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Subject: ROW Royal Farms #220 and SE 4816
Attachments: Petition for Appeal and Request for Oral Argument.pdf; Petition for Appeal and Request for Oral Argument SE 4816.pdf

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TWO FARMS, INC., Applicant	*	BEFORE THE
	*	
IN RE: APPLICATION FOR	*	COUNTY COUNCIL FOR
SPECIAL EXCEPTION FOR GAS	*	
STATION IN CONJUNCTION WITH	*	PRINCE GEORGE'S COUNTY
FOOD AND BEVERAGE STORE	*	
	*	SITTING AS THE
SPECIAL EXCEPTION	*	
CASE NO. SE 4816	*	DISTRICT COUNCIL
	*	
	*	CASE NO. _____

* * * * *

PETITION FOR APPEAL AND REQUEST FOR ORAL ARGUMENT

Dharam Singh Goraya, 217 Biddle Road, Accokeek, Maryland 20607, Harshdeep Goraya, 217 Biddle Road, Accokeek, Maryland 20607, Gucharan Boparai, 510 Biddle Road, Accokeek, Maryland 20607, Sharon Gregerson, 403 Biddle Road, Accokeek, Maryland 20607, Kulbir Singh, 301 Biddle Street, Accokeek, Maryland 20607, Navinderdeep Singh, 15814 Livingston Road, Accokeek, Maryland 20607, Pat Hale, 508 Biddle Road, Accokeek, Maryland 20607, Neil Tillman, 15503 Helen Drive, Accokeek, Maryland 20607, Linda Tillman, 15503 Helen Drive, Accokeek, Maryland 20607, Sangee Tharmarajah, 15797 Livingston Road, Accokeek, Maryland 20607 (business address), Sulojana Tharmarajah, 15797 Livingston Road, Accokeek, Maryland 20607 (business address), and Farmington Woods (72 residences) HOA (collectively, "Citizen-Protestants") by their attorney, G. Macy Nelson, appeal the decision of the Zoning Hearing Examiner ("Examiner") to approve SE 4816.

Introduction

Two Farms Inc. d/b/a Royal Farms (“Applicant”) applied for a Special Exception for a food and beverage store in combination with a gas station in the C-S-C zone. The Applicant must satisfy the general criteria for a special exception set forth in Prince George’s County Code Zoning Ordinance (“ZO”), Section 27-317(a), the specific requirements for a Gas Station in ZO Sections 27-358, and the specific requirements for a Food or Beverage Store in ZO Section 27-355. “The burden of proof in any zoning case shall be the applicant’s.” ZO Section 27-142.

The Applicant also applied for an Authorization to Issue Building Permit for a Structure within a Proposed Right-of-Way. The Applicant must prove compliance with ZO Section 23-142.

Zoning Hearing Examiner Joyce B. Nichols (“Examiner”) conducted an evidentiary hearing on December 17, 2019, December 18, 2019, January 21, 2020, January 22, 2020, February 25, 2020, February 27, 2020, and March 5, 2020.¹ The Examiner issued the proposed decision (“Decision”) on January 11, 2021.

The District Council (“Council”) should reverse the Examiner’s Decision because the Examiner erred legally and factually. Citizen-Protestants set forth below the grounds for the appeal with appropriate references to the record and the Examiner’s Decision. Citizens-Protestants also, where appropriate set forth proposed findings of fact and conclusions of law.

¹ The digital record of the proceeding on January 22, 2020 was corrupted and lost. February 25, 2020 was a redo of January 25, 2020.

Facts

Location

The Applicant applied for a Special Exception for a food and beverage store in combination with a gas station on 2.94 acres of land zoned C-S-C in the southwest quadrant of the intersection of Indian Head Highway (MD 210) and Livingston Road (MD 373) (“Subject Property”).

Existing Conditions

The Subject Property currently has several buildings with various dates of construction, known as Parcels 52 through 55. Parcel 52 was built in 1982 as an electrician’s office. Parcel 53 was built circa 1959 and is an Old Line Bank branch that is no longer operating. Parcel 54 was built circa 1959 and is currently used as a realtor’s office. Parcel 55 was built circa 1958 and is currently used as a church. The Applicant proposes to remove all four existing structures. Exhibit 5 at 2.

Nature of Request

The proposed development will include a 4,649 square foot food and beverage store, with 11 indoor seats and 12 outdoor seats, 8 multiproduct gas dispensers, and 69 parking spaces. *Id.* at 1–2. Edward Steere described the proposed Royal Farms as a “hyper convenience store.” January 21, 2020 Transcript at 59. Jeff Bainbridge testified that the proposed Royal Farms store “should be the same as the existing Royal Farms Store at the National Harbor site.” December 18, 2019 Transcript at 36.

Neighborhood

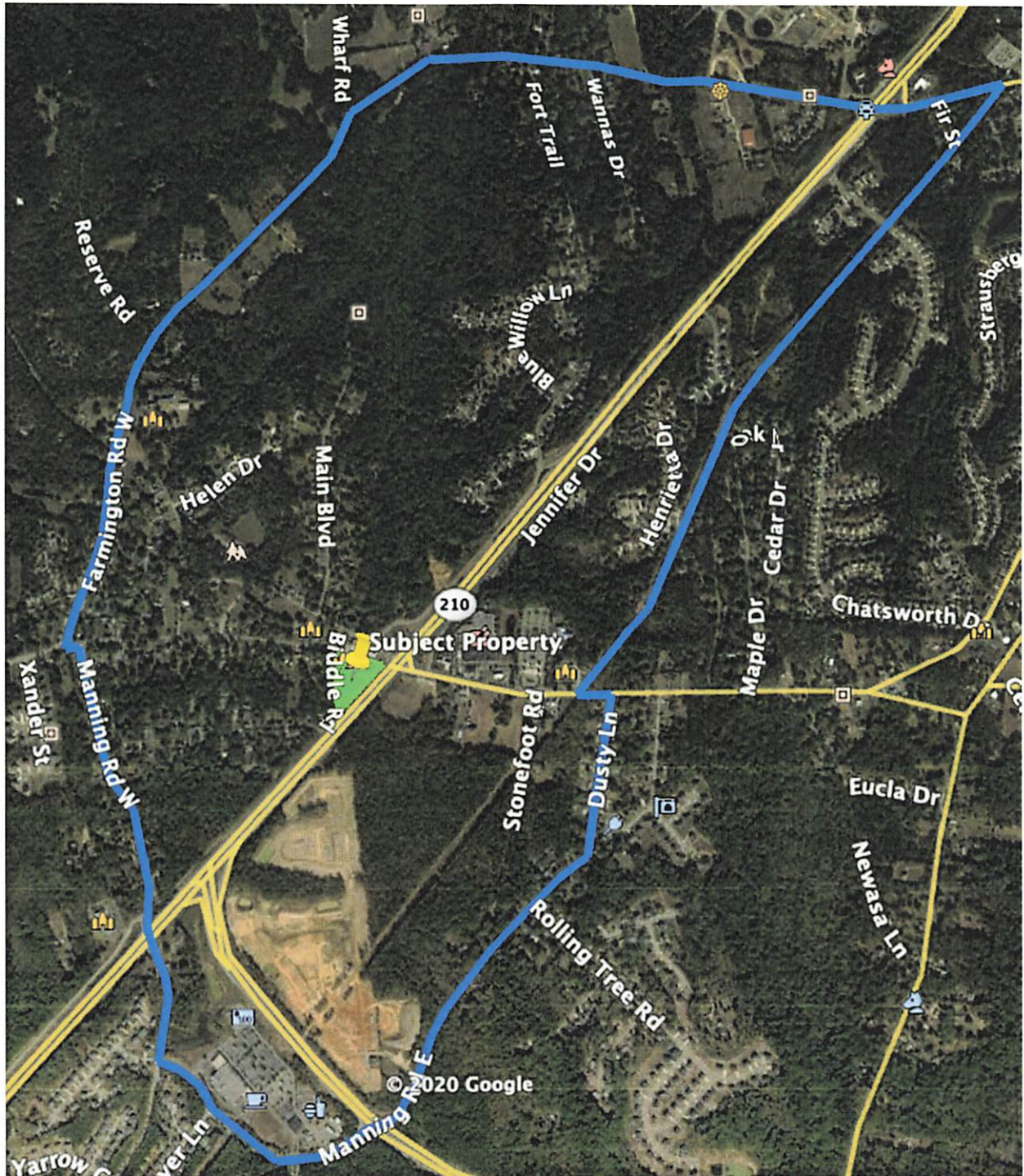
Error 1.

Citizen-Protestants except to the Examiner's definition of the Neighborhood. See Decision 3–4.

The Council should find that the Neighborhood of the Subject Property includes the following boundaries:

- Manning Road West and Farmington Road West on the southwestern, western, and northwestern sides;
- Manning Road East on the south and southeastern sides;
- Dusty Lane on the east side (south of Livingston Road);
- The power line on the east side (north of Livingston Road); and
- Farmington Road East at the northeast corner of the Neighborhood.

The aerial image below depicts the boundaries of the Neighborhood:



See Exhibit 53.

These boundaries respect what the Subregion 5 Master Plan says about this area. The Master Plan designates two primary commercial areas in Accokeek, “Accokeek

Village on Livingston Road east of MD 210 and Manokeek Village on MD 228, also east of MD 210.” *Id.* at 31. It also states, “. . . B&Js BBQ establishment and various commercial businesses located west of MD 210 are recognized as the heart of Accokeek.” *Id.* at 36. The Master Plan also describes Accokeek’s Livingston Road corridor in great detail, explaining “with care and attention, the traditional character of Livingston Road, between the US Post Office and Keller’s Market, to the east, can be maintained and enhanced as additional development occurs.” *Id.* at 36.

The Examiner should have rejected the definition of the neighborhood by Mark Ferguson, the Applicant’s land planner, because his proposed neighborhood was too large. Indeed, he acknowledged his proposed neighborhood was the largest he had ever defined in his career. January 21, 2020 Transcript at 256.

Error 2.

Citizen-Protestants except to the Examiner’s factual findings regarding the “Surrounding Uses” at page 4–5 of the Examiner’s Decision because the Examiner’s proposed findings are inconsistent with the record.

Citizen-Protestants propose the following factual findings:

Factual Findings regarding the existing characteristics of the Neighborhood:

- 1. Accokeek is a rural community with unique historical significance. The Subject Property is located at the gateway to Accokeek.**

The Council should credit Kelly Canavan for her testimony describing Accokeek’s distinct rural character and historical significance. Ms. Canavan resides in Accokeek and is the President of the Accokeek Mattawoman Piscataway Creeks Communities Council

(“AMP Creeks”), a volunteer civic association with several hundred members. February 25, 2020 Transcript at 80–81. Ms. Canavan stated that there are multiple small farms, the Alice Ferguson Foundation, and the Moyaone Reserve, “a special zoning district that was formed to preserve land and rural life” located nearby the Subject Property. *Id.* at 101. She relies on the Subregion 5 Master Plan to describe the detrimental impact this supersized development will have on “what the Subregion 5 Master Plan calls the gateway to Accokeek.” *Id.* at 101–02; Exhibit 105.

The Council should credit the testimony of Holliday Wagner who described the historic nature of Accokeek. She grew up in Accokeek and resides at 1910 Bryan Point Road, Accokeek. December 17, 2019 Transcript at 90. She described Livingston Road (MD 373) as being a heritage road. *Id.* at 94. “[M]y father remembers when it was corduroy [road] . . . that was Livingston in the 30’s when he moved here. So this is . . . a historic route.” *Id.*

The Council should credit Lena Thompson for her testimony describing “[Accokeek’s] small town nature and feel” giving her “a break from fast paced city life.” December 17, 2019 Transcript at 51.

The Council should also credit testimony of other citizens regarding Accokeek’s distinct rural character and historic nature including the testimony of: Karen Sexton (December 17, 2019 Transcript at 102, 106); Madeline Kochen (February 27, 2020 Transcript at 42–44, 46–48); Dharam Goraya (January 22, 2020 Transcript (lost); Exhibit 108); Marilyn Randall (January 22, 2020 Transcript (lost); Exhibit 108); Michael

Leventhal (January 22, 2020 Transcript (lost); Exhibit 113; and Sharon Gregerson (January, 22, 2020, Transcript (lost); February 25, 2020 Transcript at 54–56).

2. The Neighborhood now includes five Food and Beverage Stores, twelve Fast Food Retailers, and three Gas Stations.

	Food & Beverage Stores in the Neighborhood	Address	Census Tract
1	Accokeek Gas & Go	201 Bryan Point Road	8013.02
2	Accokeek Exxon	15797 Livingston Road	8013.10
3	Weiss Grocery Store	15789 Livingston Road	8013.10
4	Giant Food Grocery Store	7025 Berry Road	8013.10
5	Manokeek 7-Eleven	401 Manning Road E.	8013.10

	Fast Food Retailers in the Neighborhood	Address	Census Tract
1	B&Js	15805 Livingston Road	8013.02
2	Beijing Express	15901 MD 210	8013.02
3	Accokeek Exxon	15797 Livingston Road	8013.10
4	Jerry's Subs & Pizza	15797 Livingston Road	8013.10
5	Accokeek Seafood	15790 Livingston Road	8013.10
6	Burger King	15785 Livingston Road	8013.10
7	Dunkin Donuts	15793 Livingston Road	8013.10
8	Eastern Chinese Accokeek	15789 Livingston Road	8013.10
9	Subway	15789 Livingston Road	8013.10
10	Manokeek 7-Eleven	401 Manning Road E.	8013.10
11	Wendy's	7099 Berry Road	8013.10
12	Eastern Chinese Manokeek	7045 Berry Road	8013.10

	Gas Stations in the Neighborhood	Address	Census Tract
1	Accokeek Gas & Go	201 Bryan Point Road	8013.02
2	Accokeek Exxon	15797 Livingston Road	8013.10
3	Manokeek 7-Eleven	401 Manning Road E.	8013.10

The Examiner erred by failing to recognize the Gas Stations and Food and Beverage stores located west of MD 210. For example, the Examiner incorrectly stated:

There are at present no Food or Beverage Stores on the west side of MD 210 in Prince George's County, south of Swan Creek Road.

Decision 22.

First, the subject Application, if approved, would represent the first Food or Beverage Store on the west side of Indian Head Highway in Prince George's County, south of Swan Creek Road. Page 22, Item 2.

Decision 25.

The subject application would represent the first Food or Beverage store on the west side of Indian Head Highway in Prince George's County, south of Swan Creek Road.

Decision 43. In fact, B&J's is located at 15805 Livingston Road and Accokeek Gas & Go is located at 201 Bryan Point Road, both in the northwest quadrant of the intersection of MD 210 and Livingston Road. *See* Exhibits 53, 115.

3. The Biddle Road community directly borders the western border of the Subject Property.

The Biddle Road community is located on the western border of the Subject Property. February 27, 2020 Transcript at 113–115; *see also* Exhibits 53, 75, 88A–H. The Applicant's Land Planner, Mark Ferguson, testified the Biddle Road residential community is within the Neighborhood of the proposed Subject Property. January 21, 2020 Transcript at 258. He testified that "perhaps 70 feet" separate the front of some houses from the Subject Property's western border. *Id.* at 262–63. For example, Harshdeep Singh Goraya resides with his family at 217 Biddle Road, Accokeek, close to the Subject Property. February 25, 2020 Transcript at 151.

The Council should also credit the citizens' testimony about the unique nature of the Biddle Road community. Ms. Gregerson resides at 403 Biddle Road. She has lived in Accokeek over 40 years and in her Biddle Road home for 26 years, located less than 400

yards from the Subject Property. February 25, 2020 Transcript at 53. She explained: “Biddle Road is a road by definition as it exists with a 25 miles per hour [speed limit],” and that, “Biddle Road is not an alley by definition as it exists” or as the Applicant describes. *Id.* at 49–50. Ms. Gregerson described Biddle Road as a “rural out of the way” family-friendly community. She described parents pushing infant strollers and children biking and skateboarding along Biddle Road. *Id.* at 54. Kelly Canavan described Biddle Road as, “[A] small adorable neighborhood where people know each other and like to chit-chat, the houses are all unique, and kids can kick a ball down the road without fear they’ll get run over.” February 25, 2020 Transcript at 97.

- 4. The only egress from the Farmington Woods community to MD 210 requires the residents of that community to drive south on Frank’s Way (formerly Hickory Knoll Road), then west on Bryan Point Road, then south on Biddle Road, and then east on Livingston Road to MD 210. This path requires the residents to drive on the same short stretch of Livingston Road as the cars travelling to and from the proposed Royal Farms.**

The Farmington Woods community, comprised of approximately 72 homes, is located less than 600 yards to the north of the Subject Property. December 17, 2019 Transcript at 48. Exhibits 75 and 53 depict the access to the Farmington Woods community. Farmington Woods residents have two access entries, an access road directly from MD 210 southbound or Frank’s Way (formerly Hickory Knoll Road). December 17, 2019 Transcript at 48–49, 58. However, the community only has one exit along Frank’s Way (formerly Hickory Knoll Road). *Id.*



See Exhibits 53, 75.

The Council should find Lena Thompson’s testimony persuasive and accept it regarding the extensive traffic backups due to accidents at the MD 210 and MD 373 intersection. Ms. Thompson testified, “there are times when I’m not even able to come out of my community because of the traffic that has backed up due to an accident up at the light at [MD] 210.” *Id.* The Council should also credit the testimony of other citizens. Karen Sexton explained drivers often utilize Frank’s Way as an alternative route due to traffic build up from accidents on MD 210. December 17, 2019 Transcript at 99. Al Pegram, president of the Farmington Woods Homeowners Association (“HOA”), testified to the HOA’s unanimous opposition to the Royal Farms, citing that it would

“adversely impact to the ingress and egress of the residents of the Farmington Woods community, increase in the number of accidents on MD 210 and an increase in curious nefarious passerby traffic in our community.” December 17, 2019 Transcript at 82; *see also* Exhibit 129.

5. The aerial photograph that includes the Neighborhood depicts approximately 500 houses.

There are approximately 500 residential houses in the Neighborhood. Many of the houses are in the Biddle Road and Farmington Woods communities. *See* Exhibit 53.

6. Indian Head Highway (MD 210) and Livingston Road (MD 373) is a major intersection for the area which is already congested with traffic.

Livingston Road (MD 373) is a major east/west road for the area. December 17, 2019 Transcript at 49. It intersects with Indian Head Highway (MD 210), a six lane divided arterial highway that connects southern Maryland to the Washington D.C. metro area. *Id.* at 108. The intersection is at the gateway to Accokeek. February 25, 2020 Transcript at 102. The 2013 Subregion 5 Master Plan stated the intersection of MD 210 and MD 373 is at a failing LOS for both the AM and PM peaks. Subregion 5 Master Plan at 98; Exhibits 74, 105. The Maryland State Highway Administration (“SHA”) reports 31 crashes at the MD 210 and MD 373 intersection. Exhibit 72.

The Accokeek Volunteer Fire Department is located at 16111 Livingston Road, 0.8 miles to the west of the Subject Property and responds to approximately eight to ten calls daily through the MD 210/MD 373 intersection. February 25, 2020 Transcript at 38–39. *See also* Exhibit 119.

The Council should credit the citizen testimony describing the intersection. Lena Thompson testified, “This intersection is notorious for its countless accidents and backups.” December 17, 2019 Transcript at 49. Holliday Wagner testified, “So this is really not a safe intersection at all Yes, [it’s] a bit deadly.” *Id.* at 93. Ms. Wagner also described her experience turning out of B&Js onto Livingston Road in the current conditions, “right, you go right out there you can take a left or a right and it’s all a little bit tricky and you end up in the middle of the traffic waiting for the lights.” *Id.* at 98. Sharon Gregerson testified that she travels through the intersection several times a day. She described the frequency of accidents at the intersection and testified that she lost loved ones in two separate, fatal accidents at and nearby the intersection. February 25, 2020 Transcript at 55; Exhibit 120; *accord* December 17, 2019 Transcript at 43. Katrina Knights testified, “on any given day the 2[10] and Livingston Road intersection will have an extensive backup of traffic, especially during the morning and evening rush hours.” *Id.* at 30. She also recalled a recent accident involving a pedestrian at the intersection. “I live there, so I know the danger that 210 brings to a lot of pedestrians that cross, you know, back and forth from my side over to the [Royal Farms] gas station side” *Id.* at 39. Linda Tillman testified to the “very scary” traffic issue and cautioned “[T]here are school buses that go in there. There’s long vehicles that go in there and it doesn’t take a lot . . . to back traffic up and people that are not familiar with that intersection are not going to know to look.” February 25, 2020, Transcript at 150.

Eight Census tracts

Exhibit 132 depicts eight Prince George’s County Census tracts in the vicinity of the Subject Property.

Factual Findings regarding Gas Stations in the eight Prince George’s County Census tracts

There are ten Gas Stations in the eight Prince George’s County Census tracts:

	Gas Stations in the Eight Census Tracts	Address	Census Tract
1	Accokeek Gas & Go	201 Bryan Point Road	8013.02
2	Accokeek Exxon	15797 Livingston Road	8013.10
3	Manokeek 7-Eleven	401 Manning Road E.	8013.10
4	Keller’s Market	15624 Livingston Road	8013.10
5	7-Eleven	12800 Old Fort Road	8013.12
6	Friendly Market	11500 Old Fort Road	8013.12
7	Mobil	11800 Livingston Road	8013.07
8	Exxon	10815 Indian Head Highway	8013.07
9	Shell	11001 Fort Washington Road	8013.07
10	Shell	10901 Livingston Road	8013.07

MD 210 Corridor between Wilson Bridge Drive and Lower Wharf Road

The table below, see Exhibit 115 at 12–14, identifies the Gas Stations, Convenience Stores, Restaurants, Fast Food Stores, Liquor Stores, and Tobacco Stores between the northern boundary of the MD 210 Corridor at Wilson Bridge Drive and the corridor’s southern boundary at Lower Wharf Road.

LEGEND:										
Gas Station/ Convenience Store	Convenience Store	Restaurant	Fast Food	Liquor Store	Tobacco Store					
Intersection	Retail Location	Gasoline	Sweet & Salty Snacks	Tobacco	Fast Food	Fried Chicken	Sodas/ Dispensers	Coffee	Liquor	
Wilson Bridge Drive										
1	Livingston Road/Kerby Hill Road	Exxon 8005 Indian Head Highway	X	X	X		X	X		
2	Palmer Road/Livingston Road	Shell 9100 Livingston Road	X	X	X		X			
3		7-Eleven	X	X	X	X	X	X	X	X

		9413 Livingston Road								
4		Domino's Pizza 9509 Livingston Road		X		X	X			
5		Sunnybrook Tavern 9001 Livingston Road		X			X	X		X
6	Old Fort Road North	McDonald's 9596 Livingston Road		X		X	X	X	X	
7		KFC/Taco Bell 9598 Livingston Road		X		X	X	X	X	
8	Fort Washington Road	Exxon 10815 MD-210	X	X	X			X	X	
9		Shell 10901 Fort Washington Rd	X	X	X			X		
10		Shell 1001 Livingston Road	X	X	X	X	X	X	X	
11		Papa John's Pizza 10747 MD-210		X		X	X	X		
12		Top China 10733 MD-210		X		X	X	X		
13		Steak in a Sack 10745 MD-210		X		X	X	X	X	
14		Shell 11001 Livingston Road	X	X	X	X	X	X	X	
15	Livingston Road/Swan Creek Road	Mobil 11800 Livingston Road	X	X	X	X	X	X	X	
16		Wendy's 11815 Livingston Road		X		X	X	X	X	
17		M.A.S.H. 11911 Livingston Road		X		X	X	X	X	
18		McDonalds 996 Swan Creek Road		X		X	X	X	X	
19		America's Best Wings 972 Swan Creek Road		X		X	X	X		
20		Silvestre Chicken 954 Swan Creek Road		X			X	X		
21		S&S Seafood 944 Swan Creek Road		X		X	X	X		
22		Hong Kong 988 Fort Washington Rd		X		X	X	X		
23		Dollar Tree 912 Swan Creek Road		X				X		
24		Ledo Pizza 920 Swan Creek Road		X		X	X	X		
25		Nuwave Liquor 964 Swan Creek Road		X	X			X		X
26		Tobacco Xpress 984 Swan Creek Road		X	X			X		
27		F&W Convenience Store 974 Swan Creek Road		X	X			X	X	
28	Old Fort Road South	7-Eleven 12800 Old Fort Road	X	X	X	X	X	X	X	
29		Cigars 210 12574 Old Fort Road		X	X			X		
30		Asian Star Restaurant 12578 Old Fort Road		X		X	X	X		
31		Dollar General 12788 Old Fort Road		X				X		
32		Brothers Liquors 12788 Old Fort Road		X	X			X		X
33		Urban Market 9502 Allentown Road		X	X			X	X	
34		Fort Washington Liquor 15785 Livingston Road		X	X			X		X
35		Silesia Market 10909 Livingston Road		X	X			X		X
36		Friendly Market 11500 Old Fort Road	X	X	X	X	X	X	X	X
37		Falcon Fuel 9500 Allentown Road	X	X	X			X		
	Farmington Road									
38	MD-373/Livingston Road	Exxon 15797 Livingston Road	X	X	X	X	X	X	X	
39		Jerry's Subs & Pizza 15797 Livingston Road		X		X	X	X		
40		Burger King 15785 Livingston Road		X		X	X	X	X	
41		Dunkin Donuts 15793 Livingston Road		X		X	X	X	X	

42		Accokeek Liquors 15789 Livingston Road		X	X			X		X
43		Subway 15789 Livingston Road		X		X		X	X	
44		Eastern 15789 Livingston Road		X		X	X	X		
45		Accokeek Gas & Go 201 Bryan Point Road	X	X	X			X		
46		B&Js 15805 Livingston Road		X		X	X	X		
47		Keller's Market 15624 Livingston Road	X	X	X			X		X
48		Accokeek Seafood 15790 Livingston Road		X		X	X	X		X
49	MD-228	7-Eleven 401 Manning Road E	X	X	X	X	X	X	X	
50		Wendy's 7099 Berry Road		X		X	X	X	X	
51		Starbucks 7045 MD-228		X				X	X	
52		Manokeek Wine & Spirits 7091 Berry Road		X	X			X		X
53		Tobacco Republic 7901 Berry Road		X	X			X		
54		Eastern 7045 Berry Road		X		X	X	X		
55		Shell 10195 Berry Road	X	X	X	X	X	X	X	
56		Wawa 11505 Berry Road	X	X	X	X	X	X	X	
57		7Eleven 11575 Berry Road	X	X	X	X	X	X	X	
58		Shell 2007 Smallwood Drive	X	X	X	X	X	X	X	
59		BJs 1001 St Nicholas Drive	X							
60	Matthew's Road	Goodies 8030 Matthews Road		X		X	X	X		
61		True Convenience 8030 Matthews Road		X	X	X		X		
62	Marshall Hall Road	Exxon Dash In 7100 Indian Head Hwy	X	X	X	X	X	X	X	
63		KFC 302 Canberra Way		X		X	X	X		
64		McDonald's 3050 Marshall Hall Ln		X		X	X	X	X	
65		Burger King 3165 Marshall Hall Rd		X		X	X	X	X	
66		US Fuel 3155 Marshall Hall Rd	X	X	X			X		
67		Subway 3055 Marshall Hall Rd		X		X		X	X	
68		Golden Star 3109 Marshall Hall Rd		X		X	X	X		
69		Dollar General 3079 Marshall Hall Rd		X				X		
70		Country Place Liquor 3140 Marshall Hall Rd		X	X			X		X
71		Tobacco 3069 Marshall Hall Rd		X	X			X		X
72		High Noon 3063 Marshall Hall Rd					X	X		
73		Shell Dash In 7100 Indian Head Hwy	X	X	X	X	X	X	X	
74		Sunoco 6945 Indian Head Hwy	X	X	X			X		
75		Portside Liquors 6967 Indian Head Hwy		X	X			X		X
76		Big B Liquors 7099 Indian Head Hwy		X	X			X		X
77		Domino's 7091 Indian Head Hwy		X		X	X	X		
78		Doc's Seafood 7105 Indian Head Hwy				X	X	X		X
79	Lower Wharf Road	Dash In 5105 MD 210	X	X	X	X	X	X	X	
LEGEND:										

Gas Station/ Convenience Store	Convenience Store	Restaurant	Fast Food	Liquor Store	Tobacco Store
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Stores 6 through 59 are in the eight Prince George’s County Census tracts depicted in Exhibit 132. Stores 1 through 5 are in Prince George’s County but not within the eight Census tracts depicted in Exhibit 132. Stores 59 through 79 are in Charles County.

The Council credits the testimony of citizens, including Sandra Miles where she stated “[A]ccookeek 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, tobacco shops.” December 17, 2019 Transcript at 42.

Further Factual Findings and Conclusions of Law

Further Factual Findings and Conclusions of Law regarding ZO Section 27-358(d)

Error 3.

The Examiner erred when she determined that the Applicant satisfied ZO Section 27-358(d). *See* Decision 7, 8, 10, and 35–39. ZO Section 27-358(d) provides:

- 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.

ZO Section 27-142 imposes the burden on the Applicant to prove compliance with ZO Section 27-358(d).

“[T]he term ‘necessary’ under the Zoning Ordinance means necessary rather than reasonably convenient or useful.” *Brandywine Enterprises, Inc. v. County Council for Prince George's County*, 117 Md. App. 525, 540 (1997). The Council should find that the

Applicant did not satisfy that burden. The Applicant failed to prove both that the proposed gas station “[i]s necessary to the public in the surrounding area” and that the proposed gas station “[w]ill not . . . upset the balance of land use [] in the area for other commercial uses.”

The Council should find that the proposed gas station is not necessary to the public in the Surrounding Area whether the Surrounding Area is defined as the Neighborhood or the eight Prince George’s County Census tracts. In either scenario, the existing supply of gas is adequate for the existing demand for gas.

The Council should find that one can calculate the existing supply of gasoline with the following equation:

$$[\# \text{ Gas Stations in Surrounding Area}] \times [\text{Average Gallons per Year per Gas Station}] = \text{Supply in Surrounding Area}$$

The Council should find that one can calculate the existing demand with the following equations:

$$\frac{\text{Average Spent on Gasoline per Household}}{\text{Average Price per Gallon (\$)}} = \text{Gallons per Year}$$

$$[\text{Gallons per Year}] \times [\# \text{ Households in Surrounding Area}] = \text{Demand in Surrounding Area}$$

These equations include the following variables:

1. the number of gas stations in the Surrounding Area;
2. the average volume of gas sold by the gas stations in the Surrounding Area;
3. the number of households in the surrounding area;
4. the average spent on gasoline annually by the households in the Surrounding Area; and
5. the average price per gallon of gasoline in the Surrounding Area.

The Council should find that the most appropriate inputs for these variables are as follows:

1. the number of gas stations in the Surrounding Area:

Scenario A (Surrounding Area defined as the Neighborhood): 3²
Scenario B (Surrounding Area defined as the eight census tracts): 10³

2. the average volume of gas sold by the gas stations in the Surrounding Area:

2.8 million gallons per year⁴

3. the number of households in the Surrounding Area:

Scenario A (Surrounding Area defined as the Neighborhood): 500⁵
Scenario B (Surrounding Area defined as the eight census tracts): 11,888⁶

4. the average spent on gasoline annually by the households in the Surrounding Area:

\$1,993⁷

5. and the average price per gallon of gasoline in the Surrounding Area:

\$2.59.⁸

² Exhibit 131 identifies the three gas stations in the Neighborhood.

³ Exhibit 151 identifies the ten gas stations in the eight Prince George's County Census tracts.

⁴ March 5, 2020 Transcript at 320 identifies the gasoline volume sold by a gas station within the eight Prince George's County Census tracts

⁵ Exhibit 53 identifies approximately 500 houses in the Neighborhood.

⁶ Exhibit 151 at 2 identifies 11,888 households in the eight Prince George's County Census tracts.

⁷ Exhibit 127 is a federally certified document that identifies the average annual expenditure on gasoline in the South Atlantic region, the most granular, verified data for the eight Prince George's County Census tracts.

⁸ Exhibit 151 at 3 identifies gasoline sells for an average of \$2.59

Surrounding Area defined as the Neighborhood

The Council should calculate the existing supply for Scenario A (Surrounding Area defined as the Neighborhood) as follows:

3 Gas Stations in Surrounding Area x 2.1 million gallons per year per station = 6.3 million gallons per year

Or

3 Gas Stations in Surrounding Area x 2.8 million gallons per year per station = 8.4 million gallons per year

Or

2 Gas Stations in Surrounding Area x 2.1 million gallons per year per station = 4.2 million gallons per year

Or

2 Gas Stations in Surrounding Area x 2.8 million gallons per year per station = 5.6 million gallons per year

The calculations with three Gas Stations includes Accokeek Gas & Go, Accokeek Exxon, and Manokeek 7-Eleven. The calculations with two Gas Stations excludes Accokeek Gas & Go, which has fewer MPDs and may not average 2.1 million gallons per year.

The Council should calculate the existing demand for Scenario A (Surrounding Area defined as the Neighborhood) as follows:

$$\frac{\$1,993}{\$2.59} = 769 \text{ gallons per year}$$

$$769 \text{ gallons per year} \times 500 \text{ households} = 0.39 \text{ million gallons per year}$$

If the Surrounding Area is defined as the Neighborhood, the Examiner finds that the supply of gas in the Neighborhood exceeds the demand for gas in the Neighborhood.

Surrounding Area defined as the Eight Prince George’s County Census Tracts

The Council should calculate the existing supply for Scenario B (Surrounding Area defined as the eight Prince George’s County census tracts) as follows:

10 Gas Stations in Surrounding Area x 2.1 million gallons per year per station = 21 million gallons per year

Or

10 Gas Stations in Surrounding Area x 2.8 million gallons per year per station = 28 million gallons per year

Or

8 Gas Stations in Surrounding Area x 2.1 million gallons per year per station = 16.8 million gallons per year

Or

8 Gas Stations in Surrounding Area x 2.8 million gallons per year per station = 22.4 million gallons per year

The calculations with ten gas stations include all gas stations in the eight Prince George’s County census tracts. The calculations with eight gas stations include seven efficient gas stations and averages Accokeek Gas & Go, Keller’s Market and Friendly Market with fewer MPDs together as one efficient gas station. *See Exhibit 151.*

The Council should calculate the existing demand for Scenario B (Surrounding Area defined as the eight census tracts) as follows:

$$\frac{\$1,993}{\$2.59} = 769 \text{ gallons per year}$$

$$769 \text{ gallons per year} \times 11,888 \text{ households} = 9.1 \text{ million gallons per year}$$

If the Surrounding Area is defined as the eight census tracts, the Council should find that the supply of gas in the eight census tracts exceeds the demand for gas in the eight census tracts.

Diesel Fuel

The table below identifies six gas stations with diesel fuel in the eight Prince George’s County Census tracts:

Gas Stations with Diesel in the Eight Census Tracts	Address	Census Tract
Accokeek Exxon	15797 Livingston Road	8013.10
Keller’s Market	15624 Livingston Road	8013.10
7Eleven	12800 Old Fort Road	8013.12
Friendly Market	11500 Old Fort Road	8013.12
Exxon	10815 Indian Head Highway	8013.07
Shell	11001 Livingston Road	8013.07

Two of the gas stations with diesel are located in close proximity to the Subject Property: Accokeek Exxon is located 500 feet from the Subject Property and Keller’s Market is located 0.93 miles from the Subject Property. Citizens testified Accokeek and the surrounding area has sufficient diesel fuel. February 25, 2020 Transcript at 91; February 27, 2020 Transcript at 166–69; *see also* Exhibit 139.

For these reasons, the Council should find an adequate supply of diesel fuel in the Neighborhood and the Surrounding Area.

Edward Steere’s lack of credibility

The Council should not be persuaded by Edward Steere’s testimony that there was a need for a gas station because his opinions had significant shortcomings, including the following:

1. Mr. Steere incorrectly identified the gas stations in the eight census tracts.

Mr. Steere intended to identify each gas station in the market area. February 25, 2020 Transcript at 11–12. He acknowledged that it would be relevant if he failed to identify a gas station in his market area because such a gas station would represent “more supply.” January 21, 2020 Transcript at 141. Mr. Steere ultimately opined that the eight Prince George’s County census tracts constitute the relevant gas station market area. Exhibit 84.

The table below identifies the gas stations in the eight Prince George’s County census tracts, the gas stations Mr. Steere identified in his reports, the gas stations Mr. Steere’s reports omitted, and his testimony on March 5, 2020 that each of the gas stations was in the market area.

Relevant Gas Stations in eight Prince George’s County Census tracts	In Edward Steere’s first report, Exhibit 10, p. 25?	In Edward Steere’s second report, Exhibit 84, p. 5?	Mr. Steere’s testimony, March 5, 2020
Accokeek Gas & Go 201 Bryan Point Road	YES	YES	In market area. p. 279
Accokeek Exxon 15797 Livingston Road	YES	YES	In market area. p. 279
Manokeek 7-Eleven 401 Manning Road E.	YES	YES	In market area. p. 279
Keller’s Market 15624 Livingston Road	YES	YES	In market area. p. 279
7-Eleven 12800 Old Fort Road	YES	YES	In market area. p. 279
Friendly Market 11500 Old Fort Road	OMITTED	OMITTED	In market area. p. 279
Mobil 11800 Livingston Road	YES	YES	In market area. p. 279
Exxon 10815 Indian Head Highway	YES	YES, but identified as “Shell”	In market area. p. 279
Shell 11001 Fort Washington Road	OMITTED	OMITTED	In market area. p. 279
Shell 10901 Livingston Road	OMITTED	OMITTED	In market area. p. 279.

Mr. Steere did not explain how he initially omitted the Shell at 10901 Livingston Road when it is immediately adjacent to the Exxon at 10815 Indian Head Highway. March 5, 2020 Transcript at 288–89; *see also* Exhibit 154 (photograph of adjacent gas stations).

Mr. Steere identified additional mistakes in his testimony on March 5, 2020. For example, Exhibit 84 at 5 stated that the Shell at 10195 Berry Road was in the market area. Mr. Steere testified, “That’s a mistake.” March 5, 2020 Transcript at 281. 10195 Berry Road is not in the market area. Mr. Steere determined that he made a mistake when he counted the fuel dispensers at the Exxon at 15797 Livingston Road. March 5, 2020 Transcript at 284. He acknowledged an error with respect to the MPDs at the Gas & Go at 201 Bryan Point Road. March 5, 2020 Transcript at 285. He testified, “we had a miscount on a number of MPDs” at the 7-Eleven at 12800 Old Fort Road. March 5, 2020 Transcript at 286.

2. Mr. Steere incorrectly used the average spent on natural “gas” used to heat the home to calculate the annual demand for gasoline in the eight census tracts.

Mr. Steere cited the US Census American Community Survey (“ACS”) as his source for the average amount households in the Trade Area spend on gasoline annually. He reported the ACS value as \$3,342 in Exhibit 10 and \$3,526 in Exhibit 84. The ACS collects data on gas used to heat the home, not gasoline used in automobiles. Mr. Steere failed to verify the accuracy of his reported ACS source. January 21, 2020 Transcript at 128.

Mr. Steere acknowledged he made a mistake using ACS to report gasoline for automobiles. February 25, 2020 Transcript at 19. Mr. Steere later incorrectly relied on the

US Bureau of Labor Statistics (“BLS”) Consumer Expenditure (“CE”) Survey as his source for the average amount spent by households in the Trade Area on gasoline annually. Mr. Steere could not verify the exact geographical area surveyed in his report, but still testified it applies to the eight Census tracts. *Id.* at 32. In Exhibit 91 he initially reported the value as \$3,428.94 using US BLS CE 2016-2017. *Id.* at 58. In Exhibit 151 he later reported the value as \$3,429 using US BLS CE (no year reported). March 5, 2020 Transcript at 251.

The most accurate statement of the expenditure on gasoline by a household in the eight census tracts appears in Exhibit 127. Exhibit 127, a federally sealed and certified document from the U.S. Bureau of Labor Statistics, reports that the average annual expenditure on gasoline is \$1,993 for the South Atlantic region. The South Atlantic region is the most granular data available for the Prince George’s County eight Census tracts. US BLS certifies the US BLS CE 2016–2017 average amount spent on gasoline annually by households in the South Atlantic region is \$1,993. *See* Exhibit 127.

The table below illustrates scenarios using different data sources to calculate the residential demand in the eight Prince George’s County Census tracts using the formula defined above.

Scenario	Exhibit	Average Spent on Gasoline per Household Annually	Verifiable Data Source?	Average Selling Price	Gallons per Year	Number of Households	Residential Demand
1	84	\$3,526	NO	\$2.59	1361	11,888	16.2 mgal/year
2	91	\$3,428	NO	None Provided, used \$2.59	1324	11,888	15.7 mgal/year
3	151	\$3,429	NO	\$2.59	1323	11,888	15.7 mgal/year

4	127	\$1,993	YES	\$2.59	769	11,888	9.1 mgal/year
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Mr. Steere overestimated residential demand for the eight census tracts by using unverifiable source data. The most accurate estimate of residential demand for gasoline in the eight Prince George’s County census tracts using verified federal data is \$1,993 per year. The residential demand for the eight census tracts is 9.1 mgal/year where one uses an annual expenditure of \$1,993. This value is significantly less than 16.2 mgal/year reported in Exhibit 84 and 15.7 mgal/year reported in Exhibit 151.

3. Mr. Steere incorrectly underestimated the supply of gasoline in the eight census tracts by using an incorrect average of 2.1 million gallons supplied per gas station.

Mr. Steere incorrectly testified that an efficient gas station pumps a high-average of 2.1 mgal/year using nationwide data from the National Association of Convenience Stores (NACS). March 5, 2020 Transcript at 254–55. Mr. Steere testified he was unable to acquire actual volume sales from gas stations in the eight Census tracts. *Id.* at 256. The only evidence regarding the volume of gas sold by a gas station in the eight Prince George’s County Census tracts was the testimony of Liaqat Masood. Mr. Masood operates a 7-Eleven gas station at 12800 Old Fort Road located within the eight Prince George’s County Census tracts. March 5, 2020 Transcript at 319. He testified that his gas station sells “[a]bout 2.8 million” gallons per year. *Id.* at 320.

Mr. Steere calculated the supply in the eight Prince George’s County Census tracts using the following calculation:

$$[2.1 \text{ Million Gallons per Gas Station}] \times [\# \text{ Gas Stations in Trade Area}] = \text{Trade Area Supply}$$

The table below identifies the supply in the eight Prince George’s County Census tracts using the 2.1 mgal/year per gas station average reported by Mr. Steere. Exhibit 151. It also identifies the supply using 2.8 mgal/year per gas station average, reflective of actual volume pumped by gas stations within the eight Prince George’s County Census tracts. Mr. Steere underestimates the current supply in the eight Prince George’s County Census tracts by 5.6 mgal/year by using a lower average of gasoline pumped per gas station annually.

Exhibit	Trade Area Supply using 2.1 mgal/year per gas station	Supply Exceeds Residential Demand?	Trade Area Supply using 2.8 mgal/year per gas station	Supply Exceeds Residential Demand?	By how much does Mr. Steere underestimate supply?
151	16.8 mgal/year	YES	22.4 mgal/year	YES	5.6 mgal/year

4. Mr. Steere incorrectly inflated the total demand in the eight Prince George’s County Census tracts by including commercial, pass-through and workforce demand.

ZO Section 27-358(d) requires the Applicant to prove that the gas station “[i]s necessary to the public.” For purposes of a special exception case, the “public” means the residents of the Surrounding Area. The “public” does not include commercial, pass-through and workforce demand. The traditional special exception analysis focuses on the effects on the neighborhood. *See Schultz v. Pritts*, 291 Md. 1 (1981).

Mr. Steere incorrectly included commercial, pass-through, and workforce demand in calculating the total demand in the eight Prince George’s County Census tracts. The addition of commercial, pass-through and workforce demand inflates the total demand beyond the residential demand of the Surrounding Area. Mr. Steere states the values

reported for commercial, pass-through and workforce data cannot be verified using empirical data. *See* Exhibit 84.

In any event, the supply exceeds both the residential demand and the sum of the demand for gas by occupants of residential houses, commercial businesses, pass-through traffic, and the workforce:

Exhibit	Residential	Commercial	Pass-Through	Workforce	Total Demand
84	16.17 mgal/year	0.59 mgal/year	0.99 mgal/year	3.74 mgal/year	21.49 mgal/year
151	15.74 mgal/year	0.59 mgal/year	0.99 mgal/year	3.74 mgal/year	21.06 mgal/year

The current supply in the eight Prince George’s County Census tracts is 22.4 million gallons. The current supply exceeds both the 15.74 million gallons residential demand and 21.06 million gallons total demand in the Surrounding Area. *See* Exhibit 151.

For all of these reasons, the Council should find that the Applicant did not meet its burden of proving that the proposed gas station is necessary to the public in the Surrounding Area because the existing demand for gas in the Surrounding Area does not exceed the existing supply of gas in the Surrounding Area.

Further Factual Findings and Conclusions of Law regarding ZO Section 27-355

Error 4.

The Examiner erred when she determined that the Applicant satisfied ZO Section 27-355(a). *See* Decision 8–9, 39–43. ZO Section 27-355(a) addresses Food or Beverage stores. It provides, in part:

- (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;

Neighborhood:

The Neighborhood of the Subject Property for the Section 27-355 analysis includes the following boundaries:

- Manning Road West and Farmington Road West on the southwestern, western, and northwestern sides;
- Manning Road East on the south and southeastern sides;
- Dusty Lane on the east side (south of Livingston Road);
- The power line on the east side (north of Livingston Road); and
- Farmington Road East at the northeast corner of the Neighborhood.

Stores in the Neighborhood:

The table below identifies the five stores in the neighborhood that sell products that a convenience store sells:

	Convenience Stores	Address	Census Tract
1	Accokeek Gas & Go	201 Bryan Point Road	8013.02
2	Accokeek Exxon	15797 Livingston Road	8013.02
3	Weiss Grocery	15789 Livingston Road	8013.02
4	Manokeek 7-Eleven	401 Manning Road E	8013.02
5	Giant Food Grocery	7025 Berry Road	8013.02

See Exhibits 53, 115. Three of these stores sell gas.

There are eleven additional fast food retail establishments that serve as food and beverage stores in the Neighborhood. *See Exhibits 53, 115.*

	Fast Food Retailers	Address	Census Tract
1	B&Js	15805 Livingston Road	8013.02
2	Beijing Express	15901 MD 210	8013.02
3	Jerry's Subs & Pizza	15797 Livingston Road	8013.10
4	Accokeek Seafood	15790 Livingston Road	8013.10
5	Burger King	15785 Livingston Road	8013.10
6	Dunkin Donuts	15793 Livingston Road	8013.10
7	Eastern Chinese Accokeek	15789 Livingston Road	8013.10
8	Subway	15789 Livingston Road	8013.10
9	Wendy's	7099 Berry Road	8013.10
10	Eastern Chinese Manokeek	7045 Berry Road	8013.10
11	Starbucks	7045 Berry Road A1	8013.10

Neighborhood population

The Council should find that there are approximately 500 houses in the Neighborhood. *See Exhibit 53.* The Council should find that the number of persons per household in the Neighborhood is approximately 2.93. Exhibit 151 at 3.

Neighborhood Demand

ZO Section 27-142 imposes the burden on the Applicant to prove compliance with ZO Section 27-355. The Council should find that the Applicant failed to prove a reasonable need for the proposed Royal Farms because the Applicant failed to prove a reasonable need for a convenience store with or without gas.

Citizens residing in the neighborhood testified there is no need for an additional convenience store. Katrina Knights testified, “[Royal Farms] cannot provide anything that the community doesn’t already have.” December 17, 2019 Transcript at 31. Sharon Gregerson explained, “I’ve been a resident of Accokeek for 40 plus years . . . and I’ve

never thought we need another gas station or more fast food options one-fifth of a mile from my home.” February 25, 2020 Transcript at 53. Karen Sexton testified, “I want some real food.” December 17, 2019 Transcript at 105. She explained, “We don’t need any more Royal Farms in Prince George’s County, what we need [is] upscale restaurants where you can take your kids and eat and enjoy one another’s company” *Id.* at 104. Other citizens had similar testimonies including: Kelly Canavan, Harshdeep Singh Goraya, Rhonda Hanson, Dharam Goraya, and Sandra Miles.

The Council should find that the Applicant failed to prove a reasonable need for the proposed Royal Farms even if the Examiner accepts Mr. Steere’s statement that nationally there is one convenience store for every 2,135 people and one convenience store with gas for every 2,682 people. Exhibit 77 at 3.

The Council should find that the proposed the demand for convenience stores and convenience stores with gas using the following equations:

$$[\text{Population in the Trade Area}] \div 2,135 \text{ C-Stores/Person} = \text{Store(s) Demand}$$

$$[\text{Population in the Trade Area}] \div 2,682 \text{ C-Stores with Gas/Person} = \text{Store(s) Demand}$$

These equations include the following variables:

1. the number of households in the Neighborhood
2. the population in the Neighborhood

The Council should find that the most appropriate inputs for these variables are as follows:

1. the number of households in the Neighborhood: 500⁹
2. the number of persons per household in the Neighborhood: 2.93¹⁰
3. the Neighborhood population: 1,500

The Council should calculate the demand for convenience stores and convenience stores with gas in the neighborhood as follows:

$$[1,500] \div 2,135 \text{ C-Stores/Person} = 0.70 \text{ Stores}$$

$$[1,500] \div 2,682 \text{ C-Stores with Gas/Person} = 0.56 \text{ Stores}$$

The Council should find there are five food convenience stores and eleven additional fast food establishments in the neighborhood. This exceeds the current convenience store demand in the neighborhood of at least 0.70 stores and convenience store with gas station demand in the neighborhood of at least 0.56 stores.

The Council should find that the Applicant failed to prove a reasonable need for the proposed Royal Farms. The Council should find that existing supply of stores in the Neighborhood exceeds the need for a Convenience store with or without gas. The Council finds that “[t]he size and location of, and access to, the [proposed Royal Farms] is not oriented toward meeting the needs of the neighborhood.”

The Council should further find that the proposed Royal Farms will upset the balance of land use in the area for other allowed uses. A large hyper-convenience store at the Subject Property that serves as the gateway to Accokeek location would upset the balance of use in the area for other allowed uses. The Royal Farms, if permitted, would

⁹ Exhibit 53 identifies the households in the Neighborhood

¹⁰ Exhibit 151, p. 3, identifies the average household size is 2.93

“[open] the door for progressively larger corporations that are less compatible with small town and rural living upsetting the balance of land use.” February 25, 2020 Transcript at 93. Established small businesses in the area credit their success to Accokeek’s rural nature. Marilyn Randalls is the owner and president of Anchors Kennels, a 21-acre kennel founded in 1987, located just 2 miles from the Subject Property. She testified the Royal Farms would impact the “feeling of country,” small town, and rural feel that is critical to the success and survival of her generational small, family-owned business. *See* Exhibit 110.

The Royal Farms does not convey the traditional character of Accokeek and would thereby impact the land use in the area for existing small businesses serving the neighborhood. Ms. Hanson testified “we need community oriented development, not something that turns Accokeek into a stop on the highway.” December 17, 2019 Transcript at 62. Sandra Miles testified “[T]here is an urgency to fulfill the diversity of services the neighborhood needs. We need more disciplined growth and quality establishments in Accokeek that address the citizen’s needs.” *Id.* at 42. Other citizens conveyed similar concerns including: Holliday Wagner (December 17, 2019 Transcript at 96–97) and the Farmington Woods HOA (Exhibit 129).

For these reasons, the Council should find that the proposed Royal Farms will upset the balance of land use, in the area for other allowed uses.

Edward Steere

The Council should not be persuaded by Edward Steere’s opinion summarized in Exhibit 77 that there is a need for a convenience store in the Subject Property’s

Neighborhood because his opinions had significant shortcomings, including the following:

The Council should not be persuaded by Mr. Steere's definition of the Neighborhood. Mr. Steere defined the Neighborhood as Census Tract 8013.02, which is the Prince George's County land west of MD 210 and south of Piscataway Creek. January 21, 2020 Transcript at 69; Exhibit 77. No sound land use principle supports that description of the neighborhood. Moreover, Mr. Steere's selection of MD 210 as the eastern boundary of his neighborhood conflicts with Mr. Ferguson's neighborhood which includes land on the west and east side of MD 210. January 21, 2020 Transcript at 250; Exhibit 86 at 3.

The Council should not be persuaded by Mr. Steere's testimony that there are no convenience services or food on the west side of MD 210 in Census Tract 8013.02. B&J's is located at 15805 Livingston Road and Accokeek Gas & Go is located at 201 Bryan Point Road, both in the northwest quadrant of the intersection of MD 210 and Livingston Road.

For all of these reasons, the Council should find that the Applicant did not meet its burden of proving compliance with ZO Section 27-355.

ZO Section 27-317(a) - Required findings

ZO Section 27-317(a) provides:

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).

ZO Section 27-317(a)(3)

Error 5.

The Examiner erred when she found that Applicant proved compliance with ZO Section 27-317(a)(3). *See* Decision at 7, 24. ZO Section 27-317(a)(3) requires the Applicant to prove that “[t]he 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.”

“The Subregion 5 Master Plan is a diverse and important part of the County with a variety of living choices and employment opportunities for residents in the Developing and Rural tiers.” Subregion 5 Master Plan at 27. The Master Plan describes Accokeek as

the most rural portion of Subregion 5. It states Accokeek retains a predominantly rural community character with community-oriented commercial development. *Id.*

Livingston Road, which is the linear, traditional heart of the Accokeek community, functions as the hub of community activity with the library, churches, small local businesses, the Fire House, the post office, and the other gathering places situated along a two-mile stretch. Attractive village scale commercial shopping areas are thriving in Accokeek, including small, locally serving commercial and office development on the south side of Livingston Road.” Adults and children from around the region, “regard Accokeek as their destination for environmental education programs at the Hard Bargain and National Colonial Farms.

Id.; Exhibit 105.

The Master Plan designates two commercial areas in Accokeek, “Accokeek Village on Livingston Road east of MD 210 and Manokeek Village on MD 228, also east of MD 210.” Subregion 5 Master Plan at 31. It also states, “. . . B&Js BBQ establishment and various commercial businesses located west of MD 210 are recognized as the heart of Accokeek.” *Id.* at 36. The Master Plan also describes Accokeek’s Livingston Road corridor in great detail, explaining:

with care and attention, the traditional character of Livingston Road, between the US Post Office and Keller’s Market, to the east, can be maintained and enhanced as additional development occurs. Today the overall “feel” of the roadway is one of quiet, slow-paced rural life. Views are generally closed because of extensive tree cover behind buildings.

Id.

The Council should find that the Applicant did not prove compliance with ZO Section 27-317(a)(3). Testimony from Mr. Jeff Bainbridge, Applicant’s real estate director, makes clear that the design of the proposed Royal Farms will conflict with Accokeek’s rural character:

Q. And the model you've selected for this store is the same model used in I believe District Heights and then Upper Marlboro and Sansbury, is that correct?

A. I think so, it's, it's certainly the model that we're building now. This is, this model is not unique to, to Accokeek...[it's] what we've used elsewhere in and outside of Prince George's County."

Q. And is it fair to say that you've used this model in both urban, suburban and rural settings?

A. Yes.

December 18, 2019 Transcript at 44–45. Mr. Ferguson also stated this proposal would resemble other Royal Farms locations. January 21, 2020 Transcript at 301. He added, "I do not believe that the architecture was specifically designed for exclusively this site." *Id.* at 302–03.

The Decision stated, "[t]he new model has been constructed throughout Maryland and most recently, on Sansbury Road and Ritchie Marlboro Road (Westphalia North), and at National Harbor." Decision 6.

Error 6.

Ms. Tharmarajah testified that she "surveyed all of the Royal Farms in Prince George's County" and took photographs including a night time photograph of "the Royal Farms at National Harbor which is the closest location to the one at the proposed site. February 27, 2020 Transcript at 117. The Examiner erred when she ruled that the night time photograph of the Royal Farms at National Harbor was inadmissible. Citizen-Protestants set forth below the photograph which their counsel sought to mark for identification and introduce into evidence.



The Applicant objected on the grounds that the photograph of the Royal Farms at National Harbor was “not relevant to this case.” February 27, 2020 Transcript at 118. Counsel for Citizen-Protestants stated: “We believe that these photographs of the National Harbor Royal Farms are representative of what the proposed Royal Farms in Accokeek will look like at night.” February 27, 2020 Transcript at 120.

People’s Counsel then stated his opinion that the photograph was admissible:

I understand the objection and the ruling, but the evidentiary requirement is only that the witness can testify that this is an accurate depiction of what she saw when she was there and it doesn’t have to be specific to lighting. It’s probative because it is a Royal Farms and if she has testified, as she has, I was there, I took these photographs and this is what it looked like at the time that I took it, it is admissible for that reason.

February 27, 2020 Transcript at 122.

The Examiner declined to allow Citizen-Protestants to mark the photographs for identification, including the photograph set forth above, and then ruled that the photographs were inadmissible stating, "I consider them to be prejudicial." February 27, 2020 Transcript at 122. The Examiner erred when she ruled that this photograph was inadmissible. The photograph was relevant evidence of what the proposed Royal Farms would look like at night.

The Council should find persuasive, and should accept, citizen testimony regarding the Applicant's failure to comply with the Subregion 5 Master Plan for Accokeek. Madeline Kochen resides less than half a mile from the subject property. She relocated to Accokeek from California and relied heavily on the Master Plan when purchasing her home.

The Master Plan talks about low-intensity commercial development on that corner, and I saw that before I moved here and I personally relied on that when I purchased my property . . . [I] relied on the County's articulated - - clear, articulated vision of wanting to preserve the local small town character of Accokeek.

February 27, 2020 Transcript at 47. Similarly, Rhonda Hanson testified, "the scale of the project is also not in keeping with the 2012 Master Plan, which envisioned a small town atmosphere with small locally owned businesses." December 17, 2019 Transcript at 62. Kelly Canavan testified, "selling these four parcels all to one developer for a single use eliminates the possibility of small businesses moving in that would better serve the Accokeek community, not commuters." February 25, 2020 Transcript at 93. Lena Thompson testified, "I love that I can go out into Accokeek, seeing and supporting the

small businesses that provide services to make up our neighborhood and community. Adding in Royal Farms takes away from all of that.” December 17, 2019 Transcript at 51.

The proposed Royal Farms conflicts with the core principles of the Subregion 5 Master Plan for Accokeek. The Subject Property is located on the west side of MD 210 in a location defined as the “heart of Accokeek.” The proposed Royal Farms clashes with its surrounding historic small town community oriented businesses and homes. It does not convey the traditional character required of the Subject Property to anchor the Accokeek community’s gateway.

For these reasons, the Council should find that the Applicant failed to meet its burden of proving compliance with the requirements of ZO Section 27-317(a)(3).

ZO Section 27-317(a)(4)

Error 7.

The Examiner erred when she found that Applicant proved compliance with ZO Section 27-317(a)(4). *See* Decision 7, 25, and 31. ZO Section 27-317(a)(4) requires the Applicant to prove, “The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area.” The Council should find that the Applicant failed to prove compliance with ZO Section 27-317(a)(4).

Safety

The Accokeek Volunteer Fire Department is located at 16111 Livingston Road, 0.8 miles to the west of the Subject Property and responds to approximately eight to ten calls daily through the MD 210/ MD 373 intersection. February 25, 2020 Transcript at 38–39; *see also* Exhibit 119. Assistant Fire Chief Lucas testified on behalf of the

Accokeek Volunteer Fire Department. Exhibit 119. Chief Lucas described the current difficulty the fire department has navigating its units through the intersection in its existing condition. She testified the proposal, “would require the vast majority of traffic to enter and exit by Livingston Road. The increase in traffic would significantly hamper our ability to effectively respond to emergency calls for public safety.” February 25, 2020 Transcript at 39. She further added, “community service and safety is our sole priority and we believe that this proposed addition will gravely affect our mission.” *Id.* at 40.

The Council should credit the testimony of Sandra Miles. She resides at 15501 Hellen Drive, Accokeek and described a recent home burglary and the delayed police response time to the home alarm. She testified gas stations and convenience stores attract criminal activity and will “. . . further overwhelm emergency response times.” December 17, 2019 Transcript at 43.

Health

Error 8.

The Examiner erred when she determined that the Applicant proved compliance with ZO Section 27-317(a)(4). *See* Decision at 13, 25, 28, and 31. The Examiner erred when she rejected the lay testimony of the citizens regarding health, safety, and welfare issues. Citizens testified that Accokeek and the surrounding is oversaturated with gas stations, convenience stores and fast food establishments, further exacerbating poor health outcomes for the community. Lena Thompson acknowledged the obesity and diabetes epidemic in her testimony and added, “Royal Farms does not care to help our community be more healthy and provide good food choices, instead they will just provide

another establishment for our children and grandchildren to grab an unhealthy bite. This is not the future I envision for my family or Accokeek.” December 17, 2019 Transcript at 51. Katrina Knights testified, “I also don’t need another greasy chicken fast food spot opening up in Accokeek Again right up on the street on the same road you have your choice of fried chicken, burgers, Chinese and pizza. Why do we need to put in one more fast food spot?” December 17, 2019 Transcript at 31. She also testified, “We don’t need to make all of these [sugary snacks and sodas] accessible to kids to further the obesity and diabetes epidemic this county already faces.” *Id.* Dharam Goraya testified that he has chronic health conditions and testified to frustrations of no healthy options to eat in the Accokeek and surrounding area, without crossing into Charles County. January 22, 2020 Transcript (lost); Exhibit 108. Other citizens testified to health concerns resulting from the added environmental effects, including the air, noise, and light pollution from the Royal Farms. Katrina Knights testified the 24/7 location would “hike up the noise pollution.” *Id.* at 32. Harshdeep Goraya explained the “24/7 LED and flood lights” will shine into homes. February 25, 2020, Transcript at 154.

Parents in the community testified with concerns the nearby Royal Farms will have on children. Katrina Knights testified, “Our kids will be inadvertently be exposed to spending, speeding, anger of frustrated drivers, smoking, vaping or any other countless numerous of undesirable behaviors. Not to mention the role of sugar snacks and sodas that will fill the Royal Farms.” December 17, 2019 Transcript at 31. Citizens also fear children will be tempted to cross the dangerous intersection to get to the Royal Farms.

Rhonda Hanson testified, “I do not want children to be tempted to cross the highway to get a treat or meet with their friends.” February 25, 2020 Transcript at 142.

The proposed Royal Farms will adversely affect the welfare of residents or workers in the area because Royal Farms will cause other small, locally owned businesses to go out of business. Ms. Wagner testified, “we will lose B&Js, they are no competition I would be heartbroken if we lost B&Js.” December 17, 2019 Transcript at 97. The Farmington Woods HOA finds the Royal Farms would “force closure of the existing landmark [small] businesses due to increased competition” *See* Exhibit 129; *see also* Exhibit 110. Mr. Steere acknowledged if other area gas stations go out of business “. . . it would be an economic loss to the County” January 21, 2020 Transcript at 184.

Error 9.

The Examiner also erred when she declined to allow Sharjeel Chaudhry, MD to offer expert opinions. *See* Decision 28–31. The rules for controlling the admission of evidence in an administrative proceeding are more relaxed than a court proceeding. *See* ARNOLD ROCHVARG, *PRINCIPLES AND PRACTICE OF MD. ADMINISTRATIVE LAW* 75 (2011); *Para v. 1691 Ltd. P’ship*, 211 Md. App. 335, 381 (2013).

Dr. Chaudhry’s opinions satisfied even the stringent requirements for a court proceeding. Maryland Rule 5-702 addresses the admissibility of expert testimony in a court proceeding:

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.

Roy v. Dackman, 445 Md. 23 (2015), analyzed Rule 5-702's three requirements.

To satisfy the first requirement, we have explained that “a witness may be competent to express an expert opinion if he [or she] is reasonably familiar with the subject under investigation, regardless of whether this special knowledge is based upon professional training, observation, actual experience, or any combination of these factors.” Fundamentally, an expert witness's opinion is expected to “give the jury assistance in solving a problem for which their equipment of average knowledge is inadequate.”

445 Md. at 41 (citations omitted).

Regarding the second requirement for “the appropriateness of the expert testimony on the particular subject,” “[a] witness may qualify [as an expert] if he possesses special and sufficient knowledge regardless of whether such knowledge was obtained from study, observation or experience” 445 Md. at 41–42 (quoting *Radman v. Harold*, 279 Md. 167, 171 (1977)).

Regarding the third requirement, *Roy* states:

An adequate factual basis for expert testimony is required under Md. Rule 5–702(3) so that the testimony “constitutes more than mere speculation or conjecture.” Accordingly, Md. Rule 5–702(3) “consists of two distinct sub-factors. It is first required that the expert have available an adequate supply of data with which to work. It is then required that the expert employ a reliable methodology in analyzing that data.” With respect to this requirement, our intermediate appellate court brethren have said that a “factual basis ‘may arise from a number of sources, such as facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions.’”

445 Md. at 42–43 (citations omitted).

The Examiner erred when she declined to allow Dr. Chaudhry to express expert opinions because he satisfied each of Rule 5-702's requirements for the admissibility of expert testimony.

(1) Whether the witness is qualified as an expert by knowledge, skill, experience, training, or education.

Sharjeel Chaudhry, MD is a Principal Consultant for Access Strategies LLC, a Columbia Maryland-based firm dedicated to a data-driven approach to clinical public health. Dr. Chaudhry graduated from Cornell University with a degree in Human Biology, Health, and Society, where his research work with Dr. Valerie Reyna in the Center for Behavioral Economics and Decision Research focused on the effect of risky lifestyle choices on individual's health. He is a graduate of the George Washington University School of Medicine and Health Sciences,

Dr. Chaudhry's work has been published in the Oxford Encyclopedia, where he connects risk perception and Fuzzy-Trace Theory to two diseases that kill the greatest percentage of adults in the United States across all ethnic and racial categories—cancer and cardiovascular disease—based on their mutual link to risk-taking lifestyle behavioral influences.

Recently, Dr. Chaudhry was selected as a Sarnoff Cardiovascular Research Fellow at Harvard Medical School and an Associate in the Program in Quantitative Genomics at Harvard T.H. Chan School of Public Health. As Associate for Harvard T.H. Chan, Dr. Chaudhry has testified before numerous state, federal, and international bodies, including the US White House and the United Nations Special Sessions.

Over the course of his career, Dr. Chaudhry has published extensively in a number of prestigious, peer reviewed medical journals including the *Journal of Clinical Investigation* and *The Proceedings of the National Academy of Sciences*.

Dr. Chaudhry is now a physician with the Beth Israel Deaconess Medical Center, a Harvard Hospital. Dr. Chaudhry holds active memberships with the American Medical Association, American Heart Association, the Sarnoff Foundation, and the American Public Health Association.

(2) The appropriateness of the expert testimony on the particular subject.

Dr. Chaudhry used the CDC's (Centers for Disease Control and Prevention) health impact assessment (HIA) framework to determine how the proposed Royal Farms would affect the health and well-being of the community. As Dr. Chaudhry stated in his oral testimony:

the point of a health impact assessment is to be able to bring the potential negative and positive public health impacts and considerations to decision makers, policy makers, and planners for projects and policies that typically fall outside of typical health related fields. And so, some of them that the CDC cites their use in are transportation, land use

Dr. Chaudhry made site visits to the 79 fast food eateries and gas stations offering food in Valbridge's Accokeek Trade Area. As Dr. Chaudhry testified, he: "[D]etails pretty extensively for every single one of these eateries or providers of any kind of food in this area along the roads and whether it offers gasoline, whether it offers sweet and salty snacks, tobacco. These are the risk factors that are really relevant to driving chronic Disease." Through his oral testimony and the HIA, Dr. Chaudhry fully connects the

social determinants of health, health risk factors facing the Accokeek community, and the impact this specific project would have on the health and well-being of the community.

(3) Whether a sufficient factual basis exists to support the expert testimony.

Dr. Chaudhry's Health Impact Assessment ("HIA") for this project was fully reviewed by Dr. Lawrence R. Deyton, MD, Murdock Head Professor of Medicine and Health Policy, and Senior Associate Dean for Clinical Public Health at George Washington University. Dr. Deyton is an international expert in clinical public health and, among numerous accolades, has served as the Chief Public Health Office for numerous governmental bodies. Dr. Deyton submitted a letter to the Zoning Hearing Examiner, stating:

Mr. Chaudhry is undoubtedly capable to conduct a health impact assessment. He has shared with me the Health Impact Assessment for Accokeek Maryland that he has conducted and I find it is superbly constructed, complete and based on sound principals recommended by the US Centers for Disease Control and Prevention. I find that his analyses are well conducted, they are based on appropriate data and that his recommendations are sound.

Letter from Lawrence R. Deyton to Zoning Hearing Examiner (Feb. 20, 2020), attached as Exhibit A. In addition, Dr. Chaudhry provided in their entirety 86 scientific publications supporting his findings. These articles are cited throughout Dr. Chaudhry's HIA as well as his oral testimony.

If permitted, Dr. Chaudhry would have opined:

1. The proposed Royal Farms gas station/convenience store will adversely affect the health, safety, and well-being of the Accokeek, Maryland community.

2. Accokeek, Maryland is a food swamp based on a survey of the surrounding area, which found a high-density of establishments selling high-calorie fast food and junk food, relative to healthier food options.

3. The proposed Royal Farms gas station/convenience store will add no unique value-add to Accokeek and its surrounding area. Royal Farms gas stations and convenience stores sell traditional convenience store merchandise, tobacco products, and fried chicken. Accokeek and the surrounding area are oversaturated with retailers offering identical or similar offerings to area citizens.

4. The proposed Royal Farms gas station and convenience store in Accokeek, Maryland will be further detrimental to the already morbid chronic health outcomes, namely diabetes, heart disease, obesity, and asthma, of Accokeek and surrounding Prince George's County area residents.

5. The proposed automobile filling station and convenience store will worsen the already poor health outcomes of Accokeek and surrounding Prince George's County area citizens.

6. Policy makers should prioritize the social determinants of health to improve the health and well-being of this predominantly minority community (65.2% African American).

In any event, even if the Council relies only on Dr. Chaudhry's factual testimony, the Council should conclude that the Applicant did not prove compliance with ZO Section 27-317(a)(4) because the Applicant did not prove that the Royal Farms "will not adversely affect the health, safety, or welfare of residents or workers in the area."

Sharjeel Chaudhry, MD used the CDC's ("Centers for Disease Control and Prevention") Health Impact Assessment ("HIA") framework to determine how the proposed Royal Farms would affect the health and well-being of the community. As Dr. Chaudhry stated,

The point of a health impact assessment is to be able to bring the potential negative and positive public health impacts and considerations to decision makers, policy makers, and planners for projects and policies that typically fall outside of typical [...] health related fields. And so, some of them that the CDC cites their use in are transportation, land use

Dr. Chaudhry "looked at the proposed site, what the proposal looks at . . . Valbridge's Accokeek trade area, the entire—the map." He also reviewed "data sources that contribute to public health data such as the CDC, the U.S. Census." His scope also included "the published literature, the medical journals, all within the sphere of clinical public health that are relevant." Dr. Chaudhry reviewed the social determinants of health, "dynamic factors that contribute to an individual's health outcomes":

Measures of prevalence of major chronic conditions, such as asthma, heart disease, diabetes, hypertension, low birth weight and mortality are frequently used indicators of population health. Other key indicators include measures that are associated with increased risk, such as metabolic syndrome, obesity, diet, smoking, or not getting enough exercise. The health of a population is largely characterized by its socioeconomic conditions, built environment and effectiveness of public healthcare systems.

Exhibit 115 at 5.

Dr. Chaudhry analyzed the physical and built environment of Accokeek (roads, parks, trails, topography) and assessed already open Royal Farms stores in Prince George's County to determine their offerings. Subsequently, Dr. Chaudhry made site

visits to the 79 fast food eateries and gas stations offering food in Valbridge's original Accokeek Trade Area. As Dr. Chaudhry testified, he:

[D]etails pretty extensively for every single one of these eateries or providers of any kind of food in this area along the roads and whether it offers gasoline, whether it offers sweet and salty snacks, tobacco. These are the risk factors that are really relevant to driving chronic Disease.

February 25, 2020 Transcript at 228.

Dr. Chaudhry testified that the clinical public health literature clearly points to the presence of bad food options as a predictor of poor health in a community. He outlines:

[T]hat Accokeek and the surrounding area is oversaturated with gas station/convenience stores, convenience stores and fast food establishments...All convenience stores sold sweet and salty snacks, sodas and tobacco, which included a variety of cigarettes, e-cigarettes, vapes, chewing tobacco and cigars. Additionally, the majority of surveyed gas stations in the immediate Accokeek area within the immediate 3-4 miles radius (with the exception of two) sell fried chicken, fried foods, sandwiches, etc., in addition to the typical aforementioned convenience store merchandise. The area is amassed by fast food eateries selling traditional fast food fare, such as fried chicken, French fries, burgers and other offerings. The area also has an abundance of liquor stores (some drive thru locations) selling beer, wine and liquor and tobacco. All convenience stores in the surveyed area are also tobacco retailers, selling a variety of cigarettes, e-cigarettes, vapes, chewing tobacco and cigars. There was at least one tobacco retailer along each in nearly every shopping center along MD 210 (with the exception of Old Fort Road North). Many of the shopping centers had a liquor retailer.

Exhibit 115 at 14-15.

Exhibit 115, pages 12 through 14, identifies the Gas Stations, Convenience Stores, Restaurant, Fast Food Stores, Liquor Stores and Tobacco Stores between the northern boundary of the MD 210 Corridor at Wilson Bridge Drive and the corridor's southern

boundary at Lower Wharf Road. Stores 6 through 59 are in the eight Prince George's County Census tracts depicted in Exhibit 132.

Dr. Chaudhry summarized his assessment of this area by stating: “[T]he number of stores that offer fast—that are fast food outlets . . . ends up pointing to this area as being a food swamp and being a food swamp is an area that has a high density of establishments selling high calorie fast food and junk food relative to healthy food options.” February 25, 2020 Transcript at 236.

Dr. Chaudhry also reviewed the population of Accokeek, in particular the demographics, socioeconomic status, current health outcomes, and racial make-up of the community. Dr. Chaudhry testified that the Accokeek population faces structural racism:

So, structural racism is how a community—the decisions that are made by decision makers—and previously I had pointed out that the decision makers on this table all except one is African American at this time. 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.

A second component of that is the data show within structural racism arguments that in deciding decisions for food and food related options when you actually go with what the public wants it actually leads to a much larger economic stimulus than if you were to just put one in without the public's proper contribution to that decision.

Id. at 241.

Dr. Chaudhry stated that after reviewing the current food offerings of the community and taking into account the social determinants of health associated with this population, it is his testimony that the Accokeek area will adversely impacted. In

particular, the Royal Farms will lead to worsening health outcomes for heart disease, hypertension, stroke, diabetes, asthma, higher BMI, and low birth weight. *Id.* at 242–52.

Among multiple examples, he states:

And so, for diabetes, the contributors of diabetes are the ingestion of poor food, high sugars. Some of these choices such as fried foods are particularly worse. Fried foods are related to—the most recent, actually very recently published article in the British Medical Journal found from the U.S. Women's Health Initiative, which is our largest prospectively collective study, is basically the Cadillac or the Rolls Royce of medical literature related to cardiovascular disease. The Women's Health Initiative Analysis published in the BMJ found that consumption of fried food—one item of fried food per week is associated with an all-cause mortality increase of 13 percent and 12 percent of cardiovascular death.

Id. at 244.

Finally, Dr. Chaudhry testified his assessment is based on the published literature:

All of these publications that are cited here are peer reviewed publications and many of them are in major journals that talk about and link these exact . . . health outcomes. Many of them correlate the intake of the food or the area and the social determinants of health and how they lead to the chronic disease that I've outlined.

Id. at 251.

On February 25, 2010, Dr. Chaudhry specifically addressed Section 27-317(a)(4)'s requirement that the Applicant prove that the proposed Royal Farms “will not adversely affect the health . . . of residents or workers in the area.”

Q. I want to focus on the sweet and salty snacks, tobacco, and the fried chicken, and the soda. Each of those Royal Farms according to your investigation sells those products?

A. Yes, and Royal Farms has it on its website as well for—

Q. Does the sale of those products adversely affect the health of the consumer of those products?

A. Yes.

Q. So,—and that factual statement is true for the proposed Royal Farms at Indian Head—MD 210 and Livingston Road assuming it sells the same products?

A. Correct.

February 25, 2020 Transcript at 252. No attorney for the Applicant objected to these questions or answers.

Traffic

Error 10.

The Examiner erred when found that Applicant proved compliance with ZO Section 27-317(a)(4) regarding traffic. *See* Decision 20–28, 38, 43, and 48.

The 2013 Subregion 5 Master Plan stated the intersection of MD 210 and MD 373 is at a failing LOS for both the a.m. and p.m. peak. Subregion 5 Master Plan at 98; Exhibits 74, 105. The SHA reports thirty-one crashes at the MD 210 and MD 373 intersection. *See* Exhibit 72.

The Council should credit the testimony of the citizens regarding the traffic including the testimony of Reverend Robert Screen, Lena Thompson, Holliday Wagner, Sharon Gregerson, Sandra Miles, Neil Tillman, Linda Tillman, Patricia Hale, Rhonda Hanson, Dharam Goraya, and Katrina Knights.

Lawrence Green conducted a traffic count on Thursday January 9, 2020 between 6 AM and 9 AM in order to determine the AM peak. February 27, 2020 Transcript at 21;

see also Exhibit 93. He determined that the AM peak LOD D with a CLV of 1382 between 6 AM and 7 AM. *Id.* Mr. Green's AM traffic count was higher than Mr. Lenhart's traffic count because Mr. Lehnhart conducted his count later in the morning. *Id.* at 23. Mr. Green testified that the morning peak would be LOS E even with the Applicant's proposed development. *Id.* at 24.

Mr. Lenhart submitted a revised Traffic Impact Study utilizing Mr. Green's CLV counts on March 5, 2020, dated March 3, 2020. *See* Exhibit 145. Mr. Lehnhart proposed a new improvement which would result in a CLV of 1448. The CLV range for LOS D is 1300 to 1450. March 5, 2020 Transcript at 182–83. The new proposed improvement must be approved by the State Highway Administration. *Id.* at 172; *see also* Exhibit 145.

The Council should credit the citizen testimony describing the existing traffic conditions at the intersection. Sarah Cavitt is president of the historic Indian Head Highway Area Action Council ("IHAAC") established in 1964. Ms. Cavitt testified the IHAAC voted unanimously to oppose Two Farms, as they "... believe it will decrease the safety of MD Route 210." December 17, 2019 Transcript at 25; *see also* Exhibit 55. Reverend Robert Screen is the lead facilitator of the MD 210 Traffic Committee and lead Chaplin of the Washington Adventist Fort Washington Medical Center. The Council should credit his testimony describing speeding and the dangers of MD 210 and the "67 people" that have perished on the road since 2007. December 17, 2019 Transcript at 137. The Council should be persuaded by citizen testimonies addressing the existing traffic conditions and concerns regarding an increase in traffic in and around the intersection and Subject Property including the testimony of: Neil Tillman (January 22, 2020

Transcript (lost); February 25, 2020 Transcript at 256; *see also* Exhibit 107), Linda Tillman (January 22, 2020 Transcript (lost); February 25, 2020 Transcript at 150; *see also* Exhibit 106), Katrina Knights (December 17, 2019 Transcript at 30; *see also* Exhibit 56), Lena Thompson (December 17, 2019 Transcript at 49; *see also* Exhibit 57), Sandra Miles (December 17, 2019 Transcript at 43), Kathryn Lucas (February 25, 2020 Transcript at 37; *see also* Exhibit 119), Karen Sexton (December 17, 2019 Transcript at 102), Kelly Canavan (February 25, 2020 Transcript at 96), Rhonda Hanson (January 22, 2020 Transcript (lost); February 25, 2020 Transcript at 142; *see also* Exhibit 58), Dharam Goraya (January 22, 2020 Transcript (lost); *see also* Exhibit 108), Patricia Hale (January 22, 2020 Transcript (lost); *see also* Exhibit 109), Holliday Wagner (December 17, 2019 Transcript at 91–93).

Risk of Crime

Error 11.

The Examiner erred when found that Applicant proved compliance with ZO Section 27-317(a)(4) regarding crime. *See* Decision 27–28.

The Council should credit the citizen testimony regarding crime. The Subject Property’s western border is Biddle Road with residential properties. Ms. Gregerson testified 24/7 establishments will “attract people and activity that is not desirable.” February 25, 2020 Transcript at 53. Harshdeep Singh Goraya testified, “adding such a high traffic business to this area endangers not our mental but our physical safety as well.” February 25, 2020 Transcript at 157. Citizens are concerned the drug activity on Biddle Road will be exacerbated by the proposed Royal Farms. The Examiner also

credits testimony of other citizens regarding the drug activity on Biddle Road including the testimony of: Patricia Hale (January 22, 2020 Transcript (lost); February 25, 2020 Transcript at 265; *see also* Exhibit 109, 124), Dharam Goraya (January 22, 2020 Transcript (lost); *see also* Exhibit 108). The Council should credit Judy Leventhal, the president of the Greater Accokeek Community Association, and her testimony confirming the drug activity on Biddle Road (February 25, 2020 Transcript at 161–62; *see also* Exhibit 123). Citizens testified to reports of gun violence and robberies at the Accokeek Village, across MD 210, the shopping center, and Manokeek Village: Katrina Knights (December 17, 2019 Transcript at 31), Rhonda Hanson (February 25, 2020 Transcript at 142), Kelly Canavan (February 25, 2020 Transcript at 99; *see also* Exhibit 102) and Harshdeep Singh Goraya (February 25, 2020 Transcript at 153–54). Citizens fear their nearby homes will become easy targets for burglary: Sandra Miles (December 17, 2019 Transcript at 43) and Kelly Canavan (February 25, 2020 Transcript at 98).

ZO Section 27-317(a)(5)

Error 10.

The Examiner erred when she found that Applicant proved compliance with ZO Section 27-317(a)(5) regarding detrimental effects on the neighborhood. *See* Decision at 32. ZO Section 27-317(a)(5) requires the Applicant to prove, “The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.”

The Council should find that the proposed Royal Farms will be detrimental to the use of the 72 residences in the Farmington Woods community. There is a unique ingress

and egress to the Farmington Woods community. The only egress from the Farmington Woods community to MD 210 requires the residents of that community to drive south on Frank's Way (formerly Hickory Knoll Road), then west on Bryan Point Road, then south on Biddle Road, and then east on Livingston Road to MD 210. The southern ingress to the Farmington Woods community requires the reverse: north on Biddle (from Livingston), east on Bryan Point Road, and north on Frank's Way (formerly Hickory Knoll Road). Both routes require the vehicles to drive on the same short stretch of Livingston Road as the cars travelling to and from the proposed Royal Farms. *See* Exhibits 53, 75. That fact will lead to acute traffic congestion at the Livingston Road access points to Royal Farms. This adverse effect is unique and is the direct result of the unique ingress to and egress from the Farmington Woods community. The Applicant failed to present any persuasive evidence that this adverse effect is not unique.

The Council should also find that the proposed Royal Farms will be detrimental to the use of the residences in the Biddle Road. The Biddle Road community is located on the western border of the Subject Property. February 27, 2020 Transcript at 113–16; *see also* Exhibits 53, 75, 88A–H. Mr. Ferguson was unable identify another Royal Farms location immediately adjacent to residential property. January 21, 2020 Transcript at 267–68. The proposed Royal Farms will adversely affect the Biddle Road community in unique ways due to the location of the proposed Royal Farms adjacent to the Biddle Road community. The plan for the Royal Farms includes parking spaces and one entrance on the rear of the building and vehicular access to Biddle Road. *Id.* at 307. The Royal Farms will generate additional traffic that will exit onto Biddle Road behind the Royal Farms.

The Royal Farms will generate air, light and noise pollution and offensive smells and odors that will adversely affect the Biddle Road community. The Council should credit the testimony of citizens regarding the air, light and noise pollution including the testimony of: Sharon Gregerson (February 25, 2020 Transcript at 52), Katrina Knights (December 17, 2019 Transcript at 31), Lena Thompson (December 17, 2019 Transcript at 49-50), and Harshdeep Singh Goraya (February 25, 2020 Transcript at 154). The Royal Farms will be open 24/7 and will attract criminals to the Royal Farms and the Biddle Road community. These adverse effects are unique and are the direct result of the unique fact that the proposed Royal Farms borders the Biddle Road community. The Applicant failed to present any persuasive evidence that these adverse effects are not unique.

Respectfully submitted,



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Attorney for Citizen-Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February 2021, a copy of the foregoing Petition for Appeal and Request for Oral Argument was mailed electronically and by first-class mail, postage pre-paid to:

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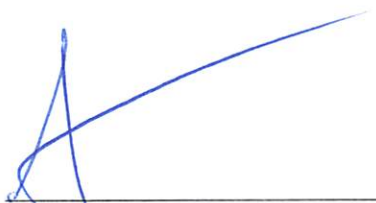
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Persons of Record



G. Macy Nelson, Esquire
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Dear Mr. Brown and Mr. Nelson,

February 20, 2020

I am pleased to offer this endorsement of Sharjeel Chaudhry's expertise in clinical medicine, public health, population health, health policy and community health. At this stage in his career he is fully capable to conduct Health Impact Assessments and already has experience working with community-based health organizations as well as local, state and Federal health officials and policy makers. We teach these skills and provide these experiences to all medical students at the George Washington University School of Medicine and Health Sciences (SMHS) in curricula and programs that I lead.

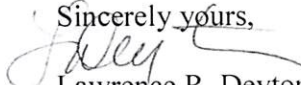
At GW SMHS, we prepare our students to assume their roles both as clinicians and also as public health leaders through our established Clinical Public Health curriculum. GW medical students are immersed in scientific and clinical coursework and field engagements that allow them to practice health assessments, interventions and evaluations pertaining to the social determinants of health, community and population health, health policy, prevention and health promotion, evidence based practice and clinician advocacy.

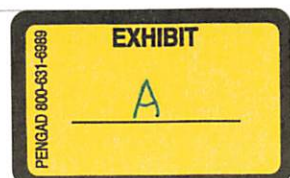
Sharjeel Chaudhry's career here at the GW SMHS has been stellar and he expects to pursue training in vascular surgery beginning this summer. He has exceeded the requirements of his curriculum and excels as a clinician and public health leader both within and beyond the walls of the hospital and clinic. For example, over the course of his medical training, he has participated in health assessments and presentation of findings and recommendations to community organizations, DC Department of Health officials and also at the White House to the AIDS Czar and US government leaders. He is certainly qualified to deliver expert testimony on community health for the Prince George's County Zoning Board and District Council.

Given his years of clinical training at the GW SMHS in both clinical medicine and clinical public health, his extensive research engagement as a Sarnoff Cardiovascular Research Fellow at Harvard, his publications in prestigious medical journals and collaborations at the Harvard T.H. Chan School of Public Health, Mr. Chaudhry is undoubtedly capable to conduct a health impact assessment.

He has shared with me the Health Impact Assessment for Accokeek Maryland that he has conducted and I find it is superbly constructed, complete and based on sound principals recommended by the US Centers for Disease Control and Prevention. I find that his analyses are well conducted, they are based on appropriate data and that his recommendations are sound.

Please do not hesitate to contact me if you have any additional questions or concerns regarding Mr. Chaudhry's expertise.

Sincerely yours,

Lawrence R. Deyton, MPSH, MD
Murdock Head Professor of Medicine and Health Policy
Senior Associate Dean for Clinical Public Health



Lawrence R. Deyton, MSPH, MD – brief bio

Dr. Deyton is the Murdock Head Professor of Medicine and Health Policy and Senior Associate Dean for Clinical Public Health in the GW School of Medicine and Health Sciences.

As Senior Associate Dean for Clinical Public Health, Dr. Deyton is creating new curriculum and pedagogy for health professions education to teach students the principles of public health, population health, and leadership in medical care and health systems decision-making. These are the tools that are required of clinicians who practice in 21st Century health care systems.

Dr. Deyton returned to GW in March 2013 after 31 years in national leadership research and clinical positions in several Federal health and public health agencies including the Food and Drug Administration, Department of Veterans Affairs, National Institutes of Health and the HHS Office of the Surgeon General and Assistant Secretary for Health and as a Congressional aide. During that career Dr. Deyton had extensive experience establishing and overseeing high profile health and public health research, education and clinical programs particularly working with front line providers, administrators and researchers.

From 2009-2013, Dr. Deyton oversaw the implementation and enforcement of the Family Smoking Prevention and Tobacco Control Act signed into law by President Obama on March 22, 2009. Described by FDA Commissioner Margaret Hamburg as “the rare combination of public health expert, administrative leader, scientist, and clinician,” Dr. Deyton became the Center for Tobacco Product’s first director on August 19, 2009 and rapidly established and enforced FDA’s new authorities to regulate tobacco products.

Prior to joining FDA, Dr. Deyton was Chief Public Health and Environmental Hazards Officer for the U.S. Department of Veterans Affairs. His responsibilities there included oversight of all public health programs for the National VA health care system. Previously, Dr. Deyton served for 11 years in clinical research and leadership positions in the National Institute of Allergy and Infectious Diseases at the National Institutes of Health (NIH) where he was Chief of the Antiretroviral Treatment Branch during which he oversaw the development and approval of drug treatment strategies including the first trials of combination therapies which are the cornerstone of current HIV treatments.

Dr. Deyton was a founder in 1978 of Washington DC’s Whitman Walker Clinic, a community based service organization specializing in LGBT and now HIV care in Washington, D.C. He is a graduate of University of Kansas, the Harvard School of Public Health and the George Washington University School of Medicine. Dr. Deyton’s post-doctorate medical training in medicine was at the University of Southern California/Los Angeles County Medical Center and in infectious diseases at the National Institutes of Health. He has published over 60 scientific articles in the peer-reviewed literature. Dr. Deyton continues to care for patients on a regular basis at the Washington, DC VA Medical Center.

In 2011, Dr. Deyton was a finalist for the prestigious Samuel J. Heyman *Service to America Medal* for his career of government service and outstanding contributions to the health, safety and well-being of Americans – 20 finalists are chosen from 4.8 million Federal employees nation-wide. Dr. Deyton received the George Washington University Distinguished Alumni Achievement Award and in 2019 was the recipient of the Leonard Tow Humanism in Medicine Award presented by the Arnold P. Gold Foundation and also the James D. Bruce Award for Distinguished Contributions to Preventive Medicine from the American College of Physicians.