DISTRICT COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

IN RE: APPLICATION OF RF EAST-WEST HYATTSVILLE, LLC REQUESTING APPROVAL OF A SPECIAL EXCEPTION TO CONSTRUCT A GAS STATION AND A FOOD OR BEVERAGE STORE ON 1.90 ACRES OF LAND IN THE CGO ZONE.

CASE NO: SE-4846

APPEAL OF THE DECISION OF THE ZONING HEARING EXAMINER AND REQUEST FOR ORAL ARGUMENT

The Carole Highlands Neighborhood Association, Friends of Sligo Creek, and the following individuals: Michael Wilpers, Jason Clayton, Jeff Cronin, Lisa Entzminger, Doris Kuehn, Carlos Manjarrez, Paul Rowe, Alvarez Powell, Donna Nelms, Chris Watling, and Mila Antova make this appeal of the Zoning Hearing Examiner's Decision and request for oral argument in front of the District Council in the above-captioned case. All parties appeared at the underlying hearings in person and are harmed by the decision to build another gas station in the area. In support, appellants note the following.

1. RF East-West Hyattsville, LLC (hereinafter "Royal Farms" or "Applicant") applied for a Special Exception ("SE-4846") to construct a gas station and a food or beverage store in the Commercial General and Office ("CGO") zone located at 1821 East-West Highway, Hyattsville, Maryland.
2. Zoning Hearing Examiner Maurene Epps McNeil ("Examiner") conducted an evidentiary hearing on August 3, 2022. The People's Zoning Counsel was not present during the evidentiary hearing, Hr'g. Tr. 6:17-20, nor was the Deputy People's Zoning Counsel. The Examiner issued the proposed decision ("Decision") on October 7, 2022 recommending approval for a special exception to build a gas station near a playground. On October 17, 2022, the Council elected to review the Examiner's decision on SE-4846.

3. The District Council ("Council") must reverse the Examiner's decision because the Examiner erred legally and factually.
4. Applicant requested that the Maryland-National Capital Park and Planning Commission ("M-NCPPC") "consider removing its playground so that the RF Property will satisfy the criterion for a special exception. . . ." Ex. 67, p. 1. M-NCPPC has seemingly agreed through an October 21, 2021 letter to remove playground equipment and in return Royal Farms will spend money beautifying the Park.
5. The Hearing Examiner accepted the agreement and found that by removing the playground equipment, the special exception no longer applied. Decision at 39-40, para. 23. This conclusion is in error, the presence of some equipment is not the sole factor for determining whether the special exception should apply.
6. Section 27-317(a) of the Zoning Ordinance establishes the required findings for approval of any special exception. Section 27-317(a)(1) requires that "the proposed use and site plan are in harmony with the purpose of this Subtitle." Section 27-317(a)(4) requires that "the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area." Section 27-317(a)(7) requires that "the proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state."
7. Section 27-102 of the Zoning Ordinance establishes the purposes that the Applicant's request must comply with. Section 27-102(a)(1) states that the application should "protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County."

8. Section 27-358(a) of the Zoning Ordinance sets out requirements for approval of a gas station, including that a gas station "shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located."
9. Section 27-107.01 of the Zoning Ordinance defines a playground as "an area used for indoor or outdoor play or recreation, especially by children, which **may** contain recreational equipment such as seesaws, slides, and swings, regardless of whether it is in public or private ownership." (emphasis supplied)
10. Section 27-358(d) of the Zoning Ordinance requires the Applicant to demonstrate the gas station is "necessary to the public in the surrounding area."
11. Section 27-355(a)(1) requires a showing of "reasonable need for the use in the neighborhood" for food or beverage stores.
12. Md. Land Use Code Ann. § 17-204(b)(1) permits M-NCPPC to grant concessions to engage in enterprise on land M-NCPPC has acquired for park purposes.
13. Md. Land Use Code Ann. § 17-204(c)(1) states that the purpose for which a concession is granted may not be inconsistent with the use of the property for park purposes.
14. Md. Land Use Code Ann. § 17-206(a)(1) empowers M-NCPPC to sell or otherwise dispose of any playground or recreational facility no longer needed for public use.
15. The Examiner's decision violates all of the above laws and ordinances when she approved SE-4846 because the proposed gas station is within three hundred feet of a playground in violation of § 27-358(a)(2). The playground equipment is still present at the location: "An outdoor playground does exist on the adjacent MNCPCC park . . . . Once the playground is removed . . . the site meets the requisite 300-foot setback. . . ."

Decision at 17, para. 30. The Examiner also erred by equating a playground (a place where children play) to the presence of playground equipment.

16. The Examiner erred in her assertion that the facts around the removal of the playground equipment were "not germane to [her] review of the request." Decision at 39-40, para. 23. The Royal Farms-M-NCPPC agreement to remove the playground equipment did not follow procedure required by the Md. Land Use Code, and should be considered invalid.
17. The Examiner does not address the fact that M-NCPPC did not make any determination on the record that the removal of the playground equipment would be consistent with park purposes when making the agreement with Royal Farms. Decision at 21, para. 42; Ex. 49. The Examiner also did not address resident testimony concerned about the potential administrative connections between M-NCPPC and Prince George's County, and during testimony interrupted community members to assert there is little connection between the two bodies. Hr'g. Tr. 91:5-92:6.
18. The Examiner erred in concluding the Royal Farms proposal satisfied the "necessary" requirement in Section 27-358(d). Decision at 38 para. 20. There are 17 gas stations within 1.5 miles of the Royal Farms Development. Ex. 83. Assuming these gas stations pump the average amount of gas for fueling stations per year as cited by Royal Farms witness Edward Steere, the yearly fuel demand in the area identified in the analysis are met without the Royal Farms gas station. Ex. 79, p. 23, 28.
19. The Examiner erred by failing to consider the necessity of the applicant's gas station under 27-358(d) independently from the applicant's assertion of the need for a beverage and food store. Decision at 10, para. 17. The Royal Farms convenience store would replace a critically acclaimed restaurant, Comedor San Alejo, which serves high quality

and culturally unique food. Hr'g. Tr. 84:22-85:4. Basing a necessity determination on the need for a business that serves fresh food when it eliminates a restaurant that sells fresh food and is part of the community is contradictory.

20. The Examiner erred by failing to adequately consider the testimonies from residents near the Royal Farms development in her finding of "need" under Section 27-358(d). Community neighborhood testimonies on the record which are not in the ZHE's decision include: "Therefore, I submit WE ARE NOT IN NEED of another gas station." (Ex. 87, at 1); "Carole Highlands is ringed with gas stations, convenience stores, and fast food. This particular intersection has all of the above." (Ex. 89, at 1); "Unfortunately, in our community the landscape is littered with the carcasses of old gas stations." (Hr'g. Tr. 25:7–9). There is nothing "necessary" about the Royal Farms gas station. The Hearing Examiner erred when she defined "necessary" as "convenient."

21. The Examiner erred when she found that the Royal Farms proposal will protect and promote health and safety, claiming it is beneficial for "residents that rely on the automobile." The Examiner failed to recognize testimony from pedestrians and bike riders using Sligo Creek Trail that heavy traffic from the proposed gas station would compound on treacherous crossing conditions. Instead, the Examiner shifted focus to the supposed benefits of the food or beverage store by asserting that pedestrians would benefit from purchasing food and drink items. Decision at 34, para. 1; Hr'g. Tr. 16:13–17:17. The Examiner also erred when she did not acknowledge community testimony that the current traffic in and out of the site will increase with the Applicant's proposed use, relying on the Applicant's use of trip generation manuals that do not reflect how little traffic is at the site currently. Hr'g. Tr. 148:7-150:8

22. The Examiner erred in finding this proposal will protect and promote health and safety in spite of the impacts of benzene exposure documented in the record. Ex. 84, the Columbia gas station study. The Examiner found that this study only applies to intersections with four gas stations, which misinterprets the study's findings showing there is an exponential public health impact of siting multiple gas stations in a single intersection. Decision at 39, para. 23.
23. The Examiner erred in finding this proposal will protect and promote health and safety in spite of additional testimony from nearby residents concerned about an "elevated exposure to the invisible toxic fumes," especially for those residents with existing health issues. Ex. 85. The Applicant's gas station will chronically emit benzene, a known carcinogen. Ex. 84. One resident was particularly concerned for a family member with asthma who liked to spend time outside close to the Applicant's site. Hr'g. Tr. 98:14-19.
24. The Examiner erred in finding this Application will not "adversely affect the health, safety, or welfare of residents or workers in the area." Section 27-317(a)(4). In her Decision, the Examiner continuously relies on the Applicant's expert testimony that only serves their interests without adequately addressing community testimony opposing the expert opinions. Decision at 39, para. 23.
25. The Examiner erred in finding the Application will not create a unique adverse impact on users of Parklawn Park. Testimony indicated that removal of the playground equipment will not reduce use of the park. The Examiner erred in failing to consider testimony about the children who play in Parklawn Park and families going to and from Cesar Chavez Elementary School, which is only a few hundred feet away from the proposed site. Hr'g. Tr. 16:17-20.

26. The Examiner erred in finding the Application will not create a unique adverse impact on the water quality of Sligo Creek. The Examiner failed to recognize that Sligo Creek is an impaired waterway and testimony that benzene will run off the site into Sligo Creek, in spite of testimony discussing how runoff washes toxic pollutants into waterways. Hr'g. Tr. 61:17–22, 62:1–3. This will only harm a community natural resource.
27. The Examiner erred in finding the location of underground storage tanks will not create a unique adverse impact in spite of testimony on how climate change will expand the Sligo Creek floodplain. The Examiner did not address testimony that the floodplain is "projected to increase 45 percent by the year 2100," and that underground storage tanks in a submerged environment "could push the tanks upward and release product in the environment." Hr'g. Tr. 42:13–21. The floodplain is shown already close to the underground storage tanks ("UST"s) in the site plan, and the Examiner did not address how the floodplain will begin to encompass the USTs in the near future due to climate change. Ex. 91.
28. The Examiner erred in stating that Applicant's site "will be located outside of the limits of the approved floodplain on site." Decision at 4-5, para. 12. The Technical Staff Report referenced by the Examiner indicates that "there are no regulated environmental features on the site with the exception of the southeastern corner that lies within the existing 100-year floodplain." Decision at 36, para. 5. The Examiner makes other contradicting statements when discussing the floodplain. First, the Examiner recognized that the 100-year floodplain, a regulated environmental feature, exists on the proposed site. *Id.* Later in the decision, the Examiner indicated that "the site has an approved Natural Resources

Inventory Equivalency Letter that determined *no on-site regulated environmental features will be impacted.*" Decision at 39, para 23.

29. The Examiner erred in finding the Application will not create a unique adverse impact on traffic. The Examiner did not adequately consider resident concerns with the traffic pattern at the East West Highway Service Road intersecting with the entrance to the Applicant site. While Royal Farms dismissed these safety concerns by stating they were not required to do traffic studies on the access road and pedestrian crossings, resident testimony was clear there would be a negative impact on the traffic pattern. Hr'g. Tr. 97:2-15, 145:17-20, 147:17-21, 297:22-298.
30. The examiner erred in finding that the neighborhood presented by Applicant "more realistically" captures the neighborhood of the property. Decision at 2.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 7th day of November 2022, a copy of the foregoing Appeal of the Decision of the Zoning Hearing Examiner and Request for Oral Argument was mailed to the following Persons of Record:

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