering (7) 35:7,13;36:5;40:4, 20;41:10,19</p> <p>Engineers (1) 36:19</p>	<p>enhanced (1) 13:12</p> <p>enjoyment (1) 85:7</p> <p>enough (3) 62:6;65:10;81:5</p> <p>ensure (2) 64:5;65:4</p> <p>ensuring (2) 91:3;92:2</p> <p>enter (2) 42:16,17</p> <p>entered (1) 54:1</p> <p>enters (1) 42:12</p> <p>entitled (1) 17:17</p> <p>entrance (4) 42:15;49:23;52:1,3</p> <p>environmental (1) 58:11</p> <p>envisioned (1) 65:3</p> <p>equipment (1) 32:24</p> <p>erected (1) 27:8</p> <p>Erin (1) 4:25</p> <p>Especially (1) 7:24</p> <p>essentially (2) 41:4;64:18</p> <p>establishing (1) 86:25</p> <p>establishment (1) 32:17</p> <p>Estate (1) 12:24</p> <p>evaluated (1) 84:6</p> <p>even (11) 7:19;17:9;20:3; 41:23;60:22;61:19; 63:19;80:14,15;84:2; 87:13</p> <p>evening (6) 36:25;37:2,10;39:10; 42:2;91:2</p> <p>event (5) 11:2;12:9;28:23; 37:14;55:8</p> <p>evergreen (2) 52:10;76:7</p> <p>Everyone (1) 20:1</p> <p>evict (1) 63:20</p> <p>evidence (7) 4:21;6:3;9:24;13:1; 20:7;92:6,16</p> <p>exact (1)</p>	<p>70:24</p> <p>exactly (1) 33:13</p> <p>EXAMINATION (5) 14:21;25:5;35:1; 45:1;88:21</p> <p>Examiner (30) 4:20,23;6:24;7:12, 14;11:7;12:19;14:20; 26:2;29:2;35:6,14; 44:4;45:7;48:19;58:2; 60:5;61:8;66:4;70:18; 72:10;85:16;86:12; 87:8;88:17,24;89:6; 92:4,10;94:13</p> <p>Examiner's (1) 50:10</p> <p>Examiners (2) 35:10;45:12</p> <p>example (1) 82:14</p> <p>exceed (2) 54:8;91:3</p> <p>except (3) 6:2;50:24;74:2</p> <p>exception (2) 29:14;72:3</p> <p>exceptions (1) 50:11</p> <p>excuse (1) 5:18</p> <p>executed (1) 11:9</p> <p>exempt (2) 37:15;41:15</p> <p>Exhibit (34) 6:15;10:16,17;11:4, 22,23;21:4;22:3;23:10; 25:8;33:20;34:22,24; 35:11;36:9;38:10; 42:14;44:14,16;45:4; 46:6,9;47:5,10,24;48:7, 12;49:12;50:15;52:4; 53:23;54:16;60:7; 92:13</p> <p>Exhibits (6) 21:11;88:15;92:6,7, 8,8</p> <p>existence (1) 13:18</p> <p>existing (21) 4:9;13:5,7,11;19:11; 36:15;39:19;46:8; 49:12;50:18,23;51:16; 77:17,21;79:18;80:3, 19;83:7,22;84:6,16</p> <p>exists (1) 23:24</p> <p>exit (4) 42:12,22,25;43:6</p> <p>exiting (1) 42:19</p> <p>expand (3)</p>
--	--	--	---	--

<p>13:10;17:10;79:6 expansion (1) 50:23 expense (1) 90:18 experience (1) 41:7 expert (9) 35:6,8,12,12;42:5; 45:7,8,11,12 explain (4) 5:24;40:24;41:13; 79:6 explicitly (2) 8:12;9:3 extend (2) 53:7;71:14 extends (1) 49:8 extensive (1) 75:21 extensively (2) 51:17;52:6 extent (1) 85:17 exterior (1) 54:2 extra (2) 31:20;33:2 extract (2) 67:3;89:14</p>	<p>20:16;49:15;72:15 FDA (4) 47:8;49:23,25;78:10 feature (1) 26:11 FedEx (1) 19:2 feedback (1) 89:13 feel (17) 28:23;66:21;68:2,13; 71:11;75:15,23;76:8, 14,23;77:7,23;78:5; 80:15,17;81:10;86:23 feeling (2) 57:8;72:8 feet (51) 4:16;27:25;37:25; 38:9,17;46:12,13,25; 47:1;51:1,2;52:15,17; 53:5,13,14,14;58:22; 59:19,22;60:10,12,13; 61:2;62:1,2;65:22; 66:12,15,16;67:18,20, 20,24;68:10,12;70:10; 74:1,6,23;75:5;76:11, 12;82:5,6,8,15,16; 91:15,16,17 felt (2) 28:17;67:25 fence (58) 27:3,6,8,11,14,19,23, 25;28:3,7,11,13,14,16; 30:15,15;33:9;52:12, 12,14,17,19,20,25,25; 53:2,5,11,13;68:13,15; 70:6,19;71:3,4,6,13,14, 19;72:5,7,19,23,24; 73:3,5,22,22;74:3,15, 22;76:14,24;84:3; 89:24;91:15,15,23 fencing (2) 68:5;77:8 figures (2) 37:18,23 file (1) 12:8 filed (2) 6:12;87:9 filing (1) 92:9 finally (3) 40:3;42:4;77:1 find (3) 9:14,16;86:13 finding (3) 53:19;79:22;88:14 findings (5) 11:3,4,6;36:8;46:5 fine (12) 17:12;18:5;21:9; 44:11;58:7;67:15;74:7; 75:6;93:3,3,4;94:14</p>	<p>finish (1) 24:2 fire (1) 79:1 first (11) 9:11;14:9;16:13; 21:14;37:23;47:2; 61:22;71:20;74:16; 87:9;94:11 fits (1) 21:1 five (1) 21:25 fixtures (8) 53:9;54:2,3,24; 55:10,11,14,20 flashing (1) 55:23 flew (1) 57:14 flood (1) 55:14 floor (7) 7:24;8:20;9:17;32:3; 38:3,6,21 floors (1) 47:2 flow (1) 51:23 focus (2) 59:24,25 folks (1) 43:19 follow (3) 7:14;8:18;10:25 following (1) 31:7 foot (14) 27:3;28:14;31:21,25; 33:8;38:17;51:6;60:2; 64:1;68:11;70:19; 73:22;82:18;89:24 footage (8) 36:17,21,23;37:4,10, 22,24;39:19 foot-candle (1) 91:9 foot-candles (3) 53:12;54:8;91:4 footnote (1) 10:10 footprint (1) 79:17 Forbes (2) 88:6;92:2 forest (1) 58:12 form (4) 11:19;41:18;48:11; 79:2 formality (1) 6:1 formulate (1)</p>	<p>93:19 forward (2) 11:12;56:19 fought (1) 63:5 found (8) 48:11;50:15;60:1; 66:17,20;75:12;83:13, 24 foundation (2) 46:23;52:8 four (24) 4:8;5:22;12:21;13:6; 16:22;17:8,14,16,17; 18:3;37:1,9;39:10; 42:1;46:1;51:11;55:13, 20;57:2,3;80:2;81:17, 18;82:11 frankly (2) 71:11;80:12 Frazier (1) 88:6 Friday (1) 16:18 Fridell (1) 15:14 friendlier (1) 53:15 front (16) 21:10;22:19;23:13; 33:3;34:1;46:22,24; 51:1,24;52:7;57:21; 60:10;72:2;75:20;76:5; 82:4 frontage (3) 41:2;43:21;46:13 full (3) 39:14;75:12,25 fully (3) 76:3,13;78:1 function (3) 12:6;13:16;27:1 functions (1) 9:3 further (9) 47:18;49:8;53:9; 80:6;85:11;88:23;89:4; 94:8,21 future (2) 65:12;78:9</p>	<p>11:25;94:13 general (5) 6:9;37:21;59:8;60:6; 82:22 generate (5) 36:20,24;37:1,14; 42:1 generated (2) 39:9;79:15 generates (1) 37:8 generation (3) 36:19;37:7,13 generator (2) 41:24;43:8 generous (2) 66:14;77:8 Gerard (2) 4:25;5:5 gets (1) 57:12 GIRARD (36) 4:4,25;5:6;12:2,5,10; 24:15;27:20;28:6; 29:10;38:12;63:9,10, 22;64:4,12,21,24; 70:17;71:1;73:20; 87:16;90:5,11,15,20, 23;91:6,19;92:22; 93:17,20,25;94:5,10,23 given (15) 4:12;16:24;17:2,21; 18:12,21;42:1;51:11, 15;56:8,9;66:19,20; 75:18;79:2 giving (1) 48:3 glasses (1) 25:11 goes (2) 43:1;57:12 goings (1) 70:12 Good (12) 4:23;14:13,14;24:21, 22;34:14,15;44:9,10, 12;51:22;94:17 grant (1) 85:13 granted (2) 6:20;15:20 grass (1) 69:22 Great (1) 42:9 greater (2) 10:13;67:22 green (1) 80:10 gross (7) 7:24;8:20;9:17; 37:24;38:2,6,21 grossly (2)</p>
F				
<p>facilities (12) 13:12,23;35:23; 39:24;77:4;78:23;79:3, 5,12;84:22;89:23; 90:21 facility (7) 26:21;29:4;56:22; 69:17;71:22;72:2;81:4 facing (4) 21:14;23:2;34:4,4 fact (10) 9:16;10:12;26:8; 43:12;51:6;57:10; 64:21;65:24;82:7; 84:16 factor (1) 62:17 factoring (1) 80:15 faintly (1) 54:15 fair (1) 72:11 familiar (7) 35:15,19,22;45:15, 18,23;88:6 family (3) 77:20;78:7;83:11 far (3)</p>				
			G	
			<p>galleries (1) 94:16 gas (1) 50:5 Gateway (5) 4:15;35:20;40:7; 45:19;77:15 Gatewood (1) 47:19 gave (2)</p>	

<p>68:1;76:22 GROSSMAN (298) 4:2,5,20;5:2,7,11,15, 22,24;6:25;7:16;8:16; 9:10,14;10:21,24;11:2, 8,11,21,25;12:4,7,12, 15;14:8,13,15,19; 15:18,25;16:4,12,15, 25;17:7,13,16,24;18:1, 3,14,18,20;4,18;21:3, 16,19,21,24;22:2,6,9, 12,14,16,20,23,25; 23:3,5,11,16,18;24:1,3, 5,13,21,23;25:4,18,21, 25;26:7,17,20,22,24; 27:13,16,18;28:5,12; 29:3,11,17,20;30:5,13, 17,20,23;31:1,5,12,15; 32:6,12;33:1,5,7,17,24; 34:2,7,9,14,16,20,23; 35:9;37:17,22;38:4,6, 22,25;39:2,4,7,13,16, 21;40:9,13,18;42:11, 22,25;43:5,9,14,18; 44:1,3,5,9,11,15,19,24; 45:10;47:13,24;48:7, 15,20;49:2,17,22; 50:19;52:18;53:17,22; 54:4,7,12,15,18;55:1,5, 7,17,22;56:1,3,10,16, 19,24;57:3,16,19,22, 25;58:3,8,14,16,18,21, 24;59:1,4,16,18,21; 60:14,19,22;61:5,16; 62:10,12,14;63:1,18; 64:3,8,15,22,25;65:19; 66:7,24;67:1,5,8,10,13; 68:18,22,24;69:3,6,9, 13,16,20,24;70:4,13, 16,20;71:2,9,16;72:5,8, 11,14,20,22;73:2,5,9, 12,16,19,21,25;74:9, 11,14,18,21;75:1,4,7, 76:1;78:11,17,20; 80:25;81:3,24;85:13, 24;86:1,4,7,10,12,16, 19;87:2,6,11,18,21; 88:3,20,25;89:4,7,19; 90:9,12,17,21;91:14, 20,25;92:5,11,18;93:2, 5,11,13,22;94:2,7,11, 14,17,20 group (1) 31:23 guess (11) 7:21;9:2;24:14; 28:12;58:11;63:8; 73:16;74:3,6;86:17; 94:15 guide (1) 39:9 Guidelines (4) 35:25;37:17,20,20</p>	<p style="text-align: center;">H</p> <p>hadn't (1) 94:15 half (2) 66:15,16 Hampshire (28) 4:13;12:23;15:8; 21:13;22:18;23:15; 25:22,23;31:9;34:4; 41:1,4,7;42:16;43:2,3, 13,17;46:11,13,21; 47:8,12;49:9,11,25; 50:2;76:18 hand (5) 14:15;24:25;34:16; 44:20;50:22 handicap (1) 52:2 hands (1) 5:15 happy (1) 48:13 hard (2) 63:5,24 harm (4) 41:20;80:16;85:2,6 harmonious (3) 40:21;83:18;84:1 harmony (1) 86:25 hasn't (1) 60:25 haven't (4) 61:22,23;62:18;63:7 he'd (1) 37:11 he's (1) 35:9 head (1) 29:9 headlights (1) 53:6 Headquarters (1) 47:8 health (1) 85:9 hear (6) 6:21,25;13:2;29:8, 21;30:2 heard (1) 5:12 hearing (28) 4:6,18,20;7:12,13; 10:7;11:23;26:2;34:24; 35:6,10;44:16;45:7,12; 50:10;60:5;61:8;66:4; 70:18;72:10;85:16; 86:12;87:7;88:17;92:3, 4;94:12;95:1 Hearings (1) 4:19</p>	<p>hearsay (4) 20:4,8,9,10 heat (1) 31:5 height (9) 27:25;28:7;52:15,17, 19,25;53:8,14;91:23 Hello (1) 14:12 help (2) 76:24;84:3 helpful (1) 55:5 helps (1) 30:21 hesitant (1) 26:14 high (4) 27:11,13;71:6;84:3 higher (4) 9:23;27:17;37:12,13 himself (1) 26:22 historically (5) 60:25;61:4;63:16; 78:4;82:17 Hold (5) 30:5;44:19;71:6,15; 93:9 holding (2) 22:3;33:20 home (4) 25:18;32:13;68:19; 69:4 homes (2) 69:9;83:11 honest (2) 49:19;85:22 hopefully (1) 66:5 hot (2) 31:1,3 hour (7) 36:24,25;37:1,2,15; 42:2,2 hours (3) 16:17;91:2,10 house (3) 20:25;21:1;25:12 housing (1) 21:1 how's (1) 93:24 Hoyle (1) 47:19 huh (1) 31:2 HUMMEL (157) 4:23,24;5:4,8,18,23; 6:22,24,25;7:3;8:11; 9:2,13;10:20,23;11:1,7, 10,17;12:14,17,19; 14:10,20,22;15:4,7,11,</p>	<p>19,22;16:3,5,10,16,20; 17:5;18:7,11,20,25; 19:4,9,13,16,19,21,24; 20:21;21:9,20;22:13, 22;23:4,9,17;24:6,11, 19;25:6,13,16;26:1,25; 28:8;29:1,2,7,13,19; 30:3,25;31:7,16;33:14, 20,22;34:8,11,21;35:2, 5,14,19,22;36:2,7;38:7, 8,13;39:22;40:3,19,24; 41:9,13,18;42:4,9;44:4, 7,13,18,25;45:2,6,14, 18,23;46:4;48:19;50:7, 9,20;58:2;60:5;61:8, 13,17;72:8,10;77:13; 78:21;79:6;81:25;82:9, 21;83:3,17;84:5,20; 85:1,11;87:7;88:2,5,10, 15,24;89:6,9,11;90:4, 24;91:7;92:1,10,17,23; 93:18;94:1,6,9,12,13, 16,19,24 hurt (1) 90:13 <p style="text-align: center;">I</p> <p>I'd (8) 8:23;34:21;44:7; 50:9,13,21;63:1;85:22 I'll (6) 4:5;9:25;20:18; 25:11;47:4;64:8 I'm (38) 4:20,25;6:21;7:17; 12:7;16:16;18:1;20:8, 11;24:2;25:7,17;26:21; 31:3;32:12,19;38:10; 43:14;44:11;46:8;52:4, 23,23;56:25;59:14; 60:5;63:22;65:2,13; 68:18;71:17;72:11; 73:1;74:21;85:13; 88:14;91:20;94:16 I've (6) 15:1,2;57:20;58:10; 82:25;86:6 idea (2) 30:14;73:21 identification (9) 11:24;21:10;22:12; 34:21,25;44:14,17; 45:3;92:15 identified (3) 23:20;25:8;88:17 identify (5) 4:22;21:5,11;35:3; 45:2 illumination (2) 85:8;91:3 immediate (3) 53:1;79:25;84:1</p> </p>	<p>Immediately (7) 31:12;42:17;51:25; 60:22;69:16;70:2;79:1 impact (8) 68:7;78:22;79:20; 80:5,13,16;81:13,16 impacted (2) 48:25;71:8 impacts (5) 58:11;63:3;79:7,8,10 impinging (1) 65:5 implying (1) 61:17 important (2) 77:19;83:9 importantly (2) 63:12;68:4 improve (3) 13:11;52:1;80:12 improved (8) 43:12;46:14;52:6; 60:12;61:6;62:1,2,5 inappropriate (1) 48:22 inches (3) 52:15;91:16,17 inclined (1) 85:13 include (7) 10:3,14;37:20;48:13; 59:19;79:11;83:10 included (4) 36:9,12;46:6;88:7 includes (1) 48:24 including (7) 4:11;43:14;50:4; 52:7;76:17;78:8;89:13 inclusion (1) 27:6 inconvenient (1) 68:1 incorrect (2) 17:4,5 increase (1) 84:8 indicate (1) 32:14 indicated (3) 10:15;17:19;29:22 indicating (2) 11:14,15 informal (1) 66:1 informality (1) 6:1 information (1) 24:24 informed (1) 64:11 informs (1) 50:14</p>
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<p>inherent (5) 79:8,10,20;81:15; 85:4</p> <p>inherently (1) 80:1</p> <p>initially (1) 92:25</p> <p>input (1) 28:22</p> <p>instance (1) 80:9</p> <p>Institute (1) 36:18</p> <p>integrated (1) 13:4</p> <p>intended (4) 8:7;30:1;65:2;87:21</p> <p>intensity (1) 84:8</p> <p>intent (3) 75:25;77:9;86:24</p> <p>interest (2) 60:17;66:14</p> <p>interested (1) 32:12</p> <p>interjected (1) 18:3</p> <p>internal (1) 75:17</p> <p>interpret (1) 8:14</p> <p>interpretation (4) 8:17;10:9;62:16; 63:24</p> <p>interrupt (2) 50:9;60:6</p> <p>intersection (4) 42:21;43:22;49:10, 24</p> <p>into (10) 13:4;28:11,24;42:17, 17;51:22;54:1;58:16; 92:6,16</p> <p>introduced (1) 21:4</p> <p>introducing (1) 20:5</p> <p>island (1) 75:16</p> <p>islands (2) 75:14,15</p> <p>isn't (1) 29:5</p> <p>issue (12) 9:11,12,22;11:5; 16:13;27:19;53:1;63:5, 23;64:5,25;90:2</p> <p>issued (1) 6:15</p> <p>issues (4) 26:5;65:7,10;89:14</p> <p>it'll (2) 52:22;66:6</p>	<p>it's (76) 6:15;7:2,15;11:14; 19:6;21:4;22:18;25:21; 26:9,10;27:10;31:3; 32:5,6,9,10,21;34:3,22; 36:16;37:19;38:8,10, 16;39:7,19;40:11;41:6; 43:11,12;46:9,14,15; 47:16;48:2,4,23,25; 56:8;57:9;59:4,8,10; 61:6,14,17;62:7,8,16, 17,23;63:8,16;65:11; 66:17;68:2,3,15;69:14, 21;70:22;71:21;74:8; 76:13,23;79:25;80:19; 81:12;82:6;84:16; 86:13;87:3;88:22; 91:20,24;93:2</p> <p>ITE (3) 36:18;37:18,19</p> <p style="text-align: center;">J</p> <p>job (2) 77:10;94:18</p> <p>Johnson (47) 5:6,9,17;24:20,21, 22;25:3,6,11,15,17,19, 20,24;26:1,4,8,19,21, 23,25;27:7,15,17,21; 30:4,5,10,16,19,22; 52:16;53:16;56:1,19, 23;57:9,18,20,23;58:8, 9;68:25;70:7,23;73:22; 89:24</p> <p>Johnson's (9) 28:1;56:9;68:19,20; 69:4,25;70:2;74:3,4</p> <p>July (1) 15:3</p> <p>June (2) 93:22;94:2</p> <p>justification (1) 86:21</p> <p style="text-align: center;">K</p> <p>keeping (5) 75:23;76:8,15;77:9; 86:24</p> <p>kick (1) 63:18</p> <p>kicking (1) 32:12</p> <p>kind (8) 6:10;18:14,19;20:9, 10;32:24;56:11;63:5</p> <p>knew (2) 38:19;64:21</p> <p>knowing (1) 71:24</p> <p>knows (1) 20:2</p>	<p style="text-align: center;">L</p> <p>lack (2) 80:9;85:9</p> <p>laid (1) 68:3</p> <p>lamps (1) 55:12</p> <p>Land (11) 5:21;8:3;41:8;45:7,8, 11,13;46:5;48:12; 50:25;78:16</p> <p>Landfair (158) 5:21;44:8,9,10,12,18, 20,23;45:2,5,6,14,17, 22;46:3,7;47:15;48:2, 10,21,23;49:3,19,23; 50:7,8,15,21;51:4; 52:22;53:21,25;54:6, 11,14,17,20;55:4,6,9, 19,25;56:2,5,11,18; 57:2,24;58:7,10,15,17, 20,23,25;59:3,15,17, 20,24;60:6,8,15,21,25; 61:6,10,12,14;62:4,11, 13,20;65:17,20;66:8, 25;67:2,7,9,12,15; 68:20,23;69:2,5,8,10, 14,19,21;70:1,10,14; 71:5,10,19;72:7,18; 73:1,4,7,18;74:7,10,12, 15,19,24;75:2,6,8;76:2; 77:13,16;78:15,18,21, 24;79:10;81:2,8,25; 82:3,13,24;83:6,18,21; 84:11,20,23;85:5,12, 18,22,25;86:3,6,9,11, 15,18,20;87:5,17,20; 88:5,9,14,19,23;89:1,2; 91:24;92:23,25;93:4</p> <p>Landfair's (1) 91:4</p> <p>Landscape (4) 10:25;91:17,21,22</p> <p>landscaped (7) 46:22;69:5;75:13,15, 16;76:13,13</p> <p>landscaping (24) 6:13,14;13:13;19:16; 52:4,5,5,7;66:15;68:5; 69:7,22;71:20;74:23; 75:17,20,22,23;77:5,8; 80:21;83:25;85:19; 86:23</p> <p>lanes (1) 41:1</p> <p>language (1) 61:25</p> <p>large (4) 48:17;52:8;76:5; 80:7</p> <p>larger (2)</p>	<p>33:10;74:3</p> <p>last (3) 27:22;33:21,21</p> <p>lastly (1) 24:6</p> <p>late (1) 11:20</p> <p>later (1) 60:15</p> <p>latest (1) 79:7</p> <p>LATR (7) 36:13,15;37:16,17, 20;40:12;41:15</p> <p>law (3) 8:17;10:9;63:6</p> <p>layout (1) 86:21</p> <p>layperson (1) 54:23</p> <p>lead (2) 6:23;7:6</p> <p>leading (2) 88:20,22</p> <p>learned (1) 61:22</p> <p>lease (3) 32:4;63:15,15</p> <p>least (1) 56:25</p> <p>leave (1) 12:7</p> <p>LED (1) 55:12</p> <p>leg (2) 43:22,23</p> <p>legal (5) 9:11,12;11:5;51:5; 82:7</p> <p>Lenhart (46) 5:20;34:12,14,15,19; 35:2,4,5,15,18,21;36:1, 6,10;37:19;38:2,5,19, 23;39:1,3,6,12,15,17, 22;40:2,8,11,17,23,25; 41:12,14,22;42:7,10, 14,24;43:3,7,11,16,19; 44:2,6</p> <p>less (3) 30:7;37:14;81:14</p> <p>let's (7) 5:15;23:12;65:7; 70:21;91:21;92:18; 93:14</p> <p>letter (4) 7:16;88:6;90:3;91:5</p> <p>letters (2) 54:16,18</p> <p>level (2) 31:23;46:15</p> <p>light (12) 53:9,10,12,23;54:2,3, 24;55:10,13;57:13,15;</p>	<p>63:23</p> <p>lighting (17) 53:17,19;54:4;56:6; 58:10;79:14,14;89:16, 19,20,23,25;90:12,21, 25;91:2,8</p> <p>lights (6) 53:20;54:19;55:3,15; 56:21;57:7</p> <p>likelihood (2) 26:12,12</p> <p>likely (1) 29:23</p> <p>limitation (1) 18:15</p> <p>limitations (1) 41:24</p> <p>limited (2) 38:23;91:12</p> <p>limits (1) 18:18</p> <p>line (23) 27:4;51:2;52:9,11, 13;53:10;55:13;60:10; 63:24;68:6,12,14; 69:11;71:7,13,14;73:8, 13;75:22;76:7,12;84:3; 91:3</p> <p>lines (2) 53:12;54:9</p> <p>Linowes (2) 4:24,25</p> <p>listed (2) 9:24;91:15</p> <p>listing (1) 54:9</p> <p>lists (1) 10:8</p> <p>little (11) 5:25;20:7,8;22:10; 28:1;33:15;48:17,23; 58:18;65:8;69:17</p> <p>Local (2) 35:24;36:13</p> <p>locate (1) 42:13</p> <p>located (5) 4:13;40:25;50:6; 52:13;75:9</p> <p>location (3) 26:5;54:19;90:19</p> <p>locations (6) 53:24;54:3;55:2,10; 89:22;90:13</p> <p>Lockwood (2) 47:7;50:2</p> <p>logical (2) 61:16;90:22</p> <p>long (10) 8:13;13:3;14:24; 15:11;46:17;56:12; 77:24;83:12;90:12; 92:19</p>
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<p>longer (1) 28:23</p> <p>look (8) 23:21;33:19;37:10; 52:16;54:23;60:6; 79:23;91:21</p> <p>looked (5) 36:15,16,17;37:3; 67:21</p> <p>looking (7) 23:1,6;24:2;54:4; 59:14;92:22,23</p> <p>looks (2) 25:12;75:2</p> <p>Lord (112) 4:7;5:19;11:14,18; 12:3;14:10,12,13,14, 18,25;15:6,10,13,21, 24;16:8,14,18,22;17:7, 9,15,22,25;18:2,5,10, 13,17,20,22;19:2,6,12, 14,18,20,23;20:1,15, 20,24;21:5,9,13,18,22, 23,25;22:5,8,10,15,18, 21,24;23:1,6,9,12,22, 25;24:2,4,10,12,16,17; 26:3,6,22;27:2,21; 29:15,17;30:2,25;31:2, 3,8,11,14,18;32:9,21; 33:2,6,15,18,20,21,23, 25;34:3,9,10;51:9; 62:17,25;63:13;64:4, 20;72:13,14,15,19,21; 73:10,14,24;90:3</p> <p>Lord's (2) 5:8;26:18</p> <p>lot (14) 26:15;54:9;59:18; 60:10,10,11,22;61:25; 63:2,5;75:17;79:25; 82:14;91:3</p> <p>Lots (5) 4:16;12:24;59:22; 60:13;75:9</p> <p>loud (1) 65:13</p> <p>low (4) 31:21;41:23;42:3; 43:7</p> <p>lower (1) 31:23</p> <p>LP3 (1) 54:5</p> <p>luminaire (1) 54:22</p> <p>lunary (1) 54:9</p>	<p>32:25;41:14;49:23; 51:25;52:3</p> <p>maintain (3) 64:6;77:24;83:12</p> <p>maintained (1) 8:8</p> <p>maintaining (1) 76:5</p> <p>majority (2) 48:6;66:9</p> <p>makes (2) 53:13;73:23</p> <p>making (2) 78:12,14</p> <p>mandated (1) 77:3</p> <p>maneuver (1) 66:12</p> <p>manual (4) 36:19;66:17,18,20</p> <p>many (6) 17:9;39:9;57:1;62:7; 78:1;79:25</p> <p>maple (2) 46:22;52:8</p> <p>mark (2) 34:21;44:13</p> <p>marked (7) 11:24;21:10,17; 34:25;44:17;45:3; 92:14</p> <p>markup (1) 48:9</p> <p>Martin (1) 4:19</p> <p>Maryland (1) 15:1</p> <p>Master (11) 4:15;35:20;40:7,15; 45:19;77:15,16;78:12; 83:5,7;84:17</p> <p>material (1) 92:20</p> <p>materials (1) 89:17</p> <p>matter (6) 4:6;48:16;61:9; 90:10;91:10;92:4</p> <p>matters (2) 6:12;12:13</p> <p>mature (5) 46:22,23;52:7;75:20; 76:5</p> <p>maximum (14) 4:11;16:20,22;17:8, 12,24;18:8,11,20,22, 24;51:11,12,12</p> <p>may (16) 8:7;14:19;24:5;25:4; 28:16,17;34:20;44:24; 53:25;60:8,16;63:17; 64:22;72:13;79:24; 93:14</p>	<p>maybe (7) 31:5;59:8,10;62:16; 67:13;68:4;87:21</p> <p>MC (2) 25:9;46:9</p> <p>McCeney (1) 49:11</p> <p>MCLEOD (1) 51:3</p> <p>mean (26) 14:25;17:9;29:20; 32:4,21;41:14;53:18; 54:4;56:16;57:5,19; 61:22,24;62:15;63:5,7, 8,10,14,19;65:13;70:8; 72:11;73:14,15;90:13</p> <p>meaning (1) 62:3</p> <p>means (2) 4:20;67:21</p> <p>mechanical (1) 8:10</p> <p>medical (38) 4:7,9;12:20,21;13:6, 6,8;15:12;16:7;17:17; 19:22,25;29:6,14;32:2, 23,23;36:20;37:18,20, 21;38:25;45:25;46:1; 47:2;49:13;51:14;62:7, 9;65:23,25;77:25; 81:11,14,17,18;82:10; 87:25</p> <p>medicine (1) 13:4</p> <p>meet (6) 19:15;75:12;82:5,20, 22;83:1</p> <p>meeting (2) 67:23;74:16</p> <p>meets (3) 14:2;50:23;66:16</p> <p>mention (1) 40:15</p> <p>mentioned (4) 7:8;14:4;39:22; 53:17</p> <p>mentions (1) 59:23</p> <p>merger (6) 62:21;63:3,8,11; 64:23;90:2</p> <p>met (1) 6:8</p> <p>method (6) 13:15,21;28:9;43:6; 77:2,12</p> <p>methodologies (1) 36:20</p> <p>methodology (2) 7:4;8:12</p> <p>metric (1) 8:20</p> <p>middle (2) 55:24;57:7</p>	<p>midpoint (1) 70:21</p> <p>might (13) 17:23;48:5,17;56:14; 61:20;65:10;70:15; 71:10,24;72:2;78:15; 87:8;88:3</p> <p>Mike (2) 5:19;34:11</p> <p>Mills (3) 4:17;12:24;47:19</p> <p>minimal (1) 83:1</p> <p>minimum (10) 7:25;59:13,18,21; 60:10,11,12;61:25; 82:14,15</p> <p>mitigate (7) 53:2,6,8;68:7;70:11, 11;76:24</p> <p>mitigating (1) 77:10</p> <p>modern (1) 55:11</p> <p>modification (1) 10:22</p> <p>modifications (2) 19:10;80:18</p> <p>modified (5) 10:21;14:6;24:9; 91:18;92:8</p> <p>modify (1) 19:14</p> <p>modifying (1) 19:13</p> <p>moment (1) 78:15</p> <p>Mondays (1) 16:18</p> <p>Montgomery (3) 12:22;15:2;35:20</p> <p>month (4) 32:9,10;63:20,20</p> <p>months (1) 21:25</p> <p>more (32) 6:3;16:23;17:2;20:7; 24:11;28:18;30:3,7,10; 33:16;37:11,12;39:4; 42:9;51:14,19;54:21; 60:18;63:12,12,16; 65:8;71:4;80:10,11; 81:14;84:1;86:23;90:7, 16,18;92:5</p> <p>morning (14) 4:23;14:13,14;24:21, 22;34:14,15;36:24; 37:1,9;39:10;42:1; 44:9,10</p> <p>most (7) 17:22;25:20;48:25; 49:5;51:20;68:4;90:22</p>	<p>mostly (5) 32:5;7,21;69:22; 89:20</p> <p>motion (16) 6:20;7:10;55:14,15, 17,20,21;56:3,22;57:3, 11,14;58:1,4;88:7; 89:25</p> <p>move (2) 35:8;45:8</p> <p>movements (1) 53:3</p> <p>moving (1) 16:10</p> <p>much (9) 6:2;26:10;28:3;30:4, 18;49:6;51:19,19; 89:19</p> <p>must (1) 87:23</p> <p>myself (2) 18:3;85:23</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name (2) 4:19;14:22</p> <p>nature (10) 5:25;56:8;61:4; 75:19;79:2;81:21; 82:17,18;84:10;87:13</p> <p>near (1) 70:7</p> <p>nearby (7) 48:5;65:6;79:1; 80:12;83:11;84:24,25</p> <p>nearest (2) 87:23,24</p> <p>necessarily (1) 26:22</p> <p>necessary (15) 7:13,15;9:7;32:11; 33:3;48:15;76:20,23; 85:17,20,21;86:13; 87:3;90:18;93:16</p> <p>necessitates (1) 79:21</p> <p>need (9) 6:17;11:14;19:14; 63:25;70:11;74:1; 89:12,16;93:3</p> <p>needed (1) 56:8</p> <p>needs (2) 19:15;85:16</p> <p>neighbor (6) 5:9;13:7;20:13; 56:15;58:6;74:5</p> <p>neighborhood (34) 18:16;20:23,25;21:2, 5;22:7;32:16;40:22; 41:20;42:6;47:5,6,18; 48:6,9,11,11,14,18;</p>
M				
<p>mailed (2) 30:11,12</p> <p>main (5)</p>				

<p>49:16,20;50:12,13,17; 78:7;80:1,17;83:20,24; 84:2,14;85:2,7;87:1</p> <p>neighborhoods (2) 49:18;77:20</p> <p>neighboring (1) 84:7</p> <p>neighbors (9) 19:21;20:3,10,12,16; 52:24;53:1;83:16;84:1</p> <p>Nevertheless (2) 80:14;82:6</p> <p>New (31) 4:13;12:23;13:17; 15:8;21:13;22:18; 23:14;25:22,23;31:9; 34:4;41:1,4,7;42:15; 43:2,3,13,17;46:11,13, 20;47:8,12;49:9,11,24; 50:2;55:20;66:19; 76:18</p> <p>next (9) 22:21;24:19;29:24; 32:18;33:23;34:11; 44:7;68:19;75:8</p> <p>Niblock (1) 7:17</p> <p>night (2) 55:24;57:7</p> <p>nobody (1) 20:6</p> <p>noise (1) 85:8</p> <p>non- (1) 79:19</p> <p>nonconforming (1) 59:2</p> <p>None (1) 19:12</p> <p>non-inherent (9) 79:8;80:5,13,16; 81:1,6,13;85:3,4</p> <p>non-resident (2) 49:13,14</p> <p>nonresidential (2) 61:4;68:15</p> <p>non-residential (1) 82:18</p> <p>nor (1) 26:6</p> <p>north (28) 22:21,24;23:7,7; 29:3;41:5;42:18;43:23; 47:7,16;49:4,25;68:10, 14;69:10,12,13,16; 70:22,23,24;71:7,7,14, 25;76:17,24;78:8</p> <p>northern (4) 42:16;70:24;73:6,13</p> <p>Northwest (13) 5:9;15:8;25:17,23; 27:5;31:9,10;34:4; 42:21;43:4;69:18,18;</p>	<p>70:2</p> <p>Nos (1) 92:13</p> <p>notarized (1) 11:19</p> <p>note (6) 55:2;60:7;64:10,16; 74:2;89:22</p> <p>noted (6) 49:4,10;50:25;52:6; 82:4;84:23</p> <p>notes (2) 38:8;60:9</p> <p>notice (11) 6:14,16;7:9,10,10; 10:3,4;11:20;63:19,21; 64:5</p> <p>noticed (3) 37:18;47:24;59:5</p> <p>notify (1) 11:13</p> <p>Notwithstanding (1) 65:24</p> <p>number (31) 7:25;8:2,4;9:22,23; 10:13;13:14;16:20; 18:21;25:14,15,16; 33:10,10;35:16;36:16, 18,21,25;37:6,7;38:17; 39:8;41:24,25;42:3; 50:11;65:20;75:18; 84:8;89:11</p> <p>numbers (3) 38:16,20;55:10</p>	<p>occupation (2) 14:23,24</p> <p>occupied (2) 7:20;8:7</p> <p>occur (1) 19:5</p> <p>occurring (1) 7:19</p> <p>occurs (1) 91:14</p> <p>October (1) 36:11</p> <p>odors (1) 85:8</p> <p>off (15) 7:17;24:18;30:24; 34:13;42:15;47:9; 53:10;55:16;57:13,17; 70:2;89:3;93:10,12; 94:25</p> <p>Office (24) 4:18;15:12,17;31:19; 33:25;37:21,21,21; 46:18;47:2;49:14,14, 25;50:3,3;53:7;62:8; 65:16;77:25;80:8; 81:14;87:22,25;88:18</p> <p>offices (2) 50:3;80:2</p> <p>often (1) 51:13</p> <p>Once (1) 30:17</p> <p>one (41) 6:18,22;12:16;16:22, 23;17:22,23;20:17; 21:14,16;22:10,21; 25:24;26:14;30:5; 32:14,14;33:21,23; 36:21,21;42:11;44:19; 49:13;51:14;57:20; 58:14,22;59:6;61:8; 62:4,23,24;63:5,8,12; 68:11;72:21;87:18; 93:9,20</p> <p>ones (7) 8:14;22:4;57:11; 85:24;86:4,6,7</p> <p>only (17) 7:5;17:1,11,20; 18:14,16;28:25;30:14; 37:3;48:10;49:15; 55:22;67:22;74:15; 84:13;85:16;91:11</p> <p>onto (6) 16:10;25:22;42:19, 22;43:1,13</p> <p>open (3) 11:18;12:7;28:22</p> <p>opening (2) 12:16,18</p> <p>operate (1) 6:2</p>	<p>operates (1) 6:2</p> <p>operating (1) 29:25</p> <p>operation (2) 16:17;91:10</p> <p>operations (9) 16:11;51:10;53:6; 66:21;78:3;80:20,21; 81:22;83:14</p> <p>opine (1) 77:14</p> <p>opinion (12) 20:21;37:7;42:5; 52:18;82:1,9,21;83:3, 17;84:5,20;85:1</p> <p>opinions (1) 30:21</p> <p>opportunity (3) 11:18;14:5;93:15</p> <p>opposed (1) 20:10</p> <p>opposite (1) 49:24</p> <p>opposition (1) 6:20</p> <p>options (2) 77:4,5</p> <p>order (2) 67:19;76:12</p> <p>Ordinance (24) 7:7,24,25;8:12,15; 12:22;13:17,24;14:4; 35:23;45:24;51:8;62:3; 66:11;75:13,24;76:4,9; 77:3;82:12,23;85:15; 86:24;87:13</p> <p>oriented (1) 68:3</p> <p>original (3) 60:16;71:15;82:7</p> <p>originally (5) 46:15;51:7;62:6; 65:9;83:22</p> <p>ornamental (2) 52:10;76:6</p> <p>ought (1) 90:18</p> <p>ours (1) 48:24</p> <p>out (14) 6:9;12:2;31:1;32:13, 20;42:20;62:18;63:7, 19;65:12,13;66:13; 68:3;93:9</p> <p>over (5) 13:18;32:22,22;37:9; 85:24</p> <p>overall (3) 43:10;63:4;75:23</p> <p>own (5) 15:7;25:10;27:4; 29:17;31:8</p>	<p>owned (4) 7:20;62:17,25;64:20</p> <p>ownership (2) 16:12;62:23</p> <p>owns (2) 16:13;61:13</p> <p>OZAH (1) 7:9</p> <p>OZHA (1) 89:18</p>
			P	
			<p>page (12) 38:9;50:14;59:6,13; 67:11;78:11,12,13,16, 18,18;88:11</p> <p>pages (3) 23:20;67:6,11</p> <p>paper (1) 90:16</p> <p>parallel (1) 46:20</p> <p>parcel (1) 62:23</p> <p>pardon (1) 7:11</p> <p>parked (1) 53:3</p> <p>parking (68) 6:13,16,17,17;7:1,2, 5,9,12,13;8:1,9;6,8,16, 22;10:8;11:5;13:12,14, 23;18:15;19:13;33:2, 10;34:1,5;38:15;40:10; 46:18;51:16,16,19,20; 52:3;60:1;62:8,9; 65:21,22;66:9,10; 67:16,20,21,24;68:3, 12;69:14;71:22;75:9, 17,18;76:20,22;77:4, 11;79:12,14,21;80:6; 81:5,8,11,19;85:9,19, 20;86:22</p> <p>part (16) 7:23;8:10,25;9:19, 20,21;10:4;11:6;19:9; 26:25;28:14;36:2;49:5; 51:20;52:1;78:9</p> <p>partially (1) 69:11</p> <p>particular (11) 17:16,19;28:15;30:8; 46:2;61:18;65:4;75:11; 79:4;84:15;86:16</p> <p>Particularly (4) 43:7;75:10,16;81:20</p> <p>parties (1) 4:22</p> <p>passed (1) 87:11</p> <p>passersby (1) 71:25</p>	

<p>passes (1) 41:15</p> <p>past (1) 66:2</p> <p>path (1) 43:17</p> <p>patient (2) 26:17,21</p> <p>patients (4) 18:21;37:9;68:1; 79:13</p> <p>pattern (1) 43:10</p> <p>pavement (2) 51:17;61:7</p> <p>peaceful (1) 85:7</p> <p>peak (7) 36:24,25;37:1,2,15; 42:1,2</p> <p>peanut (1) 94:16</p> <p>pedestrian (3) 43:15,20,23</p> <p>pediatrician (2) 15:16,16</p> <p>penalties (1) 34:18</p> <p>penalty (3) 14:17;25:2;44:22</p> <p>pending (1) 87:14</p> <p>people (4) 5:3;26:11,15;63:18</p> <p>Pepco (7) 21:15;23:1;29:4; 68:16;69:17;72:2,17</p> <p>per (1) 60:9</p> <p>perceive (1) 30:7</p> <p>percent (3) 32:22,23;63:16</p> <p>Perez (2) 15:15,19</p> <p>Perez's (1) 15:16</p> <p>perfectly (3) 27:24;57:13;74:7</p> <p>perhaps (2) 21:5;63:12</p> <p>perimeter (5) 72:24;75:14;76:10, 11,16</p> <p>period (2) 55:16;56:14</p> <p>perjury (4) 14:17;25:2;34:18; 44:22</p> <p>permit (3) 15:20;16:1;20:18</p> <p>permitted (1) 6:7</p>	<p>perspective (3) 28:19;41:6;79:22</p> <p>pertain (1) 40:9</p> <p>pertains (1) 7:22</p> <p>petitioner (1) 5:19</p> <p>Phil (1) 63:10</p> <p>Phillip (1) 4:24</p> <p>phonetic (1) 15:14</p> <p>photograph (3) 21:22;46:10;69:1</p> <p>photographs (6) 21:4,6;22:3;23:19, 21;54:1</p> <p>photometric (5) 53:9;56:7;89:20; 90:6,8</p> <p>photometrics (1) 53:18</p> <p>physician (3) 15:2,3;26:6</p> <p>physician's (1) 46:18</p> <p>pickup (1) 19:5</p> <p>picture (2) 21:12;33:19</p> <p>pictures (3) 23:23;33:18;90:6</p> <p>place (3) 71:20;74:16;90:22</p> <p>Plaintiff's (1) 92:13</p> <p>Plan (52) 4:15;5:22;9:24;10:8, 11,15,25;12:8;21:6; 33:9;35:20;40:7,15; 45:19;47:6;52:5,14; 53:9,18,19;54:5;55:2,3, 7;56:7;59:7,8,23; 60:16,18,18;64:16; 70:9;77:15,16,19; 78:12;83:5,7,9;84:18; 89:13,16,20,22;90:6,7, 8,22;91:21,22,23</p> <p>Planner (2) 5:20,21</p> <p>Planning (26) 9:16;10:17,21;13:25; 14:6;17:18;24:8,9; 28:17;35:7,13;36:4,14; 40:4,19;41:9,18;45:8,9, 11,13;46:5;66:3,18,25; 91:1</p> <p>plans (5) 6:13;30:8,9,11;92:8</p> <p>planted (1) 51:7</p>	<p>planting (5) 75:14;76:10,11,16; 77:6</p> <p>plantings (2) 46:23;52:8</p> <p>platted (1) 82:8</p> <p>please (21) 4:22;14:11,16,22; 21:11;24:25;25:9; 34:17;35:3;36:7;40:24; 42:13;44:8,18,20;45:2; 46:4;64:16;77:14; 78:22;79:6</p> <p>pleased (1) 86:21</p> <p>plenty (1) 11:25</p> <p>pm (5) 16:19;19:3;37:24; 39:8;91:11</p> <p>podiatrist (3) 31:19,21;33:25</p> <p>point (5) 9:12;42:12;58:22; 69:24;90:5</p> <p>pointing (1) 68:19</p> <p>police (1) 78:25</p> <p>Policy (2) 35:24,25</p> <p>portion (3) 7:21;38:25;70:7</p> <p>portions (1) 86:16</p> <p>possibilities (1) 63:8</p> <p>possible (2) 57:19;71:23</p> <p>postal (1) 19:2</p> <p>posting (2) 11:9,22</p> <p>potentially (1) 57:7</p> <p>practical (1) 91:10</p> <p>practice (6) 8:13;13:3,8;16:21; 31:22;87:22</p> <p>practicing (2) 15:2;18:9</p> <p>practitioner (1) 51:14</p> <p>practitioner's (3) 15:12;49:13;62:7</p> <p>practitioners (8) 4:8;12:21;13:6; 17:18;46:1;81:17,18; 82:11</p> <p>precedent (1) 66:1</p>	<p>predominantly (1) 84:18</p> <p>predominately (2) 84:10,12</p> <p>prefer (2) 21:8;30:15</p> <p>preference (2) 71:5,17</p> <p>preliminary (2) 6:11;12:12</p> <p>prepared (1) 36:10</p> <p>prescribed (1) 67:23</p> <p>present (4) 17:3,10,11,21</p> <p>presentation (1) 6:23</p> <p>presented (1) 85:15</p> <p>preserve (2) 77:19;83:10</p> <p>presume (3) 7:22;37:5;92:6</p> <p>pretty (3) 6:2;74:21;93:19</p> <p>previous (4) 26:6;35:11;45:10; 64:13</p> <p>previously (6) 35:5;45:6;82:25; 83:6;84:23;92:14</p> <p>primarily (1) 53:2</p> <p>primary (2) 27:8;32:15</p> <p>probably (3) 16:23;22:1;62:6</p> <p>problem (2) 10:11;18:6</p> <p>problems (4) 26:8,14;57:24;85:6</p> <p>proceed (10) 4:3;5:15;12:15; 14:19;24:5;25:4;34:20; 44:24;66:5;92:3</p> <p>proceeding (1) 32:15</p> <p>proceedings (1) 5:25</p> <p>process (1) 77:2</p> <p>profession (1) 87:23</p> <p>project (1) 36:11</p> <p>promote (2) 91:2,8</p> <p>pronounced (1) 56:13</p> <p>proper (3) 6:13;64:5;79:13</p> <p>properly (1) 13:22</p>	<p>properties (6) 47:11,21;48:24;49:4; 60:3;78:8</p> <p>property (98) 8:6,6;12:23;13:3; 15:5,7,11,22;16:6,13; 19:1,22,25;23:13; 25:10,14;27:4,4;29:1, 16;30:8;31:9,16;35:15; 36:4,15,23;37:1,15; 39:20,40;25;41:2,5,23; 42:16,18,23;43:1,20, 21,25;45:15,20;46:8, 10,11,19;47:23;49:3,7; 51:7;52:2,6,7,9,11,13; 53:10,12;55:13;56:9; 58:11;61:7,9,11;62:22, 22;67:18;68:2,6,9,11, 14,21;71:7,13,14;73:8, 13;75:20,21,22;76:7, 11,17;77:17,18,25; 78:4,24;79:5,12,16; 82:8,19;83:13;84:3,22</p> <p>property's (1) 13:8</p> <p>proposal (10) 28:20;33:8;50:22; 56:25;58:4;60:20; 71:15;72:23;73:2;74:2</p> <p>propose (1) 89:23</p> <p>proposed (38) 6:14;8:11;9:5;13:9, 21;16:10,16,17;20:21; 26:3;36:3;39:25;40:5, 20;41:10,19;42:5;43:9; 48:8;68:13;72:22; 73:17,17;80:1,18; 81:12,16;82:1,9,21; 83:3,18,25;84:5,21; 85:1;90:25;91:15</p> <p>proposes (1) 77:24</p> <p>proposing (9) 13:10;19:10;52:9; 56:21;66:13,15;76:6; 81:15,23</p> <p>protect (2) 77:20;83:10</p> <p>protested (1) 20:13</p> <p>prove (1) 20:5</p> <p>provide (14) 13:12;65:25;67:3,21; 71:12;75:16;76:19,20, 22;77:5;78:6;83:15; 86:22;89:17</p> <p>provided (3) 68:5;77:8;84:25</p> <p>provides (1) 41:3</p>
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<p>providing (5) 19:16;66:14;75:21; 76:4;89:14</p> <p>provision (8) 13:22;28:15,16; 59:14;61:18,24;74:22; 87:18</p> <p>provisions (3) 28:13;59:11;87:4</p> <p>proximity (1) 56:9</p> <p>public (10) 4:6;35:23;39:24; 41:11;78:23,25;79:1,5; 84:22,24</p> <p>published (1) 66:17</p> <p>pull (1) 93:9</p> <p>purchase (1) 15:4</p> <p>purchased (1) 15:22</p> <p>purpose (4) 8:5;53:2;60:23; 81:10</p> <p>purposes (5) 61:1;63:14;64:7; 86:13;87:3</p> <p>put (6) 27:2;56:6;67:10; 72:21;90:6,17</p> <p>putting (1) 52:24</p>	<p>33:8;34:4;52:19; 73:22;74:23</p> <p>RE-2 (1) 49:10</p> <p>read (2) 60:9;88:10</p> <p>reading (1) 40:14</p> <p>ready (2) 4:2;92:3</p> <p>real (1) 71:11</p> <p>realize (1) 27:18</p> <p>really (12) 17:11;18:15;29:4; 37:6;41:16;56:8;61:22; 62:18;79:3;90:9;91:11; 93:20</p> <p>rear (16) 27:3;51:22;52:9,11, 25;53:16;67:18;68:6; 70:15;71:13;72:4; 75:22;76:7,11;77:11; 84:3</p> <p>reason (8) 18:1,14,16;27:8; 70:4;72:21;73:14;87:8</p> <p>reasons (2) 42:7;83:6</p> <p>recall (2) 28:15;30:25</p> <p>received (3) 6:19;16:5;92:15</p> <p>recent (3) 31:7;85:15;87:10</p> <p>recently (2) 27:20;52:23</p> <p>reception (1) 80:2</p> <p>recognize (1) 66:2</p> <p>recollection (1) 28:13</p> <p>recommendation (4) 7:8,14;9:8;14:1</p> <p>recommendations (9) 6:19;10:1;24:8;40:6; 45:20;66:17;83:5; 84:17;89:15</p> <p>recommended (4) 7:11;10:17;14:5; 56:5</p> <p>recommends (1) 77:16</p> <p>reconfigured (1) 51:17</p> <p>record (36) 4:24;11:17;12:7; 13:1;14:23;18:8;21:12; 22:22;23:9,17;24:7,18; 25:7,14;28:22;30:24; 32:13;33:12;34:13;</p>	<p>35:2;36:9;45:3;46:6; 48:12;51:13;54:1; 65:21;87:7;88:16;89:3; 91:5;92:19;93:10,12; 94:3,25</p> <p>records (2) 32:2,23</p> <p>rectangular (1) 46:12</p> <p>recycling (1) 19:4</p> <p>redevelopment (1) 78:9</p> <p>reduce (2) 52:17;53:14</p> <p>reduced (3) 8:4;51:10;83:14</p> <p>reducing (4) 27:25;28:6;78:3; 80:20</p> <p>reduction (1) 52:19</p> <p>refer (1) 47:5</p> <p>reference (4) 60:2;78:11,13,19</p> <p>referenced (3) 59:8;78:12,16</p> <p>references (1) 89:21</p> <p>referring (4) 23:9;42:14;46:9; 52:4</p> <p>reflect (1) 22:6</p> <p>reflecting (1) 60:17</p> <p>refresh (1) 85:22</p> <p>regarding (8) 16:6;39:25;50:11; 61:9;79:7;85:19;88:18; 89:15</p> <p>regulation (1) 88:17</p> <p>relate (1) 75:13</p> <p>relates (1) 54:22</p> <p>relationship (1) 79:18</p> <p>relatively (1) 66:19</p> <p>relaxed (2) 6:3;20:8</p> <p>relevant (1) 79:4</p> <p>relief (2) 77:1,12</p> <p>reluctant (1) 20:9</p> <p>relying (1) 28:2</p>	<p>remain (1) 11:18</p> <p>remedy (1) 87:8</p> <p>remember (1) 19:6</p> <p>remove (1) 58:4</p> <p>removed (2) 51:18,25</p> <p>removing (1) 57:25</p> <p>rental (1) 32:3</p> <p>rented (1) 65:12</p> <p>renters (2) 32:7;33:11</p> <p>replacing (1) 55:11</p> <p>report (24) 11:3;16:2;17:1,19; 23:19,21;29:22;37:3; 38:8,10,13;39:18,23; 40:14;48:12;50:14,16, 25,25;59:6,10;78:16; 79:7;88:11</p> <p>reporter (1) 6:4</p> <p>represent (2) 47:21;54:18</p> <p>representation (1) 48:3</p> <p>request (8) 7:9,13;9:6;10:3; 11:17;28:11;66:5;75:9</p> <p>requested (9) 6:16,18;13:20;65:18; 82:25;85:14;86:5,7; 89:24</p> <p>requesting (2) 13:13;28:9</p> <p>require (3) 50:22;81:18;86:1</p> <p>required (16) 7:2,4,9;8:1,2;9:23; 10:9,12,13;19:17;27:2; 28:15;33:10;39:14; 54:8;81:5</p> <p>requirement (8) 8:19;10:5;51:2; 68:10;74:17,17;76:16; 82:6</p> <p>requirements (19) 6:8;14:3;27:2;28:10; 45:24;58:12;59:9,12, 23;71:21;76:4,10;82:2, 22;83:2;85:17,19,23; 86:2</p> <p>requires (3) 76:16;80:2;91:1</p> <p>resided (1) 26:4</p>	<p>residence (7) 46:15;62:6;69:25; 70:1;79:23,24;83:23</p> <p>residences (3) 48:6;49:8;65:6</p> <p>residential (27) 29:1,4,23;32:17; 59:19;60:3,4,23;61:1,2, 21;62:15;63:15,25; 67:17,18;69:22;75:10; 78:7;80:11;82:16;84:7, 10,13,18;87:24;90:1</p> <p>residentially (7) 60:11;61:19;62:1,2, 5;79:24;80:19</p> <p>residents (1) 85:10</p> <p>respect (9) 41:21;42:6;45:20,24; 50:10;75:15;76:2;77:2; 80:6</p> <p>respond (3) 93:8,15,21</p> <p>responds (1) 93:15</p> <p>response (5) 5:14;93:14,18,23; 94:3</p> <p>responses (1) 27:25</p> <p>rest (1) 20:25</p> <p>restaurant (1) 50:5</p> <p>restriction (1) 37:6</p> <p>restriped (2) 51:17,18</p> <p>result (2) 51:10;85:3</p> <p>resume (4) 35:4,11;45:5,12</p> <p>resumed (1) 29:23</p> <p>retail (2) 50:1;80:8</p> <p>review (9) 14:5;35:24,25;36:7, 14,15;37:16;39:24; 46:4</p> <p>reviewed (1) 39:23</p> <p>revise (2) 52:16;58:3</p> <p>revised (5) 6:12;10:7;12:8;33:9; 64:16</p> <p>revising (1) 89:13</p> <p>revisions (2) 89:12,16</p> <p>revoked (1) 29:15</p>
Q				
<p>quickly (2) 25:6;93:19</p> <p>quite (6) 51:13;53:14;66:4; 70:23;71:10;81:21</p>				
R				
<p>R- (1) 45:24</p> <p>R-90 (5) 4:17;49:4,9;77:17; 82:2</p> <p>radius (1) 47:25</p> <p>raise (9) 14:15;24:25;31:20, 24;34:16;44:20;65:7; 89:25;90:2</p> <p>raised (1) 66:3</p> <p>raising (1) 70:20</p> <p>rates (1) 37:12</p> <p>rather (5)</p>				

<p>Ridge (1) 15:1</p> <p>right (131) 4:5;5:2,11,24;6:11, 21,25;7:16;9:14;10:16; 11:8,11,21;12:1,10; 14:8,15,19;15:18;16:4; 17:11,24;19:20;20:18; 21:3,15;22:2,9,23;24:5, 13,17,25;25:4,12,18, 21,25;26:20,23,24; 27:13;28:5;29:20; 30:17;32:6,7,9,18;33:1, 2;34:2,9,16;35:9; 40:13,18;43:14;44:1,5, 20,24;49:2;51:2,3; 53:21;54:6;55:25;56:2, 2,21;58:3,25;59:3,15, 17,20;60:24;61:1,5,7; 62:11,13;63:15,20,22; 64:3,24;65:16;66:7; 68:23;69:19;70:16; 71:9;72:18,18,20;73:4, 18,20,24;74:11,18,21, 24,24;75:1;76:1;81:24; 84:11;85:25;86:3,7,11, 18,20,20;87:11,18; 88:22,22,25;90:15; 91:19;92:11,18,23; 93:22;94:7,11,21</p> <p>right-of-way (1) 51:1</p> <p>road (10) 41:2;42:15,17,20,20, 23;43:1,12,24;46:20</p> <p>roads (1) 41:11</p> <p>Rockville (1) 15:1</p> <p>Roman (1) 60:7</p> <p>room (8) 7:21;8:9,10;9:19,20; 76:19;77:7;81:5</p> <p>rules (1) 6:3</p> <p>ruling (1) 10:13</p> <p>run (1) 28:20</p> <p>running (2) 27:3;46:20</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safe (7) 13:22;43:5,10;51:22; 66:22;79:14;80:23</p> <p>safely (1) 43:23</p> <p>safer (1) 51:19</p> <p>safety (5)</p>	<p>13:11;26:11;85:9; 91:2,8</p> <p>same (6) 22:4,18;47:16;51:24; 59:13;94:4</p> <p>satisfied (3) 82:15,16,19</p> <p>satisfy (5) 6:18;82:1,4,10,14</p> <p>satisfying (1) 76:3</p> <p>saw (3) 7:16;21:3;53:18</p> <p>saying (6) 7:19;10:10;18:1; 20:11;32:6;63:22</p> <p>scale (2) 48:4;80:20</p> <p>scenario (1) 37:5</p> <p>scene (1) 23:23</p> <p>schedule (2) 54:22,25</p> <p>schedules (1) 54:10</p> <p>Schindler (2) 47:9;49:24</p> <p>school (1) 79:3</p> <p>Science (5) 4:15;35:20;40:6; 45:19;77:15</p> <p>scope (5) 66:21;78:3;81:22; 83:14;84:8</p> <p>scratch (1) 13:19</p> <p>screen (1) 71:7</p> <p>screening (13) 6:14;13:13,15;28:3, 4,10;75:22;77:3,4; 80:21;83:25;84:2; 86:23</p> <p>screens (1) 69:11</p> <p>seat (2) 31:2,3</p> <p>second (9) 25:22,24;30:5;44:19; 47:2;56:20;66:8;68:25; 93:9</p> <p>Section (8) 4:9;7:25;8:3,4,5; 12:21;60:9;82:11</p> <p>security (2) 56:16;57:6</p> <p>Seeing (1) 5:15</p> <p>seek (1) 77:11</p> <p>seeking (4)</p>	<p>13:5;58:13;74:20; 77:1</p> <p>seeks (1) 74:4</p> <p>seems (1) 8:9</p> <p>send (1) 67:13</p> <p>sense (4) 70:14;73:23;74:6; 75:4</p> <p>sensitive (3) 52:23;53:1;56:12</p> <p>sensors (4) 56:22;57:3;58:1,4</p> <p>separately (1) 9:5</p> <p>series (1) 50:1</p> <p>serve (2) 39:25;84:22</p> <p>served (4) 41:11;78:24;79:5; 84:21</p> <p>service (12) 19:3;41:2;42:15,17, 20,20,22,25;43:12,24; 46:20;72:1</p> <p>services (3) 65:23,25;84:25</p> <p>set (2) 37:23;57:16</p> <p>setback (27) 51:1,2,5,6;59:12,14, 18,21;60:2,12;61:18, 24,25;62:24;64:1;65:1, 4;67:22,24;68:9;71:20; 74:17;82:5,5,8,15,18</p> <p>setbacks (10) 6:13;58:19;59:7,9; 60:1,11,20;63:4;67:16, 17</p> <p>seven (6) 4:11;17:3;37:2,9; 39:10;42:2</p> <p>several (1) 34:5</p> <p>sewer (2) 78:25;84:24</p> <p>shall (1) 12:15</p> <p>shape (1) 46:12</p> <p>share (2) 24:24;30:21</p> <p>shared (1) 43:17</p> <p>she's (2) 11:15;12:2</p> <p>shook (1) 29:8</p> <p>Shopping (1) 78:9</p>	<p>shorter (1) 28:11</p> <p>shouldn't (1) 62:24</p> <p>show (6) 13:2;25:7;48:4;50:9, 13;91:7</p> <p>showing (3) 6:13;21:14;23:14</p> <p>shown (7) 49:11;53:9;60:18; 61:1;90:7;91:16,17</p> <p>shows (6) 21:12;33:9;38:14; 46:10;52:14;90:19</p> <p>shrubs (1) 52:11</p> <p>shut (1) 55:16</p> <p>side (21) 22:24;23:7;43:17; 46:11,24;47:8,12;50:2; 61:3;68:9,10,15;69:10; 71:25;72:4;74:10,17; 75:21;76:18,18,24</p> <p>sides (2) 74:25;76:17</p> <p>sidewalk (2) 43:21;72:1</p> <p>sight (2) 47:22;48:25</p> <p>signalized (1) 43:22</p> <p>signed (1) 7:16</p> <p>Silver (2) 4:14;12:23</p> <p>similar (5) 40:11;41:6;46:16; 49:6;83:24</p> <p>simply (5) 53:25;55:11;63:13; 76:19;77:6</p> <p>single (3) 77:20;78:7;83:11</p> <p>site (45) 4:10,11,13,15;6:12; 9:24;10:8,11,15;12:8; 13:17;18:9,11;33:9; 37:6;40:15;41:15,25; 42:1,12;51:11,13,14; 55:2,3,7;59:7,8,22; 60:16;64:16;69:6;70:9, 22,25;79:19;80:10,10; 81:3,5,7;89:13,22;90:7, 22</p> <p>situation (2) 33:13;65:3</p> <p>six (2) 21:25;37:10</p> <p>size (4) 47:1;79:18;80:4; 81:20</p>	<p>slight (1) 10:22</p> <p>small (1) 55:14</p> <p>sold (3) 15:15;31:22;32:1</p> <p>somebody (5) 21:6,7;57:4;71:24; 72:2</p> <p>someone (2) 26:12;27:9</p> <p>someone's (1) 26:15</p> <p>sometimes (1) 75:3</p> <p>sorry (6) 16:16;25:17;38:10; 50:9;60:5;73:1</p> <p>sort (1) 11:16</p> <p>sound (2) 47:22;48:25</p> <p>south (19) 15:8;23:6,7,14;29:5; 31:12;41:7;46:24;47:9, 17;49:5,8;50:2;60:23; 61:3;62:22;64:17; 82:17;90:1</p> <p>southbound (2) 41:1;42:15</p> <p>southern (2) 73:6,7</p> <p>sp (1) 15:14</p> <p>space (11) 6:18;7:2;11:5;18:15; 52:3;65:24;81:9,10,13; 87:22;88:18</p> <p>spaces (18) 8:1,2;9:22;10:8,12, 14;33:10;34:5;46:18; 51:20,25;65:21;66:9, 10,13;67:20;68:12; 75:18</p> <p>speak (1) 33:15</p> <p>speaking (1) 72:15</p> <p>special (2) 29:14;50:11</p> <p>specific (7) 6:8,9;9:18;40:15; 59:11;71:21,21</p> <p>specifically (3) 9:3;30:1;77:18</p> <p>specified (4) 9:18;10:24;90:13; 91:22</p> <p>specifies (1) 61:24</p> <p>specify (2) 67:8,11</p> <p>spelled (1)</p>
--	---	---	--	--

6:9 spirit (4) 75:24;76:8,15;77:9 split (1) 46:15 spread (1) 55:12 Spring (2) 4:14;12:23 square (17) 4:16;36:17,21,23; 37:4,10,22,24,25;38:9, 17,17;39:18;46:12,25; 47:1;65:22 staff (64) 6:19;7:11;8:9;9:8,15, 20,22;10:16;11:3,13; 13:20;14:6;16:1;17:1, 18,19;18:4;23:19,21; 28:17,21;29:22,22; 33:8;37:3,6;38:8,10, 13;39:18,23;40:14; 47:14,17;50:12,13,16, 25;59:6,10;60:17; 64:10,16;65:7,15,16; 66:3;68:1;73:17,19; 78:13;79:17;80:15; 88:11;89:14;90:25; 92:21;93:7,14,15,17, 21,23;94:3 staff's (6) 14:1;48:16,18,21; 49:21;88:10 Stand (3) 14:11;60:8;66:24 standard (6) 13:14;61:3;66:11; 75:12;82:10;91:9 standards (16) 13:15,16;20:7;45:25; 50:24;59:25;66:16,18; 75:9,11;80:7;82:2,4,14, 20;83:2 standing (1) 77:24 standpoint (8) 36:5;40:5,20;41:10, 19;70:6;71:17;73:23 start (4) 5:18;46:7;55:23; 65:20 started (2) 15:14;21:1 starting (2) 13:19;63:14 state (1) 14:22 stated (2) 51:13;83:7 statement (6) 12:16,18;20:12; 36:11,13;89:8 Station (3)	35:23;50:5;78:25 stations (1) 79:1 statute (1) 8:13 statutory (1) 10:5 stay (2) 56:12,13 still (2) 53:11;87:21 stop (1) 63:2 stops (1) 79:2 storage (11) 7:22,22;8:10;9:19; 32:2,5,7,22,23;63:17; 64:14 store (1) 50:4 street (1) 33:13 strict (1) 87:3 strictly (1) 61:2 striped (1) 46:19 strongly (2) 28:24;71:11 structure (8) 7:5;13:11;19:11; 46:25;47:3;63:25; 79:23;80:19 structures (1) 46:16 study (2) 39:14;89:20 stuff (2) 32:2,24 style (3) 49:6;50:3;83:23 styled (1) 80:19 Subdivision (3) 4:17;12:25;35:23 subject (22) 4:13,14;6:5;12:22; 13:3,8;15:4,11;19:1,22, 25;36:4;45:15,20; 46:10;47:23;49:3,7; 58:12;62:21;64:19; 77:18 submission (1) 93:13 submit (11) 10:7;64:9,15;65:14, 14,15,15,16;74:2; 92:20;93:6 submitted (4) 21:7;48:8;88:1; 89:20	submitting (2) 64:9;67:14 subparts (1) 92:7 substantially (2) 40:5;83:4 sufficient (5) 53:5,8;66:22;70:11; 93:21 sufficiently (3) 68:7;80:22;84:9 suggested (3) 62:16;74:15;92:25 suggesting (1) 62:12 suggestion (1) 61:20 suitability (2) 36:3;87:22 sum (1) 8:2 sunset (1) 91:8 supply (1) 50:4 support (7) 5:10;9:7;19:24;26:2; 62:9;65:25;74:20 supported (8) 13:7;20:1,14,15; 66:6,23;68:8;78:2 supports (3) 13:20;77:17;83:7 suppose (1) 72:2 supposed (1) 88:21 sure (21) 7:17;17:13;24:3; 33:17;44:2;55:4;56:25; 58:17;59:13;65:2;67:7, 9,12,15;69:2;71:17; 74:21;78:24;79:10; 88:5;91:20 surface (1) 62:9 surrounding (14) 20:22;35:16;40:21; 42:6;45:15,21;46:16; 47:4,6,18;49:5;80:1; 83:19;85:7 swear (5) 14:16;24:25;34:17; 44:19,21 sworn (1) 6:5	tagged (1) 54:12 talk (3) 12:3;26:10;92:18 talked (4) 8:20;19:21;20:1; 27:21 talking (10) 20:16;27:20;39:2; 70:18;72:16;73:10; 86:2;91:11;93:5,6 talks (1) 7:24 tally (1) 65:22 tandem (1) 67:24 technical (35) 6:19;7:11;9:8,15,21; 10:16;11:3;13:20;14:1, 6;16:1,25;17:18;23:19, 20;28:21;33:7;38:9; 39:23;47:14;50:12,13, 16;64:9,16;65:7,14; 78:13;79:17;80:14; 88:10;89:14;90:25; 92:21;93:7 technically (2) 74:16;75:12 telling (1) 32:19 tenancy (4) 63:15;64:14,19; 65:11 tenant (5) 8:22,24;9:18;64:11, 17 tenants (2) 61:23;64:6 term (3) 8:13;80:10;83:12 terminated (2) 32:4,10 terminates (2) 65:11,11 terms (17) 8:20;28:18;36:17,17; 41:8;42:11;52:24;57:6, 6;59:6;71:12;74:22; 75:23;80:20;85:23; 86:22,24 test (2) 41:14,16 testified (8) 17:7,14;35:6,9;45:7; 51:9;54:8;65:21 testify (2) 5:10;29:16 testimony (6) 13:2;27:23;35:12; 45:11;52:15;91:4 That'll (1) 67:15	that's (62) 6:7;7:23;8:25;10:4; 15:21,25;16:1;17:5,6, 15,24;18:5,16;20:4; 21:9;22:10,13,22; 23:17;24:15;25:18; 27:23;28:14;29:2,6; 32:24,25;33:25;35:4; 37:8,12,19;39:4,6,12; 40:17;42:24;43:3; 47:25;48:3;57:5,13; 58:7,22,24;60:11; 61:19;68:13;69:4,6; 72:11,22;75:6;81:10, 13;83:12;87:5,10,11; 88:20;91:5;92:7 theirs (1) 48:17 theory (1) 81:16 there's (22) 8:24;17:9;23:18; 32:3,17;34:1,5;53:11; 57:6;63:6,24;69:21; 72:5;7:75;19:80;4,18; 81:20;86:20;87:14,16, 91:7 therefore (2) 41:15;66:23 therein (1) 20:6 they'll (1) 8:18 They're (11) 5:7;7:18;54:12; 55:14,17;56:21;57:22; 58:4;62:25;66:10;71:8 they've (1) 50:16 thinking (1) 65:13 third (1) 67:15 Thistle (1) 14:25 though (2) 7:19;48:13 thought (10) 11:25;17:15;31:1; 61:22,23;62:18;63:7; 65:9;68:24;88:3 thoughts (1) 27:5 three (14) 4:10;17:1,8,12,20; 18:9;51:11,12;52:10, 10;75:11;76:6,6,93:24 tie (1) 54:21 title (6) 67:10,11;85:16,19, 23;86:1 titled (4)
		T		
		table (1) 59:9 tables (1) 8:3	table (1) 59:9 tables (1) 8:3	

<p>46:9;47:5;52:5; 66:18 today (10) 5:16;12:19;24:24; 27:24;46:19;49:13; 66:4;67:3;78:24;93:6 today's (1) 92:2 together (2) 12:1;56:6 tomorrow (2) 12:6;63:14 tonight (1) 27:24 took (1) 63:24 top (1) 32:3 topic (1) 90:24 total (3) 8:4;17:20;82:19 town (1) 12:3 townhouse (1) 50:3 TPAR (4) 36:14;39:17,19; 41:16 Traffic (23) 5:20;35:7,12;36:5, 10,12;39:14;40:4,10, 20;41:10,19,21,23; 42:6,12;43:7,10,15; 47:22;48:25;51:23; 79:15 transit (2) 79:1;84:24 transition (2) 78:6;83:16 Transportation (16) 5:20;35:7,13,24,25; 36:4,8,13,14,19;40:1,4, 19;41:6,9,18 trash (1) 19:4 travel (1) 41:7 treated (1) 9:4 treatments (1) 77:6 tree (3) 69:11;75:14;76:2 trees (10) 46:23;52:8,10,10,11; 69:21;76:5,6,7,7 trip (4) 11:12;36:19;37:7,13 trips (12) 36:20,24,24;37:1,2,9, 10,15,23;39:9;42:2,2 true (1)</p>	<p>62:5 truth (13) 14:16,17,17;20:5; 25:1,1,2;34:17,18,18; 44:21,21,22 try (3) 25:11;26:13,16 trying (2) 27:9;72:12 turn (7) 6:11;37:8;47:4; 50:21;59:12;65:17; 79:20 turning (2) 58:13;75:8 turnover (1) 37:12 two (27) 4:11;16:23;17:2,11, 20,22,23;18:11;19:6,7, 7,8;27:22;36:12;37:5; 38:16;46:22;49:12,15; 50:17;51:12,25;52:8; 76:5;77:4;84:13;88:15 type (2) 29:6;79:11 typical (1) 79:25</p>	<p>25:9;27:19;29:15;31:7; 38:15;46:1;52:24;56:1; 57:15;61:7;67:22; 68:25;71:3;72:16; 82:11;93:8 upon (4) 36:23;37:7,22;79:7 UPS (1) 19:2 use (129) 4:8,10;6:6,7,10;7:6, 19,23,23;8:3,5,10,20; 9:1,4,18,18,19,20,21; 10:18;12:20;13:5,7,9; 14:2,3;15:19,25;16:6, 11,17;17:17,19;19:9, 22,24;20:22;26:3;27:1; 29:14,16,23;30:9; 32:19,25;35:15,16; 36:3,16;37:18;38:1,14, 24;39:25;40:21;41:8, 11,20,23;42:5;43:17; 45:16;46:1,8;47:6; 48:12;50:22,25;51:10; 56:8;60:1;61:2,4,9,21; 62:9,10,15;63:25; 64:13,14;65:5;68:14, 15;71:7,8,21,22;74:10; 75:19;77:14,23,24; 78:6,16,22;79:3,4,9,11, 12;80:1,14;81:11,16, 16,22;82:1,3,10,10,13, 16,17,22;83:4,8,8,12, 12,18;84:6,15,21;85:2, 6;88:7;90:1 used (26) 8:7;13:3;15:12; 28:14;29:14;31:17; 32:2,5,7;33:3,6;34:3,6; 37:19;38:20;46:17; 59:1;60:23;61:1,11,19; 62:7;63:13,16;81:9; 93:8 uses (20) 9:2;16:7;41:4;45:25; 49:12,15;50:1,4,18; 67:16;69:12;75:11; 77:21;80:7,11,23; 82:11;84:7,9,14 using (4) 39:8,8;48:18;88:12 usual (1) 19:2 Usually (3) 17:22;28:2;94:16 utility (1) 74:10 utilizing (1) 56:6</p>	<p>88:12 vacant (4) 59:19;60:4,11;62:1 validate (4) 4:9;13:5;77:24; 83:12 valuable (1) 92:2 variance (1) 6:7 various (2) 50:4;52:11 vehicle (3) 8:1;13:14;80:24 vehicles (2) 66:12;70:12 vehicular (1) 43:15 vernacular (2) 49:7;83:23 versus (4) 50:12;58:24;59:7; 79:8 view (6) 53:2,8,15;71:24; 72:3;76:25 VIKA (1) 91:5 visitors (3) 68:1;79:13,16 voted (1) 13:25</p>	<p>we'll (8) 19:14;46:7;52:16,16; 65:8;68:6;76:23;93:24 we're (40) 12:19;13:19;17:14; 27:24;28:6,8;44:13; 47:10;52:1,9;53:14; 54:2;56:20;58:12; 59:13;61:1;62:10;66:4, 15;75:21,23;76:3,4,4,5, 8,14;77:11;80:20; 81:14,22;86:2,21,22; 90:24;91:11;92:22,23; 93:5,6 we've (6) 18:23;20:1;23:12; 47:7,20;82:16 website (1) 88:13 week (3) 19:6,8;27:22 welcome (2) 30:19;92:5 welfare (1) 85:10 weren't (2) 12:3;74:16 west (12) 22:24;23:2;25:22; 46:11;47:10,11,18; 49:5;50:2;69:6;70:2,22 western (1) 73:6 what's (17) 20:6;21:10;22:12; 25:7;32:14;45:3;54:24; 57:8;66:20;68:18;69:4, 13,20;71:16;79:7; 83:24;84:16 whatsoever (1) 19:12 Whereupon (1) 95:1 White (6) 4:14;35:20;40:6; 45:19;77:15;78:9 whole (7) 7:19;14:16;25:1; 32:1;34:17;44:21;63:2 width (8) 60:10;66:9,12,21; 68:4;76:20;82:15; 89:15 widths (1) 77:5 wife (2) 15:16;16:14 William (1) 5:21 willing (2) 53:14;66:5 Wilma (4) 5:9;20:2,15;24:19</p>
	U			
	<p>U&O's (1) 64:14 ultimately (1) 63:20 unanimously (1) 13:25 unavailable (1) 87:23 under (17) 4:8;6:7;8:4;10:9; 12:21;14:3,17;25:2; 27:7,11;34:18;44:22; 61:21;62:22;63:3; 64:25;82:22 Understood (1) 33:14 undue (4) 41:20;80:16;85:2,6 unfair (1) 75:18 Unfortunately (1) 57:9 unless (3) 8:4;9:17;21:5 unusual (3) 28:2;80:4;81:21 unworkable (1) 67:25 up (29) 4:8,10;7:18;8:19,21, 25;11:13;12:20;13:6; 17:16,17;22:11,16;</p>			
		V		
		<p>vacancies (1)</p>		
			W	
			<p>waiver (26) 6:16,17,18;7:1,2,9, 12,13;9:6,7,9;10:1,3, 14;11:5;66:5,8,23; 67:16;68:7;74:20;75:9; 86:5,8,10,15 waivers (10) 13:14,20;58:13,16; 65:18;79:21;80:6;81:6; 82:25;85:14 wake (1) 56:1 walking (3) 48:3,4;72:1 walkways (1) 79:14 wasn't (2) 11:19;29:21 water (2) 78:25;84:24 way (17) 6:2;8:21;38:7;39:5; 47:13;54:3;59:5;68:2, 3;73:10,12;74:6;77:18; 80:17;88:21;91:16; 94:13 we'd (2) 24:19;35:7</p>	

<p>wires (1) 11:12</p> <p>wish (4) 9:12;10:9;12:16; 89:7</p> <p>wishes (2) 5:12;74:4</p> <p>within (13) 12:10;27:21;48:6; 49:16;17,17,19,20; 50:16;53:4;61:14;62:3; 84:14</p> <p>without (1) 81:6</p> <p>witness (7) 5:4,12;14:9;44:3,7; 88:4,22</p> <p>witness's (1) 28:19</p> <p>witnesses (5) 5:7,16,22;6:5;89:5</p> <p>won't (1) 54:8</p> <p>wonder (1) 70:5</p> <p>wondered (1) 71:2</p> <p>wooden (2) 27:3,6</p> <p>words (2) 13:18;25:13</p> <p>work (1) 76:21</p> <p>works (1) 7:18</p> <p>worst (1) 37:4</p> <p>wouldn't (1) 24:15</p> <p>wrapped (1) 28:11</p> <p>wraps (1) 51:21</p> <p>write (1) 4:21</p> <p>writing (1) 7:4</p> <p>written (1) 48:11</p> <p>wrote (1) 65:3</p>	<p>You'd (3) 11:2;30:15;63:2</p> <p>you'll (3) 5:16;19:13;53:11</p> <p>you're (21) 11:13;13:2;20:4; 22:3;28:25;30:19;32:6; 55:9;60:3;62:1,12; 63:4;64:9;67:14;69:3; 73:10;78:12;88:21; 89:21,23;92:5</p> <p>you've (9) 9:23;30:8;39:23; 47:25;54:7;85:14,24; 86:4,7</p>	<p>13A (3) 21:11,17,21</p> <p>13B (2) 22:13,14</p> <p>13C (1) 22:22</p> <p>13D (2) 23:4,5</p> <p>13E (1) 23:10</p> <p>13F (2) 23:17;33:22</p> <p>14 (3) 66:15,16;88:11</p> <p>150 (2) 46:13;82:15</p> <p>15814 (1) 14:25</p> <p>16 (5) 36:24;37:23;39:7; 68:10,12</p> <p>16th (1) 93:6</p> <p>18 (2) 10:12;66:12</p> <p>18,591 (2) 4:15;46:12</p> <p>1950's (1) 51:8</p> <p>1954 (1) 51:8</p> <p>1957 (1) 15:14</p> <p>1966 (1) 15:2</p> <p>1970 (1) 15:3</p> <p>1984 (3) 15:20,21;26:5</p> <p>1990 (2) 15:6,23</p>	<p>24B (3) 25:8;42:14;46:9</p> <p>24E (1) 60:7</p> <p>24E1 (1) 47:5</p> <p>24E3 (1) 52:5</p> <p>24G (2) 91:6,7</p> <p>25 (9) 6:12,15;36:24;37:24; 39:8;51:6;67:17,24; 82:8</p> <p>26 (1) 10:17</p> <p>26th (2) 93:6,14</p> <p>27 (1) 6:15</p> <p>28 (3) 11:22,23;58:22</p> <p>28.7 (2) 51:1;82:5</p> <p>29 (3) 34:22,24;35:11</p>	<p>16:19;19:3;91:11</p> <p>50 (5) 13:18;18:22,23; 32:22;63:16</p> <p>59.3.5.7.8.2 (1) 4:9</p> <p>59.3.5.7A (2) 12:21;59:14</p> <p>59.3.5.7A2 (2) 60:9;82:11</p> <p>59-6 (1) 82:23</p>	
	Z			6	
	<p>Zone (11) 4:17;45:25;49:10; 50:1,6;51:4;59:9,25; 82:2;84:8;87:24</p> <p>zoned (3) 49:4,9;79:24</p> <p>zones (3) 8:1;67:17;75:10</p> <p>Zoning (37) 4:19;7:7,24;8:12,15; 12:22;13:17,23;14:4; 27:2;45:24;51:8;62:3; 21,24;63:3,8,11;64:22; 66:11;75:13,24;76:3,8; 77:3,17,21;82:12,23; 83:7,8;85:15;86:24; 87:13;88:17;90:2; 94:12</p>			<p>6 (20) 23:20;52:14,15; 53:14;67:19;71:15; 74:1,23;76:12;85:16, 19,23;86:1,17;87:4; 91:15,15,16,16,17</p> <p>6- (2) 27:2;70:18</p> <p>6,500 (3) 38:9,17;46:25</p> <p>6.2.3 (1) 7:25</p> <p>6.2.3.1 (1) 8:5</p> <p>6.2.4b (1) 8:3</p> <p>6.2.4c (1) 8:4</p> <p>6.5 (1) 28:10</p> <p>60 (3) 32:22;51:20;66:11</p> <p>650 (3) 43:23,23,24</p> <p>6-feet (2) 71:15,17</p> <p>6-foot (12) 27:6,8;28:16;30:15; 33:8;52:20;70:6;71:3, 6;72:24;73:5,22</p> <p>6th (1) 93:22</p>	
	0			7	
	<p>0.1 (4) 53:12;54:8;91:3,9</p>			8	
	1	2		9	
	<p>1 (3) 60:7;68:11;92:7</p> <p>10 (7) 4:16;12:8;63:6; 76:11;93:1,4,14</p> <p>100 (1) 60:10</p> <p>11 (3) 4:16;12:24;14:25</p> <p>11:32 (1) 95:1</p> <p>11016 (2) 4:13;12:23</p> <p>12 (2) 12:24;52:10</p> <p>13 (3) 21:4;22:3;33:20</p> <p>1-30 (1) 92:13</p>	<p>2 (2) 59:16;60:7</p> <p>20 (5) 59:22;60:13;61:2; 62:1;82:18</p> <p>2014 (1) 4:14</p> <p>2015 (2) 36:11;87:12</p> <p>2016 (2) 6:12,15</p> <p>20853 (1) 15:1</p> <p>21 (1) 46:18</p> <p>22 (2) 36:11;67:20</p> <p>23 (2) 10:16;11:4</p>		<p>4 (11) 27:25;28:14;33:8; 38:9;52:17;53:5,13; 70:10;74:6,23;75:4</p> <p>4- (2) 73:21;89:23</p> <p>4,500 (2) 47:1;65:22</p> <p>40 (6) 59:19;60:2,12;62:1; 63:25;82:15</p> <p>4-fence (1) 70:7</p> <p>4-foot (9) 27:13;30:15;52:19; 71:4,13,14;74:5;76:14; 84:2</p>	<p>7 (2) 23:20;76:12</p>
Y			5		
<p>yard (10) 46:22;51:1,22,24; 52:25;53:16;70:15; 76:5;77:11;82:4</p> <p>year (1) 91:12</p> <p>years (5) 13:18;36:16;62:7; 63:6;78:1</p>			<p>5 (4) 7:8;23:20;53:7,13</p> <p>5,100 (1) 38:16</p> <p>5:00 (3)</p>	<p>8 (4) 46:6;50:14;63:6; 90:25</p>	
				9	
				<p>9 (1) 36:9</p>	

9:00 (2)

16:18;19:3

90 (1)

45:25

920 (3)

5:9;25:17;27:4

924 (1)

31:10

9th (2)

93:24;94:2