

1 THE PRINCE GEORGE'S COUNTY PLANNING BOARD OF  
2 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

3  
4  
5 7-ELEVEN AT BRANDYWINE VILLAGE  
6 Specific Design Plan, SDP-1803

7  
8 T R A N S C R I P T  
9 O F  
10 P R O C E E D I N G S

11  
12 COUNTY ADMINISTRATION BUILDING

13 Upper Marlboro, Maryland

14  
15 January 14, 2021

16 VOLUME 1 of 1  
17

18  
19 BEFORE:

20 ELIZABETH M. HEWLETT, Chair

21 DOROTHY F. BAILEY, Vice-Chair

22 A. SHUANISE WASHINGTON, Commissioner

23 MANUEL R. GERALDO, Commissioner

24 WILLIAM M. DOERNER, Commissioner  
25

**Deposition Services, Inc.**

12321 Middlebrook Road, Suite 210  
Germantown, MD 20874

Tel: (301) 881-3344 Fax: (301) 881-3338

info@DepositionServices.com www.DepositionServices.com

OTHERS PRESENT:

ADAM BOSSI, Staff Urban Design Section

PETER GOLDSMITH, Senior Counsel

ARTHUR HORNE, Attorney for Applicant

C O N T E N T S

<u>SPEAKER</u>	<u>PAGE</u>
Suhani Chitalia	17
Jacquelyn Kapinos	18
Jennifer Jackson	29
Jamila Balamani	31



1 MADAM CHAIR: Okay. Okay. Mr. Lenhart?

2 MR. LENHART: Present.

3 MADAM CHAIR: Okay. Thank you. Now we have,  
4 okay, so you're going to have to help me. Suhani Chitalia?

5 MS. CHITALIA: Good morning, present.

6 MADAM CHAIR: Okay. Did I pronounce it correctly?

7 MS. CHITALIA: You did, it was perfect, thank you.

8 MADAM CHAIR: Chitalia. Okay. Now I got to  
9 remember how I pronounce it. Okay. Jacquelyn Kapinos?

10 MS. KAPINOS: Good morning, present

11 MADAM CHAIR: Did I pronounce yours correctly?

12 MS. KAPINOS: Yes, perfectly.

13 MADAM CHAIR: Okay. Thank you. Jennifer Jackson?

14 MS. JACKSON: (No audible response.)

15 MADAM CHAIR: Jamila --

16 MS. JACKSON: Present.

17 MADAM CHAIR: Okay. Wonderful. Jamila Balamani?

18 MS. BALAMANI: Good morning, present.

19 MADAM CHAIR: Wonderful. Okay. That concludes my  
20 signup speakers. We have a significant additional backup.  
21 So I will let Mr. Bossi before we take off, I'll let him get  
22 started with that. So we're ready for you, ready for  
23 takeoff, Mr. Bossi.

24 MR. BOSSI: I'm loving the pilot analogy. Thank  
25 you.

1 MADAM CHAIR: Yes.

2 MR. BOSSI: Happy to be back in front of the Board  
3 again this morning, Madam Chairwoman. As you mentioned this  
4 is Item 8, this is the remand hearing of the Specific Design  
5 Plan, SDP-1803, which does propose the development of a 7-  
6 Eleven brand food and beverage store and a gas station. As  
7 you did point out we did receive a number of additional  
8 backup documents. These did include a single exhibit from  
9 the applicant and four exhibits submitted by Ms. Chitalia  
10 with the University of Maryland Law Clinic on behalf of the  
11 opponents here. These items were added to your backup, so  
12 you should have those available to review.

13 MADAM CHAIR: We do.

14 MR. BOSSI: I do want to mention here too, staff  
15 did also prepare just a short orientation --

16 MADAM CHAIR: That's what we need.

17 MR. BOSSI: -- a presentation --

18 MADAM CHAIR: Thank you.

19 MR. BOSSI: -- yes, should it be needed. So if  
20 you'd like me to go through that just to remind the Board of  
21 what the project --

22 MADAM CHAIR: I would like that.

23 MR. BOSSI: -- was.

24 MADAM CHAIR: I would like.

25 MR. BOSSI: Sure.

1 MADAM CHAIR: Okay.

2 MR. BOSSI: Okay. Then I'm going to ask if we can  
3 jump right into that then. We can move on to --

4 MADAM CHAIR: Are you going to do it or do you  
5 need Mr. Flannigan here to do it and if so you have to guide  
6 him.

7 MR. BOSSI: Yes. Yes, if we want to go over the  
8 orientation information I'm going to ask Mr. Flannigan to  
9 turn to slide 3, please.

10 MADAM CHAIR: Okay.

11 MR. BOSSI: All right. So the property that we  
12 are talking about subject to the SDP is in Planning Area  
13 85A, Council District 09. This is back in the Brandywine  
14 area of Southern Prince George's County. Slide 4, please.

15 The subject property is in the northwest quadrant  
16 of the intersection of U.S. 301, Robert Crain Highway and  
17 Chadds Ford Drive. Next slide, please.

18 The site that we are talking about is in the Local  
19 Activity Center Zone, that's a Comprehensive Design Zone.  
20 Slide 6, please.

21 The aerial image here does show the subject site  
22 as undeveloped. However, I will say the image is a little  
23 dated. The site has since been graded along with a basic  
24 infrastructure installation is ongoing. The right-of-way of  
25 U.S. 301 abuts the site to the east, again with Chadds Ford

1 Drive to the south. There is a stream valley that includes  
2 environmental features and woodland that is preserved, which  
3 is located between the subject site and the residential  
4 development to the west. Slide 7, please.

5 The site here does slope downwards from west,  
6 excuse me, from east to west.

7 MADAM CHAIR: Can everyone else please mute? Can  
8 everyone else please mute? Thank you.

9 MR. BOSSI: So the site does have a little bit of  
10 a slope from east to west, that goes down gradient towards  
11 the stream valley. Slide 8, please.

12 Subject site is loosely circled here in red and is  
13 shown in context with the site access road and commercial  
14 buildings that were approved by the Board under SDP-1802.  
15 West of the site, this on the top part of the image, we do  
16 see some of the existing townhouse development with the  
17 preserved area of woodlands and primary management area in  
18 between the commercial and residential development. In this  
19 area, the wooded area to be retained is approximately 200  
20 feet wide. Slide 9, please.

21 So as shown here on the Site Development Plan, we  
22 do see the food and beverage store in the west central  
23 portion of the site, in kind of the top central portion of  
24 the image. The gas station canopy below it with eight fuel  
25 dispensers a little closer to U.S. 301. We do see accesses

1 provided at two points, the north and south end of the  
2 building, respectively. The northern driveway shown here is  
3 to be shared with the abutting development to the north  
4 which is provided for under SDP-1802, that is a Taco Bell  
5 restaurant.

6           Parking for the site is shown here to the south  
7 and east of the building with its trash enclosure and  
8 loading space provided just to the north of the building.  
9 Sidewalks and bike racks are also provided. Staff generally  
10 found that transportation and pedestrian site access issues  
11 and circulation were adequate. Kenny, if we could go back  
12 to Slide 2, please. I'd just like to bring that up. Thank  
13 you so much.

14           So the District Council, as we know this is a  
15 remand hearing, the District Council in its order of remand  
16 did ask the Planning Board to address the two specific  
17 issues that we see here. Those pertain to the applicability  
18 of Sections 27-528(b) and 27-494 of the Zoning Ordinance. I  
19 do want to direct you to staff's memorandum which is in your  
20 backup that is dated December 31st as provided in that memo,  
21 staff has found these provisions of the Zoning Ordinance are  
22 not applicable for the approval of SDP-1803, as the  
23 ordinance required conformance be demonstrated with these  
24 requirements at the time of earlier approvals for the  
25 subject property.



1           Section 27-528(b) does pertain specifically to  
2 Specific Design Plans for infrastructure. SDP-1803 is not a  
3 Specific Design Plan for Infrastructure. The Board did  
4 previously approve a Specific Design Plan for Infrastructure  
5 that is associated with this site, that was SDP-1604 and  
6 that is associated with the larger Brandywine Village  
7 Commercial Development, which this site is part of.

8           Regarding Section 27-494 --

9           MADAM CHAIR: Excuse me.

10          MR. BOSSI: -- which is the purposes --

11          MADAM CHAIR: Excuse me, Mr. Bossi, we approved  
12 the infrastructure, but when was that? That wasn't the  
13 subject of the County Council's action in this particular  
14 case, right?

15          MR. BOSSI: No, ma'am. No, ma'am.

16          MADAM CHAIR: Okay.

17          MR. BOSSI: The order of remand asked the Board to  
18 look at Section 27-528(b) --

19          MADAM CHAIR: Okay.

20          MR. BOSSI: -- which has to do with the SDP for  
21 Infrastructure. If you bear with me a moment, I can find  
22 the date of approval for that. That should be in our backup  
23 or in our memo.

24          COMMISSIONER WASHINGTON: It looks like February  
25 16, 2017, is that correct?

1 MR. BOSSI: Yes.

2 UNIDENTIFIED SPEAKER: Yes, Madam. Yes.

3 COMMISSIONER WASHINGTON: Okay.

4 MR. BOSSI: Commissioner Washington, you beat me  
5 to it, thank you.

6 COMMISSIONER WASHINGTON: I'm just trying to be  
7 helpful.

8 MR. BOSSI: Thank you so much. So that SDP, the  
9 infrastructure SDP is not the subject of discussion here  
10 today, but that was where the relevant finding for Section  
11 27-528(b) was made back in September of 2017.

12 So the other second point of remand was regarding  
13 Section 27-494, those were the purposes of the L-A-C Zone  
14 and the associated compatibility findings. Those were  
15 actually determined at the time of Basic Plan approval as  
16 noted in our memo. And at that time the relationship of the  
17 uses both the residential and the commercial proposed for  
18 the overall Brandywine Village development and the  
19 development spaces that were set aside for those different  
20 uses were approved by the Basic Plan and carried forward  
21 through the Comprehensive Design Plan, Preliminary Plan of  
22 Subdivision and through the specific design phases of this  
23 review process.

24 You know, as I did previously note, staff has  
25 reviewed all the additional materials that were submitted by

1 the applicant in opposition recently. While the opposition  
2 materials do discuss valid and important concerns, they're  
3 unfortunately not issues that are the subject of the Zoning  
4 Ordinance in the context of SDP-1803. Therefore, staff does  
5 recommend the Planning Board adopt the additional findings  
6 of staff's memo dated December 31, 2020 to address the two  
7 specific issues of the order of remand and then subsequently  
8 issue an amendment to the Planning Board resolution 2020-  
9 131, which is the subsequent item on your agenda. This does  
10 conclude our presentation, and I'm of course here to answer  
11 any questions.

12 MADAM CHAIR: Okay. Thank you, Mr. Bossi. Let's  
13 see if the Board has any questions of you. Madam Vice  
14 Chair?

15 MADAM VICE CHAIR: No questions, thank you.

16 MADAM CHAIR: Okay. Commissioner Washington?

17 COMMISSIONER WASHINGTON: No questions, thank you.

18 MADAM CHAIR: Commissioner Doerner?

19 COMMISSIONER DOERNER: No questions, thanks.

20 MADAM CHAIR: Commissioner Geraldo?

21 COMMISSIONER GERALDO: No questions, Madam Chair.  
22 Thank you.

23 MADAM CHAIR: Thank you. We also have our  
24 attorney on, Peter Goldsmith, our Senior Counsel in the  
25 event that the Board has any questions of him at some point.

1 I'm going to turn to Mr. Horne first to present on behalf of  
2 the applicant and then see where we are. Mr. Horne?

3 MR. HORNE: Good afternoon, Madam Chair and  
4 members of the Planning Board, for the record Arthur Horne,  
5 the Law Offices of Shipley and Horne in Largo, Maryland.  
6 Happy New Year to everybody.

7 MADAM CHAIR: Happy New Year.

8 MR. HORNE: I am here, you mentioned some of the  
9 individuals who are involved, who are present with a list,  
10 Brianna Wilson (phonetic sp.) for 7-Eleven, Mr. Joe Caputo  
11 with the Capital Commercial Group, Nick Speach from Bohler  
12 Engineering and Mike Lenhart from Lenhart Traffic  
13 Consultants. I mentioned them only because --

14 MADAM CHAIR: Hold on. Hold on. Hold on, Ms.  
15 Wilson I did not mention.

16 MR. HORNE: Oh, okay. Well, I mentioned --

17 MADAM CHAIR: We don't have her signed up, so.

18 MR. HORNE: Yes.

19 MADAM CHAIR: Okay.

20 MR. HORNE: I'm only mentioning it to the point  
21 that these are individuals who were involved in the case as  
22 so well stated by Mr. Bossi, this case is on a remand for  
23 two particular issues. Those two issues were raised by the  
24 opposition at the appeal of this case to the District  
25 Council and the District Council then remanded it back to

1 the Planning Board for determinations of these two specific  
2 issues. Let me just say that you know as Mr. Bossi  
3 indicated, this is part of a Comprehensive Design Plan that  
4 has been through the Basic Plan, Preliminary Plan of  
5 Subdivision, the Comprehensive Design Plan and now the  
6 Specific Design Plan.

7 I was a part of a co-counsel on this matter when  
8 it came through before, and actually 1802 which was the  
9 restaurant of Taco Bell on this site was heard on the same  
10 day as this case, 1803. And 1803 SDP was handled by Mr.  
11 Matt Tedesco, who in going back and looking at the evidence  
12 and did a fantastic job of making all of the findings and it  
13 was all part of the record. And again, we stand on the  
14 record and the approval that was made by the Board before.  
15 You know, though the remand from the District Council is  
16 very limited it only has two questions, I do want to point  
17 out that the process and the law of administrative res  
18 judicata does apply and that the fact that the Planning  
19 Board did make these findings previously and positively sort  
20 of limits their ability to look at the other determinations  
21 as to whether anything else would apply beyond what the  
22 District Council pointed out in this particular case.

23 And as the memo sets forth by the staff, and as we  
24 concur with 100 percent, neither one of these provisions  
25 really apply. The first, you know, with the infrastructure

1 was as stated before determined back in 2017 not appealed,  
2 made that determination at that time. The second one is the  
3 purposes of the L-A-C Zone. This property was zoned L-A-C  
4 as part of the comprehensive rezoning the Basic Plan.  
5 Ironically, when we were going through the process and I had  
6 the fortune of representing the development through this  
7 process, when we were at the time of the infrastructure, at  
8 the time of the CDP, when we went in front of they indicated  
9 that this is the best example of a comprehensive design  
10 operation that they had seen. Because the individuals who  
11 live in those houses, the townhouses right of of Chadds Ford  
12 right behind it, their property was rezoned part of this  
13 comprehensive rezoning and so they went forward built the  
14 houses first and then they came in now with the commercial  
15 and the --

16 MADAM CHAIR: Mr. Horne, I need to make sure I  
17 understood that correctly. So you're saying the very same  
18 District Council that remanded this matter to us said what  
19 in the prior case?

20 MR. HORNE: In the CDP --

21 MADAM CHAIR: Right.

22 MR. HORNE: -- stated that it was, I don't want to  
23 say I'm quoting, but paraphrasing, one of the finest  
24 examples of why we have a Comprehensive Design Zone because  
25 it, they take in consideration the fact that they want to

1 have connectivity between residential and commercial and  
2 this was zoned as such. The residential part was built  
3 first and then now comes the commercial. And even when we  
4 looked at this plan in the commercial it's separated by wood  
5 areas, stream valley, but there's a connectivity between the  
6 commercial and the residential. And you know all this was  
7 analyzed as we go through the process.

8 I say all that Madam Chairman and Board, by way of  
9 background only. Again, this is a very, very limited remand  
10 on two questions that we argued at the District Council  
11 didn't apply, but they wanted to have it remanded back to  
12 see, you know, whether the Planning Board concurs with the  
13 argument that these issues that were raised by the  
14 opposition were in fact addressed and if they were addressed  
15 whether the Planning Board stands by its original opinion.  
16 Again, for having participated in this previously, the  
17 arguments that were made both at 1802 and then subsequent at  
18 1803, this particular case, were the same arguments that  
19 were made, made on appeal, even in the record that was the  
20 opposition's record today are the same arguments that were  
21 made and heard by this Planning Board previously. There's  
22 no question as Mr. Bossi said that the issues that are  
23 raised, the opposition is very, very legitimate, legitimate  
24 concerns about health, safety and welfare generically that's  
25 concerned. But what they're asking for is not relevant to

1 the SDP, this particular case, it's more of a general policy  
2 matter and when they look at and try to talk about vapors,  
3 emissions and things associated with a gas station that's  
4 the Maryland Department of Environment, not the Planning  
5 Board.

6           In any, in their evidence put in there applies to  
7 every gas station that you have no matter where it's  
8 located. And so therefore again, with this limited remand  
9 and the fact that the Planning Board has already opined and  
10 found that the (indiscernible) that is set forth for  
11 approval of a SDP has been met. It's consistent with the  
12 CDP and it was laid out both in the resolution as well as  
13 the statement of justification, Mr. Tedesco and all did  
14 fantastic, laid out all the requirements, the findings of  
15 fact and conclusions of law was set forth. We agree with  
16 that and we stand on that as well and ask the Planning Board  
17 to in fact follow up and agree with what they approved  
18 before.

19           So having said that, Madam Chairman, I'll just  
20 yield because again we are at the position that  
21 (indiscernible) feel as if we have to reiterate the  
22 approval, because we've already been through it before and  
23 this Board has already found compliance previously.

24           MADAM CHAIR: Okay. Thank you, Mr. Horne. Let's  
25 see if the Board has any questions of you at this time.



1 Madam Vice Chair?

2 MADAM VICE CHAIR: No questions.

3 MADAM CHAIR: Commissioner Washington?

4 COMMISSIONER WASHINGTON: No questions.

5 MADAM CHAIR: Commissioner Doerner?

6 COMMISSIONER DOERNER: No questions.

7 MADAM CHAIR: Commissioner Geraldo?

8 COMMISSIONER GERALDO: I have no questions, Madam  
9 Chair.

10 MADAM CHAIR: Okay. Thank you. Okay. So I'm  
11 going to go down our list. Suhani Chitalia?

12 MS. CHITALIA: Good afternoon, Madam Chairman,  
13 thank you so much for taking the time --

14 MADAM CHAIR: (Sound.)

15 MS. CHITALIA: -- to consider this matter. I will  
16 actually not be speaking during this particular hearing.  
17 I'll be passing it off to our student attorney, Jacqueline  
18 Kapinos and we have Ms. Jamila Balamani and Jennifer Jackson  
19 as well who will take some time.

20 MADAM CHAIR: Okay. So we have a number of people  
21 we're going to ask that everyone not be unduly repetitive  
22 though, but you will certainly be afforded your right to  
23 speak. So Ms. Jacquelyn Kapinos?

24 MS. KAPINOS: Good morning, Madam Chair Hewlett  
25 and members of the Planning Board.

1 MADAM CHAIR: Good morning.

2 MS. KAPINOS: My name is Jacquelyn Kapinos, and I  
3 am a student attorney with the University of Maryland  
4 Environmental Law Clinic, here with my co-counsel, Suhani  
5 Chitalia. I'll be representing Ms. Jamila Balamani, Ms.  
6 Jennifer Jackson, Ms. Valerie Davis and the Brandywine  
7 Healthy Neighborhoods Alliance. We ask that the Planning  
8 Board consistent with the District Council's order for  
9 remand reconsider whether this gas station is appropriate in  
10 a residential neighborhood in light of available scientific  
11 studies on the detrimental health impacts of gas station  
12 emissions that we've provided to the Board. I will address  
13 the issue of air emissions while Ms. Balamani and Ms.  
14 Jackson will later testify on the impact of food swamps in  
15 the Chadds Ford community.

16 The matter before you is grounded in the basic  
17 principal that a source of toxic carcinogenic compounds  
18 should not be placed in close proximity to a residential  
19 neighborhood and children's playground. The types of  
20 compounds released from gasoline including benzene, toluene,  
21 ethylbenzene and xylenes also known as Vtech (phonetic sp.)  
22 submissions are dangerous and jeopardize the health and  
23 safety of nearby residents, particularly children.

24 Based on the order for remand provided by the  
25 District Council, we ask you to address public health

1 impacts associated with gas station emissions. We hope this  
2 hearing and supplemental materials provided will assist the  
3 Planning Board in fully considering the important health  
4 issues associated with gas stations in making your decision.

5           The Chadds Ford neighborhood is primarily  
6 residential with trails and natural spaces for local  
7 residents to enjoy. The neighborhood has pedestrian  
8 walkways that surround the area which connects to a lake  
9 located just 0.3 miles from the proposed 7-Eleven site. The  
10 neighborhood also hosts two playgrounds, one of which is  
11 located adjacent to the 7-Eleven property line.

12           The consideration of public health in zoning  
13 decisions is required per the Prince George's Zoning  
14 Ordinance 27-102(a)(1) which explicitly states that the  
15 purpose of the Zoning Ordinance is to protect and promote  
16 the health, safety and welfare of the present and future  
17 inhabitants of the county. In fact, when considering any  
18 zoning decisions per the Code, public health and safety is  
19 the first and foremost consideration. While under normal  
20 circumstances building a gas station may be a matter of  
21 right, that right presumes that the health, safety and  
22 welfare of Prince George's County residents are protected  
23 per 27-102(a)(1).

24           Here, there are facts and scientific studies that  
25 eliminate that presumption, requiring the Board to assess

1 the compatibility of the gas station with neighboring land  
2 uses at this particular site. Therefore, the presumption  
3 that a gas station can be built as a matter of right is moot  
4 because there are scientific studies directly contradictory  
5 safety as an assumption. Building the gas station near  
6 residences and a playground negatively impact the community,  
7 health, safety and welfare. The members of the Brandywine  
8 Healthy Neighborhoods Alliance ask that the Planning Board  
9 deny the approval of gas pumps in close proximity to the  
10 Chadds Ford residential neighborhoods. Various scientific  
11 studies conducted on gas station emissions show considerable  
12 detrimental health impacts to those who are consistently  
13 exposed to gas station emissions.

14           According to a 2019 study, benzene from gas  
15 storage tanks constitute a health concern at a distance of  
16 up to 518 feet. It is unclear in the record how far away  
17 the gas pumps and tank vents are from the surrounding  
18 residences and playground. We ask for the Planning Board to  
19 clarify this issue.

20           Furthermore, in neighboring Montgomery County a  
21 health study established the basis for Montgomery County to  
22 increase their setback requirements for large gas station  
23 from 300 feet to 500 feet. Although not --

24           MADAM CHAIR: Excuse me --

25           MS. KAPINOS: -- clear from the record --

1 MADAM CHAIR: Excuse me. Excuse me --

2 MS. KAPINOS: -- the perimeter of the 7-Eleven is  
3 in --

4 MADAM CHAIR: Excuse me.

5 MS. KAPINOS: -- close proximity --

6 MADAM CHAIR: Excuse me, Ms. Kapinos, was that  
7 done by, I heard you say what happened in Montgomery County  
8 and they increased the setback and was that pursuant to a  
9 county ordinance?

10 MS. KAPINOS: I am not sure off the top of my  
11 head. I can look that up and get back to you after the  
12 hearing.

13 MADAM CHAIR: Yes, that would be nice and then  
14 point me to the similar Prince George's County ordinance  
15 that says the same thing, because that would be helpful for  
16 us.

17 MS. KAPINOS: Actually (indiscernible).

18 MADAM CHAIR: Okay. That increases our setback as  
19 well.

20 MS. KAPINOS: Thank you.

21 MADAM CHAIR: Thank you.

22 MS. KAPINOS: Absolutely. So I will make sure to  
23 do that as soon as the hearing is over.

24 MADAM CHAIR: Well no, you have to do it before  
25 the end of the hearing because the hearing is today, so but

1 before the hearing is over. Okay, thank you.

2 MS. KAPINOS: Yes, absolutely.

3 MADAM CHAIR: Thank you. Okay.

4 MS. KAPINOS: Okay. Although not clear from the  
5 record, the perimeter of the 7-Eleven is in close proximity  
6 to residential properties in the Chadds Ford community.  
7 Studies show that gas stations pose even greater risk to  
8 young children. In accordance with these findings, the  
9 Environmental Protection Agency recognizes the  
10 particularized risks to young children and provide site and  
11 guidelines which recommends screening for gas stations  
12 within 1,000 feet of a perspective school. In the Chadds  
13 Ford community a playground is located within 1,000 feet of  
14 both gas pumps and gas storage tanks raising concerns that  
15 young people will be exposed to harmful emissions when they  
16 should be protected and safe.

17 Thank you for taking the time to listen to the  
18 concerns of the Chadds Ford community. We respectfully ask  
19 that the Planning Board deny the approval of the 7-Eleven  
20 gas pumps, following consideration of the health impacts  
21 associated with gas station emissions to nearby residents  
22 and children.

23 MADAM CHAIR: Ms. Kapinos, I'm going to see if  
24 there's any questions first, but I'd like to take this  
25 opportunity to thank you for your presentation first.

1 You're a student attorney so can you explain what that  
2 means?

3 MS. KAPINOS: Absolutely. So I currently work  
4 with the Environmental Law Clinic at the University of  
5 Maryland.

6 MADAM CHAIR: Yes.

7 MS. KAPINOS: And so I'm working underneath  
8 Suhani, who is supervising me but I'm now presenting to you  
9 on behalf of our clients.

10 MADAM CHAIR: Does that mean you're already an  
11 attorney or you've graduated from law school or not  
12 graduated from law school?

13 MS. KAPINOS: I have not graduated yet.

14 MADAM CHAIR: Okay. I'm only saying that --

15 MS. KAPINOS: But I'm a practicing attorney.

16 MADAM CHAIR: -- what I'd like to say is several  
17 of us, I'm an attorney, several of us on the Board are  
18 attorneys and I wanted to commend you on doing a spectacular  
19 job and wishing you well in your future. That is the only  
20 reason I asked that question, let me be clear, not to cast  
21 any aspersions but just to say very well done. Okay.

22 MS. KAPINOS: Thank you very much. I really  
23 appreciate it.

24 MADAM CHAIR: Thank you. Now so what about Ms.  
25 Jackson? Ms. Jackson is going to speak as well? Okay.

1 MS. KAPINOS: Yes, ma'am.

2 MADAM CHAIR: Thank you. Oh no, let me see if the  
3 Board has any questions of you at this time, Ms. Kapinos.  
4 Madam Vice Chair?

5 MADAM VICE CHAIR: No, Madam Chair, I don't have  
6 any questions but I would like to associate myself with the  
7 comments made to our presenter that she did a very good job.  
8 Thank you.

9 MADAM CHAIR: Thank you. Okay. Commissioner  
10 Washington?

11 COMMISSIONER WASHINGTON: No questions, but I too  
12 associate myself with the comments of the Chair. Great job,  
13 Ms. Kapinos.

14 MADAM CHAIR: Okay. Commissioner Doerner?

15 COMMISSIONER DOERNER: Yes, good job on the  
16 presentation. In terms of sort of the health concerns that  
17 you've raised, one of the issues in land use law is not  
18 zoning out uses completely out of everywhere they could  
19 align in the county. So there's case laws on different  
20 types of nuisances or externalities and if you increase it  
21 by 1,000 feet to 5,000 or different distances, you could  
22 essentially completely zone a particular use out of any  
23 possible location in the county. So as sort of the Board  
24 that would approve these kinds of decisions or deny certain  
25 kinds of plans, we have to take those kinds of things into



1 consideration because there can be all sorts of other legal  
2 questions or problems that we have in terms of takings and  
3 due process and other issues that we could end up in lots of  
4 legislation down the road.

5           So to clarify one of your concerns in terms of the  
6 distance, I realize that it's not exact, that you don't have  
7 the exact distance, but do you have any way of gauging the  
8 potential health risk based upon the scientific studies that  
9 you have and exposure to the kids? So if you say something  
10 shouldn't be within 1,000 feet, why? So is it because  
11 within 500 feet there's a certain level of exposure? Is it  
12 because at 900 feet there's a certain level of exposure?  
13 There's some sort of a declining impact and that's what I'm  
14 interested in if you could provide any information about.

15           MADAM CHAIR: Thank you.

16           MS. KAPINOS: Absolutely. So in the studies we  
17 provided there are multiple studies that dictate how far the  
18 distance should be from a residence. Our main concern is  
19 that the one study that I mentioned is that at a distance of  
20 up to 518 feet, so any closer than 500 feet normally it  
21 becomes very detrimental. And based on the way that the  
22 community is set up now, it's within that proximity.  
23 Similarly, within 1,000 feet it also becomes a problem and  
24 1,000 feet away is where the playground is located. So the  
25 majority of our studies I can also cite to, if you give me a

1 moment after this, I can look up the particular cites, but  
2 within the packet we provided you we have citations that  
3 show --

4 MADAM CHAIR: We have it.

5 MS. KAPINOS: -- that the closer you get the worst  
6 the emissions become for those living in the area, which is  
7 also why we wanted to know if possible how far away they are  
8 exactly from the vents particularly, and the pumps. Because  
9 we would say that around 500 feet and closer becomes  
10 detrimental.

11 MADAM CHAIR: Okay.

12 COMMISSIONER DOERNER: Okay. Do you know how many  
13 places are within the 500 feet buffer? Is it just one  
14 property or is it the entirety because that would have a  
15 differential impact and differential claims on the other  
16 side as well for the nuisance.

17 MS. KAPINOS: Absolutely. So because we weren't  
18 able to fully map out where everything was based on the  
19 schematics that we were given, on our estimate a lot of the  
20 homes, the residential homes meet that 500 buffer from where  
21 we had, I guess we tried to estimate it on our own. So the  
22 housing units right there do meet that 500 buffer.

23 COMMISSIONER DOERNER: Okay. And then I'll ask  
24 you sort of a different kind of question. Should it be the  
25 role of the Planning Board to actually deny this kind of a

1 use or should it be the choice of the people to reside in  
2 those kinds of places? So there's a difference of bringing  
3 the nuisance to yourself versus actually voluntarily going  
4 in that area and having the choice to be able to live there  
5 and sort of assessing the risk on your own and whether or  
6 not we should have a role in actually denying the ability of  
7 people, so you can do that.

8 MS. KAPINOS: Absolutely, so one, I absolutely  
9 think that it's up to you deny that. Because at this point  
10 in time it becomes an issue of air and safety and well-being  
11 of the citizens located there. So even though they reside  
12 there now putting in this extra gas station is just going to  
13 increase the carcinogenic emissions that they are going to  
14 be living close to. Particularly because there are already  
15 other gas stations located in the area, we don't feel that  
16 this one is necessary to put right by these properties and  
17 these homes that are just going to constantly give these  
18 emissions to the residents that are living there. So we do  
19 feel that it should be the Planning Board to determine that  
20 decision which then would positively impact the health of  
21 the community members.

22 MADAM CHAIR: Okay. Let me ask this question, I'm  
23 going to jump in here, Commissioner Doerner, for a second.  
24 Some of the questions where you're headed I have some  
25 questions too, they're of our counsel, Commissioner Doerner.

1 COMMISSIONER DOERNER: Yes.

2 MADAM CHAIR: But one of the things you said, Ms.  
3 Kapinos, was about not necessary. And of course necessity  
4 is not a factor that we can consider. So I don't know if  
5 you mentioned that but that is not something that we can  
6 consider, necessity. So I just wanted to address that real  
7 quick. And then go back to you Commissioner Doerner, to see  
8 if you have some other questions.

9 COMMISSIONER DOERNER: No, that was it. I  
10 appreciate the answers and thank you for entertaining my  
11 questions.

12 MADAM CHAIR: Okay. And thank you.

13 MS. KAPINOS: Thank you very much.

14 MADAM CHAIR: Commissioner Geraldo?

15 COMMISSIONER GERALDO: Madam Chair, I don't have  
16 any questions. I just want to thank the University of  
17 Maryland Law School for having this type of clinical program  
18 to train future lawyers. Thank you.

19 MADAM CHAIR: Thank you. We look forward to  
20 seeing you in the years to come, Ms. Kapinos. Okay. And  
21 then Mr. Horne, I don't know if you can answer that question  
22 about the pumps, the distance from the pumps. We can come  
23 back to you but first I'm going to go to Jennifer Jackson at  
24 this time. Ms. Jackson, are you on the phone?

25 MS. JACKSON: Yes.

1 MADAM CHAIR: Okay.

2 MS. JACKSON: I'm here.

3 MADAM CHAIR: Okay. She's caller 2. Okay. Thank  
4 you. Okay. You may proceed.

5 MS. JACKSON: All right. Good afternoon to  
6 members of the Planning Board, thank you again for this  
7 platform to voice my concerns regarding 7-Eleven. My name  
8 is Jennifer Jackson, a homeowner in the Chadds Ford Landing  
9 community. I'm (indiscernible) here to plead with you all  
10 to reconsider the proposed plans of this gas station,  
11 specifically speaking of the gas pumps. It concerns me that  
12 the building of this establishment was approved given the  
13 close proximity to residential homes. What feasibility  
14 studies were conducted to ensure the safety of the  
15 residents?

16 According to the National Institute of Health, gas  
17 stations pose significant risk hazards to people, as people  
18 fill up their tanks with diesel fuel or gasoline may drip  
19 from the nozzle to the ground and vapors may leak from the  
20 open gas tank into the air. This can lead to air and soil  
21 pollution. Air pollution is created when fuel evaporates  
22 emitting toxic fumes and when motor vehicles are running.  
23 Soil pollution can result when the fuel that is spilled on  
24 the ground builds up and seeps into the underlying,  
25 underlying soil and groundwater, underground pipes where

1 tanks are rust or leak contaminates other surrounding areas.

2           So who exactly is at risk? People who live or  
3 work near may be exposed to toxic chemicals in the air, soil  
4 and drinking water. Children, the elderly and people of all  
5 ages who live in close proximity and who have conditions  
6 such as asthma are at a greater risk of harm. A recent  
7 analysis published by the American Journal of Epidemiology  
8 found an elevated risk of childhood leukemia among children  
9 living near gas stations. We have a playground for children  
10 a few feet away from the proposed gas station. So when this  
11 plan was approved, was the safety concerns of children and  
12 residents even considered, given the proximity of this gas  
13 station?

14           We deserve fair conveniences such as safety, quiet  
15 and peaceful surroundings. No excessive and ongoing  
16 traffic, no concerns of hazardous smells or emissions near a  
17 home. I assumed I made a wise decision to purchase my home  
18 here. I was gravely disappointed to hear of a gas station  
19 and convenience store literally in the backyard of my home  
20 being approved by our leaders of P.G. County. Residents  
21 within this Chadds Ford community have an active and vibrant  
22 life. On any given day you will find residents walking,  
23 running, bicycling. You will also see people walking their  
24 dogs, mothers and fathers enjoying outdoor activities with  
25 their children.

1           Put yourself in our shoes. Would you want your  
2 loved ones to come home to this day in and day out? A gas  
3 station is simply not compatible within residential living  
4 quarters. I simply state these concerns for you to  
5 consider, to reconsider and address the potential risk of  
6 citizens who would have to endure what this site could  
7 bring. We understand you all saw this as an opportunity for  
8 economic growth but that should never be accomplished or  
9 presumed at the risk of our safety and peace. Thank you.

10           MADAM CHAIR: Thank you, so much, Ms. Jackson.  
11 I'm now going to turn to Jamila Balamani.

12           MS. BALAMANI: Hello?

13           MADAM CHAIR: Yes, we can hear you. Thank you.

14           UNIDENTIFIED MALE SPEAKER: Madam Chair, you're  
15 muted.

16           MADAM CHAIR: Oh, I'm muted. Thank you. Ms.  
17 Balamani? Thank you.

18           MS. BALAMANI: Good morning, Madam Chair and  
19 members of the Board. I would like to thank you for this  
20 opportunity to once again speak. As a concerned citizen of  
21 the Chadds Ford community during the COVID-19 times our  
22 community's only outlets are walking, biking and taking our  
23 children to the playground. The gas station will expose our  
24 residents including children to pollution emissions.  
25 Unfortunately, no amount of safety measures for a new gas

1 station within a close proximity to a residential area will  
2 resolve the public health threat. It should be a choice to  
3 reside next to a gas station and not a right. I'm asking  
4 the Planning Board to protect the health, safety and welfare  
5 of our residents of Brandywine in Prince George's County and  
6 eliminate the gas pumps as the long-term effects could be  
7 detrimental to our community's health. Thank you.

8 MADAM CHAIR: Thank you, Ms. Balamani, Balamani,  
9 yes, that's right. Okay. Thank you.

10 MS. BALAMANI: Balamani. Thank you.

11 MADAM CHAIR: Thank you. So let me do this,  
12 before I turn to our counsel, I guess I'd like to ask some  
13 questions and make a statement. That concluded my sign-up  
14 list but you know we find ourselves in a predicament here  
15 and let me just say that, and the predicament is that this  
16 Board does not enact any laws. This Board must follow the  
17 laws as enacted by the County Council, as enacted you know  
18 any state and federal laws as well and also as determined by  
19 the courts, be it the state courts and the United States  
20 Supreme Court. And so we've heard a lot of people say that  
21 this should not be a permitted use, but my question is to  
22 our legal counsel, Mr. Goldsmith, who determined that this  
23 use, who put this in the L-A-C Zone? What entity?

24 MR. GOLDSMITH: Madam Chair, Peter Goldsmith,  
25 Senior Counsel. It is the District Council decided to place



1 this property in the L-A-C Zone.

2 MADAM CHAIR: Okay. And then is this use  
3 permitted in the L-A-C Zone?

4 MR. GOLDSMITH: Yes, ma'am, both the food and  
5 beverage store are permitted and so is the gas station.  
6 It's a permitted --

7 MADAM CHAIR: And that was, I'm sorry, go ahead.

8 MR. GOLDSMITH: Yes, a permitted use in the L-A-C  
9 Zone.

10 MADAM CHAIR: And that was determined by the  
11 County Council who remanded this to us, correct?

12 MR. GOLDSMITH: Correct.

13 MADAM CHAIR: Okay. So my question is and I know  
14 that you said that the section raised, Section 27-528(b)  
15 actually pertains to the infrastructure which we've already  
16 had but they did cite this, the Council cited this in their  
17 order of remand about considering the health and safety  
18 findings. So what were the findings from the Prince  
19 George's County Health Department that were forwarded to us  
20 as this case was heard, or if anyone else can answer that?

21 MR. GOLDSMITH: Well it's my understanding that  
22 the site was referred to the Department of Health and this  
23 is for this SDP, it was referred to the Department of  
24 Health, but we didn't receive any response from --

25 MADAM CHAIR: Okay.

1 MR. GOLDSMITH: -- the Health Department itself.

2 MADAM CHAIR: Okay. That's what I wanted to know.  
3 That's what I wanted to know.

4 MR. GOLDSMITH: Right.

5 MADAM CHAIR: I'm trying to find out because I  
6 know we're not experts, we send information to the Public  
7 Works and Transportation when it concerns the roads or State  
8 Highway Administration when it concerns the highway roads  
9 and they typically send feedback. So we did not hear  
10 anything from the Prince George's County Health Department  
11 on this. What about the Maryland Department of the  
12 Environment? What were their concerns when this case was  
13 heard?

14 MR. GOLDSMITH: That I'm not sure.

15 MADAM CHAIR: Okay.

16 MR. GOLDSMITH: I'd have to turn to Mr. Bossi, who  
17 was --

18 MADAM CHAIR: Mr. Bossi or Mr. Horne, if one of  
19 you can answer that question as well.

20 MR. BOSSI: Madam Chair, Adam Bossi from the Urban  
21 Design Section.

22 MADAM CHAIR: Okay.

23 MR. BOSSI: We did not receive nor did we ask  
24 specifically for comments from MDE --

25 MADAM CHAIR: Yes.

1 MR. BOSSI: -- which is typical for this type of  
2 case.

3 MADAM CHAIR: Okay.

4 MR. BOSSI: Environmental staff within the  
5 Planning Department --

6 MADAM CHAIR: Correct.

7 MR. BOSSI: -- typically look at any of the  
8 applicable issues --

9 MADAM CHAIR: Okay.

10 MR. BOSSI: -- under that environmental heading  
11 under the Zoning Ordinance when we review these.

12 MADAM CHAIR: Thank you.

13 MR. BOSSI: And their comments were provided.

14 MADAM CHAIR: Thank you. And thank you for that,  
15 I appreciate that. I do want to know if we had any  
16 information forwarded to us or any policy regarding, I mean  
17 the County Council put this property in the L-A-C Zone we  
18 know that it's adjacent to residential property, they knew  
19 that at the time the decision was made. They also put gas  
20 stations and the food and beverage in as a permitted use  
21 which is a documented law now, pursuant to Council Ordinance  
22 so we must follow that now.

23 My next question is what what about the County  
24 Board of Health, did they make a decision regarding, did  
25 they send any information regarding this gas stations and

1 whatnot in close proximity to a neighborhood associations or  
2 the L-A-C Zone, neighboring homes or the L-A-C Zone? Have  
3 we heard --

4 MR. BOSSI: Madam Chair, Adam Bossi. We have not  
5 received any of that type of information.

6 MADAM CHAIR: We have no information from the  
7 County Board of Health. May I ask who serves as the County  
8 Board of Health?

9 MR. BOSSI: I'm not certain, Madam Chair.

10 MADAM CHAIR: Well, Mr. Horne, can you respond to  
11 that?

12 UNIDENTIFIED SPEAKER: The County --

13 MADAM CHAIR: Mr. Horne, who sits as the County  
14 Board of Health?

15 MR. HORNE: Yes, the District Council, the County  
16 Council members also serve as the County Board of Health.

17 MADAM CHAIR: So the County Council who remanded  
18 this case to consider for the health considerations raised  
19 here, did that same County Council raise any concerns as  
20 they sat as the County Board of Health?

21 MR. HORNE: I'm not aware --

22 MADAM CHAIR: Okay.

23 MR. HORNE: -- of the (indiscernible).

24 MADAM CHAIR: I was just curious. Okay. And then  
25 somebody mentioned a feasibility study, that a feasibility

1 study should be required. Did the County Council when they  
2 determined that this was a permitted use in the ordinance,  
3 did they determine that a feasibility study would be  
4 required? Can anyone answer that?

5 MR. HORNE: Madam Chairman, I can answer it. It  
6 is not required and again this is part of a Comprehensive  
7 Design Zone process and you know again if the Health  
8 Department did comment at the time of the CDP, everything  
9 was known at that time and there was no issues with  
10 reference to this application. Again, it's Basic Plan, SDP  
11 for Infrastructure, Preliminary Plan, CDP and now the SDP.  
12 You know, all those applications build on each other and  
13 again, you know, not only this property but where the  
14 residents live, what I said, the L-A-C went before the  
15 houses were ever built where they live this property was  
16 zoned L-A-C. There was a big sign out front of the property  
17 saying commercial on 301 when they were building the houses  
18 back there. So this Comprehensive Design Plan was, you  
19 know, always known at this site. And again it's something  
20 that if the Council wants to change the process or have  
21 something different, see a gas station by special exception,  
22 Madam Chair, has additional requirements and one of the  
23 additional requirements what is a 300 foot setback from  
24 residential, but that is not a requirement in an L-A-C Zone  
25 or in this particular case. So and the references that and

1 I'm not positive about this, but the references that have  
2 been made about Montgomery County may only apply to the  
3 special exception. But these issues were brought up at the  
4 previous hearing, Ms. Jackson and Ms. Balamani testified at  
5 those hearings previously, made the same arguments you all  
6 have already ruled on that. They're coming back and asking  
7 for basically a reconsideration. They're asking this  
8 Planning Board to legislate when again as you were saying,  
9 this is not you know something to legislate on. And what  
10 this development is like it's not inconsistent, you just  
11 step out the CAB and walk down to the Villages of Marlboro  
12 that's the L-A-C Zone with a gas station and the shopping  
13 center and residential, all there. That's the development.  
14 That's the development there's plenty other examples of how  
15 this operates and so in this particular case again, they've  
16 met all the requirements, on the remand specifically those  
17 two issues have been discussed and approved by the Planning  
18 Board. And you know I know I'm probably speaking out of  
19 turn, Madam Chairman --

20 MADAM CHAIR: Yes, you are.

21 MR. HORNE: -- I think, you know again and as far  
22 as the distances that you know Applicant's Exhibit A1 is the  
23 you know the plan that's a part of the record.

24 MADAM CHAIR: Can you help us, okay, maybe we can  
25 go to A1, Mr. Flannigan, but while you're doing that, can

1 you answer that question about the approximate distance?

2 MR. HORNE: Yes, it's about and I have Mr. Speach  
3 on from Bohler but it's, to the playground they're referring  
4 to it's like 531 feet.

5 MADAM CHAIR: Okay.

6 UNIDENTIFIED SPEAKER: It's --

7 MADAM CHAIR: Is that, Mr. Caputo, you're going to  
8 respond?

9 MR. SPEACH: It's actually Mr. Speach.

10 MADAM CHAIR: Mr. Speech, I'm sorry.

11 MR. SPEACH: I was just going to say that it's 531  
12 feet to the playground, the closest playground to the  
13 convenience store. It's closer to about, I'd say 650 feet  
14 or so to the pumps themselves and then if you did the tank  
15 or the vents you're probably looking closer to 700 feet.

16 MADAM CHAIR: Okay. Thank you for that answer.  
17 Okay. So that was a key question that was raised and that  
18 helps us, so you're saying with regard to the pumps it's  
19 about 700. Okay. I think the problem that I'm having is  
20 and I can turn to our counsel to address some of these  
21 issues that were raised. I think the very first time we  
22 heard this case we heard it, we heard and weighed every bit  
23 of evidence that comes before us, as we always do. As we  
24 always do. But our hands are somewhat tied when we have  
25 laws and ordinances that dictate the parameters for us and

1 here we have a Council who dictated the parameters. They  
2 put this in the L-A-C Zone. We went information to the  
3 Health Department, I understand the Health Department, I  
4 need some clarification here, I'm told that the Health  
5 Department responded regarding the CDP which is the  
6 application, this is a Comprehensive Design Zone which means  
7 it's a three step process. There's the Basic Plan, there's  
8 the Comprehensive Design Plan, and then there's the Specific  
9 Design Plan.

10 The Health Department responded in the Basic Plan  
11 and also in the Comprehensive Design Plan. Are we told now  
12 that it did or not did respond in terms of the Specific  
13 Design Plan? I thought it did not but did it?

14 MR. BOSSI: Madam Chair, Adam Bossi.

15 MADAM CHAIR: Okay.

16 MR. BOSSI: The Health Department did not offer  
17 comments on the Specific Design Plan.

18 MADAM CHAIR: Okay. That's what I thought before  
19 but they did on this Comprehensive Design Plan, CDP and the  
20 Basic Plan in this three step process. So my concern is  
21 that, I think we did it right, we heard everything and we  
22 weighed everything and we made a decision that fully  
23 comported with the laws that have been established, many of  
24 which have been established by the very County Council and  
25 District Council who remanded it to us. So you know they



1 put in the L-A-C Zone, it is a permitted use along with the  
2 gas station and the convenience store. We are told that  
3 it's roughly 700-some odd feet away from the pumps, that the  
4 playground is roughly 700-some odd feet away from the pumps.  
5 And someone requested a feasibility study, but a feasibility  
6 study is not something that we can require because it's not  
7 required under the laws. It's already deemed permitted.  
8 The Council determined that. So I'm just a little bit stuck  
9 about what we can do, notwithstanding the very stellar  
10 argument that was presented. So I guess I'm going to turn  
11 to, and then there was some issue regarding, some statement  
12 regarding the Montgomery County Setback Ordinance and I  
13 don't know whether it applies to a special exception or not  
14 as you indicated, Mr. Horne, but it doesn't apply to Prince  
15 George's County at all.

16           So what Ms. Kapinos was going to determine is what  
17 setback requirement we have in Prince George's County to  
18 follow for that. Can you point to that, Ms. Kapinos?

19           MS. KAPINOS: Madam Chair?

20           MADAM CHAIR: Yes?

21           MS. KAPINOS: I don't know if this is allowed but  
22 can I jump in to clarify a few points?

23           MADAM CHAIR: I can come back to you, but I would  
24 like for you to answer my question about what does it show  
25 in terms of our setback for Prince George's County.

1 MS. KAPINOS: Absolutely. So I also did find the  
2 code, it's Montgomery County Code Chapter 59 Section --

3 MADAM CHAIR: Okay.

4 MS. KAPINOS: -- 3.5.13.C1. I can put that in the  
5 chat in a second, if you would like.

6 MADAM CHAIR: No, it's okay.

7 MS. KAPINOS: Essentially what --

8 MADAM CHAIR: Because it's not relevant --

9 MS. KAPINOS: -- this --

10 MADAM CHAIR: -- you're using it by way --

11 MS. KAPINOS: Yes.

12 MADAM CHAIR: -- of analogy --

13 MS. KAPINOS: Right.

14 MADAM CHAIR: -- but it's, yes.

15 MS. KAPINOS: What, I'm sorry to interrupt you.

16 MADAM CHAIR: No.

17 MS. KAPINOS: What it shows is that other counties  
18 are taking the situation of gas stations very seriously.

19 MADAM CHAIR: Yes.

20 MS. KAPINOS: And they're using special exemptions  
21 to ensure that gas stations aren't anywhere near residences.  
22 So the point of us bringing it up is to show that other  
23 local communities and governments are taking issue with gas  
24 stations being so close to residences. So even though right  
25 now --

1 MADAM CHAIR: That's great.

2 MS. KAPINOS: -- we don't have a special exemption  
3 within --

4 MADAM CHAIR: Exception. Exception.

5 MS. KAPINOS: -- Prince George's County, we're  
6 using it to show that it's an important issue.

7 MADAM CHAIR: Okay. So I think that's wonderful  
8 and hopefully did you bring that up to the County Council  
9 who would be the body to adopt that? To approve such an  
10 ordinance, a similar ordinance in Prince George's County?

11 MS. KAPINOS: I did not give that argument, but I  
12 believe that it was mentioned in (indiscernible).

13 MADAM CHAIR: Okay. Okay. Because that would be  
14 helpful if they did enact something like that, because right  
15 now we're abiding by the ordinance that they did enact,  
16 which made this a permitted use. And so if they change the  
17 law that might be very good and that might be a good  
18 argument to raise to them you know for something to  
19 consider. So let me turn now to Mr. Goldsmith in terms of  
20 the where we find ourselves in this process, vis-à-vis the  
21 remand.

22 MR. GOLDSMITH: Okay. Madam Chair, Peter  
23 Goldsmith, Senior Counsel. Can I ask Mr. Flannigan to put  
24 the second slide back up from Mr. Bossi's presentation, it  
25 just shows the two questions that the Board must address in

1 this remand. And while he does that, I just want to say  
2 that as an alumnus of the University of Maryland School of  
3 Law, I wish I had been smart enough to find an opportunity  
4 to argue before the Planning Board, that would have been fun  
5 as a student.

6 But you know with that said, I just want to point  
7 out also that the Board remanded this case, the District  
8 Council remanded this case but it never decided the merits  
9 of the appeal. And so it just remanded the case for the  
10 Board to address only these two specific issues and I think,  
11 and I agree with Mr. Horne's characterization of the scope  
12 of this of what the Board's supposed to do on remand, and I  
13 agree with staff's memorandum.

14 Now these are two very specific questions, you  
15 know, for question 1, the applicability of Section 27-528(b)  
16 it addresses Specific Design Plan for Infrastructure, you  
17 know as has already been said, this is not a Specific Design  
18 Plan for Infrastructure it's a Specific Design Plan for food  
19 and beverage store and a gas station. And you know and that  
20 section does mention separations for health, safety and  
21 welfare but within the context of approval of a Site Plan  
22 and it says you know with respect to grading, re-facing,  
23 woodland conservation, drainage, erosion and pollution  
24 discharge and those are health considerations that you know  
25 we should consider with respect to a Site Plan which is

1 where it was placed, you know, where we're talking about the  
2 locations of building, streets, lighting, trails and so  
3 forth.

4           With respect to the second question, the  
5 applicability of Section 27-494 that section is the  
6 purposes, as has already been said, it addresses the purpose  
7 of the L-A-C Zone and that has already been addressed when  
8 the Planning Board rezoned this property to L-A-C. They  
9 determined that this property was compatible with the  
10 proposed land uses and surrounding areas when it made that  
11 decision. And so I think, you know, I'd also like to  
12 address some of the questions that were just raised at this  
13 hearing and also that were in the backup.

14           I think you know the opponents say that the Board  
15 should deny the development because of its proximity to  
16 homes and a playground. Now the development, you know has  
17 already been said, it meets all the setbacks as far as I  
18 understand in regulations for the food and beverage store  
19 and the gas station. I think there is a provision in the  
20 special exception requirements for gas stations that require  
21 gas stations to be at least 300 feet from a school but  
22 that's for a special exception and again, these are  
23 permitted uses.

24           There was a request in the opponent's memorandum  
25 that the Board consult with and obtain from the County

1 Department of Health a written health impact statement that  
2 addresses the adverse health consequences of adding a  
3 convenience store to an already high concentration of fast  
4 food and convenience stores. Yes, the requirement under 27-  
5 527.01 requires the Board refer the plan to the Health  
6 Department to perform a health impact assessment and that's  
7 to refer a plan out. You know it was referred, staff didn't  
8 receive a response but lest the requirement that the plan be  
9 referred, you know, that was satisfied. The code did not  
10 state that the Board can't act if it doesn't receive a  
11 response.

12           And again, the Board doesn't have the authority to  
13 demand a written impact statement from the Department of  
14 Health. And I think as Mr. Bossi mentioned, even if the  
15 Department of Health issued such an impact statement it  
16 would be irrelevant to the considerations of the SDP. You  
17 know, the Board's authority is limited, it can only disprove  
18 a Specific Design Plan if it doesn't comply with Section 27-  
19 528(a) and (b) and as we said Section B doesn't apply  
20 because this is not an SDP for infrastructure and A says it  
21 requires conformance with the CDP, the Landscape Manual,  
22 that the property is adequately served with program public  
23 facilities that there would be adequate drainage, that the  
24 Site Plan be in conformance with a Type 2 TCP and so forth.  
25 And all those findings were made at the previous hearing.

1 MADAM CHAIR: Umm.

2 MR. GOLDSMITH: Umm.

3 MADAM CHAIR: Go ahead.

4 MR. GOLDSMITH: Madam Chair, did you want me to,  
5 did you want to say something?

6 MADAM CHAIR: No, no, I didn't know if you were  
7 finished or not. If you're not finished, please continue.

8 MR. GOLDSMITH: The reason I'm trying to address  
9 all of these issues because of the --

10 MADAM CHAIR: Okay. That's fine. We want to make  
11 sure the record's clear.

12 MR. GOLDSMITH: -- discussion --

13 MADAM CHAIR: Yes.

14 MR. GOLDSMITH: -- right and because of the  
15 discussion before the District Council. Now I think there  
16 was an assertion that all plans and development approvals  
17 need to address whether the proposed development protects  
18 the health, safety and welfare of the residents. You know,  
19 although health, safety and welfare is --

20 MADAM CHAIR: (Indiscernible).

21 MR. GOLDSMITH: -- I just closed my notes, but  
22 although health, safety and welfare is a consideration, I  
23 think it's the constitutional underpinnings of a Zoning  
24 Ordinance that's, the Board must only make the findings that  
25 are required by the Zoning Ordinance. You know I think that

1 for special exceptions there is a specific requirement that  
2 you must make a finding that the use will not adversely  
3 affect the health, safety and welfare of residents or  
4 workers in the area. But these are permitted uses and that  
5 determination has already been, and I think the last  
6 question I think dealt with air pollution and underground  
7 storage tanks. And now you know those are considerations  
8 for other state and federal agencies, you know, this is the  
9 Site Plan and the Board is limited with the required  
10 findings that it's supposed to make. I think that's all I  
11 had to say.

12 MADAM CHAIR: Okay. Thank you, Mr. Goldsmith. So  
13 let me do this first. Let's see if the Board has any  
14 questions of anyone at this time, first. Madam Vice Chair?

15 MADAM VICE CHAIR: No questions at this time,  
16 thank you.

17 MADAM CHAIR: Commissioner Washington?

18 COMMISSIONER WASHINGTON: No questions, thank you,  
19 and thank you Mr. Goldsmith for that added context.

20 MADAM CHAIR: Thank you. Commissioner Doerner?

21 COMMISSIONER DOERNER: Yes, I have some questions  
22 for Mr. Goldsmith. So I think for the student attorney this  
23 is a good example of on the job training. You've raised  
24 good questions, in some ways our hands are tied just because  
25 of the nature of how this works and it involves what you



1 probably don't get into all the nuances at the local level  
2 of whose making what decisions and what part of the process.  
3 We're not a legislative body so we can't actually write the  
4 laws, we have to kind of go with what they've actually told  
5 us. So in some way we're quasi-judicial or even ministerial  
6 at certain points of the process, which changes the burden  
7 of what we have to do and what we can do. And it actually  
8 puts the burden back on the legislative body to change the  
9 law if there's a problem with it. We literally don't have  
10 the authority to change certain things.

11           And from what I've heard from our attorney we have  
12 a very, in the remand it's sort of like when you go through  
13 cross-examination that you can only consider certain things  
14 and there's a very limited scope of that, right. So we have  
15 two things that we can consider. I think in the  
16 neighborhood compatibility argument, the second one it's  
17 actually pretty tight, because presumably in the  
18 consideration of the land use the legislative body  
19 considered everything that was available to them and made  
20 the right choice at that point.

21           I think the kind of remaining issue is number one  
22 in the health issues that you've raised which are somewhat  
23 shaken and they kind of are in law. Like you have this sort  
24 of like fudge space where you have to decide whether or not  
25 the impact is great enough at certain distances and you have

1 to just make choices. The one thing that I'm not sure about  
2 is that I don't think any of the main items that we would  
3 consider are of concerns from like the health of public  
4 safety standpoint. So if you look at like noise pollution,  
5 storm water runoff and mitigation, I think all those from an  
6 environmental perspective are fine and will be covered in  
7 some way. Maybe not the ideal, but they've been addressed.

8           The one thing that I don't think has been  
9 addressed that I'm hoping our counsel can talk about is  
10 pollution. I know that noise pollution and light pollution  
11 have been addressed and those are called out in the 2002  
12 General Plan and are actually items for consideration. I  
13 don't think the Health Department actually did anything on  
14 potential mitigation or potential pollution from like fumes  
15 or potentially tanks in some odd situation leaking and kind  
16 of getting into neighborhood areas. And it wasn't actually  
17 a consideration at the time when they were actually writing  
18 their memo because they weren't thinking that this was going  
19 to be a gas station. So that didn't really come into the  
20 criteria potentially because it wasn't really the use that  
21 was being imagined at the time that they were thinking  
22 about.

23           So as sort of a decision maker, a voting body in  
24 this case, I'm kind of wondering what we're supposed to do  
25 if the Health Department at the county level doesn't address

1 that and if the 2002 General Plan doesn't actually call that  
2 out as a criteria that they're supposed to address. But if  
3 it is a potential health or environmental concern can we  
4 even, should we even consider from like a legal basis is  
5 sort of the first question, and then the second question for  
6 us to think about later on is whether or not the magnitude  
7 is actually justifiable or concerning.

8           So Mr. Goldsmith, if the Health Department or the  
9 County Council in sitting in that particular committee have  
10 not actually addressed anything on the gas or fume kind of  
11 pollutions coming out of there, do we have any kind of  
12 authority to consider that and should we from like a legal  
13 standpoint?

14           MR. GOLDSMITH: Well the Code requires us to only  
15 refer this out to the health agency. It says the Planning  
16 Board can't act unless (indiscernible) and it says nothing  
17 about actually getting a response from the Health  
18 Department. And you know again, this is just an approval of  
19 a Site Plan it's not an approval of a use, we're approving  
20 the Site Plan.

21           But with respect to this decision, you know if you  
22 look, it refers, number one on the remand applies, this  
23 health, safety and welfare consideration applies only to  
24 Section 27-528(b) which doesn't apply here at all. Because  
25 this is not a --

1 MADAM CHAIR: Infrastructure.

2 MR. GOLDSMITH: -- SDP for Infrastructure. So we  
3 shouldn't, there's no reason to make any of these  
4 considerations right now.

5 COMMISSIONER DOERNER: Okay. That's what I, I  
6 think that's an unfortunate answer for the opposition and  
7 their arguments have been raised today, but that's what I  
8 was looking for in terms of helping us figure out where we  
9 have to kind of like walk the line.

10 MADAM CHAIR: Thank you. Okay. And Commissioner  
11 Geraldo, any questions?

12 COMMISSIONER GERALDO: Just one question to  
13 summarize. So in order for us to consider the impact of the  
14 fumes that would really be a District Council decision,  
15 wouldn't it? If they would want to change the law?

16 MR. GOLDSMITH: Well, yes but there are agencies  
17 like the EPA would consider, you know that they regulate  
18 clean air, but you know the Board is limited to the findings  
19 that its required to make to approve a Specific Design Plan  
20 and that does not require them to consider emissions from  
21 the gas station.

22 COMMISSIONER GERALDO: Okay. Thank you.

23 MADAM CHAIR: Okay. So what I'm going to do Ms.  
24 Kapinos asked for a couple of minutes to respond and then  
25 Mr. Horne, you have summation, you close us out. Okay. Ms.

1 Kapinos?

2 MS. KAPINOS: Absolutely. Thank you very much and  
3 thank you all for this very intellectual discussion. I  
4 guess the most important thing that I want to stress is that  
5 when the Planning Board first approved the CDP, these  
6 emissions and these dismisses weren't considered to begin  
7 with. So our ask is to now consider them. I understand  
8 through the legal standpoint that might not necessarily be  
9 possible, but that is primarily what we do ask is that if  
10 there's a way to go back in and reevaluate with the studies  
11 that we presented.

12 The second part is that I would stress although  
13 there might be disagreement that this is within your  
14 authority under 27-102(a)(1) which states the purpose of the  
15 Zoning Ordinance is to protect the health, safety and  
16 welfare. So before we even get to the L-A-C Zone, you have  
17 that initial presumption of the health and safety and our  
18 argument is that the health and safety is not being taken  
19 into account in the situation, which would then override the  
20 L-A-C right.

21 And then lastly, we just want to also stress that  
22 federal governments and other local governments have taken  
23 into account all of these very important requirements of  
24 where a gas station should be located and if possible we  
25 also would urge the Planning Board to consider those before

1 allowing the gas stations to be put in by neighboring  
2 communities.

3 Thank you very much for allowing me to speak again  
4 and for the time.

5 MADAM CHAIR: Okay. Thank you, Ms. Kapinos. Mr.  
6 Horne?

7 MR. HORNE: Thank you, Madam Chairman and the  
8 Board for this opportunity to speak and I do concur with  
9 what all you all were saying earlier about Ms. Kapinos and  
10 the program and it's fantastic, she's done a fantastic job.  
11 And I you know agree with what Mr. Goldsmith was saying  
12 about the limitation that's here.

13 The issues that's raised by the opposition and Ms.  
14 Balamani and Ms. Jackson are legitimate concerns,  
15 generically. They are issues that the District  
16 legislatively which this Board cannot address and these  
17 things you know as far as how the Council would like to see  
18 development occur. In this particular case, however, again,  
19 your findings and conclusions are based on the Zoning  
20 Ordinance and this applicant has met all the criteria from  
21 the original SDP of Infrastructure through the Preliminary  
22 Plan through the CDP and now with the SDP. And again the  
23 reason we have a remand is because these issues the two on  
24 the screen were raised by the opposition's attorneys and the  
25 Board did not respond, they just simply remanded it and say

1 oh well let's see if these two issues apply. And you know  
2 you've evaluated, indicated that they do not apply, that  
3 though the health, safety and welfare has been taken into  
4 consideration you know at several stages of the application  
5 process including this one right here. And you know again  
6 we just ask that the Board you know, what they did before  
7 and adopt its findings and conclusions and address those two  
8 issues as outlined in the resolution next. So again, just  
9 you know, we thank you for the opportunity, we appreciate  
10 the overall issue but in this particular case this again,  
11 this is another fine example of comprehensive, you know,  
12 building and development in the county where you have  
13 connectivity between residential and commercial,  
14 walkability, separation by stream valley and a heavily  
15 wooded area. It's a development that I think is going to be  
16 it's already very nice but it's really going to be nice when  
17 the commercial operates right there.

18           And again, as you see, this is just one phase of  
19 the commercial. There is some additional commercial that's  
20 lined up to go in that area as well because it was always  
21 anticipated to be as such and I think it will, you know,  
22 enhance those residential developments and the community as  
23 a whole. And you'll be able to walk to and enjoy the  
24 community. So I thank you for the opportunity to address  
25 the Planning Board.

1           MADAM CHAIR: Okay. Thank you, Mr. Horne. I'm  
2 going to call for a motion, but before I do this easily  
3 could have come up under discussion, but you know, I think  
4 everybody said it, so we're just being a little bit  
5 redundant right now. But our hands are somewhat tied but I  
6 can remember being a young attorney and a judge contacted me  
7 to tell me, and they took the decision under advisement and  
8 the judge called to tell me what a great job I had done  
9 while the decision was under advisement. I said uh-oh we're  
10 getting ready to go down. And but it was not due to the  
11 oral argument or the lack of a wonderful presentation, it  
12 was due to the constraints that we have. And so I do want  
13 to tell you, say that to Ms. Kapinos that you've done a  
14 wonderful job on behalf of the folks that you represent and  
15 we wish you the best of the best of the luck in the future.  
16 We hope to see you again, we hope you become a member of the  
17 Bar Association here. We hope you are very, very active and  
18 productive in our legal community and we wish you all the  
19 best. It's wonderful that you have an opportunity to do  
20 this while you're a student, it's fabulous and kudos to the  
21 University of Maryland as well.

22           I do feel like our hands are somewhat tied, as  
23 you've heard from our counsel and I will just turn to folks  
24 for a motion.

25           COMMISSIONER WASHINGTON: Madam Chair, based on



1 staff's supplemental evaluation and analysis and I think  
2 importantly the testimony of our counsel, Mr. Goldsmith, I  
3 move that we adopt the additional findings as outlined in  
4 Mr. Bossi's December 31, 2020 memo, which addresses two  
5 specific issues that were subject to the District Council  
6 order of remand and issue an amendment to PGCPB Resolution  
7 Number 2020-131.

8 MADAM CHAIR: We have a motion by Commissioner  
9 Washington.

10 COMMISSIONER DOERNER: Second, Doerner.

11 MADAM CHAIR: Okay. Seconded by Commissioner  
12 Doerner. Under discussion I would just add and also as  
13 supplemented if the motion maker and seconder accept also  
14 having weighed the presentation from the opposition as well,  
15 both their written materials and their testimony today as  
16 well.

17 COMMISSIONER WASHINGTON: Absolutely. And again,  
18 congratulations Ms. Kapinos, great job on your presentation.

19 MADAM CHAIR: And also under, you know, one more  
20 thing, we have determined, our counsel has determined that  
21 those two provisions are not applicable. But even if they  
22 had been applicable, they have been discussed and disposed  
23 of anyway. So I just want that in as a finding anyway.  
24 Okay. We have a motion from Commissioner Washington,  
25 seconded by Commissioner Doerner. Madam Vice Chair?

1 MADAM VICE CHAIR: I vote aye.

2 MADAM CHAIR: Commissioner Washington?

3 COMMISSIONER WASHINGTON: Aye.

4 MADAM CHAIR: Commissioner Doerner?

5 COMMISSIONER DOERNER: I'll vote aye, and just as  
6 part of, my son in the background, okay, part of discussion  
7 I'd just also encourage you that, one second, one second,  
8 I'll fix it, as part of discussion, I will also just  
9 recommend that if you do want to take this further, that  
10 there are always different ways of coming to the same kind  
11 of result that you're trying.

12 MADAM CHAIR: Right.

13 COMMISSIONER DOERNER: You did a great job  
14 advocating on the opposition side. I think what you've  
15 heard is that actually the person or the body to implement  
16 these kinds of changes would more appropriately be the  
17 County Council. And you can definitely continue to take  
18 this up, this doesn't mean that it's over necessarily. But  
19 yeah, good luck in the future and I will vote in favor of  
20 the motion.

21 MADAM CHAIR: Okay. And Commissioner Geraldo?

22 No.

23 COMMISSIONER GERALDO: Yes, I share in the  
24 comments, I share in the comments of the other Commissioners  
25 and especially that I understand the concern, but our hands

1 are tied. And I encourage you to go to the District Council  
2 and perhaps will change the law, and I vote aye.

3 MADAM CHAIR: Thank you. The ayes have it 5-0.  
4 Thank you very much. Okay. And then we will go to Item 9  
5 which is a resolution. Do we need anything in the  
6 resolution other than the finding, do we need any additional  
7 findings in the resolution, having weighed the testimony  
8 presented today as well? I'd like that supplemental finding  
9 in the resolution, having weighed --

10 COMMISSIONER WASHINGTON: Move approval of that  
11 being incorporated, Madam Chair.

12 MADAM CHAIR: Okay.

13 MADAM VICE CHAIR: Second.

14 MADAM CHAIR: We have a motion and a second,  
15 motion by Commissioner Washington, seconded by Madam Vice  
16 Chair. Madam Vice Chair?

17 MADAM VICE CHAIR: I vote aye.

18 MADAM CHAIR: Commissioner Washington?

19 COMMISSIONER WASHINGTON: Aye.

20 MADAM CHAIR: Commissioner Doerner?

21 COMMISSIONER DOERNER: Aye.

22 MADAM CHAIR: Commissioner Geraldo?

23 COMMISSIONER GERALDO: I vote aye.

24 MADAM CHAIR: The ayes have it 5-0. Thank you  
25 very much everyone. Good luck to you, Ms. Kapinos, we look

1 forward to seeing you.

2 **(Whereupon, the proceedings were concluded.)**

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Planning Board in the matter of:

7-ELEVEN AT BRANDYWINE VILLAGE

Specific Design Plan, SDP-1803



By: \_\_\_\_\_

Date: February 23, 2021

Diane Wilson, Transcriber