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

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: :
WESTGATE APARTMENTS : Case No. SE 4852
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A hearing in the above-entitled matter was held on
December 14, 2022, at the Prince George's County Office of
Zoning, County Administration Building, Room 2174, Upper
Marlboro, Maryland 20772 before:

Maurene McNeil
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Nathaniel Forman, Esq.

On Behalf of People's Zoning:

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AUTOMATED SPEAKER: This conference will now be recorded.

MADAM EXAMINER: Okay. Good morning, everyone. I'm Maurene McNeil. I'll be the Hearing Examiner today and we're here on Special Exception 4852, a request to revise a certified non-conforming use. And today is December 14, 2022. If counsel would identify himself for the record?

MR. FORMAN: Good morning, everyone. My name is Nate Forman and I'm an attorney with O'Malley, Miles, Nysten & Gilmore, with offices in Greenbelt, Maryland.

MADAM EXAMINER: Mr. Forman, the People's Zoning Counsel, Mr. Stan Brown, had a prior court commitment today and he will try to join use and apologizes that he's not here now. He wasn't aware of this hearing when he scheduled the other. And do you have any objection to proceeding without him?

MR. FORMAN: No objection to proceed without him, Madam Examiner.

MADAM EXAMINER: Okay. And is there anyone here signed in on this link that's opposed to this application?

(No affirmative response.)

MADAM EXAMINER: Everybody is pretty much your witness, Mr. Forman?

MR. FORMAN: Yes, Madam Examiner.

1 MADAM EXAMINER: Okay. Then you may proceed, but
2 just before you do, because we have a new counsel and
3 because we have a new Zoning Ordinance, could you, even
4 though I know it's in the Technical Staff Report, would you
5 just touch on briefly a short opening explaining which code
6 we're going under today and why? Thank you.

7 MR. FORMAN: Of course, Madam Examiner. So, to
8 answer her, the question and talk about the proceedings, we
9 are going to be proceeding under the prior Zoning Ordinance;
10 and to the option, the reason we're doing that is this case
11 has, was in the process of getting accepted, getting to this
12 point prior to the adoption of the new Zoning Ordinance.
13 So, that's why we have chosen to proceed and just continue
14 along the path that we had started with, which was the prior
15 Zoning Ordinance.

16 MADAM EXAMINER: And to your knowledge, and, and
17 there's a provision in the new Zoning Ordinance that allows
18 you to do this, correct?

19 MR. FORMAN: Yes, thank you, yes. Under 27-19,
20 that section, there's the option for any applicant to
21 proceed under the prior or the current Zoning Ordinance for
22 a period of two years beginning in April 1, 2022, until
23 April 1, 2024. So, even though this case wasn't actually
24 accepted until after the enactment or adoption of the new
25 Zoning Ordinance, we were still allowed to proceed under the

1 prior Zoning Ordinance.

2 MADAM EXAMINER: Thank you. You may continue.

3 MR. FORMAN: All right. Thank you, Madam
4 Examiner. I'd just like to begin with just a, another quick
5 preview as to the purpose of today's testimony and today's
6 hearing, and it's to request a special exception approval to
7 increase a number of permanent dwelling units at Westgate at
8 Laurel Apartments on which are owned by the Applicant,
9 Westgate at Laurel, LLC; and the purpose is to increase a
10 number of permitted dwelling units by seven for a total of
11 225 dwelling units.

12 A special exception is required because Westgate
13 at Laurel Apartments are certified, non-conforming use, and
14 any enlargement or expansion of a non-conforming use
15 requires special exception approval. This case was, the
16 property, which you will hear from testimony, was
17 constructed around 1965 and it became a certified, non-
18 conforming use in 2001.

19 The unique feature of this application is that to
20 accommodate the seven additional dwelling units. No
21 external construction is required. The existing buildings
22 can accommodate the additional units through internal
23 construction only. There is space for all of them. More
24 details will be provided regarding the property history, the
25 nature of this request and its satisfaction of requirements

1 for special exception approval through the testimony of the
2 two witnesses I plan to call.

3 My first witness is Mr. Shraga Rabinowitz, who
4 also goes by Sha Rabinowitz; and he will testify on behalf
5 of the Applicant. And my second witness is Mr. Kevin
6 Foster, a land use planner with Gutschick, Little & Weber.
7 And don't worry, Madam Examiner, we'll be sure to make sure
8 you know how to spell Mr. Rabinowitz's last name.

9 So, unless there are any preliminary issues or
10 concerns that will need to be addressed, I would like to
11 call Mr. Shraga Rabinowitz as my first witness.

12 MADAM EXAMINER: Mr., please forgive me, Shraga
13 Rabinowitz, also known as Sha, do you swear or affirm --

14 MR. RABINOWITZ: Perfect, first try.

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

18 MR. RABINOWITZ: Yes, I do.

19 MADAM EXAMINER: Okay. And do, please, spell that
20 for the record for us, your name.

21 MR. RABINOWITZ: First name is, first name is
22 Shraga, S-H-R-A-G-A, and my last name is Rabinowitz, R-A-B-
23 I-N-O-W-I-T-Z.

24 MR. FORMAN: All right. Thank you. And, Mr.
25 Rabinowitz, what is your address?

1 MR. RABINOWITZ: I live at 2408 Steel Road,
2 Baltimore, Maryland 21209.

3 MR. FORMAN: Okay. And what is your connection
4 with Westgate at Laurel, LLC, the Applicant in this case?

5 MR. RABINOWITZ: I'm a Senior Regional Manager for
6 the entity that owns Westgate at Laurel, LLC, as well as a
7 resident agent for Westgate at Laurel, LLC.

8 MR. FORMAN: Are you authorized to speak on behalf
9 of Westgate at Laurel, LLC?

10 MR. RABINOWITZ: Yes, I am.

11 MR. FORMAN: Okay. Is Westgate at Laurel, LLC,
12 currently in good standing with the state of Maryland?

13 MR. RABINOWITZ: Yes, it is. We submitted a
14 certificate of good standing that was issued by the state of
15 Maryland. It should be included in the record.

16 MR. FORMAN: Okay. Thank you. And --

17 MADAM EXHIBIT: Exhibit 31 for the record.

18 MR. FORMAN: Oh.

19 MR. RABINOWITZ: Thank you.

20 MR. FORMAN: Thank you. What type of business is
21 Westgate at Laurel, LLC?

22 MR. RABINOWITZ: We're owner and operator of a
23 multi-family apartment complex called Westgate at Laurel.

24 MR. FORMAN: And where is Westgate at Laurel
25 located?

1 MR. RABINOWITZ: The main address is 8200 Gorman
2 Avenue, Laurel, Maryland. There's 20 addresses for the
3 property. Nineteen of them have various residential units
4 and the other one is the leasing office.

5 MR. FORMAN: Would you mind naming the, all the
6 addresses for the record, please, and make sure you, you
7 denote just specifically, again, which one is the leasing
8 office?

9 MR. RABINOWITZ: All of them are on Gorman Avenue.
10 So, buildings 8100, 8102, 8104, 8106, 8108, 8110, 8112,
11 8114, 8116, 8118, 8120; and then there's 8200, which is the
12 leasing office; and then, again, residential buildings is
13 8202, 8204, 8206, 8210, 8212, 8214 and 8216, again, all on
14 Gorman Avenue.

15 MR. FORMAN: Thank you. And did you say 8208, or
16 did I just miss that?

17 MR. RABINOWITZ: I, I think I did. If I didn't,
18 it's, there is 8206, 8208 and 8210.

19 MR. FORMAN: Okay. Thank you. That, just to be
20 sure, I'm, probably with me just missing it, but I wanted to
21 be clear.

22 MR. RABINOWITZ: No problem.

23 MR. FORMAN: When was Westgate at Laurel
24 Apartments purchased by Westgate at Laurel, LLC?

25 MR. RABINOWITZ: January of 2020.

1 MR. FORMAN: And have there been any improvements
2 to Westgate at Laurel since it was purchased in January of
3 2020?

4 MR. RABINOWITZ: Yes, we made a number, number of
5 improvements, specifically in the hallways. We put in LED
6 lighting; we refreshed all the carpets there; and installed
7 secure access to all the buildings. We have been renovating
8 units as they become vacant. We've constructed a brand-new
9 playground in a more central location. New appliances has
10 been a very big thing at the property. HVAC units have been
11 replaced as needed, which ended up being a lot of them. We
12 did a, new signage and fresh paint for the exterior of the
13 buildings. We've been replacing a lot of old roofs. We
14 refreshed the parking lots with asphalt and paint; and we've
15 dug up and replaced a couple of main sewer lines that needed
16 replacing.

17 MR. FORMAN: Okay. Do you have an approximate
18 idea of how much was spent on these improvements?

19 MR. RABINOWITZ: Yes. So, in 2020, 2021, we've
20 spent approximately \$520,000. I don't have the numbers for
21 2022 because it hasn't been closed out yet; but, again,
22 we're talking hundreds of thousands of dollars each year.

23 MR. FORMAN: Okay. So, you, but you did make
24 improvements in 2022, correct?

25 MR. RABINOWITZ: Correct, more of the same. Not

1 new signage because that's a one-time thing, but the rest of
2 the stuff are mostly as we go.

3 MR. FORMAN: And, and do you just have kind of a
4 rough idea as to how much was spent this year?

5 MR. RABINOWITZ: I don't have that exact number,
6 but I'm just based off of previous years, it's usually
7 somewhere between 200 and \$350,000 each year.

8 MR. FORMAN: Okay. Thank you. So, in the three
9 years that you've owned it, you basically have spent almost
10 three-quarters of a million dollars, if not more?

11 MR. RABINOWITZ: Correct.

12 MR. FORMAN: Okay.

13 MR. RABINOWITZ: And this is besides for, this is
14 besides for regular maintenance that needs to be done to the
15 property.

16 MR. FORMAN: Okay. And what would you, what is
17 kind of the, what is regular maintenance compared to these
18 improvements that you have made?

19 MR. RABINOWITZ: It's really whatever our
20 maintenance, whatever tickets are put in by the tenants,
21 whatever complaints they have, that, it would include a lot
22 of the pipe replacement that I haven't included in the
23 bigger improvements, but it ends up really adding up over
24 the course of a year.

25 MR. FORMAN: Okay. So, like, you know, broken

1 locks or maybe faulty windows, that type of stuff, is not --

2 MR. RABINOWITZ: It includes lines, it could be
3 drywall work, it could be just general repairs as, as the
4 resident needs.

5 MR. FORMAN: Okay. Perfect. Thank you. What is
6 the occupancy rate for Westgate at Laurel Apartments?

7 MR. RABINOWITZ: It's a steady 95 percent.

8 MR. FORMAN: Okay. Thank you. And when you
9 bought Westgate at Laurel Apartments, how many dwelling
10 units were there?

11 MR. RABINOWITZ: Two hundred and nineteen.

12 MR. FORMAN: And when you applied for and
13 ultimately received a use and occupancy permit for this
14 property, as shown on Exhibit 16, how many dwelling units
15 were actually allowed?

16 MR. RABINOWITZ: Two hundred and eighteen.

17 MR. FORMAN: But when you bought the property,
18 there were 219 dwelling units in existence?

19 MR. RABINOWITZ: Correct.

20 MR. FORMAN: How was there 219 units if only 218
21 were there?

22 MR. RABINOWITZ: So, after we bought the property,
23 we learned that the former owner had converted a storage/old
24 laundry room into a unit. Only after we bought the property
25 and learned more about the history did we realize that this

1 was done without any approvals or permitting by the County.

2 MR. FORMAN: And are you still operating this
3 property with 219 dwelling units?

4 MR. RABINOWITZ: Yes, we are.

5 MR. FORMAN: If you know your permit only allows
6 for 218, why are you still operating with 219 units?

7 MR. RABINOWITZ: Yeah. The unpermitted unit was,
8 was and still is occupied by the same resident from before
9 the sale before we evicted the tenant or we wanted to see if
10 there was some process to allow a 219th unit. Also, we
11 bought the property in January of 2020. Pretty much right
12 afterwards is when the pandemic happened and evictions for
13 any reason was extremely hard to do. So, we, we, we, we
14 also bought the property at 219 units and we wanted to try
15 to keep the minimum of the property at 219 units.

16 MR. FORMAN: Okay. Thank you. And how did you
17 know that the unpermitted unit was occupied? I mean in, in
18 theory, wouldn't it look like any other unit?

19 MR. RABINOWITZ: So, all other units on, on the
20 entire property are all, it's all from an entrance on the
21 front of the building. You go into a hallway. There are
22 staircases going upstairs, downstairs. They all look the
23 same. This unit is where a storage unit would be on any
24 other building. There are a bunch of these storage units
25 throughout the property, but this on over here has a unit

1 number on it on the outside of the building.

2 MR. FORMAN: And, thank you. And, Madam Examiner,
3 I believe Mr. Rabinowitz's point can be made better if we
4 have, if we can look at Exhibit 4, which is in the record,
5 please?

6 MADAM EXAMINER: Ms. Neal, could you pull up
7 Exhibit 4?

8 MR. FORMAN: Can you scroll down, please? Can
9 everyone see the, these images?

10 MR. RABINOWITZ: The best, the best images to be
11 able to prove this is the bottom two images. If you want to
12 zoom into that so people can see it better?

13 MR. FORMAN: The, yeah, the bottom right and the
14 bottom left, correct?

15 MR. RABINOWITZ: No, just the bottom, the bottom
16 middle. Yeah, the bottom, yeah, those two units. So, you
17 can see that there's a main entrance to the building. All
18 the units are through those glass doors. It goes up two
19 flights and down one flight.

20 What we're looking at over here, I can't make out
21 what building I'm looking at; but you can see a door on the
22 right of the entrance and that's, that's a storage room.
23 That could be a, a maintenance shop. It could be a storage
24 room. And at Building 8104, where the current tenant lives,
25 that actually is a door with, that has a unit and has an

1 address on it.

2 MR. FORMAN: And that's how you could tell that
3 where the unpermitted unit was located in that it was
4 clearly in an area that had been previously marked and
5 reserved for a storage area/a laundry room?

6 MR. RABINOWITZ: Correct.

7 MR. FORMAN: Okay. Thank you. How many extra
8 storage areas/laundry rooms exist on the property?

9 MR. RABINOWITZ: So, there's one in every single
10 building, but there are seven altogether that could be
11 converted into units. One of them has already been
12 converted before we bought the property and there's another
13 six that could be converted in the same exact way.

14 MR. FORMAN: And why are these spaces no longer
15 necessary for storage or laundry facilities?

16 MR. RABINOWITZ: So, every single unit in Westgate
17 at Laurel has their own laundry inside the unit, washer and
18 dryer. Previously, it wasn't like that, so once they put it
19 in every single unit, it no longer was needed.

20 MR. FORMAN: And I believe you had mentioned that
21 not every storage/laundry room in the building can be
22 converted. How many cannot be converted? There are 12.

23 MR. RABINOWITZ: There's 12 units, 12 cannot be
24 converted and it would be 13, including Building 8200, which
25 is the leasing office.

1 MR. FORMAN: Okay. And for, but seven can be
2 converted into dwelling units?

3 MR. RABINOWITZ: Correct.

4 MR. FORMAN: Okay. And for, and why can the 12
5 units not be converted outside, 12, 12 areas not be
6 converted?

7 MR. RABINOWITZ: So, there's, there's a couple
8 different reasons, but for the most part, you're talking
9 about they have gas meters, electrical meters, mechanical
10 stuff like water heaters and stuff like that. So, those
11 theoretically have the space for a unit, but it would be a
12 lot harder to convert them.

13 MR. FORMAN: So, so, the only, really,
14 realistically, the only additional units you can, you could
15 ever get on this site through just internal construction
16 would be the seven that are the subject of this special
17 exception, is that correct?

18 MR. RABINOWITZ: That is correct.

19 MR. FORMAN: Okay. Thank you. And what is
20 required, or to convert the storage areas into dwelling
21 units, I mean is there anything that makes them
22 uninhabitable basically?

23 MR. RABINOWITZ: No, so, there's no external
24 construction. It's pretty easy to make it into a one-
25 bedroom apartment. They already have the hook-ups for gas,

1 and electric, and plumbing. I'm guessing that's because
2 they used to be laundry rooms. It's, all hook-ups are there
3 and it would mostly be about running the plumbing, electric,
4 gas where as needed and kind of drywall and framing.

5 MR. FORMAN: Okay. And how would these units be
6 accessed from the building?

7 MR. RABINOWITZ: So, they would basically have an
8 access, a private entrance, as you can see in this exhibit
9 that we're looking at; but they would also be able to get
10 access from the main entrance by entering the glass doors,
11 going downstairs and there is a hallway that runs through
12 the basement that they could also have access from.

13 MR. FORMAN: And now many bedrooms would be able
14 to be supported through the conversion of these units?

15 MR. RABINOWITZ: It's, it's, it can only be a one-
16 bedroom apartment.

17 MR. FORMAN: Just given the size of it, it's just,
18 it's only one bedroom?

19 MR. RABINOWITZ: I mean it's, it would be a decent
20 size living space; but putting a second bedroom would be
21 making it very, very tight.

22 MR. FORMAN: Okay. Thank you. And, and --

23 MR. RABINOWITZ: From --

24 MR. FORMAN: -- Madam Examiner, the, the typical
25 layout for one of these one-bedroom units can be seen on

1 Exhibit 19 if you would like to mark it for the record, at
2 least look at it for right now.

3 MR. RABINOWITZ: Just if I could add to what I
4 just said before, there's also a very, very high demand in
5 our area for one-bedroom apartments. Westgate at Laurel
6 mostly has two bedrooms. We have a few one-bedrooms and
7 there's a very high demand for that.

8 MR. FORMAN: So, that you, you anticipate that if
9 these are converted and made for lease, that they would be
10 snapped up pretty quickly is what you're saying?

11 MR. RABINOWITZ: Correct.

12 MR. FORMAN: Okay. Thank you. Where would these
13 additional one-bedroom units be located?

14 MR. RABINOWITZ: So, Building 8100, we would call
15 it Apartment A because most of our units are numerical;
16 8104, Apartment A is already in existence; 8110-A, 8116-A,
17 8204-A, 8208-A and 8216-A.

18 MR. FORMAN: Okay. Thank you. And, and, Madam
19 Examiner, the actual locations of these units are shown on
20 the Site Plan, can be seen on Exhibit 30. They are the, the
21 red boxes that are outlined throughout the property. And
22 8104-A, I, is the second from the leftmost one.

23 MR. RABINOWITZ: Right.

24 MR. FORMAN: So, that's the existing unit. Mr.
25 Rabinowitz, I would like to ask you about the parking

1 situation at Westgate at Laurel and the type of impact you
2 think these, the additional units might have on it. What
3 was the parking situation like at Westgate at Laurel when
4 you bought it in 2020?

5 MR. RABINOWITZ: Yeah. So, when we bought it in
6 2020, as I do by most new properties that we buy, I spend a
7 lot of time at that specific property. Almost immediately,
8 within the first week, I, I had multiple residents
9 complaining to me about how bad the parking lots were. They
10 said that people commuted to jobs, would park in our parking
11 lot and leave the car there during the day. There would be
12 people having multiple cars for even one-bedroom apartments.
13 There were broken-down vehicles that weren't moved for, for
14 weeks or even months. So, we, we, it took some time for us
15 to get a parking system in place; but once we got it in
16 place, it's really helped and there really hasn't been much
17 of an issue.

18 MR. FORMAN: Could you please describe the, the
19 parking enforcement system that you now use?

20 MR. RABINOWITZ: Yes. So, it's an online parking
21 system that people have to register their cars with their
22 real registrations and that has to match up to the rent
23 roll. So, if there's any illegal occupants in a unit, he
24 wouldn't be able to park his car there. Family and friends
25 can't just keep their vehicles for, you know, an extended

1 period of time. And they, this company shares that
2 information with a towing company who scans their plates and
3 matches it up.

4 MR. FORMAN: Okay. Thank you. And if this
5 special exception were approved, as a practical matter,
6 would the parking lot be able to handle the additional cars
7 from these additional units?

8 MR. RABINOWITZ: For sure. Under the system,
9 there hasn't been an issue; and since there's only one-
10 bedrooms, the maximum amount of spots we'd be adding is six
11 more spots because that's what we allow for a one-bedroom
12 apartment.

13 MR. FORMAN: I, I think you mean, you mean seven
14 because there's already the one existing that's not --

15 MR. RABINOWITZ: That is correct.

16 MR. FORMAN: -- (unintelligible).

17 MR. RABINOWITZ: I apologize, seven more spots.

18 MR. FORMAN: No, no problem. And do you have any
19 visitor parking at, on that, onsite?

20 MR. RABINOWITZ: Yes, we have 10, 10 visitor
21 spots.

22 MR. FORMAN: Okay. Thank you very much.

23 MR. RABINOWITZ: And those are near the leasing
24 office.

25 MR. FORMAN: Located near the leasing office?

1 MR. RABINOWITZ: (No audible response.)

2 MR. FORMAN: Okay. Thank you, Mr. Rabinowitz.

3 Those are all the questions I have this morning. Madam
4 Examiner, do you have any questions for Mr. Rabinowitz?

5 MADAM EXAMINER: I don't know if it's for Mr.
6 Rabinowitz, the next witness, or proffer from you, but you
7 can see, your examiner has slight vision issues. So, on
8 Exhibit 30, I was going to ask you this, on Exhibit 30 and
9 on the Site Plan that was approved in the ERR, do we show
10 actual notes that say how many one-bedrooms are like in
11 Building 1, you know what I mean, in each building; because
12 there's got to be a way to make sure that say the next owner
13 doesn't determine that they want those 12 units that you so
14 kindly don't want, Mr. Sha. You know, we can't allow this
15 to continue to grow in units without approval from the
16 County. So, I need to know how many units are in each
17 building right now? And I'll accept your floorplan. I
18 don't think we need more elaborate floorplans; but I need to
19 know each building, how many two-bedrooms, how many one-
20 bedrooms, how many units like they used to do on the, and
21 maybe it's on there, is it on the multi-family permit?
22 Well, then that one won't have these seven, so you need to
23 leave the record open to give me -- you'll need another
24 permit, correct? And, anyway --

25 MR. RABINOWITZ: A new record --

1 MADAM EXAMINER: -- I think we need to see it now
2 and then you can show it to them when it's time for the
3 permit.

4 MR. RABINOWITZ: I believe, and I, and I actually,
5 if you, I can proffer, I believe, from the case history in
6 the ERR, that had been one of the conditions of the
7 approval; but in an exception request from, a file that was
8 by Mr. Haller who was the attorney in the case, I believe he
9 requested to not actually have to list the types of units
10 because that way there could be some conversion of one
11 bedrooms to twos, or twos to one, would still limit the
12 total maximum to what had been permitted by the rental
13 licenses.

14 MADAM EXAMINER: See, and I didn't notice that.
15 By the way, I'm glad you brought this up, the prior record,
16 of course, is incorporated in this record and will be
17 referenced herein; and I do have at least a digital copy of
18 that prior file.

19 Okay. I hear what you're saying, but that will
20 have to match-up with what the counsel said in its approval;
21 and I think they were sort of silent on that issue because
22 we don't get that many of them. I'm not --

23 MR. RABINOWITZ: Yeah.

24 MADAM EXAMINER: -- sure, you can't convert any of
25 the one-bedrooms to two-bedrooms if this, I mean this is a

1 certified non-conforming use at this point. I don't know.
2 Maybe that's not considered; maybe that's intensification
3 instead of -- how about --

4 MR. FORMAN: Well, that actually would be, I
5 think, sorry for interrupting you, but if you converted a
6 one-bedroom, two one-bedrooms into a two-bedroom, you
7 actually would have fewer dwelling units. It would be a
8 decrease.

9 MADAM EXAMINER: That's true.

10 MR. RABINOWITZ: It would be a -- I can't think of
11 the, off the top of my head what the opposite of an
12 intensification is, a de-intensification?

13 MADAM EXAMINER: Look, look, not intensified.

14 MR. RABINOWITZ: There we go.

15 MADAM EXAMINER: The English language always has a
16 way to handle it. Okay. Let me think about that for now.
17 You're probably correct; but I at least want to know where
18 the, the 12 are there we're not changing; and I think you
19 said that verbally, but is it --

20 MR. RABINOWITZ: It, yeah, on that Site Plan that
21 you have, I can show you, there, they're all in the same
22 areas as where the red boxes are --

23 MADAM EXAMINER: Uh-huh.

24 MR. RABINOWITZ: -- but --

25 MADAM EXAMINER: I mean does the floorplan say it?

1 That's all we need because, you know, as you all probably
2 know, files get missing; UNO's for apartment dwellings
3 disappear depending on when it was constructed; and I'm just
4 a big fan of anybody else picking up this record later and
5 knowing exactly what it was we approved. So, this isn't to
6 delay you; it's just something I'm thinking about and, and,
7 and Mr. Forman will figure out how to make me happy if,
8 indeed, this is approved. Okay.

9 MR. FORMAN: Thank you. If, indeed, it is
10 approved. There is another limitation that is actually
11 going to be coming up with my next witness, Mr. Kevin
12 Foster, about parking; and, basically, as you can see and
13 will hear, that the parking itself can actually really only
14 accommodate the seven additional units. Any more units than
15 that is going to require more of a substantive change to the
16 parking area that would then certainly be more significant
17 than all just internal construction.

18 MADAM EXAMINER: Uh-huh.

19 MR. FORMAN: So, I think that in some respects
20 you, from a legality standpoint, the parking can't support
21 any more than seven one-bedroom units; and I think at that
22 point there's a, a maximum, and we can put the maximum level
23 of parking just based upon that reality.

24 MADAM EXAMINER: Okay. Okay.

25 MR. FORMAN: But I also understand what you're

1 saying, Madam Examiner, and we can, maybe we can, we can
2 discuss it a little bit more after Mr. Foster's testimony if
3 that's okay?

4 MADAM EXAMINER: Okay. Thank you, Mr. Rabinowitz,
5 unless you have other questions?

6 MR. RABINOWITZ: I don't have any questions.

7 MADAM EXAMINER: Okay. I really meant Mr. Forman,
8 but it's good to know you don't have any questions either.
9 You're finished, Mr. Forman?

10 MR. FORMAN: Yes, I am. And if it, if it's okay
11 with Madam Examiner, Mr. Rabinowitz actually was able to
12 accommodate us this morning, but he actually has a meeting
13 he needs to run to. So, if it's okay if he leaves, if
14 that's all right?

15 MADAM EXAMINER: Yes, that's fine with me.

16 MR. FORMAN: Okay. Thank you very much.

17 MR. RABINOWITZ: Thank you.

18 MADAM EXAMINER: Thank you, Mr. Rabinowitz.

19 MR. FORMAN: Thank you for your testimony this
20 morning.

21 MADAM EXAMINER: Mr. Foster, do you swear or
22 affirm under the penalties of perjury that the testimony you
23 shall give will be the truth and nothing but the truth?

24 MR. FOSTER: I do.

25 MR. FORMAN: All right. Thank you, Your Honor.

1 MADAM EXAMINER: And, just before Mr. Foster
2 starts, I apologize, I'm not sure I made it clear in the
3 beginning, but there doesn't appear to be anyone here today
4 opposed to this hearing. I need to state that for the
5 record. Thank you.

6 MR. FORMAN: Thank you. And, Mr. Foster, can you
7 please state your address for the record?

8 MR. FOSTER: For the record, Kevin Foster with the
9 firm of Gutschick, Little & Weber. Our offices are 39, 3909
10 National Drive, Burtonsville, Maryland.

11 MR. FORMAN: Okay. Thank you. And what is your
12 position with Gutschick, Little & Weber?

13 MR. FOSTER: I'm a principal, an owner within the
14 firm, and I'm Director of Planning and Landscape
15 Architecture.

16 MR. FORMAN: All right. Thank you. So, are, have
17 you ever qualified previously as an expert in the field of
18 land planning before this Zoning Hearing Examiner for Prince
19 George's County?

20 MR. FOSTER: Yes, I have, two other occasions.

21 MR. FORMAN: Thank you. And I believe your resume
22 has, and CV has been submitted as part of the record as
23 Exhibit, is it 34?

24 MADAM EXAMINER: I have to admit, I didn't see it;
25 but that doesn't -- Ms. Neal, do you have an Exhibit 34 from

1 Mr. Foster, his resume?

2 MS. NEAL: No, I do not.

3 MADAM EXAMINER: You do not? You know what, you
4 sent that --

5 MR. FORMAN: I think it was Friday afternoon.

6 MADAM EXAMINER: You, yeah, yes, we have it.
7 We'll find it and put, make sure it's Exhibit 34 in the
8 record. And also --

9 MR. FORMAN: Okay.

10 MADAM EXAMINER: -- Mr. Foster, for the record,
11 could you spell out the name of the firm because this is
12 going to be recorded, I mean transcribed --

13 MR. FOSTER: Sure.

14 MADAM EXAMINER: -- and I'm not sure they would
15 pick it up.

16 MR. FOSTER: Okay. It's, it's Gutschick, Little &
17 Weber, and Gutschick is spelled G-U-T-S-C-H-I-C-K, Little,
18 L-I-T-T-L-E, Weber is W-E-B-E-R.

19 MADAM EXAMINER: Okay. We'll work on that,
20 getting that exhibit up shortly; and you may continue, Mr.
21 Forman.

22 MR. FORMAN: Thank you, Madam Examiner; and I, I
23 do move to have Mr. Foster qualified as an expert in the
24 field of land planning for this hearing.

25 MADAM EXAMINER: Okay. I'm going to play People's

1 Zoning Counsel for a second. Mr. Foster, have you ever been
2 denied the opportunity to testify as an expert in land use
3 planning?

4 MR. FOSTER: I, I have not.

5 MADAM EXAMINER: Were you --

6 MR. FOSTER: Never been denied.

7 MADAM EXAMINER: Okay. And in this County, did
8 you appear before, was it before the Planning Board, the
9 ZHE, the District Council, court, where were you accepted?

10 MR. FOSTER: Hearing Examiner, and I've, I've,
11 I've, I've testified in numerous cases in front of the
12 Planning Board.

13 MADAM EXAMINER: Okay. And please tell me it's
14 not this Hearing Examiner.

15 MR. FOSTER: No, it's not.

16 MADAM EXAMINER: Do I look familiar? Okay.

17 MR. FOSTER: No.

18 MADAM EXAMINER: Okay. Thank you. You will be
19 accepted as an expert in the area of land use planning.

20 MR. FOSTER: Thank you.

21 MR. FORMAN: Thank you. Mr. Foster, have you
22 viewed the exhibits in this case, including Park and
23 Planning's Technical Staff Report and PowerPoint
24 presentation?

25 MR. FOSTER: Yes, I have.

1 MR. FORMAN: Have you personally visited the
2 subject property and surrounding area?

3 MR. FOSTER: Yes, on multiple occasions.

4 MR. FORMAN: Have you reviewed the 2010 approved
5 Sub-Region 1 Master Plan and Sectional Map Amendment, as
6 well as the County General Plan, Plan Prince George's 2035,
7 with regard to this property?

8 MR. FOSTER: Yes, I have reviewed both documents.

9 MR. FORMAN: Okay. Thank you. I would like to
10 point you towards Exhibit 6, if that could be brought up,
11 please? Thank you. And I know this, this usually would
12 work better in person, but we can try to, if you can help
13 orient Madam Examiner using this exhibit, can you please
14 explain what is going on and what you can kind of see in
15 this, in this exhibit?

16 MR. FOSTER: Certainly. So, now I'm referring to
17 Exhibit 6. This is an aerial photograph with the site
18 outlined in red. So, the site is a very linear, almost an
19 arrow shaped running side to side on the property is, in
20 the, the exhibit is Maryland Route 198; on the left side of
21 the exhibit, running up and down, or north/south, is Van
22 Dusen Road. The subject property is outlined in red; and
23 then outlined in tan, kind of superimposed on that as well,
24 are the corporate limits of the city of Laurel and Prince
25 George's County.

1 MR. FORMAN: Is any portion of the property, I
2 mean it looks like a portion of the property is in the city
3 of Laurel; but are all the improvements located in this
4 county, in Prince George's County?

5 MR. FOSTER: Yes, they are. In the northeast
6 corner of the property, there is a little panhandle, or a
7 little finger that touches Tenth Street, and that finger is
8 within the city of Laurel, and that's actually where our
9 sewer goes, sewer access is to the property. The remainder
10 of the site is within Prince George's County, and all
11 improvements, built improvements are within the County
12 limits.

13 MR. FORMAN: Okay. Thank you very much. And I, I
14 think you kind of touched on this in your explanation, but
15 could you maybe just for the record specify the neighborhood
16 that this property is located in, please?

17 MR. FOSTER: Sure. The northern property, the
18 northern boundary of the neighborhood would be Sandy Spring
19 Road and West Street. So, if, if you're looking at Exhibit
20 6 toward the top, Sandy Spring Road is running left to
21 right, and that intersects with West Street. So, the area
22 between the site and West Street, there's Tower Federal
23 Credit Union office building, the city of Laurel's municipal
24 buildings, another retail complex and townhouses along West
25 Street. The western boundary is, is Van Dusen Road; the

1 southern boundary is Maryland 198, Gorman Road, which is
2 running right to left on the property; and below that is R-
3 55, single-family residential neighborhood; and the eastern
4 boundary is Tenth Street where there's single-family houses
5 to the east.

6 MR. FORMAN: Okay. Thank you. And so, I believe
7 you also went into the uses in the zoning for all the
8 adjoining properties in the neighborhood? Can you just
9 explain briefly the neighborhood that's across the street,
10 across, I'm sorry, the street is very vague, across MD-198
11 from the property?

12 MR. FOSTER: Yes. It's on the opposite side of
13 198 from the subject property. It's a very stable R-55
14 single-family, detached neighborhood. It looks like it was
15 built probably in the 50s and 60s by the style of the
16 housing, but it is very well kept and it's certainly a very
17 stable neighborhood.

18 MR. FORMAN: Okay.

19 MADAM EXAMINER: If I may, Mr. Forman?

20 MR. FORMAN: Yes, ma'am.

21 MADAM EXAMINER: Mr. Foster, I, I sort of know
22 this area, but not very well.

23 MR. FOSTER: Okay.

24 MR. FORMAN: I always go to restaurants or
25 shopping, so do you know an area up there that's called

1 Second Avenue, it's some type of consignment Shop?

2 MR. FOSTER: No, I do not.

3 MADAM EXAMINER: Okay. Or do you know, if you
4 were leaving, say we're way up on 198 and you're leaving,
5 and you're headed down this way from Baltimore Washington
6 Parkway --

7 MR. FOSTER: From the other side of --

8 MADAM EXAMINER: -- after the racetrack, all of
9 this is after the racetrack, I take it, because that's not
10 our county and --

11 MR. FOSTER: Yes, you're, you're crossing over --

12 MADAM EXAMINER: And the bingo parlor is after
13 that?

14 MR. FOSTER: Yes, you --

15 MR. FORMAN: That's all Anne Arundel County, yeah.

16 MR. FOSTER: Yeah, it's Anne Arundel County where
17 the track is. Then you get into --

18 MADAM EXAMINER: Okay.

19 MR. FOSTER: -- the city of Laurel, cross over
20 Route 1, and 198 continues; and it's actually two
21 directional, 198; and they join up just east of the
22 property, both lanes of 198 come back together and then come
23 across the front of the site. And then if you continue on
24 past Van Dusen, you'll, the next thing you'll run into is
25 the on-ramp, on-ramp to 95.

1 MADAM EXAMINER: Ninety-five?

2 MR. FOSTER: Yeah, this is really close to 95.

3 MADAM EXAMINER: Okay.

4 MR. FOSTER: It's on the, it's on the --

5 MADAM EXAMINER: I never have been here.

6 MR. FOSTER: It's on the --

7 MADAM EXAMINER: Okay.

8 MR. FOSTER: -- western side of the city of
9 Laurel.

10 MADAM EXAMINER: I understand now. Thank you so
11 much.

12 MR. FOSTER: Certainly.

13 MR. FORMAN: And my apologies for not going into
14 more of the bigger picture of the location.

15 MADAM EXAMINER: No, it's not your fault. It just
16 helps me picture it. Thanks.

17 MR. FORMAN: Mr. Foster, you heard the testimony
18 from Mr. Rabinowitz earlier regarding the property.

19 MR. FOSTER: Yes.

20 MR. FORMAN: I was hoping you could go into a
21 little more detail regarding its configuration and sort of
22 set-up using Exhibit 30, which is the Site Plan for this
23 case.

24 MR. FOSTER: Certainly. If I could get Exhibit 30
25 brought up?

1 MR. FORMAN: Would it be possible to zoom in a
2 little bit more on just the illustrative portion of, of the
3 Site Plan, please? Could we, yeah, thank you.

4 MR. FOSTER: Great. So, I'm, I'm now referring to
5 Exhibit 30, which is the Special Exception Site Plan; and as
6 it was described earlier by Mr. Rabinowitz, there are 218,
7 there, well, there are 218 dwelling units on the property;
8 and they're really organized in three separate buildings.
9 And then these three buildings are also delineated into
10 blocks. So, if we start on the western edge of the west,
11 northwestern edge of the property, you'll see it on Exhibit
12 30, there's a long, linear building there. That is Building
13 No. 1 and it's made up of individual blocks that contain 12
14 dwelling unit, 12 possible dwelling units apiece; but some
15 of those lower-level units, obviously, are not yet dwelling
16 units. Some are maintenance rooms, old laundry rooms; and
17 then below that is Building No. 2, which is three blocks
18 together. In the middle of the site is the leasing office,
19 and there's a rec area, swimming pool; and then on the
20 eastern portion of the site, there's a U-shaped building,
21 which is Building 3, which, again, comprises blocks of
22 units.

23 There's surface parking that is distributed
24 throughout the property. There are three entrances along
25 Maryland Route 198. There's one on the west, one in the

1 middle, one on the east, and the one in the middle is
2 signalized. So, that's, that's how you get out onto
3 eastbound 198 because there's a median, so the, the eastern
4 and the western entrances are right in, right out only.

5 MR. FORMAN: Okay. And could you please describe
6 kind of the, what you mean by a block as forming the
7 portions of the building? Like what does it mean for it to
8 be a block?

9 MR. FOSTER: Okay. Can I, can we scroll over a
10 little bit to the left and up a bit? There's a, okay,
11 that's good. On the Site Plan, we had, we had put a typical
12 layout of a, one of these apartment blocks. And as you can
13 see on the left, typical existing dimensions, there are, on
14 each floor there are four units and a center hallway; and
15 each one of these blocks is three stories. The lower level
16 is a bit depressed in the ground, so in some places it's
17 close to being at grade; some places it's below grade. It
18 just depends on the individual, individual units, or
19 individual blocks; but they're, in theory, you could have
20 had 12 units per block if this entire property had been
21 built-out in these, for these individual units.

22 MR. FORMAN: And so, so during construction, it
23 seemed like the lowest level unit, which may have been Unit
24 4, was usually reserved; or maybe Unit 4 or Unit 3 was
25 reserved for the storage area or the laundry room when it

1 was constructed?

2 MR. FOSTER: Yes, it depends on which unit, which,
3 what location; but it was always a unit in the front that
4 had direct access to the front of the building. I guess
5 they wanted separated access for those laundry rooms not
6 coming into the middle corridor, but they could have; but,
7 yes, all of those extra spaces all faced the parking lots.

8 MR. FORMAN: Okay. Thank you. And, Mr. Foster,
9 Mr. Rabinowitz made reference to Exhibit 4 when describing
10 the, the area of the additional dwelling units. Would you
11 mind kind of going through this exhibit in a bit more detail
12 to really kind of highlight and explain what you are
13 mentioning about the blocks and the layout?

14 MR. FOSTER: Sure. If I could have Exhibit 4
15 brought up, please?

16 MS. NEAL: I'm sorry, you said Exhibit 4?

17 MR. FOSTER: Yes, ma'am.

18 MR. FORMAN: Yes, please.

19 MR. FOSTER: Thank you. So, Exhibit 4 is an
20 exhibit that, it shows a number of site photos, and all of
21 these photos are basically individual photos of the
22 buildings; but if you look at, like on the, on the right in
23 the middle, it shows Building 1, and that's where you see
24 the center hallway and the, the units on either side. You
25 can see there's three units on each side. So, it's three

1 floors and there's four units. That is a block where there
2 would be a center hall and four units on either side, three
3 stories tall, and it's also a very good one because you can
4 see the lower level is a little bit, a little bit depressed;
5 so, it, that's kind of a condition we see in a lot of them.

6 If you could scroll to the lower right-hand
7 corner? That gives, gives us a very good view on the
8 lefthand side and in the one on the middle there of what
9 these unused spaces look like. They have separate
10 entrances; they have a window, but that's where the laundry
11 room, meter room, storage rooms were located in each one of
12 the blocks, so it gives a good sense of how they relate.
13 So, the proposal for adding, you know, newer units is all
14 internal construction. There's already a door; there will
15 be no external construction. There's already windows. So,
16 it's a matter of, you know, interior framing and whatever to
17 get the units done; but it will not have a, a material
18 effect on the property itself.

19 MR. FORMAN: And --

20 MADAM EXAMINER: Mr. Foster, if I may, do you, do
21 you know the code for habitability of these units? Do they
22 only need that one window, or are there more windows, or are
23 you all, are you all averring that all of these things will
24 be allowed as dwelling units? I meant to ask that earlier
25 of Mr. Rabinowitz. So, you're not, I know that there's

1 certain requirements --

2 MR. FOSTER: Yes.

3 MADAM EXAMINER: -- for a dwelling.

4 MR. FOSTER: Yes, there are certain requirements
5 typically tied to fire egress and, yes, the plan is to have
6 all these units meet all the, all the building codes, yes.

7 MADAM EXAMINER: Well, how many windows do they
8 have right now? Just that one?

9 MR. FOSTER: The, yes, they, they just have the
10 one. If you notice on the ones next to them, the lower
11 level, those are the, that's a screen door out to the patio.
12 So, there's, and then the rest of the unit doesn't have any
13 windows. So, each unit has windows on the facade that they
14 face. So, the units in the rear have windows in the back
15 and the units in front have, have windows in the front.
16 There are no other windows for each individual unit.

17 MADAM EXAMINER: Okay. And, and what I'm looking
18 at right now, Ms. Neal, doesn't show that. Is there a way
19 to like make this bigger again and you show me the, you said
20 there's a window and then there's an access to a patio or
21 something? Did you say that?

22 MR. FORMAN: For the typical dwelling unit on the
23 bottom level is a patio with a sliding glass door.

24 MR. FOSTER: Yes.

25 MR. FORMAN: These are just the doors and the

1 windows.

2 MADAM EXAMINER: I got you. Okay. Thank you.

3 MR. FORMAN: But they, thank you, there will be
4 both two points of egress and ingress because you can get
5 through the door directly to the outside, or the door that's
6 in the internal hallway. And I do, you know, to proffer, I,
7 I, you know, we need to double-check whether it's the
8 building code; but I, you know, given the demand for one-
9 bedroom units, I'm, you know, this, people may be satisfied
10 with this type of situation. You know, sometimes young
11 professionals or just single workers, you know, it's just a
12 place to rest their head at night. They're not necessarily,
13 you know, looking for a lot of bells and whistles. They
14 really just need a place to rest their head; and I think
15 when this is being leased out to a future tenant, as long as
16 they know what they're getting, it's, you know satisfactory,
17 assuming it does comply with building codes which, of
18 course, we're not going to violate.

19 MADAM EXAMINER: Okay. And if we left the record
20 open, could you submit or, either submit the site or submit
21 a copy of those requirements for rental of units? I know
22 that it's, you're right, in Subtitle 4, or in the
23 International Codes that we've adopted is somewhere.

24 MR. FORMAN: Okay.

25 MADAM EXAMINER: Thank you.

1 MR. FORMAN: And would you, in addition to just
2 submitting the, the codes themselves, would you like some
3 sort of response to the requirements from an expert?

4 MADAM EXAMINER: Even better, thank you.

5 MR. FORMAN: However, we make it easy for you,
6 Madam Examiner, we, we're willing to do it.

7 MADAM EXAMINER: Thank you. I appreciate that.

8 MR. FORMAN: So, Mr. Foster, based on your
9 experience as a land planner, is there any reason to suggest
10 that these areas being converted into additional dwelling
11 units would be harmful or injurious to future residents?

12 MR. FOSTER: No, I don't think there's, at all, I
13 don't think there would be any reason. The, the, the
14 blocks, the building area is already there. It's all
15 internal construction. So, it's, it's not going to have any
16 material impact on the current residence.

17 MR. FORMAN: Okay. And, Mr. Foster, you heard the
18 testimony earlier from Mr. Rabinowitz regarding the, why the
19 Applicant is requesting up to seven additional one-bedroom
20 units. Can you please explain why a special exception is
21 necessary to add the requested seven dwelling units?

22 MR. FOSTER: Sure. The existing apartment complex
23 is a certified, non-conforming use; and any expansion,
24 alteration, or extension of a certified non-conforming use
25 requires a special exception approval. Adding seven

1 dwelling units is considered an expansion or enlargement,
2 even though there's, it's all internal construction, and
3 there is no, you know, expansion of the overall building.

4 MR. FORMAN: Okay. Thank you. And can you please
5 explain why this apartment building is considered a non-
6 conforming use and now it became certified as a non-
7 conforming use?

8 MR. FOSTER: Sure. Over the years, there were
9 some changes to the Zoning Code, and also some changes to
10 the property, and they all contributed to making this a non-
11 conforming use. The property was originally constructed in
12 roughly 1965 with the Zoning Ordinance in effect at that
13 time, with the exception of density. You know, the, there's
14 an approved Site Plan that shows 206 dwelling units, but it
15 certainly seems that 218 were built somewhere along the
16 line.

17 Originally, it was zoned RR-18 from the 1963
18 standards. And one of the other changes that occurred on
19 the site was the state highway acquired land from this
20 property when Maryland Route 198 was upgraded, and that
21 reduced the site area which caused some of the non-
22 conformity. So, by the year 2000, the property was non-
23 conforming on the basis of lot coverage, minimum green area,
24 front yard setback, parking and loading, you know, dense, in
25 addition to the, to density.

1 And regarding the certification property process,
2 excuse me, the property was certified as a non-conforming
3 use twice, first in 2000 through CNU41302-2000; and then the
4 next year through validation of permit issued in error, Case
5 ERR-180.

6 MR. FORMAN: Why was this property certified
7 twice?

8 MR. FOSTER: I can't tell you for sure, but it, it
9 certainly appears the NCU41302-2000 was approved
10 administratively for 2000, excuse me, for 206 dwelling
11 units, which was the quantity on the original Site Plan.
12 The non, non-conforming use, you know, could have, could
13 only support 206 dwelling units because that was the maximum
14 that in theory could have been built in 1965 based on the
15 size of the property and the density of the R-18 Zone in
16 effect in '65. The maximum density for the RIT was 21.78
17 dwellings per acre, and at 9.64 acres, that would have only
18 permitted 206 dwelling units.

19 The reason you really can't know for sure is there
20 were no use and occupancy permits issued back then; so, it
21 was clear how many units were actually built and approved by
22 the County in '65. When the first building opened, it,
23 there's also some, some inclinations in the record that some
24 spaces may have been used for an engineer's office and also
25 for a doctor's office.

1 The history of the property definitely supports
2 the existence of 218 units, not the original Site Plan
3 approved, 206; and the same 206 that were in the original
4 non-conforming use. The first definitive instance of
5 listing of dwelling units on a document issued by the
6 County, and Park and Planning, was the first rental license
7 in '71, the first year the rental licenses were issued in
8 the county; and they've been issued every two years
9 thereafter; and they were originally issued for 218 dwelling
10 units. Because there was evidence to support the 218
11 through the issuance of the rental licenses, previous
12 applicants submitted and received approval for the 218
13 dwelling units through a validation of a permit issued in
14 error which was ERR-180, which was in 2001.

15 MR. FORMAN: And, Mr. Foster, if I understand your
16 testimony correctly, you had mentioned that when this
17 building was opened, it did have some commercial uses in it;
18 not, it wasn't solely used residential?

19 MR. FOSTER: That's what it seems. There's some
20 indications in the record that there, there may have been
21 some commercial uses in some of these spaces, yes.

22 MR. FORMAN: And does that help support the, your
23 finding and understanding why it's difficult to understand
24 how many of the actual available units were used for
25 dwelling units and maybe not some, you know, related

1 commercial purpose?

2 MR. FOSTER: Yes, it's very difficult to, to
3 determine that at this point.

4 MR. FORMAN: Okay. Thank you very much. And so,
5 if I understand you correctly, the operative case for the
6 non-conforming use certification is ERR-180, which allowed
7 for 218 dwelling units, is that correct?

8 MR. FOSTER: Yes, that's correct.

9 MR. FORMAN: All right. Thank you. And with that
10 property history kind of out of the way, and the need for
11 the special exception explained, I would like to ask you
12 more about the, this proposed use and whether the subject
13 application meets the requirements for approval of a special
14 exception? Are you familiar with the specific requirements
15 for the extension or enlargement of a, of a certified non-
16 conforming use within an existing building as set forth in
17 Section 27384 of the prior Zoning Ordinance?

18 MR. FOSTER: Yes, I'm familiar with that.

19 MR. FORMAN: Regarding the specific criteria
20 posited in Section 27384 of the Zoning Ordinance, in your
21 expert opinion, does this application comply with the
22 requirements to extend or enlarge a certified, non-
23 conforming use throughout a building?

24 MR. FOSTER: Yes, it does.

25 MR. FORMAN: Was the property a single lot under a

1 single ownership when it became non-conforming?

2 MR. FOSTER: Yes, based on the deed, history of
3 the property which is shown in Exhibits 15, 17 and 18, it
4 was a single property under single ownership. Obviously,
5 it's been sold over time; but it still remained under single
6 ownership.

7 MR. FORMAN: And so, just to be clear, since this
8 use became non-conforming, had the lot remained a single lot
9 under a single ownership entity?

10 MR. FOSTER: Yes, it has.

11 MR. FORMAN: It's just been kind of sold to
12 successors in interest, correct?

13 MR. FOSTER: Correct.

14 MR. FORMAN: All, are the requirements of Part 11
15 met with regard to the extended area?

16 MR. FOSTER: Yes, the, there are sufficient
17 parking spaces to support the additional seven dwelling
18 units; seven, one-bedroom dwelling units. When the property
19 was constructed in 1965, the Zoning Ordinance at that time
20 would have required 1.25 dwelling units, excuse me, 1.25
21 parking spaces per dwelling unit. With 218 dwelling units,
22 the total number of required spaces would have been 273
23 spaces. Parking for a one-bedroom dwelling unit is
24 calculated at a rate of two spaces per unit now. With seven
25 dwelling units, the parking lot must provide an additional

1 14 spaces to those already previously required for the, for
2 the site, which was 273. Thus, the total parking for the
3 existing units and the additional proposed units would be
4 287 parking spaces. The site currently provides 288 parking
5 spaces. For this reason, the requirement is satisfied.

6 MR. FORMAN: Thank you. Having asked you about
7 the specific requirements for a special exception to extent
8 or enlarge a certified, non-conforming use, I would like to
9 ask you about the general requirements for special exception
10 approval. Yes?

11 MR. FOSTER: Okay.

12 MADAM EXAMINER: Mr. Forman, I'm so sorry. Can I
13 back up a minute just to make it really clear on this
14 record? So, what, so your opinion is, Mr. Foster, that
15 whatever parking that was approved with the, the two non-
16 conforming use certifications is all the parking that's
17 required presently; but this request to expand would have to
18 satisfy the current law and that's just two spaces per the
19 seven units? You don't believe that the parking has to now
20 be, meet the current law totally?

21 MR. FOSTER: No, I, I believe that the, the
22 previously approved standards needs to be met for the
23 existing units; and that the new units need to meet the new
24 standard.

25 MADAM EXAMINER: I just want to make that clear on

1 the record. I'm not saying I disagree with you; but go, go
2 ahead. I'm sorry.

3 MR. FORMAN: Thank you. And I think for legality
4 purposes, and just for the record, I believe the
5 justification can also be found under Zoning Ordinance
6 Section 27584 of the prior ordinance.

7 MADAM EXAMINER: Thank you.

8 MR. FORMAN: Thank you. Let me get back to, so,
9 Mr. Foster, I haven't asked you about the specific
10 requirements for a special exception to extend or enlarge a
11 certified, non-conforming use. I would now like to ask you
12 about the general requirements for special exception
13 approval found under 27317 of the Zoning Ordinance.

14 MR. FOSTER: Okay.

15 MR. FORMAN: In your opinion, is the proposed use
16 and Site Plan in harmony with the purposes of the Prince
17 George's County prior Zoning Ordinance?

18 MR. FOSTER: Yes, in my opinion, the additional
19 seven dwelling units are in harmony with the purposes of the
20 Zoning Ordinance. There's no exterior changes proposed.
21 Only interior renovations are required to create these seven
22 dwelling units. The existing multi-family buildings will
23 continue to be compatible with the surrounding neighborhood.

24 MR. FORMAN: All right. Thank you. In your
25 opinion, is the proposed use in conformance with all of the

1 applicable requirements and regulations of Subtitle 27 of
2 the prior Zoning Ordinance?

3 MR. FOSTER: Yes, the subject property previously
4 certified as a non-conforming use through NCU41032-2000 and
5 ERR-180 a year later. All non-conformities have existed and
6 have been certified most recently by the approval of ERR-
7 180. In fact, the basis for that approval was that the
8 property was constructed in excess of the density required
9 under the R-18 Zone back in '65. The site has never been in
10 conformance with density and that has not caused any issues
11 over the years. Moreover, the limited increase in density
12 from 23.7 dwelling units an acre to 24.3 units an acre will
13 have very limited impact on the property.

14 MR. FORMAN: Thank you. And in your opinion, will
15 the proposed use substantially impair the integrity of the
16 Sub Region 1 Approved Sector Plan for the General Plan for
17 Prince George's County?

18 MR. FOSTER: The limited increase in density will
19 not substantially impair the integrity of, of either of
20 these plans. The site is located within an established
21 community's growth policy area in accordance with the Plan
22 Prince George's 2035. Established communities are areas
23 appropriate for context-sensitive infill. Moreover, within
24 the Sub Region 1 Sector Plan, the site is designated for
25 medium to high-density residential.

1 MR. FORMAN: And in your opinion, would you
2 consider the proposed dwelling to be in conformance with the
3 denotation or designation of it as being medium/high-density
4 residential?

5 MR. FOSTER: Yes, I would.

6 MR. FORMAN: Okay. Thank you. In your opinion,
7 will the proposed use adversely affect the health, safety or
8 welfare of the residents or workers in the area of the
9 subject property?

10 MR. FOSTER: No, there's no reason to believe that
11 the additional seven dwelling units will have any adverse
12 impact on the health, safety or welfare of the residents, or
13 workers in the area. The conditions proposed by Park and
14 Planning Staff for sidewalk connections, bike racks will
15 enhance the property above and beyond what would otherwise
16 have been required had this application not been filed.
17 With proposed site improvements, greater benefit would be
18 provided to the residents of Westgate should a special
19 exception be approved.

20 MR. FORMAN: Thank you. And in your opinion, will
21 the proposed use be detrimental to the use or development of
22 adjacent properties, or the general neighborhood?

23 MR. FOSTER: No, since, since nothing about the
24 property will change, there's no reason to believe that the
25 seven additional dwelling units will be detrimental to the

1 use or development of adjacent properties, or the general
2 neighborhood for that fact. Most of the neighborhood is
3 built out and the site will remain residential as it is
4 today.

5 MR. FORMAN: Thank you. Is the Site Plan in
6 conformance with the Type 2 Tree Conservation Plan for this
7 property?

8 MR. FOSTER: This site was developed prior to the
9 enactment of the Woodland Conservation Ordinance. The site
10 would qualify for an exemption. For this reason, no TCP-2
11 is required for this application.

12 MR. FORMAN: All right. Thank you. Does the site
13 demonstrate preservation and/or restoration of the regulated
14 environmental features in a natural state to the fullest
15 extent possible?

16 MR. FOSTER: Based on my review, there are no
17 regulated environmental features on the site.

18 MR. FORMAN: All right. Thank you. Is the
19 subject property located in the Chesapeake Bay Critical
20 Area?

21 MR. FOSTER: It is not.

22 MR. FORMAN: All right. In your opinion, are
23 there any facts or circumstances that show that the
24 particular use proposed upon the subject property through
25 this application at the particular location proposed would

1 have any adverse effects above and beyond those inherently
2 associated with the proposed use, irrespective of its
3 location within the R-18 Zone?

4 MR. FOSTER: My opinion, there is nothing about
5 the additional seven dwelling units at this particular
6 location that would have any adverse effects above and
7 beyond those inherently associated with an apartment
8 complex, irrespective of its location within the R-18 Zone.

9 MR. FORMAN: Thank you. And do you agree with all
10 of the conditions that are set forth in the Planning Board
11 resolution?

12 MR. FOSTER: Yes, I do.

13 MR. FORMAN: Thank you very much for your
14 testimony this morning, Mr. Foster. Those are all of the
15 questions I have for you. And, Madam Examiner, that
16 concludes the Applicant's testimony this morning, although
17 we will ask to keep the record open to submit the additional
18 material that the Madam Examiner has requested.

19 MADAM EXAMINER: Okay. I just have one other
20 question. Mr. Foster, did you play any role in preparing
21 the statement of justification?

22 MR. FOSTER: The statement of justification, yes.
23 I worked with Mr. Forman in all the analysis and putting
24 that together, yes.

25 MADAM EXAMINER: Okay. Good. So, you agree with

1 everything in there?

2 MR. FOSTER: Yes, I do.

3 MADAM EXAMINER: I'm also playing People's Zoning
4 Counsel right now, Mr. Forman, as well. So, thank you. I
5 have no further questions.

6 MR. FORMAN: You play it very well, Madam
7 Examiner.

8 MADAM EXAMINER: So, then, this is your case.
9 You're keeping the record open just for that information
10 about compliance with any, anything in the building code, et
11 cetera, regarding habitability of apartment dwellings?

12 MR. FORMAN: Yes. And you had raised the question
13 earlier about the limitation in the conversion of units. Is
14 that still of a concern about highlighting the plan, or
15 making sure that the, it's limited to 225?

16 MADAM EXAMINER: That's not so much of a concern
17 because if it's approved, then I'm sure something, we'll
18 discuss that.

19 MR. FORMAN: Okay. Thank you very much.

20 MADAM EXAMINER: Okay. All right. I thank you
21 all for being here. I thank Staff as well and I wish you
22 all happy holidays. And the record will close as soon as
23 you submit that --

24 MR. FORMAN: Okay. Thank you very much. I
25 appreciate that. And we will have an expert go through and

1 make sure that we can meet those requirements, too.

2 MADAM EXAMINER: Oh, I'm remiss with one thing.
3 Did you all talk to the city of Laurel about this?

4 MR. FORMAN: Yes, we did.

5 MADAM EXAMINER: Because there's nothing in the
6 record from them. I just wanted to make sure they were
7 aware.

8 MR. FORMAN: I mean we had communications early on
9 with the city because, to be perfectly frank, we saw that it
10 was completely encompassed by the city and we talked about
11 annexation and they were not interested. So --

12 MADAM EXAMINER: Okay.

13 MR. FORMAN: -- with the County.

14 MADAM EXAMINER: Okay. Thank you very much then.
15 And, again, happy holidays to everyone.

16 MR. FOSTER: Thank you.

17 MR. FORMAN: Thank you.

18 MR. FOSTER: Happy holidays.

19 MADAM EXAMINER: Thank you.

20 (Whereupon, the hearing was concluded.)
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C E R T I F I C A T E

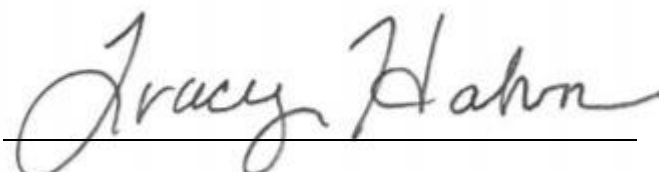
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DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Office of the Zoning Hearing Examiner in the matter of:

WESTGATE APARTMENTS

Case No. SE 4852

By:



Tracy Hahn, Transcriber