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Transcript of Hearing

Date: April 13, 2021

Case: The Primrose School

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Transcript of Hearing

1 (1 to 4)

<p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 THE PRIMROSE SCHOOL, :</p> <p>5 Applicant. : Case No.: CU 18-08</p> <p>6 -----x</p> <p>7</p> <p>8</p> <p>9 HEARING</p> <p>10 BEFORE HEARING EXAMINER LYNN A. ROBESON HANNAN</p> <p>11 Conducted Virtually</p> <p>12 Tuesday, April 13, 2021</p> <p>13 3:39 p.m. EDT</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 No. 366893</p> <p>24 Pages: 1-63</p> <p>25 Transcribed by: Megan Wunsch, AAERT CET</p>	<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR MONTGOMERY COUNTY OFFICE OF ZONING AND ADMINISTRATIVE</p> <p>4 HEARINGS:</p> <p>5 LYNN ROBESON HANNAN, HEARING EXAMINER</p> <p>6</p> <p>7 FOR THE APPLICANT:</p> <p>8 JODY S. KLINE, ESQUIRE</p> <p>9 MILLER, MILLER & CANBY</p> <p>10 200-B Monroe Street</p> <p>11 Rockville, MD 20850</p> <p>12 (301) 762-5212</p> <p>13</p> <p>14 FOR CAROL KOSARY, PAUL POSEY, CECELIA ENGLISH:</p> <p>15 WILLIAM J. CHEN, JR., ESQUIRE</p> <p>16 THE LAW OFFICES OF WILLIAM J. CHEN, JR., LLC</p> <p>17 200-A Monroe Street, Suite 300</p> <p>18 Rockville, MD 20850</p> <p>19 (301) 279-9500</p> <p>20</p> <p>21 Also Present:</p> <p>22 Carol Kosary, Sarah Newens, Alana Chamoun,</p> <p>23 Carla J. Ammerman, Cecelia English, Robert O'Malley,</p> <p>24 Elaine McCann French, Srikanth Mandava, Teresa Lucas</p> <p>25</p>
<p>1 Hearing in re The Primrose School, Applicant, held</p> <p>2 virtually.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Pursuant to agreement, before Sarah Loiler, Notary</p> <p>10 Public in and for the Commonwealth of Virginia.</p> <p>11</p> <p>12</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</p> <p>24</p> <p>25</p>	<p>1 C O N T E N T S</p> <p>2 TRANSCRIPT OF PROCEEDINGS PAGE</p> <p>3 Closing Argument by Mr. Kline 6</p> <p>4 Closing Argument by Mr. Chen 27</p> <p>5 Rebuttal Argument by Mr. Kline 55</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 (No exhibits marked.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</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</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER ROBESON HANNAN: This is a</p> <p>3 continuance of the case of CU -- OZAH Case No. CU 18-08, an</p> <p>4 application for -- by Primrose School for a daycare center</p> <p>5 for 195 students at 7430 Needwood Road, Derwood, Maryland.</p> <p>6 Will the parties please identify themselves for the</p> <p>7 record.</p> <p>8 MR. KLINE: Good afternoon. For the record, my</p> <p>9 name is Jody Kline, K-L-I-N-E. I'm an attorney with the</p> <p>10 law firm of Miller, Miller & Canby with offices at 200-B,</p> <p>11 as in boy, Monroe Street, Rockville, Maryland, representing</p> <p>12 the Applicant in this case.</p> <p>13 MR. CHEN: Good afternoon. My name is Bil Chen,</p> <p>14 C-H-E-N, and I'm an attorney representing Carol Kosary,</p> <p>15 K-O-S-A-R-Y, Paul Posey, P-O-S-E-Y, and C.C. English, with</p> <p>16 law offices located at 200-A, capital A, Monroe Street,</p> <p>17 Suite 300, Rockville, Maryland 20850.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Thank you. All</p> <p>19 right. We're here for closing arguments. Are there any</p> <p>20 preliminary matters, or should -- are you ready to proceed?</p> <p>21 MR. KLINE: The Applicant's ready to proceed.</p> <p>22 MR. CHEN: Ready to proceed, Madam Hearing</p> <p>23 Examiner.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Okay. We'll</p> <p>25 start with the Applicant, we'll go to Mr. Chen, and then,</p>	<p style="text-align: right;">7</p> <p>1 HEARING EXAMINER ROBESON HANNAN: I think it's</p> <p>2 priority funding.</p> <p>3 MR. KLINE: Pardon?</p> <p>4 HEARING EXAMINER ROBESON HANNAN: I'm sorry.</p> <p>5 Priority funding area.</p> <p>6 MR. KLINE: I'm sorry. Did I -- okay. Thank you.</p> <p>7 A slur or something, I'm sure.</p> <p>8 Yeah, the priority funding area and, more</p> <p>9 importantly from my client's point of view, that there</p> <p>10 wouldn't be any governmental reason why we would not be</p> <p>11 able to put in a storm drain to replace an existing failing</p> <p>12 storm drain. And I'm just pleased that that's off the</p> <p>13 table, and we can not talk about it.</p> <p>14 And I might add, members, I'm going to just go</p> <p>15 offline briefly so that I do shuffle my papers, it doesn't</p> <p>16 cause a problem as we were commenting the other day.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: We'll figure that</p> <p>18 out.</p> <p>19 MR. KLINE: That'll be a scientific thing to be</p> <p>20 studied, I guess, at another point in time.</p> <p>21 Going back to my comments about trying to take a</p> <p>22 view of the -- a higher level view of this. I'd like to</p> <p>23 compliment Mr. Davis. I thought Mr. Davis' testimony about</p> <p>24 the Upper Rock Creek Master Plan was -- was balanced. I</p> <p>25 can't remember if he used the term layers or not, but I --</p>
<p style="text-align: right;">6</p> <p>1 Mr. Kline, you can have a five-minute rebuttal, if you</p> <p>2 wish. All right.</p> <p>3 CLOSING ARGUMENT ON BEHALF OF THE APPLICANT</p> <p>4 MR. KLINE: Thank you. Good afternoon again.</p> <p>5 First of all, thank you for not forcing us to do</p> <p>6 this when we completed the testimony taken the other day</p> <p>7 because it did give me an opportunity to organize things</p> <p>8 into, what I kept saying, a more cogent fashion.</p> <p>9 More importantly, I think, though, it made me</p> <p>10 realize that after ten and a half days of hearings, we</p> <p>11 didn't have to argue everything. It was probably better to</p> <p>12 kind of take a step back and try and look at the big</p> <p>13 picture of things. So I think I will be, therefore, a</p> <p>14 little bit more concise in my arguments than we were</p> <p>15 individually. And then today's experience tells me we</p> <p>16 probably ought to be even more concise in order to try and</p> <p>17 get us out of here at a reasonable hour.</p> <p>18 So, having said all that and consistent with that</p> <p>19 sort of introduction, I was pleased that we were able to</p> <p>20 come to some understanding about one of the issues that I</p> <p>21 thought we spent a lot of time talking about, the primary</p> <p>22 funding area, and I think that we concluded that the</p> <p>23 property, the subject property, is not included within a</p> <p>24 primary funding area and, more importantly from my client's</p> <p>25 point --</p>	<p style="text-align: right;">8</p> <p>1 but I thought that that was an appropriate way to describe</p> <p>2 the plan.</p> <p>3 And I would say that the Applicant and the</p> <p>4 opposition are all -- actually not all that far apart in</p> <p>5 the sense of what the plan is trying to accomplish, but in</p> <p>6 -- but in the end, and I'm going to kind of rush through an</p> <p>7 awful lot of stuff to say this, but, in the end, the</p> <p>8 subject property -- actually, could I do this? Maybe it'd</p> <p>9 be a good time to do that. Could you pull up the staff</p> <p>10 report, Exhibit 106, and in particular page 7.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. You should</p> <p>12 be seeing it.</p> <p>13 MR. KLINE: Yeah. And if you can scroll up a</p> <p>14 little higher, there we go, just so we can get the subject</p> <p>15 property there. Yeah.</p> <p>16 It -- I'm using that more as a backdrop for your</p> <p>17 consideration rather than to make specific points, but</p> <p>18 clearly the Upper Rock Creek Plan was intended to try and</p> <p>19 improve the environmental conditions of all the area</p> <p>20 included within the Upper Rock Creek Plan, which included</p> <p>21 everything all the way -- you can see up in the north</p> <p>22 there, into the Olney and the upper county area, all the</p> <p>23 way down to the red at the bottom, which is essentially</p> <p>24 adjacent to the Shady Grove metro station.</p> <p>25 But where I think the Applicant and the opposition</p>

<p style="text-align: center;">9</p> <p>1 disagreed is the emphasis to be put on the language in the 2 plan in terms of, did everything in the plan apply to this 3 property as compared to other parts of the plan? 4 And so the distinguishing factor is what we, the 5 Applicant, thought were relevant as it relates to -- or 6 what were relevant in the plan relating to this property 7 were the fact that the subject property is not in the 8 special protection area. It's not north of Muncaster Mill 9 Road, which you can see diagonally running from the mid- 10 left to the lower-right corner through the planning area. 11 The subject property's not located in the most sensitive 12 watershed, the North Branch of the Upper Rock Creek area, 13 the main stem. It's not the most -- the area that is the 14 most sensitive, and it isn't subject to any of the 15 impervious limits simply because it's not considered to be 16 as important. 17 So, for all of those reasons, we felt that the 18 Master Plan language pushing for environmental sensitivity 19 is good and valid and should have effect on some of the 20 design guidelines or design recommendations for the 21 property, but they weren't binding because they don't 22 really apply to this property in that regard. 23 And in the context of what is this application 24 doing to basically promote the goals of the Master Plan, I 25 would say, as you heard some of our witnesses say, that the</p>	<p style="text-align: center;">11</p> <p>1 basically saying that 75 percent of the traffic that's 2 going through the master planning area is actually through 3 traffic or commuter traffic, and only 25 percent of the 4 traffic is generated within the -- this planning area. And 5 there is discussion in the plan about that does cause some 6 out-of-area congestion on the roads. But -- 7 MR. CHEN: Excuse me. Excuse me. Mr. Kline, if 8 you are -- Madam Examiner, if Mr. Kline is just referring 9 you to language in the Master Plan, the Master Plan's in 10 the record, and I do not object to that; however, my 11 recollection is there has been no testimony presented by 12 the Applicant or the opposition relative to pages 63 and 13 64, and I would object to Mr. Kline interpreting or 14 characterizing that -- those pages of the Master Plan. 15 Again, if he's merely referring the Examiner to 16 those two pages, I don't have an objection, but if he's 17 going to offer interpretation, commentary, or anything else 18 about what is contained on those two pages, I object. 19 HEARING EXAMINER ROBESON HANNAN: Mr. Kline. 20 MR. KLINE: I'll do it this way. I'll -- I'll read 21 the citation on page 63 and 64 that Mr. Davis and I talked 22 about the other day. I don't think, consistent with my 23 earlier point, that you want me to take the time now to 24 find the language in the Plan that does talk about the 25 congestion that comes from that. We'll just -- we'll just</p>
<p style="text-align: center;">10</p> <p>1 reconstruction of the storm drain system to eliminate an 2 existing environmental problem probably -- well, is a major 3 benefit to the watershed. 4 And that -- the last thing I'll say, it's probably 5 more of a visual cue, but it goes to the point about the 6 layers and the -- the -- where the property is located -- 7 and when you take a look at the site as it's marked on the 8 -- page 7 of the Master Plan that's showing right now, I 9 don't think I heard anybody use this term, but -- but the 10 subject property is, in my opinion, or the Applicant's 11 opinion, an outlier. It is separated from the more -- 12 areas attracting the more intensive use. 13 And I have difficulty identifying this property 14 being in the residential wedge when it is -- when it's 15 walking distance to the Shady Grove metro station as 16 compared to the area north of Muncaster Mill Road which 17 gets the most attention in the Master Plan. So I use those 18 points as distinguishing the subject property from the 19 overall environmental recommendations in the Master Plan 20 and their reduced level of applicability to the subject 21 property. 22 The Master Plan does give us guidance about traffic 23 also. And you may recall the dialogue I had with Mr. Davis 24 and when we -- I can't remember if he read it or I read it, 25 but talked about language in the Master Plan on 63 and 64,</p>	<p style="text-align: center;">12</p> <p>1 -- 2 HEARING EXAMINER ROBESON HANNAN: Well, I just said 3 it today, I -- oh, the congestion that comes from it. Oh, 4 I see. Okay. 5 MR. KLINE: Yeah. Right. 6 HEARING EXAMINER ROBESON HANNAN: It does say 25 7 percent is through traffic, I think. 8 MR. KLINE: Right. I'll just -- I'll just leave 9 that language standing as it is. 10 HEARING EXAMINER ROBESON HANNAN: Okay. 11 MR. KLINE: Okay. But -- 12 HEARING EXAMINER ROBESON HANNAN: Well, you don't 13 have to read it. I know that -- 14 MR. KLINE: Yeah. 15 HEARING EXAMINER ROBESON HANNAN: -- there's 16 language about 25 percent is -- I think it's on 63 or '4. 17 MR. KLINE: It is -- well, yeah, you are correct on 18 those two pages. But, frankly, I actually wanted to stress 19 the 75 percent of the traffic that's traveling through the 20 area is from -- 21 HEARING EXAMINER ROBESON HANNAN: Oh. 22 MR. KLINE: -- outside the planning area that -- 23 that -- that -- and without characterizing what that -- 24 that has an effect. 25 MR. CHEN: Objection. Again, if the language is</p>

<p style="text-align: right;">13</p> <p>1 there, fine, but the characterization, interpretation, the</p> <p>2 commentary on it, I object to.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: All right. Well,</p> <p>4 unless you can point us to a particular page, the</p> <p>5 particular language, Mr. Kline, we'll go with the 25</p> <p>6 percent and, you know, make what we can of the 75 percent,</p> <p>7 subject to, you know, whatever's in the record.</p> <p>8 MR. KLINE: I'm fine with that. The 75-25 is what</p> <p>9 I wanted to get across. But the -- what that was going to</p> <p>10 lead me to was regardless of where the traffic is coming</p> <p>11 from, is there a problem?</p> <p>12 And the -- what I wanted to stress was the</p> <p>13 testimony you heard from our traffic engineer that the --</p> <p>14 all the studies that were done and completed and approved</p> <p>15 by the local planning agency all indicated that the</p> <p>16 application complies with the Adequate Public Facilities</p> <p>17 Ordinance.</p> <p>18 The intersections work at acceptable levels of</p> <p>19 service. 95 percent of the light cycles -- rephrase that</p> <p>20 -- 95 percent of the time, traffic will not back up beyond</p> <p>21 -- on Needwood Road beyond Carnegie Drive. The queues</p> <p>22 basically clear in cycle. The gap study shows there's</p> <p>23 adequate intervals for vehicle turning movements into and</p> <p>24 out of the site. And, most importantly, given all the</p> <p>25 concern and the testimony that Mr. Davis put so much weight</p>	<p style="text-align: right;">15</p> <p>1 MR. KLINE: Yes, ma'am.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Someday I'll get</p> <p>3 this straight. I still don't have it straight.</p> <p>4 MR. CHEN: Just past it, I think.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Yes, I'm getting</p> <p>6 there. It's the valuation stuff; correct? Okay.</p> <p>7 MR. KLINE: Yeah, it's the tax appeal information.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>9 MR. KLINE: And what I really wanted to get to was</p> <p>10 the page that Mr. Posey put together that showed basically</p> <p>11 the evolution of his -- of the family's tax bill. I had</p> <p>12 written down point 1. Yeah. Thank you. Great.</p> <p>13 First of all, Mr. Chen and I have been doing this a</p> <p>14 long time, but I've never had a case that turned on the</p> <p>15 issue of economic value. That's been discussed, but it's</p> <p>16 never been a deciding factor in a case that I've been</p> <p>17 involved in.</p> <p>18 And I wanted to -- I wanted to remind you that the</p> <p>19 Applicant's appraiser acknowledged that any -- well,</p> <p>20 acknowledged that there would be a reduction in the value</p> <p>21 of the adjacent property next door that would be</p> <p>22 attributable to the construction of the Primrose School,</p> <p>23 but of course the point was that would occur in any event,</p> <p>24 under any use that would occur on the property, simply</p> <p>25 because the very special, pristine nature of the property</p>
<p style="text-align: right;">14</p> <p>1 on in terms of congestion and safety issues, is that there</p> <p>2 have been no record of any accidents on that road in the</p> <p>3 last three years -- rephrase that -- in the last three</p> <p>4 years, reported years, which do not, I might add, include</p> <p>5 2020 code year.</p> <p>6 So there is not a demonstrable safety problem</p> <p>7 that's shown up. And, by all standards that we normally</p> <p>8 assess traffic in Montgomery County, the application</p> <p>9 satisfies that requirement. And, therefore, the</p> <p>10 application meets the standards of the Adequate Public</p> <p>11 Facilities Ordinance and allows for safe and efficient flow</p> <p>12 of traffic past and --</p> <p>13 (Technical interruption.)</p> <p>14 THE REPORTER: I'm sorry. This is the court</p> <p>15 reporter. You said "past," and then it muted.</p> <p>16 MR. KLINE: Yeah, I'm sorry. I was a little too</p> <p>17 quick on the button. "Past and around the site," was what</p> <p>18 I wanted to say.</p> <p>19 THE REPORTER: Thank you.</p> <p>20 MR. KLINE: Madam Hearing Examiner, could you pull</p> <p>21 up Exhibit AAAAA.1, which I believe is in 227, and I think</p> <p>22 that's in the -- I think it's in the D section.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Is that four A's?</p> <p>24 MR. CHEN: Five.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Five A's?</p>	<p style="text-align: right;">16</p> <p>1 would be changing by virtue of any development around it.</p> <p>2 The point that I wanted to try and make, based on</p> <p>3 the information that you're taking a look at, and if you</p> <p>4 remember the sequence -- and I'm having a little trouble</p> <p>5 reading it, so if my numbers are off a little bit, I'm --</p> <p>6 I'll just be sort of generic about it. The -- the initial</p> <p>7 assessment was reduced -- thank you. The initial</p> <p>8 assessment was reduced by \$52,400, presumably as a response</p> <p>9 to a summation by Mr. Posey with a very compelling</p> <p>10 photograph showing what they had to endure next door.</p> <p>11 What was a little surprising was, somewhat</p> <p>12 gratuitously, the next tax cycle period it was reduced</p> <p>13 again by another \$28,800, presumably, I guess, because of</p> <p>14 the same feature.</p> <p>15 What I wanted to do was contrast that number that</p> <p>16 is occurring as a -- as a result of a matter of right</p> <p>17 construction and a matter of right activity going on next</p> <p>18 door and asking, what does that tell us about what the</p> <p>19 phrase undue burden means in terms of the context of value</p> <p>20 depreciation due to a fixed -- or due to the construction</p> <p>21 on the Primrose School property? And if you can have a</p> <p>22 11.25 percent reduction in property value as a result of a</p> <p>23 use permitted by right, then that's a fairly -- that's a</p> <p>24 fairly large number, and how does that tell us how to</p> <p>25 interpret what undue burden means?</p>

<p style="text-align: right;">17</p> <p>1 I think the Applicant -- rephrase that. I think 2 probably the opposition thinks that that number should be 3 looked at in the -- in the -- basically in the absolute. 4 That much of a reduction, 10 percent, which was identified 5 in the McPherson study, it is a large number. I'm going to 6 say to you that it's -- well, it's less than what a use 7 permitted by right actually accomplished next door, and, 8 therefore, it's not fair to say that the Primrose School is 9 having an adverse effect on the property or is an undue 10 burden if a use permitted by right that the Montgomery 11 County Zoning Ordinance laws already allows would have that 12 much effect itself.</p> <p>13 Now I personally think that's probably more of an 14 academic argument because I think we would say it ought to 15 be at a comparative number, not an absolute number, but I 16 say -- because I've -- because I've just never seen this, 17 the issue I'm bringing up to you in this context, be 18 evaluated that way, but we should be -- we should be 19 thinking about what's actually going to be happening out 20 there in terms of what's going to be going on.</p> <p>21 And, to wrap it all up, I guess what I was going to 22 say is, again, that I think it would be academic because I 23 think in the end, my recommendation to you would be that 24 you would not make your decision based on the appraisals of 25 either party simply because there are -- there is no solid</p>	<p style="text-align: right;">19</p> <p>1 primary factor. And I -- I want you to remember what the 2 site plan looks like and let me kind of walk you through a 3 west-to-east breakdown of the land area that is lost and is 4 undevelopable.</p> <p>5 So, first of all, we will have to dedicate ten feet 6 to Carnegie Road because, despite what the Hearing Examiner 7 may think, the Department of Transportation still expects 8 that there will be a dedication of right-of-way because 9 someday they want that road to be built, and they want to 10 be able to get the land area that they otherwise would not 11 get. And the -- well, and so there's ten feet that 12 automatically comes off the width of the property. Then, 13 because Carnegie has a front yard, there is a 50-foot 14 setback from buildings, and that affects the drive lanes as 15 well. That's all -- so that's on the south side. That's 16 60 feet gone on the south side.</p> <p>17 On the north side, you would have a 34-foot -- if 18 the drive lane had to be on -- rephrase that. The drive 19 lane does have to be 34 feet away from the eastern property 20 line, and then you've got a 20-foot-wide driveway, so 21 that's 54 feet.</p> <p>22 So the cumulative numbers there comes out at 114 23 feet of property on the east and west sides of the property 24 are not available for development in most -- without some 25 special treatment. And that becomes a -- becomes a</p>
<p style="text-align: right;">18</p> <p>1 economic -- there is no solid economic information to 2 support any number you've seen. There is no good 3 comparables. All the parties agree that there were no good 4 comparables. The examples that were -- or the estimates 5 that were given by the brokers who were polled by the 6 opposition's appraiser ran all the way from zero to 30 7 percent, which tells you how much of a range was viewed 8 within the industry as to what could happen.</p> <p>9 So I don't believe that your decision should be 10 based on something that is as imprecise as the appraisal 11 information you've got. And, as I say, if a permitted use 12 could have that big of an impact, then a special exception 13 use should be presumed to be able to have the equivalent or 14 less impact.</p> <p>15 So where that takes is to the issue that I think is 16 really what all the decisions you make in this case should 17 be based, and that is the design and the use. You've heard 18 that I have been a guest in the -- the house next door. I 19 understand what they live with on the east side already, 20 and I appreciate what's going to be happening.</p> <p>21 What I wanted to start off with though is to try 22 and diminish the idea that it is simply the size of the -- 23 the mass of the building that is driving this. It 24 certainly is a factor; there's no question about that. But 25 it is not the -- it is not the only -- it is not even the</p>	<p style="text-align: right;">20</p> <p>1 69-foot-wide building envelope in the middle of the 2 property.</p> <p>3 And I won't belabor all of the design options 4 because the Hearing Examiner said, I've heard enough, and 5 -- and -- but I -- but I -- but I want to start off with 6 one example.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Well, I don't 8 want to curb your closing.</p> <p>9 MR. KLINE: Yeah. No, no, I -- I -- I am -- I've 10 gotten my point out that I want to make, and that is the 11 building envelope is narrow.</p> <p>12 But I did want to use that, or I do want to use one 13 example of the iterations that were looked at to kind of 14 demonstrate the problems we had.</p> <p>15 First of all, the Zoning Ordinance says when you've 16 got a daycare center, you don't put the parking in the 17 front. We basically want the building to be fronting up on 18 the road. We don't want to have just a sea of parking in 19 the front of the building. So the parking has to go in the 20 back. That pushes the building to the north.</p> <p>21 Yes, the witnesses to the opposition are correct: 22 There is more line of sight than just the eastern edge of 23 the property, so you could have to have the driveway in 24 other places. But when you put the parking in the back, 25 the building moves to the north, put the driveway anywhere</p>

<p style="text-align: right;">21</p> <p>1 within the 135 feet was testified was available in the 2 front to get an adequate line of sight, you cannot make a 3 turning movement fast enough to get a fire vehicle around 4 the building to get around. So you have to put the drive 5 lane either parallel to the eastern property line or 6 parallel to the western property line. 7 And when we did a study plan to do that -- and 8 people mentioned this in the testimony. We did a study 9 plan that did that. It had to push the building north to 10 take advantage of the no longer having a 34- or 20-foot 11 setback on the east side -- I said north, I mean to the 12 east -- and we concluded in conversations with Park and 13 Planning Commission at that point in time that it would be 14 -- it would be easier to screen the traffic and the 15 activity on the property associated with the comings and 16 goings of the road along the east side than it would be to 17 screen the building that would be much closer and much 18 larger to see. 19 So that's why the driveway went on the east side 20 rather than on the west side, which we could've done, but 21 it would've been very difficult to accomplish, and it 22 would've had, in the opinion of most of the designers who 23 looked at it, an adverse effect on the property. 24 So, at that point in time, when we knew that the 25 road was going to be parallel to the eastern property line,</p>	<p style="text-align: right;">23</p> <p>1 guess I'd better say I felt, because I'm the only one who's 2 read the Butler opinion on our team -- but what we thought 3 were the distinguishing characteristics between Butler and 4 Primrose is the fact that it's the intensity of the use 5 that's there. 6 The Butler application, all the landscape 7 contractor with trucks, backhoes, wagons, flat beds, lots 8 of noise, starting up early in the morning, loading mulch 9 into trucks, you know, not -- not passenger vehicles 10 dropping children off in the school and going into the 11 building and then leaving, but actually getting out there 12 early in the morning and -- excuse me for one second, Madam 13 Hearing Examiner, my lights are going out. Thank you. 14 But going back to my comment about -- certainly 15 with Primrose more traffic, much more traffic, but not of 16 the same quality of traffic -- much more industrial, loud, 17 obnoxious potential of the traffic itself -- trucks, 18 backhoes. 19 Secondly, the proximity of the residents to the 20 north, the lady who was the primary objector to Butler. 21 The house was 42 feet away from the drive lane, much closer 22 than is occurring here. 23 Three, noise. The court of appeals probably 24 mentions in its opinion at least five times the fact that 25 trucks will be backing up 130 feet with their OSHA beepers</p>
<p style="text-align: right;">22</p> <p>1 our whole effort at that point on was basically to try and 2 minimize the impact that would occur by the traffic, the 3 lights, the noise and the activity level of admittedly a 4 large number of cars coming in off that road. And that's 5 why you heard so much from Mr. Jolley about the fence, the 6 landscaping that was proposed, and all the other features. 7 We got criticized for shrinking the drive lane by 8 two feet in order to create a next two feet of planting, 9 but in fact those were the steps we took to try and 10 maximize the buffer along the east side. And we thought 11 when we completed our discussion with Park and Planning 12 Commission and understood there was going to be a favorable 13 recommendation that that was -- we had met our burden of 14 proof of minimizing the impact on properties to the east. 15 As it turned out, that wasn't quite right. 16 And that kind of carries me to your questions about 17 the Butler case. You asked me to distinguish the Butler 18 case, and I think you probably meant both in a legal sense 19 and in a factual sense. Factual sense, they are actually 20 quite similar: long, narrow properties with a drive lane 21 in the Butler property along the northern property line, 22 just as there's a long driveway on this one on the east 23 side. 24 Let me just get my notes here for a second. 25 But what we -- what we felt was the -- or what I</p>	<p style="text-align: right;">24</p> <p>1 beeping away early in the morning, basically creating a 2 situation that would be very -- basically an obnoxious 3 situation for an adjacent property owner. And the noise 4 also was basically some of the equipment was being put on 5 and how it was being done, but the beepers were really 6 picked up as something really bothersome and a real 7 problem. 8 And then, finally, yes, there is -- when you read 9 the Butler opinion, there is a -- basically a line of tall 10 fir trees running along the common property line between 11 the two properties, but all of the -- they were so old and 12 so full that all of the lower branches essentially have 13 died off so that there was no -- no feature of landscaping 14 that would obscure the view from the property to the north 15 into the Butler property, so everything that could be seen 16 -- I'll rephrase that -- everything could be seen and heard 17 directly. So there was no way to know -- well, basically, 18 that was the most obnoxious condition. 19 So this is sort of, kind of an after -- I realized 20 it after the fact, but what we did when we went to Park and 21 Planning Commission was to -- was to try and devise a set 22 of buffering and screening mechanisms/tools to basically 23 minimize -- or not minimize -- to eliminate the problem 24 that I just talked about. 25 And the distinction that I would say between the</p>

<p style="text-align: right;">25</p> <p>1 two cases, therefore, boils down to a comment from, I'm 2 guessing -- I don't -- I guess this was probably -- yeah, 3 I'm not sure whether -- which hearing examiner it was, let 4 me put it that way. I won't try and -- but the opinion 5 quotes the language where the hearing examiner says, I do 6 not believe that conditions can be devised that will 7 attenuate these adverse effects adequately, and we didn't 8 know that language when we went to Park and Planning 9 Commission to try and minimize our impact, but it clearly 10 was the same goal as what the hearing examiner felt he 11 could not achieve by any conditions in that case. 12 That having been said, you heard the Applicant in 13 some of our rebuttal testimony the other day mention that 14 we had -- we had come up with a plan that Park and Planning 15 thought was adequate to mitigate the impacts of the use. 16 That was not accepted by the adjacent property owner. So 17 you heard, particularly Mr. Jolley, talk about things that 18 could be done to enhance what's been shown in the plans -- 19 both landscaping, tree protection, measures that would try 20 and maximize the amount of separation and protection for 21 Dr. Kosary and Mr. Posey. 22 I am -- I am not asking for permission to amend the 23 application to basically increase the amount of proffers 24 that the Applicant would make, and I don't expect you to 25 put a condition in that says let's make the planning trees</p>	<p style="text-align: right;">27</p> <p>1 that. I just -- I can't solve the problem. 2 We think we can do it through site plan. And so 3 I'm indicating that the Applicant would accept a condition 4 of a site plan review under the applicable provisions, the 5 Zoning Ordinance, before implementation of a conditional 6 use if it were granted. 7 Thank you. 8 HEARING EXAMINER ROBESON HANNAN: Thank you. Is 9 that it for now, Mr. Kline? 10 MR. KLINE: Yeah. I'd like to reserve a few 11 minutes, but I don't think I'm going to have a lot to say. 12 Thank you. 13 HEARING EXAMINER ROBESON HANNAN: Certainly. 14 Mr. Chen. 15 CLOSING ARGUMENT ON BEHALF OF CAROL KOSARY, PAUL POSEY, 16 CECELIA ENGLISH 17 MR. CHEN: Thank you, Madam Examiner. I've got a 18 fair amount in an outline, but what I'm going to do is try 19 to hit on Mr. Kline's areas of observations and then come 20 back to my outline. 21 And, with that, I'll start with the last bit of 22 information about Mr. Jolley's testimony. Obviously my 23 clients object to a site plan condition for the basic 24 reason that my clients do not believe that a site plan 25 requirement will deal with the problems that are raised by</p>
<p style="text-align: right;">26</p> <p>1 to be planted, the street trees to be planted three and a 2 half inches and in tighter planning sequence, as discussed 3 by Mr. Jolley. That's not what you would normally like to 4 do, and I don't expect that you want to remand this back to 5 Park and Planning Commission for basically a review of a 6 site plan that would have all the proffers. 7 So what I wanted -- what I wanted to do for you, 8 Madam Hearing Examiner, is basically remind you that you 9 have the authority through Section 59.7.3.1.F.1.a to impose 10 a condition that the Applicant obtain a site plan to 11 incorporate all of the features that were described in the 12 hearing that was presented the other day plus any others 13 that are deemed appropriate in the field in a meeting that 14 would involve the Applicant, the adjacent property owners, 15 and the appropriate authorities of Montgomery County. 16 We -- we thought we had done enough, but there has 17 been enough opposition testimony that says that's not -- 18 apparently not the perspective of the adjacent property 19 owner, and I'm offering you -- I'll rephrase that -- I'm 20 proffering that there is a mechanism that can enhance the 21 protection of Dr. Kosary and Mr. Posey, and my client has 22 authorized me to offer that they will go through the site 23 plan review process to improve the screening between the 24 properties to achieve the -- to achieve the protection that 25 the hearing examiner in the Butler case said, I can't do</p>	<p style="text-align: right;">28</p> <p>1 this application. 2 And, just by way of some minor observations, Mr. 3 Jolley made some interesting comments that I think are -- 4 are important to remember. Number one, he had no idea how 5 the fence on the property line could be maintained. The -- 6 this application proposes to put a fence on the property 7 line, the Hearing Examiner asked how that would be 8 maintained, and he had no -- he didn't have an answer. He 9 admitted that the 20-foot poles were not required, that 10 lighting could've been provided for a daycare conditional 11 use much lower, which, to me, converts the 20-foot pole 12 proposal into a noninherent adverse impact. 13 Probably most fundamentally though, he never 14 contradicted my clients' testimony that putting the line of 15 disturbance right up to the property line was going to have 16 a fatal impact on trees that are near the property line, 17 and my clients had described their first-hand experience 18 with this, with the development on the western side of the 19 church. 20 And in this -- on this one point, if I may, Mr. 21 Jolley's recommendation was that there could be watering, 22 mulching, some clipping of the roots of my clients' trees, 23 and his words were -- and he used these words both in 24 direct examination by Mr. Kline, and I used them in asking 25 him on cross -- his words were that the matters that he was</p>

<p style="text-align: right;">29</p> <p>1 proposing would, quote, Significantly reduce stress, end 2 quote. Those are his words. When you read the transcript, 3 as I think you will, those were Mr. Jolley's words. 4 So he was not saying that my clients' concern and 5 belief, based on experience, first-hand experience, that 6 they would lose trees is not accurate. What he did say 7 was, well, we'll do -- we can do this to significantly 8 reduce the stress from literally grading to the property 9 line. So, Madam Examiner, with regard to Mr. Jolley, I ask 10 that you take a look at his entire information and what he 11 had to acknowledge relative to the property and the 12 conditional use from his perspective. 13 I'm going to hold off on -- on Butler for a minute 14 because I'm going to come back to that. 15 With regard to the design, and Mr. Kline gave you 16 information about how much land they would lose as a result 17 of dedication and the orientation of the building, all of 18 that, Madam Examiner, is based upon the Applicant's 19 insistence and refusal to budge on having no less than 195 20 children plus, I think it's about 30 staff. 21 In this regard, I will remind that back in January, 22 I guess it was 2017, this application or proposal was at a 23 DRC meeting. It wasn't there for a subdivision approval; 24 it was there as a conditional use. And at that point the 25 staff even observed about reducing the number of children.</p>	<p style="text-align: right;">31</p> <p>1 minimize the impact, what they've done is literally seek a 2 setback that is less than what would exist with residential 3 development. And, in that regard, I'll explain. 4 With a house, the setback is 17 feet. With a 5 conditional use building, the setback is 34 feet. Not only 6 are they going to have the setback, they then need a waiver 7 of the setback for the driveway because the driveway is 8 part of the parking facility. And, in that regard, the 9 driveway would have to also be set back 34 feet, and that 10 includes the parking area in the back, Madam Examiner. 11 And, in order to fit this project on this site, they have 12 to have a setback waiver under, I guess, it's subarticle 6 13 -- let me get it. I lost some of my papers. 14 They need the setback waiver, and that is found at 15 Section 59.6.2.10, and what that does is put the traffic 16 plus -- and it's not merely cars. It's deliveries, it's 17 trash pickup, it's at least -- the numbers are 750 cars a 18 day going up and down that driveway, and I'll come back to 19 that, but that amount of activity will be 12 feet from the 20 property line and the most that the Applicant will have 21 will be a fence that they don't know how they're going to 22 maintain. They don't know how that's going to happen. 23 So that when you talk about the design for the site 24 and -- and the activities and the efforts made by the 25 Applicant to be able to place this facility on this</p>
<p style="text-align: right;">30</p> <p>1 Madam Examiner, going back a year, if you recall, 2 there's a fair amount of cross-examination and testimony 3 that we went through. I think Mr. Taylor may have been the 4 witness, and, I apologize, I haven't looked at my notes. 5 But two things pop out. 6 Number one, the words used by the Applicant's 7 witnesses were the program, and repeatedly that word was 8 used by all of their witnesses, the representative from 9 Primrose, and ultimately what we found out was that the 10 program meant 195 students with the 30-some-odd staff. 11 In addition, the testimony was that this design, 12 the building that was being proposed, was one of several 13 alternative designs used by Primrose. This is not a custom 14 building on this site. This building is not put on this 15 site to comply with Montgomery County unique regulations. 16 What you have here is one of Primrose's, you know, models 17 that they use. 18 And what they did in this case, what the Applicant 19 has done and the Applicant's witnesses, has said, okay, 20 this is what Primrose wants. Primrose wants no less than 21 195 with 30 staff, and for that type of facility, this is 22 the type of improvement that it has to have. And based 23 upon that, they then tried to, quote, fit the property -- 24 the building, excuse me, on the site. 25 And while Mr. Kline talks about how they tried to</p>	<p style="text-align: right;">32</p> <p>1 property, Madam Examiner, this is a situation where they're 2 trying to shoehorn in a use that is, as proposed, way too 3 large for what the site can accommodate. 4 If I may. I mean, they talk -- well, they talk 5 about the building envelope, but the building envelope was 6 really not a building envelope. They were going to have a 7 certain building on this site per Primrose's wishes. And 8 to the extent that there's any problems created by that, 9 it's self-imposed. It's self-imposed because of the number 10 of children they want to have. 11 They also -- Mr. Kline went to the Exhibit 227- 12 AAAAA.1, and he is arguing that neither appraisal is worthy 13 of consideration. Couple of observations. 14 First of all, with regard to the appraisals, 15 economic impact is in the Zoning Ordinance. It is a 16 mandated consideration. In this particular case, the 17 McPherson organization prepared a extended report. The 18 report does stand for what's in the record. Mr. McPherson 19 was cross-examined. 20 Quite candidly, I think when you compare the two 21 reports that were made that there is night and day 22 difference, and maybe that's a good reason for Mr. Kline to 23 ask the Hearing Examiner to reject both appraisal reports. 24 I do believe that at least the McPherson report is a good 25 report, it's worthy of your consideration. I think Mr.</p>

<p style="text-align: right;">33</p> <p>1 McPherson was very, very candid and open in answering 2 questions both from Mr. Kline and the Hearing Examiner and 3 that that report alone is worthy of consideration and 4 acceptance by the Hearing Examiner. 5 In addition though, Madam Examiner, I want to refer 6 you to a court decision of the Maryland Court of Appeals, 7 and this goes to Mr. Posey's testimony. Mr. Posey provided 8 testimony and evidence based upon his tax assessments. He 9 explained where he was coming from. He explained, to his 10 best, how things came about and how the numbers came. He 11 admitted that -- you know, he was giving you the documents 12 that had come from the State. 13 Madam Examiner, there's a case that really goes to 14 this type of a circumstance where the property owner is 15 testifying. And it arises in a condemnation case where 16 part of land was taken, but the major issue on appeal was 17 the testimony of the property owner. This is Brannon, 18 B-R-A-N-N-O-N, v. State Roads Commission, and it's found at 19 305 Md. 9 -- 793. It's a 1986 decision. And if I may 20 quote, at page 801, the court observed, quote: 21 The landowner is the most logical person to testify 22 as to the property's value because of his familiarity with 23 it. Indeed, the landowner occupies a special position 24 where he testifies as to the value of his property. Unlike 25 an expert witness, the owner of the property is</p>	<p style="text-align: right;">35</p> <p>1 to the -- to you and hope you look at it. 2 By the way, Mr. Davis testified based upon his 3 experience as the highest and best use in smart growth, and 4 his testimony supported the economic value testimony that 5 you heard from both Mr. Posey and Mr. McPherson. 6 The Master Plan. If I may, Madam Examiner, you 7 heard a lot about traffic. You heard a lot about queue, 8 you heard a lot about LATR. There was a great deal of 9 testimony. You even asked to hear more from Mr. Cook and 10 Dr. Kosary. I think that what's significant here is that 11 what the Applicant has given you is calculations based upon 12 software, software that even became questionable as to what 13 was the appropriate software to use. 14 At the end of the day -- and I'm not going to get 15 into queue lines and -- and, you know, things that of that 16 nature that were covered with Mr. Cook and Dr. Kosary, but 17 I do have to observe that I think that even by those tests, 18 with regard to the queue line and vehicles and congestion 19 at the Redland-Needwood Road intersection, I think that the 20 information supplied by the Applicant really dovetails and 21 corroborates the testimony that you heard from the area 22 citizens. And I don't think the issue, whether it's 23 through traffic or where it comes from, is really -- as 24 stated in the Master Plan is all that germane. 25 You had extensive testimony, first-hand testimony,</p>
<p style="text-align: right;">34</p> <p>1 presumptively competent to express his opinion of its 2 value. 3 Now, having said that, the court does go on to say 4 that the fact finder, the court, the hearing officer, has a 5 right to look into the basis for the property owner's 6 opinion if the property owner has something. 7 And then the Brannon case mentions another case 8 where the property owner came up with a number based upon 9 an offer to purchase the property, and the court said, no, 10 an offer to purchase is not a good basis. 11 In this case, please, you have Mr. Posey's 12 testimony and his logic and the documentation that he 13 utilized. And I submit that separate and apart from 14 McPherson, you have the testimony of Mr. Posey, which is a 15 separate, stand-on-its-own basis for adverse economic value 16 impact. 17 And, by the way, when I say this, I don't mean to 18 in any way disparage McPherson. What I'm saying to the 19 Hearing Examiner is you have got two sources, two 20 legitimate sources upon which you can and should consider 21 adverse economic impact, and, you know, quite frankly, you 22 know -- we abide by your decision. 23 By the way, in -- in -- in Brannon, the court also 24 said that the property owner does have the competency to 25 testify about property's diminished value. So I offer that</p>	<p style="text-align: right;">36</p> <p>1 with photographs of people who gave you their experiences 2 of what is going on in that road system 3 Now, if I may, one of your colleagues addressed 4 this type of issue recently, and that was in OZAH Case CU 5 19-04, FM Group, Inc., doing business as Francisco 6 Landscaping, and the Hearing Examiner's Report and Decision 7 in that case, and I'm talking about pages 42 and 43, 8 accepted the testimony of area residents over that of 9 experts. And, in that regard, the hearing examiner cited 10 Montgomery County v. Laughlin at 255 Md. 724, Tauber v. 11 Montgomery County Council, 244 Md. 332. There's also Eger 12 v. Stone, 253 Md. 533. 13 The hearing examiner's office, the courts, have 14 recognized that the testimony of area residents can be 15 accepted over that of experts. And, in this particular 16 case, I strongly urge that the Hearing Examiner has a case 17 record where, number one, the traffic information supplied 18 by the Applicant is somewhat weak -- I think that's a fair 19 statement. 20 Whereas, the testimony of area residents -- what 21 comes to my mind, Madam Examiner, is the testimony of the 22 gentleman -- I forget his name -- but he is not one of my 23 clients, but he brought photographs showing the congestion 24 at the site, showing what was going on, and he was not a 25 loner. He was testifying along with neighbors and other</p>

<p style="text-align: right;">37</p> <p>1 people that travel through that area.</p> <p>2 There -- I even asked at one point, I believe, but</p> <p>3 I'll be abided by the transcript, but I think I even asked</p> <p>4 Mr. Cook, you know, was there any dispute about the</p> <p>5 testimony that had been supplied? And there wasn't.</p> <p>6 Furthermore, if you recall, Mr. Davis testified</p> <p>7 about congestion at the access point. There was nothing</p> <p>8 from the Applicant to rebut that testimony. It was proper</p> <p>9 testimony. It was germane. The Applicant never even</p> <p>10 responded to it.</p> <p>11 By the way, with regard to congestion, Madam</p> <p>12 Examiner, I refer you to Gerzak, G-E-R-Z-A-K, v. Todd,</p> <p>13 T-O-D-D, 233 Md. 25, at page 26.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Can you give me</p> <p>15 that citation, the numbers again?</p> <p>16 MR. CHEN: Yeah. It's Gerzak, G-E-R-Z-A-K, v.</p> <p>17 Todd, T-O-D-D, 233 Md. 25, and --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)</p> <p>19 MR. CHEN: -- the -- the -- I jump to page 26 where</p> <p>20 the court observed -- and this is a quote -- Before a</p> <p>21 special exception may be granted in Baltimore County, it is</p> <p>22 necessary that the board find that the proposed</p> <p>23 development, among other things, will not create congestion</p> <p>24 in the roads, streets or alleys. The burden of proof is</p> <p>25 upon the petitioner.</p>	<p style="text-align: right;">39</p> <p>1 Well, when it went back up, the court of appeals in</p> <p>2 Robertson v. Board of Appeals said, hey, a determination</p> <p>3 had been made by the board on this issue, and that</p> <p>4 determination should've stood. And so they -- they ordered</p> <p>5 that the decision be reversed granting the special</p> <p>6 exception because the board had not taken into</p> <p>7 consideration the previous adverse impact of parking.</p> <p>8 That's a little bit complicated because I said at</p> <p>9 the time remand, and you've got to read it to get the full</p> <p>10 flavor of what was going on.</p> <p>11 But the long and short of it is for each of the</p> <p>12 areas that my clients have raised problems with traffic --</p> <p>13 and that goes to on the road, it goes to congestion, it</p> <p>14 goes to parking -- there is clear legal authority -- and</p> <p>15 certainly as to what's on the road system out there now --</p> <p>16 and, again, I don't know whether it's coming straight</p> <p>17 through or where it's being generated, where it's going.</p> <p>18 To me, it doesn't matter because the concern is what is the</p> <p>19 traffic condition at this location. And when you look at</p> <p>20 the uncontradicted evidence on that, the testimony of the</p> <p>21 area residents, I don't even think it's a close shot.</p> <p>22 Mr. Kline also said in conjunction with traffic</p> <p>23 that there had been no accidents, no demonstrable safety</p> <p>24 problem. I think that type of observation pales in light</p> <p>25 of what the testimony is of what's really going on out</p>
<p style="text-align: right;">38</p> <p>1 You know, not only that, the courts have even</p> <p>2 recognized that parking itself, off-street -- off-street</p> <p>3 parking by itself can cause deleterious impact on</p> <p>4 neighbors, and that -- and there's two cases.</p> <p>5 One is Cleland, C-L-E-L-A-N-D, v. Mayor and City</p> <p>6 Council of Baltimore, 198 Md. 440, where they're talking</p> <p>7 about -- and I've got some brackets here, but the statement</p> <p>8 is, It was not intended by the zoning act that whenever it</p> <p>9 was convenient or desirable for an individual owner to have</p> <p>10 a special exception -- for parking -- he should be allowed</p> <p>11 it by the board. Exceptions are not a matter of right, and</p> <p>12 when it appears, as it does in this case, that nothing will</p> <p>13 be served by the convenience of the doctor -- this is for a</p> <p>14 special exception, I think for a doctor's office -- doctors</p> <p>15 and their employees, we do not think such a case, based</p> <p>16 upon convenience alone, would justify the board in granting</p> <p>17 the exception.</p> <p>18 There's another case, Robertson v. Board of</p> <p>19 Appeals, 210 Md. 190 at 199 -- this was on a remand. And</p> <p>20 the first time around there had been a determination that</p> <p>21 the off-street parking would have an adverse impact on the</p> <p>22 neighbors, went up, came back down, and was reversed, came</p> <p>23 back down, and I think, as I remembered, the board did not</p> <p>24 go off in that determination about the adverse impact of</p> <p>25 parking.</p>	<p style="text-align: right;">40</p> <p>1 there. And thank God there are not accidents. Thank God</p> <p>2 we don't have deaths. Maybe part of it is that it is so</p> <p>3 congested and it's so slow that people can enter and not</p> <p>4 enter.</p> <p>5 But he also talks about how that's a demonstration</p> <p>6 of their studies of adequacy of public facilities. That --</p> <p>7 that comment was also made in conjunction with the special</p> <p>8 protection area and his conversation about that and his</p> <p>9 discussion about Mr. Davis' testimony.</p> <p>10 Let me tell you where he's going with this. The</p> <p>11 argument that you're hearing today is that this property is</p> <p>12 not in the residential reserve. Now that's an important</p> <p>13 factor. Mr. Davis testified about this, and I'm going to</p> <p>14 mention that in a moment. Mr. Kline cross-examined and</p> <p>15 cross-examined Mr. Davis on this issue.</p> <p>16 Now when Mr. Davis testified, as I recollect, and</p> <p>17 again I'll defer to your transcript, he went through page</p> <p>18 after page after page of the Master Plan. He gave you the</p> <p>19 page numbers, and he quoted excerpts from the pages that he</p> <p>20 cited for his position that this property is in the</p> <p>21 residential reserve -- or the wedge, I guess, is the more</p> <p>22 proper terminology -- that once you're in the wedge, then</p> <p>23 all of the concerns that the Master Plan has about the</p> <p>24 wedge are applicable to this property, and Mr. Davis</p> <p>25 explained that.</p>

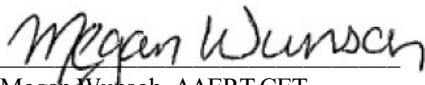
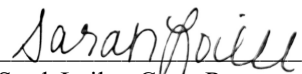
<p style="text-align: right;">41</p> <p>1 And, in fact, if I may, going to the Master -- the</p> <p>2 staff report, if I may -- Mr. Kline took you through a</p> <p>3 couple of pages -- if I may, when you go to page -- top --</p> <p>4 top of page 8 -- I don't know if you want to pull it up. I</p> <p>5 don't need it.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Yes, I'm going</p> <p>7 there.</p> <p>8 MR. CHEN: Page 8. Thank you. If you can scroll</p> <p>9 -- thank you.</p> <p>10 Very top sentence says, The Master Plan also</p> <p>11 recommends keeping the residential wedge areas at a low</p> <p>12 density that is compatible with the existing community.</p> <p>13 This is talking about this site when it says the existing</p> <p>14 community. That's what it's talking about.</p> <p>15 And if you back up to page 6 -- could you do that?</p> <p>16 Thank you. Right there. You've got it, right -- in the --</p> <p>17 the middle -- the very middle paragraph, On pages 12 and</p> <p>18 13, the Master Plan makes overall recommendations for the</p> <p>19 residential wedge, including some applicable to the subject</p> <p>20 property, and then it lists them.</p> <p>21 Respectfully, I believe that the staff recognized</p> <p>22 that this property and its area was within the residential</p> <p>23 wedge of the Upper Rock Creek Master Plan, and that while</p> <p>24 Mr. Davis was very respectful of the preservation areas</p> <p>25 that were important and covered a large part of the</p>	<p style="text-align: right;">43</p> <p>1 to put in a million-dollar drainage system to service its</p> <p>2 conditional use that, therefore, the County would accept</p> <p>3 that and allow Primrose's contractors to do it.</p> <p>4 Madam Examiner, there's a proposition about -- in</p> <p>5 zoning law that I think has some carryover to special</p> <p>6 exceptions, particularly with public facilities, the</p> <p>7 adequacy of public facilities, and that is the issue of is</p> <p>8 the facility -- I think the terminology is reasonably</p> <p>9 probable of fruition within the near future or foreseeable</p> <p>10 future.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Foreseeable</p> <p>12 future.</p> <p>13 MR. CHEN: Yeah. I think that proposition carries</p> <p>14 over to special exceptions. And, in this case, I don't</p> <p>15 think that the Applicant has demonstrated that such a</p> <p>16 possibility exists with the drainage system that they have</p> <p>17 been talking about. And, quite frankly, they're a little</p> <p>18 better with the water and sewer in the front of the</p> <p>19 property in the northeastern corner because there is in the</p> <p>20 road facilities, and I think they're in Category 2 of WSSC,</p> <p>21 but, again, there is no information from the WSSC that they</p> <p>22 would allow it.</p> <p>23 And my client testified that when they sought to</p> <p>24 construct their home, they were able to contact the WSSC</p> <p>25 beforehand and did get word that they would be able to tap</p>
<p style="text-align: right;">42</p> <p>1 planning area, this property and its environs are part of</p> <p>2 the residential wedge and that the concerns in the Master</p> <p>3 Plan for protecting and preserving the residential wedge</p> <p>4 are applicable to this property. And I think Mr. Davis, as</p> <p>5 I had said repeatedly, really nailed that down.</p> <p>6 Oh. Mr. -- early in his comments, Mr. Kline also</p> <p>7 made the observation -- this goes to adequacy of public</p> <p>8 facilities. I think I've got this. He said, no -- there's</p> <p>9 no governmental reason for putting in a storm drain system,</p> <p>10 and, therefore, what they were offering to do was</p> <p>11 acceptable.</p> <p>12 The problem with that is that the adequacy of</p> <p>13 public facilities and the drainage is tied into the Master</p> <p>14 Plan and the area and that on examination I asked if it was</p> <p>15 recognized that the drainage system that exists today is a</p> <p>16 public facility, and it was admitted that it was. So it's</p> <p>17 not a private facility.</p> <p>18 And the witness, while he was very confident that</p> <p>19 the government would accept it and that it would allow</p> <p>20 Primrose's contractors, I guess, to go in and install it,</p> <p>21 there has been no information on that whatsoever and that</p> <p>22 when I queried him about his knowledge about capital</p> <p>23 improvement programs, of public facilities in Montgomery</p> <p>24 County, he did not know. He was candid about that. But he</p> <p>25 was just assuming that because Primrose was going to offer</p>	<p style="text-align: right;">44</p> <p>1 into that system. You don't have that here, but, be that</p> <p>2 as it may, you know, I think there's a serious issue with</p> <p>3 regard to the adequacy of public facilities in all of these</p> <p>4 areas.</p> <p>5 Let me go back. Just real quick, the reference to</p> <p>6 the subject property as an outlier, separated from other</p> <p>7 areas, quite candidly, I just don't think that's an</p> <p>8 accurate description of the property, and that it is in the</p> <p>9 residential wedge.</p> <p>10 I have not forgotten Butler. I'm going to come</p> <p>11 back to that.</p> <p>12 They -- Mr. Kline also said that -- the first part</p> <p>13 of this I've got in quotes, and that is that, quote,</p> <p>14 Minimizing the impact, end quote, seems to be the</p> <p>15 appropriate legal burden that his client has. I don't</p> <p>16 think that's the burden. It's not minimizing impact. It's</p> <p>17 any impact, and what it is -- what is the impact? And if</p> <p>18 the impact is adverse, then the application must be denied.</p> <p>19 Now to talk a little bit about Butler -- let me get</p> <p>20 my notes. First of all, Mr. Kline tried to distinguish the</p> <p>21 facts in Butler to this particular case, and one of the</p> <p>22 things that he started with was distinguishing between the</p> <p>23 character of the traffic, and he mentioned that in the</p> <p>24 Butler case, the -- Ms. Butler had trucks, backhoes and</p> <p>25 early morning operations, and he juxtaposed that with</p>

<p style="text-align: right;">45</p> <p>1 discharging children. And he said there is no same quality 2 of traffic impact.</p> <p>3 Well, in Butler -- where do I have it -- Madam 4 Examiner, I -- I'm sure you have the cite on this case. 5 But if you look at -- this is in 417 Maryland -- if you 6 look at page 280, they talk about the traffic and the 7 activities in Butler. And one of the points that you take 8 away from that is that, first of all, the hours in the 9 morning between activities of Butler compared to the school 10 are about the same. Admittedly different vehicles, but you 11 also have on a magnitude of hundreds more vehicles coming 12 on to this site than you had in Butler.</p> <p>13 Another thing in Butler was they're not there all 14 day. They -- the -- the employees come, pick up the 15 vehicles in the morning, about the same time that the 16 school would be opening, and leave, and they'd come back 17 late afternoon.</p> <p>18 In addition, he talks -- the report at page 280, 19 they're talking about the heavy season. In this particular 20 case, this is year-round. The activity is going to be, 21 with the amount of traffic and the activity and the non- 22 dropping-off-car activity, will be for the whole year.</p> <p>23 You know, Butler said that -- she was talking about 24 limiting her deliveries to no more -- of certain material 25 to no more than three times a week, two times a season. I</p>	<p style="text-align: right;">47</p> <p>1 denied the special exception, and when it boils down, it 2 comes to page 308, and I'm going to quote this because I 3 think these are standards that the court is articulating 4 that have application to this case.</p> <p>5 And I quote on 308: The denial of the application, 6 however, was supported by substantial evidence that the 7 narrowness of Butler's lot, the configuration of the 8 commercial enterprise activities and installations on the 9 lot, and the proximity of the commercial activities to 10 adjacent properties were sufficient noninherent adverse 11 effects to persuade the board to deny the application.</p> <p>12 I think that long sentence with three separate 13 clauses really gives a summary of the court's recognition 14 of the analysis done by the Board of Appeals and the 15 factors that it was looking at. And I think you have all 16 of them present in this case. Quite frankly, the magnitude 17 of what is being proposed on this property does create a 18 circumstance where the property is too narrow for the 19 proposed use. You need to have -- the setback waiver by 20 itself demonstrates that.</p> <p>21 When you look at the configuration of the -- of the 22 commercial operations, meaning the building and the parking 23 and the activity, you have that. You literally -- and the 24 magnitude of the operations. You literally, I submit, have 25 a circumstance in this case which mirrors what the court of</p>
<p style="text-align: right;">46</p> <p>1 mean, please, look at 280, and when you see the activity 2 involving the trucks and the other vehicles that Mr. Kline 3 was talking about -- admittedly, it's not a truck, but we 4 do have trucks coming to the site. There will be trash 5 collections. There'll be deliveries, and there'll be 750 6 motor vehicle trips coming down that driveway every day, 7 and it'll be year-round. So that's that part that I think 8 has to be recognized.</p> <p>9 Another part, and this is now page 307, what the 10 court recognized was, among the issues that got heavy 11 problems -- and you know this already, Madam Examiner -- is 12 the location of the driveway. And that's on page 307, and 13 the court, now I'm quoting. Further, the configuration of 14 the uses on Butler's lot and the location of the driveway 15 was -- was such that the trucks would need to back up and 16 -- you know, the beeping, the things that Mr. Kline talked 17 about. The location of the driveway in that case is, quite 18 bluntly, a comparable issue. I think the traffic is not 19 even comparable, meaning by that the magnitude of the 20 traffic.</p> <p>21 If you go to -- you know, Madam Examiner, I know 22 you've -- I'm sure you've read Butler years ago, and you've 23 come back to it, but when you go to the last -- the last 24 two pages of the report really are the discussion about the 25 reasons, the factual basis for why the Board of Appeals</p>	<p style="text-align: right;">48</p> <p>1 appeals is articulating on page 308 as to the factors that 2 the administrative authority addressed and deals with.</p> <p>3 If I may. I've not followed my outline, but I may 4 have covered just about everything. Just a couple of 5 things.</p> <p>6 I don't think the operational issues have really 7 been fully presented to the Hearing Examiner. I think the 8 last submission that at the last second came in that I 9 objected to, which were handbooks, again, I refer the 10 Hearing Examiner back to the 2020 testimony of the 11 Applicant's witnesses about operations. My recollection is 12 there's a lot of unclear information given about the 13 operations and how they would be done.</p> <p>14 I know you've been through part of that already. 15 I'm sure you'll be going over it again, but I respectfully 16 submit that I think that the Applicant has really not been 17 as clear as it should've been with regard to the operations 18 of the conditional use. And I think that's a problem. I 19 think there's a lot of vagueness, I think there's some 20 blanks that are in there that have not been addressed. And 21 I think that's the reason why you got that last submission 22 that came in at a crazy time.</p> <p>23 Oh. Exhibit -- you don't have to pull this up -- 24 Exhibit 227, documents AAA, BBB 1 -- .1, .2, .3, CCC, and 25 DDD, that's a sight distance evaluation that was -- came in</p>

<p style="text-align: right;">49</p> <p>1 through Russ Reese. That -- that, to me, is compelling 2 evidence. The Applicant, who argues that it needs to have 3 access at a certain point because of sight distance, never 4 gave the Examiner a sight distance evaluation. 5 My clients went out, had Mr. Reese do it, and that 6 report demonstrated that there is a wide swath of frontage 7 on Needwood that's available for access, but the reason why 8 it's got to be in that northeast corner is because they 9 want 195 students and 30 administrators, that they won't 10 back off from that, and the rationale for that location for 11 access is the size of this conditional use, which is just 12 too much for the site. The reason why they need the 13 setback is again the size of what they want to have. 14 This seems to be a circumstance where the Applicant 15 says, look, this is what I want to have on this property, 16 and I'm willing to do these things to help ameliorate it, 17 even though there still is going to be these impacts, but 18 this is what I want, and this is what I want approved. I'm 19 not interested in a smaller operation. This is what I want 20 and, you know, please give it to me. 21 I think it's -- I think it's arrogant. Bluntly, I 22 think it's arrogant. 23 If I may just go to Mr. Kline's discussion about 24 the surrounding area. Again, Mr. Davis was extensively 25 examined about this. Mr. Davis makes no bones that the</p>	<p style="text-align: right;">51</p> <p>1 that. You do this, and you're going to read it -- the 2 transcript. I just think when you come down to the 3 analysis for the affected area that Davis' testimony makes 4 sense, and, you know, it's your call. But you're going to 5 have to make that decision. 6 By the way, the reason why Mr. Kline argues today 7 that this property is not in the residential wedge is 8 because the argument about low density, large lot. That's 9 where that's all coming from. Because it's those types of 10 developments in the residential wedge that are sensitive to 11 the environmental and other issues that are raised in the 12 Master Plan, and that's why Mr. Kline argues that this 13 property is an outlier. 14 I mean, just on that one point, geographically, we 15 know the subject property is within the Rock -- Upper Rock 16 Creek Master Plan. Okay. If it's an outlier, what 17 planning guide applies to it? Nothing? I mean, if it's 18 not within the residential wedge within the Master Plan, 19 what is it? And I haven't heard to that -- you know, Mr. 20 Kline is very good on his presentation, and, you know, I 21 respect him a great deal, but if this property is an 22 outlier, tell us what it is and why it should not be 23 subject to the residential wedge component of the Master 24 Plan. 25 I've got to -- I've got to mention this. A year</p>
<p style="text-align: right;">50</p> <p>1 area west of Redland, in his opinion, is not the 2 surrounding area. 3 Mr. Wolford -- I don't know whether you picked up 4 on this at the last hearing -- on direct examination, he 5 gave the areas that was the ICC to the north, the Midcounty 6 Connector, and there was something else -- oh, gosh -- I 7 apologize, I forget what it was, but you then said, wait a 8 minute. You know, we don't go by looking outwards to 9 define the area. Because, you know, when you heard, I 10 think Midcounty Connector -- ICC, you know, you're 11 wondering, what's going on? 12 When I cross-examined him, he changed his 13 testimony. If you look at the transcript, I started with, 14 well, you identified this. And, all the sudden, he's come 15 up with new information that he's now relying upon orally 16 for his neighborhood or surrounding area. Quite frankly, I 17 think that hurts his testimony in the credibility of where 18 he's coming from. 19 Whereas, Mr. Kline took Joe Davis through it 20 extensively, extensively, and Mr. Davis was very adamant 21 and gave his land use reasons why he was not going to go 22 into a different planning area, Gaithersburg, to the west 23 of Redland, and that he was focused on the southern side 24 and the northern side and the properties to the south. 25 Look, you're going to have to make a decision on</p>	<p style="text-align: right;">52</p> <p>1 ago, we went through extensively exterior lighting, if you 2 remember that, and we had the discussion about the cleanup 3 crew at the end of the day, a year ago, and the hours of 4 the lights and things of that nature. 5 Was it last week, last Friday, Mr. Mandava, all of 6 a sudden, says, we're going to put timers on all the 7 lighting so that they're all off at 7:30. He admitted that 8 he did not know when it got dark at night. He admitted 9 that it could be that the cleanup crew would have to go to 10 their cars or their -- in the dark without any lights. I 11 don't recollect his testimony about parent-teacher 12 meetings, but, again, Madam Examiner, I ask that you take a 13 look at that testimony and compare it to what you heard a 14 year ago or what was presented to you a year ago. 15 The issue about Crabbs Branch, it is a 16 subwatershed. It is a regular-level stream that needs to 17 be protected. If you go to -- I think it's page 49, 18 paragraph at the bottom of the Master Plan talks about 19 that. Both Davis and Dr. Kosary testified about it. The 20 importance of trees, the maintaining of trees in the Master 21 Plan area, again, Dr. Kosary addressed that. 22 Last year -- I don't know whether you remember 23 this, but, last year, one of the witnesses -- I think it 24 may have been Mr. Wolford -- at the end of the testimony 25 gave the cryptic comment, A property owner's right of</p>

<p style="text-align: right;">53</p> <p>1 access to the public right-of-way cannot be denied. I 2 don't know whether you remember that, but it was right at 3 the end, and it was in the context of the access point in 4 the northeastern corner. 5 There are some old cases on that. Because the 6 gentleman was correct: If you are on a public way, you are 7 entitled to access. But that does not mean you're entitled 8 to access the way you want it. It does not mean that 9 you're entitled to access if it would be to the detriment 10 to other property owners. And there are two really old 11 cases that -- I read them a year ago. They're kind of 12 convoluted, but I believe I've accurately stated to you the 13 proposition that while a property owner has a right to 14 access, it does not mean that the property owner has the 15 right of access as the property owner wants it. 16 And then these cases are Alan Construction Co. v. 17 Gerding, G-E-R-D-I-N-G, 209 Md. 71, pages 73 and 74, and 18 Perellis -- I'm probably butchering the pronunciation, but 19 it's P-E-R-E-L-L-I-S -- v. Mayor and City Council of 20 Baltimore, 190 Md. 86, and it's at page 93. They're a 21 little bit convoluted, but, respectfully, I think the 22 proposition that I've articulated is supported by those two 23 decisions. 24 I think -- with Davis' testimony, he gave you the 25 explanation for ZTA 99004 and the background. He was</p>	<p style="text-align: right;">55</p> <p>1 Mr. Kline, do you want to follow up? And take your 2 time. 3 REBUTTAL ARGUMENT ON BEHALF OF THE APPLICANT 4 MR. KLINE: I don't know if you can see me there, 5 Madam Hearing Examiner. 6 HEARING EXAMINER ROBESON HANNAN: I can now. 7 MR. KLINE: Okay. I really did not want to have to 8 take my closing of my closing to -- to have to rebut -- not 9 testimony -- the statements that you have just heard, but I 10 just -- I just can't let it leave the way it is. 11 Mr. Jolley's testimony. Mr. Jolley very distinctly 12 stated, I do not know where the critical root zones are on 13 the properties of the trees on the Kosary-Posey property, 14 so I don't know where we might be encroaching into that 15 area, but in the event there are any trees that we would be 16 encroaching into because of the limits of disturbance, here 17 are the measures we would take to try and protect them to 18 the greatest extent possible. 19 I would encourage you to read the Francisco case, 20 not because it gives you any great vision as to what should 21 happen in this case, but simply because the circumstances 22 that basically generated a lot of citizen comment were 23 because the roads were inadequate to accommodate the 24 vehicles that were generated by the Francisco operation. 25 It was a situation of dedicated public streets, not</p>
<p style="text-align: right;">54</p> <p>1 involved in that legislative effort, gave some background 2 on inherent and noninherent adverse effects and unusual 3 circumstances. I -- he was straight up with you talking 4 about noninherent characteristics and the language used in 5 hearing examiners' reports. He testified about the parking 6 setback waiver and the tree variance even. He -- he 7 addressed the line of sight analysis that was presented and 8 the congestion, as I've noted. He -- he was very candid in 9 testifying and explaining his differences with the staff 10 and their technical report. 11 Again, Mr. Kline would disagree with Mr. Davis, I'm 12 sure, but Mr. Davis was very straightforward in his 13 criticism of the staff, and the Examiner heard that 14 testimony. And I think when you look at Davis' criticism 15 of the staff, I think those criticisms were meritorious, 16 especially when you look at the facts that had been 17 developed over -- over ten days of hearings. 18 He went through literally every section and 19 subsection of the -- the needed findings for the Hearing 20 Examiner for a conditional use. Mr. Kline and you cross- 21 examined him fully on each of those areas. 22 I guess my -- my final comment -- well, let me -- 23 let me wait one second. I'm done. No further. 24 HEARING EXAMINER ROBESON HANNAN: Thank you, Mr. 25 Chen.</p>	<p style="text-align: right;">56</p> <p>1 publicly maintained, and, therefore, the right-of-way was 2 narrower than you would have in a public street, and that 3 was what the concern was. 4 It doesn't have any bearing on the circumstances of 5 Needwood Road or anything affiliated with our case that 6 would give you any guidance in that regard. 7 The Applicant -- we may have -- we may have on 8 occasions said statements about the location of the 9 driveway that were misleading in the sense that we were not 10 as specific as we should've been. What I've been trying to 11 emphasize is that the driveway is located to get the 12 maximum line of sight because it's set on the top of the 13 ridge. 14 There are other places that there was adequate line 15 of sight, but the simple fact of the matter is that's not 16 the best place to put the driveway simply for the -- what I 17 mentioned before. You cannot bring the road in and get it 18 to maneuver around whatever building you build there 19 quickly enough in order to avoid having to have a parallel 20 road on either the south side or the north side, and we 21 made an election to think that the -- the road on the north 22 side could be better screened and -- better screened. 23 And when -- when it's suggested that it is the size 24 of the building and the size of the program that's driving 25 all that, the simple fact of the matter is, if you take a</p>

<p style="text-align: right;">57</p> <p>1 look at Section 59.G.6.2.5k, any conditional use that went 2 on this property that had more than three parking spaces is 3 going to have that problem because they would have to have 4 that driveway then going around the building no matter how 5 -- whatever size it is. 6 So it is not the building that's driving it; it is 7 the -- basically the inherent and strict requirements for 8 the land area dedicated to basically making everything fit 9 on the property that's causing us to have to put the 10 driveway where it is. And we, ultimately, as I said, 11 decided that we could do a better job of screening the 12 impact of the driveway where we put it rather than if it 13 was somewhere else. 14 I -- well, the -- the statement was made that the 15 review by the Development Review Committee at Park and 16 Planning Commission was to deal with the conditional use 17 application, and that statement is contrary to the exhibit 18 that I remember you putting on the screen fairly recently 19 that showed that document, the DRC agenda, and it was 20 called a concept plan. And we were there because we were 21 trying to avoid the problem that we're dealing with now by 22 asking the County to let us abandon Carnegie, which would 23 then allow us to be able to come in on that street. 24 Basically, we would have a better situation in terms of how 25 to get onto the property.</p>	<p style="text-align: right;">59</p> <p>1 Road, and I understand why Mr. Davis didn't think that 2 should be included, although other planners didn't agree 3 with him, but just the neighborhood you can see immediately 4 to the north is not a low-density area. 5 And if you ask me why does the Applicant think the 6 parcel of land outlined in yellow on that photograph is an 7 outlier, it's because it is in an enclave of RE-1 zoned 8 land that does not abut any other enclave of RE-1 land 9 until you get much further north, and it is basically -- 10 the closest -- rather than being close to any RE-1 zone, 11 it's close to PD-2 zoned land surrounding the Shady Grove 12 metro station. So that -- that little enclave, it just 13 doesn't fit in with the concept of what the Master Plan is 14 doing. 15 And I said I thought Mr. Davis basically put -- put 16 layers on this, but I don't think you should be -- or that 17 it should be suggested that all of the environmental 18 principles of the Upper Rock Creek Master Plan should be 19 applicable at a hundred percent against this property 20 because it just does not fit in that situation. 21 And I don't understand how the property can be 22 tainted, I guess, for purposes of the Applicant's argument, 23 with the claim that it's in the residential wedge when in 24 fact it's within walking distance, as people have 25 testified, of the Shady Grove metro station. Those two</p>
<p style="text-align: right;">58</p> <p>1 There was nothing about the conditional use that 2 brought us there that day, and it was an effort to try and 3 come up with another solution to minimize the problem. And 4 I don't know how many times I have to say this, but that 5 was not the purpose of the meeting. It was strictly to 6 test out the abandonment, and we learned the County 7 believes that that linkage should be made someday between 8 the subdivision to the south and -- and Needwood Road, and, 9 therefore, they would not abandon. And I don't know why 10 anybody would suggest that that was a discussion of the 11 conditional use when in fact the agenda, it clearly 12 indicates that's not the case. 13 I'm -- I'm going to finish with asking you if you 14 could pull up the staff report, and that would be page 3. 15 HEARING EXAMINER ROBESON HANNAN: Is this what you 16 want, Mr. Kline? 17 MR. KLINE: Yes, ma'am. Thank you. 18 Going back to the text on page 8 of the staff 19 report that was read by the counsel for the opposition, The 20 Master Plan also recommends keeping the residential wedge 21 areas in a low density that is compatible with the existing 22 community. 23 The Applicant asserts that what you see in that 24 picture is not a low-density community. Even if you 25 disregard everything on the west side of -- of Redland</p>	<p style="text-align: right;">60</p> <p>1 things just don't compute. 2 In the end, I think that the -- the -- the tough 3 thing to deal with in this case is the edge issue between 4 the two properties, and can the school operate and be 5 harmonious with the Posey -- Posey-Kosary property, and we 6 feel that we did a good job and convinced other 7 professional planners that it was an adequate separation 8 and are prepared to go further if you felt there needed to 9 be more protection through a site plan condition, if you 10 wished. 11 That concludes my argument. Thank you very much. 12 HEARING EXAMINER ROBESON HANNAN: Thank you very 13 much. I just want to commend both attorneys. You've done 14 an absolutely excellent job for your clients, both of you, 15 and I certainly appreciate it. 16 With that, if no one has anything else, we are 17 going to close -- not close the record. We're going to 18 close the public hearing. We're going to leave the record 19 open for a period of ten days so that we can receive the 20 transcript, and, by my calculation, the ten days ends April 21 23rd. Are there any objections to that, just out of an 22 abundance of caution? 23 MR. KLINE: No objection from the Applicant. 24 MR. CHEN: No objection by my clients, Madam 25 Examiner.</p>

<p style="text-align: right;">61</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. Well, I do</p> <p>2 -- I really do want to commend both of -- both of the</p> <p>3 parties. And, with that, we'll close the public hearing.</p> <p>4 The record will remain open just to receive the transcript,</p> <p>5 not to receive any more testimony or letters. Everybody</p> <p>6 has participated so far, and so we have to call a close at</p> <p>7 some point.</p> <p>8 With that, I'm adjourning this hearing. The record</p> <p>9 will close on April 23rd, and my decision is due 30 days</p> <p>10 after the date the record closes.</p> <p>11 Okay. Thank you very much.</p> <p>12 (Off the record at 5:18 p.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</p> <p>24</p> <p>25</p>	<p style="text-align: right;">63</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Megan Wunsch, do hereby certify that</p> <p>3 the foregoing transcript is a true and correct record of</p> <p>4 the recorded proceedings; that said proceedings were</p> <p>5 transcribed to the best of my ability from the audio</p> <p>6 recording and supporting information; and that I am neither</p> <p>7 counsel for, related to, nor employed by any of the parties</p> <p>8 to this case and have no interest, financial or otherwise,</p> <p>9 in its outcome.</p> <p>10</p> <p>11</p> <p>12</p> <p>13 </p> <p>14 <u>Megan Wunsch, AAERT CET</u></p> <p>15 April 22, 2021</p> <p>16</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: right;">62</p> <p>1 CERTIFICATE OF COURT REPORTER</p> <p>2 I, Sarah Loiler, the officer before whom the foregoing</p> <p>3 proceedings were taken, do hereby certify that said</p> <p>4 proceedings were electronically recorded by me; and that I</p> <p>5 am neither counsel for, related to, nor employed by any of</p> <p>6 the parties to this case and have no interest, financial or</p> <p>7 otherwise, in its outcome.</p> <p>8</p> <p>9 </p> <p>10 <u>Sarah Loiler, Court Reporter</u></p> <p>11</p> <p>12</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</p> <p>24</p> <p>25</p>	

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