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Transcript of Administrative Hearing

Date: May 21, 2020

Case: Edmonson & Gallagher Property Services

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Transcript of Administrative Hearing
Conducted on May 21, 2020

1 (1 to 4)

1	3
1 MONTGOMERY COUNTY	1 A P P E A R A N C E S
2 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	2 ON BEHALF OF THE APPLICANT:
3 -----x	3 JODY S. KLINE, ESQUIRE
4 IN RE: :	4 MILLER, MILLER & CANBY
5 CU 20-02 :	5 200-B Monroe Street
6 EDMONDSON & GALLAGHER PROPERTY:	6 Rockville, Maryland 20850
7 SERVICES, LLC, application for:	7 (301)762-5212
8 Milestone Senior Living :	8
9 Parcel 507, :	9 ALSO PRESENT:
10 Middlebrook Subdivision :	10 James Edmondson, The Applicant
11 -----x	11 Jane Przygocki
12 Transcript of Proceedings	12 Michael A. Wiencek, Jr.
13 Conducted Virtually	13 Mahmut Agba
14 Thursday, May 21, 2020	14 Daniel Park
15 2:00 p.m. EST	15 Nicole White
16	16 Jon S. Frey
17 Before:	17 Nana Johnson
18 LYNN A. ROBESON HANNAN,	18 Joseph Gothard
19 Administrative Hearing Examiner	19
20	20
21	21
22	22
23 Job No.: 299811	23
24 Pages: 1 - 119	24
25 Reported by: Stephanie L. Hummon, RPR	25
2	4
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2 (5 to 8)

<p>5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER ROBESON: It's</p> <p>3 2 o'clock, so I am reconvening the public hearing</p> <p>4 in the case of CU 20-02, Edmondson & Gallagher</p> <p>5 Properties, an application for an independent</p> <p>6 living facility for seniors on property located</p> <p>7 about 0.14 miles from the intersection of Frederick</p> <p>8 and Plummer Roads in the R-90 zone.</p> <p>9 Just a little background -- we do have a</p> <p>10 court reporter on this hearing.</p> <p>11 Okay. Just a little background. We</p> <p>12 originally had this hearing on May 11th.</p> <p>13 Shortly -- we adjourned the hearing at about 12:52,</p> <p>14 and shortly after we adjourned the hearing, I got</p> <p>15 notification from the County Council's staff, that</p> <p>16 Mr. Gothard had tried to join the meeting, but was</p> <p>17 unable to.</p> <p>18 So, today, we are going to reconvene the</p> <p>19 meeting, to allow him to testify and ask questions</p> <p>20 of the Applicant's witnesses, if need be.</p> <p>21 Mr. Kline and Mr. Gothard, can you</p> <p>22 identify yourselves for the record, please. And</p> <p>23 one thing about these videos, if you could speak</p> <p>24 and say your name slowly and spell it also, for the</p> <p>25 court reporter, and also, if we can avoid</p>	<p>7</p> <p>1 Okay. Hearing no objections, is there</p> <p>2 anyone else, besides Mr. Gothard, who wants to</p> <p>3 testify, that is not going to be called by</p> <p>4 Mr. Kline?</p> <p>5 All right. Hearing none, we will</p> <p>6 proceed.</p> <p>7 I thought the best way to proceed is</p> <p>8 let's hear Mr. Gothard's concerns, and then maybe,</p> <p>9 Mr. Kline, your witnesses can respond.</p> <p>10 Mr. Gothard, thank you for your written</p> <p>11 testimony.</p> <p>12 Thank you for your written testimony,</p> <p>13 that was quite helpful.</p> <p>14 So for now, if anyone -- does anyone</p> <p>15 object to proceeding like that?</p> <p>16 Okay. Hearing none, Mr. Gothard, do you</p> <p>17 have video, by any chance?</p> <p>18 MR. GOTHARD: I have video disabled on my</p> <p>19 computers.</p> <p>20 HEARING EXAMINER ROBESON: Okay. Well,</p> <p>21 let's do this. Can you please raise your right</p> <p>22 hand.</p> <p>23 MR. GOTHARD: Yes, I'm raising my right</p> <p>24 hand.</p> <p>25 Whereupon,</p>
<p>6</p> <p>1 cross-talking each other because on this platform,</p> <p>2 it can be very confusing for the court reporter.</p> <p>3 Okay. With that being said, Mr. Kline,</p> <p>4 would you identify yourself for the record?</p> <p>5 MR. KLINE: Good afternoon. For the</p> <p>6 virtual record, my name is Jody Kline, J-o-d-y,</p> <p>7 K-l-i-n-e. I'm an attorney with the law firm of</p> <p>8 Miller, Miller & Canby, with offices at 200B Monroe</p> <p>9 Street in Rockville, which is the venue from which</p> <p>10 I'm speaking right now.</p> <p>11 HEARING EXAMINER ROBESON: All right.</p> <p>12 And, Mr. Gothard, can you state your name</p> <p>13 and address for the record.</p> <p>14 MR. GOTHARD: Joseph Gothard. The last</p> <p>15 name is spelled G-o-t-h-a-r-d. We are located at</p> <p>16 19050 Wheatfield Drive, Germantown, Maryland 20876,</p> <p>17 the property adjacent -- to the south of the</p> <p>18 application.</p> <p>19 HEARING EXAMINER ROBESON: Thank you very</p> <p>20 much.</p> <p>21 Now, all the witnesses that the Applicant</p> <p>22 called were sworn in at the last hearing and they</p> <p>23 are still under oath.</p> <p>24 Does anybody object to reconvening this</p> <p>25 hearing?</p>	<p>8</p> <p>1 JOSEPH GOTHARD,</p> <p>2 being first duly sworn or affirmed to testify to</p> <p>3 the truth, the whole truth, and nothing but the</p> <p>4 truth, was examined and testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY HEARING EXAMINER ROBESON:</p> <p>7 Q. Okay. Mr. Gothard, why don't you tell us</p> <p>8 what your concerns are.</p> <p>9 A. Okay. So I'm going to be pretty much in</p> <p>10 alignment with the statements -- the written</p> <p>11 testimony.</p> <p>12 And the first concern is in regards to</p> <p>13 the potential impact to property value. And one of</p> <p>14 the requests is that, you know, the Applicant make</p> <p>15 sure that there's no negative impact to adjacent</p> <p>16 property values. And we want the Applicants to</p> <p>17 provide relevant information and objective evidence</p> <p>18 from other low-income housing that they worked on</p> <p>19 and built.</p> <p>20 So that's item one. Any questions?</p> <p>21 HEARING EXAMINER ROBESON: No. Go ahead.</p> <p>22 Do you have any questions, Mr. Kline?</p> <p>23 MR. KLINE: I'll wait until it's all</p> <p>24 over.</p> <p>25 HEARING EXAMINER ROBESON: Okay.</p>

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3 (9 to 12)

<p>9</p> <p>1 MR. KLINE: Probably don't -- yeah.</p> <p>2 THE WITNESS: Okay. So then I proceed to</p> <p>3 the next -- or the following items and then hand it</p> <p>4 over back to you.</p> <p>5 So the second item was fencing, barriers</p> <p>6 to have no negative impact on our property and</p> <p>7 house.</p> <p>8 The third item was trees, and we want to</p> <p>9 be sure that they are placed in such -- and</p> <p>10 maintained in such way that -- to ensure that</p> <p>11 roots, branches, debris remain on their property at</p> <p>12 all times, and no damage to any part of our</p> <p>13 property.</p> <p>14 And, you know, as I mentioned further</p> <p>15 down, that -- and it is my humble opinion, that</p> <p>16 they should be moved away from, you know, what is</p> <p>17 shown on the drawings. The -- some of the other</p> <p>18 margins that they are shown in the drawings --</p> <p>19 BY HEARING EXAMINER ROBESON:</p> <p>20 Q. You're saying the trees?</p> <p>21 A. Yes.</p> <p>22 Q. The (Inaudible). Okay.</p> <p>23 A. The drawings show a very narrow sleeve of</p> <p>24 ground where they -- where they plan to put trees.</p> <p>25 And some of the prospectives show that they may</p>	<p>11</p> <p>1 belabor this.</p> <p>2 A. Okay. Next item is the waste</p> <p>3 disposal/Dumpster location. And, you know, once</p> <p>4 again, it is my humble opinion, that they should</p> <p>5 not place it, you know, right in front of our home,</p> <p>6 you know. And, essentially, my recommendation is,</p> <p>7 and expectation is that they move it towards</p> <p>8 Route 355. There is plenty of wooded area. It's</p> <p>9 much easier to remove the garbage from that</p> <p>10 location than, you know, to -- for -- for the</p> <p>11 dump -- for the trucks to travel all across the</p> <p>12 property to -- you know, pretty much to -- in front</p> <p>13 of our -- our home. And I know that they will</p> <p>14 likely make all kind of noises. There will be</p> <p>15 odors, potentially fluids and everything else</p> <p>16 happening. We really, really do not want that</p> <p>17 location to stay.</p> <p>18 HEARING EXAMINER ROBESON: Okay. Now, I</p> <p>19 have Exhibit 45, which is the landscape plan up.</p> <p>20 Is everyone able to see it?</p> <p>21 THE WITNESS: Not yet.</p> <p>22 MR. KLINE: Not here either.</p> <p>23 HEARING EXAMINER ROBESON: All right.</p> <p>24 Not now either?</p> <p>25 THE WITNESS: Nope.</p>
<p>10</p> <p>1 grow pretty tall, which also means that their roots</p> <p>2 and branches likely to extend into our property.</p> <p>3 And, you know, in case of storm, obviously, it may</p> <p>4 damage the home.</p> <p>5 There is -- there is plenty of space if</p> <p>6 they move -- just move it towards 350 -- Route 355,</p> <p>7 Frederick Road. I think that solves the problem.</p> <p>8 Q. You mean move the -- do you have video on</p> <p>9 your -- where you're calling from, Mr. Gothard?</p> <p>10 A. As I mentioned to you, ma'am, I</p> <p>11 disabled -- we disabled, you know, cameras from --</p> <p>12 Q. Okay. I didn't know if that meant you</p> <p>13 couldn't see, I was going to bring up an exhibit,</p> <p>14 but that's okay. Keep going.</p> <p>15 A. I can see what you are showing. I</p> <p>16 cannot -- I cannot enable my camera on short</p> <p>17 notice.</p> <p>18 Q. I see. No, that's fine. I was going to</p> <p>19 see -- hold on one second.</p> <p>20 MR. KLINE: Ms. Robeson, Exhibit 45 is</p> <p>21 the rendered site plan, which I think is a good</p> <p>22 exhibit for a lot of discussion.</p> <p>23 HEARING EXAMINER ROBESON: For some</p> <p>24 reason, okay, I am not able to --</p> <p>25 Q. Okay. Well, keep going. I don't want to</p>	<p>12</p> <p>1 BY HEARING EXAMINER ROBESON:</p> <p>2 Q. All right. Well, I'll work on that.</p> <p>3 Keep going.</p> <p>4 A. Okay. Next item, 5, the drain: Ensure</p> <p>5 that all drainage is away from -- from our</p> <p>6 property.</p> <p>7 And number 6, pest control: Ensure there</p> <p>8 are no pest or rodent infestation that migrate into</p> <p>9 adjacent properties.</p> <p>10 7, noise control: Ensure that there is</p> <p>11 no loud noise impacting the community.</p> <p>12 And, finally, 8: The building height</p> <p>13 should be reduced to blend in, you know, to -- you</p> <p>14 know, what the entire community heights is, not to</p> <p>15 stick out like -- like a tall building.</p> <p>16 And, you know, the final -- in closing,</p> <p>17 which we'd request that, you know, the Applicant</p> <p>18 not proceed with on-site activities until they</p> <p>19 address in writing and in documentation and</p> <p>20 drawings and the -- the updated plans should</p> <p>21 provide objective evidence that the testimony</p> <p>22 and -- and the documentation are allowed.</p> <p>23 I yield back to you.</p> <p>24 Q. Okay. Mr. Kline -- is that all you want</p> <p>25 to say at the moment?</p>

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4 (13 to 16)

<p>13</p> <p>1 A. Yes, ma'am.</p> <p>2 HEARING EXAMINER ROBESON: Okay. Do you</p> <p>3 have -- Mr. Kline, do you have any questions for</p> <p>4 Mr. Gothard, or would you prefer to address his</p> <p>5 concerns -- start giving your perspective of his</p> <p>6 concerns?</p> <p>7 MR. KLINE: Ms. Robeson, no, I don't have</p> <p>8 any questions of Mr. Gothard at this time. I</p> <p>9 appreciate your guidance on this. You saw my note</p> <p>10 about never having done this before in 46 years --</p> <p>11 HEARING EXAMINER ROBESON: Yeah.</p> <p>12 MR. KLINE: -- so I appreciate your</p> <p>13 leading us through this.</p> <p>14 And I think that what I would probably</p> <p>15 like to do is call witnesses to try and address</p> <p>16 what he has brought up in his comments. And then</p> <p>17 maybe have some kind of a dialogue or further</p> <p>18 discussion about it.</p> <p>19 HEARING EXAMINER ROBESON: That's fine.</p> <p>20 MR. KLINE: All right.</p> <p>21 HEARING EXAMINER ROBESON: Why don't you</p> <p>22 call your first witness.</p> <p>23 MR. KLINE: Well, that's what I -- that</p> <p>24 was going to be my next step. I actually</p> <p>25 anticipated starting with Mr. Wiencek, you</p>	<p>15</p> <p>1 BY MR. KLINE:</p> <p>2 Q. Mr. Wiencek, were you present when</p> <p>3 Mr. Gothard was speaking a few minutes ago?</p> <p>4 A. No. I only just joined, I'm sorry.</p> <p>5 Q. Okay, fine. Well, you do have a copy of</p> <p>6 his letter of the 18th of May, where he listed his</p> <p>7 concerns?</p> <p>8 A. Yes.</p> <p>9 Q. You've had a chance to review that?</p> <p>10 A. Yes.</p> <p>11 Q. With the Hearing Examiner's permission,</p> <p>12 I'll just ask the question --</p> <p>13 MR. KLINE: I'm sorry, you must be on</p> <p>14 mute, Ms. Robeson.</p> <p>15 HEARING EXAMINER ROBESON: I am.</p> <p>16 Let me just remind you, you're still</p> <p>17 under oath.</p> <p>18 THE WITNESS: Yes.</p> <p>19 HEARING EXAMINER ROBESON: Okay?</p> <p>20 Go ahead.</p> <p>21 MR. KLINE: Fine.</p> <p>22 BY MR. KLINE:</p> <p>23 Q. Mr. Wiencek, then, so let's just sort of</p> <p>24 start a platform so Mr. Gothard understands what</p> <p>25 your role is.</p>
<p>14</p> <p>1 remember, who is the architect, but it does not</p> <p>2 look to me like he has joined us yet.</p> <p>3 Michael, are you there?</p> <p>4 HEARING EXAMINER ROBESON: I do not see</p> <p>5 his --</p> <p>6 MR. KLINE: Right.</p> <p>7 HEARING EXAMINER ROBESON: -- name on</p> <p>8 here.</p> <p>9 MR. KLINE: We all know he's been</p> <p>10 prepped. We -- I talked to him yesterday.</p> <p>11 Mr. Edmondson, who's here with me, has talked to</p> <p>12 him. Could we have a couple of minutes just to try</p> <p>13 and call him and --</p> <p>14 HEARING EXAMINER ROBESON: Wait. Wait.</p> <p>15 I do see his -- I do see his name there now.</p> <p>16 MR. WIENCEK: Yeah, Michael Wiencek.</p> <p>17 MR. KLINE: Oh, good. Yeah. Okay. We</p> <p>18 just didn't -- we didn't -- you don't -- you</p> <p>19 haven't earned an icon yet on the screen, for some</p> <p>20 reason. There you go. Fine.</p> <p>21 Whereupon --</p> <p>22 MICHAEL WIENCEK, JR.,</p> <p>23 previously sworn, was recalled, and continued to</p> <p>24 testify as follows:</p> <p>25 EXAMINATION BY COUNSEL FOR THE APPLICANT</p>	<p>16</p> <p>1 Would you explain what -- what is your</p> <p>2 profession, and what has been your involvement in</p> <p>3 this project?</p> <p>4 A. So I'm an architect. I run a firm with</p> <p>5 offices in Montgomery County and in D.C. And we</p> <p>6 specialize in multifamily housing, both market rate</p> <p>7 and affordable, with a bent towards doing</p> <p>8 affordable and social justice-type projects.</p> <p>9 Now, what was the remainder of the</p> <p>10 question? I'm sorry.</p> <p>11 Q. No, that was -- that was an adequate</p> <p>12 answer.</p> <p>13 What I'd like to do is ask if the</p> <p>14 Hearing Examiner could bring up Exhibit 45 again,</p> <p>15 the rendered site plan.</p> <p>16 And ask you to just kind of give</p> <p>17 Mr. Gothard and the Hearing Examiner an overview of</p> <p>18 the organization of the site, the features of the</p> <p>19 property, and why the buildings and improvements</p> <p>20 are where they are located. And then we'll get</p> <p>21 into the individual factors themselves.</p> <p>22 A. Yeah.</p> <p>23 Q. So we all -- we all have Exhibit 45 in</p> <p>24 front of us right now. It's been blown up to catch</p> <p>25 the southern end of the property --</p>

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5 (17 to 20)

<p>17</p> <p>1 HEARING EXAMINER ROBESON: Here, I'll 2 take it back down. 3 MR. KLINE: Yeah. That'd be fine right 4 there. 5 Q. And so, Mr. Wiencek, when you were given 6 this project, would you just give us an overview of 7 the features of the property that you thought drove 8 the design and how you organized the improvements 9 on the property? 10 A. Yeah. So one of the big things that 11 drove it is the 125-foot setback that we have to 12 have along Frederick Road, Route 355. When we 13 first got involved in the project, no one knew that 14 there was going to be such a large dedication 15 required. And after long discussions with the 16 County, it became apparent they were going to, even 17 though, other properties along 355 haven't had to 18 respect that in the past. But the council has 19 stated that this needs to be done. And so that 20 became a driver for the design of this property. 21 Because, as you can see, Mr. Gothard, 22 the -- there's a big green space in front, and 23 that's an area that's -- to allow Route 355 to be 24 expanded in the future. But that pushed our 25 building, and even our parking, way back into the</p>	<p>19</p> <p>1 fire vehicles driving under a portion of the 2 building, in case there was a fire, and it could 3 endanger people. 4 So what we ultimately decided to do was 5 create this circulation of parking and drive around 6 the building. And, like I said, work closely with 7 the grades, because if you didn't watch out on the 8 site, we would have ended up with a huge retaining 9 wall along your side of the property, as well as 10 down at the south end by the two small houses that 11 are on 355. 12 And so, it creates sort of an undulating 13 effect. And, in fact, the top courtyard of our 14 building -- our building's created almost by two 15 separate wing elements. On the top, smaller 16 triangular courtyard is actually a story higher 17 than the larger, more open courtyard that -- that 18 addresses your property. So working this building 19 into the site was a really big challenge. But we 20 wanted to make sure that we respected your house 21 and the house behind us a lot. 22 And so one of the things that we were 23 able to do was push the lowest level, which is a 24 cellar -- which we'll get to when we get to the 25 plans -- into the ground about 4 feet. And,</p>
<p>18</p> <p>1 site. And so we had to figure out a way to make it 2 work. 3 And as I said at the last hearing, we've 4 looked at large number of schemes, more than normal 5 on a property like this, to try to figure out how 6 to best utilize this site, because it's got not 7 only that setback, which has some steep slopes down 8 to Route 355, but it also has a cross slope of-- 9 on it. So that when you start at the -- when you 10 drive into the parking lot and you start at the top 11 of the site, the plan north, that parking area is 12 about 12 feet higher than the parking that's down 13 at the bottom end of the site, by the two houses 14 that sit in front of you -- or sit behind you, 15 actually, on Route 355. 16 So what we had to do is figure out a way 17 to get fire circulation around a building that -- 18 that sits on this site. And so grading and how we 19 would meet the existing grades became very 20 important. 21 So we worked closely with Soltesz, the 22 civil engineer, and looked at ways to do that. We 23 looked at actually setting the building overtop of 24 the parking, but then the fire -- fire reviewers 25 came back and said that they did not want to have</p>	<p>20</p> <p>1 actually, when it -- when you look directly across 2 from your house at the -- our building, our 3 building's lowest level is actually about 6 and a 4 half feet below grade at that point. 5 And then when -- 6 Q. And, Mr. Wiencek, when you say that, are 7 you talking about what I'll call the northern wing 8 or the -- the larger southern wing? 9 A. The northern wing, the rear northern 10 wing. Right there, exactly. 11 Q. So there's how many floors exposed on 12 that side of the building, facing Mr. Gothard's 13 house? 14 A. Four and a half. 15 Q. Okay. Thank you. 16 A. And one of the things that we did, 17 actually, there, because we knew we were addressing 18 your -- a house over there, your house, you can see 19 on that plan -- and it'll be more apparent on my 20 plans -- but you can see the green roof, and if you 21 can move the cursor to that little white rectangle 22 that you just went over, right there in the corner. 23 That piece is only a story and a half tall. 24 And so what we did at this corner was, we 25 stepped the building both horizontally by shifting</p>

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6 (21 to 24)

<p>21</p> <p>1 the pieces of the wings, as you can see, so that 2 one piece -- one thinner piece sticks forward and 3 one piece sticks back. But then on the piece that 4 steps back, we actually dropped it and only did a 5 two-story element at that point. So that we -- 6 we're trying -- the idea is, we're trying to break 7 up the apparent mass. 8 The other reason that we put the -- the 9 buildings as we did, and -- and put the parking as 10 we did was, the way the grading works, our parking 11 is actually about -- I have it right here, 5 feet 12 below the first floor of your house. So what 13 happens is, at the parking area, we have a berm up 14 to your grade, and then the civil engineers put in 15 landscaping there and then -- to act as a screen, 16 which we'll get into through a section, in a 17 moment. But -- 18 Q. Mr. Wiencek, what you're referring to is 19 that green strip between the gray, which is our 20 parking lot, and the property line on the back of 21 Mr. Gothard's house, that will be berm and linear 22 separation? 23 A. Correct. And it's got three types of 24 planting; mountain laurels, arborvitae, and some 25 larches or something like that. We can look at the</p>	<p>23</p> <p>1 height. 2 And then with Mr. Gothard's side yard, 3 our building -- we tried to get the building as far 4 away as possible from his property. And so we're 5 about 80 feet away from his actual home. 6 And as I said, the building, then, is 7 modulated to step up. The tallest portion of the 8 building at that back corner is 50 feet, but the 9 shortest portion of the building over there is 10 44 feet. As you go upslope towards the Dumpster, 11 because there's the -- the driveway is sloping up 12 towards the Dumpster, the building comes up at a 13 grade. 14 So those were the biggest challenges. 15 And, you know, like I said, we tried -- my firm is 16 sort of known -- well, not sort of known, we're 17 known for really being detail-oriented and -- and 18 making our buildings work within the environment, 19 and meet the needs of both the client and the 20 residents who are going to use the building, but 21 respect all the neighbors. And so we really spent 22 a lot of time and tried to make sure we were going 23 to screen it. 24 So one of the things that, when we were 25 working with Soltesz, and we had them working on</p>
<p>22</p> <p>1 landscape plan. But -- 2 HEARING EXAMINER ROBESON: May I 3 interrupt? 4 THE WITNESS: Yes. 5 HEARING EXAMINER ROBESON: I didn't 6 hear -- can you hear me? 7 THE WITNESS: Yes. 8 MR. KLINE: Yes, ma'am. 9 HEARING EXAMINER ROBESON: How far below 10 the first floor of his house is the parking area? 11 Was it 4 feet? 12 THE WITNESS: It's -- it's 3 feet -- his 13 house is at about 438, and our parking adjacent to 14 his house is at 435. So there's a berm -- and, 15 actually, we have an exhibit which is a site 16 section, which is not in my set of drawings, it's 17 in the civil set of drawings, that actually does a 18 really good job. It takes a section through 19 Mr. Gothard's house, as well as our building. 20 One of the points I was trying to get to 21 was, we're actually 64 feet -- we set our building 22 64 feet away from the property line, where the side 23 yard setback here is 16 feet. And we set the 24 building and the parking down into the grade so 25 that we would, you know, give less of apparent</p>	<p>24</p> <p>1 that section, you know, we worked closely on having 2 the -- setting the elevation of our building and 3 setting the elevations of the parking so that, you 4 know, one of the big things that you don't want to 5 have happening is headlights coming up during the 6 night and disturbing a neighbor. And I think we 7 did a really good job at that. 8 And then the landscape architect really 9 made a lot of nice choices. If you look at their 10 plan, again, when we get to that, you'll see that 11 there's, actually nearest Mr. Gothard's house, the 12 arborvitae that are underplanted under the larger 13 deciduous trees really give a nice screening. And 14 then what we did by stepping the building away from 15 the parking in the way we did with those two jogs 16 in the end of our building, we've got redbuds and 17 low planting against the building. 18 And as I said at the last hearing, what 19 you'll end up seeing then is, you'll look through 20 the taller trees -- you probably won't really see 21 much through the arborvitae, but when you can see 22 it from, say, your front yard between some trees, 23 you'll then see the landscape piling up on 24 itself -- or on each other. And then you get this 25 nice layered effect of the redbuds behind the lower</p>

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7 (25 to 28)

<p>25</p> <p>1 laurels underneath of the -- the arborvitae and the 2 deciduous trees. 3 Q. Mr. Wiencek, going back to additional 4 text, because I think you've done a good job on the 5 height issue, and so I don't characterize the 6 statement, I'll just read it: The use of color 7 schemes to reduce the visual impact of a five-level 8 facility is created, but it doesn't resolve the 9 impact to the adjacent community. 10 Were there any other building 11 articulation features you wanted to point out to 12 talk about how you use, other than color? But then 13 also, describe how you use color to mitigate the 14 impact of the height of the building. 15 A. Yeah. Could we go to the renderings that 16 are -- 17 MR. KLINE: Ms. Robeson, I believe what 18 Mr. Wiencek would be talking about would be 19 Exhibits 51, and then probably 12, 13, 14, and 15, 20 the exterior elevations. 21 A. Actually, it's -- it's 18 and 19. 22 Q. Okay. 23 HEARING EXAMINER ROBESON: Okay. I 24 thought there was some on Exhibit -- okay. 25 There's -- this is Exhibit 51, which are revised</p>	<p>27</p> <p>1 But what we've done is use two tones of 2 brick and two tones of siding and two types of 3 siding, so -- to try to break the building up and 4 work with making it more vertical, facing 5 Route 355, and trying to use stepping materials -- 6 or stepping of the materials in the back side, 7 which we'll get to in a moment, to break down the 8 scale even more. So we wanted to present sort of a 9 more gateway-type scale along Route 355, and a more 10 residential scale at the rear. 11 So what we did was, here, you can see on 12 the front, we've got some red elements -- red-brick 13 elements, all the red is a red brick that go up, 14 and some go to the top and some step at various 15 heights to try to, again, break things apart. But 16 then other tower elements are done with a darker 17 gray tone of cementitious panels so that it's got 18 one -- a different type of texture, and it's 19 actually set 4 inches back from the face of the 20 brick. 21 Then on the lower elevation, directly 22 behind the column that's holding up the porte 23 cochère, you can see a rectangle of darker gray. 24 And actually, that same gray is another rectangle 25 to the left, past the tower next to the entrance,</p>
<p>26</p> <p>1 elevations. 2 THE WITNESS: Those are elevations, but 3 what we did last time was use the renderings to 4 actually show the materials, which -- just keep 5 going. Two more sheets. 6 HEARING EXAMINER ROBESON: Is this it 7 here? 8 THE WITNESS: Yeah. 9 So this is really the front of the 10 building, but it starts -- 11 BY MR. KLINE: 12 Q. Well -- and -- yeah, when you say, "the 13 front," you better probably say the upper -- give 14 us a perspective of both the upper and the lower 15 one. 16 A. Yeah. So the upper one is, as you drive 17 up Frederick Road and just as you get to the corner 18 of our property, you'd be looking up at the view 19 that you see in the upper rendering. And then as 20 you pass, and you can see that porte cochère, the 21 cover, drive-in entrance for the residents. 22 And then on the lower one, it's a similar 23 view, but more direct, as you drive past the 24 building, and you see, again, that -- the 25 porte-cochère element sticking out.</p>	<p>28</p> <p>1 those are gray panels. And, again, we wanted to -- 2 to start to break the scale of the building down, 3 using that. 4 And on the rest of the building 5 surrounding the gray brick panels, we have 6 horizontal cementitious lap siding, which is much 7 more residential and just has a nicer texture to 8 it. 9 So by using the -- the different colors 10 of brick and different colors of siding, but as 11 well as using the different textures of both, we 12 get -- we try to break the materials down a lot. 13 We -- or the scale down a lot. We also put a band 14 around the top here to sort of give a cap to it. 15 If you go to the next sheet, we can show 16 you a view that will actually be a very similar 17 view to what Mr. Gothard would see if the trees 18 weren't in the -- the new trees wouldn't be in the 19 way. 20 So the lower view is what you would 21 actually see from your backyard, Mr. Gothard. The 22 trees have been ghosted out completely, so you -- 23 but that -- that is our lower courtyard elevation. 24 And you can see how we've got a red-brick base, and 25 then at the corner on the left of the rear</p>

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8 (29 to 32)

<p>29</p> <p>1 elevation, we've got brick going -- gray brick 2 going up above that. And, again, beyond that and 3 at the very top, we have the horizontal lap siding. 4 On the -- 5 HEARING EXAMINER ROBESON: May I ask a 6 question? 7 THE WITNESS: Yes. 8 HEARING EXAMINER ROBESON: These -- these 9 are the ghosted-out trees here -- 10 THE WITNESS: Yeah. Correct. 11 HEARING EXAMINER ROBESON: -- where 12 the -- for the record, it's the gray -- dark -- 13 very light-gray areas. 14 Are the redbuds included in that 15 ghosting? 16 THE WITNESS: No. No. The ghosting 17 is -- was done more conceptually just to give an 18 idea that there -- that you'd be looking through 19 trees. If we showed all of them in ghosting, 20 you -- we're trying to show Park & Planning the 21 building more than the landscape through here. But 22 the landscape plan, I think, if we can go to that 23 next after this, we can talk about how this all 24 works. 25 You can see that, then, on the right-hand</p>	<p>31</p> <p>1 I hope that's helpful or discernible from 2 what I'm talking about. Could we go -- 3 BY MR. KLINE: 4 Q. I'm sorry, maybe I cut you off. Did you 5 want to add something other -- because I was going 6 to go to sort of a different section here, but if 7 you had something else to say, you finish it out. 8 A. Only if we wanted to go to sections in 9 the landscape plan, but -- 10 Q. I think I'll pass on that for right now. 11 A. Fine. 12 MR. KLINE: Ms. Robeson and Mr. Gothard, 13 I'm going to kind of change, go to a slightly 14 different subject, and I just wondered, do you want 15 this opportunity to ask any questions of 16 Mr. Wiencek now, or do you want to wait till he's 17 finished and reserve your questions until then? 18 HEARING EXAMINER ROBESON: Mr. Gothard, 19 do you have questions? 20 MR. GOTHARD: Yes. I will first say that 21 I appreciate Mr. Wiencek's expertise and 22 explanations; however, would you be kind to be 23 responsive in addressing the concerns raised in the 24 written testimony? 25 I understand that, you know, you are</p>
<p>30</p> <p>1 portion, you can see how the bottom of the -- the 2 gray works up around the bottom of that and -- and 3 reduces the apparent height of that. And then 4 we've got the red-brick base. But then the 5 red-brick base that's to the far right is that 6 one-and-a-half-story portion of the building. 7 So while it doesn't show well in this -- 8 we can show it better on an elevation, possibly. 9 That starts to break up the scale again, so that 10 we're trying to respect the scale of the 11 surrounding houses, even though I'm 80-some feet 12 away from them. 13 And when you have the redbuds sitting 14 against it and then the taller trees in the 15 foreground, looking at that -- that section that 16 Soltesz did will be helpful, but when you get the 17 tall trees in the foreground and then the colorful 18 trees in the background, you get this really nice 19 layering and the -- the tall trees being close to 20 you, actually will appear taller relative to the 21 building, and, in fact, will appear to be, when 22 you're standing on the ground, looking up through 23 them, will appear to be about the height of the 24 building. It will screen, basically, the whole 25 height of the building.</p>	<p>32</p> <p>1 proud of your work, but that doesn't resolve, you 2 know, building height problems, locations of the 3 Dumpster, the trees being located close to the 4 house and being as tall as they are, potentially, 5 in the case of a storm, damaging the house, et 6 cetera. So I would very much appreciate it if you 7 would be kind to address the written testimony 8 items. And once again, I do appreciate you being 9 proud of your work. 10 THE WITNESS: I appreciate it. Thank 11 you. 12 BY MR. KLINE: 13 Q. Mr. Wiencek, my suggestion is, we do have 14 the landscape architect. I'll -- I'll kind of 15 reserve the -- the questions on the landscaping for 16 him. Although, you may -- you may get to it. But 17 apropos of Mr. Gothard's suggestion, let me read a 18 sentence in Paragraph 8 of the letter of his 19 concerns, and have you try and focus on the two 20 elements in this. 21 So the sentence reads: This community, 22 meaning the neighborhood where Mr. Gothard lives, 23 should continue to have residential buildings of 24 similar nature and value, not tall, low-income 25 housing.</p>

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9 (33 to 36)

<p>33</p> <p>1 And in that, I read two things; one, can 2 you explain why you feel this building has been 3 made compatible with its surrounding buildings, and 4 then we'll go to the low-income aspect of it, 5 please. 6 A. Yeah. So the -- the use of the 7 materials -- the residential materials and the way 8 we've take -- have taken them and placed them on 9 the building to modulate the building and break up 10 the scale, is a way to pay deference and use the 11 same textures and materials that are found in the 12 neighborhood. 13 Mr. Gothard's house is a tannish brick, 14 and there's other houses in the neighborhood with 15 brick and siding on them. You know, we tried not 16 to make this look like a commercial building. We 17 wanted it to be -- feel like a residential 18 building, but because of -- one of the things that 19 people tend to feel will make a building look more 20 residential is to put a pitched roof on them. In 21 this case, all that would do would make the 22 building feel much taller. So we were really 23 trying to -- to keep the scale down. 24 As I said, the average height of a 25 building is 47 feet. The highest point near</p>	<p>35</p> <p>1 HEARING EXAMINER ROBESON: Okay. That -- 2 that's what I was thinking of. 3 THE WITNESS: No, that's the other one. 4 HEARING EXAMINER ROBESON: So -- 5 THE WITNESS: So that's behind us, where 6 we're actually -- they look up the hill at us, and 7 then the next section -- 8 HEARING EXAMINER ROBESON: Wait. I might 9 have to -- 10 MS. PRZYGOCKI: It's 23(a). 11 HEARING EXAMINER ROBESON: 23(a)? 12 MS. PRZYGOCKI: Yes. 13 THE WITNESS: Sorry. 14 HEARING EXAMINER ROBESON: Okay. Do 15 you -- do you have it up now? 16 MR. KLINE: Not yet. 17 HEARING EXAMINER ROBESON: How's that? 18 THE WITNESS: That's it. 19 So this shows on the right -- this is the 20 drawing by Soltesz. The right-hand side is 21 Mr. Gothard's house, with the two stories and then 22 the roof pitch shown on top. Then you can see how 23 you come to the property line, which is shown as a 24 vertical line. You see the taller trees, which the 25 landscape architect can talk about, the deciduous</p>
<p>34</p> <p>1 Mr. Gothard is 50 feet from grade. But by being 2 80 feet away from him, we really feel like the -- 3 the way we broke the scale down on the elevations 4 with the materials, does respond to it, because a 5 lot of this has to do with scale and not -- not 6 necessarily being a -- mimicking a single-family 7 home. You know -- 8 HEARING EXAMINER ROBESON: Mr. Wiencek, 9 I -- it's my recollection that there is somewhere 10 in the record a elevation that shows the height 11 compared to -- maybe it's not Mr. Gothard's 12 property, maybe it was -- I thought there was a 13 side elevation comparing the height of this part, 14 the -- I guess it would be the southern part of the 15 property. 16 Am I misremembering that? 17 THE WITNESS: No. It's -- it's in the 18 civil drawings. It's a section that shows it very 19 nicely. I had it up here. 20 MR. KLINE: Ms. Robeson, Exhibit 23(a) 21 and (b) are cross-sections through the project -- 22 THE WITNESS: Yeah -- 23 MR. KLINE: -- and -- 24 THE WITNESS: And -- and it's taken right 25 through Mr. Gothard's home.</p>	<p>36</p> <p>1 trees with the arborvitae below it, which is the 2 conical trees below, and then you'll see the 3 screening. 4 So you see how the -- the way we work 5 this is, even standing in Mr. Gothard's yard, he 6 won't be looking at the cars. He'll be looking 7 through landscaping across the top and they'll be 8 screened by that berm. 9 And then the effective height of the 10 building relative to his is kept, you know, in 11 keeping -- frankly, one of the reasons I kept it, 12 or we kept it so far away, the -- you know, the 13 80 feet that we've got away, is to make sure that 14 we didn't have a scale issue. 15 And then -- so it's a combination of 16 the -- the use of the materials to create blocks 17 that break the building down so that it appears 18 that it's made out of modules that, you know, are 19 more residential in scale. But, also, we -- we did 20 rely a lot here on how the landscaping will make 21 this look. The building will become just a 22 backdrop in the landscaping. 23 And that was sort of the concept is, you 24 know, we -- the building shape was defined because 25 of the way we had to create landscaping around it,</p>

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10 (37 to 40)

<p>37</p> <p>1 to make sure that we didn't overpower anybody near 2 us or -- or cause them to feel like there was a 3 behemoth sitting behind them. This is just a 4 four-story wood construction building. And as you 5 can see, the type of the roofs on residential homes 6 make the homes really appear much larger and 7 volumetric than -- than -- than only a, you know, a 8 two-story look. So this gives you a good idea of 9 the scale of our building to Mr. Gothard's. 10 HEARING EXAMINER ROBESON: Do you know 11 how -- do you know how far Mr. Gothard's house is 12 from the property line? 13 THE WITNESS: From scaling it on Jane's 14 drawing -- and, Jane, you can comment on this. 15 MR. KLINE: 16. 16 THE WITNESS: I believe it's 16 feet. 17 HEARING EXAMINER ROBESON: Okay. 18 THE WITNESS: And then we have a 16-foot 19 setback requirement. And that's where the parking 20 starts. But we're actually 6 -- from the property 21 line to the closest point, and it actually is just 22 a point on the building, we're 64 feet from the 23 property line. And so that's where I get the 24 64 feet, plus his 16-foot side yard gives us the 25 80-foot distance.</p>	<p>39</p> <p>1 second half of the sentence I read to you a minute 2 ago, and I'll lead off by saying, is there any 3 feature of the building that a person riding up 4 355, or living next to it, would read it as being a 5 building populated by people qualified for 6 low-income status? 7 A. No. So as I said, we do -- I've done 8 over 90,000 units of multifamily housing. A good 9 70 percent of that has been affordable or mixed 10 income. 11 And one of the things that we really 12 pride ourselves, we actually were -- our firm was 13 instrumental in changing what affordable housing 14 looks like in the Washington metropolitan area. 15 And I've been in business now for 34 years, doing 16 this. And what -- one of the things that we did 17 was made affordable housing -- you know, you can 18 drive through and see 1970s' buildings that you can 19 say, ah, that's affordable housing. Well, that 20 doesn't fly today, at least in the way we approach 21 buildings, and most architects today. 22 When you drive by this, you're going to 23 think that this is a high-end building and we want 24 you -- we believe that most people look at it and 25 say, jeez, that's a great location, I'd like to</p>
<p>38</p> <p>1 I appreciate the comment that you made, 2 Mr. Gothard, about the -- the larger landscaping 3 there. And then we'll let the landscape architect 4 talk about it, but we put a lot of thought into 5 making it so that you would be looking up through 6 it and -- and weren't intending to over -- you 7 know, to cause your property any damage. I don't 8 think it would, but we were trying to use the 9 landscaping as sort of a palette that also softens 10 the building. And that's done a lot. You know, 11 landscape -- people don't give landscaping enough 12 credit relative to architecture. 13 In my mind, we were giving you a very 14 nicely landscaped new side yard, but that's just -- 15 HEARING EXAMINER ROBESON: Well, I guess 16 the question is, and I don't think it's yours to 17 opine, his question is, what happens with the part 18 of the tree that's crossing over the line? And 19 that may not be -- 20 MR. KLINE: Mr. Park and I have talked 21 about, and he will be prepared to address that in 22 his testimony. He's the landscape architect. 23 HEARING EXAMINER ROBESON: Okay. 24 BY MR. KLINE: 25 Q. Mr. Wiencek, if I could take you to the</p>	<p>40</p> <p>1 live there. And that's happened so many times. I 2 think Jim can talk to this too. People will come 3 to the buildings we build and they'll find out, 4 well, they actually have to -- I have income to 5 qualify, but they absolutely want to live in these 6 buildings. 7 Also, the funding instruments that are 8 used to finance these through the state, the state 9 has very high standards that you need to meet. If 10 this was a market -- straight market-rate building, 11 I would not have as much brick on it as I do today 12 because of the standards that we have to meet. To 13 qualify for the tax credits, you've got to really 14 not only create units that are larger than most 15 market-rate units, but you've got to make them 16 attractive because the state -- I actually helped 17 the state write the standards, a number of years 18 ago, to make sure that housing that was for 19 affordable residents or for disadvantaged -- 20 economically disadvantaged residents didn't have an 21 appearance or a connotation. And, remember, this 22 is affordable. 23 HEARING EXAMINER ROBESON: Appearance or 24 connotation of what? 25 THE WITNESS: I'm sorry?</p>

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11 (41 to 44)

<p style="text-align: right;">41</p> <p>1 HEARING EXAMINER ROBESON: What is the 2 appearance or connotation you were trying to avoid? 3 THE WITNESS: There's a lot of buildings, 4 say, in old Rockville, not out this way because 5 affordable housing wasn't out in Germantown in the 6 old days, but that -- affordable housing used to be 7 done as big, blank boxes. You might see a little 8 bit -- or either ball brick in the early '50s and 9 '60s, or you'd see a little bit of brick at the 10 base and then vinyl siding at the top. And they 11 just -- they were done as what I call, throwaway 12 projects, and today, architecture matters. 13 Again, you know, I'm not trying to toot 14 our horn, but we really work hard to make these 15 buildings look like a great piece of architecture 16 fit into the environment. We've got 100 -- or over 17 150 design awards, of which, again, 70 percent of 18 them are for affordable housing. And it's -- 19 they're national, some of them are international 20 design awards, and a lot of them are state and the 21 local AIA awards. 22 And so I mentioned before, I don't -- it 23 may not mean much to Mr. Gothard, but I became a 24 fellow of the AIA, which is like 1 percent of the 25 architects in the country become fellows, but the</p>	<p style="text-align: right;">43</p> <p>1 I can give an example. In Reston, 2 Virginia, we did a property surrounded by very 3 high-end homes and town homes along the golf -- one 4 of the golf courses. And when we got done, nobody 5 knew it was affordable housing. And, actually, the 6 high-end communities around us hired us to come in 7 and redo their properties because they thought that 8 our property looked better than theirs. 9 And then we did several other projects 10 around the area where the new buildings that we do 11 bought more investment into the surrounding 12 community because it set a higher standard for 13 people to -- to meet and feel comfortable. 14 MR. KLINE: Mr. Gothard, I'm going to 15 move on from question number 8, so if you had any 16 questions about the testimony from Mr. Wiencek on 17 question number 8, feel free to ask him now. 18 MR. GOTHARD: Well, I listened carefully, 19 Mr. Wiencek, and I appreciate the explanations. 20 I -- you know, obviously, my testimony stands as -- 21 as written of the, obviously, the concern. 22 HEARING EXAMINER ROBESON: All right. 23 MR. KLINE: Thank you. Okay. So I'll 24 just keep going through some of the other 25 questions, if that's all right, Ms. Robeson.</p>
<p style="text-align: right;">42</p> <p>1 reason I became a fellow was that we had changed 2 the face of affordable housing. We had made 3 affordable housing look and feel just as nice as 4 any market-rate project. 5 My -- my concept is that if I -- if I was 6 to be driving down high-end Massachusetts Avenue in 7 D.C., our buildings should be able to fit there and 8 feel in place. And then when I'm in a neighborhood 9 like this, I want to make them attractive so people 10 who look at them and see them through the landscape 11 and see them at night with the way we do our site 12 laying, it's an attractive addition to the 13 neighborhood that -- that enhances the neighborhood 14 and enhances everybody's experience. 15 BY MR. KLINE: 16 Q. Mr. Wiencek, based on your substantial 17 experience and your portfolio of designing and 18 constructing affordable housing, are you aware of 19 any instance where one of your buildings with 20 low-income housing in it had a negative or 21 diminution in value of surrounding properties? 22 A. No, not actually. You know, I've done a 23 number of properties, actually, where we were the 24 catalyst for improvement in the remainder of the 25 neighborhood.</p>	<p style="text-align: right;">44</p> <p>1 HEARING EXAMINER ROBESON: That's -- 2 that's -- 3 MR. KLINE: Sure. 4 HEARING EXAMINER ROBESON: -- what is a 5 good idea. 6 MR. KLINE: Very good. 7 BY MR. KLINE: 8 Q. So, Mr. Wiencek, the next -- or actually, 9 the preceding question on Mr. Gothard's memo was 10 number 7, dealing with noise control. And since 11 you apparently have quite a background in 12 developing multifamily, how -- do you feel that 13 this project -- well, what measures have been taken 14 to reduce noise emanating from the property, and 15 would there be much in a project of this nature, in 16 any event? 17 A. You know -- 18 HEARING EXAMINER ROBESON: Start with -- 19 can you start with how much noise he's going to 20 experience? 21 MR. KLINE: Sure. Yeah. 22 HEARING EXAMINER ROBESON: And -- and, 23 also, whether you can move that -- you know, 24 whether it's possible to move the Dumpster, say, 25 to -- let's see if I'm sharing -- I don't think I</p>

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12 (45 to 48)

<p style="text-align: right;">45</p> <p>1 am sharing, hold on -- about moving the Dumpster 2 somewhere, for instance, over here, closer to 3 this -- I think this is a club on the northern side 4 of the property? I know I threw you a loop on that 5 one, but it's a thought. 6 A. I think I'll address -- 7 Q. Break it down -- let's break it down and 8 separate it out. 9 So in the -- what is the noise that is 10 typically generated from a project with 111 11 residential units of this size? 12 A. You know, very, very quiet, from a use 13 standpoint. Remember, this is 62 and older, senior 14 residents. It tends to be a lot of single women 15 because women outlast men. And we have about 12 or 16 12 1/2 percent of two-bedroom units. But even 17 they, for the most part, turn out to be either a 18 healthcare worker living with a female resident 19 or -- or two singles living in the same unit. 20 We have, you know, outdoor spaces, but 21 again, we don't have kids and -- and rowdy 22 residents. We've got -- 23 HEARING EXAMINER ROBESON: You would have 24 a generator, correct? And you do have the truck 25 that empties the Dumpster, correct?</p>	<p style="text-align: right;">47</p> <p>1 Q. By that, you mean pickups? 2 A. Pickups, I'm sorry, yes. 3 And you actually, you know, for various 4 reasons, for odor and vermin and such, you'd want 5 to make sure that it's being pulled often enough, 6 so that you don't overflow it. Or another way to 7 reduce the number of pulls, is to make this a 8 massive enclosure that has, you know, lots of 9 Dumpsters in it. That means when they do pick up 10 there, they're much longer and it just causes more 11 problems. 12 So we've got a two-Dumpster pad located 13 there right now. And on other properties, what's 14 been done is asked that the pickups be done at 15 certain hours, you know, say, after 9:00 in the 16 morning and before 7:00 in the evening and, you 17 know, it depends on various ordinances and 18 requests. But that -- that can easily be done. 19 One of the things that was done here -- 20 and I'll let Soltesz talk more about the exact 21 location and if it can be moved, because there's a 22 lot to do with stormwater management and grading 23 that -- that made this a reasonable spot to put it. 24 I'm not saying the only spot, but is that we held 25 it up near that big tops of trees that is going to</p>
<p style="text-align: right;">46</p> <p>1 THE WITNESS: Yeah. So we have the 2 potential of having a generator, and that's being 3 investigated now. The generator, we placed as far 4 as -- away from any residential use as possible. 5 It's actually underground, inside the building, to 6 the left of the entry on the plan that you're 7 looking at right now. So that little angular -- 8 HEARING EXAMINER ROBESON: So it's -- 9 A. A little lower. A little further south. 10 Right there. 11 So it's below grade in the basement of 12 our building there, and the exhaust comes out at 13 the roof, and so the sound -- and it goes through 14 mufflers, et cetera, so the sound and any odor is 15 dissipated. So it's -- like I said, it's -- we 16 held it close to 355 and away from residential. 17 I can speak to the -- 18 HEARING EXAMINER ROBESON: And how about 19 the Dumpster? 20 THE WITNESS: The Dumpster, you know, 21 what we've done -- and I know Angie has done this 22 before -- this -- this will probably have around 23 three pulls a week, so the dump -- 24 Q. You mean pickups? 25 A. I'm sorry?</p>	<p style="text-align: right;">48</p> <p>1 stay along -- shoot, the name of the street -- 2 Wheat -- Wheatfield. And so we were trying to hold 3 it as far away from Mr. Gothard's house and the 4 other property behind us to -- to have as little 5 impact as possible. 6 The other thing is, we do have a rooftop 7 terrace. Again, we're talking about seniors, it's 8 not like there's blaring music. 9 On the lower terrace, near you, we have a 10 picnic area with some grills. You know, there will 11 be families visiting, but at a senior housing 12 project of any type, you really get just very 13 little noise coming from them. In fact, there's a 14 nice -- the other nice thing is, cars tend to be 15 parked a lot more often and not moved as often as 16 in a family. People aren't going to work every 17 morning, so you don't have cars starting every 18 morning and moving them around. So there's just 19 fewer trips generated and fewer -- less noise 20 generated by the cars as well. 21 Q. We'll -- we'll have Ms. Przygocki, with 22 Soltesz, also talk about the location of the 23 Dumpsters and its operations. 24 Continuing on, paragraph number 6 deals 25 with pest control. Based on your experience in</p>

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13 (49 to 52)

<p style="text-align: right;">49</p> <p>1 designing units of this type, what programs are 2 implemented to ensure that there will be no pests 3 brought into the neighborhood or be bothersome to 4 the surrounding properties? 5 A. So even during construction of the 6 documents and the contract that the owner has with 7 the contractor, requires that there be pest control 8 throughout the project to make sure that -- that 9 there isn't a problem. The way materials are 10 stored on site, you know, needs to be taken into 11 account a lot, to make sure that they don't become 12 little habitats, and contractors know that. And 13 it's written into the contract, so it's 14 enforceable. 15 And then once the building is up, just 16 before it's turned over, the contractor's required 17 to do a full extermination and review of the 18 building to make -- and -- and the site, to make 19 sure that there are no pests. The owners, 20 including E&G, all have pest control services 21 coming through units all the time to make sure that 22 there isn't a problem in any of the buildings and 23 in the site. 24 And one of the things, you know, the 25 reason I'm trying to keep to the two Dumpsters and</p>	<p style="text-align: right;">51</p> <p>1 it's going to be flowing down the road, and 2 Mr. Gothard's property is up a 3-foot berm from us, 3 so in -- the next -- the one before this -- if we'd 4 end up having to have a flood of 4 feet, before we 5 get any drainage going over into his property. 6 MR. KLINE: Mr. Robeson, I don't have any 7 other questions to ask of Mr. Wiencek. However, 8 Mr. Gothard may feel that some of the answers don't 9 hit all the questions. We do have a witness for 10 all the other questions he has on his list, but if 11 he has any questions of Mr. Wiencek, he's welcome 12 to ask them now. 13 HEARING EXAMINER ROBESON: Okay. 14 Mr. Gothard, do you have any questions of 15 Mr. Wiencek? 16 MR. GOTHARD: I think it's more of a 17 statement. As I mentioned in the written 18 testimony, the drainage cannot say what it is, for 19 the reasons I mentioned. 20 We also discussed noise and the three 21 times pickup, at 9:00 a.m. or after. I can tell 22 you that my wife and I, we are working on opposite 23 shifts. My wife works 12-hour night shift as a 24 charge nurse at hospitals, the last thing we need 25 is -- is noise.</p>
<p style="text-align: right;">50</p> <p>1 the relatively small Dumpsters is, the residents, 2 in this case, are going to be taking their trash 3 out to the Dumpster, and they will have -- they 4 won't be able to open the covers, that only opens 5 when the truck picks it up. And there's a side 6 door that swings open easily for a senior. We have 7 to use a certain spring tension on those, so that 8 they can drop their trash in and then it gets 9 immediately closed. So that keeps smells and 10 vermin and pests out of -- out of that area. 11 Although, just as you probably have today in the 12 woods, you know, there's animals that are in the 13 woods. But we're -- there's extermination and 14 humane trapping, when something like that comes 15 along. 16 Q. And how -- the last question I wanted to 17 ask you is, on paragraph number 5, which is titled, 18 Drainage, and I know you've done some studies in 19 looking and everything about -- but, essentially, 20 why would our stormwater management program avoid 21 having -- causing any problems for Mr. Gothard? 22 A. As you saw in that site section, the -- 23 the way the drainage is going to happen through the 24 site, it's either going to be picked up in 25 landscaped areas by storm drainage structures, or</p>	<p style="text-align: right;">52</p> <p>1 And, you know, odors and everything else 2 from the front of the house because, you know, that 3 Dumpster is just in front of the house, a little 4 bit to the left. 5 MR. KLINE: And -- 6 MR. GOTHARD: My suggestion -- my 7 suggestion is to do -- you know, I basically 8 second -- Ms. Robeson's has the point, when we 9 discussed the site, to move it in the opposite 10 corner of the property, towards 355. It fits 11 nicely in the wooded area. It is very easy to 12 remove by -- by the Dumpster truck. 13 MR. KLINE: Mr. Gothard, let me say this. 14 Had we spoken to you six months ago, when we first 15 wrote you and you told us that, we wouldn't be 16 having this conversation today about the -- the 17 Dumpster. There are reasons why it is there and 18 it's the most logical place, and Ms. Przygocki will 19 explain to you why it's there. 20 We normally would probably have been 21 willing to remove it, but I'm really reluctant to 22 do that at this point in time in the process 23 because what happens is, we have to amend the 24 application, Ms. Robeson has to send it out to 25 Park & Planning to look at, and it delays the</p>

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14 (53 to 56)

<p>53</p> <p>1 process of the application. So I'd like you to 2 hear why we think it can be done there and not have 3 any adverse effect on you, before we make final 4 conclusion on that.</p> <p>5 Normally, I probably would have been 6 willing to negotiate that, but it's very late in 7 the process, and we're not sure why we're hearing 8 this now, instead of months ago, when you first 9 heard about it -- or from -- heard from us.</p> <p>10 But let me go back to something you said. 11 You saw the cross-section, your property is going 12 to have a 5-foot berm between it and the 13 development, how is it that water is going to get 14 onto your property?</p> <p>15 MR. GOTHARD: I -- you know, I'm not 16 going to continue on discussing that part because I 17 think the section clarified that part. As I 18 mentioned, the fact that the Dumpster is currently 19 shown in front and to the left of our home, and it 20 would create noise every time it is removed -- you 21 know, the trash is removed. We -- we cannot go 22 along with that.</p> <p>23 I mentioned that my wife works 12-hour 24 night shifts at the hospital. We just cannot have 25 that. And we definitely don't want the odor and</p>	<p>55</p> <p>1 any question for Mr. Wiencek. 2 The second thing that might be addressed 3 by the experts, is the fact that the trees are tall 4 and extend into our property. And, you know, 5 storms -- I would take that -- I will say that have 6 a good chance to, let's say, result in damage to 7 our home.</p> <p>8 HEARING EXAMINER ROBESON: Okay. 9 Mr. Kline, do you have a landscape 10 architect that's going to testify to that?</p> <p>11 MR. KLINE: Yes, ma'am, we do and -- 12 HEARING EXAMINER ROBESON: Okay. If you 13 can -- Mr. Gothard, we're going to get to that one 14 with a different expert, but we will get to that 15 one.</p> <p>16 MR. GOTHARD: Thank you. 17 HEARING EXAMINER ROBESON: Okay. Let's 18 go forward with the Dumpster -- or with 19 Ms. Przygocki. 20 Whereupon -- 21 JANE PRZYGOCKI, 22 previously sworn, was recalled, and continued to 23 testify as follows: 24 EXAMINATION BY COUNSEL FOR THE APPLICANT 25 BY MR. KLINE:</p>
<p>54</p> <p>1 everything else that comes with Dumpsters. You 2 know, there's a much better location on the site. 3 I don't believe that, you know, the change to the 4 application is very significant magnitude with 5 regards to the Dumpster.</p> <p>6 MR. KLINE: Well, Mr. Gothard, I 7 understand your answer, and thank you for 8 correcting me on the -- the drainage issue.</p> <p>9 Ms. Robeson, maybe we can use this as an 10 opportunity to try and come up with something that 11 works.</p> <p>12 Now, could I kind of finish with 13 Mr. Wiencek -- I had no further questions, and 14 bring on Ms. Przygocki for a limited area, but 15 primarily, to talk about the Dumpster and why 16 Soltesz thought that was the optimum location and 17 let's see if that's correct.</p> <p>18 Mr. Wiencek, do you agree? 19 HEARING EXAMINER ROBESON: Mr. Wiencek -- 20 MR. GOTHARD: If I may? 21 HEARING EXAMINER ROBESON: -- you may be 22 excused. 23 Yes? 24 MR. GOTHARD: Ms. Robeson, just one more 25 thing because Mr. Kline was saying that if I have</p>	<p>56</p> <p>1 Q. Jane Przygocki, would you please 2 introduce yourself to Mr. Gothard. 3 A. Hello, Mr. Gothard. I'm Jane Przygocki. 4 I am a land planner with Soltesz, and project 5 manager, and -- and largely responsible for a lot 6 of the drawings and overseeing the production of 7 the drawings here.</p> <p>8 HEARING EXAMINER ROBESON: And, 9 Ms. Przygocki, you're still under oath. 10 THE WITNESS: Yes. 11 HEARING EXAMINER ROBESON: Okay. Go 12 ahead.</p> <p>13 Q. So two questions, Ms. Przygocki, and 14 let's get to one that's really the most critical 15 one right now.</p> <p>16 Why did Soltesz determine that the 17 location shown for the Dumpster was the optimum 18 location, both from our point of view, and the 19 impact on the surrounding neighborhood?</p> <p>20 A. Well, there were a lot of factors that 21 went into that decision. They -- one thing that 22 we -- as -- as Mr. Wiencek mentioned, we are trying 23 to be sensitive to all of the neighbors, and 24 pulling the building away from the neighbors has 25 less of an impact on the neighbors, as does the</p>

<p>57</p> <p>1 building, if it's close to the -- the neighbors. 2 So we put the parking around the perimeter and then 3 provided landscaping to screen, not only the 4 parking, but the building. 5 So the area remaining, after the 6 significant dedication that is required along 355, 7 is what you see inside of the -- basically, where 8 you see the first row of trees that is along 355, 9 along that service drive, so we only had from there 10 back to work with. 11 So now, for stormwater management, we -- 12 as is required by stormwater management 13 regulations, there's -- every 20,000 square feet of 14 a site has to be treated and -- for the amount of 15 runoff, as well as the quality of the runoff. 16 So there's no more big stormwater 17 management ponds in -- in the county anymore, they 18 don't do that. You have to have small facilities 19 that treat the entire site. And then after -- 20 after all of the facilities are in place and all of 21 the calculations have been done, that site -- the 22 runoff from that site is as though it was woods in 23 good condition. 24 So any runoff to any of the adjacent 25 neighbors, whether it be Mr. Gothard or to the</p>	<p>59</p> <p>1 put it at the north corner, left of the building, 2 it could not be put there because there is a 3 stormwater facility there. And, also, that grade, 4 it goes down considerably, as you noticed in the 5 other cross-section, the 23(b), towards that 6 property. We wanted the Dumpster to be as far from 7 any house as possible, and that's sort of the 8 farthest place that we could -- 9 HEARING EXAMINER ROBESON: How far -- 10 yeah, how far is it from Mr. Gothard's house? 11 THE WITNESS: The Dumpster is actually 12 about 70 feet away, and it is surrounded by a wood 13 fence, 6-foot wood fence, so you would not see it. 14 And part of the reason it's positioned the way it 15 is, is the doors to the fencing open towards the, 16 would be the western side of the site, in other 17 words, away from Mr. Gothard's property. So that 18 when -- even when they open the doors, he won't be 19 able to see in because it's on the opposite side. 20 So none of that will be visible. 21 HEARING EXAMINER ROBESON: I don't think 22 it's the doors that he's concerned about. I think 23 it's the sound. 24 THE WITNESS: So -- right. 25 MR. GOTHARD: It's the -- the location</p>
<p>58</p> <p>1 other adjacent neighbors, will be no more than 2 woods in good condition. 3 So now, that being said, because we do 4 have to treat them in -- at every 20,000 square 5 feet, there are a number of facilities around the 6 site. 7 And maybe if we could go to the site 8 plan, which is Exhibit -- 9 Q. Hey, Jane. 10 A. Yes. 11 Q. Are we talk -- are you leading up to the 12 Dumpster? Because I think I'd like to dispose of 13 that issue first. 14 A. Well, I -- yes, I am leading there. I'm 15 going there -- 16 Q. Okay. 17 A. -- believe it or not. 18 Q. Okay. 19 A. So -- actually, so if you look at the 20 site plan, there were a number of the open spaces 21 that were remaining after meeting a lot of the 22 other setback requirements for both building and 23 parking. We're -- we're in the corners, one of 24 them being where the Dumpster is now. 25 The -- the suggestion to, for instance,</p>	<p>60</p> <p>1 and the fact that this is a Dumpster in front and a 2 little bit left of our house, with removals that 3 occur at, you know, especially when my wife comes 4 from 12-hour shift at the hospital, and -- and, you 5 know, this trash is removed. 6 Ms. Robeson Hannan mentioned -- you know, 7 pointed before to the opposite corner on the site. 8 Not -- not the corner that -- where you have 9 drainage, the opposite corner of the site, where 10 it's much easier to remove. No, it's in that 11 larger wooded area, farther down, or if you be kind 12 to point, farther to the left. 13 Yes. Yes. 14 THE WITNESS: Right. 15 MR. GOTHARD: That area or across the 16 driveway are -- you know, there, it's much easier 17 to remove and it's wooded area. It blend -- it can 18 made -- be made to blend in. That solves the 19 entire problem with absolutely minimum change to 20 the drawings. 21 THE WITNESS: Well, if you were to come 22 in with a truck, and be -- it would be a very tight 23 turn to make that as a left turn and to be emptying 24 the trash, you don't really have room. You would 25 have to go in the opposite direction and I</p>

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16 (61 to 64)

<p>61</p> <p>1 suppose --</p> <p>2 HEARING EXAMINER ROBESON: What about</p> <p>3 here?</p> <p>4 THE WITNESS: Pardon me?</p> <p>5 HEARING EXAMINER ROBESON: What about</p> <p>6 midpoint, along that northern, plan north property</p> <p>7 line that shows the three, I guess they're rosebud</p> <p>8 trees?</p> <p>9 THE WITNESS: Right. Well, directly</p> <p>10 across from that is a loading area in which there</p> <p>11 would be delivery trucks that pull off in that</p> <p>12 indentation that you see there. And so that would</p> <p>13 be a conflicting movement with the loading area.</p> <p>14 HEARING EXAMINER ROBESON: Well, the</p> <p>15 loading area is right in, right out, so to speak,</p> <p>16 right?</p> <p>17 THE WITNESS: Correct. Right -- no, it's</p> <p>18 just -- it's just --</p> <p>19 HEARING EXAMINER ROBESON: I guess --</p> <p>20 THE WITNESS: It's just a pull-off. It's</p> <p>21 just a pull-off.</p> <p>22 HEARING EXAMINER ROBESON: Yes.</p> <p>23 THE WITNESS: Okay.</p> <p>24 HEARING EXAMINER ROBESON: So I guess</p> <p>25 I'm -- let me tell you my concern.</p>	<p>63</p> <p>1 HEARING EXAMINER ROBESON: How much lower</p> <p>2 is it?</p> <p>3 THE WITNESS: About 2 feet.</p> <p>4 HEARING EXAMINER ROBESON: How much, did</p> <p>5 you say, lower?</p> <p>6 THE WITNESS: 2 feet.</p> <p>7 HEARING EXAMINER ROBESON: I couldn't --</p> <p>8 10 feet?</p> <p>9 MR. KLINE: 2.</p> <p>10 THE WITNESS: 2 feet. 2.</p> <p>11 MR. KLINE: 2.</p> <p>12 THE WITNESS: T-w-o.</p> <p>13 HEARING EXAMINER ROBESON: 2 feet.</p> <p>14 THE WITNESS: Right. The site goes up</p> <p>15 from the south to the north. So next to</p> <p>16 Mr. Gothard's house, it's about 5 -- the parking is</p> <p>17 about 5 feet lower, and farther down, it's even</p> <p>18 lower. It's -- we're talking 432 or, you know,</p> <p>19 whereas up at the top, it's about 436. But it</p> <p>20 still is lower than his property and then it's</p> <p>21 surrounded by a 6-foot wood fence. And then it's</p> <p>22 also surrounded by trees, shrubs, and not only</p> <p>23 deciduous trees, but evergreen trees to screen the</p> <p>24 sight and sound of the Dumpster area.</p> <p>25 MR. KLINE: And the berm.</p>
<p>62</p> <p>1 When I originally looked at this, I did</p> <p>2 not realize that Mr. Gothard's house -- I did not</p> <p>3 realize that this was in the, basically, the front</p> <p>4 yard of his house.</p> <p>5 THE WITNESS: Right.</p> <p>6 HEARING EXAMINER ROBESON: I mean, it's</p> <p>7 not in the front yard, but it faces the front yard.</p> <p>8 I -- and, you know, maybe I should have -- I</p> <p>9 probably should have seen the driveway there</p> <p>10 because that would have told me, but it didn't --</p> <p>11 it didn't cause --</p> <p>12 MR. KLINE: Well, we -- Ms. Robeson --</p> <p>13 THE WITNESS: It basically --</p> <p>14 MR. KLINE: -- we -- Jane.</p> <p>15 Ms. Robeson, we understand your point, it</p> <p>16 is adjacent to the front yard. But here -- we were</p> <p>17 sort of muting --</p> <p>18 BY MR. KLINE:</p> <p>19 Q. Jane, explain, what is the visibility of</p> <p>20 that feature from the front yard of Mr. Gothard's</p> <p>21 house?</p> <p>22 A. So the Dumpster is actually several feet</p> <p>23 lower, a minimum of, at least, 2 feet lower than</p> <p>24 the property on -- than Mr. Gothard's property.</p> <p>25 Then it is surrounded by a 6-foot wood fence.</p>	<p>64</p> <p>1 HEARING EXAMINER ROBESON: Now, what</p> <p>2 would -- what would be the issue of moving it --</p> <p>3 aside from, I agree with Mr. Kline, it's late in</p> <p>4 the process, but it is the --</p> <p>5 MR. KLINE: Uh, yeah.</p> <p>6 HEARING EXAMINER ROBESON: -- public</p> <p>7 hearing.</p> <p>8 Who said that?</p> <p>9 But it is --</p> <p>10 MR. KLINE: We're just --</p> <p>11 HEARING EXAMINER ROBESON: -- the public</p> <p>12 hearing, and this is the kind of thing we do look</p> <p>13 at at the public hearing.</p> <p>14 So tell me why you couldn't put it up</p> <p>15 along this -- this edge.</p> <p>16 THE WITNESS: Well, it -- there is about</p> <p>17 16 feet of depth there.</p> <p>18 Let's see.</p> <p>19 MR. KLINE: While Ms. Przygocki's doing</p> <p>20 that, I would say we -- we are comfortable and</p> <p>21 confident that we can screen it, so it cannot be</p> <p>22 seen. We understand Mr. Gothard's concern about</p> <p>23 the noise, and I would be having Mr. Edmondson</p> <p>24 testify about he would, basically, contract for</p> <p>25 services to minimize the pickup times, to try and</p>

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17 (65 to 68)

<p>65</p> <p>1 coordinate with Ms. Gothard's schedule the maximum 2 amount possible. So we -- we -- 3 HEARING EXAMINER ROBESON: Yeah, but -- 4 MR. KLINE: -- can make it invisible and 5 we can try and make it silent. 6 HEARING EXAMINER ROBESON: Well, the 7 thing is, what if her schedule changes? 8 MR. KLINE: Sure. Let's continue -- 9 let's continue the discussion. 10 BY MR. KLINE: 11 Q. Is there an alternative? 12 Jane, where can it go? 13 A. It may be possible to -- again, we would 14 have to look at the turning movements. We would 15 have to do a truck turning study because these 16 vehicles do not maneuver as easily as automobiles 17 do. But we can -- we could look at providing it in 18 that area adjacent to the parking lot for the 19 private club. But it -- they don't -- they don't 20 turn easily, so it would probably eliminate a 21 number of parking spaces because of the angle that 22 they would need to go in. Whereas at -- in the 23 other corner, because of the configuration of the 24 site, we did have more room to be able to do that. 25 I'm not saying that it's impossible, but</p>	<p>67</p> <p>1 Drive. So if we have the slope going down, you 2 can't put a leveled Dumpster on that. And we've 3 gone to considerable effort to screen the perimeter 4 of the property and -- and provide the amount of 5 landscaping, as is required by the landscape 6 regulations. 7 MR. KLINE: Ms. Robeson, yeah, it -- this 8 is the kind of thing you'd like to try to work out 9 in this hearing, but it sounds like there's some 10 unknowns that we can't answer today. So I think 11 what I'm going to suggest is, ask if -- when we 12 conclude the hearing, to leave the record open, 13 which you would probably have to do anyway, to get 14 the transcript, and within X-number of days you 15 select, we will get back to you with either a we 16 can't do it; or two, we can do it and here's how we 17 would do it. And I guess that would require us to 18 revise the plan and you would need to ship it to 19 Park & Planning Commission. But I don't think we 20 can get closure on it today because of the -- so 21 many unknowns, and I just wish I'd known about it 22 earlier. 23 HEARING EXAMINER ROBESON: I do 24 understand that, but -- I do understand that. 25 MR. KLINE: I think we've exhausted the</p>
<p>66</p> <p>1 I'm not saying it's possible. I'm -- and it's 2 certainly a reasonable concern that Mr. Gothard 3 has. I -- and I wish that, perhaps, we would have 4 known of this earlier, maybe we could have taken 5 that into consideration before it got to -- through 6 the planning board hearing and to this point. 7 Q. Mr. Gothard has suggested down in the 8 southeast corner, and there is a triangular parcel 9 of land that is nothing but trees, or backs up to a 10 property, it's got lots of U-Haul trucks in it. 11 Is there anyplace down in that area where 12 it could fit? 13 A. That actually has a stormwater facility 14 in that area -- 15 Q. Okay. Okay. 16 A. -- to prevent any water from running off 17 into adjacent properties. And so does the corner 18 that is directly adjacent to the U-Haul operation. 19 Q. Okay. 20 A. So I guess the only other place that we 21 could consider would be either adjacent to that 22 parking lot, or maybe somewhere in between where it 23 is and that other corner. However, that -- that 24 area won't work because the -- the slope in that 25 area drops off significantly towards Wheatfield</p>	<p>68</p> <p>1 issue about Dumpsters, unless somebody else had any 2 questions or comments about it. 3 MR. GOTHARD: I just want to say I 4 appreciate your effort to solve it and -- and that 5 is, you know, mainly because, yes, I heard you, 6 while we're going to manage the Dumpster -- the 7 removal to be X, Y, Z time and so forth, I am 8 thinking long term, ladies and gentlemen, and 9 whatever arrangement -- schedule arrangements we've 10 made -- people make today is subject to change. 11 So, therefore, you know, I appreciate you moving 12 it. 13 The one last point on this subject I want 14 to make is, I am not aware of any previous times 15 that these plans were made -- made available to us, 16 so I had no knowledge until this time of the 17 layouts and, you know, the sections and everything 18 else. So thank you. 19 HEARING EXAMINER ROBESON: All right. 20 MR. KLINE: Ms. Robeson, you know what my 21 answer -- 22 HEARING EXAMINER ROBESON: Mr. Kline, do 23 you want to go back -- 24 MS. PRZYGOCKI: What? 25 MR. KLINE: I'm sorry, we lost you at the</p>

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18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 end there.</p> <p>2 HEARING EXAMINER ROBESON: Who did you</p> <p>3 lose?</p> <p>4 MR. KLINE: You. I didn't hear the end</p> <p>5 of your sentence. I think you were maybe inviting</p> <p>6 me to call another witness.</p> <p>7 HEARING EXAMINER ROBESON: Yes.</p> <p>8 MR. KLINE: Yeah.</p> <p>9 HEARING EXAMINER ROBESON: We're moving</p> <p>10 on from the Dumpster, as I understand it.</p> <p>11 MR. KLINE: I think we've exhausted that.</p> <p>12 BY MR. KLINE:</p> <p>13 Q. Ms. Przygocki, was there anything else</p> <p>14 that came up in questions from Mr. Gothard that you</p> <p>15 wanted to address to supplement Mr. Wiencek's</p> <p>16 testimony?</p> <p>17 A. Well, I would agree with Mr. Wiencek</p> <p>18 about that the -- the materials are compatible with</p> <p>19 residential subdivisions, in that he's gone out of</p> <p>20 his way to incorporate residential-type materials</p> <p>21 and -- and scale, in a way that makes it fit with</p> <p>22 the neighborhood.</p> <p>23 I can -- I can address the tree issue,</p> <p>24 if -- if you'd like, or we can go on to --</p> <p>25 Daniel Park is our landscape architect. I don't --</p>	<p style="text-align: right;">71</p> <p>1 Is there to be any fence at all?</p> <p>2 A. There is no fencing proposed along the</p> <p>3 property line. The only fence that's proposed is</p> <p>4 the one that screens the Dumpster, which is a good</p> <p>5 15 feet away from the property line, and a good</p> <p>6 70 feet away from Mr. Gothard's house.</p> <p>7 MR. KLINE: Thank you. I have no further</p> <p>8 questions of Ms. Przygocki.</p> <p>9 HEARING EXAMINER ROBESON: Okay.</p> <p>10 Mr. Gothard, do you have any more</p> <p>11 questions of Ms. Przygocki?</p> <p>12 MR. GOTHARD: I --</p> <p>13 HEARING EXAMINER ROBESON: Okay. Hearing</p> <p>14 none --</p> <p>15 MR. GOTHARD: I thank --</p> <p>16 HEARING EXAMINER ROBESON: Oh, go ahead.</p> <p>17 MR. GOTHARD: Thank you.</p> <p>18 So somebody else is addressing the trees,</p> <p>19 just so that you know that I have a very good</p> <p>20 reason to be concerned. Our house was already</p> <p>21 damaged by some -- some of these trees.</p> <p>22 HEARING EXAMINER ROBESON: Some of the</p> <p>23 trees that are currently on the property?</p> <p>24 MR. GOTHARD: That -- that are not on our</p> <p>25 property, on the adjacent property.</p>
<p style="text-align: right;">70</p> <p>1 I think there are -- will be far fewer trees there,</p> <p>2 after this is built, than there are currently.</p> <p>3 This is a fully forested site.</p> <p>4 I don't -- I don't anticipate that</p> <p>5 with -- when the fall leaves fall, that they will</p> <p>6 all blow in the right direction, as they probably</p> <p>7 don't now. But I would -- I can say it will be a</p> <p>8 much more manicured landscape and very controlled,</p> <p>9 and that all the lawns will be mowed and the trees</p> <p>10 will be trimmed, and it won't be -- look like the</p> <p>11 forest that's there now, with considerable</p> <p>12 underbrush and fallen tree limbs and grazing deer</p> <p>13 and other -- that I think it will be much less</p> <p>14 prone to any disruption than it is in its current</p> <p>15 state.</p> <p>16 Q. Well, Ms. Przygocki, we have the</p> <p>17 advantage of seeing Mr. Park sitting there,</p> <p>18 drumming his fingers on the table, ready to</p> <p>19 testify. So we'll -- we will call him in a second.</p> <p>20 But there is something that you can</p> <p>21 address in condition number -- or, I'm sorry,</p> <p>22 concern number 2 talks about, ensure that fencing</p> <p>23 barriers, when we build them, are on our property</p> <p>24 and don't have an adverse effect on the Gothard</p> <p>25 property.</p>	<p style="text-align: right;">72</p> <p>1 HEARING EXAMINER ROBESON: Okay.</p> <p>2 Okay. Mr. Kline, do you want to call the</p> <p>3 landscape architect?</p> <p>4 MR. KLINE: Mr. Park, would you please</p> <p>5 hold your hand up, so Ms. Robeson knows.</p> <p>6 Yeah.</p> <p>7 HEARING EXAMINER ROBESON: Okay.</p> <p>8 MR. KLINE: And you've heard her --</p> <p>9 you've heard her admonition that you are -- have</p> <p>10 been sworn -- you're sworn and -- you're still</p> <p>11 sworn.</p> <p>12 MR. PARK: Yes, Mr. Kline.</p> <p>13 Ms. Robeson, good afternoon.</p> <p>14 HEARING EXAMINER ROBESON: Good</p> <p>15 afternoon. You're still under oath.</p> <p>16 Whereupon --</p> <p>17 DANIEL PARK,</p> <p>18 previously sworn, was recalled, and continued to</p> <p>19 testify as follows:</p> <p>20 EXAMINATION BY COUNSEL FOR THE APPLICANT</p> <p>21 BY MR. KLINE:</p> <p>22 Q. Mr. Park, you've had -- you've had the</p> <p>23 advantage of hearing Mr. Gothard's concerns</p> <p>24 directly, and I'm not going to even ask you a</p> <p>25 question. I'm just going to ask you to address his</p>

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19 (73 to 76)

<p>73</p> <p>1 concerns and then we'll -- we'll come back and 2 forth. 3 So explain -- explain your landscaping 4 scheme and how you think his concerns can be 5 address -- or are addressed. 6 A. Certainly. I think we may want to go 7 back to Exhibit 23(a), the section drawing. 8 And, you know, Mr. Gothard, I don't want 9 to get very technical. I mean, it's really a 10 practical matter, if we can pull up that drawing in 11 the meantime. 12 But, you know, I actually live about 13 20 feet from a forest conservation easement, so I'm 14 very familiar with the issues with trees, 15 especially on mature growth, the issues with roots 16 and branches. You know, trees are living things, 17 and as they grow, they can grow in different ways. 18 And you probably have experienced that with the 19 trees that are on your site today. 20 I would like to say that the trees that 21 are on your site, primarily, are tulip poplars and 22 black oaks. And the issue with tulip poplars, 23 especially on mature growth, when they get tall, as 24 the ones that are adjacent to your site, they tend 25 to lean. And they will continue to lean, and the</p>	<p>75</p> <p>1 you're proposing? I forget which exhibit is the 2 landscape plan, but what are the taller trees 3 you're proposing? 4 THE WITNESS: Right. So the taller trees 5 are Tilia americana, in other words, American 6 lindens, or basswoods, as they call it. And, you 7 know, versus the trees that are there, which are 8 the tulip poplars, they don't lean as much. They 9 have a very straight central leader and they will 10 go up straight, and continue to grow up straight 11 through the life of the tree, which -- which is one 12 of the reasons we picked that tree for that 13 location. And it really is a lower maintenance 14 tree with medium growth rate. 15 And, Mr. Gothard, you have to realize, 16 though, when we put these trees in, they are going 17 to be planted at 3 1/2-inch caliper, or roughly 18 14 feet in height. So they'll only be about 7 or 19 8 feet wide when they're planted. 20 So, you know, if you look at the life of 21 this tree, it will probably be about 20 years 22 before that canopy really grows out and starts to 23 encroach beyond the property line. So, you know, 24 that is one thing we did consider, that those trees 25 will take a little bit longer to grow. And then</p>
<p>74</p> <p>1 branches will continue to break, especially with 2 the spring season and the fall season. And they 3 will drop to break. 4 So, you know, I think it's fair to agree 5 that trees are living things and they produce 6 seeds, they produce leaves which fall and grow, as 7 Jane Przygocki pointed out, I'll point it out. 8 I would like to say, though, that with 9 the plan proposed within -- if you look at that 10 plan on the elevation, from that parking space to 11 your property line is about 16 feet, approximately. 12 The zoning code requires 10-foot setback, and we 13 knew that if we wanted to create a substantial 14 buffer between our proposed development and your 15 residence, Mr. Gothard, that we would want to do 16 our best to increase that as much as to the -- as 17 much as possible. And so 16 foot, really, there 18 is -- is the maximum extent possible and within 19 that area, Mr. Gothard, we really did provide a 20 nice area where we have some very low-maintenance 21 trees. 22 I can start by -- 23 HEARING EXAMINER ROBESON: What kind of 24 trees -- can I interrupt? 25 What -- what are the taller trees that</p>	<p>76</p> <p>1 underneath of it, obviously, there is -- there are 2 evergreens and the shrubs as well. 3 As with all trees, they have roots, and 4 the roots will grow where the soil is. And we 5 certainly understand your concern about roots. I 6 think, in my expert opinion, I think that the roots 7 will affect your property a little less -- a lot 8 less, I would say, than if the trees had been 9 planted on a berm that went up the other way. The 10 roots will grow, probably, more into your -- into 11 the berm, and the roots that are on the surface and 12 exposed will be on the side of the proposed 13 development, more so. 14 So I believe that will help the situation 15 and, you know, it will be a matter of time before 16 those trees grow up. But they will not get as tall 17 as trees that are there today, and they will have 18 less maintenance involved with them -- to them 19 versus the trees that are in there today. 20 BY MR. KLINE: 21 Q. Mr. Park, let me go back and just make 22 sure I get something right, from the beginning. So 23 the -- the county code would have required you to 24 have at least a 10-foot planting strip. You've -- 25 you've gone one and a half times that, to make sure</p>

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20 (77 to 80)

<p>77</p> <p>1 you have more than an adequate amount of planting 2 space for trees, and you get more separation that 3 way. 4 A. Yes, that's correct. 5 Q. Okay. And maybe to put it into a graphic 6 sense, the exhibit that's on the screen now is 7 probably showing a tree in its 15th or 20th year of 8 life? 9 A. That's correct. 10 Q. Okay. Thank you. 11 Go ahead, continue, if you had something 12 else to add. 13 A. No, I -- I just think, you know, that if 14 you -- if the purpose is to achieve screening, I 15 really think that the design, as proposed, is 16 really mis -- advantage -- advantageous to 17 Mr. Gothard's property. Obviously, the property 18 line is where it is. But as far as the plant 19 material selected, we believe it's appropriate 20 and -- for the setting and this condition of the 21 plan currently. 22 Q. Was there anything else you heard in 23 Mr. -- either read in Mr. Gothard's concern or 24 heard in our presentations today, subjects that you 25 wanted to comment on that we -- that I didn't think</p>	<p>79</p> <p>1 THE WITNESS: Drainage pond. 2 MR. GOTHARD: Right. Yeah. So, you 3 know, that's -- those are the, I think, very valid 4 reasons why we have that concern. 5 THE WITNESS: Yes, I can speak to that, 6 Mr. Gothard. 7 So we are clearing the forest in that 8 area, and by doing that, the trees that are there, 9 they will die, they will be removed. And the roots 10 that go onto your yard, will also decay at some 11 point. Those are the deep tap roots, as well as 12 structural roots that encroach your property. 13 So I think in the near -- 20, 30 years, 14 what we're doing will improve the situation on your 15 yard, as far as the roots. 16 As far as other tree types we can propose 17 -- you know, there are a bunch of trees we can 18 propose. I think this site, the American linden 19 that we're proposing is a good tree. The other 20 trees we could propose would still have the same -- 21 a similar form, and that is because we have to have 22 a certain amount of tree canopy to cover the 23 parking lot along the proposed development, as part 24 of the zoning requirements. 25 So I don't think moving to a different</p>
<p>78</p> <p>1 to ask you about? 2 A. He -- Mr. Gothard did mention debris. 3 And debris will tend to collect on the bottom of 4 the berm, when the wind blows it, it'll collect -- 5 kind of the trees will filter it, will probably get 6 stuck before they do get to Mr. Gothard's property, 7 so I think that also is another advantage of the 8 current layout. 9 MR. KLINE: Thank you. I have no further 10 questions of Mr. Park. 11 THE WITNESS: Thank you. 12 HEARING EXAMINER ROBESON: Okay. 13 Mr. Gothard, do you want to ask Mr. Park 14 anything? 15 MR. GOTHARD: Yes, thank you. 16 Two -- two things. Is there any other 17 tree type? Potentially, lower and a smaller 18 diameter as it grows out, you know, from a 19 branches' perspective. 20 And, also, I mentioned that we had damage 21 from -- from trees from adjacent properties to the 22 house, to the siding, and we had damage from the 23 roots that damaged the drainage below the basement 24 floor. It basically -- it went right through the 25 plastic, you know, that drainage --</p>	<p>80</p> <p>1 canopy tree, at that point, of the same size would 2 improve your situation there. So I mean, you know, 3 if you're thinking something more columnar, that 4 would not be acceptable for zoning code. 5 But, you know, just imagine, the trees 6 will go in. They'll be 7 foot, 8 foot in diameter, 7 and it will be 20, 25 years out, before you have a 8 real maintenance issue, which you would have today, 9 anyways, if the trees were there. 10 HEARING EXAMINER ROBESON: Wait. I'm -- 11 I'm not clear. 12 MR. GOTHARD: Sorry. 13 HEARING EXAMINER ROBESON: What you're -- 14 go ahead, Mr. Gothard. You go ahead. 15 MR. GOTHARD: I appreciate the fact that 16 you're -- you're saying that we have that problem 17 now. Well, since you are doing work, you know, and 18 you've already placed those trees, I -- that is not 19 good justification for -- for the problems to 20 continue. 21 THE WITNESS: Should I respond, 22 Ms. Robeson? 23 MR. KLINE: Well, I'm not sure I 24 understood the question, so maybe, can you clarify 25 it, Mr. Gothard?</p>

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21 (81 to 84)

<p>81</p> <p>1 MR. GOTHARD: Okay. Sorry about that. I 2 going to clarify. So I mentioned that, yes, we 3 do -- we did have problems before, both with trees 4 falling and damaging the house, and with roots 5 penetrating the -- the drainage under the house. 6 But what I am -- the reasons why I ask those 7 questions and I put in testimony what I put in 8 there, is because going forward, we do not want to 9 have that kind of problem. So I appreciate any 10 effort you can put in, making sure that that 11 doesn't happen. 12 Thank you. 13 THE WITNESS: Mr. Gothard, I think -- I 14 think that the Applicant has put forward that 15 effort by pushing the -- the grading down so that 16 the berm is higher on your side. I think that does 17 help the situation with the roots and it helps the 18 situation, you know, with the screening. 19 And as far as the plant material 20 selected, you know, we think it's appropriate. And 21 the maintenance issue will be significantly reduced 22 for the next 20, 25 years. You know, if your 23 concern is beyond that, you know, I don't think 24 there's any tree that we could put there, that 25 would not become an issue, you know, beyond 25,</p>	<p>83</p> <p>1 talking about more fibrous roots that will not 2 necessarily damage foundation. You know, they'll 3 stabilize the soil, actually, on -- on the 4 properties, and I think the roots that are going to 5 be an issue will be deeper, especially with this 6 type of tree. And, again, as I said, it will be a 7 long time before any of those issues would arise. 8 But, yes, you know, the drip line is where the 9 canopy would be. 10 MR. KLINE: Ms. Robeson, I guess I'll 11 give you the benefit of -- or give you and Mr. 12 Gothard the benefit of some research I did this 13 week on behalf of the Aspen Hill Pet Cemetery whose 14 trees, in a historic site, grow over the parking 15 lot of a church next door. And the church is 16 concerned that branches are going to fall on the 17 cars in the parking lot. And we have authorized 18 them that they -- the law says under what -- 19 Maryland follows what they call the Massachusetts 20 Rule, is that a property owner can shave the -- any 21 encroaching branches to the property line. 22 So Mr. Gothard's always got the right to 23 cut off a branch that extends over onto his 24 property line. 25 Unfortunately, his concern seems to be</p>
<p>82</p> <p>1 30 years. But, you know -- 2 HEARING EXAMINER ROBESON: Can I -- 3 THE WITNESS: Yes. 4 HEARING EXAMINER ROBESON: Can I ask -- 5 well, maybe this is a question for the Applicant. 6 Do they have -- do these types of communities have 7 (Indiscernible) trees? Is -- that's not a 8 question. 9 Is somebody maintaining these trees, I 10 guess is my question, either from the management 11 company or -- like, they just don't let the 12 parking -- any of the landscaping grow out of 13 control, do they, or do they? 14 MR. KLINE: Well, I guess I'm going to 15 ask a question of Mr. Park first. And thinking 16 about the cross-section you had up there. 17 BY MR. KLINE: 18 Q. Mr. Park, is it just an old wives' tale 19 or is it true that the drip line, the canopy of the 20 tree is usually equivalent to the -- the extent to 21 which the roots grow out? 22 A. That's not necessarily true, Mr. Kline. 23 The drip line would be inward towards the trunk 24 of -- of the critical root zone. But the critical 25 root zone are, you know, surface roots. We're</p>	<p>84</p> <p>1 more subterranean, and I have to tell you, I've 2 never had a zoning hearing where somebody asked me 3 to put in trees smaller so that they would not grow 4 larger and into the property. 5 HEARING EXAMINER ROBESON: I had the same 6 thought -- I had the same thought. But I guess 7 what we're caught with is, what I'm reading, I 8 mean, if we had to leave it at the arborvitae, but 9 you have the canopy shading requirements -- 10 MR. KLINE: Correct. 11 HEARING EXAMINER ROBESON: -- for the 12 parking area, which in a way, you know, 13 sometimes -- it used to be that we would just say, 14 put arborvitae on that side and leave it at that. 15 MR. KLINE: Otherwise, I think we would 16 consider changing the tree, but then we would have 17 to find where we would have to go meet our canopy 18 requirement elsewhere. And we're worrying about a 19 problem that, frankly, none of us are going to be 20 living long enough to see. Well, Mr. Park maybe, 21 but the rest -- 22 HEARING EXAMINER ROBESON: Speak for 23 yourself. 24 Do these -- are you saying that the 25 roots -- Mr. Park, are you saying that the roots</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 are not going to cause -- of the new tree, are not 2 going to cause as much damage because they grow 3 into the berm? 4 THE WITNESS: That's correct. 5 HEARING EXAMINER ROBESON: I wasn't sure 6 what you were -- go ahead. 7 THE WITNESS: Yes. Because we have a 8 berm situation there, the roots that run along the 9 first 18 inches of the soil, and as far as depth, 10 will probably only be on the lower side, and 11 there's been studies that show this, and on the 12 upper side, you will have less growth of roots. 13 Toward Mr. Gothard's property, you will have less 14 growth -- root growth because of the berm. 15 BY MR. KLINE: 16 Q. Is it sort of the -- the roots are smart 17 enough that the course of least resistance is to go 18 down the berm, rather than horizontal onto his 19 property? 20 A. The -- as far as nutrition and what 21 they -- the plants need, they prefer the first 18 22 inches of soil. And so they'll grow in that 23 direction. And, you know, it depends on how steep 24 the slope is, but they -- you know, obviously, the 25 root ball is sunken in, so they'll go in the lower</p>	<p style="text-align: right;">87</p> <p>1 to be within that length. And if that's 2 achievable, still without that tree in that 3 location, then I think it's quite possible. 4 HEARING EXAMINER ROBESON: Well, 5 Mr. Gothard, are you sure you don't want that tree 6 right there? What if it's just arborvitae and the 7 smaller understory stuff? Are you sure you don't 8 want that tree there? 9 MR. GOTHARD: The -- as I mentioned, the 10 concern is twofold, right. One is the roots and, 11 actually, you know, I appreciate Mr. Park's 12 explanation; however, the -- the -- we have a 13 basement and the berm situation actually makes 14 it -- makes it more likely that the roots will -- 15 will grow right under our basement. And that's 16 where we had the problem. 17 The other thing is that, yeah, I am 18 familiar with the Massachusetts Law because 19 Montgomery County, when we -- when we called, when 20 the house was damaged from the trees on the 21 adjacent property, you know, Montgomery County sent 22 us a note saying that the Massachusetts Law 23 applies. Well, that's fine and dandy, but we ended 24 up paying for repairs. We ended up paying for tree 25 maintenance, and that is something that I don't</p>
<p style="text-align: right;">86</p> <p>1 direction and then the roots that are tucked in, 2 into the grade, will have a tougher time getting in 3 through the deeper soil. 4 HEARING EXAMINER ROBESON: Do you need -- 5 could you take out one tree opposite his house and 6 put it somewhere else? Like this tree? I don't -- 7 which one is your landscape plan? 8 THE WITNESS: Ms. Robeson -- 9 MR. KLINE: That's -- the landscape plan 10 is 20 -- sorry, it would be 41 -- 11 THE WITNESS: (b). 12 MR. KLINE: -- (b). 41(b). 13 HEARING EXAMINER ROBESON: Well, okay. 14 Would it mess up your canopy shading too 15 much, if you just took out this one tree? It's 16 just an idea and there's common area over here, but 17 I don't know. 18 THE WITNESS: Ms. Robeson, I'm going to 19 let Mr. Kline counsel the Applicant regarding this 20 matter. But my opinion is, as far as tree canopy, 21 that one tree could be relocated to another area of 22 the parking lot to achieve that. The only thing we 23 want to check is that the perimeter planting 24 requirements, that we have enough canopy trees. 25 And there are a certain number of trees that need</p>	<p style="text-align: right;">88</p> <p>1 think that -- that we should have been dealing 2 with. 3 HEARING EXAMINER ROBESON: Okay. 4 MR. GOTHARD: Now you want to send -- now 5 you want to say why I -- 6 HEARING EXAMINER ROBESON: Let me ask -- 7 MR. GOTHARD: -- why I am concerned about 8 the large trees next to the house. 9 HEARING EXAMINER ROBESON: Well, what if 10 they were moved that -- can you see the screen? 11 MR. GOTHARD: Yes, ma'am. 12 HEARING EXAMINER ROBESON: Okay. There's 13 one -- 14 MR. GOTHARD: I think two trees -- two 15 trees are probably main -- of main concern. The 16 one that's right in towards the center of the 17 house, and the one above that. 18 HEARING EXAMINER ROBESON: You mean -- 19 the one plan north to -- 20 MR. GOTHARD: Yes. 21 HEARING EXAMINER ROBESON: Yes. 22 MR. GOTHARD: So the reason why I was 23 thinking if -- if they could be smaller trees, you 24 know, it would -- it would solve the problem. I -- 25 I did hear, and I understand your -- your -- the</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 explanation regards to the canopy, and so forth. 2 But, you know, as you can see, the trees are pretty 3 close to the home. 4 MS. PRZYGOCKI: If I could interject, is 5 that possible? 6 HEARING EXAMINER ROBESON: Yes, please. 7 MS. PRZYGOCKI: One of the other 8 requirements, unfortunately, Mr. Gothard, of -- of 9 the landscape requirements for the perimeter is 10 that there be a shade tree planted every 30 feet on 11 center. So if we were to take out two trees, we 12 would not be meeting that requirement. 13 HEARING EXAMINER ROBESON: And now, where 14 is this requirement, though? Because I think I can 15 waive that requirement. 16 MS. PRZYGOCKI: Okay. 17 HEARING EXAMINER ROBESON: Still need 18 (Indiscernible). Is that in Article 6 of the 19 Zoning Ordinance? 20 MR. KLINE: Yeah. 21 MS. PRZYGOCKI: Yeah. 22 MR. KLINE: 562.5 -- 2.9? 23 MS. PRZYGOCKI: 2.9. 24 MR. KLINE: 2.9, yeah. 25 HEARING EXAMINER ROBESON: 2.9. Because</p>	<p style="text-align: right;">91</p> <p>1 a basswood. But I do agree it's more compact than, 2 you know, say, a gnome -- and not as tall as a -- 3 as a tulip poplar that existed. 4 HEARING EXAMINER ROBESON: How much 5 shorter do you expect it to grow, compared to a 6 tulip poplar, Mr. Park? 7 MR. PARK: I think in this condition, 8 we're probably looking at, you know, 50 feet -- 40, 9 50 feet. I think in this condition, those tulip 10 poplars can get up to 80 feet. 11 HEARING EXAMINER ROBESON: Right. 12 MS. PRZYGOCKI: The other -- 13 MR. KLINE: I'm sorry, yes. 14 MS. PRZYGOCKI: -- point I wanted to make 15 is, by removing those two trees, although we 16 certainly could, if that was the preference of the 17 Hearing Examiner and we would -- we would go by 18 your decision, it would -- it would diminish the 19 screening of the -- the building and of the 20 landscaping that surrounds the building. So I 21 guess, in my opinion, I think that would be less 22 desirable than more desirable, to not have that 23 tree there, and to have the additional landscaping. 24 HEARING EXAMINER ROBESON: Is -- is the 25 root spread of this tree approximately the same as</p>
<p style="text-align: right;">90</p> <p>1 if you look at 7.3.1.E.2.B -- and I don't have the 2 document in front of me, but I'm pretty sure this 3 is a conditional use, I can waive that 4 requirement -- any requirement of Article 6, to the 5 extent needed to ensure compatibility. 6 MS. PRZYGOCKI: Okay. Well, the only 7 other thing I would mention is that the Tilia 8 cordata that we selected here is a pretty compact 9 growing tree. And it's -- it's not as loose and, 10 for lack of a better term, messy, as some trees 11 might be. It's pretty -- grows pretty tight and, 12 most likely, only would be about 30-feet wide. 13 It's shown as 35-feet wide here. 14 MR. PARK: Yes. Ms. Robeson, for the 15 record, the tree is a Tilia americana, and not a 16 Tilia cordata. 17 HEARING EXAMINER ROBESON: I don't know 18 what that means, but I'll take -- 19 MR. KLINE: Yeah. So what's -- what's 20 the significance of that, Mr. Park? 21 HEARING EXAMINER ROBESON: -- your word 22 for it. 23 MR. PARK: I believe Ms. Przygocki 24 mentioned a different tree than -- than we were 25 talking about. But, you know, it's a linden. It's</p>	<p style="text-align: right;">92</p> <p>1 the tulip poplar, do you know? 2 MS. PRZYGOCKI: No, I -- I don't know. I 3 know that the tulip poplar does grow to be a lot 4 taller. I think -- and correct me if I'm wrong, 5 Mr. Park -- that would be more like 60 to 80 feet. 6 I mean, be -- walking the site, they were -- they 7 were very large and there were significant dropped 8 branches. But I don't -- I can't say for certain, 9 I think I would defer to Mr. Park on that. 10 MR. KLINE: And I believe the Applicant 11 is ambivalent about what to plant and where to 12 plant it, in the sense we thought this was 13 beneficial to Mr. Gothard. He's had some problems, 14 and I understand why he's taking the position he's 15 taking. If he doesn't mind having narrower trees 16 or shorter trees or more visibility of our 17 building, in order to get a trade-off, so he has 18 less risk of having root encroachment, we'd be 19 willing to do that, if you have the ability to help 20 us do that. 21 What I would ask, though -- 22 HEARING EXAMINER ROBESON: I think -- 23 MR. KLINE: And let me -- 24 HEARING EXAMINER ROBESON: Yeah, go 25 ahead.</p>

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24 (93 to 96)

<p>93</p> <p>1 MR. KLINE: And let me tell you what 2 my -- what my qualifier would be. 3 HEARING EXAMINER ROBESON: You can go 4 ahead. 5 MR. KLINE: That you would normally ask 6 us to come up with a revision to our plan and send 7 it to Park & Planning and ask them for their 8 opinion, and I would -- I would ask that you not do 9 that because they would think we were crazy to give 10 up a tree -- a beautiful tree that would screen 11 everything, and I think they would recommend 12 against that very strongly. So -- but it -- 13 HEARING EXAMINER ROBESON: Yeah. But you 14 know what, that doesn't mean I have to take 15 their -- I know what opinions -- I have -- I have 16 no choice, I didn't write the zoning ordinance. 17 But -- because we tried not to have to, when they 18 were drafting this, we tried not to have to refer 19 everything back to Park & Planning. 20 But at the end of the day, my question 21 is, the shade requirement is really more 22 environmental, and I think it's difficult to say 23 that one or two trees is going to significantly 24 impact the environmental requirement. 25 And who knows what Park & Planning will</p>	<p>95</p> <p>1 think. Is this parking lot landscaping? Is it -- 2 are these trees driven by the parking lot 3 landscaping requirements in 6.2? Or are they 4 driven by the perimeter landscaping requirements in 5 6.5? 6 MR. PARK: Ms. Robeson -- 7 MS. PRZYGOCKI: They're driven by -- oh, 8 I'm sorry, go ahead. 9 MR. PARK: Oh, yeah, Jane knows, if you 10 don't know. It's, I believe it's the 6.2.9. 11 MS. PRZYGOCKI: I would -- 12 HEARING EXAMINER ROBESON: Okay. So you 13 also have this option: The deciding body may waive 14 any requirement of 6.2. So there is some 15 flexibility there. 16 So the -- so I guess the question -- my 17 question to you is, we have both 7.3.1. 18 My computer is freezing. 19 We have the standards in 7.3.1 that give 20 us some flexibility. And then we have the 6.2, 21 but, really, I don't see why you need the 6.2 22 because we have the 7.3.1.B. 23 So I guess I would have to take it back. 24 I don't have to agree -- I don't know what Park & 25 Planning -- who's the planner on this? I don't</p>
<p>94</p> <p>1 say because we have a gentleman here who, you know, 2 has had his basement -- okay, you can't -- can you 3 see -- you can't see what I have on my screen now, 4 can you? 5 MR. KLINE: It's not showing up on our 6 screen, no. Is it one of the exhibits? 7 HEARING EXAMINER ROBESON: How about now? 8 How about now? 9 MR. KLINE: Not yet. 10 HEARING EXAMINER ROBESON: This is the 11 county code. 12 MR. KLINE: We see that now. 13 HEARING EXAMINER ROBESON: The zoning 14 ordinance. 15 MR. KLINE: Yeah. 16 HEARING EXAMINER ROBESON: So what I have 17 here -- what I have here, it says: Satisfies the 18 requirements to zone, the standards under Article 19 59-3, and to the extent necessary, to ensure 20 compatibility, meets general applicable -- 21 applicable general requirements under 59-6. 22 And we -- our office added that because 23 we kept running into these situations where the 24 strict landscaping requirements didn't make sense. 25 Now, there's also a waiver provision, I</p>	<p>96</p> <p>1 know. 2 MR. KLINE: Phillip -- Phillip Estes 3 wrote the staff report, and Doug Johnson was the 4 environmental reviewer. 5 HEARING EXAMINER ROBESON: Well, it 6 doesn't need to go back to him because this is 7 landscaping. 8 MR. KLINE: Sure. 9 HEARING EXAMINER ROBESON: So then the 10 question -- 11 MR. KLINE: I was just going to say -- 12 HEARING EXAMINER ROBESON: -- becomes, is 13 there -- 14 MR. KLINE: -- we are ambivalent. We 15 would follow your guidance. 16 HEARING EXAMINER ROBESON: -- a tree that 17 does a little bit of screen for Mr. Gothard without 18 root system? 19 MR. KLINE: Yeah, we are prepared to 20 follow your guidance. I just hope that we don't 21 get caught into a fight down at Park & Planning 22 Commission about this issue that holds us up, 23 that's -- that was my only concern. 24 HEARING EXAMINER ROBESON: Well, I mean, 25 I think he's got a -- Mr. Gothard, I understand his</p>

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25 (97 to 100)

<p>97</p> <p>1 concern.</p> <p>2 How far is he from the property line,</p> <p>3 16 feet?</p> <p>4 MR. KLINE: Your question was what,</p> <p>5 Ms. Robeson?</p> <p>6 MR. GOTHARD: 6 feet -- 16 feet and 3 is</p> <p>7 setback, as I understand it, 10 feet. The tree</p> <p>8 grows to 50 feet or so. Mr. Park can confirm those</p> <p>9 numbers.</p> <p>10 HEARING EXAMINER ROBESON: So,</p> <p>11 Mr. Gothard, what if they just take out trees and</p> <p>12 leave the arborvitae? Is that going to be</p> <p>13 acceptable to you? Or do you want some kind of</p> <p>14 mid-range tree that could go in there?</p> <p>15 MR. GOTHARD: I -- we could -- we could</p> <p>16 go along with some mid -- some smaller trees that</p> <p>17 don't grow that tall and, you know, they -- they</p> <p>18 don't have such large canopy, if you would. Either</p> <p>19 way, they -- what we are looking for is not -- not</p> <p>20 to -- to reduce the potential for damage to the</p> <p>21 house or drainage due to the roots. That's --</p> <p>22 that's all we are looking for.</p> <p>23 MR. PARK: Ms. Robeson, Mr. Gothard, if I</p> <p>24 may. You know, I think --</p> <p>25 HEARING EXAMINER ROBESON: Yeah.</p>	<p>99</p> <p>1 MR. PARK: Right. So, Ms. Robeson, what</p> <p>2 I'm saying is that I think we need to look at it,</p> <p>3 but we might be very close where we can satisfy</p> <p>4 both sides of the coin, if we can get it to work.</p> <p>5 HEARING EXAMINER ROBESON: That would be</p> <p>6 wonderful.</p> <p>7 Okay. So why don't we -- let's -- let's</p> <p>8 look at this.</p> <p>9 Mr. Gothard, before I start, what I'm</p> <p>10 going to do now is set some time, as far as</p> <p>11 checking out the Dumpster changing and these two</p> <p>12 trees. Before I start into that, do you have any</p> <p>13 more questions of anyone? Mr. Gothard?</p> <p>14 MR. GOTHARD: Yes, so sorry about that, I</p> <p>15 remained on mute. Thank you for checking.</p> <p>16 I believe that, you know, we've -- you</p> <p>17 were all very kind to attempt to address most of</p> <p>18 the things. I think if -- those two items are</p> <p>19 probably on the top of the list, and the other --</p> <p>20 the only -- the other, I guess, item is probably</p> <p>21 the height of the building, but that -- the most</p> <p>22 important among the eight.</p> <p>23 HEARING EXAMINER ROBESON: Okay. So I'm</p> <p>24 pulling -- I'm pulling my phone out, but I'm doing</p> <p>25 it to look at my calendar.</p>
<p>98</p> <p>1 MR. PARK: -- I think that a fastigate</p> <p>2 or columnar tree in that location at</p> <p>3 Mr. Gothard's -- adjacent to Mr. Gothard's home,</p> <p>4 you know, I think that may be a solution where we</p> <p>5 could keep the 30-foot spacing needed by Park &</p> <p>6 Planning and the zoning ordinance. And, perhaps,</p> <p>7 we seek a waiver on the canopy coverage. I think</p> <p>8 it's -- Jane, what's the canopy coverage on the</p> <p>9 parking lot?</p> <p>10 MR. KLINE: It should -- it should be</p> <p>11 25 percent, isn't it?</p> <p>12 MR. PARK: That's correct.</p> <p>13 MS. PRZYGOCKI: Yes, the minimum is</p> <p>14 25 percent. I believe, right now, with the</p> <p>15 coverage that we have, we are very close to</p> <p>16 30 percent.</p> <p>17 MR. PARK: Okay. So, yeah --</p> <p>18 MS. PRZYGOCKI: So we would be</p> <p>19 removing -- I don't know what the area of those two</p> <p>20 trees is, in terms of how much that would diminish</p> <p>21 the -- the total square footage, whether that would</p> <p>22 put us under 25 percent or not. Most --</p> <p>23 MR. PARK: Right.</p> <p>24 MS. PRZYGOCKI: -- probably not. I don't</p> <p>25 know.</p>	<p>100</p> <p>1 MR. KLINE: Sure. Ms. Robeson, I did</p> <p>2 have one last witness, but it's probably really</p> <p>3 just a very quick mop-up.</p> <p>4 HEARING EXAMINER ROBESON: No, that's</p> <p>5 fine. That's fine. I didn't -- I thought we had</p> <p>6 done -- we were done.</p> <p>7 MR. KLINE: No. We got into the trenches</p> <p>8 a little earlier than I expected.</p> <p>9 HEARING EXAMINER ROBESON: The trees. We</p> <p>10 couldn't see the forest for the trees.</p> <p>11 Okay. Go ahead.</p> <p>12 MR. KLINE: I'd like to call</p> <p>13 Jim Edmondson. Can you see him on your screen?</p> <p>14 HEARING EXAMINER ROBESON: Mr. Edmondson,</p> <p>15 you're the most important person on the team.</p> <p>16 You're still under oath. Please go ahead.</p> <p>17 Whereupon --</p> <p>18 JAMES EDMONDSON,</p> <p>19 previously sworn, was recalled, and continued to</p> <p>20 testify as follows:</p> <p>21 MR. KLINE: Thank you.</p> <p>22 EXAMINATION BY COUNSEL FOR THE APPLICANT</p> <p>23 BY MR. KLINE:</p> <p>24 Q. Mr. Edmondson --</p> <p>25 HEARING EXAMINER ROBESON: Why don't you</p>

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26 (101 to 104)

<p>101</p> <p>1 tell Mr. Gothard, very briefly, who you are.</p> <p>2 THE WITNESS: Okay. I'm a partner in the</p> <p>3 firm of E&G Group. E&G stands for Edmondson &</p> <p>4 Gallagher. We've been doing affordable housing for</p> <p>5 38 years in the Washington area and a number of</p> <p>6 other markets. And I'm -- I'm happy to say that</p> <p>7 I'll associate myself with Michael Wiencek, the</p> <p>8 architect, we've used him repeatedly on doing</p> <p>9 projects in the Washington, D.C. area.</p> <p>10 HEARING EXAMINER ROBESON: Okay.</p> <p>11 BY MR. KLINE:</p> <p>12 Q. Sure. Based on your experience --</p> <p>13 actually, first off, for Mr. Gothard, please</p> <p>14 explain the number of units you've developed in the</p> <p>15 metropolitan area, so he has a sense of your level</p> <p>16 of experience.</p> <p>17 A. In the greater Washington, D.C. area, we</p> <p>18 have done approximately 5,000 units of affordable</p> <p>19 housing that -- rehabilitation and new</p> <p>20 construction. And we are -- we are considered</p> <p>21 experts and among the -- the leading firms in</p> <p>22 Washington area using low-income housing tax credit</p> <p>23 financing, which is what will apply here on the</p> <p>24 Frederick Road site.</p> <p>25 Q. And you have embarked on the application</p>	<p>103</p> <p>1 among the recognized experts in putting great</p> <p>2 design on affordable housing projects and helping</p> <p>3 us, as developers and operators of those</p> <p>4 properties, to -- to win the allocations of the</p> <p>5 financing that we need.</p> <p>6 This -- the designs, the renderings that</p> <p>7 you've seen, the designs, all of that, are</p> <p>8 reflective of great skill, and our confidence that</p> <p>9 the nature of the -- the design will enable us to</p> <p>10 get the financing that we need in order to do</p> <p>11 the -- to do the development.</p> <p>12 Q. Are you aware of any -- any multifamily,</p> <p>13 multistory affordable project you developed in any</p> <p>14 of the local jurisdictions that had a -- that</p> <p>15 caused a diminution in value of any surrounding</p> <p>16 properties?</p> <p>17 A. Quite to the contrary. I can't think of</p> <p>18 a single example where we haven't actually improved</p> <p>19 the circumstances in a particular neighborhood.</p> <p>20 Partly, that's by good design; partly, in some</p> <p>21 cases, which doesn't apply here, it's because we've</p> <p>22 taken derelict buildings and turned them around</p> <p>23 into something that's new and modern and fresh.</p> <p>24 We -- we delivered a property, late in</p> <p>25 2019, in Washington which is really, in most</p>
<p>102</p> <p>1 that would get that financing available for this</p> <p>2 project?</p> <p>3 A. Yes. We've done some preliminary work in</p> <p>4 that regard, yes.</p> <p>5 Q. And in that process, what -- what</p> <p>6 requirements must you meet that would dictate the</p> <p>7 quality of the design of the building; the</p> <p>8 materials and everything else?</p> <p>9 A. Yes. The State of Maryland and</p> <p>10 Montgomery County, like virtually every other</p> <p>11 jurisdiction in the greater Washington area, had</p> <p>12 requirements that we, as seekers of financing for</p> <p>13 affordable housing units, have to comply with.</p> <p>14 Failing to comply means we don't get the financing</p> <p>15 that we need, so we can't do the projects. And</p> <p>16 those requirements include targeting certain income</p> <p>17 groups, setting rents that are affordable to people</p> <p>18 in certain income ranges, continued successful</p> <p>19 operation of the properties. If we were bad</p> <p>20 property managers, we would lose the opportunity to</p> <p>21 do more properties.</p> <p>22 And, perhaps, most significantly, for</p> <p>23 Mr. Gothard's point of view, we have design</p> <p>24 requirements that have to be met. Michael Wiencek</p> <p>25 and his company, his -- his architectural firm are</p>	<p>104</p> <p>1 respects, analogous to this property, the one we're</p> <p>2 proposing; a senior project sitting in an area</p> <p>3 that's -- that has different types of buildings,</p> <p>4 single-family houses, town houses, other apartment</p> <p>5 buildings.</p> <p>6 This -- this particular building, which</p> <p>7 we call Milestone Seniors actually has one side of</p> <p>8 the building that's closer to a single-family house</p> <p>9 than the proposed building will be to Mr. Gothard's</p> <p>10 house. It was an enormous up -- upgrade to the</p> <p>11 community. That owner and all the other</p> <p>12 single-family owners in the immediate vicinity were</p> <p>13 delighted with the new structure, partly because</p> <p>14 it's -- it's beautiful architecturally and it --</p> <p>15 they know that it comes along with a -- an upgrade</p> <p>16 to the -- to the appearance and operation and</p> <p>17 general viability of the neighborhood.</p> <p>18 Q. And, Mr. Edmondson, let's see. You're</p> <p>19 agreeable to managing the community to have the</p> <p>20 waste management pickups at times and days a week</p> <p>21 to minimize the impact on the surrounding property</p> <p>22 owners?</p> <p>23 A. Oh, yeah, that's -- yes, absolutely.</p> <p>24 That is -- that is a standard thing that we</p> <p>25 request. We're -- when you have apartment</p>

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27 (105 to 108)

<p>105</p> <p>1 buildings, you have Dumpsters or some other mode of 2 trash hauling, which inevitably involves noise. 3 And so -- so scheduling the pickup times is always 4 important for our residents, as well as for the 5 neighbors. 6 Q. And, finally, you're prepared to work 7 with the Hearing Examiner and Mr. Gothard to try 8 and possibly relocate the Dumpster itself, and 9 maybe work with the landscaping to try and address 10 Mr. Gothard's concerns? 11 A. We are. In a perfect world, from my 12 standpoint, this would not result in a multimonth 13 delay of the process because, as I've said, we've 14 already -- we've already begun seeking the first 15 step in the financing that we need for the building 16 with the Montgomery County Housing -- Housing 17 Office. 18 MR. KLINE: I have no further questions 19 of Mr. Edmondson. If Mr. Gothard would like to ask 20 any questions, I'm sure he'd be glad to respond. 21 HEARING EXAMINER ROBESON: Mr. Gothard, 22 do you have any questions of Mr. Edmondson? 23 MR. GOTHARD: Thank you for asking. 24 So you mentioned that, you know, your 25 property development improves the condition of</p>	<p>107</p> <p>1 So I guess, I have to ask your team, how soon they 2 can look at moving the Dumpster and either 3 substituting -- you know, finding different trees 4 that are not going to cause the concern, and maybe 5 still meet the shading -- the canopy requirements. 6 But even if it's altered, if the canopy 7 requirements are altered by a small amount, that 8 doesn't give me a lot of concern. I'd rather 9 have -- you know, if we can get a tree that is a 10 little shy of the canopy requirements, that doesn't 11 concern me. 12 MR. KLINE: Well, thinking ahead. Today 13 is Thursday. Friday is not usually a good workday 14 for most people. Monday is a holiday. 15 So would Soltesz be in a position to be 16 able to get back to the Applicant by the middle of 17 next week, with advice about we can or cannot move 18 the Dumpster? And what we can do about trees along 19 the perimeter of the property? Would, say, next 20 Tuesday or Wednesday be possible? 21 Jane, you're the project manager. 22 MS. PRZYGOCKI: I would say yes. We'd be 23 happy to take a look at it and try to come up with 24 a solution that is good for everyone. 25 HEARING EXAMINER ROBESON: Would it help</p>
<p>106</p> <p>1 other properties. I understand and appreciate the 2 example you have given. I will check it out 3 myself, if you provide the proper information that 4 allows us to check it out. 5 The -- one more item that I would like to 6 touch on is, appreciate you -- your commitment to 7 manage waste removal schedules. I don't want to 8 end up in a situation where my wife has to schedule 9 her work in the hospital, based on your schedule. 10 I hope you understand that. That is a long-term 11 thing. Today, you can say it will happen in a 12 certain way. A year from now, who knows? I really 13 appreciate relocation. We definitely cannot accept 14 the Dumpster at the current location. 15 Thank you. 16 MR. KLINE: Ms. Robeson, I said at the -- 17 HEARING EXAMINER ROBESON: All right. 18 Let's -- 19 MR. KLINE: -- I said at the beginning, 20 I've never had a reconvened public hearing, so now 21 I know how they operate. 22 Where would you like to go now? 23 HEARING EXAMINER ROBESON: Well, what I'd 24 like to do is set a time frame -- I do understand, 25 you know, that you've applied for the financing.</p>	<p>108</p> <p>1 you to have till Friday? 2 MS. PRZYGOCKI: That would help. And if 3 we can beat that deadline, we'll do that too. 4 MR. KLINE: What I was going to suggest 5 is that we try and have the answers to you by 6 Tuesday or Wednesday, and if they are positive, 7 then we would have a plan or plans to you by 8 Friday. 9 Jane -- 10 HEARING EXAMINER ROBESON: I see what 11 you're saying. 12 MR. KLINE: -- would that be -- 13 MS. PRZYGOCKI: I understand. Yes. We 14 would want to do -- 15 MR. KLINE: Yeah. 16 MS. PRZYGOCKI: -- a site first and then 17 maybe present the results and then see if that's 18 amenable, and then produce revised plans that would 19 incorporate that. 20 MR. KLINE: Yeah. And, unfortunately, 21 because the Dumpster -- 22 HEARING EXAMINER ROBESON: That -- 23 MR. KLINE: -- the Dumpster shows on 24 virtually all the plans, we -- we do have to make a 25 lot of changes. The landscaping plan's a little</p>

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28 (109 to 112)

<p>109</p> <p>1 bit easier, but the -- we'll have to figure out 2 some -- some way to do it. 3 Maybe what we could is, if you'd be -- 4 this would be if you'd be willing to do this. Let 5 us submit a site plan and a landscaping plan that 6 you would send to Park & Planning Commission, and 7 then in the -- while they're looking at it, we 8 would do all the other sheets to reconcile them 9 with those two main sheets, and that way, you 10 wouldn't have to send, you know, 15 pages down to 11 Park & Planning Commission. 12 Ms. Robeson, would that sound doable to 13 you? 14 HEARING EXAMINER ROBESON: That's fine, 15 as long as -- when is Mr. -- should we set a time 16 frame for Mr. Gothard to weigh in? 17 MR. KLINE: Sure. Well, he certainly 18 should. And what I would do is, I would make 19 arrangements to -- 20 HEARING EXAMINER ROBESON: That way -- 21 that way, you know, we'll -- I'm trying to get to 22 his working with -- see what's the most acceptable 23 by a certain time before we -- 24 MR. KLINE: Sure. Sure. Yeah. 25 Well, why don't -- why don't you think of</p>	<p>111</p> <p>1 everybody's benefit. 2 HEARING EXAMINER ROBESON: So what if we 3 try to do that by -- is June 3rd unrealistic for 4 Soltesz? 5 MS. PRZYGOCKI: June 3rd -- I'm sorry, is 6 that Wednesday? 7 HEARING EXAMINER ROBESON: Yes. 8 MS. PRZYGOCKI: Okay. Yes, we can do 9 that. Wednesday, 6/3. 10 HEARING EXAMINER ROBESON: I mean, they 11 don't have to be final plans, just they can be 12 conceptual. 13 MS. PRZYGOCKI: Two weeks from yesterday. 14 It basically -- yeah. With Monday being out, that 15 will give us Tuesday to -- to come up -- well, 16 Friday and Tuesday to come up with the drawings. 17 MR. KLINE: I'm just wondering if we 18 missed a week or skipped a week, because June 3rd 19 is actually two weeks from yesterday. And I didn't 20 think you were thinking about that long, 21 Ms. Robeson. 22 HEARING EXAMINER ROBESON: I was not. 23 MS. PRZYGOCKI: Oh, I think you're 24 thinking of -- I'm sorry, May 27th? 25 HEARING EXAMINER ROBESON: I apologize.</p>
<p>110</p> <p>1 how much time you want to give him. And I'll -- 2 we'll proffer that we will hand deliver whatever 3 documents we come up with and leave them on the 4 front steps of his house, and by whatever date you 5 think you'd like him to have it, and give him 6 whatever time it's going to take. And we won't be 7 transmitting -- asking you to transmit to Park & 8 Planning until he has said, this is okay. 9 HEARING EXAMINER ROBESON: Well, I don't 10 need him to -- I just need to find out whether -- 11 what his position is, not necessarily -- I'm not 12 giving him approval authority over it, but let's 13 see what we can do. 14 MS. PRZYGOCKI: So with those drawings, 15 then, for Wednesday delivery, would they be 16 deliverable to whom? 17 HEARING EXAMINER ROBESON: Mr. Gothard, 18 can they e-mail revised drawings, or do you want -- 19 do you need hand-delivered ones or can you do -- 20 can you work with e-mail? 21 MR. GOTHARD: E-mail, electronics, any -- 22 any electronic means are good. Thank you. 23 HEARING EXAMINER ROBESON: Is that easier 24 than trying to hand deliver the plans? 25 MR. GOTHARD: Probably faster for -- for</p>	<p>112</p> <p>1 MS. PRZYGOCKI: May 27th. 2 HEARING EXAMINER ROBESON: I'm just 3 looking at this -- I'm looking -- I have too much 4 new computer technology. 5 Let me do it this way. Okay. May 27th. 6 How's that? 7 MS. PRZYGOCKI: Okay. That will be fine. 8 HEARING EXAMINER ROBESON: No, you 9 have -- 10 MS. PRZYGOCKI: Yes. 11 HEARING EXAMINER ROBESON: Give me 12 something realistic. 13 MS. PRZYGOCKI: Can we -- 14 HEARING EXAMINER ROBESON: 28th? 15 MS. PRZYGOCKI: Can we say the 28th, and 16 then we would have to deliver the drawings the 17 following Monday to Park & Planning? 18 HEARING EXAMINER ROBESON: No, no. Hold 19 up. Hold up. 20 What I'd like to do is, you can -- you 21 can e-mail the drawings to Mr. Gothard on the 28th. 22 MS. PRZYGOCKI: Okay. 23 HEARING EXAMINER ROBESON: Okay? At the 24 same time, you can e-mail them to Park & Planning. 25 But, Mr. Gothard, you have till June 3rd</p>

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29 (113 to 116)

<p>113</p> <p>1 to give us your written comments on the plans. 2 MR. GOTHARD: Will do, ma'am. Anything 3 to help. 4 HEARING EXAMINER ROBESON: So on 5/28, 5 you can e-mail plans to Park & Planning. They are 6 accepting amendments by e-mail. 7 MS. PRZYGOCKI: Okay. 8 HEARING EXAMINER ROBESON: And then, 9 Mr. Gothard, if I could get your written comments 10 by June 3rd, in writing. 11 Then I will give the Applicant till 12 June 8th to make any comments, based on 13 Mr. Gothard's comments. 14 And then we'll leave the record -- I also 15 have to see if Park & Planning -- I have to leave 16 the record open for them to comment. So let me do 17 this. 18 We'll get the plans to Park & Planning 19 May 28th. We'll have Mr. Gothard's comments on 20 June 3rd. I'll give Park & Planning till 21 June 12th, and then -- unless they can get it 22 faster, depending on how major -- I know -- I don't 23 know if this is going to change the stormwater or 24 not. 25 And then, Mr. Kline, if you have any</p>	<p>115</p> <p>1 MR. KLINE: Yeah. And that -- that would 2 be more than I would need. The 14th would be fine, 3 Ms. Robeson. 4 HEARING EXAMINER ROBESON: We'll do -- I 5 mean, I'm setting -- I'm setting deadlines. We 6 don't have to take the full amount of time. I know 7 we've got the tax credit -- 8 MR. KLINE: Okay. Fine. That's fine. I 9 understand your point. 10 Now, you saw how quickly Mr. Estes 11 responded to your shuttle condition, and I think he 12 probably will do the same thing, so I think those 13 are good outside dates. And maybe that's -- 14 HEARING EXAMINER ROBESON: I'm sorry, I 15 lost part of -- 16 MR. KLINE: Pardon me? 17 MR. EDMONDSON: She lost you. She was -- 18 she was locked. 19 MR. KLINE: Yeah. No. You were 20 commenting on the speed at which Park & Planning 21 may respond, and you noticed how quickly Mr. Estes 22 gave you his comments on the shuttle condition. 23 And he seems to be pretty efficient. So I think 24 he'll probably -- you'll probably hear from him 25 pretty quickly. So maybe what -- rather than have</p>
<p>114</p> <p>1 comments on Park & Planning comments, you can pick 2 a -- pick a date after June 12th. 3 MR. KLINE: I don't need five days from 4 the 3rd till the 8th. I don't think that 5 necessarily speeds anything else up, but I can get 6 back to you in two days or so. 7 So you can put me down for my response to 8 Mr. Gothard's comment on the 5th. And in terms of 9 Park & Planning, again, two-day turnaround. 10 HEARING EXAMINER ROBESON: Okay. So that 11 would be the 16th. 12 All right. So what I have -- let me just 13 go over it again. I have plans delivered to 14 Mr. Gothard, by e-mail, and Park & Planning by 15 5/28. 16 On 6/3, Mr. Gothard, written comments. 17 6/5, any comments Mr. Kline has on 18 Mr. Gothard's comments. 19 6/12, Park & Planning's comments. 20 And 6/16, any final comments. 21 How's that? 22 MS. PRZYGOCKI: I'm sorry. 16 is what, 23 final comments by? 24 HEARING EXAMINER ROBESON: Kline -- 25 Mr. Kline on Park & Planning.</p>	<p>116</p> <p>1 due dates, just say, Mr. Kline, you've got to 2 respond within 48 hours after Mr. Estes gives you 3 his report. 4 HEARING EXAMINER ROBESON: Okay. All 5 right. 6 MR. KLINE: Okay? 7 Because I'm tired of getting kicked under 8 the table by Mr. Edmondson here. 9 HEARING EXAMINER ROBESON: Mr. Edmondson? 10 MR. EDMONDSON: Yes, ma'am. 11 HEARING EXAMINER ROBESON: Do you a -- 12 honestly, do you have a drop-dead deadline for the 13 taxing -- low-income tax incentive financing? 14 MR. EDMONDSON: We have -- we have an 15 unofficial deadline. It's open enrollment. 16 It's -- what you do is, you -- you get in line. 17 The sooner you submit a full application to the 18 County, the sooner you'll hear. And the sooner we 19 submit, the further ahead in the line we're going 20 to be. So time does matter, but it's not like I 21 have a June 15th drop-dead date by which time -- 22 HEARING EXAMINER ROBESON: I understand. 23 But you lose some priority? 24 MR. EDMONDSON: Yes. 25 HEARING EXAMINER ROBESON: You may lose</p>

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Conducted on May 21, 2020

30 (117 to 120)

<p>117</p> <p>1 some priority?</p> <p>2 MR. EDMONDSON: Yes, ma'am.</p> <p>3 HEARING EXAMINER ROBESON: Okay.</p> <p>4 So let me see -- I'm going to keep all</p> <p>5 the deadlines here, but I am going to ask Phil if</p> <p>6 he can get us his response as quickly as possible.</p> <p>7 MR. KLINE: Thank you. That'd be great.</p> <p>8 Thank you very much.</p> <p>9 HEARING EXAMINER ROBESON: So that we</p> <p>10 can -- we can move some of these deadlines up.</p> <p>11 MR. KLINE: Wonderful.</p> <p>12 HEARING EXAMINER ROBESON: My -- and the</p> <p>13 most, you know, as soon as you can get the drawings</p> <p>14 in, that's where we start, to the extent you're</p> <p>15 able to change things.</p> <p>16 MR. KLINE: And we understand your</p> <p>17 instructions.</p> <p>18 HEARING EXAMINER ROBESON: And I am</p> <p>19 actually in the process of drafting the decision,</p> <p>20 so hopefully, this extension will not hold up the</p> <p>21 overall decision.</p> <p>22 MR. KLINE: Mr. Edmondson --</p> <p>23 HEARING EXAMINER ROBESON: So the --</p> <p>24 MR. KLINE: No, that's fine. Wonderful.</p> <p>25 HEARING EXAMINER ROBESON: Okay.</p>	<p>119</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER - E-NOTARY PUBLIC</p> <p>2 I, STEPHANIE HUMMON, Registered</p> <p>3 Professional Reporter and E-Notary Public, the</p> <p>4 officer before whom the foregoing deposition was</p> <p>5 taken, do hereby certify that the foregoing</p> <p>6 transcript is a true and correct record of the</p> <p>7 proceedings; that said testimony was taken by me</p> <p>8 stenographically and thereafter reduced to</p> <p>9 typewriting under my supervision; and that I am</p> <p>10 neither counsel for or related to, nor employed by</p> <p>11 any of the parties to this case and have no</p> <p>12 interest, financial or otherwise, in its outcome.</p> <p>13 IN WITNESS WHEREOF, I have hereunto set</p> <p>14 my hand and affixed my notarial seal this 30th day</p> <p>15 of May, 2020.</p> <p>16 My commission expires July 6, 2023.</p> <p>17</p> <p>18</p> <p>19 <i>Stephanie L. Hummon</i></p> <p>20</p> <p>21 E-NOTARY PUBLIC IN AND FOR</p> <p>22 THE STATE OF MARYLAND</p> <p>23</p> <p>24</p> <p>25</p>
<p>118</p> <p>1 MR. KLINE: Thank you. Thank you again.</p> <p>2 HEARING EXAMINER ROBESON: So the record</p> <p>3 is going -- so the record is going to, just for</p> <p>4 drop-dead date, the record is going to close 6/16,</p> <p>5 but I'm going to ask everyone to get their comments</p> <p>6 as soon as possible.</p> <p>7 Anything else before we adjourn?</p> <p>8 MR. KLINE: Thank you for the education</p> <p>9 on reconvened hearings.</p> <p>10 MR. GOTHARD: Thank you, all.</p> <p>11 HEARING EXAMINER ROBESON: Well, hearing</p> <p>12 nothing else -- Mr. Gothard, do you have anything</p> <p>13 else?</p> <p>14 MR. GOTHARD: Just to thank you all and</p> <p>15 wish you good health.</p> <p>16 MR. KLINE: And you, sir.</p> <p>17 HEARING EXAMINER ROBESON: Well, I hope</p> <p>18 we plant the right trees for you.</p> <p>19 MR. GOTHARD: Thank you.</p> <p>20 HEARING EXAMINER ROBESON: Thank you very</p> <p>21 much. I'm going to adjourn the hearing.</p> <p>22 (Off the record at 4:28 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>	

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