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# Transcript of Hearing

**Date:** January 28, 2022

**Case:** Heritage Gardens Land, LLC

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Conducted on January 28, 2022

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13 9:36 a.m.	13
14	14 E X H I B I T S
15	15 (None marked)
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1 A P P E A R A N C E S	1 P R O C E E D I N G S
2 ON BEHALF OF MONTGOMERY COUNTY OFFICE OF ZONING AND	2 HEARING EXAMINER BAUMGARDNER: -- hearing in case
3 ADMINISTRATIVE HEARINGS:	3 number CU 22 01, requesting a conditional use for a
4 DEREK BAUMGARDNER, HEARING OFFICER	4 residential care facility located at 10701 S. Glen Road, all
5	5 located within Montgomery County Maryland. We are joined by
6 ON BEHALF OF THE APPLICANT:	6 our court reporter, Mr. Costello. How are you sir? Thank
7 PATRICIA HARRIS, ESQUIRE	7 you for being here. We are also going to be recording this
8 LERCH, EARLY & BREWER, CHTD.	8 in session. You should see a recording and transcription bar
9 7600 Wisconsin Avenue, Suite 700	9 appear at the top (inaudible) shortly. We have the court
10 Bethesda, MD 20814	10 reporter as the primary transcription or -- and then the
11 Phone: 301-986-1300	11 recording as a backup so just in case we have some problem
12	12 there.
13 ON BEHALF OF OPPOSING PARTIES:	13 We are officially on the record. As I mentioned,
14 DAVID BROWN, ESQUIRE	14 my name is Derek Baumgardner. I am the Hearing Examiner for
15 LAW FIRM OF KNOPF & BROWN	15 this case, which means I will listen to you today, take in
16 401 E Jefferson St, #206,	16 evidence, and write a decision based upon that evidence. You
17 Rockville, MD 20850	17 may request an appeal to the Board of Appeals if you do not
18 Phone: 301-545-6100	18 like that decision, within 10 days of the date (inaudible).
19	19 Just a couple of brief comments about the hearing today, our
20 ALSO PRESENT TELEPHONICALLY:	20 procedures and (inaudible) virtual platform that you are all
21 NANA JOHNSON, MONTGOMERY COUNTY OFFICE OF ZONING	21 currently using called Microsoft Teams. First of all, if you
22 AND ADMINISTRATIVE HEARINGS	22 have any problems with the platform, please call our office
23 AUSTIN COSTELLO, COURT REPORTER	23 at 240-777-6663. We will try to walk you through it to get
24	24 kicked off or if you're having any other technical problems
25 MARIE BRIGHAM, Citizen	25 here today.

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2 (5 to 8)

<p style="text-align: right;">5</p> <p>1 A couple of ground rules about hearings in 2 general, but also specifically about hearings on the virtual 3 format. Number one, please mute yourselves throughout the 4 proceeding unless you are either giving testimony or asking a 5 question. Background noise can interfere with the 6 transcription as well as being able to understand other folks 7 who are testifying or asking questions. 8 Secondly, if you look towards the top of your 9 screen in the middle right, there are a number of different 10 icons. The first one, if you put your cursor over it, says 11 show participants. If you click on that, on the right hand 12 side of your screen it should show a drop-down box so you can 13 see the different folks who are participating in this 14 morning's hearing. 15 To the right of that is an icon that says, show 16 conversation. That is a private chat feature that we do not 17 use. So if you have questions, we will go over that process 18 right now. To the right of that is another icon. And if you 19 roll your cursor over it it will bring a bunch of emoticons 20 and various things including a heart, which I've never seen 21 used. One of those is the raise your hand feature. The 22 raise your hand feature, if you have a question and you can't 23 otherwise get my attention, please click on that raise your 24 hand and that raises your virtual hand, it pops up on my 25 screen and tells me that you either have an issue or a</p>	<p style="text-align: right;">7</p> <p>1 process. Once those questions are asked we will move on to 2 the next witness from the Applicant. We will go through each 3 witness in that fashion. When the Applicant has concluded 4 their case in chief we will turn it over to any opposition. 5 At that point in time the opposition will also 6 call witnesses. They will ask their questions. The 7 Applicant will have the ability to ask questions of those 8 witnesses until those witnesses are completed. At the end of 9 all the questioning, both parties will be given the 10 opportunity to give closing statements or summations if they 11 so desire. I don't anticipate us concluding this today, but 12 you never know. So we will do that. 13 Can I first ask if there is anyone who is logged 14 in or who is called and who is not represented by counsel. 15 And if you can identify yourselves and for the record and 16 give us your address and a good contact email address. So 17 again, is there anyone who is not represented by counsel here 18 today who is logged in? 19 MS. BRIGHAM: I Marie Brigham and I'm not sure 20 about that because I'm speaking for myself with an abutting 21 neighbor. But I also am a member of WMCCA. So I don't know 22 what that puts me at. 23 HEARING EXAMINER BAUMGARDNER: Yes, ma'am. How do 24 you spell your last name? 25 MS. BRIGHAM: It's Brigham; B-R-I-G-H-A-M.</p>
<p style="text-align: right;">6</p> <p>1 question or something else that you would like to bring to my 2 attention. 3 As we're going to today's hearing, please avoid 4 crosstalk. So if someone is asking a question, please don't 5 interrupt them. If you're the one answering the question, 6 please wait until the question has been completed before 7 giving your answer. If you have an objection, please wait 8 until the appropriate time to raise one. If you have another 9 issue, please again either use that raise your hand feature 10 or otherwise indicate me on the screen that there is some 11 other issue and I can briefly pause the proceeding so we can 12 do with that particular issue. 13 All parties and folks participating today will 14 have the opportunity to speak. So please don't think that we 15 are ignoring you or that we will not get back to you. The 16 general procedure for today as in all of our cases, we will 17 open with any preliminary issues. As far as I see there are 18 two that we have to deal with this morning. 19 After we deal with those preliminary matters we 20 will begin the Applicant's case in chief. That process is 21 the Applicant will go first. They will give any opening that 22 they would like. They will go to their witnesses. They will 23 ask their witnesses questions. When they are done with their 24 witness, other folks who are participating may ask that 25 witness any questions that were raised during the questioning</p>	<p style="text-align: right;">8</p> <p>1 HEARING EXAMINER BAUMGARDNER: And what is a good 2 email address for you, ma'am? 3 MS. BRIGHAM: (Inaudible) MBrigham@AOL.com. 4 MR. BROWN: I'm pretty sure Ms. Brigham is one of 5 my clients. 6 MS. BRIGHAM: Okay. I wasn't sure how I was 7 speaking. 8 HEARING EXAMINER BAUMGARDNER: Not a problem. 9 When we get to community or opposition testimony, I will 10 leave that to Ms. Brigham and Mr. Brown to determine if you 11 would like to testify on your own, Ms. Brigham, or if you 12 would like to be included in that the testimony and the 13 argument from the community Association (inaudible). Okay. 14 All right. That sounds great. 15 HEARING EXAMINER BAUMGARDNER: Is there anyone 16 else who is not represented by an attorney here today? All 17 right. We will go with the parties. We can start with the 18 Applicant's counsel. If you can introduce yourself for the 19 record and your clients and please identify the witnesses 20 that you will be calling you today. 21 MS. HARRIS: Certainly. Good morning. Pat Harris 22 with Lerch, Early &amp; Brewer here on behalf of the Applicant 23 Heritage Gardens Lands LLC. My -- the Applicant is 24 represented by Ken Wormald who is with the Wormald Companies. 25 Then we have -- and you wanted the rest of the witnesses is</p>

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3 (9 to 12)

9	<p>1 that (inaudible)?</p> <p>2 HEARING EXAMINER BAUMGARDNER: That's correct.</p> <p>3 MS. HARRIS: All right. Okay.</p> <p>4 HEARING EXAMINER BAUMGARDNER: Thank you.</p> <p>5 MS. HARRIS: Ms. Kelly Cook Andress who is</p> <p>6 president and founder of Sage Life Senior Living. Jane</p> <p>7 Przygocki who is a land planner with Soltesz. Tim Steman</p> <p>8 with -- a civil engineer with Soltesz. Daniel Park,</p> <p>9 landscape architect with Soltesz. Dennis Swihart, architect</p> <p>10 with Wormald Companies. Chris Cavett with Wells and</p> <p>11 Associates. He's the transportation consultant. And then</p> <p>12 Kevin Kagan who is the appraiser with Lipman, Frizzell &amp;</p> <p>13 Mitchell.</p> <p>14 HEARING EXAMINER BAUMGARDNER: Thank you. If you</p> <p>15 see my head down it's because I'm writing notes.</p> <p>16 Mr. Brown, if you can please introduce yourself</p> <p>17 and your clients and anyone who you know ahead of time will</p> <p>18 be testifying here today.</p> <p>19 MR. BROWN: David Brown of Knauf &amp; Brown. I'm</p> <p>20 representing West Montgomery County Citizens Association and</p> <p>21 a number of individual homeowners in the vicinity of the</p> <p>22 property. Their names and addresses have been identified for</p> <p>23 the record. I could pull out that information if you need it</p> <p>24 on the record, on the hearing transcript, but that's not --</p> <p>25 HEARING EXAMINER BAUMGARDNER: I'm just making</p>	11	<p>1 And before we get to that, I did want to give -- if there</p> <p>2 is -- and it sounds like we might not have -- well, I was</p> <p>3 going to open the hearing up and see if counsel would agree</p> <p>4 that we can let folks from the community who are</p> <p>5 unrepresented give their testimony now just to get it out of</p> <p>6 the way so they wouldn't have to wait around. We certainly</p> <p>7 don't have to do that. We can wait until the afternoon to do</p> <p>8 that as well. But if folks were logged in now and wanted to</p> <p>9 go about their day, I was going to give that option.</p> <p>10 MS. HARRIS: And that would not preclude those</p> <p>11 that aren't logged in from testifying later once they login,</p> <p>12 I'm assuming?</p> <p>13 HEARING EXAMINER BAUMGARDNER: That's correct.</p> <p>14 Yes, that's correct. And that would be anybody from the</p> <p>15 community that's not represented by counsel. But what I</p> <p>16 hear, I don't think that we have anyone logged in other than</p> <p>17 Ms. Brigham depending upon that issue that kind of falls</p> <p>18 within that category. So is there anyone that will -- from</p> <p>19 the community that would like to testify right now that is</p> <p>20 not represented by counsel, please let me know.</p> <p>21 And hearing none -- again, as Ms. Harris said,</p> <p>22 this is not precluding your testimony later. This is simply</p> <p>23 as a courtesy for folks who are, you know have other things</p> <p>24 to do. All right. Then we will going to preliminary</p> <p>25 motions. As I mentioned at the beginning, I see two right</p>
10	<p>1 (inaudible). Sure. So the reason I ask is I go to the list</p> <p>2 on my screen to make sure I'm identifying everyone so that</p> <p>3 I'm not leaving anyone out.</p> <p>4 MR. BROWN: All right. The ones who I believe are</p> <p>5 in attendance today and would be participating as witnesses</p> <p>6 are Sam Rosenthal, Susan Lee of West Montgomery, Rick Magen,</p> <p>7 another abutting resident along with Mr. Rosenthal. And as I</p> <p>8 said before, Marie Brigham. There may be one, or two, or</p> <p>9 three more. The list of witnesses at the moment is in a</p> <p>10 state of flux because of the difficulty of having meetings,</p> <p>11 getting together and organizing the presentation in a more</p> <p>12 focused way. But I will just say by this afternoon I think I</p> <p>13 will have a much clearer picture of who's going to testify</p> <p>14 and the order of their testimony.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Okay, that's fine.</p> <p>16 MS. HARRIS: And Mr. Baumgardner, there are</p> <p>17 nearby residents that want to testify in support. They are</p> <p>18 not here at the moment. I think they were waiting to hear</p> <p>19 whether there was going to be a specific time allocated as</p> <p>20 opposed to sitting two hours (inaudible).</p> <p>21 HEARING EXAMINER BAUMGARDNER: Sure. All right.</p> <p>22 MR. BROWN: We also have the preliminary question</p> <p>23 of whether I have or don't have an expert witness in this</p> <p>24 case, which we will be discussing soon I imagine.</p> <p>25 HEARING EXAMINER BAUMGARDNER: That is correct.</p>	12	<p>1 off the bat. The first is Ms. Harris's motion to strike.</p> <p>2 And the second is the question about the traffic</p> <p>3 study which was raised by Mr. Brown. What I would like to do</p> <p>4 is hear argument from both sides about both issues. I would</p> <p>5 like to start with the LATR question or with the traffic</p> <p>6 study question. I would like to limit this to I would say 10</p> <p>7 minutes for each side. I don't think it will take that long,</p> <p>8 but I would like to hear both sides' argument as to the</p> <p>9 necessity of the traffic study.</p> <p>10 Let me bring up -- if I can -- we do have the</p> <p>11 ability to bring up exhibits on your screen. You might have</p> <p>12 seen me fiddling with that earlier. So let me try to bring</p> <p>13 that up to so we can all -- are looking at the same thing.</p> <p>14 Mr. Brown, do you recall which exhibit that might be? I'm</p> <p>15 going to the list.</p> <p>16 MR. BROWN: I think it's -- Exhibit 25 is the</p> <p>17 traffic statement that we claimant is inadequate.</p> <p>18 MS. HARRIS: There was --</p> <p>19 MR. BROWN: The motion, the motion to postpone the</p> <p>20 hearing is Exhibit 38. And I don't know that the opposition</p> <p>21 memorandum became an exhibit, but I have a reply memorandum</p> <p>22 at Exhibit 59. You have a report from Mr. Penn at the</p> <p>23 planning board as Exhibit 60. And your email to the -- to</p> <p>24 the parties is Exhibit 64.</p> <p>25 MS. HARRIS: It was also a supplemental</p>

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13	<p>1 transportation analysis which is Exhibit 58.</p> <p>2 HEARING EXAMINER BAUMGARDNER: (Inaudible).</p> <p>3 MR. BROWN: And I mentioned Exhibit 61? I may not</p> <p>4 have. That's also part of it.</p> <p>5 HEARING EXAMINER BAUMGARDNER: I see there</p> <p>6 (inaudible). And I'm sorry Mr. Brown, your original request</p> <p>7 for the postponement, which exhibit was that?</p> <p>8 MR. BROWN: So 38.</p> <p>9 MS. HARRIS: I don't -- it may not have been on</p> <p>10 the list that was posted on the (inaudible).</p> <p>11 HEARING EXAMINER BAUMGARDNER: Yeah, it's not on</p> <p>12 the website, but I'm looking at the hard file. I have it</p> <p>13 here. It's just not opening properly. Well, let's address</p> <p>14 that particular issue, Mr. Brown.</p> <p>15 You have the floor. Again, let's try to keep it</p> <p>16 to about 10 minutes. I have reviewed all the filings.</p> <p>17 MR. BROWN: It will be less. It will be less than</p> <p>18 that.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Okay.</p> <p>20 MR. BROWN: The claim that no traffic study is</p> <p>21 required under LATR guidelines defies common sense and does</p> <p>22 not withstand scrutiny. It's based on the notion that the</p> <p>23 Fourth Presbyterian School had trip credits that could be</p> <p>24 subtracted from the 50 or more trips of Heritage Gardens to</p> <p>25 actually produce a negative effect on traffic along S. Glen</p>	15	<p>1 from page 15 of the policy. The expectation that a, quote, a</p> <p>2 study is necessary if inadequate travel conditions are likely</p> <p>3 to occur. That's the policy underlying the guidelines. For</p> <p>4 one thing, this means looking into the future and predicting</p> <p>5 the impact on traffic of adding a new use to unused land.</p> <p>6 That prediction as LATR requires takes the count</p> <p>7 of existing trips on the roads from other uses called</p> <p>8 background traffic, and future trips projected from other</p> <p>9 known pipeline development. But this process intended to</p> <p>10 produce a realistic idea of the future traffic in the area</p> <p>11 must also avoid double counting of traffic, which could</p> <p>12 happen if for a given project traffic from prior use at the</p> <p>13 development site was counted along with traffic projected for</p> <p>14 the new use at that site.</p> <p>15 Section 3B6 of the guidelines called existing use</p> <p>16 trip credits specifies when it is proper to go through this</p> <p>17 avoidance of double counting exercise. Both the planning</p> <p>18 board staff and the Applicant make the point that Heritage</p> <p>19 Gardens qualifies for getting, quote, existing use trip</p> <p>20 credits under the list of criteria for the look back, which</p> <p>21 is a 12 year period in which the prior development was in</p> <p>22 place.</p> <p>23 We do not dispute that Heritage Gardens would be</p> <p>24 entitled to take credit for existing trips from the school if</p> <p>25 what was going on here is the simple and expedient</p>
14	<p>1 Road, not the 50 new trips that would trigger the need for a</p> <p>2 traffic study.</p> <p>3 To reach this nonsensical conclusion, the</p> <p>4 Applicant and the planning Board staff rely on section 3B6 of</p> <p>5 the 2021 LATR guidelines. Before getting to that, a little</p> <p>6 background. The former parochial school was on a lot owned</p> <p>7 by a church, making school use exempt from obtaining a</p> <p>8 special exception/conditional use. So no traffic study was</p> <p>9 done when that use became operative by the Presbyterians in</p> <p>10 1999. That alone raises questions why it would be not</p> <p>11 appropriate -- why would it be appropriate to actually do a</p> <p>12 traffic count now 21 years later.</p> <p>13 Why for one did Wells and Associates submit a</p> <p>14 traffic study for the earlier, smaller scale conditional use</p> <p>15 for the property in 2019 where in the proposed use would not</p> <p>16 itself generate 50 vehicle trips, but not an updated study</p> <p>17 now? This is not explained. The traffic study I'm -- from</p> <p>18 2019 that I'm talking about, was one that was submitted in</p> <p>19 connection with the Wormald application that was withdrawn</p> <p>20 after the matter -- after vigorous debate about whether or</p> <p>21 not it was even conditional use eligible before Hearing</p> <p>22 Examiner Robeson.</p> <p>23 Let me get back to the technicalities of the</p> <p>24 guidelines. The guidelines are intended to fulfill the</p> <p>25 county growth policy expectation that, and I'm quoting now</p>	16	<p>1 replacement of one use for another. But that is not what is</p> <p>2 going on here. There are no school, quote, existing site</p> <p>3 trips, unquote, to credit to Heritage Gardens because the</p> <p>4 school is long dead and buried as the use of the property.</p> <p>5 That use was abandoned seven years ago and no measurable</p> <p>6 traffic is coming and going to the site day after day from</p> <p>7 that property; there is the reason for a look back.</p> <p>8 Now, the switch from one use to another obviously</p> <p>9 does not take place instantly. And if fairly little time has</p> <p>10 passed it would be appropriate for the new user to look back</p> <p>11 at the then existing trips of the old use as a credit on the</p> <p>12 new use. But how long should this look back process go on?</p> <p>13 Certainly not 12 years, which is how the planning Board staff</p> <p>14 and the Applicant read the guidelines. And surely not even</p> <p>15 seven years in this case from the time the old use was</p> <p>16 unequivocally abandoned.</p> <p>17 The guidelines do not say where the line is. So</p> <p>18 the Hearing Examiner should determine a reasonable time under</p> <p>19 the circumstances of this case. It should not matter what</p> <p>20 was done in any other case among the examples provided by the</p> <p>21 Applicant. And if this section of the LATR guidelines have</p> <p>22 been misunderstood and misapplied in the past, that is not a</p> <p>23 proper reason for continuing the error. In our view, calling</p> <p>24 trips from seven years ago, quote, existing site trips, is</p> <p>25 pure fantasy.</p>

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5 (17 to 20)

17	<p>1 While all along, since the Presbyterians took over</p> <p>2 the property in 1999, the neighborhood roadways have grown</p> <p>3 more and more congested. We urge you to dispense with the --</p> <p>4 not to dispense with the traffic study on the dubious</p> <p>5 assumption that there has not been enough of a change in</p> <p>6 background or pipeline traffic since 1999 to warrant another</p> <p>7 look. Thank you.</p> <p>8 HEARING EXAMINER BAUMGARDNER: Thank you, Mr.</p> <p>9 Brown.</p> <p>10 Ms. Harris, your reply, please.</p> <p>11 MS. HARRIS: Thank you. And given the limited</p> <p>12 amount of time, I'm going to limit my reference to LATR. But</p> <p>13 if I have time it and I will go back to that. I was</p> <p>14 originally going to talk to that in more detail. The</p> <p>15 opponent's contention is just simply contrary to the plain</p> <p>16 meaning of the LATR, inconsistent with our parking planning</p> <p>17 has interpreted the guidelines. It's contrary to our</p> <p>18 practice and is contrary to what the planning staff and the</p> <p>19 planning board specifically determined in this case.</p> <p>20 Probably more importantly is that when you get down to it</p> <p>21 here, if a study as opposed to a statement were required,</p> <p>22 substantively nothing different would be submitted.</p> <p>23 And I will get to that in just a very brief</p> <p>24 moment. In other words, the analysis that the Applicant</p> <p>25 prepared and submitted to evaluate the vehicular impact of</p>	19	<p>1 guidelines on section 3B4 on page 22 say if a project</p> <p>2 produces less than 50 trips within all that is required is</p> <p>3 information demonstrating trip generation, information on the</p> <p>4 proposed location and nothing more is required.</p> <p>5 On the other hand, if 50 or more trips are</p> <p>6 required, then in order to evaluate the impact of the</p> <p>7 project, what the Applicant would need to do is analyze the</p> <p>8 impact of the project on nearby signalized intersections. In</p> <p>9 this case that the intersection at S. Glen and Little Falls.</p> <p>10 And it's based on the impact of the new trips meaning that</p> <p>11 the trips after effectively crediting the trips from the</p> <p>12 prior use of the school.</p> <p>13 So what did -- can we mute? Can everyone mute?</p> <p>14 So I think that's it so what did the traffic</p> <p>15 analysis that we submitted do? Both Exhibit 25 and then the</p> <p>16 supplemental analysis, which is Exhibit 58, did exactly this.</p> <p>17 We analyzed the effect of the project on the signalized</p> <p>18 intersection, but then we went further than what the</p> <p>19 requirements say and we analyzed the effect of the use on the</p> <p>20 intersection of S. Glen and Norton.</p> <p>21 And then we also evaluated the impact at the</p> <p>22 intersection of the project driveway in S. Glen. Furthermore</p> <p>23 what we did was, we didn't effectively credit the prior use</p> <p>24 by including it in background trips. We took a look at what</p> <p>25 this project as proposed would generate. And it was that</p>
18	<p>1 the proposed residential care facility is substantively no</p> <p>2 different than what would be produced under a traffic study.</p> <p>3 And in fact, and I will explain, we even went further than</p> <p>4 what would be required under a traffic study. Now first of</p> <p>5 all, just a very briefly go to the past practices. I do</p> <p>6 think they are relevant.</p> <p>7 And I just identified six in our motion. I would</p> <p>8 note that most importantly we identified six because we could</p> <p>9 not find any examples where parking planning determined that</p> <p>10 the trips from the prior use could not be accounted. But I</p> <p>11 think the most telling one is the Vitro office building at</p> <p>12 401115 Aspen Hill Road. In that case the office building had</p> <p>13 been vacant for 10 years and a new use, a different use,</p> <p>14 automobile sales wanted to move in.</p> <p>15 And to quote the staff report, the traffic</p> <p>16 statement which was prepared for filing with the APFO review</p> <p>17 concluded that the traffic impact is far less than with the</p> <p>18 current allowed use. They were referring to the vacant</p> <p>19 office building as the, quote, current allowed use. And</p> <p>20 thus, a traffic study is not required. But let me know move</p> <p>21 to the more important issue, which is there is no substantive</p> <p>22 difference.</p> <p>23 So the fact that requiring a traffic study in this</p> <p>24 case would not, as I said, would not produce a different</p> <p>25 outcome than the information that we did submit. The LATR</p>	20	<p>1 number of trips that were applied to those three</p> <p>2 intersections in our analysis.</p> <p>3 So we went further. So the bottom line is that</p> <p>4 what we submitted in terms of evaluating the vehicular impact</p> <p>5 is exactly what would have been required if a traffic study</p> <p>6 had been required. And then if I go back just for a moment</p> <p>7 to say that the LATR sets forth two tests to determine when a</p> <p>8 traffic -- when a credit can be applied. And one has to do</p> <p>9 with whether the use has been -- the first test is that 75</p> <p>10 percent of the UNOs for the use were approved more than 12</p> <p>11 years ago. We submitted to parking planning all of the</p> <p>12 building permits and UNOs that DPS had on record.</p> <p>13 And as reflected in their email to you on, I</p> <p>14 believe it was January 6, they concluded that we met this</p> <p>15 test. And then we also meet the second test was his credits</p> <p>16 may be applied of the proposed use will be replacing an</p> <p>17 existing land use and that land-use was occupied for more</p> <p>18 than 12 years. This does the school use has been there for</p> <p>19 15 years since 1999. And the property itself has been</p> <p>20 devoted to a school since the 60s.</p> <p>21 But you know, and again, this is the test that</p> <p>22 park and planning has consistently applied. And as I say, I</p> <p>23 quoted six examples. I would note that the reason why they</p> <p>24 take this approach is because tomorrow a new use could go in</p> <p>25 in the property, assuming the buildings are still there, and</p>

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6 (21 to 24)

<p>21</p> <p>1 put trips on the road. Now tellingly, and I think I agree 2 with this, what parking planning also says is if the 3 buildings had been demolished, then they won't allow you to 4 take the trip credit because it sort of undercuts the whole 5 premise which is a new use could move in tomorrow and the 6 trips would be on the road. 7 And that's why they credit them. But that's 8 really -- you know, that's really process over the substance, 9 which the substance is, as I said, that ultimately what we 10 did submit is exactly what would be required under a traffic 11 study for evaluating the vehicular impact. So the only 12 consequence of the Hearing Examiner requiring a traffic study 13 would be a delay in these proceedings, because at the end we 14 were produce the exact same information that would be in the 15 record. And that information is adequate to assess the 16 impact of this use on the neighboring network of roads. 17 Thank you. 18 HEARING EXAMINER BAUMGARDNER: Just a couple of 19 questions about the use of the language, existing use. And 20 this will be for Ms. Harris first. And then we will turn it 21 over -- the same question to Mr. Brown. It's clear that the 22 language says existing use. And the prior use of the 23 property as a school, it's uncontested that hasn't been 24 operating for a number of years. What's to stop a look back 25 period before that? What's to say there was a school there</p>	<p>23</p> <p>1 interpreted it. And the reason again is because that last 2 use -- take the case of the Vitro building. An office, it 3 could sit vacant for 10 years, 11 years, or as the regulation 4 say, up to 12 years, and a new office could come in there 5 tomorrow and the troops would be back on the road. And so 6 that's why they say, okay, we can then instead take those 7 trips and credit it against a new use that is planning to 8 come in. 9 And you know, sometimes when you take that credit, 10 the existing trips attributable to the land-use aren't enough 11 to make a difference. You still end up having to do a 12 traffic study. And we cited an example of that in a recent 13 conditional use in Silver Spring. On the other hand, 14 sometimes the trip credit is enough that it makes a 15 difference between having to do a statement versus a study. 16 But again, I'm coming back to the bottom line. 17 Our statement was effectively, substantively exactly what you 18 would get if we had put traffic study on the front page of 19 our report. 20 HEARING EXAMINER BAUMGARDNER: One final question 21 then I will turn it over to Mr. Brown for a response to my 22 question. In your office building example, if you have an 23 office building, and I will just make up numbers, that has 24 the traffic count in a.m. peak and p.m. peak will not exceed 25 afterwards a new office building comes into play. But for</p>
<p>22</p> <p>1 and seven years ago and before that it was a monastery and 2 before that it was a -- you know, some other use. What's to 3 stop a look back for every property in Montgomery County to 4 go to its last authorized use and then apply trip credits for 5 every single conditional use moving forward? 6 MS. HARRIS: Well first of all, it says existing 7 land use as opposed to existing use. And I think that's 8 different. I mean, land uses a term of art. And if we look 9 in the master plan, you can look on vacant property and say, 10 well was the land-use. So it's the use to which the property 11 can be used. And I think, as I said, that the most important 12 thing -- and it's the last use. It's not -- you know, if 13 this had been used for a 300 child, child development center 14 in 1970 and then it was used for a school use, we can go back 15 and try to claim those trips from the child development 16 center. 17 It's the -- is the immediately prior use. And I 18 think the language is pretty clear because the language does 19 not say that the use it needs to be currently operational. 20 And again, historically parking planning has always -- has 21 always applied it this way. Now if you talk to them, they 22 will admit that the language isn't artfully written. In fact 23 this case has highlighted that. And they said they were 24 going to clean it up when they make some upcoming revisions. 25 But the reality is this is the way they've</p>	<p>24</p> <p>1 whatever reason it requires more than 50 trips, peak a.m., 2 peak p.m. Would that office get credit for the old use and 3 then not have to go to a traffic study? Does my question 4 make sense or no? 5 MS. HARRIS: What you're saying is somehow there 6 was, in connection with the approval on a property, a stated 7 requirement that you had to limit your trips? Is that what 8 your question is? 9 HEARING EXAMINER BAUMGARDNER: That's -- no. And 10 perhaps I'm not praising my question correctly. What we have 11 in this case is a use of property that would otherwise -- if 12 it was an in-fill development, brand-new site, nothing was 13 there, it was a rolling grass field, under this proposal it 14 would require a traffic study, correct? 15 MS. HARRIS: If we have a current -- you're saying 16 if we have a current vacant piece of property and we wanted 17 to come in and develop (inaudible). 18 HEARING EXAMINER BAUMGARDNER: Exactly what you're 19 proposing in this application. 20 MS. HARRIS: We would need to do -- in that 21 case -- so essentially what you're saying is if we worked -- 22 if we couldn't apply the credits -- 23 HEARING EXAMINER BAUMGARDNER: Correct. 24 MS. HARRIS: What we need to do? We would need to 25 do a traffic study because our trip, our total person trips</p>

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<p>25</p> <p>1 were above 50 in the p.m. Having said that, okay, so yes, we 2 would have to do a traffic study. So what would we submit to 3 you? We would submit for purposes of evaluating vehicular 4 impact, we would submit what is the impact of that use at the 5 intersection of S. Glen and Falls. And we did that. And 6 then as I said we actually went beyond that because we 7 utilized two other intersections and we didn't take credit 8 for the school use. So we did exactly that. We did exactly 9 what you said.</p> <p>10 HEARING EXAMINER BAUMGARDNER: Okay. Mr. Brown, 11 any response from my questions?</p> <p>12 MS. HARRIS: Yes, very briefly. Ms. Harris notes 13 that the title of section 6 of the LATR guidelines that we 14 been referring to is -- the title is existing use trip 15 credits. And she emphasizes the notion that the use is a 16 term of art in the -- in zoning. But when you read the 17 actual text of the guideline, it says that the Applicant may 18 take credit for existing site trips based on the current LATR 19 trip generating methodology.</p> <p>20 Existing site trips is not existing land use of 21 trips. It's actually existing trips on the site. This 22 would -- the idea that you should be able to use this in a 23 situation where the -- were an office building has been -- 24 has been that has not been in use for several years, but it 25 is still a legitimately permitted use in that zone, I can</p>	<p>27</p> <p>1 HEARING EXAMINER BAUMGARDNER: One second Ms. 2 Harris.</p> <p>3 Mr. Brown, are you done?</p> <p>4 MR. BROWN: So I am done, yes.</p> <p>5 HEARING EXAMINER BAUMGARDNER: Okay. I was just 6 checking to make sure.</p> <p>7 MS. HARRIS: May I just make one additional point, 8 which actually Mr. Brown touched on? Which is the very 9 point, that though our existing structures on that site, an 10 appropriate school of which there are many options could move 11 in there tomorrow and operate and put trips on the road. 12 That is completely analogous to the Vitro office billing 13 situation. Is that the existing structures are there any use 14 could come in tomorrow. And that's exactly why Park and 15 planning says well, if the buildings were demolished, they 16 are not going to attribute credit for the trips. But that's 17 not what we have here.</p> <p>18 HEARING EXAMINER BAUMGARDNER: Okay. I will take 19 that under advisement. Moving on to our second preliminary 20 issue, it's Ms. Harris's motion for a potential witness. 21 First, let me ask Mr. Brown, were you going to call that 22 witness? Or is this something that we're going to have to 23 figure out this morning?</p> <p>24 MR. BROWN: That would be my first witness if I'm 25 allowed to call him.</p>
<p>26</p> <p>1 understand why you would want to look back and see what the 2 overall impact would be of switching from one to the other.</p> <p>3 In this case, we do not have an existing permitted 4 use on the property. This land is owned RE2. A school is a 5 permitted use on the property and a Presbyterian church 6 related school is a permitted use on the property. But that 7 use has been abandoned and it cannot be picked up by somebody 8 else without a conditional use unless they happen to be 9 another church school.</p> <p>10 So there is plenty of reason to think that what 11 the guideline meant was that you go back and look to see 12 whether or not there are any existing site trips coming and 13 going from the property. And there haven't been for the past 14 seven years. And I don't believe that if you don't qualify 15 for an exemption under this particular provision, you are 16 entitled to substitute for a traffic study what I 17 characterize as a traffic study lite.</p> <p>18 An approved traffic study is a lot more 19 complicated than as described by merely analyzing trip 20 generation at one intersection. And the methodology and the 21 data they going to a traffic study have to be reviewed and 22 approved by a number of people outside of the purview of the 23 hearing -- on a Hearing Examiner.</p> <p>24 MS. HARRIS: Mr. Baumgardner --</p> <p>25 MR. BROWN: So --</p>	<p>28</p> <p>1 HEARING EXAMINER BAUMGARDNER: Okay. Then I will 2 hear from Ms. Harris about the motion to strike. And then we 3 will have a response from Mr. Brown to that motion.</p> <p>4 MS. HARRIS: Thank you. So the rules are in -- 5 the OHZA rules are in place for a reason. And what Mr. Brown 6 in his response to my motion immediately said was, you're 7 right, we didn't comply with the rules. And then he gave a 8 number of reasons why they didn't comply. When a use is 9 contested like this one, there is an inordinate amount of 10 work that goes into preparation for a case. And I know Mr. 11 Brown and probably everyone else on this call would agree 12 with that.</p> <p>13 And it's especially to the last week of a hearing. 14 You are preparing witnesses. You are doing additional 15 research. You may have follow up on the planning board 16 hearing. And to get a notice one week prior when it was due 17 20 days prior to the hearing that a new expert witness is -- 18 or (inaudible) expert witnesses then just identified, simply 19 is not that is not fair. But it goes beyond not fair. It 20 places a burden on the other party to suddenly rearrange 21 their work schedule, their hearing prep to then focus in on 22 the expert witness. And this is all on top of the full 23 caseload on many other projects as well.</p> <p>24 So there is definitely prejudice. You know, it's 25 especially true since this didn't just arise. I mean, Mr.</p>



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<p>29</p> <p>1 Brown has been aware of this application since at least 2 August 2021. And frankly, since 2019 when the first 3 conditional use application was filed. So to me, it's 4 just -- it's unusual that the hearing prep cannot be a little 5 bit more organized to not spring on the opposition a new 6 witness a week before the hearing.</p> <p>7 And frankly -- and the rules say must. There's 8 not any discretion in this area. And I think to deny this 9 motion would be to send a message to all other opposition, 10 opponents in cases like this, which is, hey, we can spring a 11 witness on to the other side a week before or maybe not one 12 witness, maybe five witnesses, and sort of throw the 13 petitioner's case off-track. The rules are in place for a 14 reason. And certainly Mr. Brown, this is in his first 15 appearance before OHZA. He is very well aware of the rules.</p> <p>16 I know that in part they attributed some of the 17 delay in identifying the witness to COVID. But frankly, if 18 this were six weeks into COVID or even maybe six months, that 19 may be an acceptable excuse. We are all dealing with that 20 constraint. I haven't seen my client or any of our witnesses 21 since February or March 2020. So we are dealing with it in 22 the same way that the opposition is doing with it. So I 23 don't think that dealing -- hearing preparation under Covid 24 is -- should provide an exception to this rule.</p> <p>25 As I say, I think we have been prejudiced by this.</p>	<p>31</p> <p>1 this Soltesz land-use report about the nature of -- the 2 nature of the senior care industry and the relationship 3 between the two aspects of this project, the independent 4 living part and the assisted living/memory care part. We 5 were trying to find out whether or not the representations in 6 the report about the demand and how common these -- this kind 7 of an arrangement was.</p> <p>8 We've been looking for a long time to find someone 9 willing to stand up and testify on our behalf. And frankly, 10 by the time we wrote the prehearing statement on January 7, 11 we had all but given up on that idea and didn't even mention 12 the possibility that there might be someone because we didn't 13 have anybody on the horizon. Yet we never gave up on the 14 idea and lo and behold we were able to find somebody about 15 two weeks later.</p> <p>16 And you know, I'm sorry that we didn't notify you 17 sooner, but we didn't have anybody any sooner. This is not 18 any kind of game playing or sandbagging on our part. And so 19 we told you exactly what our witness was going to talk about 20 and we did it as soon as we could. I feel that considering 21 the fact that this witness is simply going to talk about the 22 industry and not be making any specific arguments about this 23 particular project, that your site will have no difficulty in 24 timely responding if she is incorrect in her assessment of 25 the industry.</p>
<p>30</p> <p>1 And I would also say that Mr. Brown went to the substance of 2 saying, look, this is in the Applicant's wheelhouse, which it 3 certainly is, and you will hear from our witnesses who are 4 seasoned senior care providers. But the substance of his 5 expert witness and what they're going to say, whether we 6 would be able to hit it out of the ballpark is irrelevant.</p> <p>7 The reality is the witnesses should have been 8 identified on January 7 and they weren't. And it 9 disadvantages and places an undue burden on the Applicant. 10 So for that reason I would encourage the Hearing Examiner to 11 grant our motion.</p> <p>12 HEARING EXAMINER BAUMGARDNER: Thank you. Thank 13 you, Ms. Harris.</p> <p>14 Mr. Brown, your reply.</p> <p>15 MR. BROWN: I still have not heard anything that 16 amounts to really significant prejudice or that can't be -- 17 that can be taken care of in the context of the fact that 18 this hearing is going to -- is going to take more than one 19 day. Essentially the complaint is that they didn't know that 20 we were going to have an expert witness 14 days earlier than 21 we told them. The facts are clear. The facts are clear that 22 we told them almost instantly as soon as we were able to 23 figure out that we could have an expert witness.</p> <p>24 We've been looking for a long time for someone who 25 would be able to talk about the claims that have been made in</p>	<p>32</p> <p>1 Plus, you also have the opportunity to examine her 2 credentials before she says anything substantive at the 3 hearing. And I'm sure that the Applicant is well-equipped to 4 do that. I think Mr. Baumgardner, you should take into 5 account the difficulties and constraints under which citizen 6 groups operate when trying to find somebody who is an expert 7 in the field where those experts almost always devote their 8 time and energy and attention to the members of the industry 9 who are the ones making the applications.</p> <p>10 And I think that you should welcome hearing from 11 somebody in the -- who is knowledgeable about the industry 12 and can say a few things about the statements that are made 13 in the Soltesz land-use report, which is going to be the 14 focus of her testimony.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Thank you. Sorry. 16 Again, I'm just writing notes. All right. So are there any 17 other preliminary matters that we needed to address before --</p> <p>18 MS. HARRIS: I have a couple. One is obviously 19 additional hearing dates. I don't know if you want to do 20 that at the end. And when we get to that, the only thing I 21 would recommend is that while I certainly hope that we can 22 get done in one day, I think that's unlikely. And I think we 23 need a second day. But for security reasons that identify 24 two additional days so we don't spend -- and so that we can 25 be as efficient as possible. That's number one.</p>

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33	<p>1 And the number two as I just wanted a</p> <p>2 clarification about -- well, number two is actually a</p> <p>3 timeslot for anyone who wants to speak in support, for them</p> <p>4 to be a will to testify. But then third, I want</p> <p>5 clarification on the calling -- the pulling up of exhibits.</p> <p>6 I didn't know whether your assistant Ms. Johnson was going to</p> <p>7 do that or where we thought -- and as I had said, we've</p> <p>8 made -- we have duplications of everything that's on OHZA</p> <p>9 website in the order in which they're going to be presented</p> <p>10 by the various witnesses. And we thought it was easier and</p> <p>11 would facilitate the hearing if each witness could bring up</p> <p>12 their own exhibits. But I wasn't sure how that was going to</p> <p>13 work. So if we can get clarification on that, that would be</p> <p>14 helpful.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Sure. I think the</p> <p>16 scheduling for a day two, possibly day three is a good idea.</p> <p>17 Unless there is some problem with this I would like to do</p> <p>18 that at the end of today's hearing. But I absolutely agree</p> <p>19 that we should get at least two more days on the calendar and</p> <p>20 everyone can look at their calendars at the end of today and</p> <p>21 we can tentatively put that on the calendar and then our</p> <p>22 office will issue a notice for those next two days.</p> <p>23 Your second question, generally I bring up</p> <p>24 exhibits for a hearing. That's just how we've been doing it.</p> <p>25 But I'm happy to allow a witness or counsel for either side</p>	35	<p>1 Montgomery who has been for years and years dealing with</p> <p>2 environmental issues in the Potomac area of the county would</p> <p>3 like to question whoever is going to be doing any kind of an</p> <p>4 environmental presentation with regard to the property.</p> <p>5 HEARING EXAMINER BAUMGARDNER: (Inaudible).</p> <p>6 MR. BROWN: And one or more the local residents</p> <p>7 may want to question any comments that are made about the</p> <p>8 neighborhood by any of the Applicant's witnesses.</p> <p>9 MS. HARRIS: It seems to me that --</p> <p>10 MR. BROWN: Those are the only two areas that I</p> <p>11 see because I'm not that I'm not a Potomac resident and I'm</p> <p>12 not equipped to ask the kinds of questions that they could</p> <p>13 ask. And frankly, we have not spent hours and hours of time</p> <p>14 in this COVID world bringing me up to speed to ask all the</p> <p>15 questions that they could ask.</p> <p>16 MS. HARRIS: It seems to me that that's a</p> <p>17 violation of rule 3.3 regarding representation. And it would</p> <p>18 be like me saying, okay, well Soltesz is an expert on forest</p> <p>19 conservation. So that person who is an expert is going to</p> <p>20 question the witness on forest conservation. It's the job of</p> <p>21 the attorney to know what the substantive issues and question</p> <p>22 their witnesses accordingly.</p> <p>23 HEARING EXAMINER BAUMGARDNER: What I think we're</p> <p>24 going to do is this. I will -- it is abnormal and I'm being</p> <p>25 very cautious here because we don't want to have a situation</p>
34	<p>1 to bring up their own exhibits. Likely, it's less clicking</p> <p>2 that I have to do. So that would be fine with me. You're</p> <p>3 welcome to have your witness or yourself or your staff</p> <p>4 produce those exhibits. That is not a problem.</p> <p>5 MS. HARRIS: Thank you.</p> <p>6 HEARING EXAMINER BAUMGARDNER: Mr. Brown, anything</p> <p>7 else preliminarily or to raise before we move forward?</p> <p>8 MR. BROWN: Just by way of clarification, the work</p> <p>9 involved in preparing an opposition case had to be split up</p> <p>10 among people. And thinking also about the burden on the</p> <p>11 opposition, the cost burden on the opposition, I have</p> <p>12 delegated as much as possible of the responsibility for</p> <p>13 preparing opposition questions to some of the people who will</p> <p>14 be testifying today who of course are unpaid. So in some</p> <p>15 respects a number of aspects of the application, I will be</p> <p>16 asking one of the other parties to the case to do the</p> <p>17 questioning. We're not going to be double teaming anybody,</p> <p>18 but the point is I will not be doing all of the questioning</p> <p>19 of their witnesses.</p> <p>20 HEARING EXAMINER BAUMGARDNER: But who might be</p> <p>21 doing the questioning?</p> <p>22 MR. BROWN: I beg your pardon.</p> <p>23 HEARING EXAMINER BAUMGARDNER: Who might be doing</p> <p>24 the questioning? Is that a community member?</p> <p>25 MR. BROWN: Well, for example, Suzanne Lee of West</p>	36	<p>1 where we're going to have witnesses who have the hat of</p> <p>2 question asker and question answerer. And Ms. Harris is</p> <p>3 correct that we have a rule on point here. And certainly in</p> <p>4 the court of law that would never be permitted.</p> <p>5 I think what I'm going to do is allow limited</p> <p>6 questions by non-counsel if they are particular points. But</p> <p>7 we're going to be really strict here about questions. This</p> <p>8 is not an opportunity for community members to provide</p> <p>9 opinion or to provide editorial style questions during</p> <p>10 hearing.</p> <p>11 Certainly when they're testifying that may provide</p> <p>12 those opinions, but -- so Mr. Brown, if you are hearing what</p> <p>13 I'm saying, we're going to allow it and see how it goes. But</p> <p>14 if we are veering off into outer space with these questions,</p> <p>15 I will cut that off and we will leave that for direct</p> <p>16 testimony from your witnesses. Does that make sense?</p> <p>17 MR. BROWN: I have. I have confidence we will not</p> <p>18 run afoul of your limitations.</p> <p>19 HEARING EXAMINER BAUMGARDNER: One of the powers I</p> <p>20 do have now in the remote world is like an auto mute people,</p> <p>21 which you don't have in person. And I'm not going to lie,</p> <p>22 I'm going to kind of miss it when we go back to live</p> <p>23 hearings. And I don't use it often, but I have used it. And</p> <p>24 I don't like using it, to be very honest. So we will -- as I</p> <p>25 say, we will allow limited questions if there are particular</p>

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37	<p>1 issues and particular matters that either side was to kind of</p> <p>2 dive a little bit deeper on. But we -- we're going to put</p> <p>3 reins on those. All right.</p> <p>4 So for our preliminary issue regarding the LATR or</p> <p>5 the requirement for the traffic study, I'm going to hold</p> <p>6 that. I want to look at some things later today perhaps</p> <p>7 during the lunch break from what you all have submitted</p> <p>8 already in writing.</p> <p>9 For the motion to strike, I am going to grant a</p> <p>10 motion to strike the witness. OHZA has rules for a reason.</p> <p>11 They allow us to figure out the timing of hearings, the time</p> <p>12 allotted for hearings, the time for any party to prepare.</p> <p>13 The identification of the potential expert witness was</p> <p>14 certainly late. But more important than that, I haven't seen</p> <p>15 what the probative value of what her testimony might be. For</p> <p>16 a conditional use that for most conditional uses including</p> <p>17 this one, it is up to our office at least at this stage to</p> <p>18 determine if what is described fits the criteria under the</p> <p>19 zoning ordinance.</p> <p>20 And that burden is on the Applicant to produce a</p> <p>21 witness, to produce evidence. So the burden of proof in the</p> <p>22 burden of persuasion is on the Applicant to establish whether</p> <p>23 or not this particular use meets the definition of a</p> <p>24 residential care facility under the zoning ordinance. I</p> <p>25 haven't heard anything and what has been submitted prior to</p>	39	<p>1 let's break for five minutes. Now the clock just ticked</p> <p>2 over. So 10:41 we will reconvene and begin the Applicant was</p> <p>3 BS case in chief. Thank you all very much.</p> <p>4 (Off the record at 10:35 a.m. resuming at 10:42</p> <p>5 a.m.)</p> <p>6 HEARING EXAMINER BAUMGARDNER: Case in chief. Ms.</p> <p>7 Vogel, I do see you down there. If you can, mute yourself,</p> <p>8 please. There is some background noise.</p> <p>9 MS. VOGEL: Okay, mute.</p> <p>10 HEARING EXAMINER BAUMGARDNER: I promise you you</p> <p>11 will be able to testify whenever that time --</p> <p>12 MS. VOGEL: Oh, I don't know how to mute myself.</p> <p>13 HEARING EXAMINER BAUMGARDNER: Okay. I can mute</p> <p>14 you, ma'am.</p> <p>15 MS. VOGEL: I can't find the mute.</p> <p>16 HEARING EXAMINER BAUMGARDNER: That's all right.</p> <p>17 I can do it for you.</p> <p>18 MS. VOGEL: Please do.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Not a problem.</p> <p>20 Here we are. I'm muting you as no offense to you.</p> <p>21 MS. VOGEL: Sure, I understand. I -- okay.</p> <p>22 MS. HARRIS: I didn't know that you needed IT</p> <p>23 training as a Hearing Examiner.</p> <p>24 HEARING EXAMINER BAUMGARDNER: Honestly, it was --</p> <p>25 I've done this in two different jurisdictions at this point.</p>
38	<p>1 the hearing and I haven't heard anything this morning that</p> <p>2 leads me to the conclusion that this particular witness's</p> <p>3 testimony would be probative of that issue.</p> <p>4 So I am going to -- I am going to grant that</p> <p>5 motion to strike, let's say the opposition's expert witness</p> <p>6 that was identified in the prehearing statement. With that,</p> <p>7 unless there are any other preliminary issues, we are going</p> <p>8 to begin our case in chief here today. And before we do</p> <p>9 that, we're going to take a five-minute break if that's okay</p> <p>10 with everyone. My clock says 10:35. We will reconvene at</p> <p>11 10:40 a.m. Just to let folks know, generally I break for</p> <p>12 lunch around noon.</p> <p>13 So my intention is to hear as much witness</p> <p>14 testimony as we can between 10:40 and 12:00. We will break</p> <p>15 for lunch for an hour, hour and a half depending on how</p> <p>16 people are feeling. I've got kids to feed upstairs. So we</p> <p>17 will do that and then we will reconvene at 1:00 or 1:30</p> <p>18 depending on what we decide an hour and a half or so to get</p> <p>19 over the rest of the afternoon.</p> <p>20 As we had mentioned before, we are going to</p> <p>21 schedule this for a day or two, additional testimony which we</p> <p>22 will do at the end of today. Unless there is some problem</p> <p>23 with the scheduling, the dates will be dates certain. So we</p> <p>24 will have those dates today decided so that everyone knows</p> <p>25 moving forward when we are going to be back here. So again,</p>	40	<p>1 And both places it's been different platforms. And Microsoft</p> <p>2 updates every three months or so. And things move around.</p> <p>3 So they do an update and the icons are in different places.</p> <p>4 So you have to constantly be reminding yourself where</p> <p>5 something is now. But anyway, we are back on the record in</p> <p>6 OHZA case 2201.</p> <p>7 This is where residential care facility located at</p> <p>8 10701 S. Glen Road. We are back with counsel and parties</p> <p>9 continuing this hearing. We are now beginning to Applicant's</p> <p>10 case in chief. Ms. Harris, so you're welcome to give an</p> <p>11 opening statement if you wish and begin questioning your</p> <p>12 witnesses.</p> <p>13 MS. HARRIS: Thank you. I will begin with an</p> <p>14 opening statement. Good morning. Once again, Pat Harris</p> <p>15 with the law firm of Lerch, Early &amp; Brewer. I did previously</p> <p>16 identify the Applicant's team. I will not do that again.</p> <p>17 But I'm here on behalf of the Applicant, Heritage Gardens</p> <p>18 Land, LLC, which is an affiliate of the Wormald Companies.</p> <p>19 At the Hearing Examiner is aware from the application</p> <p>20 materials, the petitioner is here today to request approval</p> <p>21 of a conditional use for a residential care facility over 16</p> <p>22 persons, more specifically classified as a senior care</p> <p>23 community, at the property located at 10701 S. Glen Road.</p> <p>24 The project is proposed for a total of up to 74 IL</p> <p>25 units, 45 contained in what we are referring to as cottage</p>

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11 (41 to 44)

<p style="text-align: right;">41</p> <p>1 independent units, and up to 29 housed in the structure 2 referred to as the Lodge. And there also be up to 105 AL, 3 assisted living and memory care beds in 87 units also housed 4 in the Lodge. And I would note that the numbers cited above 5 our maximum caps. Any increase in the assisted living and 6 memory care units above 96 beds up to the maximum of 105 beds 7 as set forth in the planning board condition assuming that 8 condition is adopted, would be accompanied by a corresponding 9 decrease in independent living units in the Lodge. 10 And our traffic consultant will address that. We 11 ask that the Hearing Examiner taken initiative notice of 12 zoning text amendment 20-08 adopted unanimously by the 13 Montgomery County Counsel May 11, 2021. This zoning text 14 amendment clarified certain provisions of the residential 15 care facility provisions of the ordinance and provided for a 16 senior care community which is defined as follows. A 17 community providing a continuum of residential occupancy and 18 healthcare services for seniors. 19 The community must include assisted living and 20 residential independent dwelling units and may also include 21 memory care and/or skilled nursing and one or more buildings 22 of any structure type. The health care and services 23 component of the community may be located in a structure 24 physically separated from the independent dwelling units. 25 This ZTA was adopted by the Council over the objection of</p>	<p style="text-align: right;">43</p> <p>1 facility. 2 We understand that change can be difficult for a 3 community, especially the immediately surrounding neighbors. 4 And that is why early on in this process in connection with 5 the prior conditional use that was filed in 2019, the 6 petitioner engaged in extensive outreach with the community. 7 Petitioner attempted this outreach effort again in connection 8 with the subject conditional use application, but 9 unfortunately the surrounding community members who have 10 concern about the application did not want to engage. 11 Through our witnesses you will hear that the 12 petitioner has designed a residential care facility that is 13 context sensitive, that respects and preserves the natural 14 environment of the property. In fact, as you will hear from 15 the Applicant, the preservation and natural features of the 16 site were a starting point in determining the design of this 17 project. Over the course of the hearing and through our 18 witnesses we will demonstrate that one, the conditional use 19 application satisfies of the development standards of the RE2 20 zone. 21 Two, that the conditional use application 22 satisfies the standards contained in section 59 3.3.2E for a 23 residential care facility. 24 Three, that are available public facilities and 25 services.</p>
<p style="text-align: right;">42</p> <p>1 opponents who testified against the ZTA expressing concern 2 over the same issues that we anticipate that you will hear 3 during the course of this hearing. 4 Those issues included that the ownership should 5 not be an option, that the ZTA would allow for a conditional 6 use to be held by more than one entity and that senior 7 support services would be physically separated from the 8 cottage IL units. The petitioner who advocated for the 9 zoning text amendment shared with many of the councilmembers 10 the proposed design of the Heritage Potomac project. 11 In unanimously approving the zoning text amendment 12 it's more than fair to say that the Montgomery County Counsel 13 understood the type of project that would result from that 14 zoning text amendment. The Montgomery County planning board 15 issued a staff report, that's Exhibit 97A in the record, 16 recommending approval of the conditional use and the planning 17 board reviewed and voted unanimously to recommend approval of 18 the project at the regularly scheduled meeting on January 13. 19 The planning board's letter of recommendation is 20 Exhibit 97. In addition, on 10 with 13 the planning board 21 also approved the preliminary forest conservation plan for 22 the project. Since at least the mid-60s, the property has 23 been used for a variety of school uses. The Applicant now 24 proposes to bring the property's use back to residential use 25 with the development of the proposed residential care</p>	<p style="text-align: right;">44</p> <p>1 Four, that the conditional use substantially 2 conforms with the recommendations of the master plan, and 3 Five, that the approval of the conditional use 4 complies with the required general and specific findings for 5 a conditional use in the zoning ordinance in section 59 7.31E 6 including that the use is compatible with the nearby 7 properties. 8 We will be calling eight witnesses. I identified 9 them previously and identified them in the order in which 10 they will appear. So I don't need to go through that again. 11 And with that, we are ready to call our first witness. 12 HEARING EXAMINER BAUMGARDNER: Great. When we 13 call our witnesses we are going to identify them. Again, I 14 would like their name, their professional address, and a good 15 email address. And then I will swear them in before the 16 testimony begins. Ms. Harris, your first witness. 17 MS. HARRIS: Thank you. So my first witness is 18 Mr. Ken Wormald representing the Applicant. Mr. Wormald -- 19 do you want to swear him in first before we proceed Mr. 20 Baumgardner? 21 HEARING EXAMINER BAUMGARDNER: Sure, let's just 22 get -- again, I know that we've said this, but let's just 23 have the witness identify himself, his professional address, 24 his email address, and then I will swear him in. 25 MR. WORMALD: Sure. Good morning. It's Kenneth</p>

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12 (45 to 48)

45	<p>1 Wormald. My professional address is 5283 Corporate Drive, 2 Suite 300, Frederick, Maryland, 21703. And real estate 3 development is my profession. And what was the other -- oh, 4 email. 5 HEARING EXAMINER BAUMGARDNER: Yeah. 6 MR. WORMALD: It's Ken.Wormald@Wormald.com. 7 HEARING EXAMINER BAUMGARDNER: Okay. Thank you, 8 sir. Can you please raise your right hand? 9 MR. WORMALD: Yes. 10 Kenneth Wormald, 11 being first duly sworn or affirmed to testify to the truth, 12 the whole truth, and nothing but the truth, was examined and 13 testified as follows: 14 HEARING EXAMINER BAUMGARDNER: Thank you, very 15 much. Ms. Harris, the witness is yours. 16 MS. HARRIS: Thank you. Mr. Wormald, can you 17 please provide a brief description of your education and 18 background? 19 MR. WORMALD: Yes, I hold a bachelor of science in 20 business administration from the University of Richmond, a 21 master of science degree in real estate from Johns Hopkins 22 University, and master of arts in Christian studies from 23 Regent College. And I completed the advanced management 24 development program in real estate at Harvard. 25 Professionally I'm a real estate developer and I am a</p>	47	<p>1 For those projects we work with Sage Life, the 2 well-respected senior living operation and development 3 partner through all phases of the development process 4 including product design, market positioning, branding, and 5 operations. 6 MS. HARRIS: And what is your position at Wormald? 7 MR. WORMALD: Yeah. So I'm a partner at the 8 Wormald Companies managing the acquisition, design, 9 development, construction, branding, and sales of multiple 10 projects. I have a particular focus on senior living as well 11 as overseeing all community and product designed to ensure it 12 meets the high standards of the Wormald brand which our 13 customers have come to expect and rely upon. 14 MS. HARRIS: And I assume you are familiar with 15 the conditional use that's the subject of this application? 16 MR. WORMALD: Yes. 17 MS. HARRIS: And what is Wormald Companies' legal 18 relationship with the Applicant Heritage Garden Land LLC? 19 MR. WORMALD: Heritage Garden Land LLC is a wholly 20 subsidiary of the Wormald Companies LLC. 21 MS. HARRIS: And what is -- what is the 22 Applicant's interest, legal interest in the property? 23 MR. WORMALD: We are the contract purchaser. The 24 (inaudible) authorization was submitted into the record as 25 Exhibit 3. We entered into the contract on the property</p>
46	<p>1 licensed real estate broker. I've spent the majority of my 2 career, the past 25 plus years in real estate. 3 MS. HARRIS: Thank you. And can you please 4 provide a little background about Wormald Companies and 5 specifically their interest in the senior living segment? 6 MR. WORMALD: Absolutely. Wormald was founded in 7 Potomac Maryland in 1964 by my father. Many of the people on 8 the call know my parents. Wormald today -- and me. But 9 Wormald today is a midsized mid-Atlantic regional development 10 firm of 85 employees operating in four states developing a 11 variety of commercial and residential property types 12 including for sale residential, apartments, senior living, 13 mixed-use, office, and retail. 14 We are a vertically integrated organization 15 meaning we have in-house professional architectural, 16 engineering, construction management, property management, 17 sales, and marketing and brokerage expertise all under one 18 roof. Projects we have created a menace have been as large 19 as 1500 units in a neo-traditional small-town development to 20 as small as one custom home in Bethesda. We've won hundreds 21 of industry awards for our completed projects. For the past 22 four decades Wormald has had a strong focus on the senior 23 segment of the market and in recent years has added higher 24 levels of acuity to the mix through assisted-living and 25 memory care development.</p>	48	<p>1 almost 4 years ago, February 8, 2018. 2 MS. HARRIS: Thank you. And can you please 3 describe your familiarity with the property? And here we 4 want to pull up our first exhibit. And Ken, I didn't know 5 whether you wanted to pull that up. Or do you want me to 6 pull? 7 MR. WORMALD: Either way. You can pull it up. 8 I'm happy to as well. 9 MS. HARRIS: Okay, I can. 10 MR. WORMALD: Yeah, well -- 11 MS. HARRIS: (Inaudible). 12 HEARING EXAMINER BAUMGARDNER: Sometimes it takes 13 a couple of seconds to load. There it is. 14 MS. HARRIS: Okay. So -- and I need to -- I'm 15 assuming I should cross-reference this to what is in the best 16 the list on the (inaudible). 17 HEARING EXAMINER BAUMGARDNER: Yes. 18 MS. HARRIS: Hold on one moment. That's where -- 19 so this is Exhibit 68, aerial location map. 20 MR. WORMALD: So as you see, the Potomac village 21 there on the right of the property is less than a mile away 22 with the blue star there. I grew up about a half-mile from 23 the site. Went to local schools in the area of. My children 24 all went to the Fourth Presbyterian school from 2004 to 2014. 25 I served on the board of the school and various school</p>

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13 (49 to 52)

49	<p>1 committees from 2004 to 2014. The little yellow star is</p> <p>2 where our company was founded.</p> <p>3 MS. HARRIS: Thank you. And what were the schools</p> <p>4 plans for the property and why did those plans change?</p> <p>5 MR. WORMALD: Yeah. The school began operations</p> <p>6 in 1999. The desire was to expand the student body</p> <p>7 incrementally by starting first with a pre-K and elementary</p> <p>8 school, then adding the middle school, then ultimately adding</p> <p>9 a high school with a pre-K through 12 operation of</p> <p>10 approximately 400 students. We had successfully added a</p> <p>11 middle school and were on track to add a high school. So the</p> <p>12 campus was master-planned for a 400 student body. We can</p> <p>13 look at the exhibit referring to the two footprints. Yeah.</p> <p>14 So on the left you will see --</p> <p>15 HEARING EXAMINER BAUMGARDNER: And this is Exhibit</p> <p>16 87; is that correct?</p> <p>17 MS. HARRIS: Yes, it is. Thank you.</p> <p>18 HEARING EXAMINER BAUMGARDNER: Yes.</p> <p>19 MR. WORMALD: So this is just kind of a</p> <p>20 introduction to the site. On the left you will see where the</p> <p>21 school was headed. We essentially had an upper campus and</p> <p>22 lower campus concept with the high school on the hill and the</p> <p>23 lower school below that. Essentially -- and so we were at a</p> <p>24 point where we embarked on a capital campaign as a board of</p> <p>25 directors. The intention was to construct in phases again,</p>	51	<p>1 MS. HARRIS: And this is Exhibit 83. Go ahead.</p> <p>2 MR. WORMALD: So this is -- this is phase 1, or</p> <p>3 the high school that again, we were literally about to begin</p> <p>4 construction. And then the 2008 recession hit and our</p> <p>5 financing to build the project was pulled. The school then</p> <p>6 scaled back its plans. We installed portables to accommodate</p> <p>7 students. The enrollment continued to decrease to a low of</p> <p>8 95 students. So we ultimately have the board made the very</p> <p>9 difficult decision to close our doors in 2014.</p> <p>10 MS. HARRIS: And what happened after the school</p> <p>11 close?</p> <p>12 MR. WORMALD: There were several offers made on</p> <p>13 the property. The owners received two offers from reputable</p> <p>14 local area schools looking to move to expand in this</p> <p>15 location. In addition to other schools and a day camp</p> <p>16 expressed interest in the property. I have also been</p> <p>17 contacted by at least two schools myself either through a</p> <p>18 broker or through direct communication with a school</p> <p>19 representative regarding the potential to purchase the</p> <p>20 property for the buildout of their school. One of those</p> <p>21 being a religious school. One interested party wanted to max</p> <p>22 out the density to greater 1,000 plus unit CCRC, all of</p> <p>23 institutional, multistory buildings. Needless to say there</p> <p>24 has been and is considerable interest in the property.</p> <p>25 MS. HARRIS: And why the shift from school to the</p>
50	<p>1 with the first phase being the high school. We did that we</p> <p>2 prepared building permit plans and fall for permits. The --</p> <p>3 by the way, while we are looking at this exhibit, the little</p> <p>4 curved wings with a future expansion to the building. And</p> <p>5 then the lower campus is the circle which is where the</p> <p>6 location of the elementary school started and would be</p> <p>7 redeveloped ultimately. And then on the right of course is</p> <p>8 the --</p> <p>9 MR. WORMALD: What's that?</p> <p>10 HEARING EXAMINER BAUMGARDNER: For the purposes of</p> <p>11 the transcript, the witness is indicating -- or counsel is</p> <p>12 indicating the map on the left in the center of the diagram.</p> <p>13 MS. HARRIS: Yes. Sorry. If I could Mr.</p> <p>14 Baumgardner, just for ease of purpose, we are -- because this</p> <p>15 property doesn't sit on and even north-south diagonal. We</p> <p>16 are considering the property line, this property line to be</p> <p>17 the west, the frontage to be the south along S. Glen Road.</p> <p>18 The bottom would be the east and then the north at the back.</p> <p>19 So all our testimony will refer to those directions.</p> <p>20 HEARING EXAMINER BAUMGARDNER: Understood.</p> <p>21 MS. HARRIS: Thank you. Sorry Mr. --</p> <p>22 MR. WORMALD: And then the map on the right is the</p> <p>23 proposed project. Just to give you a visual reference</p> <p>24 between the two potential outcomes of the property. I guess</p> <p>25 we go on to the rendering of the building.</p>	52	<p>1 senior use? Why was that so -- why was that of interest to</p> <p>2 Wormald Companies?</p> <p>3 MR. WORMALD: Right.</p> <p>4 MS. HARRIS: And do you think the property was --</p> <p>5 maybe I should say, why did you think the property was</p> <p>6 well -- so well-suited for senior living?</p> <p>7 MR. WORMALD: Sure, yeah. So as a former resident</p> <p>8 of Potomac with parents that still live there who also have</p> <p>9 aging friends, we are aware of the need for senior living in</p> <p>10 Potomac. As a company we've had several inquiries over the</p> <p>11 years from the 20854 ZIP Code asking that we build senior</p> <p>12 living in Potomac. So the demand has been apparent for</p> <p>13 years. The Potomac sub region master plan calls for senior</p> <p>14 living citing a need based on demographics and existing</p> <p>15 supply.</p> <p>16 This is a rare infill property converting a school</p> <p>17 institutional used a residential. While there are an</p> <p>18 increasing number of assisted living facilities, there is a</p> <p>19 limited number of residential care facilities that have</p> <p>20 independent living as well as assisted living and memory</p> <p>21 care. Most are more institutional in nature. We wanted to</p> <p>22 provide a product that had a level of care and services but</p> <p>23 in an environment that was more familiar to the homestyle</p> <p>24 people currently live in.</p> <p>25 So context-sensitive design was really important</p>

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14 (53 to 56)

<p>53</p> <p>1 to us. Also having spent so much time on the property, 2 preservation of most of its natural beauty and environmental 3 features was personally important to me. Our vision for 4 senior living is all about responding to what we are hearing 5 in the market and allowing seniors to age with dignity and 6 space and community environment they will love being in. 7 We believe the senior living industry has largely 8 failed seniors and not providing the variety of residences 9 that they deserve. The other thing we're looking at is the 10 proximity to the Potomac Village which is also important. I 11 will community will have a van or shuttle transportation to 12 nearby shops, the Potomac library, local medical offices, and 13 similar destinations. 14 MS. HARRIS: And as you mentioned -- you sort of 15 touched on this, but when -- can you explain how the site 16 surroundings played a role in the project design? 17 MR. WORMALD: Yes. Sorry, let me -- so, okay. 18 Yeah. So having grown up here and already intimately 19 familiar with the area, we wanted a design that was 20 consistent with the surrounding residential feel with an 21 architectural style, size, and massing of the structures. 22 The preservation of trees and forest was very important was. 23 We deliberately located the Lodge at the lowest elevation 24 point of the property where the elementary school was. We 25 did not want a predominantly institutionally styled</p>	<p>55</p> <p>1 use, can you please explain the anticipated structure of the 2 committee and identify the entity that will hold the 3 conditional use? 4 MR. WORMALD: Yes. So the objective will be to 5 provide a structure that is enforceable and binding on the 6 initial owners and all subsequent owners. So the Applicant 7 will control the conditional use approval as the owner of 8 Heritage Lodge and Fitness Center and the individual cottage 9 unit owners will also be subject to the requirements of the 10 conditional use approval. 11 To ensure continued compliance with the 12 conditional use, as we pointed out in the land-use report, 13 the project as a whole will be subject to a declaration of 14 covenants that will be solely controlled by the Applicants as 15 the owner of the Heritage Lodge and Fitness Center the 16 covenants will provide the Applicant with additional 17 enforcement rights to ensure compliance across the entire 18 Heritage Potomac campus with all the conditions of the 19 residential care facility conditional use approval. 20 The covenant may also provide that the project 21 will be owned and operated as a housing for older persons as 22 defined by the Federal Housing for Older Persons Act and the 23 corresponding state law which will be included and enforced 24 through the covenants. Or there may be separate and 25 identical housing for older person covenants recorded against</p>
<p>54</p> <p>1 residential care facility. 2 MS. HARRIS: Okay. And I mentioned this in my -- 3 one of the remarks earlier. It was the expected ownership 4 interest in the various senior units? 5 MR. WORMALD: Yeah. So the cottages will be 6 located on ownership lots and will be fee simple ownership. 7 And the independent living, assisted living, and memory care 8 in the Lodge will be rentals. 9 MS. HARRIS: And then somewhat briefly, because 10 Sage Life will get into this given that it's within their 11 wheelhouse. But how are the services -- how is the service 12 component structured? 13 MR. BROWN: Yeah. So in brief, there will be a 14 service fee for all independent living residents, which will 15 vary depending on the level of service required. Food 16 service for the independent living units will be based on a 17 variety of meal plans available to the residents to choose 18 from. For the assisted living and memory care, they will be 19 enjoying all their meals in the Lodge and be fully dependent 20 on the food service. For the assisted living and memory 21 care, we will have a base level of service fee included in 22 the rent with the ability to increase the amount of care 23 based on the level of services required. 24 MS. HARRIS: Thank you. And given the 25 opposition's concern about the control of the conditional</p>	<p>56</p> <p>1 the Heritage Lodge in section and the cottage unit section of 2 the project so that each may administer the age restrictions 3 in their own portion of the project. 4 MS. HARRIS: And then given that you had always 5 anticipated the declaration of covenants, and I actually 6 believe the land-use report identified that that would be in 7 structure. Do you have any issue with the planning board's 8 recommendation for condition number 15 which would read as 9 follows; 10 The independent living units located within the 11 cottages shall be subject to a declaration of covenants 12 recorded in the land recordings and binding on all successors 13 and assigns that provides for the following, one, the cottage 14 units are part of the overall residential care facility and 15 all services and amenities available to the independent 16 living units located in the Lodge are available to the 17 cottage unit residents, and two the cottage unit -- excuse 18 me -- the cottage units are subject to the conditions and all 19 respects of the conditional use approval. If you have any 20 objection with adding -- if this were to get approved, that a 21 condition would be added to the approval stating that? 22 MR. WORMALD: Now, we would have no objection. As 23 I said, we always anticipated the structure. So of course we 24 agree with that condition. 25 MS. HARRIS: Okay. And a moment ago I asked you</p>

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15 (57 to 60)

<p>57</p> <p>1 about the anticipated structure of the project. At what 2 point of the development process will be homeowners 3 association be established or a declaration recorded? 4 MR. WORMALD: Yeah. So first of all we don't even 5 own the land yet and we don't have the necessary entitlements 6 yet. It's typical to go through the entitlement process 7 before even thinking about HOA documents or other agreements. 8 But the HOA will be formed and the declaration recorded prior 9 to the occupancy of the first unit. 10 MS. HARRIS: Thank you. And then finally I would 11 like to ask you about your civic outreach. What if any 12 outreach efforts have you engaged in? 13 MR. WORMALD: Yeah, absolutely. So maybe just 14 backing up to the prior application we fail to start. In 15 that application we reached out to the neighbors, had on-site 16 meetings, phone calls, and in person meetings that -- where 17 there was interest in that. Those meetings all seemed to go 18 fairly well and we received some strong support. 19 However, over time it was clear that there were 20 some who were not happy with the application. And when we 21 filed the subject application this past August, we again 22 reached out to the adjacent neighbors in an effort to 23 continue the dialogue with an offer to meet. Unfortunately, 24 I received no responses. 25 We did get the opportunity to present at the</p>	<p>59</p> <p>1 alternative uses for this land will consist of multiple 2 multistory buildings and increase of bus and car traffic. We 3 feel Heritage Gardens will be a benefit to the Potomac 4 community. 5 I also want to say that we've also been in regular 6 contact with the synagogue who also supports the project. 7 You will note we've included a sidewalk connection to the 8 synagogue property so congregants who live in Heritage 9 Potomac can easily walk to the synagogue. We are excited 10 about our shared missions to care for seniors in Potomac 11 through our respective organizations and see a lot of 12 synergistic opportunities for volunteerism and programming. 13 MS. HARRIS: Thank you. 14 HEARING EXAMINER BAUMGARDNER: Mr. Wormald, who is 15 the author of that email? 16 MR. WORMALD: She asked to remain anonymous. 17 MS. HARRIS: And can you explain why she asked to 18 remain anonymous? 19 MR. WORMALD: She didn't want -- and so 20 essentially some of the neighbors to be upset with her. 21 MS. HARRIS: Okay (inaudible). 22 HEARING EXAMINER BAUMGARDNER: Just so it's clear 23 for the record -- and I can understand that. I can't 24 consider the contents of that email for purposes of the 25 record.</p>
<p>58</p> <p>1 January 12 West Montgomery Citizens Civic Association meeting 2 and we had a nice interaction there with a lengthy Q and A 3 time. We've been in contact with a handful of neighbors who 4 boarder the project and who live nearby who have expressed 5 their support for the project through email and phone calls. 6 And if I could, I would like to read one such 7 email. This was a letter written by a longtime Potomac 8 resident who has been asking about the community for a couple 9 of years now and has children and grandkids within a quarter- 10 mile of Heritage Potomac. They all love the idea of living 11 near one another. And that letter reads, we have lived in 12 Potomac for over 49 years and our children and grandchildren 13 live here. 14 We have a large single-family house and wish to 15 downsize and eliminate maintenance. We would like to stay in 16 the Potomac area near family, friends, and doctors. We have 17 only found apartment institutional living which is not 18 attractive to us. We really want to that we really want our 19 own home. We would like to open our front door and see 20 beautiful green space and not look out the window at cement 21 and traffic. 22 Heritage Gardens offers us the opportunity to stay 23 near our family and doctors. It fits onto -- into our 24 criteria of owning our own home with living and bedroom on 25 the first floor, no traffic, and near the village. We feel</p>	<p>60</p> <p>1 MS. HARRIS: Thank you. 2 HEARING EXAMINER BAUMGARDNER: But Ms. Harris, you 3 may continue. 4 MS. HARRIS: Okay. Let me just note that there 5 are additional letters of support in the record. So we 6 understand that. Actually, that concluded my questions. But 7 I would just ask, is there anything else Mr. Wormald that you 8 would like to add? 9 MR. WORMALD: No, not right now. No. 10 MS. HARRIS: Thank you. So that concludes our 11 first witness. 12 HEARING EXAMINER BAUMGARDNER: Thank you, Ms. 13 Harris and Mr. Wormald. Mr. Brown, do you have any questions 14 for this witness? 15 MR. BROWN: Yes. Good morning, Mr. Wormald. How 16 are you? 17 MR. WORMALD: Good morning. I'm doing well. 18 MR. BROWN: I wanted to clarify a couple of 19 things. You said that you are the contract purchaser of the 20 property. Are you -- do you have a contract with an entity 21 called S. Glen Properties LLC, the current owner? 22 MR. WORMALD: Correct. 23 MR. BROWN: What can you tell me about S. Glen 24 Properties LLC? Who -- is that a subsidiary of some of the 25 company?</p>



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16 (61 to 64)

<p>61</p> <p>1 MR. WORMALD: They are the representatives of a 2 family foundation, nonprofit. 3 MR. BROWN: Our -- is Wormald affiliated with that 4 entity in any way? 5 MR. WORMALD: No. 6 MR. BROWN: You said that you are aware of the 7 need for senior living in Potomac and you mentioned that 8 there are relatively few situations where independent living 9 has been combined with assisted living, memory care, correct? 10 MR. WORMALD: More the emphasis on the lack of 11 independent living. I believe there's been no independent 12 living built in the Potomac subregion since the 2002 master 13 plan. But certainly the continuum of care presented by 14 independent living (inaudible) assisted living and memory 15 care is very attractive and makes a lot of sense. And so we 16 felt really good about that. 17 MR. BROWN: And you said that you're responding to 18 what you hear in the market about this, correct? 19 MR. WORMALD: Correct. 20 MR. BROWN: And your -- the structure that you are 21 employing in this particular instance is that the independent 22 living units that are outside of the Lodge will be fee owned 23 and the independent living units inside the Lodge along with 24 the assisted living and memory care beds will be rental 25 units, right?</p>	<p>63</p> <p>1 MR. WORMALD: Yeah, you do see it in CCRCs. 2 MR. BROWN: My question is more specific, however. 3 The question is, are you aware of any arrangement where there 4 is an intended progression of movement where one switches 5 from an ownership situation at the, at the active adult 6 community level and into a rental situation when you move 7 into assisted living and memory care? 8 MS. HARRIS: If I could, I would like to object to 9 this. I mean, it meets the definition of the use. So I 10 don't know what the relevance is of this line of questioning. 11 HEARING EXAMINER BAUMGARDNER: If Mr. Wormald can 12 answer, he may. I understand his testimony thus far and I 13 understand Mr. Brown's question. I think he's answered it to 14 be honest. And I think more specificity would come from our 15 future expert if I understand from -- I get is a company 16 called Sage Life. So Mr. Wormald, you may answer the 17 question again if you wish. And then we will move on. 18 MR. WORMALD: Like I said, I've been aware of a 19 number of communities across the country, but I will defer to 20 get Sage Life to answer the question more fully. 21 MR. BROWN: That's fine. Thank you. I have just 22 one more area to talk about. You mentioned your intention to 23 put together a set of enforceable covenants that will be 24 under the control of the -- I guess under Wormald's control 25 for enforcement and your approval of an additional condition</p>
<p>62</p> <p>1 MR. WORMALD: Correct, in the Lodge, yeah. 2 MR. BROWN: Are you aware of this particular 3 arrangement and any other, and any other facility where all 4 of -- where these particular ownership and rental 5 arrangements are all combined in one, in one -- on one parcel 6 of land? 7 MR. WORMALD: Well, there are several around the 8 country. I think our operator, Sage Life will speak to this 9 question later on because they are more active. But yeah, I 10 know certainly there are a number of communities around the 11 country that integrate ownership into the, into the formula 12 especially the forms of the buildings. So when you talk 13 about moving from a cottage to a -- to an assisted living 14 building, but that formula is everywhere. 15 I mean, we see it in Leisure World, in Asberry 16 locally. And there is a number of different communities 17 where that type of movement from a quit/unquote cottage style 18 residence into kind of more -- into assisted living, memory 19 care, even independent living building does occur. But, 20 yeah. 21 MR. BROWN: That's -- that is a regular feature of 22 a continuing care retirement community, correct? 23 MR. WORMALD: What is a regular feature? That 24 progression of movement? 25 MR. BROWN: Yes.</p>	<p>64</p> <p>1 relating to those covenants as suggested by the planning 2 board. So my question is, I don't see any draft covenants 3 and application. Do you have draft covenants prepared that 4 you can submit to the Hearing Examiner? 5 MR. WORMALD: As I stated earlier, we -- it's way 6 early in the process. We have consulted with the attorney 7 that would be drafting those covenants and the extensive 8 calls with him. And we feel very comfortable with the 9 arrangement and that it -- yeah, it will be done well. 10 MR. BROWN: Okay. I'm through with my questions 11 Mr. Wormald. But I do want to tell the Hearing Examiner 12 where I'm headed with that particular last question because 13 it relates to a comment made in my memorandum of law, Exhibit 14 93. I feel that at the very least, a draft set of covenants 15 should be part of and subject to review and this application 16 process. And at the close of the Applicant's case I will be 17 moving for a ruling from the Hearing Examiner that the 18 application is incomplete and needs to be -- and such a draft 19 set of covenants needs to be included in the hearing process 20 before it should continue. We don't have to discuss that 21 now, but that will be coming from me at the close of the 22 Applicant's case, just let you know. 23 HEARING EXAMINER BAUMGARDNER: Understood. Ms. 24 Harris, any questions based upon Mr. Brown's questions? 25 MS. HARRIS: Yes. But may I respond to Mr.</p>

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17 (65 to 68)

<p>65</p> <p>1 Brown's last comment first?</p> <p>2 HEARING EXAMINER BAUMGARDNER: Very briefly, since</p> <p>3 he said he will be bringing it up later in the hearing.</p> <p>4 MS. HARRIS: (Inaudible). And two items of note.</p> <p>5 First of all, it's not a requirement anywhere in the zoning</p> <p>6 ordinance to put -- to prepare a declaration of covenants.</p> <p>7 Second, as the Applicant has indicated they don't even own</p> <p>8 the land yet. This is a very expensive process. To add one</p> <p>9 more legal component in connection with an approval one is</p> <p>10 not required seems unnecessary.</p> <p>11 But as we've said we've consulted with -- as he</p> <p>12 said, he's consulted with legal counsel that would be forming</p> <p>13 the structure. So it's certainly not that we're totally</p> <p>14 aware of the requirement, but it seems premature and</p> <p>15 unnecessary and not required.</p> <p>16 So I just have one or perhaps two questions for</p> <p>17 Mr. Wormald following up. Will this facility have a nursing</p> <p>18 component?</p> <p>19 MR. WORMALD: No.</p> <p>20 MS. HARRIS: And to your knowledge, are nursing</p> <p>21 components a required component of a CCRC?</p> <p>22 MR. WORMALD: I believe they are.</p> <p>23 MS. HARRIS: Thank you. I have no other questions</p> <p>24 for Mr. Wormald.</p> <p>25 HEARING EXAMINER BAUMGARDNER: What would a</p>	<p>67</p> <p>1 primary occupation, business address, and I think an email</p> <p>2 addresses what the Hearing Examiner asked for.</p> <p>3 MS. ANDRESS: Okay. Hi. I'm Kelly Cook Andress.</p> <p>4 I'm president and founder of Sage Senior Living DVA. We</p> <p>5 rebranded just a couple of years ago as Sage Life. Our</p> <p>6 address is 1489 Baltimore Pike, Springfield, Pennsylvania,</p> <p>7 19064. And my email address is KCA@SageLife.com. I, as</p> <p>8 president and founder of Sage Senior Living I am responsible</p> <p>9 for operating a vertically integrated development and</p> <p>10 operations company.</p> <p>11 We have 12 communities from Baltimore to Boston</p> <p>12 including three in the greater Baltimore area and a new</p> <p>13 community to be opened in August in Frederick, Maryland. So</p> <p>14 we are very excited. And we are doing that assisted living</p> <p>15 and memory care project with the Wormalds. So we are very</p> <p>16 excited about expanding our partnerships with them. I</p> <p>17 attended George Washington University and I studied finance</p> <p>18 and economics. After that that is like a right into my --</p> <p>19 HEARING EXAMINER BAUMGARDNER: Just real quick. I</p> <p>20 don't have to swear you in for her you are. But I might as</p> <p>21 well do that now since Ms. Harris will be beginning her</p> <p>22 questioning shortly.</p> <p>23 KELLY ANDRES,</p> <p>24 being first duly sworn or affirmed to testify to the truth,</p> <p>25 the whole truth, and nothing but the truth, was examined and</p>
<p>66</p> <p>1 nursing component look like?</p> <p>2 MS. HARRIS: If I could, since is not providing</p> <p>3 one, I don't necessarily know that that's a fair question. I</p> <p>4 can tell you I represent Erickson in Rock Spring and they are</p> <p>5 providing a CCRC. And in that case I have about 1000 IL,</p> <p>6 independent living units, about 200 assisted living units.</p> <p>7 And then they had the nursing component which is about 15</p> <p>8 nursing beds. So to give you a sense of -- but they are a</p> <p>9 licensed CRCC.</p> <p>10 HEARING EXAMINER BAUMGARDNER: Sure. But what</p> <p>11 type of care -- and this is just for my own curiosity. What</p> <p>12 type of care, if you know, what a nursing component provide</p> <p>13 that an assisted living facility would not be providing?</p> <p>14 MS. HARRIS: And I would like to, and I could, ask</p> <p>15 our next witness that, who is Ms. Andress who is -- that's</p> <p>16 her field of -- we are not qualifying her as an expert, but</p> <p>17 that's her field of expertise. And so I would like to ask</p> <p>18 that question of her.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Understood. Thank</p> <p>20 you very much, Mr. Wormald for your testimony. Please stick</p> <p>21 around in case we have any rebuttal later on. Ms. Harris,</p> <p>22 your next witness.</p> <p>23 MS. HARRIS: Ms. Kelly Cook Andress. And I'm</p> <p>24 sorry. Am I pronouncing your last name correctly? Okay,</p> <p>25 Andress. For the record, please state your full name,</p>	<p>68</p> <p>1 testified as follows:</p> <p>2 HEARING EXAMINER BAUMGARDNER: Thank you, very</p> <p>3 much. Ms. Harris.</p> <p>4 MS. HARRIS: Okay. So Ms. Andress, you are giving</p> <p>5 your experience. So I think you stopped at you have a</p> <p>6 business degree of some sort from GW. Is that --</p> <p>7 MS. ANDRESS: I attended G -- yeah, George</p> <p>8 Washington University. And immediately after school I went</p> <p>9 to work for a small company at the time called Sunrise</p> <p>10 Retirement Communities. And I started with Sunrise when they</p> <p>11 had three communities. As I said, that was in 1989. And</p> <p>12 interestingly, 30 years ago nobody knew what assisted living</p> <p>13 was. So almost every zoning hearing or every conversation</p> <p>14 started out with, what is assisted living and where are they</p> <p>15 located around the country.</p> <p>16 It has been very fulfilling to see the industry</p> <p>17 that has grown up out of those early days when I was working</p> <p>18 at a (inaudible) home in Vienna, Virginia not far from</p> <p>19 Potomac. After that, I was there until about 1994. And then</p> <p>20 I went to work for Standish Care, which was the first</p> <p>21 assisted living company to go public. And that was in</p> <p>22 Boston.</p> <p>23 And about three years later I went to another very</p> <p>24 local company. I was the first Bright View employee. And it</p> <p>25 was actually the Shelter Group was just deciding to get into</p>

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18 (69 to 72)

<p>69</p> <p>1 assisted living. They did a national search and they 2 selected me to help them with that endeavor. So I built 3 about the first eight Bright Views and now there is Bright 4 Views all around this -- or a few Bright Views in this 5 greater area.</p> <p>6 So in 2006 -- let me check my notes. In 2006, 7 Mike and I decided to start Sage Senior Living. And our -- 8 we bought into one community in the Maples -- which is now 9 the Maples of Towson and in Towson, Maryland right across 10 from Towson University. We still own that today. It was 11 actually community that I built 30 years earlier when I was 12 at Sunrise. So I was very at that time, 20 years later. So 13 I was excited to be able to buy -- purchase a community.</p> <p>14 And our first community that we built for Sage 15 Senior Living happened to be independent and assisted living 16 in a continuum. So we've always been consistent that a 17 continuum is what our seniors want.</p> <p>18 MS. HARRIS: Can I ask you a couple questions real 19 quickly?</p> <p>20 MS. ANDRESS: Sure. Sorry.</p> <p>21 MS. HARRIS: No, that's okay. And we submitted to 22 the record just for -- to sort of provide some color to the 23 testimony that you just heard, a couple of examples of the 24 community. So I just wanted to reference those very quickly. 25 These are -- this is Exhibit 85.</p>	<p>71</p> <p>1 or manage, are they similar to the structure that is being 2 proposed for this project?</p> <p>3 MS. ANDRESS: Many are the continuum. The only 4 difference here is that one has an equity component versus a 5 purely rental continuum.</p> <p>6 MS. HARRIS: And do they have (inaudible) in this 7 case the cottage component? Or is that component new for you 8 here?</p> <p>9 MS. ANDRESS: That component is new for us, which 10 is why -- I mean, we look at the cottage component is just 11 another floor plan, right. We have numerous floorplans 12 within all of our communities. And so we -- and so it's -- I 13 think it's very important that in this endeavor that we are 14 partnering with the Wormald company because they are so 15 profoundly committed and experienced at building the 16 cottages. Other than that -- other than that the operations 17 is us taking care of (inaudible) landscaping, maintenance, 18 and our residents.</p> <p>19 MS. HARRIS: And are you aware of any other -- 20 structurally -- are you aware of any other comparable type 21 projects throughout the -- in -- throughout the country or 22 even the region similar to what's being proposed here?</p> <p>23 MS. ANDRESS: Well, there is a property called 24 Springton Lake, which is very close to our (inaudible) which 25 is the red building that you showed with the people playing</p>
<p>70</p> <p>1 MS. ANDRESS: Yes.</p> <p>2 MS. HARRIS: Okay.</p> <p>3 MS. ANDRESS: That's assisted living and memory 4 care in Paoli, Pennsylvania, which is a close in suburb of 5 Philadelphia of the Philadelphia mainline. And we developed 6 and built that property.</p> <p>7 MS. HARRIS: And then the next one?</p> <p>8 MS. ANDRESS: The Maples of Towson, Towson, 58 9 apartments of assisted living.</p> <p>10 MS. HARRIS: And then this one?</p> <p>11 MS. ANDRESS: (Inaudible) that was our first Sage 12 Senior Living. That's independent and assisted in Delaware 13 County right next to Swarthmore University.</p> <p>14 MS. HARRIS: Thank you. You mentioned that and I 15 can't recall if you said you own or operate 12 --</p> <p>16 MS. ANDRESS: Correct.</p> <p>17 MS. HARRIS: Okay. So I just wanted to drill down 18 on that a little bit. Do you own or do you operate or do you 19 manage? Or what do you do?</p> <p>20 MS. ANDRESS: All of the above. So we are a fully 21 integrated company. So we do third-party management in three 22 cases. The rest of which we are partners either, you know to 23 either very large degree or smaller degrees in everything 24 that we manage.</p> <p>25 MS. HARRIS: And are any of the ones that you own</p>	<p>72</p> <p>1 (inaudible) and the dog. They opened about the same time we 2 did and they have in (inaudible) and we are located 6 miles 3 from each other. And so we watched each other and residents 4 go back and forth, do I want to buy, do I want to rent, 5 because we had independent and a rental option. They also 6 have a clubhouse there where they provide services and meals, 7 offer home care. It's also a maintenance free environment. 8 So I have always been excited about this option.</p> <p>9 Also, you know, we've watched -- of course I think 10 some of us have experience with the nationally recognized 11 Willow Valley, which is in Lancaster. And Willow Valley has 12 all different living arrangements there as well. And if you 13 think about the construct, if you go into a CCRC or continued 14 care retirement community or a life care community, you kind 15 of buy into your cottage or sometimes you buy a condominium, 16 which is a vertical construct, right. So you buy into that.</p> <p>17 But then as you move through -- if you need 18 assisted living or skilled, you sell your other independent 19 living cottage or you sell your independent living condo and 20 then you basically go into a rental contract. So this is 21 just a minor variation on a theme we've seen forever in 22 senior living.</p> <p>23 MS. HARRIS: And in your opinion just based on 24 being out in the space for many, many years, what your since 25 about an interest in the fee, the fee ownership component of</p>

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19 (73 to 76)

<p>73</p> <p>1 this project?</p> <p>2 MS. ANDRESS: Well, I've been hearing it for 30</p> <p>3 years. And especially wealthier people are used to owning</p> <p>4 versus renting. In fact, they are used to owning multiple</p> <p>5 homes often times. And if I've heard it once, I've heard it</p> <p>6 15 times is, why should I rent. Our residents say, or</p> <p>7 potential residents and say to us, why should I rent and pay</p> <p>8 your mortgage when I can be paying mine and creating equity</p> <p>9 for myself.</p> <p>10 So there are -- there is a large portion of</p> <p>11 seniors out there who just are always going to want to buy.</p> <p>12 And so we see this as a beautiful expansion of the offerings</p> <p>13 to allow not only the CCRC equity construct, but also this is</p> <p>14 slightly modified construct. Just like there's all sorts of</p> <p>15 living environments and the constructs for younger people.</p> <p>16 So we see it as a win for seniors.</p> <p>17 MS. HARRIS: Thank you. And I'm going to ask the</p> <p>18 question that the Hearing Examiner asked only so I don't</p> <p>19 forget it now. And that is, if you know, what's the</p> <p>20 difference -- well first of all, do you have any nursing</p> <p>21 facilities?</p> <p>22 MS. ANDRESS: No.</p> <p>23 MS. HARRIS: Okay. But can you answer the</p> <p>24 question of what's the difference in level of care between</p> <p>25 assisted living and nursing?</p>	<p>75</p> <p>1 desirable neighborhood where our residents want to stay and</p> <p>2 our adult children want mom and dad to stay in the area as</p> <p>3 well. So that's the first thing that we like.</p> <p>4 And we liked the proximity, so that it's an easy</p> <p>5 drive back to their existing relationships whether that's the</p> <p>6 salon or whether they go to the grocery store that they go</p> <p>7 to. They get to stay going to -- literally important things.</p> <p>8 Going to the same person that's worked on the car for those</p> <p>9 people who still have cars. All of that has created who we</p> <p>10 are. Going to the same libraries. Being involved in those</p> <p>11 kind of local activities. Continue to volunteer in their</p> <p>12 local area. And a lot of that, there is a sense of place in</p> <p>13 the community to the Potomac Village. And so the closer we</p> <p>14 can be to that, the better.</p> <p>15 MS. HARRIS: Thank you. And are you familiar with</p> <p>16 the conditional use that's the subject of this application?</p> <p>17 MS. ANDRESS: Yes.</p> <p>18 MS. HARRIS: And can you -- you sort of touched on</p> <p>19 this, but what levels of care will be provided?</p> <p>20 MS. ANDRESS: So we will provide independent</p> <p>21 living, but then the cottages and in the Lodge assisted</p> <p>22 living and memory care.</p> <p>23 MS. HARRIS: And I probably should have asked the</p> <p>24 Hearing Examiner's question right about this time. But in</p> <p>25 any event, can you explain the differences between the --</p>
<p>74</p> <p>1 MS. ANDRESS: Sure. And there is -- assisted</p> <p>2 living where -- targeted at a resident population that's a</p> <p>3 little more mobile and we are restricted in our license from</p> <p>4 offering nursing care which is defined as basically serious</p> <p>5 wounds. We cannot have anybody was on life support. We</p> <p>6 cannot do intravenous feeding. We can do IVs. So if you</p> <p>7 need those kind of services, those are basically healthcare</p> <p>8 services that are required to be overseen by medical</p> <p>9 professionals as compared to what we call wellness</p> <p>10 professionals.</p> <p>11 There is a difference. And so we are restricted</p> <p>12 from what is called skilled services in our communities.</p> <p>13 MS. HARRIS: Mr. Baumgartner, did that answer your</p> <p>14 question?</p> <p>15 MR. BAUMGARDNER: Yes it does, thank you.</p> <p>16 MS. HARRIS: Okay, thank you. So Mr. Wornald</p> <p>17 testified that one of the attractive characteristics of the</p> <p>18 site was its proximity to Potomac Village. Can you identify</p> <p>19 from your professional standpoint what was attractive about</p> <p>20 the site?</p> <p>21 MS. ANDRESS: Oh well, the first thing is we love</p> <p>22 to be an intergenerational attractive neighborhoods, right.</p> <p>23 Neighborhoods -- as Mr. Wornald said, he grew up not far from</p> <p>24 the area. His parents are still there. We need to be around</p> <p>25 grandkids because -- and then the one thing is that it's a</p>	<p>76</p> <p>1 what independent living means versus what assisted living</p> <p>2 means?</p> <p>3 MS. ANDRESS: Yes. So independent living is a</p> <p>4 lower level of support than assisted or memory care. And</p> <p>5 pretty much anybody who moves into an independent living,</p> <p>6 whatever for plan, already is experiencing some sort of</p> <p>7 physical decline. And so our motto at Sage Life is a little</p> <p>8 bit of support goes a long way. Just as to be the right</p> <p>9 support at the right time for the right person.</p> <p>10 So people in independent living might be</p> <p>11 experiencing isolation. They may decide that they don't want</p> <p>12 to drive at night. They don't want to drive at night. They</p> <p>13 don't want to drive like today in the snow. They don't want</p> <p>14 to drive in traffic. So all of a sudden, certainly during</p> <p>15 the winter the world gets really small if you're not driving.</p> <p>16 So maybe that physical frailty is -- or the support that they</p> <p>17 are looking for is transportation support or communal dining</p> <p>18 where they want to eat not alone every night.</p> <p>19 So independent living requires -- and they are</p> <p>20 also very interested in our maintenance free living and our</p> <p>21 housekeeping. And yes, our security. Security, a sense of</p> <p>22 security is very important our residents. And then in</p> <p>23 assisted living -- so those residents in independent</p> <p>24 living -- although I know 40-year-olds who act like 70-year-</p> <p>25 olds and 70-year-olds that act like 40-year-olds. Sometimes</p>

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20 (77 to 80)

<p>77</p> <p>1 it's good to give kind of construct to the age. So the age 2 in our independent living is usually mid-70, lower to mid-70s 3 to early 80s. 4 Then in assisted living, as we start to need more 5 support, we always say that we kind of trade in space for 6 some services. So if we move into assisted living, our 7 apartments become smaller, but we get more hands-on physical 8 support from our associates. And so that might be of 9 assistance for the activities of daily living, bathing, 10 dressing, grooming, ambulating, certainly medication 11 administration, and healthcare, a wellness plan that is 12 formulated with our residents and their families, but also 13 their physicians. And so we can support that. 14 And then we -- so the average age there is 15 probably made -- lower 80s into the mid-90s and even a few 16 residents older than that. So we are getting older. And 17 then in memory care, the average age is about the same as 18 assisted living, but we are suffering from cognitive decline 19 usually due to Alzheimer's or other forms of dementia where 20 we need a much smaller environment and a secure, locked 21 setting because we may not make the best decisions for 22 ourselves anymore. And we're certainly then doing all 23 medications. None of us are driving anymore at all. And 24 it's a very close coordination with family and physicians. 25 MS. HARRIS: Thank you. And you mentioned that</p>	<p>79</p> <p>1 There is intense scrutiny of our policies and procedures 2 prior to opening and then after opening. 3 So we have to be approved. All of our written 4 policies and procedures have to be approved. And then they 5 come back and assess that we are actually doing what we said 6 we were going to do. Every residence care plan is open for 7 review and approval. And then of course we have other 8 licenses. Our kitchen is licensed by the local Department of 9 Health, et cetera. 10 MS. HARRIS: And is independent living licensed? 11 MS. ANDRESS: No, it is not. It is not licensed 12 in any of our environments in any of our states or counties 13 in which we operate. 14 MS. HARRIS: And how many states is that? 15 MS. ANDRESS: Four. 16 MS. HARRIS: Okay. And how many units and beds 17 are proposed? 18 MS. ANDRESS: We are proposing 74 independent 19 living units, 45 in cottages and then a maximum of 29 at the 20 Lodge. And then we have 87 assisted living and memory care. 21 All of those are in the Lodge. And that's up to 105 beds 22 which is a maximum. 23 MS. HARRIS: And if you achieve that maximum, will 24 there be a decrease in the independent living units in the 25 Lodge?</p>
<p>78</p> <p>1 the general age for independent living is low 70s or mid-70s. 2 But pursuant to the zoning ordinance, what's the minimum age 3 for some want to move into independent living? 4 MS. ANDRESS: It's 62. 5 MS. HARRIS: Okay. And that's by the zoning 6 ordinance and federal law; is that right? 7 MS. ANDRESS: Yes. There are some that are 55 and 8 some that are 62. This is 62. 9 MS. HARRIS: Okay, thank you. And the zoning 10 ordinance section 3.3.2E1A provides that a facility must meet 11 all applicable federal, state, and county certificate 12 licensure and regulatory requirements. Can you please 13 explain the licensing requirement for a residential care 14 facility? 15 MS. ANDRESS: Okay. So in Maryland -- every state 16 is different. So in Maryland is called assisted living. And 17 it is licensed and regulated by DHMH/OHCQ, which is 18 Department of Health and Mental Hygiene, awful name. But 19 that's the department, basically the Department of Health 20 that it's under. And then OHCQ is office of health care 21 quality. They license assisted living. And then our memory 22 care is called a special designation and that's because it's 23 more -- is a locked environment so it requires additional 24 oversight, additional review of our policies and procedures. 25 So under OHCQ and our license, there's annual inspections.</p>	<p>80</p> <p>1 MS. ANDRESS: Yes. 2 MS. HARRIS: Okay. 3 MS. ANDRESS: Yes. 4 MS. HARRIS: And then can you explain how a 5 resident may progress from independent living, whether it be 6 in a cottage unit or in the large unit to assisted living? 7 MS. ANDRESS: Well, I think -- you know, I 8 always -- I always start by saying there is no average you 9 know in any human -- every family is different. And if you 10 can't do this with any of your -- with any of our parents, 11 it's probably that one was very different than the other. 12 But generally speaking, as I said, as we are what I call 13 frailing, I don't think it's a Scrabble word, but as we are 14 frailing, let's say we come into a cottage, maybe it's a 15 couple. 16 And you know, Jack Spratt and his wife are really 17 true. So to less than optimally healthy people can live 18 together much easier than maybe one person can live alone. 19 So let's say a couple moves in. Maybe mom or dad passes away 20 at a certain point or maybe mom or dad just gets more frail 21 and needs assisted living or maybe needs memory care. So you 22 could go from somebody could be in the cottage and one person 23 could be in the cottage and then maybe mom or dad moves to 24 the memory care. 25 And then maybe dad or mom says, well, why do I</p>

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21 (81 to 84)

<p>81</p> <p>1 need this large real estate anymore when I'm spending all the 2 time in the Lodge anyway. So I can sell my cottage and move 3 into the independent or assisted living in the Lodge. So 4 that's just an example of how it can become very fluid. Now, 5 if you're in the cottage of course, you would always have 6 preferential access to any apartments in the Lodge, whether 7 they be independent, assisted, or memory care. 8 Just like if you were in the assisted living you 9 would have preferential treatment for an open space in memory 10 care. And even when we are full, there is always -- there is 11 not always, but usually the vast majority of the time, 95 12 plus percent of the time there is turnover because assisted 13 living, our average length of stay is about a year and a half 14 now. So that means that either through passing away or 15 moving to a higher level of care, there is -- there is 16 usually always an apartment available within a very 17 reasonable period of time even when we are at full occupancy, 18 for somebody to progress, to graduate into another level of 19 care. 20 MS. HARRIS: So just so I understand it. You're 21 not necessarily guaranteed a spot in assisted living, but you 22 are given preferential priority when a spot opens up? 23 MS. ANDRESS: Correct. Prior to access is what we 24 call it. And of course we are partners with our residents 25 and their families almost virtually from the day that they</p>	<p>83</p> <p>1 residents and visitors? 2 MS. ANDRESS: Yes, it is. And you know it's -- 3 that's an important question for me because we -- you know, 4 we need enough parking for our -- to fulfill our commitment 5 to our residents and to our associates. So yes, we have 6 looked at it very closely. 7 MS. HARRIS: And how many employees will be on 8 site at any one time? 9 MS. ANDRESS: At any one time, you know except for 10 maybe at the (inaudible) shift change, I would say a maximum 11 of 30. You know, we are a 24/7 operation. So we are 12 anticipating that with about 90 associates. But remember, we 13 are seven days a week. So those associates are spread seven 14 days a week, three shifts a day. 15 MS. HARRIS: And the operating -- we include an 16 operating statement in the submission, I would note. And 17 that set forth the various, what you just mentioned, the 18 three shifts a day. What are the hours of those shifts? 19 MS. ANDRESS: Well it's like life. This very few 20 hard lines. So generally we say that our shifts are 7:00 to 21 3:00, 3:00 to 11:00, 11:00 to 7:00. You know, that's kind of 22 for the wellness shift which happens to be our largest 23 cohort, associate cohort. But dining folks come in at 24 different times. Administrative staff comes in more on a 25 9:00 to 5:00. So it is very throughout the day. And even</p>
<p>82</p> <p>1 move in. And whether that involves us doing dog walking for 2 them to us providing in-home assistance with bathing, 3 dressing, or grooming. So very few of us really have the 4 banana peel where we maybe make -- have a fall and then there 5 is this dramatic life change. 6 So we can usually almost always accommodate their 7 needs in their existing setting for a short time until an 8 apartment becomes available. 9 MS. HARRIS: And is there ever an instance in -- 10 based on your experience and your other facilities where 11 there isn't one and then if so, say there is not an assisted 12 living unit open, what happens in that situation of a person 13 really needs to go at that time to assisted living? 14 MS. ANDRESS: Well, in that situation then, if 15 they -- if we determined that we could not accommodate it, 16 then they might have to go to another community. 17 MS. HARRIS: And that's -- a similar situation 18 happens in your existing communities? Is that what you're 19 saying? 20 MS. ANDRESS: Oh, correct. Correct. 21 MS. HARRIS: Okay. So moving on to sort of some 22 more physical type things. Have you reviewed the parking 23 provided? And do you believe that it's -- and I would note 24 that our other experts will get into the details of this. 25 But do you think it's adequate for the employees and the</p>	<p>84</p> <p>1 then the 7:00 to 3:00, 3:00 to 11:00, 11:00 to 7:00, that 2 varies because frankly 7:00 a.m. is right when people are 3 getting up, getting their morning showers. So we have some 4 people that fits their schedule better. Some associates that 5 come in at 5:00 and leave at 1:00. Some come in at 6:00 and 6 leave it 2:00. Some come in and 7:00 and leave at 3:00 7 because life isn't as linear as three shifts a day would 8 suggest. 9 MS. HARRIS: Thank you. I don't think it's 10 necessary to go through all the details under an operating 11 statement. Again, I note that that information is in the 12 record. And will the facility provide on-site providers or 13 health -- I'm sorry -- health services for the residents? 14 MS. ANDRESS: Yeah, we will have a dedicated 15 well -- what we call our wellness center. And that will -- 16 almost all of our communities, I think for the exception of 17 one, we do have a physician that comes in and shows -- and 18 provides physician services, you know, doctors office visits, 19 kind of like a GP or a gerontologist comes in and provides 20 wellness -- provide healthcare to our communities. They also 21 are available to us to -- for consultation. And then very 22 often they will have a nurse practitioner that comes in 23 another day a week. So we will probably have, when we are -- 24 you know, when we are full, we were probably have three days 25 a week. And then of course we have our staff nursing on-site</p>

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22 (85 to 88)

<p>85</p> <p>1 as well.</p> <p>2 MS. HARRIS: So when you say staff nursing, some</p> <p>3 the people that you employ, they're actually people that have</p> <p>4 nursing degrees that are on-site?</p> <p>5 MS. ANDRESS: Correct, or -- and/or LPN, yes.</p> <p>6 MS. HARRIS: Okay got it. And --</p> <p>7 MS. ANDRESS: Oh, and then we also have physical</p> <p>8 therapists that come in. So we have physical therapists that</p> <p>9 come in. You know, we strongly believe in use it or lose it.</p> <p>10 So physical therapy is great -- we think underutilized at all</p> <p>11 ages. But it works wonders for our residents.</p> <p>12 MS. HARRIS: Thank you. And then can you explain</p> <p>13 the amenities that are going to be provided in the project?</p> <p>14 MS. ANDRESS: Sure. So if we think about it, what</p> <p>15 we have is three distinct areas that can all be self-</p> <p>16 sufficient so that you never care -- you know, you can live</p> <p>17 your whole life and never care if you are in assisted. You</p> <p>18 can live your whole life in, everything you need in assisted.</p> <p>19 In the same in independent living. But then there's other --</p> <p>20 but there is cross collaboration between them as well. So we</p> <p>21 will have one commercial kitchen that feeds 3 to 4 dining</p> <p>22 venues if you include the lounges and all that, one dedicated</p> <p>23 for memory care, one dedicated for assisted living, and one</p> <p>24 dedicated for independent living, both the Lodge and the</p> <p>25 cottages.</p>	<p>87</p> <p>1 more than that because they want to eat three meals a day.</p> <p>2 They want to eat -- as I always say, my family, you don't get</p> <p>3 blueberries unless they are cheap because that's when they</p> <p>4 are good. But if you want blueberries in the winter when</p> <p>5 there are \$5 for this much, you can apply \$5 of your credit</p> <p>6 to get blueberries in the winter if you want as well.</p> <p>7 So it's a completely flexible dining option, which</p> <p>8 is of course what works really well in the cottages. It's a</p> <p>9 natural extension. So that we also have residents who prefer</p> <p>10 to have their families come in and dine with us. They can</p> <p>11 use their meal credits for that. I don't care who is eating</p> <p>12 the food as long as our residents are enjoying what they</p> <p>13 are -- their dining experience.</p> <p>14 MS. HARRIS: (Inaudible).</p> <p>15 MS. ANDRESS: And since COVID, we've all learned</p> <p>16 about takeaway, right? So residents can come down and have</p> <p>17 meals and pick up a meal and take it back to their either</p> <p>18 apartment or cottage as well.</p> <p>19 MS. HARRIS: Thank you. And in our -- in the</p> <p>20 land-use report there is a mention of a mosaic program. Just</p> <p>21 very briefly, can you give a sort of a brief overhaul,</p> <p>22 overview of what that involves?</p> <p>23 MS. ANDRESS: Sure. Our entire activities and</p> <p>24 enrichment calendar is based on our mosaic. Life is a</p> <p>25 mosaic. And mosaic is movement outreach, social arts,</p>
<p>86</p> <p>1 We have -- each area will have its own activity</p> <p>2 spaces for both wet crafts and dirty crafts and clean crafts,</p> <p>3 classrooms, and living room areas, centralized concierge</p> <p>4 area. So there will be as and then of course we boarded</p> <p>5 talked about the health and wellness offices and areas in the</p> <p>6 physical therapy. And then of course there is the garage,</p> <p>7 which is important, underground parking, which I think is</p> <p>8 great for our residents of course, but also for our</p> <p>9 neighborhood to not look at a sea of parking. Besides that</p> <p>10 there is libraries and all sorts of spaces just like in your</p> <p>11 own home.</p> <p>12 MS. HARRIS: And what -- just very briefly, in</p> <p>13 terms of the food for the independent living. You mentioned</p> <p>14 that there is a dining room. How does that work? Is</p> <p>15 everyone required to go to that one room? Or how does</p> <p>16 independent living and food interface with each other?</p> <p>17 MS. ANDRESS: So we have flexible dining. So what</p> <p>18 we have for our independent living residence is there is a --</p> <p>19 kind of like maybe at your club. There will be a, you know,</p> <p>20 4 or \$500 dining credit. And you can spend that however you</p> <p>21 want. And you can -- it equals out so that you can have</p> <p>22 basically breakfast and dinner every day of the month and</p> <p>23 that's great because most of us really don't eat three meals</p> <p>24 a day.</p> <p>25 But then we also have residents who spend much</p>	<p>88</p> <p>1 intellectual curiosity. So we make sure there is offerings.</p> <p>2 We start out with offerings in all those areas. Movement is</p> <p>3 self-evident.</p> <p>4 Outreach is so that we stay connected to giving</p> <p>5 back to our communities and participating in our communities,</p> <p>6 whether that's at the YMCA, or as I said with the library or</p> <p>7 other outwardly facing organizations. We want to stay -- our</p> <p>8 residents to stay outwardly facing.</p> <p>9 Social, some people are born joiners. I'm</p> <p>10 actually more of an introvert. So I have to make myself do</p> <p>11 those kind of things. So there are social activities on</p> <p>12 there which could be -- it could be karaoke and happy hour.</p> <p>13 It could be -- you know, we have one crazy, wacky group that</p> <p>14 has this ukulele club. We do plays, all sorts of things in</p> <p>15 social.</p> <p>16 And then arts obviously I think is self-evident.</p> <p>17 Intellectual classes, and then curiosity is -- well, that's a</p> <p>18 where we categorize stuff that I've always been interested</p> <p>19 in. A couple of years ago it was all about the eclipse. So</p> <p>20 that's -- we brought in scientists and things. So our -- we</p> <p>21 go where our residents lead us, but we understand that life</p> <p>22 is a mosaic and we try to offer a variety of offerings.</p> <p>23 MS. HARRIS: Thank you. What about the</p> <p>24 transportation facilities provided by Sage for the residents?</p> <p>25 MS. ANDRESS: So we will have -- I think we've all</p>

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23 (89 to 92)

<p>89</p> <p>1 seen the 12 passenger van to go by with the various 2 retirement community name on the side. So we will have a 12 3 passenger van, but we will also have a minivan or a town car, 4 depending on the location. Minivan happens to be easy to get 5 in and out of because the seats are right at the right height 6 for our rear ends. So they are easy access. 7 And that's mainly just so that we can match the 8 vehicle to the number of travelers. You know, we can be more 9 green. We are starting to have -- our cars are starting to 10 be -- use electric cars, et cetera. But we think support to 11 match the trip to the -- the vehicle to the size that the 12 trip we are taking. So if we are taking one person locally, 13 that's one thing. But if we are doing a larger trip, we 14 would take a larger van. 15 But we do that. We will offer scheduled 16 transportation to things like the Rite-Aid and the grocery 17 store and CVS and things like that, also local office medical 18 buildings so that we can -- it's much more fun to go to an 19 appointment with our friends than, you know, sit in the 20 waiting room than go alone. So there will be scheduled 21 transportation and then more ad hoc unscheduled 22 transportation available as well. 23 MS. HARRIS: Thank you. And what about, getting 24 down to the nuts and bolts, trash and recycling? Just sort 25 of briefly, how does that work?</p>	<p>91</p> <p>1 MS. ANDRESS: All of our laundry is done on site. 2 We will have a linens contract. We do not do our own linens 3 on site. And that's once a week at the most. 4 MS. HARRIS: Okay. And then the zoning ordinance 5 alludes to noises. Any concern here that there will be 6 any -- any concern about noise generated from the site? 7 MS. ANDRESS: No. We will have -- we don't -- 8 well capital A, we are so far from our local -- our closest 9 neighbor here. But we do not get noise complaints. So I 10 think that -- I mean, in the years that we've been through 11 this, I think I would have heard. 12 MS. HARRIS: Actually -- so that's an interesting 13 question. So in all of your years of doing this on the 14 facilities that you have, any noise complaints from those 15 facilities? 16 MS. ANDRESS: No. We had one and we were able to 17 work together because we do have a generator on site. And 18 when we were cycling the generator we changed the (inaudible) 19 the cycling of the generator and that was fine. 20 MS. HARRIS: And that's a requirement (inaudible)? 21 MS. ANDRESS: Yes. 22 MS. HARRIS: Okay. And then I like my timing 23 because I have one last question and it's 11:59. The zoning 24 ordinance does not require a finding of need -- and you 25 already addressed this. So just very briefly. And again,</p>
<p>90</p> <p>1 MS. ANDRESS: Trash and recycling. So we have 2 trash on every level. We aggregate our trash. We try to 3 minimize our trash. We have digesters in all of our 4 communities so that we minimize our food waste. And then we 5 also have recycling. So our staff will -- dedicated areas. 6 And then our staff takes it down into the dumpster. We have 7 trash pickups 3 to 5 days a week. We don't have any that are 8 seven days a week. We have 3 to 5 days a week trash and 9 recycling and that's privately contracted. 10 MS. HARRIS: And one of the planning board's 11 recommended conditions was that no trash pickup on the 12 weekends. Is there any problem with this? 13 MS. ANDRESS: No. 14 MS. HARRIS: And how about deliveries? How are 15 those? How often are those made and what types of 16 deliveries? 17 MS. ANDRESS: Well, other than normal residential, 18 we do have basically food deliveries. Our most, we have 19 about one a day. They tend to use the box trucks. And 20 frankly, that's at their convenience because it's easier to 21 manipulate around our community. So we have the box trucks. 22 Then of course we have normal UPS and Amazon deliveries. But 23 those are more residential vehicles. 24 MS. HARRIS: What about laundry? Is that done on 25 site? Or do you ship that out?</p>	<p>92</p> <p>1 the zoning ordinance doesn't require a need. But can you 2 opine about the need for this type of community? I think you 3 hit on this before, but one or two sentences with respect to 4 need. 5 MS. ANDRESS: Well, certainly with the aging baby 6 boomers and beyond, we are going to be dealing with aging 7 folks for the next 30, 40 years. As I think we talked about, 8 if it wasn't for COVID, the -- all the headlines that year 9 would be the first baby boomers turned 75 and 76. So this is 10 a real need. And I think that the Potomac offering the for 11 sale and equity option will be incredibly popular in this 12 location and it will be something that is -- positions this 13 property to be heads above anything else offered in the 14 greater area. 15 MS. HARRIS: Thank you. Mr. Baumgardner, that 16 concludes my questions of this witness. 17 MR. BAUMGARDNER: Thank you, Ms. Harris. 18 Mr. Brown, any objection from you if we take our 19 lunch break now and if you have any questions for Ms. Andress 20 we take that up after lunch? 21 MR. BROWN: I do have some questions, but it will 22 take nearly as long as the direct examination. So I'm happy 23 to wait until after lunch. 24 MR. BAUMGARDNER: Okay. 25 (Crosstalk)</p>



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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 MR. BAUMGARDNER: I didn't want to interrupt any 2 kind of train of thought or anything like that. That's 3 happened to me when I was in private practice (inaudible). 4 As long as both of you have found that acceptable, I think 5 that's what we will do. We are going to take a little bit 6 longer for lunch. So if there is no problem, can we return 7 at 1:30? I can do 1:15 as well. What do we think about 8 that?</p> <p>9 MS. HARRIS: So I was going to ask, just because 10 we do have a lot and -- is there any way to abbreviate that? 11 Or is that not possible? I mean, it's our goal to try to get 12 through as many of our witnesses today as possible.</p> <p>13 MR. BAUMGARDNER: Sure. I don't think there is a 14 way around that. I can do 1:15. That is a little bit longer 15 than it does take anyone to actually eat lunch. But for 16 today, I think that's the best I can do.</p> <p>17 MS. HARRIS: Okay.</p> <p>18 MR. BAUMGARDNER: If we start back at 1:15, we can 19 push through to 4:30, possibly even a little bit past 4:30 20 depending upon everyone's schedules to get as much in as we 21 can today. So does that work for everyone to return at 1:15?</p> <p>22 MS. HARRIS: Yes.</p> <p>23 MR. BAUMGARDNER: Okay. We will break now and we 24 will reconvene at 1:15 p.m. to take up any cross-examination 25 of Ms. Andress and continue on with the Applicant's case in</p>	<p style="text-align: right;">95</p> <p>1 right?</p> <p>2 MS. ANDRESS: No. If I did, I misspoke. We 3 operate 12 properties, some of which have independent and 4 assisted and memory care. Some of which have assisted. Like 5 for instance we showed a picture of Galesford Crossing. 6 It's -- we said that was assisted and memory care. So --</p> <p>7 MR. BROWN: All right. But the number is 8 somewhere between 0 and 12, right?</p> <p>9 MS. ANDRESS: Correct.</p> <p>10 MR. BROWN: Where there is -- where there is a 11 continuum, an IL/AL continuum, right?</p> <p>12 MS. ANDRESS: Correct. Correct.</p> <p>13 MR. BROWN: Okay. Will the Lodge operate like 14 those?</p> <p>15 MS. ANDRESS: Yeah, we -- yes. Yes.</p> <p>16 MR. BROWN: So who will be eligible for the 17 independent living units in the Lodge?</p> <p>18 MS. ANDRESS: The eligibility for the independent 19 living in the Lodge and the cottages will be the same.</p> <p>20 MR. BROWN: I'm sorry. I didn't hear the end of 21 that sentence.</p> <p>22 MS. ANDRESS: Eligibility for the Lodge and the 23 cottages will be the same.</p> <p>24 MR. BROWN: And what is that?</p> <p>25 MS. ANDRESS: They are 62 and older and want to</p>
<p style="text-align: right;">94</p> <p>1 chief. And we will get to as many witnesses as we can during 2 the afternoon section.</p> <p>3 MS. HARRIS: Thank you. Okay, thank you.</p> <p>4 MR. BAUMGARDNER: Thank you all, very much.</p> <p>5 MS. ANDRESS: Thank you. Bye-bye.</p> <p>6 MR. BROWN: Thank you.</p> <p>7 (Off the record at 12:03 p.m., resuming at 1:18 8 p.m.)</p> <p>9 MR. BAUMGARDNER: -- 01 requesting a conditional 10 use for a residential care facility located at the property 11 known as 107017 S. Glenn Road. We had left off with the 12 direct examination of Ms. Andress. We are picking off with 13 Mr. Brown's cross-examination of Ms. Andress and we are ready 14 to go whenever you are, Mr. Brown.</p> <p>15 MR. BROWN: I am ready. Ms. Andress, good 16 afternoon. How are you?</p> <p>17 MS. ANDRESS: Fine, thank you. How are you?</p> <p>18 MR. BROWN: I'm fine. And you know, in listening 19 to your testimony, I think it might have made a mistake in 20 characterizing yourself as an introvert. But fortunately we 21 don't have to go into that.</p> <p>22 MS. HARRIS: I had the same thought.</p> <p>23 MR. BROWN: I believe you testified that Sage Life 24 owns or operates 12 properties that combine independent 25 living and assisted living in the same building; is that</p>	<p style="text-align: right;">96</p> <p>1 participate in our contracted offerings, which is our meal 2 plans and our maintenance free living and the other 3 amenities.</p> <p>4 MR. BROWN: So what -- so picking up on that, what 5 kind of obligations exactly will Lodge independent living 6 residents incur other than rent?</p> <p>7 MS. ANDRESS: They will have a meal program 8 obligations. They will have a meal program and they will be 9 responsible for expenditures over their meal program and any 10 other expenditures in the community if they were to use our 11 salon services or if they were to see a doctor or physical 12 therapy, those are all -- they would be responsible for 13 anything that is not included in their rent.</p> <p>14 MR. BROWN: Will the independent living units have 15 a full kitchen?</p> <p>16 MS. ANDRESS: Yes.</p> <p>17 MR. BROWN: So the meal plan is kind of the use or 18 lose thing? Is that really what -- is it really how that 19 will operate?</p> <p>20 MS. ANDRESS: Correct. I believe our typical plan 21 that you have, like you can carry over for two weeks if you 22 don't use it. But as like any other -- like any club or 23 anything, that if you don't use it, you lose it.</p> <p>24 MR. BROWN: I understand. Does that use or lose 25 feature on meal plans apply to the ownership units?</p>

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25 (97 to 100)

<p>97</p> <p>1 MS. ANDRESS: The cottages? Correct. Yes.</p> <p>2 MR. BROWN: Any other restrictions or obligations</p> <p>3 apply to the ownership units that are different from the</p> <p>4 independent living units in the Lodge?</p> <p>5 MS. ANDRESS: From our perspective, no, it's a 62</p> <p>6 plus community. So beyond the age restriction, no.</p> <p>7 MR. BROWN: Now, I was taken with your testimony</p> <p>8 at the end where you said -- I may not have this quote exact,</p> <p>9 but I will try. That this project is going to be heads above</p> <p>10 anything offered in the greater metropolitan area. Did I get</p> <p>11 that about right?</p> <p>12 MS. ANDRESS: I believe so, yes. I mean, that's</p> <p>13 clearly an opinion.</p> <p>14 MR. BROWN: I understand. I just --</p> <p>15 MS. ANDRESS: I don't think that's a technical</p> <p>16 term.</p> <p>17 MR. BROWN: But I --</p> <p>18 MS. ANDRESS: I don't think that's a technical</p> <p>19 definition.</p> <p>20 MR. BROWN: I'm only -- I was only asking for your</p> <p>21 opinion based on your experience in the industry. But I want</p> <p>22 to pinpoint more precisely is your answer on a question asked</p> <p>23 of you by Ms. Harris. You're offering ownership units at the</p> <p>24 independent living level combined with separately, on the</p> <p>25 same property, rental units at both the independent living</p>	<p>99</p> <p>1 existed that are arranged in the way that Heritage Gardens</p> <p>2 plans to be arranged in this respect?</p> <p>3 MS. ANDRESS: Not exactly.</p> <p>4 MR. BROWN: All right. Thank you, very much. We</p> <p>5 are all done.</p> <p>6 MR. BAUMGARDNER: Ms. Harris, any questions for</p> <p>7 Ms. Address based on Mr. Brown's questions?</p> <p>8 MS. HARRIS: No, thank you.</p> <p>9 MR. BAUMGARDNER: Okay. We thank this witness for</p> <p>10 her time. The floor is back to you, Ms. Harris, for your</p> <p>11 next witness.</p> <p>12 MS. HARRIS: Thank you. I -- before I do that, I</p> <p>13 have somewhat of a logistical, procedural question, because</p> <p>14 it made -- we may need to change the order of my witnesses.</p> <p>15 During the lunch break I learned that one of my witnesses is</p> <p>16 not available (inaudible). And it's likely that if we are</p> <p>17 going to have hearings next week, they are one of my last</p> <p>18 witnesses. So my question is, is there a possibility that we</p> <p>19 could -- that the schedule would accommodate hearings for</p> <p>20 next week? I mean, I would prefer not to pick witnesses out</p> <p>21 of order, but if I have to, I will.</p> <p>22 MR. BAUMGARDNER: I don't think so. So I have a</p> <p>23 hearing Monday, Tuesday, Wednesday. Let me pull up the</p> <p>24 calendar real quick. So I have a hearing on the 31st, the</p> <p>25 1st, the 2nd. Then I have a hearing on the 7th and a hearing</p>
<p>98</p> <p>1 and the assisted living level. And my -- her question and my</p> <p>2 question is, where else has this been done? You mentioned</p> <p>3 two places, but I didn't get enough detail for me to be able</p> <p>4 to follow up and compare them with yours. The first one I</p> <p>5 believe you said was Springton Lake; is that right?</p> <p>6 MS. ANDRESS: Correct. Springton Lake has the for</p> <p>7 sale age restricted with the independent living services</p> <p>8 available to it. And then I also mentioned, as just as an</p> <p>9 example, Willow Valley, but that's a CCRC. So they are not</p> <p>10 exact. They are not exactly like this property. But I'm</p> <p>11 used to -- you know, no two CCRCs is exactly the same, no</p> <p>12 life care is exactly the same and no rental community is</p> <p>13 exactly the same. So I'm confused by the expectation.</p> <p>14 MR. BROWN: So where is Willow Valley located?</p> <p>15 MS. ANDRESS: It's in Lancaster.</p> <p>16 MR. BROWN: Pennsylvania?</p> <p>17 MS. ANDRESS: Uh-huh. But it's --</p> <p>18 MR. BROWN: Is that right?</p> <p>19 MS. ANDRESS: Yes.</p> <p>20 MR. BROWN: And where is Springton Lake located?</p> <p>21 MS. ANDRESS: Media, Pennsylvania.</p> <p>22 MR. BROWN: Media, Pennsylvania?</p> <p>23 MS. ANDRESS: Uh-huh.</p> <p>24 MR. BROWN: And do you know of any other</p> <p>25 facilities in the countries that are going -- that already</p>	<p>100</p> <p>1 on the 11th. So we are looking towards the week of -- verify</p> <p>2 this real quick if I give you bad dates. We are looking at</p> <p>3 possibly February -- the week of February 14, possibly either</p> <p>4 February 14, February 21, 22nd, or early month.</p> <p>5 MS. HARRIS: Okay. Well, you did one thing. You</p> <p>6 at least clarified that is not going to be next week,</p> <p>7 unfortunately.</p> <p>8 MR. BAUMGARDNER: That's correct.</p> <p>9 MS. HARRIS: Okay. We do have -- during the break</p> <p>10 we did identify the dates that were available. So when we</p> <p>11 get to that portion I can provide those to you unless you</p> <p>12 want me to do that now. Otherwise, we will just --</p> <p>13 MR. BAUMGARDNER: (Inaudible).</p> <p>14 MS. HARRIS: Excuse me?</p> <p>15 MR. BAUMGARDNER: We can do that at the end of</p> <p>16 today.</p> <p>17 MS. HARRIS: Okay. Well then our next witness</p> <p>18 will be Jane Przygocki. And Jane, I apologize if I'm</p> <p>19 mispronouncing your name.</p> <p>20 MR. BAUMGARDNER: Ms. Przygocki, are you there?</p> <p>21 MS. HARRIS: You are on mute.</p> <p>22 MR. BAUMGARDNER: So there is an audio issue.</p> <p>23 MS. PRZYGOCKI: Okay (inaudible).</p> <p>24 MR. BAUMGARDNER: There you are.</p> <p>25 MS. PRZYGOCKI: All right.</p>

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26 (101 to 104)

101	<p>1 MR. BAUMGARDNER: All right. If you can please</p> <p>2 provide us your full name, your professional address, and a</p> <p>3 good business email address, please.</p> <p>4 MS. PRZYGOCKI: My name is Jane Przygocki. I am a</p> <p>5 land use planner with Soltesz, which is located at 3 Research</p> <p>6 Place, Suite 100, Rockville, Maryland. And the email address</p> <p>7 is JPrzygocki@Soltesco.com</p> <p>8 MR. BAUMGARDNER: So your connection is not</p> <p>9 particularly great. Can you move the mic closer to yourself?</p> <p>10 Or is there another device that's close to that's also logged</p> <p>11 in? That can also cause interference with the signal.</p> <p>12 MS. PRZYGOCKI: I don't believe there is -- is</p> <p>13 there a device that's logged in? Can you hear me all right</p> <p>14 now?</p> <p>15 MR. BAUMGARDNER: It's better the closer you are</p> <p>16 to whatever device you are using.</p> <p>17 MS. PRZYGOCKI: How's that?</p> <p>18 MR. BAUMGARDNER: When you are speaking directly</p> <p>19 into the mic it's better. Anytime you move your head away it</p> <p>20 starts to trail off.</p> <p>21 MS. PRZYGOCKI: Okay.</p> <p>22 MR. BAUMGARDNER: That's very good right there.</p> <p>23 MS. PRZYGOCKI: Okay. All right. I apologize.</p> <p>24 It's usually a very sensitive microphone. So I'm just</p> <p>25 surprised.</p>	103	<p>1 Science degree in landscape architecture from the University</p> <p>2 of Virginia. And I've been a certified member of the</p> <p>3 American Institute of Certified Planners since 1995. And</p> <p>4 I've been working in land development (inaudible) and</p> <p>5 landscape designer primarily in Montgomery County and the</p> <p>6 surrounding jurisdictions for over 35 years.</p> <p>7 MS. HARRIS: And what your -- what (inaudible)</p> <p>8 Soltesz?</p> <p>9 MS. PRZYGOCKI: I'm employed by Soltesz as a</p> <p>10 technical director and I'm responsible for the development,</p> <p>11 review, submittal, and processing of development plans for</p> <p>12 the (inaudible) site plans, preliminary plans, conditional</p> <p>13 use plans and local map amendments.</p> <p>14 MS. HARRIS: And have you ever testified as an</p> <p>15 expert for this body or another Montgomery County body?</p> <p>16 MS. PRZYGOCKI: Yes, I've testified as an expert</p> <p>17 in land planning (inaudible).</p> <p>18 (Crosstalk)</p> <p>19 COURT REPORTER: I do apologize for the</p> <p>20 interruption. This is the reporter speaking. It is very</p> <p>21 hard to hear the current witness right now. I think the</p> <p>22 issue might be -- if Mr. Brown, if you are able to mute</p> <p>23 yourself while the questioning is going on, I feel like there</p> <p>24 may have been a little bit of feedback happening at the</p> <p>25 moment. Thank you, Mr. Brown.</p>
102	<p>1 MR. BAUMGARDNER: It might be the platform.</p> <p>2 JANE PRZYGOCKI,</p> <p>3 being first duly sworn or affirmed to testify to the truth,</p> <p>4 the whole truth, and nothing but the truth, was examined and</p> <p>5 testified as follows:</p> <p>6 MR. BAUMGARDNER: Thank you, very much. Ms.</p> <p>7 Harris, the witness is yours.</p> <p>8 (Crosstalk)</p> <p>9 MS. HARRIS: Say it again, please.</p> <p>10 MS. PRZYGOCKI: Przygocki.</p> <p>11 MS. HARRIS: Przygocki. Well --</p> <p>12 MS. PRZYGOCKI: Switch the Y and the Z</p> <p>13 (inaudible).</p> <p>14 MS. HARRIS: Przygocki?</p> <p>15 MS. PRZYGOCKI: Przygocki.</p> <p>16 MS. HARRIS: Przygocki. I'm just going to say</p> <p>17 Jane, and I apologize, if that's acceptable.</p> <p>18 MS. PRZYGOCKI: That is perfectly fine.</p> <p>19 MS. HARRIS: Thank you. My apologies. So Jane,</p> <p>20 what profession -- can you state your profession for the</p> <p>21 record, please?</p> <p>22 MS. PRZYGOCKI: Yes, I'm a land use planner.</p> <p>23 MS. HARRIS: And can you please describe your</p> <p>24 professional and educational background and credentials?</p> <p>25 MS. PRZYGOCKI: Sure. I have a Bachelor of</p>	104	<p>1 MS. PRZYGOCKI: Okay.</p> <p>2 MS. HARRIS: Much better, actually.</p> <p>3 MR. BAUMGARDNER: (Inaudible) Mr. Court Reporter.</p> <p>4 MS. HARRIS: I would note that Ms. Przygocki's</p> <p>5 resume is a record at 29C and (inaudible) should be qualified</p> <p>6 as an expert in the area of land planning and has been before</p> <p>7 this board on numerous other occasions.</p> <p>8 MR. BAUMGARDNER: Mr. Brown, any objection?</p> <p>9 MR. BROWN: I would just like to make a brief</p> <p>10 inquiry. Ms. --</p> <p>11 MR. BAUMGARDNER: So she has been admitted as an</p> <p>12 expert in front of OZHA multiple times. So a very brief</p> <p>13 inquiry.</p> <p>14 MR. BROWN: Yes, sir. You're not offering</p> <p>15 yourself as an expert on the senior -- on the senior care</p> <p>16 community industry, are you?</p> <p>17 MS. PRZYGOCKI: No, I'm not. I'm offering myself</p> <p>18 as an expert in land use planning. Although I have worked on</p> <p>19 other senior communities, I'm not an expert in that field.</p> <p>20 MR. BROWN: Thank you, very much. I have no</p> <p>21 objection.</p> <p>22 MR. BAUMGARDNER: Thank you, sir. Ms. Przygocki</p> <p>23 is so admitted for the purposes of this hearing as an expert</p> <p>24 in land-use planning. Any other designations in addition to</p> <p>25 land-use planning, Ms. Harris?</p>

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27 (105 to 108)

<p>105</p> <p>1 MS. HARRIS: No, just land-use planning.</p> <p>2 MR. BAUMGARDNER: The floor is yours.</p> <p>3 MS. HARRIS: Thank you. And are you familiar with</p> <p>4 the conditional use application which is before us today?</p> <p>5 MS. PRZYGOCKI: Yes, the application is for the</p> <p>6 proposed redevelopment of a former site of the Fourth</p> <p>7 Presbyterian school containing approximately 30.6 acres of</p> <p>8 land located at 10701 S. Glen Road.</p> <p>9 MS. HARRIS: And just a sidebar. Do you -- are</p> <p>10 you more comfortable if I'm pulling up the exhibits that</p> <p>11 you're planning to refer to? Or are you able to do that?</p> <p>12 MS. PRZYGOCKI: That will be fine. If you can</p> <p>13 pull them up for me please, the community services exhibit.</p> <p>14 MS. HARRIS: Yes (inaudible).</p> <p>15 MS. PRZYGOCKI: Thank you, very much. So the site</p> <p>16 is located just about 300 feet west of Falls Road and just</p> <p>17 under a mile as the (inaudible) to Potomac Village Center.</p> <p>18 MR. BAUMGARDNER: And Ms. Przygocki, this is</p> <p>19 Exhibit 70?</p> <p>20 MS. PRZYGOCKI: Yes.</p> <p>21 MR. BAUMGARDNER: Thank you.</p> <p>22 MS. PRZYGOCKI: And there are many community</p> <p>23 services in the area. And as you can see by the list, that</p> <p>24 was one of the attractions about this site, that there are</p> <p>25 many community services nearby that would be available to the</p>	<p>107</p> <p>1 as well as the conditional use standards. I also was</p> <p>2 responsible for evaluation of the project's conformance with</p> <p>3 the master plan and compliance with the zoning ordinance and</p> <p>4 I assisted with the site layout and site design of the</p> <p>5 proposed development to ensure compatibility with the</p> <p>6 surrounding neighborhood and compliance with all the code</p> <p>7 requirements.</p> <p>8 And assistance also with the landscape design,</p> <p>9 which is focused on complementing the architecture, creating</p> <p>10 pleasing (inaudible) amenities for residents, providing</p> <p>11 substantial buffering for compatibility with the surrounding</p> <p>12 neighborhood, improving environmental brackets to the</p> <p>13 protection of sensitive areas and natural habitat and</p> <p>14 restoration of previously paved areas, assistance with the</p> <p>15 preparation of the land-use report and assembling the</p> <p>16 application documents for submission. And then responding to</p> <p>17 technical review comments and concerns and addressing their</p> <p>18 comments to the plans.</p> <p>19 MS. HARRIS: Thank you. And was Soltesz</p> <p>20 responsible for issuing the land-use report which is Exhibit</p> <p>21 44 in the record?</p> <p>22 MS. PRZYGOCKI: Yes. Soltesz was responsible for</p> <p>23 issuing that report. It was very much a collaborative</p> <p>24 effort, as all of our consultants had contributed to the</p> <p>25 information that's contained in the report. And Soltesz</p>
<p>106</p> <p>1 seniors in this community.</p> <p>2 MS. HARRIS: And what's at the site zoned?</p> <p>3 MS. PRZYGOCKI: The site is zoned RE2. The</p> <p>4 proposed development is a residential care facility pursuant</p> <p>5 to the zoning ordinance section 3.3.2E containing up to 74</p> <p>6 independent living units and up to 87 assisted living and</p> <p>7 memory care units or up to 105 beds. Within the residential</p> <p>8 care facility classification, the project is referred to as</p> <p>9 the senior care community defined as a community providing a</p> <p>10 continuum of residential occupancy and healthcare services</p> <p>11 for seniors. This community must include assisted-living and</p> <p>12 residential independent dwelling units and may also include</p> <p>13 memory care and/or skilled nursing in one or more buildings</p> <p>14 of any structure type. The Healthcare Services component of</p> <p>15 the community may be located in a structure physically</p> <p>16 separated from the independent units. And that as per the</p> <p>17 definition in the -- that is in the ordinance under 59 1.</p> <p>18 (Inaudible) .2.</p> <p>19 MS. HARRIS: Thank you. And can you please</p> <p>20 describe what your responsibilities were in connection with</p> <p>21 this application?</p> <p>22 MS. PRZYGOCKI: I was responsible for reviewing</p> <p>23 the Potomac subregion master plan and the zoning ordinance</p> <p>24 requirements, but being general in requirements and the</p> <p>25 specific purposes and development standards for the RE2 zone</p>	<p>108</p> <p>1 packets that all up and puts it into one concise report.</p> <p>2 MS. HARRIS: And have you made a personal</p> <p>3 inspection of the property?</p> <p>4 MS. PRZYGOCKI: Yes, I've been there many times.</p> <p>5 MS. HARRIS: And then can you please describe the</p> <p>6 location and general characteristics of the property? And</p> <p>7 for that, I'm going to put up on the screen Exhibit 91.</p> <p>8 MS. PRZYGOCKI: Okay. So maybe you could zoom in</p> <p>9 a little bit. I don't know how much you can. Well, it's a</p> <p>10 little hard to see the topography on this map --</p> <p>11 (Crosstalk)</p> <p>12 MS. PRZYGOCKI: From-- there we go. Yeah. So</p> <p>13 basically it's 30.6 acres. It's under a mile from Potomac</p> <p>14 Village, as I mentioned. And -- which is the location of</p> <p>15 community services and shopping. And for purposes of</p> <p>16 presentation as you mentioned earlier, we will call what is</p> <p>17 left on the screen will be the south end of the property. It</p> <p>18 is -- the site gently slopes down from the south to the north</p> <p>19 at about 4 percent with moderate to heavy tree canopy to the</p> <p>20 north and to the east.</p> <p>21 I'm sorry. I don't have the pointer, but perhaps</p> <p>22 you could show the canopy along the northern -- along the</p> <p>23 western property line there. And then there is a significant</p> <p>24 forest at the northern end of the property as well. The site</p> <p>25 is improved with structures from the former fourth</p>

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28 (109 to 112)

<p>109</p> <p>1 Presbyterian Church that school, excuse me, which includes an 2 office building, and arts and crafts building, classrooms. 3 There is a pool which has been filled in for 4 safety, and a pool house, paved play areas, the gymnasium, 5 and surface parking and access is via a two lane access drive 6 from S. Glen Road, which is that the south there and as you 7 are showing there into the site. In the natural features of 8 the site include forest stands and the main branch of Kilgore 9 branch stream runs south to north and it is fed by an 10 intermittent stream running west to east. No existing 11 comprehensive stormwater facilities exist on the site. There 12 is one facility over by the gymnasium and the elevation 13 changes, yes that is the facility that I'm referring to. So 14 the change in elevation from S. Glen Road to the lowest point 15 in the site is about 70 feet. It goes from 370 at S. Glen 16 Road to 300 at the far end of the site adjacent to the 17 stream. And this -- there are not protected soils on site. 18 It's not within a special protection area and however, the 19 environmental aspects of the site will be addressed in more 20 detail later by our other experts. 21 MS. HARRIS: Thank you. And what's the zoning of 22 the site and the zoning history? 23 MS. PRZYGOCKI: It's zoned RE-2, has been for a 24 very long time, since the 1960s the site has been used for an 25 institutional or educational use, which included a Montessori</p>	<p>111</p> <p>1 large houses. The Congregation B'nai Tzedek lies adjacent to 2 the eastern property line. 3 MS. HARRIS: And what type of room is S. Glen 4 Road? Is it characterizes anything special? 5 MS. PRZYGOCKI: It is characterized as a country 6 road in the area of the subject property. It is a two-lane 7 paved road in a 70 foot wide right of way. And this is a 8 picture of the side, this is the entrance to the site right 9 here, and you can see in the distance there the entrance to 10 the synagogue. 11 To the right is Norton Road which that 12 intersection is slightly offset from the existing entrance. 13 MS. HARRIS: And I would note that this photo is 14 submitted, and it's Exhibit 89. 15 And are you aware of any other conditional uses 16 that are located on comparable type roads? 17 MS. PRZYGOCKI: Yes. This is very similar to 18 other conditional uses. If you can show that example there? 19 This is Exhibit Number 71. The German School on Château 20 Drive, on the right-hand side of the screen there is on such 21 a right of way. It is a two lane road with a 60 foot right- 22 of-way, even smaller. 23 The Barnesville School on Peach Tree Road in 24 Dickerson is a two-lane rustic Road. And the Friends House 25 on Quaker Lane, which is off of Norwood Road which is on the</p>
<p>110</p> <p>1 school, the Burns School Associates, the Hellenic Academic, 2 and most recently the Fourth Presbyterian School. Some of 3 these uses were permitted by special exception. The Fourth 4 Presbyterian School, however, being a religious school did 5 not require a special exception school approval. 6 MS. HARRIS: And please describe the surrounding 7 neighborhood as you've defined it. 8 MS. PRZYGOCKI: So we described the surrounding 9 neighborhood and the staff agreed with our definition of the 10 neighborhood in terms of -- and as it is shown here in this 11 Exhibit 17 in the record, to the south is the southern 12 property line of the properties (inaudible) S. Glen. To the 13 west are the sites with access off of Edison Road, and 14 Dobbins Drive. So we can see all of those having access to 15 those two roads, the north is the residence of Front Broad 16 Green Terrace, as they are adjacent to the property there. 17 And then, to the east there is Falls Road Golf 18 Course fronting Lockland Road, and right across the street 19 there we included those confronting properties that are 20 facing S. Glen Road across from that intersection. 21 MS. HARRIS: And generally speaking, can you 22 describe the character of the neighborhood, please? 23 MS. PRZYGOCKI: It's a single-family detached 24 neighborhood. It's comprised of all -- the entire 25 neighborhood is in the RED 2 zone. There's large lots and</p>	<p>112</p> <p>1 left there, but is also a very similar road, and it is a two 2 lane. And Friends House is a similar type of use to what we 3 are proposing -- in the Applicant is proposing here. The 4 others are schools, but that one is also a residential care 5 facility with both cottages and a Lodge and apartments. 6 MS. HARRIS: Do you happen to know how many units 7 of that is, offhand, the Friends House? 8 MS. PRZYGOCKI: The Friend's house, excuse me. 9 Perhaps you could call up -- I'm sorry, I don't remember off 10 the top of my head. Hold on one second. 11 I'm sorry. 12 MS. HARRIS: Well, we can come -- 13 MS. PRZYGOCKI: Oh, I'll what A- have to check on 14 that. I'm sorry, I don't have that number here. 15 MS. HARRIS: And is the German School and 16 elementary school, high school, or do you know that? What -- 17 MS. PRZYGOCKI: The German School actually is a 18 broader range. It goes, I believe, pre-K to high school. 19 But I'm -- I would not -- I'm not an expert on that facility. 20 MS. HARRIS: Okay. And is S. Glen classified as a 21 rustic road? 22 MS. PRZYGOCKI: No, it's not. There is a portion 23 of S. Glen to the north of this, if you would like to show 24 Exhibit 84. And actually, I guess it would be west. So 25 Exhibit 84 shows that Justin beyond -- okay. Further to the</p>

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29 (113 to 116)

<p>113</p> <p>1 west there -- our site is about where -- oops, is right about 2 where you had your cursor, right there. That's Norton Road, 3 and that the existing interest to our site. To the left of 4 that, or to the west, is S. Glen Road and that portion is 5 considered an exceptional rustic road. However, it's 6 interesting to note that portion where the Applicant's 7 property -- or the subject of the application is not on a 8 rustic road.</p> <p>9 MS. HARRIS: What's the significance of a rustic 10 road?</p> <p>11 MS. PRZYGOCKI: Rustic roads are basically 12 historic and scenic roadways that reflect the agricultural 13 character and rural origins of Montgomery County. 14 Designation as a rustic road recognizes the character of the 15 road and encourages preservation of the physical features and 16 maintenance of the right-of-way. But this is not a rustic 17 road (inaudible) about 1,400 feet beyond the property is 18 where the rustic road starts.</p> <p>19 MS. HARRIS: Thank you. And in your professional 20 opinion will the proposed development impact the character of 21 the surrounding neighborhood?</p> <p>22 MS. PRZYGOCKI: In my opinion it will further the 23 residential character of the neighborhood by development of 24 the site that has historically used for institutional 25 purposes, which has kind of become a part of the fabric of</p>	<p>115</p> <p>1 MS. HARRIS: So do you want to describe what's on 2 the screen? And this is Exhibit 56-C.</p> <p>3 MS. PRZYGOCKI: Okay. We're not seeing the 4 exhibit right now. There it is. Okay. So the 5 development -- the placement of the structure along S. Glen, 6 there's only one structure that's placed along S. Glen and 7 it's very similar in character and size to the adjacent 8 properties. It's about the same size, it's about the same 9 setback, and what the Applicant tried to do is mimic that 10 streetscape which is along that Glen -- or S. Glen Road.</p> <p>11 Another aspect of the property is that there is 12 significant tree preservation and low lot coverage and 13 density relative to what would normally be permitted. As the 14 architect will testify to, the building has been designed to 15 have a residential appearance and bulk and massing of the 16 cottages is designed to ensure compatibility with the scale 17 of the surrounding homes, many of which are large homes on 18 large lots.</p> <p>19 The Lodge at the right-hand side of the screen, or 20 what would be the northern part of the site is at the lowest 21 part of the site. And really, will not be visible or barely 22 visible from the road as it is so much lower than the road, 23 and also is screened by a significant stream valley buffer 24 with forest. So that will be nestled into the hillside there 25 and will be of relatively low visibility.</p>
<p>114</p> <p>1 the community, however, in that it had a lot of activity over 2 the years. But unlike those previous educational uses, this 3 is a residential use so if anything it would enhance the 4 residential character. It's 30 acres of land.</p> <p>5 You know, a mile from Potomac Village, it's 6 certain to be put to a use in some sort of way and this seems 7 like an appropriate use for the land given the zoning and the 8 master plan. It is interesting though, and worth noting that 9 prior to the recession as Ken Wormald described earlier that 10 the Fourth Presbyterian had pulled a building permit to start 11 a major mass plan school expansion for 400 students. And 12 now, per the zoning ordinance another religious school could 13 develop the property similarly.</p> <p>14 So as will be explained later, the proposed 15 development is in character with the surrounding area through 16 placement of the structures. Maybe we could -- well, I'll 17 get to that exhibit later.</p> <p>18 MS. HARRIS: Well, I actually think it -- were you 19 going to refer to Exhibit (inaudible)?</p> <p>20 MS. PRZYGOCKI: I was going to go for this 21 exhibit, yes.</p> <p>22 MS. HARRIS: I think it might make more sense to 23 talk about what's being proposed and then maybe your comments 24 that you just made could be put in context.</p> <p>25 MS. PRZYGOCKI: Okay.</p>	<p>116</p> <p>1 MS. HARRIS: Anything else in terms of the overall 2 site design based on this --</p> <p>3 MS. PRZYGOCKI: We were sensitive to the adjacent 4 properties and have provided not only is there existing 5 forest along the western property line, but there -- we will 6 be providing landscape buffering along both side property 7 lines there in order to screen the adjacent properties from 8 the use, and keep a residential appearance as well.</p> <p>9 There will be landscape along the street, along S. 10 Glen Road and it will be very much in the character of many 11 of the residences in the area where there's a, like, a rail 12 fence and landscaping and good -- so that will have a similar 13 appearance to the surrounding neighborhood.</p> <p>14 And we believe, as per the traffic consultant's 15 reports that the impact will be minimal compared to what the 16 previous use was. And that will be discussed by the traffic 17 consultant himself.</p> <p>18 MS. HARRIS: Okay. Is there (inaudible)?</p> <p>19 MS. PRZYGOCKI: And a lot of -- well, and we can 20 reiterate this again later, but so much of the forest on the 21 site is preserved, it's like 75 percent of the forest that's 22 existing on the site is preserved. And then, in addition to 23 that the Applicant is proposing to add a lot of extra 24 landscaping and not only ornamental landscaping but 25 forestation.</p>

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<p>117</p> <p>1 MS. HARRIS: And can you explain just a little bit</p> <p>2 more now that we have this in front of us, the -- what's</p> <p>3 happening with the cottage units and in terms of their</p> <p>4 general size and what's proposed?</p> <p>5 MS. PRZYGOCKI: Well, as I said, the -- we've got</p> <p>6 the one -- the initial unit is facing S. Glen. All of the</p> <p>7 rest of the units are set significantly into the site, over</p> <p>8 several hundred feet. The first house is over 130 feet back</p> <p>9 from the road. The cottages are similar in architectural</p> <p>10 style and similar footprints to many of the other Potomac</p> <p>11 Estate homes in the neighborhood.</p> <p>12 As I mentioned before, the entrance will be</p> <p>13 landscaped with similar rail fence and stone pillars. The</p> <p>14 elements are similar to estate architecture which the</p> <p>15 architect will also provide some examples of that. Unlike a</p> <p>16 lot of the other residential care facilities this will have</p> <p>17 generous interior park spaces and large -- as well as large</p> <p>18 natural areas to explore. The -- all of these -- the parks</p> <p>19 are connected by sidewalks and trails and then there's</p> <p>20 significant forest in the northern end of the site which can</p> <p>21 also be explored.</p> <p>22 So lighting is all residential in character so it</p> <p>23 does not have the look of an institutional large building</p> <p>24 with a lot of -- see parking around it. It's just the</p> <p>25 cottages provide parking in enclosed garages, side load</p>	<p>119</p> <p>1 the fitness center. It's an existing building. It existed</p> <p>2 as part of the school use, built with stone and siding colors</p> <p>3 that will be compatible with the proposed buildings as the</p> <p>4 architect will describe there's a -- they've selected a very</p> <p>5 natural stucco and stone color scheme.</p> <p>6 And that building sits a little bit lower than the</p> <p>7 existing -- or excuse me, the proposed Lodge building.</p> <p>8 MS. HARRIS: And in this -- in your land use</p> <p>9 report you referred to the property as a campus-like setting.</p> <p>10 Can you just identify what features helps sort of promote</p> <p>11 that kind of characteristic?</p> <p>12 MS. PRZYGOCKI: Sure. It is -- there's -- it's</p> <p>13 all -- the whole campus is intended to be, as you say, a</p> <p>14 campus on one lot with internal drives circulating</p> <p>15 throughout, open spaces tied together with sidewalks and</p> <p>16 connectivity throughout the campus, nature trails provided</p> <p>17 and then the community hub will be at the Heritage Field</p> <p>18 fitness building which where they will -- the residents of</p> <p>19 both the Lodge and the cottages will be able to access both</p> <p>20 fitness services as well as social activities and it will be</p> <p>21 kind of a hub for arranging for these types of things.</p> <p>22 MS. HARRIS: Okay. So you've described this</p> <p>23 project fairly generally based on this exhibit. But I want</p> <p>24 to get into more of the details as they relate to the</p> <p>25 specific development standards of the zoning ordinance. So</p>
<p>118</p> <p>1 garages that -- typical of Potomac Estate homes. And there's</p> <p>2 very minimal surface parking provided. And that parking is</p> <p>3 screened from the neighborhood by the very Lodge building</p> <p>4 that it serves.</p> <p>5 MS. HARRIS: I'm going to zoom in there and if you</p> <p>6 could just describe that parking just a little bit more that</p> <p>7 would be helpful.</p> <p>8 MS. PRZYGOCKI: All right. Great. The surface</p> <p>9 lot here is provided for the convenience of visitors and</p> <p>10 residents and there's a drop off at each wing on one side is</p> <p>11 the assisted living and the other side is the independent</p> <p>12 living. There are 25 spaces here, again, shielded from view</p> <p>13 of the surrounding residences by the building itself and also</p> <p>14 set into the hillside so they are actually lower than that of</p> <p>15 the rooftops of the surrounding community.</p> <p>16 There are 10 spaces -- so it's 25 spaces in this</p> <p>17 circular drive. There are 10 spaces down by the service area</p> <p>18 and the gymnasium. And then underneath the building there</p> <p>19 are 40 garage spaces provided.</p> <p>20 MS. HARRIS: And you mentioned the -- and I don't</p> <p>21 know that any other witness has focused on this and so -- can</p> <p>22 you describe the building that you referenced as the</p> <p>23 gymnasium building that my cursor's on?</p> <p>24 MS. PRZYGOCKI: Yes. That -- I -- that's the</p> <p>25 existing gymnasium which will, in the future, be converted to</p>	<p>120</p> <p>1 let me pull up the next exhibit.</p> <p>2 Can you explain to me -- and why don't we start</p> <p>3 with density? Can you -- and I don't know if you want me to</p> <p>4 zoom into the development standard or -- I mean, the table?</p> <p>5 MS. PRZYGOCKI: You can zoom in for the benefit of</p> <p>6 the Hearing Examiner and the audience, but basically, in</p> <p>7 terms of density, the density that is proposed is a fraction</p> <p>8 of what would normally be permitted. There -- as the lot is</p> <p>9 30.6 acres and at 15 units per acre the independent living</p> <p>10 units, it would -- a density of 459 independent living units</p> <p>11 would be permitted. However, this application only proposes</p> <p>12 74, which is only 16 percent of the allowable density.</p> <p>13 The area that would be required for 74 independent</p> <p>14 living units would be 4.93 acres and we have 30.6 acres here.</p> <p>15 But since this is a mix of different types of units we don't</p> <p>16 want to double count the acreage against both uses so if you</p> <p>17 subtract the 4.93 acres as would be required for independent</p> <p>18 living units, and take the 25.67 acres remaining, we can</p> <p>19 assess what the density is for the assisted living and memory</p> <p>20 care.</p> <p>21 So assisted living and memory care require 1,200</p> <p>22 square feet per bed with 25.67 acres remaining, 931 beds</p> <p>23 would be allowed. The Applicant is only proposing 96. So</p> <p>24 this is about 10.3 percent of what the allowable density</p> <p>25 would be. So total, if you were to add the two uses, in</p>

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<p>121</p> <p>1 terms of what the required area for each is, the 7.93 and the 2 2.64 acres, only 7.67 acres would be required. However, this 3 is being proposed on a site of 30.6 acres. 4 So there is considerable -- it's low density and 5 it's -- there is considerable open space provided. 6 MS. HARRIS: And while each (inaudible) zone and 7 we recognize that, do you have any sense of other residential 8 care facilities, what their densities or acreages are like? 9 MS. PRZYGOCKI: Yes. Let's see. That -- we have 10 other -- actually, we've looked at number of other facilities 11 in the area and typically you might have this many acres on a 12 site that is anywhere from 3 to 5 acres, is not unusual. And 13 the -- we have in an exhibit chart that shows some of the 14 relative facilities that show the number of beds and the 15 acreage provided. 16 MS. HARRIS: And I think you said this number of 17 acres on this number of acres. Did you mean this number of 18 (inaudible)? 19 MS. PRZYGOCKI: I apologize. This number of units 20 on -- a similar number of units on a fraction of the site 21 area. So while we're providing basically a total of 170 22 units on 30 acres, you might see that same number or 23 something close to it, like 120 to 150 on four or five acres. 24 And this has been shown over and over again on other recently 25 approved projects such as -- well, we've talked about some of</p>	<p>123</p> <p>1 independent units are classified as dwelling units. 2 MS. HARRIS: Thank you. And then, now let's move 3 on to green area. What's the requirement, and what's being 4 proposed here? 5 MS. PRZYGOCKI: We have a requirement of 50 6 percent green area and the Applicant is proposing 75 percent 7 green area, so that's a significant increase. It's like 1- 8 1/2 times what's normally required. And similarly the lot 9 coverage is only 13 percent of the site, and 25 percent is 10 usually allowed. Even the setbacks, they've all been 11 increased by at least 50 percent and up to 45 times the 12 requirement in terms of the rear setback is setback over 400 13 feet from the adjacent lot. And there's only, like, a 30 14 foot requirement there. 15 MS. HARRIS: And then what (inaudible) -- 16 MS. PRZYGOCKI: I'm sorry? 17 MS. HARRIS: No, go ahead. 18 MS. PRZYGOCKI: Well, I was going to suggest that 19 maybe we call up Exhibit 86 and 96. 20 MS. HARRIS: Yes, but I can only do it one at a 21 time. So do you want 86 first? 22 MS. PRZYGOCKI: I'd like 86 first, please. 23 Thank you for running the exhibits. I appreciate 24 it. 25 MS. HARRIS: Yeah, I've been impressed with my</p>
<p>122</p> <p>1 them, Brandywine in the area, Artis Senior Living, Spectrum 2 Retirement Communities, they are all much smaller area but 3 significant number of units. 4 MS. HARRIS: Thank you. And actually, what the 5 proposed planning board condition says, and up to 105 beds. 6 How would that change the calculation you just indicated? 7 Because I believe you last focused on 96 beds. 8 MS. PRZYGOCKI: Yes. And the Applicant is looking 9 to have some flexibility there to be able to respond to the 10 market and what's needed. So in -- as was mentioned earlier 11 in the testimony they may reduce the number of independent 12 living units to add a few assisted living units. And we've 13 done the calculation to where if they maximize that out to 14 105 assisted living units and they would correspondingly 15 reduce the independent living units to 19 from 29, the actual 16 density is even better, believe it or not. It's -- the 17 independent living units would be 13.9 percent of the allowed 18 density as compared to the 16 percent and the 105 AL would be 19 11.2 percent of the allowed density. 20 MS. HARRIS: And just to clarify, the 105, is that 21 beds or units? 22 MS. PRZYGOCKI: That is beds. Assisted living and 23 memory care units are such that they are -- their density is 24 controlled by beds because they don't typically have -- well, 25 it's just a different classification. Whereas the</p>	<p>124</p> <p>1 ability to multi-task here. 2 MS. PRZYGOCKI: Okay. So in order to get a sense 3 and demonstrate a sense of the impact on the surrounding 4 properties we ran a couple of cross sections, one being AA at 5 the S. Glen Road, and the second one being BB which runs 6 through the middle of the property and reaches out to 7 adjacent properties. And then, CC which runs through the 8 Lodge. And the arrows that are pointing on the ends of the 9 section lines are the direction in which that section is 10 facing. 11 So in other words if it cuts through a building 12 you'll see in the next exhibit where it cuts through the 13 building, but then what you're seeing in the background is 14 shown in order to give you a relative sense of what's going 15 on with the site. 16 So section AA is shown here. That is S. Glen Road 17 in the middle there. Across the street is the -- an existing 18 home and if you'll notice the proposed home is setback 19 significantly as is the confronting properties. There's 20 berming and landscaping, fencing and ornamental landscaping 21 along the property line. And the -- much of the movement and 22 their activity would be screened by that landscaping and 23 berming. 24 The next section down is section BB. 25 MS. HARRIS: I'll zoom in so that (inaudible).</p>



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125	1 MS. PRZYGOCKI: Maybe we could go back to remind 2 the audience of what that -- where that is taken. So this is 3 through the middle of the property and then up through -- it 4 shows relative where the house on Lot 4 is relative to the 5 rest of the community. If you notice on this plan too, you 6 can see the landscaping that is planted along the western 7 border there, and as well as on the southern border. 8 So if we go -- look at BB. BB was facing back 9 towards the street. So on the left we have the adjacent 10 homes that are accessed off of S. Glen by a panhandle lot and 11 the road that accesses the synagogue. That's a private 12 drive. It's not a road per se but a private drive that leads 13 to the synagogue. And then, we have the first of the 14 cottages, the internal road and more internal park, more 15 cottages and the other internal road and cottages. But if 16 you'll notice these cottages are similar in height to what we 17 estimate the homes adjacent to be and are ample landscaping 18 and setback is provided. 19 MS. HARRIS: And when you say the estimate of the 20 homes, what was the height that was estimated? 21 MS. PRZYGOCKI: 35 feet, or -- 22 MS. HARRIS: And do you -- I'm sorry. Go ahead. 23 MS. PRZYGOCKI: Just we estimated 35 feet as we do 24 not have surveys of those particular homes. 25 MS. HARRIS: And do you know what they maximum	127	1 going to get into architecture because he should, but any 2 general comment about the architecture? 3 MS. PRZYGOCKI: Actually, I'm very impressed with 4 the architecture. It uses very similar styles and motifs of 5 many of some surrounding homes. Although there are a variety 6 of homes and as the architect will show you he -- they to a 7 variety of different elevations and colors and materials as 8 well. But it's -- I found the architecture to be very 9 similar to the Estate homes in the surrounding Potomac area. 10 MS. HARRIS: And we have two witnesses that are 11 going to testify about environment issues, so I don't want to 12 dwell too much on this and I know that's not your level of 13 expertise. But just very generally, can you describe the -- 14 what's going on with the trees and the forest conservation on 15 the site? 16 MS. PRZYGOCKI: Yes. This was one of the key 17 goals of the design of the community was also not only to 18 have setbacks and architecture and lot coverage that were 19 similar to the surrounding neighborhood, but also to protect 20 the natural environment on the site and it was very much a 21 goal of the Applicant as well as our design professionals 22 here. So as a result, 75 percent of the existing forest on 23 the site is going to be preserved and that's -- there are 24 11.59 acres of forest existing and 8.78 acres will remain. 25 And that alone exceeds the forest requirement right there.
126	1 height is allowed in RE2 for a single family home? 2 MS. PRZYGOCKI: Yes, it's 50 feet. 3 MS. HARRIS: Okay. Okay. Now, you want to go to 4 the next section? 5 MS. PRZYGOCKI: Okay. CC goes through -- this is 6 looking the other direction and looking at the -- going right 7 through the middle of the Lodge looking towards the northern 8 end of the site. On the left we have a single family home 9 that -- and there is significant forest and trees in that 10 area and the Lodge is built into the slope. It is lower than 11 the ground plan of the adjacent property. And in -- and 12 height wise is very comparable to the adjacent property. 13 MS. HARRIS: And how many stories along the 14 western façade of that Lodge? How many stories is that? 15 MS. PRZYGOCKI: It's actually only three stories 16 there because one story is sunken into the ground. So this 17 would read as a three-story building from any adjacent 18 properties. If we were to look on the plan you would see 19 mostly there are -- there are significant forest both behind 20 it and there are also existing trees in between the property 21 and the adjacent home. 22 MS. HARRIS: Thank you. Can I -- do you have 23 anything else for this or can I take this off the screen? 24 MS. PRZYGOCKI: You can take that off. 25 MS. HARRIS: Okay. And I know the architect's	128	1 And eventually, with additional plantings the 41 2 percent of the site will be placed in a forest conservation 3 easement, 12.59 acres will be put in forest conservation 4 easement. And Mr. Park later in his testimony will provide 5 more detail on that. But it's impressive how much of the 6 forest and the stream valley that the Applicant has gone to 7 great lengths to preserve. 8 MS. HARRIS: Do you happen to know, is there a 9 forest conservation easement on the property now? And if so, 10 how much -- approximately how much land's encumbered? 11 MS. PRZYGOCKI: Yes. There is a forest 12 conservation easement of 1.14 acres that was previously 13 dedicated which was part of the previous application, which n 14 ever got built. And that 1.14 acres is taken into 15 consideration as well. And that will remain as forest as 16 well as additional forest conservation easement which will be 17 placed on the property. 18 At the front of the property there is a -- what is 19 called a category 2 conservation easement, which allows for 20 maintenance and mowing or trimming of shrubs and the like. 21 That is up near the front of the property so that can be more 22 meticulously maintained. The category 1 easement, which is 23 over the natural forest in the back is the -- no forest 24 cutting or -- is allowed, it's very, very protected in its 25 natural form.

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<p>129</p> <p>1 MS. HARRIS: Thank you. Can you please describe 2 the proposed signage for the property? 3 MS. PRZYGOCKI: Yes. This -- if you could call up 4 Exhibit 92. And right here. The tastefully designed signage 5 includes stone piers and contrasting signage. We've reduced 6 the size of the sign ever so slightly. We were just over 40 7 square feet in our initial submission and each sign will be 8 no more than 40 square feet apiece. The one -- the sign on 9 the left there is the entry sign at the entrance to the 10 property. The sign on the right is -- will be at the Lodge 11 so you know that you've arrived at Heritage Lodge. 12 MS. HARRIS: Will there be any other signage on 13 the site? 14 MS. PRZYGOCKI: The only other anticipated signage 15 at this point is way finding signage, which was required by 16 the fire marshal to show which units are in -- at any 17 intersections. We show which units are to the right or to 18 the -- straight forward or whatever direction that you choose 19 to go. Or conversely, whichever unit you're looking for it 20 can tell you which way to go. 21 MS. HARRIS: Thank you. And actually since you 22 mentioned fire, the fire department has looked at this -- has 23 the fire department looked at this plan and do we have any 24 indications from them that it's acceptable? 25 MS. PRZYGOCKI: Yes. We worked very closely with</p>	<p>131</p> <p>1 conditional use case, that's the conformance with the master 2 plan. So what is the relevant master plan governing this 3 property? 4 MS. PRZYGOCKI: That's the 2002 Potomac sub region 5 Master Plan. 6 MS. HARRIS: And I assume that you have reviewed 7 that plan; is that correct? 8 MS. PRZYGOCKI: Yes, I have. The plan itself 9 provides no specific recommendations to this site. But I'm 10 sorry, I cut off your question, didn't I? 11 MS. HARRIS: Well, I was going to say can you 12 identify for me sort of the big picture items that the 13 plan -- that are in the plan that are relevant to this 14 (inaudible)? 15 MS. PRZYGOCKI: I think, although it gives no 16 specific recommendations for the site, this - what is 17 significant is that the master plan specifically identifies 18 the need for senior housing in the Potomac sub region. And 19 this project will further that goal by providing additional, 20 desired senior housing within the master plan boundaries and 21 in close proximity to goods and services desired by senior 22 residents. 23 The -- again, the Potomac Village Center which is 24 less than a mile away will provide easy access to desirable 25 goods and services for future residents. The master plan</p>
<p>130</p> <p>1 the fire marshal, Dr. Marie LaBaw on this and made sure that 2 she -- all of the -- actually, all of the radii and turning 3 widths and the entrance widths and the entrance width was 4 determined by Dr. LaBaw. But this plan has been approved by 5 her and we have submitted an approved plan to the record as 6 well. 7 MS. HARRIS: Okay. I don't have that exhibit 8 number, but I can get it. 9 MS. PRZYGOCKI: The approved fire department 10 access plan is 69. 11 MS. HARRIS: Okay. So -- and then one last 12 general question for you, which is, did this application 13 require the preparation of a forest conservation plan? 14 MS. PRZYGOCKI: Yes, of course. And it was 15 submitted with the conditional use application. The planning 16 board approved the preliminary forest conservation plan on 17 January 13th of 2022. The plan includes forest conservation 18 which will be met onsite. No reforestation is actually 19 required. But the project exceeds the forest conservation 20 requirements and as mentioned earlier, 41 percent will be 21 placed in easement and supplemental plantings will be 22 provided as well in the stream valley buffer to further 23 stabilize the area. 24 MS. HARRIS: Thank you. Okay. Now, I want to 25 turn to one of the components which is the crux of a</p>	<p>132</p> <p>1 also recognizes that senior housing is appropriate throughout 2 the subregion wherever zoning permits this use either by 3 right or as a special exception use, on page 38 of the master 4 plan. A special exception use is what a conditional use used 5 to be called. They've changed the language just to make the 6 understanding more clear. A conditional use or a special 7 exception use is something that is permitted in the zone but 8 requires another level of review because it has certain 9 characteristics that will want to be reviewed in closer 10 detail. And one of the criteria is compatibility. And we 11 feel like these -- this application very much addresses that. 12 MS. HARRIS: And does the -- keep going, sorry. 13 MS. PRZYGOCKI: Well, the -- in addition to 14 recognizing that there's a need for senior housing the master 15 plan also recognizes that it's not meeting the goal and it 16 projected that 750 units would be needed by 2020. And the 17 master plan has not met this goal. And in fact, it doesn't 18 even include beyond 2020, which is the period that we're in 19 now. So they haven't met the goal out to 2020 and beyond. 20 And since the master plan was adopted only 342 21 units have been built in the Potomac sub region. That 22 includes Brandywine which is an assisted living, not an 23 independent living. Artis, which is -- has 72 beds, but 24 that's all Alzheimer's, and Spectrum which is assisted living 25 and memory care. And those, all three, as you can see in</p>

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<p>133</p> <p>1 this chart those are the three that have been approved and 2 built since the plan was adopted. So this is far less than 3 the 750 units that the master plan anticipated as being 4 needed; less than half of the goal.</p> <p>5 MS. HARRIS: And I just want to highlight, I think 6 you said this, but how many independent living units have 7 been built in the Potomac sub region since the adoption of 8 the plan?</p> <p>9 MS. PRZYGOCKI: Just the -- can you go up?</p> <p>10 MS. HARRIS: Yes. So I thought you said that these 11 brown colors indicate the three projects that were 12 constructed or approved after the plan was adopted; is that 13 right?</p> <p>14 MS. PRZYGOCKI: Right. So of those projects none 15 of those are independent living.</p> <p>16 MS. HARRIS: So no independent (inaudible).</p> <p>17 MS. PRZYGOCKI: That's all assisted living, right.</p> <p>18 MS. HARRIS: Thank you. And does the zoning 19 ordinance require any need indication here for this use?</p> <p>20 MS. PRZYGOCKI: No. The zoning ordinance does not 21 require proof of need. However, it does recognize that there 22 is a need and so it just demonstrates that this is consistent 23 with the master plan. But that's not one of the findings 24 that's required, is to prove need.</p> <p>25 MS. HARRIS: And were there any other</p>	<p>135</p> <p>1 The second characteristic that they specify is 2 minimizing the commercial appearance of parking through 3 location and landscaping. Front yard parking is -- this is 4 quoting the ordinance here. Front yard parking should only 5 be allowed if it can adequately be landscaped and screened. 6 So the parking in the southern half of the property from S. 7 Glen is no different than many subdivisions and -- 8 residential subdivisions; it's integral garages in the house 9 they are side-load garages so they're even less visible from 10 the street.</p> <p>11 And each of the IL units or independent living 12 units will have its own garage which is capable of housing 13 two cars. So that parking is very much screened from the 14 adjacent neighborhood. In terms of the other surface parking 15 throughout the neighborhood if that is minimized the Lodge 16 places 40 spaces underneath of the building so they are not 17 even seen.</p> <p>18 The other 25 spaces that are in the surface 19 parking lot in the front drop off circle are screened from 20 adjacent neighbors just by virtue of the three story building 21 itself. And the 10 spaces are actually a little bit lower 22 and also screened from adjacent uses by the buildings 23 themselves. So this is very unique in this respect that all 24 of the parking is really not visible to surrounding 25 properties.</p>
<p>134</p> <p>1 recommendations -- again that's -- no specific 2 recommendations for this property, but big picture 3 recommendations in the master plan that may have some 4 relevance here?</p> <p>5 MS. PRZYGOCKI: Yes. The master plan noted that 6 they had concerns about the number of private schools in the 7 Potomac sub region and the problems caused by drop off and 8 pickup and queuing. And so it's significant to note that 9 here we are taking a use that was a school, that was 10 identified as not this particular school wasn't identified, 11 but in general that schools were problematic and replacing it 12 with a use that is a needed use, senior housing, and which is 13 also residential in use and character.</p> <p>14 MS. HARRIS: Thank you. The master plan contains 15 a specific policy regarding special exceptions. Can you 16 describe how this project conforms to that policy?</p> <p>17 MS. PRZYGOCKI: Yes. It -- the master plan spells 18 out several criteria, the first being architectural 19 compatibility with the surrounding neighborhood. And this 20 architecture has been strategically designed to promote 21 compatibility with the surrounding neighborhood. The IL 22 cottages massing and height are compatible. The Lodge, the 23 design and massing and placement tucked into the lowest part 24 of the site, and the overall density and lot coverage are all 25 comparable to the surrounding neighborhood.</p>	<p>136</p> <p>1 And the next criteria is enhancing the screening 2 and buffering between the proposed use and the adjacent 3 residential areas and the right-of-way. So starting with 4 along S. Glen, the structure is setback 142 feet and within 5 this buffer there is a rail fence, trees and shrubs of varied 6 heights to screen the front of the units from the road.</p> <p>7 A category 2 forest conservation easement to the 8 west of the entrance drive will preserve the trees and then 9 screening will be added along that property line, the western 10 property line and the eastern property line. Again, of 11 varying heights and textures and color to provide full 12 landscape screening at different levels as well as landscape 13 interest.</p> <p>14 The structures in terms of their relationship to 15 the adjacent homes are compatible and they very much look 16 like a single family estate home (inaudible) institutional 17 use. And the building setbacks where 20 feet is required, 18 we've provided typically 35 feet. So the -- all of the 19 setbacks and screening have been provided to make the new 20 residences compatible with the adjacent properties. There's 21 also wide forest conservation buffers which range everywhere 22 from 50 feet to 350 feet surrounding the property. And the 23 property provides approximately 75 percent green area which 24 is well over the 50 percent requirement.</p> <p>25 So we feel like this enhanced screening and</p>

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<p>137</p> <p>1 buffering between -- of setbacks and landscaping provides 2 good -- a good enhancement to the compatibility with the 3 neighborhood. 4 The final recommendation for special exceptions by 5 the master plan is to avoid excessive concentration of 6 special exceptions along major transportation corridors. 7 This site is not on a major transportation corridor. As 8 mentioned before this is a two-lane country road, so this 9 doesn't really apply. But the reason it says -- it makes 10 that recommendation is because it says that those major 11 corridors are more vulnerable to overconcentration due to 12 their high visibility. 13 This is also interesting because it implicitly 14 recommends or notes that if they are trying to avoid a 15 concentration along major corridors it implies that roads 16 that are not major corridors are acceptable for special 17 exceptions. 18 MS. HARRIS: Thank you. And then, did Park and 19 Planning -- did the Park and Planning commission staff and 20 the planning board in making their recommendation of approval 21 agree with your conclusion that the proposed project is in 22 substantial conformance with the master plan? 23 MS. PRZYGOCKI: Yes, they did. On page 35 of the 24 technical staff report they make this finding and discuss it 25 further on pages 19 and 20. The planning board itself, in</p>	<p>139</p> <p>1 the front lot line will be 264 feet as compared to a 25 foot 2 minimum. The property has frontage on S. Glen Road which is 3 a requirement of the zone that it have frontage on a street 4 or open space. And that requirement has been met. 5 The residential character complies with the 6 placement and setback requirements of the RE2 zone as well. 7 However, the conditional use setbacks are -- they supersede 8 those of the RE2 zone and are what's applicable in this 9 instance. But I will note that even so the proposed plan 10 meets and it exceeds all of the setback requirements in the 11 RE2 zone. 12 MS. HARRIS: And can we go to lot coverage for a 13 moment? I don't know if you -- is there a lot coverage 14 requirement? 15 MS. PRZYGOCKI: There is a requirement for a 16 (inaudible) -- 17 MS. HARRIS: (inaudible) RE2 zone? 18 MS. PRZYGOCKI: Yes. Lot coverage is -- should be 19 a maximum of 25 percent and this application provides 13.4 20 percent, roughly half of the coverage allowance. 21 MS. HARRIS: And then, in terms of the zoning 22 ordinance setbacks the requirement for the front setback is 23 what? 24 MS. PRZYGOCKI: The requirement for the front 25 setback in the RE2 zone or are you speaking of --</p>
<p>138</p> <p>1 transmitting, after reviewing the plan transmitted a letter 2 along with the staff's findings and agreed with the staff 3 findings saying that the use is compatible with the 4 recommendations of the 2002 Potomac sub region Master Plan. 5 And that is on the top of page 2 of the transmittal letter 6 which is in the record as Exhibit 97. 7 MS. HARRIS: Thank you. Is there anything else 8 you want to say about the master plan before we turn to the 9 development standards of the zoning ordinance? 10 MS. PRZYGOCKI: Not that I can think of right now. 11 MS. HARRIS: Okay. so then, turning to the 12 ordinance itself, you're familiar with the zoning ordinance 13 from Montgomery County including the provisions of the RE2 14 zone? 15 MS. PRZYGOCKI: Yes. The -- I guess we could call 16 up the rendering again, just to show the -- how it complies. 17 MS. HARRIS: Okay. 18 MS. PRZYGOCKI: This is detailed in the land use 19 report and shown in the data table more specifically on the 20 conditional use site plan. And it meets the minimum lot and 21 density requirements and I'll just highlight a few of those. 22 It significantly exceeds the minimum lot area requirement 23 which is 2 acres, and the site is 30.6 acres. The lot width 24 at the front building line is -- the requirement is 150 feet 25 and in this instance it will be 312 feet. The lot width at</p>	<p>140</p> <p>1 MS. HARRIS: No, I'm sorry. For the residential 2 care facility. I moved on to that. 3 MS. PRZYGOCKI: All right. I'm sorry. So -- 4 MS. HARRIS: So (inaudible) just let me ask it 5 this way. Does the project meet the residential care front 6 requirement of a front setback from the street of 20 feet? 7 MS. PRZYGOCKI: Yes, it does. It far exceeds 8 that. The setback is over 130 feet. 9 MS. HARRIS: Okay. 10 MS. PRZYGOCKI: Even with the dedication. There 11 will be some dedication, there's like 140 feet from the 12 existing right-of-way and there will be some additional 13 dedication as well. 14 MS. HARRIS: And then the side setbacks 15 requirement is 20 feet and what did you say the general 16 average is? 17 MS. PRZYGOCKI: Generally it averages 35 feet. 18 MS. HARRIS: Okay. And then the rear setback is 19 30 and what's provided there? 20 MS. PRZYGOCKI: 413 feet is what's provided. And 21 30 feet is the requirement. 22 MS. HARRIS: Okay. Thank you. And then, moving 23 on to parking, can you identify what's required and what's 24 provided? 25 MS. PRZYGOCKI: Yes. Basically, again, the</p>

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141	<p>1 parking is computed based on whether it's beds or whether 2 it's units, but there's a total of 113 spaces required. And 3 the Applicant has provided 164 spaces. 4 MS. HARRIS: Just (inaudible), is that the 113 is 5 just for the bed component or is that the total project? 6 MS. PRZYGOCKI: That is the -- that's the total 7 project. 8 MS. HARRIS: Okay. 9 MS. HARRIS: And how many will be provided did you 10 say? 11 MS. PRZYGOCKI: 165. 12 MS. HARRIS: Okay. And if the beds increased to 13 the 105 max, instead of 113 how many would be required? 14 MS. PRZYGOCKI: I don't have that computed. 15 However, beds have even less requirement than do dwelling 16 units. So dwelling units are .2 -- dwelling units are 1 17 space per IL unit whereas the requirement per bed is .25, or 18 one-quarter of a space. So you could increase the number of 19 units by four and still -- and reduce one and you'll be 20 breaking even. One IL that is. 21 MS. HARRIS: Okay. So just because you threw out 22 a lot of numbers there, generally -- 23 MS. PRZYGOCKI: Generally, I think they could -- 24 I'm sorry, I interrupted you. I think that the parking 25 requirements will easily be met.</p>	143	<p>1 MS. PRZYGOCKI: Yes, there is. As we mentioned 2 before, the fire department access plan has been provided and 3 approved by the department of permitting services for the 4 site. 5 MS. HARRIS: And did park and planning staff and 6 the planning board agree with your conclusions that the 7 project meets the development standards of the RE2 zone? 8 MS. PRZYGOCKI: Yes, they did. 9 MS. HARRIS: Thank you. Okay, so as everyone 10 knows, that was the base zone requirements, but now we need 11 to address does the project meet the zoning requirements of a 12 residential care facility. So that section, which is 3.3.2 E 13 2 C ii provides another requirement for this facility. Have 14 you reviewed that section? 15 MS. PRZYGOCKI: Yes, I have. 16 MS. HARRIS: And I'm going to go through a number 17 of questions there. The first one is, does the proposed 18 facility provide ancillary services such as transportation, 19 common, dining room and kitchen, meeting or activity rooms, 20 convenience, commercial areas or other services or facilities 21 of the enjoyment, service, or care of the residents? 22 MS. PRZYGOCKI: Yes. As previously testified to 23 the proposed senior living facility will include ancillary 24 services and facilities that are customary for a residential 25 care facility containing independent living, assisted living</p>
142	<p>1 MS. HARRIS: Thank you. And how will loading and 2 trash be accommodated? 3 MS. HARRIS: If you look on the exhibits in front 4 of us, the Lodge -- for the individual cottages, excuse me, 5 their trash pickup will be at curbside as in a normal single 6 family detached development. 7 For the Lodge, there is a loading area at just 8 the -- right where you have your cursor, right there. And 9 just below the furthest end of the Lodge. And that is 10 screened from view, or from the surrounding neighborhood by 11 the presence of the buildings as well as proposed trees and 12 landscaping. And that pickup will be -- there will be a 13 dumpster there which will pick up, as Kelly Andress 14 testified, a certain number of times per week. 15 MS. HARRIS: Thank you. And is the generator 16 shown on this plan? 17 MS. PRZYGOCKI: Actually the generator is not 18 shown on this rendering. But it is just to the right. I 19 could call up another plan or it is basically just to the 20 right of that dumpster that you have your cursor on now. It 21 is to the right of that sidewalk at that eastern end of the 22 building. 23 MS. HARRIS: Okay. And is there adequate fire 24 access to the site? And I think we touched on this a moment 25 ago.</p>	144	<p>1 and memory care facilities. These services and facilities 2 include, but are not necessarily limited to onsite 3 transportation, and a shuttle service, common dining 4 facilities, residential amenities such as activity rooms, 5 lounges, fitness center, outdoor courtyards and walking paths 6 and activity areas, physical therapy and wellness services 7 and planned activities for socialization. 8 MS. HARRIS: Thank you. And then the next 9 subsection is not relevant in that this is not a group home 10 for children. But subsection C ii (c) provides that the 11 maximum density per dwelling unit is 15 units per acre and 12 the green area is 50 percent. And I know you went through 13 these before so I think we can just very briefly state what 14 the density is and the green area. 15 MS. PRZYGOCKI: Sure. The density for the 16 independent living units is 15 units per acre, which would 17 require 4.98 acres, 30.6 acres are provided so that's over 18 six times the requirement -- the acreage requirement. Or 19 conversely, if you look at it based on the 30.6 acres you 20 could conceivably build 459 units and the proposed units are 21 only 16 percent of what's allowed. 22 The green area requirement is 50 percent and this 23 application provides 75 percent. 24 MS. HARRIS: Okay. And that was the density for 25 the independent living units. So -- and then the next</p>

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<p>145</p> <p>1 subsection deals with density for assisted living, and so 2 what is that density? 3 MS. PRZYGOCKI: So the assisted living and memory 4 care is -- the density is calculated by beds, and 1,200 5 square feet per bed is required. And by this application 6 about 11,674 square feet per bed is provided. And this was 7 calculated, again, in order to not double count the area of 8 the site we reduced for that calculation the overall acreage 9 by the acreage allocated to the independent living to 10 determine those figures. 11 So all of these numbers clearly demonstrate that 12 there's more than sufficient land area to accommodate this 13 use. I would really emphasize that point, that this is many 14 times over the rea that would be required for this type of 15 use. 16 MS. HARRIS: Thank you. Then the next section 17 deals with the setback requirements. And it requires that 18 the project meet the setback requirements of standard method 19 R30 zone. This is subsection ii (e). Does the project 20 comply with those standards? 21 MS. PRZYGOCKI: Yes. All of those standards, 22 front, side, and side setback abutting a residential use 23 that's not a part of the application itself are all met by 24 this application. I don't know if you want me to go through 25 each and every one of them, but it's -- the code actually</p>	<p>147</p> <p>1 to permit the MPDUs as required by Chapter 25 A. 2 MS. HARRIS: Thank you. And subsection 2 H. Will 3 the project comply with the age restrictions restricting the 4 age to 62, except as provided under this section? And 5 actually I think Ms. Address already testified to that. But 6 can you answer that question? 7 MS. PRZYGOCKI: Yes. It's actually a requirement 8 of the conditional use, so they have to abide by this 9 particular requirement which restricts the age to 62 with the 10 exception of some certain conditions such as the death of a 11 spouse or whatever. 12 MS. HARRIS: And ii (i) requires that the height, 13 density, coverage and parking standards must be compatible 14 with surrounding uses. And then there's -- well, in your 15 professional opinion is the proposed building and site done 16 and compatible with the residential character of the 17 (inaudible)? 18 MS. PRZYGOCKI: In my opinion, yes. As previously 19 testified the project will be compatible by virtue of it 20 meets and exceeds the development standards. The density is 21 a fraction of what is allowed. The lot coverage is 50 22 percent less than the maximum allowed, and only 14 percent of 23 the site. The residential massing and appearance and 24 architecture -- the height does not exceed that of the RE2 25 standard, which is 50 feet.</p>
<p>146</p> <p>1 divides it up by building type as well. 2 MS. HARRIS: Well, I don't think it's necessary to 3 go through all of them, but let me just ask. Are those 4 setbacks specified on the conditional use plan? 5 MS. PRZYGOCKI: Yes, they are. Yes. On the 6 conditional use plan the sheet number 1 of the conditional 7 use plan has the development table which outlines all of 8 these setbacks and the provided setbacks. The requirement 9 and the setback provided. And in all cases it exceeds them, 10 and in some cases by many times over. 11 MS. HARRIS: Thank you. I don't think it's 12 necessary to go through each one unless the Hearing Examiner 13 would like for us to do that. 14 The next subsection ii (f) asks, is the minimum 15 side setback to abutting lots, not part of the application, a 16 minimum of 20 feet? 17 MS. PRZYGOCKI: Yes, it is. And in this case 18 we've provided, usually 35 feet. 19 MS. HARRIS: Thank you. 20 MS. PRZYGOCKI: At a minimum. 21 MS. HARRIS: Thank you. Subsection G. Will the 22 project satisfy the MPDU requirement for the IL units? 23 MS. PRZYGOCKI: Yes. The department of housing 24 and community affairs, prior to issuance of a building 25 permit, the Applicant will enter into an agreement with DHCA</p>	<p>148</p> <p>1 The cottages will generally be in the range of 39 2 feet and the Lodge 50 feet at its highest point. This is 3 tucked into the lowest elevation of the site so its impact is 4 even less in terms of the visual impact to the neighborhood. 5 And in most cases, I believe, lower than the adjacent 6 rooftops. There is significant forest conservation areas and 7 environmental protection. Stormwater management is provided 8 where previously none was provided so this in turn enhances 9 and protects the stream. So as that runoff which is right 10 now is not controlled will be. 11 And the parking is concealed. And I think all of 12 these features make it the proposed application very 13 compatible with the residential character of the 14 neighborhood. 15 MS. HARRIS: And did park and planning staff and 16 the planning board agree with this conclusion as well? 17 MS. PRZYGOCKI: Yes, they did. In their staff 18 report on page 41, the technical staff report and they 19 affirmed the findings and the board -- the planning board, 20 that is, in their (inaudible) recommended approval of the 21 application and found that it met all of the requirements for 22 the conditional use. 23 MS. HARRIS: Thank you. I'm now going to turn to 24 the section of the zoning ordinance that has to do with 25 inherent and non-inherent uses. And the zoning ordinance</p>

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<p>149</p> <p>1 requires the Hearing Examiner to consider the inherent and 2 non-inherent adverse effects of the proposed use on nearby 3 properties and the general neighborhood. While inherent 4 adverse effects are those necessarily associated with the 5 use, non-inherent effects, not necessarily associated with 6 the use, or are created by unusual characteristics of the 7 site. What are the inherent characteristics that staff 8 identifies being associated with this project?</p> <p>9 MS. PRZYGOCKI: The staff report and the planning 10 board both indicated that a building large enough to house 11 the proposed number of residents would be an inherent 12 characteristic of the application. Vehicle and pedestrian 13 trips to and from the property, varied hours of operation, 14 noise or odors associated with vehicles and noise or odors 15 associated with truck deliveries or trash collection, 16 emergency electrical generator and lighting. And they said 17 that these are typically associated with similar uses and 18 don't exceed what would normally be expected by this use.</p> <p>19 MS. HARRIS: So when they come up with their list 20 of non-inherent -- I mean, excuse me of inherent 21 characteristics is it based on this specific project or is 22 it -- these are the inherent characteristics of any 23 residential care facility?</p> <p>24 MS. PRZYGOCKI: These are characteristics that, if 25 this use was placed anywhere in the county you would have</p>	<p>151</p> <p>1 the application as set forth in this section. Have you had 2 an opportunity to review this section?</p> <p>3 MS. PRZYGOCKI: Yes.</p> <p>4 MS. HARRIS: And with regard to the specific 5 findings, subsection E i (a) requires that the conditional 6 use satisfy any applicable previous approvals. Are there any 7 previous approvals for the property with which the project 8 needs to comply?</p> <p>9 MS. PRZYGOCKI: No. There were several prior 10 special exceptions. However, they included a riding stable 11 which are no longer there and there were two private 12 educational institutions -- the PEI, more private educational 13 institution has not been revoked, but it does not apply in 14 this instance as it is not that use.</p> <p>15 MS. HARRIS: Thank you. And subsection 1 B, does 16 the project satisfy the requirements of the zone use 17 standards and the applicable general requirements in article 18 59.6 of the ordinance?</p> <p>19 MS. PRZYGOCKI: Yes. As I previously discussed 20 the project satisfies the requirements of the RE2 zone, of 21 the new standards, of the residential care facility and the 22 general requirements of the -- under Article 59-6 which 23 includes access, parking, landscaping, screening, and 24 science.</p> <p>25 MS. HARRIS: Thank you. And subsection 1 C</p>
<p>150</p> <p>1 these uses typically would be inherent to the use. So in 2 other words, when they said in the zoning ordinance that a 3 residential care facility is permitted in an area by special 4 exception they are recognizing that it's going to have these 5 characteristics associated with it regardless of where it is 6 in the county.</p> <p>7 And so it is anticipated that this would be the 8 case and -- but they also provide for a special process in 9 order to review the application.</p> <p>10 MS. HARRIS: Thank you. And have you evaluated 11 whether there are any non-inherent effects associated with 12 the proposed residential care facility use?</p> <p>13 MS. PRZYGOCKI: I have evaluated it and in my 14 estimation there are no non-inherent characteristics 15 associated with this application.</p> <p>16 MS. HARRIS: Thank you. Now, I'd like to turn to 17 the general conditions that are required for a conditional 18 use approval and this is Sections 597.31 E of the code, of 19 the zoning ordinance.</p> <p>20 MS. PRZYGOCKI: Okay.</p> <p>21 MS. HARRIS: And I'm just going to read through 22 these requirements. As you've confirmed, a residential care 23 facility over 16 person requires the approval of a 24 conditional use. The Hearing Examiner must approve the 25 conditional use and make specific findings in connection with</p>	<p>152</p> <p>1 requires that the conditional use substantially conform with 2 the master plan. You previously testified to that. Anything 3 that you want to highlight with respect to the master plan 4 recommendations and the conformance?</p> <p>5 MS. PRZYGOCKI: I would just reiterate that I 6 think this furthers the master plan goal of providing 7 additional senior housing, which is identified as a need in 8 the sub region. And in compliance with the criteria for 9 special exceptions which the master plan took a pointed 10 effort to outline and these include compatibility in 11 residential design and massing, parking located to minimize 12 the commercial appearance, screening from the immediate view 13 of abutting properties, ample screening and a buffering of 14 views from the street and above the properties, and it avoids 15 concentration of special exceptions along major corridors, 16 transportation corridors.</p> <p>17 MS. HARRIS: Thank you. And then Subsection 1 D 18 requires that the conditional use be in harmony with, and not 19 alter the general character of the neighborhood. Have you 20 had an opportunity to review this?</p> <p>21 MS. PRZYGOCKI: Yes. As I previously discussed, 22 the property will be harmonious with the residential 23 character of the surrounding neighborhood, the density, 24 materials, scale, massing, lot coverage, concealed parking 25 all promote harmony with the surrounding neighborhood. The</p>

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<p>153</p> <p>1 sign in the materials are very compatible with local 2 architecture. The siting of the Lodge reduces the visual 3 impact, and the use fits into the overall fabric of the 4 neighborhood.</p> <p>5 MS. HARRIS: Thank you. Subsection 1 E requires 6 that the conditional use will not come when evaluated in 7 conjunction with existing and approved conditional uses in 8 any neighboring residential detached zone, increase the 9 number, intensity, or scope of conditional uses sufficiently 10 to the fact that the area adversely or alter the 11 predominantly residential character of the area.</p> <p>12 And then, it goes on to say a conditional use that 13 substantially conforms to the recommendations of the master 14 plan does not alter the nature there.</p> <p>15 In your professional opinion, will be proposed 16 conditional use affect the area adversely, or alter the 17 residential nature of the area?</p> <p>18 MS. PRZYGOCKI: Well, first there are no other 19 conditional uses within the surrounding neighborhood. So it 20 will not create a preponderance of special exception uses. 21 The proposed residential uses a much more fitting than the 22 prior school use. And irrespective, the project will not 23 alter the residential character of the area as has been 24 described, it will maximize the compatibility for all the 25 reasons that I have previously discussed.</p>	<p>155</p> <p>1 11430 Falls Road in Potomac which is only 2.4 miles, or five 2 minutes travel time from the property. And as you mentioned, 3 the property will be going through preliminary plans of the 4 planning board will be required to find adequate public 5 facilities at that time.</p> <p>6 MS. HARRIS: Thank you. And then, subsection E 1 7 (g) requires that the conditional use will not cause undue 8 harm to the neighborhood, and then this language is 9 important, as a result of non-inherent add verse affects the 10 loan, or the combination of an inherent and non-inherent 11 adverse effect. In terms of the use, peaceful enjoyment, 12 economic value, or development of abutting our confronting 13 properties, the traffic (inaudible), for the health, safety, 14 or welfare of the neighboring residents, visitors, and 15 employees.</p> <p>16 In your professional opinion, with the conditional 17 use cause any harm to the surrounding area as a result of 18 non-inherent adverse effects?</p> <p>19 There seems to be a lot of background noise.</p> <p>20 COURT REPORTER: There is some interference, but I 21 can't tell where it's coming from. The only folks who are 22 un-muted are I think it's just yourself, Ms. Harris, and the 23 witness. I think it's just some interference on the line.</p> <p>24 MS. HARRIS: Okay.</p> <p>25 MS. PRZYGOCKI: I think it might be our heating</p>
<p>154</p> <p>1 Furthermore, as the finding states, a conditional 2 use that substantially conforms to the master plan by 3 definition will not alter the nature of the area.</p> <p>4 MS. HARRIS: Thank you. Subsection 1 F requires a 5 finding that the project will be served by adequate public 6 facilities, although since a preliminary plan subdivision 7 acquired subsequently, the planning board is tasked with 8 making this finding.</p> <p>9 Nonetheless, in your professional opinion will be 10 conditional use be served by adequate public facilities with 11 respect to schools, storm drain, water and sewer, police and 12 fire protection? And I realize you didn't testify to all of 13 the so some of them may be appropriate for one of the other 14 experts.</p> <p>15 MS. PRZYGOCKI: Right. In terms of traffic we 16 have a traffic consultant, Chris Cavett who will address the 17 traffic capacity issues, and Timothy Seaman, our civil 18 engineer will testify as to the adequacy of the public water 19 and sewer and utilities. In terms of police and fire 20 protection, the nearest police station to the property is the 21 Maryland state police at 7915 Montrose Road, which is only 22 4-1/2 miles, or 11 minutes from the property. Also, there is 23 the Montgomery County Police Department is at 100 Edison Park 24 Drive, which is 7.8 miles from the property.</p> <p>25 The nearest firehouse is Fire Station number 33 at</p>	<p>156</p> <p>1 system. So I will try to get real close to the mic and 2 answer your question.</p> <p>3 MS. HARRIS: Okay.</p> <p>4 MS. PRZYGOCKI: So -- well, actually in regard to 5 this question it refers to non-inherent adverse effects and 6 as previously testified, we find that there are no non- 7 inherent adverse effects associated with the property, or the 8 use, or the design and so therefore this analysis really is 9 not necessary.</p> <p>10 The staff in the planning board agreed with us and 11 the Applicant has gone to great lengths to make the use 12 compatible. There's no, absolutely no undue harm, no 13 inherent impacts. Excuse me. Only the inherent impacts are 14 expected, and will be present. And they will present no 15 undue harm to the peaceful enjoyment, value, or development 16 potential of the neighborhood. Rather, it will provide a 17 more residential use at a very low density consistent with 18 the master plan and compatible with the neighborhood.</p> <p>19 MS. HARRIS: Thank you. Mr. Hearing Examiners, I 20 would say that since you haven't made a ruling on this that 21 there are non-inherent adverse effects, we are putting on 22 witnesses to address those, obviously, but our conclusion is 23 that there are no such non-inherent adverse impacts.</p> <p>24 Section 7.3.1 E 5 and 6 require that certain 25 conditional uses may only be approved when the Hearing</p>



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157	<p>1 Examiner finds from a preponderance of the evidence that a</p> <p>2 need exists. Is the proposed residential care facility</p> <p>3 within one of these subsections?</p> <p>4 MS. HARRIS: No, it's not. This use is not listed</p> <p>5 in those -- in that list of uses that need a -- excuse me, a</p> <p>6 proof of need. The zoning ordinance specifies the</p> <p>7 termination will be required for such uses as a gas station</p> <p>8 or a community swimming pool or hotel, the residential care</p> <p>9 facility is not one of those uses and is nothing like those</p> <p>10 uses that are listed, so in my professional experience the</p> <p>11 issue of need is not an issue unless the use is identified</p> <p>12 under one of those categories.</p> <p>13 MS. HARRIS: Thank you. And then, in summary, is</p> <p>14 it your professional opinion that the conditional use</p> <p>15 permit -- the conditional use plan permits the Hearing</p> <p>16 Examiner to make the necessary findings outlined under the</p> <p>17 7.3.1 E section?</p> <p>18 MS. PRZYGOCKI: Yes, that is my professional</p> <p>19 opinion.</p> <p>20 MS. HARRIS: And is it your professional opinion</p> <p>21 that the proposed conditional use plan satisfies all of the</p> <p>22 applicable code requirements?</p> <p>23 MS. PRZYGOCKI: Yes.</p> <p>24 MS. HARRIS: And do you agree with the findings of</p> <p>25 the staff in the planning board as it relates to the</p>	159	<p>1 MR. BROWN: I'm ready to go.</p> <p>2 HEARING EXAMINER BAUMGARDNER: All right.</p> <p>3 MR. BROWN: Good afternoon Ms. Przygocki. Dave</p> <p>4 Brown for the residents. Let me start with this question, if</p> <p>5 I could.</p> <p>6 Would you agree that a senior care community is,</p> <p>7 according to the ordinance, a type of residential care</p> <p>8 facility?</p> <p>9 MS. PRZYGOCKI: I'm sorry, can you say that again?</p> <p>10 MR. BROWN: My understanding of the ordinance is</p> <p>11 that a senior care facility is a type of residential care</p> <p>12 facility; do you agree?</p> <p>13 MS. PRZYGOCKI: Yes.</p> <p>14 MR. BROWN: Would you further agree that the</p> <p>15 application must comport with the definition of residential</p> <p>16 care facility, in addition to that of senior care facility?</p> <p>17 MS. PRZYGOCKI: Yes.</p> <p>18 MR. BROWN: Let's talk about the non-inherent</p> <p>19 issue for a moment. It's not an inherent feature of a</p> <p>20 residential care, or senior care that it be located in an</p> <p>21 area surrounded by RE2 homes, is it?</p> <p>22 MS. PRZYGOCKI: That's never been specified as an</p> <p>23 inherent characteristic, and an inherent characteristic is</p> <p>24 something that is characteristic to use regardless of what</p> <p>25 zone or area of the county that it exists in.</p>
158	<p>1 conditional use?</p> <p>2 MS. PRZYGOCKI: Yes, I do.</p> <p>3 MS. HARRIS: I know we've covered a lot. Is there</p> <p>4 anything else that you want to add in your testimony?</p> <p>5 MS. PRZYGOCKI: No, I think we pretty much covered</p> <p>6 all of the -- both the requirements and the goals of the</p> <p>7 master plan and the requirements of a conditional use. So</p> <p>8 I'm happy to leave it there.</p> <p>9 MS. HARRIS: Thank you. And that concludes our</p> <p>10 questioning of this witness.</p> <p>11 HEARING EXAMINER BAUMGARDNER: Thank you very</p> <p>12 much.</p> <p>13 MS. HARRIS: Mr. Bumgarner, before we go on to</p> <p>14 cause can we take a three minute break?</p> <p>15 HEARING EXAMINER BAUMGARDNER: Yeah. Let's make</p> <p>16 it five. Let's convene back at 3:15.</p> <p>17 MS. HARRIS: Thank you.</p> <p>18 HEARING EXAMINER BAUMGARDNER: All right. I'll</p> <p>19 see you all back here in five minutes.</p> <p>20 (A recess was taken.)</p> <p>21 MS. HARRIS: I concluded the questioning and we</p> <p>22 were on the cross.</p> <p>23 HEARING EXAMINER BAUMGARDNER: Got it. Mr. Brown?</p> <p>24 MR. BROWN: Yes, sir.</p> <p>25 HEARING EXAMINER BAUMGARDNER: The floor is yours.</p>	160	<p>1 MR. BROWN: But the use might have non-inherent</p> <p>2 effects depending on the location, correct?</p> <p>3 MS. PRZYGOCKI: It may. In this case we</p> <p>4 determined that it did not.</p> <p>5 MR. BROWN: I understand. You talk about how the</p> <p>6 application meets the lot coverage and setback requirements,</p> <p>7 but I want to think about that for a minute in terms of</p> <p>8 what's called the ownership lots. Are you familiar with the</p> <p>9 part of the application that describes exactly what parcels</p> <p>10 of land the 45 cottage unit owners will own?</p> <p>11 MS. PRZYGOCKI: The entire application is located</p> <p>12 on one record lot, and the cottage is will be on what is</p> <p>13 called ownership lots.</p> <p>14 MR. BROWN: I haven't seen any diagram showing</p> <p>15 what these ownership lots are going to look like for the</p> <p>16 duplexes and the triplexes. Do you have any sense of what</p> <p>17 they're going to look like?</p> <p>18 MS. PRZYGOCKI: Well, from the street they won't</p> <p>19 look like anything. I mean, you will see the lots. They are</p> <p>20 really more a legal construct under which the ownership is</p> <p>21 held as opposed to something where, for instance, in a</p> <p>22 traditional R200, or RE2 subdivision you might have a fence</p> <p>23 line or something like that, this is not that type of</p> <p>24 development. This is all one lot and it's all maintained as</p> <p>25 one lot and would not have those type of divisions.</p>

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<p>161</p> <p>1 MR. BROWN: How big will these lots be? These 2 ownership lots? 3 MS. PRZYGOCKI: They vary with the -- just where 4 they are located on the site. 5 MR. BROWN: Well, can you give me a range, 6 generally? 7 MS. PRZYGOCKI: If you will excuse me a moment. 8 There are roughly on the order of probably 10,000 9 square feet. 10 MR. BROWN: Okay. So I'm just trying to picture 11 this in my mind. Let's use the simplest example. That the 12 ownership block for the center unit in a triplex, that lot 13 would not have any area except in the immediate front and the 14 immediate rear of the triplex, right? 15 MS. PRZYGOCKI: Well (inaudible) -- 16 MR. BROWN: Well, let's imagine. 17 MS. PRZYGOCKI: Part of their lot area would 18 include the area where the building is. 19 MR. BROWN: I understand. 20 MS. PRZYGOCKI: It -- 21 MR. BROWN: But let's -- I'm just trying to 22 understand the -- 23 (crosstalk) 24 MS. PRZYGOCKI: Again, it's -- 25 MR. BROWN: Go ahead.</p>	<p>163</p> <p>1 property line? 2 MS. PRZYGOCKI: No, the ownership lot has no 3 bearing on the setback requirements of the zone. The setback 4 requirements of the zone pertain only to the record lot, 5 which is the entire lot. This is -- 6 MR. BROWN: I have not -- excuse me. I have not 7 asked any questions about the setback requirements. I'm 8 asking about the location of the ownership lot property line 9 in relation to the lot property line where it borders other 10 residences. 11 MS. HARRIS: If it -- may I -- 12 MS. PRZYGOCKI: I -- 13 MS. HARRIS: -- (inaudible) just a moment. The 14 same to be related to preliminary plan issues and the 15 preliminary plan will follow this conditional use, assuming 16 that it gets approved. There has not been, yet, an ownership 17 plat prepared, so I don't know that the questions are even 18 relevant. 19 MR. BROWN: What I'm trying to understand is 20 whether or not the owner of the ownership lot has any rights 21 to the use of that land area that might possibly contradict 22 with the lot owners intended use of that area. 23 HEARING EXAMINER BAUMGARDNER: If the witness 24 knows the answer to the question, she can answer. If it is 25 something that is unknowable at this time, we can move on to</p>
<p>162</p> <p>1 MS. PRZYGOCKI: It's not a subdivided lot. This 2 is a different kind of legal ownership holding. So -- 3 MR. BROWN: All right. I'm getting feedback. 4 MS. PRZYGOCKI: Okay. 5 MR. BROWN: Go ahead. 6 MS. PRZYGOCKI: Well, I -- I'm wondering where 7 this questioning is the leading, and I'm wondering if what 8 you're leading to is that the ownership lots would need to 9 abide by a certain lot requirements, and they don't. This is 10 all in one lot. This is a -- that's a ownership construct, 11 not a subdivision construct. 12 MR. BROWN: All right. I would suggest -- 13 HEARING EXAMINER BAUMGARDNER: Everyone, can we 14 hold up for a second? Let's have a question and answer. And 15 then a question and answer. 16 MR. BROWN: Yes, I would ask the witness to -- 17 rather than worrying about where I'm going, just answer my 18 questions. 19 MS. PRZYGOCKI: I apologize. Thank you. 20 MR. BROWN: My next question is this; let's 21 imagine this triplex unit in the middle that has land in the 22 rear of the building, and let's imagine further, and I think 23 this was your testimony, that the setback from the property 24 line for that unit is 35 feet. Would the ownership lot go 25 all the way to the property line or something short of the</p>	<p>164</p> <p>1 the next question. 2 MS. PRZYGOCKI: I do not know the answer to that 3 question. I suspect it would be covered under the covenants 4 that would be along with this property. 5 MR. BROWN: You understand that if the ownership 6 lot extends all the way to the property line the question 7 arises whether it is in the lot owner are the ownership owner 8 that would control the buffering area between their unit and 9 the lot line. And that's what I'm trying to understand. 10 MS. PRZYGOCKI: Right, I understand that. And I 11 actually -- I would say in most instances our ownership lots 12 do not extend into the buffer area. And that is specifically 13 for the purpose of maintenance of those landscape buffers so 14 that one is not going on someone else's personal property in 15 order to maintain what is a buffer, landscape, a sidewalk, or 16 whatever that is pertinent to the whole community. 17 MR. BROWN: Thank you. That's helpful. With 18 regard to maintenance of the ownership lots of themselves, is 19 that going to be the responsibility of the owner, or will 20 there be people that will be coming in and mowing the grass 21 or weeding the plants or whatever might be done? How will 22 that be arranged? 23 MS. PRZYGOCKI: Again, that would be a question 24 that would be more suitably posed to Kelly Cook Andress, and 25 that is something that would be covered under the contract, I</p>

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<p>165</p> <p>1 would imagine, of the people purchasing within the community. 2 That's not under my purview in terms of whether this meets 3 the requirements of the special exception. 4 MR. BROWN: Okay. Now you said that the needs 5 analysis was a collaborative effort. Oh, I'm sorry. You 6 said that your report was a collaborative effort among 7 several consultants. My question is whether or not the needs 8 analysis portion of that report, whether you were directly 9 involved in the preparation of that part, starting on page 10 13? 11 MS. PRZYGOCKI: Well, the needs analysis was done 12 by the park and planning commission. We were responding to 13 the stated need in the master plan. We didn't make a 14 determination of need as a determination of need is not a 15 requirement of the conditional use. 16 MR. BROWN: I'm not asking about that. I'm asking 17 about pages 13 and 14 of your land-use report. I want to 18 know who prepared that analysis. 19 MS. PRZYGOCKI: Again, I would point to a 20 collaborative effort here. There were numerous people 21 working on the application that contributed facts to this. 22 MR. BROWN: I take it from your answer that you 23 did not prepare this part? 24 MS. PRZYGOCKI: We assembled the entire 25 application and this entire report using facts that were</p>	<p>167</p> <p>1 follows. The cottage units of Heritage Potomac are the 2 results of decades of studying the needs of seniors and 3 providing this aging segment of the population what they 4 want. 5 Is this reference to decades of studying a 6 reference to studying done by the Applicant, or by other 7 people? 8 MS. PRZYGOCKI: No, I think this is in reference 9 to numerous other studies by others that have been cited in 10 this document. The Applicant has not spent decades 11 researching this. 12 MR. BROWN: All right. 13 MS. PRZYGOCKI: At least to my knowledge. Maybe 14 he has. 15 MR. BROWN: Now, turning to the master plan, the 16 master plan was finalized in 2002, right? 17 MS. PRZYGOCKI: Yes. 18 MR. BROWN: And the application that you are 19 making in this case is based upon an either 2020 or 2021 20 amendment to the zoning ordinance, right? 21 MS. PRZYGOCKI: Uh-huh. Yes, I'm sorry if you 22 didn't (inaudible). Can you hear me? Yes. 23 MR. BROWN: Your answer is yes? 24 MS. PRZYGOCKI: Yes. 25 MR. BROWN: So the types of senior housing that</p>
<p>166</p> <p>1 pointed out by various members of the design team. 2 MR. BROWN: I would appreciate an answer as to my 3 question as to whether or not you participated in the 4 preparation of these two pages of the report. 5 MS. PRZYGOCKI: Yes, I did. 6 MR. BROWN: All right. Do you stand by the 7 statements made on these two pages? 8 MS. HARRIS: If I may. If the witness could just 9 have time to read those two pages before she answers, I think 10 that's appropriate. 11 HEARING EXAMINER BAUMGARDNER: Sure, we will take 12 30 seconds. 13 MS. PRZYGOCKI: Yes, I stand by these findings. 14 MR. BROWN: Okay. Just a couple of questions 15 about them. There is a footnote on page 13 that references 16 an AARP report and a 2018, I believe a 2018 housing need a 17 survey by Montgomery County. Do you believe that either of 18 those documents supports the notion of a growing demand for 19 the type of facility that is proposed here? 20 MS. PRZYGOCKI: Yes, I do. And I think the 21 reports point out both a need in terms of population and some 22 of the survey responses in terms of the potential residents 23 would prefer. 24 MR. BROWN: All right. One last question. On the 25 next page there's a reference at the top that reads as</p>	<p>168</p> <p>1 were contemplated in 2002 under the master plan do not 2 necessarily include the particular configuration that you 3 have produced in response to the recent amendment to the 4 zoning ordinance; isn't that right? 5 MS. PRZYGOCKI: The master plan didn't specify 6 what type or what shape or what building form, it just 7 anticipated the need for housing of these senior residents, 8 and they anticipated the need for downsizing. But it did not 9 specify what type they would want to. 10 MR. BROWN: My other question about the master 11 plan concerns your testimony that the master plan does not 12 mention this property. Did I summarize your testimony 13 correctly on that point? 14 MS. PRZYGOCKI: Yes, it makes no specific 15 recommendations for this property. It makes in general 16 recommendations about the area, and about special exceptions 17 and goals. But in regard to this particular property it 18 doesn't make specific recommendations. Some of the other 19 properties in the Potomac area it doesn't make specific 20 recommendations for, but this is not one of them. 21 MR. BROWN: I would like you to take a quick look 22 at Exhibit 94-C. This is a map excerpted from the master 23 plan showing forest priority preservation areas. Isn't the 24 property listed -- shown on Exhibit 94-C although not 25 specifically identified?</p>

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<p>169</p> <p>1 MS. PRZYGOCKI: I don't have 94-C in front of me. 2 Perhaps you can call it up or perhaps the Hearing Examiner 3 can call up 94-C? 4 Wait a minute, I think I have it. So could you 5 restate the question? I'm sorry, I was looking for the 6 exhibit. 7 MR. BROWN: The question is whether or not the 8 property shows up on that exhibit as a forest priority 9 preservation area? 10 MS. PRZYGOCKI: There is some portion of the 11 property that shows up on this map that is designated a 12 priority forest category 4, yes. 13 MR. BROWN: Thank you. I'm going to talk a minute 14 about -- or ask a couple of questions about the density of 15 the project. I believe your testimony was that the density 16 is a fraction of what would normally be permitted; is that a 17 fair summary? 18 MS. PRZYGOCKI: Yes. 19 MR. BROWN: All right. When you use the word 20 permitted, you were talking about permitted under the 21 conditional use, not permitted as of right, correct? 22 MS. PRZYGOCKI: I'm sorry. My computer did some 23 funny things to me. I apologize, Mr. Brown, could you 24 restate the question? 25 MR. BROWN: Yeah. When you were talking about the</p>	<p>171</p> <p>1 MS. PRZYGOCKI: The base zone for RE2 zone is yes, 2 one house per 2 acres. 3 MR. BROWN: All right. There is also the 4 possibility of clustering the properties into a more dense 5 environment when clusters zoning would be appropriate for the 6 property; is that also possible in the RE2 zone? 7 MS. PRZYGOCKI: Yes, that is -- not in the RE2 8 zone, is available in the RE2C zone and this is not 9 designated -- 10 MR. BROWN: Yes, I -- 11 MS. PRZYGOCKI: -- RE2C. 12 MR. BROWN: I appreciate that correction. Let me 13 ask the question this way. Is there any doubt in your mind 14 that this property would qualify under the standards for RE2 15 zoning to get rezoned from RE2 to RE2C? 16 MS. PRZYGOCKI: That is a matter for a local map 17 amendment and I have not studied that. And that was not the 18 goal of this application, and that's not a matter that I have 19 studied. I'm sorry. 20 HEARING EXAMINER BAUMGARDNER: And Mr. Brown -- 21 MR. BROWN: All right. Well, let's -- 22 HEARING EXAMINER BAUMGARDNER: -- we're going to 23 focus our attention here on the subject application, and we 24 can certainly go down a rabbit hole of every potential 25 development property or every potential way of developing</p>
<p>170</p> <p>1 density being a fraction of what would normally be permitted, 2 you were talking about permitted under the conditional use, 3 not permitted as a right under the base zone, correct? 4 MS. PRZYGOCKI: Well, the use is a permitted use 5 by conditional use -- you know, special exception or under a 6 conditional use. But it must abide by the standards of the 7 conditional use and the standards of the RE2 zone in certain 8 cases, and certain requirements of the conditional use to 9 precede the RE2 zone, but yes. I hope that answers your 10 question. 11 MR. BROWN: Well, let's be more specific. The 12 base density for the RE2 zone is 2 acres per single-family 13 house, right? 14 MS. PRZYGOCKI: The basic density for the RE2 zone 15 is not applicable in this instance because the conditional 16 use is subject to the requirements of the conditional use. 17 So -- 18 (Crosstalk) 19 MR. BROWN: Ms. Przygocki, I really would 20 appreciate it if instead of arguing with me you would just 21 answer my questions. 22 MS. PRZYGOCKI: I'm not arguing with you, sir. 23 MR. BROWN: The base zoning in this zone the basic 24 density for a buy right building is 2 acres for each single- 25 family home; is that not correct?</p>	<p>172</p> <p>1 this particular property, but let's focus on the subject 2 application. 3 Ms. Przygocki's testimony regarding density was 4 that for this application that the density was below that 5 that would be permitted under this particular development 6 scheme. So if you have questions about that density by all 7 means please ask them. But otherwise, density for single- 8 family residential housing, I don't really see as being 9 relevant to this matter. 10 MR. BROWN: All right. I would like you -- Mr. 11 Baumgardner, could you bring up Exhibit 91, please? 12 HEARING EXAMINER BAUMGARDNER: (Inaudible). One 13 second. Once it loads, can you all see my screen? 14 MS. HARRIS: We can see your screen, but it's not 15 there yet. 16 HEARING EXAMINER BAUMGARDNER: Okay, let me try 17 this one more time. 18 MS. HARRIS: If you want, I can bring it 19 (inaudible). 20 HEARING EXAMINER BAUMGARDNER: I had it here. 21 Here we go. Can you see it now? 22 MR. BROWN: Ms. Przygocki, this is in a listing 23 conditions exhibit, correct? 24 MS. PRZYGOCKI: Yes, it is. 25 MR. BROWN: Is it correct to say that the dark</p>

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<p>173</p> <p>1 green strip along a significant -- a thin dark green strip 2 along a significant portion of the boundary on, I guess, and 3 the west side, with the properties on Edison and Dobbins, is 4 that as continuous as it appears on document? 5 MS. PRZYGOCKI: That is the tree line that was 6 established by the approved NRI, yes. Now, some of those 7 trees may be for than others. I know from having walked the 8 site that some of them are evergreen, and some of them are 9 deciduous, so at this point in time, it might not look like a 10 solid math because it's winter. But yes, that is the 11 existing tree line. 12 MR. BROWN: How much of that tree line is on the 13 Applicants property? 14 MS. PRZYGOCKI: I would say about half. 15 MR. BROWN: Okay. Now, would you bring up Exhibit 16 56-C, C as in Charlie? 17 HEARING EXAMINER BAUMGARDNER: (inaudible). 18 MR. BROWN: Now, Ms. Przygocki (inaudible) show us 19 much the same thing with regard to the tree line on the north 20 side, or the west side except that the time frame has shifted 21 from existing to some future time after the project is built, 22 correct? 23 MS. PRZYGOCKI: Yes. 24 MR. BROWN: My question to you is that what point 25 in time in your estimation would the buffering on that side</p>	<p>175</p> <p>1 of what the project is going to look like some years down the 2 road, right? 3 MS. PRZYGOCKI: Yes. I would say some years down 4 the road. It wouldn't look like this immediately, but the 5 trees will grow into significant screening as well. 6 MR. BROWN: All right thank you. I have no 7 further questions. 8 HEARING EXAMINER BAUMGARDNER: Thank you, Mr. 9 Brown. Ms. Harris, many questions based upon Mr. Brown's 10 questions? 11 MS. HARRIS: Yes, just a few. 12 Hold on one moment. Ms. Przygocki, you started to 13 refer to this but I just want to make sure it's clear the 14 distinction in between and ownership lot and a record lot. 15 Can you explain the difference in terms of zoning compliance 16 issues? 17 MS. PRZYGOCKI: In terms of zoning compliance 18 issues the setback requirements, the quantitative 19 requirements refer to the record lot, not the ownership lots. 20 MS. HARRIS: I'm sorry. Not the what, the phone 21 rang. 22 MS. PRZYGOCKI: The measurement requirements refer 23 to the record lot, not the ownership lot. 24 MS. HARRIS: And as you indicated, and ownership 25 lot is really just a legal construct, not much different than</p>
<p>174</p> <p>1 look as substantial as it does here after the project is 2 built? 3 MS. PRZYGOCKI: Well, the trees that are in there 4 are -- I would have to measure. I don't know at what point 5 in time. 6 MR. BROWN: Well, the additional buffering that 7 you're going to be putting in in that area is going to be 8 relatively small caliper trees when they are actually 9 planted; isn't that so? 10 MS. PRZYGOCKI: Yes, you're right, relative to the 11 existing trees which are mature trees that have been there 12 for a very long time, some of them 60 feet or more, these 13 trees will be significantly smaller. However, at maturity 14 they will grow over time and at maturity will eventually 15 become much larger dimension. Or -- 16 MR. BROWN: Well, should I -- 17 MS. PRZYGOCKI: Or much larger than at initial 18 planting. I'm sorry (inaudible) yes, correct. 19 MR. BROWN: So is it fair to say that what I am 20 looking at here is what it will look like at maturity? 21 MS. PRZYGOCKI: This is roughly a, I believe the 22 trees that were shown were roughly at about maybe a 15 or 20 23 year maturity. But I am -- this is not the actual landscape 24 plan though -- but I think it's somewhat accurate, yes. 25 MR. BROWN: I understand. It's to give us an idea</p>	<p>176</p> <p>1 a condominium, a land condominium unit; is that fair? 2 MS. PRZYGOCKI: Right. As used in a number of 3 different settings such as condominium, such as commercial 4 leasing, it's just a different legal construct or ownership. 5 MS. HARRIS: Thank you. And then, in terms of 6 determining the density for a conditional use, is the 7 underlying density, as it relates in this case that relates 8 to the density for a single-family home on an RE2 zoned land, 9 is that density the controlling when it comes to determining 10 the appropriate density for a conditional use, and in this 11 case a residential care facility? 12 MS. PRZYGOCKI: The -- I'm sorry, can you restate 13 the question? 14 MS. HARRIS: Yes. In determining the appropriate 15 density for a residential care facility would one look to the 16 residential care facility provisions or would one look to the 17 underlying RE2 standards as they relate to the development of 18 single-family homes? 19 MS. PRZYGOCKI: In regard to the minimum lot size, 20 (inaudible) to the RE2 standards. With regard to the density 21 you would refer to the conditional use standards. 22 MS. HARRIS: And so is it correct that the 23 density, as it relates to single-family homes has nothing to 24 do with determining what's appropriate for the conditional 25 use under the residential care facility standards?</p>

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177	<p>1 MS. PRZYGOCKI: That's correct, because this</p> <p>2 application does not propose single-family detached homes.</p> <p>3 It proposes a conditional use, so those would be the guiding</p> <p>4 requirements.</p> <p>5 MS. HARRIS: And, in this case in the zoning</p> <p>6 ordinance, I think you went through this in a fair amount of</p> <p>7 detail set forth with great detail the density permitted with</p> <p>8 respect to independent living units and the density permitted</p> <p>9 with respect to assisted living beds, correct?</p> <p>10 MS. PRZYGOCKI: Yes. I've gone through all of</p> <p>11 those requirements and this application meets or exceeds all</p> <p>12 of those requirements.</p> <p>13 MS. HARRIS: Thank you. I don't have any further</p> <p>14 questions, thank you.</p> <p>15 Mr. Baumgardner, you're on mute.</p> <p>16 HEARING EXAMINER BAUMGARDNER: I'm following my</p> <p>17 own rules, and I'm violating my own rules. Any further</p> <p>18 questions of this witness by counsel?</p> <p>19 MS. HARRIS: No.</p> <p>20 HEARING EXAMINER BAUMGARDNER: Okay. Thank you</p> <p>21 Ms. Przygocki for your testimony here today.</p> <p>22 Ms. Harris, your next witness, please?</p> <p>23 MS. HARRIS: If I may, I'm going to call Dennis</p> <p>24 Swihart, the architect.</p> <p>25 Mr. Baumgardner, just so I have a sense of timing</p>	179	<p>1 MR. SWIHART: Yeah. I work at 5283 Corporate Dr.,</p> <p>2 Suite 300, Frederick, MD 21703. The email is Dennis.Swihart,</p> <p>3 that's S-W-I-H-A-R-T at Wormald.com.</p> <p>4 HEARING EXAMINER BAUMGARDNER: Sir, can you please</p> <p>5 raise your right hand? Do you swear or affirm under the</p> <p>6 penalties of perjury that the testimony you're about to give</p> <p>7 is the truth, the whole truth and nothing but the truth?</p> <p>8 MR. SWIHART: Yes.</p> <p>9 HEARING EXAMINER BAUMGARDNER: Thank you. Ms.</p> <p>10 Harris, the witnesses years.</p> <p>11 MS. HARRIS: Thank you. And Mr. Swihart, who is</p> <p>12 your current employer -- oh, you already went through that.</p> <p>13 Excuse me. I'm sorry. How long have you been employed as an</p> <p>14 architect?</p> <p>15 MR. SWIHART: Yeah, I've been working in the field</p> <p>16 of architecture for 28 years now, and I've been licensed for</p> <p>17 23 of those years.</p> <p>18 MS. HARRIS: And what is your current position at</p> <p>19 the Wormald Companies?</p> <p>20 MR. SWIHART: I am the director of architecture</p> <p>21 and that means I am responsible for our professional design</p> <p>22 for all of the residential buildings that we do here. It</p> <p>23 includes a lot of single-family homes, and also preliminary</p> <p>24 design and ongoing management for multifamily residential</p> <p>25 projects.</p>
178	<p>1 here, when are you anticipating that we are going to conclude</p> <p>2 today's session?</p> <p>3 HEARING EXAMINER BAUMGARDNER: My thought would be</p> <p>4 4:30 unless someone has a problem with that. Given the</p> <p>5 nature of, especially if your next witness is the architect I</p> <p>6 think we can do that in 40 minutes or so with direct and</p> <p>7 hopefully cross as well. So by my list that would be half of</p> <p>8 your witnesses, excluding the witnesses who might testify</p> <p>9 about transportation, obviously depending upon how I rule on</p> <p>10 the traffic study question.</p> <p>11 So if we can get to 4:30 with the architect we can</p> <p>12 then break for the day, decide when we can put this back on</p> <p>13 the docket in the next coming weeks. Does that sound</p> <p>14 suitable for everyone involved?</p> <p>15 MS. HARRIS: Yes. And in fact, that's why I</p> <p>16 thought the architect would be the most appropriate next</p> <p>17 witness just given the time constraints.</p> <p>18 HEARING EXAMINER BAUMGARDNER: Mr. Brown, does</p> <p>19 that work for you as well?</p> <p>20 MR. BROWN: Absolutely.</p> <p>21 HEARING EXAMINER BAUMGARDNER: All right. Then we</p> <p>22 will call Mr. -- I'm not going to say this gentleman's name</p> <p>23 correctly, Mr. Swihart, can you please give us your name,</p> <p>24 your professional address and any professional email address,</p> <p>25 please?</p>	180	<p>1 MS. HARRIS: And your educational background,</p> <p>2 please?</p> <p>3 MR. SWIHART: I received a bachelor of</p> <p>4 architecture degree from Virginia Tech in 1994 and I have</p> <p>5 kept current with continuing education that is typical of the</p> <p>6 profession.</p> <p>7 MS. HARRIS: And your professional experience</p> <p>8 before you joined the Wormald Company?</p> <p>9 MR. SWIHART: Before I joined the Wormald Company</p> <p>10 I had a wide range of experience, including residential,</p> <p>11 multifamily, and single-family, educational, institutional,</p> <p>12 and cultural as well as retail. Then, after becoming</p> <p>13 licensed -- well, some of that was during -- when I was</p> <p>14 licensed, but in the last 16 years I've been leading projects</p> <p>15 men specializing in mixed-use and residential projects in</p> <p>16 particular.</p> <p>17 And over the last eight years some of which,</p> <p>18 probably about six of that at a different company was with a</p> <p>19 developer architect, and so I got involved in some more</p> <p>20 things related to neighbor issues and representing the owner</p> <p>21 as well, and dealing with concerns that come up on projects</p> <p>22 and resolving those concerns through design work.</p> <p>23 MS. HARRIS: And have you ever testified as an</p> <p>24 expert before either this body or any other administrative</p> <p>25 body?</p>

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181	<p>1 MR. SWIHART: No, I haven't. I've presented and</p> <p>2 submitted projects for a review and worked through numerous</p> <p>3 zoning related matters including setback, line of sight and</p> <p>4 fight the issues. I have also designed projects in direct</p> <p>5 response to neighborhood concerns.</p> <p>6 MS. HARRIS: And despite the fact that Mr. Swihart</p> <p>7 has not previously testified as an expert witness, based on</p> <p>8 his experience and his education I'd like to submit him as an</p> <p>9 expert in the field of architecture.</p> <p>10 HEARING EXAMINER BAUMGARDNER: Mr. Swihart, you</p> <p>11 had mentioned that you were licensed, are you licensed in the</p> <p>12 State of Maryland?</p> <p>13 MR. SWIHART: Yes, I am.</p> <p>14 HEARING EXAMINER BAUMGARDNER: And do you have</p> <p>15 your license and number handy? I forget what it's called.</p> <p>16 MR. SWIHART: Oh boy, I don't have it memorized.</p> <p>17 HEARING EXAMINER BAUMGARDNER: (Inaudible).</p> <p>18 MR. SWIHART: Let me see if I can pull it up here.</p> <p>19 I'm not sure if I have it handy.</p> <p>20 HEARING EXAMINER BAUMGARDNER: If you don't have</p> <p>21 it handy that's fine, you can submit it after the fact. It's</p> <p>22 something that we like to --</p> <p>23 MR. SWIHART: Yeah, I don't have it handy. I</p> <p>24 apologize. I've got my old license that I had in Virginia,</p> <p>25 but that wouldn't be appropriate for this.</p>	183	<p>1 all of the architectural aspects of the project based on a</p> <p>2 design that was initiated before my involvement. But in</p> <p>3 addition to revisions I've been making in the architecture, a</p> <p>4 large portion of my work has been to provide analysis and</p> <p>5 illustrate options for massing, building placement, and</p> <p>6 secreting. This was directed at ensuring the compatibility</p> <p>7 with the neighborhood as we develop the site plan.</p> <p>8 Moving forward, I will continue to be responsible</p> <p>9 for all the architectural design, but we do intend to hire an</p> <p>10 outside architect, BCT Design Group, out of Baltimore to do</p> <p>11 the detailed design work at the Lodge, and I will be</p> <p>12 reviewing it and managing that work. The plan is to develop</p> <p>13 the cottage is in-house, so I will be more directly involved</p> <p>14 in their design and documentation, following all the way</p> <p>15 through the construction process.</p> <p>16 MS. HARRIS: Thank you. And have you made an</p> <p>17 inspection -- an on-site inspection of the property?</p> <p>18 MR. SWIHART: Yeah, absolutely. I had to become</p> <p>19 familiar with the topography and the significant site</p> <p>20 features just so I could ensure -- so I could understand it</p> <p>21 better and ensure the design is well cited and compatible</p> <p>22 with the area.</p> <p>23 MS. HARRIS: And can you please briefly describe</p> <p>24 the architectural nature of the surrounding area?</p> <p>25 MR. SWIHART: Sure. And I know that Jane touched</p>
182	<p>1 HEARING EXAMINER BAUMGARDNER: If you can provide</p> <p>2 that to counsel after today's hearing and then Ms. Harris can</p> <p>3 submit it to -- through our email to Ms. Johnson that would</p> <p>4 be fine.</p> <p>5 Any questions, Mr. Brown? Do you have any</p> <p>6 questions of Mr. Swihart or otherwise subject to him being</p> <p>7 admitted as an expert in architecture?</p> <p>8 MR. BROWN: No questions here.</p> <p>9 HEARING EXAMINER BAUMGARDNER: Okay.</p> <p>10 MS. HARRIS: Thank you.</p> <p>11 HEARING EXAMINER BAUMGARDNER: Based upon that</p> <p>12 presentation, I'm admitting Mr. Swihart as an expert for the</p> <p>13 purposes of this hearing in architecture. Any other related</p> <p>14 specialties other than architecture, Ms. Harris?</p> <p>15 MS. HARRIS: No.</p> <p>16 HEARING EXAMINER BAUMGARDNER: He is so admitted.</p> <p>17 The witnesses years.</p> <p>18 MS. HARRIS: Thank you. And Mr. Swihart, are you</p> <p>19 familiar with the conditional use that's the subject of this</p> <p>20 application?</p> <p>21 MR. SWIHART: Yes, I am.</p> <p>22 MS. HARRIS: And can you please describe what your</p> <p>23 responsibilities were in connection with this conditional</p> <p>24 use?</p> <p>25 MR. SWIHART: Yeah, I'm primarily responsible for</p>	184	<p>1 on some of this, but in this might be a little redundant.</p> <p>2 But it's single-family dwelling on lots that are a minimum of</p> <p>3 2 acres as required by the RE2 zone. Almost all the houses</p> <p>4 and lots off of S. Glen are set back around 135 feet or more</p> <p>5 from the property line. Other houses in the neighborhood are</p> <p>6 more typically setback between 70 to 140 feet, that's off of</p> <p>7 S. Glen Road.</p> <p>8 All these houses in this area date back from the</p> <p>9 1950s and those are -- tend to be colonial, Cape Cod, ranch-</p> <p>10 style homes. There are relatively small in comparison to the</p> <p>11 other houses that are 1 to 1-1/2 stories tall, up to maybe</p> <p>12 3,500 square feet or so, in general terms. There may be some</p> <p>13 exceptions to that here and there.</p> <p>14 But after the 1950s, the houses became much larger</p> <p>15 in footprint, typically having heights of 2 to 2-1/2 stories</p> <p>16 and there are some very large ones and some smaller ones, but</p> <p>17 on average they are more in the 5,000 to 8,000 square foot</p> <p>18 range of home. They go up as high as 16,000 square feet.</p> <p>19 Stylistically, they draw on a wide range of</p> <p>20 historical styles, including French country, federal, tutor,</p> <p>21 and Georgian. But they are mostly eclectic in nature so you</p> <p>22 will see a couple of different styles in a single house.</p> <p>23 There are a few good examples of more pure things, but that's</p> <p>24 generally true. Typical materials are brick, stone,</p> <p>25 synthetic wood, synthetic stucco. Most roofs are asphalt</p>

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<p>185</p> <p>1 shingle, although some of the newer houses do have some late 2 and metal roofing, and the roof slopes, while there are a 3 few, especially some of the earlier houses have lower roof 4 slopes more typical is about a 12/12 roof pitch. There are 5 some styles such as the French country or tutor style that 6 goes much deeper than that, and I would guess maybe 18/12 7 would be about the maximum of slope. 8 MS. HARRIS: Thank you. And are you familiar 9 generally with the zoning ordinance and the conditional use 10 requirements of the zoning ordinance? 11 MR. SWIHART: Yes. 12 MR. BROWN: And has the design been influenced by 13 the surroundings? And I'm going to pull up Exhibit 67, 14 that's your (inaudible) exhibit. 15 MR. SWIHART: Yeah, it should be the Norton house. 16 MS. HARRIS: Can you not see that? 17 MR. SWIHART: Not yet. 18 MS. HARRIS: Sorry. 19 MR. SWIHART: There we go. Okay. This is real 20 brief, but we didn't want to take direct photos of the lot of 21 different houses, but this one is pretty well screened. And 22 it also happens to be one of the inspiration, I guess, we use 23 for the design of our architecture. You can see in there, 24 Steve roof forms, stone siding, the shutters and even some of 25 the window forms are designed on an old world style</p>	<p>187</p> <p>1 MR. SWIHART: So that's rendering we did is sort 2 of the front looking into the drive the aisle. And it looks 3 back at the first (inaudible) like Jane mentioned that we 4 placed one of the triplex cottages at the front of the site. 5 It's about 137 feet back from the property line. The cottage 6 has a footprint of 8,634 square feet and is about 160 feet 7 long which is similar to our neighbor to the east on S. Glen 8 Road. 9 And there will be tasteful landscaping of trees 10 and shrubs in the front as discussed earlier, what you will 11 see from the road is similar to other houses along S. Glen. 12 At this entry drive, as you can see there is an entry 13 structure and beyond that on the left you can see the next 14 structure, which is a triplex, it's about 265 feet from the 15 road. As Jane mentioned, the site slopes down considerably 16 towards the back so it is hard, if not impossible, to see 17 additional structures from the road. 18 If you don't mind going to the next image, the 19 lawn renderings. 20 MS. HARRIS: This is 56-E. 21 MR. SWIHART: Yeah. So of course the assisted 22 living has been discussed. The assisted living and memory 23 care and (inaudible) residents are housed in singular 24 structure which we are calling the Lodge. For that, we 25 designed a four-story structure, and as Jane or someone</p>
<p>186</p> <p>1 architecture. This one is more French than anything else. 2 So we looked at houses around the site and tried to think of 3 how that could influence our design. And if you don't mind, 4 could you go to the next image of our (inaudible)? 5 MS. HARRIS: Yes, I would just note that that was 6 Exhibit 67. And now, we're going -- 7 MR. SWIHART: Okay. I don't know. Maybe you can 8 zoom in on a few of them, but in order to make it most 9 compatible with the adjacent neighborhood, the structures and 10 design is duplex -- most of the structures and designs is 11 duplex, and triplex cottages. In size, massing and details 12 they will mimic single-family homes that would be similar in 13 this area. 14 Style, details, and materials are based on, as I 15 mentioned, kind of an old world architectural from actual 16 styles of old world. The influences that we most used word 17 to your country at houses of England and France. As is 18 typical, we provided side loading garage is and what you will 19 see is basically stone, synthetic stucco such as the EIFS and 20 synthetic wood trim. 21 And then, I guess if you don't mind, go to the 22 next image. It should be the site entry. 23 MS. HARRIS: This is Exhibit 88. 24 MR. SWIHART: Yeah, there it is. 25 MS. HARRIS: Okay.</p>	<p>188</p> <p>1 described, it's only three stories at the back due to the 2 site grading being higher back there. The structure has a 3 more residential feel, we included elements from a Lodge 4 design, such as exposed timber and stone, and traditional 5 gable roof forms, just to make sure it is not such an 6 institutional building. 7 If you don't mind, can you go onto the next one, 8 which I think was the site plan? 9 MS. HARRIS: Yeah, 56-C. 10 MR. SWIHART: Yeah, it's the same one we've been 11 looking at. And can you zoom in on the Lodge a little bit? 12 This has been mentioned before, but, you know, we -- the 13 massing of the building has been kept as compact as possible 14 with the ranging around that inner courtyard which serves a 15 couple do functions. By not being such a long building it 16 allows it to nestle more easily into the lowest portion of 17 the site. And the resultant (indiscernible) as mentioned is 18 at or lower than the adjacent neighbors. 19 Also, the parking place is placed out of view as 20 Jane described and you can see the central courtyard there 21 where there is some parking and also between the gym 22 structure to the lower right there and the Lodge structure 23 there's a little additional parking. All that is screened. 24 I don't really belie you'll be able to see it from anywhere. 25 There is a house way, way, way far on the east, but there's a</p>



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189	<p>1 big forest between them and this area, so you can't see into 2 the -- it's oriented so you can't see into that parking area. 3 Let' see. I guess that's all I have to say about that. 4 MS. HARRIS: And then, can you briefly describe, 5 and you did it a little bit but any additional detail you 6 want to provide about the architecture as it relates to the 7 conditional use application? 8 MR. SWIHART: Yeah. If you can go -- I think the 9 next imaged is actually just a -- the triplex or duplex 10 renderings again. 11 MS. HARRIS: Yeah. 12 MR. SWIHART: Okay. So yeah, in addition to the 13 style and massing which is consistent with the Potomac area 14 we provide multiple building elevations as we've got 15 different color configurations. So the idea is that there 16 will never be two houses exactly the same across the street, 17 or near each other. And that makes it feel more like a real 18 residential neighborhood. They were designed to replace -- 19 to replicate the experience of living in a single-family 20 home, but with enhanced design features which will allow the 21 graceful aging in place. 22 The senior residents, for example, will be able to 23 live entirely on 14, the main level, which has all the 24 necessary living space and a master bedroom suite. There is 25 an elevator in each townhouse and it connects all three</p>	191	<p>1 are expecting the residents to have high standards, so it is 2 important that the fixtures of each house and match the 3 specific buyer needs and preferences. Required owner 4 modifications will be turned in when homes are purchased. 5 If you could go to the next slide, please, I would 6 like to talk about the Lodge a little bit more. Maybe 7 (inaudible) on some of this. But the Lodge was designed to 8 be compatible using materials such as stone, synthetic 9 stucco, exposed timber, and gabled roof forms, as I 10 mentioned. Four stories tall plus one basement level. The 11 basement level there is on the upper right side, and as a 12 residential care facility, the building layout provides a 13 generous common areas and social interaction bot for both 14 large and small group settings. And if you can zoom in on 15 the upper left image, I guess, there. Keep going. The lobby 16 is going to be the hub for communal life within the campus. 17 And our residents will have access to all these large 18 interior spaces and some exterior terraces. 19 So this is the entry level. I guess, if you don't 20 mind, go to the second floor. That sort of more 21 representative of the whole -- that's the lower level there. 22 MS. HARRIS: Sorry. 23 MR. SWIHART: I think it is on the left. And it's 24 (inaudible) refined. So you can see there the gray area is a 25 communal kitchen, and then on either side of that, on the</p>
190	<p>1 levels. The lower level we're expecting now to be on 2 finished, or may be built out with the buyer specific 3 preferences. The upper level contains a bathroom suite in 4 space and two bedrooms for out-of-town relatives. 5 While the building code doesn't have any unique 6 requirements for independent living, we have looked at the 7 principles of universal design and a lot of features that are 8 most compatible and most helpful to the wide variety of 9 senior needs. For example, the floor plan is mostly open 10 with few doors. The hallways are 42 inches wide and more, 11 and all the general circulation doors are at least 2'8" wide, 12 which allows for wheelchair access. 13 The bathrooms are oversize with traditional 14 blocked in walls for the potential installation of grab bars 15 as needed. And then, the kitchens and bathrooms have 16 additional clearance just for ease of maneuvering. 17 The garages have a dedicated space and they are 18 built a little bit wider so that you can fit a ramp in 19 because there will be a small step between the garage and the 20 house, just for practical reasons. And then, other features, 21 just some of the details. You've got lever type door and 22 faucet handles comfort height and it's (inaudible) type light 23 switches, and all of these details will be appropriate just 24 about for anybody that lives there. 25 As I mentioned, these are upscale houses and we</p>	192	<p>1 left side in blue is the assisted living area with a dining 2 room right there where you've got your cursor. And on the 3 right, in the orange, that's for the independent living, and 4 that's the dining room there. And not just the dining room, 5 but once it gets fully designed there will be a lot of craft 6 rooms in all the common spaces that we talked about with Ms. 7 Andress. 8 And then the point, the triangle there is an 9 exterior terraces. So every floor is going to have two 10 terraces on it, and then the top floor, if you could go to 11 the top floor; I think it's in purple. Yet, the purple is 12 the memory care units so that -- they get their own dining 13 space there in blue just because of the nature that area has 14 to be more secure, and they also have a secure exterior 15 terraces there on the lower left. 16 Let's see what else. Well actually, can you go 17 back to the entry court area? 18 MS. HARRIS: On the floor plan? Yeah, hold on. 19 MR. SWIHART: Yeah, there you go. There it is. 20 MS. HARRIS: All right. 21 MR. SWIHART: In the upper left. This was 22 described before, but you can see more clearly I think that 23 as you enter in there is a porte-cochere on the right and if 24 you keep driving around you get to the one on the left. The 25 one on the right goes into the independent living areas and</p>

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<p>193</p> <p>1 that's where the entire community will be able to share 2 the -- the cottages will be able to come there and share in 3 all the communal spaces. And then, on the left, you got the 4 assisted living entry. 5 The service to the building is, if you go, I think 6 it's on the right, that we talked about before, but you can 7 see it very clearly here. Between the gym and the -- can you 8 zoom in just a little bit more? That's the service access 9 that was described there. So the areas in brown are all back 10 of house for mechanical spaces. And then finally, I think 11 the existing gym structure, it shows that there, as 12 mentioned, it's going to be rehabbed. We don't have any 13 plans to change the exterior of the building, but the 14 interior will be designed professionally for the program 15 (inaudible) life. We are expecting that they're going to 16 have, you know fitness, recreation rooms, bathrooms, and 17 probably an office space for a fitness director. 18 MS. HARRIS: Thank you. And can you describe, and 19 Jane identified the master plan recommendations, but can you 20 describe how the architecture furthers those recommendations 21 as it relates to (inaudible) uses? 22 MR. SWIHART: Yeah, absolutely. Welcome so we 23 looked at the master plan recommendations for guidance. 24 That's how we created the design of a certain building. And 25 I just want to be clear, my comments are going to focus on</p>	<p>195</p> <p>1 portion of the site to be at a similar elevation as the 2 neighbors at the roofline. 3 It also recommends that parking be located and 4 landscape to minimize a commercial appearance. And I think 5 we touched on this a lot, but again, parking at the cottages, 6 that's all completely internal, exactly like a suburban 7 neighborhood, and they are side load garages so their 8 presence on the street is not very obvious. And then the 9 other parking is all hidden, either underneath the building 10 for the Lodge, in that courtyard, are screened between the 11 gym structure and in the main Lodge. 12 MS. HARRIS: Thank you. Have you evaluated the 13 applicable zoning ordinance standards with respect to the 14 subject project and that the proposed development? 15 MR. SWIHART: Yes, I have. And as Jane has 16 demonstrated the conditional uses well within RE2 and 17 conditional use development standards. I looked carefully at 18 building height and can confirm that they are at, or under 39 19 feet tall. That number could change a little bit as we get 20 into detail design, the construction detailing and just final 21 rating, but it's right around that area, and will definitely 22 be underneath the 50 foot height limit. The Lodge is also 23 under 50 feet tall, and that's on a (inaudible) as well. 24 MS. HARRIS: Can you repeat the height of the 25 Lodge because it sounded like you said 150 feet.</p>
<p>194</p> <p>1 the master plan's recommendations related to the design of 2 the buildings. 3 The basic intent of the recommendations, which are 4 on page 36, with respect to conditional uses, it's to 5 preserve the residential character of an area. And 6 (inaudible) to the zoning ordinance to ensure that the 7 architecture is compatible with the adjoining neighborhood. 8 And as Jane Przygocki, demonstrated earlier, this 9 product well exceeds the requirements of the zoning ordinance 10 and all the standards. The overall driver of the design and 11 detail was to make sure of the residential appearance was in 12 keeping with the surrounding homes. And we treated that as 13 a -- and we are mimicking single-family home design with the 14 cottages and with a more residential style at the Lodge to 15 keep it from looking like a commercial building. 16 The massing of the duplexes and triplexes in size 17 and breadth, and width resemble some of the larger homes 18 surrounding -- some of the larger, surrounding single-family 19 residences. At 39 feet typical height they are similar in 20 height to many of the neighbors. The orientation of that 21 single entry triplexes which we mentioned before, facing 22 south go in, makes it certain that the presence for the 23 street will be identical, similar, or very close to the 24 neighbors. And the Lodge massing, which I mentioned being 25 compact around the internal courtyard and nesting in a low</p>	<p>196</p> <p>1 MR. SWIHART: No, it's actually about 47 feet, but 2 it is under 50 feet. 3 MS. HARRIS: Okay. Thank you. 4 MR. SWIHART: (inaudible). 5 MS. HARRIS: Thank you. Section 59 7.3 1 E G of 6 the conditional use requirements requires that the use will 7 not cause any undue harm as a result of odors, in your 8 opinion will the conditional use generate any significant 9 odors so as to cause undue harm? 10 MR. SWIHART: No, I don't have concerns with this. 11 I've designed a number of projects with commercial kitchens 12 and that were in urban settings. I mean, that are 13 immediately adjacent to the neighbors, and I've also talked, 14 and I have had any issues from any of the neighbors. I also 15 talked with our consultant and our architect at BC2, she has 16 done many more of these types of buildings and she hasn't had 17 any experience with problems in there. 18 I will stay that they will have a -- it's probably 19 going to have commercial class 1, a commercial hood, which is 20 a -- I think we defined those, but there are a lots of 21 filters in that hood. It filters out about 70 percent of 22 it -- of the grease matter in the fumes, and that greatly 23 reduces any smells and then, I would also point out that the 24 building code actually requires the exhaust to be about 10 25 feet away from any adjacent building. And we are going to be</p>

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<p>197</p> <p>1 between 250 to 300 feet from the nearest house. So I 2 definitely don't expect any problems. 3 They are also, just for reassurance, the county 4 has an air quality law and it requires a special air quality 5 permit which we will need to get. That's based on the size 6 of the hood basically. And since we do everything per code, 7 we just don't see this as an issue. 8 MS. HARRIS: Thank you. And section 7.3.1 E (i) D 9 requires that the proposed development be harmonious with, 10 and will not alter the character of the surrounding 11 neighborhood in a manner inconsistent with the plan. In your 12 expert opinion as an architect, please explain how this 13 harmony and compatibility is achieved. 14 MR. SWIHART: Sure. And some of this goes back to 15 the land planning. But as Ms. Przygocki demonstrated the 16 project has extremely low density, 16 percent of what is 17 allowed for independent living, and 10.3 percent of what's 18 allowed for assisted living and memory care. While the 19 residential care facilities of this size are typically 20 singular structure surrounded by service parking lots, ours 21 has a far more residential in character with multiple smaller 22 structures, and parking is almost 100 percent concealed. 23 And placing that single triplex along the street 24 we are in harmony with the character, size, and setbacks of 25 other lots along S. Glen Road. The Lodge has also been</p>	<p>199</p> <p>1 alter the residential character of the surrounding 2 neighborhood? 3 MR. SWIHART: Yes. 4 MS. HARRIS: And in your professional opinion does 5 the proposed conditional use satisfy all the applicable code 6 requirements? 7 MR. SWIHART: Yes, it does. 8 MS. HARRIS: And finally, is there anything else 9 you would like to add? 10 MR. SWIHART: I mean not really, I just feel like 11 we've taken a good care to make sure it is compatible with 12 the neighborhood and the project will be a great benefit for 13 the community. 14 MS. HARRIS: Thank you. I have no further 15 questions for Mr. Swihart. 16 HEARING EXAMINER BAUMGARDNER: Thank you. Mr. 17 Brown, any questions for Mr. Swihart? 18 MR. BROWN: Just a few. 19 Mr. Swihart, when you talk about describing the 20 surrounding neighborhood of having houses in the 5 to 8,000 21 foot range, were you talking about footprints, or gross floor 22 area? 23 MR. SWIHART: Gross floor area. 24 MR. BROWN: So what would the footprints typically 25 be? Half of that?</p>
<p>198</p> <p>1 designed to be a more residential feel with a gable roof 2 forms and material similar to what you would see in the 3 neighborhood. By placing it at the low portion of the site, 4 as mentioned before, the physical presence is minimized and 5 in keeping -- to make it more compatible with neighbors. 6 Being designed around a central entry court keeps it compact 7 and further screens in the parking. 8 And it is intended for upscale living so this 9 is -- regardless of the quality Wormald has a long history of 10 providing details and execution that ensure quality 11 residential design, that is our target market, is sort of a 12 high-end clientele, and we have to meet that market segment. 13 So we have a long history of doing so. (Inaudible) all that 14 experience in creating (inaudible) is appropriate for this 15 neighborhood. 16 MS. HARRIS: Thank you. And now, I just have four 17 very quick questions. 18 MR. SWIHART: Sure, no problem. 19 MS. HARRIS: First, in your professional opinion, 20 does the proposed conditional use achieve maximum 21 compatibility with the residential character of the 22 surrounding neighborhood? 23 MR. SWIHART: Yes, it does. 24 MS. HARRIS: And in your professional opinion is 25 of the proposed conditional use harmonious with and will not</p>	<p>200</p> <p>1 MR. SWIHART: Yeah. That may be fair. I didn't 2 really study that much in detail. 3 MR. BROWN: So what are the footprints on the 4 duplexes in the triplexes? 5 MR. SWIHART: The duplex is about 5,700 -- it's 6 5,761 square feet, the triplex is 8,634 square feet. 7 MR. BROWN: That's just the footprints? 8 MR. SWIHART: Yes. 9 MR. BROWN: Is it any more for the gross floor 10 area, or would it be the same? 11 MR. SWIHART: Let me check my notes here. It's 12 slightly more, the triplex living area is 9,888. The duplex 13 area is 6,592. It basically just adds in the small top 14 floor. 15 MR. BROWN: I'm sorry, what was the triplex number 16 again? 17 MR. SWIHART: It was 9,888 square feet. 18 MR. BROWN: Good. Let's talk just for a minute 19 about the duplexes first. Is it -- is there going to be some 20 difference structurally and architecturally among the 21 duplexes? 22 MR. SWIHART: You mean compared to each other? Is 23 that what you mean? 24 MR. BROWN: Yeah. 25 MR. SWIHART: No. The floor plans are going to be</p>

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<p>201</p> <p>1 mostly identical. We will change the front so we get 2 different elevations for, you know, we have three or four 3 elevations for those. But (inaudible) is. 4 MR. BROWN: Is it fair to say that all of them 5 will essentially resemble each other in architectural style? 6 MR. SWIHART: Yeah, they'll have the same -- 7 MR. BROWN: The duplexes. 8 MR. SWIHART: Yeah, right. I mean they'll -- 9 right, like I said there'll be variations throughout the 10 community. You know, slightly different roofs forms, 11 sometimes with a gable, sometimes there's not. But the 12 style, yeah they will be similar. 13 MR. BROWN: All right. Now same questions as to 14 the triplexes? 15 MR. SWIHART: It's the same answer. We've got the 16 same floor plan design except for at the front there will be 17 minor variations just to achieve the different elevations 18 that we will need. So we might have to pop out a living room 19 in one area so that we can get a gable that wasn't there on 20 one of the other models. But for the most part, they are 21 going to be functioning identical in the interior. And the 22 style will be similar to, just with those variations of 23 colors and roof forms to make them unique in the community. 24 MR. BROWN: I think that will do it. Thank you. 25 MR. SWIHART: Thank you.</p>	<p>203</p> <p>1 are some -- if you look around the whole neighborhood, there 2 are some other houses that are similar size and scale. Some 3 of them quite a bit larger. 4 MS. HARRIS: Thank you. And did you -- did I hear 5 you say that the duplexes and triplex were designed to 6 accommodate one level of living? 7 MR. SWIHART: That's right. Yeah, absolutely. So 8 like I said, a wheelchair is going to be able to get through 9 all of the necessary spaces to live there, and with that 10 extra area it's going to make it easy, you know, if there are 11 any sort of modifications, as you can see there's extra space 12 to just move around generally and customizing these homes as 13 needed for specific ailments. 14 MS. HARRIS: And so for that ground for living, 15 which it sounds like that's the primary area where the 16 independent living residents would use, what in either a 17 triplex or a duplex, what's the approximate square footage of 18 that living area? 19 MR. SWIHART: For a single -- it's 2,083 square 20 feet. All of these floor plans are actually the same. Even 21 the triplex and the duplex, and so that main level is about 22 2,000 square feet. 23 MS. HARRIS: So that -- okay. So the -- is it 24 fair to say that the primary living space for the independent 25 living residents is approximately, what did you say, 2,083?</p>
<p>202</p> <p>1 HEARING EXAMINER BAUMGARDNER: Thank you, Mr. 2 Brown. Ms. Harris, any redirect based upon Mr. Brown's 3 questions? 4 MS. HARRIS: Yes, just very briefly. 5 The to go back to the footprint question for a 6 moment, and I'm referring now, again, to the site plan, the 7 rendered site plan. I think it is 56-C. 8 MR. SWIHART: Yeah. 9 MS. HARRIS: You touched on this, but can you sort 10 of from a visual comparison compare the footprint and will 11 just take the triplex that fronts S. Glen since that's going 12 to be the most visible structure on the whole property? And 13 can you do a visual inspection of the surrounding houses that 14 you see on this plan and is this footprint comparable to 15 those existing structures? 16 MR. SWIHART: Yeah, that is absolutely -- we don't 17 even need to see it because we look at that specifically, and 18 that one is very comparable to the ones on the right. And as 19 I said, they are certainly smaller houses than the adjacent 20 neighborhood, but there are some very large houses in the 21 neighborhood as well. So we felt completely comfortable with 22 this size of the building. 23 So to get to your specific example it's about, as 24 I mentioned, the triplex is about 160 feet long, and it's 25 very similar in size to our neighbor to the east. And there</p>	<p>204</p> <p>1 MR. SWIHART: Let me make sure I'm answering the 2 right question. So the main level is 2,083. 3 MS. HARRIS: Yeah, that's what -- 4 MR. SWIHART: And then we have an upper -- yeah. 5 The main levels is 2,083 for -- 6 MS. HARRIS: Right, and I think you said that the 7 upper level would be used if what did you say out of town 8 guests of a resident or a relatives? 9 MR. SWIHART: That's right. The total of that -- 10 basically the total of this level is what you typically count 11 in a square footage calculation. And the upper level is 12 about 1,215 square feet. 13 MS. HARRIS: Okay. 14 MR. SWIHART: So the total is 3,296. 15 MS. HARRIS: Okay. 16 MR. SWIHART: As currently designed. You know, 17 that could very well be changed. 18 MS. HARRIS: So when you mentioned 9,000 -- I just 19 wanted to be clear here. So when you mentioned 9,800 for the 20 triplex, you were talking -- 21 MR. SWIHART: That was the entire -- 22 MS. HARRIS: That was the entire structure with - 23 -including all three units? 24 MR. SWIHART: That's correct. 25 MS. HARRIS: Okay. That's -- okay. I have no</p>


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205	1 further questions for Mr. Swihart. 2 And again, where minute before your deadline. 3 HEARING EXAMINER BAUMGARDNER: Good. Very, very 4 good for a Friday. 5 Any closing issues we need to deal with before we 6 pull out our calendars and look when we can set this in for 7 Day 2? 8 Hearing none, I will look at my own calendar. 9 MS. HARRIS: Oh, actually, once we figure out the 10 dates could we -- would it be possible to figure out, like, 11 two timeslots on one of those days that the people that want 12 to speak can speak? 13 HEARING EXAMINER BAUMGARDNER: Sure, definitely. 14 MS. HARRIS: Thank you. So Mr. Baumgardner, you 15 had mentioned, I think you said February -- because we took 16 our calendars at lunchtime. 17 HEARING EXAMINER BAUMGARDNER: Yeah. 18 MS. HARRIS: And I believe that you said the 9th 19 and the 10th are available? 20 HEARING EXAMINER BAUMGARDNER: They are, but 21 they're not great because they're wedged in between two 22 hearing days, and I have both of those hearings. The better 23 week would be the following, which is the week of February 24 14th. We could do the 14th and 15th, or if you really wanted 25 to, the 16th and 17th. Or the following week, the 21st is a	207	1 to be safe? 2 MR. BROWN: If you don't take up more than one day 3 I'm not going to take up more than one day. 4 HEARING EXAMINER BAUMGARDNER: I think we can get 5 done in two days. 6 MR. BROWN: Thank you. 7 HEARING EXAMINER BAUMGARDNER: I think we will be 8 safe for two days. We are not going to be scheduling 9 anything for that week anyway so in the event we needed the 10 16th, from our calendar we could do it. And were not going 11 to schedule anything between now and then anyway, so I'm 12 confident that we will be able to complete in another two 13 days. 14 MS. HARRIS: And could we say -- well -- and well, 15 two other things. One is to ensure -- could we -- is the 16 start time still 9:30 or is it possible to start earlier? I 17 just don't want us to extend more than two days 18 (indiscernible). 19 HEARING EXAMINER BAUMGARDNER: I was going to 20 suggest that, pushing the start time back to 9:00 a.m. That 21 way we can start it right at nine and have a full two or 22 three hour block of time to go with your testimony, have a 23 shorter lunch break and then start back a little bit sooner 24 so we have (indiscernible). 25 Our office will issue a hearing -- I guess we
206	1 holiday, President Day. So I can also do the 22nd and 23rd, 2 or the 23rd and 24th, or the 24th, are the 25th. 3 MS. HARRIS: So we took out our calendars, we 4 thought we were being realistic by going out three weeks. 5 And so we had identified the 14th, 15th, and 16th of that 6 following week that are possible. 7 HEARING EXAMINER BAUMGARDNER: Those will be fine 8 with my calendar. 9 MS. HARRIS: Could we do the 14th and the 15th? 10 HEARING EXAMINER BAUMGARDNER: Mr. Brown, are you 11 available on the 14th and the 15th? 12 MR. BROWN: I'm good for that. 13 HEARING EXAMINER BAUMGARDNER: Okay. Let me just 14 crosscheck this really quick to make sure I'm not double 15 booking somebody in our agency. 16 Okay. That looks to be fine. 17 MS. HARRIS: And dare I say, and I don't want 18 to -- and I really hope we can get done in those two days, 19 but doing it -- and maybe this is partly a question for Mr. 20 Brown, and I think he previously indicated that he needed 21 approximately four hours. Is that still an accurate 22 estimate, Mr. Brown, or should we potentially identify a 23 third day just so we have it on the calendar so we don't have 24 to then be three weeks out from the 15th if need be? 25 I mean, could we block off the 16th as well, just	208	1 don't have to do a hearing notice. We will issue something 2 in writing stating the dates and the time change just so that 3 people aren't caught off guard with starting a half-an-hour 4 earlier than we normally do. 5 MS. HARRIS: Okay. 6 HEARING EXAMINER BAUMGARDNER: And I will issue a 7 ruling in the traffic study question by Monday. I'm going to 8 do that this weekend. So at least you all will know what 9 it's going to look like for the 14th, 15th with as much 10 notice as we can give you. 11 Any questions about that scheduling? 12 MS. HARRIS: No. The only thing I would ask again 13 is if we could identify maybe like, 9:00 and 2:00 or 9:30 and 14 2:00 for potential people so that they don't have to hang 15 out. 16 HEARING EXAMINER BAUMGARDNER: Sure. I mean, 17 would folks be interested in taking the morning of the 14th 18 to allow folks to -- from the community to testify? I mean, 19 we could potentially, like, do that first thing. That could 20 be the first thing that we do, we get that out of the way so 21 folks can go about their week? 22 MS. HARRIS: I think that -- excuse me. I think 23 that sounds fine and if there happens to be someone that 24 can't then maybe they can come in at the very end or 25 something.

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<p style="text-align: right;">209</p> <p>1 HEARING EXAMINER BAUMGARDNER: Correct. And that 2 will be open for any community member. So it doesn't matter 3 whether they are, you know, supporting the application or 4 opposing the application if they are unrepresented by counsel 5 if they anted to provide their testimony. So that's what 6 we'll do. 7 We'll tentatively allow that to occur on the 14th 8 in the morning. But again, not prohibiting any of that 9 testimony later on either on the 14th or on the 15th if a 10 particular member of the community can't make it on the 14th 11 in the morning, that's fine. And that will also be in 12 whatever we issue in terms of our written scheduling order 13 there. And please, let your respective clients and 14 respective communities know that that will be the best time 15 for community members to testify, but not the only time. 16 All right, any closing remarks -- well not closing 17 remarks. Any other final issues for today that we need to 18 address before we close? 19 MS. HARRIS: No, I'll just say I'm so immersed in 20 this that i didn't look out the window and then when I did I 21 was astounded to see all these now. So everyone drive safely 22 if you are not at home. 23 HEARING EXAMINER BAUMGARDNER: That's exactly 24 right. If you're on the eastern shore you're getting hit 25 harder than if you're on the western shore. But for anyone,</p>	<p style="text-align: right;">211</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Molly Bugher, do hereby certify that the 3 foregoing transcript is a true and correct record of the 4 recorded proceedings; that said proceedings were transcribed 5 to the best of my ability from the audio recording as 6 provided; and that I am neither counsel for, related to, nor 7 employed by and of the parties to this case and have no 8 interest, financial or otherwise, in its outcome. 9 10  11 _____ 12 Molly Bugher, CDLT-161 13 Date: February 8, 2022 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">210</p> <p>1 please drive safely and have a good weekend and we'll see you 2 all on the 14th. 3 MS. HARRIS: Thank you. 4 (The recording was concluded 4:36 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

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