

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

3
4
5 DEWEY PROPERTY
6 Detailed Site Plans, DSP-19050 and DSP-19050-1
7 Departure from Design Standards, DDS-660
8

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

12
13 COUNTY ADMINISTRATION BUILDING

14 Upper Marlboro, Maryland

15
16 July 16, 2020

17 VOLUME 1 of 1
18

19 BEFORE:

20 ELIZABETH M. HEWLETT, Chair

21 DOROTHY F. BAILEY, Vice-Chair

22 MANUEL R. GERALDO, Commissioner

23 WILLIAM M. DOERNER, Commissioner (Absent)

24 A. SHUANISE WASHINGTON, Commissioner
25

Deposition Services, Inc.

12321 Middlebrook Road, Suite 210
Germantown, MD 20874

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

info@DepositionServices.com www.DepositionServices.com

OTHERS PRESENT:

JEREMY HURLBUTT, Staff, Urban Design Section

DAVID WARNER, Principal Counsel

KENNY FLANAGAN, Staff

TOM MASOG, Staff, Transportation Section

BEN RYAN, Staff, Transportation Section

HELEN ASAN, Staff, Parks and Recreation Department

THOMAS HALLER, Attorney for Applicant

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MADAM CHAIR: The Prince George's County Planning Board is back in session and we now have before us, well let's do a check so that everyone who cannot see who is just listening knows who we have present. Madam Vice Chair?

MADAM VICE CHAIR: Present, thank you.

MADAM CHAIR: Commissioner Washington?

COMMISSIONER WASHINGTON: Present.

MADAM CHAIR: Commissioner Geraldo?

COMMISSIONER GERALDO: Present.

MADAM CHAIR: Principal Counsel?

MR. WARNER: Present.

MADAM CHAIR: Okay. We've got everybody else, we have our Planning Director here, our technical hearing writer and Mr. Kenny Flanagan who is over there working at this PowerPoint, so we're good to go here. All right. So we left off, we said we would resume starting with Items 5 and 6, which are companion cases, Detailed Site Plan 19050 and Departure from Design Standards 660 for the Dewey Property. I'm going to do a check to make sure we have everyone we need. Jeremy Hurlbutt, are you on?

MR. HURLBUTT: Present.

MADAM CHAIR: Wonderful. Jill Kosack?

MS. KOSACK: Present.

MADAM CHAIR: Mr. Haller?

1 MR. HALLER: Present.

2 MADAM CHAIR: Mr. Haller, we --

3 MR. HALLER: I'm here.

4 MADAM CHAIR: I know but we got this case and
5 another big case today after this --

6 MR. HALLER: And --

7 MADAM CHAIR: -- so you know, succinct. Okay?

8 MR. HALLER: I was hoping that we could present
9 both of them basically at the same time, is that possible?

10 MADAM CHAIR: Well, you can present, actually
11 they're related. We have to vote on them separately because
12 we have to vote on 5 and 6 first.

13 MR. HALLER: I understand.

14 MADAM CHAIR: That's fine and we were going to
15 incorporate the records anyway, so that's fine. But still,
16 we didn't just meet brevity. Thank you. Mr. Masog?

17 MR. MASOG: Present.

18 MADAM CHAIR: Okay. Ben Ryan?

19 MR. RYAN: Present.

20 MADAM CHAIR: Paul Sun? Paul Sun? Or Helen Asan?

21 MS. ASAN: I'm here, Madam Chair.

22 MADAM CHAIR: Thank you, Ms. Asan. David Bickel.

23 MR. BICKEL: Present.

24 MADAM CHAIR: Kate Powers?

25 MS. POWERS: Present.

1 MADAM CHAIR: Wonderful. Peter Ciferri (phonetic
2 sp.)?

3 MR. CIFERRI: Present.

4 MADAM CHAIR: Sylvia Anderson? Okay. We're
5 looking for Sylvia Anderson. Okay.

6 UNIDENTIFIED SPEAKER: One of those callers.

7 MADAM CHAIR: She might be a caller, we don't
8 know. Have you unmuted everyone? Okay. So we do not --

9 MS. ANDERSON: Yes.

10 MADAM CHAIR: Oh you're present?

11 MS. ANDERSON: I am present.

12 MADAM CHAIR: Thank you, Ms. Anderson. Okay.

13 MS. ANDERSON: Thank you.

14 MADAM CHAIR: All right. So we have a huge list
15 of exhibits. So we have Applicant's legal memo which Mr.
16 Haller is 181 pages, okay, then we have Applicant's Exhibits
17 2, 3, 4, 5A and D, E through I, J through M and response to
18 opposition, revisions to conditions, opponent, okay so I
19 think that's it for applicant's.

20 Then we go to opponent's exhibits starting with 1
21 through 3, 4 through 6, 7 and 8, 9, 10 and then right on
22 down to 29. And then we have Mr. Ciferri's, well we were
23 already going to combine the record. Okay. And a
24 preliminarily motion which you submitted but that's it.

25 So we have everyone present and I'm just going to

1 give a preliminarily statement before I go to address this
2 case. So Mr. Hurlbutt will be presenting and the Board is
3 now going to consider Items 5 and 6, which again are
4 Detailed Site Plan 19050 and Departure from Design Standards
5 660 for the Dewey Property and when we finish with those two
6 items, we will go to Item 7. But I think as Mr. Haller
7 indicated, we can incorporate them all, but we have to vote
8 on Items 5 and 6 first. And it's because Item 7 which is an
9 amendment number one, is only being considered separately
10 due to the timing of when the Planning Department received
11 the application and since they all relate to the same
12 property.

13 But I do want to acknowledge receipt of a letter
14 dated July 15, 2020 from Mr. Peter Ciferri on behalf of 6525
15 Belcrest Road, LLC, the owners of the property adjacent to
16 the Dewey Property. The letter is asking the Board to rule
17 on a preliminarily motion prior to considering 5, 6 and 7,
18 stating that the Board does not have jurisdiction to conduct
19 the hearing because the application was not consented to by
20 the adjacent property owner.

21 May I remind everyone that this Board is (A) not a
22 court of law, we are an administrative hearing. Everything
23 is admissible so long as it's deemed relevant. We do not
24 have a process for entertaining preliminarily motions of
25 that nature, especially a motion preventing us from hearing

1 the case and for carrying out our statutory duties. So the
2 rules lay out a very specific process for the consideration
3 of development applications in Prince George's County that
4 come before us. So once the matter is introduced, we hear
5 from the technical staff here who present their
6 recommendation and then we hear from the applicant who
7 presents their case and then we go down the list of people
8 who have signed up, particularly the members of, any elected
9 officials and members of the public who wish to speak. So I
10 am going to, after consultation with counsel, I am going to
11 just proceed in that order as set forth in our Rules of
12 Procedure because I don't know that there's any reason,
13 we're just not able to entertain a motion to not hear the
14 case but we can, everyone who is entitled to speak can speak
15 provided that your testimony is relevant to the case. With
16 that, I'm going to turn to Mr. Hurlbutt.

17 MR. HURLBUTT: Good morning, Madam Chair and
18 members of the Planning Board, for the record I'm Jeremy
19 Hurlbutt with the Urban Design Section. The project before
20 you is Detailed Site Plan DSP-19050, Dewey Property. As for
21 mentioned, you should have additional backup from the
22 applicant and then an opponent. This case was continued
23 indefinitely from the Planning Board hearing date of April
24 16, 2020, so it could be heard with Item 7, which is DSP-
25 19050-01. This DSP covers grading, infrastructure on the

1 whole site and a single multifamily building on Parcel 5.

2 The DSP, there are two applications as part of
3 this item. First, the DSP which is for a mixed-use building
4 consisting of 321 multifamily dwelling units and 1,258
5 square feet of commercial retail use. There is also a
6 Departure from Design Standards for a reduction in the size
7 of the standard parking space size to 9 feet by 18 feet.

8 Next slide.

9 The site is located in the northern portion of
10 Prince George's County in Planning Area 68, Council District
11 02. Slide 3, please.

12 More specifically, the project is located on the
13 north side of Toledo Road, approximately 240 feet west of
14 Adelphia Road. The proposed Parcel 5 where the proposed
15 multifamily building will be located is located on the south
16 central portion of the site just north of Toledo Road. Next
17 slide.

18 The subject property is located in the mixed-use
19 infill zone, or M-U-I Zone. Next slide.

20 The property is located in the 2016 approved
21 Prince George's Plaza Transit District Development Plan and
22 Transit District Overlay Zone. Next slide.

23 Slide 6 is an aerial photo. The entire Dewey site
24 is bounded by Belcrest Road to the west, Toledo Road to the
25 south and Adelphia Road to the east. To the north and to

1 the east are properties with institutional uses, which
2 include Maryland National Capital Park and Planning
3 Commission owned properties. To the west, beyond Belcrest
4 are multifamily dwelling units. Beyond Toledo Road to the
5 south is the University Town Center development with
6 commercial and multifamily uses. Next slide.

7 The Site Plan shows the eastern half of the
8 overall site is wooded and a stream valley is present in the
9 middle of the site that runs north to south through the
10 site. Next slide.

11 The property has frontage on Master Plan roads
12 which include collector Belcrest Road shown here in green.
13 Arterial Adelphia Road shown here in red. And primary road,
14 or Toledo Road shown in pink. Next slide.

15 This bird's eye view which shows the existing
16 conditions of the property looking south to the University
17 Town Center and the Mall at Prince George's, at the top of
18 the slide. It also shows the existing multifamily to the
19 west and institutional uses to the north or the bottom of
20 the slide and to the east, or on the left hand side of the
21 slide. Next slide.

22 This Site Plan shows that two public roads that
23 are proposed to form an L shape in the southwestern corner
24 of the property that will be dedicated to the City of
25 Hyattsville. And the five-story building with 321

1 multifamily dwelling units and a little over 1,000 square
2 feet of commercial space in the south-central portion of the
3 property on proposed Parcel 5, which is shaded in gray on
4 this slide. The site is currently improved with surface
5 parking lot which is to be fully razed with this DSP, also
6 proposed to the entire site is also proposed to be entirely
7 graded in a storm water management pond to be constructed
8 for future development. Next slide.

9 The Illustrative Plan further illustrates this
10 application in combination with the Item 7 which will be
11 heard next. For this case is shown on Parcel 5 which is
12 noted with the number 5 and the building is colored orange
13 with an internal parking garage in gray that will be
14 accessed on the west side of the proposed Public Road B.
15 just north of the parking. Next slide.

16 Slide 12 shows above ground transformers that will
17 be located in the streetscape within the tree and furnishing
18 zones of Road B. These transformers are adjacent to the
19 right-of-way and in front of the sidewalk and viewable from
20 the right-of-way. An amendment to the TDDP standards have
21 been requested for the location of the transformers to allow
22 them to be above grade. Staff does not support the
23 placement of these transformers above grade in this location
24 since they are in front of the building and the sidewalk.
25 In addition, they are adjacent to the right-of-way and will

1 cause, and will greatly affect the streetscape. Staff would
2 point out that above ground transformers do exist in the TDDP
3 but were not subject to the requirements of the current
4 TDDP, which added these specific requirements for
5 undergrounding. Next slide.

6 Slide 13 is a rendering showing the southwest
7 corner of the building that with the main residential
8 entrance and retail to the right. The black elements anchor
9 the corner and highlight the building's entrance with
10 elevated (indiscernible) walls and increased amounts of
11 glass. This will be the main residential entrance. Next
12 slide.

13 This slide shows the north elevation of the
14 building proposes a flat roof height of approximately 53
15 feet with varying top parapet and the façade of the building
16 is composed of a combination of masonry cementitious panels
17 and metal panels in a range of black, white black and gray
18 colors. Next slide.

19 The southern evaluation will have the main
20 residential lobby and retail entrances. The applicant has
21 requested an amendment to allow the minimum clear height of
22 retail space to be reduced from 14 feet to 10 feet, while
23 maintaining the store front fenestration of 14 feet on the
24 exterior of the building. Staff supports this amendment.
25 The bottom of this slide shows the southern elevation to the

1 east which will be further activated with stoops that will
2 provide direct access to ground floor residential units
3 which will help activate the primary frontage. Slide 16,
4 please.

5 This elevation will overlook the storm water
6 management pond and windows and blacked out metal balconies
7 are provided on all façades of the building to break up the
8 building's massing. Next slide.

9 The west elevation shows the entrance to the
10 internal parking garage as well as to the north, two loading
11 spaces that will also be accessed directly from Road B which
12 the applicant has requested an amendment to allow this
13 direct access and not to have the loading access from the
14 rear of the building. The applicant, and staff supports
15 this amendment. Next slide.

16 These are elevations from the internal courtyard
17 of the building which will only be seen from the amenity
18 space of the building. Next slide.

19 These are additional renderings that show the
20 leasing lobby entrance which is adjacent to the parking
21 garage entrance on the upper left as well as on the upper
22 right, the northern courtyard which will be open to a
23 sidewalk that runs between this parcel and Parcel 2. And
24 the bottom left another angle of that same courtyard with
25 the last rendering being the corner of the building, the

1 southeast corner closes to the Prince George's Community
2 Center and storm water management pond. Next slide.

3 Once again further renderings of the parking
4 garage entrances, entrance and leasing lobby on the left
5 hand side of the screen and the main residential lobby on
6 the right hand of the screen which will be highlighted with
7 signage above it. Next slide.

8 The build to line slide shows the requested
9 amendment to allow the building to deviate from the build to
10 line along Toledo Road and Road B. Next slide.

11 This closer up image shows that the southwest
12 corner of the building will allow for additional gathering
13 space in front of the retail. The Urban Design staff
14 recommends that the Planning Board adopt the findings of
15 this report and approve Detailed Site Plan, DSP 19050 and
16 Departure from Design Standards, DDS-660 and Type 2 Tree
17 Conservation Plan, TCP2-042-2019-01, Dewey Property. The
18 applicant has proposed revisions to the Staff Report which
19 staff does not support changes to allow for the above ground
20 transformer adjacent to the Public Road B, but staff does
21 support the modifications to Condition C1E to change the
22 language to this loading condition. This concludes staff's
23 presentation. Thank you.

24 MADAM CHAIR: Thank you. Are there any questions
25 of Mr. Hurlbutt? Madam Vice Chair?

1 MADAM VICE CHAIR: Not at this time, thank you.

2 MADAM CHAIR: Commissioner Washington?

3 COMMISSIONER WASHINGTON: Yes, if Mr. Hurlbutt
4 would clarify the applicant is also proposing a change to
5 the Alternative Transit District Development Standards A2,
6 there's some added language and if staff would comment on
7 that, I'd appreciate it.

8 MADAM CHAIR: Mr. Hurlbutt?

9 MR. HURLBUTT: Sorry about that.

10 MADAM CHAIR: No worries.

11 MR. HURLBUTT: Yes, we do not support that either
12 as that pertains to the above grounding the transformers.

13 COMMISSIONER WASHINGTON: Okay. So you are not
14 supporting the proposed changes to A2 and then B1, as
15 outlined in the, okay, thank you.

16 MR. HURLBUTT: Correct.

17 MADAM CHAIR: Okay.

18 COMMISSIONER WASHINGTON: No further questions,
19 Madam Chair.

20 MADAM CHAIR: Okay. Okay. Commissioner Geraldo?

21 COMMISSIONER GERALDO: No questions.

22 MADAM CHAIR: Thank you. Okay. With that, I'm
23 going to turn to Mr. Haller.

24 MR. HALLER: Thank you, Madam Chair and members of
25 the Board. Once again, Thomas Haller representing the

1 applicant in this Detailed Site Plan application. As the
2 Chair knows my middle name is Brevity and I will try to be
3 as brief as possible. But in the sake of time, I would
4 propose that my presentation will basically overview the
5 entire development so that I don't have to do it again.

6 MADAM CHAIR: Correct.

7 MR. HALLER: But I would note for the Board there
8 are two issues which are common to both applications and so
9 I will highlight those in my presentation. One of them is
10 the issue related to the transformers, the other is the
11 issue related to the parking and so I'm going to highlight
12 those here and then when we go to the presentation on the
13 next case, I can focus on the remaining issues that are
14 unique to that case.

15 So if I could ask Mr. Hurlbutt to go back to Slide
16 11 of his PowerPoint presentation. This slide is helpful
17 because if the Board remembers we were originally scheduled
18 on this case back in April and the property has been the
19 subject of two prior Preliminary Plan of Subdivisions and
20 there were split into two separate Preliminary Plans because
21 the property is under two separate ownerships and it took
22 time to bring them all under the same contract purchaser.
23 And so as a result we were a little bit at a different
24 timing for the projects and so we filed two Preliminary
25 Plans and then we ended up filing two Site Plans and it

1 ultimately makes sense it seems to us, for the Board to see
2 the entire project as one application. And so this
3 illustrative plan shows you the overall developments
4 proposed for the Dewey Property.

5 Now the Dewey Property itself which is what you
6 see rendered in front of you consists of a total of 21 acres
7 of land and as the Staff Report notes, it's zoned M-U-I and
8 it's in the Prince George's Plaza T-D-O-Z. There are a
9 total of five parcels of land that are proposed to be
10 platted and they are each identified on the Illustrative
11 Site Plan in front of you. Parcel 1 which is at the south,
12 I mean excuse me, the northwest corner of Toledo Road at
13 Belcrest Road or excuse me, of the site, I'm sorry, is a
14 proposed multifamily dwelling that will contain 361 dwelling
15 units, that will be a rental building. And as I said,
16 that's right at the corner.

17 The Parcel 2 and Parcel 3, Parcel 2 is 5.36 acres,
18 Parcel 3 is 2.15 acres and together those will be 158 for
19 sale multifamily dwellings. These dwellings are styled as
20 two-over-two condos when you look at them that's what you
21 think of in your mind. But they're actually multifamily
22 dwellings designed with a vestibule that's open that
23 provides protection from the elements for the residents or
24 visitors and those will be on two and three and then Parcel
25 5 what you see sort of in the middle of the site, along the

1 north side of Toledo Road, is a 321 multifamily rental
2 building, which is the subject of this particular DSP. And
3 then Parcel 4 is a proposed regional storm water management
4 facility that has been locally known as Time Ponds for many
5 years. And that pond will be constructed by the Clean Water
6 Partnership and owned by Prince George's County.

7 Now from a broad perspective, the project promotes
8 several very important goals of the TDDP. The first and
9 foremost is the construction of the regional storm water
10 management facility on Parcel 4. The TDDP discusses the
11 importance of providing quantity storm water management
12 controls. This quantity storm water management is not just
13 important for the ultimate development of this property but
14 there are many other properties that need redevelopment
15 within the Prince George's Plaza Metro area that are going
16 to ultimately rely on this regional storm water management
17 facility. And so it's very important and it's identified in
18 the TDDP as an important facility. This property owner will
19 be providing the land for the ability to construct that
20 facility. There's also identified in the TDDP a desire for
21 a regional trail system that would run from Belcrest Road
22 down to Toledo Road and you can see a trail that runs
23 through Parcel 4 and it will also encircle upon and be not
24 only the maintenance for the pond but also a pedestrian
25 trail as well. And there's a condition which is included in

1 the staff recommendation to actually connect that trail all
2 the way down to Toledo Road on the east side of the pond on
3 the back of land owned by the Commission. And so that will
4 help to implement that recommendation of the TDDP.

5 Another recommendation of the TDDP is to bring
6 quality housing in close proximity to transit, which not
7 only provides additional residents to support the retail in
8 the area, but also will support transit usage and will
9 continue to make Prince George's Plaza the most complete
10 transit oriented district in Prince George's County. And as
11 I said before there's both rental and for sale product
12 included in this proposed development which is also
13 something that the diversity of housing types is encouraged
14 by the TDDP.

15 And then another element is extension of public
16 roadways. The TDDP talks for breaking down the area into
17 more manageable blocks for pedestrian connectivity and Mr.
18 Hurlbutt mentioned earlier Public Roads A and B which form
19 that L shape Public Road B extending from Toledo Road,
20 Public Road A being the extension of Toledo Terrace. But
21 also very important in this is that currently at the
22 intersection of Belcrest Road and Toledo Terrace there is
23 not a traffic signal as part of the Preliminary Plan
24 process. We were required to prepare a signal warrant
25 study, which determined that a signal will be warranted at

1 that intersection and so a traffic signal will be
2 constructed at Toledo Terrace and Belcrest Road and
3 pedestrian crosswalks will be installed, so to improve
4 pedestrian connectivity in the area, which is another very
5 important goal of the TDDP.

6 And then the final thing is that if Mr. Hurlbutt
7 can go to the aerial photograph --

8 MADAM CHAIR: And also I'd like to Mr. Flanagan to
9 be able to follow with the cursor, you know, at these
10 intersections where you're talking so like Belcrest Road and
11 Toledo Terrace. Okay. Okay.

12 MR. HALLER: If you go to the left side of the
13 property where the road comes into it right, right, that
14 road, that right there, that's Toledo Terrace and that's
15 where the traffic signal will be installed --

16 MADAM CHAIR: Okay.

17 MR. HALLER: -- and the new crosswalks will be
18 installed. And I bring this photograph up because one of
19 the recommendations which is then in the Prince George's
20 Plaza TDDP since it was first adopted in 1992 has been the
21 elimination of surface parking. And sometimes people talk
22 about a sea of surface parking, this is a sea of surface
23 parking. And it has been on the property for many years and
24 the goal of this application is to allow for the
25 redevelopment of the site and the elimination of the surface

1 parking. And as you know one of the issues is that an
2 adjoining property owner has argued that the surface parking
3 lot must remain in perpetuity. But it is our goal as is the
4 goal of the TDDP to relocate that parking and to allow for
5 the redevelopment of this parking lot.

6 I do want to thank Mr. Hurlbutt for this
7 assistance in the review of these cases, as you can see
8 there are a lot of moving parts. But hopefully by bringing
9 them all together with you, to you at the same time, you can
10 start to see how the plans coelest (phonetic sp.) and show
11 how the overall development can be viewed as a whole.

12 So with regard to the two issues that are common
13 to this case, and to the 01 revision which is Item 7 on your
14 agenda, the first issue is the issue related to parking.
15 And I know that in your backup there are hundreds of pages
16 of legal memoranda and exhibits and these all stem from the
17 position of the owner of Metro Three. And just to note the
18 owner of Metro Three and just to note the owner of Metro
19 Three submitted a letter into the record on March 31st of
20 2020 into the record of this case, to which I responded with
21 a letter dated April 15th. And then there was a subsequent
22 letter submitted into the record of Item 7 dated May 28,
23 2020 by the owner of Metro Three to which I responded on
24 June 8th. And then there were two letters submitted this
25 past week dated July 10th and July 15th by the owner of

1 Metro Three as well.

2 Now, the Board should also be aware that the owner
3 of Metro Three has filed a complaint in the Circuit Court of
4 Prince George's County, which is currently pending and which
5 named Park and Planning as a defendant. And then there was
6 also a demand for arbitration filed by the owner of the
7 property to enforce a parking lease agreement that exists
8 related to the property. So suffice it to say that the
9 issues raised by Metro Three are in litigation and will be
10 determined by another tribunal outside the scope of this
11 hearing.

12 The issue that's before the Planning Board is
13 whether the applicant has provided the requisite information
14 which was required pursuant to Finding 19 of resolution
15 adopted in Preliminary Plan 4-18022 and that's Planning
16 Board Resolution Number 19-82. If you will recall, Metro
17 Three appeared at that hearing and raised concerns about the
18 adequacy of parking if the Detailed Site Plans for this
19 property are approved and the parking that is currently
20 existing on the Dewey Property is ultimately removed. And
21 the Planning Board placed a finding that requested that the
22 applicant prepare a parking analysis to demonstrate that if
23 parking is removed that it will not create a parking
24 shortage within the area.

25 Within the record of this case, our traffic

1 consultant, Mr. Mike Lenhart, prepared a parking analysis
2 and it's important to note that in prior applications
3 related to the University Town Center on the south side of
4 Toledo Road, Mr. Lenhart had prepared prior parking analyses
5 because as each application has come in and removed surface
6 parking and maybe put in structured parking there's a
7 condition of a Conceptual Site Plan dated back to 2000, it
8 required an analysis be done. And I would also note that
9 the property on the south side of Toledo Road being zoned M-
10 X-T requires a parking analysis be done as a matter of the
11 compliance with the Zoning Ordinance. And so Mr. Lenhart
12 took the prior parking analyses that had been done and
13 updated it, assuming that the parking lot on the Dewey
14 Property was eliminated. And what that parking analysis
15 demonstrates is that even if the surface parking on the
16 Dewey Property is eliminated, there is still a surplus of
17 over 1,000 parking spaces on the south side of Toledo Road
18 to serve the owner of Metro Three.

19 And staff has indicated in its review of that
20 study that it has satisfied the requirement set forth in the
21 finding of the Preliminary Plan to demonstrate that the
22 removal of the surface parking will create an inadequacy of
23 parking. As we have indicated in our letters and in our
24 memoranda that we have submitted into the record, both the
25 owner of the Metro Three building and the owner of the Dewey

1 Property are subject to a ground lease agreement that allows
2 the surface parking lot to be relocated to existing garages
3 located at the University Town Center. And that is exactly
4 what the owner of the Dewey Property is proposing to do,
5 which is to move the parking to a new location which was
6 authorized pursuant to the ground lease.

7 Now it's obviously not my intention to litigate
8 the rights of the parties under that ground lease as part of
9 this Detailed Site Plan application. That will be
10 adjudicated by the courts or American Arbitration
11 Association. But I do want to address a couple of the
12 issues which have been raised and which challenge the right
13 of the Planning Board to render a decision in this case.

14 In the letter that was just filed yesterday, Metro
15 Three continues to allege that their longstanding use of the
16 surface parking lot has morphed into an ownership interest
17 such that the Planning Board should consider them a co-
18 applicant and that since they did not sign the application
19 the Board should not proceed with the approval of this
20 application. The documentation which has been submitted
21 into the record clearly reflects that Metro Three has a
22 leasehold interest in the parking lot and that at least
23 provides the landlord with the right to relocate the parking
24 which is what we had told them we intend to do and what we
25 have indicated to the Board we intend to do. And as we

1 discussed in our April 15, 2020 letter, the leasehold
2 interest is not considered an ownership interest under our
3 Zoning Ordinance and therefore their signature is not
4 required on this application. And we believe that the
5 document that they signed when they purchased the property
6 accepting their rights and obligations under the ground
7 lease is all the consent that is needed to allow this
8 application to proceed.

9 The second allegation that I want to address is
10 that the parking waiver that was approved originally to
11 allow the parking off site from their property in 1970 gives
12 them a permanent right to park in the Dewey Property and
13 that no one can interfere with that permanent right. As we
14 have noted in our written responses to their arguments, the
15 parking waiver did not deny the Dewey Property the right to
16 develop its property. It gave Metro Three the right to park
17 on the property and throughout the history that the parking
18 has existed on the property it has always been contemplated
19 that the parking could and would be relocated at the time
20 that the Dewey Property was redeveloped. This was stated in
21 the record of the parking waiver that was approved in 1970.
22 It was stated in the mortgage which was cited as the long
23 term arrangement under which the District Council originally
24 approved the parking waiver. And since 1998, the terms and
25 provisions regarding the parking and the ability to relocate

1 it have been governed by a ground lease.

2 And as I mentioned earlier when Metro Three
3 purchased its property in 2015 it signed an assignment of
4 rights and obligations acknowledging that it was buying the
5 property subject to the terms of the ground lease which
6 allowed the parking to be relocated.

7 While conformance to the terms of the ground lease
8 is being litigated, this has nothing to do with this
9 application, or the fact that the applicant has satisfied
10 the Board's directive in the Preliminary Plan to show that
11 if a surface parking is eliminated, it will not create a
12 parking shortage in this area. So it is our position that
13 the issue before you is a private dispute between adjoining
14 property owners and that the application that's before you
15 can proceed notwithstanding the objections of the owner of
16 Metro Three.

17 I'm happy to answer questions about that
18 particular issue if you want or I can move on to the next
19 issue.

20 MADAM CHAIR: I'd rather you move on.

21 MR. HALLER: Okay.

22 UNIDENTIFIED SPEAKER: Yes.

23 MADAM CHAIR: I don't know if we have any
24 questions but we'll have our attorney if need be and I'm
25 sure we'll hear from others. So you can keep going.

1 MR. HALLER: Now okay, so the second issue which
2 is common to both projects is the question related to the
3 location of the transformers. There are recommendations in
4 both applications to place the transformers underground and
5 these relate to the two multifamily buildings located on
6 Parcels 1 and Parcel 5. Now the Parcel 5 property which is
7 the subject of the DSP that is currently being heard, Agenda
8 Item Number 5, there are four transformers which are serving
9 the building. Two of them are proposed to be located on
10 Public Road B and two of them are to be located on the
11 southeast side of the property --

12 MADAM CHAIR: Okay. Mr. Haller --

13 MR. HALLER: -- adjacent to --

14 MADAM CHAIR: -- Mr. Flanagan is here working the
15 cursor. Those transformers that's not what you're talking
16 about because that's not five, right? Where are you --

17 MR. HALLER: No, I was across the street --

18 MADAM CHAIR: Oh up at the top.

19 MR. HALLER: -- and the transformers are just to
20 the top of the screen.

21 MADAM CHAIR: Right. Got it. Okay. Thank you.

22 MR. HALLER: And then there are two transformers
23 that are not shown on this exhibit. We had submitted a
24 separate exhibit that showed the other two transformers, but
25 for purposes of our discussion I think we can utilize this

1 exhibit.

2 MADAM CHAIR: Okay.

3 MR. HALLER: So as I said, so there are four
4 transformers associated with each parcel.

5 MADAM CHAIR: Okay.

6 MR. HALLER: Four related to Parcel 5, four
7 related to Parcel 1. Two of the transformers that are
8 related to Parcel 5 are located on the eastern side of the
9 building near the storm water management pond. And staff
10 has agreed that those can be located above ground and
11 screened.

12 The issue has to do with the two transformers
13 proposed for Public Road B to serve Parcel 5, and the four
14 transformers on Road B to serve Parcel 1. And I would note
15 that for Parcel 1, and I know that we aren't hearing that
16 case yet, but Parcel 1 is surrounded on all four sides by
17 these transformers. They have no place to put them but
18 somewhere along a street frontage and so the impact of
19 undergrounding these transformers has a particularly big
20 impact on Parcel 1 but it has a tremendous impact on both
21 parcels as well.

22 I would like to note and I don't know if Mr.
23 Hurlbutt can go to the exhibits that I submitted yesterday
24 that show kind of a broader picture of or if Kenny can that
25 show the broader picture of the site and where the

1 transformers are. This is kind of a blown up exhibit that
2 shows the --

3 MADAM CHAIR: Can you?

4 MR. HALLER: -- transformers.

5 MADAM CHAIR: So do you have a number for it?

6 Because we have Mr. Flanagan here and we have an awful lot
7 in here so we just have to orient him to it. The
8 applicant's exhibits that we have are, did you number them?

9 MR. HURLBUTT: Staff numbered them and I believe
10 it should be 2, 3 or 4.

11 MADAM CHAIR: Okay.

12 UNIDENTIFIED SPEAKER: Applicant's exhibits.

13 MR. HALLER: Yes.

14 MADAM CHAIR: But applicant's exhibits, oh boy.

15 MADAM VICE CHAIR: We really don't have it.

16 MR. HALLER: It's probably --

17 UNIDENTIFIED SPEAKER: Item 5, there we go.

18 MADAM CHAIR: Okay. Hold tight. But they're
19 applicant's exhibits, not the Staff Report.

20 MR. HALLER: Right.

21 COMMISSIONER GERALDO: What's the exhibit number,
22 Mr. Haller?

23 MR. HALLER: I didn't label it as Applicant's
24 Exhibit 1, 2 or 3, I had it labeled as --

25 MADAM CHAIR: This is the last night, late last

1 night ones, remember.

2 MR. HALLER: -- there were three exhibits related,
3 well actually four exhibits related to the transformers.

4 MADAM CHAIR: Okay. Hold on a second. Mr.
5 Hurlbutt, you will recall this issue came up last night.
6 Okay. So I think if you go --

7 UNIDENTIFIED SPEAKER: Can he see the screen? Can
8 Jeremy see the screen?

9 MADAM CHAIR: Jeremy, can you see that screen
10 that's up now?

11 MR. HURLBUTT: Yes.

12 MADAM CHAIR: Okay. So what are you asking?

13 UNIDENTIFIED SPEAKER: Can he tell us which --

14 MADAM CHAIR: Do you know which one because
15 they're in Share Point, do you know which one? Well, okay,
16 so these are in Share Point.

17 MR. HURLBUTT: These are only, I'm just seeing the
18 PowerPoint presentations, I'm not seeing the --

19 MADAM CHAIR: Okay. So --

20 MR. HURLBUTT: -- Share Point.

21 UNIDENTIFIED SPEAKER: (Indiscernible).

22 MADAM CHAIR: So that's what I'm asking. So the
23 ones that we've distributed, okay, well we can't do, it
24 looks as though we can't pull that up.

25 UNIDENTIFIED SPEAKER: But you do have a hard

1 copy.

2 MADAM CHAIR: But we do have the hard copies. All
3 of the Board members have the hard copies how you find it is
4 beyond me.

5 COMMISSIONER WASHINGTON: We still need to know
6 which one we're supposed to be looking at thought.

7 MADAM CHAIR: That's true --

8 COMMISSIONER GERALDO: Right.

9 MADAM CHAIR: -- I'm saying --

10 MR. HALLER: So the exhibits that I was going to
11 refer to is called Proposed Transformer Screening and it
12 shows a broader view from, it's not as close up of view as
13 the one that was included in the PowerPoint presentation.

14 MR. HURLBUTT: Which is --

15 MADAM CHAIR: What did you say it's called again?

16 MR. HALLER: At the bottom right of the image it's
17 called Proposed Transformer Screening.

18 MADAM VICE CHAIR: No.

19 MADAM CHAIR: Yes, I see it, I have it right here.
20 It's, well, I don't know what to tell you --

21 MADAM VICE CHAIR: Where did you find that?

22 MR. HURLBUTT: (Indiscernible).

23 COMMISSIONER GERALDO: Is it illustrative?

24 MADAM CHAIR: I have mine in order.

25 COMMISSIONER GERALDO: Is it in the --

1 MADAM CHAIR: It's the third --

2 UNIDENTIFIED SPEAKER: There are --

3 MADAM CHAIR: -- packet down. It's just a two
4 pager and it says, is this it? I mean can you see mine?
5 Can you zero in on mine?

6 MR. HALLER: Yes, that's it. Yes, that's it.

7 MADAM CHAIR: Okay.

8 MADAM VICE CHAIR: I have that.

9 COMMISSIONER WASHINGTON: But do you have an
10 exhibit number? Because everything we have --

11 MADAM CHAIR: I understand.

12 COMMISSIONER WASHINGTON: -- is labeled
13 Applicant's Exhibit.

14 MADAM CHAIR: I understand that but this, you saw
15 what's happening, it doesn't --

16 UNIDENTIFIED SPEAKER: It's on the front page,
17 right, their front page.

18 MADAM CHAIR: What about it? It doesn't have an
19 exhibit number.

20 COMMISSIONER GERALDO: It's Exhibit Number 4, I
21 believe.

22 MADAM CHAIR: Oh 4, yes, it is 4, that's right.
23 You're right (indiscernible).

24 COMMISSIONER GERALDO: It's number 4.

25 MADAM CHAIR: Okay. Sorry.

1 MR. HALLER: This is instructive in the future I
2 will make sure that I put applicant exhibit numbers on each
3 one of the things I submit.

4 MADAM CHAIR: It is, no, in the future we're not
5 submitting all these exhibits. That's the (indiscernible)
6 okay. Okay.

7 MR. HALLER: So --

8 MADAM CHAIR: Okay. So let me ask this question.
9 Does everybody have it? Okay.

10 COMMISSIONER GERALDO: Yes, I have it.

11 MADAM CHAIR: Okay.

12 UNIDENTIFIED SPEAKER: Yes. Yes, ma'am.

13 MR. HALLER: So I want to note, I wanted to use
14 this exhibit to make a couple of observations. So as you
15 see we have frontage on two major roads, Toledo Road and
16 Belcrest Road. Belcrest Road is on the far left side of
17 this exhibit and the TDDP classifies roads based upon
18 whether they're major roads or minor roads. And so
19 obviously Toledo Road and Belcrest Road are considered to be
20 major roads. And then there are lesser classification
21 streets and included in the TDDP are something called B
22 Streets and so our Public Road B is considered a B Street.
23 So what I wanted the Board to notice is that
24 public road is number one for Parcel 1 in particular, we
25 didn't propose the transformers along either of the major

1 roads, Toledo Road or Belcrest Road. We propose to put them
2 on a B Street, number one. And number two is that we
3 intentionally coordinated the design and development on
4 Parcels 1 and 5 to group the service areas in the same
5 place. So we have the entrance to the garages, the entrance
6 to the loadings, the service areas and the transformers all
7 grouped together at the same location.

8 And then the final thing I want you to notice is
9 that we pulled them back as far up Road B as we could and
10 that was done on purpose because we wanted them to not be
11 visible from the major roads, from Toledo Road or from
12 Belcrest Road. And the Board should be aware that these
13 transformers, you know, the electrical line service these
14 transformers and the further you take these transformers
15 away from where the utilities are which is in the main
16 streets, Toledo Road and Belcrest Road, the more expensive
17 it is to put them there. And so we have made conscious
18 efforts to group all of the service areas at the same place.
19 We've grouped them on a B Street. We have extended, we've
20 increased our own expense by bringing them further up the
21 road so they wouldn't be visible from the main roads. Those
22 were all done with the intention of conforming to the
23 requirements of the TDDP and creating the most attractive
24 streetscape possible.

25 But the issue that we have with staff is basically

1 a fundamental disagreement with how the TDDP is interpreted.
2 Because the Board is aware, you've had cases recently
3 several cases quite frankly, I think the most recent one was
4 June 25th where you discussed transformers and we've had
5 transformers on U.S. Route 1, you had transformers at the
6 standard project on June 25th where they were visible from
7 the road and they were proposed to be screened, either
8 screened with some sort of a substantial screening material
9 or screened by some sort of a rack, to actually create an
10 art, something that looks attractive. And we had submitted
11 images in our justification statement of some existing
12 transformers in the Prince George's Plaza TDDP that were
13 above ground and staff's response was well that was the old
14 TDDP, the new TDDP is different. But we included them to
15 not only show that they were above ground but that they
16 hadn't even been screened.

17 I mean you're driving down East-West Highway,
18 you're driving down major roads that you see the
19 transformers and the transformers aren't even screened.
20 From day one on this project we had proposed to screen the
21 transformers because that is a requirement of the TDDP. But
22 I want the Board to focus on what the requirements of the
23 TDDP are and one of the exhibits that I submitted is a copy
24 of some language from the Transit District Development Plan.
25 And if I could ask you to pull that exhibit from your

1 package, it's entitled Streets and Frontage, Frontage Zones.

2 Do you have that exhibit?

3 MADAM VICE CHAIR: Not yet.

4 MADAM CHAIR: We're looking. Hold on.

5 COMMISSIONER WASHINGTON: It's Applicant's Exhibit
6 Number 2.

7 MADAM CHAIR: Okay.

8 COMMISSIONER GERALDO: Two?

9 COMMISSIONER WASHINGTON: Yes.

10 MADAM CHAIR: Okay. So --

11 MR. HALLER: And that should be two pages --

12 MADAM CHAIR: Okay.

13 MR. HALLER: -- the second page including the
14 photograph.

15 MADAM CHAIR: Okay. Hold on a second.

16 COMMISSIONER WASHINGTON: Correct.

17 UNIDENTIFIED SPEAKER: (Indiscernible).

18 MADAM CHAIR: I'm just saying these are my
19 exhibits for this case. I'm just saying.

20 MR. HALLER: So wait --

21 UNIDENTIFIED SPEAKER: (Indiscernible).

22 MADAM CHAIR: Huh?

23 UNIDENTIFIED SPEAKER: Are they the applicants
24 exhibits or what? Applicant exhibit.

25 MADAM CHAIR: Oh no, excuse me. It wasn't

1 finished. These are the exhibits for this case, 800 and
2 some odd pages for this case.

3 MR. HALLER: But there's only about four of them
4 that are relevant. I could have told you that on the first
5 day.

6 MADAM CHAIR: Okay. So all right, I'm still
7 trying to find one, but okay.

8 UNIDENTIFIED SPEAKER: (Indiscernible) two.

9 MADAM CHAIR: It's two. Okay. Well, it's buried
10 in here somewhere.

11 COMMISSIONER WASHINGTON: I just forwarded Jessica
12 the e-mail with all of them in there if that's helpful to
13 you, Madam Chair.

14 MADAM CHAIR: Okay. Oh I got it.

15 MADAM VICE CHAIR: Okay.

16 MADAM CHAIR: This is it. Okay. Got it. Okay.
17 Thank you.

18 MR. HALLER: Yes. Do all the Board members have
19 that?

20 MADAM CHAIR: Yes. And I'm breaking out the
21 chocolate now.

22 MADAM VICE CHAIR: Yes, we do. Okay.

23 MR. HALLER: Okay. So the top which is entitled
24 Streets and Frontage, Frontage Zones is taken from page 208
25 of the Transit District Development Plan for Prince George's

1 Plaza and the bottom right hand bullet of that section it
2 says on A streets, B streets pedestrian streets or
3 promenades no new public utilities including but not limited
4 to transmission or distribution lines, mechanical equipment
5 are permitted above ground.

6 And what staff is, and just so the Board is aware
7 an A Street would be a major street such as Belcrest Road
8 and such as Toledo Road and what we are creating is a new B
9 Street. And so we agree new public utilities are not
10 supposed to be above ground. And in fact, if you look at
11 the second page of my exhibit you will see that there is an
12 existing public utility on Toledo Road now that we are
13 proposing to put underground and that is something that is
14 encouraged by the TDDP. But as the Board is aware, in prior
15 development districts and transit districts, the cost to
16 underground public utilities is expensive, and in fact,
17 Pepco often will not allow us to take public utilities
18 underground.

19 In fact, you know there are many requirements in
20 TDDP's that say that existing public utilities are supposed
21 to go underground that the Board has not required it because
22 of the expenses or the problems of working through Pepco of
23 actually getting authorization to do that. But we are
24 actually spending the funds to put the existing public
25 utilities on Toledo Road underground and also incurring the

1 expense of putting these transformers off of the public
2 road, the main public road so they won't be visible, but if
3 you look at the next heading on that first sheet where it
4 says downtown core B Street. So the top of the page says
5 streets and frontage, at the bottom of the page it says
6 downtown core B Street.

7 What we have here is a downtown core B Street and
8 if you look at the far right bullet it says delivery
9 services, loading, dumpsters, parking facilities surface and
10 structured entrances, and above ground utilities servicing
11 buildings fronting on a street or pedestrian streets shall
12 be located on B streets or alleys. So there's two elements
13 that are relevant.

14 The first is is that it specifically references
15 above ground utilities servicing buildings. A transformer
16 is an above ground utility servicing a building. Staff's
17 position is no it's a public utility therefore you have to
18 put it underground. But if this transformer which is
19 located on private property, not in public utility easement,
20 is not being used to service any other building and cannot
21 be used to service any other building, is not an above
22 ground utility servicing a building, then what is an above
23 ground utility servicing a building?

24 In other words, if the staff's interpretation that
25 this is a public utility is correct, then the language that

1 I just read to you about above ground utilities servicing
2 buildings has no meaning whatsoever, because there is no
3 such other above ground utility servicing a building other
4 than a transformer. And so if you look at the dictate it
5 said that the services, loading, dumpsters, parking
6 entrances and in our view transformers are to be located on
7 B Streets when you also front on an A Street. This is
8 exactly the situation that we have here, which is we have
9 two buildings that front on A Streets. We have provided a B
10 Street to give us a location to provide the delivery
11 services, parking facilities, entrances, loading spaces and
12 transformers and we are putting them there. We are
13 conforming exactly to the dictates of the language of the
14 TDDP.

15 And then there is another requirement which we
16 have not reproduced which says that when you have a ground
17 mechanical equipment like this it must be screened. And
18 from day one as I mentioned, we have proposed not only to
19 just screen it, we're not trying to screen it with shrubs or
20 even a wood fence or a vinyl fence. We are proposing a
21 substantial artistic metal screening package to screen the
22 transformers and we have coordinated between the buildings
23 so that they will be consistent in style and design so that
24 as you walk down the sidewalk you won't even notice the
25 transformers, unlike other places in the TDDP. Even though

1 they will be above ground they will be completely screened
2 and protected with bollards from the roadway so that they
3 can service the building.

4 And I would like to also note and I don't mean to
5 throw Pepco under the bus, but I'm going to.

6 MADAM CHAIR: But. But.

7 COMMISSIONER GERALDO: But.

8 MR. HALLER: Pepco, this is not a situation where
9 you go buy a transformer off a shelf and you can compete
10 pricewise. Pepco requires you to pay them to put these
11 things underground. Pepco, we're talking about probably
12 over three quarters of a million dollars if we are required
13 to put these transformers underground.

14 MADAM CHAIR: In total?

15 MR. HALLER: They are incredibly, probably in
16 total.

17 MADAM CHAIR: Okay.

18 MR. HALLER: And I mean you know maybe you know
19 one of my clients on the phone can weigh in on that. But
20 the fact of the matter is is that Pepco's guidelines prefer
21 above ground transformers. There's probably a reason why
22 they charge such an exorbitant fee to put them below ground
23 and Pepco doesn't like to maintain them because they're
24 harder to maintain when they're below --

25 MADAM CHAIR: When they're below ground.

1 MR. HALLER: -- ground. But --

2 MADAM CHAIR: Okay. I need to stop you for a
3 second, Mr. Haller. I need to stop you for a second because
4 I know you're making your case and you're preserving the
5 record but I will tell you that, first of all and maybe if
6 needed our attorney can jump in, but I think --

7 UNIDENTIFIED SPEAKER: Uh-huh.

8 MADAM CHAIR: -- this is a decision that the Board
9 can make and we can go either way on this. We can require
10 underground transformers or we can require, go with the
11 above ground transformers. And we do have to look at this,
12 the language as set forth in Applicant's Exhibit 400 and,
13 no, Applicant's Exhibit Number 2 and when you consider that
14 it's not on the A Streets that's it on the B Streets and
15 that you intend to set them back further, and that you
16 intend to put something decorative, although I will tell you
17 on one of these exhibits, Exhibit 3 --

18 COMMISSIONER GERALDO: Three.

19 MADAM CHAIR: -- some of them, you know, are nicer
20 looking than others. Like that first one there, is not
21 doing a thing for me. But some of the others are more
22 attractive, some of the other precedents there are more, you
23 know they have more interesting detail. So you know maybe I
24 can go with that, but it's not really a legal issue at this
25 point, especially given the language regarding street and

1 frontage and we do take into consideration what Pepco says
2 and Pepco guidelines because it is harder for them to
3 maintain. However, I mean it's still something we can
4 require or not but if you could wrap this portion up, Mr.
5 Haller, and ultimately the decision will be ours based on
6 the case that you've made. I don't want to cut you off if
7 you still have some other points to make on it, but you
8 know, you know that expression about the horse, you know,
9 the dead horse. Okay.

10 MR. HALLER: No, I just wanted the Board to be
11 aware that there is an interpretation of the TDDP that does
12 not require that these be underground. But if the Board
13 were to even find that that's what the requirement is, we've
14 requested a modification that would allow the Board to grant
15 the amendment, allow them to be above ground in this case,
16 provided that they are attractively screened. And we
17 understand that way that the condition would be written is
18 that we would work with staff --

19 MADAM CHAIR: Yes.

20 MR. HALLER: -- to come up with the appropriate
21 screening for them.

22 MADAM CHAIR: That's right.

23 MR. HALLER: And so that would --

24 MADAM CHAIR: Because that first one is not
25 cutting it. Okay.

1 MR. HALLER: No, no, no. We just want the Board
2 to be aware there's multiple options out there.

3 MADAM CHAIR: Okay.

4 MR. HALLER: Our preference is for a much more
5 artistic screening because we are in Hyattsville, we are
6 providing public art with these projects and we want this to
7 be an artistic statement, not plain.

8 MADAM CHAIR: Okay. So we don't know yet where
9 the Board will go --

10 COMMISSIONER GERALDO: Madam --

11 MADAM CHAIR: -- but I just wanted you --

12 MR. HALLER: I understand.

13 MADAM CHAIR: -- to know we have options.

14 Commissioner Geraldo --

15 MR. HALLER: That --

16 MADAM CHAIR: -- were you trying to say something?

17 MR. HALLER: No, yes, let me, well what it said --

18 MADAM CHAIR: And they say women can't make up
19 their minds.

20 COMMISSIONER GERALDO: -- that the applicant would
21 work, wait a minute, where's my thing, can you hear me?

22 MADAM CHAIR: Yes, we hear you.

23 COMMISSIONER GERALDO: I guess not. Okay. You
24 see me but you don't hear me?

25 MADAM VICE CHAIR: No, we hear you --

1 MADAM CHAIR: No, both.

2 MADAM VICE CHAIR: -- but we don't see you.

3 MADAM CHAIR: We see your ceiling fan.

4 COMMISSIONER GERALDO: Okay. So all right, so

5 what I was going to say is that the applicant working with

6 the staff, but the staff would have the ultimate decision,

7 is that what you're saying, Mr. Haller?

8 MR. HALLER: With regard to the --

9 COMMISSIONER GERALDO: Screening.

10 MR. HALLER: -- design of the screens?

11 COMMISSIONER GERALDO: Yes.

12 MADAM CHAIR: Subject to approval.

13 COMMISSIONER GERALDO: Yes.

14 MADAM CHAIR: Subject to approval.

15 COMMISSIONER GERALDO: Yes.

16 COMMISSIONER WASHINGTON: Yes, that's the

17 language.

18 COMMISSIONER GERALDO: Yes. Okay.

19 MADAM CHAIR: If we went with that, but there are

20 two ways to go with that. If --

21 COMMISSIONER GERALDO: I'm not saying we are, I'm

22 just want --

23 MADAM CHAIR: I know, I know.

24 COMMISSIONER GERALDO: -- that part clear.

25 MADAM CHAIR: Right. But even if we went with

1 that part, there's still two ways to go, either we find that
2 we need the amendment or we find that that particular
3 provision doesn't require the amendment, and then on the
4 flip side you know we still go with the underground. So I'm
5 just saying there's two courses of action under one scenario
6 and then one course of action --

7 COMMISSIONER GERALDO: I would like to hear from
8 Mr. Warner though.

9 MADAM CHAIR: On what?

10 COMMISSIONER GERALDO: On that issue.

11 MADAM CHAIR: Okay. Mr. Warner? It's up to us.
12 I think there's --

13 MR. WARNER: David Warner, Principal Counsel.
14 I'll make it quick. The staff recognized that very conflict
15 that Mr. Haller brings up and they discussed that and
16 ultimately they decided to go with the alternative, I think
17 they felt fit the design better, which was undergrounding
18 the utilities. But there is a conflict in there, it can be
19 addressed either way.

20 MADAM CHAIR: So it's up to us.

21 COMMISSIONER GERALDO: Thank you.

22 MADAM CHAIR: Thank you. Okay. Mr. Haller?

23 MR. HALLER: So with that, I think I've concluded
24 my discussion of the issues that are related to just this
25 case. As I said, both of those issues relate to the other

1 case as well and with regard to the proposed revisions to
2 conditions, staff did not agree with the revisions related
3 to allowing the transformers to be above ground. There was
4 one minor revision to the wording of Condition 1E which
5 staff was in agreement with.

6 So I don't think I need to go through the
7 conditions in any more detail than that. So that would
8 conclude my presentation with regard to this particular
9 application.

10 MADAM CHAIR: Okay. So you obviously have the
11 right to come back at the end and I also want to see, you
12 have Mr. Bickle, is Mr. Bickle here to answer questions or
13 does he wish to speak?

14 MR. HALLER: Answer questions.

15 MADAM CHAIR: Okay. And then I know we have our
16 team, Mark Juba and Tom Masog here just to answer question
17 if you have, you don't need to say anything do you, or do
18 you?

19 UNIDENTIFIED SPEAKER: No.

20 MADAM CHAIR: Okay.

21 MR. MASOG: Oh, hi Madam Chair, this is Tom Masog.

22 MADAM CHAIR: Okay. Okay. Kate Powers
23 representing the City of Hyattsville?

24 MS. POWERS: Yes. Good afternoon Chairman Hewlett
25 and members of the Planning Board, for the record my name is

1 Kate Powers and I am the City Planner for the City of
2 Hyattsville and I'm here representing the City of
3 Hyattsville regarding all of the applications for the Dewey
4 Property today.

5 And so the City of Hyattsville is in support of
6 the recommendations within Park and Planning staff memo and
7 supports of those conditions --

8 MADAM CHAIR: Hold on, hold on, we're going to
9 mute everybody else, Ms. Powers. Ms. Powers? We lost her?

10 UNIDENTIFIED SPEAKER: Yes.

11 MADAM CHAIR: Okay. Ms. Powers?

12 MS. POWERS: Yes, can you hear me?

13 MADAM CHAIR: Now we can. We heard some
14 background noises so we had to mute everyone else. So
15 you're in agreement with --

16 MS. POWERS: No problem.

17 MADAM CHAIR: -- the staff recommendation, what
18 about the transformers?

19 MS. POWERS: Sure. So overall we are, you know,
20 very supportive of this development, we think that it's a
21 substantial investment in the City's Transit Oriented
22 Development Zone. We think that it targets you know
23 density, mixed-use, walkability, all of these goals and
24 though much of the project aligns with the TDDP, the City
25 does not support the applicant's proposed above ground

1 transformers and instead concurs with Park and Planning
2 staff per the TDDP there are no, you know, physical
3 restrictions that limit the applicant's ability to place the
4 transformers at grade. We feel that these are more secure,
5 visually appealing, and that they align with the intent of
6 the TDDP more so than the above ground transformers.
7 However, the City is supportive of above grade transformers
8 that are screened from public view like those that are --

9 MADAM CHAIR: Okay. So --

10 MS. POWERS: Sorry, I can repeat some of that if
11 it (indiscernible) based on noise --

12 MADAM VICE CHAIR: (Indiscernible) the end of
13 that, yes, thank you.

14 MADAM CHAIR: Okay.

15 MS. POWERS: And so on Public Road B, the City is
16 not supportive of above ground transformers, however, the
17 City is supportive of above grade transformers screened from
18 public view along the east side of Parcel 5, as we feel that
19 that area having the above ground transformers will have a
20 reduced impact on the urban streetscape.

21 MADAM CHAIR: Which is what Mr. Sievers indicated
22 too, he was okay with that one, those two. Okay.

23 MS. POWERS: Exactly.

24 MADAM CHAIR: So my question is I should have
25 asked Mr. Haller before, so do we have the Pepco guidelines?

1 MR. HALLER: Madam Chair, I have Pepco guidelines
2 but I did not include them with the application. What they
3 say is that they want the transformers above ground unless
4 the local jurisdiction, unless it's not possible or unless
5 the local jurisdiction prohibits them being above ground.

6 MADAM CHAIR: Okay. Thank you. Okay. Okay. So
7 let's see, Kate Powers, were you finished?

8 MS. POWERS: Yes, to speaking about the
9 transformers, just quickly an addition.

10 MADAM CHAIR: Okay.

11 MS. POWERS: As always, public art is very
12 important to you know the culture and community of
13 Hyattsville so the City Council would like to see the
14 integration of public art into the project and we're
15 appreciative that this request is reflected in staff's
16 recommendations.

17 And lastly, the City supports the applicant's
18 request for a departure from design standards for the 9 foot
19 by 18 foot universal sized parking spaces that are proposed
20 within the parking garage structure on Parcel 5.

21 Thank you, that concludes my comments.

22 MADAM CHAIR: Thank you. And the applicant would
23 love to incorporate your request for public art right around
24 the transformers, I see. Okay. So are there any questions
25 of Ms. Powers from Hyattsville? Madam Vice Chair?

1 MADAM VICE CHAIR: No questions.

2 MADAM CHAIR: Commissioner Washington?

3 COMMISSIONER WASHINGTON: No questions.

4 MADAM CHAIR: Commissioner Geraldo?

5 COMMISSIONER WASHINGTON: You're muted.

6 COMMISSIONER GERALDO: No questions.

7 MADAM CHAIR: Thank you. Okay. So I'm going to
8 now go to Peter Ciferri.

9 MR. CIFERRI: Good afternoon, Madam Chair and
10 Board, this is Peter Ciferri --

11 MADAM CHAIR: Good afternoon.

12 MR. CIFERRI: -- and I'm with McMillian Metro Law
13 Firm. I represent the adjacent property owner 6525 Belcrest
14 Road LLC, the owner of Metro Three, and I do thank you for
15 the opportunity to be heard today. I know it's getting late
16 in the day and I appreciate your indulgence.

17 I do need to start out with something that I think
18 you're going to be shocked to hear this, but I don't think
19 you have the entire record in front of you, as crazy as that
20 may sound.

21 MADAM CHAIR: Okay.

22 MR. CIFERRI: And what I'm referring to is we
23 submitted letters on March 31st, April 8th, May 28th, July
24 10th and July 15th and I believe those have now been put
25 before you but the e-mail I got at 11:30 this morning from

1 staff is that these items are part of the record but they
2 were not included for Planning Board consideration. You may
3 state your issues for the record, I'm sorry for the issue.
4 And you know my concern is that you may not have had a
5 complete record before you in advance of the hearing in
6 order to understand and appreciate the sorts of arguments
7 that we're going to make today on something that's
8 relatively complex and unique.

9 And what I don't want is for there to be an issue
10 where you're making determinations without having the
11 opportunity to consider a full and complete record, which
12 really is the foundation of determining the sorts of legal
13 issues that were raised here. So I'm pointing that out for
14 the record, I do object to proceeding without your having an
15 opportunity to consider our memorandum in advance of the
16 hearing and so I'd just note that objection for the record.
17 Now --

18 MADAM CHAIR: Okay. So before you do that, we can
19 note your objection for the record and I am going to turn to
20 our counsel, I'm presuming our counsel is aware of this, Mr.
21 Warner, and I don't know what your letters are going to say.
22 If they're addressing the issue of the lease versus the
23 ownership --

24 UNIDENTIFIED SPEAKER: (Indiscernible).

25 MADAM CHAIR: Excuse me?

1 UNIDENTIFIED SPEAKER: He sent it late last night.

2 MADAM CHAIR: Okay.

3 UNIDENTIFIED SPEAKER: Like it was after the
4 cutoff.

5 MADAM CHAIR: But they were letters from March.

6 COMMISSIONER GERALDO: Yes.

7 UNIDENTIFIED SPEAKER: Oh, okay.

8 MADAM CHAIR: That's what.

9 MR. WARNER: Madam Chair, David Warner, Principal
10 Counsel. Actually all those letters have been reviewed by
11 the Board because they were all directed to the Board,
12 addressed to the Board on those --

13 MADAM CHAIR: Okay.

14 MR. WARNER: -- different dates, because they
15 related to those earlier hearings --

16 MADAM CHAIR: But this case --

17 MR. WARNER: -- and when those hearings didn't get
18 heard, they moved forward. So they have been all seen by
19 the Board members and they are being included in this
20 record. So I don't see the objection.

21 MR. CIFERRI: Well they weren't included in the
22 case file that was published yesterday and that's the basis
23 for the objection. I know it might be getting into the
24 technical weeds, but I want to be sure that there was an
25 opportunity and if that's the case, then there was an

1 opportunity.

2 MADAM CHAIR: Okay.

3 MR. CIFERRI: But I do just need to state that for
4 the record.

5 MADAM CHAIR: Okay. Thank you.

6 MR. CIFERRI: So moving to the substance here,
7 there is a fundamental question before the Board as to
8 whether it can consider an application --

9 UNIDENTIFIED SPEAKER: (Indiscernible).

10 MR. CIFERRI: -- on one property owner that has
11 the effect of eliminating a use --

12 UNIDENTIFIED SPEAKER: What did he say?

13 MR. CIFERRI: -- for a different property.

14 MADAM CHAIR: Okay. Too many people are talking,
15 can others --

16 UNIDENTIFIED SPEAKER: (Indiscernible).

17 MADAM CHAIR: -- let's mute everyone else. Okay.

18 Mr. Ciferri, you can continue, thank you.

19 MR. CIFERRI: Okay. Am I unmuted now?

20 MADAM CHAIR: Yes.

21 MR. CIFERRI: Okay. So the issue here is that you
22 have an application being submitted by one property owner
23 that has the effect of eliminating the use rights of a
24 different property owner. Metro Three is the beneficiary of
25 the use right that was established by valid entitlement

1 approvals obtained jointly by both the owner of the Dewey
2 parking parcel and the owner of the Metro Three building.
3 That right of use gives Metro Three's owner an equitable
4 interest use of the parking lot. Today, the applicant only
5 controls the parking lot and Belcrest Road LLC owns the
6 building.

7 Metro Three's right of use to the parking parcel
8 has always been vested in those original approvals. And the
9 applicant really has no right to proceed with a plan to
10 eliminate the building's parking approvals without both
11 owners participating as co-applicants in an application that
12 meets the interest of both properties.

13 MADAM CHAIR: So I'm going to stop you
14 periodically, if I have questions. So but you don't have an
15 ownership interest in the parking lot, you have a lease
16 agreement --

17 MR. CIFERRI: We have --

18 MADAM CHAIR: -- and I want to get back to what
19 Mr. Haller said earlier about relocating the parking.

20 UNIDENTIFIED SPEAKER: Ownership interest in the
21 property.

22 MADAM CHAIR: Excuse me? Right. Right.

23 UNIDENTIFIED SPEAKER: That's not the parking --

24 MADAM CHAIR: An ownership interest in, right, you
25 don't have ownership interest in the property. I'm trying

1 to understand and --

2 MR. CIFERRI: Well I will --

3 MADAM CHAIR: Okay. Go ahead.

4 MR. CIFERRI: -- I will get to this and address
5 your concerns. I can do it now, we have a use right that is
6 an equitable interest to use the property under valid public
7 approvals. The ground lease is a private agreement that
8 came into place about 28 years after that and is the subject
9 of an arbitration and a litigation. So there's a
10 fundamental difference here that I'll expand upon between
11 the effect of a public approval that continues and the
12 effect of a private agreement put in place later.

13 And in 1970 Spurrell (phonetic sp.) Development,
14 the owner of Metro Three and Dewey Development, the owner of
15 the parking lot jointly came before the Planning Board and
16 the District Council for approval of an off-lot parking lot
17 on the Dewey parcel to serve the Metro Three parcel. The
18 applicant agrees, in fact, that the effect of the approvals
19 was to waive the distance requirements for off lot parking
20 and agreeing to designating the Dewey parcel as the parking
21 lot for Metro Three.

22 And there are two Zoning Ordinance provisions from
23 1970 that govern those approvals. The first one is 24.16
24 and this is in Exhibit 20, and that provision is called
25 Permanent Requirements and starts out all required

1 automobile parking compounds and loading areas together with
2 the driveways giving access thereto are deemed to be
3 required space in connection with the uses to which they are
4 accessory and shall not be encroached upon in any manner.

5 This section means that there were added
6 permanency requirements to the Code that any parking
7 compound becomes an accessory use to the primary use to
8 which it's connected and then cannot be encroached upon.
9 The second Zoning Ordinance change in 1970 was 24.222 called
10 Offsite Facilities and this provision is rather long, but
11 I'll summarize it, it does three things when an off lot
12 parking lot is requested. Number one, it requires parking
13 within 500 feet of the building. Number two, it requires
14 only 100 spaces of off lot parking and number three requires
15 a legal arrangement showing permanent availability of the
16 parking compound.

17 The waiver obtained by the developer in 1970
18 specifically sought waiver of the 500 foot limitation and
19 the 100 parking space cap. Both contain 24.222 but the Code
20 was also required this aspect of permanency and the original
21 developer did not seek waiver of the requirement for an
22 appropriately arrangement for permanency. He also didn't
23 seek a waiver of Section 214.16 which also makes the lot a
24 permanent accessory to the building. Both those ordinances
25 use the term permanent in describing the relationship

1 created by the approvals and the joint applicants didn't
2 seek waivers of either of those.

3 Instead, they proceeded jointly under the Code
4 requirements and obtained the approvals for the Dewey Parcel
5 and built it for Metro Three's use.

6 Now surely if the developer's intent was to
7 develop this parking lot in a different way, then they could
8 have chosen to put Metro Three's parking someplace else or
9 they could have pursued additional waivers for the
10 additional code requirements or they could have re-
11 subdivided Metro Three, they had control over the whole
12 property in 1970. They didn't do anything. Instead they
13 specifically chose to put the parking for Metro Three on the
14 Dewey Parcel subject to the existing law. Use and occupancy
15 permits could not have been pulled for Metro Three without
16 the approved parking and without obtaining the
17 (indiscernible) waivers. This parking lot has served at
18 Metro Three's sole source of parking ever since.

19 In 1987, Greenwood School came before the Planning
20 Board for a Detailed Site Plan and specifically relied on
21 these original approvals and the continued use of the Dewey
22 Parcel for parking, that's in Exhibit 16. Both properties
23 were made subject of that application because the request
24 dealt with the building's continued use of the parking lot.
25 There's some further importance of that plan, the parking

1 tabulation of course at the time, showed that 1,550 parking
2 spaces were specifically allocated to Metro Three and that
3 3,506 parking spaces exist in the UTC neighborhood and that
4 number later becomes the baseline for the TDDP. The Site
5 Plan also incorporates the continued validity of the parking
6 waiver.

7 This was, this 1987 Site Plan was the operative
8 Site Plan until at least 2001 for these properties and in
9 1998 the TDDP specifically provides on page 20 that all
10 newly existing parking and loading spaces do not have to be
11 reduced and/or eliminated in accordance with TDDP parking
12 gaps. In 2016 the TDDP update provides the same exemption
13 until a DSP is submitted. All legal and existing parking,
14 loading spaces in the Transit District that were lawful in
15 2016 need not be reduced and are exempt from the Transit
16 District Standard, and DSP review.

17 The 2016 TDDP on page 262 specifically recognizes
18 that this surface parking lot is a legally existing lot.
19 And that's important because the TDDP itself does not reduce
20 parking and it actually confirms the existence of legally
21 preexisting parking and so it's a mechanism where Detailed
22 Site Plans are considered property by property.

23 In 2015 the Planning Department assured my client
24 that no such application had been made to alter the original
25 rights. This is in Exhibit 25 and after summarizing the

1 applicable approvals, starting with CSP-24 and moving
2 forward the conclusion was that the property was improved in
3 accordance with the zoning standards at the time of
4 development. The most recent 2017 parking calculations
5 included in both Exhibit 26 and 29, those show that no prior
6 approvals have reduced Metro Three's parking. Now the
7 applicant in its favor has pointed to CSP-24. CSP-24
8 requires that parking owners bring forward a Detailed Site
9 Plan when their respective properties are being redeveloped.
10 That's Condition 15 and it's Exhibit 27. Per the applicant,
11 that CSP still applies to the building parcel and Belcrest
12 is the successor to the parking lot users. But Belcrest
13 hasn't submitted a DSP for review.

14 MADAM CHAIR: Okay.

15 MR. CIFERRI: The only Detailed Site Plan that
16 appears to have ever affected Metro Three since the CSP is
17 DSP-52 and in that resolution Finding 17 makes clear that
18 parking was unaffected and analysis was unnecessary by that
19 plan. The Board recognized specifically that the parking
20 provided for Metro Three was legally preexisting parking
21 exempt from meeting TDDP standards. That's Exhibit 28.
22 This is consistent with the TDDP's exemption of legally
23 preexisting parking lots. And the applicant hasn't
24 demonstrated a single existence, a single instance, rather,
25 of a development that changed Metro Three's reliance on the

1 Dewey Parcel for the parking. Yet the applicant know feels
2 that those jointly granted original approvals can be washed
3 away without both owners participating in this application.
4 It's the applicant's burden of proof and it hasn't
5 demonstrated its application can be brought without
6 considering the rights still held by Metro Three.

7 MADAM CHAIR: To me, I'm going to turn --

8 MR. CIFERRI: To your --

9 MADAM CHAIR: Go ahead, you're not finished, I'm
10 sorry. Go ahead.

11 MR. CIFERRI: I'm not. To your point, under the
12 Zoning Ordinance Detailed Site Plans are required to be
13 filed by the owner of the affected property, and ownership
14 specifically includes a person in whom equitable title rests
15 and that's in the definition of owner, sub 172 of the
16 definition section. Metro Three has an equitable interest
17 because it has continued rights and it's tough to ignore
18 that the Dewey Parcel was originally approved as the parking
19 lot for the Metro Three parcel. It was raw land before
20 that. Serving as the parking for Metro Three was the only
21 thing this parcel has ever been used for. More than 1,500
22 parking spaces are actually constructed on 11.5 acres of the
23 original parcel. The parking continues to be relied upon
24 and likewise Metro Three couldn't have been occupied without
25 the availability of the Dewey Parcel for its on-lot parking.

1 There's not a single public approval that upsets
2 the original parking improvements. When we sought the
3 opinion of Paul Woodburn from Ben Dyer Associates, who
4 scoured the public records and he reached the same
5 conclusion and that's Exhibit 26 and I'll quote, the exhibit
6 I attached to Exhibit 26 summarizes the Detailed Site Plans
7 we were able to obtain from the MNCPPC records. These
8 Detailed Site Plans note the reduction changes from the
9 required parking since the approval of DSP-87076. From our
10 view of the parking tabulations for this plan there is no
11 reference made to reducing the required parking for Metro
12 Three nor to relocating any of Metro Center Three parking.
13 Based on this, it is my opinion that the owner and users of
14 Metro Three should be able to rely on DSP-87076 approval
15 designating this existing parking lot associated with Metro
16 Center Three office building as originally approved. It is
17 my opinion that based on the record Detailed Site Plan
18 approvals we have been able to secure that it is, it was and
19 still is the intent that the surface parking lot on Parcel A
20 on the north side of Toledo Road was and is for the purpose
21 of providing adequate and Code required parking but
22 continues to Metro Three buildings and tenants since
23 originally approved.

24 So where does that leave Metro Three mainly first
25 there is clear evidence of an attempt to merge here and the

1 (indiscernible) is clear the merger may be derived from
2 common owners and tenants as evidenced by integrating or
3 utilizing two properties in service at a single structure or
4 project. And that legal conclusion is supported by evidence
5 of the owners' intent which may not be great. Now here the
6 Code provisions in place at the time established a permanent
7 relationship between the properties where the parking lot is
8 to be used in service of the building lot. The Bloomberg
9 (indiscernible) of common legal counsel obtained all
10 necessary approvals for this (indiscernible) under those
11 laws in fact at the time.

12 Second, the best of rights emerged when a property
13 owner constructs and obtains lawful permits in reliance on
14 valid approvals. Metro Three and the parking lot were
15 constructed and actually occupied in reliance on the
16 availability of parking at the Dewey Property, specifically.
17 The building owners now have vested rights, protective
18 against subsequent changes to law. For example, relying on
19 later Master Plans to remove parking with no development for
20 this building is being proposed. Indeed as the Master Plan
21 policies have changed, there's always been a recognition
22 that legally existing service parking continues in the same
23 manner without disturbance. Subsequent changes in law can't
24 act to disturb Metro Three's prior public approvals because
25 none of those changes were retroactive. And prospective

1 changes can't act to take its rights either, not without
2 Metro Three being redeveloped.

3 And as to this parking lot and Metro Three's
4 reliance on it, the use has never changed and there's no
5 evidence that either the parking lot or the building lot
6 could ever have gone through a public process to alter the
7 original approvals. These are not, these are indeed valid
8 approvals that continue binding on this day and the only way
9 Metro Three's approvals can be disturbed is if Metro Three
10 makes the affirmative election to redevelop its property
11 under the TDDP standards, that's how legally existing
12 parking gets reduced in this neighbor. Metro Three would
13 have to come before the Planning Board with its own Detailed
14 Site Plan or Metro Three would have to consent to the
15 substance of Dewey's Detailed Site Plan. Otherwise, your
16 decision to approve this plan would have the immediate and
17 irreparable effect of eliminating the entirety of a legally
18 existing surface parking that continues to benefit Metro
19 Three.

20 You're taking one property owner's use rights at
21 the request of another entirely separate property owner.
22 It's not how the Planning Board operates and it's now how
23 the planning process functions. In every other instance
24 where a Detailed Site Plan application has come forward in
25 the UTC neighborhood. The owners of the affected properties

1 have come before the Board for approval. We haven't located
2 a single instance where a property owner had its
3 entitlements removed without being a party to the
4 application. Yet, in staff's analysis here, the applicant
5 should be able to proceed with this plan and our concerns
6 are dealt with through a private ground lease.

7 Proceeding on the application this way is legal
8 error and it would result in a deprivation of property
9 rights without a due process. This entire application
10 should have never been accepted because it's fundamentally
11 flawed and you have the ability to correct that right now by
12 denying the application as incomplete or otherwise
13 indefinitely postponing it pending a decision by the Circuit
14 Court. Because there is a pending lawsuit in the Circuit
15 Court seeking declaratory injunctive relief to protect our
16 interest in using this parcel.

17 As you know, the applicant and Park and Planning
18 are both defendants in that action and there's also an
19 arbitration filed by the Dewey Parcel owner to have the
20 private ground lease (indiscernible) enforced. Right now
21 you're being put in a position to resolve the parties'
22 questions of use, ownership and the right of the applicant
23 to relocate parking when all of those issues of the subject
24 of litigation and arbitration. It's really a cart before
25 the horse issue here.

1 MADAM CHAIR: So you know what, let me get this,
2 Mr. Ciferri, I appreciate your legal analysis, but some of
3 it's getting repetitive. I mean some of the things you've
4 said you know quite a lot in the same presentation. So I
5 appreciate what you're saying and I'm going to ask for you
6 to start to wrap up because --

7 MR. CIFERRI: Sure.

8 MADAM CHAIR: -- what you're saying is we don't
9 have the legal right to do this. That's your professional
10 legal opinion and you --

11 MR. CIFERRI: I'll make final points then --

12 MADAM CHAIR: Okay.

13 MR. CIFERRI: -- and I'll try not to be redundant.
14 It's an important issue to us and this is frankly the first
15 opportunity we've had to publically address it and so --

16 MADAM CHAIR: And let me --

17 MR. CIFERRI: -- you know I'm sorry for being
18 redundant.

19 MADAM CHAIR: Okay. And when you were in Circuit
20 Court did you file some sort of stay?

21 MR. CIFERRI: We filed for a preliminarily
22 injunction and unfortunately, my impression of things, and
23 by we, I mean my client's litigation counsel it wasn't me.

24 MADAM CHAIR: Okay.

25 MR. CIFERRI: But to be clear, we filed for a

1 preliminarily injunction and there's been no ruling on it,
2 not every defendant has responded to the complaint yet --

3 MADAM CHAIR: Okay.

4 MR. CIFERRI: -- we're experiencing some COVID
5 related court delays, is frankly the answer --

6 MADAM CHAIR: Okay.

7 MR. CIFERRI: -- to the question.

8 MADAM CHAIR: Okay. Okay.

9 MR. CIFERRI: But I do want to make a few final
10 points here. First, to something Mr. Haller mentioned
11 regarding the ground lease. The argument goes that the
12 ground lease controls this issue and that completely
13 undermines the Board's authority. What the applicant is
14 suggesting is that when you impose a condition on the
15 applicant, they just go out and make a private agreement and
16 then reduce the condition. The ground lease is a private
17 agreement and so what happens when the ground lease expires?
18 Does that mean the public approval has also expired? That's
19 really what the applicant's arguing.

20 UNIDENTIFIED SPEAKER: Not it's not.

21 MR. CIFERRI: And to make another point here on
22 intent, I won't spend a lot of time on this, but again the
23 applicant's had plenty of opportunities to show you what
24 public approvals have undone these public approvals and all
25 it's showing you for in 10 are private agreements, you have

1 a mortgage that was made before the permanency requirements
2 were added to the Code and before the building parking lot
3 were occupiable and the private mortgage does nothing more
4 than show the lender's intent to require additional security
5 for its loan. You have a coordination agreement that does
6 the same thing and now on the other hand you have a
7 justification statement that acknowledges that an
8 appropriate legal arrangement showing current availability
9 will be met by the application.

10 So finally, one other point and then I will wrap
11 up, I know it's getting late in the day. It needs to be
12 said though, there is no agreement to relocate this parking.
13 Even if you assume that the applicant has a right under the
14 ground lease, the applicant hasn't given us an actual
15 agreement to consider. The applicant does not own a parking
16 garage somewhere else in the UTC, and so it's hard to tell
17 how they even plan to provide an equal replacement for the
18 parking we have even if you accept everything they say about
19 the ground lease.

20 What the applicant's really done is just throwing
21 big numbers around and I'm sure you haven't seen an
22 agreement. We certainly haven't signed one. You know the
23 applicant keeps coming before you and basically just asking
24 for your trust on this, but we're not sure where that puts
25 us. If you approve this plan without a plan for parking

1 where does that put us?

2 MADAM CHAIR: Is there a minimum parking required
3 now?

4 MR. CIFERRI: That's really not even the point,
5 the point is that we have --

6 MADAM CHAIR: But it is my question.

7 MR. CIFERRI: If we redeveloped we would be under
8 the TDDP standards and at that time when our property
9 redevelops in the manner that we choose, we would go through
10 the same parking calculation analysis as everyone else. And
11 there would either be a reduction or an increase to the
12 overall parking calculation in the zone. That's really the
13 answer. But we're not coming before the Board and that's
14 the problem.

15 MADAM CHAIR: Okay. Is that where you are? Was
16 that your --

17 MR. CIFERRI: I can finish there. I can answer
18 any additional questions you have and I do appreciate your
19 time. Thank you.

20 MADAM CHAIR: Okay. So let's see if the Board has
21 any questions of you. Madam Vice Chair?

22 MADAM VICE CHAIR: No questions, thank you.

23 MADAM CHAIR: Okay. Commissioner Washington?

24 COMMISSIONER WASHINGTON: No questions, Madam
25 Chair.

1 MADAM CHAIR: Okay. Commissioner Geraldo? We're
2 trying to, Commissioner Geraldo?

3 COMMISSIONER GERALDO: No questions.

4 MADAM CHAIR: Okay. So what I'm going to do is
5 I'm going to ask, I would like for our counsel to respond
6 and I'm going to ask for Mr. Haller to respond, but not
7 until after we hear from the next speaker, Sylvia Anderson.
8 Ms. Anderson? Ms. Anderson (indiscernible). Is everybody
9 unmuted? She responded before.

10 UNIDENTIFIED SPEAKER: Yes, I think she was caller
11 19 and also caller 19 has dropped out.

12 MADAM CHAIR: Okay. Just to keep the record
13 clear, I'm going to call her name again. Ms. Anderson, who
14 we believe was caller 19, we don't see that number on here
15 anymore. Ms. Anderson? Ms. Sylvia Anderson? Okay. Okay.
16 Okay. Without further ado, Mr. Warner?

17 MR. WARNER: Thank you, Madam Chair, David Warner,
18 Principal Counsel. I did want to address a few of the
19 points made actually by both the applicant and Mr. Ciferri.
20 I think first of all the threshold issue that both of them
21 refer to is this existing litigation that was filed by, and
22 I'll just use the term Metro for Mr. Ciferri's client and
23 Dewey for Mr. Haller's client. But the litigation filed by
24 Metro against Dewey did add the Commission as a party but
25 doing so in and of itself does not prevent the Planning

1 Board from proceeding to consider this matter. So just as a
2 threshold issue, yes, there's existing litigation, yes, the
3 Commission is a party to it, that does nothing to inhibit or
4 prevent you from considering this application. You know if
5 the court told us you couldn't, that would be a different
6 case but that's not the case.

7 Two, this is and I have read every single one of
8 the letters that Mr. Ciferri has provided to the Board as
9 well as the responses from Mr. Haller and I also
10 participated in phone calls between the two of them. And to
11 me this is entirely a dispute between two private parties
12 over the terms of a lease and the only reason that this is
13 being you know brought to your attention is because I
14 believe that issues raised by Mr. Ciferri are just related
15 to his private litigation that his client is having with Mr.
16 Haller's client.

17 First of all, the only interest that Metro has in
18 the Dewey Property is as a lessee and you know the lease
19 does allow Metro to use the Dewey Property for parking. But
20 lessees are not required to approve a property owner's
21 application for a DSP approval. The zoning (indiscernible)
22 the owner of the property to do so or his authorized
23 representative, I think is the exact quote. There's no
24 evidence of any equitable interest in the property that
25 Metro has. An equitable is a right that you have to at some

1 point acquire formal or legal title to the property. So
2 that does not exist in this case.

3 So there would be no reason that a property owner
4 in this case, Dewey, would have to get the consent from an
5 adjacent property owner. That just is, doesn't make any
6 sense and it's not required in the Zoning Code.

7 Then secondly there's this recurring refrain which
8 is that somehow Metro has a use right in the Dewey Property
9 and somehow that's being used to suggest that at some point
10 the government gave this use right to Metro and they now
11 have the right to control how another private property owner
12 develops their property and that's complaining, I think the
13 term use in zoning context with the right to use the
14 property which Metro has because they have a lease. And so
15 I think that Mr. Ciferri is confusing those two terms. The
16 county's never given Metro any legal rights over the Dewey
17 Property or any other authority to limit the development of
18 the Dewey Property. They granted a waiver in 1970 so that
19 the previous owner of the Metro property could use surface
20 parking on the Dewey Property to satisfy its parking
21 requirements. In other words, the authority was granted so
22 that the Metro property actually had already built the
23 building, use and occupy the building because the parking
24 requirements changed in the meantime.

25 You get to the same arrangement that we see quite

1 often from other developments where a property owner doesn't
2 have sufficient parking so they request that the Board
3 approve the use of parking on an adjacent parcel. And the
4 Code does allow that kind of relief, so the owner can
5 develop his property more intensely. But all of the
6 authority and any grant of authority being given is entitled
7 is being given just to the owner of the developed property,
8 in this case would be Metro. So it doesn't place any
9 development restrictions on the adjacent property where it
10 has the parking. You wouldn't even have to have the
11 adjacent property owner apply. They just need to show that
12 they have some kind of permanent agreement with the adjacent
13 property owner to park cars over there. So if for some
14 reason that permanent parking arrangement is terminated, the
15 burden on fixing that problem lies wholly with the property
16 that didn't have enough parking at the time. So this isn't
17 an unusual situation, this is very similar to what we
18 encounter on a regular basis, what the Board encounters on a
19 regular basis.

20 And it's also, you know, I think probably is
21 significant that although Mr. Ciferri didn't answer the
22 question directly subsequent to 1970 the properties had been
23 rezoned. There's no minimum parking requirement applicable
24 to Metro's parcel anymore. So yes, the waiver that they
25 were given in 1970 is still effective to allow them to use

1 and occupy the property but it isn't even needed anymore
2 because the zoning has changed and the minimum parking
3 requirements that previously applied in their property
4 aren't even applicable anymore. So that's kind of the
5 practical side of this as well.

6 And I think that it just should be clear that
7 absolutely nothing that you're considering today limits in
8 any way what metro can do with its property, what is going
9 to be perhaps an issue for Metro, is their private dispute
10 with the Dewey Property and the fact that perhaps our
11 trigger will decide that the lease is, in the terms of the
12 lease that Dewey Property thinks are in their favor will be
13 decided in their favor. Maybe they'll decide it's in
14 Metro's favor. Either way it's a private dispute and it has
15 nothing to do with this matter.

16 MADAM CHAIR: Thank you. Okay. So now I'm going
17 to turn to Mr. Haller. Thank you, Mr. Warner.

18 MR. HALLER: Thank you, Madam Chair. I really
19 have nothing to this discussion that would do anything other
20 than extend the hearing. I agree with Mr. Warner's
21 evaluation and I think my summary of the situation expresses
22 where we are with regard to our view of the issues raised by
23 Mr. Ciferri.

24 I do have one final thing I wanted to say about
25 the transformer issue, but with regard to the parking issue,

1 I've completed my comments.

2 MADAM CHAIR: Okay. All right. What about, okay,
3 so say what you need to say about the transformer issue.

4 MR. HALLER: I just wanted to emphasize to the
5 Board how uncertain projects are today under the current
6 financial cloud that has been created by the COVID-19
7 issues. I mean to be quite frank with you, none of the
8 buildings on this plan in front of you are financeable right
9 now because of those issues and layering substantial
10 additional costs only makes it harder to develop these
11 properties and the benefits that result from the development
12 of this property in terms of advancing the goals of the TDDP
13 would be jeopardized if an additional expense is added to
14 this project that ultimately prevent it from being able to
15 be financed.

16 And we would like the Board to take that into
17 consideration as you debate this issue.

18 MADAM CHAIR: Okay. Are those your closing
19 arguments? Or is that your response to --

20 MR. HALLER: (Sound.)

21 MADAM CHAIR: Okay.

22 MR. HALLER: That was my closing argument.

23 MADAM CHAIR: Because I was going to ask what you
24 did with Tom Haller, but okay. Okay. Does the Board have
25 any questions of anyone at this time? Madam Vice Chair?

1 MADAM VICE CHAIR: No, I do not.

2 MADAM CHAIR: Commissioner Washington?

3 COMMISSIONER WASHINGTON: No questions, Madam
4 Chair.

5 MADAM CHAIR: Commissioner Geraldo?

6 COMMISSIONER GERALDO: I have no questions, Madam
7 Chair.

8 MADAM CHAIR: Mr. Hurlbutt, do you have anything
9 else to add?

10 MR. HURLBUTT: Not at this time, ma'am.

11 MADAM CHAIR: Okay. We are ready for a motion.

12 COMMISSIONER GERALDO: Madam Chair, I have one
13 question before we get to the motion and the question is for
14 Mr. Haller.

15 MADAM CHAIR: Okay.

16 MR. HALLER: Yes?

17 COMMISSIONER GERALDO: Okay. The question is you
18 heard the City of Hyattsville address the issue of the
19 transformers. Are you okay with what the City suggests only
20 if they could be hidden on one side but not on the other?

21 MR. HALLER: Well that's what we've already
22 proposed --

23 MADAM CHAIR: Yes.

24 MR. HALLER: -- we've already proposed to hide
25 them on the one side, they want all of the transformers on

1 Public Road B which is the same position that your staff has
2 taken, and that's what we object to. We want them to be
3 able to be above ground as long as they are attractively and
4 artistically screened.

5 COMMISSIONER GERALDO: All of them?

6 MR. HALLER: Yes.

7 COMMISSIONER GERALDO: Okay. That's all I needed
8 to be clear. Thank you.

9 MADAM CHAIR: Okay.

10 COMMISSIONER WASHINGTON: Madam Chair, this is
11 Commissioner Washington and I would like to move that we
12 adopt the findings of staff with the exception to the
13 finding as it relates to the disapproval of the streets and
14 frontage, well let me just shorten it, but --

15 MADAM CHAIR: The first one --

16 COMMISSIONER WASHINGTON: -- the transformers, if
17 you will and approve the Alternative Transit District
18 Development Standards A1 through 5 as outlined in staff's
19 report and as modified by Applicant Exhibit and I don't know
20 that we gave the conditions a number, but I will say one if
21 you're okay with that, Madam Chair.

22 MADAM CHAIR: Okay, that's fine. That's fine.

23 COMMISSIONER WASHINGTON: Okay. Would that be, as
24 modified by --

25 MADAM CHAIR: You know what --

1 COMMISSIONER WASHINGTON: -- Applicant Exhibit
2 Number 1, and I also move that approve Transit District
3 Development Standards (indiscernible) --

4 MADAM CHAIR: You know what, excuse me. Let's not
5 refer to it by the number, just call it applicant's
6 conditions as set forth in the record. Because there's too
7 many numbers, we have too many and I don't know what that
8 would be.

9 COMMISSIONER WASHINGTON: Okay. Well then I'll
10 back up and start over, just so it's a clean motion.

11 MADAM CHAIR: Okay.

12 COMMISSIONER WASHINGTON: Madam Chair, I'd like to
13 move that we adopt the findings of staff with exception to
14 the finding as it relates to the disapproval of Item Number
15 B1 as outlined in staff's Technical Staff Report,
16 specifically the placement of the transformers within the
17 frontage zone on Road B, and approve Alternative Transit
18 District Development Standards as outlined in staff's report
19 A1 through 5 and as modified by the applicant's proposed
20 conditions A2 and also I move that we approve Alternative
21 Transit District Development Standard, Streets and Frontage,
22 Frontage Zone page 208 to allow the placement of
23 transformers within the frontage zone on Road B.

24 And before I move on, let me just state that I
25 would ask staff to work with counsel to come up with an

1 appropriate finding in support of that and I would reference
2 the Applicant Exhibit Number 2 where he actually highlighted
3 or communicated and from my perspective, it's not a public
4 utility and can be placed above ground on the
5 (indiscernible) I think it's a rich opportunity in this
6 instance and I can appreciate the financial considerations.
7 But I think that there's a huge opportunity especially given
8 the artistic kind of artistic value that Hyattsville placed
9 so there's a huge opportunity to really do something nice in
10 this area and certainly any screening would need to be
11 consistent with the high quality integration that we see
12 throughout the Hyattsville area. And also the language
13 should reflect that the final screening is subject to the
14 approval of staff. I know we have language that we
15 typically use and would ask staff to include that.

16 And then further, Madam Chair I move that we
17 approve DSP-19050 and TCP2-042-2019-01 along with the
18 associated conditions as outlined in staff's report and as
19 further modified by with the applicant's proposed revisions
20 to conditions and I believe it's Condition Number 1E. And
21 then finally approve DDS-660.

22 MADAM CHAIR: That's a motion, what a motion.
23 Okay. Is there a second?

24 MADAM VICE CHAIR: Second, Madam Chair.

25 MADAM CHAIR: Okay. We have a motion and a

1 second. I would like to ask the motion maker if she would
2 be amenable and the seconder if they would be amenable to
3 not only subject to the approval of our staff for the
4 decorative features surrounding the transformer, but if we
5 could also include with input from the City of Hyattsville?

6 COMMISSIONER WASHINGTON: Absolutely, and thank
7 you for that. That was my omission.

8 MADAM CHAIR: Okay.

9 MR. WARNER: Madam Chair, Dave Warner, just one
10 thing.

11 COMMISSIONER GERALDO: Yes.

12 MR. WARNER: I think you did have people
13 separately signed up to speak on Item 7.

14 MADAM CHAIR: Okay. But we didn't get to that
15 yet.

16 MR. WARNER: But I thought I heard her motion
17 mention the amendment as well.

18 MADAM CHAIR: No.

19 COMMISSIONER WASHINGTON: No, it did not, it
20 mentioned DDS-660 that's 5 and 6.

21 MR. WARNER: Okay. I'm sorry, I thought I heard
22 you say dash 01 as well. Okay. Never mind.

23 MADAM CHAIR: No, I was listening intently.

24 MR. WARNER: I apologize.

25 MADAM CHAIR: I was listening intently for that.

1 Okay. All right. So we have a motion and a second and it's
2 amended to include the language regarding the City of
3 Hyattsville. Is there additional discussion?

4 Madam Vice Chair?

5 MADAM VICE CHAIR: Vote aye.

6 MADAM CHAIR: Commissioner Washington?

7 COMMISSIONER WASHINGTON: Aye.

8 MADAM CHAIR: Commissioner Geraldo?

9 COMMISSIONER GERALDO: I vote aye.

10 MADAM CHAIR: The ayes have it 4-0, that's for 5
11 and 6, and 5, 7, I mean 5 and 6 and --

12 UNIDENTIFIED SPEAKER: Five and six.

13 MADAM CHAIR: Yes, five and six companion cases.

14 We are now going to Item 7. The record has been
15 incorporated. Mr. Haller did make comments with regard to
16 Item 7. I will now turn to Mr. Sievers, or I mean excuse
17 me, Mr. Hurlbutt and Mr. Haller to see if there is anything
18 you needed to add for that one? For Item 7.

19 MR. HURLBUTT: I can run through the specifics of
20 this case but I think Mr. Haller has highlighted those.

21 MADAM CHAIR: Okay.

22 MR. HURLBUTT: So staff is happy to --

23 MADAM CHAIR: Okay.

24 MR. HURLBUTT: -- rest on that.

25 MADAM CHAIR: Okay. I'm also going to turn to,

1 okay, so Mr. Haller was there anything you wanted to add?

2 COMMISSIONER WASHINGTON: Madam Chair, I'm sorry,
3 before Mr. Haller speaks, if staff could please weigh in on
4 the proposed revisions to the findings and conditions as
5 part of Item Number 7. Mr. Hurlbutt?

6 MR. HURLBUTT: Yes. One moment. So staff was not
7 in full agreement obviously because of the transformer
8 issues and I guess maybe it would be, if the Board would be
9 so indulged, I would like to go to the pedestrian exhibit
10 which is the other item that we don't agree upon which is
11 Slide 26 of the PowerPoint presentation --

12 MADAM CHAIR: That's fine.

13 MR. HURLBUTT: -- for Item 7.

14 MADAM CHAIR: Thank you. And then this particular
15 case seems to have more speakers signed up unless there's a
16 mistake here.

17 MR. HURLBUTT: Yes. So essentially the other item
18 of disagreement is this exhibit shows additional pedestrian
19 connections and staff has recommended to be condition. The
20 first pertains to Parcel 2 which is shown in the northwest
21 section of the property and Condition 1L asks for the red
22 line to be added. The applicant has requested an extra, that
23 the block for Parcel 2 to extend beyond what is normally
24 allowed within the TDDP, as well as to allow for a fence to
25 fully fence off the right-of-way from this property. In

1 order to meet the vision of the TDDP which is for a walkable
2 transit district staff felt that there should be a break of
3 some sort in the block. We had worked with the applicant
4 and was not able to achieve this through layout and felt
5 that the condition for a pedestrian connection would be
6 appropriate between the multifamily buildings in order to
7 provide circulation within the interior of the site and also
8 to allow for users within and outside of the site to have
9 the shortest walking distance possible in a defined space --

10 MADAM CHAIR: Okay.

11 MR. HURLBUTT: -- through this connection.

12 Additionally, the applicant has proposed to remove one of
13 the conditions related to the sidewalk connection in pink
14 because it's repetitive and staff agrees with that. And
15 essentially this connection would complete the loop trail
16 around Parcel 4 and I believe staff is in agreement with
17 that. I just wanted to highlight that.

18 MADAM CHAIR: Okay.

19 MR. HURLBUTT: And to answer Board Member
20 Washington's question that the applicant has proposed
21 revisions to the findings that staff is and in full
22 agreement except for the changes to A10 and B1, which relate
23 to the transformer TD standards. As well as C1G and L,
24 which G relates to the transformers and how it relates to
25 the sidewalk connection.

1 MADAM CHAIR: Okay. So let me ask you this, Mr.
2 Hurlbutt, there's no mandatory, obligatory statutory
3 requirement for a said finding regarding the transformer.
4 So you know I think what Commissioner Washington was
5 indicating earlier, I mean we find this to be an acceptable
6 alternative and that can be decorative and you know we're
7 not going with the underground placement --

8 MR. HURLBUTT: Understood.

9 MADAM CHAIR: -- at this, so also the applicant is
10 just by his own words, just saving what \$750,000, so I'm
11 interested to hear what he has to say about that pedestrian
12 connection now. And then, and I just to call on, so I
13 guess, Mr. Haller, why don't we start there with the
14 pedestrian connection?

15 MR. HALLER: Thank you, Madam Chair, and I
16 appreciate Mr. Hurlbutt's and the Board's attention to this.
17 And I realize that in the overall scheme of this project it
18 seems a relatively smaller item and I understand it. Let me
19 explain to you what our rationale was. When you look at the
20 plans that we submit and you've seen these Detailed Site
21 Plans, you know they're black and white drawings, there's
22 lines all over the place it's hard to figure everything out.
23 And so when staff asked for this additional connection, we
24 prepared this exhibit to understand where are all the
25 pedestrian connections on this property. And what I think

1 this exhibit shows is that we have connected really
2 everything that we can. All of the units that front on
3 Belcrest Road walk right out onto Belcrest Road. The people
4 that front on the internal streets can use the internal
5 sidewalks to go down to Public Road A or to go up to
6 Belcrest Road and the connections that staff is asking us
7 for don't really take anybody anywhere any quicker than they
8 can go anyway.

9 It's not really a cost issue at all, because if
10 you add these paths, these sidewalks to the plan it's not a
11 cost issue, what is it is you're bringing people along the
12 side of people's units and so a security and a privacy
13 issue, not a cost issue at all. And so Mr. Hurlbutt
14 indicated that and he's correct we propose a decorate
15 wrought iron fence to run along Belcrest Road to provide
16 some privacy between the public realm and people's fronts of
17 their units and this would require that we put gates that
18 would allow people to walk along the sides of the units.
19 And so from the standpoint of safety and security we feel
20 that people within this section should not have any
21 outsiders be able to walk through their development like
22 that. They can be on the public road, they can be on the
23 private road and on the sidewalk system, but it becomes a
24 question of security and privacy and that was the reason for
25 the objection.

1 We just wanted to demonstrate to the Board we're
2 really not preventing anybody from getting anywhere they can
3 already go. I mean, you know, and maybe it's a couple
4 steps, but the reality of it is it's not a pedestrian
5 connectivity issue, it's a privacy and security issue.

6 MADAM CHAIR: Did you say along the side of the
7 homes or the, did you say the side?

8 MR. HALLER: Yes. So if you look at the long red
9 line on the exhibit --

10 MADAM CHAIR: Yes.

11 MR. HALLER: -- that Mr. Hurlbutt is showing --

12 MADAM CHAIR: Yes.

13 MR. HALLER: -- you're running between the two
14 units --

15 MADAM CHAIR: Okay.

16 MR. HALLER: -- on each side and so you're going
17 to be adding a sidewalk which will go between those units
18 and it will allow people walking down Belcrest Road to be
19 able to open the gate and get into the side of their units.
20 And we just felt --

21 UNIDENTIFIED SPEAKER: Right.

22 MR. HALLER: -- that they needed to be a little
23 bit more privacy and security within the development than to
24 do that.

25 COMMISSIONER WASHINGTON: And Mr. Haller, for

1 clarification you're saying that you proffered or are
2 proffering decorative like wrought iron fence along Belcrest
3 Road?

4 MR. HALLER: We proposed that, yes. Yes. To
5 provide --

6 COMMISSIONER WASHINGTON: Okay. Can --

7 MR. HALLER: -- some separation between the public
8 realm and the private realm, yes.

9 COMMISSIONER WASHINGTON: Okay. So basically it
10 kind of keeps the community within the community, if you
11 will?

12 MR. HALLER: Right. And so in order to do this
13 connection we'd have to put a gate there. We're not going
14 to be able to lock that gate and so it's just going to open
15 things up to public being able to come into the community
16 from kind of the middle of the site, if you will, middle of
17 the road, if you will.

18 COMMISSIONER WASHINGTON: Okay. So only residents
19 would have access through the gate, the fence you're talking
20 about into the community?

21 MR. HALLER: Well I mean the lead walks it'll go
22 into the people's homes.

23 COMMISSIONER WASHINGTON: I'm trying to visualize
24 it. Is there a way you can help, I'm not sure who's at the
25 cursor.

1 MADAM CHAIR: Okay.

2 UNIDENTIFIED SPEAKER: (Indiscernible).

3 MADAM CHAIR: Mr. Flanagan has the cursor, but
4 maybe I misunderstood. I thought you were saying they won't
5 be able to go through the side of the homes.

6 MR. HALLER: No, what I'm saying is is that you
7 have lead walks going into each of the units --

8 MADAM CHAIR: Okay.

9 MR. HALLER: -- and there will be a gate that
10 allow someone to go into the unit.

11 MADAM CHAIR: Okay.

12 MR. HALLER: And while that gate will likely not
13 be locked, I mean it will be clearly a private access to
14 somebody's home. But if you put a separate sidewalk
15 connection in those other two locations that doesn't lead to
16 a home, it just invites somebody into the heart of the
17 community, you're now bringing somebody in through a gate
18 that you're going to have to put in, you're not going to be
19 able to lock that gate, and people will be able to come into
20 the community and go between the units without having to go
21 through the normal public road sidewalk system.

22 Again, we think that that creates a concern of
23 privacy and security for the residents in there, that
24 wouldn't exist if the only openings were to the lead walks
25 to their homes.

1 COMMISSIONER WASHINGTON: Okay. I'm going to ask
2 you one more time, because I'm still not clear. Let's start
3 at the top, the north corner, Mr. Belcrest. I mean not Mr.
4 Belcrest (indiscernible) so start there, Mr. Haller.

5 UNIDENTIFIED SPEAKER: He's been called worse.

6 COMMISSIONER WASHINGTON: The pointer now, the
7 very, let's go to the north tip of the top of Belcrest Road
8 is that what, okay, or thereabouts, is that where the fence
9 start and then we move south or?

10 MR. HALLER: I think the fence will start on the
11 south side of the driveway coming into the site.

12 COMMISSIONER WASHINGTON: Okay. Right there.

13 MR. HALLER: Correct.

14 COMMISSIONER WASHINGTON: Okay.

15 MR. HALLER: And then it will run, and then it
16 will run --

17 COMMISSIONER WASHINGTON: And keep moving down.

18 MR. HALLER: And it will run along Belcrest Road
19 to the top of Public Road A.

20 COMMISSIONER WASHINGTON: Got it. Okay.

21 MR. HALLER: And that's where it will stop.

22 COMMISSIONER WASHINGTON: Okay. And so you can
23 only enter behind that fence either on that, the northern
24 tip or down at Public Road A and that's a question.

25 MR. HALLER: Well, unless you own one of those

1 units, in which case you can come in and access your unit.

2 COMMISSIONER WASHINGTON: Right. But I'm saying
3 but there's no, and it's a question again, from where you
4 say the fence is going to run, the only open, the gates to
5 enter behind, enter the fence will be either the northern
6 tip or the public road and Belcrest Road is that --

7 MR. HALLER: No. No, each one of the units has a
8 lead walk that will go out that will be able to --

9 COMMISSIONER GERALDO: The street.

10 MR. HALLER: -- access the sidewalk. So it will
11 be open --

12 COMMISSIONER WASHINGTON: I understand the
13 sidewalk, I'm just trying to understand because as I
14 understand it you've got Belcrest Road, then you've got a
15 fence, then you've got a sidewalk, is that correct?

16 MR. HALLER: Yes.

17 COMMISSIONER WASHINGTON: Right. Okay. So I'm
18 trying to --

19 MR. HALLER: Well we have --

20 UNIDENTIFIED SPEAKER: The sidewalk
21 (indiscernible) side.

22 COMMISSIONER WASHINGTON: -- understand where you
23 would enter --

24 MADAM CHAIR: It's on the outside.

25 COMMISSIONER WASHINGTON: -- if you're walking.

1 MADAM CHAIR: The sidewalk is on the outside.

2 MR. HALLER: If you're --

3 MADAM CHAIR: I think, right?

4 MR. HALLER: Yes. The fence is not, I mean the
5 sidewalk is outside of the fence.

6 COMMISSIONER GERALDO: Right.

7 MR. HALLER: So if you were walking down Belcrest
8 Road the fence will not impede your ability to walk
9 whatsoever. If you live in one of the units that fronts on
10 Belcrest Road you can come out your front door, go out your
11 connector sidewalk and go right out to Belcrest Road. But
12 if you are not, and if you are walking down --

13 MADAM CHAIR: But if you don't live there --

14 MR. HALLER: -- Belcrest Road and you want to get
15 into and you live inside the community if you're coming from
16 the north you can walk on the sidewalk that comes along the
17 entrance road along the north side and then come into the
18 sidewalk network there. If you're coming from the south or
19 if you're coming across Toledo Road, excuse me, Toledo
20 Terrace --

21 MADAM CHAIR: Terrace.

22 MR. HALLER: -- where we're going to be adding the
23 new crosswalks, you'll be able to enter the community on
24 Public Road A. But we don't necessarily want people to be
25 able to randomly access in the middle of the gate where they

1 don't have access to a specific unit.

2 COMMISSIONER WASHINGTON: Got it. Okay. Thank
3 you.

4 COMMISSIONER GERALDO: I have a question.

5 MADAM CHAIR: Okay. Commissioner Geraldo.

6 COMMISSIONER GERALDO: So anybody could walk, take
7 those lead walks if they wanted to, am I right?

8 MADAM CHAIR: No.

9 COMMISSIONER GERALDO: And --

10 MADAM CHAIR: Right? Only the people who live
11 there I thought.

12 MADAM VICE CHAIR: No.

13 COMMISSIONER GERALDO: No, they're going to have
14 to, I mean --

15 UNIDENTIFIED SPEAKER: (Indiscernible).

16 MADAM CHAIR: Okay let me be quiet.

17 COMMISSIONER GERALDO: -- there's got to be a --

18 MR. HALLER: Each lead walk going to the units
19 will have a gate. That's correct.

20 COMMISSIONER GERALDO: Okay. All right. That's
21 what I want, okay.

22 MADAM CHAIR: Okay so those were your questions --

23 COMMISSIONER GERALDO: What's --

24 MADAM CHAIR: Okay. Go ahead, Commissioner
25 Geraldo.

1 COMMISSIONER GERALDO: I have one more question,
2 Madam Chair.

3 MADAM CHAIR: Yes, go ahead.

4 COMMISSIONER GERALDO: I'm sorry. What's the
5 distance from the most northern part to Public Road A?

6 MR. HALLER: So it's 550 feet. And the TDDP has a
7 standard that says that a block length should not exceed 500
8 feet. And we requested a modification of that, the reason
9 for the modification is that Public Road A is a fixed
10 location, it's fixed because it's across from Toledo Terrace
11 and --

12 COMMISSIONER GERALDO: Yes.

13 MR. HALLER: -- Toledo Terrace will be extending
14 across and coming into Public Road A. The land left north
15 of Public Road A is 550 feet. And so there was a slightly
16 larger road frontage along Belcrest Road than what the TDDP
17 normally calls for and so that was kind of the rationale
18 staff had was well, we're letting you go to 550 but we
19 should have a place where people can get in in the middle.
20 And I wanted to demonstrate again how many opportunities
21 there are for people walking up and down Belcrest Road to
22 enter into the community if they live there. They don't
23 really need to cut across and in between units in order to
24 get to their unit.

25 COMMISSIONER GERALDO: I guess what I'm thinking

1 that this is an in town development, infill where we're
2 really promoting the walkability. You've got all the mixed-
3 use in there as well with stores and everything. So you're
4 basically cutting out a part, you're cutting out parts of
5 the community from --

6 MR. HALLER: We're certainly not --

7 COMMISSIONER GERALDO: -- walking through --

8 MR. HALLER: Yes, I mean we're not --

9 MR. DECAINE: Is there any way I can make a
10 comment?

11 MADAM CHAIR: Who is that, who's commenting?

12 MR. DECAINE: Am I able to make a comment?

13 MADAM CHAIR: Is that Mr. Decain (phonetic sp.), I
14 saw that you had signed up I was going to call you.

15 MR. DECAINE: Yes, Scott Decane.

16 MADAM CHAIR: Okay. Okay.

17 MR. DECAINE: I apologize for the interruption,
18 Madam Chair. I just wanted to make comment. Mr. Haller
19 made the comment earlier and I just wanted to emphasize the
20 point, we don't, we don't, we don't have a conceptual
21 objection here. I, I wanted to highlight first what we
22 believe we've done here which is extraordinary pedestrian
23 connectivity. I mean this is not a standard garden variety
24 pedestrian connectivity plan, this is what I would consider
25 extraordinary.

1 But far more importantly is and we're not looking
2 at larger aerial here, but if we did you would see that the
3 places that people will want to walk to are almost entirely
4 to the south, the high school's to the north so that's a
5 possible destination, but the principal destinations are the
6 mall, the metro station and the UTC campus on the other side
7 of Toledo Road.

8 COMMISSIONER GERALDO: Yes.

9 MR. DECAIN: And if there were not the red
10 sidewalk you, you would not, you would literally not be
11 adding an extra step in your pedestrian connectivity to
12 those destinations without the red pedestrian paths.
13 They're literally to connect directly the way number 2 shows
14 to Belcrest Road is a connection to nowhere because there's
15 no destination there. Once you're at Belcrest there, you
16 have to then head south. So the alternative would be simply
17 to walk down the interior roadway to hit Public Road A and
18 then jog to the west to Belcrest Road. There is, there is
19 literally no advantage, none from a pedestrian connectivity
20 perspective by adding that red, that red sidewalk. That was
21 my only comment, Madam Chair.

22 MADAM CHAIR: So because that's what I think
23 everybody, I think that's what Mr. Haller was trying to get
24 at before. He was trying to demonstrate the number of
25 pedestrian connections and --

1 MR. HALLER: That's correct.

2 MADAM CHAIR: Okay. So --

3 UNIDENTIFIED SPEAKER: (Indiscernible).

4 MADAM CHAIR: Okay.

5 MR. DECAIN: So my only point was that by coming
6 out of any of these units anywhere around in Number 2 and
7 let's say you were headed to the mall, you would walk due
8 south from Number 2, following the arrow, keep going, keep
9 going --

10 COMMISSIONER GERALDO: Yes.

11 MR. DECAIN: -- keep going down, and then you jog
12 west there.

13 UNIDENTIFIED SPEAKER: Yeah.

14 MR. DECAIN: Right there you go west --

15 MADAM CHAIR: And then --

16 MR. DECAIN: -- and it is literally, in fact given
17 the, the somewhat northern trajectory of the sidewalk in
18 red, it actually would be longer to use the sidewalk in red
19 because it's heading slightly north.

20 MADAM VICE CHAIR: And then you would have to
21 cross.

22 MR. DECAIN: It's literally counterproductive.

23 UNIDENTIFIED SPEAKER: Got it.

24 MADAM VICE CHAIR: Yes.

25 MR. DECAIN: And by the way when you hit Belcrest

1 Road there, there's no crosswalk. There's no crosswalk
2 there. You have to come south to where the new lights is
3 being installed at Toledo Terrace to cross the road. So it,
4 it is a sidewalk to nowhere.

5 MADAM CHAIR: Okay. Let me do this for a second,
6 because we still have the City of Hyattsville signed up and
7 let's see, can we see what they have to say too? Okay. Ms.
8 Powers?

9 MS. POWERS: Yes. Hello Chairman Hewlett.

10 MADAM CHAIR: Hello.

11 MS. POWERS: So most of our comments are
12 consistent with the previous application, so that would
13 include the subgrade transformers, the integration of public
14 art. Some additional comments would be that the City is in
15 agreement with staff's recommendations that all side and
16 rear elevations of the condominiums on Parcels 2 and 3
17 include either additional materials or colors as well as the
18 inclusion of additional masonry work on highly visible side
19 units. Something that the Council was concerned about was
20 the sort vacant vinyl siding that was originally proposed,
21 but we are much happier with the current revisions that
22 include more architectural interest. And then in addition I
23 don't think we've really gotten to this part yet, but a
24 large part of this development includes the construction of
25 the regional storm water facility on Parcel 4. And the City

1 really views this facility as an opportunity for additional
2 amenity space for all residents and so it's the City's
3 position that if feasible the pedestrian trail on Parcel 4
4 form a connecting loop around the storm water pond and
5 understand that --

6 MADAM CHAIR: Okay. Hold on. Hold on, Ms.
7 Powers. We're going to mute everyone else. Okay. Okay.
8 We're going to come back to you.

9 MS. POWERS: Great.

10 MADAM CHAIR: Okay. There you go.

11 MS. POWERS: So it's the City's position that if
12 feasible the pedestrian trail on Parcel 4 form a connective
13 loop around the storm water pond and we understand that
14 feasibility and constructability will need to be considered
15 and that the applicant may need some flexibility in order to
16 make a fully connected loop a reality. And so those are
17 sort of, that's the brief explanation of the City's comments
18 and thank you for your consideration.

19 MADAM CHAIR: So Ms. Powers, your connectivity is
20 centered around Parcel 4 there?

21 MS. POWERS: Yes. So --

22 MADAM CHAIR: Okay. By the storm water pond.
23 Okay.

24 MS. POWERS: -- Park and Planning's recommendation
25 of these pedestrian connections --

1 MADAM CHAIR: For two.

2 MS. POWERS: -- off of Belcrest Road is not
3 something that was presented to our City Council.

4 MADAM CHAIR: Okay.

5 MS. POWERS: So it's not something that they took
6 into --

7 MADAM CHAIR: You can comment on.

8 MS. POWERS: -- consideration, therefore, we do
9 not have any comments on them at this time.

10 MADAM CHAIR: Okay. Thank you. That's what I
11 wanted to know. Let's see if anyone has any questions of
12 you. Madam Vice Chair?

13 MADAM VICE CHAIR: No questions, thank you.

14 MADAM CHAIR: Okay. Commissioner Washington?

15 COMMISSIONER WASHINGTON: No questions, thank you.

16 MADAM CHAIR: Okay. Commissioner Geraldo?

17 COMMISSIONER GERALDO: I just want to be clear
18 that Mr. Haller is okay with the connection on Parcel 4.

19 MR. HALLER: Yes. In fact --

20 COMMISSIONER GERALDO: Okay.

21 MR. HALLER: -- there were two connections that
22 the City of Hyattsville asked us to pursue, one was a
23 connection from Parcel 3 to the trail around the pond, which
24 we are showing on this exhibit. And then the other one was
25 the connection along Parcel 4 which require us to cross Park

1 and Planning owned land and there are conditions that
2 provide for that and we are in agreement with those
3 connections.

4 COMMISSIONER GERALDO: Okay.

5 MADAM CHAIR: Okay.

6 COMMISSIONER GERALDO: I just wanted to be
7 certain. Thank you.

8 MADAM CHAIR: Thank you. Okay. Now I still have
9 other people signed up. Okay. So Mr. Bickle, are you here
10 only if there are any questions?

11 MR. BICKEL: That is correct.

12 MADAM CHAIR: Okay. Thank you. Okay. Scott
13 Decain, you just spoke. Is there anything else you needed
14 to add? Mr. Decain?

15 MR. DECAIN: No. No, Madam Chairman. Thank you.

16 MADAM CHAIR: Okay. Thank you. I have Matt
17 Tedesco on here.

18 MR. DECAIN: No, Madam Chair, I have no further
19 comments.

20 MADAM CHAIR: Okay. Mr. Tedesco?

21 MR. TEDESCO: Good afternoon, Madam Chair, Matthew
22 Tedesco. I represent NRP Group which is the developer of
23 Parcel 1 and we would align ourselves with Mr. Haller's
24 presentation. Thank you.

25 MADAM CHAIR: Okay. Thank you. And so Josh

1 Woodbridge is with you?

2 MR. WOODBRIDGE: Yes.

3 MR. TEDESCO: That's correct.

4 MADAM CHAIR: Okay. Thank you. And then Brandon
5 Gurney?

6 MR. GURNEY: Hi Madam Chair, Brandon Gurney,
7 Stanley Martin Homes. I'm good, thank you.

8 MADAM CHAIR: Okay. Thank you. Peter Ciferri?

9 MR. CIFERRI: Thank you. I'd only ask that the
10 argument and memoranda and exhibits be incorporated into
11 this case as well.

12 MADAM CHAIR: They are indeed. Everything is
13 incorporated. Okay. Okay. That concludes the signup list.
14 If the Board doesn't have any questions of anyone, no one is
15 so indicating. Mr. Haller, you can close it out if you have
16 anything to add.

17 MR. HALLER: I have nothing to add, Madam Chair.
18 Thank you very much for your time.

19 MADAM CHAIR: Okay. Thank you. Okay. Is there a
20 motion?

21 COMMISSIONER WASHINGTON: Madam Chair, it's
22 Commissioner Washington and I move that we adopt the
23 findings of staff and the finding, finding number 6 as
24 further modified by the proposed revision to finding in
25 applicant exhibit and approve Alternative Transit District

1 Development Standards A1 through 9 as outlined in staff's
2 report, Alternative Transit District Development Standard B1
3 as amended by the proposed applicant exhibits, and approve
4 DSP-19050-1 and TCP2-042-2019-02 along with the associated
5 conditions as outlined in staff's report and as further
6 modified by the applicant's proposed revisions to the
7 conditions document.

8 COMMISSIONER GERALDO: Commissioner Geraldo,
9 second.

10 MADAM CHAIR: We have a motion and a second. And
11 again we've utilized the same conditions with regard to the
12 transformers and that would be in conjunction with our staff
13 and with the input from the City of Hyattsville, right?

14 COMMISSIONER WASHINGTON: Correct.

15 MADAM CHAIR: Okay. Thank you.

16 UNIDENTIFIED SPEAKER: That's true.

17 MADAM CHAIR: Okay. Is there any additional
18 discussion?

19 On discussion, I'd like to thank everyone for
20 staying with us and you know working through some of these
21 issues. It's not easy for any of us during these times but
22 we're very, very appreciative of everyone as we still try to
23 propel Prince George's County forward. I'm going to call
24 for the vote. Madam Vice Chair?

25 MADAM VICE CHAIR: I vote aye and I'd like to

1 associate myself with your comments. Thank everybody for
2 participating.

3 MADAM CHAIR: Thank you. Commissioner Washington?

4 COMMISSIONER WASHINGTON: Aye.

5 MADAM CHAIR: Commissioner Geraldo?

6 COMMISSIONER GERALDO: I vote aye, and I share in
7 your comments. Thank you.

8 MADAM CHAIR: Thank you so very much. Again,
9 everyone please stay safe. I'm going to now turn to our
10 Chief of Development Review, Mr. Hunt, are you on?

11 MR. HUNT: Yes, Madam Chair, I'm here.

12 MADAM CHAIR: Mr. Hunt, this is a critical
13 question for the day. Is there any additional business to
14 come before the Planning Board today?

15 MR. HUNT: 4:59 p.m., that is all the business
16 before the Board today. Thank you very much.

17 MADAM CHAIR: Thank you very much, Mr. Hunt.
18 Thank you everyone.

19 COMMISSIONER GERALDO: Thank you.

20 MADAM CHAIR: The Planning Board is adjourned.
21 Thank you.

22 MR. HALLER: Thank you, Madam Chair.

23 COMMISSIONER WASHINGTON: (Indiscernible).

24 MADAM CHAIR: Thank you.

25 COMMISSIONER GERALDO: Everybody be safe.

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MADAM CHAIR: Yes, be safe.

MADAM VICE CHAIR: Thank you. You do as well.

MADAM CHAIR: Thank you.

COMMISSIONER WASHINGTON: Take care.

(Whereupon, the proceedings were concluded.)

DIGITALLY SIGNED CERTIFICATE

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

DEWEY PROPERTY

Detailed Site Plans, DSP-19050 and DSP-19050-1

Departure from Design Standards, DDS-660



By: _____

Date: September 28, 2020

Diane Wilson, Transcriber