



**Planet Depos**<sup>®</sup>  
We Make It *Happen*<sup>™</sup>

---

# Transcript of Administrative Hearing

**Date:** August 9, 2019  
**Case:** 1784 Capital Holdings, LLC

Planet Depos  
Phone: 888.433.3767  
Email: [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)  
[planetdepos.com](http://planetdepos.com)

Transcript of Administrative Hearing  
 Conducted on August 9, 2019

<p style="text-align: center;">1</p> <p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 IN RE: :</p> <p>5 THE APPLICATION OF, : Case No.: CU 19-03</p> <p>6 1784 CAPITAL HOLDINGS, LLC :</p> <p>7 -----x</p> <p>8</p> <p>9 HEARING</p> <p>10 Rockville, Maryland</p> <p>11 Friday, August 9, 2019</p> <p>12 9:32 a.m.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job: 257723</p> <p>24 Pages: 1 - 61</p> <p>25 Transcribed by: Molly Bugher</p>	<p style="text-align: center;">3</p> <p>1 A P P E A R A N C E S</p> <p>2 FOR MONTGOMERY COUNTY OFFICE OF ZONING AND</p> <p>3 ADMINISTRATIVE HEARINGS:</p> <p>4 MARTIN GROSSMAN, HEARING EXAMINER</p> <p>5</p> <p>6 FOR THE APPLICANT:</p> <p>7 ERIN E. GIRARD, ESQUIRE</p> <p>8 LINOWES AND BLOCHER LLP</p> <p>9 7200 Wisconsin Ave Suite 800</p> <p>10 Bethesda, MD 20814</p> <p>11 Phone: 301.654.0504</p> <p>12</p> <p>13 FOR THE TOWN OF KENSINGTON:</p> <p>14 MICHELE ROSENFELD, ESQUIRE</p> <p>15 THE LAW OFFICE OF MICHELE ROSENFELD LLC</p> <p>16 1 Research Ct, Suite 450</p> <p>17 Rockville, MD 20850</p> <p>18 Phone: 301.204.0913</p> <p>19</p> <p>20 SUELLEN FERGUSON, ESQUIRE</p> <p>21 COUNCIL BARADEL ATTORNEYS AT LAW</p> <p>22 125 West St #4</p> <p>23 Annapolis, MD 21401</p> <p>24 Phone: 301.641.2440</p> <p>25</p>																																																		
<p style="text-align: center;">2</p> <p>1 Conditional Use Hearing held at:</p> <p>2 Montgomery County Office of Zoning and Administrative</p> <p>3 Hearings:</p> <p>4 100 Maryland Avenue</p> <p>5 County Office Building</p> <p>6 Room 200</p> <p>7 Rockville, MD</p> <p>8 Phone: 240.777.6660</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Pursuant to agreement before Michael Pawela, a reporter</p> <p>16 and notary public, in and for the State of Maryland.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p>1 C O N T E N T S</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right; width: 20%;">PAGE</td> </tr> <tr> <td>2 Transcript of proceedings</td> <td style="text-align: right;">5</td> </tr> <tr> <td colspan="2">3</td> </tr> <tr> <td colspan="2" style="text-align: center;">4 EXHIBITS</td> </tr> <tr> <td colspan="2">5</td> </tr> <tr> <td colspan="2">6 EXHIBITS INTRODUCED AT HEARING:</td> </tr> <tr> <td style="text-align: left;">7 NUMBER DESCRIPTION</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>8 Exhibit 78 Rosenthal's Entry of Appearance</td> <td style="text-align: right;">6</td> </tr> <tr> <td>9 Exhibit 79 Affidavit of posting</td> <td style="text-align: right;">38</td> </tr> <tr> <td>10</td> <td></td> </tr> <tr> <td>11</td> <td></td> </tr> <tr> <td>12</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>		PAGE	2 Transcript of proceedings	5	3		4 EXHIBITS		5		6 EXHIBITS INTRODUCED AT HEARING:		7 NUMBER DESCRIPTION	PAGE	8 Exhibit 78 Rosenthal's Entry of Appearance	6	9 Exhibit 79 Affidavit of posting	38	10		11		12		13		14		15		16		17		18		19		20		21		22		23		24		25	
	PAGE																																																		
2 Transcript of proceedings	5																																																		
3																																																			
4 EXHIBITS																																																			
5																																																			
6 EXHIBITS INTRODUCED AT HEARING:																																																			
7 NUMBER DESCRIPTION	PAGE																																																		
8 Exhibit 78 Rosenthal's Entry of Appearance	6																																																		
9 Exhibit 79 Affidavit of posting	38																																																		
10																																																			
11																																																			
12																																																			
13																																																			
14																																																			
15																																																			
16																																																			
17																																																			
18																																																			
19																																																			
20																																																			
21																																																			
22																																																			
23																																																			
24																																																			
25																																																			

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER GROSSMAN: All right. We all</p> <p>3 ready to proceed?</p> <p>4 MS. ROSENFELD: Yes, Mr. Grossman.</p> <p>5 HEARING EXAMINER GROSSMAN: Then I'll call the</p> <p>6 case. Court reporter ready? This is a public hearing, in</p> <p>7 the matter of CU19-03, application by 1784 Capital Holdings</p> <p>8 LLC, pursuant to the zoning ordinance, section</p> <p>9 59.3.6.8.D.2.B, for a conditional use to allow construction</p> <p>10 and use of 126,955 square-foot self-storage facility, to be</p> <p>11 known as Kensington Storage, at 10619 Connecticut Avenue, on</p> <p>12 the southeast corner of the intersection of Connecticut</p> <p>13 Avenue, Maryland 185, and Plyers Mill Road in Kensington,</p> <p>14 Maryland. The Applicant's revised plan would also include a</p> <p>15 restaurant and artist studio space. The site, which is</p> <p>16 identified as part of Lot 2, Lorainer Knowles Estate</p> <p>17 (phonetic), consists of 1.06 acres, and it's owned by</p> <p>18 Mountain View Burselon LLC. The Applicant is the contract</p> <p>19 purchaser. It is in the CRT 2.5C2.0R2.0H75 commercial</p> <p>20 residential town zone, and it's subject to the 2012</p> <p>21 Kensington sector plan. This hearing is conducted by the</p> <p>22 officer of Zoning and Administrative hearings. My name is</p> <p>23 Martin Grossman. I'm the hearing examiner. I will hear</p> <p>24 evidence in this case, and I will make a decision. Will the</p> <p>25 parties identify themselves, please, for the record?</p>	<p style="text-align: right;">7</p> <p>1 little bit more relaxed and we're kind of a combination of a</p> <p>2 formality, and a little bit of more informality, but that's,</p> <p>3 pretty much, the way the operation functions. Now, we're</p> <p>4 here today for an application for a conditional use, and that</p> <p>5 is a use that's not a variance, because it's statutorily</p> <p>6 permitted, if there are -- if conditions are met that are</p> <p>7 specified in the zoning ordinance. Both general conditions</p> <p>8 that apply to all conditional uses, and specific ones that</p> <p>9 apply to this type of conditional use. Oddly, in this</p> <p>10 particular case, the specific conditions for storage</p> <p>11 facilities don't exist. That is, there is a provision for</p> <p>12 self-storage facilities, but it just refers back to the</p> <p>13 general provisions for conditional uses. In any event, these</p> <p>14 proceedings are not a plebiscite. I'm not permitted to count</p> <p>15 noses, or letters for that matter. I've received a lot of</p> <p>16 letters. We do look at the letters, but the question that I</p> <p>17 have to answer, is whether or not the application meets the</p> <p>18 requirements of the zoning ordinance. Not whether it's more</p> <p>19 or less popular in any particular place. All right. Let's</p> <p>20 turn to the first question, and that is, two days before this</p> <p>21 hearing, I received an email from the attorney for the Town</p> <p>22 of Kensington, asking that the hearing be continued, because</p> <p>23 she discovered that her law firm had a conflict. And I asked</p> <p>24 that she then file a formal motion to that effect, and that</p> <p>25 there be a response filed by the Applicant the next day.</p>
<p style="text-align: right;">6</p> <p>1 MS. GIRARD: Erin Girard, with Linowes and</p> <p>2 Blocher, on behalf of the Applicant.</p> <p>3 HEARING EXAMINER GROSSMAN: Ms. Girard.</p> <p>4 MS. ROSENFELD: Michele Rosenfeld, here on behalf</p> <p>5 of the Town of Kensington, and Mr. Grossman, I do have an</p> <p>6 entry of appearance to submit into the record.</p> <p>7 HEARING EXAMINER GROSSMAN: All right.</p> <p>8 MS. ROSENFELD: May I approach?</p> <p>9 HEARING EXAMINER GROSSMAN: Sure.</p> <p>10 MS. ROSENFELD: The copies have been provided to</p> <p>11 Ms. Girard.</p> <p>12 HEARING EXAMINER GROSSMAN: All right. Thank you.</p> <p>13 MS. FERGUSON: Suellen Ferguson, Council Baradel,</p> <p>14 here on behalf of the Town of Kensington, for the purpose</p> <p>15 only of arguing the motion for continuance.</p> <p>16 HEARING EXAMINER GROSSMAN: All right, Ms.</p> <p>17 Ferguson. Let me mark this as Exhibit 78. Rosenthal's entry</p> <p>18 of appearance. All right. Let me explain a little bit about</p> <p>19 the nature of these proceedings, and what we hear about, and</p> <p>20 then we'll turn to some preliminary matters. These hearings</p> <p>21 are conducted, pretty much, the way you might think a trial</p> <p>22 will be conducted. That is, witnesses are all sworn in.</p> <p>23 They are subject to cross-examination. There is a court</p> <p>24 reporter here who takes everything down. The rules of</p> <p>25 evidence are similar to, though not exactly like, a court. A</p>	<p style="text-align: right;">8</p> <p>1 Because it was only two days before the hearing, there would</p> <p>2 be no time to get notice out to the public, and therefore the</p> <p>3 hearing had to go forward, and then we would hear oral</p> <p>4 argument, which I'm about to hear, from the parties, as to</p> <p>5 whether or not -- at least if we continue the case, but</p> <p>6 continue the bulk of the case, to resume it on another day,</p> <p>7 or to proceed today. So, I'll hear first from the Town of</p> <p>8 Kensington on the motion, and -- I don't know, who's going to</p> <p>9 argue that? Ms. Ferguson, are you going to argue the motion?</p> <p>10 MS. FERGUSON: Yes. However, Ms. Rosenfeld would</p> <p>11 also like to be able to chime in, if that's acceptable?</p> <p>12 HEARING EXAMINER GROSSMAN: Sure.</p> <p>13 MS. FERGUSON: Thank you.</p> <p>14 HEARING EXAMINER GROSSMAN: And you should address</p> <p>15 whatever you want to address, of course, but also the</p> <p>16 question of if the Applicant, as the Applicant alleges, that</p> <p>17 they're going to suffer costs, and I can understand that if</p> <p>18 we delay this. Should the Applicant suffer any costs from</p> <p>19 the delay, and will your law firm pick up any of those</p> <p>20 reasonable costs to the Applicant, of any delay is set forth</p> <p>21 in the Applicant's opposition. So, you should address that</p> <p>22 as well. You may proceed.</p> <p>23 MS. FERGUSON: Thank you. As you noted, the first</p> <p>24 notice that I had that there was a conflict, was last week.</p> <p>25 We both talked to our clients. The Town of Kensington waived</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">9</p> <p>1 the conflict, because the matters are not related, in any 2 way. So, the Town did waive that by a vote of the Council, 3 and the Applicant has not consented to waive, and as a 4 result, I am ethically prevented from proceeding and 5 representing the Town today, other than to argue this motion, 6 and to hand off the case itself to other counsel. We have 7 worked very hard to get someone in who's qualified to do this 8 kind of work, and have retained Ms. Rosenfeld. And she's 9 here today, even though she has other matters today, and has 10 to -- has a brief, I believe, that's due on Monday, and so 11 therefore, is unable to put in the kind of time that would be 12 necessary to properly represent the Town on this case 13 immediately. However, she is available, and will work this 14 into her schedule, if there is a way to do so, if you will 15 provide a continuance today, at least for the bulk of the 16 case. Our suggestion in the motion had been that for those 17 residents who had come to speak today, they be allowed to, as 18 participants, be allowed to speak. There is, as far as I 19 know, only one person who is not being called as an expert by 20 the Applicant, who will be speaking, that cross-examination 21 would be requested by the Town, and that would be Ms. Means. 22 So, Mary Means, M-E-A-N-S. 23 HEARING EXAMINER GROSSMAN: I'm not sure I 24 understand. There's only one person who the Town would want 25 to cross-examine, if she testifies?</p>	<p style="text-align: right;">11</p> <p>1 MS. FERGUSON: So, the Town has -- and this is the 2 sector plan that the Town participated in developing, is 3 intensely interested in, has participated since last fall, 4 when this first action was taken, and have met many times 5 with the Applicant. And also come to public meetings that 6 have been held by the Applicant, and generated public 7 meetings at the Town also. They have a development review 8 board that they have appointed to look at projects initially. 9 They are -- it's staffed with volunteers, but knowledgeable 10 volunteers. People who are in architecture, business, 11 construction, that type of background. And they look at the 12 project from that perspective, and always do try to work with 13 the applicants who are coming in under the sector plan. 14 There are a number of projects that have already occurred, 15 including the Soera (phonetic) project that's just been 16 through this process, that they have worked with extensively, 17 and in fact, provided right of way, and traded right of way. 18 HEARING EXAMINER GROSSMAN: I think you're getting 19 far afield here. 20 MS. FERGUSON: I'm just -- what I would like to do 21 is, to show that the Town as an entity has participated, and 22 is intensely interested in continuing to do that. And so, 23 therefore wishes to be a party in this case also. As you 24 know from the rules, they must be represented by counsel. 25 HEARING EXAMINER GROSSMAN: Right.</p>
<p style="text-align: right;">10</p> <p>1 MS. FERGUSON: No. 2 HEARING EXAMINER GROSSMAN: I don't understand 3 what you mean. 4 MS. FERGUSON: I'm getting ahead of myself, 5 probably. 6 HEARING EXAMINER GROSSMAN: Okay. 7 MS. FERGUSON: But we had suggested, so that 8 everyone's time would not be wasted today -- 9 HEARING EXAMINER GROSSMAN: Yes. 10 MS. FERGUSON: In terms of showing up, that those 11 persons who showed up individually, who are not represented 12 by counsel, or not entities, but are residents that have an 13 interest in this case, for whatever reason, but are not 14 experts, be allowed to testify today, and so you could take 15 care of that portion of the hearing. And, generally 16 speaking, the Town has heard these witnesses, generally, 17 before, and know pretty much what they're going to say. 18 There is one individual who would be appearing as an 19 individual, not as an expert, that we would like to cross- 20 examine -- have the opportunity to cross-examine. 21 HEARING EXAMINER GROSSMAN: Okay. 22 MS. FERGUSON: And that's the lady that I just 23 mentioned. Otherwise, we don't anticipate, from what we know 24 so far, that there would be a necessity for that. 25 HEARING EXAMINER GROSSMAN: Okay.</p>	<p style="text-align: right;">12</p> <p>1 MS. FERGUSON: I am conflicted out of that. Since 2 this all happened, I have not been able to prepare a case, 3 because I'm ethically not allowed to do so. So, they are 4 without assistance at this point, and so we are asking for 5 the continuance, to allow them as an entity to participate in 6 a way that is meaningful. 7 HEARING EXAMINER GROSSMAN: Well, what about the 8 question of costs to the Applicant, which they specified in, 9 I think it was paragraph 8 of the opposition? 10 MS. FERGUSON: Yes. 11 HEARING EXAMINER GROSSMAN: If this case, or the 12 bulk of it, is to be continued to another -- to resume 13 another day, does the law firm agree that they should bear 14 the costs of that? 15 MS. FERGUSON: My answer has several parts to it. 16 HEARING EXAMINER GROSSMAN: All right. 17 MS. FERGUSON: First -- and this is not a 18 complaint, but I had not seen this claim until yesterday, 19 late afternoon, so have not had an opportunity to review the 20 fact. I have never seen a request like this in an 21 administrative hearing, previously. So, I am not aware that 22 someone in your position is able to assess that kind of cost. 23 I would like to have an opportunity, or counsel would like to 24 have an opportunity to evaluate that, and determine whether 25 or not that is an option that you do have. Clearly, if you</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">13</p> <p>1 have the option to do that, and you feel that it is 2 appropriate. This is not the fault of the Town of 3 Kensington. None of this is, and my firm would have to stand 4 up to that. For that. I don't -- I just haven't seen this 5 before, to this level, and in fact, actually in 30 years 6 practice have never been in this situation before. This is 7 the first time this has ever happened to me, and -- 8 HEARING EXAMINER GROSSMAN: It's the first time 9 it's ever happened, to my recollection, here as well, but 10 there is a rule -- my office has rules that have been 11 approved by the Council for land use cases such as this. And 12 our rule 5.0 govern sanctions, and it says, "the hearing 13 examiner may impose any sanction authorized by the 14 Administrative Procedures Act, section 2A8J, for failure to 15 comply with these rules, or for unexcused delays or 16 obstructions to the prehearing and hearing process. Such 17 sanctions may include suspension or continuance of scheduled 18 hearings, denial of admission of documents and exhibits, 19 admission of matters as adverse to a defaulting party, 20 assessment of costs, dismissal of conditional use 21 applications, and recommendations of dismissal of cases 22 requiring a decision by the district Council." I can go on, 23 but that's the idea. So, the authority is there. 24 MS. FERGUSON: Very well. Then -- and I think 25 that Ms. Rosenfeld may also want to speak today, but then</p>	<p style="text-align: right;">15</p> <p>1 MS. FERGUSON: I understand. 2 HEARING EXAMINER GROSSMAN: But it is true that 3 they have asked for continuances, and received continuances 4 of this hearing before. 5 MS. FERGUSON: So, that was one of the aspects of 6 -- I'm not -- in terms of doing work in the zoning field, I 7 represent a number of municipalities, about nine of them, and 8 so have not been familiar with, generally speaking in this 9 area, experts coming in from the West Coast or the Midwest to 10 testify. But there's nothing attached to the motion, so it's 11 hard to determine whether or not everything has been 12 represented as the case, but you know, counsel has 13 represented it, so I assume that, in fact, there is a basis 14 for that. 15 HEARING EXAMINER GROSSMAN: All right. 16 MS. FERGUSON: And that's my response. 17 HEARING EXAMINER GROSSMAN: Thank you. 18 MS. FERGUSON: And if my co-counsel would like to 19 say something, I'd certainly like her to do it. 20 HEARING EXAMINER GROSSMAN: All right. Ms. 21 Rosenfeld? 22 MS. ROSENFELD: Thank you. Good morning Mr. 23 Grossman. 24 HEARING EXAMINER GROSSMAN: Good morning. 25 MS. ROSENFELD: Well, since you ended on costs,</p>
<p style="text-align: right;">14</p> <p>1 what I've represented is the case. The Town is blameless in 2 this, would like to continue to participate in a meaningful 3 way, and so my firm would stand ready for that. 4 HEARING EXAMINER GROSSMAN: All right. 5 MS. FERGUSON: So -- 6 HEARING EXAMINER GROSSMAN: Well, I'm glad to hear 7 that, because I don't want to punish the Town, in terms of 8 costs, if they're not at fault, but by the same token, I 9 don't want the Applicant to suffer costs due to no fault of 10 their own. So, that is a consideration, certainly, but I'm 11 going to hear from everybody before I rule on it. 12 MS. FERGUSON: I certainly understand. And I 13 would note that this is the first time that the Town has 14 asked for a continuance. 15 HEARING EXAMINER GROSSMAN: Right. 16 MS. FERGUSON: My understanding is, is that a 17 continuance -- a number of continuances have been requested 18 by the Applicant in this case, which started last fall, and 19 so any costs that are related to delaying for a few weeks, I 20 think really aren't justified, because this is something that 21 has been going on for quite a while, and in part, it's 22 because the Applicant has also continued the case. 23 HEARING EXAMINER GROSSMAN: That's absolutely 24 true. The Applicant has continued here. Of course, they did 25 it on a timely basis, so we didn't have this issue.</p>	<p style="text-align: right;">16</p> <p>1 I'll start there. I'd like to point out the fact that in 2 paragraph 8 of the Applicant's motion, they request that the 3 Town be required to pay the applicant. They've not requested 4 it of former counsel, so again -- 5 HEARING EXAMINER GROSSMAN: Well, usually it's the 6 town that's the party before me, not counsel. 7 MS. ROSENFELD: Correct. 8 HEARING EXAMINER GROSSMAN: So, that's why it 9 would, to me -- I don't want to punish the Town by charging 10 them costs when they are an innocent victim. That's why 11 wanted to hear if the law firm was going to stand up and say, 12 yes, they would do so, because it's the Town before me, not 13 the law firm. Technically. 14 MS. ROSENFELD: Okay. Thank you. And I just 15 wanted to make the record clear that the Town has been an 16 innocent party in all of this, and we would ask that no cost 17 be assessed against the Town. 18 HEARING EXAMINER GROSSMAN: Well, if it came -- 19 MS. ROSENFELD: For the same reasons you just 20 mentioned. 21 HEARING EXAMINER GROSSMAN: I understand, but if 22 it came down to the question of making the Applicant whole, 23 in terms of this -- the cost of this delay, the assessment 24 would have to be technically against the Town as the party, 25 but with the understanding that the law firm would pay it.</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">17</p> <p>1 That's the way, I guess technically, under the law, I would 2 have to do it. 3 MS. ROSENFELD: All right, and I appreciate that 4 clarification. I will point out that it is not unusual for 5 last-minute requests for extension of time, or for 6 rescheduling hearing in land use cases. As you know, they 7 happen quite frequently. In this case, it's necessitated by 8 the fact that I was brought into this case Wednesday 9 afternoon, and obviously can't prepare, even under the best 10 of circumstances, to try and prepare for this case in one 11 business day would be unrealistic. And so, as I noted 12 earlier, the rules of procedure do require that an entity be 13 represented of an organization, and without attorney 14 representation, individual members can only appear and 15 testify in narrative form, but this is a contested 16 proceeding. It is the potential for a petition for judicial 17 review, certainly is here, as in every contested case. 18 HEARING EXAMINER GROSSMAN: Right. 19 MS. ROSENFELD: And so, the prejudice to the Town, 20 to not have an attorney during the merits of this case, are 21 very high. They lose the opportunity to make objections to 22 testimony that's being presented, or to procedural 23 irregularities that may present themselves. They lose the 24 opportunity to cross-examine witnesses. So I submit to you 25 that the prejudice, in moving forward with the case, to the</p>	<p style="text-align: right;">19</p> <p>1 And, of course, under the zoning ordinance, the Council 2 doesn't play a direct part in a conditional use proceeding. 3 Under the zoning ordinance, the hearing examiner is the 4 entity that decides, subject to an appeal to the Board of 5 Appeals, and from there to a court. 6 MS. ROSENFELD: Correct. 7 HEARING EXAMINER GROSSMAN: It doesn't go to the 8 Council, so there's a legal question surrounding that that 9 we'll get into as we proceed here. 10 MS. ROSENFELD: Well, that will be an interesting 11 question to brief. And on the flipside, while there is, I 12 think, significant prejudice to the Town in moving forward 13 today on the merits of this case, there really is no 14 prejudice to the Applicant. I'm assuming the calendars will 15 allow us to reset another hearing date in the relative near- 16 term. I don't see this as being an extensive continuance, 17 and they're not prejudiced in any way on the merits. 18 Replacing one counsel with the other, the Town will be 19 represented by legal counsel. It doesn't change the posture 20 of the submissions that are before this body, or how they 21 would be reviewed. With respect to the costs, and if you 22 look at the opposition filed by the Applicant, really that's 23 the only prejudice that they identify in their pleading. 24 They say that the costs -- they're prejudiced because it will 25 cost them more to return. That is not prejudice in the due</p>
<p style="text-align: right;">18</p> <p>1 Town, without an attorney prepared to represent them, is 2 high. It's very, very high. In addition to that, I'd like 3 to mention that the Town's interest in this case has, in some 4 ways, a special status. As you know, section 2-201 of the 5 land use code provides the Town of Kensington special 6 protections in land use cases. The law provides that a two 7 thirds majority of the planning board is required to overturn 8 any land use resolution adopted by the Town, which in this 9 case, the Town did adopt. The Town adopted a resolution 10 opposing this particular project. And so, the General 11 Assembly has recognized that this particular municipality, 12 along with Takoma Park, has special interests in in the way 13 that their community is developed. And so, I think that also 14 should carry great weight with respect to whether or not the 15 Town is represented by counsel in these proceedings. 16 HEARING EXAMINER GROSSMAN: Yeah, I have a number 17 of legal questions that I was going to, if this case is not 18 going to be continued, that I did want the parties to 19 address, regarding those provisions. The one you didn't 20 mention, the subsection just before the one you read, 21 concerns any zoning matters, and there's a question as to 22 whether or not that was intended to include a conditional use 23 application such as this, because it requires not just a two 24 thirds majority of the planning board, but also of the 25 Council to overturn a resolution of the Town of Kensington.</p>	<p style="text-align: right;">20</p> <p>1 process sense, and I don't think it's a consideration for 2 whether or not this case should be continued. The costs to 3 the applicant don't change the burden of proof, they don't 4 change the weight of the evidence, they don't change how the 5 proceeding would be conducted. So, while it may be 6 burdensome for the Applicant in a nonlegal point of view, it 7 does not prejudice them with respect to the merits of the 8 questions that are before this body, so -- before you, Mr. 9 Grossman. 10 HEARING EXAMINER GROSSMAN: Yes. 11 MS. ROSENFELD: And so, for those reasons, I would 12 ask that you grant the continuance of this proceeding on the 13 merits. We, I think, would be comfortable moving forward 14 with allowing individuals to testify, so that people who have 15 taken time off from work, and are here this morning, don't 16 have to return on another day, with the exception of Ms. 17 Means, whose name has already been provided to you, who we 18 anticipate we would want to cross-examine, and I'm not 19 prepared to do that this morning. 20 HEARING EXAMINER GROSSMAN: Okay. 21 MS. ROSENFELD: Thank you. 22 HEARING EXAMINER GROSSMAN: All right. Ms. 23 Girard? 24 MS. GIRARD: Mr. Grossman, I'm happy to stand, but 25 in my experience, we usually sit, so I --</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">21</p> <p>1 HEARING EXAMINER GROSSMAN: It's up to you. 2 Whatever makes you comfortable. 3 MS. GIRARD: I don't want to offend you, but my 4 eyesight's not as good as it used to be, so I'd rather be 5 closer to my paper. 6 HEARING EXAMINER GROSSMAN: Whatever makes you 7 comfortable is fine with me. 8 MS. GIRARD: Thank you. You know, all of this 9 would be true, as far as there's usually extensions of time, 10 there's that we -- 11 HEARING EXAMINER GROSSMAN: Excuse me one second. 12 Ma'am, you know there is one seat I see, back here, if you 13 want to come in. 14 UNIDENTIFIED SPEAKER: I didn't want to interrupt. 15 HEARING EXAMINER GROSSMAN: We have one more 16 individual here. You know, I should -- let me interrupt you 17 for second, Ms. Girard. I should've also asked at the 18 beginning about people who are here to testify, and let me 19 ask that question now. Others who are not being called 20 directly by the Town, or by the Applicant who wish to be 21 heard today? So, I'll start from the back row. Yes, ma'am. 22 What's your name please? 23 MS. HEARTSONG: Judith Heartsong. 24 HEARING EXAMINER GROSSMAN: Okay. And I ask that 25 when you sign in, you leave your name, address, and email</p>	<p style="text-align: right;">23</p> <p>1 The thing that really is, frankly, unbelievable in this case 2 is that the Town has known of this application since it was 3 originally filed last year, and as counsel has represented, 4 has participated actively in this matter. We advised the 5 Town on May 14th that we were proceeding, even over their 6 objections. So, they had notice that we intended to come to 7 the hearing examiner for a hearing. That was conveyed -- the 8 hearing date of August 2nd was conveyed to them on June 11th. 9 The official notice went out on June 18th. I mean, this is 10 months ago that these notices went out. I don't know when 11 the Town engaged -- 12 HEARING EXAMINER GROSSMAN: Of course, this is 13 August 9th. That was continued also, to August 9. 14 MS. GIRARD: It was -- yeah, exactly. So, then 15 there's an extra week in there. 16 HEARING EXAMINER GROSSMAN: Right. 17 MS. GIRARD: I don't know when the Town decided 18 that it needed to engage counsel, but I think the conflict is 19 a little bit of a sideshow. The issue started with the fact 20 that counsel itself did not begin participating until late in 21 the process. You know that I objected to the late submission 22 of the prehearing statement, which came in 11 days shorter -- 23 in a 11-day shorter time frame than it should have. And then 24 it's just been exacerbated by this conflict. Such that we 25 had a motion two days ago, and we had 24 hours to respond,</p>
<p style="text-align: right;">22</p> <p>1 address that you can be contacted. You wish to be heard for, 2 against, or just to comment? 3 MS. HEARTSONG: For. We are Artists and Makers 4 Studios. We would be the studios in the building. 5 HEARING EXAMINER GROSSMAN: Okay. Well, let's -- 6 I'm going to take the back row first. Anybody else in the 7 back row? No? All right. Ma'am? 8 MS. CHALFIE: Deborah Chalfie. 9 HEARING EXAMINER GROSSMAN: Is that Deborah 10 spelled D-E-B-R? 11 MS. CHALFIE: D-E-B-O-R-A-H. 12 HEARING EXAMINER GROSSMAN: O-R-A-H, okay. And 13 last name? 14 MS. CHALFIE: Chalfie. C-H-A-L-F-I-E. 15 HEARING EXAMINER GROSSMAN: Okay. And once again, 16 make sure you leave your address, and email address there. 17 And did you wish to be heard for or against this project? 18 MS. CHALFIE: Against. 19 HEARING EXAMINER GROSSMAN: Okay. Anybody else? 20 I see no other hands. All right, I'm sorry I had to 21 interrupt you for that, Ms. Girard. Go ahead, you may 22 proceed. 23 MS. GIRARD: That's okay. I think just cutting to 24 the chase. Yes, we have continuances all the time. Somebody 25 gets sick. Something comes up, and that's understandable.</p>	<p style="text-align: right;">24</p> <p>1 and I'm taking a little bit of offense that while things 2 weren't explained in that -- in your response, well, I had 24 3 hours, and I had other things going on. So, it's not that we 4 are objecting to the Town being represented by counsel. We 5 are fine with that. Well, not fine with that. It's hard to 6 take, because we feel like some of these issues are self- 7 created on the Town side, but we are willing to -- 8 HEARING EXAMINER GROSSMAN: Well, they have to be 9 represented. The Town has to be represented by counsel if 10 they're appearing. It's actually originates as a bar 11 requirement, and then case law that interprets that, and 12 makes it clear that organizations should -- 13 MS. GIRARD: We agree, and we're fine with that. 14 I just meant we're not happy about the continuance, to have 15 that happen, was my point, but I think, in fairness, you 16 know, when the Hearing Examiner asked, what would be our 17 solution? I mean, I feel like the fairest approach, if it's 18 going to be fair to give the Town a continuance in order to 19 prepare adequately, even though we've been ready for months, 20 then I think it's only fair to compensate the Applicant for 21 all the travel expenses. All of the consultants are here, 22 ready to speak. They're on the clock. Kelly arrived at 2 23 o'clock this morning, because his flight got canceled. You 24 know, there's a lot of -- 25 HEARING EXAMINER GROSSMAN: You said Kelly. You</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">25</p> <p>1 want to fully identify the gentleman? 2 MS. GIRARD: I'm sorry. Kelly McKone, the 3 Applicant. You know, and so there's a lot -- to say there's 4 no prejudice, it's not fair. I mean, we are here. We're 5 ready to go. The Town has had notice for quite some time. 6 We would like to proceed, but understanding that, you know, 7 that maybe there's a balance to be struck. We think that the 8 fair thing to do would be to compensate the Applicant for, at 9 least, the monetary damages associated with the delay. 10 HEARING EXAMINER GROSSMAN: All right. And if we 11 do proceed in that fashion, yeah, I would say it would be 12 reasonable expenses, and you mentioned -- one of the items 13 you mention is extending the contract as a cost. I'm not 14 sure what, exactly, that cost is supposed to be, and whether 15 or not it really would be impacted by some delay in this 16 proceeding. Can you explain a little bit more about that? 17 MS. GIRARD: So, as part -- as you know, the 18 applicant is the contract purchaser of the property. 19 HEARING EXAMINER GROSSMAN: Right. 20 MS. GIRARD: And it's been under contract for 21 quite some time, and as is typical with contracts, you have 22 to pay for extensions. So, if we're talking a week delay, 23 two-week delay, that's going to push us into the next 24 extension period. And so, the Applicant is going to 25 experience direct monetary impact of having to pay for</p>	<p style="text-align: right;">27</p> <p>1 MR. MCKONE: We would just have to use more 2 extensions. 3 HEARING EXAMINER GROSSMAN: Right. 4 MR. MCKONE: Yeah. 5 HEARING EXAMINER GROSSMAN: We have -- well, I 6 don't know what an extension costs. 7 MR. MCKONE: 30 days, \$11,000.00. 8 HEARING EXAMINER GROSSMAN: I see. Okay. 9 MR. MCKONE: Is what we negotiated. Every month. 10 HEARING EXAMINER GROSSMAN: All right. But if we 11 can do it within a week, or two weeks, or whatever, that 12 would be fine. 13 MR. MCKONE: Yes. 14 HEARING EXAMINER GROSSMAN: And we have -- the 15 hearing examiner has 30 days to -- in which to enter its 16 decision, and that can be extended, however, by the hearing 17 examiner. I almost never do. In fact, I usually do them 18 faster than the 30 days, and I would -- one of the things I 19 might be able to do, is compress my time a little bit to 20 avoid a prejudice, if we had to postpone it for a week, or 21 something like that. If, in fact, this is postponed, would 22 that moot the concern you had about the late filing of the 23 prehearing statement by the Town? 24 MS. GIRARD: I think it would. 25 HEARING EXAMINER GROSSMAN: Okay. Because I'm not</p>
<p style="text-align: right;">26</p> <p>1 another months' worth of time under that contract. 2 HEARING EXAMINER GROSSMAN: When does that 3 contract expire? 4 MS. GIRARD: It was set up to expire in early 5 September, anticipating that a hearing examiner report would 6 issue within approximately 30 days. 7 HEARING EXAMINER GROSSMAN: So, early September 8 being exactly what? What date in September? 9 MS. GIRARD: I'm sorry, I'm just getting the 10 answer for you. Like I said, this all developed quite late 11 yesterday. 12 MR. MCKONE: Yeah, so what happened is, we have 13 extensions to continue, but the longer we go out, there are 14 extensions we wouldn't have to use, if we could get this 15 resolved. 16 HEARING EXAMINER GROSSMAN: Well, I'm trying to 17 say -- I'm trying to find out exactly what the date would be 18 that you'd -- that would be the deadline by which you would 19 have to get another extension. 20 MR. MCKONE: Well, it's just if they -- if we're 21 able to do -- have a -- if we're able to reconvene in the 22 next week or two, I don't think it would impact us any more 23 than where we're at today. If it got to be a month, six 24 weeks, then it definitely would. 25 HEARING EXAMINER GROSSMAN: Okay. Because?</p>	<p style="text-align: right;">28</p> <p>1 sure what the prejudice is, given that the Town's position 2 has been well known. They filed an opposition, I believe, 3 back in October. 4 MS. GIRARD: It was more a function of the 5 prejudice of the late notice to -- obviously you prepare for 6 a hearing differently, if you know that you're going to have 7 organized opposition, versus not. 8 HEARING EXAMINER GROSSMAN: Okay. But -- 9 MS. GIRARD: So, with the additional time, I 10 agree. I think that that's -- there's no point objecting. 11 We will know, and we will have adequate time to prepare. 12 HEARING EXAMINER GROSSMAN: Okay. What's a 13 reasonable date? I mean, I do have next Friday open. The 14 16th. 15 MS. GIRARD: I can say that we have experts that 16 can't be here next week, so we could do the early part of the 17 following week; 19, 20, 21. 18 HEARING EXAMINER GROSSMAN: What are we talking 19 about, Ms. Rosenfeld, from the standpoint of your calendar? 20 And while you're looking at that, Ms. Rosenfeld, do you have 21 an objection to proceeding with the two community members who 22 are here today, and taking their testimony, so they won't 23 have to come back again? 24 MS. GIRARD: No, that's fine with us. 25 HEARING EXAMINER GROSSMAN: Okay.</p>



Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">29</p> <p>1 MS. ROSENFELD: Mr. Grossman, right now, the week 2 of August 19th is wide open for me. That week would work. 3 HEARING EXAMINER GROSSMAN: All right. Our 4 hearing schedule is somewhat complicated by the fact that, 5 you know, they're renovating this building, the Council 6 office building, and we've been told that my office, and the 7 others that use this hearing room, and the hearing -- we have 8 to move out in September, early September. So, any future 9 hearings beyond August -- well, I have one set for September 10 6th -- will have to be held in a different location, so 11 that's another -- and of course, we're all bogged down, and 12 trying to get ready for this move, but in any event, let's 13 see. And ordinarily, I don't do -- ordinarily, we do our 14 hearings on Mondays and Fridays, because Tuesday's a Council 15 day, and Wednesday the Board of Appeals uses this room, and 16 Thursday is a planning board day, so we usually do our 17 hearings on Mondays and Fridays, but since the -- I think 18 both the board of appeal, and the Council is in recess, and 19 the Board of Appeals may be as well, and so we might have a 20 little bit more flexibility. What looks good on your 21 calendar during the week of the 19th? 22 MS. GIRARD: We propose the 20th. 23 HEARING EXAMINER GROSSMAN: Okay, that's Tuesday 24 the 20th. Does that look good to you, Ms. Rosenfeld? 25 MS. ROSENFELD: Yes. Yes, it does.</p>	<p style="text-align: right;">31</p> <p>1 also leave your address, and -- 2 MS. HAUCK: No, (inaudible). 3 HEARING EXAMINER GROSSMAN: All right. When you - 4 - there's a sign in list outside the door, so make sure you 5 fill that in, so that we can reach you. And are you here to 6 testify for or against the proceeding? 7 MS. HAUCK: For. 8 HEARING EXAMINER GROSSMAN: Okay. And -- yes, 9 ma'am. 10 MS. O'MALLEY: Julie O'Malley. I've signed in. 11 I'm the president of the Historical Society of Kensington. 12 HEARING EXAMINER GROSSMAN: And you're here to 13 testify for or against? 14 MS. O'MALLEY: Against. 15 HEARING EXAMINER GROSSMAN: Okay. So, you were 16 going to give me some idea of what we're talking about, in 17 terms of -- 18 MS. GIRARD: Yeah, and we're coordinating. So -- 19 and Kelly can chime in. So, there's flight and hotel for the 20 applicant and the architect, and then there's the hourly fees 21 of the consultants who have come here this morning that will 22 not be testifying. 23 HEARING EXAMINER GROSSMAN: Okay. 24 MS. GIRARD: We think it's in the ballpark of 25 \$3,500.00</p>
<p style="text-align: right;">30</p> <p>1 HEARING EXAMINER GROSSMAN: All right. So, I have 2 to go walk back in and check my personal calendar. All 3 right. So, at least we know that someday we could do that. 4 All right. Can you flesh out a little bit what we're talking 5 about, in terms of the costs to the Applicant? Travel cost, 6 and the expert costs that you're talking about, since there 7 isn't a delay cost, per se, to the Applicant? 8 MS. GIRARD: Yes. And I just wanted to interrupt 9 for second. Again, I know that there's someone else here who 10 wants to testify, from the community. 11 HEARING EXAMINER GROSSMAN: Okay. 12 MS. FERGUSON: And I've just received such a note 13 also. 14 HEARING EXAMINER GROSSMAN: All right. And who 15 are those people? Yes, ma'am. 16 MS. HAUCK: I want to testify. 17 HEARING EXAMINER GROSSMAN: Yes, and what's your 18 name please? 19 MS. HAUCK: Molly Hauck. H-A-U-C-K. 20 HEARING EXAMINER GROSSMAN: All right. Molly H-A- 21 U - 22 MS. HAUCK: C-K. 23 HEARING EXAMINER GROSSMAN: C-K. 24 MS. HAUCK: Mm-hmm. 25 HEARING EXAMINER GROSSMAN: Did you sign in, and</p>	<p style="text-align: right;">32</p> <p>1 MR. MCKONE: I'd say four. Somewhere around four. 2 Less than five. 3 MS. GIRARD: We're happy to do an itemized thing 4 of exactly what -- 5 HEARING EXAMINER GROSSMAN: Okay. So, about 6 \$4,000.00 total. More or less. 7 MS. GIRARD: Yeah, don't hold us to that. 8 HEARING EXAMINER GROSSMAN: Right. 9 MS. GIRARD: But we can itemize exactly what we're 10 talking about. 11 HEARING EXAMINER GROSSMAN: Okay. And Ms. 12 Ferguson, is that a -- sound like a reasonable, general area, 13 in terms of costs? 14 MS. FERGUSON: Yes, it does. 15 HEARING EXAMINER GROSSMAN: Okay. All right. All 16 right, it seems to me that, and I'm deciding that I'm going 17 to grant the continuance of the bulk of this hearing. We're 18 going to hear from the four citizens who are here to testify, 19 as both sides have agreed to that. And we'll continue the 20 remainder of the hearing until a date that I'll set, as soon 21 as I can check my personal calendar, during the week of 22 August 19, so that we minimize the delay. And as part of 23 this, the attorney, or now former attorney, for the Town of 24 Kensington will pick up the costs of the Applicant, in the 25 general arena of about \$4,000.00, as a cost to their travel</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">33</p> <p>1 and time of their experts. And so, to that extent, the 2 continuance of the hearing is granted. 3 MS. FERGUSON: Thank you. 4 HEARING EXAMINER GROSSMAN: All right. Let's 5 recess for five minutes, while I go check my calendar, and 6 we'll come back at 10:20 a.m., and we'll address a couple of 7 other matters, and then hear from the witnesses from the 8 community who are here. Okay. Thank you. 9 (Off the record 10:10 a.m.) 10 (On the record 10:19 a.m.) 11 HEARING EXAMINER GROSSMAN: All right. I can do 12 it on August 20th. And so let's say I can announce -- we 13 don't have to send out an additional written notice if I 14 announce at the public hearing, which this is. So when we 15 finish with the business that we've outlined, that we are 16 going to handle today here, this case will resume. And this 17 is the announcement; will resume on August 20, that's a 18 Tuesday, 2019 at 9:30 a.m. here, that is in the Stella B. 19 Warner Council office building at 100 Maryland Avenue in 20 Rockville, Maryland on the second floor, Davidson Memorial 21 Hearing Room. And so that will be the official announcement 22 of this continuance of the bulk of the hearing until that 23 date after we finish the items we talked about. Also -- and 24 to that extent, discontinuance is granted. I would ask Ms. 25 Girard, that you prepare a formal list of the costs, which</p>	<p style="text-align: right;">35</p> <p>1 Yesterday the Applicant filed with my office, signed, sealed, 2 and dated copies of the plans. I understand that they are 3 just -- they are identical with the plans that have been 4 previously filed, the revised plans. And that the only 5 differences they have now been signed and sealed. Is that 6 correct? 7 MS. GIRARD: That's correct. 8 HEARING EXAMINER GROSSMAN: All right. And so I 9 think it's probably easier just to keep the same exhibit 10 numbers on those plans as previous. Everybody agreeable to 11 that since they just -- question. State law requires that 12 plans filed by professionals, or prepared by professionals, 13 be signed and sealed if they are to be accepted by a public 14 body such as this. And so that had to be done. Okay. 15 MS. GIRARD: Mr. Grossman, just one other thing to 16 give counsel notice, we are going at the sub out our 17 transportation engineer. He is not available on the 20th. 18 So we will submit the resume of who is going to replace him; 19 same firm; as soon as we have it within the next -- today is 20 Friday. So either later today or Monday. 21 HEARING EXAMINER GROSSMAN: All right. That's 22 fine. 23 MS. ROSENFELD: And Mr. Grossman, just with 24 respect to the signed, sealed, and dated plans, would we be 25 able to list them under the prior exhibit as just -- with a</p>
<p style="text-align: right;">34</p> <p>1 will be assessed technically against the Town of Kensington, 2 but will be borne by the law firm that had previously 3 represented them. 4 MS. GIRARD: And Mr. Grossman, during the break we 5 did speak to each of our consultants to get a more accurate 6 depiction. Unfortunately, it's higher than the (inaudible). 7 And we think it will be in the range of 7,000 instead of 8 4,000. 9 HEARING EXAMINER GROSSMAN: Ms. Ferguson? 10 MS. GIRARD: And we are happy to itemize that. 11 MS. FERGUSON: Subject to the itemization, yes. 12 HEARING EXAMINER GROSSMAN: Yes, you agree to the 13 law firm picking that up? Your law firm is picking that up, 14 correct? 15 MS. FERGUSON: Yes. 16 HEARING EXAMINER GROSSMAN: Okay. All right. 17 Before we get to the taking of the community members' 18 testimony, there are a couple of other items which I wanted 19 to alert you to that can be addressed at the next hearing 20 date. First of all, as to the other oral argument issue I 21 said we would have, since it is now a moot point conceded by 22 the Applicant, the late filing of the Town's prehearing 23 statement. So that prehearing statement will be accepted as 24 the Town of Kensington's prehearing statement based on that. 25 Okay. Let me turn to the two other preliminary items.</p>	<p style="text-align: right;">36</p> <p>1 new sub number so I can correlate them to what had been 2 previously filed? 3 HEARING EXAMINER GROSSMAN: I was going to -- I 4 was just going to have them exhibitized under the same number 5 as the previous one. 6 MS. ROSENFELD: And just -- 7 HEARING EXAMINER GROSSMAN: Just substitute it in 8 effect. 9 MS. ROSENFELD: And just substituted entirely? 10 HEARING EXAMINER GROSSMAN: Right. 11 MS. ROSENFELD: Okay. 12 HEARING EXAMINER GROSSMAN: Since they are 13 represented to be identical, it's just a question of the 14 formality of them being signed and sealed. 15 MS. ROSENFELD: Okay. That's fine. Thank you. 16 HEARING EXAMINER GROSSMAN: All right. Affidavit 17 of posting. 18 MS. ROSENFELD: Yes. 19 HEARING EXAMINER GROSSMAN: Why don't we get that? 20 HEARING EXAMINER GROSSMAN: The affidavit of 21 posting will be Exhibit 79. This is a requirement -- thank 22 you -- that the Applicant provide an affidavit showing that 23 the sign was posted for notice. Okay. Some of the questions 24 here I'm going to postpone until the next hearing date. But 25 some of the things I would like you to consider for that</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">37</p> <p>1 hearing date is whether or not you agree, Ms. Girard, that I 2 have to give significant deference to the planning board's 3 interpretation of its own sector plan. 4 MS. GIRARD: Mm-hm. 5 HEARING EXAMINER GROSSMAN: Another legal question 6 to be addressed by both the Applicant and Town of Kensington, 7 concerns the section 24 201B requirement for two thirds 8 Council majority to rule against the position of the Town of 9 Kensington in this zoning matter, but does not require 10 Council action and other land-use matters under section 24 11 201C. As a legal matter it is the conditional use decision, 12 a zoning matter, or a land-use matter within the meaning of 13 this section. So I would like the parties – you can file 14 something or prepare to address it orally at the next 15 proceeding. 16 MS. GIRARD: Okay. 17 HEARING EXAMINER GROSSMAN: And I would like -- I 18 would actually like to see some legislative history on that 19 question because it's not clear. I mean, in a sense, a 20 conditional use is a zoning matter, but they may have meant 21 just a rezoning, which is a different kind of proceeding. It 22 does go to the Council. It does come before our office, but 23 for a report and recommendation to the Council. So they are 24 different kinds of proceedings. Okay. Another, but related 25 legal question. Even if section 24 201B is the applicable</p>	<p style="text-align: right;">39</p> <p>1 have a condition limiting the number of on-site employees. 2 And we have conditions requiring following all the applicable 3 regulations and so on. But I would like the parties to 4 consider whether or not there are specific conditions that 5 should be suggested if in fact this conditional use were 6 granted. I would also like the parties to tell me if they 7 agree to the technical staffs definition of the neighborhood, 8 which is in Exhibit 59, page 5. To the Applicant, I don't 9 see anything in your submission that mentions signage. And 10 of course, signage is subject to control by the zoning 11 ordinance and by the Department of Permitting Services as 12 well as in terms of compatibility, with this office. I would 13 like to know, is signage going in. And if so, your plan 14 should reflect any proposed signage. And finally, the staff 15 report mentions two existing special exceptions on this site, 16 CBA1332 and S104. Are they still active on the site? Ms. 17 Girard, are they still active on that site? 18 MS. GIRARD: One was for a gas station and that is 19 not active. I'm going to be honest, I don't know off the top 20 of my head what the other one is. 21 HEARING EXAMINER GROSSMAN: Okay. So I would like 22 some response from the Applicant obviously. If this 23 conditional use were granted, then those would have to be 24 revoked in some fashion. So I would like some report back as 25 to what the status of that is and what your plan would be in</p>
<p style="text-align: right;">38</p> <p>1 section, would it have to go to the Council if I ruled 2 against the Town of Kensington and was upheld by the Board of 3 Appeals, since it would not ordinarily go there? But I don't 4 know what the impact of this particular Maryland statutory 5 section is on our procedures. This office does act as the 6 appointee of the Council through the zoning ordinance to 7 handle these matters. So maybe that moots that point, but I 8 would like to hear from the parties on that point. 9 MS. ROSENFELD: And Mr. Grossman, I'm sorry. 10 Would you walk through that one more time? I got most of it. 11 HEARING EXAMINER GROSSMAN: All right. If I rule 12 on this conditional use and I ruled against the Town of 13 Kensington, if that were to happen and it was -- and then 14 somebody took it to the Board of Appeals, with the matter 15 have to go to the Council given the statutory provision, even 16 though our zoning ordinance does not have a process for to go 17 to the Council? Because this office sits at the Council's 18 appointee to handle this kind of zoning matter. All right. 19 To the Applicant, if I were to grant this conditional use, 20 what conditions would you think are satisfactory to protect 21 the community? And I also asked the Town of Kensington that 22 same question. Because as far as I can tell from our 23 records, I don't see another self-storage conditional use 24 case that we've handled. So I don't see a typical set of 25 conditions. I mean, we generally have -- in every one we</p>	<p style="text-align: right;">40</p> <p>1 that regard. 2 MS. GIRARD: Okay. 3 HEARING EXAMINER GROSSMAN: Are there any other 4 preliminary matters that we should address before going to 5 hear the -- before community members who wish to be heard? 6 Seeing no hands -- 7 MS. ROSENFELD: Not from the town. 8 HEARING EXAMINER GROSSMAN: All right. All right. 9 Let's hear first from Judith Heartsong. Yes, ma'am. And I 10 guess what we will have to do is -- let's pull a chair, if 11 you would, up to the table since I don't think we -- you 12 haven't mic'd it up here, have you? Yeah, how long would it 13 take you to mic it up here? 14 COURT REPORTER: I could move a mic and have it up 15 there in five seconds. 16 HEARING EXAMINER GROSSMAN: Five seconds would be 17 good. Let's do that so everybody can hear. And when we do 18 resume, I would like to have it up here at the end of the 19 table, so that people can see the -- all right. All right. 20 Ms. Heartsong. Have a seat, please. 21 MS. HEARTSONG: Sitting is good. 22 HEARING EXAMINER GROSSMAN: Sitting is great. All 23 right. Would you state your full name and address, please? 24 MS. HEARTSONG: My name is Judith Olivia 25 Heartsong, 13625 Warrior Brook Terrace in Germantown,</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">41</p> <p>1 Maryland.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay. Would you raise</p> <p>3 your right hand, please? Do you swear or affirm to tell the</p> <p>4 truth, the whole truth and nothing but the truth under</p> <p>5 penalty of perjury?</p> <p>6 MS. HEARTSONG: Yes.</p> <p>7 HEARING EXAMINER GROSSMAN: Okay. Then you may</p> <p>8 proceed.</p> <p>9 MS. HEARTSONG: I have no written statement. I</p> <p>10 just wanted to share how we were brought into this project.</p> <p>11 I am the owner and executive director of Artist and Makers</p> <p>12 Studios. We have two locations in Rockville. I had not been</p> <p>13 involved in any way in this project until I was contacted by</p> <p>14 Kelly McCone, who works for the developer. And he was in</p> <p>15 town. My name had come up at either a Council meeting or a</p> <p>16 public hearing. And a town person suggested to one of the</p> <p>17 Councilmembers that it might be a great idea to get us</p> <p>18 involved. Apparently studios had been discussed for the</p> <p>19 project, but just putting some studios in and not having any</p> <p>20 sort of management or anyone in a professional capacity to</p> <p>21 run them. So Kelly came to visit, visited both locations.</p> <p>22 We were actually busy installing that day and he had to call</p> <p>23 me four times before I picked up the phone. But he came out</p> <p>24 and visited both locations. The Council then came to a First</p> <p>25 Friday event. The Kensington Council came and visited First</p>	<p style="text-align: right;">43</p> <p>1 would work with our other centers and that we would be able</p> <p>2 to keep them full and running with artists. So we drew plans</p> <p>3 for about 30 studios, a gallery. And then on the upper floor</p> <p>4 in the drawings, there will be an outdoor roof deck that we</p> <p>5 can use both for openings, classes, and workshops, places for</p> <p>6 the artists to work outside. And then my hope would be to</p> <p>7 have the community come in and maybe offer brown bag lunch</p> <p>8 tours, that kind of thing as well to bring the community in.</p> <p>9 We typically have First Friday events every month. At my</p> <p>10 current locations, we have 300 to 500 guests, but that's for</p> <p>11 much greater square footage. This would be approximately</p> <p>12 8000 square feet and would only host potentially 30 artists.</p> <p>13 So in a fair -- Kensington would be likely and much smaller</p> <p>14 event. We tend to host bigger name metro area artists in the</p> <p>15 gallery so that we draw the crowds to come out and see those</p> <p>16 folks. And at the same time they visit our artists in the</p> <p>17 studio who tend to be more emerging artists. So the other</p> <p>18 thing to mention is that the community member that brought us</p> <p>19 to the attention of the Council has already collected about</p> <p>20 25 names of artists living in and around Kensington who need</p> <p>21 studio space. So we would be really excited to participate.</p> <p>22 The development company has been extremely supportive and</p> <p>23 responsive when we have had design needs or questions about</p> <p>24 how to move forward. As we pretty much have a handshake</p> <p>25 agreement at the moment, but we provided a pro forma in the</p>
<p style="text-align: right;">42</p> <p>1 Friday at both locations. I had the impression that we came</p> <p>2 out fairly favorably in everybody's opinion. We run 23,000</p> <p>3 square feet in downtown Rockville. Not in downtown</p> <p>4 Rockville, forgive me. In Rockville, the greater Rockville</p> <p>5 town.</p> <p>6 HEARING EXAMINER GROSSMAN: We, being the Artists</p> <p>7 Masters Studios?</p> <p>8 MS. HEARTSONG: Yes, Artists and Makers Studios.</p> <p>9 HEARING EXAMINER GROSSMAN: Makers Studios, that's</p> <p>10 right.</p> <p>11 MS. HEARTSONG: So we have one --</p> <p>12 HEARING EXAMINER GROSSMAN: I can't read my own</p> <p>13 handwriting. It's been 10 seconds since I wrote it.</p> <p>14 MS. HEARTSONG: We have one 13,000 square-foot</p> <p>15 location on Park Lawn Drive, and one 23,000 square-foot</p> <p>16 location on Wilkins Avenue in Rockville. So they came out,</p> <p>17 had some great conversations with everybody. We started to</p> <p>18 proceed with Kelly. Some people from his company came from</p> <p>19 Arizona and they toured word as well. So I kind of got to</p> <p>20 meet everybody and we -- it felt like we were being taken out</p> <p>21 for a test drive. And I think we passed. So then they asked</p> <p>22 us to start drawing plans. We talked about the amount of</p> <p>23 square footage that we would want. Of course as a business</p> <p>24 owner, I'm concerned about oversaturation. So we very</p> <p>25 specifically picked an amount of square footage that we felt</p>	<p style="text-align: right;">44</p> <p>1 drawings which have been actualized into charts and things.</p> <p>2 And I just -- I wanted to come and just let everybody know</p> <p>3 how supportive the development company has been to bring us</p> <p>4 in it to try to offer everything that we would need to be</p> <p>5 interested to participate. And we would love to come to</p> <p>6 Kensington.</p> <p>7 HEARING EXAMINER GROSSMAN: All right. Does that</p> <p>8 complete your statement?</p> <p>9 MS. HEARTSONG: I think so.</p> <p>10 HEARING EXAMINER GROSSMAN: All right. Hold on</p> <p>11 one second. Ms. Girard, do you have any questions of this</p> <p>12 witness?</p> <p>13 MS. GIRARD: No.</p> <p>14 HEARING EXAMINER GROSSMAN: All right. Ms.</p> <p>15 Rosenfeld?</p> <p>16 MS. ROSENFELD: No, thank you.</p> <p>17 HEARING EXAMINER GROSSMAN: All right.</p> <p>18 MS. HEARTSONG: Thank you.</p> <p>19 HEARING EXAMINER GROSSMAN: Thank you very much</p> <p>20 for coming down and sharing that.</p> <p>21 MS. HEARTSONG: Thank you.</p> <p>22 HEARING EXAMINER GROSSMAN: Okay. Deborah Chafee,</p> <p>23 is that correct?</p> <p>24 MS. CHALFIE: Right, Chalfie.</p> <p>25 HEARING EXAMINER GROSSMAN: Chalfie, I'm sorry,</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">45</p> <p>1 yes. Would you state your full name and address, please? 2 MS. CHALFIE: Deborah Chalfie, 511 Albany Avenue, 3 Tacoma Park, Maryland. 4 HEARING EXAMINER GROSSMAN: Okay. Would you raise 5 your right hand, please? Do you swear or affirm to tell the 6 truth, and nothing but the truth under penalty of perjury? 7 MS. CHALFIE: I do. 8 HEARING EXAMINER GROSSMAN: All right. You may 9 proceed. 10 MS. CHALFIE: Great. Well, good morning. 11 HEARING EXAMINER GROSSMAN: Good morning. 12 MS. CHALFIE: I'm Deborah Chalfie. I'm not a 13 Kensington resident. I live in Tacoma Park, but I've lived 14 in Montgomery County for nearly 40 years. I have family in 15 Rockville. So I come back and forth a lot to visit. And I 16 regularly patronize businesses in Kensington. My vet is on 17 Metropolitan Avenue. I go to Knowles Pharmacy. I patronize 18 the antique shops. And I would come more often if there were 19 restaurants or shops or other kinds of activities that were 20 of interest. I also have a 25 year interest in Art Deco and 21 midcentury modern architecture. I was very alarmed therefore 22 to see posting for the conditional use of replacing the 23 current gas station on the Huggins property with a self- 24 storage facility. So that's why I'm here today. I'm here as 25 an individual who is opposed to the proposed conditional use</p>	<p style="text-align: right;">47</p> <p>1 calls for. I urge you to wait for something better. I know 2 some on the other side are trying to sow anxiety, that the 3 site can't support anything else but this. It's the only 4 financially feasible use. If it's not snapped up now, we 5 will have to wait how long and we will be stuck with 6 vegetables and mulch piles. But the mulch piles and 7 vegetables are easily moved. If Kensington settles now for a 8 self-storage building, the town will be stuck with it for 40 9 to 50 years, and it will set the stage. It will set a 10 precedence for future redevelopment in Kensington. I note 11 when I read the read -- the report said there are already two 12 self-storage facilities close by. This third one I think 13 would cement the area as a self-storage mecca. And I don't 14 think that's what Kensington is looking for. It is worth 15 further exploration and waiting a little longer to get this 16 right. I also agree with the staff report's appropriate 17 consideration of the gas station that's now on the site. The 18 station is highlighted in the inventory of buildings noted in 19 the book, Montgomery Modern. It's a piece of the town's 20 history and it's an excellent and rare example of the Google 21 style of midcentury modern architecture and represents the 22 kind of scale and historic character that the plan says it 23 wants to preserve. I also think that that's -- 24 HEARING EXAMINER GROSSMAN: You're suggesting a 25 plan -- the Kensington sector plan would preserve the gas</p>
<p style="text-align: right;">46</p> <p>1 and I urge you to deny the application. Connecticut Avenue 2 is one of the country's great boulevards. It runs from the 3 White House all the way up to Leisure World. Much of it is 4 residential. It has great homes. It has grand old apartment 5 buildings. And it has high quality commercial nodes along 6 the way. The corner at Plyers Mill is also a major 7 intersection on that boulevard and part of the town core. 8 Kensington's town center aspires to be something that's 9 vibrant and animated and something that fits with the 10 community. And it could be the next high quality commercial 11 node on Connecticut Avenue. And smart redevelopment could 12 create some cohesion and livability in that area that's not 13 there right now. But the proposed use, I think, it's 14 fundamentally unsuited for the site because of several 15 reasons. The proposed building is hulking, it's looming, 16 it's anonymous, and is unappealing. It wouldn't activate or 17 animate the area. Self-storage is a dead use. I know 18 because there is a self-storage facility right down the 19 street from me near Montgomery College. It would decimate, 20 not elevate, the quality of commercial development in the 21 core. And by my calculation, the mixed use part of the 22 proposed building would constitute only 11 percent of the 23 square footage. 90 percent would be self-storage. And I 24 question whether one restaurant and a handful of artists can 25 really carry the load in terms of doing what the sector plan</p>	<p style="text-align: right;">48</p> <p>1 station? 2 MS. CHALFIE: No, it doesn't say anything about 3 preserving the gas station per se. But it does say that one 4 important goal as part of the vision is to preserve the scale 5 and historic character of the town core. And that gas 6 station is currently part of that and has been there for 7 quite a while. 8 HEARING EXAMINER GROSSMAN: Well, are you 9 suggesting that the implication of the sector plan is to 10 preserve that gas station given its architecture? 11 MS. CHALFIE: I'm saying it would be consistent 12 with the sector plan. And what I was just going to say was 13 that the site is big enough to support both some kind of 14 adaptive reuse of the gas station, plus some additional 15 development to help animate that intersection. 16 HEARING EXAMINER GROSSMAN: Okay. 17 MS. CHALFIE: I appreciate the chance to speak 18 today, even though I'm not a resident of Kensington. But I 19 do feel strongly about both the gas station and the 20 preservation of important architecture, as well as believing 21 very strongly in creating livable communities. And I think 22 this proposed conditional use is just not compatible with any 23 of that. 24 HEARING EXAMINER GROSSMAN: All right. Ms. 25 Girard, do you have any questions?</p>

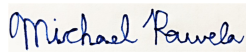
Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">49</p> <p>1 MS. GIRARD: No questions. 2 HEARING EXAMINER GROSSMAN: Ms. Rosenfeld? 3 MS. ROSENFELD: No. 4 HEARING EXAMINER GROSSMAN: No? 5 MS. ROSENFELD: Thank you. 6 HEARING EXAMINER GROSSMAN: All right. 7 MS. CHALFIE: Thank you. 8 HEARING EXAMINER GROSSMAN: Thank you very much 9 for coming down. We are always happy to hear from members of 10 the community in either direction. It always helps in 11 deciding these cases. 12 MS. CHALFIE: Thank you. 13 HEARING EXAMINER GROSSMAN: Thank you, very much. 14 Okay. Julia O'Malley. No, I'm sorry. I skipped Molly 15 Hauck. Would you state your full name and address, please? 16 MS. HAUKE: My name is Molly Hauck, and my address 17 is 3900 Decatur Avenue, Kensington. 18 HEARING EXAMINER GROSSMAN: All right. Would you 19 raise your right hand, please? Do you swear or affirm to 20 tell the truth, the whole truth and nothing but the truth 21 under penalty of perjury? 22 MS. HAUKE: I do. 23 HEARING EXAMINER GROSSMAN: All right. You may 24 proceed. 25 MS. HAUKE: Okay. I have lived in Kensington since</p>	<p style="text-align: right;">51</p> <p>1 and other parts of Kensington, and not sophisticated or 2 attractive enough for 21st-century Montgomery County. The 3 Town of Kensington claims that storage units are consistent 4 with the Kensington sector plan because there already are two 5 nearby. I just reread the Kensington sector plan and I don't 6 see anything in it that suggests that this is inconsistent 7 with it. The sector plan tries to create mixed-use 8 buildings, which this is. It tries to get people to walk, 9 which this would do if people live relatively nearby. Mixed- 10 use buildings attract people. Restaurants, art studios, and 11 art openings attract people. I don't care how many storage 12 facilities are in Kensington as long as they are attractive. 13 Storage units are the only way to pay for this expensive 14 site, which I've heard is going for \$4 million. Restaurants 15 and artists can't support that. People only see storage 16 units if they have large signs on them. The design of the 17 proposed building has lots of windows on the lower two floors 18 and gives no indication that storage units are on the upper 19 floors. Signs on it are on underground. Signs on the 20 proposed building could be designed so the restaurant and 21 artist studios are highlighted and storage is in smaller, 22 less noticeable print. The site has many constraints. It is 23 totally unsuitable for residential or office space because 24 there are gas stations on both sides of it and across the 25 street, and a fire station is across the street. No one in</p>
<p style="text-align: right;">50</p> <p>1 1982, 37 years; 35 in Chevy Chase View, and 2 in Rock Creek 2 Palisades. There are many things I like about Kensington, 3 but the appearance of Connecticut Avenue is not one of them. 4 It's been filled with ugly gas stations the whole time I've 5 lived here. Opportunities for dinner, drinks, and artist 6 studios in Kensington have always been very limited. I would 7 much rather go to dinner, a drink or two, an art show in 8 Kensington than Bethesda, or Silver Spring. And I would like 9 to see money spent by Kensington residence stay in 10 Kensington. I'm very excited about the prospect of an 11 attractive mixed-use building with approximately 30 artist 12 studios and a restaurant. I would like to be proud of the 13 way Connecticut Avenue looks rather than be embarrassed by 14 it. Connecticut Avenue is wall-to-wall gas stations. There 15 are many nearby on Connecticut Avenue near this site, one on 16 each side and across the street from the proposed side, one 17 on the block just south of it all on the west side of the 18 street, and two on the block just north of it for a total of 19 seven gas stations on Connecticut Avenue. Kensington is the 20 gas station capital of Montgomery county. Gas stations are 21 far more unattractive and environmentally detrimental than 22 storage units, and they contribute to traffic where storage 23 doesn't. Approving this building would get rid of one gas 24 station. And Google architecture is not a style that is 25 consistent with Victorian Kensington, the Town of Kensington,</p>	<p style="text-align: right;">52</p> <p>1 their right mind would want to live or work there. Traffic 2 on the Connecticut Avenue and Plyers Mill is terrible. The 3 proposed uses are the only possible ones and storage units 4 are the only way to pay for them. The people who will go to 5 a restaurant and artist studios in an unattractive area, and 6 they don't care where they put their storage. Storage is 7 also an advantage because it will generate very little 8 traffic. Let's focus on enlivening Connecticut Avenue and 9 make it somewhat more attractive. The building that the 10 developers has done is very attractive and the plaza is 11 welcoming. The restaurant and artist studios would enliven 12 Kensington and make it more interesting. It would enable 13 Kensington residents to go out to dinner in Kensington; 14 artists who work in Kensington and have art openings that 15 draw people from the community. I applaud the developers for 16 continuing to pursue this project and being willing to incur 17 the cost of cleaning up the environmental impact of the gas 18 station. If approved, I predict that people will forget 19 about the conflicts of surrounding its inception. It will be 20 hugely popular and people from all parts of Kensington and 21 surrounding areas will walk and drive to the restaurant and 22 artist openings. 23 HEARING EXAMINER GROSSMAN: Thank you, Ms. Hauck. 24 Questions? 25 MS. GIRARD: No questions.</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">53</p> <p>1 HEARING EXAMINER GROSSMAN: Any questions? 2 MS. ROSENFELD: No. 3 HEARING EXAMINER GROSSMAN: All right. Thank you, 4 very much. I appreciate you coming down here and sharing 5 your thoughts. And Julia O'Malley? Welcome. 6 MS. O'MALLEY: Thank you. 7 HEARING EXAMINER GROSSMAN: Would you state your 8 full name and address, please? 9 MS. O'MALLEY: Julia O'Malley, 10019, Frederick 10 Avenue in the Town of Kensington. 11 HEARING EXAMINER GROSSMAN: All right. Will you 12 raise your right hand, please? Do you swear or affirm to 13 tell the truth, the whole truth, and nothing but the truth 14 under penalty of perjury? 15 MS. O'MALLEY: I do. 16 HEARING EXAMINER GROSSMAN: You may proceed. 17 MS. O'MALLEY: I've lived in Kensington over 40 18 years. I've been active in the historical society for all 19 but one of those years, the very first year. I have been 20 active on town committees including the revitalization 21 committee, working on the sector plan. I've been on the 22 historic preservation commission for the County. And I've 23 been, most recently and still am the president of the 24 Historical Society of Kensington. 25 HEARING EXAMINER GROSSMAN: All right. So just to</p>	<p style="text-align: right;">55</p> <p>1 sector plan called for being engaged with the railroad and 2 Howard Avenue. 3 HEARING EXAMINER GROSSMAN: So you are saying that 4 the back wall will not be engaged with Metropolitan Avenue or 5 whatever -- 6 MS. O'MALLEY: With Howard Avenue and the 7 railroad. 8 HEARING EXAMINER GROSSMAN: Howard Avenue, okay. 9 MS. O'MALLEY: This plan relies on pass-through 10 exit to an entrance from southbound Connecticut, 11 Metropolitan, or Plyers Mill Avenue through the barely 12 adequate Baskin-Robbins, 7-Eleven, Manny's Pizza and Subs 13 parking lot. To exit onto Metropolitan headed towards 14 Connecticut South or Plyers Mill East makes it extremely 15 difficult traffic stopping left turn at that intersection. 16 Please note the side -- the crosswalk with no walking light 17 at that corner is a pedestrian crossing often used by the 18 North residential -- North Kensington residential 19 neighborhood. And they come that way to come to the shops 20 and to the south side of town. The Town has worked with the 21 state for decades to improve the intersection at that corner 22 and has not succeeded after many changes. Intersection 23 improvement should be a requirement before a development of 24 this size is approved. The developer's effort to make a 25 storage building look like a conventional commercial or</p>
<p style="text-align: right;">54</p> <p>1 make sure that the record is clear, I take it you're 2 testifying here on your own behalf, not on behalf of any of 3 those organizations you mentioned? 4 MS. O'MALLEY: The Historical Society did vote 5 unanimously to oppose this development. 6 HEARING EXAMINER GROSSMAN: But are you here as a 7 representative or are you here as an individual? 8 MS. O'MALLEY: I guess I'm here individually. 9 HEARING EXAMINER GROSSMAN: Okay, because there is 10 a difference in terms of what the rules require for 11 disclosure and so one for those two things. 12 MS. O'MALLEY: Okay. 13 HEARING EXAMINER GROSSMAN: Okay. So we take your 14 testimony here as on your own behalf. 15 MS. O'MALLEY: All right. 16 HEARING EXAMINER GROSSMAN: We understand your 17 background. Thank you. 18 MS. O'MALLEY: All right. So I think I want to go 19 over some of the main points that I have about the reason 20 that this is not appropriate for this site. In sector plan 21 CRT -- the CRT allowance for this property assumes the 22 combined multi-lot parcel, not just a large project crowded 23 onto a single lot. The sector plan outlined three lots. The 24 developers project will have a 75 foot flat back wall facing 25 Kensington's main street and antique row, Howard Avenue. The</p>	<p style="text-align: right;">56</p> <p>1 residential building is not likely to work. The type of 2 glass that is necessarily used to face the opaque wall 3 behind, most if not all the windows in the South storage 4 building is reflective glass. These look nothing like actual 5 transparent window through which people, furnishings, and 6 most importantly light, can be seen within a building and 7 which give evidence of life and human activity within. Such 8 a building is an odd hybrid and is a cold presence in a 9 hierarchical significant location where the community needs 10 one of higher purpose, one that engages the community. If we 11 are to help reserve the grievous effects of the inescapable 12 highway corridor door that has come to dominate our 13 commercial building environment, we need to have buildings 14 that communicate with the people. The town's beginnings 15 reflect a clear vision creating a peaceful community, livable 16 and walkable. Our major intersections need to reflect that 17 or we no longer look or work like a town. Allowing this 18 highly inappropriate use mismatched with Metropolitan Avenue, 19 ignoring crosswalks to the neighborhoods, and blocking 20 intersections could be precedent-setting and detrimental to 21 our town of 2,000 residents and its future development. The 22 sector plan design guidelines were developed to promote the 23 community's heritage through its buildings, spaces, and 24 people. New development should be sensitive to the historic 25 architecture, interpreting existing elements in a new way.</p>

Transcript of Administrative Hearing  
Conducted on August 9, 2019

<p style="text-align: right;">57</p> <p>1 If this project goes through, we will be guaranteed a 75 foot 2 self-storage monolith, which will show how the sector plan 3 has failed us. This only has parking on the site for 58 to 4 60 cars, not adequate for its use. 5 HEARING EXAMINER GROSSMAN: You mean for its self- 6 storage use or for the restaurant plus the -- 7 MS. O'MALLEY: For the restaurants. For all 8 three. 9 HEARING EXAMINER GROSSMAN: All right. Okay. 10 MS. O'MALLEY: As well as the open houses, which I 11 understand they could use valet parking, but there are no 12 places nearby for it. 13 HEARING EXAMINER GROSSMAN: What do you mean open 14 houses? 15 MS. O'MALLEY: For the art, artist studio. 16 HEARING EXAMINER GROSSMAN: Oh, I see. 17 MS. O'MALLEY: As far as the historic preservation 18 writeup in the sector plan, it talks about the gas station 19 being constructed in 1961. It's highlighted in the inventory 20 of Montgomery Modern Buildings and districts for the county. 21 And it is in the Montgomery Modern book that was written 22 recently. 23 HEARING EXAMINER GROSSMAN: Are you advocating 24 retaining the gas station in any plans? 25 MS. O'MALLEY: I would like to see it retained. I</p>	<p style="text-align: right;">59</p> <p>1 right. Thank you very much for coming down here and sharing 2 your views. I appreciate that. 3 MS. O'MALLEY: Thank you. 4 HEARING EXAMINER GROSSMAN: All right then. So is 5 there anything else that we should be handling now in 6 anticipation of our return to this hearing room on August 20? 7 MS. GIRARD: I can't think of anything. 8 MS. ROSENFELD: Nothing comes to mind. 9 HEARING EXAMINER GROSSMAN: Okay. All right then. 10 I don't know -- let's see; the 20th. I'm just trying to 11 remember whether we will have the transcript back in time. 12 This is the -- yes, we should have the transcript back next 13 week. So that's well, maybe not. Maybe it will just come on 14 the 20th on its normal time schedule. Given what's -- that 15 we are coming back here, why don't I -- I'm going to order 16 the transcript on a 48 hour turnaround, so that we can post 17 it on our website if anybody wishes to see that. All right. 18 If there is nothing else than for today, we are recessed 19 until August 20. Thank you all very much. Have a good 20 weekend. 21 MS. GIRARD: Thank you, you too. 22 MS. ROSENFELD: You too. 23 (Off the record at 11:00 a.m.) 24 25</p>
<p style="text-align: right;">58</p> <p>1 think it could be a great reuse for a restaurant. I think 2 there is room on the rest of the site for more building to go 3 with it, to expand it. 4 HEARING EXAMINER GROSSMAN: The sign would say eat 5 here and get gas or is it -- 6 MS. O'MALLEY: No, it wouldn't be gas. It would 7 be an interesting architectural reuse of the building. 8 HEARING EXAMINER GROSSMAN: Okay. 9 MS. O'MALLEY: As opposed to tearing something 10 down and building something else. 11 HEARING EXAMINER GROSSMAN: Okay. 12 MS. O'MALLEY: I think that most people in 13 Kensington would love to have the Artists and Makers in town. 14 We have a lot of other space in town that could be used for 15 that. And I would like to see the Town work with them to 16 bring them into town. Just down the street there is a huge 17 Bakers Union building with a big outdoor terrace and always 18 having signs for lease up on it. I think that concludes most 19 of my comments. 20 HEARING EXAMINER GROSSMAN: Okay. 21 MS. O'MALLEY: Thank you for this opportunity. 22 HEARING EXAMINER GROSSMAN: Thank you. Hold on 23 one second. Do you have any cross-examination questions? 24 MS. ROSENFELD: I do not. 25 HEARING EXAMINER GROSSMAN: Ms. Rosenfeld? All</p>	<p style="text-align: right;">60</p> <p>1 CERTIFICATE OF COURT REPORTER 2 I, Michael Pawela, the officer before whom 3 the foregoing proceedings were taken, do hereby 4 certify that said proceedings were electronically 5 recorded by me; and that I am neither counsel for, 6 related to, nor employed by any of the parties to 7 this case and have no interest, financial or 8 otherwise, in its outcome. 9 10 11 12 13  14 _____ 15 Michael Pawela, Court Reporter 16 17 18 19 20 21 22 23 24 25</p>



Transcript of Administrative Hearing  
Conducted on August 9, 2019

1 CERTIFICATE OF TRANSCRIBER

2 I, Molly Bugher, do hereby certify that the foregoing  
3 transcript is a true and correct record of the recorded  
4 proceedings; that said proceedings were transcribed to the  
5 best of my ability from the audio recording and supporting  
6 information; and that I am neither counsel for, related to,  
7 nor employed by any of the parties to this case and have no  
8 interest, financial or otherwise, in its outcome.

9  
10 *Molly Bugher*

11 \_\_\_\_\_  
12 Molly Bugher

13 DATE: August 13, 2019

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25