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OFFICE OF THE ZONING HEARING EXAMINER  
FOR PRINCE GEORGE'S COUNTY

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BRIGHTSEAT ROAD RE LLC : Case No. SE/VSE-4845  
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A hearing in the above-entitled matter was held on  
January 26, 2022, at the Prince George's County Office of  
Zoning, County Administration Building, Room 2174, Upper  
Marlboro, Maryland 20772 before:

Maurene McNeil  
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Thomas Haller, Esq.

On Behalf of People's Zoning:

Stan Brown

\* \* \* \* \*

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MS. MCNEIL: Okay. Good morning everyone, I'm  
Maurene McNeil and I'll be the Hearing Examiner today and  
today is January 26, 2022. Happy New Year to those I  
haven't seen this year. We're here today on Special  
Exception 4845, the applicant is Hyattsville Brightseat Road  
RE LLC and it's a request for a gas station and food or  
beverage store. And before I go further, are you all  
hearing an echo because I am, from me? Okay.

MR. FERGUSON: Madam Examiner --

MS. MCNEIL: Mr. Poe, we thank you.

MR. FERGUSON: -- Harry, thank you are clear.

MS. MCNEIL: Okay. Thank you. So I was at the  
point to ask counsel to identify themselves for the record.

MR. BROWN: Stan Brown, People's Zoning Council.

MR. HALLER: I'm sorry Madam Examiner, my client  
called, he wasn't able to get on, he couldn't find the link  
so he's calling in, he's getting on right now, I apologize.

MS. MCNEIL: Okay. So you're here as counsel, Mr.  
Haller?

MR. HALLER: Yes, ma'am. I'm sorry, I'm here as  
counsel for the applicant.

MS. MCNEIL: Okay. Before we start is anyone here  
in opposition to this request? If you are, just raise your  
hand. I'd note for the record there doesn't appear to be

1 any opposition. So Mr. Haller, wait a minute. And Mr.  
2 Alter is your client?

3 MR. HALLER: Yes, ma'am.

4 MS. MCNEIL: Okay.

5 MR. HALLER: He's just now joining.

6 MS. MCNEIL: Yes, I see him. So okay, go ahead,  
7 Mr. Haller.

8 MR. FERGUSON: Madam Examiner, Mark Ferguson,  
9 apologies. I'm getting a message from Mr. Guckert who will  
10 be testifying later that he did not get a log in as well.

11 MS. MCNEIL: Okay. Mr. Ferguson, you know Ms.  
12 Rawlings e-mail right, can you send that to him and then  
13 she'll send him the link?

14 MR. FERGUSON: I will.

15 UNIDENTIFIED SPEAKER: I'm showing we sent him  
16 one.

17 MS. MCNEIL: Okay. You already have his e-mail.  
18 Okay?

19 UNIDENTIFIED SPEAKER: I did the other day.

20 MR. FERGUSON: Yes, it's just because he didn't  
21 get it, that's all.

22 UNIDENTIFIED SPEAKER: Yeah, I can resend.

23 MR. HALLER: Since you sent it on a Sunday maybe  
24 Wes didn't look on Sunday.

25 MR. FERGUSON: No, I told him to, but I think.

1 UNIDENTIFIED SPEAKER: Okay. Let me go in and see  
2 what I can do here.

3 MS. MCNEIL: Okay. Thank you. All right, Mr.  
4 Haller.

5 MR. HALLER: Good morning, Madam Examiner, again  
6 for the record Thomas Haller on behalf of the applicant in  
7 this case. And the hearing that's before today Special  
8 Exception 4845 is an application for a special exception to  
9 construct a gas station with a food and beverage store, it  
10 is branded as a 7-Eleven and it is located at the corner of  
11 Arena Drive and Brightseat Road. If you drive from Largo  
12 Town Center across the bridge, which the overpass of the  
13 beltway, and you're going down toward the FedEx Field  
14 Stadium, this site is on the right hand side of the road.  
15 The property has an existing Wood Springs Suites Hotel that  
16 was constructed pursuant to Detailed Site Plan 15021. The  
17 Detailed Site Plan was originally approved for two hotels  
18 and the site was developed and one of the hotels as I noted  
19 has been constructed. However, the owner has elected to  
20 forego the construction of the second hotel --

21 UNIDENTIFIED SPEAKER: (Indiscernible).

22 MS. MCNEIL: I'm seeing that I forgot to, if  
23 you're not speaking you need to mute yourself.

24 MR. HALLER: Microphone.

25 MS. MCNEIL: Mr. Alter, if you could mute

1 yourself?

2 MR. ALTER: I, do you want me to mute myself,  
3 okay, sorry? I, I don't think I'm making noise.

4 MS. MCNEIL: No problem.

5 MR. ALTER: Sorry.

6 MS. MCNEIL: No, it might be feedback, I'm getting  
7 ready to mute myself and hope it goes away. Let's see.

8 UNIDENTIFIED SPEAKER: Excuse me, I just sent Mr.  
9 Guckert the link again.

10 MR. HALLER: All right. Well, the noise is  
11 reduced anyway. So as I was saying, the owner of the hotel  
12 property has elected to sell the pad site that was  
13 originally created for the second hotel to the applicant in  
14 this case for the construction of the proposed facility.  
15 And the boundaries of the special exception reflect the  
16 boundary of the property that has been sold to the  
17 applicant.

18 As a preliminarily matter, I did want to note for  
19 the record that we submitted a copy of a certificate of good  
20 standing for the ownership entity which is Sandpiper Arena  
21 Drive LLC and that was marked as Exhibit 34 on the exhibits  
22 list, and so I wanted to make sure that that was noted for  
23 the record. And I also just wanted to ask a question, there  
24 are several exhibits that I submitted over the past few days  
25 and I didn't know whether the Examiner would like me to go

1 through them and explain what they are or just to refer to  
2 them during the testimony as I have the witnesses refer to  
3 them. Do you have a preference?

4 MS. MCNEIL: You can do the latter, but I would  
5 like you to look at it. So we have 47 premarked exhibits  
6 and I just want to make sure, I'm pretty sure they all came  
7 from you, but you have no objection to making them part of  
8 the record?

9 MR. HALLER: No, I do not and I just want to note  
10 that Binder 1 that shows up on the agenda contains Exhibits  
11 1 through 32, Binder 2 contains Exhibits 33 through 40, and  
12 so Exhibits 41 through 47 are not shown on the agenda, the  
13 meeting details on the website. So those are the additional  
14 exhibits that I submitted that we would need to refer to as  
15 part of this hearing.

16 MS. MCNEIL: Okay. And thank you, Mr. Haller. I  
17 should have said everything that you just said, so I  
18 appreciate you. What happened is your last exhibits came a  
19 little after the date that we put things up on the web,  
20 that's why we try to get all exhibits, it's about a week  
21 before the hearing but I do understand that there are  
22 reasons why folks can't make that time period. So what you  
23 will want to do is at least explain 41 through 47 carefully  
24 because they were not on the web. Okay.

25 MR. HALLER: As we get to those through the

1 testimony I will make sure that we do that.

2 MS. MCNEIL: Okay. Thank you and you may proceed.

3 MR. HALLER: All right. Thank you.

4 MS. MCNEIL: And Mr. Guckert is here, I saw him.

5 MR. HALLER: Yes. And so I would now like to call  
6 as my first witness Mr. Richard Alter.

7 MS. MCNEIL: Mr. Alter?

8 MR. ALTER: (No audible response.)

9 MR. HALLER: Mr. Alter, can you unmute yourself?

10 MS. MCNEIL: And turn on the camera.

11 MR. HALLER: Mr. Alter?

12 MR. ALTER: There's my camera. My apologies, I'm  
13 unfortunately under, a little under the weather so I ended  
14 up not going to the office where I could be on a computer,  
15 so I'm trying to do this off my cellphone where I don't have  
16 necessarily the world's best Wi-Fi so my apologies for any  
17 inconveniences I'm causing. But hopefully you can hear me  
18 and see me at this point.

19 MR. HALLER: We cannot see you, we can hear you.

20 MR. ALTER: Okay. Now I've pushed the seat button  
21 and it seems to, it's no longer, it's no longer got an X  
22 through it. Clearly my microphone is green and web, it says  
23 view webcam, share my, wait a second maybe this does it.  
24 Did that work?

25 MS. MCNEIL: Yes.

1           MR. ALTER: Okay. Sorry, I, I'm, I'm probably the  
2 oldest person on this phone call and therefore the least  
3 technically competent. So my apologies for any difficulties  
4 that I've had.

5           MS. MCNEIL: Okay. I'm not going to make any of  
6 that true evidence, but Mr. Alter, do you swear or affirm  
7 under the penalties of perjury that the testimony you shall  
8 give will be the truth and nothing but the truth?

9           MR. ALTER: Yes, it will be.

10          MS. MCNEIL: Okay.

11          MR. HALLER: Thank you, Mr. Alter. Can you please  
12 state your name and business address for the record?

13          MR. ALTER: My name is Richard M. Alter, and 5850  
14 Waterloo Drive, Colombia, Maryland.

15          MR. HALLER: And could you please describe your  
16 roll --

17          MR. ALTER: I'm sorry, 210, 21046. I am a  
18 managing partner in the ownership entity that has the  
19 property under contract.

20          MR. HALLER: And that is Hyattsville Brightseat  
21 Road RE LLC?

22          MR. ALTER: Yes.

23          MR. HALLER: And is Hyattsville Brightseat Road RE  
24 LLC an entity in good standing in the state of Maryland?

25          MR. ALTER: It is and I thought you had actually

1 part of your 47 appendages, actually has been sent in as  
2 well.

3 MR. HALLER: Yes, I would note for the record --

4 MR. ALTER: The, the confirmation document, yes.

5 MR. HALLER: -- a certificate of good standing  
6 representing that Brightseat Road RE LLC is an entity in  
7 good standing was submitted and is included as Exhibit 33 in  
8 the record. If the Examiner needs to see that I can ask  
9 that it be pulled up, but it was provided in the second  
10 binder. Mr. Alter, are you authorized by Hyattsville  
11 Brightseat Road RE LLC to testify today before the Zoning  
12 Hearing Examiner regarding this application?

13 MR. ALTER: Yes, I am.

14 MR. HALLER: And do you have prior experience in  
15 developing projects in the region and specifically in Prince  
16 George's County?

17 MR. ALTER: I do. I, I said earlier I may be the  
18 oldest person on this call, so in October of '21 I  
19 celebrated my 50th year at Manekin. We have, which is sort  
20 of the company that, it's not referenced anywhere, but  
21 that's the operating company that is a real estate company  
22 that I am an owner of. And we have in that name or the name  
23 of multiple partnerships been working in the county for over  
24 30 years, projects that, that hopefully you all are familiar  
25 with as we initially did for the Goulds their first

1 developments in Conterra. We were associated with the, the  
2 University of Maryland and corporate operate properties in  
3 the development and redevelopment of the office park  
4 adjacent to Noah in College Park. We're fairly eclectic so  
5 we've done industrial redevelopment and construction of the  
6 old Safeway facility. We have done shopping center down on  
7 Indian Head Highway and Berry Road and the Giant shopping  
8 center. I'm not giving you any dates, those were all done  
9 over a somewhat long period of time.

10           We also did an office in Lanham, the industrial  
11 (indiscernible) the last three years I'd say Prince George's  
12 County has been my basic home. I have been fortunate enough  
13 to be part of the ownership group of National Capital  
14 Business Park which was rezoned a 450 acre site all behind  
15 west of Collington off of 301 and we are working with all of  
16 the appropriate government bodies following successful text  
17 amendment to industrial to develop upwards of to 5 million  
18 square feet of industrial space just west of Collington. We  
19 have other industrial projects at Brightseat off of either  
20 Arena or Medical Center Drive and we have done other  
21 convenience store locations and currently have Royal Farms  
22 going up on Off Road and another one off of Woodmore in  
23 Woodmore off of 202.

24           MR. HALLER: All right. Well thank you very much  
25 and turning your attention to the instant application, what

1 is the applicant proposing to develop on the subject  
2 property that's the topic of today's hearing?

3 MR. ALTER: We, redeveloping a convenience store  
4 for 7-Eleven with gas pumps and to, a food eating  
5 facilities.

6 MR. HALLER: Is the property currently developed?

7 MR. ALTER: The un-subdivided property is  
8 currently has a hotel built on it by the property owner.  
9 Initially he had shown a Site Plan with two hotels on it,  
10 the second hotel is, the first hotel is right up against the  
11 beltway, the second hotel fronts on Brightseat and that  
12 property is the one that we are talking about.

13 MR. HALLER: All right, thank you. Are you  
14 proposing to purchase the property that is the subject of  
15 this special exception application?

16 MR. ALTER: Yes, we will purchase the property.

17 MR. HALLER: All right. At the time that we first  
18 began the project, were you planning to file a Preliminary  
19 Plan of Subdivision for the property?

20 MR. ALTER: Yes, I believe so. I mean frankly,  
21 you can probably answer that question better than, than I  
22 can, as both you and Bohler have handled all of the  
23 different engineering and entitlement aspects.

24 MR. HALLER: When you --

25 MR. ALTER: But we've, clearly, clearly there

1 were, there, I'm sorry, go ahead Tom.

2 MR. HALLER: No, no. When you do purchase the  
3 property, will you be sharing points of access with the  
4 hotel?

5 MR. ALTER: Yes, we will need sharing points of  
6 access with the hotel.

7 MR. HALLER: And what --

8 MR. ALTER: We will come in off of the current  
9 driveway.

10 MR. HALLER: And will you also be sharing other  
11 facilities, such as storm water management facilities?

12 MR. ALTER: Yes, we will.

13 MR. HALLER: Okay. Now let me ask you a question.  
14 As you are aware, there is a variance application associated  
15 with this application to allow the property to access the  
16 driveway rather than to directly access Brightseat Road.  
17 Why do the boundaries of the special exception not include  
18 the driveway which serves the hotel as well?

19 MR. ALTER: The property owner who was the seller  
20 and the property owner of the hotel for reasons that their  
21 counsel could probably describe better than I can, but did  
22 not want the special exception to cover the entrance road.

23 MR. HALLER: Okay. And so since the property that  
24 is the subject of this special exception will be sharing  
25 common access and the use of the storm water management

1 facilities on the property, will it be necessary for there  
2 to be an agreement to share the use of the cost of  
3 maintaining these shared facilities?

4 MR. ALTER: Yes, we will have a reciprocal lease  
5 and agreement that deals with the, the commonality of both  
6 access as well as shared facilities. And I believe that  
7 there's at least a draft that was part of the documentation  
8 that was sent in.

9 MR. HALLER: And Madam --

10 MR. ALTER: The document itself would not be,  
11 would not become official until we actually take title, so  
12 that's why you don't have a signed copy.

13 MR. HALLER: Yes, and Madam Examiner we submitted  
14 a draft of the reciprocal easement agreement as Exhibit 39.  
15 I'm not planning to have Mr. Alter go through that  
16 agreement. I can certainly have it pulled up if you need to  
17 see it. But I just wanted to have that in the record so  
18 that it would be clear that the applicant in this case will  
19 be sharing first amended complaint facilities and having  
20 appropriate agreement to do so with the owner of the  
21 property.

22 MS. MCNEIL: What's under, bring something up  
23 preliminarily, Mr. Haller and I apologize, but I don't  
24 believe that the variance is advertised for this hearing and  
25 I was thinking that you all were going to come in and maybe

1 just to brief the staff that you needed one. So if you  
2 think you need a variance, I mean if someone could pull up  
3 Exhibit 31, I don't even think the signs mention variance.  
4 If they do, then we're good.

5 MR. HALLER: It was certainly referenced in the  
6 Staff Report and it included the --

7 MS. MCNEIL: It wasn't referenced in the Staff  
8 Report but I mean the application doesn't reference it, I  
9 just missed it. I apologize, the application doesn't  
10 reference this, the signs didn't reference it unless, Ms.  
11 Poteat can you pull up Exhibit 31?

12 MR. HALLER: Is that the notice?

13 MS. MCNEIL: Yes, some pictures attached to it.

14 MS. POTEAT: Give me a second.

15 MS. MCNEIL: Okay.

16 MR. HALLER: The sign posting.

17 MS. MCNEIL: If you'd scroll down to some  
18 pictures. After that one there's one standing up and I  
19 don't know if you can make it larger, but I mean I guess we  
20 can make it larger ourselves. Anyway I can't see variance  
21 on there. I mean, Mr. Haller, do you have a copy yourself,  
22 do you see the variance?

23 MR. HALLER: I'm sorry?

24 MS. MCNEIL: Do you see variance on that sign?

25 MR. HALLER: I do not see variance on that sign.

1 I can try to blow it up, but I do not see, I can't read the  
2 sign. I'm looking at the notice of virtual hearing, I do  
3 not see the reference to the variance.

4 MS. MCNEIL: Okay. So I apologize, thank you, Ms.  
5 Poteat. I apologize, and you can take it down.

6 MS. POTEAT: Sure, thank you.

7 MS. MCNEIL: But what we'll have to do, if you  
8 need this variance we can go forward today, give you a date  
9 today and all we talk about next time is the variance.

10 MR. HALLER: Would you like my witness to address  
11 the variance today and then so --

12 MS. MCNEIL: Will they be available next time as  
13 well?

14 MR. HALLER: We can make them available. I think  
15 the only witness that would probably need to address it is  
16 Mr. Ferguson.

17 MS. MCNEIL: Okay. Yes, he can address it. I  
18 apologize.

19 MR. HALLER: All right. Thank you.

20 MS. MCNEIL: Everybody mute themselves.

21 MR. HALLER: Are we ready to go back to Mr. Alter?

22 MS. MCNEIL: We can go back to Mr. Alter and Ms.  
23 Poteat, you can take your screen down. Okay. Thank you  
24 all.

25 MR. HALLER: All right. Thank you. Mr. Alter,

1 can you still hear me?

2 MR. ALTER: I can still hear you.

3 MR. HALLER: Okay. So Mr. Alter are you aware  
4 that because the property is zoned I-3 which requires  
5 approval of Conceptual Site Plan and a Detailed Site Plan  
6 these additional applications will also be required in  
7 addition to this Special Exception application?

8 MR. ALTER: Yes, I am.

9 MR. HALLER: And if this application is approved,  
10 will you be responsible for developing the property in  
11 accordance with the Site Plan?

12 MR. ALTER: Yes, we will.

13 MR. HALLER: And have you had a chance to review  
14 the Staff Report and the recommended conditions of approval?

15 MR. ALTER: Yes, I have.

16 MR. HALLER: And do you agree with all of the  
17 recommended conditions of approval as listed in the Staff  
18 Report?

19 MR. ALTER: I think the only issue we had, and  
20 issue is probably, the only consideration or concern we had  
21 in the Staff Report dealt with the, the sign. I think all  
22 the other issues were clearly acceptable.

23 MR. HALLER: Okay. And when you reference the  
24 sign, are you referring to Condition 1E, which requires that  
25 the proposed pylon sign be reduced in height to the lowest

1 point of the roof of the building?

2 MR. ALTER: Yes.

3 MR. HALLER: And why do you object to that --

4 MR. ALTER: And --

5 MR. HALLER: -- why do you object to that  
6 condition?

7 MR. ALTER: The, the user and in fact, I'm going  
8 to rely a little more on the testimony of representative  
9 from 7-Eleven as well as Mr. Ferguson's comments with regard  
10 to it. But obviously there are visibility issues given the  
11 permit, given, sorry, the grading, the grades along  
12 Brightseat and some of the, the trees that we will need to  
13 be maintaining and saving that all impact on the, the  
14 desired height of the sign.

15 MR. HALLER: Okay. With the exception of this one  
16 condition, you're in agreement with all of the other  
17 conditions recommended by staff?

18 MR. ALTER: Yes, I am, Tom.

19 MR. HALLER: Okay. I have no further questions of  
20 Mr. Alter.

21 MR. ALTER: Thank you. And again I apologize for  
22 my lack of competency early on.

23 MS. MCNEIL: Stop saying that, you were fine. Mr.  
24 Brown, do you have questions of Mr. Alter?

25 MR. BROWN: Yes, just one or two. Good morning,

1 Mr. Alter.

2 MR. ALTER: Good morning.

3 MR. BROWN: The Staff Report indicates that the  
4 applicant is a contract leasee as opposed to a contract  
5 purchaser.

6 MR. ALTER: (Sound.)

7 MR. BROWN: You testified that the applicant is a  
8 contract purchaser, so which is it?

9 MR. ALTER: No, we will be the contract purchaser.  
10 I mean Tom could explain earlier on why we did, had some  
11 consideration that we would take this under an ownership lot  
12 in a lease kind of vehicle, but we will be the property  
13 owners when we take title.

14 MR. BROWN: All right.

15 MR. ALTER: And the property moves forward.

16 MR. BROWN: All right. And in looking at the  
17 business entity affidavits and individual applicant  
18 affidavits there's an entity described as Chesapeake RE  
19 Development LLC. What is the relationship of that entity to  
20 this property and this applicant?

21 MR. ALTER: You'll have to tell me where that is.  
22 I mean unfortunately in my 50 year career while the company,  
23 the development ownership, sorry, the company that I'm the  
24 president and major owner of is a company called Manekin,  
25 now the LLC, you see Manekin Corporation, you may be

1 hopefully familiar with that name after 50 years in the  
2 area, but we have developed over 15 million square feet of  
3 projects and maybe over 100 different projects and each  
4 project has a different name. So I apologize if maybe Tom  
5 could help me with a reference with regard to the  
6 Chesapeake, I'm blanking on it.

7 MR. BROWN: Yes, Tom if you could tell us what is  
8 the relevance of having an affidavit from Chesapeake RE  
9 Development LLC.

10 MR. HALLER: It is my understanding that they own  
11 a greater than 5 percent interest or have a greater than 5  
12 percent interest in the entity that is the contract  
13 purchaser. And so under the ethics statute requirements, we  
14 have to provide an affidavit from them.

15 MR. BROWN: And that was my next --

16 MR. ALTER: And if I, if I could sort of add to my  
17 litany of different information in the 100 different deals I  
18 may have 1,000 different partners in different entities. So  
19 again I'm sure we can provide you the background on  
20 Chesapeake and do the actual named owners or the ownership  
21 group in Chesapeake. I just, unfortunately I'm at my, in my  
22 home and I would need help in my office to get that, but  
23 I'll be happy to have that be provided for you later.

24 MR. BROWN: If you can how many 5 percent or more  
25 owners are there of Hyattsville Brightseat Road RE LLC? If

1 you know.

2 MR. ALTER: They, we, most, most of our  
3 development entities are single ownership entities and as we  
4 put different financing packages on, I'd say, you know, when  
5 I said there's 100 different partnerships. So for example  
6 at National Capital Business Park where I said we would have  
7 5 million square feet, there's a single entity that owns the  
8 250 developable acres, but as we built projects for and  
9 let's say it's 10 tenants, each one of those tenants will be  
10 built under a separate LLC, because of separate financing  
11 issues, separate equity issues. So the, the numbers are  
12 relatively off the chart. I can give you and track down the  
13 information for you, I just can't do it off the top of my  
14 head, I apologize.

15 MR. BROWN: Yes, no, I understand all of those  
16 relationships related to National Capital Business Park and  
17 Manekin and the other entities that you are involved in, but  
18 I want to focus on Hyattsville Brightseat Road RE LLC. And  
19 you can't answer it now but Mr. Haller, if he could provide  
20 in this record a list of the persons or entities that own 5  
21 percent or more of Hyattsville Brightseat Road RE LLC. I  
22 mean if it is only Chesapeake Development which owns 5  
23 percent or more and this Christian E. Proctor who also  
24 signed an individual affidavit, that's fine. But that  
25 doesn't appear to be the case since Mr. Alter, I would

1 assume reasonably, is also a 5 percent owner or more, and I  
2 do not see an individual affidavit from him.

3 MR. ALTER: And, and actually, sorry, number one,  
4 because I said I'm the oldest guy on the call, I am 77, soon  
5 to be 78 and my, well I hopefully will stay healthy and  
6 continue to develop for a long time. Much of my current  
7 development is part of basically estate planning issues and  
8 so while I speak for the entity and have the ability to you  
9 know manage the equity, I am not a 5 percent owner or family  
10 entity. Family members of my family are and will be listed  
11 and I'm thinking now that you've mentioned Chesapeake that  
12 that well may be another partner who is out in Frederick and  
13 that's the entity. And the reason I say that is because the  
14 proctor entity, it's his daughter as well, but in terms of  
15 my 5 percent given my age, I have basically not taken  
16 ownership of any significant amount of these entities. And  
17 I apologize for throwing National Capital Business Park out  
18 there, I just use that as a frame of reference to explain  
19 sort of how these things come about.

20 MR. BROWN: All right.

21 MS. MCNEIL: Mr. Brown, if I may? Can I just ask  
22 this? Mr. Haller, you have 9A through 9H as ethics  
23 affidavit. If we leave the record open can you please  
24 verify that all of these people are 5 percent owners or more  
25 and if there are any others can you provide those as well?

1           MR. HALLER: I absolutely will. I absolutely  
2 will, Madam Examiner, and I'll provide an organizational  
3 chart so you'll see who owns the 5 percent or greater  
4 interest in the end.

5           MS. MCNEIL: I'm sorry, Mr. Brown, you can go  
6 ahead now.

7           MR. BROWN: No other questions, thank you.

8           MS. MCNEIL: Thank you, Mr. Alter.

9           MR. HALLER: All right. Thank you.

10          MR. ALTER: Thank you.

11          MR. HALLER: Now I'd like to call --

12          MR. ALTER: You and --

13          MR. HALLER: -- Mr. Owen as my next witness.

14          MS. MCNEIL: Mr. Owen. Good morning, Mr. Owen.

15          MR. OWEN: Good morning, Madam Examiner. Good  
16 morning, how are you?

17          MS. MCNEIL: Good, thank you. Do you swear or  
18 affirm under the penalties of perjury that the testimony you  
19 shall give will be the truth and nothing but the truth?

20          MR. OWEN: Yes, I do.

21          MR. HALLER: Good morning, Mr. Owen, how are you  
22 today?

23          MR. OWEN: I am wonderful, Mr. Haller, how are  
24 you?

25          MR. HALLER: Awesome. Could you please state your

1 full name and business address for the record?

2 MR. OWEN: Sure. My name is William Owen, I am  
3 the Assistant Vice President of Penntex Ventures, LLC, which  
4 is a real estate development company based out of  
5 Pittsburgh, Pennsylvania. The business address is 400 Penn  
6 Center Boulevard, Pittsburgh, P-A, 15235 --

7 MR. HALLER: And what is --

8 MR. OWEN: -- Suite 1000.

9 MR. HALLER: I'm sorry. And would you please  
10 explain what Penntex Ventures role is with the processing of  
11 this application?

12 MR. OWEN: Sure, Penntex Ventures is a preferred  
13 developer for a few different tenants, one of them being 7-  
14 Eleven. We develop a lot of 7-Eleven's across all of  
15 Maryland, Delaware, Virginia, West Virginia and we've been  
16 retained by Mr. Alter to assist him in guiding this through  
17 the various processes of entitlement, lease negotiations,  
18 lease executions and ultimately prosecution of that lease as  
19 to, you know requirements for a build to projects and  
20 deliverables and contract management with contractors when  
21 the time comes, management of consultants during the  
22 entitlement process, et cetera.

23 MR. HALLER: And so you are the person with  
24 Penntex who is responsible for the management of this  
25 project?

1 MR. OWEN: Yes, sir, that's correct.

2 MR. HALLER: Okay. And in such role, are you  
3 familiar with the pending application and the proposed  
4 facility to be constructed?

5 MR. OWEN: Yes, I am.

6 MR. HALLER: Could you please describe for the  
7 Examiner exactly what is being proposed?

8 MR. OWEN: Sure. What we're proposing here is a  
9 fueling station that will consist of eight multi position  
10 dispensers and what that means is it's just your typical gas  
11 dispensary, where you have a pump on either side. So there  
12 are a total of 16 fueling positions proposed.

13 In addition to the fueling station, we're  
14 proposing a combination of a typical convenience store as  
15 well as a restaurant type concept within a 4,050 square foot  
16 enclosed building that will be necessary to the, the fueling  
17 use.

18 MR. HALLER: Thank you very much. And how will  
19 the site be accessed?

20 MR. OWEN: The site will take access through the  
21 existing access drives that serves the Wood Spring Suites  
22 Hotel located to the rear of the subject parcel from which  
23 we're going to subdivide our parcel and we'll take access  
24 directly out to Brightseat Road.

25 MR. HALLER: Okay. So this facility will access

1 the driveway that served the entire property and then from  
2 that driveway will directly access Brightseat Road, is that  
3 correct?

4 MR. OWEN: That is correct.

5 MR. HALLER: Okay.

6 MR. OWEN: Yes.

7 MR. HALLER: From an operational perspective, is  
8 this access to the facility adequate to serve the needs of  
9 7-Eleven?

10 MR. OWEN: Yes, it is and, and there is an  
11 executed lease here between Mr. Alter's entity and 7-Eleven  
12 and in the process of obtaining that lease we have to  
13 provide certain documentation and exhibits to the tenant.  
14 Amongst those exhibits are patron circulation exhibits that  
15 show how, you know, vehicles come in and where they stack  
16 and where they park and et cetera. In addition to obviously  
17 delivery vehicles, you know the fueling deliveries, et  
18 cetera. We have to provide clear exhibits that demonstrate  
19 the trucks can accurately circulate into the site without  
20 any conflicts into opposing lanes or infrastructure, i.e.,  
21 curbs and things of that nature and you know be able to, to  
22 stop, offload the fuel without, you know, blocking any sort  
23 of other access, patrons et cetera.

24 We submit all of these documents to 7-Eleven, they  
25 are out through various 7-Eleven, we call them departments,

1 operations and fueling and et cetera. We gain approvals  
2 from all of them to make sure that it works from them, for  
3 their operations and then all those become actually exhibits  
4 to the lease.

5 MR. HALLER: Okay. And so they have concluded  
6 that the site as designed functions adequately for all of  
7 their needs?

8 MR. OWEN: Yes, sir, that is correct.

9 MR. HALLER: All right. Would you please describe  
10 the architecture of the proposed store?

11 MR. OWEN: Sure. The architecture here is a  
12 little bit unique, unlike you know many convenience  
13 operators, your Wawa's, your Sheetz, your Royal Farms that  
14 are all of the traditional architecture. Here this one is,  
15 for lack of a better term, a one off. The ordinance is  
16 clear in that this development must blend in with you know  
17 other aspects of the development, so in developing the  
18 architecture of this store we looked at the, the hotel to  
19 the rear and took all of the detailing of that and  
20 incorporated it into the design of this building.

21 MR. HALLER: Thank you very much. Could I ask Ms.  
22 Poteat to pull up Exhibit 41?

23 MS. POTEAT: I'm sorry, yes.

24 UNIDENTIFIED SPEAKER: Excuse me.

25 MS. POTEAT: Susie, can you give me a helping hand

1 for a second? My documents is covering up my thing at the  
2 bottom and I can't get to it.

3 MR. HALLER: Yes, it's just above the seal.

4 UNIDENTIFIED SPEAKER: Okay.

5 MR. HALLER: I can see it. No, that's a different  
6 case, I'm sorry. Sorry about that.

7 MS. POTEAT: I'm sorry, what was the document?

8 MR. HALLER: Exhibit 41.

9 MS. POTEAT: Thank you. For some reason, Madam  
10 Examiner, I can't seem to pull it up.

11 MR. HALLER: It's not in Binder 2, it's the first  
12 document outside of Binder 2.

13 MS. POTEAT: Let's do it this way.

14 MS. MCNEIL: Correct, it's not in a binder,  
15 Exhibits 41 through 47 are not.

16 MS. POTEAT: Oh boy.

17 MR. OWEN: A copy of it I can pull up if that.

18 MR. HALLER: I have it if you want me to pull it  
19 up. There it is. Is there any way you can show the entire,  
20 enlarge the screen to show the entire document or you just  
21 have to scroll through it?

22 MR. OWEN: It's good to know I'm not the only one  
23 that gets the spinning wheels when it matters makes either  
24 sometimes.

25 MS. MCNEIL: And Mr. Haller, while it's going I do

1 want you to know --

2 UNIDENTIFIED SPEAKER: I'm not sure why, I'm not  
3 sure why it's saying there was an error reading the string.  
4 It was up there, because here it is. I'm afraid to X out of  
5 this.

6 MS. MCNEIL: Well, can you make, who was that said  
7 they had it up was it Mr. Owen?

8 MR. OWEN: Yes.

9 MS. MCNEIL: So they can put it on their screen?

10 MR. HALLER: He has it, I have it as well, Madam  
11 Examiner.

12 MS. MCNEIL: Can we make Mr. Haller a presenter?

13 UNIDENTIFIED SPEAKER: There you are.

14 MR. HALLER: All right. There we go. All right.  
15 So Mr. Owen, I'm showing you what has been marked in the  
16 record as Exhibit 41 and using this exhibit could you please  
17 describe for me how the architecture was designed to be  
18 compatible with the existing development on the property?

19 MR. OWEN: Sure. If, if you look towards the top  
20 of Exhibit 41, you'll see a true photograph of I believe  
21 it's called Wood Spring Suites, which is the existing hotel  
22 located to the rear of the parcel, from which the  
23 subdivision will occur and the 7-Eleven will be built.

24 The next two images down are architecture  
25 elevations of our proposed 7-Eleven. And what you can see

1 between the two are that in developing our architecture we  
2 took directly from the hotel to the rear and incorporated  
3 it's called tripartite where you have you know it's, it's an  
4 architectural term where you have, you know, segregations  
5 and segmentation of different material types and we've taken  
6 that same rhythm and applied it to our 7-Eleven. They have  
7 a hardiplank siding we are incorporating the same hardiplank  
8 siding, that's sort of the brown tones that you'll see,  
9 tans. They have brick cementitious siding as well for you  
10 know panels, masonry panels, we've incorporated those as  
11 well.

12           Additionally, if you look towards the parapet  
13 there's specific in the areas where you have flat roofs,  
14 there's specific parapet treatment. We've also, and cornice  
15 treatment that we've incorporated into the 7-Eleven to again  
16 match up with that. In that, in that cornice treatment  
17 we've again matched the materials with efface and some  
18 premade cornice materials.

19           And then finally if you look towards the roof  
20 line, you can see a little bit at the top of the center of  
21 the hotel you can see the slanted sort of parapet there and  
22 we've again taken those cues from that architecture and also  
23 incorporated it into the, into the architecture of the  
24 proposed 7-Eleven.

25           So again we've, we think we've gone you know while

1 it's not obviously an exact match, the intent wasn't to  
2 exactly match, but rather to compliment it and make it  
3 appear as though they are part of the same and single  
4 development.

5 MR. HALLER: And is it fair to say that there will  
6 not be another 7-Eleven in the county that looks like this  
7 one because of the way it was designed?

8 MR. OWEN: That is correct.

9 MR. HALLER: All right. Could you please describe  
10 the food operations that are going to be available at this  
11 particular location?

12 MR. OWEN: Sure. I believe we submitted a floor  
13 plan as well, I'm not sure if you can pull that up. We can,  
14 what I can do is just almost, you know, give you sort of a  
15 walking tour through the floor plan. This is a unique 7-  
16 Eleven where it will be more similar to --

17 MR. HALLER: If I can interrupt you for a moment,  
18 Mr. Owen. I just want --

19 MR. OWEN: Yeah.

20 MR. HALLER: -- to note for the record that  
21 Exhibit 42 is the floor plan and that's what's shown on the  
22 screen here before you.

23 MR. OWEN: Thanks. Thank you, Mr. Haller. So  
24 again referring to Exhibit 42, what 7-Eleven has done here  
25 is incorporated an operation a very similar to that of the

1 Royal Farms and the Wawa's et cetera in regards to fresh  
2 food option being available here. As soon as you, in  
3 addition to that, we've taken the traditional convenience  
4 layout, we've also modified it based on some feedback that  
5 we've received, you know, in development of this project.

6           As you walk in the front door, which is where Mr.  
7 Haller's cursor is, obviously immediately to the left, those  
8 are your, you know your typical cash registers and that sort  
9 of stuff there. Directly in front of you sort of the, you  
10 know, the vertical access, what that is is a, that's our  
11 fresh food case. So that's where you'll see things you know  
12 fruit cups, fresh fruits, yogurts, you know, protein, you  
13 know the protein packs where you see the meats and cheeses  
14 all individually packed. Also fresh made sandwiches, et  
15 cetera will be there.

16           To your right as you're continuing towards the  
17 rear, that's where you, or to your left rather, as you're  
18 continuing towards the rear, that's where your fresh food  
19 component is. 7-Eleven has acquired a company called Roost  
20 Chicken and there will be a Roost Chicken within this 7-  
21 Eleven. Basically what a Roost is is you'll have the  
22 typical menu, you know, touchscreen menu order pads and you  
23 know for breakfast you'll be able to order you know an egg  
24 platter with you know whatever your meat is, ham, or bacon  
25 whatever, et cetera. Lunches they have you know fried

1 fishes and chickens and sandwiches, you know, very similar  
2 to you know like Royal Farms type operation. The same thing  
3 for dinner, you can order family meals, but it's, you know,  
4 they've incorporated things, you know, healthier options you  
5 know like green beans, for example are available. Again,  
6 the fish, not just you know chicken and stuff, there's some  
7 healthier options available as well.

8           Throughout the rest of the store, obviously in the  
9 back 7-Eleven's beloved Slurpee's, obviously they'll still  
10 be there. The farthest called Gondola which is you know the  
11 racks where the product is, as you're moving around towards  
12 the right of the store all the way at the back that's  
13 actually where we put the candy on this one. You know the  
14 idea here is you know move it towards the back, move the  
15 fresh food options you know more forward. I have kids, I  
16 know they always want the first thing they see, so that was  
17 a, a, you know, a consideration, a material consideration in  
18 laying out the store.

19           Moving towards the front, you have your other  
20 aisles, you know, a typical aisles that you'll see in a  
21 convenience store operation and then obviously your coffee  
22 bar. 7-Eleven has really expanded their coffee offerings,  
23 you'll have cold coffees, hot coffees, nitro which is almost  
24 like a draft coffee, those will all be available.

25           And then again all the way back at the front of

1 the store you'll see some tables there, with seating for 12.  
2 So again as you come in you know get your breakfast from the  
3 Raise the Roost, you can sit right there on site and eat it  
4 as well.

5           Off to the right side those are all, you know,  
6 just your typical coolers for drinks, you know, ice teas,  
7 waters, things of that nature and then obviously the entire  
8 left side of the building is all of your, for lack of a  
9 better term, back of the house. The kitchen is back there  
10 where they make, again all of this, all the chicken and fish  
11 and eggs and all that, it's where the stuff is all made  
12 fresh on site, as well as you know, clean up sinks, a  
13 freezer, et cetera, et cetera.

14           MR. HALLER: So in summary this isn't just a food  
15 and beverage store, this incorporates an eating and drinking  
16 establishment or a component into the same building?

17           MR. OWEN: You know, I would even offer that  
18 actually that you know if you look at the area the, the, the  
19 food and beverage, the fresh made foods, the you know  
20 orderings, the, the fresh you know fruits and vegetables,  
21 the seating area, the coffee bars, all those sort of things  
22 actually make up a, a vast majority of this store. And the  
23 smaller component here in terms of the accessory use is your  
24 typical you know sodas and a bag of Doritos, and a Snickers  
25 bar.

1 MR. HALLER: Okay. Thank you very much. Will  
2 this store include any vehicle repair services?

3 MR. OWEN: No, sir, it will not.

4 MR. HALLER: Does 7-Eleven plan to display or rent  
5 cargo trailers, trucks or similar uses as part of this  
6 facility?

7 MR. OWEN: No, they will not.

8 MR. HALLER: And does 7-Eleven anticipate the  
9 storage of wrecked motor vehicles on the subject property?

10 MR. OWEN: No, no, no they will not.

11 MR. HALLER: Does the store offer retail sales of  
12 alcoholic beverages?

13 MR. OWEN: No, this will not.

14 MR. HALLER: Okay. And I asked Mr. Alter about  
15 the conditions in the Staff Report and whether there was any  
16 objection to them and he referenced the condition that  
17 requires the reduction in the height of the proposed pylon  
18 sign. Is that the only condition that 7-Eleven objects to  
19 as the proposed tenant?

20 MR. OWEN: Yes, it is.

21 MR. HALLER: And what is the height of the  
22 freestanding sign that is currently shown on the Site Plan?

23 MR. OWEN: We've proposed a height of 35 feet.

24 MR. HALLER: And why was the sign proposed to be  
25 35 feet?

1           MR. OWEN: Again in, in working to develop you  
2 know this entire proposal we looked to the existing special  
3 exception for the hotel to the rear and their sign is 35  
4 feet 10 inches. And I believe there's reference in the  
5 ordinances actually that the height of the sign is to be the  
6 highest, it can be the height of the, you know the tallest  
7 building in the park or in the development, which again  
8 would be the hotel, obviously it's much higher, so again  
9 we're, we're trying to you know match what was, what is  
10 already there basically.

11           MR. HALLER: Okay. And are there issues as well  
12 with the visibility of signage along the property frontage?

13           MR. OWEN: Sure. And, and everyone knows the  
14 area, obviously, the, the predominant traffic is going to be  
15 along Arena Drive and that is where a majority of, of the,  
16 the traffic you know will come to this store from. What Mr.  
17 Haller has pulled up here, I, I would assume it's probably  
18 Exhibit 43, is that correct?

19           MR. HALLER: It's Exhibit 45.

20           MR. OWEN: 45. So on our screen here is Exhibit  
21 45 and what this is, is it's a, it's a Google Earth, you  
22 know, street view picture along Arena Drive looking towards  
23 the site. The site is towards your, your right hand side,  
24 about where that truck is and what you can see there is  
25 there's an expansive width right-of-way along Arena Drive

1 that the SHA owns and maintains and within that there are,  
2 you know existing plantings and trees over which we have no  
3 control and obviously which as demonstrated by this  
4 photograph preclude view of our proposed site from Arena  
5 Drive.

6 MR. HALLER: And what is your understanding of the  
7 impact of complying with the condition as it is currently  
8 written?

9 MR. OWEN: Well, in, in essence what would, what  
10 would happen is the sign would be placed in, in a, at a  
11 height at such which you wouldn't be able to, to see it  
12 coming along Arena Drive from this view as we see in, in  
13 enough time in order to make safe maneuvers over to you know  
14 make the right hand turn onto Brightseat, and then  
15 ultimately access, access the site. The intent of, you  
16 know, a secondary intent of asking for the taller sign is to  
17 again give visibility to allow motorists along Arena Drive  
18 coming from the beltway adequate time to recognize it,  
19 recognize it as their destination, or the destination, rather,  
20 and then make you know safe traffic movements, if necessary  
21 in order to access the site.

22 MR. HALLER: Let me drill down a little bit more  
23 on the signage and I'm going to go back to Exhibit 41 that  
24 we had pulled up before. The condition that is written says  
25 that the sign can't be higher than the lowest point of the

1 roof of the building. The condition isn't specific as you  
2 know about what building they're referring to but we assume  
3 they're referring to the building that is associated with  
4 this application. And let me ask you a question, what is  
5 the height of the building?

6 MR. OWEN: Well, based on the, on the strict  
7 interpretation of the Zoning Ordinance the height of the,  
8 the convenience store building itself, believe it or not is  
9 only about 14 feet. The way that the ordinance is written,  
10 the height is to the lowest you know, the flat of the flat  
11 roof. So looking at this exhibit again we referenced these  
12 taller parapets and cornice work and taller roof lines, et  
13 cetera, and those are all shown here, but those actually are  
14 how the height of the building is determined. If you were  
15 to zoom in here you can see a very thin dashed line that  
16 extends horizontally all the way across both the front and  
17 back elevations. There we go. There we go. So there you  
18 can see a horizontal dashed line, that is actually the level  
19 of the flat roof. So everything above that is, I guess you  
20 could call it false superstructure. It's there to, you  
21 know, shield the, you know rooftop units, there's  
22 condensers, there's coolers, or not coolers but condensers  
23 for the coolers, HVA systems, things of that nature. So  
24 everything above that is intended just to screen the view of  
25 those mechanicals and equipment on the roof. But the actual

1 roof height would be where that, where that horizontal  
2 dashed line is, which is approximately 14 feet above  
3 finished height.

4 MR. HALLER: Okay. So just for purposes of the  
5 record in looking at Exhibit 41 there is a rendering of the  
6 front façade and the rear façade of the building. And on  
7 that exhibit there is a dashed line that extends across both  
8 the front façade and the rear façade that is the actual  
9 location of the roof. And that is, that would be as you  
10 understand it, the measurement of what the lowest point of  
11 the roof height would be?

12 MR. OWEN: That is correct.

13 MR. HALLER: Okay. And so given that you've  
14 testified that that would mean the sign would have to be  
15 reduced down to 14 feet, is it your opinion that 14 feet  
16 doesn't provide adequate visibility based upon the existing  
17 conditions and the topography of the site?

18 MR. OWEN: Correct, that is my, that is my opinion  
19 and I believe it's evidenced as well by the, the prior  
20 Exhibit 45 I believe it was being the picture along Arena  
21 Drive demonstrating that there is, you know, obviously,  
22 taller vegetation that would preclude the view of the sign.

23 MR. HALLER: Okay. And do you think that there is  
24 a sign height that is less than 35 feet that you would be  
25 willing to agree to as a compromise to the staff's

1 condition?

2 MR. OWEN: Yes. We've actually gone back and  
3 worked with our consultants some, done some you know  
4 analysis and we believe a reduction of a sign to a 25 foot  
5 height, in other words, a reduction by 10 feet from our  
6 proposed 35 foot height would still provide, you know,  
7 adequate visibility along Arena or the existing vegetation,  
8 but would also, we believe be a, a good compromise here,  
9 understanding you know the goal is to try and limit some  
10 signage height.

11 MR. HALLER: And you think that although 25 feet  
12 obviously would be less visible than 35 feet, you think it  
13 would be sufficient to serve the purposes of the signage in  
14 this case?

15 MR. OWEN: I believe so, yes, and something else  
16 to consider the actual tallest part of the, the store here,  
17 if you were to go to the top of the, you know the parapets,  
18 is about 26 feet. So in that regard, you could perhaps also  
19 argue that we're meeting the intent of the ordinance still  
20 by matching sign height to building.

21 MR. HALLER: Okay. Thank you. And so if  
22 Condition 1E were revised to read reduce the height of the  
23 pylon sign to 25 feet, that would be acceptable to 7-Eleven?

24 MR. OWEN: Yes, it would be.

25 MR. HALLER: Okay. And Madam Examiner, I would

1 note when we were reviewing this issue, we discovered that  
2 in Council's decision on DSP 150021, there is a condition,  
3 and by the way that decision is Exhibit 4E, it was attached  
4 to our justification statement. There is a condition in  
5 that particular Detailed Site Plan its reference is  
6 Condition 1G2, that approved a 35 foot tall sign on the  
7 beltway and then the second sign that was proposed for the  
8 second hotel for the condition that required it to be  
9 reduced to 25 feet in height. So that is an existing  
10 condition that applies to the existing Detailed Site Plan,  
11 and I wanted to note that for the record. And I have no  
12 further questions for Mr. Owen at this time.

13 MR. OWEN: Thank you, Mr. Haller.

14 MS. MCNEIL: If I may, before I turn to Stan, Mr.  
15 Haller and Mr. Owen, but it could be a proffer from Mr.  
16 Haller. You mentioned that this could be an eating or  
17 drinking establishment or a food and beverage store because  
18 of the indoor seating. And I note in other cases staff has  
19 said that it might be a eating or drinking establishment,  
20 but I don't see that in their Staff Report. So did you all  
21 have any discussion about eating or drinking establishment  
22 with the staff?

23 MR. HALLER: Madam Examiner, as we reviewed the  
24 floor plan for this facility and realized that there was  
25 seating provided for the food section, we determined that it

1 also incorporates an eating and drinking establishment  
2 concept and we have provided a revised Site Plan that  
3 accounts for the eating and drinking component in the  
4 parking schedule, that was not reviewed by staff because  
5 they didn't have the footprint of the building. But it is a  
6 permitted use in the I-3 Zone, does not require a special  
7 exception, so we are planning to update the Site Plan to  
8 account for that component in the parking regulation.

9 MS. MCNEIL: Okay. But --

10 MR. HALLER: Mr. Speech --

11 MS. MCNEIL: -- what I would like, if I may, just  
12 on that one thing because I'm dealing with that in other  
13 cases, I want to know how one use is both things. An eating  
14 or drinking establishment can do much more than a food or  
15 beverage store but a food or beverage store just says it's  
16 primarily eaten off site which to me means you could still  
17 have some tables. So I know that that has been the  
18 interpretation over the years but I'm having a hard time  
19 letting it be two uses in one and I'm also concerned that  
20 the eating or drinking establishment, you know, it also can  
21 have music, dancing, drinking, so I'm just throwing that out  
22 there and since we will have to come back for the variance  
23 that will give you some time, I'd just like to know your  
24 thoughts on that. So I guess I'm saying I don't see why a  
25 food or beverage store can't have a few seats and be a food

1 or beverage store.

2 MR. HALLER: And I think that I would agree with  
3 that if the square footage of the building were essentially  
4 all devoted towards providing convenience items as is  
5 typical in a food and beverage store. When we were  
6 reviewing the floor plan with Mr. Owen it became obvious  
7 that the majority of the floor plan was really devoted  
8 toward the eating and drinking component. And so we were  
9 concerned, because as I noted Mr. Alter's testimony, we have  
10 to go through the Detailed Site Plan process and we will be  
11 required to account for that at least in the parking  
12 standards, and so we wanted to make sure we didn't end up  
13 with a special exception approved that didn't conform to the  
14 requirements of the Detailed Site Plan. So that was why we  
15 wanted to make sure that we didn't ignore that component of  
16 the building and --

17 MS. MCNEIL: Well, I think you're correct in  
18 showing it in parking. I just want you to know how I'm  
19 thinking and while I'm on this, have you given any thought,  
20 and you don't have to answer this yet either, but you know  
21 there's a new county law for gas stations and you all are  
22 not subject to it because you filed this before January  
23 22nd. But come April 1st with the rezoning will you still  
24 have to do those other Site Plans, I mean have you looked  
25 into that? I don't want to answer, I'm just throwing this,

1 there's just so much influx because the new ordinance will  
2 be in place and if this case, if this matter is continued, I  
3 can work hard to make it not be April 1st, but just in case  
4 it is, you might want to look at it, I'm not sure that we  
5 kept those other Site Plan requirements in there in the  
6 rewrite.

7 MR. HALLER: There are --

8 MS. MCNEIL: So it was just super thought for you  
9 that I was thinking of along with his testimony came.

10 MR. HALLER: I will elect not to answer that  
11 question at this point because I will be the first one to  
12 admit that I do not fully comprehend all of the changes that  
13 the new ordinance incorporates, and certainly not going to  
14 decide at this point whether or not that would be a  
15 preferred option for us.

16 MS. MCNEIL: Okay. And then the last thing, I  
17 guess it'll be Mr. Ferguson then or someone will address why  
18 this is, our law isn't written well, I just have to admit  
19 it. And the footnote that allows this food or beverage  
20 store says it's permitted by right as an accessory use,  
21 provided the uses are located within the same building. How  
22 is a gas station located in this building?

23 MR. HALLER: Well all of the, oh I'm sorry Mr.  
24 Owen can answer that question.

25 MS. MCNEIL: Okay.

1           MR. OWEN: Well the, I believe the, well it's not  
2 going to be in actually the same building but the fueling  
3 station is, as I understand it the canopy by definition of  
4 the ordinance is a building.

5           MS. MCNEIL: Yes.

6           MR. OWEN: So it, it could be an interpretation  
7 that the C store, the food and beverage store would actually  
8 be an accessory structure, where the primary structure on  
9 this parcel is indeed the fuel canopy, which meets the  
10 definition of a building by the ordinance. I believe the,  
11 the definition is obviously I don't know the exact quote,  
12 but it has to be a roof that is a structure that has a roof  
13 that protects one from the weather, but doesn't have any  
14 mention as to exterior walls or any mention as to being  
15 fully enclosed, et cetera.

16           MR. HALLER: Mr. Owen, isn't the employee who  
17 would be supervising or managing the pumps, he's in the  
18 building as well, in the store?

19           MR. OWEN: That's correct, yes.

20           MR. HALLER: Yes. All of the operations are  
21 operated out of this building, out of the building that is  
22 the food and beverage store.

23           MS. MCNEIL: The canopy is not attached to the  
24 building, right?

25           MR. HALLER: No, it's not.

1 MS. MCNEIL: So it's a no, okay.

2 MR. OWEN: No.

3 MS. MCNEIL: Okay. Thank you. Mr. Brown, do you  
4 have any cross?

5 MR. BROWN: Yes, Mr. Owen, what is the name of  
6 your company again?

7 MR. OWEN: The name of the company is Penntex  
8 Ventures, P-E-N-N-T-E-X Ventures, LLC.

9 MR. BROWN: And what is your position or role with  
10 that entity?

11 MR. OWEN: I am the Assistant Vice President. I,  
12 I run what's known as our engineering and permitting  
13 department, we have a staff of civil engineers, landscape  
14 architects and administration that manage all the  
15 entitlement processes for our various projects across all of  
16 the Mid-Atlantic.

17 MR. BROWN: And your company is the preferred  
18 developer for 7-Eleven, correct?

19 MR. OWEN: We are a preferred developer, yes.

20 MR. BROWN: All right. You're one of possibly  
21 several. Tell us what a preferred developer does for an  
22 entity such as 7-Eleven.

23 MR. OWEN: Sure. Basically we work with a few  
24 different real estate managers with 7-Eleven, so there's an  
25 overall you know Mid-Atlantic Real Estate Manager, Mr.

1 Carissi (phonetic sp.) and he has underneath of him several  
2 other real estate managers that manage you know separate  
3 territories, one for western PA, on for eastern PA, one for  
4 Maryland, Delaware, et cetera. Our real estate department,  
5 we have separate people here that manage real estate, they  
6 work with a team of brokers and they'll work with that real  
7 estate manager to identify sites, identify owners, and then  
8 basically what we'll do is we'll put a, put a deal together  
9 where we'll purchase that land or in an instance such as we  
10 have here, we'll work as you know a fee developer and assist  
11 an owner in doing the entitlement process and putting the,  
12 the deal together, to you know get land under contract, the  
13 proper consultants retained again all the lease negotiated,  
14 exhibits created and executed. And then we'll prosecute  
15 this project all the way through to turnkey, our projects  
16 are where referred to commonly as build to suit, which  
17 basically means we do everything but pour the slushies and,  
18 or pour the Slurpee mix into the Slurpee machine. We  
19 install everything inside. We take care of all of that and  
20 hand the keys over to 7-Eleven and then they take over.

21 MR. BROWN: And your company was not the architect  
22 for the building, correct?

23 MR. OWEN: That is, that is correct. We retain an  
24 architect, their name is Dimension Group and they are  
25 located out of, they're located out of Dallas, Texas, but

1 the office we work with is in Denver, Colorado. They're  
2 actually the preferred, one of two preferred architects for  
3 7-Eleven, the other one being Core States. Not that it  
4 matters, but.

5 MR. BROWN: And you are not an architect, are you?

6 MR. OWEN: No, sir.

7 MR. BROWN: You're not a planner either, are you?

8 MR. OWEN: I have a degree in landscape  
9 architecture from Temple University and maintained my  
10 licensure in that in Pennsylvania until not too, too long  
11 ago. But honestly I just don't utilize it, you know, in  
12 terms of you know signing and sealing plans anymore. But I  
13 do use my education and, and degree in landscape  
14 architecture on a daily basis.

15 MR. BROWN: Although you were not qualified as an  
16 expert in any particular field in this case, you for lack of  
17 a better phrase, attempted to give opinions on the  
18 architecture and other issues related to this application,  
19 but you're not an expert in this case, correct?

20 MR. OWEN: That is correct, yeah, I was not  
21 offered as an expert I was offering an opinion testimony  
22 that I believe is substantiated through the exhibits that we  
23 offered as well.

24 MR. BROWN: Well as a lay person you cannot offer  
25 opinion testimony. But going to the issue of the sign, you

1 indicated that there was vegetation that may block the sign.  
2 If you or Mr. Haller can pull up the photograph that shows  
3 the vegetation, I just want it to confirm that vegetation  
4 will remain after the property is graded because I don't  
5 know the answer to that.

6 MR. HALLER: Do you see my --

7 MR. OWEN: Well, I can confirm that.

8 MR. HALLER: Can you see my screen again?

9 MR. OWEN: Yes, we can see a document.

10 MR. HALLER: Let me try to pull up that image  
11 again.

12 MR. OWEN: Yeah. Excellent. Thanks, Tom. Yes, I  
13 can confirm that vegetation will remain. As I indicated  
14 it's located within the SHA right-of-way and will remain.  
15 We, we do not have control over it.

16 MR. BROWN: All right. So that vegetation that's  
17 to the right of the dump truck heading towards FedEx Field,  
18 that you're telling me is going to remain after the gas  
19 station food and beverage store is constructed?

20 MR. OWEN: Yes, sir, that is correct. At that end  
21 of the site towards, you know, Arena Drive, is where the  
22 existing storm water management facility is that services  
23 the overall development and there are no changes proposed in  
24 that area. We won't be grading for quite, quite a ways from  
25 that area. We have other, I believe our engineer will be

1 testifying later and he can at that time give you a Site  
2 Plan, I believe, that will show you where our limits are and  
3 where the limits of those trees are and a plan view to make  
4 that a little more clear for the record.

5 MR. BROWN: All right. I hope he can show me  
6 that, because I'm looking at, I don't know the exhibit  
7 number, but Figure 2, preliminarily site layout and that  
8 vegetation appears to no longer exist. However, show me if  
9 you could, the copy of the Site Plan that indicates the  
10 location of the pylon sign.

11 MR. OWEN: Sure, can we pull that up?

12 MR. HALLER: Give me a second here, hold on.  
13 Well, hold on.

14 MR. OWEN: Right there.

15 MR. HALLER: Hold on.

16 MS. MCNEIL: Tom, are you doing Exhibit 46?

17 MR. HALLER: Actually what I've pulled up but  
18 they're the same is Exhibit 46, but I can pull up 36 if you  
19 would like me to.

20 MS. MCNEIL: No, no, I said 46, that's your  
21 revised Site Plan.

22 MR. HALLER: Okay. I'm sorry, yes, 46. And I'm  
23 highlighting where the sign is located.

24 MR. BROWN: All right. And so Mr. Owen, you're  
25 telling us that you're proposing a 25 foot pylon sign as

1 opposed to approximately 14 foot sign that would equate with  
2 the height of the building. I don't understand why you  
3 don't think a 14 or 15 foot sign would not be sufficient  
4 given this is at an intersection of Brightseat Road sight  
5 lines are quite clear and anyone on Arena Drive is going to  
6 see that facility as the grading moves upward from the  
7 intersection toward the hotel. I mean the building itself  
8 is visible. Won't the building have signage on it that says  
9 7-Eleven as well?

10 MR. OWEN: There will be signage on the building  
11 as well. However in looking at this exhibit, if you look  
12 towards the plan view south, that red line, from that red  
13 line again south towards the road that's the limits of the  
14 right-of-way within which the existing vegetation is, and  
15 then again towards the plan east is where the vegetation is.  
16 And again that vegetation is tall enough that when viewing  
17 it from you know, approximately 3 foot 6 height, which is  
18 your height about, you know eye height about when you're  
19 sitting, that vegetation will preclude your view looking up  
20 that, looking up towards the site. Something critical to  
21 remember too, obviously, when you do these Google, Google  
22 images, that Google image is taken from I believe it's a 10  
23 foot elevation. So what you're seeing here isn't true to  
24 what to you're going to be able to see in fact, you can, can  
25 even see it in, in the exhibit where obviously the vehicle

1 heights behind us are much lower and we're seeing well above  
2 those cars. To that end, we're actually up even higher than  
3 would be the case for even the dump truck. And again you  
4 can see here where all that vegetation that's located within  
5 that right-of-way clearly obscures the view of the, of the  
6 development site there.

7 MR. BROWN: Have you approached State Highway  
8 Administration at all about clearing that right-of-way of  
9 the vegetation?

10 MR. OWEN: No, we have not.

11 MR. BROWN: And the storm water management pond is  
12 on the SHA property, is that accurate?

13 MR. OWEN: No, sir, it is located on the  
14 development site and exists behind this vegetation, there we  
15 can see it.

16 MR. BROWN: All right. All right.

17 MS. MCNEIL: And SHA, oh I'm sorry, Stan. You're  
18 saying the SHA vegetation would come all the way down to  
19 Brightseat right now?

20 MR. OWEN: It's located just off the edge of the  
21 swale. Tom, if you could, I believe we have something that  
22 shows an aerial that might even show it a little bit more  
23 clearly. If you go up --

24 MR. HALLER: You mean an aerial of the site?

25 MR. OWEN: Yes.

1 MR. HALLER: This shows it pre-development.

2 MR. OWEN: If I may, does it show something that's  
3 a little more zoomed in or maybe one of our other exhibits?

4 MR. HALLER: The Landscape Plan may show it  
5 better. It shows the --

6 MR. OWEN: There you go. Yeah. So there you go.  
7 So again referring to the Landscape Plan here, you can see  
8 sort of, you know, the bubbly revision cloud. That outlines  
9 the area of the existing vegetation.

10 MR. BROWN: And I was going to let this issue  
11 pass, but in looking at this, there is proposed trees or  
12 landscaping, if you will beyond the existing vegetation on  
13 SHA's right-of-way on your property, correct?

14 MR. OWEN: Correct.

15 MR. BROWN: So I mean you're sort of asking to  
16 have it both ways. You're telling us you can't see the sign  
17 because of the existing vegetation and then due to  
18 requirements of landscaping you're putting up additional  
19 trees and you know therefore you need a taller sign.

20 MR. OWEN: Well, the, the need for the relief from  
21 the taller sign would exist with or without compliance with  
22 the landscape requirements. But again, we do intend to  
23 comply with the landscape requirements but the vegetation  
24 as, as it exists today does in fact preclude the, the, the  
25 view of that sign were it to be limited to the, the 14 feet.

1           MR. BROWN: But again, I just want to make sure  
2 you and I are on the same page here. If I am standing on  
3 Arena Drive or in a vehicle on Arena Drive in front of the  
4 proposed vegetation on the site, will I not be able to see  
5 the canopy and the gas station food and beverage store that  
6 is going, I don't know whether that's north or south on this  
7 thing, but going towards --

8           MR. OWEN: Plan north. Yeah, plan north.

9           MR. BROWN: Yes, yes, plan north.

10          MR. OWEN: Oh, if you were standing at the  
11 intersection looking directly at the development, absolutely  
12 you could certainly see that. However, again, the reason  
13 for the, the taller sign, if I may, is you know again as  
14 traffic approaches along Arena Drive and it's moving, coming  
15 from the beltway, we want people to be able to see this and  
16 recognize it with enough advance notice in order to make  
17 safe maneuvers over. Once you're up at the intersection,  
18 you've gone past it. What we're trying to do is alert  
19 drivers before they get to this intersection that we're  
20 there, and that we, so that way they can make those safe  
21 maneuvers to make it into our site. But to your point, if  
22 you were standing at the intersection of Brightseat and  
23 Arena and looking at the site, yes, sir, you could certainly  
24 see, certainly see the site.

25          MR. BROWN: And going to the issue of

1 architectural compatibility to the surrounding neighborhood,  
2 you seemed to testify that you made the structure compatible  
3 to the existing hotel which is not the most aesthetically  
4 pleasing architectural representative in that neighborhood,  
5 unfortunately.

6 MS. MCNEIL: Which is why beauty is in the eye of  
7 the beholder. But, go ahead.

8 MR. BROWN: Right. I mean I think the church  
9 across the street might have been a more attractive than  
10 this building, but that's not for me to say, I guess, so  
11 I'll let that go.

12 MS. MCNEIL: No, wait a minute. This is good  
13 because I heard that it had to be compatible with the other  
14 buildings within the park and that is the hotel. So set us  
15 straight, Mr. Owen.

16 MR. BROWN: It must be compatible with other  
17 buildings in the surrounding area, not just in the park I-3  
18 park.

19 MS. MCNEIL: And you're probably right, but I  
20 heard him incorrectly, so I need to --

21 MR. BROWN: Right.

22 MS. MCNEIL: -- Mr. Owen if you could tell us  
23 again what you had to be compatible with.

24 MR. OWEN: I mean again specific ordinance  
25 language I don't have committed to memory, but I can tell

1 you that the intent when I worked with our architectural  
2 consultant was that we needed to blend this in. I, I looked  
3 at it as we're taking access from a common road with an  
4 existing structure that was approved, so I, I presumed that  
5 that architecture was acceptable, as is Madam Examiner  
6 indicated, beauty in the eye of the beholder. Even my wife  
7 thinks I'm pretty. But again, you know we'll work with, you  
8 know, the, the, that was the intent of developing the  
9 architecture. I can affirm to you 100 percent we're willing  
10 to work with the county and whomever's eye is the beholder,  
11 if they'd like to see any architectural modifications here,  
12 we have, we have no problems in doing so. This is, I don't  
13 think I've done a single 7-Eleven that has the same  
14 architecture, so again we're committed to work with, you  
15 know, with you and modify that architecture if need be. But  
16 in developing the architecture for this store, we took the  
17 cue directly from the, the, the Wood Springs Suites to the  
18 rear of the site, thinking that was the, you know the intent  
19 of the ordinance that we should follow.

20 MR. BROWN: And lastly, I had asked Mr. Alter  
21 whether he was the contract purchaser or lessee, he  
22 indicated the Hyattsville Brightseat Road RE LLC was the  
23 contractor purchaser. And so 7-Eleven is a lessee of  
24 Hyattsville Brightseat Road RE LLC, is that correct?

25 MR. OWEN: That is correct. The Hyattsville

1 entity will be the landlord, 7-Eleven will be the tenant.

2 MR. BROWN: All right. And so the draft proposed  
3 reciprocal easement for the driveway will be between  
4 Hyattsville Brightseat Road RE LLC and the owner of the what  
5 is it, Wood Stream Suites or something suites or another?

6 MR. OWEN: Correct. That is correct, Sandpiper is  
7 the owner of the residual property. Yes, the agreement is  
8 between the two for that you know reciprocal easement,  
9 maintenance and things of that nature.

10 MR. BROWN: Yes. All right.

11 MR. OWEN: And then through the, through the lease  
12 7-Eleven becomes responsible for you know maintenance of  
13 their facilities. What's commonly referred to as a triple  
14 net lease, so they'll be responsible for prosecution of it  
15 that way, in accordance with their lease and with the  
16 (indiscernible).

17 MR. BROWN: No other questions, thank you.

18 MR. OWEN: Thank you.

19 MS. MCNEIL: Thank you, sir. Your next witness?

20 MR. HALLER: Thank you, Madam Examiner, I just  
21 wanted to, I don't have any additional questions for Mr.  
22 Owen, I did want to note a couple of things for the record.  
23 Mr. Owen said he didn't have the statutory provision in  
24 front of him and I did want to note that Section 27-  
25 358(a)(10) says that the details of architectural elements,

1 such as elevation depictions of each façade schedule of  
2 exterior finishes and description of architectural character  
3 of the proposed buildings shall demonstrate compatibility  
4 with the existing and proposed surrounding development, and  
5 so obviously the existing development is the hotel. I did  
6 want to note that and I did also want to note that Mr.  
7 Ferguson will also be addressing this issue of the  
8 visibility and the compatibility.

9           And then the final thing I want to wanted to note  
10 for the record is that pursuant to the requirements of the  
11 code the height limit on the signage is based upon the  
12 height of the tallest structure in the industrial park and  
13 so the signage height that we've been discussing, none of  
14 the signs either the one that was proposed or the one  
15 proffered are not in conformance with the Zoning Ordinance  
16 The higher sign that we've been discussing is higher than  
17 what staff recommended based upon their recommendation that  
18 it be the highest point of the building. And again they  
19 didn't specify whether the building was the hotel or whether  
20 the building was the 7-Eleven store. But it was our concern  
21 and view that that might have been their intent and since  
22 it's not 100 percent clear until you really drill down as to  
23 what the height of the building is based upon where the flat  
24 roof is, we weren't sure what staff's intention were, but we  
25 felt that I think Mr. Owen has testified that they felt that

1 the signage height is now being proposed is consistent with  
2 staff's intention and it's also in conformance with the code  
3 requirement. So Mr. Brown referred to taller sign, but it's  
4 not a taller sign than what's permitted, it's just a taller  
5 sign than what the effect of staff's condition would have  
6 been, if that makes sense.

7 All right. Thank you very much. I'd now like to  
8 call Mr. Wes Guckert.

9 MS. MCNEIL: Where's Mr. Guckert?

10 MR. GUCKERT: Mr. Guckert is right here. Good  
11 morning, everyone.

12 MS. MCNEIL: Good morning, Mr. Guckert, long time  
13 no see.

14 MR. GUCKERT: It has been. Thank you for still  
15 being in your position and, and taking care of Prince  
16 George's County.

17 MS. MCNEIL: Oh my goodness. Okay.

18 MR. GUCKERT: It's true.

19 MS. MCNEIL: Do you swear or affirm under the  
20 penalties of perjury that the testimony you shall give will  
21 be the truth and nothing but the truth?

22 MR. GUCKERT: I do.

23 MR. HALLER: Thank you, Mr. Guckert. Can you  
24 please state your full name and business address for the  
25 record?

1 MR. GUCKERT: My name is Wes Guckert, business  
2 address is 9900 Franklin Square Drive, Baltimore, Maryland  
3 21236.

4 MR. HALLER: And what is your occupation?

5 MR. GUCKERT: I'm a traffic and transportation  
6 planner. I'm president of The Traffic Group Incorporated.

7 MR. HALLER: And I have previously submitted a  
8 copy of your resume which has been marked as Exhibit 38 in  
9 the record and that was the copy of the resume that you  
10 provided to me, is that correct?

11 MR. GUCKERT: Yes, sir.

12 MR. HALLER: And have you qualified as an expert  
13 previously before the Zoning Hearing Examiner as an expert  
14 in the field of transportation planning and engineering?

15 MR. GUCKERT: I have many times.

16 MR. HALLER: I would like to offer Mr. Guckert as  
17 an expert in the field of transportation planning and  
18 engineering.

19 MS. MCNEIL: Mr. Brown?

20 MR. BROWN: Should I object, Mr. Guckert?

21 MR. GUCKERT: I don't think so, Mr. Brown, but  
22 feel free.

23 MR. BROWN: It's a pleasure to see you. No  
24 objection.

25 MR. GUCKERT: Great to be here and great to be

1 alive.

2 MS. MCNEIL: He's accepted as an expert in the  
3 area of transportation planning and engineering.

4 MR. HALLER: Thank you. Mr. Guckert, have you  
5 been retained by the applicant Hyattsville Brightseat Road  
6 RE LLC in this case to serve as their transportation planner  
7 and engineer?

8 MR. GUCKERT: Yes, sir.

9 MR. HALLER: And are you familiar with the  
10 property which is the subject of today's hearing?

11 MR. GUCKERT: Yes, sir.

12 MR. HALLER: And are you familiar with the road  
13 network in the area?

14 MR. GUCKERT: Absolutely.

15 MR. HALLER: And have you personally inspected the  
16 subject property and the surrounding road network?

17 MR. GUCKERT: Yes, sir.

18 MR. HALLER: And are you familiar with prior  
19 approvals for the subject property which related to  
20 transportation planning and adequacy?

21 MR. GUCKERT: Yes, sir.

22 MR. HALLER: Would you please explain the access  
23 points and public road network which affect and will serve  
24 the subject property?

25 MR. GUCKERT: As pointed to earlier, the primary

1 traffic will be coming from Arena Drive, Medical Center  
2 Drive, Capital Beltway to Brightseat Road where traffic will  
3 enter at the existing entrance to the existing hotel and  
4 then it will enter into the 7-Eleven site.

5 MR. HALLER: And would you explain the access  
6 points, where is that access point located?

7 MR. GUCKERT: Located well north of Arena Drive  
8 significant distance away from the existing traffic signal  
9 at Brightseat and Arena Drive.

10 MR. HALLER: Thank you. Madam Examiner, would it  
11 be helpful to you if I pull up the Site Plan or any type of  
12 an aerial photograph?

13 MS. MCNEIL: Yes, you're doing such a great job  
14 with that. Thank you so much.

15 MR. HALLER: Let me try it again.

16 MS. MCNEIL: And while you're doing that, I should  
17 note for the record that we had a staff member that took off  
18 and the other two ladies are stepping up handling that case.  
19 So that is part of our issue today. But Mr. Haller, is just  
20 great. Thank you.

21 MR. HALLER: Okay. So we still have a Site Plan,  
22 let me for purposes of this discussion --

23 MR. GUCKERT: There you go.

24 MR. HALLER: Sorry. Okay. So I guess just go  
25 back briefly and utilizing this exhibit reference where the

1 site is and where the access will be coming from.

2 MR. GUCKERT: The site is the northeast quadrant  
3 of Brightseat Road and Arena Drive where the cursor is  
4 showing and just to the north side of the red line which is  
5 the property outline is the existing entrance to the  
6 existing hotel that will also be an entrance into the 7-  
7 Eleven.

8 MR. HALLER: Okay. And did you prepare a traffic  
9 analysis in this case which is marked as Exhibit 13 for the  
10 record?

11 MR. GUCKERT: I did. And for this particular  
12 case, Madam Examiner, it really is one that is not an impact  
13 study so to speak, it is really just showing that the trip  
14 cap that was established in a previous Preliminary Plan of  
15 Subdivision will not be exceeded for the overall property  
16 that includes a 7-Eleven and the hotel site and together  
17 those two uses do not exceed the trip cap from the  
18 Preliminary Plan of Subdivision.

19 MR. HALLER: Thank you, Mr. Guckert. And I would  
20 note for the record, Madam Examiner, Mr. Guckert referenced  
21 a prior subdivision, I would note that there is a resolution  
22 in the record which is Exhibit 4C, which is Resolution 5-  
23 15059 and it's resolution number, Prince George's County  
24 Planning Board Resolution Number 1626. And so that is the  
25 resolution that established the trip cap for the property.

1 And Mr. Guckert, when was that trip cap established?

2 MR. GUCKERT: The exact year I do not know, but it  
3 was quite some time ago.

4 MR. HALLER: Well then I would note for the record  
5 that the resolution is dated in 2016 and also that the  
6 record plat for the property is Exhibit 4D in the record.

7 And so you've indicated that the trip cap, I mean that the  
8 trip generated by the proposed facility will not exceed the  
9 trip cap. What is the trip cap for the property?

10 MR. GUCKERT: The trip cap is 233 morning and 279  
11 evening peak hour trips. And what we did was that we  
12 conducted a traffic analysis of the amount of traffic  
13 generated by the current hotel and then prepared the  
14 projection of the 7-Eleven trips. Out of the two together  
15 submitted that to staff, Planning Commission staff and they  
16 concurred with our analysis that the two uses would be  
17 within the existing trip cap.

18 MR. HALLER: Okay. Thank you. And in your  
19 opinion would the proposed development in this application  
20 including the access points be adequate to handle the  
21 traffic generated by this project?

22 MR. GUCKERT: Absolutely.

23 MR. HALLER: And from the standpoint of traffic  
24 impact, will the proposed use adversely affect the health,  
25 safety or welfare of residents or workers in the area?

1 MR. GUCKERT: In my opinion it will not.

2 MR. HALLER: And based upon your analysis from the  
3 standpoint of traffic impact, will the proposed use be  
4 detrimental to the use or development of adjacent properties  
5 or the general neighborhood?

6 MR. GUCKERT: Absolutely not.

7 MR. HALLER: All right. I have no further  
8 questions of Mr. Guckert.

9 MS. MCNEIL: Mr. Brown?

10 MR. BROWN: I have no questions, thank you.

11 MS. MCNEIL: Okay. Well, Mr. Guckert it was great  
12 seeing you but I have no questions either.

13 MR. GUCKERT: Thank you. And may I be excused  
14 from the hearing?

15 MS. MCNEIL: What do you think, Tom?

16 MR. HALLER: I have nothing further for Mr.  
17 Guckert.

18 MS. MCNEIL: Thank you. You're excused.

19 MR. GUCKERT: Thank you both. Bye-bye.

20 MS. MCNEIL: Bye-bye.

21 MR. HALLER: All right. Thank you, Madam  
22 Examiner. My next witness is Mr. Nick Speech.

23 MR. SPEECH: Good morning everybody.

24 MS. MCNEIL: Good morning, Mr. Speech. Do you  
25 swear or affirm under the penalties of perjury that the

1 testimony you shall give will be the truth and nothing but  
2 the truth?

3 MR. SPEECH: Yes.

4 MS. MCNEIL: Thank you.

5 MR. HALLER: Thank you, Mr. Speech. Could you  
6 please state your full name and professional address for the  
7 record?

8 MR. SPEECH: Nicholas Brittan Speech, 16701  
9 Melford Boulevard, Suite 310, Bowie, Maryland 20715.

10 MR. HALLER: And with whom are you employed?

11 MR. SPEECH: Bohler Engineering.

12 MR. HALLER: And what is your position with  
13 Bohler?

14 MR. SPEECH: I'm an associate with Bohler.

15 MR. HALLER: And do you have any professional  
16 qualifications?

17 MR. SPEECH: I am a licensed professional engineer  
18 in the State of Maryland.

19 MR. HALLER: And I would like to reference into  
20 the record Exhibit 37, which is the resume that you provided  
21 to me. Is that your current resume?

22 MR. SPEECH: It is.

23 MR. HALLER: And have you qualified previously  
24 before the Zoning Hearing Examiner as an expert in the field  
25 of civil engineering and testified as such related to the

1 preparation of plans and conformance with the Prince  
2 George's County Zoning Ordinance?

3 MR. SPEECH: I have.

4 MR. HALLER: I would like to offer Mr. Speech as  
5 an expert in the field of civil engineering.

6 MR. BROWN: No objection.

7 MS. MCNEIL: He will be accepted as an expert in  
8 the area of civil engineering.

9 MR. HALLER: So Mr. Speech, has Bohler been  
10 retained by the applicant in this case to prepare the  
11 Special Exception Site Plans and Landscape Plans for the  
12 proposed development?

13 MR. SPEECH: We have.

14 MR. HALLER: And are you familiar with the  
15 requirements set forth in the Prince George's County Zoning  
16 Ordinance for preparation of a Special Exception?

17 MR. SPEECH: I am.

18 MR. HALLER: I would like to refer you to Exhibit  
19 30 which is a copy of the Special Exception Site Plan which  
20 has been filed in this case. Allow me to pull that up  
21 again, hold on one second, so I can figure out how to do  
22 this. All right. So hold on one second. Okay. This is  
23 Exhibit 30 which is dated 10/28/21, is this a copy of the  
24 Site Plan that you prepared?

25 MR. SPEECH: Yes, it is.

1           MR. HALLER: And did this Site Plan respond to or  
2 incorporate comments that you received from Park and  
3 Planning as a result of their review of the application?

4           MR. SPEECH: Yes, it is.

5           MR. HALLER: Are you familiar with the subject  
6 property and the surrounding area?

7           MR. SPEECH: I am.

8           MR. HALLER: And are you familiar with the current  
9 zoning classification of the property?

10          MR. SPEECH: I am, it's I-3.

11          MR. HALLER: Okay. And to the best of your  
12 knowledge has the Site Plan been prepared in conformance  
13 with the requirements of the I-3 Zone?

14          MR. SPEECH: Yes.

15          MR. HALLER: What is the purpose of the proposed  
16 development?

17          MR. SPEECH: As mentioned previously, it's to  
18 provide a gas station and a food or beverage store  
19 associated with the gas station to the existing site with  
20 the existing hotel.

21          MR. HALLER: Okay. And does the Site Plan contain  
22 a list of applicable development regulations which govern  
23 the development of the site and can you identify which sheet  
24 those regulations are on if it does?

25          MR. SPEECH: Yes. It is on Sheet 3, titled Site

1 Plan.

2 MR. HALLER: Okay. I pulled up Sheet 3, is this  
3 the correct sheet?

4 MR. SPEECH: That is.

5 MR. HALLER: And can you identify where on the  
6 Site Plan those notes would be located?

7 MR. SPEECH: They are Note 22, which is on the  
8 bottom right hand side of the sheet.

9 MR. HALLER: Okay. Now I'm highlighting with my  
10 cursor Note 22, is this the note you're referring to?

11 MR. SPEECH: It is.

12 MR. HALLER: Okay. And does the Special Exception  
13 Site Plan also include a Landscape Plan?

14 MR. SPEECH: It does.

15 MR. HALLER: And to the best of your knowledge,  
16 has the Landscape Plan been prepared in conformance with the  
17 Landscape Manual?

18 MR. SPEECH: It has.

19 MR. HALLER: Are you aware that there are specific  
20 requirements applicable to the special exception for a gas  
21 station?

22 MR. SPEECH: Yes, as set forth in Section 27-358  
23 in the Zoning Ordinance.

24 MR. HALLER: Okay. That section requires that the  
25 subject property have at least 150 feet of frontage on an

1 access to a street with a right-of-way width of 70 feet.

2 What road does the subject property front on?

3 MR. SPEECH: It's on both Brightseat and Arena  
4 Drive. And Brightseat Road does have a right-of-way width  
5 of 80 feet which is greater than the 70 feet required.

6 MR. HALLER: Are there restrictions which impact  
7 the ability to access the roadways that the property which  
8 is the subject of this special exception fronts?

9 MR. SPEECH: Yes. Actually the topography of  
10 Brightseat Road and the site itself, Brightseat sits much  
11 lower than the site and so in looking at how the site could  
12 be situated there's actually a retaining wall and some steep  
13 grades between the site and Brightseat. So there couldn't  
14 be an access point directly off of Brightseat outside of the  
15 access drive that is already there, the hotel.

16 MR. HALLER: Can you help me locate where the  
17 retaining wall that you referred to is?

18 MR. SPEECH: Sure. With your cursor, right where  
19 your cursor is there it runs the length of the frontage with  
20 grading sloping down away from it and sloping above it and  
21 there's also a couple bio retention areas for storm water  
22 management located on the right hand side of the retaining  
23 wall.

24 MR. HALLER: Okay. And could the property have  
25 access to Arena Drive?

1 MR. SPEECH: No, it cannot.

2 MR. HALLER: Is there any condition from a prior  
3 approval that restricts access to Arena Drive?

4 MR. SPEECH: Yes, the subdivision plat has a  
5 denial of access.

6 MR. HALLER: Okay. And does Brightseat Road have  
7 a right-of-way width of a minimum of 70 feet in width?

8 MR. SPEECH: Yes, it's 80 feet.

9 MR. HALLER: So are you aware as to whether a  
10 variance has been requested from the requirement that the  
11 property have direct access to the public street?

12 MR. SPEECH: Yes.

13 MR. HALLER: Okay. Now let me ask you a few other  
14 questions related specifically to Section 27-358, 27-  
15 358(a)(2) requires that the subject property be located at  
16 least 300 feet from any lot on which a school, outdoor  
17 playground, library or hospital is located. Does the site  
18 conform to this requirement?

19 MR. SPEECH: Yes. There are no such facilities  
20 within 300 feet.

21 MR. HALLER: Okay. And Section 358(a)(3) requires  
22 that the use not include the display and rental of cargo  
23 trailers, trucks or similar uses. Does the site comply  
24 with, excuse me, does the proposed development conform to  
25 this requirement?

1           MR. SPEECH: It does and that's noted in that Note  
2 22 on Sheet 3, as we spoke about previously.

3           MR. HALLER: Okay. And Section 27-358(a)(4)  
4 prohibits the storage or junking of wrecked motor vehicles.  
5 Does the note also address that requirement?

6           MR. SPEECH: It does as well.

7           MR. HALLER: Okay. Section 27-358(a)(5) relates  
8 to access driveways and states that they cannot be less than  
9 30 feet, unless a lesser width is allowed by State Highway  
10 or Public Works. Does the access to the site onto  
11 Brightseat Road conform to that requirement?

12          MR. SPEECH: It does.

13          MR. HALLER: Okay. And there is also a  
14 requirement related to the access drive, the width of the  
15 access driveways and there was some confusion on our end as  
16 to whether or not the requirement related to the width of  
17 the access driveways would apply where the access is to the  
18 driveway serving the larger development. So I wanted to  
19 call your attention, did the access driveway that is  
20 proposed to access the driveway which serves the larger  
21 site, is that at least 30 feet in width as shown on the Site  
22 Plan?

23          MR. SPEECH: Yes. It's shown on the sheet we're  
24 looking at there, you can see the entrance closest to  
25 Brightseat is actually 35 feet in width which is larger than

1 the 30 and it is located more than 20 feet away from  
2 Brightseat Road.

3 MR. HALLER: Okay. And does it also meet the  
4 criteria that it be a minimum of 12 feet from the adjoining  
5 property line?

6 MR. SPEECH: Yes. So that first entrance does.  
7 And then the second entrance which is a smaller entrance  
8 although could meet one-way standards, we actually were able  
9 to potentially revise the special exception boundary if  
10 needed, to make sure that it would meet the 12 feet  
11 separation requirement.

12 MR. HALLER: Okay. So let me drill down on that a  
13 little bit more. So there is a provision in 27-358(a)(5)  
14 that says that a driveway may begin or end at a point not  
15 less than 12 feet from the side or rear lot line of an  
16 adjoining lot. And so the question was if that requirement  
17 applies to this entrance in the northeast corner of the  
18 special exception area, is it 12 feet from the adjoining  
19 property, which will become the residue of the hotel site?  
20 So that's the issue that you're referring to, correct?

21 MR. SPEECH: That's correct.

22 MR. HALLER: And as the Site Plan that is  
23 referenced as Exhibit 30 as currently depicts, is there 12  
24 feet between where the entrance begins and where the  
25 adjoining lot would be?

1           MR. SPEECH: There is not, if you're taking it  
2 from the point of curvature at the connection between the  
3 entrance and the driveway from Brightseat.

4           MR. HALLER: Okay. So a revised Site Plan was  
5 submitted which is referenced as Exhibit 46 and were you  
6 able to adjust the boundary of the special exception to  
7 address that specific criteria if it's determined to be  
8 applicable?

9           MR. SPEECH: Yes.

10          MR. HALLER: Okay. I'm going to pull up that Site  
11 Plan and I'm going to highlight that same corner and is that  
12 the revision area that you're referring to?

13          MR. SPEECH: It is.

14          MR. HALLER: Okay. Madam Examiner, just for ease  
15 of understanding this issue, I submitted another exhibit  
16 which is referenced as Exhibit 47, and if I can pull that  
17 up, it shows these two areas of the Site Plan that just so  
18 that they can be easily seen without going from one screen  
19 to another. And so if I could ask Mr. Speech to just using  
20 this exhibit, describe the difference between the two  
21 corners of the site in the northeast corner.

22          MR. SPEECH: Sure. So as you can see on the left  
23 hand side which was the original design, there's a slight  
24 jog in the special exception boundary. That jog was altered  
25 to provide a bump out right in the top right hand corner to

1 provide the 12 feet from the PC of the entrance. But it  
2 also snugged in the special exception line a little bit so  
3 that the overall area remained two acres.

4 MR. HALLER: Okay. Yes, so just to confirm this  
5 modification to the boundary doesn't change the area of the  
6 special exception at all, it's still two acres in area.

7 MR. SPEECH: That's correct.

8 MR. HALLER: And so if it is determined that that  
9 requirement applies to this internal lot line, that this  
10 revision to the special exception would address that  
11 requirement?

12 MR. SPEECH: Absolutely.

13 MR. HALLER: Okay. Let me see, next question.  
14 Going back to 27-358, 27-358(a)(6) requires that access  
15 driveways be defined by curbing. Are the driveways on the  
16 proposed Site Plan defined by curbing?

17 MR. SPEECH: Yes, they are.

18 MR. HALLER: Okay. And is that also noted in Note  
19 22?

20 MR. SPEECH: It is.

21 MR. HALLER: Okay. And Section 27-358(a)(7)  
22 requires that the sidewalk at least five feet in width be  
23 provided in the area between the building line and the curb  
24 in those areas serving pedestrian traffic. Does the site  
25 conform to this requirement?

1 MR. SPEECH: It does and that is also noted in the  
2 Note 22.

3 MR. HALLER: Okay. 27-358(a)(8) requires that the  
4 gasoline pumps and other service appliances --

5 MS. MCNEIL: I'm sorry, stopping you right there,  
6 is it five foot exactly or are the sidewalks larger, what  
7 are they?

8 MR. SPEECH: There's actually a few differences.  
9 Some sidewalks are five feet as the minimum, there are some  
10 that are larger to be six and a half feet. But in general  
11 everything is five foot or bigger.

12 MS. MCNEIL: And would I be able to see that? I'm  
13 like Mr. Alter when it comes to that, I'm getting older and  
14 I can't see when you all do the sidewalks, but yours are  
15 clearly marked?

16 MR. SPEECH: They are.

17 MR. HALLER: Madam Examiner, if you look at the  
18 Site Plan there's a notation here that shows the width of  
19 the sidewalk.

20 MS. MCNEIL: Yes.

21 MR. HALLER: That shows five feet in that  
22 location, up here it says five feet.

23 MS. MCNEIL: Right.

24 MR. HALLER: It looks like they're generally  
25 labeled, I don't know.

1 MS. MCNEIL: Okay. Thank you. I didn't mean to  
2 interrupt.

3 MR. HALLER: It appears that they are labeled on  
4 the site.

5 MS. MCNEIL: Yes. Thank you.

6 MR. HALLER: 27-358(a)(8) requires that the  
7 gasoline pumps and other service appliances be located 25  
8 feet behind the street line, or at least 25 feet behind the  
9 street line. Does the Site Plan conform to this  
10 requirement?

11 MR. SPEECH: It does. It's actually over 60 feet.

12 MR. HALLER: All right.

13 MR. SPEECH: And that's noted on the plan as well.

14 MR. HALLER: Thank you. And does Section 27-  
15 358(a)(9) deals with repairs services associated with a gas  
16 station. Does the Site Plan conform to this requirement?

17 MR. SPEECH: Yes, and also like the others noted  
18 in Note 22, this is also specified, so yes it meets our  
19 requirement.

20 MR. HALLER: Thank you. Mr. Owen testified  
21 earlier about Section 27-358(a)(10) which requires  
22 architectural detail to be included with the application.  
23 Were the architectural plans for the gas station included  
24 with the application?

25 MR. SPEECH: Yes, they were filed alongside.

1           MR. HALLER: Okay. And 27-358(b) requires that  
2 the Site Plan show the topography of the subject lot and  
3 abutting lots to a depth of at least 50 feet. Does the Site  
4 Plan conform to this requirement?

5           MR. SPEECH: It does.

6           MR. HALLER: Okay. 27-358(b) also requires that  
7 the Site Plan show the location and type of trash enclosures  
8 to be shown and the location of any exterior vending  
9 machines. Are these shown on the plan?

10          MR. SPEECH: The trash enclosure is actually shown  
11 right where your cursor just was, it's on the lower right  
12 hand side of the site as you're looking at this exhibit.  
13 The detail is located on Sheet 13 of the special exception.  
14 There are no exterior vending machines, so they are not  
15 shown.

16          MR. HALLER: Okay. All right. I would like to,  
17 just following up on the discussion we had about the sign  
18 just recall the question about the freestanding sign shown  
19 on the plan. How tall is the sign shown on the plan that  
20 was submitted with the application?

21          MR. SPEECH: 35 feet.

22          MR. HALLER: And does the 35 foot height conform  
23 to the requirements of the I-3 Zone?

24          MR. SPEECH: Yes.

25          MR. HALLER: And which section of the code does

1 that, sets forth the allowable height in the I-3 Zone?

2 MR. SPEECH: 27-614(b).

3 MR. HALLER: Okay. And what does that particular  
4 section provide?

5 MR. SPEECH: It basically says the sign cannot be  
6 greater than the height of the building on the site for the  
7 lowest portion of the height of the building on the site.

8 MR. HALLER: And you heard Mr. Owen testify that  
9 he would agree to a reduced height of a freestanding sign of  
10 25 feet, would a 25 foot tall sign also conform to the  
11 requirements of 27-614(b)?

12 MR. SPEECH: It would.

13 MR. HALLER: And now you also heard Mr. Owen  
14 testify that the proposed facility will include an eating  
15 and drinking establishment component as well as the food and  
16 beverage component and that the eating and drinking  
17 establishment component would have 12 seats. When the Site  
18 Plan was prepared did the parking calculations take into  
19 account the eating and drinking establishment component and  
20 specifically the number of seats that are proposed?

21 MR. SPEECH: No, at the time it was filed we  
22 didn't have the final floor plan. So we did not take into  
23 account the seats.

24 MR. HALLER: So you just provided parking at the  
25 standard rate for a food and beverage store and didn't

1 account for an eating and drinking establishment, correct?

2 MR. SPEECH: Correct, just for the gas station and  
3 the food and beverage store.

4 MR. HALLER: So have you had an opportunity now to  
5 revise the Site Plan to account for parking related to  
6 eating and drinking establishment?

7 MR. SPEECH: We did and the parking is still met  
8 based on the requirements including all uses.

9 MR. HALLER: And that's shown on Exhibit 46 which  
10 we included into the record?

11 MR. SPEECH: That's correct.

12 MR. HALLER: Okay. I'm going to move back to  
13 Sheet 3 of that and is the area on Sheet 3 that I've pulled  
14 up on the screen, is that the note that addresses the  
15 parking requirements?

16 MR. SPEECH: Yes, it is note 5(c) as shown right  
17 on the screen in front.

18 MR. HALLER: Okay. So under the original  
19 application what were the number of parking spaces required  
20 and the number of parking spaces provided? When I say in  
21 the initial application, I'm talking about Exhibit 30 which  
22 was the Site Plan dated 10/28/21.

23 MR. SPEECH: There were 23 spaces required and 32  
24 spaces provided.

25 MR. HALLER: Okay. And now that we've included

1 the food and beverage component, what are the parking spaces  
2 provided and parking spaces required?

3 MR. SPEECH: 21 spaces are required and 31 spaces  
4 are provided.

5 MR. HALLER: So even accounting for the food and  
6 beverage store in the square footage of this plan the site  
7 still provides more parking than in the minimum  
8 requirements, is that correct?

9 MR. SPEECH: That's correct.

10 MR. HALLER: So based upon your testimony in  
11 total, is it your opinion that the Site Plan conforms to the  
12 requirements of the Zoning Ordinance including the  
13 requirements specifically applicable to gas stations?

14 MR. SPEECH: In my opinion it does.

15 MR. HALLER: All right. Thank you. I have no  
16 more questions for Mr. Speech.

17 MS. MCNEIL: Mr. Brown? And that is, I mean to  
18 interrupt Tom when he was saying it. Oh, the sign is  
19 measured from the lowest point of the building, so is the  
20 lowest point of that hotel 35 feet?

21 MR. SPEECH: I don't have the exact dimensions,  
22 but I know that there is nothing lower, it's at least 35  
23 feet if not taller. And that 35 foot 10 was what was  
24 specified in the previous Detailed Site Plan Staff Report as  
25 what was allowed. So that is where our assumption of the 35

1 foot 10 inch lowest building height came from.

2 MS. MCNEIL: Okay. Because I thought the 35-10  
3 was the actual height. But the sign is measured from the  
4 lowest point but you still think you meet it. And in any  
5 event, I hear that you all are proffering 25 feet, I wanted  
6 to make sure about the 35. Thank you.

7 MR. SPEECH: Correct.

8 MS. MCNEIL: Mr. Brown?

9 MR. BROWN: Yes, good morning, Mr. Speech.

10 MR. SPEECH: Good morning.

11 MR. BROWN: Refresh my memory, I cannot recall  
12 whether or not the hotel has a freestanding sign, does it?

13 MR. SPEECH: It does.

14 MR. BROWN: And how tall is that sign?

15 MR. SPEECH: I believe that sign is 35 feet 10  
16 inches.

17 MR. BROWN: Yes. And you are telling us that 27-  
18 614(b) says what?

19 MR. SPEECH: 27-614(b) let me see if I can read it  
20 from my notes.

21 MS. MCNEIL: I can save you time. I printed it,  
22 it says in the I-3 Zone that maximum height is not greater  
23 than the lowest point of the roof of any building in the  
24 employment park.

25 MR. SPEECH: Yes.

1           MR. BROWN: Well I was getting ready to spear you  
2 but if it says any building, I guess I can't. Because I was  
3 going to say, I mean this sign is not advertising the hotel,  
4 so it doesn't make sense to say that it can be lower than  
5 the height of the hotel but I guess the hotel is in the  
6 employment park, huh. All right, I'll move on from that.

7           The other issue was the sidewalks from the Site  
8 Plans that were put up I saw sidewalks on the west and the  
9 north of the building between the property line and the  
10 curb. I did not see a sidewalk on the south between the  
11 property line and the curb.

12           MR. SPEECH: There is not a sidewalk on the south  
13 side on Arena Drive that connects into the site. The  
14 topographic challenges, the landscaping and the existing  
15 trees that were discussed earlier and then the existing  
16 storm water management that's there, there's no clear path  
17 to bring a sidewalk in there. But there is a connection  
18 from the intersection at Arena Drive around the front of the  
19 site on Brightseat and then to your point on the north hand  
20 side of the building and then a sidewalk and ADA path that  
21 connects into the site and brings a pedestrian to the  
22 building.

23           MR. BROWN: So 27-358(7) which provides a sidewalk  
24 at least five feet wide shall be provided in the area  
25 between the building line and the curb in those areas

1 serving pedestrian traffic. So I'm assuming your opinion is  
2 due to the topography and the vegetation on the south side  
3 that area is not serving pedestrian traffic?

4 MR. SPEECH: Correct.

5 MR. BROWN: Going to 27-358(a) (5) the last  
6 sentence which Mr. Haller raised a moment ago and if you  
7 could, Mr. Haller put up the comparison of the 12 foot  
8 issue, that exhibit I believe it is 47.

9 MR. HALLER: Correct, let me get it for you here.  
10 Here we go.

11 MR. BROWN: So Mr. Speech before I ask the next  
12 question of how you were able to accomplish the 12-foot  
13 issue, are we assuming or do we know that the hotel that is  
14 adjacent to that corner is in fact a side yard, I'm sorry, a  
15 side or a rear lot line. Again, just going by my  
16 recollection of driving past that intersection it would  
17 appear to me that the hotel fronts toward the intersection  
18 of Arena Drive and Brightseat Road and that would probably  
19 be the front yard. So confirm for me that that corner  
20 proposed in Exhibit 7 concerning the 12 foot issue is in  
21 fact from the side or rear lot line of the adjoining lot.

22 MR. SPEECH: I guess I would take it as in looking  
23 at our site and Mr. Ferguson may be able to answer this  
24 better than me, but based on our frontages have two and that  
25 would be our side lot, and so I would assume that that is

1 the same with the hotel as well.

2 MR. BROWN: But the last sentence of subsection 5  
3 says from the side or rear lot line of any adjoining lot.  
4 So whether your property is a side or rear lot line is  
5 irrelevant, the issue is whether or not that is adjacent to  
6 the hotel's side or rear lot line. That's the adjoining  
7 lot. So in other words, if you have Mr. Haller any exhibit  
8 that shows the lot line of the hotel as it relates to that  
9 corner.

10 MR. HALLER: Let me use this, hold on.

11 MR. BROWN: I'm looking at Figure 2 preliminarily  
12 site layout which was in the binder and it shows the hotel  
13 and the Site Plan.

14 MR. HALLER: Yes, here's the hotel site is here.

15 MR. BROWN: And the hotel building is sort of at  
16 an angle facing Brightseat Road and the proposed gas station  
17 and it just would appear to me, I mean it's arguable whether  
18 or not that's the front yard as opposed to the rear lot line  
19 or side lot line of the hotel.

20 MR. HALLER: This may actually help. I know this  
21 is just an aerial photograph.

22 MR. BROWN: All right, that helps. So Mr. Speech,  
23 the 12-foot issue that we're dealing with is it at the  
24 corner if you can put the cursor where it looks like there's  
25 a, it's at the corner right there.

1 MR. SPEECH: Correct.

2 MR. BROWN: All right. So that's exactly what I  
3 thought. So that's the front yard, is it not of the hotel?

4 MR. SPEECH: I think in looking at it, to me it  
5 goes to what you said before because the hotel is angle,  
6 that is towards the front of the hotel but is it considered  
7 the front as pointing north or the front as pointing to the  
8 west, then I think it does a little bit of both.

9 MR. BROWN: I guess the point is, I mean and this  
10 is probably helpful to you, if we assume that is the front  
11 yard of the hotel, which to me would be a reasonable  
12 assumption, then you don't even need to comply with this 12  
13 foot requirement from the side or rear lot line of an  
14 adjoining lot, because that is not the side or rear lot,  
15 definitely not the rear lot line of the hotel. Do you see  
16 my point?

17 MR. SPEECH: I do, and I think we wanted to make  
18 sure in our application that if it was considered a side  
19 that we could comply and I think we can. If it's considered  
20 a front and we don't need to comply that works too.

21 MR. BROWN: All right. So Mr. Haller, you're  
22 going to go ahead and make a determination now which one of  
23 these are you going to go with? The revised Site Plan that  
24 shows compliance with the 12 foot requirement?

25 MR. HALLER: Well the only thing that I would

1 comment, I mean obviously the revised Site Plan also  
2 addresses the parking issue. So I think a revised Site Plan  
3 is required either way but to your point yes, we were not  
4 convinced at all that this applied and you know one reason  
5 is because the section specifically relates to the access  
6 driveways to the public road network and that's not what  
7 this is. But you've raised a very good point about which  
8 side lot line are we referring to? Are we referring to the  
9 side lot line of the hotel or the side lot line of the site,  
10 and if it is the side lot line of the hotel this would  
11 probably not qualify as such. And so to that point this  
12 would not need to even be incorporated into the revised Site  
13 Plan because it would already conform. And if that's the  
14 agreed interpretation, then that I would prefer that that  
15 not included in the revised Site Plan.

16 MR. BROWN: All right. And then just clarify for  
17 me, how are you able to maintain two acres, oh no, never  
18 mind. If you're not going to include it in, we don't need  
19 to deal with that issue. I had one other question, just  
20 give me a second here. All right, I guess that's it. No  
21 further questions. Thank you.

22 MR. SPEECH: Thank you very much.

23 MS. MCNEIL: I just have one question and I  
24 apologize that I haven't memorized the Site Plan yet, but  
25 are you all going to have air machines or vacuum and if so

1 do you show them on the Site Plan? Or show some type of  
2 detail for them?

3 MR. SPEECH: So we do and then the air and the  
4 vacuum machine is located next to the dumpster, which Mr.  
5 Haller showed on the bottom right hand side of the Site Plan  
6 and it is labeled on sheet three of the Site Plan.

7 MS. MCNEIL: Thank you. No further questions.

8 MR. SPEECH: Thank you.

9 MS. MCNEIL: As to that discussion you all had  
10 earlier, Tom, I think the language clearly means the side or  
11 rear lot line of the hotel, for what that's worth.

12 MR. HALLER: Okay.

13 MS. MCNEIL: But I wouldn't tell you that right  
14 here on the spot you've got to change your Site Plan, you  
15 have time to think about that.

16 MR. HALLER: Okay. Thank you. All right. My  
17 next witness is Mr. Ed Steer.

18 MR. STEER: Good morning.

19 MS. MCNEIL: Good morning, Mr. Steer. Do you  
20 swear or affirm under the penalties of perjury that the  
21 testimony you shall give will be the truth and nothing but  
22 the truth?

23 MR. STEER: I do.

24 MR. HALLER: Good morning, Mr. Steere. Please  
25 state your name and business address for the record.

1 MR. STEER: My name is Edward Steer, I'm at 11100  
2 Dovedale Court, Marriottsville, Maryland 21104.

3 MR. HALLER: And what is your trade or occupation?

4 MR. STEER: So I'm a planner and market analysis  
5 for Valbridge Property Advisers.

6 MR. HALLER: And how long have you been engaged in  
7 the field of planning and market analysis?

8 MR. STEER: 30 plus years now.

9 MR. HALLER: And have you ever qualified as an  
10 expert witness before the Zoning Hearing Examiner in Prince  
11 George's County or any other tribunal?

12 MR. STEER: Yes, I have.

13 MR. HALLER: And I have included in the record two  
14 resumes, one marked Exhibit 35 and one marked Exhibit 40  
15 that you provided to me. Are those your current resumes?

16 MR. STEER: Yes, they are.

17 MR. HALLER: I would like to offer Mr. Steere as  
18 an expert in the field of market analysis and needs  
19 analysis.

20 MR. BROWN: No objection.

21 MS. MCNEIL: He'll be accepted as an expert in the  
22 area of market analysis and needs analysis, what did you  
23 say?

24 MR. HALLER: Needs analysis or economic analysis.

25 MS. MCNEIL: Economic, and economic analysis.

1 Thank you.

2 MR. HALLER: Mr. Steere, have you been retained by  
3 the owner of the property to perform services regarding the  
4 proposed gas station and food and beverage store component  
5 which are the subject of this application?

6 MR. STEER: Yes, I have.

7 MR. HALLER: Please describe the services which  
8 you've been retained to perform.

9 MR. STEER: So in regards to the special exception  
10 requirements of the zoning code, I was retained to craft a  
11 report determining whether there was unmet need for the gas  
12 station and food and beverage use on this site.

13 MR. HALLER: And in response to that request, did  
14 you prepare an analysis with regard to the facility?

15 MR. STEER: I did, yes.

16 MR. HALLER: I would note for the record that Mr.  
17 Steere's initial analysis is contained in the record and  
18 marked as Exhibit 21. Are you familiar with the criteria  
19 for approval of a special exception for a gas station in  
20 Prince George's County?

21 MR. STEER: Yes, in specific districts, yes.

22 MR. HALLER: And are you aware that Section 27-  
23 358(d) requires that prior to approval of a special  
24 exception for a gas station the District Council must find  
25 that the gas station is necessary to the public in the

1 surrounding area?

2 MR. STEER: Yes, I am.

3 MR. HALLER: And did your initial analysis address  
4 the issue of need as it applies specifically to the gas  
5 station?

6 MR. STEER: It did, yes.

7 MR. HALLER: And are you also familiar with the  
8 criteria for approval of a special exception for a food and  
9 beverage store contained in Section 27-355 of the Zoning  
10 Ordinance?

11 MR. STEER: Yes, I am.

12 MR. HALLER: And you're aware as well that Section  
13 27-355(a)(1) and (a)(2) require that the applicant show a  
14 reasonable need for the food and beverage store in the  
15 neighborhood and that the size, location and access to the  
16 establishment shall be oriented toward meeting the needs of  
17 the neighborhood?

18 MR. STEER: Yes.

19 MR. HALLER: Did your initial analysis  
20 specifically address need for the food and beverage store  
21 component under Section 27-355?

22 MR. STEER: It did not.

23 MR. HALLER: And why did it not?

24 MR. STEER: As I interpreted the Zoning Code here  
25 for the I-3 Zoning District, the food and beverage store was

1 a permitted use, it's classified in the code as a permitted  
2 use subject to being accessory to a gas station. It did not  
3 require it specifically to be a special exception as it does  
4 in other districts.

5 MR. HALLER: But as you noted from reviewing the  
6 Staff Report, the staff did look at Section 27-355 as though  
7 it were applicable, is that correct?

8 MR. STEER: That's correct.

9 MR. HALLER: So as a result, have you revised your  
10 analysis to also specifically address the need for a food  
11 and beverage store if it's determined that this finding is  
12 applicable?

13 MR. STEER: I did, yes.

14 MR. HALLER: Madam Examiner, I would note that a  
15 revised needs analysis was submitted into the record and is  
16 marked as Exhibit 44. And Mr. Steere is that analysis, the  
17 updated analysis that you prepared?

18 MR. STEER: Yes, it is.

19 MR. HALLER: Given the requirements for the  
20 purpose of the assignment to examine the evidence of public  
21 need for these uses at this location?

22 MR. STEER: I'm sorry, say that again.

23 MR. HALLER: Given the requirements that are  
24 contained in 27-358 and 27-355 was the purpose of your  
25 assignment to examine the evidence of public need for the

1 uses at this location?

2 MR. STEER: Yes, that's correct.

3 MR. HALLER: And in conducting the analysis, could  
4 you please describe the scope of your work?

5 MR. STEER: So very generally, I go to the site  
6 and I inspect the neighborhood, I drive around, I see what's  
7 there. I visually visit all of the other gas stations and  
8 convenience stores in the area and make an assessment of  
9 what I see. And I define a trade area for this particular  
10 site and then I consult demographic data to find out how  
11 many people live and work in the area and you know generate  
12 the report based on that data that I've collected.

13 MR. HALLER: Okay. And can you please describe  
14 the site and the site access?

15 MR. STEER: So the site access as we talked about  
16 before is the lane that goes up to the Wood On Suites, and  
17 the site sits at the corner of Brightseat and Arena Drive at  
18 the northeast corner. Basically it's visible for the most  
19 part from Brightseat Drive, very little from Arena Drive,  
20 due to the forest that we've discussed already on the side  
21 of Arena Drive. However, folks heading north or south on  
22 Brightseat will see it better. The site is elevated off of  
23 the side of the road and so the access from the side on the  
24 access plane to the hotel makes the most sense. But  
25 Brightseat Drive is a major road that circles around to

1 Sheriff Road, north of the stadium and Arena Drive turns  
2 into Medical Center Drive and goes into Largo, and of course  
3 goes straight to FedEx Field, so they're both very high  
4 traffic important access routes for everybody in the area.

5 MR. HALLER: Thank you. And could you please  
6 describe the surrounding land uses, you mentioned FedEx  
7 Field but can you describe the other surrounding land uses?

8 MR. STEER: So north of the site is a vacant  
9 industrial parcel and then there's I think it's the Landover  
10 Center Industrial Park or something like that, or  
11 technology, I don't know, it's an industrial business park.  
12 On the, obviously, directly east of the site is the hotel  
13 but then the beltway and then you're going into the mixed-  
14 use area on the other side of the beltway with the business  
15 park and residential and then the hospital area and the  
16 former Capital Center site. And south of the site is a pond  
17 and on the other side of that pond is a rehab center. And  
18 not of course on the west side is a large church and then  
19 the FedEx Field.

20 MR. HALLER: Okay. And what is the current zoning  
21 of the subject property?

22 MR. STEER: The zoning is I-3, industrial.

23 MR. HALLER: And will the zoning of the property  
24 continue to be industrial under the implementation of the  
25 new Zoning Ordinance?

1 MR. STEER: Yes, correct, it would be I-E.

2 MR. HALLER: Okay. And in preparing the needs  
3 analysis did you define a market, or trade area?

4 MR. STEER: I did, yes.

5 MR. HALLER: Could you please describe the trade  
6 area in which you've defined and the rationale for the trade  
7 area?

8 MR. STEER: Sure. So the trade area is in the  
9 report on page 17. The site is almost centered in there --

10 MS. MCNEIL: Mr. Steere?

11 MR. STEER: Yes.

12 MS. MCNEIL: I'm sorry, it would be that page in  
13 either exhibit?

14 MR. STEER: Good question.

15 MS. MCNEIL: Page 17. Or are you looking at 30?  
16 I'm just wondering. I'm just doing what Stan used to do, I  
17 like getting on him.

18 MR. STEER: Just taking my fire away from Stan is  
19 what you're doing, I know.

20 MR. BROWN: I was letting you all (indiscernible).

21 MR. STEER: Yes, it's on page 17 of both reports.

22 MS. MCNEIL: Okay. Thanks.

23 MR. STEER: Yes. So the area is more or less  
24 defined by Central Avenue on the south side over to Landover  
25 Road on the north side where it hits the beltway and to the

1 east just past Landover Road, Route 202. On the west side  
2 you have Martin Luther King Boulevard and Hill Road.

3 I choose that area because really there is that  
4 perimeter has commercial uses, but really nothing internal  
5 to it that is acceptable or the Landover area there where  
6 the hospital and things are in between. But everything on  
7 the inside of the beltway is pretty much residential or  
8 industrial at this location and a large part of that is the  
9 FedEx Field site and the Prince George's County Sports and  
10 Learning Center.

11 MR. HALLER: And within that trade area that  
12 you've defined, did you identify the residential employee  
13 demand within that area?

14 MR. STEER: I did, yes.

15 MR. HALLER: And did you calculate what that  
16 residential and employee demand would be within your report?

17 MR. STEER: I did calculate that, yes. I computed  
18 a total of about 15.8 million gallons per year of gas demand  
19 between residents and employees in the area.

20 MR. HALLER: Okay. And as part of the report, did  
21 you also identify industry trends which you believe are  
22 relevant to the needs of the (indiscernible)?

23 MR. STEER: I did. And the industry trends are I  
24 have them later in the report, but what we're talking about  
25 here is that there is a growth, there is a movement industry

1 wide of people historically would travel 10 minutes out of  
2 their way to get the cheapest gas they could. And now more  
3 than 50 percent of people are traveling out of their way  
4 actually to get the convenience store, the food and beverage  
5 side. They're going for branding and store location and  
6 store product over the price of fuel. So that trend has  
7 been escalating in the past few years, and what's also  
8 important is that the trend is leaning more towards the more  
9 youthful age group of 18 to 34 year olds when approaching  
10 that same demand . They would prefer to have the facility  
11 over the cheapest gas. And so that was an important factor  
12 in my analysis of all the existing stations out here.

13 MR. HALLER: And identifying the need for the  
14 proposed facility, did you rely on the high traffic count on  
15 the beltway and the seasonal traffic to the Washington  
16 Football Team Stadium, which is just to the west of the  
17 subject property?

18 MR. STEER: I did not rely on that at all.

19 MR. HALLER: And why not?

20 MR. STEER: Well because first and foremost this  
21 site has to meet the needs of the neighborhood as per  
22 required, the requirements of the zoning code and the  
23 neighborhood doesn't support the stadium or the sports and  
24 learning complex or the hospital exclusively. So the  
25 traffic that's on the beltway is not local, it's regional

1 and likewise the attendance coming to the stadium or to the  
2 sports and learning complex or to the hospital is regional  
3 and I can't count on where they came from. So if we found  
4 that it's supported just locally within its own trade area,  
5 then those other uses coming off the beltway are only going  
6 to be an additional demand.

7 MR. HALLER: So in essence those sources of  
8 customers just make your conclusions conservative?

9 MR. STEER: Yes, very conservative.

10 MR. HALLER: As part of your analysis did you  
11 evaluate the competition in the trade area?

12 MR. STEER: I did, yes.

13 MR. HALLER: And could you please summarize your  
14 findings regarding the trade area competitors both in terms  
15 of gas station and food and beverage stores?

16 MR. STEER: Sure. The best analysis I have a  
17 chart on page 24 and a map on page 25 of the report of the  
18 other uses in the area. And what I did is I tabulated who  
19 they are, where they are, how many gas positions, fueling  
20 positions they have, how many diesel fueling positions they  
21 have and what kind of convenience store they may or may not  
22 have, and whether they have service bays.

23 The part of the trend analysis that we looked is  
24 that the people don't want to go to a gas station, and  
25 generally people don't want to go to gas stations that have

1 service bays and broken down cars in the parking lot. They  
2 don't feel as safe and they don't feel as clean when they're  
3 in those facilities. So we count the service bays, we take  
4 note of what the priority use is at every one of these sites  
5 and we look at the type of convenience store and the size of  
6 the convenience store they may or may not have on the site.  
7 I classified those based on National Association of  
8 Convenience Store standards and you can see in that table  
9 where there many stores are kiosk stores. A kiosk store,  
10 it's very simply where you see a whole canopy with pumps  
11 under it and in the middle of the canopy is a small kiosk  
12 like store and they might have a bunch of vending machines  
13 in front of that. And in some cases you can't even go  
14 inside, it's just a store for the cashier and cigarettes.

15           The old fashioned 7-Eleven format from decades ago  
16 is basically what's called a limited selection store, and  
17 this store that we're proposing here is going to be what's  
18 called a hyper convenience store. It's going to have food  
19 and beverages, I mean eating and drinking as well as food  
20 and beverages is what I would say on that. So it's the  
21 highest performing store in the spectrum of convenience  
22 stores.

23           The other important point is to look at the map  
24 and see that all of these stores are located at the  
25 perimeter of the trade area, they're really nothing internal

1 so there's stores along Martin Luther King Boulevard, one on  
2 Sheriff Road and a few on Central Avenue, and the one Sunoco  
3 over in Landover.

4 MR. HALLER: Okay. And so based upon your  
5 analysis of the (indiscernible) in the trade area, what was  
6 your elevation as to the ability of those existing  
7 facilities to meet the demand within the trade area?

8 MR. STEER: So based on the scale of the stores  
9 that are existing out there, and the types of uses that they  
10 really support, we used some ranking standards and  
11 determined that the proposed 7-Eleven would likely  
12 outperform those stores by a factor of 2 to 1, just because  
13 of the location, size and product offerings on site.

14 So we estimated approximately 13.8 million gallons  
15 of supply, and I have to clarify here. We can't determine  
16 exactly how much supply any gas station provides, because  
17 it's secret information. It is recorded by the state and  
18 the feds but they do not publish it and if I go to a station  
19 and ask I'll probably get run off with a shotgun.

20 So we estimated based on other performance metrics  
21 that the industries have put together. So 13.8 million  
22 gallons of supply is what we estimated for these 12 stores.

23 MR. HALLER: Okay. And so based upon the trade  
24 area, a number of residents and employees in the trade area  
25 and the competition within the trade area of similar uses,

1 do you have an opinion as to whether the proposed gas  
2 station will be necessary to the public and the surrounding  
3 area and whether there's a reasonable need for the food and  
4 beverage store?

5 MR. STEER: Yes. So I didn't talk clearly about  
6 the food and beverage store separately because most of what  
7 we're dealing with are food and beverage store that were  
8 part of existing gas stations. But there are three other  
9 standalone food and beverage stores 7-Eleven's in this  
10 market area that are also on the perimeter, one at Central  
11 Avenue and Hill and one at Hampton Park and one on Sheriff  
12 Road, and those are locations that don't have fuel, they're  
13 just old 7-Eleven's. So they also as an old 7-Eleven don't  
14 offer fresh foods, they only offer the shelf prepackaged  
15 things. So running the numbers we determined that there is  
16 close to 2 million gallons of unmet demand.

17 In running the need on the convenience argument,  
18 there is nothing else of this product type available in this  
19 market, in this trade area. There is no other convenience  
20 store that has fresh prepared foods. There is no other  
21 convenience store right at the interchange, except at  
22 Central Avenue, there is two gas stations and a 7-Eleven  
23 there at Central Avenue and the beltway. So within this  
24 particular area serving especially the new hospital site and  
25 things that are going on there, as well as the stadium and

1 the Prince George's Sports and Learning Complex, there is  
2 nothing of this type that serves it. So the convenience and  
3 need definition for that is met very well.

4 MR. HALLER: Okay. And then let me also ask you  
5 in your opinion is the size, location and access to the food  
6 and beverage store oriented towards meeting the needs of the  
7 neighborhood based upon your observation?

8 MR. STEER: Yes. So exactly, there is nothing  
9 similar available there right now, and so it is a service  
10 and a use that's not available without going out of this  
11 trade area, I'm sorry, without going out of the neighborhood  
12 to find it.

13 MR. HALLER: Okay. And so essentially in this  
14 particular circumstance where you have a food and beverage  
15 store in conjunction with the convenience store given the  
16 nature of the competition in the neighborhood, and the lack  
17 of convenience stores of this type with gas, it's really the  
18 combination that really creates the, that makes this thing  
19 particularly needed within the community. Is that a fair  
20 summary?

21 MR. STEER: That's a very good summary. The  
22 combination is what the consumers are demanding  
23 wholeheartedly nationwide and the combination doesn't exist  
24 in this neighborhood today, so it's, and if it's not met,  
25 the demand is not met locally is what I'm saying.

1 MR. HALLER: Okay. Thank you, Mr. Steere, I have  
2 no further questions at this time.

3 MS. MCNEIL: Mr. Brown?

4 MR. BROWN: Yes, good afternoon, Mr. Steere.

5 MR. STEER: Not yet, five minutes. Good morning.

6 MR. BROWN: Almost. Just a couple of questions.  
7 27-355 for a food and beverage provides a food or beverage  
8 store may be committed subject to the following the  
9 applicant shall show a reasonable need for the use in the  
10 neighborhood. Have you adopted the neighborhood proposed by  
11 the staff?

12 MR. STEER: No, I create my own neighborhood. I  
13 don't, I recognize that in this case it looks like the staff  
14 adopted my neighborhood. They don't usually do that, but  
15 their description was very similar to mine, but I did my  
16 report before the staff got to theirs.

17 MR. BROWN: All right. The neighborhood is a term  
18 of art so you cannot create your own, believe it or not.  
19 And so my question is and Mr. Ferguson may have to answer  
20 this later, are you guys adopting the staff's neighborhood  
21 for purposes of 27-355 or is Mr. Ferguson going to propose  
22 another neighborhood?

23 MR. STEER: Well, you're going to have to talk to  
24 Mr. Ferguson about that in a few minutes, but --

25 MR. BROWN: Well it goes to the issue of --

1 MR. STEER: -- I can only create my own trade  
2 area, I don't rely on anybody else's trade areas ever.

3 MR. BROWN: All right. But see that's my problem  
4 here. You're using the term trade area interchangeably with  
5 neighborhood.

6 MR. STEER: Okay.

7 MR. BROWN: I understand you have to create a  
8 trade area to evaluate need, but the Section 27-355 calls  
9 for a neighborhood analysis not your trade area. So in  
10 other words if your trade area encompasses the neighborhood,  
11 we're only relevant to looking at need of how it relates to  
12 the neighborhood. And so that's why I asked you the  
13 question. If you --

14 MS. MCNEIL: Mr. Brown?

15 MR. BROWN: Yes?

16 MS. MCNEIL: Mr. Brown? I just want you to know  
17 miracle of miracle it appears, unless he's got another  
18 analysis that Mr. Ferguson did adopt staff's. So it's the  
19 same neighborhood.

20 MR. BROWN: It's the same neighborhood?

21 MS. MCNEIL: Yes.

22 MR. STEER: In either case if I might interject,  
23 there is no definition of neighborhood, so --

24 MR. BROWN: Well then --

25 MR. STEER: -- it's sort of a subjective term in

1 zoning.

2 MR. BROWN: It is subjective but it is  
3 subjectively identified in each case. And that's why I  
4 asked you did you adopt the staff's neighborhood because if  
5 that's the neighborhood we're dealing with, then that's the  
6 neighborhood that we have to evaluate need as it relates to  
7 27-355.

8 MR. STEER: But we don't consult the staff before  
9 we do our analysis.

10 MR. BROWN: Oh you don't consult them, but their  
11 neighborhood will dictate your need analysis.

12 MR. STEER: I don't want to argue with you, but I  
13 know what a neighborhood is better than the staff does and  
14 my determination of a neighborhood in my trade area is  
15 professional and it is not going to be somebody else's and  
16 I've never done it that way in all my years of doing this.  
17 It's always been customized based on my analysis, my  
18 background in geography and planning.

19 MR. BROWN: Do you have a page in your study that  
20 shows me your trade area as compared to the neighborhood  
21 that staff and Mr. Ferguson have adopted?

22 MR. STEER: No. My report was done before the  
23 staff did their report. I have no idea what the staff was  
24 going to do.

25 MR. BROWN: All right. I want to see the

1 difference between your trade area and the staff's  
2 neighborhood.

3 MR. HALLER: If it may be helpful, let me pull up  
4 Mr. Steere's trade area and then we can look at the Staff  
5 Report and track the staff's definition compared to his.

6 MR. STEER: The only difference on the staff's  
7 trade area is they've bordered it to the Capital Beltway,  
8 otherwise they followed Central Avenue, Landover Road,  
9 Brightseat Road, and Sheriff Road. So they cut if off at  
10 the beltway, I did not. This would be at page 17. Back up,  
11 there you go.

12 MR. HALLER: So if I understood what you just  
13 said, Mr. Steere, correctly, staff's neighborhood cut off at  
14 the beltway and your trade area goes east of the beltway?

15 MR. STEER: Correct.

16 MR. BROWN: So if Mr. Steere you conclude there is  
17 a reasonable need for the food and beverage in the  
18 neighborhood, and staff cut it at the, or you cut if off at  
19 the Capital Beltway or did staff cut if off at the Capital  
20 Beltway? Which is it, Mr. Haller?

21 MR. STEER: Staff cut if off at the Capital  
22 Beltway.

23 MR. BROWN: Staff cut if off at the Capital  
24 Beltway. All right. And then you used the same trade area  
25 for the analysis for the gas station being necessary to the

1 public and the surrounding area, is that correct?

2 MR. STEER: Yes, I established a trade area. Mark  
3 Ferguson establishes a neighborhood through his analysis but  
4 I establish a trade area. I don't specifically call it out  
5 as a neighborhood in my report, I call it out as a trade  
6 area.

7 MR. BROWN: I may have misspoke, I meant do you  
8 use the same trade area for the gas station as you used for  
9 the food and beverage, is that correct?

10 MR. STEER: In this case I did, not always.

11 MR. BROWN: All right. And the existing 7-  
12 Eleven's in the trade area you identified earlier were at  
13 the Hampton Park development on Central Avenue and the  
14 intersection of I guess Sheriff Road and Barlow Road and  
15 then where is the third?

16 MR. STEER: Central Avenue and Hill Road.

17 MR. BROWN: Okay. And in your trade area what  
18 were the other comparable food and beverage gas station  
19 facilities?

20 MR. STEER: The 12 that I listed.

21 MR. BROWN: All right, can you pull that up for  
22 me?

23 MR. STEER: That's on page 24, Tom.

24 MR. HALLER: And what was the question again, Mr.  
25 Brown?

1           MR. BROWN: The comparable food and beverage gas  
2 station facilities in the trade area.

3           MR. HALLER: Food and beverage gas stations.  
4 Okay. Hold on. 24 you said?

5           MR. STEER: Yes, 24.

6           MR. HALLER: Is this the one?

7           MR. STEER: Yes, that's it. Or do you want to see  
8 a map, there's maps on the next page?

9           MR. BROWN: No, no, that's fine. That's fine.  
10 Let me just look at that real quick.

11          MR. STEER: Hold on.

12          MR. HALLER: Mr. Brown, are you referring to gas  
13 stations with a comparable food and beverage component or  
14 just that offer any type of food and beverage component?

15          MR. BROWN: That offer any type of food and  
16 beverage component. So Mr. Steere, your trade area did not  
17 include the proposed facilities up in Woodmore Town Center,  
18 is that correct?

19          MR. STEER: That's correct.

20          MR. BROWN: And your trade area does not include  
21 the proposed Royal Farms at Route 202 that you testified on  
22 a couple of months ago, is that correct?

23          MR. STEER: That's correct.

24          MR. BROWN: All right. No other questions, thank  
25 you.

1 MS. MCNEIL: I have no questions, Mr. Steere.

2 MR. STEER: Thank you.

3 MR. HALLER: Before I turn to Mr. Ferguson, I did  
4 want to, Mr. Brown raises an interesting issue, which is the  
5 code requires a special exception for the gas station, it  
6 allows the food and beverage store in conjunction with that  
7 gas station, it does not require a special exception for the  
8 food and beverage store. And so the criteria for need for  
9 the gas station references the need in the surrounding area.  
10 The criteria to a special exception for a food and beverage  
11 store talks about neighborhood. So if you will, there's a  
12 conflict between those two sections. So the question is  
13 whether 355 is even applicable in this case. And it's our  
14 view that it is not but we didn't want to not address it in  
15 the needs analysis, but arguably at least even if it were  
16 applicable since the primary application is the gas station,  
17 the market analysis associated with the gas station would  
18 appear to be the market analysis would be applicable. But  
19 that's just my view.

20 MS. MCNEIL: You're an esteemed attorney, 355  
21 though the special exception requirement, right?

22 MR. HALLER: For a use that requires a special  
23 exception.

24 MS. MCNEIL: Right. And sometimes the Council has  
25 said that permitted uses have to meet those requirements in

1 a footnote and --

2 MR. HALLER: They have.

3 MS. MCNEIL: -- you're telling me that's not the  
4 case here, correct?

5 MR. HALLER: That's correct.

6 MS. MCNEIL: I understand that you're trying to  
7 cover all your, you can see I don't play sports, what's he  
8 trying to cover, all your bases, but right not absent seeing  
9 more I think that the only issue with the food or beverage  
10 store is does it meet the footnote that goes with gas  
11 stations. And I think it does, I'm not giving you a hard  
12 time because I do not think that the food or beverage store  
13 is in the same building as the gas station, so I don't think  
14 that's ever possible. I don't think that was written  
15 correctly, the footnote. The footnote says that, you know,  
16 again it's accessory if it's in the same structure.

17 MR. BROWN: And I agree with you, Madam Examiner,  
18 and just for the record I think Mr. Owen was really  
19 stretching the duality, if you will, when he said that the  
20 canopy and the gas station was the building. I mean why you  
21 went there, I don't know, Mr. Owen, but I let it go.

22 MS. MCNEIL: I mean I can't think of any gas  
23 station at all where they're in the same building.

24 MR. HALLER: The function --

25 MS. MCNEIL: So just have to read it in a way that

1 makes sense and I'm thinking that they're on the same lot go  
2 inside to pay the money. You said the worker is inside.  
3 We'll let Mr. Ferguson tap dance and give me more, but it  
4 adds to your initial question I don't see right now why 355  
5 applies to this case.

6 MR. HALLER: And --

7 MS. MCNEIL: No matter what it's a P not an SE.

8 MR. HALLER: Right. Right. Well let me go ahead  
9 and call Mr. Ferguson because I'm sure that Mr. Ferguson has  
10 an opinion on this as well as other --

11 MS. MCNEIL: Okay.

12 MR. HALLER: -- so we will --

13 MS. MCNEIL: And let me ask you before you start,  
14 we're moving pretty well, so you think maybe by 12:30,  
15 because I do have to give them a break, or at 12:45? Is he  
16 your last witness?

17 MR. HALLER: I think we'll be done by 12:30. Yes.

18 MS. MCNEIL: And he's the last witness?

19 MR. HALLER: Yes.

20 MS. MCNEIL: All right. Mr. Ferguson, do you  
21 swear or affirm under the penalties of perjury that the  
22 testimony you shall give will be the truth and nothing but  
23 the truth?

24 MR. FERGUSON: I do.

25 MR. HALLER: Thank you. Mr. Ferguson, please

1 state your full name and address for the record.

2 MR. FERGUSON: My name is Mark Ferguson, my  
3 address is 9500 Medical Center, formerly Arena Drive, Suite  
4 480, Largo, Maryland.

5 MR. HALLER: And what is your occupation?

6 MR. FERGUSON: I am a land planner.

7 MR. HALLER: And have you been previously accepted  
8 by the Zoning Hearing Examiner of Prince George's County as  
9 an expert in the field of land planning?

10 MR. FERGUSON: I have been accepted on many times  
11 as an expert in the field of land use planning by Madam  
12 Examiner.

13 MR. HALLER: I apologize. I have included in the  
14 record as Exhibit 36 Mr. Ferguson's ever expanding resume  
15 and would ask that he be admitted as an expert witness, or  
16 accepted as an expert witness in this case.

17 MS. MCNEIL: Good afternoon, Mr. Ferguson, and you  
18 will be accepted as an expert in land use planning.

19 MR. FERGUSON: Thank you so very much.

20 MR. HALLER: So Mr. Ferguson, are you familiar  
21 with the property which is the subject of today's special  
22 exception application?

23 MR. FERGUSON: I am.

24 MR. HALLER: And have you been retained as the  
25 applicant's expert land use planner in this case?

1 MR. FERGUSON: I have.

2 MR. HALLER: And have you made a personal  
3 inspection of the property?

4 MR. FERGUSON: I have.

5 MR. HALLER: Can you actually see it from the  
6 window of your office?

7 MR. FERGUSON: Not quite. There's trees in the  
8 way but other than yes, I could.

9 MR. HALLER: Anyway, are you familiar with the  
10 surrounding neighborhood?

11 MR. FERGUSON: I am.

12 MR. HALLER: Please describe the property in the  
13 surrounding neighborhood.

14 MR. FERGUSON: Well the surrounding neighborhood,  
15 and Madam Examiner, I really hate to gainsay you, but a  
16 miracle did not occur on this case. I did not adopt staff's  
17 description of the neighborhood, I apologize. So I would  
18 describe the limit the neighborhood as the staff did on  
19 three sides, but on the fourth they go all the way to Hill  
20 Road. I really will limit that to the properties that front  
21 and gain access to Brightseat Road. Because Brightseat Road  
22 really is a linear north/south environment. The only way  
23 through it to the left is through the stadium which is  
24 really a substantial barrier. So my neighborhood is much  
25 more limited and I really define that very specially to

1 evaluate compliance with 27-317(a) (5) which is that the  
2 proposed use will not be detrimental to the use or  
3 development of adjacent properties or the general  
4 neighborhood. And I really feel very strongly that  
5 residential properties on the far side of the stadium will  
6 not be affected in any way at all by what happens on this  
7 property, whether it's a gas station or frankly, any other  
8 use. They're just too far separated.

9           So but to describe the neighborhood as a whole,  
10 it's an interesting one. It's eclectic but in a strange  
11 way. It's split between industrial uses, the city of craze  
12 complex and higher density residential uses. So you have at  
13 the north you have the Old Washington Homes or K Hovnanian  
14 Homes office building, up the corner where Brightseat Road  
15 turns you know from heading east/west to heading  
16 north/south. Then there's a fairly large garden apartment  
17 complex, the Lansdowne Village and then further south you  
18 get into the Jericho or City of Praise complex, their  
19 business park, the church, the academy, their parking  
20 facilities, crossing over what's that point Bishop People's  
21 Drive, the senior living facility, their youth center.

22           Then you have Thomas Pullen Middle School, the  
23 arts magnet. You have a half dozen, roughly, single family  
24 detached houses on the west side of Brightseat Road, and  
25 then the Manor Farm townhouse development which is all the

1 way down at the southern end of the neighborhood right by  
2 Central Avenue.

3           The east side is much more industrial but still  
4 eclectic, so you have a pumping station, you have an office  
5 building, you have county offices where social services is.  
6 You have Centennial Village townhouses in the R-T Zone. In  
7 the I-3 Zone you have the center point, I'm sorry, you have  
8 Center Point Office Building, you have the Future Care Rehab  
9 Center. The subject, some vacant property and then  
10 properties that I believe Mr. Steere had described, the  
11 Landover Industrial Center and 95 Office Park. So you have  
12 industrial office uses, you have the church complex, some of  
13 which is in fact, you know, employment use as well, their  
14 business center, and then you have fairly high density  
15 residential in the neighborhood as well. So eclectic but no  
16 commercial uses, really it's either industrial and  
17 institutional and residential.

18           MR. HALLER: Thank you, Mr. Ferguson. And can you  
19 please briefly review the Site Plan and the proposed  
20 buildings and uses?

21           MR. FERGUSON: So we have seen that before and  
22 essentially we have the entrance proceeding from west to  
23 east. We have the interest at the northwest corner of the  
24 larger site as a whole, which is to say the existing  
25 subdivided parcel, the Lot 1, the name of the property owner

1 is escaping me, it starts with an S.

2 MR. HALLER: Sandpiper.

3 MR. FERGUSON: Thank you. The Lot 1, the  
4 Sandpiper subdivision. You have the canopy with the gas  
5 pumps fronting on and parallel to Brightseat Road. Behind  
6 that you have a building which is then surrounded by parking  
7 on four sides of it.

8 To the south of the property there is storm water  
9 management and then a substantive topographic drop down to  
10 the right-of-way of Arena Drive, Medical Center Drive, and  
11 the wooded area in between the subject property and the edge  
12 of the road.

13 MR. HALLER: Now in conjunction with the  
14 preparation of your testimony, have you had an opportunity  
15 to prepare a report which addresses the neighborhood, the  
16 planning documents and the statutory provisions which are  
17 applicable to the proposed use?

18 MR. FERGUSON: I did.

19 MR. HALLER: And could you please, and I would  
20 note for the record that Mr. Ferguson's report is Exhibit  
21 43.

22 MR. FERGUSON: 43, thank you.

23 MR. HALLER: And Mr. Ferguson, could you please  
24 summarize your report and your findings as a result of the  
25 analysis contained therein?

1           MR. FERGUSON: I will and I will just state pro  
2 forma for the record, I'm sorry, I have a persistent frog in  
3 my throat, that I do adopt the contents of my report as my  
4 testimony today. I do go through the requirements of 27-  
5 317(a) which is to say the conformance of the proposed  
6 application with the purposes of the ordinance, I go through  
7 those, I think there's really only one which is particularly  
8 worth highlighting.

9           And that is the first purpose of the, or the  
10 purposes of the I-3 Zone and specifically the second  
11 purpose, excuse me, of the I-3 Zone, which is to provide for  
12 a mixture of industrial research office and in certain  
13 instances, specific retail commercial uses and I'm eliding  
14 some language, in a manner which will retain the dominant  
15 industrial employment character of the area while also  
16 providing for the enhanced viability of the zone by  
17 providing for the location of certain retail commercial uses  
18 on the periphery of the area, specifically where the  
19 periphery fronts on and is adjacent to arterial roadways.  
20 And in fact, Arena Drive, Medical Center Drive is an  
21 arterial roadway and this property is at the periphery of  
22 the industrial area.

23           Now I do discuss that at some length because I  
24 think that's germane to certain Zoning Ordinance provisions.  
25 In a past time of history, this property was at one time

1 part of a larger assembly that was collectively known as  
2 Spectrum 95. And in fact, the Master Plan refers in its one  
3 reference to this area, refers to this area as the Spectrum  
4 95, you know, industrial area. Almost all of the Spectrum  
5 95 assembly is now occupied by the Jericho Campus, or the  
6 City of Praise Campus, as the church is now known. But  
7 other pieces included the subject, it included the Future  
8 Care Center so it's not you know co-terminus. But the  
9 ordinance doesn't define industrial park, so I think it's  
10 reasonable to either look at it in terms of the entire  
11 Spectrum 95 assembly as the Master Plan does, or frankly, in  
12 a more limited way as being essentially just this Sandpiper  
13 property with the two uses of the hotel and the subject gas  
14 station.

15           In either case, it's clearly larger than the  
16 subject property and I think that's germane to the issue of  
17 the sign. So thus the purposes I do talk about the other  
18 general criteria of 27-317(a) that it won't impair the  
19 Master Plan which I don't believe it will, that it won't  
20 adversely affect health, safety and welfare, this is a  
21 modern facility conforming to all of the modern regulations,  
22 and it's in a good location for a use such as this. It will  
23 not be detrimental to the use or development of adjacent  
24 properties or the general neighborhood. And I think really  
25 the purpose of the I-3 Zone that I discussed earlier is the

1 most germane in looking at this, whereas, the I-3 Zone  
2 specifically seeks to provide limited locations such as this  
3 one for uses such as this to really enhance the viability of  
4 the remainder of the area. To provide a needed service and  
5 to make the area more attractive to the workers, the  
6 occupants of the area which in this case now include workers  
7 at the rehab center, it includes workers at the City of  
8 Praise Business enter, as well as frankly you know attendees  
9 at their services. But also, in the larger neighborhood,  
10 certainly the needs of the residents of the Lansdowne Garden  
11 Apartments, the Centennial Village Townhouses, there's a few  
12 hundred there, a few hundred dwelling units in the Lansdowne  
13 Village Apartments and somewhere in between 100 and 200 in  
14 the Manor Farms, will all have their needs met by this  
15 facility. So that really summarizes the germane parts of  
16 27-317.

17 I do also go through the criteria of 27-358, most  
18 of which have been addressed by Mr. Speech. The only points  
19 that I will revisit, first of all it's the architectural  
20 compatibility question of 358(a)(10), I do agree with Mr.  
21 Owen's approach to designing this proposed building to be  
22 compatible with the abutting hotel. I find further that it  
23 will also be really more compatible with the character both  
24 in terms of scale and material of the Future Care Center.  
25 I'm personally not as big a fan of the architecture of the

1 City of Praise Campus, maybe I just don't like the color  
2 blue for roofs, but as Madam Examiner reminds us, beauty is  
3 absolutely in the eye of the beholder. But clearly, I think  
4 the efforts of the applicant to integrate the architecture  
5 speaks directly to the intent of 27-358(a)(10).

6           The only other point of 27-358 that I will bring  
7 up is that of the driveway in (a)(5). And I think the  
8 unique character of the subject property and its access  
9 really raises a number of interpretations that are possible  
10 of that provision of 358. I will say with regard to the  
11 question at the lot line, I think the line of inquiry that  
12 Mr. Brown proposed is appropriate, unfortunately, the way  
13 that front yard is defined and has been applied by the  
14 ordinance, particularly after the proposed subdivision will  
15 limit the front yard to the frontage along both Brightseat  
16 Road of that shared driveway. And secondly, of its  
17 remaining frontage along Arena Medical Center Drive. And so  
18 every lot line that is not one of those is either a side or  
19 a rear. Rear lot lines are defined as the ones opposite the  
20 narrower of two fronts in the case of corner lots, and  
21 everything else is a side. So therefore the lot line in  
22 question is a side line at the hotel.

23           That having been said, there's still another  
24 interpretation of the ordinance which I discuss in my  
25 report. Because the intent of that is to address public

1 frontage because there is ordinarily requirement that you  
2 have public road frontage, the question is is the relevant  
3 driveway, the shared driveway location out on Brightseat  
4 Road and that does meet the side lot line questions,  
5 criteria.

6           So Madam Examiner, I think that's for you to  
7 determine what the law is. I think, unfortunately, in this  
8 peculiar case our code is less than 100 percent clear and  
9 will allow you to get to a decision through a number of  
10 ways. One being that the driveway along Brightseat Road is  
11 the germane one and that meets the setback requirements.  
12 The other would be to alter the limits of the special  
13 exception so that there's sufficient separation from the  
14 point of curvature to the side lot line. There's actually a  
15 third interpretation which is possible, which is that from  
16 the line of the driveway that there be 12 feet of separation  
17 in between the driveway and the side lot line and that  
18 condition is actually met as well. The only question that  
19 brings this whole thing into play is whether that curve of  
20 the driveway, the fillet, if you will, is what gives rise to  
21 the requirement. We did discuss this in a prior case, NSE-  
22 4772, and I think that's why you know we're being to  
23 picayune in this particular location.

24           What my belief, frankly, is that the 12 foot side  
25 yard requirement comes from allowing enough of the setback

1 so that your curve, the flare of your driveway doesn't go in  
2 front of somebody else's property because there's typically  
3 12 feet in between curb lines and the right-of-way lines and  
4 that's the typical curve radius. So if you have the edge of  
5 the driveway, 12 feet separate, then your curve to  
6 transition won't go in front of somebody else's property.  
7 It's my belief that was the genesis of the regulation.

8           So Madam Examiner, there's a third venue for you  
9 to evaluate and make your decision on.

10           MR. HALLER: So let me make sure that I'm clear.  
11 So if you were to measure the 12 feet from the straight line  
12 that would be formed by the curve and not include the  
13 fillet, we would meet that requirement without amending the  
14 special exception?

15           MR. FERGUSON: Correct.

16           MR. HALLER: But if you start the 12 foot  
17 measurement where the curve of the fillet begins, then this  
18 revision to the special exception we proposed, that would  
19 meet that criteria?

20           MR. FERGUSON: With the revision and that's  
21 assuming that Madam Examiner doesn't adopt what I present in  
22 my report as the first option which is that the relevant  
23 driveway is the one that's out on Brightseat Road rather  
24 than these two, you know, entrances from the private road  
25 after which we've already entered from the public road.

1 MR. HALLER: Right.

2 MS. MCNEIL: Well, let me ask you this. In your  
3 first, in the last one you mentioned, if the point is safety  
4 once any vehicle has left Brightseat and starts traveling on  
5 the rest of the property, wouldn't they still need to have a  
6 safe distance from points of curvature, where the cars come  
7 out? I mean is safety only important on Brightseat Road?

8 MR. FERGUSON: They would, but I think that what  
9 you have here is you have a Site Plan which already provides  
10 for it, in terms of the location and configuration of the  
11 driveways within the property. So in the scheme of are we  
12 making the world you know a safe place, we achieve that  
13 regardless of the letter of the law and how you choose to  
14 apply that.

15 MS. MCNEIL: Yes, I'm just looking at you all and  
16 your client was really thinking of safety no matter what  
17 that hefty law says, so --

18 MR. FERGUSON: Yes, ma'am.

19 MS. MCNEIL: -- since he already revised the Site  
20 Plan for the, what are you all saying, Phillip?

21 MR. HALLER: Fillet.

22 MR. FERGUSON: F-I-L-L-E-T, fillet is the  
23 technical term.

24 MS. MCNEIL: Instead of fillet. Okay. Fillet.

25 MR. HALLER: And let me ask a follow up question,

1 Mr. Ferguson. But obviously the criteria references a  
2 driveway entrance onto the public road and we know from the  
3 criteria and I think it's (a)(1) or (a)(2) that the road  
4 that it accesses has to have a minimum right-of-way with the  
5 70 feet. So the driveway that would serve a gas station is  
6 coming off of a fairly highly traveled road with higher  
7 speed limits. Whereas an entrance on a driveway internal to  
8 a property is a whole different situation, would you agree  
9 with that?

10 MR. FERGUSON: It is. It is from to Madam  
11 Examiner's point of safety the speeds on that private access  
12 will be, necessarily much lower because cars will just have  
13 come to a very slow speed to be able to turn from Brightseat  
14 into the property or even moving throughout the site.  
15 There's similar turning movements that make cars slow down  
16 to most have stopped. I, Madam Examiner, am a California  
17 roller, I confess. So only most of stops, not stops for me.  
18 Madam Examiner, you're a former police officer, I actually,  
19 I withdraw that testimony.

20 MS. MCNEIL: Sheriff, sir. But that's for another  
21 day. I'm sorry, Tom, you're finished?

22 MR. HALLER: No. I mean I don't think Mark is  
23 done, I mean --

24 MS. MCNEIL: We took him away with the access. Go  
25 ahead.

1           MR. FERGUSON: Well, I think I had gotten to the  
2 end of your question, Tom, so if I hadn't redirect me.

3           MR. HALLER: Well no, the other issue that we  
4 discussed earlier was the criteria for a variance. I think  
5 the Examiner wanted you to address that today, even though  
6 we may have to have a subsequent hearing on that.

7           MR. FERGUSON: I do.

8           MS. MCNEIL: If I may? I'm so sorry. You said  
9 something in here that you've said in other analysis and  
10 that's the gasoline pumps. So why is nobody mentions on the  
11 Site Plan the distance from the pump to the street?

12           MR. FERGUSON: Madam Examiner, that's a great  
13 question which I asked myself. I think we can recall Mr.  
14 Speech and give him a stern lecture. The dimension from the  
15 canopy to the street is mentioned and that may be relevant  
16 for zoning for setbacks for basic setbacks because a canopy  
17 is a building. But the 27-358 specifically asks for the  
18 distance of the pumps. All I can say is that it is more  
19 than the distance from the canopy which does exceed the  
20 requirement.

21           MS. MCNEIL: Okay. Thank you. Go ahead, Tom.

22           MR. FERGUSON: So the criteria of the variance, I  
23 think it's first worth pointing out that as of today the  
24 property is not subdivided and therefore as of today a  
25 variance is not required. The provisions of 27, I believe

1 it's 328.01 specify that setbacks are to be measured from  
2 the limits of the special exception area, however that is  
3 defined. But this is not a setback question. So I think  
4 you could argue that as of today a variance is not required.  
5 However, it is the applicant's intention to subdivide the  
6 property, number one. And then secondly, this question of  
7 27-358 it seems to me speaks to use and therefore the  
8 question of variance would need to be applied and speak to  
9 the, you know, speak to the use. So in other words, I guess  
10 it would be a preemptive variance that would be needed,  
11 otherwise the applicant would have to come back to revise  
12 their special exception after the subdivision.

13 I would point out, Madam Examiner, that 27-471(h)  
14 one of the regulations of the I-3 Zone does provide that  
15 every use, it parallels that of 27-358(a)(1) which says  
16 every use must, every lot must have frontage on and direct  
17 vehicular access to a street of 70 foot right-of-way or  
18 greater. But that's a lot in subdivision question so in my  
19 opinion the Planning Board would have the authority to grant  
20 that variance at the time of subdivision because it's  
21 subdivision related, or having to do with the lot itself  
22 rather than the use.

23 MS. MCNEIL: Yes, because right now it's still one  
24 lot, right?

25 MR. FERGUSON: The one lot right now, correct.

1 MS. MCNEIL: I was wondering that about the rear,  
2 the setback from the side and rear lot, it's one lot.

3 MR. FERGUSON: Yes, ma'am. But --

4 MS. MCNEIL: That's what I'm --

5 MR. FERGUSON: Yes, ma'am.

6 MR. HALLER: And I think we were looking at the  
7 boundaries of the special exception as being even though not  
8 yet created as a lot that the criteria were applicable to  
9 the boundaries of the special exception, as the quote  
10 unquote subject property. So if that --

11 MS. MCNEIL: That's a different lot.

12 MR. HALLER: -- if the boundaries of the special  
13 exception are the subject property and if the subject  
14 property is required to have direct frontage on a street as  
15 opposed to a previously approved driveway, then the variance  
16 would be appropriate, or would be applicable, I should say.  
17 Appropriateness is your determination in Mr. Ferguson's  
18 opinion.

19 MS. MCNEIL: But you have something in this  
20 record, correct, that allows you to use the access no matter  
21 what right now to Brightseat, the easement.

22 MR. FERGUSON: The easement agreement which I  
23 believe --

24 MS. MCNEIL: Yes, I saw it.

25 MR. FERGUSON: -- I didn't write down the exhibit

1 number, will at such time as it's executed.

2 MS. MCNEIL: This is a perfect zoning case. Okay.  
3 Go ahead with your question.

4 MR. FERGUSON: I'm sorry, to continue I think Mr.  
5 Haller was asking me to speak to the criteria. I think the  
6 topographic separation, there is 10 or more feet of  
7 separation in between the usable area of the property and  
8 Brightseat Road and then there is denial of access along  
9 Arena Medical Center because of its proximity to the  
10 interchange with the beltway. So those are unusual  
11 topographic conditions that would meet the requirements of  
12 27-230(a)(1) and the hardship then is that if they can't  
13 therefore use this access, they can't get into the property,  
14 which is you know a fatal hardship.

15 And then finally, the variance will not  
16 substantially impair the intent, purpose or integrity of the  
17 General Plan. This is the kind of industrial, this is the  
18 kind of use in an industrial park again specifically that  
19 that second purpose of the I-3 Zone speaks to. And so this  
20 is what the Master Plan sees for the property continuation  
21 of the industrial, planned industrial use that exists now.  
22 So therefore in my view all three of the required criteria  
23 of 27-230 are met.

24 MR. HALLER: Thank you, Mr. Ferguson. Before you  
25 conclude, could you provide comment regarding relating to

1 the sign?

2 MR. FERGUSON: I beg your pardon, if you could ask  
3 that one more time again?

4 MR. HALLER: Can you provide your opinion with  
5 regard to the sign discussion that we held earlier?

6 MR. FERGUSON: I will. So Madam Examiner actually  
7 by reading the provision of 27-614, I think really that's  
8 exactly what I was going to say. In other words, the sign  
9 height limit is for the industrial park. However, we choose  
10 to define that whether it's just the hotel or the larger  
11 Spectrum 95 which would allow the sign to be even taller,  
12 because the City of Praise Church is quite large. I don't  
13 know the height of it, but it's well in excess of 35 feet 10  
14 inches. So I think Madam Examiner has already pointed out  
15 the germane part of the ordinance there.

16 MR. HALLER: All right. Thank you. And you  
17 indicated you adopted your written report as your testimony  
18 and your written report contains your conclusion with regard  
19 to the relevant findings of conformance with the  
20 requirements of 27-317 as well as 27-358(a). I have no  
21 further questions for Mr. Ferguson at this time.

22 MS. MCNEIL: Mr. Brown?

23 MR. BROWN: Just one question, Mr. Ferguson, and  
24 we can all get on with our day, I guess. The variance 27-  
25 358(a)(1) --

1 MR. FERGUSON: Yes, sir.

2 MR. BROWN: -- I will give it to you that the  
3 property has exceptional topographic conditions, but in  
4 reading the explanation by staff on page 16, it does not  
5 address exceptional narrowness, shallowness or shape or  
6 extraordinary situation or conditions. The rationale given  
7 by the staff and in your justification statement concerning  
8 a restriction of access to the Capital Beltway and to Arena  
9 Drive, that does not go to the physical characteristics of  
10 the property and 27-358(a)(1) relates to the physical  
11 conditions of the property, not any regulatory tool that  
12 impacts the property. So explain to me, if you can, how  
13 this property or request for the variance meets 27-  
14 358(a)(1).

15 MR. FERGUSON: Well, first I will say at the  
16 outset that I actually disagree with your analysis. So the  
17 first thing is that it's not and's it's rather or's. So the  
18 specific parcel of land physically has to have narrowness,  
19 shallowness or shape, economic, exceptional topographic  
20 conditions or other extraordinary situations or conditions.  
21 So as I read that any one of those would qualify you for  
22 consideration for a variance. And to me --

23 MR. BROWN: I agree with you 100 percent and  
24 that's my question is that if we agree it meets the  
25 topographical --

1 MR. FERGUSON: Yes.

2 MR. BROWN: -- topographic conditions tell me do  
3 any of the other adjectives apply?

4 MR. FERGUSON: Right. So I do not believe it has  
5 exceptional narrowness, I do not believe that it has  
6 exceptional shallowness, I don't think it has an unusual and  
7 exceptional shape. But I do believe that the denial of  
8 access is an extraordinary situation or condition. And so  
9 if you don't, I can say we can both present those opinions  
10 to Madam Examiner who can find the fact. But that is how I  
11 would present it.

12 And I did want to mention Mr. Brown on a personal  
13 note, it's nice to see you back healthy and in your office  
14 again.

15 MS. MCNEIL: Yes.

16 MR. BROWN: It's good to be back with a small frog  
17 in my throat as well.

18 MR. FERGUSON: Yes.

19 MR. BROWN: I hope you feel better too.

20 MR. FERGUSON: Good.

21 MS. MCNEIL: I meant to say that earlier, it's  
22 good to see you, Stan.

23 MR. BROWN: So much. No other questions.

24 MR. FERGUSON: Thank you, Mr. Brown.

25 MR. HALLER: If I could just follow up briefly on

1 the question with regard to the special exception boundary  
2 parcel as it fronts on Arena Drive. There's also a  
3 substantial topographic difference along Arena Drive, is  
4 there not?

5 MR. FERGUSON: There is, which you know speaks to  
6 screening actually because the property is high, you know,  
7 the topography goes up and then levels out for some distance  
8 before the development on the subject property starts,  
9 really that topography will act as supplemental screening.  
10 You know, essentially as a bit of a berm.

11 MR. HALLER: Right. So I mean the point of my  
12 question is the topography doesn't just exist on Brightseat  
13 Road, although it definitely exists there as well.

14 MR. FERGUSON: It does. Although to a degree the  
15 topography along Arena is moot because even if it were flat,  
16 you wouldn't be allowed to go in there.

17 MR. HALLER: Right. I have no further questions.

18 MS. MCNEIL: And is that topography different on  
19 the other corner?

20 MR. FERGUSON: Madam Examiner, which other corner?

21 MS. MCNEIL: You compared it to the other  
22 properties in the area. Is all the property along  
23 Brightseat Road --

24 MR. FERGUSON: Oh, oh, oh, oh. It is unusual for  
25 its grade separation. Really everybody else does enter in

1 on grade. The City of Praise Church gets its principal  
2 entrance off of Jericho City Drive not off of Brightseat.  
3 And at that point they're all level, there's just something  
4 about this property, I believe at one time a stream used to  
5 flow under the intersection of Brightseat and Medical Center  
6 Arena Bishop People's Drive and really the remainder of that  
7 stream is under the storm water management facility which is  
8 on the south side of Medical Center Drive.

9 MS. MCNEIL: I just had one other question. Staff  
10 sort of suggested that the landscape plan will be looked at  
11 later, but you all did provide a Landscape Plan, correct?  
12 Because I think I'm supposed to look at one for the special  
13 exception as well.

14 MR. FERGUSON: Yes, and there is a Landscape Plan.  
15 I think the staff referred to that in terms of the  
16 discussion of screening of the loading space. There was  
17 supplemental planting to the woodlands which will be remain  
18 that was shown that I believe Mr. Brown you noticed earlier.  
19 That is I'm sure the intent of that supplemental planting to  
20 screen the loading space.

21 MS. MCNEIL: Okay. I have no further questions of  
22 the witness.

23 MR. HALLER: All right. Thank you. That would be  
24 my case at this time.

25 MS. MCNEIL: Are you available March 9th, if you

1 think you still need, I mean you have to decide do you think  
2 you still need a variance? I mean, your witness also talked  
3 about, I mean can I grant the variance before it's needed?

4 MR. HALLER: Again --

5 MS. MCNEIL: It's one lot now, I mean do you think  
6 all those things are going to change soon?

7 MR. HALLER: I mean my reading of Section 27-358  
8 is that the subject property must have frontage on and  
9 direct vehicular access to and a street with a right-of-way  
10 width 70 feet and if the subject property are the boundaries  
11 of the special exception, I mean for example, when you --

12 MS. MCNEIL: (Indiscernible).

13 MR. HALLER: -- do a pad in a shopping center,  
14 you're required --

15 MS. MCNEIL: Right.

16 MR. HALLER: -- you will not, the boundaries of  
17 the special exception may not include the entire property,  
18 the entire shopping center, but you require that the  
19 shopping center be shown --

20 MS. MCNEIL: (Indiscernible) you're right.

21 MR. HALLER: -- in order to make sure that all of  
22 the requirements are met. And in fact, one of the  
23 conditions that staff has is that they want us to revise the  
24 Site Plan to show everything, to show all of the property,  
25 not just the special exception area. If your interpretation

1 is --

2 MS. MCNEIL: No, no, I agree with you. I'm so  
3 sorry, Tom, I had forgotten, I didn't until we came into  
4 this hearing that the hotel would not let you show it. I  
5 thought you were going to tell me that it will be shown.

6 MR. HALLER: I mean it's not that we can't show  
7 it, we can show it, we just can't include it within the  
8 boundaries of our special exception. Because they don't  
9 want --

10 MS. MCNEIL: That's what I meant by show it.

11 MR. HALLER: Okay.

12 MS. MCNEIL: Within the boundaries, so okay, so  
13 you may need a variance?

14 MR. HALLER: And I think that assuming that that  
15 is the correct interpretation, the need for the variance  
16 exists now. It doesn't get created when we subdivide the  
17 property, it's created by the boundaries of the special  
18 exception, because that's the subject property.

19 MS. MCNEIL: Well let me ask you, you can speak  
20 for Mr. Ferguson on this, and did I forget that quickly. Oh  
21 so it's a total variance if you're waiving the section in  
22 other words? And normally yes (indiscernible).

23 MR. HALLER: Well we're not waiving the  
24 requirement that we have frontage on a street with a right-  
25 of-way width of 70 feet or more, we're requesting a waiver

1 of the requirement for direct vehicular access for the  
2 reasons stated. I mean number one you've got topography  
3 issues, number two you've got not much distance between the  
4 driveway and the intersection. So query whether we would  
5 ever even get approval of another entrance to the property  
6 given that the determination has already been made as to  
7 where the appropriate point of access for this larger site  
8 should be.

9 MS. MCNEIL: Okay. I'm good. Anybody else? So I  
10 was asking you, March 9th, can you all come back that date?  
11 Stan, look at your, it is a Wednesday.

12 MR. HALLER: I'm 99 percent sure that that works  
13 for me. Let me just double check. Yes, that is fine.

14 MS. MCNEIL: Well Stan that's a Wednesday, so.

15 MR. BROWN: That's okay with me.

16 MS. MCNEIL: Okay. So this matter will be  
17 continued until March 9th at 9:30 a.m. to address the  
18 variance only and we can adopt the prior testimony but Mr.  
19 Ferguson should be available.

20 MR. HALLER: Yes, we'll make sure Mr. Ferguson is  
21 available and I mean it may be a very short meeting. Does  
22 the site need to be reposted, is that what you're saying?

23 MS. MCNEIL: We're continuing it, oh yes, that's  
24 what I'm saying. We never posted it, so yes you'll have to  
25 get with us for that too.

1 MR. HALLER: So we would have to do that 30 days  
2 in advance of that hearing then, correct?

3 MS. MCNEIL: Yes. Yes.

4 MR. HALLER: Okay.

5 MS. MCNEIL: Then I thank you all for being here.  
6 Thank you, staff and community included.

7 MR. HALLER: And then one more thing, we held the  
8 record open to provide a list of --

9 MS. MCNEIL: Oh right.

10 MR. HALLER: -- people with a 5 percent or greater  
11 interest in the --

12 MS. MCNEIL: Right, and your organizational chart,  
13 I think.

14 MR. HALLER: Correct.

15 MS. MCNEIL: I don't think I had anything else.  
16 Yes, that's it.

17 MR. HALLER: I think that's all I had on my list.

18 MS. MCNEIL: That's all I have too.

19 MR. HALLER: Mr. Brown, was there anything else  
20 that we needed to hold the record open for?

21 MR. BROWN: No, that's it.

22 MS. MCNEIL: And the record is being held open  
23 anyway, so technically you're just giving us another exhibit  
24 at this point.

25 MR. HALLER: Right. I'll make sure that that's

1 provided well in advance and so that once we hold the  
2 hearing on the 9th, hopefully we'll be able to close the  
3 record.

4 MS. MCNEIL: Okay. Thank you all.

5 MR. HALLER: Thank you.

6 MS. MCNEIL: Yes.

7 (Whereupon, the hearing was concluded.)

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that  
the attached pages represent an accurate transcript of the  
electronic sound recording of the proceedings before the  
Prince George's County Office of the Zoning Hearing Examiner  
in the matter of:

BRIGHTSEAT ROAD RE LLC

Case No. SE/VSE-4845

By:

*Diane Wilson*

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Diane Wilson, Transcriber