

## Moses, Leonard D.

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**From:** Sean Canavan <seanpcanavanpal@gmail.com>  
**Sent:** Tuesday, March 23, 2021 1:09 AM  
**To:** Clerk of the Council; Council District 9; Council District 1; Taveras, Deni L.; Glaros, Dannielle M.; Council District 4; Council District 5; Council District 6; Council District 7; Awai-Bourne, Marise A.; Raysor, Raymond M.; Franklin, Mel; Kelly Canavan  
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Dear Council Members,

Attached please find the appeal of Accokeek, Mattawoman, Piscataway Creeks Communities Council, et al.'s appeal in the above-named case.

Sincerely,  
Sean Canavan  
Council for Appellants

**DISTRICT COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**

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**IN RE: APPLICATION OF TWO FARMS INC., D/B/A ROYAL FARMS ET AL. REQUEST FOR  
A SPECIAL EXCEPTION FOR A 4,649 SQUARE FOOT FOOD OR BEVERAGE STORE IN  
COMBINATION WITH AN 8-DISPENSER GAS STATION  
CASE NO: SE 4816**

**AND**

**TWO FARMS INC.'S APPLICATION TO AUTHORIZE THE ISSUANCE OF BUILDING  
PERMITS FOR STRUCTURES WITHIN A PROPOSED RIGHT OF WAY**

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**ACCOKEEK, MATTAWOMAN, PISCATAWAY CREEKS COMMUNITIES COUNCIL, INC.  
ET AL.'S APPEAL OF THE DECISION OF THE ZONING HEARING EXAMINER AND  
REQUEST FOR ORAL ARGUMENT**

On behalf of Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc., (“AMP Creeks Council”), Al Pegram, Joan Smuck, and Kelly Canavan, J. Carroll Holzer, Esquire and Sean Canavan, Esquire present the following appeal of the Zoning Hearing Examiner’s Decision in the above-captioned case. All parties are both aggrieved and appeared at the underlying hearings both in person and through counsel.

**PROCEDURAL BACKGROUND**

1. On December 17, 2019, a series of hearings were commenced before the Zoning Hearing Examiner (hereinafter “ZHE” or “Examiner”) to determine whether Two Farms’ (“hereinafter “Royal Farms” or “Applicant”) request for a special exception and application to authorize the issuance of building permits for structure within a proposed right of way should be granted. Royal Farms sought these accommodations in order to build a Royal Farms Hyperstore/Gas Station<sup>1</sup> at the intersection of Md. 373 and Md. 210 at the Southwest corner of that intersection. The intersection in question already has gas stations on the Northeast and Northwest corners.

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<sup>1</sup> A Hyperstore is what Royal Farms calls their largest convenience stores. “The Royal Farms fits into the hyper convenience store category.” 1/21/20 Tr. at 59. (For the dates 12/17/19 and 12/18/19, the transcripts of the right of way case and the special exception case are separate. The citations for those days include either a ROW or SE designation.

2. The subject property has been purchased by Royal Farms from the Clagett family and two corporations. If the special exception is denied, the purchase agreement will be rescinded.<sup>2</sup>
3. The right of way case (hereinafter “ROW”) had previously been heard, but was remanded to determine two issues.<sup>3</sup> The issue relevant to this appeal is consideration of the criteria in Zoning Ordinance Sec. 27-259 (g)(1)(A-D).
4. ROW hearings were held on December 17 and 18, 2019 and January 21, 2020, and hearings in SE 4816 (“SE” or “special exception case”) were held on December 17 and 18, 2019, January 21 and 22, 2020, February 25 and 27, 2020, and March 5, 2020.<sup>4</sup>
5. The hearing on January 22, 2020 was not recorded due to technical problems. Over the objections of Opponents’ counsel, that hearing was repeated on February 25, 2020.
6. In both cases attorneys Sean Canavan and Carroll Holzer appeared for the appellants named above who are opposed to the granting of the ROW permit and the SE. In both cases, attorney Macy Nelson appeared for a different group of parties opposed. These parties are referred to collectively in this document as “the Opposition” or “Opponents” and where distinction is necessary, by name. Occasionally the above terms may be used for only one of the opposing parties.
7. At the January 22, 2020 hearing, Mr. Nelson proffered expert witness Dr. Sharjeel Chaudhry, who was qualified as an expert in the field of public health and offered extensive testimony.<sup>5</sup>
8. At the February 25, 2020 hearing, the Examiner contradicted her previous ruling when she decided that Dr. Chaudhry could not be qualified as an expert.<sup>6</sup>
9. On January 11, 2021, the Examiner issued her decision.

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<sup>2</sup> 12/17/19 ROW Tr. at 71, 78, 85, 12/18/19 SE Tr. at 49.

<sup>3</sup> Dec. at 1, para 2.

<sup>4</sup> See all transcripts. Evidence of the unrecorded hearing on January 22, 2020 can be found in the transcript on 2/25/20 at page 6.

<sup>5</sup> 2/25/20 Tr. at 221.

<sup>6</sup> *Id.* at 219-220.

## APPLICABLE LAW

### ROW CASE

The ROW case was remanded to allow the parties and the community to present evidence regarding the criteria outlined under Section 27-259 of the Zoning Ordinance (g)(1)(A-D),<sup>7</sup>

“(g) Criteria for approval.

(1) The District Council shall only approve the request if it finds that:

(A) The entire property cannot yield a reasonable return to the owner unless the permit is granted;

(B) Reasonable justice and equity are served by issuing the permit;

(C) The interest of the County is balanced with the interests of the property owner; and

(D) The integrity of the Functional Master Plan of Transportation, General Plan, and Area Master Plan is preserved.”

### SPECIAL EXCEPTION CASE

There are several provisions of the Zoning Ordinance that must be satisfied prior to the issuance of the SE requested by Royal Farms. Those relevant to this appeal are:

Section 27-317 (establishes the required findings for any special exception), Section 27-355 (establishes criteria applicable to a food and beverage store), and Section 27- 358 (explains what must be proved before a special exception may be granted to a gas station.) Several of the relevant provisions overlap and are analyzed herein concurrently. Royal Farms did not satisfy 27-317, Royal Farms did not satisfy 27-358, and Royal Farms did not satisfy 27-355.

Two relevant provisions, Section 27-355(a)(1) and 27-358 (d)(1), require that Royal Farms make a showing of need. In the context of zoning, the Court of Special Appeals, in *Baltimore County Licensed Beverage Ass'n v. Kwon* 761 A.2d 1027 (Md. Ct. Spec. App. 2000), explained the standard for determining need,

“We conclude that necessary, in this instance, means that the transfer of the liquor license to the transfer site will be convenient, useful, appropriate, suitable, proper, or conducive **to the public in that area.**” (Internal quotations and page references omitted, emphasis added).

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<sup>7</sup> Dec. at 1, para 2.

However, even a showing of need may be refuted. In *Lucky Stores, Inc. v. Board of Appeals of Montgomery County et al.* 270 Md. 513, 536 (1973), the Court of Appeals held that even if there is evidence of need, that showing may be refuted by “substantial evidence...affirmatively indicating through several witnesses and documentary exhibits that there was indeed no need.”

Section 27-355(a)(3) requires that Royal Farms “will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan”.

### **Admission of Expert Witnesses**

Finally, Maryland Rule 5-702 offers guidance on how expert witnesses are qualified, and stipulates (in part),

“Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.”

The Court of Appeals has held that,

“A trial judge has wide latitude in determining whether expert testimony is sufficiently reliable to be admitted into evidence, and his sound discretion will not be disturbed on appeal unless the decision to admit the expert testimony was clearly erroneous or constituted an abuse of discretion.” *Montgomery Mut. Ins. Co. v. Chesson*, 399 Md. 314, 327 (2007)

In general, the standards applied to admitting expert witnesses are somewhat relaxed in administrative proceedings, as are evidentiary standards generally. MD State Govt Code § 10-213 (2016), *See also* Arnold Rochvarg, *Principles and Practice of Md. Administrative Law* 75 (Carolina Academic Press, 2011).

## **Definition of “Neighborhood.”**

According to the usage in the Subregion 5 Master Plan, Communities are large areas made up of component parts called “neighborhoods.” Subregion 5 Master Plan at 28, 41, 75. This is explained in more depth below, and the terms “neighborhood” and “community” are used in this document in conformity with those legal meanings.

## **BACKGROUND**

As detailed below, the Examiner made multiple errors of fact and law in both her decision and her conduct of the hearings. The majority of these errors sprung from the Examiner’s clear prejudice in favor of Royal Farms and against Opponents and the community. Examiner excluded testimony, constantly placed obstacles in front of both citizens and Opponents, and applied inconsistent legal standards throughout seven days of hearings. In making these errors, the Examiner misunderstands the fundamental purposes of the Zoning Ordinance and Master Plans, which are to protect communities and neighborhoods, rather than to benefit developers.

During the hearings, 22<sup>8</sup> individual witnesses who live in the neighborhood surrounding the subject property, as well as others who live in the larger Accokeek Community, testified in

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<sup>8</sup> These witnesses are Kelly Canavan 2/25/20 at 80, Joan Smuck, testified orally on 1/22/20 and submitted written testimony, Al Pegram 12/17/19 SE Tr. at 80, Michelle Gregorson 2/25/20 at 48, Dharam Goraya 12/18/19 ROW Tr. at 47, Holiday Wagner 12/17/19 SE Tr. at 90, Kathryn Lucas 2/25/20 at 37, Neil Tillman 2/25/20 and submitted written testimony, Linda Tillman 2/25/20 at 147, Rhonda Hanson 2/25/20 at 140, Michael Leventhal 1/22/20 and submitted written testimony, Judy Allen-Leventhal 2/25/20 at 160, Madeline Kochen 2/27/20 Tr. at 42, Marilyn Randall Exhibit 110, Katrina Knights 12/17/19 SE at 29, Sandra Miles *Id.* at 41, Lena Thompson *Id.* at 48, Karen Sexton 12/17/19 SE Tr. at 99, Rev. Dr. Robert L. Screen 12/17/19 SE Tr. at 135, Carmen B. Young 12/17/19 ROW Tr. at 28, Harshdeep Goraya 2/25/20 at 151, Patricia Hale, 2/25/20 at 263. This number does not include some of the witnesses who testified on the 22<sup>nd</sup> but could not return for the hearing redux, or who were unable to wait long hours due to the Examiner constantly prioritizing paid Royal Farms witnesses over community witnesses – Royal Farms witnesses who were often required by their employer to be at the entire hearing. “[H]ave you been in attendance at this hearing every day for the past seven hearing days?” 3/5/20 Tr. at 152-153. On multiple occasions throughout the hearings, both Opponents and Applicant attorneys requested that citizens who were not represented be allowed to testify at times that did not require them to wait hours or days. 12/17/19 ROW Tr. at 37, 12/18/19 SE Tr. at 109. The Examiner consistently refused to accommodate those citizens. “The applicant is in the middle of his case. He’s entitled to present it. I understand the citizen’s concerns. **I’m trying to keep the process moving along. So I don’t know and some of the attorneys need to leave early tonight.**” *Id.* (Emphasis added) Other possible solutions to ensure citizen participation were also refused. For example, Applicant attorneys suggested, and Opponents counsel endorsed, that unrepresented citizens be allowed to submit testimony in writing rather than being

opposition to this Royal Farms Hyperstore. The opposing witnesses were characteristic of the diversity of the Accokeek neighborhood and represented both rich and poor, small landowners and large, and new arrivals to the neighborhood as well as those who have been there for decades like Holiday Wagner, Harshdeep Goraya, and Al Pegram.<sup>9</sup> Those witnesses expressing their opposition further represented over 300 households in the immediate neighborhood.<sup>10</sup> The neighborhood witnesses explained how they valued their neighborhood's character, what their neighborhood's character is, and the negative impacts a Royal Farms Hyperstore/gas station would have on the neighborhood.

Holliday Wagner explained:

Q: "[I]t's your opinion that putting a 16-pump gas station of this size there would destroy or significantly impair the rural character of Accokeek?"  
MS. WAGNER: "Yes."<sup>11</sup>

Rhonda Hansen testified

Q: "[Y]ou believe a project of this size would compromise the rural character of Accokeek, is that --"  
MS. HANSON: "Absolutely. I'm not against development...you know it needs to be community-oriented development and it needs to be scalable to a small town."<sup>12</sup>

Madeline Kochen added,

"[P]utting a Royal Farms there would completely alter the character of the community for me and for everybody that lives there. Instead of being a quiet, rural, small town with nothing overbearing, nothing dominating your vision or your hearing or your sense of smell...[i]nstead of that, we have this completely paved three-acre area with however many, you know, 69 parking spots and 16 -- 18 pumps, however many pumps trying to create as much traffic at that intersection as they can."<sup>13</sup>

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forced to wait hours and only then be allowed to testify if there was time left. Mr. Canavan: "Madam Examiner, I think what Mr. Tedesco [Mr. Tedesco is Applicant's counsel] was suggesting...is that we accept written testimony and I guess we would then waive cross-examination, if we agree to that?"

MS. NICHOLS: "No, I can't do it." 12/17/19 SE Tr. at 7.

<sup>9</sup> The neighborhood witnesses who testified for Royal Farms were almost exclusively large landowners from the Moyoane reserve and either members of the Claggett family or friends of the Claggett family.

<sup>10</sup> 12/17/19 SE Tr. at 80-82, 2/25/20 Tr. at 80, Michael Levethal testified 1/22/20, submitted written testimony.

<sup>11</sup> 12/17/19 SE Tr. at 96.

<sup>12</sup> 12/17/19 SE Tr. at 66.

<sup>13</sup> 2/27/20 SE Tr. at 43.

Neighborhood witnesses also testified about health and safety impacts and explained that their community neither needed nor wanted a Royal Farms. Sandra Miles contributed,

“Accokeek and the surrounding areas in District 9 as well as the majority of Prince George’s County have become saturated with gas stations, fast food, liquor stores...”<sup>14</sup>

Katrina Knight added,

“As my children continue to grow, I want to see our community grow as well. However, I want to see our community grow in a way that gives back to our kids and enrich their lives. Adding a Royal Farms to Accokeek will certainly not do that.”<sup>15</sup>

Harshdeep Singh Goraya, who lives across the road from the proposed site, explained:

“I do not want a large corporation coming here turning our small town into the likes of a dangerous city. This is not what this community is about, and this is not what the members of this community want.”<sup>16</sup>

Sharon Gregerson’s objections were based on decades in the community,

“Families reside on Biddle Road and frequently walk, push infant strollers, bike, skateboard, et cetera. Additional vehicles are a safety concern, impeding the ability for the residents to safely use the residential street. Royal Farms development here would likely impact Biddle Road residents' normal daily life in a negative manner...I do not live in Accokeek because it's similar to Fort Washington, Oxon Hill, or Waldorf with commercial businesses stacked together in our residential **neighborhoods**. We enjoy our homes away from the businesses knowing when we return home we have a rural out of the way feel.”<sup>17</sup>

These are only a few samples of the passionate neighborhood opposition to this Royal Farms.

Throughout the hearings, Examiner was hostile to neighborhood and community witnesses, making several decisions that prevented or impaired their ability to offer evidence, and that hostility continues

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<sup>14</sup> 12/17/19 SE Tr. at 41.

<sup>15</sup> *Id.* at 30.

<sup>16</sup> 2/25/20 Tr. at 156 (for address) and 157.

<sup>17</sup> 2/25/20 Tr. at 54.



throughout her decision, for example when she states that citizens testifying in an attempt to keep their neighborhoods and children safe were acting in bad faith, “nothing more than an attempt to **misuse** the health, safety and welfare concerns contemplated by the District Council.” Dec. at 31, para. 14.

The aggressive and pre-emptive manner in which the Examiner cast aside evidence from the neighborhood and community, as well as her dismissive tone in dealing with certain witnesses in the hearing and in her decision, raises troubling concerns about ignoring the diverse, representative voices of a neighborhood in favor of a few hired experts who repeatedly showed they do not know this neighborhood or the larger community. The Examiner’s hostility to witnesses testifying in opposition was not limited to residents of the neighborhood. She also ignored testimony from Sarah Cavitt, the president of the Indian Head Highway Area Action Council regarding traffic safety and others who opposed Royal Farms.

### **ARGUMENT**

The specific errors made by the Examiner are detailed herein. Many of the Examiner’s errors improperly excluded evidence relevant to multiple sections of the Zoning Ordinance and the ROW case, many of the Examiner’s decisions regarding the weight or exclusion of testimony do the same, and the Examiner’s legal errors defining key terms inconsistently also apply in several contexts. At the conclusion of the Argument section there is a review of the sections of the Zoning Ordinance that Royal Farms has failed to satisfy. The memorandum submitted to the Examiner in this case by the present Appellant is also incorporated by reference in full.

### **RIGHT OF WAY CASE**

**I. The Examiner erred when she refused to allow the parties and multiple community witnesses to present evidence regarding the statutory criteria under Section 27-259.**

Section 27-259 establishes the criteria which a request for a ROW permit must meet,

(g) Criteria for approval.

(1) The District Council shall only approve the request if it finds that:

- (A) The entire property cannot yield a reasonable return to the owner unless the permit is granted;
- (B) Reasonable justice and equity are served by issuing the permit;
- (C) The interest of the County is balanced with the interests of the property owner; and
- (D) The integrity of the Functional Master Plan of Transportation, General Plan, and Area Master Plan is preserved.

**a. The Examiner excluded the testimony of two witnesses and blocked the testimony of a third in the ROW case over the objections of counsel.**

On December 17, 2019, Charles Hallock and Carmen Young attempted to testify regarding traffic safety, the economic benefits and drawbacks to the county of the proposed Royal Farms,<sup>18</sup> impacts of the Royal Farms on policing and schools, and general impacts on the nature of the community. All of the above are certainly relevant to the county's interests and thus Criteria C, and are also relevant to D, maintaining the integrity of planning. Nevertheless, the Examiner struck both citizens' testimony from the record, and refused to hear any other evidence on the same topics,

"I need to point out that both Mr. Hallock's testimony and Mr. Young's testimony are not properly in front of the right-of-way case, because they don't go to either one of those two issues that the limited remand is for...the record will reflect that both the testimony of Mr. Hallock and the testimony of Mr. Young will be removed from this case."  
12/17/19 ROW Tr. at 33.

Both attorneys representing the Opposition objected to excluding this evidence.<sup>19</sup> Attorneys for Royal Farms stated they would accept evidence on these issues being heard during the ROW case, and also pointed out that refusing to allow citizens to testify and instead wait for the SE case would compromise the ability of citizens to make their voices heard,

"I would be willing to proffer to allow citizens to come up and be heard whether it's in the right-of-way matter or not and at such time incorporate and adopt that testimony into

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<sup>18</sup> In the 12/17/19 ROW transcript, Mr. Hallock's testimony can be found on 24-27, Mr. Young's testimony spans 28-32.

<sup>19</sup> Mr. Canavan: "Actually for Criteria C, the interest of the county is balanced with the interest of the property owner. I'm not sure how you would get around the interest of the county and save transportation here. What Mr. Young is testifying about is essentially that the road would be dangerous. The county has an interest in **preserving safety** and I feel like that's got to be balanced. So I think that comes in under Criteria C." Attorney Macy Nelson subsequently stated, "I agree with that, that's the point I was going to make." 12/17/19 ROW Tr. at 35. (Emphasis added).

the special exception case... **I think it does do a disservice to the citizens** that took time out of their day today to be here to be heard.”<sup>20</sup> (Emphasis added)

Despite the consensus among all attorneys that witnesses should be heard on these issues during the ROW case, the Examiner refused to hear this evidence and did not consider it in her decision. This was the first time the Examiner made a ruling which she was aware would make it much more difficult for witnesses from the neighborhood and community to testify, but it was not the last.

On the second day of the hearing, Dharam Singh Goraya was called to testify. Mr. Goraya is an older Sikh gentleman who speaks with an accent and has lived in the community for over 30 years.<sup>21</sup> Mr. Goraya is also a small business owner (the Goraya family owns Accokeek Gas n Go, a gas station business less than 100 yards from the Royal Farms) and a longtime postal worker. Mr. Goraya’s home is also just across the street from the property.<sup>22</sup> Mr. Goraya was asked his opinion of the impact on the county of the proposed construction. Before Mr. Goraya could do more than start his answer, the Examiner lost her patience and refused to hear his testimony, stating,

“So with regards to can’t yield a reasonable return clearly he has no basis to testify.<sup>23</sup> **Reasonable justice and equity are served.**<sup>24</sup> Really **no basis for testify.** Interest of the county is balanced with the interest of the property owner he can’t testify for the property owner. And the last one is the integrity, I’m not quite sure which one of these you’re trying to elicit this.”<sup>25</sup> (Emphasis added)

The harshness with which the Examiner dismissed Mr. Goraya’s potential evidence was characteristic of how she treated community witnesses throughout the hearings.<sup>26</sup> Subsequent to dismissing any

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<sup>20</sup> 12/17/19 ROW Tr. at 17.

<sup>21</sup> 12/18/19 ROW Tr. at 56.

<sup>22</sup> *Id.*, 2/25/20 at 158.

<sup>23</sup> It is unclear how the Examiner reached her condescending conclusion that Mr. Goraya had nothing to offer on the economic prospects of a gas station located less than a hundred yards from the gas station he owns.

<sup>24</sup> It is indicative of the Examiner’s prejudice that she openly stated during the hearing, that she had reached a conclusion on a key criterion.

<sup>25</sup> 12/18/19 ROW Tr. at 58.

<sup>26</sup> Dr. Sharjeel Chaudhry is another Opponent witness who the Examiner categorically dismissed, going so far as to state that Dr. Chaudhry, who studied at Harvard, Johns Hopkins, Cornell, and George Washington, was not qualified to opine on what foods were healthy. Dec. at 30-31, para 12. Dr. Chaudhry explained one way that diverse communities like Accokeek often have their voices ignored, “structural racism is how a community -- the decisions that are made by decision makers... The decision makers often believe that they are making a decision for a population that they think is the best decision for this population, but the population **adamantly disagrees** or is **not at the table to help contribute to that decision** and as a result a decision is made that is not appropriate for the people.” 2/25/29 Tr. at 241. It is important to note that Dr. Chaudhry was not present throughout all seven days of

possibility that Mr. Goraya may have something to offer, the Examiner then made a legal error by holding that witnesses could not offer testimony or evidence that only applied to one side of the balancing test stated in 27-359 (g)(1)(C),

“If you want to ask him the whole thing, ask him to explain the interest of the county balanced with the interest of the property owner...what is his view on the interest of the county in obtaining this particular use balanced with the interest of the property owner. He can testify to that if he can do the balancing act.” 12/18/19 ROW Tr. at 60-61.

Both Opponent attorneys objected to this evidentiary ruling.<sup>27</sup> In denying multiple citizens and a represented party the opportunity to offer clearly relevant evidence, the Examiner demonstrated her prejudices both towards the Applicants and against hearing the voice of the community and made an error of law that both prevented these witnesses from being heard and prevented other witnesses from testifying. In refusing to hear the citizens’ testimony and instead requiring them to testify in the SE case if they wanted their voices heard, the Examiner both excluded relevant evidence and, as Royal Farms attorney Tedesco recognized, severely inconvenienced citizens who had sacrificed work days to come and testify. Opponent attorneys were also unable to call further witnesses due to the Examiner’s error in interpreting what was relevant evidence. This pattern would be repeated throughout the hearings.

**b. The Examiner denied citizens the opportunity to fully participate in the zoning process.**

Madeline Kochen, a resident of the Accokeek neighborhood, lives at 401 Farmington Road West, Accokeek, Maryland. In addition to being an Accokeek resident, Ms. Kochen is licensed to practice law in several states, but not Maryland. 2/21/20 Tr. at 40-42. Ms. Kochen, a person of record in these cases,

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the hearing and did not specifically assert that the decision-making process in this case was indicative of structural racism. However, had Dr. Chaudhry been present at all seven days, he may have noted the diverse group of neighborhood and community witnesses and the fact that all neighborhood witnesses testifying for Royal Farms and all Royal Farms experts appeared to be white.

<sup>27</sup> 12/18/19 ROW Tr. at 61, “In the interest of making a record and I think this came up yesterday with regards to the traffic and safety evidence. I join Mr. Nelson and also would argue that any evidence regarding the specific interest of the county not necessarily what they are, because we know the county’s interested in traffic safety but the specific conditions that affect those interests we would argue is relevant here and should be admitted as well.”

asked if she could submit a pro se memorandum and was informed by the Examiner that only attorneys licensed in Maryland, and not community members, are allowed to present argument. *Id.* at 43-44.

MS. KOCHEN: “Excuse me. What if it was just a layperson and I wanted to submit a memorandum of law?”

MADAM EXAMINER: “No.”

Ms. Kochen attempted to file a pro se memorandum at the conclusion of this case, which the Examiner struck from the record as constituting the “unauthorized practice of law.” Dec. at 2, para. 5, FN 1. Ms. Kochen’s argument should have been accepted, but more concerning was the disdain the Examiner showed by categorically excluding citizen input into the zoning process, both by categorically dismissing all citizen testimony – as explained below – and by refusing to allow pro se persons of record from participating fully in the hearings.<sup>28</sup>

### **SPECIAL EXCEPTION CASE**

The arguments above in the ROW case involving the Examiner’s efforts to minimize or discount neighborhood, community, and citizen testimony are hereby incorporated into the following arguments.

#### **II. The Examiner erred by allowing Royal Farms to continuously redefine the subject property’s neighborhood depending on which statutory provision they were attempting to satisfy.**

The Examiner’s partiality toward Royal Farms was perhaps most clear in how she treated the definition of the word “neighborhood.” In the present case, there are several criteria located in different places in the zoning ordinance that required the Examiner to understand what the subject property’s neighborhood needs and the impact that construction and operation of a Royal Farms Hyperstore would have on the neighborhood,

“Section 27-355 (a) a food or beverage store may be permitted, subject to the following...

- (1) The applicant shall show a reasonable need for the use **in the neighborhood;**

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<sup>28</sup> By making this decision, the Examiner excluded any person who could not afford to pay for seven days of attorney’s fees from participating in the process. Considered in concert with the Examiner’s dismissal of all testimony from the diverse, representative, group of citizen’s testifying, this decision raises alarming questions about equity and access to government decision making.

- (2) The size and location of, and access to, the establishment shall be oriented toward meeting the needs of **the neighborhood;**” (Emphasis added)

Also relevant is,

Section 27-317 (a)(5) “The proposed use will not be detrimental to the use or development of adjacent properties or the **general neighborhood**” (Emphasis added)

Section 27-358 (a) requires that,

“(10) Details on architectural elements such as elevation depictions of each facade, schedule of exterior finishes, and description of architectural character of proposed buildings **shall demonstrate compatibility with existing and proposed surrounding development.**” (Emphasis added)

- a. **Royal Farms offered four conflicting definitions of “neighborhood” depending on what statutory provision they were attempting to satisfy, the Examiner erred by simultaneously accepting three of those definitions.**

Prior to determining what the neighborhood needed, the Examiner was required to define what the neighborhood was. As part of their application, Royal Farms attempted to define the relevant neighborhood in their Statement of Justification. Dec. at 3, Para 5. Technical Staff endorsed that definition. *Id.* At the hearing, Royal Farms restated their belief in that definition,

MR. TEDESCO: “And have you reviewed the statement of justification in this application?”

MR. BAINBRIDGE: “I have.”

MR. TEDESCO: “And do you incorporate and adopt that as your additional testimony today?”

MR. BAINBRIDGE: “I do.”

MR. TEDESCO: “And have you reviewed the Technical Staff Report in this matter prepared by Maryland National Capital Park and Planning Commission?”

MR. BAINBRIDGE: “I have.”

MR. TEDESCO: “And do you agree with the findings in the Technical Staff Report?”

MR. BAINBRIDGE: “I do”

Subsequent to offering that definition of the surrounding property's neighborhood, and after endorsing Technical Staff's acceptance of it, Royal Farms offered three more mutually exclusive definitions, each to be used only when it served Royal Farms' interests.

i. **Royal Farms defined the relevant neighborhood as the entire Accokeek community.**

Royal Farms witness Mark Ferguson attempted to define a different much larger neighborhood than the one previously defined by Royal Farms,

"It's perhaps the largest neighborhood that I've ever defined. I'd say on the north that it's Piscataway Creek and Floral Park Road. On the west it's the Potomac River. The county line is the Potomac River. On the south it's the county line of Mattawoman Creek or where it diverges in its northwest course along the county limit. And then on the east Danville Road and Gardner Road which are not quite -- not quite continuous." 1/21/20 Tr. at 250.

Mr. Ferguson continued by tying his definition of neighborhood to the Subregion 5 Master Plan,

"[T]his definition is the same as the Master Plan's definition of the Accokeek Community." 2/25/20 Tr. at 250-251.

The Examiner stated,

"your Zoning Hearing Examiner accepts the neighborhood as proposed by the Applicant's expert land planner, Mr. Mark Ferguson." Dec. at 4, para 5.

This "expansive"<sup>29</sup> – Mr. Ferguson's words – definition of neighborhood benefitted Royal Farms because, among other reasons, of the requirements in Section 27-317 (a)(5) and Section 27-358 (a)(10) – quoted above – which require that new development be compatible with the surrounding neighborhood. Armed with Royal Farms' preposterously large definition of neighborhood, the Examiner was able to reach across the highway, which Mr. Ferguson and the Examiner both acknowledge would normally be a boundary dividing neighborhoods<sup>30</sup>, and include the development on the other side of the highway, the Accokeek Village Shopping Center (which also contains a Gas Station with a Food or Beverage Store).

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<sup>29</sup> 1/21/20 Tr. at 250.

<sup>30</sup> Dec. at 4, para. 5.

Dec. at 38, para 41. In doing so, the Examiner incorrectly finds that the proposed Hyperstore is consistent with the surrounding development despite the fact that no commercial development on the West side of the intersection was built in the last 40 years, a fair portion is decades older, and all is much smaller in scale. That finding is contained in the Examiner's analysis of the gas station element of the project. *Id.* Mr. Ferguson's definition allowed the Examiner to compare the proposed Hyperstore/gas station to a shopping center, rather than the quaint, small town, commercial and non-residential development it actually shares a neighborhood with.

ii. **Royal Farms also defined a much smaller neighborhood in attempting to justify its convenience store.**

Mr. Ferguson's definition of the subject property's neighborhood was not the one Royal Farms intended that the examiner use for all legal provisions.<sup>31</sup> Royal Farms offered a third, a neighborhood much smaller in size, that they asked the Examiner to apply to 27-355 (Food and Beverage Store.) Royal Farms witness Edward Steere testified,

"Okay. The neighborhood – the convenience neighborhood...we've decided would be the tract that's on the west side of Maryland Route 210. There is a single census tract that covers all of the land in Prince George's County on the west side of Maryland 210 south of Piscataway Creek." 1/21/20 Tr. at 71-72.

In case there was any doubt that Royal Farms was asking the Examiner to use two different definitions of "neighborhood," Mr. Steere clarified,

"So this trade area is much smaller than a gasoline sales trade area because it's a convenience store...[s]o we're looking at **this particular neighborhood**<sup>32</sup> on the west side of Maryland Route 210 **because the folks who live on that side of Maryland Route 210 have no other options for a convenience store.**" *Id.* (Emphasis added)

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<sup>31</sup> In fact, Royal Farms initially submitted a third definition of neighborhood in their Statement of Justification. Planning Staff accepted this definition, but when Royal Farms found their initial definition was no longer convenient, they attacked it, and blamed the definition on Planning Staff. 1/21/20 Tr. at 249-250. The Examiner also accepted this attack on Planning Staff. Dec. at 3-4, para 5.

<sup>32</sup> This is a direct acknowledgement by a Royal Farms witness that Accokeek has multiple neighborhoods.



The Examiner also accepted this definition of neighborhood, quoting Mr. Steere's analysis approvingly on pages 40-41, para 42 of her decision, then stating,

“The subject Application would represent the first Food or Beverage Store on the west side of Indian Head Highway in Prince George's County....” Dec. at 43, para 43.<sup>33</sup>

The Examiner relied on this “west side of 210” definition of neighborhood and repeats it extensively to justify her decision across many different criteria. Dec. at 14, para 2, Dec. at 22, para 3, Dec. at 25, para 7, Dec. at 39, para 42, Dec. at 41, para 42, Dec. at 43, para 43. etc.

**iii. Royal Farms also offered a 4<sup>th</sup> definition of neighborhood, which the Examiner seemed to accept at points in her decision.**

Finally, Mr. Steere offered an alternate fourth “neighborhood” if the Examiner chose to take a broader view of the convenience store neighborhood. This fourth alternative was actually larger than the entire Accokeek Community Mr. Ferguson attempted to include, and encompassed many addresses in Clinton, Maryland.<sup>34</sup> The Examiner also seemed to accept this definition of neighborhood in her consideration. Dec. at 41-43, para 42.

The Examiner thus accepted Royal Farms' larger definition when Royal Farms needed other gas station/convenience stores in the neighborhood, but then accepted Mr. Steere's smaller neighborhood to find that there are not gas station/convenience stores in the neighborhood. The gas station across the highway consequently becomes something of a Schrodinger's Exxon in the Examiner's rationale, both existing and not. Finally, she also seems to accept their third definition of the relevant neighborhood. These inconsistencies are errors of fact, law, and a clear sign of the Examiner's bias.

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<sup>33</sup> The Examiner does mention the larger neighborhood definition in her analysis of the Food and Beverage Store criteria, but the later discussion regarding the west side of 210 neighborhood, as well as her extensive quoting of Mr. Steere's analysis of the smaller neighborhood, makes clear that is the definition she used.

<sup>34</sup> 1/21/20 at 75. Here Royal Farms demonstrates its unfamiliarity with the area. A glance at the map of Census Tract 8013.11 shows that it includes geographies distinct from the neighborhood described by multiple Accokeek residents. Windbrook Drive, which is included in that tract, is in Clinton for example.  
[https://www2.census.gov/geo/maps/dc10map/tract/st24\\_md/c24033\\_prince\\_georges/DC10CT\\_C24033\\_002.pdf](https://www2.census.gov/geo/maps/dc10map/tract/st24_md/c24033_prince_georges/DC10CT_C24033_002.pdf)

**III. The Examiner erred in accepting Royal Farms' assertion that the surrounding property's neighborhood is the entire Accokeek Community.**

**a. Under the Subregion 5 Master Plan, Neighborhoods are component parts of Communities.**

Subregion 5 is made up of “[t]he three vibrant communities of Accokeek, Brandywine, and Clinton/Tippett.” Subregion 5 Master Plan at 27. These communities are, in turn, made up of neighborhoods. Throughout the Subregion 5 Master Plan, neighborhoods are clearly delineated as subordinate parts of the three large communities,

“It is a large, mixed-use community within the MD 5/US 301 corridor with transit-oriented **neighborhoods**.” *Id.* at 28

“Transportation facilities are built to meet the needs of Clinton/Tippett residents.... Pedestrian sidewalks and bike paths connect the residential **neighborhoods** to commercial and recreational areas. *Id.*

“While this Subregion 5 Master Plan pays a lot of attention to the recommended Brandywine Community Center, preservation and enhancement of existing **neighborhoods** is also an important consideration.” *Id.* at 41.(Emphases added)

Applicant recognized this when, in their submitted Statement of Justification, they originally defined the neighborhood in which the subject property is located narrowly.

**b. Examiner's adoption of Royal Farms' erroneous definition of neighborhood contradicted planning staff, opponent witnesses, and Applicant's own witnesses.**

In addition to clearly contradicting the meaning of neighborhood in the Subregion 5 Master Plan, the Examiner's definition was contrary to that of Planning Staff. Dec. at 3, para 5. It also contradicted the testimony of Maura Clagett, a member of the family that is selling the property to Royal Farms and a witness for the Applicants. Mrs. Clagett testified to the multiple neighborhoods in the Accokeek Community, while self-servingly claiming that the Royal Farms Hyperstore would not change the character of the neighborhood.<sup>35</sup> Ms. Clagett explained the distinction between the neighborhood surrounding the property and the Moyaone Reserve, where the Clagetts live.

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<sup>35</sup> 12/17/19 Tr. at 118.

“All of that by definition is suburban. The reserve, the Moyaone Reserve, that would be considered a form of rural.”<sup>36</sup>

Charles Clagett also asserted that there are multiple neighborhoods in Accokeek, dividing the area he lived in, which he characterized as “rural”, and the other as “suburban.”<sup>37</sup> Alex Renger, a friend of the Clagett family testifying on behalf of granting the SE, described his neighborhood as a “small town” at least 5 times. 12/17/19 tr. at 17-20. This stands, as do the numerous descriptions provided by neighborhood witnesses in opposition, and as does Royal Farms witness Steere’s description, in stark contrast to the “largest neighborhood I’ve ever defined.”<sup>38</sup> The Examiner’s adoption of the expansive neighborhood defined by Royal Farms witness Ferguson misunderstands the facts and law and is erroneous in ignoring the definition of neighborhoods that is clear in the Subregion 5 Master Plan.

**IV. The Examiner erred by dismissing relevant evidence offered by hundreds of neighborhood residents and Opponents’ witnesses that the community does not want or need Royal Farms and that the community will be harmed by Royal Farms.**

As mentioned previously, there are multiple applicable portions of the Zoning Ordinance and Subregion 5 Master Plan that required the Examiner to consider the impacts of the proposed Royal Farms Hyperstore on the subject property’s neighborhood and the broader Accokeek Community. For example, Section 27-355 stipulates that the Examiner must consider both the needs of the neighborhood and ensure that the characteristics of the use meet the needs of that neighborhood.<sup>39</sup> As *Baltimore County Licensed Beverage Ass'n v. Kwon* 761 A.2d 1027 (Md. Ct. Spec. App. 2000) explained the standard for determining need, the relevant considerations must be related “to the public in that area” and that, even if there is a showing, the public may refute that showing. What the Examiner ignores in dismissing all neighborhood

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<sup>36</sup> Residents of the Moyaone Reserve, including the Clagett family, are protected from the kind of gauche development represented by Royal Farms by restrictive zoning.

<sup>37</sup> 12/17/19 SE Tr. at 112.

<sup>38</sup> And of course also contrasts with the even larger neighborhood Mr. Steere defined which included the entire Accokeek Community and part of the Clinton one.

<sup>39</sup> “(a) a food or beverage store may be permitted, subject to the following...

(1) The applicant shall show a reasonable need for the use in the neighborhood;  
(2) The size and location of, and access to, the establishment shall be oriented toward meeting the needs of the neighborhood;”

testimony, and what constitutes an error of law, is that the relevant consideration is the specific public in a given neighborhood, not some abstract public whose need is extrapolated from national figures or asserted by outside “experts.”

**a. The Examiner categorically dismissed all evidence offered by the neighborhood and community regarding the nature of the neighborhood and Royal Farms’ impacts.**

The Examiner’s prejudice was further revealed in how she assessed the criteria regarding neighborhood need and impact. The Examiner dismissed, ignored, or discredited testimony from residents of the neighborhood, many of whom have lived near the subject property for decades. On the topic of the proposed Royal Farms’ impact on the neighborhood, 22 neighborhood witnesses offered testimony in opposition, as previously explained. In addition to the many individual witnesses, Al Pegram testified on behalf of the Farmington Woods Homeowners Association, representing more than 72<sup>40</sup> homeowners who live within a few hundred yards of the property and must drive past it to access MD 210. Michael Leventhal offered testimony on behalf of the Moyaone Association and its 190 homesteads<sup>41</sup>. Kelly Canavan offered testimony on behalf of AMP Creeks and its hundreds of members. The owners of adjacent businesses, Carmen Young of B & J’s, “the heart of Accokeek,<sup>42</sup>” testified, Dharam Singh Goraya, whose family owns Accokeek Gas n Go, attempted to testify,<sup>43</sup> and Marilyn Randall, who owns the nearby Anchors Kennel submitted written testimony. The Reverend Screen of the River Jordan foodbank, directly across the street from the subject property, also offered testimony in opposition.<sup>44</sup> These people are the public in that area that *Baltimore County Licensed Beverage Ass’n* contemplates and had the Examiner not continually refused to make accommodations to allow citizen testimony, there would have been more,

“I attended the hearings on December 17 and 18, 2019 and January 21 and 22, 2020. I was only permitted to speak on January 22 despite returning day after day. I was not granted the opportunity to testify on the record again when the testimony was lost.”<sup>45</sup>

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<sup>40</sup> 12/17/19 SE Tr. at 82.

<sup>41</sup> <https://www.moyaone.org/about/historic-designation/>

<sup>42</sup> Subregion 5 Master Plan at 36.

<sup>43</sup> Mr. Goraya’s attempt to testify is explained in a preceding section.

<sup>44</sup> 12/17/19 SE Tr. at 135.

<sup>45</sup> 2/18/21 Marilyn Randal letter to the District Council.

Despite the hundreds of diverse and representative neighborhood residents who tried to share information about the nature of their neighborhood and its needs, the Examiner categorically dismissed all of them,

“The Opposition did not present any expert testimony regarding the nature of SE-4816’s potential impact on the surrounding neighborhood. Mr. Mark Ferguson, the Applicant’s expert land planner, presented unrefuted expert testimony...which constituted **the only probative evidence** in the Zoning Hearing Examiner’s evidentiary record with regard to the issue.” Dec. at 17. (Emphasis added)

The Examiner’s conclusion that only expert witnesses can discuss what the public in a given area needs and wants is contrary to the law, it is contrary to common sense, and it is evidence of an overwhelming prejudice against the public whose interests the Examiner is supposed to protect.

**b. The Royal Farms evidence Examiner based her conclusions on did not address the public in this area.**

Royal Farms asserted, and the Examiner accepted, that the neighborhood “needed” a Royal Farms Hyperstore by citing the national ratio of convenience stores to people and, from that number, inferring there was an unmet demand. “Based on a national population...there is approximately one store for every 2,100 people.” Dec. at 43, para 42 (Quoting Royal Farms’ submission). The Examiner noted there was not a food and beverage store on the west side of 210 and completed her analysis that there was both demand and need.

At no time did Royal Farms submit, or the Examiner quote, any evidence of need or demand drawn from residents of the neighborhood. Royal Farms explicitly stated they developed their justification of need without consulting anyone living in the neighborhood.<sup>46</sup> In the present case, there was no showing

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<sup>46</sup> Royal Farms also acknowledged that, once they had heard from the neighborhood, they made no changes to the design and plans for the Hyperstore. 12/18/19 SE Tr. at 56. Another example of the Examiner’s prejudice occurs when Opponent’s counsel attempts to get Royal Farms witness Baidbridge to state whether Royal Farms had spoken to anyone in the community prior to claiming the neighborhood and community needed a Royal Farms. *Id.* at 51-56. Despite the straightforward inquiry, the Examiner repeatedly interrupted and at one point told counsel, “He’s already indicated he’s not the witness to answer that, so you need to move on.” *Id.* at 53, continuing her practice of allowing Royal Farms to determine which witness they would prefer to have answer Opponents’ questions.

that the public in this area needed a Royal Farms Hyperstore and the evidence was extensive that the public neither needed nor wanted it. As Katrina Knights stated clearly, “I don’t **want** my children or anyone else’s children being put at risk...I also don’t **need** another greasy chicken fast food spot opening up in Accokeek.”<sup>47</sup> (Emphasis added). Ms. Knights’ statements were echoed by hundreds of citizens who expressed their opposition. As previously mentioned, over 300 households, individually or through representatives, expressed their opposition. In a “neighborhood” that Royal Farms claims, and the Examiner agrees, is “976 households”<sup>48</sup> there could not be clearer indicators that a Royal Farms hyperstore is neither wanted nor needed.

**c. The paid Royal Farms witnesses relied on by Examiner consistently made sloppy mistakes and demonstrated their ignorance of the neighborhood and community.**

The Examiner, in justifying her grant of the ROW and SE, relied on three Royal Farms witnesses for her understanding of the surrounding property’s neighborhood and the impacts that the proposed Royal Farms Hyperstore would have on that neighborhood. These three witnesses continually demonstrated, and even acknowledged, their ignorance of the Accokeek neighborhood and the larger community.

The Examiner relied on Edward Steere, of Marriotsville, Maryland for multiple definitions of the applicable neighborhood and for testimony regarding the supply and demand of and for gasoline in the area. Dec. at 20, 25, 30, 38-43. Throughout his testimony and in the exhibits he prepared, Mr. Steere made frequent, careless, and unprofessional errors. Mr. Steere prepared a report detailing, among other things, how many gas stations were in the area around the subject property. Mr. Steere’s report omitted almost 40% of the gas stations in the area that he defined. 2/25 Tr. at 14-17. In one case, Mr. Steere missed a gas station that was next to a gas station he did include.<sup>49</sup> 3/5/20 Tr. at 288-289. On cross examination, Mr. Steere acknowledged all of the above mistakes, although he did claim that one omitted

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<sup>47</sup> 12/17/19 SE Tr. at 31.

<sup>48</sup> Dec. at 40, para 42.

<sup>49</sup> It is unclear whether Mr. Steere simply omitted the second station intentionally because doing so would benefit Royal Farms or whether he never saw either and located the gas station he did include via a web search or in some other manner.

Exxon Station was in fact one of the Shells he had named. *Id.* at 279. Mr. Steere also made multiple errors in his descriptions of the gas stations he was able to locate. *Id.* at 288.

Mr. Steere further buttressed his credibility by inadvertently describing a figure representing **natural** gas consumption per home as proving how much gasoline each home used. Exhibit 84, 1/21/20 at 128.<sup>50</sup> When Mr. Steere's mistake was pointed out to him, he denied it and insisted his source referred to gasoline. *Id.* at 125-130. Despite the Examiner openly attempting to aid Mr. Steere by inexplicably preventing the introduction of a federal government document Mr. Steere himself had cited that proved Mr. Steere's error,<sup>51</sup> Mr. Steere was – at the February 25, 2020 hearing - finally forced to recant and acknowledge his mistake. 2/25/20 Tr. at 19. Almost lost amidst this cacophony of errors was Mr. Steere opening his testimony by asserting that the majority of Accokeek's "trade area" was actually located in Charles County.<sup>52</sup> This was not the only time Mr. Steere demonstrated his ignorance of the neighborhood and community that he repeatedly asserted **needs** a Royal Farms Hyperstore,

Q "Right. And the Zip Code for Accokeek is 20607, is it not?"

A "I don't know."<sup>53</sup>

Despite his well-documented ignorance of Accokeek and his other mistakes, Mr. Steere was comfortable contradicting the dozens of witnesses who testified to Accokeek's rural small-town character (including witnesses testifying on behalf of Applicant), as well as the descriptions contained in the Subregion 5 Master Plan,

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<sup>50</sup> Mr. Steere had cited the American Community Survey portion of the census and on being informed that the census data was natural gas, not gasoline, claimed, "I'll produce the census table that identifies the annual expenditure on gasoline by households in this trade area." Mr. Steere later produced another report using a different figure and a new source. 2/25/20 Tr. at 58. It is instructive of Mr. Steere's credibility that rather than simply admitting a mistake when confronted with the source of the initial figure, he attempted to defend that figure while also submitting another. *Id.* It is also indicative of the Examiner's prejudice that she denied Opponent's attempts to enter the document proving the source of Mr. Steere's initial figure into evidence, a ruling she later contradicted in admitting Royal Farms evidence as explained below.

<sup>51</sup> This is yet another example of the Examiner applying inconsistent legal standards to aid Royal Farms. It is discussed in more detail below. 2/21/20 Tr. at 121.

<sup>52</sup> 1/21/20 Tr. at 55.

<sup>53</sup> 1/21/20 Tr. at 114.

Q: "It's a relatively rural area, is it not?"

A: "In my opinion Accokeek is a suburban community and it does not have boundaries."<sup>54</sup>

Of course Mr. Steere had established what he believed were specific – and mutually exclusive – boundaries for Accokeek on two separate occasions previously, but he nevertheless attempted to, again, redefine a neighborhood and community to serve the minute by minute needs of his testimony,

Despite his ignorance of both Accokeek and his own asserted professional field, the Examiner relied on Mr. Steere to define the subject property's neighborhood's needs, as well as that neighborhood's scope. At no time did Mr. Steere offer any evidence of need or demand that was **specific to the public in the neighborhood**. That Mr. Steere's neighborhood definition contradicted with Mr. Ferguson's did not seem to register with the Examiner who accepted all three definitions – two of Mr. Steere's and one from Mr. Ferguson. In choosing to accept the testimony of Mr. Steere over 100s of Accokeek residents, the Examiner demonstrated her determination to aid Royal Farms no matter what the evidence said.

The second Royal Farms witness on whom the Examiner relied was the previously mentioned Mark Ferguson, of Largo, Maryland<sup>55</sup>, whose ignorance of the Accokeek Community was demonstrated by his attempt to describe that community as a single neighborhood and his refusal to listen to the community, including his own witnesses, when they stated it was not. Despite the public in the neighborhood and the community testifying that he was wrong, the Examiner also chose Mr. Ferguson to define the neighborhood that those members of the public live in.

The final Royal Farms witness on whom the Examiner relied was Michael Lenhart, of Baltimore, Maryland.<sup>56</sup> Mr. Lenhart conducted a one-day, six-hour evaluation to determine peak traffic counts at the 210/373 intersection. Mr. Lenhart mistakenly believed traffic was not very heavy at the subject intersection, despite the many members – again including Applicant witnesses – of the community testifying otherwise,

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<sup>54</sup> 1/21/20 Tr. at 114.

<sup>55</sup> 1/21/25 Tr. at 242.

<sup>56</sup> 12/18/19 SE Tr. at 150.



MR. TEDESCO: "Well the testimony yesterday was that this intersection is jammed and almost un-passable. And this is the highest peak hour time during the study period and I think the video speaks for itself that that is incorrect."<sup>57</sup>

MR. LENHART: "...our traffic study shows that that current level of service for that movement is a level of service B as in boy."<sup>58</sup>

Subsequently, traffic expert Lawrence Green testified regarding Mr. Lenhart's error,

"Sometimes the peak hours can begin earlier than you might expect or they may be a little bit later depending -- basically depending upon a location. **So you have to be familiar with the exact area that you're doing the study.**" 2/27 Tr. at 19. (Emphasis added).

Mr. Lenhart then used Mr. Green's data in his subsequent reports, rather than the incorrect data Mr. Lenhart had previously gathered,<sup>59</sup> information that was incorrect due to Mr. Lenhart's ignorance of the area. Mr. Lenhart also attempted to change the formula he had used for calculating the level of service at a given intersection, much as Mr. Steere attempted to change Royal Farms' definition of neighborhood.<sup>60</sup> It is possible that the reason Royal Farms witnesses were so ignorant of the Accokeek Community and its neighborhoods are that, prior to Royal Farms asserting that the public in this neighborhood needs this Hyperstore, and prior to the reports from which these experts testified, no one from Royal Farms made any attempts to communicate with the people who live in the neighborhood.<sup>61</sup>

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<sup>57</sup> *Id.* at 159. (An interjection from Mr. Brown and the first portion of Mr. Lenhart's response were omitted because they were not specifically relevant to this point.)

<sup>58</sup> This is not properly a question and answer, but is indicative of a practice the Examiner regularly permitted, wherein the Applicant's attorneys were allowed to testify, confer with witnesses during testimony, make speaking objections and interrupt opposition witnesses, as explained later in this document. This was illustrated on 2/25/20 Tr. at 184,

MR. BROWN: -- "it's not time for you to give an opinion but to ask him questions."

MR. TAUB: "Fine. But if he's going to give opinions, **I'm going to counter them.**" (Mr. Taub represented Applicants, the he referred to was Dr. Chaudhry.)

<sup>59</sup> 3/5/20 Tr. at 157-158, "Mr. Green counted from 6:00 to 9:00 and found that the peak hour actually starts a little earlier."

<sup>60</sup> 3/5/20 Tr. at 162-163, Q: "So the most conservative approach was, although not required -- would not be required by State Highway Administration, would be to include the growth factor, which you did?"

A: "Yes, we did in this report."

Q: "But it would be more accurate to say from an SHA analysis standpoint that the growth factor would not be appropriately included?"

A: "That's correct." (an objection from Opponents' counsel is omitted)

<sup>61</sup> MR. CANAVAN: "Prior to March of this year, did you do any research or contact anyone in the community to find out what the community wanted?"

MR. BAINBRIDGE: "No."

**d. The Examiner aggressively attacked credible, uncontradicted testimony from witnesses testifying in opposition. In doing so, she applied a different standard of skepticism from the credulity with which she approached Applicant witnesses.**

Where Examiner did mention neighborhood, community or Opponent testimony in her decision, she applied a degree of skepticism that bore no relationship to that which she exercised with Applicant witnesses. As many of the witnesses testified, Accokeek is a small town community that [is] “accepting and familial.”<sup>62</sup> Kelly Canavan, a 45-year resident of the community and part of that family, testified about the Accokeek First Church of God, another Accokeek institution, and the Bible and Leadership Institute they operate, which prepares – and certifies – students to enter the clergy.<sup>63</sup> Ms. Canavan then supported her testimony with three exhibits from the Church to support her personal knowledge. *Id.* Applicants did not question or challenge Ms. Canavan’s personal knowledge of the Church’s activities or ask any questions about those activities despite having two separate chances, due to the recording malfunction. Examiner Nichols, who aggressively questioned<sup>64</sup> several witnesses throughout the hearing – generally when it benefitted Applicant – again opted to ask no questions and there were no objections to Ms. Canavan’s testimony or exhibits. Despite the fact that Ms. Canavan’s testimony regarding the Bible and Leadership Institute (“The Institute”) was unchallenged and corroborated, the Examiner, in her decision, inexplicably and hostilely, characterized the evidence summarized above as,

“the **uncontradicted** description of the **purported** activities on the church property.”  
Dec. at 33, para 21.

It is noteworthy that the Examiner seems to intentionally misstate Ms. Canavan’s testimony, by characterizing what the Institute does as “a bible instruction program requiring a registration fee.”

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MR. CANAVAN: “The question was when Royal Farms selects a site to build on is it generally their practice to consult the community before making that decision?”

MS. NICHOLS: “Personally.”

MR. BAINBRIDGE: “No.” 12/18/19 Tr. at 54. This is part of the colloquy with Mr. Bainbridge referred to earlier in this document.

<sup>62</sup> 2/25/20 Tr. at 258.

<sup>63</sup> 2/25/20 Tr. at 82-85.

<sup>64</sup> 2/25/20 Tr. at 191-200 illustrates the Examiner asking many questions of Dr. Chaudhry, whereas in the present example she did not ask Ms. Canavan a single question on either day about the “purported” activities of the school operated by First Church of God.

*Id.* In fact, Ms. Canavan testified, her documents corroborated, and her attorney’s memorandum clearly explained, that the Institute is a training program for the clergy. Ms. Canavan detailed the “semesterized course-based course of study” wherein “Students study under multiple instructors and earn credit toward four separate certifications.”<sup>65</sup> In Opponent’s memorandum, it is clearly stated that, “[t]he Bible and Leadership Institute prepares students for the ministry, a profession.” AMP Memo at 16. It stretches credulity to believe that this mischaracterization by Examiner was inadvertent. Examiner Nichols continued her attack by stating,

“There was no probative evidence to allow the Examiner to conclude that her testimony was either accurate or current.”<sup>66</sup>

Laughably, the Examiner then attacked the “uncorroborated testimony” by questioning the very corroboration she denied existed.

“Similarly there is no way of determining whether the information shown on Exhibit 96 is either accurate or current.”<sup>67</sup>

This was the most explicit example of the Examiner dismissing relevant, credible, uncontradicted testimony from the community and the Opposition, but hardly the only one, as explained below.

**e. The Examiner’s abuse of discretion in rescinding Dr. Sharjeel Chaudhry’s acceptance as an expert and her aggressive rejection of Dr. Chaudhry’s testimony, was indicative of prejudice against Opponents.**

As previously mentioned, a tribunal has discretion in determining whether to accept a proffered expert witness, but should consider “whether the witness is qualified as an expert by knowledge, skill, experience, training, or education.” Md. Rule 5-702.

**i. In accepting Royal Farms’ proffered expert witness, the Examiner set a very low standard for accepting proffered experts.**

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<sup>65</sup> 2/25/20 Tr. at 82-83.

<sup>66</sup> Dec. at 33, para 21

<sup>67</sup> *Id.*

Royal Farms proffered Tom Ruszin as an expert in “fuel station and environmental compliance” at the state and federal level.<sup>68</sup> Mr. Ruszin had worked in the compliance field for eight years and, as he acknowledged, had **no** education related to the field or to his purported expertise.<sup>69</sup> (Emphasis added) Royal Farms also claimed Mr. Ruszin had previously testified as an expert in multiple jurisdictions, but during voir dire, Mr. Ruszin was forced to admit that claim was false and that he had testified only one time previously.<sup>70</sup> Over the objections of Opponents, Mr. Ruszin was accepted as an expert, “I’m going to accept Mr. Ruszin as an expert in the field of fuel systems and environmental compliance.”<sup>71</sup> Mr. Ruszin’s level of expertise was perhaps best reflected in the following exchange,

MR. CANAVAN: “Are you are aware that gas stations have a negative impact on air quality?”<sup>72</sup>

MR. RUSZIN: “I have not read any reports that state such.”<sup>73</sup>

ii. **In rescinding the expert status previously afforded to Opponent’s witness Dr. Sharjeel Chaudhry, the Examiner applied an inconsistent standard to Opponents.**

As previously explained, at the January 22 hearing, Dr. Chaudhry was proffered and **accepted by the Examiner** as an expert in public health. Dr. Chaudhry testified, and his testimony was extremely damaging to Royal Farms. Unfortunately, January 22 was the day that the Examiner’s office failed to record the hearing. Unlike Mr. Ruszin, Dr. Chaudhry’s education is extensive and directly related to public health. Dr. Chaudhry received his undergraduate degree from Cornell in “human biological, **health**, and society,<sup>74</sup>” and attended medical school at George Washington. During his doctoral work, Dr.

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<sup>68</sup> 12/18/19 SE Tr. at 63.

<sup>69</sup> 12/18/19 SE Tr. at 66. (Mr. Ruszin’s single academic credential was an undergraduate degree in marine science, which he acknowledged was not relevant to the subject matter of his claimed expertise.)

<sup>70</sup> 12/18/19 Tr. at 64.

<sup>71</sup> *Id.* at 67.

<sup>72</sup> Objection by Applicant counsel and an Examiner interjection are omitted. 12/18/19 Tr. at 102.

<sup>73</sup> The laughable contention that gas stations do not cause air pollution has been disproven extensively over the past 5 decades, including by this study, <https://www.sciencedaily.com/releases/2018/10/181004110021.htm>. Gas stations are area sources of air pollution per the EPA, <https://www.epa.gov/haps/reducing-emissions-hazardous-air-pollutants>.

<sup>74</sup> 2/25/20 Tr. at 166.

Chaudhry won numerous awards in his field of expertise. Dr. Chaudhry also did research fellowships at Johns Hopkins and Harvard.<sup>75</sup>

Dr. Chaudhry’s work experience is also extensive and directly related to public health. Dr. Chaudhry, at the time of the hearing, was employed as an associate at “Harvard’s T.H. Chan School of **Public Health**,<sup>76</sup>” (Emphases added) In addition, Dr. Chaudhry founded and operates his own corporation, Access Strategies, which he founded to address public health issues including “access to good food, healthy food options in communities.”<sup>77</sup> Dr. Chaudhry also testified to other work related to public health including consulting for the USDA, Medicare, and the Veteran’s Health Administration,<sup>78</sup> and work at Johns Hopkins. Dr. Chaudhry has also published numerous peer reviewed journal articles in the field.<sup>79</sup>

Finally, Dr. Chaudhry holds memberships in the Sarnoff Cardiovascular Research Foundation, the American Medical Association, the American Heart Association, and the American Society of Hematology.

Despite Dr. Chaudhry’s extensive education and work experience, the Examiner employed a standard that was inconsistent with her decision to certify Mr. Ruzsin and her previous decision to accept Dr. Chaudhry as an expert. This was done after the Examiner had heard Dr. Chaudhry’s testimony and recognized the danger it posed to Royal Farms.<sup>80</sup> Applying different standards to two witnesses in the same proceeding is a clear abuse of discretion and even more evidence of the Examiner’s prejudice in favor of Royal Farms. The disparity in the qualifications of the two witnesses is perhaps best illustrated in the below chart:

	Mr. Tom Ruzsin	Dr. Sharjeel Chaudhry
		• Cornell

<sup>75</sup> *Id.* at 215-216.

<sup>76</sup> *Id.* at 169.

<sup>77</sup> *Id.* at 169-171

<sup>78</sup> *Id.* at 170-171.

<sup>79</sup> *Id.* at 197-198.

<sup>80</sup> *Id.* at 221.

Relevant Education	None	<ul style="list-style-type: none"> <li>• Johns Hopkins</li> <li>• Harvard</li> <li>• George Washington</li> </ul>
Relevant Work Experience	<ul style="list-style-type: none"> <li>• Environmental Consultant</li> <li>• Royal Farms</li> </ul>	<ul style="list-style-type: none"> <li>• Access Consulting</li> <li>• Harvard TH Chan School of Public Health</li> <li>• Consulting for: USDA, Medicare, and the Veteran's Health Administration</li> </ul>
Relevant Publications	None	18 <sup>81</sup>
Previous Expert Certifications	1	0

**iii. The Examiner's treatment of Dr. Chaudhry's lay testimony was further evidence of her prejudice against Opponents.**

By the time she wrote the opinion in this case, the Examiner's opinion of Dr. Chaudhry's education and work experience, once so high she had acknowledged him as an expert, had sunk so low that she refused to accept his judgment on what foods were unhealthy.

“[D]ue to his lack of expertise, the HIA constitutes nothing more than a compilation of observations and conclusions by a lay witness lacking the professional expertise or technical background to draw **any** conclusion about food options available...and...the impact of those food options on the health of the community.” Dec. at 31, para 12. (Emphasis added).

The Examiner advances the dubious conclusion that a physician who has performed vascular surgery, owns and runs a public health consulting firm, has consulted for the USDA on nutritional guidelines<sup>82</sup> is employed by the Harvard T.H. Chan School of Public Health, and has authored or co-authored over a dozen articles in the medical field does not have the requisite knowledge to opine on whether a given food is healthy or not. Dr. Chaudhry testified extensively on the negative impacts that Royal Farms food offerings would have on the neighborhood and

<sup>81</sup>

<sup>82</sup> *Id.* at 187.

community and his testimony echoed concerns expressed by the public in the neighborhood. Just as the Examiner categorically dismissed the testimony from the public in the neighborhood, she dismissed all of Dr. Chaudhry's testimony.

**iv. The Examiner demonstrated open bias in favor of Royal Farms throughout the hearing.**

**1. The Examiner applied inconsistent evidentiary standards to aid Applicants in their cross examination of Dr. Chaudhry.**

In addition to applying a different standard for proffered experts to Dr. Chaudhry, the Examiner contradicted previous evidentiary rulings in order to aid Applicant's counsel in their cross examination of Dr. Chaudhry. Previously Examiner had ruled that unauthenticated federal government documents could not be admitted as evidence. This ruling was made when Opponents' attorney Macy Nelson attempted to offer a federal census document. "You can't use a document that you haven't authenticated."<sup>83</sup> The document in question was from a census survey that Royal Farms witness Steere had quoted in his report as explained above. When Dr. Chaudhry testified, Applicant's counsel attempted to introduce a federal document to question Dr. Chaudhry. Opponents objected and the Examiner ruled, "I'm going to let the cross-examination on this continue. It is a government document. It's clearly identified as such."<sup>84</sup> Opponents' counsel renewed his objection and explained specifically that,

"When I tried to use a federal document to cross-examine Mr. Steere, the examiner ruled I couldn't do that and so that's the precedent and it profoundly limited my ability to test the opinions of Mr. Steere because I couldn't use the federal documents."<sup>8586</sup>

The Examiner nevertheless let Royal Farms continue using the document because, "this is different."<sup>87</sup> In addition to this ruling, the Examiner excluded a photograph of the Royal Farms store at National Harbor,

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<sup>83</sup> 1/21/20 Tr. at 127.

<sup>84</sup> 3/5/20 Tr. at 102.

<sup>85</sup> *Id.* at 102-103.

<sup>86</sup> The document in question was subsequently abandoned when it became clear that Applicant's attorneys had misunderstood how to use the government website from which it was drawn. Despite Dr. Chaudhry attempting to help Applicant, the line of questioning was abandoned. 3/5/19 Tr. at 105-107.

<sup>87</sup> 3/5/20 Tr. at 104.

even after Royal Farms witnesses had admitted the proposed store would be identical. 2/27/20 Tr. at 120. This exclusion was made over the objections of Opponents and People's Counsel.

In contrast to how the Examiner managed the testimony of Dr. Chaudhry, when Mr. Ruszin was questioned by Opponents' attorneys Macy Nelson and Sean Canavan, the Examiner interjected after questions but before Mr. Ruszin could answer more than ten times. In doing so, the Examiner often assumed the role of Applicant's counsel, making objections to questions, disallowing legitimate questions and otherwise shepherding Applicant's witness.<sup>88</sup>

2. **The Examiner regularly allowed Applicant's counsel to speak to witnesses during breaks in questioning and while other attorneys addressed the Examiner.**

In the midst of the discussion over the government document, Opponents' counsel objected to Applicant's counsel inappropriately speaking to the witness during testimony, "We have a witness on the stand that's talking to the other counsel while you're talking. I think there should be some decorum here."<sup>89</sup> Opponents' counsel had to point this out to the Examiner, despite the fact that the Examiner was directly across the table, less than six feet, from Applicant's counsel.

Opponents had previously objected to Applicant's counsel speaking to witnesses during examinations,

MR. HOLZER: "I don't like to object but I notice the witness now is talking to counsel while he's being cross-examined and I don't think that's an appropriate process."

MADAM EXAMINER: "The witness – you were talking to counsel. I'm looking at them. Who is talking to who?"

THE WITNESS: "I was talking to him." (indicated Applicant's counsel)

MADAM EXAMINER: "Oh, okay. Just hold on."

MR. HOLZER: "And it occurred previously (inaudible)."

MADAM EXAMINER: "Okay. Okay. Well, it's occurring here too. So"

MR. HOLZER: "Yes. No, I mean previously in this –"

MADAM EXAMINER: "Right. But it's occurring here constantly."

MR. BROWN: "But no, while he's testifying he cannot talk to counsel or to any other person."<sup>90</sup>

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<sup>88</sup> 12/18/19 Tr. at 82-104.

<sup>89</sup> *Id.* at 105.

<sup>90</sup> 1/21/20 Tr. at 99-100.



Prior to that there had been another objection made to Applicant's counsel inappropriately communicating with witnesses.

MR. CANAVAN: "Objection. This is a speaking objection."<sup>91</sup>

MR. TEDESCO: "I'm trying to get clarification to the question, sir."

MR. CANAVAN: "You're approaching the witness."

On none of these occasions did the Examiner admonish Applicant's counsel for their clearly improper behavior. That behavior was not only permitted, as demonstrated above, the Examiner specifically attempted to justify it.

V. **The Hearing Examiner erred when she refused to recognize undisputed, corroborated evidence that Accokeek First Church of God operates a school less than 300 feet from the subject property.**

Section 27-358(a)(2) of the zoning ordinance requires that,

"The subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located"

The zoning ordinance defines a school, private in Section 27-107.01(a)(206) as,

"School, Private: A private school or **training institution** which offers a program of college, **professional**, preparatory, high school, middle school, junior high school, elementary, kindergarten, or nursery school instruction; or any program of trade, technical, **professional**, or artistic instruction. A private school is not a Home Occupation." (Emphases added and internal quotations omitted)

Accokeek First Church of God operates a **professional** training institution for persons preparing for the ministry, a

"semesterized course-based course of study called The Bible and Leadership Institute. Students study under multiple instructors and earn credit toward four separate certifications. There are charges for textbooks and registration."<sup>92</sup>

As defined by the provision above, the Bible and Leadership Institute is a "training institution which offers a program of ...trade...instruction." The trade in question is the ministry.

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<sup>91</sup> 12/18/19 Tr. at 254-255. A speaking objection is when an attorney uses the language in his objection to cue the witness as to the desired response.

<sup>92</sup> 2/25/20 Tr. at 83.

It is a private school and is less than 300 feet from the subject property.<sup>93 94</sup> These facts were proven through the testimony of Kelly Canavan<sup>95</sup> who also submitted exhibits from the church that corroborated her testimony. As explained above, the Examiner, without basis, opted to reject Ms. Canavan's credible, corroborated evidence solely because crediting it would work against Royal Farms.

**VI. The Examiner erred when she reached the unsupported conclusion that a Royal Farms Hyperstore would actively improve the health, safety and welfare of residents.**

Section 27-317(a)(4) requires that a special exception not be granted except in situations where,

“The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area.”

Again ignoring the extensive testimony of neighborhood and community witnesses, the Examiner came to the counterintuitive conclusion that a gas station/convenience store would “actively improve the health, safety and welfare of residents.” Dec. at 25, para 7. (Perhaps ignoring the very reason why there is a prohibition against placing gas stations in close proximity to schools.)

All 22 of the neighborhood witnesses who testified against the proposed use spoke to health, safety and welfare impacts. Many testified of dangers to neighborhood safety caused by the 24/7 Royal Farms Hyperstore. Witnesses submitted evidence regarding local crime and response times and expressed that Royal Farms, unlike the surrounding businesses which close early, would draw new crime by staying

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<sup>93</sup> 2/25/20 Tr. at 83.

<sup>94</sup> In addition to the Bible and Leadership Institute, Accokeek First Church of God offers Sunday School and regular bible study. It is arguable whether these programs alone, without the Institute would satisfy the requirements of Section 27-358(a)(2), but the clear intent of the Section, to protect vulnerable people from the negative impacts of being close to a gas station, is a strong argument that the children who spend their time studying at the church should be protected by this provision, even if the Church did not operate the Institute.

<sup>95</sup> 2/25/20 tr. at 82-84, Exhibits 96 and 97.

open all night and further tax first responders.<sup>96</sup> Harshdeep Goraya<sup>97</sup> perhaps phrased it best when he stated,

“[T]his would shatter the feeling of safety my family and I have become accustomed to since our time here... I'm terrified at the thought that we may no longer keep our windows open in the summer months or enjoy our garden and sunlight on our porch due to the constant traffic and loitering this business will bring.”<sup>98</sup>

Many neighborhood parents, as well as Dr. Chaudhry, Ms. Canavan, and several other witnesses, testified that adding another, closer, vendor offering sweet and salty snacks, soda, tobacco, and fried food will have an adverse health impact on the residents of Accokeek, particularly their children. The testimony, reports, and supporting literature submitted by Dr. Chaudhry<sup>99</sup> and as testified to by Rhonda Hanson,<sup>100</sup> Karen Sexton,<sup>101</sup> and other neighbors is particularly instructive on this point.

Accokeek Assistant Fire Chief Kathryn Lucas, among many others, testified on behalf of the AVFD that adding a Royal Farms Hyperstore to the intersection “will gravely affect our mission”<sup>102</sup> by increasing congestion at the intersection and impeding emergency services. Finally, almost every witness, including those testifying for Royal Farms, spoke of the hazardous intersection.

The Examiner dismissed all of this evidence as, “Opponents to SE-4816 presented no probative evidence regarding adverse impacts.” Dec. at 27, para 11. This echoes her earlier categorical dismissal of the people who actually live in the neighborhood, drive through the intersection, and will have the character and safety of their neighborhood destroyed by the Royal Farms Hyperstore.

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<sup>96</sup> Sandra Miles testified, “[I]n the first nine months of 2019 police districts 5 and 7 which serve Accokeek, Fort Washington and Brandywine had priority emergency times that exceeded the 10 minute emergency benchmark every month.” 12/17/19 Tr. at 43. Rhonda Hansen, Sandra Miles, and Katrina Knight all testified about their concerns about Royal Farms drawing additional crime and/or traffic to an area where emergency services are already overtaxed. 12/17/19 SE Tr. at 36, 42, 62.

<sup>97</sup> Mr. Goraya is related to Dharam Singh Goraya, mentioned earlier in this memo.

<sup>98</sup> 2/25/20 Tr. at 153-154.

<sup>99</sup> 2/25/20 Tr. at 222-263.

<sup>100</sup> *Id.* at 140.

<sup>101</sup> 12/17/19 SE Tr. at 105.

<sup>102</sup> 2/25/20 Tr. at 40. Holiday Wagner explained, “I’ve seen the fire truck and the EMT’s sitting there and sitting there and sitting there, because they can’t, we can’t move out of their way.” 12/17/19 SE Tr. at 93.

The Examiner continued her attack on neighborhood residents,

“None of the evidence produced by Opponents...demonstrated that SE-4816 would, in any way, adversely affect the health, safety or welfare of the community.” Dec. at 28, para 11.

The degree of contempt the Examiner showed for the 22 neighborhood witnesses, and others from outside the neighborhood, who stated that there would be adverse impacts, and the hundreds more they represented, could not be clearer. The Examiner explained that “the Opposition’s generalized fears regarding the proposed use are, at best, merely possible adverse impacts inherent to the use” citing case law suggesting that routine negative impacts associated with a proposed use that are not specific to a location or neighborhood don’t count.

What the Examiner again misses by seeing this case only from the Applicant’s perspective and ignoring the neighborhood witnesses, is that the negative impacts associated with this use *are* particular to the location and neighborhood. Adding a Royal Farms Hyperstore that is open 24/7 – which is not normal for this use – will have a unique impact on the neighborhood, because all of the current businesses close early, thus deterring thieves who have nothing to rob after 10 p.m.<sup>103</sup> Likewise the nature of the impact on the health of the community. As Dr. Chaudhry and community witnesses pointed out, the placement and cumulative effect of the Hyperstore are what particularly endangers the health of the neighborhood. And of course concerns around traffic safety are specific to the location.

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<sup>103</sup> Characteristic of both the casual relationship Royal Farms witnesses showed with the truth, and the Examiner’s conduct of the hearing was Royal Farms witness Bainbridge claiming Royal Farms planned to be open 24/7 because “operating 24/7 is really a response to the community.” 12/18/19 SE Tr. at 58. After forcing Mr. Bainbridge to acknowledge that no one in this Community had asked for a 24/7 store or even been consulted, Mr. Canavan attempted to explore the real reasons why Royal Farms planned to be open 24/7, MR. CANAVAN: “You also testified that the industry has found that being open 24/7 is safer. Is that uniform with regards to communities the stores are in? You know different conditions around the stores? Is 24/7 always safer?” MR. BAINBRIDGE: “I, I don’t think it’s always safer. It’s generally speaking.” MR. CANAVAN: “Would you say it’s fair to say 24/7 is always more profitable for Royal Farms?” MS. NICHOLS: “Beyond the scope.” MR. CANAVAN: “He testified about his reason for making the 24/7 decision.” MS. NICHOLS: “(Indiscernible) concept of the safety issue, not to a profit issue.” (Of note in this exchange is there was not an objection from Applicant’s counsel, the Examiner simply decided to step in and prevent a legitimate line of questioning.)

**VII. The Examiner erred in accepting the flawed evidence of Royal Farms traffic witness Lenhart as dispositive that no negative traffic impacts would occur.**

As explained previously, the Examiner relied exclusively on Mr. Lenhart in coming to her conclusions regarding traffic safety, although Mr. Lenhart had to rely on the study done by Mr. Green, since his own mistakes were exposed by Mr. Green's work, as explained above. As in all other areas, the Examiner ignored the concerns of those who live in the neighborhood and who had more than six hours of experience with the intersection. Mr. Lenhart's dubious conclusion that traffic would actually improve once Royal Farms added hundreds of car trips to the intersection is the basis for much of the Examiner's decision. "Mr. Lenhart indicates that this improvement would more than offset the effect of traffic from the proposed gas station." Dec. at 14, para 2. Another counterintuitive conclusion reached by the Examiner is that combining six, currently unused, entrances into two which will experience huge traffic volumes, is a safety upgrade. In her decision, the Examiner does not explain why an unused entrance is dangerous.

**a. The testimony of those citizens who use the intersection was overwhelmingly against Royal Farms.**

The entire community, including the rare witnesses testifying in favor of Royal Farms, spoke with one voice when they characterized the current intersection of Livingston Rd, Maryland 210, and Route 373 ("the Intersection") as dangerous,<sup>104</sup> and Royal Farms "expert" witness Michael Lenhart conceded as much when he said during certain periods of the day, the intersection received a failing safety grade, "[y]ou saw an E."<sup>105</sup> While Mr. Lenhart proved unreliable, as explained previously, his grade of E here does agree with the testimony of residents about the danger of the intersection. Community advocates including Sarah Cavitt, the president of the Indian Head Highway Area Action Council testified that the Royal Farms would make the intersection more dangerous. President Cavitt testified that her organization has been studying Route 210 since 1964 and that they opposed the Royal Farms because,

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<sup>104</sup> Dan Donahue, testifying in favor of Royal Farms, stated simply, "The road is going to have to get expanded." 12/17/20 at 13.

<sup>105</sup> 12/18/19 SE Tr. at 217.

“[w]e believe it will decrease the safety of Maryland Route 210. The **vote was unanimous.**”<sup>106</sup> (Emphasis added)

**b. Royal Farms failed to consider multiple key danger points in their analysis.**

Multiple witnesses testified that one of the most dangerous elements of that intersection is that drivers who are travelling from Waldorf to Livingston Road must exit Route 228 onto 210, then cross five lanes of traffic in a short distance and stop abruptly in order to make a left turn onto Livingston Road.<sup>107</sup>

Dr. Reverend Screen testified,

“you’re going to have to cut through in the very, in seconds to get to make the left the turn. It’s going to be a very unsafe situation. A very unsafe situation. It’s very unsafe now with the number of accidents we already have recorded and if we’re going to increase the number of people who are going to try to negotiate that small space to make a left turn we’re asking for in my opinion, a very unsafe and unstable situation.”<sup>108</sup>

The proposed Royal Farms is intended to entice even more motorists into making this dangerous maneuver. Royal Farms relies on enticing pass-by traffic that will be diverted from 210 onto Livingston Road.<sup>109</sup> Despite this danger, Royal Farms did not bother to count the number of cars currently making this maneuver,

Q: “And in terms of the cars turning left from northbound 210 onto Livingston Road, do you have any way of knowing how many of those came from 228?”

MR. LENHART: “No.”

Q: “In your data with regards to how many cars will be attracted to the station, do you have any modeling or forecasting that tells us how many of those cars will come from 228?”

MR. LENHART: “Not precise...”<sup>110</sup>

Royal Farms has proposed no change that will mitigate the danger posed by motorists going from 228 to Livingston Road across five lanes of traffic, and concedes that its proposed store would entice more motorists to do so.

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<sup>106</sup> 12/17/19 SE Tr. at 24.

<sup>107</sup> *Id.* at 92-93, 137-144, 149-154.

<sup>108</sup> *Id.* at 141.

<sup>109</sup> 12/18/19 SE Tr. at 189-190.

<sup>110</sup> *Id.* at 237-238.

A second dangerous element of the intersection is the B & J's Carry Out exit closest to route 210. As Neal Tillman explained,<sup>111</sup> that exit from B & J's is in dangerously close proximity to Route 210, which creates danger when cars must leave B & J's and cross Livingston Road to then turn onto or cross Maryland 210. If cars are simultaneously turning right from 210, there is a high risk of collision. Adding to that danger is the widespread practice of using the B & J's parking lot as a cut through from Bryan Point Road to Livingston Road.<sup>112</sup> The more cars that are turning onto Livingston Road from Maryland 210, the more dangerous this intersection becomes. Once again, Royal Farms ignored the danger it intended to create and opted not to study the B & J's exit.

Q: "At any point did you measure how many cars came out of the B&J's parking lot?"

MR. LENHART: "No."

Q: "[D]o you have any reason to dispute the various witnesses' contention that cars using that as a cut through is relatively common?"

MR. LENHART: "I didn't specifically look at how many cars might be using it as a cut through."<sup>113</sup>

After admitting to not having studied either danger point, Mr. Lenhart then ignored the testimony of residents and contended that enticing additional motorists onto the road would not affect safety.

Q: "So let me ask the question again. Is it your contention that no matter how many entries onto Livingston from this property and exits off Livingston to this property take place, the rate at which accidents occur and motorists are harmed will not be changed?"

MR. LENHART: "I don't believe that it will affect the safety at this location, no."<sup>114</sup>

**c. Royal Farms has offered a series of half-measures and hastily contrived "solutions" based on an unreliable expert who has made mistakes throughout this case.**

Royal Farms initially proposed mitigating the dangerous traffic issues by repainting Livingston Road to create a new traffic pattern<sup>115</sup>. After the initial hearing began, Royal Farms then came up with a hastily contrived second plan that called for a new lane to be built to help alleviate the danger at the

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<sup>111</sup> 2/25/20 Tr. at 262-263.

<sup>112</sup> 12/17/19 SE Tr. at 153.

<sup>113</sup> 12/18/19 SE Tr. at 239-240.

<sup>114</sup> *Id.* at 253-254. (Exchange between Examiner and counsel omitted.)

<sup>115</sup> 12/18/19 Tr. at 257, "Changing the lane use designation on eastbound Livingston at 210 instead of being a left, a through and a shared through right it would be a left, a through and a right."

intersection that witness Lenhart had previously categorically stated would be safe with some repainting. “Yes, we were requested to go back and take another look at the intersection to see if an additional turn lane on Livingston Road to turn south onto 210 would provide additional benefit and so we have done that.”<sup>116</sup> The attempt by Royal Farms to avoid acknowledging their previous analysis and solution were incorrect and insufficient is transparent. However, this second proposal would not mitigate either of the danger points mentioned above. The fact that this proposal was only made after the hearing began, rather than after an initial, thorough review of traffic at the intersection, reaffirms the cavalier approach to community safety that Royal Farms demonstrated in ignoring the 228 merge and B & J’s parking lot exit danger points as well as the overwhelming input from the Community regarding other dangers. Royal Farms’ second “solution” neglected to address problems identified by witnesses with much greater experience at the intersection, as previously explained, and was based on an analysis contradicted by traffic engineer Lawrence Green. As with all of Royal Farms’ mistakes in this case, their expert’s miscalculation benefitted Royal Farms. Mr. Green explained, how safe the intersection is,

Q: “You were at level of service D as in dog, he was level of service –”  
A” “B as in boy.”<sup>117</sup>

Upon hearing Mr. Green’s testimony, and testimony from many residents, Royal Farms’ “expert” “conducted” yet another analysis, this time using the correct peak hours.<sup>118</sup> Royal Farms once again went back to the drawing board and came up with their third and fourth proposals. This time, after multiple proposals and months of resident testimony, Royal Farms finally addressed the B & J’s entrance issue by proposing that the westbound portion of Livingston Road be changed,

“That right-turn lane could be used for traffic in and out of the driveways while providing a second lane for traffic to bypass them.”<sup>119</sup>

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<sup>116</sup> *Id.* at 168.

<sup>117</sup> *Id.* at 23.

<sup>118</sup> 3/5/20 Tr. at 161-162. (Q: “Did you apply Mr. Green’s analysis in the a.m. and p.m. peak hours using his critical lane volumes and what impacts that would have on the level of service with that improvement in place?”

A: “Yes, I did”)

<sup>119</sup> *Id.* at 171.



This “solution” claims to solve one portion of the problem, people entering the B & J’s entrance, but does not solve the main issue, which is people exiting from B & J’s onto Livingston who now, thanks to Royal Farms’ latest “solution” will endanger another lane of oncoming traffic. Further, as mentioned by multiple witnesses, the B & J’s entrance is roughly 60 feet from the intersection and the view from 210 is partially obscured<sup>120</sup> which means any cars not familiar with the new pattern would have a split second to recognize it and make a rushed merge, even if there is not a car emerging from B & J’s. In the best-case scenario, cars will turn onto Livingston Road, then have to immediately merge to get out of the turn lane, thus constricting traffic and creating congestion that will likely keep cars from merging off of 210 effectively. What Royal Farms’ latest solution does is eliminate a lane of traffic at an overcrowded intersection in the interests of an ineffective solution that will not solve the bulk of the problem and that will not mitigate the increased danger Royal Farms is creating. Royal Farms’ third proposed solution also does nothing to mitigate the danger of the 228 to Livingston maneuver. As acknowledged by Royal Farms, all of their proposed “solutions” would depend on State Highway Administration approval.<sup>121</sup>

Royal Farms continually adjusted its analysis because their work was shoddy and insufficient. After initially attempting to deny the accuracy of community testimony, they made repeated piecemeal attempts to do just enough to get their SE, but they still have yet to comprehensively address the safety issues identified by the community, both regarding overall volume and the two danger points specifically named.

**VIII. The Examiner erred in asserting that Royal Farms would not substantially impair the integrity of any approved Master Plan or Functional Master Plan.**

Section 27-317(a)(3) requires that a special exception not be granted except in situations where, “The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan.”

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<sup>120</sup> *Id.* at 168.

<sup>121</sup> 12/18/19 SE Tr. at 180.

Examiner states that “no historic sites or resources are located within the vicinity of the subject site; as such, the approval of the subject Application will have no adverse impact on this Functional Master Plan.” Dec. at 18, para 3.

On October 7, 2020, the Department of the Interior approved the Moyaone Reserve as a National Historic District. The Moyaone is “[r]oughly bounded by Bryan Point Rd., Piscataway Park, Overlook Dr./Old Landing Rd., and Farmington Rd. West”<sup>122</sup> and characterized by modern mid-century architecture and significant natural spaces.<sup>123</sup> The boundary of the Moyaone is half a mile from the proposed site.<sup>124</sup> The Royal Farms gas station and hyperstore would be dramatically out of character with this Historic District in architecture, scope, and size, and, as part of what the Subregion V Master Plan recognizes as the “gateway” to Accokeek and the Moyaone Reserve, it would adversely impact the Historic District, which is protected by the Functional Master Plan.

#### **SUMMARY OF ZONING ORDINANCE PROVISIONS NOT SATISFIED BY ROYAL FARMS**

Here follows a summary of the sections of the zoning ordinance that were not satisfied by this Application and a brief reference as to why they were not satisfied.

**1. The application does not meet the Special Exception requirements for a food and beverage store in Sec. 27-355.**

Section 27-355(a)(1) explains that a “food or beverage store may be permitted, subject to the following: The applicant shall show a reasonable need for the use in the neighborhood.” 27-355(a)(2) states that the “size and location of, and access to, the establishment shall be oriented toward meeting the needs of the neighborhood;”

As stated by the Court of Special Appeals in *Baltimore County Licensed Beverage Ass’n v. Kwon* 761 A.2d 1027 (Md. Ct. Spec. App. 2000), it must be established that “**the public in that area**” needs the

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<sup>122</sup> Appendix, Exhibit B.

<sup>123</sup> *Id.*

<sup>124</sup> Appendix, Exhibit C.

relevant development. Royal Farms fail this test on multiple grounds. First, as explained above, Royal Farms defined multiple inconsistent neighborhoods that the Examiner erred in accepting. Second, Royal Farms introduced no evidence applicable to the **public in this area**. However, should the council decide that Royal Farms' single national survey was sufficient evidence, there is still not need, because the public has refuted any such showing.

The Court of Appeals has held that even if there is evidence of need, that showing may be refuted by "substantial evidence...affirmatively indicating through several witnesses and documentary exhibits that there was indeed no need." *Lucky Stores, Inc. v. Board of Appeals of Montgomery County et al.* 270 Md. 513, 536 (1973) Similarly, in this case there have been many more than "several witnesses." There have been 22 individual witnesses and hundreds who offered evidence through their neighborhood associations, all of whom refuted the idea of need.

The application also fails to satisfy Section 27-355 (a)(3) "The proposed use shall not unduly restrict the availability of land, or upset the balance of land use, in the area for other allowed uses" for reasons stated in subsequent sections.

**2. The application does not meet the technical requirements that must be satisfied to grant a Special Exception for a gas station as outlined in Sec. 27-358.**

According to Sec. 27-358(a)(10),

"[d]etails on architectural elements such as elevation depictions of each facade, schedule of exterior finishes, and description of architectural character of proposed buildings shall demonstrate compatibility with existing and proposed surrounding development."

The commercial buildings in this area that are not on the subject property are Accokeek First Church of God (built in 1950), B&J's (built in 1955), and Accokeek Gas & Go (built in 1958). Their architecture is quaint, distinctive and corresponds to the current development on the property, most of which was constructed in the 1950s. Each charming building is small and one-of-a-kind and there is a small town aesthetic testified to by over a dozen witnesses and the Subregion V Master Plan. The Royal Farms

Hyperstore/Gas Station was designed to fit environments like National Harbor, where its twin was built. It is in no way consistent with quaint, small-town development. This fact was testified to by many witnesses who live in Accokeek and have seen the National Harbor Royal Farms. Additionally, the residences in the neighborhood are modest, distinct from their neighbors', and, in the Moyaone Reserve National Historic District, nationally recognized for their distinguishing mid-century architecture.

Sec. 27-358(d)(1) mandates that “[w]hen approving a Special Exception for a gas station, the District Council shall find that the proposed use is necessary to the public in the surrounding area.” As stated above, this showing must be made with regard to the public in Accokeek, and may be refuted. In this case, the public has made its voice heard loud and clear; it does not need a gas station. The only evidence presented by the Applicant was abstract and drawn from large surveys. It assumed several facts not proven, namely that citizens were not willing to purchase gas outside of the neighborhoods they live in. Since these residents have been doing so for years, Royal Farms’ conclusion is ludicrous on its face.

Sec. 27-358(a)(2) requires that a gas station may be permitted only if “[t]he subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located.” The First Church of God operates a school, as explained in previous sections. This school is on a lot only 105 feet from the subject property. This was proven through unchallenged, corroborated testimony and exhibits, as explained in previous sections.

Royal Farms would also violate Sec. 27-358(d)(2): a special exception for a gas station “[w]ill not unduly restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses.” Royal Farms will change the nature of businesses allowed in Accokeek by opening the door for progressively larger operations that are less compatible with small town and rural living, thus upsetting the balance of land use. Further, the subject property is comprised of four parcels that are almost all of the available properties left in the Accokeek Commercial Corridor (the section of Livingston Road from the Accokeek post office to Keller’s, as designated by the Sub V Master Plan). Selling these

four parcels all to one developer for a single use eliminates the possibility of small business moving in that would better serve the needs of the neighborhood and Accokeek community.

**3. Royal Farms cannot comply with the provisions of Section 27-317, which apply to all Special Exception Applications.**

Section 27-317 (a) of the Zoning Ordinance requires that, among other things, the applicant must demonstrate that,

“(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan,”

and

“(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood”

The Subregion 5 Approved Master Plan and Sectional Amendment recognizes that,

“The linear mix of business, service, institutional, and residential uses along approximately two miles of Livingston Road between the U.S. Post Office, west of MD 210 (Indian Head Highway), and Kellers Market (near Bealle Hill Road), form the rural ‘main street’ of Accokeek”

And sets as a priority maintaining that character,

“With care and attention, the traditional character of Livingston Road, between the US Post Office west of MD 210 and Kellers Market, to the east, can be maintained and enhanced as additional development occurs.”

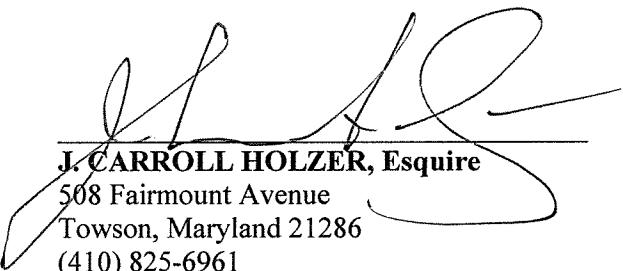
Resident after resident, as quoted above and shown more extensively in the transcripts, testified that a Royal Farms Hyperstore would destroy the rural character of Accokeek that the Subregion V Master Plan prioritizes maintaining. The county and state have poured a great deal of money into preserving thousands of acres on nearby Old Marshall Hall Road alone. The Moyaone Reserve is a special zoning district about half a mile from the subject property that was formed to preserve land and rural life, and is a designated National Historic District. There are at least seven small, private locally owned farms in

Accokeek and two farms that are part of prominent foundations serving Prince George's and national visitors (Alice Ferguson and Accokeek), all within a few miles of the proposed project. Houses here are large and small, but they are unique, whether on large tracts of land or in small subdivisions. This is the proposed use's general neighborhood. Super-sizing development at what the Subregion V Master Plan calls "the gateway to Accokeek" will change the very nature of the adjacent neighborhood and community by bringing traffic, noise, crime, junk food, increased pollution, and around-the-clock activity to the adjacent properties and general neighborhood. The Examiner erred when she categorically discounted the extensive evidence of the negative effects that a Royal Farms Hyperstore would have on the Subregion V Master Plan by dismissing the evidence offered the hundreds of community members who made their voices heard, instead favoring a single Royal Farms witness who repeatedly demonstrated his ignorance of the area, and had no basis in law or in fact.


Under Sec. 27-317(a)(4), a Special Exception may be granted only if "[t]he proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area." For reasons explained extensively above, the Royal Farms would negatively affect the health of residents, the safety of residents, and the welfare of residents.

**WHEREFORE**, for the foregoing reasons and as explained in this appeal and the memoranda filed by both Opponents previously, the District Council should deny Royal Farms' requests for a special exception and a permit to build in a right of way.

Respectfully submitted,

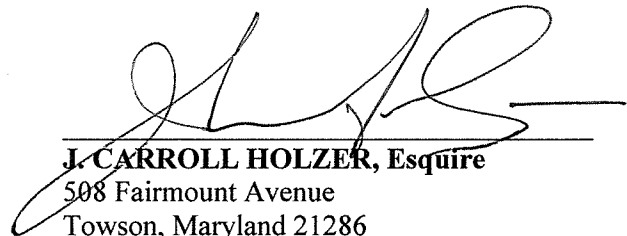


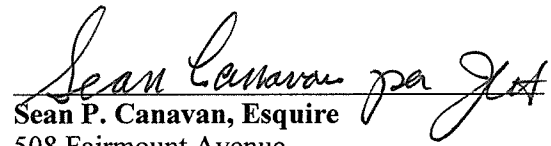
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*Attorney for Opponents*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this 22<sup>nd</sup> day of March, 2021, a copy of the foregoing Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. et al.'s Appeal of the Decision of the Zoning Hearing Examiner and Request for Oral Argument to all parties of record in the foregoing case.

  
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## **APPENDIX**

Exhibit A

Sec. 27-107.01. - Definitions.

(a) Terms in the Zoning Ordinance are defined as follows:

- (206) **School, Private:** A private school or training institution which offers a program of college, professional, preparatory, high school, middle school, junior high school, elementary, kindergarten, or nursery school instruction; or any program of trade, technical, professional, or artistic instruction. A private school is not a "Home Occupation." The term does not include:
- (A) Any institution which is under the jurisdiction of the Prince George's County Board of Education; or
  - (B) Any activity offering instruction which is carried on by a single teacher, tutor, or instructor having a total enrollment of less than six (6) students.

Sec. 27-108.01. - Interpretations and rules of construction.

(a) Words and phrases are to be interpreted as follows:

- (1) The particular and specific control the general.
- (2) In case of any difference of meaning or implications between the text and any caption, illustration, summary table, or illustrative table, the text controls.
- (3) Words used in one tense or form include other tenses and derivative forms, unless the obvious construction of the wording indicates the contrary.
- (4) Words used in the singular include the plural (and vice versa) and words used in the masculine gender include the feminine and neuter, unless the obvious construction of the wording indicates the contrary.
- (5) When the Zoning Ordinance refers to development or activity occurring on one property and its impacts on another property, it is assumed that more than the land itself may be impacted. Buildings, structures, and people may also be impacted, as the case may be.
- (6) Unless otherwise specified, all distances shall be measured horizontally and at right angles to the line (tangent in the case of a curved line) in relation to which the distance is specified. All land areas shall be measured horizontally. All heights shall be measured vertically.
- (7) Words and phrases not specifically defined or interpreted in this Subtitle or the Prince George's County Code shall be construed according to the common and generally recognized usage of the language. Technical words and phrases, and others that have acquired a peculiar and appropriate meaning in the law, shall be construed according to that meaning.

- (8) Time computation: In computing periods of time, the day of the act (after which the designated period of time begins to run) is not to be included. The last day of the period computed is to be included unless:
- (A) It is a Saturday, Sunday, or County legal holiday, in which case the period runs until the end of the next day that is neither a Saturday, Sunday, nor County legal holiday; or
  - (B) The act is the filing of a paper in a court or County office, and the offices on the last day of the period are:
    - (i) Not open;
    - (ii) Closed for a part of that day, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor County legal holiday; or
    - (iii) Not open the entire day during ordinary business hours. When the time is more than seven (7) days, intermediate Saturdays, Sundays, and County legal holidays shall be considered as other days. If the period of time is seven (7) days or less, intermediate Saturdays, Sundays, and County legal holidays shall not be counted.
- (9) Unless otherwise specified, an "area" of land means "contiguous area."
- (10) The word "approve" includes "approve with conditions, modifications, or amendments."
- (11) A "building," "structure," "land," or "property" includes the words "or part thereof," unless the obvious construction of the wording indicates the contrary.
- (12) The word "buy" also includes the words "offer to buy."
- (13) Conjunctions: Unless the context indicates the contrary, where a regulation involves two (2) or more items connected by the conjunctions "and," "or," or "either...or," the conjunction shall be interpreted as follows:
- (A) "And" indicates that all the connected items shall apply;
  - (B) "Or" indicates that the connected items may apply singly or in any combination;
  - (C) "Either...or" indicates that the connected items shall apply singly but not in combination.
- (14) The words "erected" and "constructed" also include "modified," "reconstructed," "built," "rebuilt," "altered," "placed," "relocated," "moved," and "maintained."
- (15) The words "including" and "such as" do not limit a term to the specified examples, but are intended to extend its meaning to all other instances or circumstances of like kind or character.
- (16) The terms "land use" and "use of land" also include "building use" and the "use of a building."
- (17) When something is referred to as being "required," it means required as a part of the regulations and procedures in the applicable zone.
- (18) The word "sell" also includes "dispense," "offer for sale," "display for sale," or "intend to sell."
- (19) The words "shall," "must," "may only" or "may not" are always mandatory and not discretionary. The word "may" is permissive.
- (20) Such as: See "including" (paragraph 15, above).
- (21) Whenever "proposed" or "planned" uses are referred to, and it is intended that these uses are ones which may occur on property but are not part of any specific development proposal, the uses are those land uses proposed in the applicable Master Plan, General Plan, or Functional Master Plan.

(22) Whenever one Division, Subdivision, Section, Subsection, etc., references another Division, etc., by referring to Division "above" or Division "below," it is intended that the Division "above" or "below" is the next one preceding (above) or following (below).

(23) It is not intended that specific requirements be interpreted separately from all other requirements in the Ordinance. The Zoning Ordinance shall be read as a whole.

(24) Adjectives and adverbs: Adjectives or adverbs appearing before a series of nouns or verbs, respectively, apply to the entire series unless specifically noted or the obvious sense of the phrase dictates otherwise.

(25) The word "following" means next after.

(26) The word "preceding" means next before.

Sec. 27-317. - Required findings.

(a) A Special Exception may be approved if:

(1) The proposed use and site plan are in harmony with the purpose of this Subtitle;

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;

(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;

(4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

(6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and

(7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

(1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or

(2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(CB-75-1989; CB-28-2010; CB-76-2010; CB-34-2011)

**Editor's note**— Section 3 of CB-28-2010 provides that a development project for which all required development applications have been approved by the Planning Board, Zoning Hearing Examiner, or District Council, and appeal periods have not expired as of September 1, 2010, is grandfathered; or a development project that has an approved preliminary plan of subdivision, but has not completed subsequent processes such as final plat or site plan as of September 1, 2010, is grandfathered for that portion of the project covered by the preliminary plan.

Section 3 of CB-34-2011 provides that a development project for which all required development applications have been approved by the Planning Board, Zoning Hearing Examiner, or District Council, notwithstanding any appeal period, is grandfathered regarding the provisions of CB-28-2010 that became effective on September 1, 2010, or any subsequent revisions in conformance with the grandfathered approval; or a development project that has an approved preliminary plan of subdivision, notwithstanding any further development review requirements including record plats is grandfathered regarding the provisions of CB-28-2010 that became effective on September 1, 2010, or any subsequent revisions in conformance with the grandfathered approval for that portion of the project covered by the preliminary plan.

Sec. 27-355. - Food or beverage store.

- (a) A food or beverage store may be permitted, subject to the following:
- (1) The applicant shall show a reasonable need for the use in the neighborhood;
  - (2) The size and location of, and access to, the establishment shall be oriented toward meeting the needs of the neighborhood;
  - (3) The proposed use shall not unduly restrict the availability of land, or upset the balance of land use, in the area for other allowed uses;
  - (4) In the I-1 and I-2 Zones, the proposed use shall be located in an area which is (or will be) developed with a concentration of industrial or office uses;
  - (5) The retail sale of alcoholic beverages from a food or beverage store approved in accordance with this Section is prohibited; except that the District Council may permit an existing use to be relocated from one C-M zoned lot to another within an urban renewal area established pursuant to the Federal Housing Act of 1949, where such use legally existed on the lot prior to its classification in the C-M Zone and is not inconsistent with the established urban renewal plan for the area in which it is located.

(CB-93-1984; CB-131-1984; CB-33-1985; CB-123-1985; CB-112-1986; CB-86-1988)

Sec. 27-358. - Gas station.

- (a) A gas station may be permitted, subject to the following:
- (1) The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet;
  - (2) The subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located;
  - (3) The use shall not include the display and rental of cargo trailers, trucks, or similar uses, except as a Special Exception in accordance with the provisions of Section 27-417;
  - (4) The storage or junking of wrecked motor vehicles (whether capable of movement or not) is prohibited;

- (5) Access driveways shall be not less than thirty (30) feet wide unless a lesser width is allowed for a one-way driveway by the Maryland State Highway Administration or the County Department of Permitting, Inspections, and Enforcement, whichever is applicable, and shall be constructed in compliance with the minimum standards required by the County Road Ordinance or Maryland State Highway Administration regulations, whichever is applicable. In the case of a corner lot, a driveway may begin at a point not less than twenty (20) feet from the point of curvature (PC) of the curb return or the point of curvature of the edge of paving at an intersection without curb and gutter. A driveway may begin or end at a point not less than twelve (12) feet from the side or rear lot line of any adjoining lot;
  - (6) Access driveways shall be defined by curbing;
  - (7) A sidewalk at least five (5) feet wide shall be provided in the area between the building line and the curb in those areas serving pedestrian traffic;
  - (8) Gasoline pumps and other service appliances shall be located at least twenty-five (25) feet behind the street line;
  - (9) Repair service shall be completed within forty-eight (48) hours after the vehicle is left for service. Discarded parts resulting from any work shall be removed promptly from the premises. Automotive replacement parts and accessories shall be stored either inside the main structure or in an accessory building used solely for the storage. The accessory building shall be wholly enclosed. The building shall either be constructed of brick (or another building material similar in appearance to the main structure) and placed on a permanent foundation, or it shall be entirely surrounded with screening material. Screening shall consist of a wall, fence, or sight-tight landscaping material, which shall be at least as high as the accessory building. The type of screening shall be shown on the landscape plan.
  - (10) Details on architectural elements such as elevation depictions of each facade, schedule of exterior finishes, and description of architectural character of proposed buildings shall demonstrate compatibility with existing and proposed surrounding development.
- (b) In addition to what is required by Section 27-296(c), the site plan shall show the following:
- (1) The topography of the subject lot and abutting lots (for a depth of at least fifty (50) feet);
  - (2) The location and type of trash enclosures; and
  - (3) The location of exterior vending machines or vending area.
- (c) Upon the abandonment of a gas station, the Special Exception shall terminate and all structures exclusively used in the business (including underground storage tanks), except buildings, shall be removed by the owner of the property. For the purpose of this Subsection, the term "abandonment" shall mean nonoperation as a gas station for a period of fourteen (14) months after the retail services cease.
- (d) When approving a Special Exception for a gas station, the District Council shall find that the proposed use:
- (1) Is necessary to the public in the surrounding area; and
  - (2) Will not unduly restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses.

(CB-8-1984; CB-1-1989; CB-48-1998; CB-22-1999; CB-72-1999; CB-29-2014)

Exhibit B





DEPARTMENT OF PLANNING  
**MARYLAND HISTORICAL TRUST**

**Medusa, Maryland's Cultural Resource Information System**

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**National Register of Historic Places**

[Log In](#)

**General Information** ?

[Print](#)

**NR Name:** Moyaone Reserve Historic District

**NR Alternate Name:**

**Address Information** ?

**Address:** Roughly bounded by Bryant Road and Piscataway Park on the North; Overlook Drive/Old Landing Road on the West; the southern boundary of Piscataway Park on the South; and Farmington Road W. on the East

**Town:** Accokeek

**Zip Code:** 20607

**Counties:** Prince Georges

**USGS Quad(s):** Mount Vernon

**Listing Information**

**NPS Ref Number:** SG100005659 ?

**Confidential Location:**  (not to be released) ?

**Category:** District ?

**National Historic Landmark:**  **Date:** ?

**Date Listed:** 10/7/2020

**Delisted:**  **Date:** ?

**Date Revised:**

**Multiple Property Submission:**  ?

**Multiple Property Submission Name:**

**Construction Information**

**Architect/Builder:**

Charles F. D. Egbert Harold Esten Charles M. Goodman  
John Jickling Casper Neer John Normile Charles F. Wagner,  
Jr.

**Period/Date of Construction:**

Criterion A: 1945-Present; ca. 1900-1958 Criterion B:  
1946-1976

**About This Resource**

20, 31, 32, 33, 34 & 35  
DIVISION OF  
BONDS RETREAT

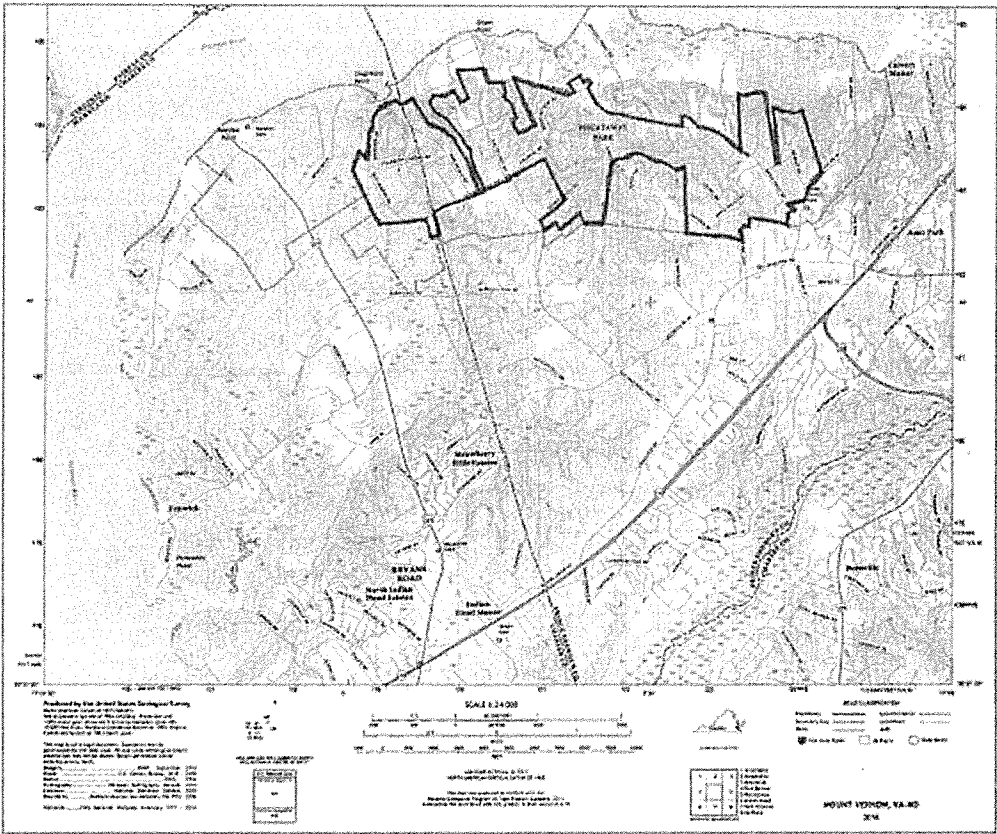
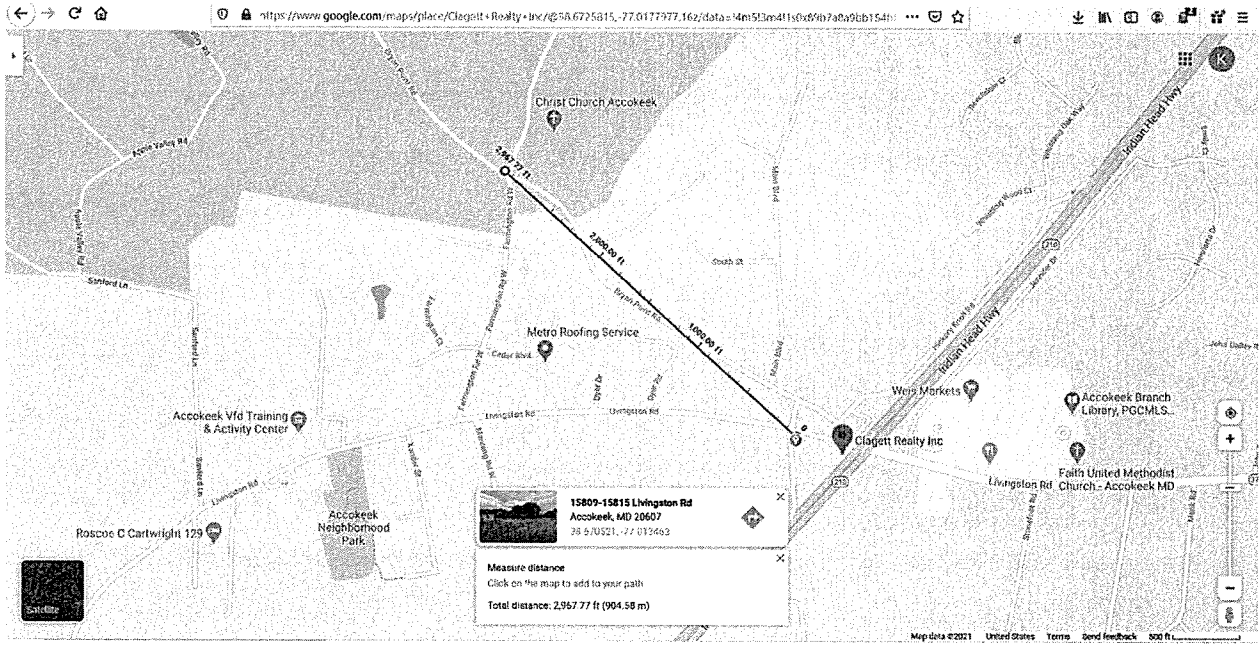
## NATIONAL REGISTER CRITERION A

- Community Planning and Development:** The Moyaone Reserve Historic District is significant at the state level under Criterion A for the period 1945 to 1958 in the area of community planning and development for its distinctive land planning qualities, which demonstrate and affirm the Moyaone's commitment to conservation and the integration of buildings and landscape.

## NATIONAL REGISTER CRITERION C

- Architecture:** The Moyaone Reserve Historic District is significant at the local level under National Register Criterion C and Criterion Consideration G in the area of architecture for the period 1946 to 1976. The single-family houses designed by Charles Wagner and other architects working in the Moyaone during the postwar period represent a significant collection of Mid-century Modern residential architecture. Other domestic forms and styles introduced into the community during this period represent an important local manifestation of national trends in residential design.

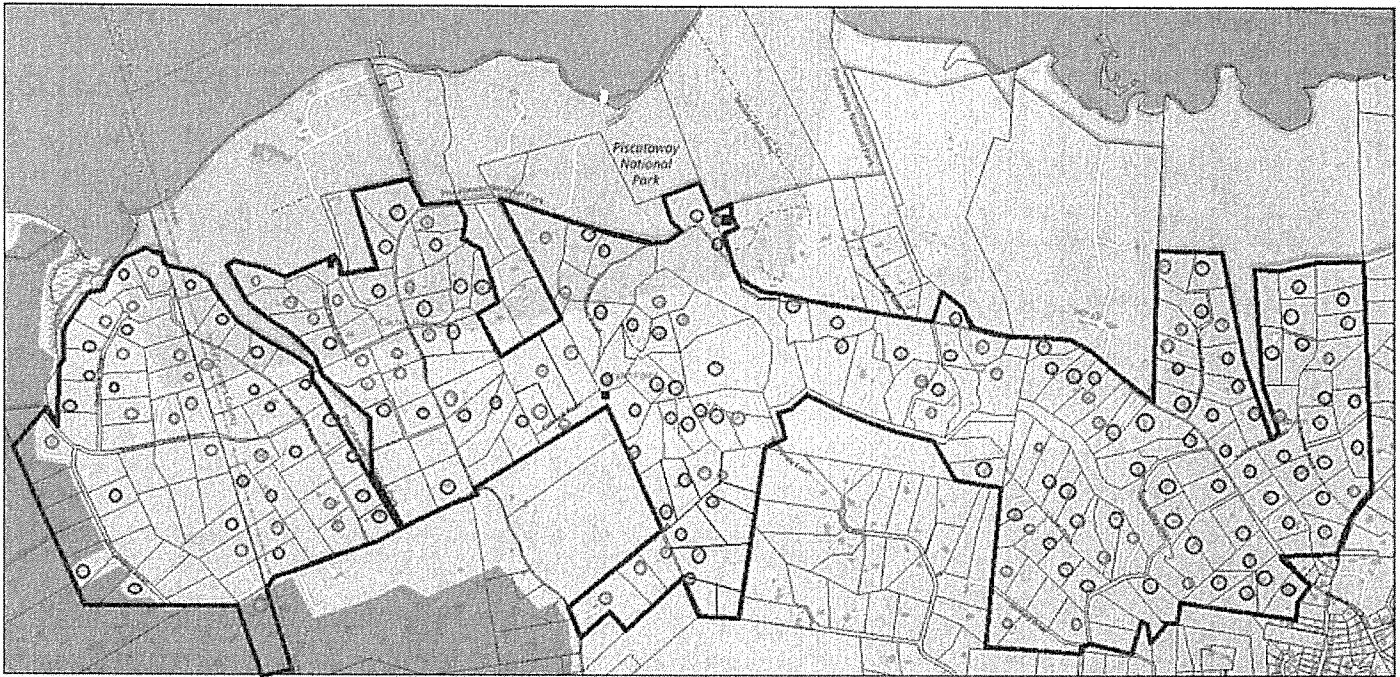
Exhibit C







Moyaone Reserve Historic District  
 Prince George's County/Charles County, Maryland

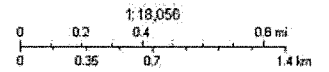
Mount Vernon Quadrangle (2016)  
 USGS Topographical Map  
 1:24,000 scale

# MOYAONE RESERVE HISTORIC DISTRICT



October 14, 2019

- KEY**  
Historic District Boundary:   
Contributing Buildings:   
Noncontributing Buildings:   
Contributing Structures: 



MD MAP: MDP.DAT  
Map data © OpenStreetMap contributors, CC-BY-SA

Made by: Maryland Historical Trust  
MDP