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NOTIFICATION OF ZONING HEARING EXAMINER'S DECISION

DATE OF DECISION: October 4, 2022
HEARING EXAMINER: Robert F. Kahoe, Jr.
RE: Zoning Appeal Case No. 5970
APPLICANTS: MCI Telecommunications Corporation &
McKinstry Essention, LLC
LOCATION: 2606 Carsins Run Road, Aberdeen
REQUEST: Expansion of a non-conforming use, approved in
Zoning Appeal Case Nos. 2945, 3290 & 3419, to
enlarge a communications station/data center in
the Agricultural District

Enclosed is an official copy of the Hearing Examiner's decision relative to the above referenced case.

The Hearing Examiner's decision shall become final **OCTOBER 24, 2022.**

This decision shall be considered a recommended opinion to the Harford County Council, sitting as The Board of Appeals, if a written request for Final Argument before the Harford County Council is filed by the close of business on above date by the Applicant, Applicant's Attorney, Opponents, People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. In addition, any Board Member, upon written notice to the Council Administrator, may request final argument.

COUNTY COUNCIL OF HARFORD COUNTY

Mylia A. Dixon
Council Administrator

Enclosure

cc: Applicant/Attorney; People's Counsel; Department of Planning and Zoning



**APPLICANTS: MCI Telecommunications Corp.
and McKinstry Essention LLC**

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS**

**REQUEST: Eexpansion of an existing non-
conforming a communication station/data center
in the Agricultural District**

Case No. 5970

HEARING DATE: August 10, 2022

ZONING HEARING EXAMINER'S DECISION

APPLICANT: MCI Telecommunications Corporation

CO-APPLICANT: McKinstry Essention LLC

LOCATION: 2606 Carsins Run Road, Aberdeen, MD 21001
Tax Map: 57 / Grid: 2F / Parcel: 0137 / Account: 048430
First (1st) Election District

ZONING: AG/Agricultural District

REQUEST: Expansion of an existing non-conforming communication station/data center. pursuant to Section 267-21 of the Harford County Code, in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject property is 34.5 acres in size, zoned AG/Agricultural, and located at 2606 Carsins Run Road, Aberdeen. The property is improved by a series of industrial-type buildings totaling 113,900 square foot in interior space and occupied and used by the successor-in-interest to the Applicant, MCI Telecommunications Corporation, as a communications/data center. According to the Department of Planning and Zoning, the present uses on the property are non-conforming. Desiring to expand the use of the property by the construction of another building, the Applicants request an expansion of this existing non-conforming use.

First for the Applicants testified Migdalia Ramos, who identified herself as a consulting engineer specializing in network construction and currently employed by Verizon Business Global, LLC. Ms. Ramos is well familiar with the property and identified it as being 34.5 acres in size and located at 2606 Carsins Run Road, Aberdeen. The property is the site of a Verizon communications station/data center.

Ms. Ramos explained the relationship of the companies which have actually operated this center over time, now identified as Verizon Business Services, LLC, successor to MCI Telecommunications Corporation, and which remains the owner of record.

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The Applicants propose to construct a 23,881 square foot building on site. Currently, the site improvements are 113,900 square feet in size. Accordingly, the new building will constitute a 21% expansion of the existing uses.

Ms. Ramos testified a total of 10 new parking spaces are proposed. It is expected that, in addition to the employees that are generally on site at present, an additional five will be employed at the new building. Their function is to provide continuing maintenance and oversight of the network and computer uses within the structures. Typical working hours are 7:00 A.M. to 3:30 P.M., on weekdays, with reduced activity on weekends.

Next for the Applicants testified Matt Bishop, employed by Kimley–Horn as a professional, LEED certified, landscape architect. Mr. Bishop was offered and accepted as an expert in his field.

Mr. Bishop described the site and stated that the new building will be located and built to avoid environmental impacts. The use will be a “Data Processing Center” which is defined by Section 267-4 of the Harford County Code as “*a facility equipped with, or connected to, one or more computers, used for processing or transmitting data.*” There is also a communications tower on site that serves the local area’s data transmission needs.

Exhibit No. 15, offered by the Applicants, shows a proposed bioretention facility, noted as “SWM-1,” to be located between the proposed building and the nearest property line.

Existing access from Carsins Run Road will be enlarged, and some existing drainage and stabilization structures now located there will be relocated in order to accommodate a larger access road. The facility is gated with a surrounding security fence.

Mr. Bishop described the zoning history of the site.

By Board of Appeals decision dated May 5, 1983 in Case No. 2945, a special exception was approved to allow for the expansion of an existing communications facility. At that time, existing temporary structures were to be removed and replaced with a 5,000 square foot masonry building.

By decision dated February 14, 1986 in Case No. 3290, a special exception was granted to allow the replacement of a guyed tower with a self-supporting tower of the same height; the construction of a 240 foot by 170 foot structure; the construction of an 80 foot by 40 foot garage; and the construction of an 8 foot by 10 foot shelter for an auxiliary generator.

By decision dated February 27, 1987 in Case No. 3419, a height variance was approved to allow a building to be constructed to the height of 51 feet.

In Mr. Bishop’s opinion, the construction and use of the new building will have no impact on the surrounding neighbors. All required setbacks are being observed; all forest conservation regulations are being complied with; and although there will be a few more employees travelling to and working on site, these numbers will be quite small and there will be no significant change in traffic accessing the subject site.

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Addressing Section 267-9I of the Harford County Code, Mr. Bishop sees no impact. There should be almost no perceptible increase in the amount of traffic caused by the additional 5 employees on site. The site of the proposed building is somewhat lower in elevation than surrounding properties, which helps limit its visual impact. The property is well screened from Carsins Run Road and from surrounding neighbors. There should be no significant noise or environmental impacts. All state and local environmental regulations will be complied with.

Mr. Bishop identified the nearest residential home to the north as being several hundred feet removed from the property line. There is also a closer home located to the southwest along Carsins Run Road. There are no churches or schools in the immediate vicinity.

In opposition testified Michael Shupe, 2620 Carsins Run Road. Mr. Shupe complained about runoff which for many years has and continues to affect his property. Despite his complaints, his problem has not been addressed by MCI¹.

Next for the Applicant testified Leonard A. Ruff, AIA. Mr. Ruff is a critical facilities architect employed by Cascade Mission Critical, LLC. Mr. Ruff designs technical facilities such as data centers. He is a licensed architect in the State of Maryland and was accepted as a professional and licensed architect.

Mr. Ruff explained that the proposed building will have the same exterior panels and coloration as the existing building on site. Page 33 of Applicant's Exhibit No. 1 shows the exterior view of the existing building and the existing exterior panels with a note that the building will have matching panels.

Page 34 of Applicant's Exhibit No. 1 shows a view of the proposed building from the north, showing the data center and the exterior coolers. Page 35 of Applicant's Exhibit No. 1 shows the new data center from the southern viewpoint. Mr. Ruff noted that the new building is at least 15 feet lower in elevation than Carsins Run Road. Page 36 of Applicant's Exhibit No. 1 shows the view from the south of the existing site and the proposed building in the background. Page 37 of Applicant's Exhibit No. 1 is of the view taken from the northwest side of the building.

Mr. Ruff explained that there will be two new standby generators along the Carsins Run Road side of the new building. Noise will be mitigated by concrete walls. Mr. Ruff explained that noise buffering for the generators and coolers has not yet been designed as additional analysis must be done.

At that point, the Applicants' attorney agreed to submit a more specific analysis of the noise to be generated by the outside equipment at the proposed building along with the Applicants' proposal to mitigate that noise if necessary.

Mr. Ruff further explained that light will be shielded so as to be directed on site and a photovoltaic study of light emissions will be undertaken.

¹ Mr. Shupe actually made his remarks during his cross-examination of Mr. Bishop. His comments will be considered as direct testimony.

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Next for the Department of Planning and Zoning testified David Culver, Deputy Director. Mr. Culver referred to the Department Staff Report in describing the history of the use.

The Staff Report found, *inter alia*:

“The proposed extension will be a continuation of the already approved and established use of the property as a communication station/data center. No expansion of the telecommunication tower is proposed, the expansion is for a new building to house the data center equipment within the expanded compound. The original approval for this site was for a tower that was approved and built sometime around 1968.”

The Staff Report contains the following analysis of the Department’s arrival at the conclusion that the use is non-conforming:

“After careful review of the use table, definition and SIC/NAICS references, we have come to the conclusion that the proposed use would be classified as business service. This use is permitted in the VB, B1, B2, B3, CI, LI and MO, and by special development the RO, thus making this site in the AG District non-conforming because of the changes in the 2008 Harford County Zoning Code.

The Staff Report further found:

“In summary, it appears that 2606 Carsins Run Road should be classified as a non-conforming situation. Indeed, this compound has been in use for numerous years based on approvals by the County and this expansion should not be substantially detrimental to the adjacent properties nor should it materially impair the public interest. The front yard is well landscaped, the sides and rear yard are heavily wooded and the site also has some sloping topography that further minimizes the visual impact of this use. This natural and wooded area, along with the sloped nature of this section of the site, would further provide adequate buffering to the adjacent properties.”²

The Department of Planning and Zoning accordingly recommends approval.

In opposition testified John P. Krick, 2420 Ken Oak Road. Mr. Krick is the owner of property to both the north and northwest of the subject parcel, and essentially extending along two sides of the proposed data center. Mr. Krick noted that the proposed data center building is fairly close to his property line (in fact, about 80 feet from MCI’s northeast property line and 160 feet – 200 feet from its northwest property line). Mr. Krick complained that much of the buffering that exists is actually on his property, with much of his property being wooded. He does not feel he should be responsible for maintaining the buffer between his residence and the data center. The area between his parcel and the data center on the northwest side will consist of some buffering, but for the most part will be used for road and parking areas.

² The issue of whether the site is non-conforming is not before the Board of Appeals.

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Mr. Krick is the owner of over 100 acres of property. He complained that the findings of the Applicants' witnesses that there will be no adverse impact on he and other neighbors was pure speculation and not supported by fact. He stated that MCI Telecommunications Corporation has been repeatedly admonished for its violations. Mr. Krick is a farmer; and he has a forest management plan; he has a required nutrient management plan on his property. Protecting the Chesapeake Bay and its water courses is extremely important to Mr. Krick and he feels that MCI has been extremely negligent in its responsibility to maintain and treat water quality and quantity. There is a stream located just to the northwest of the parcel on Mr. Krick's land and, in fact, appears on the site plan. Wildlife, including osprey, live in the wetlands created by the stream, and Mr. Krick feels the use will impact that environment.

Mr. Krick fears light and noise pollution to be generated by the new data center, and he feels that the Applicants will not control erosion in this area of HEL (Highly Erodible Land).

Mr. Krick stated that past performance equals future activity. He feels that MCI has done a poor job in managing its property and has not been a good steward of its property. Generators on site emit pollution and the extreme noise is "atrocious" and it is not ameliorated.

Mr. Krick further stated that erosion is a huge issue and is a large generator of nutrient overload in the Chesapeake Bay. MCI allows water to leave its property at a high rate of speed which results in erosion. James Run is close to the property and maximizes the drainage from the MCI property directly to the Chesapeake Bay.

He is worried about the amount of erosion that the present MCI use causes due to lack of care of the stream to the northwest of the property. Mr. Krick submitted written comments which expanded upon his objections.

Next in opposition testified Jeff Krick, the son of John Krick. Mr. Krick is able to visually see the existing facility from his residence which is located almost directly north of the subject property. He will be able to see through the trees in the fall and winter and is bothered by the loud noise generated from the site. He is also concerned about the stream impact and erosion.

At the conclusion of testimony, the Applicants were requested by the Hearing Examiner to submit a report on noise impact of the proposed use and noise mitigation methods, if necessary. The record was kept open for this purpose. That report dated September 9, 2022 entitled "Verizon ABRDMD Site - Greenfield Building, Environmental Noise Impact Study" was subsequently submitted. A copy of the report was provided to opponent John Krick, who made written comments in response. That report and those comments have been considered in this opinion.

APPLICABLE LAW:

Section 267-21 of the Harford County Code provides:

"The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less-restricted and more-intense use.*

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- B. The enlargement or extension does not exceed 50% of the gross square footage in use at the time of the creation of the nonconformity.*
- C. The enlargement or extension does not violate the height or coverage regulations for the district.*
- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.*
- E. The limitations, guidelines and standards set forth in § 267-9I (Board of Appeals, Limitations, guides and standards) are considered by the Board.”*

Section 267-4 of the Harford County Code defines “Data Processing Center” as follows:

“DATA PROCESSING CENTER - A facility equipped with, or connected to, one or more computers, used for processing or transmitting data.”

Harford County Code Section 267-9I, Limitations, Guidelines and Standards is also applicable to this request and will be discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

This commercial site is located in a rural residential area of Harford County close to U.S. Route 95. The area contains mixed housing on varying lot sizes and some low impact commercial uses. The subject parcel is located in the midst of a fairly substantial forested area (See attachment No. 9 to the Staff Report).

The property has long been used for data collection and transmission facilities beginning prior to the first Board of Appeals Decision concerning the property dated May 5, 1983. That decision allowed an expansion of an existing communications facility. The 1983 decision (Case No. 2945) referenced the fact that the then-existing tower on the property had been constructed approximately 15 years before the date of the zoning decision, which would have put its construction in the late 1960’s. Quite clearly, the facility in some shape or form has been in existence for many years.

The use has grown over the years, as has been allowed by a number of favorable zoning decisions. Currently, the property hosts improvements of approximately 114,000 square foot in size with parking, surrounding security fence, and a data transmission tower.

The present request is for a relatively modest expansion of existing facilities, seeking permission to construct an approximately 24,000 square foot freestanding building which would be a roughly 21% expansion of the existing use. A few additional parking spaces will be added and there will be approximately five additional employees working at this data center. It is easily found, based on the proposed use and the testimony presented at the hearing, that the impact to traffic will be very minor, and perhaps imperceptible, as a result of the improvements. There will be no particular environmental impact, with the exception of noise which will be discussed below, and there will be no particular visual impact as the portion of the property on which the building is to be constructed is fully screened by existing vegetation.

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The Applicants can quite easily meet applicable Harford County Code requirements.

Section 267-21 of the Harford County Code, which authorizes the extension or enlargement of a nonconforming use, states:

A. The proposed extension or enlargement does not change to a less-restricted and more-intense use.

The expansion will be of an already approved and established communication station / data processing center. Testimony was that the use will be simply an adjunct to the existing use of the property with the improvements to be lightly manned. There is no evidence that the enlargement will be less restrictive or more intense than the present use.

B. The enlargement or extension does not exceed 50% of the gross square footage in use at the time of the creation of the nonconformity.

The expansion of the use will not exceed 50% of the size of the current data processing center use which is non-conforming.

C. The enlargement or extension does not violate the height or coverage regulations for the district.

Evidence indicates that neither of these regulations will be violated.

D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.

The proposed use is simply an expansion of the existing use, which should have no adverse impacts beyond what is generated now by the current use, although neighbors have objected on the basis of potential environmental impacts. For reasons addressed below, it is found that the evidence presented by the Applicants and its supporting environmental noise impact study indicates that neither noise nor other environmental impacts will be adverse.

E. The limitations, guidelines and standards set forth in § 267-9I (Board of Appeals, Limitations, guides and standards) are considered by the Board.”

The considerations of Harford County Code Section 267-9I, Limitations, Guidelines and Standards are addressed as follows:

1) The number of persons living or working in the immediate area.

There should be no adverse impact on the number of persons living or working in the area. The new proposed data center will have only a few people working there during the week and even fewer on the weekends. Traffic should be minimal. There will virtually no change to the site as can be seen by passersby. Mr. Shupe, a neighbor complained about existing stormwater runoff. However, there is no evidence that the proposed use will cause Mr. Shupe to suffer any increased impact from storm water runoff.

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- 2) *Traffic conditions, including facilities for pedestrians and cyclists, such as sidewalks and parking facilities; the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

As discussed above, existing traffic should not be significantly impacted by the proposed expansion.

- 3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The use is consistent with the orderly growth of the neighborhood which contains scattered residential uses of varying lot sizes, scattered commercial uses, and substantial forest cover, and is located close to U.S. Route 95.

- 4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

There is no evidence of any possible emissions from the subject property which will have an adverse or even unusual impact on adjoining properties. It appears that the only potentially affected adjoining property owners are Mr. Krick and his son to the north - northeast. That area is almost completely forested and the nearest house to the northeast is located more than 300 foot from the property line and is buffered by the existing forest.

Mr. Krick articulated his many environmental concerns about the expansion. He feels that MCI Communications has been negligent in the past in maintaining runoff water quality and quantity and has not been a good conservator of wildlife in the area. He is concerned about light and noise pollution and potential erosion. In the past, MCI Communications has not done a good job in this respect and Mr. Krick feels that it will continue to do poorly. As a result, Mr. Krick's property will be adversely affected.

Mr. Krick's comments are well articulated but are not persuasive. His worries about the environmental impact, specifically to his property and generally to the watershed and wildlife in the area, are perhaps genuinely felt but are at best unsubstantiated fears. There are a host of county, state, and federal regulations which govern and regulate stormwater runoff quality and quantity issues; forestation issues; wildlife issues; and watercourse management issues. There is simply nothing on record, in evidence, or contained in the Kricks' written submissions, on which to base a denial of this application.

Perhaps a more immediate concern is the noise to be generated by the facility. Although the data processing center will of course be enclosed, there will be large chillers located outside around the perimeter of the building due to the heat being generated by the equipment inside. Furthermore, there will be two new generators which must be tested on a regular basis. These items will generate noise and for that reason, the Applicants provided a noise study.

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The noise study shows that there will be no increased perceptible noise impact on Mr. Krick's property from the proposed use once in operation. The report considered sound emissions to be generated both by the existing and proposed building support systems, including cooling towers, condensing units, heat pumps, dedicated outside air systems, and emergency generators (see pg. 9 of report). The study predicted noise impact on the subject property and Krick property and neighbors' property with I-95 traffic only; with cooling equipment, generator, and traffic during the daytime and nighttime; with cooling equipment and traffic only; and with cooling equipment and no traffic during the daytime and nighttime.

All scenarios showed no increased noise impact, i.e., no impact beyond existing levels, on surrounding properties, including the Kricks' property. The report concluded, at page 1:

"The site is located within the jurisdiction of Harford County; § 193-8 of the County Code provides general language regarding nuisance in residential areas and does not specify maximum permissible sound levels for environmental noise. Following this, Title 26 of the state of Maryland standards are referenced in this report.

The 3-dimensional computer-aided sound propagation and noise abatement model shows that the proposed site operations will not be louder than the current normal daytime and nighttime operations; the normal daily operations (cooling systems) will be quieter than normal Interstate 95 traffic noise. The emergency generators, which the Maryland Environmental Noise Standards (26.02.03.02.(C)(2)(h) exempts during emergency operation, adds up to 1 dB of noise to the nearest residential neighbors for the 30 minutes of maintenance operation once every few weeks. This analysis assumes that all existing and new generators run concurrently during maintenance.

To reduce the potential noise impact during generator maintenance operation, limit the maintenance operation to 3 or fewer concurrently running generators under maintenance (reduced load)."

The report further states, at page 16:

"The predicted noise levels at the nearest residential properties meet the Maryland Department of the Environment – Environmental Noise Standards when accounting for all building systems noise and Interstate 95 traffic noise. The noise from the on-site building systems alone is 5 to 10 dB quieter than the traffic noise and is not likely perceptible to any of the residential neighbors. The emergency generators are estimated to increase the noise level by approximately 1 dB for the 30-minute duration of the maintenance operation if all ten of the emergency generators are completing maintenance runs concurrently, which includes eight (8) existing and two (2) new generators.

The proposed site building support systems and the cooling and emergency power generation are estimated to meet the state noise standards and the intent of the Harford County requirements not to be a noise impact or nuisance."

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Furthermore, the concluding paragraph of the report at page 17 states:

“The 3D noise contour modeling shows that the primary noise source for this community is vehicle traffic on Interstate 95.”

Accordingly, it is found that the noise to be generated from the proposed use will not have an adverse impact on adjoining property owners or on the neighborhood.

5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The subject property is served by public water and sewer. The Harford County Sheriff's Office and Maryland State Police will provide police protection.

6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The request is consistent with generally accepted engineering and planning principles and practices.

7) *The structures, in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

No such structures have been identified.

8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The request is consistent with the 2016 Master Plan, according to the Staff Report.

9) *The environmental impact, the effect on sensitive features and opportunities for recreation and open space.*

No such sensitive environmental features have been identified, although a watercourse has been described as lying on the Krick property north of the subject property, and may emanate close to the subject property. For reasons as stated above, there is no evidence to support any deleterious impact on this or other environmental features.

10) *The preservation of cultural and historic landmarks*

No such landmarks have been identified.

Accordingly, the proposed use complies with all conditions of Section 267-9I of the Harford County Code.

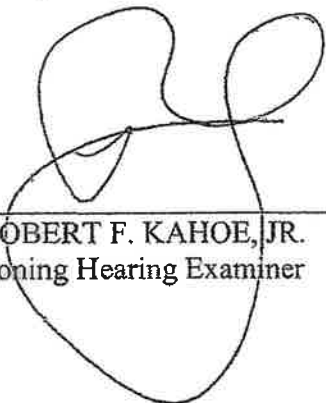
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CONCLUSION:

Accordingly, it is recommended that the request for an expansion of non-conforming use be approved, subject to the following conditions:

1. The Applicants shall prepare the required plans for review and approval.
2. The Applicants shall obtain all necessary approvals, permits, and inspections for the project.
3. Maintenance of all generators shall be limited to three (3) or fewer concurrently running under maintenance with no overload. The timing of the maintenance operation shall coincide with trash and facilities pickup during the daytime only.

Date: OCTOBER 4, 2022



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 24, 2022.

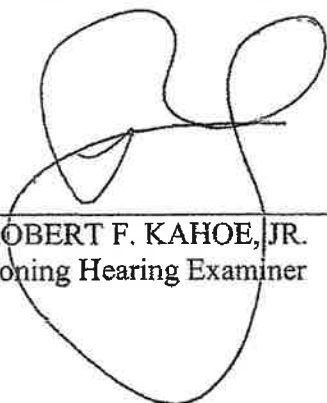
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Date: OCTOBER 4, 2022



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 24, 2022.