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

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QUEENS CHAPEL TOWN CENTER, LLC : Case No. CSP-10002-C-02
:
and DSP 10011-C-02
:
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A hearing in the above-entitled matters was held on December 15, 2021, at the Prince George's County Office of Zoning, County Administration Building, Room 2174, Upper Marlboro, Maryland 20772 before:

Maurene McNeil
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Dan Lynch, Esq.

On Behalf of People's Zoning:

Stan Brown

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P R O C E E D I N G S

1
2 MS. MCNEIL: Good morning everyone, I'm Maurene
3 McNeil and I'll be the Hearing Examiner today, and it's
4 December 15, 2021. We're here on an application CSP-10002
5 and DSP-10011. The applicant is Queens Chapel Town Center,
6 LLC, and they're requesting a deletion or amendment of
7 Condition 3C, that was imposed when the Council approved
8 both the Conceptual Site Plan and the Detailed Site Plan
9 back in 2011. I think that's a good idea, and I'll have
10 counsel identify themselves for the record.

11 MR. LYNCH: Good morning Madam Examiner, Dan Lynch
12 on behalf of Queens Chapel Town Center, LLC.

13 MR. BROWN: Good morning, Stan Brown, People's
14 Zoning Council.

15 MS. MCNEIL: Okay. Preliminarily before we begin
16 and thank you Mr. Lynch for being my assistant, if you're
17 not speaking you should turn your mics off to ensure that we
18 have don't have any feedback. Caller number 2, can you
19 identify yourself for the record?

20 MR. CHANDLER: This is Jim Chandler, representing
21 the Mayor and Council of the City of Hyattsville.

22 MS. MCNEIL: Okay. Mr. Chandler we must have you
23 on twice then. Can you turn off, what's the other one,
24 you've got your cell phone and your computer on?

25 MR. CHANDLER: Just the cell phone.

1 MS. MCNEIL: Hmm.

2 MR. LYNCH: He's showing up twice.

3 MS. MCNEIL: I know. Maybe you're not call, is
4 there someone else on the phone?

5 MR. HOLLINS: Kevin Hollins (phonetic sp.) is on
6 the phone just listening.

7 MS. MCNEIL: Okay.

8 MR. LYNCH: That's caller 2.

9 MS. MCNEIL: Okay. Mr. Hollins. All right. So
10 you're not going to testify, sir?

11 MR. HOLLINS: That's correct, ma'am.

12 MS. MCNEIL: Okay. All right. Mr. Lynch, you may
13 begin.

14 MR. LYNCH: Good morning again, Madam Examiner.
15 Again for the record, Dan Lynch with McNamee Hosea here on
16 behalf of the applicant, Queens Chapel Town Center, LLC.
17 The Queens Chapel Town Center, LLC is the owner of the
18 property located along Hamilton Street in the City of
19 Hyattsville, Maryland.

20 We are here today, Madam Examiner, on the
21 applicant's request to revise the condition of approval
22 associated with CSP-10002 and DSP-10011, specifically
23 requesting an amendment to Condition 3C that was approved
24 with both the DSP and the CSP.

25 And we have amended, as you'll note, we submitted

1 an amended request in terms of rather than delete the
2 condition in its entirety in a letter to you, which is
3 marked as Exhibit 9, we request a slight modification to the
4 condition, which we think after a review of both the Sector
5 Plan for West Hyattsville as well as the nonconforming use
6 provisions, we believe that the amendment constitutes what
7 the client is attempting here is to allow the continued
8 operation of an eating and drinking establishment with
9 drive-thru service.

10 I have with me here today, Madam Examiner, three
11 witnesses. I have Mr. Harvey Mazell on behalf of Queens
12 Chapel Town Center, LLC, I also have with me John Wiess who
13 also works for Queens Chapel Town Center, LLC and is also a
14 private broker. And then I have Mr. Mark Ferguson who will
15 be testifying as our expert land planner.

16 MS. MCNEIL: Okay. Before you begin, I forgot to
17 ask, I believe some may be in opposition to this request.
18 Is there anyone here in opposition to the request?

19 MR. CHANDLER: Madam Chair, the City of
20 Hyattsville is in opposition to the request.

21 MS. MCNEIL: Okay.

22 MR. BOADO: Madam Chair, this is Alexi, a resident
23 of Hyattsville, I live just a couple blocks away, I'm in
24 opposition.

25 MS. MCNEIL: The only reason I ask is you have a

1 right to question the witnesses and you'll have a right to
2 testify. But we would appreciate being able to see your
3 faces when you do so that I can be ensured that you are who
4 it says you are, et cetera. So can you two come on camera
5 later, you'll be able to do that?

6 UNIDENTIFIED SPEAKER: Yes.

7 MS. MCNEIL: All right. Thank you very much.
8 Okay Mr. Lynch, you may start.

9 MR. LYNCH: Again, Madam Examiner I have three
10 witnesses, my first witness is Mr. Harvey Mazell.

11 MS. MCNEIL: Mr. Mazell?

12 MR. MAZELL: Good morning, Madam Examiner. Good
13 morning.

14 MS. MCNEIL: Good morning. Do you swear or affirm
15 under the penalties of perjury that the testimony you shall
16 give will be the truth and nothing but the truth?

17 MR. MAZELL: I do.

18 MS. MCNEIL: Thank you.

19 MR. LYNCH: And Mr. Mazell, will you state your
20 full name and business address for the record, please?

21 MR. MAZELL: Harvey Mazell, 8555 16th Street,
22 Silver Spring, Maryland.

23 MR. LYNCH: And the zip code?

24 MR. MAZELL: 20910.

25 MR. LYNCH: And Mr. Mazell, you're familiar with

1 the request to amend the conditions of approval that is
2 before the Hearing Examiner today?

3 MR. MAZELL: Yes, sir.

4 MR. LYNCH: And this request was filed on behalf
5 of Queens Chapel Town Center, LLC, is that correct?

6 MR. MAZELL: Yes it is.

7 MR. LYNCH: And is Queens Chapel Town Center, LLC
8 the owner of the property which is the subject of those
9 conditions?

10 MR. MAZELL: Yes it is.

11 MR. LYNCH: Okay. What is your interest in Queens
12 Chapel Town Center, LLC?

13 MR. MAZELL: I am one of the partners in the
14 center.

15 MR. LYNCH: Okay. And are you authorized on
16 behalf of Queens Chapel Town Center, LLC to testify here
17 today?

18 MR. MAZELL: Yes.

19 MR. LYNCH: Now, how long has Queens Chapel Town
20 Center, LLC owned the subject property?

21 MR. MAZELL: Approximately 20 years.

22 MR. LYNCH: And why don't you just so you can give
23 the Examiner a little bit of background tell us a little bit
24 about your purchase as well as the improvements you've made
25 to the property since you purchased it?

1 MR. MAZELL: The, the center was built in, in many
2 stages in the late 40's early 50's, it was a very prominent
3 location and when we bought the center approximately 20
4 years ago, it was still owned by the same family. They had
5 essentially, they made an effort to keep it clean, but much
6 of it, there was approximately 30 percent was just boarded
7 up, they had had fires and they boarded it up and basically
8 took the funds and felt they just couldn't lease it. What
9 we have done since we bought the center is to put, put in
10 new brand new store fronts, we've put in roofs what were,
11 were actually degraded. We've put in parking, we put pavers
12 in, mechanical systems. We, many of the merchants weren't
13 paying rent and they, some of them other than having pigeons
14 and sometimes homeless people I think in some of the
15 buildings, we really went all out, it was on the market for
16 quite a while. It was being marketed at the time was Cary
17 Winston, which is now Transwestern. And one of the ones
18 that actually, it was really where the fire had been it was
19 vacant, was where we brought the post office in with the
20 good help of the Mayor of Hyattsville, Peter Shapiro was the
21 counsel person, Albert Wynn who was a Congressman. It was
22 really a full boat to work with us in a way to make this the
23 vibrant center.

24 The building on the end was vacant. We had, I
25 think it had one tenant in it and that's where today the KFC

1 sits, because we couldn't lease it, but we did have interest
2 for a freestanding building. So I hope that answer the
3 question.

4 MR. LYNCH: Sure. So you say you brought the KFC
5 or the Kentucky Fried Chicken on the property. When did the
6 Kentucky Fried Chicken first start operating from the
7 subject property?

8 MR. MAZELL: Probably about 19 or 20 years ago,
9 approximately.

10 MR. LYNCH: Okay. And at that time they had
11 obtained the associated land use approvals and an approved
12 DSP to operate from the subject property, is that correct?

13 MR. MAZELL: Yes.

14 MR. LYNCH: And so they've operated from the
15 property for approximately 20 years. At which point, what's
16 happened over the last two years with regard to the KFC?
17 Did they terminate their lease or did they vacate the
18 property, could you just tell the Examiner what happened?

19 MR. MAZELL: They had a significant decline with
20 business and they decided they had a series of options, they
21 decided not to renew it and they decided to leave, close
22 early.

23 MR. LYNCH: And approximately when did that occur?

24 MR. MAZELL: I believe it was March or April of
25 this year.

1 MR. LYNCH: Okay. And since KFC vacated the
2 property, has Queens Chapel Town Center, LLC, have they been
3 actively marketing that site or that area to lease to other
4 entities?

5 MR. MAZELL: Yes, we've worked with John Weiss,
6 who has not only a local understanding of the market but
7 really regional, so we have made every effort recently since
8 we knew they were leaving to market the property.

9 MR. LYNCH: Now have you had any interest in
10 leasing, excuse me, have you had any interest in any
11 perspective tenants in leasing the property?

12 MR. MAZELL: We have had interest from national as
13 well as some local merchants to lease the property. To them
14 an important part of their success was going to be access to
15 the drive-thru and they just felt that it wasn't 100 percent
16 certain that they would be able to do this so as a result
17 they would not make a commitment because of, you know,
18 because of the level of investment that it takes from them
19 and from us to get it open and operating and renovations.

20 MR. LYNCH: Okay. Now you're referring to the
21 drive-thru, if we could just get into that a little bit
22 further. The prospective tenants have shown interest in the
23 property, but they're concerned with their ability to
24 continue to operate the drive-thru portion of the use?

25 MR. MAZELL: Yes.

1 MR. LYNCH: And why is that?

2 MR. MAZELL: They felt that they, they, while they
3 felt it was there they weren't certain it would just, they
4 didn't want to spend the money and the time and the effort
5 and go through and find out there was any uncertainty. They
6 wanted, they wanted assurance that it's, it was there for
7 them to use.

8 MR. LYNCH: Okay. So basically does this arise
9 out of the language of Condition 3C which is the subject of
10 today's hearing?

11 MR. MAZELL: Yes.

12 MR. LYNCH: Okay. And that condition places 180
13 day closure period on that operation?

14 MR. MAZELL: Yes, it does.

15 MR. LYNCH: So in the event the use is closed for
16 more than 180 days the prospective tenant will lose their
17 ability to operate an eating and drinking establishment with
18 drive-thru, is that correct?

19 MR. MAZELL: Yes, that's correct.

20 MR. LYNCH: Okay. So based upon your
21 conversations with the prospective tenants, they have been
22 unwilling to enter into a lease because of Condition 3C, is
23 that correct?

24 MR. MAZELL: Correct.

25 MR. LYNCH: Okay. Now in addition to reletting

1 the premises to another drive-thru fast food operator, have
2 you looked at any alternatives such as redeveloping that
3 portion of the property as an alternative to the fast food
4 or eating and drinking establishment use?

5 MR. MAZELL: No. We have, the, we, we look at
6 the, we, use, I guess redevelopment on a long term but it
7 would not change, that's a very small portion of the
8 property it's a very small property. Our long term vision
9 would be for the redevelopment of the property one day as a
10 mixed-use, one day.

11 MR. LYNCH: So are you saying that from your
12 standpoint you're not looking at redeveloping just that
13 portion of your shopping center?

14 MR. MAZELL: That's correct.

15 MR. LYNCH: Okay. How about the overall
16 redevelopment of the shopping center?

17 MR. MAZELL: Our attitude is and, has been and
18 continues to be I think we mentioned it when we, there are
19 only four of the existing tenants with us today that were
20 there, Bank of America, there's several other merchants that
21 were there when we acquired the property. But we've brought
22 in basically there were, the 27 merchants in total, all but
23 four we were able to redo tenant, we've kept everybody
24 working, you know, I'm just keeping them open especially
25 through the, the hardship of the pandemic. We look

1 somewhere 10 to 15 years, perhaps, the idea of redeveloping
2 the, the entire property. But it would not be just this
3 corner, which as you see the Site Plan it just would be,
4 that is not logic for redevelopment of that parcel.

5 MR. LYNCH: So based upon your conversations with
6 the perspective tenants, okay, you feel that the Condition
7 3C is imposing a hardship on your ability to relet the
8 property, is that correct?

9 MR. MAZELL: Yes.

10 MR. LYNCH: Okay. No further questions, Madam
11 Examiner.

12 MS. MCNEIL: Mr. Brown?

13 MR. BROWN: Yes, good morning, Mr. Mazell, how are
14 you?

15 MR. MAZELL: Good morning. Thank you, I'm, I'm
16 well, and yourself?

17 MR. BROWN: Doing all right. You've indicated
18 that you are a partner of Queens Chapel Town Center, LLC, I
19 think you mean you're a member. I did not see in the file
20 the certificate of good standing, Mr. Lynch, is that in the
21 file?

22 MR. LYNCH: No, it is not, Mr. Brown.

23 MR. BROWN: All right. Before the record closes
24 put in the certificate of good standing?

25 MR. LYNCH: Understood.

1 MR. BROWN: I see the business entity ethics
2 affidavit is listed as an exhibit, I also did not see that
3 actually in the binder though. Is that in the binder?

4 MR. LYNCH: I'm not sure whether it made it into
5 the binder, but it was submitted as an exhibit this week.

6 MS. MCNEIL: It should be Exhibit 12.

7 MR. BROWN: It should be 12, but I didn't see it
8 in the binder.

9 MS. MCNEIL: Oh, I copied from the binder and I
10 have it.

11 MR. BROWN: Do you?

12 MS. MCNEIL: I'm looking at the problem, but we'll
13 make sure you get it.

14 MR. BROWN: All right. That's fine. Then also to
15 make sure I understand your concerns, Mr. Mazell, the tenant
16 who recently left was Kentucky Fried Chicken, is that
17 correct?

18 MR. MAZELL: Yes, sir.

19 MR. BROWN: And they left approximately when?

20 MR. MAZELL: March or April of this year, I think
21 it was the end of March.

22 MR. BROWN: And they had been a tenant there for
23 how many years?

24 MR. MAZELL: Almost 20 years, 19.

25 MR. BROWN: Okay. And so that 20 year lease ended

1 this year, is that correct?

2 MR. MAZELL: I believe it ends, yes, I think it
3 was and maybe Mr. Wiess when he comes on can assist. I
4 think it ended in November this year.

5 MR. BROWN: All right. So you're telling us that
6 the reason they did not re-tenant is based upon this
7 Condition 3C, is that correct?

8 MR. MAZELL: Well they, they left themselves, they
9 made a corporate decision and they left. The leasing of it,
10 we have done since then, we've tried to relet because they
11 had no, they have no interest in continuing there.

12 MR. BROWN: All right. So their termination of
13 their lease really was not related to Condition 3C. The
14 problem you're having is trying to find new tenants having a
15 problem with 3C, correct?

16 MR. MAZELL: Correct.

17 MR. BROWN: All right. This particular section or
18 condition, the last sentence provides if the use is
19 discontinued for a period of 180 days or more then it's no
20 longer a legal use. You do understand, and Mr. Lynch may
21 need to take a look at the case law, but Maryland case law
22 provides that as long as there is a valid lease on a
23 property, the use does not become nonconforming. So in
24 spite of what this section says that if the use is
25 discontinued, use is considered the period of the executed

1 lease. And so I don't know specifically what concerns your
2 prospective tenants have with this section, I don't
3 understand why a tenant would discontinue its quote unquote
4 lease which is the use for a period of 180 days. Can you
5 tell me why a prospective tenant would do that?

6 MR. MAZELL: (No audible response.)

7 MR. BROWN: Mr. Mazell?

8 MR. MAZELL: Oh I'm sorry, I thought you had
9 returned to Mr. Lynch. I cannot, no, I don't know.

10 MR. BROWN: And I'm just trying, I understand your
11 concern of the condition, but I'm just trying to get a
12 handle on why a tenant would discontinue the use for 180
13 days but for an act of God, tornado, hurricane, fire,
14 whatever, flood, other than that if they're doing
15 reconstruction of the structure or the entire shopping
16 center, you know, the use is not nonconforming because they
17 still have a lease until that construction work is done. So
18 I'm just trying to understand what is the concern of those
19 prospective tenants that they would no longer have a legal
20 use, when they still would have a lease.

21 MR. MAZELL: (No audible response.)

22 MR. BROWN: You can't answer that, I understand.

23 MR. MAZELL: I really can't.

24 MR. BROWN: So I'm just put it on the record, so
25 Mr. Lynch you can look up those issues.

1 MR. LYNCH: And Mr. Brown, I think Mr. Wiess, who
2 is the leasing agent will be able to answer that question.

3 MR. BROWN: All right. No other --

4 MR. MAZELL: Also --

5 MR. BROWN: -- further. Thank you.

6 MR. MAZELL: -- Mr. Brown, also the pandemic I
7 think you know it is something that obviously has affected
8 all of us in varying degrees. And I know at the center we
9 have, it's been constant for a year and a half over, over a
10 year and a half, we've worked with all the merchants there.
11 We have a personal relationship, Michael Hollins who is a
12 partner and myself in work with these continuously to keep
13 them open, adjusting rents, doing what, what it takes to do
14 this, getting through this pandemic, it has been challenging
15 as we all know.

16 MR. MAZELL: Yes, I understand it's a very
17 difficult problem for everybody. All right. Thank you. No
18 other questions.

19 MS. MCNEIL: Mr. Mazell, I think I know the
20 answer, but I want to make sure. There are no other drive-
21 thru's in this shopping center, just the one associated with
22 KFC?

23 MR. MAZELL: There are the, the Bank of America
24 has an ATM, a drive-thru ATM. But there are no drive-thru
25 as this, yeah.

1 MS. MCNEIL: Okay.

2 UNIDENTIFIED SPEAKER: That's not true, there is a
3 drive-thru.

4 MS. MCNEIL: Wait a minute.

5 MR. SANCHEZ: There is a drive-thru.

6 MS. MCNEIL: Mr. Fenton --

7 MR. SANCHEZ: Yes.

8 MS. MCNEIL: Wait a second.

9 MR. SANCHEZ: Okay, sorry.

10 MS. MCNEIL: Do you have questions of this
11 witness?

12 MR. SANCHEZ: Are you asking me?

13 MS. MCNEIL: Yes.

14 MR. SANCHEZ: Yeah.

15 MS. MCNEIL: It's time now for others, for you all
16 to ask questions if you have any.

17 MR. SANCHEZ: No, I, I, I have, I have a question
18 for Harvey. Mr. Mazell, do you --

19 MS. MCNEIL: Okay. You can't ask him about other
20 drive-thru's because you're not testifying now --

21 MR. SANCHEZ: Yeah.

22 MS. MCNEIL: -- you're asking him questions.

23 MR. SANCHEZ: Okay.

24 MS. MCNEIL: So ago ahead --

25 MR. SANCHEZ: Okay.

1 MS. MCNEIL: -- and come on camera if you can.

2 MR. SANCHEZ: Okay. Okay. There is, there is
3 another a drive-thru, it's an alcohol delivery service,
4 that's two doors down.

5 MR. MAZELL: My apology, there is a --

6 MR. SANCHEZ: Yeah.

7 MR. MAZELL: -- drive-thru, a beer and wine store.
8 Yes.

9 MR. SANCHEZ: Exactly.

10 MR. MAZELL: Thank you.

11 MR. SANCHEZ: So let me ask, let me ask Mr.
12 Mazell, do you, do you want to live next to a Kentucky Fried
13 Chicken, sir?

14 MR. MAZELL: If that's what the, if that was what,
15 yes, versus a vacant building, yes, to answer your question.
16 Is that the question?

17 MR. SANCHEZ: Yes. How about versus a local pizza
18 place or a coffee shop?

19 MR. MAZELL: Well, I, I, I, all of these are
20 important, I I look at today there's homeless people,
21 there's drugs, alcohol, constantly in mister, mister, Jim
22 can actually testify that it's a, it's an incredible
23 challenge. Would I want to live next to a place where
24 there's graffiti and garbage and needles and just it's
25 constantly, and it's degraded the whole, would I want to

1 live next to a center that had a vacant building with people
2 hanging out and it's degraded, the quality of the whole
3 center, tenants have suffered? That's, I would like to see
4 a vibrant operating center. KFC, whatever, coffee, whatever
5 it takes to get it operating.

6 MR. SANCHEZ: Okay. And let me ask you another
7 question. What do you think is going to happen when a bunch
8 of drunks and drug addicts and homeless people are --

9 MR. LYNCH: Madam Examiner, I'm going to object to
10 these questions. I'm not even sure what they have to do
11 with the case.

12 MR. SANCHEZ: They have to. What are they going
13 to do, what are those people going to do when they're
14 offered a dollar menu at a fast food restaurant?

15 MR. LYNCH: Madam Examiner, when I object, Madam
16 Examiner, you're muted.

17 MR. BROWN: Your microphone is not on, Maurene.

18 MS. MCNEIL: Mr. Lynch, I have sustained your
19 objection, but Mr. Sanchez that can be part of your
20 testimony.

21 MR. SANCHEZ: Okay. Thank you.

22 MS. MCNEIL: Do you have any other questions?
23 Because the questions are really supposed to be based on
24 what he already testified to.

25 MR. SANCHEZ: I'm not a lawyer, I don't have any

1 more questions.

2 MS. MCNEIL: I know. So do you have any other
3 questions of him?

4 MR. SANCHEZ: Oh.

5 MS. MCNEIL: Thank you.

6 MR. SANCHEZ: Oh let me ask him another question.
7 Mr. Mazell, do you live in the area? Do you live in
8 Hyattsville?

9 MR. LYNCH: Madam, I'm going to object to that.
10 He already gave his address, it's on the record.

11 MR. SANCHEZ: No, he lives in a nice house in
12 Silver Spring, am I correct?

13 MS. MCNEIL: Okay. Mr. Sanchez, that's still more
14 of your testimony. He gave his address.

15 MR. SANCHEZ: There you go. There you go.

16 MS. MCNEIL: Mr. Chandler, do you have any
17 questions of this witness?

18 MR. CHANDLER: I do, Madam Chair.

19 MS. MCNEIL: And there's one other thing --

20 MR. CHANDLER: Harvey --

21 MS. MCNEIL: -- Mr. Chandler --

22 MR. CHANDLER: Yes?

23 MS. MCNEIL: -- Mr. Lynch, Mr. Chandler had
24 requested information earlier as to how long this hearing
25 may go and I told him he'd have an opportunity to go out of

1 order, if he could not stay for the entire hearing. So are
2 you prepared to wait for the entire hearing now or?

3 MR. CHANDLER: I am, Madam Chair.

4 MS. MCNEIL: Okay. Go ahead with your questions.

5 MR. CHANDLER: Mr. Mazell, correct me if I'm wrong
6 but your testimony is speaking to the economics and economic
7 realities of the shopping center and this vacant site,
8 specifically. Would you agree that's accurate?

9 MR. MAZELL: No.

10 MR. CHANDLER: Okay. You would not agree that's
11 accurate?

12 MR. MAZELL: I'm speaking to the economics, no.

13 MR. CHANDLER: Okay.

14 MR. MAZELL: That's not all, no.

15 MR. CHANDLER: Okay. Mr. Mazell, has the City of
16 Hyattsville provided you and your shopping center with grant
17 funding to support the shopping center?

18 MR. MAZELL: Has, I'm sorry, the City of
19 Hyattsville provided us with grant funding?

20 MR. CHANDLER: To support the shopping center.

21 MR. MAZELL: I believe it was for, for the arts,
22 for the mural.

23 MR. CHANDLER: No, did --

24 MR. MAZELL: And we have had some from the City
25 for stores --

1 MR. LYNCH: Madam Examiner, again I'm going to
2 object to this question. I'm not sure what it has to do
3 with the questions that I asked Mr. Mazell.

4 MR. CHANDLER: Madam Chair, the testimony that was
5 offered by Mr. Mazell was speaking to the economic vibrancy
6 of the shopping center.

7 MR. LYNCH: And I'm not sure what the grant
8 funding has to do with that.

9 MR. CHANDLER: If I'm permitted to ask my
10 questions, I think it will become obvious.

11 MR. BROWN: Maurene, we didn't hear your last
12 statement.

13 MS. MCNEIL: I'm so busy trying to mess up the
14 sound, I apologize. Mr. Chandler, I overruled the objection
15 for you to ask the one question, but we don't to stay on
16 this topic.

17 MR. CHANDLER: Yes. Yes. The last question on
18 this route. Mr. Mazell, would you agree that the City's
19 been a good financial partner in helping the shopping center
20 to improve its aesthetics?

21 MR. MAZELL: You've assisted.

22 MR. CHANDLER: I'll take that as a yes.

23 MR. MAZELL: Yes, you've assisted. The county has
24 been involved as well.

25 MR. CHANDLER: Yes.

1 MR. MAZELL: And as well as ourselves with a major
2 commitment as you know.

3 MR. CHANDLER: Absolutely. Madam Chair, that's
4 the end of my questions for this witness.

5 MS. MCNEIL: Okay. Thank you, sir. And Mr.
6 Chandler, next time come on camera. I had forgot to remind
7 you of that.

8 MR. CHANDLER: I apologize, I thought I had turned
9 it on.

10 MS. MCNEIL: Okay. Thank you, Mr. Mazell. Mr.
11 Lynch, your next witness, unless you have redirect?

12 MR. LYNCH: No, I do not. My next witness is Mr.
13 John Wiess.

14 MR. WIESS: Good morning.

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

18 MR. WIESS: (No audible response.)

19 MR. LYNCH: Mr. Wiess, would you state your full
20 name and address for the record?

21 MR. WIESS: Jonathan Weiss, 8555 16th Street,
22 Silver Spring, Maryland 20901.

23 MR. LYNCH: And by whom are you employed?

24 MR. WIESS: I have two positions, I'm employed by
25 Mazell Development and I'm also principal broker at SES

1 Realty Advisors.

2 MR. LYNCH: And how long have you been employed by
3 Mazell?

4 MR. WIESS: Ten months.

5 MR. LYNCH: Ten months. Okay. And are you
6 familiar with the property which is the subject of the
7 request today?

8 MR. WIESS: Yes.

9 MS. MCNEIL: Mr. Lynch, I'm sorry, Mr. Chandler,
10 you have to turn your mic off. Thank you.

11 MR. LYNCH: Okay. Again, are you familiar with
12 the property which is the subject of today's request?

13 MR. WIESS: Yes.

14 MR. LYNCH: Okay. And what is your
15 (indiscernible) on the property?

16 MR. WIESS: I am the leasing agent for the
17 property and have been for approximately 20 years at a
18 couple different brokerages, but as a leasing agent.

19 MR. LYNCH: And did you hear Mr. Mazell's
20 testimony regarding Kentucky Fried Chicken's termination of
21 a lease?

22 MR. WIESS: Yes.

23 MR. LYNCH: And is Mr. Mazell's testimony
24 accurate?

25 MR. WIESS: Yes.

1 MR. LYNCH: Okay. Now, Mr. Mazell indicated
2 during his testimony that they've reached out to prospective
3 tenants so that they could release the KFC property to a new
4 tenant. Have you been involved in that process on behalf of
5 Queens Chapel Town Center, LLC?

6 MR. WIESS: Yes, I've been leading that effort.

7 MR. LYNCH: Okay. And could you just tell us a
8 little bit about the prospective tenants you've spoken to to
9 date?

10 MR. WIESS: Sure. We've done a comprehensive, you
11 know, marketing plan to solicit and, and find a replacement
12 tenant for the property. We've talked to a variety of
13 tenants including McDonald's, Boston Market, Roaming
14 Rooster, Pollo Campero, Mezeh, Shook, Hook and Reel, Krispy
15 Kreme, Burger King, among others.

16 MR. LYNCH: And Mr. Mazell indicated during this
17 testimony that you've been unable to relet the property, is
18 that correct?

19 MR. WIESS: That is correct.

20 MR. LYNCH: And you've had direct communications
21 with each of these prospective tenants?

22 MR. WIESS: Yes.

23 MR. LYNCH: What has been, based upon your
24 communications with these prospective tenants, what has been
25 the feedback? Why have they been unwilling to relet this

1 property? Or excuse me, why have they been unwilling to
2 release this property, excuse me.

3 MR. WIESS: For the, the food uses we've spoken
4 with, the drive-thru is a, you know, material to, excuse me,
5 to their, to their business operation and there is in their
6 minds uncertainty and concern over whether the condition for
7 the use of that drive-thru will in fact allow them to
8 utilize it for a couple of different reasons. Number one,
9 with the building you know, with following KFC's vacating
10 the building, if that 180 days passes, whether they would be
11 able to get a use and occupancy to use for that purpose.
12 And secondly, from some of the larger tenants, we're
13 required over time, whether it's a franchise particularly,
14 but also just corporately owned restaurants to renovate
15 their properties every seven to 10 years, typically.
16 Whether they, if they were in a position to have to shut
17 down the restaurant in order to do a full renovation and the
18 renovation exceeded 180 days, whether that would also figure
19 an issue for them to reopen and utilize the drive-thru.

20 Those concerns have turned away, unfortunately,
21 the bulk of the tenants we've spoken with who want to use
22 that drive-thru as part of their business operation.

23 MR. LYNCH: Now is the response that you received
24 from these prospective tenants, do you consider that to be
25 usual or do you just believe that the tenants are just in so

1 many words, risk adverse?

2 MR. WIESS: I think it's a, it's a combination. I
3 think, you know, for a lot of the national tenants just
4 specifically your, your McDonald's, your Boston Markets,
5 they are typically risk adverse and don't want to make the
6 investment in the process if there is sort of a cloud of
7 uncertainty. But it, it really, it's, you know, it's an
8 unusual situation with this condition, it's not something
9 they typically bump into in their efforts to find properties
10 to lease. And with that concern kind of hanging over their
11 heads, they'd rather move on to you know properties that
12 they know they can, they can make the investment and open
13 for business and you know, hopefully succeed.

14 MR. LYNCH: Now so it's based upon the response
15 that Queens Chapel Town Center, LLC has received some
16 prospective tenants, that is why this request was filed
17 today, is that correct?

18 MR. WIESS: That is correct.

19 MR. LYNCH: Okay. Have you limited, let me
20 rephrase it. Now the prospective tenants you have spoken
21 to, have you limited these to quick serve type restaurants,
22 such as the McDonald's, such as a Burger King or have you
23 expanded your scope of prospective tenants you've spoken to?

24 MR. WIESS: We've, we've expanded, we, we have not
25 limited to the, the quick serve fast food type restaurant

1 operations. We've spoken to, you know, retailers, that may
2 frankly be able to use the drive-thru, like a pharmacy, and
3 we've spoken to you know other food uses that typically do
4 not, you know, utilize a drive-thru. But frankly in today's
5 market many of those folks who didn't previously use drive-
6 thrus are now looking to utilize them, given the unfortunate
7 market conditions related to the pandemic.

8 MR. LYNCH: So just so I understand, so that the
9 tenants who in the past would not have used the drive-thru
10 are looking to have that ability to use a drive-thru also,
11 is that correct?

12 MR. WIESS: That is correct.

13 MR. LYNCH: Also, as the leasing agent, and again
14 you've said you've worked on this property for probably 20
15 years as the leasing agent, what did the fast food component
16 bring to the center? What benefits did it bring to the
17 center?

18 MR. WIESS: Sure. You know typically, you know,
19 the fast food type uses or quick serve uses that, that
20 utilize this type of operation really drive you know more
21 traffic to the site, foot traffic customers in general to
22 the property, which is a, a great benefit in a, in a
23 shopping center like Queens Chapel Town Center. We try to
24 create in marketing a retail shopping center something we
25 call synergy where there's, your, your customers that come

1 to the shopping center don't just come to one tenant, but
2 they shop the entire shopping center and patronize various
3 tenants when they come there. So the more people we can
4 bring to the shopping center as customers, the better for
5 the greater shopping center.

6 MR. LYNCH: So when you're leasing space in a
7 shopping center of this size and scale, okay, would you
8 normally have what you would consider to be an anchor
9 tenant?

10 MR. WIESS: Yes. So you know a typical
11 neighborhood shopping center or a grocery anchor shopping
12 center you have a larger grocery store or pharmacy that sort
13 of anchors the center and drives traffic. In today's world
14 in retail leasing specifically, what has come to the fore is
15 that your pad tenants, your, your fast food drive-thrus,
16 your larger restaurant groups, dollar stores, other types of
17 businesses have become the, the anchors for the shopping
18 center. So the fast food use at the KFC building really
19 anchors the project in terms of driving traffic, you know
20 similar to the post office at the other end of the property
21 that brings customers to the property.

22 MR. LYNCH: So based upon your experience with
23 this center, and I'm assuming with other centers in the
24 area, you believe that the removal of the fast food use or
25 the fact that that use now is vacant, that impacts the

1 overall viability of the center, would you agree with that?

2 MR. WIESS: Yes.

3 MR. LYNCH: Now, Mr. Mazell also just briefly
4 spoke about the potential to redevelop this portion of the
5 property on which KFC is located. Do you have any thoughts
6 from your perspective whether that's viable at this point?

7 MR. WIESS: My opinion, given the market
8 conditions I lease properties south of this down at Queens
9 Chapel Road and Chillum Road, and we're involved in the
10 shops at Metro Station up at Belcrest and East-West Highway.
11 I think for the foreseeable future, you know, a vibrant
12 shopping center like Queens Chapel Town Center will remain
13 the highest and best use, particularly since it's an
14 established, you know, operation as opposed to, for example,
15 Greenfield Development like we've seen across the street at
16 the West Hyattsville Metro Station that was not, you know,
17 income generating property but vacant land. So I think when
18 you have a vibrant shopping center like Queens Chapel Town
19 Center that you have successful retail tenants and generally
20 a successful center, I think in, I think for the foreseeable
21 future it will remain as such. But there's no doubt that at
22 some point in the, in the medium term let's call it, you
23 know as, as Hyattsville continues to grow and become even
24 more vibrant, there will be an opportunity to redevelop the
25 entire property for mixed-use.

1 MR. LYNCH: Okay. I have no further questions for
2 Mr. Wiess.

3 MR. BROWN: Good morning, Mr. Wiess.

4 MR. WIESS: Good morning.

5 MR. BROWN: You testified that prospective tenants
6 have declined to lease this particular location. Do you
7 have any letters that outline their concerns?

8 MR. WIESS: I don't have any specific letters, you
9 know, typically this sort of, the, the, the pipeline or
10 timeline for, for a company to lease property is you know
11 reaching out to tenants, having conversations, meetings on
12 site, negotiating LOI's as a sort of dig into the, you know,
13 the, the, the, the what if's, as they consider zoning and
14 other things, permitting, et cetera, you know questions come
15 up. I would say that off the top of my head I can't recall
16 a specific letter of termination of negotiations, it was, I
17 would say almost entirely verbal.

18 MR. BROWN: So when a prospective tenant executes
19 a letter of intent with this LLC, the landlord, do they
20 typically ask for a copy of the Conceptual Site Plan and
21 Detailed Site Plan conditions of approval?

22 MR. WIESS: For your larger, I would say national
23 tenants they typically ask for what the landlord has in its
24 file. Most of the, specifically the larger tenants will do
25 the research themselves, they'll pull that information

1 themselves from the county or the city or you know the
2 municipality that, that governs.

3 MR. BROWN: Yes. Now you mentioned that some of
4 the prospective tenants you reached out to included Mezeh
5 and Boston Market. I'm not aware of Mezeh or Boston Market
6 having a drive-thru, do they?

7 MR. WIESS: Boston Market does, Mezeh, if, if you,
8 you may be familiar with their location up at the Mall of
9 Prince George's, right on the front side there on the East-
10 West Highway side, that has been their typical operation.
11 Through again, you know, the pandemic many, many users I
12 call them or tenants, that typically would not have looked
13 to a drive-thru are now looking to a drive-thru. Chipotle
14 is a good example of that, that is their strong preference
15 right now for drive-thru locations, they call them
16 Chipolanes (phonetic sp.) and Mezeh had expressed interest,
17 we had, we had reached out to they, they didn't reach out to
18 us, and we had that conversation, so.

19 MR. BROWN: Yes. All right. No other questions,
20 but if you could look through your files and maybe give Mr.
21 Lynch you know two or three e-mails or some type of
22 correspondence from a perspective tenant that indicated you
23 know the lack of a potential drive-thru or the related
24 issues outlined by yourself and Mr. Harvey earlier as part
25 of their concern for not wanting to lease the property if

1 you have it, that would be helpful.

2 MR. WIESS: I'll see if I have something and I
3 will certainly provide it to Mr. Lynch.

4 MR. BROWN: No other.

5 MR. LYNCH: Thank you.

6 MS. MCNEIL: Thank you. Mr. Sanchez, do you have
7 any questions of this witness?

8 MR. SANCHEZ: Yeah, I have a question. I don't
9 know how you come up with the six months to renovate a fast
10 food restaurant. What does that have to do with some of
11 these prospective, prospective leasee's not wanting to, to
12 rent this building? The McDonald's at the corner of
13 Baltimore Avenue and East-West Highway renovated in about
14 six weeks.

15 MR. WIESS: So I think the, the concern, it's, it
16 really comes down to uncertainty. You know I've worked
17 extensively through Prince George's County over my career
18 but also in Montgomery, Fairfax County Washington, D.C., a
19 variety of different jurisdictions. You know the, the, the
20 permitting process, construction process is tricky. You
21 know I'll give you a quick example. You know, down the
22 street at Shops at Queens Chillum we have a tenant called
23 Mid Atlantic Seafood. They were well under construction and
24 had all their plans and permits approved and working away
25 and lo and behold there was an issue with the Pepco conduits

1 and bolts at the back of the center that had to be replaced.
2 Well, you know, Pepco, it took them four months to come out
3 and begin the process of replacing those, and it turned what
4 should have been a four to six month construction process
5 into over a year. So I think it's really just the concern
6 of you don't know the what if's, what could happen. You
7 know, it, it's tricky. So I think you know in terms of the
8 renovation process, you know, you hope you have all your
9 ducks in a row so that you can start construction and
10 complete construction, but you're dealing with utilities,
11 you're dealing with inspections and what an inspector may
12 find, you know, during that process. And these tenants are,
13 they're risk adverse, you know, they don't want to make the
14 financial commitment or time commitment if they're not
15 comfortable that they're going to be able to you know be
16 open and operate.

17 MS. MCNEIL: If I may jump in on Mr. Sanchez,
18 because he just raised a question for me. So is the issue
19 the time or is the issue what delays are outside of your
20 control and therefore could give you more time? So if you
21 said --

22 MR. WIESS: Well --

23 MS. MCNEIL: -- all they said in your condition is
24 unless the delay is not your fault. Perhaps if we beefed up
25 that portion of it, would there be less concern, do you

1 think?

2 MR. WIESS: I'm, I'm not an attorney so I can't
3 speak to the, to the language. But, but Mr. Sanchez was
4 speaking to I think the second part that some of the, the,
5 the more prominent national tenants had --

6 MS. MCNEIL: Right.

7 MR. WIESS: -- where they said that if, you know,
8 if, if seven, 10 years down the road they need to a
9 renovation and they run into a stumbling block with the 180
10 days is that going to be an issue. And as to --

11 MS. MCNEIL: And I'm asking you based on your
12 experience, if you know, if the language in the condition
13 said that the 180 days does not include any delay caused by,
14 say during the pandemic nobody had wood --

15 MR. WIESS: Right.

16 MS. MCNEIL: -- and you can't build. If we had
17 some language in there that gave you a sense of security
18 that the 180 days isn't straight 180 days if you're
19 renovating and you run into a situation that requires more
20 time.

21 MR. WIESS: I think my, my layman's mind says yes,
22 but when I stop and kind of think about it a little bit
23 further, they might say well okay we're agreed that if
24 there's delays caused by steel and the wood shortages, okay,
25 but what happens if it's Pepco? You know, oh we didn't

1 think about that, well that, that doesn't cover the beyond
2 your control. I think their, their overriding concern is
3 the, the what if. But conceptually I think you know if, if
4 we know that we have the ability to market the space and,
5 and find a tenant for the space, you know, in, in a non-
6 COVID related you know marketing environment where we can,
7 the tenant can feel comfortable that they can go through the
8 normal planning and permitting process in the county, and,
9 and obtain their use and occupancy permit, you know, in
10 whatever timeframe it takes do to the what if's. Then I
11 think that's, that's ultimately what the goal is.

12 MS. MCNEIL: Thank you. I'm sorry, Mr. Sanchez,
13 if you had, I sort of interrupted Mr. Sanchez.

14 MR. SANCHEZ: Oh no, that's fine. Thank you. No,
15 no worries.

16 MR. BROWN: All right. But I just wanted to
17 clarify again though, Mr. Wiess, it's really not an issue of
18 what if but it's really an issue of right now. There is not
19 a termination of a use under the law during the period of a
20 lease. And so really the applicant's issue is as of the
21 date of termination of KFC, the 180 days has commenced to
22 run, correct?

23 MR. WIESS: Uh-huh. That would be, yes, I think
24 that's correct, yes.

25 MR. BROWN: So that's really the issue is that

1 whether or not you can get a new drive-thru tenant in there
2 within the next 180 days, or rather within 180 days after
3 KFC's lease terminated, and if you can there are no what
4 if's because as long as you have an executed lease the use
5 does not terminate, even during construction or renovation.
6 You have a lease, they're renovating because they have a
7 lease.

8 MR. WIESS: Uh-huh.

9 MR. BROWN: I understand the long term thing you
10 want to nip this thing in the bud, so you don't have this
11 problem again, but I think your issue is the current 180
12 days. But no other questions. Thank you.

13 MR. WIESS: Thank you.

14 MR. BROWN: Yes, Mr. Mazell?

15 MR. MAZELL: Thank you. One, one of the things,
16 I'm sorry.

17 MS. MCNEIL: Excuse me one second. Mr. Sanchez,
18 Mr. Mazell doesn't get to ask questions.

19 MR. SANCHEZ: No.

20 MS. MCNEIL: Mr. Sanchez was doing cross of Mr.
21 Wiess. Are you finished, sir?

22 MR. MAZELL: Oh, I'm sorry, I just want to mention
23 one thing, I'd just like to --

24 MS. MCNEIL: No, you've got to wait a second.

25 We'll get back to you, we will. Mr. Sanchez, did you have

1 any other questions?

2 MR. SANCHEZ: (No audible response.)

3 MS. MCNEIL: You have to unmute.

4 MR. SANCHEZ: I'm, I'm sorry, I'm sorry. Can you
5 hear me now? Okay. I think that using the Mid Atlantic
6 Seafood as, as an analogy is not very good because that
7 wasn't a restaurant beforehand. And you're just talking
8 about renovating an existing fast food restaurant for the
9 same exact use. So I, I don't think the six month window
10 that you're talking about is, is at all relevant. I mean
11 any restaurant --

12 MS. MCNEIL: I'm going to help him. Is it, Mr.
13 Sanchez you've got to ask questions.

14 MR. SANCHEZ: Yeah.

15 MS. MCNEIL: So is the six month window relevant
16 if --

17 MR. SANCHEZ: There you go.

18 MS. MCNEIL: -- you're putting in the same use?

19 MR. SANCHEZ: Thank you.

20 MS. MCNEIL: Mr. Wiess?

21 MR. WIESS: Respectfully, Mr. Sanchez, I do think
22 it's applicable. We're talking about shopping centers that
23 are 80 plus years old, actually both of those shopping
24 centers, one is 70, one is 80. There are all kinds of
25 things that turn up during construction for regular retail

1 tenants as well as restaurant tenants. You know, as we, as
2 we turn over retail tenants and we've opened up a number of
3 local tenants that the members that own that shopping center
4 have spent substantial dollars on renovating to bring
5 bathrooms up to ADA compliance, electrical panels up to
6 current standards, HVAC units, you know that will turn over
7 something, for example, you know, a dated electrical panel
8 that needs to be replaced. So you end up dealing with the
9 utilities and various construction issues regardless if it's
10 a restaurant.

11 MS. MCNEIL: Okay. Mr. Sanchez, if you don't have
12 any other questions, Mr. Chandler?

13 MR. CHANDLER: Yes, ma'am. John, how are you?

14 MR. WIESS: Good, thank you. How are you?

15 MR. CHANDLER: Good. A couple of questions here,
16 I'll keep them all relevant to your testimony. You said you
17 had spoken to new prospective tenants for use of this site,
18 some with drive-thru's, some without. Can you tell me
19 generally the term in terms of years that the new tenants
20 were considering?

21 MR. WIESS: They, they vary. I would say
22 typically you know for a restaurant tenant like this,
23 they're, they're looking for an initial term of 10 years and
24 depending on, you know, the tenant, they'll typically look
25 for some additional options beyond that 10 years to extend

1 their lease.

2 MR. CHANDLER: Okay. Is it fair to say none of
3 those terms would exceed 25 or 30 years?

4 MR. WIESS: I think it's, you know, everything
5 left in negotiation I don't think I'm speaking out of turn
6 in saying that the members that own that shopping center are
7 not interested in going anything beyond that range that you
8 outlined --

9 MR. CHANDLER: Okay.

10 MR. WIESS: -- in the interest of keeping the
11 option for redevelopment when the time comes.

12 MR. CHANDLER: Okay. And just, I was a little
13 unclear, do you yes or no in terms of any written non-
14 binding letters of intent?

15 MR. WIESS: We have gotten down the line with a
16 number of tenants, we have not achieved a signed letter of
17 intent due to the issues --

18 MR. CHANDLER: Okay.

19 MR. WIESS: -- that we outlined earlier.

20 MR. CHANDLER: Okay. Thank you. So you mentioned
21 driving traffic to the shopping center, do you have an
22 estimate on the number of vehicles that utilize the drive-
23 thru on a daily basis when KFC was on site and operating?

24 MR. WIESS: I do not. I'm sorry.

25 MR. CHANDLER: Okay. Have any of the prospective

1 tenants shared with you what they would project in terms of
2 either the quantity of trips or the percentage of sales of
3 drive-thru versus walkup?

4 MR. WIESS: That's a good question. No, the short
5 answer is I do not have any specific ratios or percentages
6 of --

7 MR. CHANDLER: Okay.

8 MR. WIESS: -- drive-thru versus walkup.

9 MR. CHANDLER: You mentioned a couple of more
10 local chains in terms of prospective tenants and obviously
11 you know, what you shared I think is fairly adequate. Do
12 any of those that you mentioned operate an existing
13 restaurant within a --

14 MR. WIESS: I'm sorry, I missed the end of your
15 sentence.

16 MR. CHANDLER: -- in Prince George's County?

17 MR. WIESS: I apologize, you, you broke up there
18 at the end.

19 MR. CHANDLER: Yes. Sorry. Do any of the, yes,
20 no worries. Do any of the restaurants that you've spoken to
21 operate a restaurant in a Transit District Overlay Zone in
22 Prince George's County?

23 MR. WIESS: I do not know the answer to that
24 question.

25 MR. CHANDLER: Okay. And then my final question.

1 So you mentioned Mid Atlantic and I hadn't thought about
2 this previously, but Mid Atlantic on the shopping center
3 that is owned by the same ownership group (audio blank from
4 54:58 - 56:02).

5 MR. LYNCH: My final witness is Mr. Ferguson.

6 MS. MCNEIL: Well, before Mr. Ferguson, are you
7 sure you don't have a question of Mr. Mazell?

8 MR. LYNCH: Not at this time.

9 MS. MCNEIL: I told him he couldn't say more for
10 if you don't ask him. No, Mr. Lynch?

11 MR. LYNCH: No, I do not.

12 MS. MCNEIL: Okay. All right. Mr. Ferguson?

13 MR. FERGUSON: Good morning, Madam Examiner.

14 MS. MCNEIL: Good morning. Do you swear or affirm
15 under the penalties of perjury that the testimony you shall
16 give will be the truth and nothing but the truth?

17 MR. FERGUSON: I do.

18 MR. LYNCH: Give me one moment, Madam Examiner.

19 One moment.

20 MR. FERGUSON: And I will say I see people in the
21 chat saying that they're having trouble with their stream
22 and I'm noticing that I'm stopping and starting as well. So
23 we've lost Mr. Brown for the moment, we've lost Mr. Chandler
24 and I see that I'm, I can see that sometimes my video
25 seizes, so I don't know if I can be heard continually or

1 not.

2 MR. LYNCH: Yes, we have lost some folks.

3 MS. MCNEIL: Thank you. Do you mind, Mr. Lynch, I
4 apologize. Is it possible staff for us to take a minute
5 break to see what's going on and maybe people will have to
6 log back in?

7 MR. LYNCH: No, that's fine and I can talk to Mr.
8 Mazell and find out what is his question is.

9 MS. MCNEIL: Okay. Then we are going to take a 10
10 minute break now.

11 MR. LYNCH: Thank you.

12 MS. MCNEIL: I guess we'll stop recording.

13 MR. LYNCH: Thank you.

14 (Off the record.)

15 (On the record.)

16 MS. MCNEIL: Mr. Ferguson, do you swear or affirm
17 under the penalties of perjury that the testimony you shall
18 give will be the truth and nothing but the truth?

19 MR. FERGUSON: I do.

20 MS. MCNEIL: Thank you.

21 MR. LYNCH: Good morning, Mr. Ferguson.

22 MR. FERGUSON: Good morning, Mr. Lynch.

23 MR. LYNCH: Mr. Ferguson, just please state your
24 full name and address for the record, please.

25 MR. FERGUSON: My name is Mark Ferguson, my

1 business address is 9500 Medical Center Drive, Suite 480,
2 Largo, Maryland 20774.

3 MR. LYNCH: And Mr. Ferguson, have you previously
4 qualified as an expert land planner?

5 MR. FERGUSON: I have on many occasions.

6 MR. LYNCH: And Madam Examiner, we have Mr.
7 Ferguson's resume marked and it's in the record as Exhibit
8 4, and we'd ask that Mr. Ferguson be accepted as an expert
9 land planner.

10 MS. MCNEIL: He will be accepted as an expert in
11 land use planning.

12 MR. FERGUSON: Thank you, Madam Examiner.

13 MR. LYNCH: Mr. Ferguson, are you familiar with
14 the property which is the subject of today's hearing?

15 MR. FERGUSON: Yes, I am.

16 MR. LYNCH: And have you prepared a land planning
17 analysis?

18 MR. FERGUSON: Yes, I have.

19 MR. LYNCH: You have and that has again Madam
20 Examiner, been marked and is in the record as Exhibit 5.
21 Now before we get into your land planning analysis, Mr.
22 Ferguson, can you kind of take us through Condition 3C and
23 just explain to the Examiner Condition 3C is currently
24 written and how you see that condition working as it
25 pertains to this property?

1 MR. FERGUSON: Well, there is three components to
2 it. The first provides that eating and drinking
3 establishments with drive-thru's which existed prior to the
4 adoption of the 2006 West Hyattsville TDDP are considered
5 valid, not nonconforming uses and that further that not
6 nonconforming status is confirmed by the second sentence,
7 which says that should you need to alter them, you go
8 through the normal Site Plan amendment to process rather
9 than a special exception which would be the case were the
10 use considered a nonconforming use.

11 However, the third condition introduces the
12 stipulation which is commonly associated with nonconforming
13 uses, namely that if they are discontinued for a period of
14 more than 180 days then they are no longer considered to be
15 a legal use.

16 Now I will add that there is a proviso in that
17 stipulation and I think that goes really to the heart of the
18 case, both to the questions that I think Mr. Brown raised in
19 his questions to Mr. Mazell, and also to Mr. Wiess'
20 testimony and that is the condition is if the
21 discontinuation or the conditions of nonoperation is the
22 specific language were beyond the control of the owner or
23 the holder of the use and occupancy permit then that would
24 allow it to go forward. So I would argue that the
25 discontinuation of operation and subsequently the lease by

1 KFC was a business decision of the tenant and therefore
2 beyond the control of the owner of the property and
3 therefore doesn't interrupt the nonconforming use. That
4 would be how I would read it.

5 But I'm not a potential lessor and what Mr. Wiess
6 has told us is that regardless of my reading or perhaps Mr.
7 Lynch's reading, their perception is that there is
8 sufficient uncertainty as to restrict them from entering
9 into a lease agreement.

10 Now I will say that the provisions of this
11 Condition 3C are even a little bit distinct from the normal
12 conditions or the normal provisions that attend
13 nonconformity. So the text of the Zoning Ordinance when it
14 comes to discontinuance of a nonconforming use talks about
15 and let me cite it, I have it open. In 27-241(c)(2) there
16 is a provision that the Planning Board may determine to
17 allow reestablishment that the conditions of nonoperation
18 were beyond the control of the person who was in control of
19 the property during the period of nonoperation. So the
20 normal operation it would appear to me would apply to a
21 discontinuation on the part of a lease holder would in fact
22 you know qualify the nonconforming use to be discontinued.
23 In Condition 3C there's the additional stipulation that it
24 has to be beyond the control of the, or there is the
25 additional provision that if the discontinuation is beyond

1 the control of the owner that doesn't disqualify the use.

2 So from a planner's view of a position of law I
3 would agree with, I think what Mr. Brown has said is that
4 you know is this moot, but you know the fact does seem to
5 remain from Mr. Mazell's testimony and from Mr. Wiess'
6 testimony and their communications with me, that this is
7 really an issue of the perception of potential lessees
8 rather than an operation of a law. And so in my report on
9 page 4, you know I do mention this interpretation and what I
10 believe is that there needs to be an affirmative
11 determination that you know the lessee is you know safe, to
12 be able to lease the building without threat of loss of
13 their right to operate.

14 It's the position of you know the applicant making
15 this request, the best way to accomplish that would be to
16 delete this last sentence of Condition 3, but you know
17 that's why we're here. That's why I was asked to be here.

18 MR. LYNCH: So Mr. Ferguson, the facts as they
19 have been laid out by Mr. Wiess as well as Mr. Hollins, they
20 stated that the lease was prematurely terminated by Kentucky
21 Fried Chicken in March of 2021.

22 MR. FERGUSON: Well, I think they said that the
23 use was terminated before the end of the lease.

24 MR. LYNCH: Correct, yes.

25 MR. FERGUSON: So yes, but the store appears to

1 have ceased in or about March of this year.

2 MR. LYNCH: So based upon the fact that they as
3 the property owner did not terminate the lease or did not
4 cause the tenant to vacate the property. It's your position
5 that under this condition they have the right to lease the
6 property to another eating and drinking establishment with
7 drive-thru service, is that correct?

8 MR. FERGUSON: Well that's how I would read it, as
9 a planner.

10 MR. LYNCH: Okay. And that that drive-thru
11 operator, if they so choose to lease this property, could
12 continue to operate an eating and drinking establishment
13 with drive-thru service under this condition of approval?

14 MR. FERGUSON: That is how I read it, yes.

15 MR. LYNCH: Okay. So it's really not the fact
16 that if this request is denied, from your perspective Queens
17 Chapel Town Center will not be able to relet the property to
18 an eating and drinking establishment to operate a fast food
19 restaurant, right?

20 MR. FERGUSON: Yes, that's my interpretation of
21 Condition 3C.

22 MR. LYNCH: And as explained to you it's really
23 just a matter of perception --

24 MR. FERGUSON: The market perception, yes. In
25 other words, their ability to secure a, you know, a vital

1 active tenant which you know Mr. Wiess talked about how in
2 the modern leasing environment you know quote pad sites are
3 really supplanting the role of traditional anchors such
4 grocery stores in a strip center or even department stores
5 in an enclosed mall as a driver is, maybe even the principal
6 driver of traffic to a retail you know establishment. Mr.
7 Wiess isn't the only person I've heard that from in the
8 leasing and retail business. So you know the ability to
9 have a vital, you know, active use there, is a market
10 function, right? And it's market for the other tenants that
11 are there, and really the whole area. Certainly as a
12 planner, certainly as a planner with a special interest in
13 long activity and revitalization, you know, look
14 revitalization it's hard, it's not just a simple matter of
15 zone it and they will come. It's really an incremental
16 effect of building the conditions where reinvestment makes
17 sense. And the one thing I've noticed over the years is
18 nothing succeeds like success and nothing fails like
19 failure.

20 So having a, whether it's vacant or even a less
21 successful, less vital, less active use at that property,
22 will have affects not just on the center and you know Mr.
23 Mazell's you know financial return, but really on the whole
24 of the surrounding neighborhood and thereby for the ability
25 of the Transit District to continue to redevelop and

1 revitalize.

2 MR. LYNCH: So let me ask you another question.
3 Mr. Mazell and Mr. Wiess talked about potential
4 redevelopment of just the area of the property on which the
5 KFC, Kentucky Fried Chicken is located.

6 MR. FERGUSON: Yes.

7 MR. LYNCH: From your standpoint and again from a
8 land planning standpoint, what do you see as the hurdles
9 they would have to overcome? I mean it seems to me as
10 though that's a very small area of the property, is that
11 correct?

12 MR. FERGUSON: Well, I think you know the hurdles
13 to a redevelopment proposal are --

14 MR. CHANDLER: Madam Chair, can I object to this
15 question?

16 MS. MCNEIL: That's Mr. Chandler objecting?

17 MR. CHANDLER: I'm objecting that the application
18 does not speak to any redevelopment.

19 MR. LYNCH: Madam Examiner, we're trying to
20 demonstrate good cause and part of our argument is that in
21 the event that we cannot operate for one reason or another
22 the eating and drinking establishment that it'd be
23 challenging to redevelop just this portion of the property.

24 MS. MCNEIL: Mr. Brown can weigh in as well, but I
25 was wondering the land use, Mr. Ferguson has a wealth of

1 knowledge but I usually only hear land use, why this
2 application satisfies the requirements of the Zoning
3 Ordinance and it seems to me like we're getting into like a
4 marketing expert testimony.

5 MR. FERGUSON: No, I was --

6 MR. LYNCH: It's not a marketing expert testimony.
7 Mr. Ferguson looked at this based upon the Zoning Ordinance
8 and there are certain constraints given the size of the
9 property that inhibits your ability to redevelop the
10 property and provide a use that's an alternative to the
11 existing eating and drinking establishment.

12 MR. CHANDLER: Madam Chair, this is not, nowhere
13 in this application mentions redevelopment it's not germane
14 to the application.

15 MR. BROWN: Yes, but the issue here though, Mr.
16 Chandler, is as raised by the applicant whether or not the
17 condition hinders them from leasing the property and Mr.
18 Lynch has to show good cause to change the condition. And
19 the good cause that he is alleging here is that, good cause
20 the standard is whether or not there are facts that existed
21 at the time the condition was imposed that were unforeseen
22 that now have come into fruition. And those unforeseen
23 facts that are alleged here is that today you cannot lease
24 the property because perspective tenants are indicating
25 there's uncertainty as to whether they could continue an

1 eating and drinking establishment with drive-in if 180 days
2 elapsed or expires. And so I mean it does go to the issue
3 of good cause but I think Madam Examiner, Mr. Ferguson just
4 has to sort of limit his testimony to those good cause
5 issues as opposed to legal conclusions or marketing
6 conclusions.

7 MS. MCNEIL: Exactly.

8 MR. LYNCH: Sure.

9 MS. MCNEIL: And also, I mean also Mr. Chandler
10 would be able to say that that was considered by the Council
11 at the --

12 MR. BROWN: Absolutely.

13 MS. MCNEIL: -- time they put the condition in.

14 MR. BROWN: Right.

15 MS. MCNEIL: So we'll overrule you but we are
16 limiting Mr. Ferguson, making sure he stays within his, what
17 is it, wheelhouse, and allowing Mr. Chandler to also testify
18 on this matter from the other side.

19 MR. FERGUSON: No, thank you, Madam Examiner. I
20 do think there are two threads to Mr. Lynch's question. The
21 first is related to is this use a nonconforming use? And
22 what does nonconformity arise from and what does it mean in
23 the application of zoning?

24 So the essence of it is we want to see something
25 different at this property but we can't make you close

1 because you have, you know, you have rights that we can't
2 take away. In fact, in the City's objection they say we
3 don't want to see a drive-thru here because it's not transit
4 friendly and effectively it doesn't conform to the ultimate
5 vision for the development that we want to see in the
6 Transit District. That's the core of what the City said of
7 why they don't want to see this condition removed because
8 they want to see this use go away, and from a high level,
9 absent any particular particularities of a site in the
10 abstract, they're not wrong. A drive-thru is not a transit
11 friendly pedestrian oriented use.

12 That having been said, you can't just snap your
13 fingers and make the use that you don't want disappear and
14 the use that you do want appear because there are many
15 constraints that stand in the way of something happening.
16 Mr. Mazell testified earlier that he did not believe the
17 redevelopment of this part of the entire center was feasible
18 on its own, but would be in the context of a redevelopment
19 of the whole center. From a zoning standpoint I agree
20 because the dimensions of this property are very, very
21 narrow.

22 What the Transit District Development Plan insists
23 on for this property is a building of three to six stories
24 occupying a substantial amount of its frontage. To be able
25 to support a building of that volume, you need, regardless

1 of what the Zoning Ordinance says, you need a certain amount
2 of parking to provide for the people who are going to use
3 that space. To be able to accommodate a three to six story
4 building on a small site such as this, there isn't enough
5 room for two aisles, you know, of parking. You would just
6 be able to have the entire ground floor of the building be
7 parking because there isn't enough room to be able to get a
8 ramp up to the next level, right. The site is just too
9 small to physically accommodate multistory development. The
10 rest of the center has areas, has ample areas that are not
11 dimensionally constrained and will support parking
12 structures that will support development on this site. But
13 this site is a standalone, it can't.

14 MR. LYNCH: Thank you, Mr. Ferguson. I have no
15 questions at this time for Mr. Ferguson.

16 MS. MCNEIL: Mr. Brown?

17 MR. BROWN: Good morning, Mr. Ferguson.

18 MR. FERGUSON: Good morning, Mr. Brown.

19 MR. BROWN: KFC vacated the property approximately
20 April of this year. The lease terminated November of this
21 year. The clock has commenced on the 180 day period.

22 MR. FERGUSON: Well, depending on your
23 interpretation of the Code, or I'm sorry, of the condition.
24 You know, my contention would be that because the lease
25 termination was beyond the control of the owner, that

1 condition as distinct from the normal operation of the
2 ordinance dealing with nonconformity allows them to continue
3 the use.

4 MR. BROWN: Well, I don't see how you get to that
5 point. Again, you have to start with the law in Maryland of
6 what a nonconforming use is. Notwithstanding the District
7 Council put this ambiguous sentence at the end of C. The
8 law in Maryland is if a nonconforming use terminates for 180
9 days in Prince George's County due to an act of God, then
10 the use may continue.

11 MR. FERGUSON: Right.

12 MR. BROWN: The law also states that if the tenant
13 or the owner, it doesn't make a distinction between the two,
14 if they have a lease to allow the nonconforming use then the
15 nonconforming use continues for the duration of the lease,
16 regardless of whether the actual business has ceased.

17 MR. FERGUSON: And I have to accept, I was not
18 familiar with that provision of the law but I accept your
19 recitation of it. And I agree, Mr. Brown, that these
20 conditions both speak to the ability of the owner to lease
21 the property but they don't speak to the willingness of the
22 lessees to lease the property.

23 MR. BROWN: And it's irrelevant whether a lessee
24 is willing to lease the property. The issue is is there in
25 fact a nonconforming use being operated for a period of a

1 lease that does not terminate for a 180 days, that is if
2 there's still a lease in play, the 180 days doesn't even
3 come in.

4 MR. FERGUSON: Well, and Mr. Brown you spoke a
5 minute ago of the weird provisions, and that's not the only
6 one. You know one of the weird things that we do here in
7 this county regularly is we say okay all of these uses that
8 aren't permitted now that we've adopted this TDDP or Sector
9 Plan with a D-D-O-Z, they may not be permitted but they're
10 not nonconforming and that again is the case here. This use
11 is specifically provided as a not nonconforming use and so
12 we have a little bit further of muddle and uncertainty that
13 which is what the applicant is trying to correct here.

14 MR. BROWN: No, I mean I don't disagree, in fact,
15 I mean I think the last sentence of that condition is
16 unenforceable anyway for the reason you just stated. That
17 Council does not have authority to abrogate the case law on
18 what a nonconforming use is by picking and choosing when
19 that use commences or terminates separate and apart from the
20 law on nonconforming uses. But anyway, I understand your
21 point. No other questions.

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

23 MS. MCNEIL: Do you have any idea if you or Dan
24 could do a proffer of what will happen with the Zoning
25 Ordinance rewrite for this property?

1 MR. FERGUSON: I did do some research into that,
2 Madam Examiner. So the property is proposed to be the LTO
3 Core Zone and then we quickly come across a weird thing
4 about the new ordinance which provides that restaurants
5 quick service without a drive-thru, would be permitted in
6 the LTOC Zone but a restaurant quick service with or without
7 a drive-thru is not permitted. So you know I don't know how
8 to resolve that other than legislatively because you have a
9 direct ambiguity that a quick serve restaurant without a
10 drive-thru is both permitted and prohibited at the same
11 time. But then you would you get to the nonconformity
12 provisions because I think under both circumstances a quick
13 service restaurant with a drive-thru would be prohibited
14 under the new Zoning Ordinance and would therefore become
15 nonconforming as of April the 1st, unless there is some stay
16 due to a challenge of the new ordinance in between now and
17 then.

18 And the language regarding continuance of
19 nonconforming uses is similar to the existing ordinance.

20 MS. MCNEIL: Thank you. Mr. Sanchez, do you have
21 any questions of this witness?

22 MR. SANCHEZ: I have a question, sure. I'd like
23 to know how long this 180 day rule has been in effect in the
24 county.

25 MR. FERGUSON: Be very specific about which 180

1 day rule are you referring to? I'm sorry.

2 MR. SANCHEZ: Well the one that we're litigating
3 right here, right? The --

4 MR. FERGUSON: Well, there are several, so I don't
5 want to assume. If you're talking about the specifics of
6 this condition, this condition was applied to a Detailed
7 Site Plan which was approved in 2011. Now interestingly, at
8 the time of this Site Plan the existing drive-thru was very
9 likely a permitted use. It's curious and I can't say that
10 definitively because there is a peculiarity in the 2006 TDDP
11 which, let me step back one more time to the 1998 TDDP when
12 this KFC was originally approved. The only use was eating
13 and drinking establishment, and there was no distinction on
14 whether or not a drive-thru status would be any different
15 than any other. There were no restrictions on drive-thru.
16 So this was absolutely a permitted use without restriction
17 when it was approved.

18 May 2006, a new TDDP was approved and eating and
19 drinking establishments are only in that Table of Uses as
20 eating and drinking establishments with live music and
21 patron dancing. So by the operation of how the Zoning
22 Ordinance gets applied in Prince George's County, unless you
23 have live music and patron dancing, you're a nonconforming
24 use. So that would be the case for pretty much every
25 restaurant in the West Hyattsville TDOZ. Again, thank you,

1 you know, for the planning staff who draft these things.

2 2010 comes along and Queens Chapel Town Center
3 asked for a Detailed Site Plan approval to expand the Table
4 of Uses permissible at that property to allow them to lease
5 to a broader range of tenants. And they asked to clarify,
6 you know, that eating and drinking establishments without
7 drive-thru service and with drive-thru service were
8 specifically permitted. And what the District Council chose
9 to do with regard to the specific drive-thru on site was
10 impose Condition 3C at the time of that approval in mid-
11 2010.

12 So but in doing so, they relied on a finding by
13 the Planning Board which I think is again central to you
14 know the matter here. And I'll quote from Planning Board
15 Resolution 11-08 recommending approval that said the
16 existing shopping center development does not necessarily
17 comply with all of the recommendations for the developed
18 tier per the General Plan nor --

19 MS. MCNEIL: Mr. Ferguson?

20 MR. FERGUSON: Yes, ma'am.

21 MS. MCNEIL: I'm so sorry but it's Exhibit 6 and
22 could you say what page you're on in that resolution just
23 for the record?

24 MR. FERGUSON: I don't recall what page my
25 quotation is on page 4 of my report.

1 MS. MCNEIL: Okay.

2 MR. FERGUSON: I can find the cite to the finding
3 if you'd like.

4 MR. SANCHEZ: Did that change come before or after
5 the, the, the KFC was already built?

6 MR. FERGUSON: After.

7 MR. SANCHEZ: Okay. So to continue this finding,
8 the existing shopping center development does not
9 necessarily comply with all of the recommendations for the
10 developed tier per the General Plan, nor the approved
11 Transit District Development Plan and Transit District
12 Overlay Zoning Map Amendment for the West Hyattsville
13 Transit District Overlay Zone. However, it will remain as
14 an existing use until such time as a redevelopment
15 application is presented and until then it would be best if
16 it remains a viable shopping center with legitimate retail
17 uses. And so ultimately everything that's before us today
18 is speaking to that finding. How is it best to have this
19 remain until such time as it is redeveloped? As a viable
20 shopping center with legitimate retail uses.

21 MS. MCNEIL: Are you finished, Mr. Sanchez? I'm
22 sorry.

23 MR. SANCHEZ: Yes, yes, thank you.

24 MS. MCNEIL: Mr. Ferguson, on page 8 of that same
25 resolution, just tell me how this affects your

1 recommendation? On page 8 --

2 MR. FERGUSON: If I could just --

3 MS. MCNEIL: -- yes, page 8 of Exhibit 6.

4 MR. FERGUSON: Yes, I'm going to get there through
5 the one, 10, 9, 8. Okay. I'm here, Madam Examiner.

6 MS. MCNEIL: Okay. The top of that page.

7 MR. FERGUSON: Yes, ma'am.

8 MS. MCNEIL: In order to ensure all future
9 tenants within this property and pedestrian oriented, the
10 applicant's request for approval of a fast food restaurant
11 with a drive-thru as a permitted use is denied. However, a
12 condition has been included in this approval that allows the
13 existing fast food restaurant with drive-thru within the
14 subject property to remain as a valid legal use.

15 MR. FERGUSON: Yes, ma'am. I mean that is the
16 essence of all of the testimony, right?

17 MS. MCNEIL: Yes.

18 MR. FERGUSON: It is exactly that. We don't want
19 to say that it's okay but here let's keep this going so that
20 this remains a viable shopping center with legal uses. And
21 so --

22 MS. MCNEIL: Or we're allowing a use that's
23 operating to continue until it ceases to do so.

24 MR. FERGUSON: Well, the thing that's interesting
25 about that, Madam Examiner, is this specific provision

1 that's unique to Condition 3C and different from the
2 ordinary, you know, discontinuation of nonconforming use
3 language in both the existing and new Zoning Ordinances that
4 allows for continuation if the circumstances for
5 discontinuation are beyond the control of the owner.
6 Normally, it's beyond the person just beyond the person in
7 control of the property or as it's phrased in Condition 3C,
8 the older of the use and occupancy permit, which is not the
9 owner, it's the occupant, the tenant. So you know it's a
10 question.

11 MS. MCNEIL: Okay.

12 MR. FERGUSON: Right? How to me, as a planner the
13 issue before us is we have the Planning Board already
14 finding it's important that until we redevelop that this
15 center remain viable for reasons that I testified to
16 earlier. We have a market condition that says regardless of
17 what the lawyer says, our lawyers aren't comfortable and so
18 that's why we're asking that the condition be amended.
19 Because ultimately, I think we all agree that the ultimate
20 use of this property shouldn't be a restaurant with a drive-
21 thru service. But we can't just snap our fingers and make
22 the use that we all want to have happen appear today and
23 that having a substandard or vacant use would actually
24 inhibit the ability to get to that use that we all want to
25 see.

1 MS. MCNEIL: But, I hear you. Okay. Mr.
2 Chandler, do you have any questions of the witness?

3 MR. CHANDLER: I do. I will try to be brief.
4 Mark, how are you?

5 MR. FERGUSON: I'm okay, Jim. Your camera is
6 black, I don't know if you have it covered.

7 MR. CHANDLER: I don't. I stopped it and now I
8 try to share it again.

9 MR. FERGUSON: There you are.

10 MR. CHANDLER: Okay. Mark, do you consider
11 yourself proficient at the 2006 West Hyattsville TDDP?

12 MR. FERGUSON: Relatively. I know many, I know
13 the site plan a lot better, for instance. But --

14 MR. CHANDLER: Okay.

15 MR. FERGUSON: -- I have it within arm's reach in
16 that book.

17 MR. CHANDLER: Okay. So page 19 of the Plan
18 reiterates promoting walkability, bicycle safety, public use
19 transit, restricting auto oriented forms like drive-thru
20 restaurants, the West Hyattsville TDDP states that within
21 the TDOZ, pedestrians will be the priority when safety and
22 access must be balanced between modes of transportation.

23 MR. FERGUSON: Yes.

24 MR. CHANDLER: Would you agree? Okay.

25 MR. FERGUSON: Yes.

1 MR. CHANDLER: Okay. The Mixed-use Transportation
2 Oriented Zone, the M-X-T of which the subject property
3 resides is intended to encourage transit and pedestrian
4 friendly development. So that is on page 50.

5 MR. FERGUSON: Yes. It absolutely is.

6 MR. CHANDLER: Okay. And finally, the goal of the
7 TDOZ is to reduce vehicle trips to divert traffic to other
8 modes, such as walking, biking and public transit on page 6.

9 MR. FERGUSON: It is.

10 MR. CHANDLER: Okay. Would you agree that a
11 drive-thru use is contrary to the three statements that I
12 just made?

13 MR. FERGUSON: In the abstract without a specific
14 application of circumstances, yes, I would.

15 MR. CHANDLER: Okay. With respect to Condition 3C
16 in the resolution, I want to make sure I understand this
17 correctly. So you believe 3C was placed there in error by
18 the Planning Board and the District Council?

19 MR. FERGUSON: Actually, I don't. I don't. I
20 think that in my reading and we're all you know projecting
21 or hypothesizing, but in my reading it tracks with the
22 provision that Madam Examiner cited in the other finding on
23 page 8. It tracks with the finding that I have recited in
24 that we want to have pedestrian oriented uses in accordance
25 with the plan. However, we recognize that even though this

1 center and this use does not comply with many of the
2 recommendations, including the ones that you've just
3 recited, and that is strictly essentially the same as the
4 finding that Madam Examiner just cited, the interim until
5 such time as we redevelop it's best that the center remain
6 viable with legal uses. And so to do that as Madam Examiner
7 that finding you cited explicitly said, we stuck in this
8 Condition 3C to say we don't actually want this kind of use
9 but we're going to let this one continue. And because of
10 the words that they used, we were going to be even more
11 liberal with letting it continue, it is out of the owner's
12 control in addition to just conditions beyond the occupant
13 and the person who had control of the property. So I think
14 it was very intentional. I do think --

15 MS. MCNEIL: Mr. Ferguson, I'm so sorry. Would
16 everybody else please mute themselves while he's speaking
17 because we're getting a lot of feedback. Thanks.

18 MR. FERGUSON: Yes. I do think that, I'm sorry, I
19 lost my train of thought, let me go back. Let me go back
20 one second. I'm not remembering what I do think, if it
21 comes back to me again, I'll jump in.

22 MR. CHANDLER: All right. One last question to
23 Mr. Ferguson. Mark, you stated that the zoning by itself
24 doesn't necessarily create a transformative use of this
25 site, which I agree, there are market realities, there are a

1 variety of realities. So my question is would an additional
2 lease for a pad site restaurant with a drive-thru use, and I
3 think John Wiess had said, you know, 15 to 25 to 30 years,
4 would that be an additional barrier to bringing this
5 property into conformity with the zoning plan?

6 MR. FERGUSON: Yes. I mean I think that's really
7 the core of the issue, isn't it? And what Mr. Wiess
8 actually said was that there was resistance on the part of
9 the ownership to those longer term leases for that exact
10 same reason. Their ultimate desire is to redevelop this
11 property into something that meets the vision of the TDDP.
12 It's just the time isn't right yet. So you know that's why
13 I believe Mr. Wiess was talking about 10 to 15 year lease
14 terms which was you know sort of harmonizing with what Mr.
15 Mazell had testified for his view of the redevelopment
16 horizon.

17 So but if you go beyond that development horizon
18 and you're left with a use on that property with a lease
19 that the tenant doesn't want to give up, then yes you're
20 absolutely right it would be an impediment to redevelopment.

21 MR. CHANDLER: Thank you.

22 MS. MCNEIL: Any further questions, Mr. Lynch?

23 MR. LYNCH: Yes, just a few Madam Examiner. Mr.
24 Ferguson, I just want to make sure we're, let's just say it
25 this way, on the same page. The use of the property is

1 currently a permitted use, correct?

2 MR. FERGUSON: (No audible response.)

3 MR. LYNCH: Subject to approved Detailed Site
4 Plan, correct?

5 MR. FERGUSON: Under the provisions of Condition
6 3C it is a legal not nonconforming use. Words really,
7 really matter, right? Is it a permitted use of the Table of
8 Uses in the 2006 TDDP only allows restaurants with live
9 music and patron dancing. So if they put a guy with a
10 guitar and a set of maracas in the corner, then presumably
11 they're legal, with or without the drive-thru because
12 there's no stipulation to that in the 2006 TDDP.

13 MR. LYNCH: But again, the language of the
14 condition says this shall not be deemed a nonconforming use.

15 MR. FERGUSON: Right. Right.

16 MR. LYNCH: So based upon the language of the
17 condition, it's not a nonconforming use and therefore not
18 subject to the nonconforming use provisions set forth in the
19 Zoning Ordinance.

20 MR. FERGUSON: Correct.

21 MR. LYNCH: Correct. It's deemed not
22 nonconforming use, and I think, and correct me if I'm wrong,
23 I think there's some confusion because in some respects as
24 indicated in Condition C, it's subject to some of the normal
25 nonconforming standards, correct?

1 MR. FERGUSON: Well it's subject to a modification
2 of the 180 day termination period. But it also is not
3 required to go through the normal procedure that would be
4 required for modification of the nonconforming use. So in
5 other words, specifically go through the normal Site Plan
6 Amendment, DSP Amendment staged to modify, extend or alter.
7 So it's treated by sentence 2 as a regular permitted not
8 nonconforming use. Sentence 3 makes it akin to a
9 nonconforming use but not in terms of application I think
10 there's an important distinction there.

11 All of this adds to you know the uncertainty
12 because people look at this go and go whoa, this isn't like
13 anything I've seen before, what exactly is this?

14 MR. LYNCH: I have no further questions, Madam
15 Chair.

16 UNIDENTIFIED SPEAKER: Ms. McNeil?

17 MS. MCNEIL: Just to clarify the record, that
18 Detailed Site Plan will stay in, will be valid for how long?
19 What would make it cease validity? They just file another
20 one?

21 MR. FERGUSON: (No audible response.)

22 MS. MCNEIL: And what I'm getting at is could the
23 eating and drinking establishment with drive-thru stay there
24 in other portions of the site be revitalized or renovated?

25 MR. SANCHEZ: Ms. McNeil?

1 MS. MCNEIL: And if you want, you know I don't
2 want to be unfair, if we could leave it open I would love to
3 get an answer to that.

4 MR. FERGUSON: No. No, that's a great question,
5 and Madam Examiner as you are aware as much as anybody in
6 Prince George's County there often aren't simple answers to
7 questions like that, right, that applicant's want to know.
8 My belief is that because Condition 3 talks about this use
9 being able to be amended by normal Site Plan Amendment and
10 that the use is valid and nonconforming, and not
11 nonconforming, excuse me, that it would be allowed to
12 continue and in fact be amended in conjunction with a
13 Redevelopment Plan that left it on the corner. That's my
14 take on it with perhaps a minute's cogitation.

15 MS. MCNEIL: Well, we're going to have to leave
16 this record open for some things that Mr. Brown wanted. So
17 in fairness I know we're not finished yet, but if you wanted
18 more time to submit something in writing through the
19 attorney providing copies to everyone.

20 MR. LYNCH: Yes, and I appreciate that, Madam
21 Chair, because I do have thoughts on that which I think will
22 address your question, understanding the way redevelopment
23 and the way the center has been developed over the years.

24 MS. MCNEIL: And what I'm really asking also is
25 under the revised condition.

1 MR. LYNCH: Yes.

2 MS. MCNEIL: Okay.

3 MR. LYNCH: Understood.

4 MS. MCNEIL: All right. Somebody said Madam
5 Examiner, who was that and do they have more questions of
6 Mr. Ferguson?

7 MR. SANCHEZ: That was me.

8 MS. MCNEIL: Mr. Sanchez, I'm sorry.

9 MR. SANCHEZ: That was me, yes.

10 MS. MCNEIL: Go ahead.

11 MR. SANCHEZ: I actually said Ms. McNeil. Ms.
12 McNeil, is Mr. Ferguson the correct person to ask about
13 whether or not he has examined how traffic flows in and out
14 of that existing KFC?

15 MR. LYNCH: Madam Examiner, I think that question
16 has been asked and answered.

17 MS. MCNEIL: It was asked by a prior witness. He
18 couldn't have any expert answer to it, but he did say he
19 visited the site.

20 MR. FERGUSON: I did and Madam Examiner as you
21 probably know I am also a Hyattsville resident. That is a
22 corner of town I go to less than other corners of town. So
23 you know my observations of it would only be as a resident
24 from the other side of town.

25 MR. SANCHEZ: Okay. So have you seen how cars

1 come out of that alley when they leave the drive-thru?

2 MR. FERGUSON: In what way, I'm sorry, Mr.
3 Sanchez?

4 MR. SANCHEZ: Have you noticed, have you, have
5 you, let me try to put this in a, in a question format.
6 Have you noticed how they leave the alley to turn onto Ager
7 Road?

8 MR. FERGUSON: (Sound.)

9 MR. SANCHEZ: You, have you noticed the conditions
10 that exist when they, when they are leaving the, the parking
11 lot of the drive-thru to get onto Ager Road?

12 MR. BROWN: Mr. Sanchez, are you asking him are
13 the cars speeding out of the driveway and throwing trash on
14 the street?

15 MR. SANCHEZ: No.

16 MR. FERGUSON: Yes.

17 MR. BROWN: Go ahead, ask him.

18 MR. FERGUSON: Feel free to lead me, if --

19 MR. BROWN: Well what are you asking?

20 MR. FERGUSON: -- if you don't mind.

21 MR. SANCHEZ: I'm, I'm asking if, if you'll notice
22 in the alleyway there's a very high, there's a high fence
23 and very high vegetation. So when cars come out to make a
24 right hand turn, they're looking to their left.

25 MR. FERGUSON: Yes.

1 MR. SANCHEZ: They're turning onto Ager Road and
2 they're not looking at the pedestrians that can pop out with
3 no visibility. It's a --

4 MS. MCNEIL: Okay. Are you aware of that, Mr.
5 Ferguson?

6 MR. FERGUSON: So that, Mr. Sanchez does describe
7 the condition there accurately. You know the alley is not
8 on the applicant's property and in fact, well, the alley is
9 not on the applicant's property and the obstructing
10 vegetation is on the property of the house which backs up to
11 the alley. And whether somebody was leaving a drive-thru or
12 simply leaving a parking space, you know, they have that
13 same you know they have that same constraint.

14 MR. SANCHEZ: No matter which way they come out of
15 that parking lot they're looking in one direction for
16 traffic to come in and not looking at the pedestrians
17 crossing across the street.

18 MR. FERGUSON: Yes, and that's true whether
19 they're coming from the drive-thru from a parking space on
20 this site or you know other parts of the center further to
21 the east. Yes, and that's a fact.

22 MR. SANCHEZ: Thank you.

23 MS. MCNEIL: Thank you, Mr. Ferguson. Okay. Mr.
24 Lynch, any other witnesses?

25 MR. LYNCH: No further witnesses, Madam Examiner.

1 MS. MCNEIL: Okay. Mr. Sanchez, would you like to
2 testify?

3 MR. SANCHEZ: Definitely.

4 MS. MCNEIL: Okay. Do you swear or affirm under
5 the penalties of perjury that the testimony you shall give
6 will be the truth and nothing but the truth?

7 MR. SANCHEZ: Sure, yes.

8 MS. MCNEIL: Okay. State your name and address
9 and then tell us what you would like me to hear about this
10 application.

11 MR. SANCHEZ: Okay. My name is Alexi Sanchez
12 Boado, and I live at 3110 Lancer Drive in Hyattsville, just
13 a few blocks away from the KFC. And so is this my
14 opportunity to just state my opinion, or? Okay. So you
15 know Mr. Mazell and his, his staff are here to fight for
16 their rights to make their, their business profitable. Full
17 respect to them for that. We residents, unfortunately, are
18 at odds with that, because we want a safe neighborhood.

19 If you've spent 20 years in this neighborhood and
20 in this area specifically of Hyattsville, you'll have
21 noticed that we've had especially in the last five years a
22 serious problem with homelessness and loitering and
23 drunkenness. And our fear as a community and we've spoken
24 about this on our private list serve is that additional fast
25 food, if that's what they intend to bring such as something

1 that has a cheap dollar menu or something to that effect,
2 would catalyze more loitering because you would have a bunch
3 of you know inebriated men looking for something to eat at
4 all hours of the day. So that's a big fear for us. The
5 other fear is garbage, of course, and traffic.

6 I mean this plan is incongruous with pedestrian,
7 with a pedestrian intense area, as the City has said. The
8 blind corner coming out of that alleyway which would
9 increase traffic if they got their way which is to have a
10 very heavily used drive-thru, if you've tried to cross that
11 alleyway day or not, especially at night, especially in the
12 wintertime, the drivers are looking the opposite direction
13 and they cannot see you coming until you're right in their
14 path. I do it all the time, it's terrifying. Okay. We've
15 already had multiple deaths on Ager Road, one just recently.
16 So the last thing we need is additional traffic.

17 The other, the other issue is that somehow and I
18 wonder why this is, the poor communities are always saddled
19 with garbage food. And today we've been lucky in that we
20 haven't had an influx of fast food restaurants right in the
21 area, but we don't, we don't need, we don't need a KFC, we
22 don't need a McDonald's, we don't, we don't need junk food.
23 Poor neighborhoods don't need access to bad quality food,
24 which is what they could potentially do if, if that kind of
25 establishment is what decides to lease the, the location.

1 Lastly, and this is sort of a comment on the
2 development generally that is associated with Mr. Mazell,
3 when the riverfront project was happening across the street
4 right next to the metro stop, we had to beg them to give us
5 some alternate retail. Why? Because we're tired of the
6 junk retail that Mr. Mazell loves to put into his, onto his
7 development. We are desperate for something better, we
8 deserve something better and yet here we are 20 years later
9 and the best thing that they can come up with is another
10 fast food restaurant. That's my testimony. Thank you.

11 MS. MCNEIL: Thank you. Before there's any cross,
12 Mr. Sanchez, could you spell, you had a hyphenated last
13 name?

14 MR. SANCHEZ: Yes.

15 MS. MCNEIL: I want to make sure we're right on
16 the record. Could you spell the rest of it, because all we
17 have is Sanchez up.

18 MR. SANCHEZ: Can I, can I text it? Can I put it
19 in the chat?

20 MS. MCNEIL: You can change, yes, sure, that's
21 fine.

22 MR. SANCHEZ: Okay. I'll put it in the chat.

23 MS. MCNEIL: Thank you.

24 MR. SANCHEZ: And also I do not have access to any
25 of these, any of this paperwork that was referred to.

1 MS. MCNEIL: And you couldn't go on line, I guess
2 the development --

3 MR. SANCHEZ: I didn't know that --

4 MS. MCNEIL: -- was on line?

5 MR. SANCHEZ: We didn't, I did not know that
6 anything was available.

7 MS. MCNEIL: Okay. We will send you that link,
8 there were 17 prefiled exhibits in this case --

9 MR. SANCHEZ: Okay.

10 MS. MCNEIL: -- and they're all on line.

11 MR. SANCHEZ: Okay. Thank you.

12 MS. MCNEIL: Any questions of Mr. Sanchez, Dan?

13 MR. LYNCH: No questions, Madam Examiner.

14 MS. MCNEIL: Mr. Brown?

15 MR. BROWN: Hello, Mr. Sanchez. Just a couple
16 points to quibble on.

17 MR. SANCHEZ: Sure.

18 MR. BROWN: You said that this was a poor
19 neighborhood? You didn't mean that, did you?

20 MR. SANCHEZ: It's a working class neighborhood.

21 MR. BROWN: I know but the house values, I
22 wouldn't consider it a poor neighborhood in Hyattsville.

23 MR. SANCHEZ: Okay. All right. It's working
24 class. The west, the west side of Hyattsville around there
25 is working class. We have two alcohol places and a check,

1 check, check cashing establishment. If that doesn't tell
2 you you're in a working class neighborhood, I don't know
3 what does.

4 MR. BROWN: And approximately how far do you live
5 from this site?

6 MR. SANCHEZ: Three blocks.

7 MR. BROWN: And you patronize that shopping center
8 on a regular basis?

9 MR. SANCHEZ: Yeah, I'm probably at the Aldi every
10 week.

11 MR. BROWN: Yes. All right. No other questions,
12 thank you.

13 MS. MCNEIL: Thank you, sir. Mr. Chandler, would
14 you like to testify?

15 MR. CHANDLER: I would.

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

19 MR. CHANDLER: I do.

20 MS. MCNEIL: State your name and also explain how
21 you're representing the Town.

22 MR. CHANDLER: Yes. My name is Jim Chandler, C-H-
23 A-N-D-L-E-R-, I serve as Assistant City Administrator and
24 Director of Economic Development for the City of
25 Hyattsville. On Monday, December 8th of this year, our City

1 Council reviewed this applicant's request and voted in
2 opposition to the applicant's request to eliminate Condition
3 3C from the prior Planning Board resolution.

4 In its most recent vote, the City reaffirmed a
5 previous opposition from May 16, 2011, with respect to both
6 the DSP and CSP that were subject of the case today. The
7 City Council nor the community it is elected to represent
8 support the applicant's request. And this is due in part
9 because the land use policies explicitly do not support
10 restaurant with drive-thru uses because of its auto oriented
11 use. We believe it undermines and in no way furthers the
12 goal of both the current and new West Hyattsville Transit
13 District Development Plan.

14 Quite frankly, the removal of Condition 3C will
15 undermine the condition of the resolution that permitted the
16 use to move forward. We believe if the applicant has
17 concerns about the condition it's incumbent upon the
18 applicant to file a new DSP to amend these conditions. As
19 Mr. Ferguson stated in his testimony, this condition was not
20 an accident it was intention by the decision making body.

21 The applicant has continued to make an economic
22 argument and at no point has really made a land use argument
23 with respect to the drive-thru use and its compatibility
24 with the intent of the West Hyattsville TDDP nor the, both
25 in its existing form and the form that is under development

1 through Park and Planning Commission. So with that, I have
2 no further testimony for the Zoning Hearing Examiner and
3 certainly look forward to your decision.

4 MS. MCNEIL: Mr. Lynch, do you have any questions?

5 MR. LYNCH: Yes, I do, Madam Examiner, one
6 question. Mr. Chandler, I believe in your testimony you
7 just indicated that this condition and if I'm not phrasing
8 correctly, please let me know, this condition allowed this
9 use to move forward, is that what you indicated?

10 MR. CHANDLER: Condition 3, as a reconditioned 3C
11 in the 2011 resolutions enabled the use to move forward with
12 those conditions tied to it.

13 MR. LYNCH: You understand that this use existed
14 prior to the imposition of the condition, are you aware of
15 that?

16 MR. CHANDLER: I am aware of that.

17 MR. LYNCH: Okay. So technically that statement
18 is not correct, the use was approved on this property
19 without this condition. That condition was placed on this
20 property as a result of a subsequent application or Detailed
21 Site Plan and Conceptual Site Plan to amend the Table of
22 Uses to allow other uses on the subject property, correct?

23 MR. CHANDLER: Understood.

24 MR. LYNCH: Okay. Just want to make sure it's
25 clear. No further questions.

1 MS. MCNEIL: Mr. Brown?

2 MR. BROWN: No questions, thank you.

3 MS. MCNEIL: All right. I don't think there, the
4 Hollins' are with you, Mr. Lynch?

5 MR. LYNCH: Yes, they are.

6 MS. MCNEIL: Okay. Then do you have anything
7 further, Mr. Lynch?

8 MR. LYNCH: No, I do not Madam Examiner.

9 MS. MCNEIL: So we're going to leave the record
10 open to get the certificate of good standing for the LLC, to
11 get any further discussion about whether the use would be
12 allowed if the requested amendment were granted would this
13 use be able to stay there even if the remainder of this six
14 acres were redeveloped and I believe we had another one.

15 MR. LYNCH: It was Mr. Brown asked Mr. Wiess to
16 provide any document he had from a perspective tenant.

17 MS. MCNEIL: Right. Yes.

18 MR. LYNCH: And Madam Examiner, and let me just
19 say here on the record, Mr. Wiess will look for that. I am
20 in possession of those documents but as the Examiner knows I
21 represent a lot of these prospective fast food users and
22 those were sent to me as part of an ongoing discussion we
23 had when they were at the same time talking to Mr. Mazell.
24 I cannot disclose those but we will look into Mr. Hollins
25 records to see if he has something similar that he could

1 share with you.

2 MR. BROWN: And also, Mr. Lynch, I mean you can
3 redact any privileged or confidential information
4 identifying the specific --

5 MR. LYNCH: Okay.

6 MR. BROWN: -- lessees, or any amounts that were
7 considered.

8 MR. LYNCH: Yes, I do have e-mails from
9 prospective tenants who I represent and the concern was
10 pretty much across the board. But I will go through my e-
11 mails and if I feel I can redact something I will do so and
12 submit that into the record.

13 MR. BROWN: All right. Great.

14 MR. LYNCH: Okay.

15 MS. MCNEIL: And Mr. Lynch, if you will, if you
16 decide not to submit anything further from Mr. Ferguson,
17 could you say that as well?

18 MR. LYNCH: Yes, I will.

19 MS. MCNEIL: Okay. And SDAT. Okay. And I thank
20 you all for being here today, bearing with us through our
21 problems earlier and the record will close as soon as that
22 information is provided. Mr. Sanchez at some point soon you
23 should have that link.

24 MR. SANCHEZ: Got it.

25 MS. MCNEIL: I don't know if you got it yet.

1 MR. SANCHEZ: Thank you, I got it.

2 MS. MCNEIL: I thank you all so much for being
3 here and if you do celebrate any holidays, upcoming holidays
4 then I wish you a Merry Christmas and Happy Holidays and
5 I'll see you next year where I will --

6 MR. LYNCH: Happy Holidays.

7 MS. MCNEIL: -- be aging backwards, I'll be 10
8 years younger next year. Okay. Thank you all so much.

9 MR. LYNCH: Thank you.

10 UNIDENTIFIED SPEAKER: Thank you, have a good one.

11 MR. LYNCH: Bye now.

12 UNIDENTIFIED SPEAKER: Thank you very much.

13 (Whereupon, the hearing was concluded.)

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C E R T I F I C A T E

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

QUEENS CHAPEL TOWN CENTER, LLC
Case No. CSP-10002-C-02 and DSP-10011-C-02

By:

Diane Wilson

Diane Wilson, Transcriber