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Transcript of Hearing

Date: August 4, 2023

Case: Community Housing Initiative, In Re: (CU 23-14)

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E X H I B I T S					
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29	7/18/23 staff report.....	/157	3 my decision is issued. So what I would like to do right		
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	approving conditional use		5 with you.		
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36	Letter of support from YIMBY Action.....	/157	12 MS. KOSARY: I am Doctor Carol Kosary and I live		
37	Shady Grove Presbyterian letter.....	19/157	13 in the Upper Rock Creek area.		
38	Planning board approval.....	38/157	14 HEARING EXAMINER BYRNE:		
39	Evans resume.....	62/157	15 MS. KOSARY: Yes, yes, I do.		
40	Keener resume.....	70/157	16 HEARING EXAMINER BYRNE: What I would like to do		
41	Sloan resume.....	71/157	17 since we are all here in person, is I would like everyone		
42	McAndrew resume.....	78/157	18 who intends to testify here -- and at this point Michelle,		
43	Upper Rock Creek Master Plan.....	101/157	19 if you could unmute the individual who is going to be		
44	Primrose School decision.....	111/157	20 testifying virtually. And I would like to swear everyone		
45	Bus schedules.....	112/157	21 in at the same time. What this does, is I make sure I		
46	Hollygrove Road exam.....	125/157	22 don't miss anyone because sometimes when we go through the		
	School bus stop map.....	131/157	23 flow I'll forget to swear someone in, I end up swearing		
			24 them in at the end. So let's get that out of the way now.		
			25 So anyone who intends to testify that's here today, if you		
6			8		
P R O C E E D I N G S					
HEARING EXAMINER BYRNE: Good morning, everyone.			1 could, please raise your right hand. And this includes two		
My name is Katie Byrne. I will be the Hearing Examiner			2 individuals who are with us on Zoom. And then I want to		
today for this case. First thing I would like to do is			3 hear an audible yes at the end.		
check in with our Court Reporter.			4 All right. Does everyone promise to tell the		
COURT REPORTER: Yes, I'm ready.			5 truth, the whole truth, and nothing but the truth.		
HEARING EXAMINER BYRNE: Good to go?			6 IN UNISON: Yes.		
COURT REPORTER: Yeah.			7 HEARING EXAMINER BYRNE: Excellent. All right.		
HEARING EXAMINER BYRNE: Just to let everyone			8 And we can hear our individual remotely. All right. Thank		
know, this is our first in person hearing for OZHA since			9 you, very much everyone. And we can go ahead and mute him		
the pandemic in the new hearing room. We've actually been			10 now.		
waiting for hybrid technology. We're still waiting on some			11 MICHELLE: They are muted.		
parts, but Nicole with our IT team has graciously offered			12 HEARING EXAMINER BYRNE: Thank you. All right.		
to help us at one of the Applicant's witnesses testify			13 So the nature of the proceedings, they are informal, but we		
virtually since he is out of town. So this is, I guess,			14 do have certain formalities that go with us. What we will		
our first test run here using a little bit of technology in			15 start with our opening statements from the Applicant. Ms.		
the room. So thank you all for your patience as we work			16 Kosary, if you wish to make any kind of opening statement,		
through this. All right. So we are here for conditional			17 you're free to do so. If you want to wait until the end		
use 23-14 filed by the Applicant, Community Housing			18 when it's your turn, that's fine. You can just jump in		
Initiative Inc. It's a public hearing on the conditional			19 with your testimony. Applicant will go first for the		
use application for an independent living facility for			20 presentation of the factual case. Opposing party will go		
seniors with 130 dwelling units. As the Hearing Examiner I			21 second. Any other interested persons can present factual		
will be listening to testimony, reviewing evidence,			22 case with support and opportunity for cross-examination.		
rendering an opinion on the application pursuant to the			23 The Appellant (sic) has the last word. They will have		
criteria as set forth in conditional uses in Article 59,			24 rebuttal after the opposition. Any objections to -- well,		
			25 let's start here. Has everybody had an opportunity to take		

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<p>9</p> <p>1 a look at the exhibit list?</p> <p>2 IN UNISON: Yes.</p> <p>3 HEARING EXAMINER BYRNE: Ms. Kosary, have you had</p> <p>4 an opportunity to take a look at the exhibit list?</p> <p>5 MS. KOSARY: Yes.</p> <p>6 HEARING EXAMINER BYRNE: Does anyone object to</p> <p>7 any of the exhibits before we start?</p> <p>8 MR. WALLACE: No objection, but there is one</p> <p>9 exhibit that I would like to have a chance to review before</p> <p>10 likely I begin the testimony of one of my witnesses.</p> <p>11 That's the exchange, Exhibit 35.</p> <p>12 HEARING EXAMINER BYRNE: Exhibit 35?</p> <p>13 MR. WALLACE: Yeah.</p> <p>14 HEARING EXAMINER BYRNE: All right. Is there any</p> <p>15 other issues regarding Exhibit 35? I mean other than</p> <p>16 Exhibit 35? If not I would like to go ahead and we will</p> <p>17 admit all of those exhibits now, that way again, we do a</p> <p>18 little housekeeping. We don't have to worry about what was</p> <p>19 admitted, what wasn't admitted. So no objection to any of</p> <p>20 them except for 35.</p> <p>21 (Exhibits 1 through 35 were admitted)</p> <p>22 HEARING EXAMINER BYRNE: When we get there, we</p> <p>23 will cross that bridge when we get there for 35. All</p> <p>24 right. At the end, closing statements, both parties will</p> <p>25 have an opportunity to make closing statements if they</p>	<p>11</p> <p>1 In addition, to be considerate of your time and if you are</p> <p>2 amenable, I will try to use more of a narrative form with</p> <p>3 my expert witnesses rather than a direct line of</p> <p>4 questioning except as necessary or you may deem necessary</p> <p>5 or I do. The Applicant and his team has put much effort</p> <p>6 and thought into the design of this community and has</p> <p>7 solicited feedback from community and agency staff. The</p> <p>8 Planning Board reviewed the application at its July 6th</p> <p>9 hearing and voted unanimously to recommend approval with</p> <p>10 the conditions proposed by technical staff. Technical</p> <p>11 staff also recommended approval. We are generally in</p> <p>12 agreement with technical staff's report as presented to the</p> <p>13 Board, the Planning Board. We are also in agreement with</p> <p>14 their conditions of approval in the Planning Board's</p> <p>15 recommendation letter. Along with these items and</p> <p>16 documents, plans and expert reports, the testimony you will</p> <p>17 hear today, the Applicant has satisfied his burden of proof</p> <p>18 and met all the requirements for the conditional use under</p> <p>19 the zoning ordinance and should be granted. With that, I</p> <p>20 would like to call my first witness.</p> <p>21 HEARING EXAMINER BYRNE: Okay, go ahead.</p> <p>22 MR. WALLACE: And that's Pat Byrne with CHI.</p> <p>23 Pat, do you want to maybe move a little closer? That's</p> <p>24 helpful. Thank you. If you could, please state your name</p> <p>25 and business address for the record.</p>
<p>10</p> <p>1 wish. Cross-examination is your time to ask questions</p> <p>2 about the witness. It's not your turn to testify.</p> <p>3 Approval of this application will be based on the criteria</p> <p>4 set forth in the zoning ordinance, 59.7.3.1. Please</p> <p>5 address all testimony to that particular criteria. Are</p> <p>6 there any preliminary matters that anyone would like to</p> <p>7 raise before we get started? All right. Without further</p> <p>8 ado, Mr. Wallace, if you would like to start.</p> <p>9 MR. WALLACE: Thank you. Again, good morning.</p> <p>10 My name is Scott Wallace with Miles & Stockbridge on behalf</p> <p>11 of the Applicant, Community Housing Initiatives. Just a</p> <p>12 few brief opening remarks. We are very pleased to present</p> <p>13 this conditional use application for an independent senior</p> <p>14 housing living community located on Overhill Road in</p> <p>15 Derwood. This community will provide approximately 130</p> <p>16 units of affordable housing for people at or below 65</p> <p>17 percent of AMI. I would like to introduce the Applicant's</p> <p>18 in the order I propose to call them as witnesses. Our</p> <p>19 first witness will be Pat Byrne, president of CHI. Second</p> <p>20 will be Josh Sloan, land planner with VIKA. Third will be</p> <p>21 Jason Evans, civil engineer with VIKA. Fourth will be Chip</p> <p>22 Keener, registered architect with Studio K Architecture.</p> <p>23 Fifth will be Dylan McAndrew, traffic engineer with Lenhart</p> <p>24 Traffic Consulting. And sixth will be Chris Bernobi who is</p> <p>25 virtual, an acoustical engineer with Kaufman Engineering.</p>	<p>12</p> <p>1 MR. BYRNE: My name is Patrick Byrne. Our</p> <p>2 business address is 1123 Homer Court in McLean, Virginia.</p> <p>3 MR. WALLACE: And please describe your role with</p> <p>4 Community Housing Initiative.</p> <p>5 MR. BYRNE: I'm the president of Community</p> <p>6 Housing and I've been developing senior housing for 12</p> <p>7 years and have had a career in general development.</p> <p>8 MR. WALLACE: And if you could, please describe</p> <p>9 in general terms the project. What type of senior</p> <p>10 community will it be? Expected ages of the residents and</p> <p>11 the unit mix?</p> <p>12 MR. BYRNE: So we are governed by HUD and CDA on</p> <p>13 age restrictions. So we are 62 and older. And it's -- the</p> <p>14 makeup will be of one-bedroom and two-bedroom units. So</p> <p>15 it's generally a highly amenitized building that is -- we</p> <p>16 feel competes with market-rate units. But of course we</p> <p>17 have the affordable component that is dictated with the</p> <p>18 project.</p> <p>19 MR. WALLACE: And can you describe the affordable</p> <p>20 component?</p> <p>21 MR. BYRNE: It's 60 percent of AMI and below, 100</p> <p>22 percent of the building.</p> <p>23 MR. WALLACE: And there is the age restriction</p> <p>24 that's required for 62 and older for the conditional use,</p> <p>25 plus the way your project is financed, but can you give us</p>

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<p>13</p> <p>1 a sense of the expected age of the residence based on 2 previous experience?</p> <p>3 MR. BYRNE: So although we are limited to 62 and 4 older, our typical tenant is north of 70 years old and we 5 have -- in other buildings we have tenants that are in 6 their 80s.</p> <p>7 MR. WALLACE: And can you describe the 8 operational features of the project including staffing, 9 deliveries, et cetera?</p> <p>10 MR. BYRNE: So on site we will have a property 11 manager, and assistant property manager, and a site porter. 12 And then off-site supporting our on-site team we have a 13 regional manager and then a whole team of marketing people, 14 leasing people. We third party manage with Habitat America 15 and they are very well known in the county, throughout 16 Maryland, and have a real sensitivity towards this type of 17 housing.</p> <p>18 MR. WALLACE: And what would the expected 19 deliveries and pickups that you have as a community?</p> <p>20 MR. BYRNE: There is -- we will receive 21 deliveries in every format, food, USP -- or UPS, FedEx, 22 medical supplies. We will have private garbage and 23 recycling pickup. So this building acts and feels no 24 different than a market rate building.</p> <p>25 MR. WALLACE: But do you have a central -- this</p>	<p>15</p> <p>1 the games rooms. We have a parlor library that is a 2 combination room that also has a computer station. Of 3 course we have an office and a reception area. We have a 4 separate mailroom, a separate package room. We have a 5 conference room. And the conference room can second as a 6 medical exam for inoculations. And then we have a very 7 large family gathering community room. And that's got a 8 copy station for people to come in and come down. And that 9 also includes a warming kitchen. The public area also is 10 set up as a party room because part of our activities, we 11 like to think of it as like a cruise ship. Our people on 12 site are planning things every day, every week so people 13 can pick and choose what activities they're going to do 14 both on and off-site, off-campus. Of course we have public 15 bathrooms. And then just as part of the mechanics we have 16 a compact room, maintenance room, trash rooms, electric 17 rooms. Of course these are elevator fed with stairwells. 18 And then we have our vestibule and lobby. On the exterior 19 we have garden areas that the residents, they are raised 20 gardens that the residents can use for their own purpose. 21 We have a continuous walking path that you will see later 22 so people can continue walking point-to-point. We have 23 patios and fire pits, grass area for family gatherings, a 24 dog wash and a dog run. And then we have a generator 25 that's enclosed.</p>
<p>14</p> <p>1 goes to another question I just want to get a little more 2 detail on. But is there a central kitchen or anything like 3 that?</p> <p>4 MR. BYRNE: Now, we have -- those not allowed by 5 HUD. The kitchens are in each apartment. We do have, as 6 part of our amenity package, we have warming kitchens for 7 family gatherings. But HUD does not allow centralized 8 kitchens. So there is no traffic related to that.</p> <p>9 MR. WALLACE: So the types of deliveries you 10 would have would be a typical FedEx type size truck, UPS, 11 Amazon, and things like that? But do you have deliveries, 12 large delivery trucks of tractor-trailers for food drop off 13 things like that?</p> <p>14 MR. BYRNE: No, this would be -- our deliveries 15 that we will receive at a building would be no different 16 than what you would receive at your house.</p> <p>17 MR. WALLACE: And we will have testimony later in 18 the hearing regarding the interior spaces through the 19 architect. Do you want to generally describe what amenity 20 features you have for your residents?</p> <p>21 MR. BYRNE: Just as an adjunct to the previous 22 question, we work on an eight hour shift, one eight hour 23 shift. And then we have a very well-planned security 24 system with cameras, alarms. So they are all tied in. But 25 on the interior we have an exercise room, project rooms for</p>	<p>16</p> <p>1 MR. WALLACE: And I meant to ask if you were 2 describing your experience with senior housing, do you have 3 any other senior housing projects you've developed in the 4 county?</p> <p>5 MR. BYRNE: We do. We have a project, Willow 6 Manor at Fairland. That's 121 units over in Silver Spring, 7 Maryland. And that we have three other projects that are 8 in the -- or two other projects, or three including this 9 that are in the pipeline. So we are very invested in 10 Montgomery County.</p> <p>11 MR. WALLACE: And for your Willow Manor project 12 at Fairland, does that also have an affordable component?</p> <p>13 MR. BYRNE: That does. That was set up as a 50- 14 50 affordable 50 market. And that is highly amenitized 15 size, 100 percent full all the time. We actually went to 16 the county and identified underutilized parking areas and 17 that's how we -- then we took it to the Council and they 18 liked the idea of it. And that's how -- and we responded 19 to the NRP and that's how we won that and were able to 20 build on that. So the 65 -- that particular project is a 21 65 year land lease with the county.</p> <p>22 MR. WALLACE: For this type of special exception 23 you're not required to show a need for it in the county. 24 But just generally assess the need for affordable senior 25 housing in the county.</p>

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5 (17 to 20)

<p>17</p> <p>1 MR. BYRNE: Well, I think it goes without saying, 2 and every councilperson, as part of their -- what they're 3 telling their people is that Montgomery County is arguably 4 maybe 30,000, 40,000 units short. Much of that, there is a 5 huge need for affordable housing. We like affordable 6 senior because it generates less traffic, less impact on 7 the schools. It allows people to age out of their house 8 and stay in the county, which we think is very important. 9 And it generally meets a need and they are always 100 10 percent full. So I think that the proof is in the pudding. 11 MR. WALLACE: Did you host any community 12 meetings, meetings with the community to discuss the 13 project? 14 MR. BYRNE: We did. We had two community 15 meetings. 16 MR. WALLACE: And the dates of those meetings? 17 MR. BYRNE: I don't have those right off the bat. 18 MR. WALLACE: And can you generally discuss how 19 those meetings were conducted and what kind of feedback you 20 got? 21 MR. BYRNE: I think they were generally well 22 received, no different than any other public hearing. 23 Typically everyone is in favor of affordable housing and 24 they have the general questions of what type of traffic 25 will this generate. And we always explain that this is</p>	<p>19</p> <p>1 HEARING EXAMINER BYRNE: So we have a new 2 exhibit? 3 MR. WALLACE: Right. 4 HEARING EXAMINER BYRNE: All right. So I think 5 this will be Exhibit 37 then. 6 (Exhibit 37 was marked for identification.) 7 MR. WALLACE: Yeah. Do you need a copy of this? 8 MS. KOSARY: Oh, sure. Thank you. 9 HEARING EXAMINER BYRNE: Thank you. 10 MR. WALLACE: And this is from the Shady Grove 11 Presbyterian Church located at 16911 Redland Road, Derwood. 12 In testimony later will show you exactly where that is in 13 relation to the property. Okay. Just a couple more 14 questions Mr. Byrne. Just based on your testimony and 15 familiarity with plans and reports submitted for this 16 community, do you believe the conditional use will be in 17 harmony with the character of the surrounding neighborhood? 18 MR. BYRNE: Oh, we do. 19 MR. WALLACE: And if the Hearing Examiner grants 20 approval of this application, is it your intention to 21 operate the improvements in the community in accordance 22 with the conditions and in full compliance with plans and 23 specifications that you have submitted? 24 MR. BYRNE: We will. 25 MR. WALLACE: No further questions for --</p>
<p>18</p> <p>1 much less traffic, much less impact on the community. Our 2 residents are healthier. It's not a nursing home or 3 special care. It is independent living. So it's just 4 people that are 62 and older. 5 MR. WALLACE: And then did you have a direct 6 conversation with Shady Grove Presbyterian Church 7 representatives regarding the project? 8 MR. BYRNE: We did. We have four projects that 9 we team with churches. As you might know, both the 10 District of Columbia and Prince George's County for 11 instance, where we were -- we rely heavily on churches to 12 provide affordable housing. So we have a natural rapport 13 with churches and we reach out to them because it's a way 14 we can get our residents into their building midweek which 15 they like to have activity. So they were very -- they are 16 very supportive of the project. 17 MR. WALLACE: And I would like to introduce into 18 the record a new exhibit. It's a letter of support which I 19 don't believe was sent directly to the -- 20 HEARING EXAMINER BYRNE: We received one this 21 morning. Was that -- 22 MR. WALLACE: I thought it was the same one. 23 It's a different one. 24 HEARING EXAMINER BYRNE: It is a different one? 25 MR. WALLACE: Yeah.</p>	<p>20</p> <p>1 HEARING EXAMINER BYRNE: Before we move on, is 2 there any objection to Exhibit 37 from anyone? Okay, if 3 not, it's admitted. I do have a couple of quick questions 4 for you Mr. Byrne. And just for clarification, Mr. Byrne 5 and I are not related. We do have the same last name. 6 This is the first that we've met today. You said you had 7 two community meetings. How well attended were they? Do 8 you recall? 9 MR. BYRNE: They were virtual and I think 10 everyone on the street which is -- I think there are only 11 about nine, plus or minus, residents on the street. And 12 then there were a couple of people that were from outside 13 of the immediate community. 14 HEARING EXAMINER BYRNE: And how are they 15 advertised? The community meetings. What was your 16 outreach? 17 MR. BYRNE: Oh, we reached out -- we personally 18 reached out to everyone in the community. 19 HEARING EXAMINER BYRNE: All right. So by 20 community, you mean -- like how broad which were circle 21 with your outreach? 22 MR. BYRNE: Well, we are required to reach out 23 to -- honestly, I don't remember the exact details, but we 24 did it via emails. 25 HEARING EXAMINER BYRNE: All right. So pursuant</p>

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6 (21 to 24)

<p>21</p> <p>1 to the code section were you reaching out to community 2 associations? 3 MR. BYRNE: All the associations, yeah. 4 HEARING EXAMINER BYRNE: Homeowners Association? 5 MR. BYRNE: Yeah. 6 HEARING EXAMINER BYRNE: And you reached out and 7 you did it via email and it was virtual? 8 MR. BYRNE: Yeah. So Mr. Wallace gave us a list 9 and we did it. 10 HEARING EXAMINER BYRNE: All right. 11 MR. WALLACE: And if I could just provide a 12 clarification. 13 HEARING EXAMINER BYRNE: Sure. 14 MR. BYRNE: So the initial meeting, which by my 15 date is January 2022, that was a voluntary meeting for -- I 16 believe before we filed this application just to get 17 community feedback. The second meeting which was January 18 2023, was the required pre-submission meeting for a 19 preliminary plan which is associated with this project and 20 we followed this conditional use application if it's 21 approved. And that one would have been notice in 22 accordance with requirements of the Planning Board which is 23 adjoining and confronting property owners. This is an odd 24 site because technically I think our only actual adjoining 25 is the state highway.</p>	<p>23</p> <p>1 planner. 2 MR. SLOAN: I guess I should sit over there for 3 now? 4 MR. WALLACE: Whichever you are more comfortable. 5 MR. SLOAN: I'll try this. 6 HEARING EXAMINER BYRNE: Sounds good. 7 MR. WALLACE: So Mr. Sloan, if you could state 8 your name, occupation, and business address for the record? 9 MR. SLOAN: It's Joshua Sloan and I'm a landscape 10 architect and land planner with VIKA Maryland. Our address 11 is 20251 Century Boulevard, Germantown, Maryland. 12 MR. WALLACE: And have you previously testified 13 before the Hearing Examiner in Montgomery County as an 14 expert? 15 MR. SLOAN: I have. 16 MR. WALLACE: And just approximately when was the 17 last time you did that? 18 MR. SLOAN: That would have been a rezoning 19 hearing. About two years ago was the last time. 20 MR. WALLACE: And what are your areas -- what 21 were you admitted as an expert in that case? 22 MR. SLOAN: Landscape architecture and planning. 23 MR. WALLACE: I'm happy to submit Mr. Sloan's 24 resume. I can voir dire him if need be. But otherwise I 25 would move to have him admitted as an expert. And as I</p>
<p>22</p> <p>1 HEARING EXAMINER BYRNE: The state highway? 2 MR. WALLACE: But we have course went further 3 than that, plus any registered community associations. 4 HEARING EXAMINER BYRNE: Okay, perfect. That was 5 me. That answers my question. I think that was -- I think 6 that was it. And Shady Grove Presbyterian Church, how 7 close is that to the site? 8 MR. WALLACE: They sit at the corner of Redmond 9 and Overhill. So it's -- we can -- when we have one of our 10 next witness can pointed out on the plan. 11 HEARING EXAMINER BYRNE: Okay, sounds good. 12 Thank you, very much. I have no additional questions. 13 MR. BYRNE: Okay, thank you. 14 MR. WALLACE: And did you want to offer cross- 15 examination? It's up to you. 16 HEARING EXAMINER BYRNE: Well, I just -- Ms. 17 Kosary, at this point. 18 MS. KOSARY: I've got nothing to ask him. 19 HEARING EXAMINER BYRNE: Okay, all right. So 20 after each witness I'll just check in with you to see if 21 you have any questions that you have for that particular 22 witness. 23 MS. KOSARY: Thank you. 24 HEARING EXAMINER BYRNE: Thank you. 25 MR. WALLACE: My next witness is Josh Sloan, land</p>	<p>24</p> <p>1 said, I have resumes. 2 HEARING EXAMINER BYRNE: That's fine. You can go 3 ahead and submit the resume. Ms. Kosary, do you have any 4 objection to him being an expert? 5 MS. KOSARY: No. 6 HEARING EXAMINER BYRNE: All right, thank you. 7 MR. WALLACE: Would you like a copy of his 8 resume? 9 MS. KOSARY: I have seen it. 10 HEARING EXAMINER BYRNE: All right. So we will 11 go ahead and just put it in for the record. Thank you. 12 And I will go ahead and admit Mr. Sloan as an expert in 13 landscape architecture and land planning. 14 MR. WALLACE: Thank you. And actually, this 15 might not be a bad time. If I could just take a minute to 16 take a look at the reference Exhibit 35. 17 HEARING EXAMINER BYRNE: Sure. Well, let's see. 18 Here we go. There it is. 19 MR. WALLACE: Thank you. 20 HEARING EXAMINER BYRNE: Okay. 21 MR. WALLACE: Mr. Sloan, are you familiar with 22 the property that is the subject of the conditional use 23 application and the surrounding area? 24 MR. SLOAN: I'm familiar with the property and 25 the area. I've visited the site.</p>

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7 (25 to 28)

<p>25</p> <p>1 MR. WALLACE: And are you familiar with the 2004 2 Upper Rock Creek Master Plan? 3 MR. SLOAN: I am. 4 MR. WALLACE: And you are familiar with the RE-1 5 zoning classification of the property and the requirements 6 for the zoning ordinance for this conditional use? 7 MR. SLOAN: Both the zoning standards and the 8 conditional use standards. 9 MR. WALLACE: And have you worked previously on 10 applications for conditional uses and special exceptions as 11 they were previously known? 12 MR. SLOAN: I have done several, yes. 13 MR. WALLACE: And did you prepare a land-use 14 report for the record? And was it submitted into the 15 record? 16 MR. SLOAN: It was. It was submitted as Exhibit 17 23. 18 MR. WALLACE: And using Exhibit 21, could you 19 please review the neighborhood that was determined for this 20 site? 21 MR. SLOAN: So would it be easier if I went up to 22 the board? 23 HEARING EXAMINER BYRNE: No, I think I'm good. 24 MR. SLOAN: I can describe it. So I'll 25 describe --</p>	<p>27</p> <p>1 The south of the property, we basically went down to some 2 property boundaries that are within an MNC, PBC park area 3 that roughly follow a stream valley. And then to the west 4 of the property our neighborhood consists of further 5 parkland properties and the church property that we spoke 6 of earlier that's on Redland Road. We submitted this in 7 staff concurred with our limits of the neighborhood. 8 MR. WALLACE: And using -- I think Exhibit 9 9 would be the best one. That's the existing conditions 10 plan. Could you please review the existing conditions on 11 the property? And actually, while you are there, do you 12 mind pointing out the location of the Presbyterian Church 13 if you know it? 14 MR. SLOAN: So our subject is in the center, near 15 center of the property in gray outline just across Overhill 16 is a large state highway parcel. On Overhill Road right- 17 of-way there is a property to our southeast, or southwest, 18 sorry, that is the church property. 19 HEARING EXAMINER BYRNE: Thank you. 20 MR. SLOAN: So if you don't mind if I stand up 21 while I -- 22 HEARING EXAMINER BYRNE: No, that's fine. 23 MR. SLOAN: It makes it easier to point things 24 out. So now I'm referring to Exhibit 9, which is the 25 existing features map. The property is within the center</p>
<p>26</p> <p>1 HEARING EXAMINER BYRNE: My eyeballs aren't what 2 they used to be. And when we are virtual I keep my glasses 3 on the whole time, but now I'm finding that that -- I may 4 have to go get glasses or bifocals or something, but go for 5 it. 6 MR. SLOAN: Yes, progressive trifocals, I highly 7 recommend them. 8 HEARING EXAMINER BYRNE: Oh Lord, okay. I guess 9 that's where I'm headed. 10 MR. SLOAN: So up on the board in the room for 11 those of you that are not there and for the record, is 12 Exhibit 21. That's the surrounding neighborhood plan. It 13 shows the subject site near the center of plan view with a 14 red outline. The red outline is the surrounding 15 neighborhood defined basically by the Intercounty 16 Connector, the ICC to the north, which really cuts off all 17 development from -- on the north side from this property in 18 terms of context. But that development area is single- 19 family housing, townhouses, and detached homes. We've 20 included the entire neighborhood to the east of us which is 21 the dead end of Overhill Road, which has several detached 22 houses, a couple of special exceptions, the Knights of 23 Columbus private club directly across Overhill Road from 24 the subject site to the east, and a cell tower which was 25 also a special exception, also to the east of the property.</p>	<p>28</p> <p>1 of the plan view. It's in a gray shade outline and a black 2 dash line. And then we have included an area about 300 3 feet around it to define the context of the site too that 4 is now outlined and it shows all of the legal property 5 identifications of property within that boundary. So the 6 site itself is currently occupied by several landscape 7 contractors. It is largely gravel paved with the various 8 trailers. There are bins for storage of mulch and gravel 9 and supplies. There are some large brush piles for -- that 10 I assume they have taken from their projects and bring back 11 to the site. There is a sort of storm water pond that's 12 not really taking much surface runoff, but that's in the 13 southern portion of the site. And then there are a lot of 14 really invasive, non-native species along the boundary of 15 the property. There are two entrances, one on the north 16 side of the east facing property line and one on the south 17 side of the east facing property line, both on Overhill 18 Road. There is a stream. There's actually a stream that 19 comes down to the south of the property and goes to a 20 culvert that runs under the state highway right-of-way to 21 an outfall. And that was all created by state highway when 22 they annexed or took a large portion of property to the 23 west and built the ICC. There is also a small spring to 24 the south of the southwest of the property and the spring 25 runs down to the stream. So that off-site area includes a</p>

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<p style="text-align: right;">29</p> <p>1 stream. The state highway parcel between the property and 2 the Overhill right-of-way is largely wooded and in decent 3 shape. The stream valley buffer that we identified and 4 staff concurred with runs onto the property and covers a 5 portion of the southern part of the property. It right now 6 is not protected. It's not forested. It has a lot of non- 7 native, invasive species and is largely impervious with 8 gravel and stockpiles of materials.</p> <p>9 MR. WALLACE: Can you describe -- and maybe you 10 already did. My apologies. But the topography?</p> <p>11 MR. SLOAN: The topography, so if I -- we ran a 12 section through the Intercounty Connector to the stream 13 valley basically. The Intercounty Connector is a little 14 bit higher than the property, but then there's a berm on 15 the northwestern portion of the property that shields us 16 and then it's closer to level on the northeastern portion. 17 Then it drops significantly from the property boundary on 18 the northwest to the southeast a good 40 to 50 feet 19 actually. And then significantly further down to the 20 stream valley buffer that's roughly even going east to west 21 across the property.</p> <p>22 MR. WALLACE: And then moving on to the proposed 23 project and using Exhibit 11. And actually I think we used 24 sheet 11-A or Exhibit 11-A. Exhibit 11-A has a cover sheet 25 conditional use plan.</p>	<p style="text-align: right;">31</p> <p>1 the state highway parcel and then there is further right- 2 of-way of Overhill Road. The ICC is to the top left of the 3 sheet. And this shows existing Overhill Road. We are 4 maintaining our northern entrance point for traffic to come 5 in. And we placed all of our parking field to the north of 6 the building between the building itself and the ICC.</p> <p>7 That's one, to protect the view of people on Overhill Road 8 to keep it more residential in character with our building 9 and landscape design on Overhill Road, and put the parking 10 to the side and behind the building. It also does a 11 significant job in pushing the building away from the ICC. 12 And distance as our noise consultant will probably speak to 13 in more detail is the best way to mitigate for noise.</p> <p>14 We've designed the site so that this parking actually sits 15 about an additional 10 feet below the berm to our north. 16 So we are cutting into the slope, creating a retaining 17 wall, and on top of that retaining wall we will have 18 screening plantings and fencing to further buffer noise 19 from the building. The building is L-shape. The front of 20 the building, it faces a drop off area for those -- for 21 deliveries and things that Mr. Byrne spoke of. It also has 22 our handicap spaces so that they have easy access to the 23 front door, and a couple of additional spaces. The 24 building is L-shaped. The long part of the L, if you will, 25 comes from the front area and heads to the west. That L-</p>
<p style="text-align: right;">30</p> <p>1 MR. SLOAN: So now we are looking at Exhibit 2 11-A. The cover sheet of a conditional use site plan. 3 This shows a local area map in the center of the plan view. 4 And it has the development standards, but the use standards 5 for the conditional use and the development standards for 6 the zone, the RE-1 zone and R-30 zone because of the way 7 the conditional use directs you to different standards for 8 applicability. And then it has notes and a sheet index. 9 Then I will turn to the actual conditional use plan.</p> <p>10 MR. WALLACE: And actually before we move off of 11 the development standards, are we meeting all requirements 12 of the RE-1 zone of this special exception? And are we 13 requesting any waivers relative to development standards?</p> <p>14 MR. SLOAN: We are meeting all of the standards 15 with which staff concurred in the Planning Board for the 16 development standards, the use standards, parking 17 standards, landscape and lighting standards. And we are 18 not requesting any waivers.</p> <p>19 MR. WALLACE: And we will provide additional 20 information about the standards.</p> <p>21 MR. SLOAN: So Exhibit 11-B is the conditional 22 use site plan, the plan view, our typical 30 scale drawing 23 of the site layout. To the -- this is oriented with north 24 to the top. So on the right side we have our Overhill Road 25 frontage. And then to the bottom left, the west side, is</p>	<p style="text-align: right;">32</p> <p>1 shaped creates a buffered backyard. That backyard is where 2 our amenity spaces are. Those include the patio, the dog 3 run, the community -- well, the community garden is a 4 little south of us, of the building. The outdoor kitchen 5 and seating areas, the lawn. And then to the south of the 6 building is where our stream valley buffer is. And our 7 stream valley buffer is going to be completely reforested 8 and cleaned up. And we've got basically a terrace across 9 the property for the parking and the building. And then we 10 slope back down. So there is a lot of cut on the north 11 side, a lot of fill on the south side. We have mitigated 12 our grading as much as possible so that we are only taking 13 up what we have to of the stream valley buffer to remove 14 soils that we are going through ground field remediation 15 through the MDA voluntary cleanup program. So that's going 16 to remove a lot of the hazardous material. And then the 17 non-native, invasive species will be removed and the stream 18 valley buffer will be replanted with a category one 19 conservation easement forest. And around the site itself 20 we are creating our parking lot and our building roof 21 primarily with storm water management facilities that our 22 civil engineer can talk about in more detail if we need to. 23 We have facilities to the west side and the south 24 basically, which is where our natural drainage patterns go. 25 Those stormwater facilities are all bioretention planters.</p>

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<p style="text-align: right;">33</p> <p>1 So water comes into the facility, it percolates through 2 levels of native plantings, soils, gravels, what not, into 3 under drains for any overflow. And that overflow is 4 connected to our swale that runs and connects to the stream 5 and then outfalls underneath Overhill Road to a culvert. 6 So significant water cleaning capacity and meeting our 7 stormwater target, our DPS, Department of Permitting 8 Services requirements. We have a second entrance that -- 9 off of Overhill Road. We moved the existing one up a 10 little bit closer to the existing intersection where 11 Overhill Road takes a right. And we rebuilt a culvert 12 underneath that driveway. 13 MR. WALLACE: Has the county Department of Fire 14 and Services, fire and rescue services reviewed the 15 internal circulation on-site and determined that it meets 16 the requirements of livable requirements? 17 MR. SLOAN: So we submitted our fire access plan 18 that we typically do. Originally this was going to have a 19 concurrent preliminary plan and the conditional use plan. 20 But those kind of got separated. So we submitted it. It 21 meets all prescriptive standards in terms of fire lane 22 width, right radii for turning movements. At this point 23 the location of the fire hydrant and water access, a 24 related fire hydrant for this site. But our final approval 25 will come with the preliminary plan.</p>	<p style="text-align: right;">35</p> <p>1 MR. WALLACE: And Mr. Sloan stole some of the 2 thunder of the civil engineer who will be testifying on 3 stormwater management, but he will be testifying on that as 4 well. 5 HEARING EXAMINER BYRNE: Oh good, thank you. 6 MR. WALLACE: If you could, you touched on some 7 of the environmental remediation and cleanup and 8 improvements made. Generally speaking, will the 9 environmental conditions of the natural features of the 10 stream valley buffer be improved through this project? 11 MR. SLOAN: They will be. We certainly have a 12 lot of existing impervious area, much of that running off 13 of gravel where trucks are stored, stockpiles are stored, 14 into the woodland and stream valley buffer right now that's 15 untreated. So meeting our target volumes, focusing on 16 runoff from the parking lot and the roof structures is key 17 to our strategy. We have received preliminary forest 18 conservation plan approval. And that did include a 19 variance for removal of some large trees. And just to 20 get -- going through the ground field remediation just to 21 get the hazardous materials out of there, we are going to 22 start with a loose ends of those trees and where they can't 23 work around them. Those will be taken down, but they will 24 be replaced at a prescribed rate with new mitigation trees 25 that are in addition to our forest conservation</p>
<p style="text-align: right;">34</p> <p>1 MR. WALLACE: Our team has alluded to it. This 2 will be followed they said by a preliminary plan to create 3 a lot that was meant to be moved concurrently, but it got 4 broken up by Department of Planning. So we will follow 5 this if this is approved with a preliminary plan. 6 MR. SLOAN: Correct. 7 MR. WALLACE: And there will be further review of 8 that and the public facilities. Some reviews are concluded 9 at the preliminary plan stage and not necessarily done now. 10 But we will be following with Preliminary Planning. 11 HEARING EXAMINER BYRNE: Have they given any kind 12 of indication of what the timeline looks like for that? 13 MR. WALLACE: I don't think we got clarity on 14 that, but it will -- 15 (Crosstalk) 16 MR. WALLACE: Since we've already had it filed 17 once it will quickly proceed. 18 HEARING EXAMINER BYRNE: Yeah, it's just it would 19 be great if it was concurrent, but I understand that's out 20 of -- 21 MR. SLOAN: We agree. 22 HEARING EXAMINER BYRNE: That's out of your 23 control. 24 MR. WALLACE: It is. 25 HEARING EXAMINER BYRNE: It is what it is, right.</p>	<p style="text-align: right;">36</p> <p>1 requirement. So our forest conservation is focused on the 2 stream valley buffer where we want significant forest land 3 to protect that area. The mitigation trees will be spread 4 throughout the property where they have ample soil volume 5 and no easements or other structures that will keep them 6 from growing to full potential and replace the ecological 7 value of the trees that we're taken down. So we've got our 8 water quality, air quality is really the basis of the tree 9 canopy and improving that. And then we've got the non- 10 native, invasive species removals. One thing that we don't 11 usually get to talk about but we do focus on, is that most 12 of our bioretention facilities because they have to be 13 planted, we plant those with a mix of the habitat providing 14 plantings focusing on pollinator and songbird requirements. 15 So we're hoping that that becomes a nice edge. And those 16 are all placed along the boundary of what's forested land. 17 So it's a really good transition between lawn, formal 18 garden areas and natural areas. 19 MR. WALLACE: And if I can ask, Mr. Sloan 20 mentioned that the Planning Board had already approved a 21 preliminary forest conservation plan as part as their 22 review of the special exception on July 6th that should be 23 in the record as Exhibit 30, unless Exhibit 30 is just 24 their letter of recommendation. Otherwise, I can submit it 25 if it is not in the record because I have a copy.</p>

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10 (37 to 40)

<p>37</p> <p>1 MR. SLOAN: I thought it was.</p> <p>2 MR. WALLACE: And it might be. I just want to</p> <p>3 make sure.</p> <p>4 HEARING EXAMINER BYRNE: I'll double check for</p> <p>5 you. One moment.</p> <p>6 MR. WALLACE: Yeah, I just figured this was a</p> <p>7 good time.</p> <p>8 HEARING EXAMINER BYRNE: It is.</p> <p>9 The cover letter -- the one I have as Exhibit 30</p> <p>10 is dated July 17th.</p> <p>11 MR. WALLACE: Is that just the letter of</p> <p>12 recommendation?</p> <p>13 HEARING EXAMINER BYRNE: It's just the outline.</p> <p>14 All I have is the letter. It is just a letter of</p> <p>15 recommendation.</p> <p>16 MR. WALLACE: Yeah, that's just --</p> <p>17 MR. SLOAN: Oh, not the approval letter for --</p> <p>18 MR. WALLACE: Well, just so that we are covering</p> <p>19 all the bases. I only have one copy though.</p> <p>20 HEARING EXAMINER BYRNE: We can make another</p> <p>21 copy.</p> <p>22 MR. WALLACE: So submitting into the record, the</p> <p>23 Planning Board's resolution approving the preliminary</p> <p>24 forest conservation plan project.</p> <p>25 HEARING EXAMINER BYRNE: I'll accept that.</p>	<p>39</p> <p>1 utility plan, correct?</p> <p>2 MR. SLOAN: Correct, Exhibit 10, utility plan.</p> <p>3 It's submitted with the conditional use plan. This is</p> <p>4 again, another plan view at 30 scale, same orientation and</p> <p>5 depiction of the plan at 30 scale in the center of the</p> <p>6 sheet showing the property. The utilities are in color,</p> <p>7 although kind of hard to see from a distance. I will</p> <p>8 describe them pretty quickly. There are existing water</p> <p>9 lines and sewer lines that go down Overhill Road within the</p> <p>10 right-of-way. We will be connecting to the water and sewer</p> <p>11 within the right-of-way. We already have a WSSC, a</p> <p>12 Washington Suburban Sanitary Commission letter of findings</p> <p>13 that we have capacity for water and sewer through our --</p> <p>14 what's called a hydraulic planning analysis, or HPA. The</p> <p>15 electric already serves the site. We'll be moving the</p> <p>16 electric and setting up our transformers for this property</p> <p>17 in the northeast corner off of our parking so that it's</p> <p>18 easily accessible for utility workers. So blue on this</p> <p>19 plan is our water connection. That's on the north of</p> <p>20 Overhill Road right-of-way. Our sewer connection is</p> <p>21 within -- is right off of that near the center of the</p> <p>22 building to the right-of-way. We have a new fire hydrant</p> <p>23 off of that water line and that puts the fire hydrant</p> <p>24 within the necessary distance for our fire access and</p> <p>25 safety for the building. The rest of the utilities are</p>
<p>38</p> <p>1 Ms. Kosary, any objection to that document coming</p> <p>2 in?</p> <p>3 MS. KOSARY: No.</p> <p>4 HEARING EXAMINER BYRNE: All right. We have as</p> <p>5 Exhibit 38 --</p> <p>6 (Exhibit 38 was marked for identification.)</p> <p>7 HEARING EXAMINER BYRNE: I will make copies of</p> <p>8 that. We will make copies when we have a break.</p> <p>9 MR. WALLACE: Now we would like to move on to</p> <p>10 utilities serving the site. I think that's where you want</p> <p>11 to go?</p> <p>12 MR. SLOAN: Yeah.</p> <p>13 HEARING EXAMINER BYRNE: I think the next time</p> <p>14 you come --</p> <p>15 MR. SLOAN: We will have the --</p> <p>16 HEARING EXAMINER BYRNE: Yeah. We'll get</p> <p>17 information out to people that will be able to use the</p> <p>18 screens rather than the easel. But the easel will still be</p> <p>19 here for those that still want to continue to use the</p> <p>20 easel.</p> <p>21 MR. WALLACE: Great.</p> <p>22 HEARING EXAMINER BYRNE: Thank you for being the</p> <p>23 guinea pig for that. Thank everyone for that.</p> <p>24 MR. SLOAN: So far so good.</p> <p>25 MR. WALLACE: So this is Exhibit 10. This is the</p>	<p>40</p> <p>1 basically a storm drain system. That storm drain system</p> <p>2 runs around each side of the building to the north and then</p> <p>3 down via south and from the west and around to the</p> <p>4 southeast. Those tie into a swale. That swale naturally</p> <p>5 runs to a stream, the stream valley buffer further to the</p> <p>6 site. And so that storm drain system is picking up all of</p> <p>7 our bioretention spots and any -- actually all of them. We</p> <p>8 don't have any -- I guess another thing kind of related to</p> <p>9 utilities and service is, as Mr. Byrne mentioned, we have a</p> <p>10 generator on site. We have placed that generator to the</p> <p>11 far northwest of the corner. And our trash and recycling</p> <p>12 bins, corrals, will be to the far northwest of the corner.</p> <p>13 So not visible from the Overhill and the Overhill spur that</p> <p>14 runs to the east.</p> <p>15 HEARING EXAMINER BYRNE: So trash pickup will</p> <p>16 come in, go to the parking lot and exit the corner?</p> <p>17 MR. SLOAN: Our trash pickup -- exactly. It will</p> <p>18 come in the north entrance. It will come to the end, it</p> <p>19 will be able to pick up, and then it can turn and run out</p> <p>20 without really any backing units either for noise. So that</p> <p>21 was a particular area that we wanted to focus on for noise</p> <p>22 and to make sure that it was compatible.</p> <p>23 MR. WALLACE: Did you mention the existing water</p> <p>24 and sewer categories for the site?</p> <p>25 MR. SLOAN: This is W1/S1.</p>

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11 (41 to 44)

<p>41</p> <p>1 MR. WALLACE: Yes. And so no water and sewer 2 category change is required for service? 3 MR. SLOAN: Correct. 4 MR. WALLACE: And I failed to -- or earlier Mr. 5 Sloan was discussing fire and access. There is a plan, 6 fire access plan in Exhibit 12 in the record. That's what 7 he has been referring to that was reviewed. So moving on 8 then to lighting. LE 1? 9 MR. SLOAN: Yeah. Yeah. 10 MR. WALLACE: Using the photometric plan that is 11 submitted into the record, just for clarity for now, this 12 is a sheet within Exhibit 33 I believe. So Mr. Sloan may 13 need to -- 14 HEARING EXAMINER BYRNE: Is it the photometric 15 lighting plan, 33-G? 16 MR. WALLACE: Yes, let me make sure that that's 17 the one that he can talk from because I don't know that it 18 really different from 11-B, but I just want to make sure. 19 MR. SLOAN: 33-B? 20 MR. WALLACE: 33-G is what we showed on the 21 exhibit list. That's sheet L500. 22 MR. SLOAN: Okay. So now we are looking at 23 Exhibit 33-G, the photometric lighting plan. Conditional 24 uses have specific requirements typically for lighting, 25 particularly ensuring that there is no off-site glare and</p>	<p>43</p> <p>1 of the eastern side along the property line we have 2 streetlights, and the streetlights of course cross the 3 property line and have a little higher footcandles. That 4 said, we are using what we call BUG rated pictures. So BUG 5 refers to the omission of backlight from a fixture, uplight 6 and glare. And we work with fixtures that are typically 7 called dark skies compliant so that they do not have any 8 uplight and don't bring light pollution up. And they won't 9 have any glare to any -- we don't have any residential 10 properties near us, but we wouldn't have an impact, and 11 backlight is minimized by those fixtures too. 12 MR. WALLACE: And so in your expert opinion, will 13 lighting comply with Article 5926 of the county zoning 14 ordinance? 15 MR. SLOAN: Yes, our lighting is compliant. 16 MR. WALLACE: Moving on to landscape. And again, 17 we're using amended Exhibit 33-G not to give a more -- 18 MR. SLOAN: Again, unless you have specific 19 questions about details of areas, I will just use the 20 overall landscape plan. 21 HEARING EXAMINER BYRNE: Okay. 22 MR. SLOAN: So I'm going to use 33-B. We have 23 additional exhibits that are enlargements of certain areas 24 if there are particular questions. I think this is enough 25 to describe the general landscape design. It doesn't show</p>
<p>42</p> <p>1 that the -- wherever we apply to residential zoning with 2 that residential LUD we have to have -- to be .0 3 footcandles, and footcandles is a measure of illumination 4 brightness on the ground. In this case we are completely 5 surrounded by rights-of-way and the state highway parcel 6 that was taken from this piece, the original platted 7 property. There is a -- this is a 1 inch equals 20 scale 8 plan. So it's focused a little bit more in detail so that 9 when you look at it closely you can read the footcandles 10 over the entire property. And the lighter the number or 11 the symbol, the lower the lighting level. And so what we 12 have done is we wanted to ensure that we were at about 13 zero. And we are at 0 footcandles within the stream valley 14 buffer. We don't have neighbors to worry about, but we 15 have wildlife to worry about. And as a landscape architect 16 we to try to keep like two levels where there are going to 17 be things like habitat. We are at 0 footcandles among our 18 western property boundary, along our northern property 19 boundary. Where we do have lighting that's a little bit 20 higher, it's along the streetscape which is where you want 21 your lighting so that people driving can see. 22 HEARING EXAMINER BYRNE: Tell me again, western 23 and northern footcandles? 24 MR. SLOAN: Western footcandles, zero. Northern 25 footcandles, zero until you get to the corner and the swath</p>	<p>44</p> <p>1 the plantings on them. We have those in the detailed 2 sheet, the detailed sheets. 33-B is the overall materials 3 planting plan. This again is a 20 scale plan. North is 4 roughly the top of the sheet. So I will describe the 5 general layout of things. We will have an entry area. 6 That entry area is largely paved against the building. And 7 except for a seating area for people waiting for an Uber or 8 their relatives to come by and visit will be all planted. 9 Their planting plan will have street trees and shrubs along 10 the front area. Our property or the façade around the 11 building will have a perimeter planting between the 12 sidewalk and the base of the building just to soften that 13 little bit like you see in a typical residential house 14 planting. As I said, the northside is at the parking lot. 15 The parking lot has ample and large, both pedestrian access 16 strips and a landscaping area so that we can meet the 17 requirements for our parking lot area landscape, both the 18 on ground back grade planting area and the tree canopy 19 requirement. So we meet both of our landscape standards 20 for the parking lot landscape. The western boundary of the 21 property is largely wooded and it slopes up to the north 22 and then it's roughly even in the middle of the site and it 23 slopes down in the south. We've got our dog run on the far 24 western border where it's post protected or most protects 25 the sound for the building. And we don't have any</p>

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12 (45 to 48)

<p style="text-align: right;">45</p> <p>1 neighbors that way. The central lawn area in the L shape 2 of the building and I described the area is a way off of a 3 back patio area. It has a grill, seating, fire pits. And 4 then we got some areas that we can do expanded games and 5 things depending on how the tenants want to use it. There 6 is a sidewalk that runs around the perimeter of the entire 7 building. And it also has an outside leg that runs to the 8 dog run so that people can get out and they can walk what 9 we call a circuit so that they don't just have to walk out 10 and back from one point to another. To the south of the 11 building is our community garden area and that will have 12 raised beds for people to plant vegetables, herbs, flowers. 13 And then to the south those will be natural plantings, 14 forest plantings within the stream valley buffer. 15 MR. WALLACE: And from your testimony and your 16 expert opinion, does the proposed landscaping satisfy the 17 parking, facility, and general landscaping requirements of 18 the zoning ordinance? 19 MR. SLOAN: Yes, it meets all of the standards. 20 MR. WALLACE: All right. Then I think we are 21 done reviewing the plans. Was there anything else you want 22 to advise? We are going to talk a little bit about the 23 Master Plan. 24 MR. SLOAN: I think that covers it, covers the 25 plan so far.</p>	<p style="text-align: right;">47</p> <p>1 several corridors that kind of run out on spokes on 495. 2 And then within or between those corridors are residential 3 areas. More recently the Thrive plan has been adopted. 4 And one of the things that the Thrive plan, which is now 5 our general plan that we look at, the Thrive plan noted in 6 pretty stark terms that that idea of wedges and corridors 7 with wedges being set aside for single-family detached 8 housing created significant inequities and also detracted 9 from the ability to provide housing for more people, and a 10 more diverse population, and an aging population. So one 11 of the things that we determine was, okay, first you have 12 the fact that we have a commercial property or a 13 residentially zoned property with commercial uses on it by 14 special exception, those are within the residential wedge 15 area of the plan. So the first thing to help it be in more 16 conformance is turn it to a residential use. Once you have 17 the residential use we looked more towards the Thrive plan. 18 And as Mr. Byrne noted we have an aging population, we have 19 a lack of housing generally, and we have a lack of 20 affordable housing in particular. So the residential use 21 was appropriate there and is compatible with the plan. And 22 the Master Plan itself does have some notations that are in 23 the land-use report about they knew that it was the need, 24 but they didn't know where to put it. This was a site that 25 wasn't really on their radar at that point and it seems</p>
<p style="text-align: right;">46</p> <p>1 MR. WALLACE: So as stated earlier, you prepared 2 a land-use planning report for the property. And that's in 3 the record and is exhibit -- 4 MR. SLOAN: 23. 5 MR. WALLACE: 23. And was that land-use report 6 adopted and accepted by technical staff with Park and 7 Planning? 8 MR. SLOAN: Yes. 9 MR. WALLACE: Please review your findings and 10 conclusions from the land-use report regarding substantial 11 conformance with the 2004 Upper Rock Creek Master Plan. 12 MR. SLOAN: Sure. So the 2004 Upper Rock Creek 13 Master Plan doesn't have any specific recommendations for 14 this site. And at that time we didn't know exactly where 15 the ICC right-of-way was going to be. So there are some 16 things that are kind of hard to judge based on the ICC 17 being put in on this -- right to the north of this 18 property. It changed the character of the neighborhood 19 significantly. That said, we did look at the general 20 recommendations of the Master Plan, specifically two 21 things. One, that this portion of the Master Plan was put 22 into what's called the residential -- one of the 23 residential wedges based on the general plan for the 24 county. And the general plan was, at that time, the wedges 25 and corridors plan which had intense development along</p>	<p style="text-align: right;">48</p> <p>1 like it's a very good site. So you got your residential 2 use, that responds to the wedges and corridors idea, but 3 then you've got the elderly and senior living and 4 affordable component that is more in line with the Thrive 5 plan general recommendations. And I think that's why staff 6 and the planning board both supported our determination 7 that this project was in conformance with the Master Plan. 8 MR. WALLACE: So again, your expert testimony 9 opinion is that the project is in potential conformance 10 with the Upper Rock -- 2004 Upper Rock Creek Master Plan 11 and also with more recent updates with the Thrive plan 12 which updated -- is the comprehensive updated general plan; 13 is that correct? 14 MR. SLOAN: Yes. 15 MR. WALLACE: Before I forget two items, this is 16 the affidavit of posting. And I just didn't want to get it 17 caught up in my mess here. 18 HEARING EXAMINER BYRNE: Right, understood. 19 MR. SLOAN: Each time I drive down the ICC I try 20 to look for that sign. But you go past it so fast. 21 HEARING EXAMINER BYRNE: All right. 22 MR. WALLACE: And I wanted to correct a statement 23 in the staff report for the -- the Planning Board staff 24 report that was taken from the Board. I don't know if 25 that's an item in the record. Yes. Oh well, no. Yes,</p>

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13 (49 to 52)

<p>49</p> <p>1 718. It's item 29, a record -- Exhibit 29 is the staff 2 report. 3 HEARING EXAMINER BYRNE: Yes. 4 MR. WALLACE: And on page -- I'm sorry. Bear 5 with me. 6 HEARING EXAMINER BYRNE: It's okay. 7 MR. WALLACE: Page -- 8 The statement I'm looking for is that the 9 property is in a special protection area and it's not. 10 HEARING EXAMINER BYRNE: Okay. 11 MR. WALLACE: And that's borne by -- 12 MR. SLOAN: Correct. 13 MR. WALLACE: Yeah. 14 MR. SLOAN: Do you want me to review the 15 environmental piece? 16 MR. WALLACE: Yes. Here it is. It's page 19. 17 And the reason that occurred to me is -- Mr. Sloan, also, 18 have you reviewed the environmental recommendations 19 regarding environmental preservation and the environmental 20 recommendations of the 2004 Master Plan? 21 MR. SLOAN: Yes. And if I remember right, the 22 special protection area for this Master Plan starts north 23 of Muncaster Mill Road, which is beyond the site. We are 24 not in a special protection area. But the general 25 recommendations for the Master Plan are to improve water</p>	<p>51</p> <p>1 HEARING EXAMINER BYRNE: Sometimes uses like this 2 evolve over time. So I'm presuming it dated back probably 3 well before the special exception was granted is my guess. 4 That's okay. I mean, just anecdotally -- 5 (Crosstalk) 6 HEARING EXAMINER BYRNE: You guys are probably 7 neighborhood people. You probably -- 8 MS. KOSARY: February 1970. 9 HEARING EXAMINER BYRNE: 1970, okay, thank you. 10 Just looking for that -- 11 MS. KOSARY: I wasn't going to (indiscernible) 12 and say it, but you asked. 13 HEARING EXAMINER BYRNE: I appreciate it. 14 (Crosstalk) 15 MR. WALLACE: Mr. Sloan, one of the required 16 findings for granting -- general requirements to grant a 17 special exception is that it will not cause undue harm to 18 the neighborhood as a result of non-inherent adverse 19 impacts alone. Can you describe the inherent and non- 20 inherent impacts of this site of this project? 21 MR. SLOAN: Yes, we -- I guess you don't have, 22 like, a piece law that does things, but over the time that 23 we are doing several of these over the years, we sort of 24 honed in on what we usually analyze as inherent impacts for 25 misuse. And those are and if things such as building</p>
<p>50</p> <p>1 and air quality. And going into some amount of detail 2 about the storm water protections that we're putting in, 3 the amount of tree canopy that we are adding to the site, 4 and also switching out non-native species for native 5 species, those are all approved for those -- to those 6 recommendations. The other is that the site is largely 7 impervious now. We didn't do an exact count of it but we 8 do know what it is afterwards and there is some kind of 9 gray areas that mulch and gravel that are not quantified. 10 This site will have 50 percent green area per the 11 requirements of the use. That green area though does 12 include sidewalks and patios. But we are at about 40 13 percent per storm water management report calculations of 14 pervious area which is significant and more pervious area 15 than is on the site now. And as to the conforming for 16 creating water quality in particular and also the more soil 17 that you have rather than paving, the more carbon 18 sequestration you have where the fines are captured as much 19 as possible. 20 HEARING EXAMINER BYRNE: I'm just curious. Do 21 you know how long the current use has been there? Does 22 anybody? 23 MR. SLOAN: The special exception was -- I think 24 I have the date of it. 25 MR. WALLACE: The management report?</p>	<p>52</p> <p>1 massing, just because you have those residential units. 2 The parking that is required to serve those residential 3 units, the trash service and transformers, generators, 4 things like that. The lighting that's required to make 5 this a safe environment both in the parking areas and in 6 the yard areas. And then the traffic that's generated by 7 the use. And I think this is the primary inhereents in the 8 past. And we made the conclusion, and staff concurred, 9 that those do not create any undue harm on the 10 neighborhood. Our neighborhood is really consistent with 11 the church, the Knights of Columbus the cell tower, and 12 then the houses further away from us. We did not find any 13 non-inherent adverse impacts with this proposed use the way 14 it is designed and laid out and staff and the board agreed. 15 MR. WALLACE: Okay, thank you. And specific use 16 standard for this conditional use is that it may be 17 permitted by the Hearing Examiner upon finding that the 18 site for the proposed facility has adequate accessibility 19 to our provides on-site, public transportation, medical 20 service, shopping areas, et cetera, the types of uses and 21 needs of the senior community. Can you describe the 22 project's accessibility to such of those services and 23 amenities? 24 MR. SLOAN: Yes. We -- 25 MR. WALLACE: Do you want to use the --</p>

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14 (53 to 56)

<p>53</p> <p>1 MR. SLOAN: Yeah. Shall we use --</p> <p>2 MR. WALLACE: And that's -- if you could refer to</p> <p>3 Exhibit --</p> <p>4 MR. SLOAN: Use the land use report? I think</p> <p>5 it's the best.</p> <p>6 MR. WALLACE: I think it's -- do you want to</p> <p>7 use -- the 4 mile vicinity map, that's what you want to</p> <p>8 use.</p> <p>9 MR. SLOAN: Yeah. That's within the land-use.</p> <p>10 MR. WALLACE: That's within the land-use, okay.</p> <p>11 So we are looking at page 4?</p> <p>12 HEARING EXAMINER BYRNE: Page 4, okay.</p> <p>13 MR. SLOAN: Page 4 in the land-use report.</p> <p>14 MR. SLOAN: Yes, thank you.</p> <p>15 MR. SLOAN: So the page 4 of the land-use report</p> <p>16 has a diagram figure that has a map, figure 3, labeled the</p> <p>17 greater vicinity map. The site is in the middle in a small</p> <p>18 red outline and we have two concentric circles showing a 1</p> <p>19 mile radius from the site and a 1.5 mile radius from the</p> <p>20 site. As Mr. Byrne discussed, these are independent living</p> <p>21 facilities. This is not assisted living or memory care.</p> <p>22 There are very few employees, only a couple on-site at a</p> <p>23 time. So many of these folks will have cars. But then</p> <p>24 again, many of them will take advantage of the numerous</p> <p>25 amenities that are on-site and visitors will be coming to</p>	<p>55</p> <p>1 identified them. They are already on the cover sheet for</p> <p>2 the site plan. They are also in the staff report. You</p> <p>3 documented that they are not asking for any special</p> <p>4 variances or waivers or anything and that the development</p> <p>5 standard meets the number of requirements of the code. So</p> <p>6 I will accept that. No need to walk through.</p> <p>7 MR. WALLACE: So with that I've got no further</p> <p>8 questions at this time for Mr. Sloan. I do reserve the</p> <p>9 right to the extent I have to, to call in my witnesses</p> <p>10 after for rebuttal purposes.</p> <p>11 HEARING EXAMINER BYRNE: Okay, fine. Ms. Kosary,</p> <p>12 do you have any questions?</p> <p>13 MS. KOSARY: Yes, I have a couple of questions.</p> <p>14 Mr. Sloan, you noted that Thrive 2050, well it might --</p> <p>15 HEARING EXAMINER BYRNE: We can't hear you.</p> <p>16 (Crosstalk)</p> <p>17 HEARING EXAMINER BYRNE: If you don't mind ma'am,</p> <p>18 if you could come forward, they are going to need you to</p> <p>19 speak into the microphone so that --</p> <p>20 (Crosstalk)</p> <p>21 HEARING EXAMINER BYRNE: I know I can hear you.</p> <p>22 (Crosstalk)</p> <p>23 COURT REPORTER: I can hear you, but it's not</p> <p>24 great on the microphone.</p> <p>25 (Crosstalk)</p>
<p>54</p> <p>1 them instead of vice versa. That said, there is a bus line</p> <p>2 on Overhill Road and we recognize that there is not a</p> <p>3 sidewalk to get there. The road, the way it is constructed</p> <p>4 to the required standards and as shown in our traffic</p> <p>5 statement, did not require it to be improved under the LATR</p> <p>6 guidelines will not have a sidewalk. So we expect most</p> <p>7 people to be driving a short distance to get to commercial</p> <p>8 centers and medical offices, and if necessary, even to the</p> <p>9 Metro. We have a significant commercial center up at the</p> <p>10 intersection of Redland Road and Muncaster Mill within a</p> <p>11 mile of the property. And then we start getting into the</p> <p>12 Shady Grove metro area between a mile and a mile and a half</p> <p>13 where there is, of course, the medical arts buildings.</p> <p>14 There are retail uses, restaurants. There is the metro and</p> <p>15 the bus line that's on Redland Road does go directly to</p> <p>16 that corridor.</p> <p>17 MR. WALLACE: So in your opinion, does the site</p> <p>18 have adequate accessibility to the types of services and</p> <p>19 uses that a senior community would need?</p> <p>20 MR. SLOAN: It does.</p> <p>21 MR. WALLACE: I realize we didn't get into the</p> <p>22 specific development standards like building heights,</p> <p>23 setbacks. We are happy to walk through them if you would</p> <p>24 like.</p> <p>25 HEARING EXAMINER BYRNE: No, that's fine. You've</p>	<p>56</p> <p>1 MR. WALLACE: Please walk around.</p> <p>2 MS. KOSARY: What?</p> <p>3 MR. WALLACE: Just walk around the --</p> <p>4 (Crosstalk)</p> <p>5 MR. WALLACE: Do you want to turn your microphone</p> <p>6 on or not? Otherwise --</p> <p>7 (Crosstalk)</p> <p>8 MS. KOSARY: Anything to help.</p> <p>9 HEARING EXAMINER BYRNE: Okay, you can hear?</p> <p>10 COURT REPORTER: Yeah.</p> <p>11 MS. KOSARY: You know that the Thrive 2050</p> <p>12 dropped the term residential wedge? Are you aware that</p> <p>13 they just replaced it with something called the limited</p> <p>14 growth area?</p> <p>15 MR. SLOAN: Correct.</p> <p>16 MS. KOSARY: Is this area -- is this property</p> <p>17 within the limited growth area?</p> <p>18 MR. SLOAN: It is.</p> <p>19 MS. KOSARY: Approximately how many dwelling</p> <p>20 units per acre are you proposing on this?</p> <p>21 MR. SLOAN: I want to make sure I -- so we have</p> <p>22 a -- we are proposing 130 units, and that is on 3.7 acres,</p> <p>23 3.78 acres. So that math is beyond what I can do.</p> <p>24 MR. WALLACE: That's a little over 34.</p> <p>25 MS. KOSARY: 34 to 35.</p>

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15 (57 to 60)

<p>57</p> <p>1 MR. WALLACE: 34.</p> <p>2 MS. KOSARY: Are you aware of any area within the</p> <p>3 Upper Rock Creek Master Plan where density is as high as 30</p> <p>4 or 34 -- 34 to 35 dwelling units per acre?</p> <p>5 MR. SLOAN: I have not looked for those</p> <p>6 properties.</p> <p>7 MS. KOSARY: So you don't know if there is</p> <p>8 anything that dense within this Master Plan?</p> <p>9 MR. SLOAN: Correct.</p> <p>10 MS. KOSARY: Granted, I realize that this is a</p> <p>11 conditional use because this property is RE-1. With the</p> <p>12 Hearing Examiner's finding that this could be approved.</p> <p>13 But are you aware -- are there any properties within the</p> <p>14 Upper Rock Creek Master Plan that are zoned for</p> <p>15 multifamily?</p> <p>16 MR. SLOAN: I have not looked beyond the context</p> <p>17 we were required to study for this for those properties.</p> <p>18 MS. KOSARY: And you are the accepted expert in</p> <p>19 land planning. You indicated that you are familiar with</p> <p>20 the Upper Rock Creek Master Plan.</p> <p>21 MR. SLOAN: Correct.</p> <p>22 MS. KOSARY: All Master Plans are built on a set</p> <p>23 of goals for framework. Can you tell me what the goals are</p> <p>24 for this particular Master Plan?</p> <p>25 MR. SLOAN: So we focus on a couple of specific</p>	<p>59</p> <p>1 project would provide a diverse range of housing choices</p> <p>2 and also promote social economic integration?</p> <p>3 MR. SLOAN: It is.</p> <p>4 MR. WALLACE: Thank you. No further questions on</p> <p>5 rebuttal at this time.</p> <p>6 HEARING EXAMINER BYRNE: Thank you.</p> <p>7 UNIDENTIFIED SPEAKER: You want to do the storm</p> <p>8 water?</p> <p>9 MR. WALLACE: Yes, that would be -- so my next</p> <p>10 expert or my next witnesses Mr. Jason Evans, civil engineer</p> <p>11 with VIKA. Could you please state your name and business</p> <p>12 address for the record?</p> <p>13 MR. EVANS: For the record, my name is Jason</p> <p>14 Evans. Business address is 20251, Century Boulevard, Suite</p> <p>15 400. That's in Germantown, Maryland 20874.</p> <p>16 MR. WALLACE: And just briefly explain your</p> <p>17 occupation, your areas of expertise, and whether you've</p> <p>18 previously qualified as an expert for the Hearing Examiner.</p> <p>19 MR. EVANS: As a civil engineer I assist in the</p> <p>20 site design, specifically utility design, storm water</p> <p>21 management, environmental concerns with sediment control.</p> <p>22 MR. WALLACE: And have you been admitted as an</p> <p>23 expert?</p> <p>24 MR. EVANS: I haven't.</p> <p>25 MR. WALLACE: With any different --</p>
<p>58</p> <p>1 ones, the general recommendations about land use and</p> <p>2 environmental in particular. I'll just refer back to my</p> <p>3 land-use report. We looked at the recommendations on the</p> <p>4 general planning policy of the wedges and corridors, pages</p> <p>5 11 through 12, and the environmental protection and</p> <p>6 restoration, also in 11 through 12, where the primary goals</p> <p>7 are listed out. Those are the areas that I've reviewed and</p> <p>8 testified to.</p> <p>9 MS. KOSARY: I don't think I have any further</p> <p>10 questions.</p> <p>11 HEARING EXAMINER BYRNE: Thank you, ma'am.</p> <p>12 MS. KOSARY: Thank you.</p> <p>13 HEARING EXAMINER BYRNE: Any rebuttal?</p> <p>14 MR. WALLACE: Just one. Mr. Sloan, this is page</p> <p>15 72 of the Thrive plan. Can you read what -- for limited</p> <p>16 growth areas, what it describes as the --</p> <p>17 MR. SLOAN: Yes. "The limited growth area," this</p> <p>18 is on page 27 of the Thrive -- and 72, sorry -- of the</p> <p>19 Thrive plan. "Limited growth area contains the mainly</p> <p>20 suburban residential communities where limited organic</p> <p>21 growth is envisioned to meet local needs for services,</p> <p>22 provide a diverse range of housing choices, and increase</p> <p>23 racial and socioeconomic integration to achieve complete</p> <p>24 communities."</p> <p>25 MR. WALLACE: And it is in your opinion that this</p>	<p>60</p> <p>1 MR. EVANS: I have not been.</p> <p>2 MR. WALLACE: Before any other bodies?</p> <p>3 MR. EVANS: I have not been.</p> <p>4 MR. WALLACE: Well hopefully this will be the</p> <p>5 first. We've submitted his resume into the record. I'm</p> <p>6 happy to voir dire him if necessary.</p> <p>7 HEARING EXAMINER BYRNE: Just a few quick voir</p> <p>8 dire would be great.</p> <p>9 MR. WALLACE: Okay, sure. How long have you been</p> <p>10 a practicing civil engineer?</p> <p>11 MR. EVANS: I received my professional</p> <p>12 engineering license in January --</p> <p>13 HEARING EXAMINER BYRNE: I'm going to stop you</p> <p>14 for one second. I just noticed that my microphone wasn't</p> <p>15 on either. So I turned it on. But now I feel like we're</p> <p>16 getting feedback from both microphones. I'm going to turn</p> <p>17 mine off. Can you hear me okay?</p> <p>18 COURT REPORTER: Yes.</p> <p>19 HEARING EXAMINER BYRNE: All right. There we go.</p> <p>20 Sorry about that.</p> <p>21 MR. EVANS: Sure. I obtained my professional</p> <p>22 engineering license in January 2010.</p> <p>23 MR. WALLACE: And can you please describe your</p> <p>24 educational background?</p> <p>25 MR. EVANS: I'm a graduate from Penn State</p>

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16 (61 to 64)

<p>61</p> <p>1 University in 2004 with a bachelor's of science degree in 2 civil engineering. 3 MR. WALLACE: And do you hold any certifications 4 related to your occupation? 5 MR. EVANS: Just the professional engineering 6 license that I mentioned previously. 7 MR. WALLACE: And other than VIKA, have you 8 worked with other firms? 9 MR. EVANS: Yes. Upon my graduation I worked 10 with another civil engineering firm in Rockville before 11 VIKA. So about 19 plus years. 12 MR. WALLACE: And you're generally familiar with 13 Montgomery County's regulations, zoning ordinance, forest 14 conservation, environmental storm water management, all of 15 the types of laws and regulations that would apply to 16 development? 17 MR. EVANS: Yes, yes I am. 18 MR. WALLACE: With that I would move him as an 19 expert in civil engineering. 20 HEARING EXAMINER BYRNE: I see a pretty long list 21 here of your professional experience working as an engineer 22 on a variety of projects throughout Maryland, and 23 specifically Montgomery County. Have you worked in any 24 other jurisdictions? Or primarily in Maryland? 25 MR. EVANS: Primarily -- my civil engineering</p>	<p>63</p> <p>1 plan for the project? 2 MR. EVANS: Yes, I prepared a concept storm water 3 management plan. 4 HEARING EXAMINER BYRNE: Sorry. And Ms. Kosary, 5 I didn't ask you. Did you object to the admission of -- 6 MS. KOSARY: He's an engineer. 7 HEARING EXAMINER BYRNE: You're good, all right. 8 Thank you. Sorry about that. Go ahead. 9 MR. EVANS: So yes, I had prepared a concept 10 storm water management plan as Mr. Sloan did. Stole my 11 thunder, as you say, it entails treating the impervious 12 area on the site which includes the parking lot and the 13 building through four separate micro bioretention 14 facilities which meet the county and state regulations for 15 storm water requirements. 16 MR. WALLACE: And are you aware of the current 17 storm water management facilities that serve the landscape 18 contract use? 19 MR. EVANS: Yeah, there is an existing storm 20 water, slash, I guess holding pond on the existing site. 21 The existing site -- from the existing site as Mr. Sloan 22 has mentioned as well, we are reducing the total impervious 23 on the site. 24 MR. WALLACE: And in your opinion, are the storm 25 water management facilities proposed for the project an</p>
<p>62</p> <p>1 license is a Maryland license, but I have also worked in 2 jurisdictions, the City of Rockville, the City of 3 Gaithersburg, and Prince George's County as well. 4 HEARING EXAMINER BYRNE: Okay, we will admit him. 5 MR. WALLACE: And then his resume will be the 6 next exhibit. 7 HEARING EXAMINER BYRNE: All right. Sounds good. 8 So then we will put in as Exhibit 39, Mr. Evans's resume. 9 (Exhibit 39 was marked for identification.) 10 MR. WALLACE: And Mr. Evans, you're familiar with 11 the property and the subject application? 12 MR. EVANS: Yes, I am familiar and I have visited 13 the site. 14 MR. WALLACE: And that you are familiar -- I 15 think you've already stated, but just to reiterate, the 16 general standards in the zoning ordinance for granting 17 conditional uses including independent living for seniors 18 as well as the storm water management requirements for 19 Montgomery County? 20 MR. EVANS: Yes, I am familiar with those 21 regulations. 22 MR. WALLACE: And we previously provided some 23 testimony regarding -- Mr. Sloan has, regarding storm water 24 management. But we will briefly have Mr. Evans talk as 25 well. Did you prepare a storm water management concept</p>	<p>64</p> <p>1 improvement over what's out there now? 2 MR. EVANS: Yes, this would bring the site up to 3 current regulations for storm water management 4 requirements. 5 HEARING EXAMINER BYRNE: And just verifying which 6 exhibit we are looking at right now. 7 MR. WALLACE: Oh, I'm sorry. It's Exhibit 13. 8 HEARING EXAMINER BYRNE: Okay, thank you. 9 MR. WALLACE: And that should be Exhibit 13 for 10 you. Yes, that's 13. 11 HEARING EXAMINER BYRNE: Yes. 12 MR. WALLACE: Then did VIKA also prepare a sight 13 distance analysis for the proposed driveway? 14 MR. EVANS: Yes, we prepared a sight distance. 15 Exhibit -- I'm not sure what exhibit that is. 16 MR. WALLACE: That is Exhibit 20, for the record. 17 HEARING EXAMINER BYRNE: Okay. 18 MR. WALLACE: And can you describe -- was that 19 analysis conducted under the applicable requirements for 20 Montgomery County? 21 MR. SLOAN: Can I look for that? 22 MR. WALLACE: Sure. 23 MR. SLOAN: Do I have the right one? 24 MR. WALLACE: And can you review for the hearing 25 examiner -- that's Exhibit 20.</p>

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17 (65 to 68)

<p>65</p> <p>1 MR. EVANS: So on Exhibit 20 is the sight 2 distance analysis for our access to the site. As Mr. Sloan 3 previously mentioned we have -- we are utilizing the 4 existing entrance on the northernmost -- on the plan you 5 have in front of you, it is on the left side. We are 6 utilizing the existing entrance to the site which meets 7 county regulations for sight distance requirements. The 8 secondary entrance to the south, or plan view to the right, 9 it also meets the county regulations for sight distance for 10 Overhill Road. Providing we get through this conditional 11 use and go to the preliminary plan, these documents will be 12 submitted to the Department of Transportation for them to 13 review and approval as well. 14 MR. WALLACE: I would note -- and I didn't mean 15 to sandbag you, but we had the late breaking email from Mr. 16 Beale to you -- 17 HEARING EXAMINER BYRNE: Correct. 18 MR. WALLACE: That showed Overhill as a tertiary. 19 HEARING EXAMINER BYRNE: Correct. 20 MR. WALLACE: Our site distance analysis was 21 based on Overhill as a secondary, but the required site 22 distance for a tertiary is that greater or less? 23 MR. EVANS: The requirement for tertiary is less 24 than the evaluation that we had conducted on the site for a 25 secondary.</p>	<p>67</p> <p>1 engineering perspective, with a conditional use be served 2 by adequate public facilities such as water, sewer, storm 3 drain, and storm water management? 4 MR. EVANS: Yes they will in my opinion. 5 MR. WALLACE: Thank you. 6 MS. KOSARY: Hi. I see mentioned that you are 7 responsible for the storm water management concept plan? 8 MR. EVANS: That is correct, yes. 9 MS. KOSARY: On July 24, DPS denied you for the 10 second time. So what's going on? What's the issue? 11 MR. EVANS: So in Montgomery County, the Water 12 Resources Division, when they review a plan, unless it is 13 approved they will deny it with comments to address 14 comments -- to address their review comments. 15 MS. KOSARY: So what are their comments? 16 MR. EVANS: I don't have the comments in front of 17 me to share with you at this moment. 18 HEARING EXAMINER BYRNE: I guess are they big or 19 little? 20 MR. EVANS: They are little. They could range 21 from notes, graphical concerns, labels. 22 MS. KOSARY: I've seen that really huge, like 23 involving million-dollar rebuilds and storm networks and 24 things like that, so. 25 HEARING EXAMINER BYRNE: Well, I guess quick</p>
<p>66</p> <p>1 MR. WALLACE: Right, so just clarification for 2 the record. 3 HEARING EXAMINER BYRNE: All right. No, I 4 appreciate that. 5 MR. WALLACE: And then so the -- we actually 6 exceed not only for a secondary, but for -- meet for a 7 secondary, but also necessary for a tertiary. And again, I 8 didn't mean to -- I just found out about that myself. 9 HEARING EXAMINER BYRNE: I mean, it was -- I was 10 looking at the plans, I was looking through some of the 11 exhibits that have come in and I realized that the staff 12 report didn't mention it at all. 13 MR. WALLACE: Yeah. 14 HEARING EXAMINER BYRNE: So I wanted to -- 15 because they are essentially our independent arm going in 16 to get their take on it. 17 MR. WALLACE: Right. And I appreciate that. I 18 have no further questions. 19 HEARING EXAMINER BYRNE: Ms. Kosary, do you have 20 any questions? 21 MS. KOSARY: Yes, I do. 22 HEARING EXAMINER BYRNE: Come on up then. 23 MR. WALLACE: I'm sorry. I do just have one 24 conclusory question. In your expert opinion, based on your 25 testimony, and the plans and documents from the civil</p>	<p>68</p> <p>1 question. So you've seen them, you have them, the comments 2 and review that -- from the rejection on 7/24? 3 MR. EVANS: I don't have it in front of me. 4 HEARING EXAMINER BYRNE: Okay, that's fine. But 5 you have them? 6 MR. EVANS: Yes. 7 HEARING EXAMINER BYRNE: Ms. Kosary, have you 8 seen them? 9 MS. KOSARY: No, I haven't. 10 HEARING EXAMINER BYRNE: No, you haven't. So 11 that -- so we don't know? 12 MR. EVANS: Yeah, we are actively working through 13 the county to address any comments in order to get a 14 concept approved, yes. 15 MS. KOSARY: And all I know is it's their second 16 denial. 17 HEARING EXAMINER BYRNE: Mr. Wallace, is there 18 anything you would like to address? 19 MR. WALLACE: Yes. Actually Ms. Kosary, could 20 you please stay up just in case? Because this is rebuttal. 21 HEARING EXAMINER BYRNE: Right. 22 MR. WALLACE: Is it typical to get comments and 23 rejection on initial one, two, three submissions of a storm 24 water management concept plan? 25 MR. EVANS: Yes, it is typical in the county to</p>

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18 (69 to 72)

<p>69</p> <p>1 go through as many as three or four review cycles with a 2 county reviewer before you get an approval. 3 MR. WALLACE: And when is it -- when are you 4 required to have a final concept plan approved? 5 MR. EVANS: Final concept plan approval is 6 required during preliminary plan process. 7 MR. WALLACE: And in your experience, do you have 8 any expectation that you won't get an approved storm water 9 management concept plan? 10 MR. EVANS: No, I believe the site and the 11 reduction of the pervious areas has left us plenty of areas 12 for bioretention to meet the requirements that the state 13 and the county require. 14 MR. WALLACE: Unlike some sites, is this 15 particularly a tight site for accommodating storm water 16 management? 17 MR. EVANS: No. This is, like I mentioned 18 earlier, there is a lot of green area to size these 19 bioretention facilities to make sure we meet the full state 20 and county requirements. 21 MR. WALLACE: No further questions. 22 MS. KOSARY: All right, thank you. I think it 23 remains to be seen. 24 HEARING EXAMINER BYRNE: Thank you, Ms. Kosary. 25 MR. WALLACE: No further questions for Mr. Evans.</p>	<p>71</p> <p>1 missed that. I apologize they are out of order. 2 (Exhibit 41 was marked for identification.) 3 MR. WALLACE: Did you want to see Mr. Keener's -- 4 Ms. Kosary, did you want to see Mr. Keener's resume? 5 MS. KOSARY: I'm sure it's acceptable. 6 MR. WALLACE: So if you could, how long have you 7 been an architect? 8 MR. KEENER: I've been registered since 2011, 9 been in the industry for over 26 years. 10 MR. WALLACE: And can you please describe your 11 educational background? 12 MR. KEENER: I earned two degrees from the 13 University of Pennsylvania, one in civil engineering 14 systems and the other in design of the environment. 15 MR. WALLACE: And could you please describe any 16 certifications you have related to -- 17 MR. KEENER: Yes, I'm a member of the American 18 Institute of Architects, certified by the National Council 19 of Registration Architectural Board, and accredited by 20 USGBC for LEAN. 21 MR. WALLACE: And to have -- other than Studio K, 22 have you worked with other firms? 23 MR. KEENER: Yes, I was at Griffith Park 24 Architects for 11 years. 25 MR. WALLACE: And on your resume you've got</p>
<p>70</p> <p>1 My next witness is Mr. Charles, Chip, Keener. 2 And we are going to use the new technology, exciting. So 3 just please restate your name, occupation, and business 4 address for the record. 5 MR. KEENER: My name is Charles Keener. I'm an 6 architect. My business address is in Glen Burney, 7 Maryland. I go professionally and socially as Chip Keener. 8 Everybody knows me as Chip Keener. 9 MR. WALLACE: And Mr. Keener, have you ever 10 testified before the Hearing Examiner in Montgomery County 11 as expert? 12 MR. KEENER: Not Montgomery County, no. 13 MR. WALLACE: Other jurisdictions? 14 MR. KEENER: Testified in other jurisdictions 15 many times, but not as an expert or been sworn as an expert 16 witness. 17 MR. WALLACE: I've got a resume for Mr. Keener 18 and I can do some voir dire. 19 HEARING EXAMINER BYRNE: Certainly. This will be 20 Exhibit 40. 21 (Exhibit 40 was marked for identification.) 22 COURT REPORTER: Yes. 23 HEARING EXAMINER BYRNE: And I realize that I did 24 not label Mr. Sloan's resume as an exhibit. So Mr. Sloan 25 will be exhibit -- his resume will be Exhibit 41. So I</p>	<p>72</p> <p>1 multiple projects that you worked on you to have you worked 2 on any projects in Montgomery County? 3 MR. KEENER: Yes. 4 MR. WALLACE: Does that include Willow Manor? 5 MR. KEENER: Yes. 6 MR. WALLACE: That was the project discussed and 7 that's also Mr. Byrne and CHI's project up in Fairland? 8 MR. KEENER: (No audible response). 9 MR. WALLACE: With that I would move to have his 10 resume submitted for the record but also qualified as an 11 expert in architecture. 12 HEARING EXAMINER BYRNE: Ms. Kosary, any 13 objection? 14 MS. KOSARY: No. 15 HEARING EXAMINER BYRNE: He is admitted. 16 MR. WALLACE: Okay, thank you. And are you 17 familiar, Mr. Keener, with the conditional use application 18 on the property and the requirements in the zoning 19 ordinance for conditional uses? 20 MR. KEENER: Yes. 21 MR. WALLACE: And then could you describe your 22 role with regard to the conditional use application? 23 MR. KEENER: We were retained to work with VIKA 24 the civil engineer to provide a building layout that fits 25 with the density requirements, the department requirements,</p>

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19 (73 to 76)

<p>73</p> <p>1 everything and -- based on that site plan. So we designed 2 the building floor plans and elevations for this process. 3 MR. WALLACE: And the elevations, conceptual 4 elevations are part of Exhibit 32. And let's start with 5 Exhibit 32-A. Would you like to review the exterior 6 elevations, the concept form? 7 MR. KEENER: Yeah, the exhibit here -- and can 8 you see that from your angle? 9 HEARING EXAMINER BYRNE: I can see. I can turn 10 run a look at it too. It's all good. 11 MR. KEENER: So these are the conceptual 12 elevations. And the site is removed from any established 13 neighborhood or specific architectural style. And the 14 location and the size having 120 to 130 apartments, five- 15 story building, we thought that something -- an urban style 16 with some federal detailing or vocabulary would fit this 17 location. This use of the materials would be materials 18 that are familiar and residential styles of architecture, 19 lap siding, clay masonry veneer, fiber cement panels that 20 are similar to the stucco finish. And the building itself, 21 we buried the height of the masonry. We articulate the 22 façades and it conveys -- we have breaks of the roofline. 23 We have -- the fenestration is more than required by code. 24 It's comfortable, but not uncomfortable for residents to 25 live in a residential environment. The roof -- we</p>	<p>75</p> <p>1 and active. And so in the central -- in the core of the 2 building you have -- 3 MR. WALLACE: And I'll just interrupt. Yes, it's 4 difficult to see what -- or maybe at least you're having 5 difficulty seeing. 6 HEARING EXAMINER BYRNE: Is the -- 7 MR. KEENER: Can I see it? 8 HEARING EXAMINER BYRNE: Where are you saying 9 central is? 10 MR. KEENER: So here if -- 11 HEARING EXAMINER BYRNE: Yes, okay, I see. 12 MR. KEENER: So this location. This is the main 13 entrance on the east façade. This is the main entrance of 14 the building, the street façade. 15 HEARING EXAMINER BYRNE: So is more of the street 16 facing side? 17 MR. KEENER: Yes, the street façade, right, 18 exactly. And when you into the building you immediately 19 see all of your community space, the amenities space, you 20 have a partner with a fireplace where you can sit and have 21 conversation. You have ahead of you a large gathering 22 area. You can see it later on in the enlarged plan here. 23 You have a large gathering, a community gathering area for 24 events. You have a fitness room. We often have fitness 25 rooms, yoga rooms. We have computer stations and game</p>
<p>74</p> <p>1 maintained a flat roof on this one specifically because it 2 was already going to be about 50 feet tall. We didn't want 3 it to be too monolithic. So with a flat roof we will be 4 able to hide the condensers up on the roof so that you 5 don't have giant condenser farms around the building. And 6 that's about it for the façades. 7 MR. WALLACE: With the façade and building design 8 and masking, was the design concept to maintain a 9 residential appearance in compatibility with the 10 neighborhood taking into account the types of uses around 11 there which include open space institutions, some single- 12 family residential houses? 13 MR. KEENER: Exactly. We wanted it to feel 14 residential to blend into any community that's in the 15 transition of suburban and urban environment, yes. 16 MR. WALLACE: And then let's take a look at the 17 floor plans and just to give a sense of some spaces inside. 18 We've heard some of the testimony already from Mr. Byrne 19 about this as to what the amenities will be, but just 20 generally walk through the floor plans. 21 MR. KEENER: Sure. So the building is laid out 22 right now with 120 apartments. And I know that we've been 23 discussing 120 to 130, but these are the preliminary floor 24 plans. And when you into the building we know that it's an 25 aged population, but we want to encourage them to be social</p>	<p>76</p> <p>1 rooms. And in this case there are package rooms because 2 people get a lot of packages. The mailroom is all -- 3 everything is here so that people will want to or will need 4 to come to this location to be social and interact with the 5 other residents in the building. And you have your 6 administrative areas where the office and the reception and 7 you can approach the management team that's on-site during 8 business hours. And then outside of the assembly space 9 you've got the elevators that we've already discussed. 10 That's an elevator building that is going to be fully fair 11 housing compliant, fully accessible for residents as they 12 age in place when they need walkers and wheelchairs. And 13 outside of that, the rest of it is residential. It's all 14 R-2 and it meets the requirements of HUD and CBA for the 15 minimum size of apartments, circulation space, and those 16 typical requirements which you have in affordable housing. 17 MR. WALLACE: Then just to restate your expert 18 opinion from an architectural perspective, will the 19 proposed project and conditional use be architecturally 20 compatible with, and in harmony with the surrounding -- 21 character of the surrounding community? And it will not 22 alter the character of this running community? 23 MR. KEENER: Correct. 24 MR. WALLACE: And that's all the questions I have 25 for Mr. Keener.</p>

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20 (77 to 80)

77	79
<p>1 HEARING EXAMINER BYRNE: Thank you. Ms. Kosary, 2 do you have any questions? 3 MS. KOSARY: No questions. 4 HEARING EXAMINER BYRNE: Thank you, very much. 5 MR. WALLACE: My next witness will be Dylan 6 McDermott. And I -- 7 And I didn't mean to call you Mr. McDermott. 8 It's Mr. McAndrew. Dylan McDermott is a person, right? 9 He's an actor? 10 MR. MCANDREW: Maybe. 11 MR. WALLACE: That's right, okay. 12 HEARING EXAMINER BYRNE: It's quite an honor. 13 MR. WALLACE: I knew I was getting something 14 wrong. 15 MR. MCANDREW: I didn't hear you. 16 MR. WALLACE: That's okay. Mr. McAndrew, Dylan 17 McAndrew. Please state your name and business address for 18 the record. 19 MR. MCANDREW: Yeah, thank you. Good morning. 20 Dylan McAndrew with Lenhart Traffic Consulting. We are in 21 Severna Park, Maryland at 645 Baltimore Annapolis 22 Boulevard, Suite 214. 23 MR. WALLACE: And have you ever previously 24 testified by a Hearing Examiner in Montgomery County as an 25 expert?</p>	<p>1 school was at STB Inc., which is also in Maryland. I was 2 there for four years, which included a one-year rotation, 3 if you will, with Baltimore City through a contract that we 4 had with them. Since, I've been at Lenhart for just over 5 six years now and that included a 15 month summer placement 6 to the Baltimore City where I was at the State Highway 7 Administration District 5 in Annapolis. 8 MR. WALLACE: And are you familiar with 9 Montgomery County's regulations and laws as they pertain to 10 development and traffic requirements and transportation 11 engineering requirements? 12 MR. MCANDREW: Yes. 13 MR. WALLACE: And that includes the subdivision 14 regulations, LATR guidelines, zoning ordinances, et cetera? 15 MR. MCANDREW: Correct. 16 MR. WALLACE: And have you worked on other 17 projects in Montgomery County? 18 MR. MCANDREW: I have. 19 MR. WALLACE: And it just a couple that you want 20 to mention? 21 MR. MCANDREW: Sure. So as stated, my first 22 position we had contracted through Montgomery County for, 23 it had on a needs basis improvements for various 24 transportation facilities and included lighting 25 improvements, intersection improvements, supplying design</p>
78	80
<p>1 MR. MCANDREW: No, I have not. 2 MR. WALLACE: Some voir dire. I'm going to 3 submit that and Mr. McAndrew's resume. 4 HEARING EXAMINER BYRNE: Thank you. This will be 5 Exhibit 42. 6 (Exhibit 42 was marked for identification.) 7 MR. WALLACE: And would you like to see Mr. 8 McAndrew's resume? 9 MS. KOSARY: Thanks. 10 MR. WALLACE: So how long have you been a 11 practicing traffic engineer? 12 MR. MCANDREW: Just over 10 years. 13 MR. WALLACE: Can you please describe your 14 educational background? 15 MR. MCANDREW: Sure. I got my bachelors of 16 science from Penn State in 2012 in civil engineering with a 17 transportation focus. 18 MR. WALLACE: Do you have any certifications 19 related to your occupation? 20 MR. MCANDREW: Yeah, I have my professional 21 engineering license for the state of Maryland. I obtained 22 that in 2017. 23 MR. WALLACE: And other than Lenhart Traffic, 24 have you worked with other firms? 25 MR. MCANDREW: Yeah, my first position out of</p>	<p>1 improvements et cetera. 2 MR. WALLACE: Then I moved Mr. McAndrew's resume 3 into the record and also that he be admitted as an expert. 4 HEARING EXAMINER BYRNE: Have you testified 5 before any other forums similar to the one that we are here 6 before like the Board of Appeals or any other jurisdiction? 7 MR. MCANDREW: Sure. Not as an expert. I've 8 been on one other planning hearing, Planning Commission 9 hearing. 10 HEARING EXAMINER BYRNE: In Montgomery -- 11 MR. MCANDREW: Not in Montgomery County, no. 12 HEARING EXAMINER BYRNE: Not in Montgomery 13 County, okay. 14 MR. MCANDREW: Yeah. 15 HEARING EXAMINER BYRNE: Ms. Kosary? 16 MS. KOSARY: No questions. 17 HEARING EXAMINER BYRNE: Okay, admitted. 18 MR. WALLACE: Thank you. And then did Lenhart 19 Consulting prepare a traffic impact statement summarizing 20 or for the project and anticipated person and trip 21 generations? 22 MR. MCANDREW: We did. And considering the net 23 trip generation for the site, the site is projected to 24 generate less than 50 peak hour person trips and therefore 25 is excluded from a full transportation adequacy analysis</p>

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21 (81 to 84)

<p>81</p> <p>1 for the LATR guidelines.</p> <p>2 MR. WALLACE: And you're moving a little faster</p> <p>3 than me. So that traffic impact statement is in the record</p> <p>4 as --</p> <p>5 HEARING EXAMINER BYRNE: Is that Exhibit 8?</p> <p>6 MR. WALLACE: Yeah, as Exhibit 8. So that's the</p> <p>7 traffic impact statement as Exhibit 8. Now you can proceed</p> <p>8 with describing what were the conclusions of that report.</p> <p>9 MR. MCANDREW: Sure. Just as I said, the LATR</p> <p>10 guidelines set forth minimum peak hour person trips</p> <p>11 threshold for when a full transportation adequacy analysis</p> <p>12 is required. In this case the net trip generation for the</p> <p>13 site is less than 50 peak hour person trips for both a.m.</p> <p>14 and p.m. peak hours and therefore all that's required is a</p> <p>15 traffic statement which has been -- which you have before</p> <p>16 you.</p> <p>17 MR. WALLACE: Can you explain why there is a net</p> <p>18 accounting for traffic?</p> <p>19 MR. MCANDREW: Yeah. So obviously the proposed</p> <p>20 site will -- which we analyze at 130 senior housing units</p> <p>21 will generate traffic. We also credit the existing traffic</p> <p>22 for the site associated with the contractors that currently</p> <p>23 are there. We pulled SDOT for the property to determine</p> <p>24 the square footage of 1339 square feet for those</p> <p>25 contractors currently on site, ran a trip generation for</p>	<p>83</p> <p>1 projecting additional traffic than what that indicates.</p> <p>2 MR. WALLACE: Okay. And then, just one</p> <p>3 clarification for the hearing examiner's the benefit. If</p> <p>4 you look at the Planning Board staff report that references</p> <p>5 a traffic study that was done for the site by Lenhart.</p> <p>6 That showed greater than 50 within the p.m. peak hour per</p> <p>7 person trips greater than 51 but that study did not take</p> <p>8 into account a net out existing trips which is why the</p> <p>9 traffic impact statement which was submitted into the</p> <p>10 record that does take into account the existing trips and</p> <p>11 that's why -- how it leads to a statement of the loads</p> <p>12 required for an LATR.</p> <p>13 HEARING EXAMINER BYRNE: Can you reference me to</p> <p>14 the page --</p> <p>15 MR. WALLACE: Yeah. Page 60. So when we go in</p> <p>16 with our preliminary plan we'll use a traffic impact</p> <p>17 statement, which we expected to be accepted by Planning.</p> <p>18 HEARING EXAMINER BYRNE: Okay. Because I guess</p> <p>19 what you're telling me right now is in looking for it it</p> <p>20 shows trips as 51?</p> <p>21 MR. WALLACE: It doesn't out existing trips.</p> <p>22 HEARING EXAMINER BYRNE: Okay.</p> <p>23 MR. WALLACE: The conclusions of that report,</p> <p>24 just for your benefit can you just -- the conclusions of</p> <p>25 the LATR study that was done?</p>
<p>82</p> <p>1 that use and deducted that from the new trips that the</p> <p>2 senior housing facility will be adding. And that results</p> <p>3 in less than 50 peak hour person trips.</p> <p>4 MR. WALLACE: And so that was based on</p> <p>5 determining the existing traffic generation was based on</p> <p>6 the SDOT records, that's an industry accepted methodology?</p> <p>7 MR. MCANDREW: Yes, that's what we always use.</p> <p>8 MR. WALLACE: Based on -- did you also review</p> <p>9 other sources of information about the existing use?</p> <p>10 MR. MCANDREW: Yes. We -- so SDOT records is</p> <p>11 kind of our official source, we take a look at just their</p> <p>12 aerial imagery for the site, and then as I mentioned, SDOT</p> <p>13 indicates just over 1500 square feet and looking at that</p> <p>14 imagery we calculated closer to 1600 square feet of kind of</p> <p>15 developed space that they utilize, whether it's storage for</p> <p>16 the vehicles, offices, or what have you. And so when we up</p> <p>17 to the square footage that, obviously, results in an</p> <p>18 increase in existing trips that we would dissipate the site</p> <p>19 to generate. And so when we subtract that from the</p> <p>20 proposed facility it also still falls below that 50 peak</p> <p>21 hours per person trip threshold.</p> <p>22 MR. WALLACE: So it using either calculation --</p> <p>23 MR. MCANDREW: Exactly. The conservative method</p> <p>24 of using SDOT records being -- but I would be willing to go</p> <p>25 additional traffic than what we would go with. But we were</p>	<p>84</p> <p>1 MR. MCANDREW: Yeah. In a nutshell the full LATR</p> <p>2 studied that we ran includes vehicular, pedestrian, bicycle</p> <p>3 and transit analysis and for the scope that would be</p> <p>4 dictated by the LATR if it did exceed the present hour trip</p> <p>5 threshold, we did not identify any improvements off-site</p> <p>6 that would be required as part of this development.</p> <p>7 MR. WALLACE: And again, I think the hearing</p> <p>8 examiner is aware that with a preliminary plan to follow</p> <p>9 the APF will finally be determined by the planning board at</p> <p>10 that time. So this is our information in the record as far</p> <p>11 as trip generation.</p> <p>12 HEARING EXAMINER BYRNE: Okay.</p> <p>13 THE WITNESS: Okay.</p> <p>14 MR. WALLACE: I have no further questions for Mr.</p> <p>15 McAndrews.</p> <p>16 HEARING EXAMINER BYRNE: I think Ms. Kosary is on</p> <p>17 her way up.</p> <p>18 MS. KOSARY: You did no other analysis beyond</p> <p>19 what's required by the LATR, correct?</p> <p>20 MR. MCANDREW: That is correct.</p> <p>21 MS. KOSARY: You're looking at just peak hours</p> <p>22 and things like that, nothing outside of peak hours,</p> <p>23 nothing in terms of total traffic generated, even though</p> <p>24 LAT -- the software that you use could actually give you</p> <p>25 that number?</p>

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22 (85 to 88)

<p>85</p> <p>1 MR. MCANDREW: Yes, we have the ability to 2 determine daily traffic but that's not what the LATR guides 3 suggest. 4 MS. KOSARY: You just did what's required? 5 MR. MCANDREW: Correct. 6 MS. KOSARY: Okay. 7 MR. WALLACE: No further questions that I have 8 for Mr. McAndrew. 9 HEARING EXAMINER BYRNE: Okay. 10 MR. WALLACE: And the final witness is a virtual 11 witness. 12 HEARING EXAMINER BYRNE: Okay. This will be fun. 13 MR. WALLACE: It is relative fun. 14 NICOLE: And that is, guest, correct? 15 HEARING EXAMINER BYRNE: Okay. I'm going to 16 check in with my court reporter right now because it looks 17 like he wants to ask -- 18 MR. WALLACE: I believe it's Chris Barnobi. 19 NICOLE: Okay. 20 MR. WALLACE: Yeah, Gus Williams is part of that. 21 HEARING EXAMINER BYRNE: Do you need a break? 22 COURT REPORTER: Yeah, if we could take a break 23 for just a minute. 24 HEARING EXAMINER BYRNE: Okay. All right, we're 25 going to take a five minute break if that's okay with</p>	<p>87</p> <p>1 MR. BARNOBI: No. No, I have not. 2 MR. WALLACE: And I think the answer is yes 3 because you're responding, but you can hear me okay, 4 correct? 5 MR. BARNOBI: Yes, I can hear it just fine. It 6 may be difficult to hear on this phone again. 7 MR. WALLACE: Okay. So we don't have a resume 8 for Mr. Barnobi, but we can go through voir dire. 9 HEARING EXAMINER BYRNE: That would be great. 10 Thank you. 11 MR. WALLACE: How long have you been an 12 acoustical engineer? 13 MR. BARNOBI: Yes, I've been practicing in 14 different forms of civil engineering for 15 years. 15 MR. WALLACE: Okay. And can you please describe 16 your educational background? 17 MR. BARNOBI: Sure. I have both a bachelor's and 18 a Masters degree in mechanical engineering. My Masters is 19 from Virginia Tech, and the focus of that mechanical 20 engineering Masters was noise control research. 21 MR. WALLACE: Okay. And do you have any 22 certifications related to your occupation? 23 MR. BARNOBI: Yes, I do. I am board certified in 24 the Institute of Noise Control Engineers. That 25 certification is similar to a professional engineering</p>
<p>86</p> <p>1 everyone to make sure that the audio is set up. 2 MR. WALLACE: Okay. 3 HEARING EXAMINER BYRNE: Okay. 4 HEARING EXAMINER BYRNE: All right. We're off 5 the record. 6 (A recess was taken.) 7 HEARING EXAMINER BYRNE: Okay. We're back on the 8 record. Mr. Wallace? 9 MR. WALLACE: Thank you. So my next witness is 10 Christopher Barnobi. Mr. Barnobi is an acoustical engineer 11 with Kaufman & Harris. 12 Mr. Barnobi, could you please state your name and 13 occupation and business record -- business address for the 14 record? 15 MR. BARNOBI: Yes. My name is Christopher 16 Barnobi. I'm an acoustical engineer, with Kaufman and 17 Harris. Our local offices located at 8171 Maple Lawn 18 Boulevard, number 320, in Fulton, Maryland 2059. 19 MR. WALLACE: Thank you. To be clear, are you 20 located -- where are you located? 21 MR. BARNOBI: I'm not in the office, I'm in 22 Brooklyn, California at the moment. 23 MR. WALLACE: Thank you. So have you ever 24 testified before the hearing examiner of Montgomery County 25 in noise engineering?, Acoustical engineering?</p>	<p>88</p> <p>1 license, and is generally recognized nationally and 2 internationally as people with strong backgrounds and 3 experience to work in noise control engineering. 4 MR. WALLACE: Are you a -- I'm sorry. Go ahead. 5 MR. BARNOBI: Similarly, I also have an 6 acoustical engineering license from the State of Oregon. 7 They are one of the very few states that actually has a 8 specialty in acoustical engineering that they provide. So 9 that's it. 10 MR. WALLACE: Okay. Are you a member of any 11 professional associations? 12 MR. BARNOBI: Yes. I'm also a member of the 13 Institute of Acoustical Engineers, the Acoustical Society 14 of America is another professional acoustical society that 15 I've given presentations for and attended conferences, and 16 helps share background trends in acoustical and noise 17 control engineering. 18 MR. WALLACE: Thank you. And have you ever 19 testified previously for anybody for acoustical 20 engineering? 21 MR. BARNOBI: Yes. I have testified in other 22 jurisdictions. Most recently, I've testified in a similar 23 situations for locations in western Washington state. 24 MR. WALLACE: Okay. And are you generally 25 familiar with Montgomery County's noise regulations in the</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 County code and noise guidelines?</p> <p>2 MR. BARNOBI: Yes.</p> <p>3 MR. WALLACE: So I would move to have Mr. Barnobi</p> <p>4 admitted as an expert in acoustical engineering and noise</p> <p>5 consulting.</p> <p>6 MR. WALLACE: Okay. Just one quick question, Mr.</p> <p>7 Barnobi. Approximately how many times did you say you have</p> <p>8 appeared before either a court or an administrative body to</p> <p>9 testify regarding acoustics? Just a rough estimate.</p> <p>10 MR. BARNOBI: I'm sorry could you repeat that,</p> <p>11 please?</p> <p>12 HEARING EXAMINER BYRNE: Oh, absolutely. When --</p> <p>13 MR. WALLACE: You may want to turn yours on.</p> <p>14 HEARING EXAMINER BYRNE: Oh, yeah. Let's -- can</p> <p>15 you hear me now?</p> <p>16 MR. BARNOBI: Yes, I can hear you.</p> <p>17 HEARING EXAMINER BYRNE: Okay. Give me an</p> <p>18 approximate number of the number of times that you've</p> <p>19 appeared before any other administrative forum or judicial</p> <p>20 body to testify regarding acoustical engineering, not</p> <p>21 necessarily -- it doesn't have to be as an expert, but how</p> <p>22 often would you say you have testified? Or how many times?</p> <p>23 MR. BARNOBI: Sure. I would say in the last 2 to</p> <p>24 5 years there have been two particular instances. Beyond</p> <p>25 five years ago, I was acting more as an assistant in</p>	<p style="text-align: right;">91</p> <p>1 MR. BARNOBI: Yes. In combination with Jess</p> <p>2 Campbell who's with me here. He conducted a preliminary</p> <p>3 analysis and calculations and modeling and I reviewed that</p> <p>4 work and assure the quality, yes.</p> <p>5 MR. WALLACE: Okay. And noise analysis is in the</p> <p>6 record as Exhibit 32-A. Could you please describe the</p> <p>7 methodology and results of the study in terms of existing</p> <p>8 noise levels?</p> <p>9 MR. BARNOBI: Sure. When we were given a report</p> <p>10 of noise measures, noise measurements of that were</p> <p>11 confirmed by Ryan Sullivan of Sullivan environment</p> <p>12 consulting, we reviewed those and -- to check on the values</p> <p>13 we were given to be sure they made sense. And then we were</p> <p>14 able to use those for our modeling for the traffic noise of</p> <p>15 the project.</p> <p>16 MR. WALLACE: Okay. And what was determined to</p> <p>17 be the existing ambient noise levels?</p> <p>18 MR. BARNOBI: You mean a quantifiable level?</p> <p>19 MR. WALLACE: Yes.</p> <p>20 MR. BARNOBI: Give me one second. So from May</p> <p>21 2023 the noise measurements that we reviewed showed daytime</p> <p>22 average noise levels to be between about 52 to 57 dBA in</p> <p>23 the property vicinity. I think most of these measurements</p> <p>24 are on the property itself. The nighttime average noise</p> <p>25 levels range from about 49 dBA to about 53 dBA.</p>
<p style="text-align: right;">90</p> <p>1 situations where another engineer might have been in front</p> <p>2 of bodies like this testifying. So a handful to 10, 20,</p> <p>3 just kind of a rough number of the different times I've</p> <p>4 been a part of presentation and testimony like this.</p> <p>5 HEARING EXAMINER BYRNE: Okay. Thank you very</p> <p>6 much.</p> <p>7 MR. WALLACE: Admitted?</p> <p>8 HEARING EXAMINER BYRNE: Admitted.</p> <p>9 MR. WALLACE: Okay. Thank you.</p> <p>10 HEARING EXAMINER BYRNE: Ms. Koser, anything?</p> <p>11 Okay.</p> <p>12 MR. WALLACE: Okay. Mr. Barnobi, are you</p> <p>13 familiar with the conditional use application of the</p> <p>14 project on the subject property that's the subject of this</p> <p>15 hearing?</p> <p>16 MR. BARNOBI: Yes, I am.</p> <p>17 MR. WALLACE: Okay. And again, you just stated</p> <p>18 your familiar with Montgomery County Code chapter 31-B, the</p> <p>19 noise ordinance and the 1983 Montgomery County Planning</p> <p>20 Board guidelines for consideration of transportation noise</p> <p>21 impacts?</p> <p>22 MR. BARNOBI: Yes I -- the second document you</p> <p>23 listed was provided to us as part of this analysis.</p> <p>24 MR. WALLACE: Great. And did you perform a noise</p> <p>25 study on the property?</p>	<p style="text-align: right;">92</p> <p>1 MR. WALLACE: And giving the existing ambient</p> <p>2 noise levels and what you know about the intended project</p> <p>3 layout and construction, will the interior and exterior</p> <p>4 spaces proposed meet applicable noise standards?</p> <p>5 MR. BARNOBI: Yes. That's our analysis, that's</p> <p>6 correct.</p> <p>7 MR. WALLACE: Okay. And again, that's stated in</p> <p>8 the study that's been put into the record.</p> <p>9 And have you reviewed any projections for traffic</p> <p>10 on the ICC in the future?</p> <p>11 MR. BARNOBI: That's correct. We provided 20 --</p> <p>12 present-day 20 year projected noise levels by the traffic</p> <p>13 consultant who spoke before myself.</p> <p>14 MR. WALLACE: Okay. and based on these</p> <p>15 projections did you evaluate noise levels at the property</p> <p>16 over the next 20 years?</p> <p>17 MR. BARNOBI: We did.</p> <p>18 MR. WALLACE: And can you -- given those</p> <p>19 projected future ambient noise levels, again, knowing what</p> <p>20 you know about the project will be interior and exterior</p> <p>21 spaces proposed meet applicable noise standards?</p> <p>22 MR. BARNOBI: They will, yes.</p> <p>23 MR. WALLACE: Okay. And then, with regard to the</p> <p>24 project as proposed, in your opinion will it -- will the</p> <p>25 project cause any undue harm to abutting and comporting</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 properties in terms of noise generation?</p> <p>2 MR. BARNOBI: I -- we may want to ask somebody</p> <p>3 else that because that kind of pivoted to (indiscernible)</p> <p>4 (01:57:08) team, I believe.</p> <p>5 MR. WALLACE: That's fine. Then that's all the</p> <p>6 questions I have for Mr. Barnobi.</p> <p>7 HEARING EXAMINER BYRNE: Okay. Ms. Koser, do you</p> <p>8 have any questions?</p> <p>9 Okay. Thank you, sir.</p> <p>10 MR. WALLACE: I think Mr. -- with regard to the</p> <p>11 questions that exist -- the proposed application and uses I</p> <p>12 think that's -- I can bring Mr. Sloan back to describe</p> <p>13 whether any of the operations would cause noise levels</p> <p>14 above what some --</p> <p>15 HEARING EXAMINER BYRNE: If you'd like to do that</p> <p>16 now we can do that now.</p> <p>17 MR. WALLACE: That's fine.</p> <p>18 HEARING EXAMINER BYRNE: Okay. Mr. Barnobi, just</p> <p>19 hang tight for a minute. We'll keep you here, and then</p> <p>20 when we take a break, we'll regroup a little bit.</p> <p>21 MR. WALLACE: Mr. Sloan, in reviewing the plan</p> <p>22 for the proposed project, the expected sources of noise</p> <p>23 upon the building, can you draw any conclusions as to</p> <p>24 whether any objectionable noises would be generated, that</p> <p>25 are not typically associated with the building like this,</p>	<p style="text-align: right;">95</p> <p>1 knowledge of the 1983 noise and guidelines, when are</p> <p>2 interior and exterior noise levels tested, particularly</p> <p>3 when you're in a sensitive area because of transportation</p> <p>4 facilities in the vicinity? Do you know when those are</p> <p>5 particularly tested?</p> <p>6 MR. BARNOBI: When it is adjusted, or are you</p> <p>7 skewed about measurements, or an analysis in involving --</p> <p>8 MR. WALLACE: When is a determination made that</p> <p>9 the interior and exterior spaces meet the required noise</p> <p>10 levels?</p> <p>11 MR. BARNOBI: I don't know exactly when, but I</p> <p>12 would say that our analysis covers this and shows that the</p> <p>13 interior and exterior spaces meets this analysis.</p> <p>14 MR. WALLACE: Okay. And maybe just to refresh</p> <p>15 your recollection, if I can point you to page 10 of the</p> <p>16 1983 guidelines. And section 2.2.3. Do you have that in</p> <p>17 front of you?</p> <p>18 MR. BARNOBI: Yes, I see that. Give me one</p> <p>19 moment.</p> <p>20 MR. WALLACE: Sure. Okay do you have that and</p> <p>21 front of you?</p> <p>22 MR. BARNOBI: Yes. What I see here is that the</p> <p>23 interior guidelines for residential areas and other noise</p> <p>24 sensitive land uses. So if a waiver of exterior noise</p> <p>25 guidelines is granted, the interior guidelines of 45 dBa</p>
<p style="text-align: right;">94</p> <p>1 and also, given the requirements for noise generation under</p> <p>2 the County's noise ordinance?</p> <p>3 MR. SLOAN: Right. We regard the noise impacts</p> <p>4 from the use itself on the surrounding neighborhood as an</p> <p>5 inherent impact, and we designed the building specifically,</p> <p>6 as I noted earlier, with trash and the generators to the</p> <p>7 far end of the property so that noise levels would not be</p> <p>8 adversely -- would not adversely affect any of the</p> <p>9 surrounding neighborhood. And then, in the other kinds of</p> <p>10 things that are typically related to any residential</p> <p>11 property with landscape crews, leaf blowers, and things</p> <p>12 like that, they have to meet the standards for the County</p> <p>13 Code for noise.</p> <p>14 MR. WALLACE: Okay. And to the best of your</p> <p>15 knowledge with the County Do is Ordinance, and that's in</p> <p>16 force on an as needed basis when there's a claimed or</p> <p>17 violation, there's an inspection and an instrumentation?</p> <p>18 MR. BARNOBI: Correct.</p> <p>19 MR. WALLACE: So it's not a certification prior</p> <p>20 to the building construction?</p> <p>21 MR. WALLACE: No. Okay.</p> <p>22 Okay. Actually I do have another question for</p> <p>23 Mr. Barnobi.</p> <p>24 HEARING EXAMINER BYRNE: Okay. Certainly.</p> <p>25 MR. WALLACE: Mr. Barnobi, just can you -- your</p>	<p style="text-align: right;">96</p> <p>1 lbn, which is the day/night level will be used prior to the</p> <p>2 approval of the building permits there shall be a</p> <p>3 certification by a professional engineer, like myself, with</p> <p>4 a competency in acoustical analysis that the building shall</p> <p>5 attenuate exterior noise levels to an interior level not to</p> <p>6 exceed 45 dBa lbn. In addition, a written commitment</p> <p>7 signed by the builder shall be submitted ensuring</p> <p>8 construction of the units in accordance with the engineer's</p> <p>9 specifications.</p> <p>10 MR WALLACE: So thank you. So based previous</p> <p>11 experience with other projects, we expect that to be a</p> <p>12 requirement we would have to comply with.</p> <p>13 HEARING EXAMINER BYRNE: Okay.</p> <p>14 MR. WALLACE: That's all that I have for Mr.</p> <p>15 Barnobi.</p> <p>16 HEARING EXAMINER BYRNE: Okay. Ms. Kosary any</p> <p>17 questions for either one of these witnesses?</p> <p>18 MS. KOSARY: No questions.</p> <p>19 HEARING EXAMINER BYRNE: Thank you.</p> <p>20 MR. WALLACE:</p> <p>21 That's all I have. Except again, for rebuttal</p> <p>22 and bringing anyone back. Actually, are you --</p> <p>23 MR. EVANS: I do have some of the tolerances I</p> <p>24 might give more detail of.</p> <p>25 MR. WALLACE: We were able, in this time, to</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 review the comments that were mentioned earlier by Ms. 2 Kosary regarding water management concept plan. 3 HEARING EXAMINER BYRNE: All right. 4 MR. WALLACE: I mean, if you desire us to. 5 MR. EVANS: I mean just to get a broader -- 6 HEARING EXAMINER BYRNE: I think everybody would 7 like to know. 8 MR. WALLACE: Okay. 9 HEARING EXAMINER BYRNE: So that would be awesome 10 if you would like to recall him and -- 11 MR. WALLACE: Sure. I can recall him. 12 HEARING EXAMINER BYRNE: And then, we'll see 13 where that leads for Ms. Kosary's cross. 14 MR. WALLACE: Okay. So Mr. Evans, did you have a 15 chance to review the comments that were referred to earlier 16 from the Department of Permitting Services on the concept 17 storm water management plan? 18 MR. EVANS: Yes, I have a copy of the July 7 19 comments received by the County on the concept storm 20 water -- 21 MR. WALLACE: And can you provide a summary of 22 what those comments are? 23 MR. MCANDREW: Yes, that are superficial for the 24 most part. They are asking for additional information 25 geotechnical information on the side adding Park and</p>	<p style="text-align: right;">99</p> <p>1 MS. KOSARY: Can we have about a 10 minute break? 2 HEARING EXAMINER BYRNE: Absolutely. 3 MS. KOSARY: Do you want to do it now? 4 HEARING EXAMINER BYRNE: Yeah, I'll tell you 5 what, let's take a 10 minute break, will have Nicole do the 6 update at the same time. And if 10 minutes turns into 15 7 minutes, so be it. So let's go ahead and take that 10 8 minute break. And were off the record. 9 (A recess was taken.) 10 HEARING EXAMINER BYRNE: We have Ms. Kosary here 11 for the opposition. If you can state your full name and 12 spell everything out for the court reporter. 13 MS. KOSARY: Okay. I'm Carol Kosary, that's 14 C-A-R-O-L without an E. Kosary is K-O-S-A-R-Y. and I 15 reside at 7416 Needwood, that's N-E-E-E-W-O-O-D, him Road 16 in the upper rock Creek Master Plan area, for almost 27 17 years. For disclosure's sake, I am president of the 18 Greater Shady Road Civic Alliance, and a member of the 19 Shady Grove Executive Plan Implementation Advisory 20 Committee. 21 I am here solely as a resident of the area and my 22 testimony does not represent the views of any organization 23 to which I may be affiliated, I'm just speaking as a 24 resident. 25 The necessary findings for the approval or denial</p>
<p style="text-align: right;">98</p> <p>1 Planning number on the plans, leaving a bank space for 2 their approval, and adding labels for contours and slopes 3 on the site, just additional information to support the 4 plan. 5 MR. WALLACE: Would you characterize these 6 comments as not substantive? 7 MR. MCANDREW: That is correct, they are not 8 substantive. And we will continue to work through the 9 counties workgroup. 10 MR. WALLACE: And again, do you expect that at 11 some point in time DPS will approve your concept storm 12 water management? 13 MR. MCANDREW: Yes. I expect for preliminary 14 plan we will definitely have approval on the concept storm 15 water. 16 MR. WALLACE: And again, that's when it's 17 required? 18 MR. MCANDREW: When it is required, right. 19 HEARING EXAMINER BYRNE: Ms. Kosary? 20 MS. KOSARY: No questions. 21 HEARING EXAMINER BYRNE: Okay. Thank you. So 22 that concludes your -- 23 MR. WALLACE: Case in chief, yes. 24 HEARING EXAMINER BYRNE: Case in chief. All 25 right. Let's see. Is everybody okay? Ms. Kosary?</p>	<p style="text-align: right;">100</p> <p>1 of a conditional use application are covered in Section 2 59.7.3.1.E of the Montgomery county zoning ordinance. 3 There are several areas where I think the argument can be 4 made for the denial of this conditional use application. 5 Section 59.7.3.1.E.1.C of the necessary findings states 6 that a conditional use application must conform with the 7 recommendations of the applicable Master Plan. Section 8 59.7.3.1.E.1.d states that the conditional use must be 9 harmonious with and did not alter the character of the 10 surrounding neighborhood in a manner consistent with the 11 plan. 16998 Overhill Road is in the 2004 Upper Rock Creek 12 2004 Master Plan. And I noticed that you actually do not 13 have a copy of the Master Plan in the record. 14 HEARING EXAMINER BYRNE: We do not. 15 MS. KOSARY: I'd like to -- 16 HEARING EXAMINER BYRNE: Sure. 17 MS. KOSARY: How do we do this without, like, 18 spilling the water and things like that? 19 HEARING EXAMINER BYRNE: Well -- 20 MS. KOSARY: Or I can -- 21 HEARING EXAMINER BYRNE: Thank you. Appreciate 22 it. 23 MS. KOSARY: Or tripping over wires or -- 24 HEARING EXAMINER BYRNE: Okay. So we'll go ahead 25 and put this copy of the plan -- it is something that I can</p>

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26 (101 to 104)

<p>101</p> <p>1 take judicial notice of and that I can refer to, but will 2 put the hard copy in the plan. 3 MS. KOSARY: Okay. 4 HEARING EXAMINER BYRNE: So this will be Exhibit 5 43. Okay. 6 MS. KOSARY: Okay. The Master Plan area 7 encompasses the upper reaches and headwaters of Rock Creek, 8 which is a tributary of the Potomac River. 60 percent of 9 the Upper Rock Creek watershed lies within the Master Plan 10 area, with the remainder consisting of the Northwest branch 11 lies within the Onley Master Plan. The main streams and 12 their tributaries within this watershed in the upper Rock 13 Creek Master Plan area are all state of Maryland, 14 Department of the environment designated use class 3, or 4. 15 Both non-titled cold water habitats, but the difference 16 between the two being use class 3 will support growth and 17 propagation of trout while use class 4 will support adult 18 trout. 19 Almost immediately past the southern boundary of 20 this Master Plan south of Maryland 28, Rock Creek and its 21 watershed deteriorate to a use class level 1, suitable for 22 water recreation, but incapable of supporting cold water 23 habitat. Preservation of the Upper Rock Creek headwaters 24 has been a county policy since 1956. With the extension of 25 Rock Creek Park which was first established by Congress</p>	<p>103</p> <p>1 2050, also refers to the residential wedge as the limited 2 growth areas. Thrive 2050 also recognizes that due to 3 environmental challenges of climate change our planning 4 framework must focus on sustainability and resilience, 5 reinforcing the environmental emphasis of the earlier 1964, 6 and 1993 plans. The Upper Rock Creek Master Plan remains 7 consistent with the environmental goals of Thrive; managing 8 development to protect the Upper Rock Creek watershed and 9 its stream valleys has been a land planning goal in 10 Montgomery County for almost 7 decades. 11 I'd like to refer to what you have as Exhibit 12 31-J. It's actually just page 2 of the Master Plan. And 13 the only reason why I'm referring to it is just that it 14 illustrates the extent of the protected watersheds within 15 the Master Plan area. Just note that all the hatched areas 16 are stream Valley parks and Rock Creek Region Park. I 17 think it makes up, like, over 25 percent of the entire 18 Master Plan area that we're talking about. 19 HEARING EXAMINER BYRNE: All right. Let me get 20 there, one second. Okay. 21 MS. KOSARY: And this is, to my knowledge, the 22 only Master Plan that we've got in Montgomery County that 23 one of its primary purposes is actually to protect 24 headwaters. 25 HEARING EXAMINER BYRNE: Okay. Thank you.</p>
<p>102</p> <p>1 through the Camper Crampton Act of 1935, into the sensitive 2 headwaters area and the creations of Lake Meadwood and 3 Burnard Frank to mitigate downstream flooding, erosion and 4 sediment. The Upper Rock Creek Master Plan area is vital 5 to the health of Rock Creek and has been since its first 6 Master Plan for the Upper Rock Creek area was approved in 7 1968, 55 years ago. 8 The Upper Rock Creek Master Plan basically has 9 had two co-equal goals throughout the three iterations in 10 1968, 1985 and 2004. The first is to protect environmental 11 resources and maintain stream quality by keeping streams, 12 forests, and wetlands in a natural state throughout the 13 entirety of the Master Plan area. We're talking not just 14 at the areas above Muncaster Mill, but we're talking about 15 the entirety of the entire Master Plan area. 16 The second is to preserve residential character 17 by keeping the residential wedge areas within the Master 18 Plan at a low density. In keeping with the wedges and core 19 doors concept, first outlined in the 1964 general plan. 20 You can find these goals on page 7 of the 2004 Upper Rock 21 Creek Master Plan. The residential wedge concept goes back 22 to Montgomery County's 1964 general plan on wedges and core 23 doors, which was updated in 1993. The 1993 general plan 24 refinement confirmed that all 1 and 2 acre residentially 25 zoned properties are in the residential wedge. Thrive</p>	<p>104</p> <p>1 MS. KOSARY: Okay. On pages 35 of the Upper Rock 2 Creek Master Plan it states that, "The general plan 3 refinement places much of the Upper Rock Creek in the 4 residential wedge where low densities are recommended to 5 protect environmental resources and to provide housing on 6 large lots. These land use and environmental goals and 7 objectives are the backbone of planning in Upper Rock 8 Creek." 9 The housing plan section of the Master Plan, 10 beginning on page 35 discusses why the County's housing 11 goals must be balanced against the Upper Rock Creek Master 12 Plan's environmental policies. On page 35, the plan states 13 that "Low densities in Upper Rock Creek and the 14 desirability of maintaining open space as a means of 15 enhancing stream quality mean that there are relatively 16 small numbers of affordable housing units in the area." 17 And in the same paragraph further states that, 18 "This plan does not substantially increase zoning densities 19 in the area which means that Upper Rock Creek will remain 20 generally less conducive to affordable and elderly housing 21 than other areas with more extensive infrastructure and 22 zones that permit higher density." 23 The plan makes recommendations that designated 24 specific properties as suitable for affordable housing or 25 elderly housing within the plan area on page 36. The only</p>

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27 (105 to 108)

<p>105</p> <p>1 sites discussed as potentially suitable were the 10 acre 2 Wynx site which is actually industrially zoned. It's off 3 East Goudie, it's adjacent to the City of Rockville and 4 basically can only be accessed through Rockville's Lincoln 5 Park community. This particular site's eventually, more 6 than likely, going to be annexed by the City of Rockville. 7 And the 17 acre potential elementary school site on Wickham 8 Road which is zoned RE-1 and is in the Upper Rock Creek 9 Special Protection Area. It's way up north of Muncaster. 10 The plan also courage assembly of the land 11 adjacent to the Redlands commercial center, which was 12 recommended for townhouse zones in order to maximize the 13 areas ability to provide moderately priced dwelling units. 14 Townhouses actually have been constructed in this area 15 since the Master Plan was approved. The land was zoned 16 RT-12.5, so were talking about zoned at a density of up to 17 12.5 dwelling units per acre. 18 The remaining recommendations involve large 19 undeveloped properties in the residential wedge, as 20 discussed on page 37 of the plan, if developed as MDPPUs, 21 development would still be within the low density framework 22 of the Master Plan with a maximum of .33 to .4 dwelling 23 units per acre. As comparison, the site that were talking 24 about, the Overhill site is approximately 3.77 acres and 25 it's proposing 130 dwelling units, though I hear 120</p>	<p>107</p> <p>1 conditions set forth over 50 years ago. 2 And here lies the real issue with special 3 exceptions and conditional uses. They get approved, the 4 approval runs with the land, and inevitably they develop 5 serious scope creep over the years and decades. And it's 6 up to the neighbors to complain to DPS, and it's up to DPS 7 to enforce. And I can tell you, from a lot of frustrating 8 experiences that I can probably teach my cat Calculus 9 before I can get DPS to enforce a special exception, or a 10 conditional use that has overstepped its conditions. 11 This site should have been cited both by DPS and 12 the Department of Environmental Protection a long time ago, 13 aggressively cleaned up and brought into conformance. The 14 fact of the matter is, is that nowhere in the Upper Rock 15 Creek Master Planning area is there property zoned for 16 multi-family residential. Nowhere are we zoned for 34 to 17 35 dwelling units per acre. Our zoning is all 18 predominantly in keeping with the low density goals of the 19 Master Plan. 20 As previously stated, even the current Master 21 Plan noted that no effort was made to increase densities in 22 order to support construction of more affordable and 23 elderly housing because of the plan's environmental 24 policies. There are no five-story apartment buildings 25 anywhere in this Master Plan. There are no five-story</p>
<p>106</p> <p>1 sometimes. But if we're talking about 130 dwelling units, 2 this works out to a little over 34 dwelling units per acre. 3 The Applicants argued that if the Upper Rock 4 Creek Master Plan was being rewritten today that due to its 5 location and degraded nature, the Overhill site would, for 6 sure, be on the list of locations for affordable elderly 7 housing. I've actually participated in public charettes 8 (phonetic) on the development of Master Plans. And I must 9 say I disagree with the Applicant. This property is zoned 10 RE-1, it's in a residential wedge. It's in a limited 11 growth area. It drains to a sensitive use class 4 12 watershed. 13 Like the recommendation for a low density MDP 14 development in the residential wedge in the current plan, 15 given the almost 7 decades of environmental policy which 16 have guided this Master Plan, point in the world would 17 anyone think that densities higher than what has been 18 recommended for this area would suddenly be implemented? 19 The question which really needs to be asked is why this 20 site has been allowed to degrade to this extent. This is 21 the site of an extremely old special exception. The dates 22 I'm seeing in development finder on the planning Department 23 website for approval was February of 1970. And you to have 24 to ask what was initially approved and whether its current 25 use is actually even still in compliance with the original</p>	<p>108</p> <p>1 office buildings. It's incompatible with the goals of the 2 plan. This proposed facility is actually approaching the 3 height of apartment buildings adjacent to the Shady Grove 4 Metro station, where the momentum on Redland Road is four 5 stories. The Delaney -- no, actually it's the Daley on 6 Gramercy Avenue is four stories above ground floor 7 commercial and The Laureate also on Gramercy is four to 8 five stories also above ground floor commercial. All of 9 these are in the much denser, very transit oriented Shady 10 Grove sector Master Plan area, not in Upper Rock Creek. 11 This application does not conform with the upper 12 Rock Creek Master Plan's goal to preserve residential 13 character by keeping the residential wedge areas within the 14 Master Plan at a low density. Further, this application is 15 not harmonious with the small residential wedge Overhill 16 Road neighborhood, of the eight homes, all zoned RE-1 with 17 lot sizes which range from 1.6 to over 7 acres, and the 18 Knights of Columbus site with a lot size of over 5-1/2 19 acres, and will alter the character and manner inconsistent 20 with this Master Plans the goal to keep the residential 21 wedge areas within the Master Plan at a low density. 22 Finally, before I leave the Master Plan, I want 23 to note that hearing examiner Robeson-Hannon did an 24 extensive review and analysis of the upper Rock Creek 25 Master Plan and her denial of CU 2018-08, which was the</p>

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28 (109 to 112)

<p>109</p> <p>1 Primrose school daycare center. Amongst other Master Plan 2 related topics, on pages 63 to 72, she covered the 3 residential wedge as it relates to the entirety of the 4 Master Plan area, as well as the planning history of the 5 Redman Road Needwood Road portion of this plan, going back 6 long before the first Master Plan, discussing how we were 7 still dealing with issues that were put in place before the 8 first Master Plan was even implemented, that have had 9 issues with denigrating streams and things like that. And 10 we're still trying to catch up. 11 And I'd like to enter this report into the 12 record. 13 HEARING EXAMINER BYRNE: The Primrose School 14 decision? 15 MS. KOSARY: Primrose, yes. 16 HEARING EXAMINER BYRNE: Sure. Mr. Wallace, any 17 objection? 18 MR. WALLACE: No. 19 MS. KOSARY: And I only brought one copy 20 because -- 21 HEARING EXAMINER BYRNE: That's okay. You know 22 what -- 23 MS. KOSARY: It's this huge. 24 HEARING EXAMINER BYRNE: It is huge. Do you need 25 that copy for yourself?</p>	<p>111</p> <p>1 let me just make sure I have my exhibit numbers up to date. 2 So the Primrose decision will be Exhibit 44. 3 (Exhibit 44 was marked for identification.) 4 HEARING EXAMINER BYRNE: Okay. 5 MS. KOSARY: Okay. So I'm going to move on 6 beyond the Master Plan. 7 HEARING EXAMINER BYRNE: Okay. Whenever you're 8 ready. 9 MS. KOSARY: Section 59.7.3.1.E.1.b of the 10 necessary findings states that conditional use applications 11 must satisfy the use standards under Article 59-3. Use 12 standards for an independent living facility for seniors 13 can also be persons with disabilities can be found at 14 section 59.3.3.2.C. Section 59.3.3.2.C.i states that, 15 quote, The site of the proposed facility has adequate 16 assess ability to, or provides on-site public 17 transportation, medical service, shopping areas, 18 recreation, and other community services frequently desired 19 by senior adults or persons with disabilities. The 20 Applicant must include a vicinity map showing major 21 thoroughfares, public transportation routes and stops, and 22 the location of commercial, medical, and public services 23 within a one-mile radius of the proposed facility. 24 You don't have, and I don't know if you want what 25 I just talked about, but I'd like to enter the bus</p>
<p>110</p> <p>1 MS. KOSARY: I certainly don't. 2 HEARING EXAMINER BYRNE: Okay. We'll go ahead 3 and put it in. And this is actually available on our 4 website as well so you can -- 5 MR. WALLACE: Okay. 6 MS. KOSARY: I know, which is why I've got 7 questions about whether these really need to be entered or 8 not entered. I don't -- 9 HEARING EXAMINER BYRNE: Well -- 10 MS. KOSARY: I generally don't work on paper to 11 begin with so I have everything on -- 12 HEARING EXAMINER BYRNE: Right. Understood. 13 Because we do keep a paper file as well as an electronic 14 file, if you want to refer to them as exhibits, we will 15 enter them as exhibits, you could also say -- asked that I 16 take judicial notice of -- 17 MS. KOSARY: Okay. 18 HEARING EXAMINER BYRNE: -- prior decisions end 19 of things. So it's up to you. 20 MS. KOSARY: Well, I printed it off so I'm going 21 to give it to you. 22 HEARING EXAMINER BYRNE: All right. We'll take 23 it then and make it part of the paper file. 24 MS. KOSARY: Okay. 25 HEARING EXAMINER BYRNE: And before we move on,</p>	<p>112</p> <p>1 schedules -- 2 HEARING EXAMINER BYRNE: Okay. 3 MS. KOSARY: -- for the record. 4 HEARING EXAMINER BYRNE: Sounds good. All right. 5 So Exhibit 45, bus schedules. 6 (Exhibit 45 was marked for identification.) 7 MS. KOSARY: This is routes 53 and 57. 8 HEARING EXAMINER BYRNE: Thank you so much. I 9 appreciate you walking back with it for me. 10 MS. KOSARY: Yes, thank you, you're hired. 11 There is no public transportation available on 12 Overhill Road. The Shady Grove Metro is approximately 13 1-3/4 miles away. Montgomery County RideOn route 57 14 travels between the Shady Grove Metro station and Lake 15 Forest Transit Center, Monday through Sunday making several 16 stops on Redland Road. Montgomery County RideOn Route 53 17 makes 6 trips in the a.m. on Redland Road between 5:45 a.m. 18 and 10:00 a.m. and two in the afternoon at 2:24 and 3:30 in 19 the direction of the Shady Grove Metro. 20 In the p.m. Route 53 makes six trips on Redman 21 Road between 3:10 and 7:20 p.m. in the direction of the 22 Redland Muncaster Mill intersection. This route only 23 operates Monday through Friday. Basically, for the most 24 part, Route 53 is an express surface between the Shady 25 Grove Metro and Glenmont. Like I said, it makes a very few</p>

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29 (113 to 116)

<p>113</p> <p>1 stops actually within the neighborhood.</p> <p>2 16998 Overhill Road does not abut Redland Road.</p> <p>3 The property at the corner of Overhill Road and Redman Road</p> <p>4 adjacent to 16998 Overhill Road is, as Ben stated, it's</p> <p>5 owned by the Maryland Department of Transportation. This</p> <p>6 property, basically, provides access to the Intercounty</p> <p>7 Connector for maintenance, and also to Pepco so they can</p> <p>8 service the extensive power lines which supply both the</p> <p>9 Overhill Road community, as well as homes on the other side</p> <p>10 of the ICC.</p> <p>11 Actually, before the construction of the ICC,</p> <p>12 there was actually a home at this location. You actually</p> <p>13 have Exhibit 31-F, and it discusses, you know, distance to</p> <p>14 the bus stop. So the closest to bus stop to the Overhill</p> <p>15 Road site is actually adjacent to -- across Redland Road</p> <p>16 from the Shady Grove Presbyterian Church, though to tell</p> <p>17 you the truth, neither Google Maps nor the ride on trip</p> <p>18 planning app seem to know that this bus stop exists. It is</p> <p>19 there, it is marked, and is approximately 1800 feet. So we</p> <p>20 are talking about a third of a mile away from the proposed</p> <p>21 site. That's quite a walk.</p> <p>22 There's actually a second page. The Applicant</p> <p>23 and planning have also, maybe talked about trying to get an</p> <p>24 easement, but they haven't discussed it today. It was</p> <p>25 brought up at the Planning Board meeting. The Applicant</p>	<p>115</p> <p>1 cross the road there.</p> <p>2 HEARING EXAMINER BYRNE: Okay.</p> <p>3 MS. KOSARY: Okay. I'd like to next go to what</p> <p>4 you have down as Exhibit 31-G.</p> <p>5 HEARING EXAMINER BYRNE: All right.</p> <p>6 MS. KOSARY: It's basically, a series of 13</p> <p>7 Google Street views down Overhill Road from the approximate</p> <p>8 location of the proposed entrance to the Redland Overhill</p> <p>9 intersection. And if you look at the -- I don't know if</p> <p>10 you can see it on the paper, it's much better if you</p> <p>11 project that. If you look at the -- there's like a small</p> <p>12 box in the left-hand corner. And the little person icon,</p> <p>13 and it gives the approximate location of the view. You</p> <p>14 have to know that Oakhill Road has no shoulders, no</p> <p>15 sidewalks, or no streetlights making access to the bus stop</p> <p>16 highly problematic. The portion of Overhill Road between</p> <p>17 the proposed site and the Redland/Overhill intersection is</p> <p>18 a dark, narrow, and heavily wooded. It should also be</p> <p>19 noted that there is a great change from the top of the hill</p> <p>20 where this proposed facility would be built to the bottom.</p> <p>21 It's called Overhill for a reason. It is over the hill.</p> <p>22 That was basically it. After that, you drop down into the</p> <p>23 stream valley.</p> <p>24 If you look at my pages 5 and 6, they show a good</p> <p>25 view of some of the steep drop-offs at various locations</p>
<p>114</p> <p>1 stated that that it's highly unlikely that they're ever</p> <p>2 going to get an easement. Again, you know, the primary</p> <p>3 purpose for the path that exists is it's an access into</p> <p>4 Pepco power lines. But if, by chance, they did get</p> <p>5 approval on this path, as at least 800 feet and it's pretty</p> <p>6 steeply downhill.</p> <p>7 So I'd next like to go to what you've got down as</p> <p>8 Exhibit 31-K.</p> <p>9 HEARING EXAMINER BYRNE: Okay.</p> <p>10 MS. KOSARY: It's actually out of the Applicant's</p> <p>11 traffic impact analysis. It's from page 21. And it's</p> <p>12 pedestrian level comfort which was developed by Montgomery</p> <p>13 County planning department to quantify how comfortable</p> <p>14 people feel when they walk in certain traffic conditions.</p> <p>15 This analysis assigns a comfort level to pathways and</p> <p>16 crossings based on factors such as traffic speed, number of</p> <p>17 lanes, and whether there is a buffer between a pathway and</p> <p>18 a street.</p> <p>19 As indicated in this exhibit, the pedestrian</p> <p>20 level of comfort is rated as uncomfortable, or undesirable</p> <p>21 in much of the area surrounding this proposed site. I note</p> <p>22 that the crossing to the southbound bus stop on Redland,</p> <p>23 which is the bus stop where one would catch the bus to the</p> <p>24 Metro, is rated as undesirable.</p> <p>25 Actually, I would be very uncomfortable trying to</p>	<p>116</p> <p>1 along this road. On page 12, you can see the location of</p> <p>2 the nearest bus stop indicated -- I've marked it with the</p> <p>3 red arrows.</p> <p>4 MS. KOSARY: Okay.</p> <p>5 MS. KOSARY: And looking at the last page, page</p> <p>6 13, you've just got the intersection of Overhill and</p> <p>7 Redland looking in the direction of the ICC and the</p> <p>8 commercial area. And looking at this I think you've</p> <p>9 gotten -- you definitely have the potential site distance</p> <p>10 issue for vehicles on Redland traveling in the south,</p> <p>11 southwest direction, that is in the direction of Shady</p> <p>12 Grove, the Shady Grove subway station at this intersection.</p> <p>13 And if there is, in fact, a site distance issue, it would</p> <p>14 impact vehicles making a left-hand turn from Overhill onto</p> <p>15 Redland. And to my knowledge, this potential issue has not</p> <p>16 been evaluated.</p> <p>17 HEARING EXAMINER BYRNE: Okay.</p> <p>18 MS. KOSARY: And I don't know if you want this</p> <p>19 exhibit, it actually just documents what the -- what</p> <p>20 Redland Road is classified at this area.</p> <p>21 HEARING EXAMINER BYRNE: And what document do you</p> <p>22 have?</p> <p>23 MS. KOSARY: It's actually taken out of the Shady</p> <p>24 Grove Sector Plan.</p> <p>25 HEARING EXAMINER BYRNE: Okay. You can just --</p>

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30 (117 to 120)

<p>117</p> <p>1 if you want to refer to it and speak to it, I'm fine with 2 that.</p> <p>3 MS. KOSARY: Okay. It's -- I just wanted to 4 establish the fact that Redland Road at this location is 5 classified as minor arterial. It's an arterial -- it's 6 considered an arterial road.</p> <p>7 HEARING EXAMINER BYRNE: So Redland is -- okay. 8 Per the Shady Grove plan.</p> <p>9 MS. KOSARY: Per the Shady Grove plan. And it's 10 getting confusing because they've just updated the Master 11 plan of highways and transitways, and they've given 12 everything new names. All the road classifications now 13 have new names. And it hasn't caught up with the 14 Montgomery County Department of Transportation site 15 distance forms and things like that.</p> <p>16 HEARING EXAMINER BYRNE: Okay.</p> <p>17 MS. KOSARY: Which is actually what Exhibit 31-A 18 is a getting into, just talking about -- if you were 19 looking at site distance for this intersection, you would 20 be talking about, it's arterial, it's 325 feet. Because 21 basically the formula required is that you take the higher 22 value of the classification of the posted speed, and in 23 this case, the classification is the higher value. It 24 document so that on the form. So you would be looking for 25 a site distance of 325 feet.</p>	<p>119</p> <p>1 just bringing it up because it could be an issue.</p> <p>2 HEARING EXAMINER BYRNE: Okay.</p> <p>3 MS. KOSARY: And before anybody whether site 4 distance for this intersection was checked before it was 5 built, we're talking about the ICC construction. The new 6 Overhill Road connection was constructed before the ICC 7 construction reach this point. Because the construction 8 was severing the existing connections to this neighborhood, 9 for the new intersection at Redland and Overhill was 10 located at pretty much the only place where you could 11 locate it.</p> <p>12 You take it further north, and it would be even 13 closer to the bridge. You take it further south and you're 14 talking about exiting through the church parking lot. This 15 intersection is literally an example of being between a 16 rock and a hard place, thanks to the ICC.</p> <p>17 And if you want to go to Exhibit 31-C, it just 18 documents how close this intersection is to the bridge. 19 It's approximately only 75 feet separation between the 20 intersection and the beginning of the bridge, if you use 21 the change in pavement type as the demarcation, which is 22 generally -- that's more for the bridge starts. And like I 23 said, it's pretty much the only place you could have 24 located it.</p> <p>25 HEARING EXAMINER BYRNE: Okay.</p>
<p>118</p> <p>1 HEARING EXAMINER BYRNE: For the -- what you're 2 saying is for Redland Road Overland (sic) section?</p> <p>3 MS. KOSARY: For the Overhill Redland the site 4 distance would have to be 325 feet.</p> <p>5 HEARING EXAMINER BYRNE: On Redland as you 6 approach Overhill?</p> <p>7 MS. KOSARY: As you approach Overhill.</p> <p>8 HEARING EXAMINER BYRNE: Okay.</p> <p>9 MS. KOSARY: And the second page of this exhibit 10 is just using the Google measurement tool which, actually I 11 will attest this is actually highly accurate. Where, like, 12 325 feet would take you, and it practically takes you off 13 the bridge. I mean, at the very least somebody needs to 14 check to make sure that -- that you actually do have safe 15 site distance at this intersection.</p> <p>16 And like I said, I've lived here for -- I've 17 lived in the area for 27 years and this bridge has been 18 there for over a dozen. I have driven over it more times 19 than I can count, and I've always had questions about that 20 intersection because the driving it in the direction of 21 Shady Grove Road you basically do not even -- you need to 22 note the intersection is there because you don't -- you 23 basically don't see it until you get up to it. It's like a 24 surprise. It's a component of the shape of the bridge and 25 a little bit of the angle on the intersection. It -- I'm</p>	<p>120</p> <p>1 MS. KOSARY: Okay. I'd like to now turn to what 2 you've got down as Exhibit 31-B. It's actually just a copy 3 so that you can put your hands on it without having to sift 4 through the document where it really is. It's the 5 Applicant's 1 mile vicinity map. And it shows the location 6 of the small Redland Center, Redmond Plaza, and Red Mill 7 Shop strip malls that are located north of the proposed 8 conditional -- this proposed conditional use.</p> <p>9 HEARING EXAMINER BYRNE: Yes.</p> <p>10 MS. KOSARY: Yes, if you want to go to 31-E.</p> <p>11 HEARING EXAMINER BYRNE: Okay.</p> <p>12 MS. KOSARY: It's the ariel view of this center. 13 And I'm sorry, but I have to laugh that the Applicant is 14 actually describing these small strip malls as a large 15 commercial area. Although there are several really small, 16 nice restaurants the variety of commercial establishments 17 is very limited. I mean, there's a post office. There's a 18 bank, there's a barber shop. We have Derwood's Vape store 19 is there. They've got a dry cleaners, a UPS store, a party 20 store, a 7-Eleven, a McDonald's, a Subway. There's a 21 Dollar Store, there's a karate lesson facility. And 22 there's a dentist. The only medical provider within a 1- 23 mile radius. And a CVS although it doesn't have a minute 24 clinic.</p> <p>25 I'm sorry, but anybody depending on this large</p>

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31 (121 to 124)

<p>121</p> <p>1 commercial center for their daily necessities would 2 probably be eating a diet of ramen, Slurpees, Big Macs and 3 Twizzlers. It's -- I'm sorry, there's just a couple of 4 strip malls. The Giant at Shady Grove and Crab's Branch is 5 about 1-3/4 mile away. The Safeway on Redland Boulevard 6 and King Farm is about 2 miles away. To reach these 7 grocery stores using public transportation requires a 8 transfer at the Shady Grove Metro, if you're taking public 9 transportation.</p> <p>10 The small Redland local park is located within 11 approximately a half a mile, although walking to this park 12 would be problematic because of the lack of sidewalks for 13 portions of the route, and having to walk across the ICC 14 bridge. It's highly debatable whether the park amenities, 15 which are very limited, although I will add that they have 16 a great soccer field, would be desirable to seniors unless 17 they play soccer, I guess. There are no recreational or 18 community services available unless you include a couple of 19 churches. The closest library is in downtown Rockville, a 20 little more than 4 miles away. The closest recreation 21 center is about 3 miles away, however, it has no programs 22 for seniors. And it's a pretty small center. It's a 23 complaint of the area, are our lack of recreational 24 amenities, actually.</p> <p>25 Shady Grove Adventist Hospital is slightly under</p>	<p>123</p> <p>1 a whole.</p> <p>2 I'd like to refer you to example (sic) 31-D, 3 which should be very familiar to you. I just wanted to 4 point out a much better example of an independent living 5 facility conditional use for low income seniors. And 6 that's of the recently approved 2204 for a facility at 1910 7 University Boulevard in Wheaton. Madam Examiner, I'm not 8 going to give you my paper copy because I think you're very 9 familiar --</p> <p>10 HEARING EXAMINER BYRNE: I am.</p> <p>11 MS. KOSARY: -- with this because you oversaw the 12 hearing.</p> <p>13 HEARING EXAMINER BYRNE: Yes.</p> <p>14 MS. KOSARY: As indicated by the exhibit record 15 and on pages 30 and 31 of your report, this facility has a 16 bus stop at its frontage. A subway station a third of a 17 mile away, a Safeway grocery store a half a mile away, 18 Wheaton Mall, which has a Target, a Costco and a Giant is 19 less than a mile away. The closest park is a half-mile 20 away, the closest library and rec center are less than a 21 mile away. The residents at this location walk to a Metro 22 station, or a grocery store across the same distance as 23 residence at the Overhill location would walk to the 24 nearest bus stop.</p> <p>25 That is provided they were desperate and wanted</p>
<p>122</p> <p>1 5 miles away. The closest urgent care facility is 3-1/2 to 2 5 miles away. The closest primary care physicians are at 3 least 3 or 4 miles away, with many located in the vicinity 4 of Shady Grove Adventist Hospital. They like to congregate 5 there. Using public transportation to reach these 6 facilities will take multiple transfers in many instances. 7 This area of the county is just very car dependent. I'm 8 sorry, that's just the way it is.</p> <p>9 The independent living facility conditional use 10 does not give an Applicant carte blanche to locate 11 facilities anywhere they choose. The use standard 12 requirement clearly states that these facilities must be 13 located in areas with adequate accessibility to public 14 transportation and a number of amenities desired by 15 seniors. The use standard asked that all these amenities 16 within a mile be identified and mapped.</p> <p>17 The Applicants map is woefully neither. It's 18 especially important for an application such as this 19 because the intent is for this to be an independent living 20 facility for low income seniors. I mean, you heard Mr. 21 Bryant, you know, the age group we're talking about is 22 probably 70 to 80 for a large part. It's just 23 unconscionable to think that this location would work for 24 seniors who are going to be more dependent on public 25 transportation than in the Montgomery County population as</p>	<p>124</p> <p>1 to take their lives into their into their own hands and try 2 to walk down Overhill Road. I mean, it's an apples to 3 oranges comparison.</p> <p>4 HEARING EXAMINER BYRNE: Okay.</p> <p>5 MS. KOSARY: Okay. Moving on, section 6 7.3.1.E.1.g deals with the impact of non-inherent adverse 7 effects, 8 9 of which are defined as "Adverse effects created by 10 physical or operational characteristics of a conditional 11 use not necessarily associated with a particular use, or 12 created by an unusual characteristic of the site."</p> <p>13 And it states that it must be determined that an 14 application for a conditional use, "Will not cause undue 15 harm to the neighborhood as a result of a non-inherent 16 adverse effect alone, or in combination with an inherent 17 adverse effect in any of the following three categories. 18 One, the use, peaceful enjoyment, economic value, or 19 development potential of abutting and confronting 20 properties or in the general neighborhood.</p> <p>21 Two, traffic, noise, odors, dust, illumination, 22 or lack of parking.</p> <p>23 Three, the health, safety, or welfare of the 24 neighbors, neighboring residents, visitors, or employees."</p> <p>25 On July 18, 2019, Hearing Examiner Martin</p>

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32 (125 to 128)

<p>125</p> <p>1 Grossman denied CU-2019-4 which was an application for a 2 landscape contractor located at 15400 Hollygrove Road in 3 Silver Spring. On page 57 of his report, Hearing Examiner 4 Grossman concluded that, "The non-inherent site condition 5 of the proposed uses soul access from the narrow, dead end 6 Hollygrove Road, which serves as the exclusive access to 7 all the homes on Hollygrove and Awkward Lane south of 8 Millwood Road constitutes an undue harm to the neighborhood 9 in each of the three categories listed in this provision in 10 that it adversely affects the use and peaceable enjoyment 11 of abutting property owners. It imposes an undue traffic 12 burden on the neighborhood, and it inflicts an undue risk 13 to the safety of neighboring residents, visitors, and 14 employees." 15 Approximately 20 homes dependent on Holly Grove 16 Road for their access. The Applicant would be operating 17 approximately 60 trucks, which would leave enmasse in the 18 morning, returning in the afternoon. I would like to 19 add -- unless you don't want my copy. 20 HEARING EXAMINER BYRNE: We'll take it. 21 MS. KOSARY: Okay. CU 19-04. 22 HEARING EXAMINER BYRNE: Okay. And it will be 23 Exhibit 46. 24 (Exhibit 46 was marked for identification.) 25 HEARING EXAMINER BYRNE: And this is the -- I</p>	<p>127</p> <p>1 on the sides. Overhill Road now dead end square previously 2 connected to Garrett Road. Until the ICC came through. 3 And I'd like to refer to Exhibit 31-H. Because 4 further, as indicated on the second page of this exhibit, 5 at least a portion of Overhill is dedicated but 6 unmaintained, or DBU, for short. It looks like it's a 7 little under a quarter of a mile starting at North Garrett, 8 used to, used to exist. 9 HEARING EXAMINER BYRNE: Okay. 10 MS. KOSARY: According to the Montgomery County 11 Department of Transportation, a DBU road is a road that is 12 dedicated for public use, provides public access to 13 multiple private properties, was not constructed to County 14 standards, was never accepted for maintenance and by the 15 County under executive order, and is not maintained by the 16 County. 17 And actually, looking at Overhill Road, I 18 actually question whether any portion of this road was 19 constructed to County standards, especially given that they 20 like to leave room for sidewalks. 21 The substandard dead end road, which I might add, 22 might have a potential site distance issue at its 23 intersection is the only access for eight homes and the 24 Derwood Counsel of the Knights of Columbus. And I just 25 want to do an FYI because the Applicant seems to be</p>
<p>126</p> <p>1 think it was Francisco, right? 2 MS. KOSARY: Right. That's -- right. And I'd 3 like to refer you to Exhibit 31-I. It's Overhill Road 4 before and after the ICC. 5 HEARING EXAMINER BYRNE: Okay. 6 MS. KOSARY: The Overhill Road neighborhood was 7 probably one of the most impacted by the construction of 8 the ICC due to decisions made on reconfiguration of the ICC 9 in this area, required by environmental reviews. It was 10 supposed to go a little further south, and miss this 11 neighborhood. 12 Before the construction of the ICC, Overhill Road 13 actually did not intersect with Redland, rather Overhill 14 Road accessed Redland Road through connections along 15 Garrett, and Nedham Roads there are also additional homes 16 in this location. If you go to the next page, though, you 17 see the construction of the ICC severed Overhill Road's in 18 Garrett and Nedham Road connections and necessitated the 19 construction of a new connection directly to Redland Road. 20 This new connection trends versus a winding semicircular 21 route which basically follows the contours of the 22 topography. Basically, they took the road how they could 23 take up the road. 24 As previously discussed it lacks shoulders, 25 sidewalks, and lighting, and it has areas with steep slope</p>	<p>128</p> <p>1 referring to the Knights as a commercial entity, when in 2 fact, they're just a service organization. 3 And from their calendar of events they appear to 4 have a monthly business meeting, a social meeting, and a 5 program meeting all on various Tuesdays in the evening. 6 And they have occasional family outings. And all in all, 7 they don't appear to be a very intense use, and neither are 8 their two sub towers. 9 This application will add 130 residences, and a 10 parking lot with space for 190 cars. And given the extreme 11 car dependency of this area, I have to question whether 12 there are even enough parking spaces given the number of 13 proposed residences. And if not, where in the world the 14 extra vehicles would go? In addition, there will be 15 increased traffic activity for delivery vehicles and 16 visitors. And again, you know, I have no idea, I have to 17 ask where visitors are going to park. 18 And Applicant's -- the Applicant has argued that 19 there will be no impact on traffic because they can 20 demonstrate that they are in compliance with the road was 21 congestion standards contained in the local area 22 transportation review guidelines. However, as Hearing 23 Examiner Robeson-Hannon stated on page 128 of the Primrose 24 decision, which again was CU 2018--08, "The review of 25 conditional uses includes not just compliance with the</p>

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33 (129 to 132)

<p>129</p> <p>1 roadway congestion standards contained in the LATR, it also 2 looks at whether traffic generated by the proposed use is 3 compatible with the surrounding area." 4 In this case, we are literally talking about 5 inundating a very small neighborhood whose only access is a 6 substandard, dead end road with traffic generated by an 7 influx of 130 new residences. That's a 16 fold increase in 8 dwelling units, from 8 to 138 total. These are huge 9 changes within such a small neighborhood, and going back to 10 the Master Plan, it's definitely going to alter its 11 character in a manner inconsistent with the Upper Rock 12 Creek Master Plan's goals of protecting the residential 13 character by keeping residential areas low density. 14 Further, however, giving the hearing examiner's 15 decision in CU 2018-04, if the introduction of a landscape 16 contractor in a neighborhood of 20 homes whose only access 17 was along a substandard, dead-end road constituted a non- 18 inherent site condition which was bound to cause undue harm 19 to the neighborhood, in each of the three categories listed 20 in the zoning code, what are we to make of the situation 21 facing the Overhill Road neighborhood? 22 In CU 2019-04, the traffic generated by up to 16 23 trucks leaving in the early morning and returning in the 24 late afternoon Monday through Friday, sometimes on 25 Saturday, for most of the year, with several deliveries by</p>	<p>131</p> <p>1 School, the middle school. And page 3 is Candlewood which 2 is the elementary school. 3 HEARING EXAMINER BYRNE: Mr. Wallace, do you have 4 any objection to the school bus route information coming 5 in? 6 MR. WALLACE: I would just note that it's a dated 7 November 1, 2022, so it is stale. 8 HEARING EXAMINER BYRNE: Okay. 9 MS. KOSARY: No, it's off their website from 3 10 days ago. 11 MR. WALLACE: I'm just saying that the date of 12 2022. 13 HEARING EXAMINER BYRNE: Okay. 14 MS. KOSARY: Okay. And I'm saying it's what 15 MCPS, it's their latest printout. 16 HEARING EXAMINER BYRNE: Okay. 17 MS. KOSARY: They obviously haven't updated it 18 for the upcoming school year. 19 HEARING EXAMINER BYRNE: Okay. I'll accept it. 20 Thank you. 21 (Exhibit 47 was marked for identification.) 22 MS. KOSARY: And finally, we must consider the 23 fact that the school bus stop for children living on 24 Overhill Road is actually located at the intersection of 25 Redlands and Overhill. The school buses don't go up</p>
<p>130</p> <p>1 tractor-trailer throughout the summer season was enough to 2 rise to the level of denial due to the non-inherent 3 constraints created by the substandard, dead-end road, on 4 Overhill Road, we are talking about the introduction of a 5 130 unit apartment building with 109 car parking lot in a 6 neighborhood of 8 homes whose only access is along a 7 substandard dead-end road. The undue traffic burden on 8 this neighborhood will be all day, every day, all year 9 long. 10 The adverse effects on the use and peaceful 11 enjoyment of the residents of the small neighborhood will 12 be all day, every day, all year long. And I'd like to 13 introduce this exhibit. It's new. 14 HEARING EXAMINER BYRNE: Okay. Do you have one 15 for Mr. Wallace as well? 16 MS. KOSARY: I do. 17 MR. WALLACE: Thank you. 18 MS. KOSARY: Thank you. 19 HEARING EXAMINER BYRNE: Thank you very much. 20 And how would you classify this? 21 MS. KOSARY: Is the location of the school bus 22 stops. 23 HEARING EXAMINER BYRNE: Okay. 24 MS. KOSARY: Page 1 is -- page 1 is from the 25 Zadok Magruder High School, page 2 is Shady Grove Middle</p>	<p>132</p> <p>1 Overhill Road. They don't go up any road like that, they 2 don't go into neighborhood roads for the most part. It's a 3 complaint amongst a whole lot of people. 4 School age children of living on this road will 5 be facing a much increased safety risk due to the increase 6 in traffic as they walk down to the bus stops in the 7 morning and return up to their homes in the afternoon 8 throughout the school year so were talking September 9 through June. For that matter, anyone living on Overhill 10 will also face a much increased safety risk if they walk or 11 bike on this road. Further, if there is indeed a site 12 distance issue at the Redland/Overhill intersection, this 13 would also constitute a greatly enhanced safety risk due to 14 the much larger volume of vehicles that would be making 15 left-hand turns onto Redland from Overhill. 16 HEARING EXAMINER BYRNE: Okay. 17 MS. KOSARY: So just to conclude -- so in 18 conclusion, this application does not conform with the 19 Upper Rock Creek Master Plan's goal of maintaining the 20 residential wedge portions, of the Plan areas low density 21 to protect environmental resources. Further, it's size and 22 scale along with the added traffic it would inflict on this 23 small neighborhood will alter its character in a manner 24 inconsistent with the plan. 25 This application fails to meet the required use</p>

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<p>133</p> <p>1 standards for this conditional use. It does not provide 2 adequate access to public transportation, medical service, 3 shopping areas, recreation, and other community services 4 frequently desired by senior adults. And finally, the fact 5 that this proposed facility is located on a substandard, 6 dead end road with potential site distance issues at its 7 current intersection and that this road serves as the only 8 means of access for the current residence constitutes a 9 non-inherent site condition which will adversely affect the 10 use and peaceful enjoyment of all the Overhill Road 11 residence, impose an undue traffic burden on the 12 neighborhood, and inflict undue risk to the safety of 13 neighboring residents who walk or bike on this road, and 14 potentially on a motorist making left-hand turns from the 15 Redland/Overhill intersection onto Redland Road. 16 Thank you. 17 HEARING EXAMINER BYRNE: Okay. Mr. Wallace, do 18 you need a slight break, or do you want to start with your 19 rebuttal -- actually, before we go there, we still have 20 your noise expert, do you plan to recall him at all? 21 MR. WALLACE: Unless you have any questions that 22 you think, you haven't raised any issues so -- 23 Ms. Kosary, you have no questions related to 24 noise? 25 MS. KOSARY: No.</p>	<p>135</p> <p>1 HEARING EXAMINER BYRNE: Okay. 2 MR. WALLACE: But I don't mind getting going. 3 HEARING EXAMINER BYRNE: Okay. 4 MR. WALLACE: Again, I'd like to maybe let our 5 architect go as well unless you have any questions for the 6 architect? 7 HEARING EXAMINER BYRNE: I have no questions for 8 the architect. That's fine. 9 MR. WALLACE: Jason, if you could stay, unless 10 you're -- 11 MR. SLOAN: I can stay. 12 HEARING EXAMINER BYRNE: All right. Ms. Kosary, 13 you're okay to continue? 14 MS. KOSARY: Yeah. Yeah. 15 MR. WALLACE: It's the one thing they haven't 16 updated. 17 HEARING EXAMINER BYRNE: Yeah. I brought my own. 18 MS. KOSARY: It spills. It's got a trap door, 19 almost. You missed the excitement. 20 HEARING EXAMINER BYRNE: I did miss the 21 excitement. All right. Nicole, thank you so much, 22 appreciate it. 23 MR. WALLACE: Thank you. That would -- from my 24 point of view, went well, I mean, in terms of the -- 25 HEARING EXAMINER BYRNE: It did. And I think</p>
<p>134</p> <p>1 HEARING EXAMINER BYRNE: Okay. And I have no 2 additional questions for your noise expert, so than we can 3 let him go. 4 MR. WALLACE: Appreciate that. 5 HEARING EXAMINER BYRNE: And we can let Nicole go 6 as well. We can terminate the zoom meeting, I think, at 7 this point. 8 NICOLE: So you don't need the people at all 9 anymore? 10 HEARING EXAMINER BYRNE: We do not. 11 MR. WALLACE: That's correct. 12 HEARING EXAMINER BYRNE: W all right. So I think 13 that's a good breaking point for them. And then, Mr. 14 Wallace, do you want to go ahead with your rebuttal? 15 MR. WALLACE: Sure. 16 HEARING EXAMINER BYRNE: Is everybody okay? Does 17 anybody need a snack or a bathroom break? 18 MS. KOSARY: You should have a box of snacks. 19 HEARING EXAMINER BYRNE: I know, right? We 20 should definitely have snacks. 21 UNIDENTIFIED SPEAKER: Mr. Wallace, do you 22 need -- 23 MR. WALLACE: I'll need definitely need Dillon, 24 and then you. So but not necessarily Josh. Our land 25 planner has stepped out for a minute.</p>	<p>136</p> <p>1 when we have the hybrid technology everyone will be able to 2 share exhibits on the screen. They'll be able to see us, 3 we'll be able to see them. We'll be able to have some 4 split screen action. 5 MS. KOSARY: And are you actually going to be -- 6 you are using Microsoft teams, are you actually really 7 going to be going to zoom? 8 HEARING EXAMINER BYRNE: I think we -- well, I 9 don't know. But -- 10 MS. KOSARY: It's a much better choice. 11 HEARING EXAMINER BYRNE: Zoom, I think Zoom does 12 work much better. We've been using Teams because -- 13 MS. KOSARY: Teams, I don't know what's wrong 14 with Teams. 15 HEARING EXAMINER BYRNE: Yeah. There are a lot 16 of other functions and features in Zoom that I also -- 17 yeah, I'm not a huge fan of WebEx either. I used that at 18 my last -- that was difficult. But yes, it seems that Zoom 19 works better with the technology that we have, so I think 20 Zoom will be probably the deliverable choice. But I 21 haven't heard 100 percent yet. 22 MS. KOSARY: Good choice. 23 HEARING EXAMINER BYRNE: All right. Well, 24 technically, we're still on the record, but we've let 25 Nicole go. With let our -- the virtual component of what</p>

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<p>137</p> <p>1 we had today go.</p> <p>2 MS. KOSARY: We've just Teams?</p> <p>3 HEARING EXAMINER BYRNE: Yeah.</p> <p>4 MS. KOSARY: It's on the record.</p> <p>5 HEARING EXAMINER BYRNE: There you go. Just us</p> <p>6 folks here in person.</p> <p>7 MR. WALLACE: Okay.</p> <p>8 HEARING EXAMINER BYRNE: All right, Mr. Wallace,</p> <p>9 you can go ahead with your rebuttal.</p> <p>10 MR. WALLACE: Well, I have a few questions for</p> <p>11 Ms. Kosary, and then I'll --</p> <p>12 MS. KOSARY: Oh, sure.</p> <p>13 MR. WALLACE: -- bring in some of my witnesses</p> <p>14 for rebuttal.</p> <p>15 HEARING EXAMINER BYRNE: Sounds good.</p> <p>16 MR. WALLACE: So Ms. Kosary, just to put some</p> <p>17 context, again, your address is?</p> <p>18 MS. KOSARY: 7416 Needwood Road.</p> <p>19 MR. WALLACE: And about how far from the site is</p> <p>20 that?</p> <p>21 MS. KOSARY: I'd say it's a bit under a mile.</p> <p>22 Oh, I should -- I should be able to answer that because I</p> <p>23 am on your map. I'm definitely under a mile.</p> <p>24 MR. WALLACE: Okay. Which side of the ICC are</p> <p>25 you on? The same side or the other side?</p>	<p>139</p> <p>1 meant to be developed that's what?</p> <p>2 MS. KOSARY: A 200 child day care center.</p> <p>3 MR. WALLACE: So it was a day care center. What</p> <p>4 was it before it was proposed to be a day care center?</p> <p>5 MS. KOSARY: It's a home.</p> <p>6 MR. WALLACE: It was a home. So it's -- okay.</p> <p>7 And you've heard some testimony about the project including</p> <p>8 some of the environmental benefits, like, storm management</p> <p>9 meets current requirements, and things like that, a cleanup</p> <p>10 of the site from both an environmental issues but also the</p> <p>11 stream valley buffer area; do you recognize those as</p> <p>12 environmental benefits from the project?</p> <p>13 MS. KOSARY: As I stated, I'm aghast that DPS and</p> <p>14 DEP have not come and shut down the side and made them</p> <p>15 clean up. That doesn't mean that I think that you should</p> <p>16 be building a five story apartment building there. I think</p> <p>17 the site needs cleanup. I think the current owner should</p> <p>18 be responsible for the cleanup. I'm sure that they're not</p> <p>19 in conformance with their current special exception.</p> <p>20 MR. WALLACE: But you don't know for sure?</p> <p>21 MS. KOSARY: I don't know for sure. I'm</p> <p>22 wondering if actually anybody can even find the old</p> <p>23 records. But like I said, from experience, it's going to</p> <p>24 be a battle with DPS to get them to cite them to begin</p> <p>25 with, unfortunately.</p>
<p>138</p> <p>1 MS. KOSARY: I'm on the same side.</p> <p>2 MR. WALLACE: Same side. Okay. You seem very</p> <p>3 familiar with, certainly wedges and core doors, general</p> <p>4 plan, are you also familiar with Thrive?</p> <p>5 MS. KOSARY: Yes, I am.</p> <p>6 MR. WALLACE: And you followed it?</p> <p>7 MS. KOSARY: Yes, I did.</p> <p>8 MR. WALLACE: Okay. And are you aware that it's</p> <p>9 a comprehensive rewrite of not only wedges and core doors,</p> <p>10 but basically all of the general plans that preceded it?</p> <p>11 MS. KOSARY: It's a -- it's -- is the latest</p> <p>12 update to the general plan, that's correct.</p> <p>13 MR. WALLACE: Okay. And was Thrive adopted when</p> <p>14 the Primrose case was decided?</p> <p>15 MS. KOSARY: No, the advanced draft for -- was --</p> <p>16 was in circulation for Thrive when Primrose was decided.</p> <p>17 MR. WALLACE: Okay. I mean, Thrive was adopted</p> <p>18 in 2022, Primrose was decided --</p> <p>19 MS. KOSARY: Was decided in 2021.</p> <p>20 MR. WALLACE: Okay. And can you just -- what was</p> <p>21 your involvement in the Primrose case?</p> <p>22 MS. KOSARY: I lived next door.</p> <p>23 MR. WALLACE: Next door to what?</p> <p>24 MS. KOSARY: Next door to the Primrose site.</p> <p>25 MR. WALLACE: Oh. Okay. And what -- that was</p>	<p>140</p> <p>1 MR. WALLACE: So of course if this project gets</p> <p>2 approved you -- you recognize that there is an</p> <p>3 environmental benefits from it?</p> <p>4 MS. KOSARY: No, I don't recognize.</p> <p>5 MR. WALLACE: Okay. So you don't support the</p> <p>6 current use as a landscape contractor, you don't support</p> <p>7 this proposed use, what do you think is an appropriate use</p> <p>8 for the site?</p> <p>9 MS. KOSARY: I'm actually surprised that the</p> <p>10 State Highway Administration didn't take the entire site</p> <p>11 when they built the ICC, for one thing.</p> <p>12 MR. WALLACE: So you don't think it should have</p> <p>13 any development on it?</p> <p>14 MS. KOSARY: Possibly a home. I mean, given how</p> <p>15 close it is to the ICC I'm surprised it wasn't taken as --</p> <p>16 as part of the buffer. I'm sure that that was an economic</p> <p>17 decision.</p> <p>18 MR. WALLACE: You talk about Overhill, and you</p> <p>19 talk about another case, another special exception case,</p> <p>20 the Francisco case.</p> <p>21 MS. KOSARY: Right. The Francisco case.</p> <p>22 MR. WALLACE: Okay. And what was the main issue</p> <p>23 in Francisco in terms of the types of vehicles that would</p> <p>24 be traveling on that road? What type of vehicles were</p> <p>25 they?</p>

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<p>141</p> <p>1 MS. KOSARY: They were, you know, big landscape 2 vehicles. 3 MR. WALLACE: All right. And the testimony you 4 heard from earlier was that the primary traffic on this 5 site is just vehicle, passenger vehicles, but normal 6 vehicles? 7 MS. KOSARY: I will point out that that -- you're 8 doing the minimal traffic analysis that you have to do, 9 which is the LATR, which is basically looking at peak -- 10 you know, at peak hours in the morning and peak hours in 11 the afternoon. You didn't even run the all-day traffic. 12 You're -- your 109 car parking lot. Of course, you're 13 going to have all day traffic impacts on the road. And -- 14 and as you've got from Hearing Examiner Robeson's comment 15 from the Primrose report, this is a conditional use. You 16 don't just look at LATR, whether you pass or don't pass 17 congestion standards. You look at the impact that the 18 traffic is going to have on the community, all day, every 19 day. 20 MR. WALLACE: You're obviously very conversant 21 with Francisco, so the characteristics of that road, and 22 how would you compare them to Overhill? Do you know the 23 paved width and the lane width of Overhill Road? 24 MS. KOSARY: When I googled it, it looked to be, 25 like, 20 to 22 feet.</p>	<p>143</p> <p>1 MR. WALLACE: Just to reiterate you go, is that 2 required under any county law that you're aware of? 3 MR. MCANDREW: Not as -- 4 MR. WALLACE: Right. 5 MR. MCANDREW: Yeah, in the scope of this 6 development, no, we would not be required to analyze site 7 distance at that intersection. You know, with this 8 vicinity to the city. 9 MR. WALLACE: Okay. So you looked at it and what 10 did you determine? 11 MR. MCANDREW: Yes, so I went out there Wednesday 12 of this week and following the guidelines and the 13 mechanisms on the Montgomery County site distance form. 14 Where she correctly identified were required to meet a site 15 distance of 325 feet, and identified that that is submit. 16 And kind of directly addressing per exhibit which showed 17 that 325 feet kind of offset from the bridge, and had a 18 clear line of sight for that. The form clearly indicates 19 that the site distance is to be measured 6 feet back from 20 either the face of the curb or the edge of the travel was. 21 So in this way, there are white edge lines that delineate 22 the travel lane, or the shoulder around -- along Redland 23 Road coming from the south, you know, up to the north going 24 over the ICC bridge. So connecting those in a similar 25 exercise to what we conducted, and offsetting myself 6 feet</p>
<p>142</p> <p>1 MR. WALLACE: And it's two lanes? 2 MS. KOSARY: And it's two lanes. 3 MR. WALLACE: And from your picture you can see 4 it's got striping in the middle? 5 MS. KOSARY: It's got striping in the middle. 6 MR. WALLACE: Okay. And so estimating that each 7 lane is 11 feet, do you know if that's a standard travel 8 lane width? 9 MS. KOSARY: That is for a tertiary. 10 MR. WALLACE: Yeah. So it's a standard width for 11 a tertiary? 12 MS. KOSARY: For the part of the road that is not 13 DBU. 14 MR. WALLACE: Okay. And then, you mentioned 15 that -- okay. Okay. So at this point I would like to ask 16 two of my witnesses to come up. So let's start with Dylon. 17 HEARING EXAMINER BYRNE: Sure. 18 MR. WALLACE: Dylan McAndrew. Okay. Mr. 19 McAndrew, did you review the site distance at Overhill and 20 Redland in response to information that was submitted into 21 the record from Ms. Kosary? 22 MR. MCANDREW: Sure. So we reviewed the exhibit 23 that she submitted and just wanted to do a check on our 24 own, although as she has mentioned not required to do so 25 for the --</p>	<p>144</p> <p>1 back, and then measuring from there, you can see a clear 2 line of sight that leads, you know, diagonally across the 3 bridge, if you will, to the southbound Redland Road traffic 4 which is the traffic that we are concerned with in this 5 case, and you can prove that it is over 325 feet by looking 6 from the correct location. 7 MR. WALLACE: So using the accepted methodology 8 for doing site distance analysis in Montgomery County you 9 determined that the adequate site distance at over Overland 10 (sic) and Redland? 11 MR. MCANDREW: Correct. 12 MS. KOSARY: Using Google Earth? 13 MR. MCANDREW: So yeah, I went out into the site 14 and verified that there was no conditions that weren't 15 properly detailed via Google Earth. You know, I have some 16 pictures of myself looking from the point where Overhill 17 would meet Redland -- 18 MS. KOSARY: So you didn't send out a survey team 19 though? 20 MR. MCANDREW: I did not, no. Just a fairly 21 traffic engineering site distance evaluation. 22 HEARING EXAMINER BYRNE: But you were physically 23 at the location? 24 MR. MCANDREW: Correct. 25 HEARING EXAMINER BYRNE: Okay. So you went</p>

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<p>145</p> <p>1 physically at the location, didn't have a full survey team 2 with you -- 3 MR. MCANDREW: No, it was just myself. 4 HEARING EXAMINER BYRNE: Just yourself, okay. 5 MR. WALLACE: Is that a standard method of doing 6 site distance analysis? 7 MR. MCANDREW: Yes. That's -- you know when 8 called upon to question, it's typically when we even have 9 these sorts of discussions and we would prove -- or 10 identify what that sight distance is via a field visit in 11 this matter. 12 HEARING EXAMINER BYRNE: Okay. 13 MR. WALLACE: No further questions at this time 14 for Mr. McAndrew. 15 HEARING EXAMINER BYRNE: Okay. 16 MR. WALLACE: If I can call Mr. Byrne back up? 17 HEARING EXAMINER BYRNE: Okay. 18 MR. WALLACE: Mr. Byrne, based on your experience 19 in developing similar communities, you know, what is your 20 experience with use of cars by residents? How do they get 21 things, how do they get places? 22 MR. BYRNE: So the majority of our residents 23 would have cars. It's an independent living facility. We 24 provide parking for all the units. Typically, there might 25 be 70 percent of the people would have automobiles, and</p>	<p>147</p> <p>1 age, we don't want them tripping on buses, we don't want 2 them walking to buses. We try and keep all of our 3 activities and programming on the campus, so we are 4 independent living, but we are not active. Our people 5 are -- typically, we don't have pickleball courts, we don't 6 have swimming pools. So have a lot of interior facilities 7 that are movement oriented, yoga and stretching, and 8 lightweight weightlifting for exercise. And then, they are 9 staying on campus walking around. Particularly, a lot of 10 residents have dogs now so that's why we made an effort to 11 provide dog washes on kind of all buildings, and areas that 12 the dogs can run without running off. 13 HEARING EXAMINER BYRNE: Your Fairland location, 14 how often do people in that location use public 15 transportation and do you have van service in there? 16 MR. BYRNE: I was going to call, -- is a very 17 active friends and family, and then residents, and I don't 18 have the percentage, but I've never heard of anyone using 19 it. That facility takes advantage of -- it's advantageous 20 that it's right next to the rec center, so for activities 21 that people will -- can just literally walk a couple of 22 hundred feet and they're taking other yoga classes. That's 23 the reason the county wanted us to build, and has actually 24 come to us to expand the building. And so that's made it 25 easier also. But going back to our -- the comment that I</p>
<p>146</p> <p>1 then, within the community, people that don't have cars 2 rely on either one of the residents, so they'll go shopping 3 together. They'll have friends and family, and pick them 4 up. So that is a very frequent occurrence. People are 5 hopping on -- or meeting with friends and family. There's 6 also a smaller percentage that use Uber and Lyft, but it's 7 still a good -- and is becoming more prevalent. And then, 8 the fortunate thing about living in Montgomery County is 9 that they have -- they provide a lot of free services to 10 the residents for 62 and older people. And then, in 11 addition to that -- 12 HEARING EXAMINER BYRNE: What kind of, like, free 13 services? Free shuttles, free? 14 MR. BYRNE: Yeah, they have -- you can call and 15 get picked up by -- we can send you to websites, but it's 16 readily available to all residents that are 62 and older if 17 you need it. 18 HEARING EXAMINER BYRNE: Okay. 19 MR. BYRNE: And then, we also provide, once the 20 building is stabilized, we can program in small van service 21 and do a once a week trip to the store taking people 22 around. As an owner, I would not encourage residents to 23 use public transportation, so although we heard a lot about 24 public transportation, it's not heavily used, if ever, 25 source of transportation. Particularly, as our residents</p>	<p>148</p> <p>1 made earlier is that our relationship with Shady Grove 2 Presbyterian is that's another place where we would take 3 people, use the Shady Grove bus to come and pick us up and 4 then, we would have talks, lunches, just activities within 5 the church. So that's why we have a pretty active -- we 6 have the local churches and our facility play an active 7 role. 8 MR. WALLACE: And if I could, just to clarify one 9 point, because if you look at the number of spaces, even 10 though it meets the parking requirements and code it's 11 probably going to be a few spaces the less than the actual 12 number of units. I think what you're saying is that 13 every -- basically in your experience not every resident 14 has a car, or once a car, but every resident who has -- who 15 wants a car you have a space for them? 16 MR. BYRNE: Right. We -- I think we are required 17 to -- and -- to part at .6, but we're always well above 18 that. 19 MR. WALLACE: And again, your experience is that 20 anyone who wants a car will have a space? 21 MR. BYRNE: Oh yeah. 22 MR. WALLACE: Because not everyone will have a 23 car, or have a car. 24 MR. BYRNE: Well, family members try and take the 25 car away eventually. And it's a financial savings and also</p>

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<p>149</p> <p>1 it's a safety and that's when you get friends and family, 2 and shared use of cars, or right shares. 3 MR. WALLACE: No further questions for Mr. -- 4 MS. KOSARY: Can I ask a question of Mr. Byrne? 5 HEARING EXAMINER BYRNE: Yeah, as part of the 6 rebuttal you have an opportunity to cross-examine him. 7 MS. KOSARY: Is the -- this is the first facility 8 in Montgomery County that you're attempting to do as a 9 conditional use, correct? 10 MR. BYRNE: As a conditional use? 11 MR. WALLACE: Correct. 12 MS. KOSARY: So and you were aware of the 13 required use standard for approval as a conditional use? 14 MR. BYRNE: I'm going to say that I'm not a 15 professional and that's why we have attorneys and 16 engineers. 17 HEARING EXAMINER BYRNE: Okay. 18 MS. KOSARY: Uh-huh. 19 HEARING EXAMINER BYRNE: All right. Thank you, 20 Mr. Byrne. 21 MR. WALLACE: And then, I'd just called Mr. Sloan 22 back. 23 Mr. Sloan, we've heard -- you provided testimony, 24 and heard more testimony about the accessibility of this 25 location to services. As a land planner, can you give us</p>	<p>151</p> <p>1 THE WITNESS: Exhibit 29, page 9, staff, in their 2 technical analysis went a little further than we did and 3 indicated that within 5 miles or less and there are 4 multiple shopping centers, grocery stores, Metro stations, 5 pharmacies, et cetera. And that the closest stores or 6 restaurants are .6 miles and the metro station as noted is 7 1.25 miles, and found that that met the findings of -- the 8 findings for approval and the planning board in their 9 recommendation adopted their findings. 10 MR. WALLACE: Okay. Thank you. And then, 11 obviously, you're familiar with Thrive and how it relates 12 to the latest orders and the general plan previously? 13 THE WITNESS: Correct. 14 MR. WALLACE: Okay. And if you can take a look 15 at page 4 of the Thrive plan. 16 And the hearing examiner can take judicial 17 notice. 18 HEARING EXAMINER BYRNE: Okay. 19 MR. WALLACE: Can you just read into the record 20 what the Thrive states about the relationship to the 21 general plan? 22 THE WITNESS: Yep. So this is on page 4 of 23 titled what is General Plan, and the third paragraph in 24 particular. "Thrive Montgomery 2050 does not abandon or 25 reject the wedges and corridors concept, but instead</p>
<p>150</p> <p>1 your opinion as to whether this location meets the 2 requirements for accessibility as stated in the zoning 3 ordinance for the use? 4 MR. SLOAN: Yes, I think that -- I just want to 5 make sure that I don't -- 3.3.2, or C.2.C.1 was the 6 adequate accessibility to public transportation and medical 7 services, et cetera. And there's no specific definition of 8 what adequate accessibility is, but given the use, 9 characteristics that we understand these residents have 10 that they will be provided with that accessibility to the 11 necessary amenities and services that are listed here. And 12 that will be, in this case, primarily by car. We 13 understand that public transportation is not a requirement 14 or a walkable bus stop or Metro station. And that in 15 comparison with property that does have significantly more 16 public transportation does not mean this is not adequate. 17 MR. WALLACE: And then, are you aware of that 18 finding -- I will talk about the findings that were made by 19 technical staff in this -- in their staff report? 20 THE WITNESS: Yes. Yeah. 21 MR. WALLACE: I just want to leap -- just -- 22 THE WITNESS: You're looking at -- I don't 23 remember which exhibit it is. 24 MR. WALLACE: The staff report, which is 25 Exhibit -- is Exhibit 29. And then page --</p>	<p>152</p> <p>1 modernizes it to remain relevant. Area of Master Plan 2 sector plans and county wide functional plans will remain 3 valid until modified pursuant to the guidance provided by 4 this plan. Like the previous general plan, it's broad 5 policy recommendations pave the way for future actions such 6 as amendments to other plans, policies, and development 7 rules." 8 MR. WALLACE: Okay. And again, in your 9 professional opinion, how does Thrive modernize the wedges 10 and corridors to make it relevant and in particularly maybe 11 state what you already quoted from what a limited growth 12 area means. 13 THE WITNESS: Right. The Thrive plan puts this 14 area in -- of a residential wedge in a limited growth area 15 which I mentioned earlier and quoted from page 72 providing 16 a diverse range of housing choices, increased socio and 17 economic integration to achieve complete communities. And 18 one thing that's in my land use report but I didn't mention 19 earlier, that the 2004 Upper Rock Creek Master Plan, like 20 every Master Plan has a section in the beginning that says 21 this may look out 20 years, but it should be updated every 22 10 years. We have a lot of Master Plans in Montgomery 23 County and we just don't have the technical staff to update 24 them as frequently as they're supposed to. So when we look 25 at something like a 20 year old Master Plan, it's updated</p>

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<p>153</p> <p>1 by -- it has a general plan update and other functional 2 plans, we look at those more carefully in terms of their 3 recommendations on the changing nature of communities who 4 are not recognized 20 years ago. 5 MR. WALLACE: Okay. All right. No further 6 questions for Mr. Sloan. 7 HEARING EXAMINER BYRNE: Ms. Kosary, do you have 8 any questions? 9 MS. KOSARY: Yes, I do. Going back to the use of 10 standards, to the part of the code that actually discusses 11 the use of standards, it states that you are actually 12 required to include a vicinity map showing major 13 thoroughfares, public transportation routes and stops, and 14 the location of commercial, medical, and public services 15 within a one-mile radius. The emphasis I want you to do is 16 public transportation routes. It's clearly -- to be, it's 17 indicating that this is your standard is taking public 18 transportation above and beyond what you think it might 19 need to be, or want it to be. Given that it does mention 20 bus routes, public transportation routes, do you think that 21 this site is accessible to those bus stops on Redland Road, 22 your closest bus stop? Are you accessible? 23 THE WITNESS: It is physically accessible to walk 24 up the street as, I guess, the children have to do to get 25 to their bus stop too, to get to those bus stops.</p>	<p>155</p> <p>1 MS. KOSARY: I don't think I have any more 2 questions. 3 HEARING EXAMINER BYRNE: Okay. Thank you, Ms. 4 Kosary. 5 MR. WALLACE: Okay. No further questions for Mr. 6 Sloan. 7 HEARING EXAMINER BYRNE: Thank you, Mr. Sloan. 8 MR. WALLACE: And I have no further questions for 9 my witnesses. 10 HEARING EXAMINER BYRNE: Okay. Well, I guess 11 that brings us to the end. 12 MS. KOSARY: You did a great job. 13 HEARING EXAMINER BYRNE: Well, thank you. So 14 just -- 15 MR. WALLACE: And the technology worked. 16 MS. KOSARY: And it did. That, which has got to 17 be a first. 18 HEARING EXAMINER BYRNE: That's actually very 19 exciting. I don't know if we'll ever all the way get rid 20 of our paper file because we are lawyers, we enjoy paper. 21 MS. KOSARY: Oh, I know this. I'm a mathematical 22 statistician. 23 HEARING EXAMINER BYRNE: Yeah, we like the paper. 24 But just to confirm, I have Exhibit 35, any objection to 25 that being admitted?</p>
<p>154</p> <p>1 MS. KOSARY: Okay. That's pushing it. You think 2 you're accessible to the park? 3 THE WITNESS: The specific part that is right 4 below to the south of us? 5 MS. KOSARY: Redland Park. 6 THE WITNESS: There are no trails or anything off 7 of Overhill Road that directly access the park. 8 MS. KOSARY: No, no, no, Redland Local Park. The 9 park on Redland. 10 THE WITNESS: Oh, Redland Local Park, you would 11 have to drive or shuttle there. I wouldn't recommend 12 walking across Redland Road to that. Relatively close, 13 nice for family gatherings, but I would recommend driving 14 there. 15 MS. KOSARY: The Upper Rock Creek Master Plan, as 16 I mentioned, has been updated across almost 60 years with 17 the same environmental goals. Why would you think that 18 Thrive would have a major impact on lessening those goals? 19 THE WITNESS: I don't think it does lessen those 20 environmental goals. And I don't think the two are 21 mutually exclusive to provide the residential use on site 22 while making it provide more -- a more sustainable 23 environment and resilient environment to deal with all of 24 the water quality, flooding, increased heat, climate 25 change, I think those are not mutually exclusive.</p>	<p>156</p> <p>1 MR. WALLACE: No. 2 HEARING EXAMINER BYRNE: Okay. That was the 3 email from Planning about the grading of that particular 4 Overhill Road. 5 Then I have Exhibit 37, Shady Grove Presbyterian 6 church letter. Exhibit 38, the resolution from the 7 Planning board regarding preliminary approval for the 8 forest conservation plan. Exhibit 39, Mr. Evans' resume. 9 Exhibit 40, Mr. Keener's resume. Exhibit 41, Mr. Sloan's 10 resume. Sorry, that was out of order. Exhibit 42, Mr. 11 McAndrews' resume. 12 Exhibit 43, we start with your additional 13 exhibits Ms. Kosary, a copy of the particular match plan, 14 2004 Upper Rock Creek. Exhibit 44, the Primrose decision 15 by Ms. Robeson-Hannon. Exhibit 45, the bus schedule. I 16 think it was routes 53 and 57, is that correct? Exhibit 46 17 CU 19-04, that was the Francisco Landscaping decision. 18 Exhibit 47, school bus stops. 19 And I will take judicial notice of the Thrive 20 plan as well. So I will take a look at that. And I think 21 that covers all of the exhibits. Any objection to these -- 22 the new exhibits? 23 MS. KOSARY: No. 24 HEARING EXAMINER BYRNE: All right. So then all 25 exhibits in the original exhibit list and then all exhibits</p>

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<p>157</p> <p>1 added after are deemed admitted. 2 (Exhibits 1 through 47 admitted.) 3 HEARING EXAMINER BYRNE: So at this point, if you 4 both wish to make closing statements we can go forward with 5 that. 6 MR. WALLACE: Given the length of the hearing and 7 the time of day I'll just be very brief. Thank you, first 8 of all, for your hearing conduct and thank you Ms. Kosary, 9 for the very thorough questions for us. We presented a 10 case with expert testimony through our plans, I'll submit 11 into the record, and through our rebuttal, the evidence 12 shows that this conditional use does meet all the 13 requirements of the zoning ordinance both general and 14 specific. This is in conformance and comports with the 15 plan, which technical staff agreed with the plan in its 16 recommendation for approval. This is exactly what is meant 17 by Thrive and also the general need for housing in this 18 county, 100 percent affordable senior housing. It is the 19 type of project that has to be encouraged and it is 20 necessary to correct social economic discrepancies and 21 conflicts that were created by previous plans and previous 22 zoning ordinance implementation of county plans. So this 23 brings a needed housing resource to the county and it 24 brings it in a way that is compatible with the surrounding 25 neighborhood and has the support of the surrounding</p>	<p>159</p> <p>1 be 40 days from today that the decision will be rendered 2 unless it is on a weekend, a Saturday, a Sunday, or a 3 holiday, and then it will be on the very next business day. 4 MS. KOSARY: You get extra days. 5 HEARING EXAMINER BYRNE: Yeah, for the -- yeah, 6 for that. 7 MR. WALLACE: Okay. Can you just remind me when 8 you're leaving the record open until? 9 HEARING EXAMINER BYRNE: Ten days from today. 10 MR. WALLACE: Okay. 11 HEARING EXAMINER BYRNE: So we have 10 days. So 12 let's say, well actually, you know what, let's look at the 13 calendar. 14 MR. WALLACE: Well, I can certainly ask, is there 15 any additional information from either side that would be 16 helpful to you at this point? 17 HEARING EXAMINER BYRNE: No, I think I have 18 everything that I needed. Nothing -- I guess the only 19 other thing that could be provided would be the experience 20 at Fairland. You know, knowing that a percentage of the 21 individuals that have cars. Knowing how many, like what 22 service you rely on there. Did you establish a shuttle 23 system there as well? That would be the -- you know, if 24 that information is available, I would take that into 25 consideration. I have, you know, access to Thrive. Thank</p>
<p>158</p> <p>1 neighborhood. The folks who lived next to this project are 2 the ones who have supported yet, who have heard about it 3 through community meetings, and have not opposed it. So we 4 asked that this all be taken into consideration in this 5 application be approved. 6 HEARING EXAMINER BYRNE: All right. Thank you. 7 Ms. Kosary, anything? 8 MS. KOSARY: Well, I think I did a thorough 9 conclusion at the end of my testimony. I just want to 10 point out that that need, although, I will acknowledge that 11 there is a need for this type of housing needs is not one 12 of the necessary findings. And in the end, you are the one 13 who makes the decision about whether this conditional use 14 application actually conforms to the necessary findings, 15 which is as the law should be. 16 HEARING EXAMINER BYRNE: All right. Thank you, 17 Ms. Kosary. Thank you, Mr. Wallace. Thank you all for 18 your participation today. This -- let's see, I have 30 19 days to make a decision, but were going to leave the record 20 open for 10 days to allow time for the transcript to be 21 prepared, so 30 days starting, counting tomorrow, plus an 22 additional 10 will be when my decision will be ready and 23 available. If I had my handy dandy date calculator in 24 front of me, I would tell you the exact date, but I do not 25 and without my date calculator I'm a counter. So it will</p>	<p>160</p> <p>1 you for a hard copy of the plan because I -- 2 MS. KOSARY: You're a lawyer, you like paper. 3 HEARING EXAMINER BYRNE: I still like the paper 4 and so I have not gotten away from the paper. 5 MR. WALLACE: We can provide a statement which 6 will be relatively short. It will be in line with what Mr. 7 Byrne said so there won't be any added -- and were happy to 8 submit the DPS comments on the concepts to stormwater 9 management plan, if you'd like them. Mr. Evans mentioned 10 that he was -- has comments from them. 11 HEARING EXAMINER BYRNE: Well, no matter what 12 happens you have two -- 13 MR. WALLACE: I know. I just wanted to know -- 14 HEARING EXAMINER BYRNE: That would be great. So 15 I'm okay with that. 16 MR. WALLACE: I just wanted to offer. 17 HEARING EXAMINER BYRNE: That's fine. Obviously, 18 plan approval would be a condition, no matter what. 19 MR. WALLACE: I just wanted to offer. 20 HEARING EXAMINER BYRNE: In the event I made a 21 decision that granted all of that, that would obviously be 22 a condition. 23 MR. WALLACE: Right. Okay. 24 HEARING EXAMINER BYRNE: All right. So it looks 25 like 10 days from today would technically be Monday, the</p>


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1 14th, and then another 30 days after that, so we're looking
2 September 13th would be a Wednesday. All right, so the
3 decision will be ready by September 13th.
4 MR. WALLACE: Great. Thank you.
5 HEARING EXAMINER BYRNE: Okay. Thank you all for
6 your participation and we're off the record.
7 (The proceeding concluded.)
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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
5 transcribed to the best of my ability from the audio
6 recording as provided; and that I am neither counsel for,
7 related to, nor employed by and of the parties to this case
8 and have no interest, financial or otherwise, in its
9 outcome.
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13 MOLLY BUGHER, CDLT-161
14 8/15/2023
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