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Transcript of Hearing

Date: January 29, 2024

Case: CM Muncaster, LLC (CU 24-07)

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Transcript of Hearing
Conducted on January 29, 2024

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1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1 A P P E A R A N C E S
2 MONTGOMERY COUNTY, MARYLAND	2
3	3 ON BEHALF OF THE APPLICANT, CM MUNCASTER, LLC:
4 - - - - - x	4 SCOTT WALLACE, ESQUIRE
5 :	5 MILES & STOCKBRIDGE
6 CM MUNCASTER, LLC, :	6 11 North Washington Street
7 Applicant :	7 Suite 700
8 :	8 Rockville, Maryland 20850
9 :	9 (301) 517-4813
10 :	10
11 - - - - - x	11 ALSO PRESENT:
12	12 Sara Behanna, OZAH Administrative Specialist II
13	13 Carol Kosary, Appellant (via Zoom)
14 HEARING	14 Andrew Einsmann, Appellant (via Zoom)
15 Before Hearing Examiner LYNN ROBESON HANNAN	15 Kristy Helms, Appellant (via Zoom)
16 Rockville, Maryland	16 Tracy McAbee, Appellant (via Zoom)
17 Monday, January 29, 2024	17 Alicia Taylor, Appellant (via Zoom)
18 9:33 a.m.	18
19	19
20	20
21	21
22	22
23 Job No.: 518601	23
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2 (5 to 8)

<p>5</p> <p>1 PROCEEDINGS</p> <p>2 THE HEARING EXAMINER: Case of CM Muncaster,</p> <p>3 LLC, CU 24-07 for a -- four townhouse units at 7100 and</p> <p>4 7106 Muncaster Mill Road. Would the parties identify</p> <p>5 themselves for the record?</p> <p>6 MR. WALLACE: For the record, Scott Wallace</p> <p>7 with the law firm of Miles & Stockbridge, land use</p> <p>8 counsel for the applicant.</p> <p>9 THE HEARING EXAMINER: Okay. Is there anyone</p> <p>10 that is appearing remotely that would like to testify</p> <p>11 today?</p> <p>12 DR. KOSARY: Yes, Madam Examiner. This is</p> <p>13 Carol Kosary, and I'd like to testify today.</p> <p>14 THE HEARING EXAMINER: Okay. Thank you. Can</p> <p>15 you identify yourself for the record, please?</p> <p>16 DR. KOSARY: My name is Carol Kosary,</p> <p>17 K-O-S-A-R-Y. Is that all you need at the moment is my</p> <p>18 name?</p> <p>19 THE HEARING EXAMINER: And I couldn't</p> <p>20 hear -- and I need your address.</p> <p>21 DR. KOSARY: Oh, 7416 Needwood Road in</p> <p>22 Derwood, Maryland.</p> <p>23 THE HEARING EXAMINER: Okay. I'm going to</p> <p>24 stop you for -- thank you for that.</p> <p>25 Can the parties hear Dr. -- is it Dr. Kosary?</p>	<p>7</p> <p>1 DR. KOSARY: Could be in the lobby.</p> <p>2 MS. PARSONS: We have Mr. Paul Barton</p> <p>3 (phonetic) and Ms. Kathy Dormitzer (phonetic) in the</p> <p>4 waiting -- or they're with us, but there's no one</p> <p>5 else --</p> <p>6 THE HEARING EXAMINER: In the waiting room?</p> <p>7 MS. PARSONS: There's no one else in the</p> <p>8 waiting room.</p> <p>9 THE HEARING EXAMINER: Okay. Our county</p> <p>10 counsel tech person is telling us that she is not in</p> <p>11 the waiting room right now.</p> <p>12 Dr. Kosary?</p> <p>13 DR. KOSARY: Yes. Correct.</p> <p>14 THE HEARING EXAMINER: I'm just saying she's</p> <p>15 not in the waiting room.</p> <p>16 DR. KOSARY: Oh, she's not? She's not --</p> <p>17 THE HEARING EXAMINER: No.</p> <p>18 DR. KOSARY: She's emailed me saying she's</p> <p>19 waiting to get in. I'm going to tell her to leave what</p> <p>20 she's in and try to get back in.</p> <p>21 THE HEARING EXAMINER: Yes.</p> <p>22 DR. KOSARY: Sometimes that works.</p> <p>23 THE HEARING EXAMINER: Yes, it does. All</p> <p>24 right. With that, we're going to proceed.</p> <p>25 Mr. Wallace, do you have an opening</p>
<p>6</p> <p>1 DR. KOSARY: It's Dr. Kosary. Correct.</p> <p>2 THE HEARING EXAMINER: I know I met you in a</p> <p>3 case before.</p> <p>4 DR. KOSARY: Yes, you have. A very big case.</p> <p>5 THE HEARING EXAMINER: Yes.</p> <p>6 DR. KOSARY: That, like, lasted forever.</p> <p>7 THE HEARING EXAMINER: Okay. Thank you for</p> <p>8 identifying yourself.</p> <p>9 Is there anyone that is appearing remotely</p> <p>10 that would like to -- anyone else that is appearing</p> <p>11 remotely that would like to testify today?</p> <p>12 DR. KOSARY: Alicia Taylor, who I think</p> <p>13 you've had email correspondence with --</p> <p>14 THE HEARING EXAMINER: Yes.</p> <p>15 DR. KOSARY: -- is traveling at the moment</p> <p>16 and is trying to get on very remotely.</p> <p>17 THE HEARING EXAMINER: Okay. Well, we'll</p> <p>18 identify her when she comes --</p> <p>19 DR. KOSARY: Right.</p> <p>20 THE HEARING EXAMINER: -- when she's able to</p> <p>21 come in.</p> <p>22 DR. KOSARY: She says she's waiting to get</p> <p>23 in. I've been emailing her.</p> <p>24 THE HEARING EXAMINER: She's in the -- oh, in</p> <p>25 the -- she's in the lobby.</p>	<p>8</p> <p>1 statement?</p> <p>2 MR. WALLACE: Thank you. Happy to be here</p> <p>3 presenting the case for this townhouse development. It</p> <p>4 is a Design For Life and community, which means it's</p> <p>5 designed to be accessible to folks who have mobility</p> <p>6 issues. It's an important housing resource and a</p> <p>7 needed housing resource in the county. And I'm very</p> <p>8 proud to be here to work with Craftmark to bring this</p> <p>9 forward.</p> <p>10 Also happy to have the unanimous support of</p> <p>11 the planning board and planning staff in this</p> <p>12 application. And as will be shown through the existing</p> <p>13 materials and documents in the record and testimony,</p> <p>14 you'll hear for today we are in compliance with all</p> <p>15 political requirements of the zoning ordinance and hope</p> <p>16 that we are approved for this development and this</p> <p>17 important project in the county.</p> <p>18 With that, we're happy to start our</p> <p>19 case-in-chief.</p> <p>20 THE HEARING EXAMINER: Okay. Dr. Kosary?</p> <p>21 Dr. Kosary?</p> <p>22 DR. KOSARY: Yes?</p> <p>23 THE HEARING EXAMINER: Did you want to make</p> <p>24 an opening statement? It's not testimony; it's just a</p> <p>25 summary of your position.</p>

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3 (9 to 12)

<p>9</p> <p>1 DR. KOSARY: No. I'll just wait until I 2 testify. 3 THE HEARING EXAMINER: Okay. Thank you. 4 DR. KOSARY: Thank you. 5 THE HEARING EXAMINER: Okay. Dr. Kosary and 6 Mr. Wallace are veterans of this process. But just for 7 the record, this is -- it's an informal hearing, but it 8 does have certain formalities. 9 Testimony is under oath and subject to 10 cross-examination. Anything you want to say about this 11 application, please say it here. If you disagree with 12 my decision, it goes to the Board of Appeals. You can 13 appeal to the Board of Appeals, but that appeal is 14 based solely on the testimony and evidence received 15 here. 16 Are there any other preliminary matters? 17 MR. WALLACE: Just one I'll raise now. It 18 may be more appropriate later. I appreciate very much 19 staff's work to -- on the exhibit list. And there is 20 one exhibit that I -- was submitted with the 21 application that does not appear to be in the exhibit 22 list, though. 23 And I'm happy to introduce that when that 24 witness testifies. 25 THE HEARING EXAMINER: What number is it, do</p>	<p>11</p> <p>1 MR. WALLACE: Thanks. 2 THE HEARING EXAMINER: All right. Well, we 3 can admit it. 4 Dr. Kosary, do you have any objection to 5 admitting it? 6 DR. KOSARY: No. I was wondering why it 7 wasn't there to begin with. 8 THE HEARING EXAMINER: Okay. If you want to 9 approach, and we can bring it in. 10 MR. WALLACE: Sure. 11 THE HEARING EXAMINER: Okay. And this will 12 be Exhibit 35, Land Use Report -- Land Use Planning 13 Report. 14 (APPLICANTS Exhibit 35 marked for 15 identification and admitted into evidence.) 16 THE HEARING EXAMINER: All right. And are 17 there any other preliminary matters? 18 MR. WALLACE: No. 19 THE HEARING EXAMINER: Okay. With that, Mr. 20 Wallace, why don't you go ahead with your first 21 witness. 22 MR. WALLACE: Thank you. My first witness is 23 Chris Malm with Craftmark Homes. 24 THE HEARING EXAMINER: Okay. Mr. Malm, 25 please raise your right hand.</p>
<p>10</p> <p>1 you know? 2 MR. WALLACE: Well, no, I'm saying it's not 3 in the record -- it's not in the record at all at 4 least. 5 THE HEARING EXAMINER: Oh. 6 MR. WALLACE: Yeah. 7 THE HEARING EXAMINER: What exhibit is it? 8 MR. WALLACE: Well, it's a land use report 9 that was filed with the application. And again, I'm 10 happy to introduce that when that -- when our -- 11 THE HEARING EXAMINER: Let me just check. It 12 may be in the exhibit list, but we haven't posted it. 13 So if you don't mind, I'll just double check. 14 MR. WALLACE: Yeah, I looked at -- through 15 it, and given, as I said, my work with -- to get this 16 right, it's probably as much my fault as anyone's. 17 THE HEARING EXAMINER: No, I don't see it. 18 So have you shown it to Dr. Kosary? 19 MR. WALLACE: It was submitted with the 20 application, so. 21 THE HEARING EXAMINER: Oh, okay. So it's on 22 the planning department's DAIC website? 23 MR. WALLACE: It should be, yes. 24 DR. KOSARY: It is, Madam Examiner. 25 THE HEARING EXAMINER: Okay.</p>	<p>12</p> <p>1 Whereupon, 2 CHRISTOPHER MALM, 3 being first duly sworn or affirmed to testify to the truth, 4 the whole truth, and nothing but the truth, was examined 5 and testified as follows: 6 THE HEARING EXAMINER: Okay. Mr. Wallace? 7 MR. WALLACE: Please state your name and 8 business address for the record. 9 MR. MALM: My name is Christopher Malm. I'm 10 with Craftmark Homes. And our address is 1355 Beverly 11 Road, Suite 330, McLean, Virginia. 12 THE HEARING EXAMINER: Can you spell 13 your -- I'm going to ask witnesses just for our 14 noticing purposes. Can you add your email? 15 MR. MALM: Sure. 16 THE HEARING EXAMINER: Can you spell your 17 last name? 18 MR. MALM: Sure. My last name is spelled M 19 as in Mike, A-L-M as in Mike. And oh, I'm sorry. And 20 my email address is C-M as in Mike, A-L-M as in Mike, 21 so CMalm at Craftmarkhomes, with an S, dot com. 22 THE HEARING EXAMINER: Thank you. 23 MR. WALLACE: And please describe your role 24 with Craftmark Homes. 25 MR. MALM: Sure. And maybe I can tell you a</p>

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4 (13 to 16)

13	<p>1 bit about Craftmark at the same time. So Craftmark is</p> <p>2 a privately owned, family-run development and home</p> <p>3 building company. We've built -- we've been in</p> <p>4 business for over 33 years and have built over 8,000</p> <p>5 homes in the D.C. area to date, over a quarter of which</p> <p>6 have been in Montgomery County. We build single-family</p> <p>7 detached homes, in addition to townhomes and</p> <p>8 two-over-two condominiums. And in terms of projects</p> <p>9 actively under construction, we have three being built</p> <p>10 right now in Montgomery County, as well as several</p> <p>11 others in the D.C. area.</p> <p>12 As far as my role at the company, my title is</p> <p>13 vice president/CFO. Some of my duties include making</p> <p>14 deals to buy land for new projects, doing land</p> <p>15 entitlements, designing product, arranging project</p> <p>16 financing, and overseeing various company functions</p> <p>17 like accounting, purchasing, sales, and operations.</p> <p>18 MR. WALLACE: And please describe in general</p> <p>19 terms the project, and we'll have more specific</p> <p>20 testimony about the project with other witnesses.</p> <p>21 But Mr. Malm will do some general --</p> <p>22 MR. MALM: Sue. Maybe it would be helpful to</p> <p>23 pull up Exhibit 10, which is our conditional use plan.</p> <p>24 THE HEARING EXAMINER: You know, can someone</p> <p>25 move this easel? I can't see the board, and I can't</p>	15	<p>1 such as wheelchairs.</p> <p>2 Some of the main accessible features for</p> <p>3 Design for Life housing include a minimally sloped</p> <p>4 site. And it's important to know that this existing</p> <p>5 site is fairly flat, so it's really conducive to Design</p> <p>6 for Life. Also, all townhomes will have zero-step</p> <p>7 front door entrances, and once you're inside the homes,</p> <p>8 there will be a slew of other accessibility features.</p> <p>9 I won't go through them all, but some of the main ones</p> <p>10 are larger maneuvering spaces in the kitchen, an</p> <p>11 accessibility enhanced bathroom, wider doorways, lower</p> <p>12 light switches. Also, all townhomes in this community</p> <p>13 will have private elevators. And each unit will have</p> <p>14 its own parking space for accessible vehicle parking.</p> <p>15 MR. WALLACE: And please describe the</p> <p>16 affordability component of the project.</p> <p>17 MR. MALM: Sure. This project will provide</p> <p>18 15 percent of the units as MPDUs. So of the total of</p> <p>19 43 townhomes, 7 of them will be MPDUs. And I think</p> <p>20 it's worth mentioning that the MPDU townhomes will be</p> <p>21 built to the same Design For Life accessibility</p> <p>22 standards as the market rates. And to our knowledge,</p> <p>23 these will be the first Design For Life MPDUs offered</p> <p>24 in the county.</p> <p>25 MR. WALLACE: As townhouses? As for-sale</p>
14	<p>1 see the easel either.</p> <p>2 (Pause.)</p> <p>3 MR. MALM: So what you're looking at is a</p> <p>4 copy of our conditional use plan. This project will</p> <p>5 consist of 43 three-story townhomes with rear-load</p> <p>6 garages. The community will have an internal street</p> <p>7 which connects to Muncaster Mill Road, as well as a</p> <p>8 system of alleys that provide vehicular access to the</p> <p>9 rear of the units for their rear-load garages.</p> <p>10 The project has two main communal areas. The</p> <p>11 first, located in the center of the project, is an open</p> <p>12 lawn space with bench seating, which is surrounded by</p> <p>13 sidewalks for pedestrian connectivity. The second,</p> <p>14 located towards the rear of the project, has a lawn</p> <p>15 space with bench seating and also has a multi-use play</p> <p>16 area and pergola. Both communal spaces will be planted</p> <p>17 with plenty of trees, which are shown in our landscape</p> <p>18 plan.</p> <p>19 And can I talk about Design for Life now too,</p> <p>20 or -- sure? Okay. Additionally, this project will be</p> <p>21 developed under the Design for Life standard. The</p> <p>22 Design for Life program was meant to increase the</p> <p>23 supply of accessible housing in Montgomery County. And</p> <p>24 accessible housing is housing which facilitates the</p> <p>25 movement and usability for people with mobility aids,</p>	16	<p>1 townhouses?</p> <p>2 MR. MALM: As for-sale townhouses, sure.</p> <p>3 MR. WALLACE: And do you know approximately</p> <p>4 the price point for an MPDU on the project?</p> <p>5 MR. MALM: It's tough to say because the MPDU</p> <p>6 office determines it at the time of sale. But in our</p> <p>7 experience, MPDU townhomes in Montgomery County are in</p> <p>8 the range of \$200,000.</p> <p>9 MR. WALLACE: And using Exhibit 12, could you</p> <p>10 please review the conceptual floor plans and elevations</p> <p>11 for the project?</p> <p>12 MR. MALM: Sure.</p> <p>13 MS. PARSONS: You said 12?</p> <p>14 MR. MALM: Yes.</p> <p>15 MR. WALLACE: Yes. The cover picture's</p> <p>16 great. A is perfect.</p> <p>17 MR. MALM: Okay. Well --</p> <p>18 MR. WALLACE: There --</p> <p>19 MR. MALM: Oh, perfect. Thank you. That's</p> <p>20 very helpful.</p> <p>21 As shown in these conceptual renderings,</p> <p>22 these will be three-story townhomes. The facades will</p> <p>23 all be high-quality materials. The fronts will be</p> <p>24 predominantly brick, real six-inch stone, and</p> <p>25 HardiePanel. And also, we're using a variety of colors</p>

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5 (17 to 20)

<p>17</p> <p>1 to add, you know, its own personality to each unit, 2 while enhancing the overall aesthetic of the 3 neighborhood. Extra variety in visual interest is 4 provided through various architectural details, like 5 the reverse gables along the roof line and also 6 projecting features like box bays and canopies over the 7 front doors, as well as a generous number of windows 8 laid out in a variety of patterns.</p> <p>9 These homes can be configured with anywhere 10 from three to five bedrooms, and will contain 11 approximately 2,500 finished square feet. And as 12 mentioned previously, each unit will contain a 13 zero-step front door entrance, a private elevator, and 14 a rear-load garage, which can accommodate accessible 15 vehicle parking.</p> <p>16 MR. WALLACE: And there are also in the 17 record is Exhibits 12B through -D, typical floor plans. 18 Is there anything with the floor plans that you want to 19 discuss or you think we've covered?</p> <p>20 MR. MALM: I think we've covered the floor 21 plan.</p> <p>22 MR. WALLACE: Okay. I'll move on. And can 23 you describe just how the community is expected to 24 operate in terms of deliveries, pickups for trash and 25 things like that?</p>	<p>19</p> <p>1 month, they sent our development team a list of 2 questions and concerns. The county also received a 3 copy of that letter, which is listed as Exhibit 33.</p> <p>4 And so shortly after that letter came out, we 5 arranged a Zoom meeting with them to discuss it. And 6 the main takeaway from that meeting was the church's 7 desire for a privacy fence between our property and 8 theirs, which we agreed to build. We explained that 9 due to a number of trees and stormwater facilities in 10 that area, the fence would likely need to be built all 11 or in portion on their side. And we plan to follow up 12 with them regarding the exact details.</p> <p>13 And also last September, we mailed letters to 14 the single-family detached homes behind our project, 15 but did not hear anything back.</p> <p>16 MR. WALLACE: Thank you. And so based on 17 your testimony, your familiarity with the plans, the 18 application, and your experience developing residential 19 projects in the county, do you think the conditional 20 use in this project will be in harmony with the 21 surrounding neighborhood?</p> <p>22 MR. MALM: Yes, I do.</p> <p>23 MR. WALLACE: Okay. Is there anything 24 else -- are you in agreement with the conditions of 25 approval proposed by technical staff?</p>
<p>18</p> <p>1 MR. MALM: Sure. For deliveries, residents 2 will receive, you know, the typical residential 3 deliveries from UPS, FedEx, and the Postal Service. 4 There will also be private garbage and recycling 5 pickup. And the community will also be governed by an 6 HOA, which is responsible for the common element 7 maintenance.</p> <p>8 MR. WALLACE: And did you host any community 9 meetings with community -- any meetings with the 10 community to discuss the project?</p> <p>11 MR. MALM: Yes. Early on in the process, we 12 reached out to our immediate neighbors. The first was 13 Shady Grove Square, which is the existing townhome 14 community, which borders us to the northeast. We had a 15 Zoom meeting with them in February of 2023. There were 16 mainly two folks from the community who were active 17 participants in that meeting. And if I recall, one of 18 them was the president of the community's condo 19 association.</p> <p>20 We also reached out to the Gospel Baptist 21 Church, which is our immediate neighbor on the other 22 side, to the southwest. We've met twice with them so 23 far. The first time was in April of 2023, where my 24 father and I presented to their entire congregation in 25 person on Sunday at their church. Then earlier this</p>	<p>20</p> <p>1 MR. MALM: Yes.</p> <p>2 MR. WALLACE: Okay. And you will be coming 3 back for -- I understand you'll be coming back for 4 preliminary plan for them to --</p> <p>5 MR. MALM: Yes.</p> <p>6 MR. WALLACE: -- in the future. Is there 7 anything else you'd like to add?</p> <p>8 MR. MALM: Sure. You know, the Design for 9 Life program has not been heavily used since its 10 inception in 2015. I believe there's only been one 11 Design for Life community built. We think it's mostly 12 due to the complexities of finding a suitable site but 13 also the complexities of building accessible product. 14 And we think Craftmark is uniquely positioned to 15 overcome both of those challenges here, and we look 16 forward to the opportunity to bring more accessible 17 homes to market.</p> <p>18 THE HEARING EXAMINER: Okay.</p> <p>19 MR. WALLACE: I have no further questions at 20 this time.</p> <p>21 THE HEARING EXAMINER: Okay. Dr. Kosary?</p> <p>22 DR. KOSARY: Yes, I do.</p> <p>23 THE HEARING EXAMINER: Can we get her visual?</p> <p>24 I'm just going to put your visual up.</p> <p>25 DR. KOSARY: Oh, your visual --</p>

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6 (21 to 24)

<p>21</p> <p>1 THE HEARING EXAMINER: So we can see you 2 testifying -- or asking questions. 3 DR. KOSARY: Oh, and I have to take the cover 4 off the camera. 5 THE HEARING EXAMINER: Yes, you do. 6 DR. KOSARY: I have to start my video. And 7 it has started. 8 DR. KOSARY: And I'm sorry. I didn't catch 9 your name. 10 THE HEARING EXAMINER: My name is Lynn -- 11 DR. KOSARY: Oh, no, I know you. Who's -- 12 MR. MALM: My name is Chris Malm. 13 THE HEARING EXAMINER: Malm. 14 MR. MALM: Chris Malm. 15 DR. KOSARY: Mr. Malm, going back to your 16 Exhibit 10, you discussed two of -- the two common 17 areas that are part of this development, your lawn and 18 your -- what's -- 19 MR. MALM: There's a -- there's two lawns, 20 one -- 21 DR. KOSARY: A multi-age play area? 22 MR. MALM: Yes. 23 DR. KOSARY: Approximately what are the 24 square footage of each of those? 25 MR. MALM: You know, I'd have to defer to our</p>	<p>23</p> <p>1 conceptually based on your Fairland model? 2 MR. MALM: The -- 3 DR. KOSARY: Your Seneca is a 24-foot 4 townhouse, correct? And your Fairland is at 20? 5 MR. MALM: The MPDUs at this project will be 6 20 feet wide. That's correct. 7 DR. KOSARY: But you've got no architectural 8 plans that you submitted for your 20-foot MPDUs, 9 correct? 10 MR. MALM: That's correct. We did not -- we 11 intend for the MPDUs to have the same architectural 12 styling as the market rates, and so they'll blend 13 seamlessly into the building. 14 DR. KOSARY: Okay. Thank you. 15 THE HEARING EXAMINER: Anything else, Dr. 16 Kosary? 17 DR. KOSARY: Not for now. 18 THE HEARING EXAMINER: Now, what size 19 are -- what's the difference in size of the four -- of 20 the market price unit and the MPDU unit? 21 MR. MALM: Sure. It's probably about a 22 500-finished-square-foot difference. And so we're 23 talking about a 24-by-roughly-42-foot market rate unit. 24 And our MPDUs will be about the same depth, but they'll 25 be 20 feet wide, which results in probably a</p>
<p>22</p> <p>1 civil engineer. I don't know the square footages off 2 the top of my head. 3 DR. KOSARY: Okay. I can, I guess, wait 4 until your civil engineer speaks then. 5 And going to your Exhibit 12, specifically 6 12A would indicate that this is actually your Seneca 7 model. So this is actually your market rate model, 8 correct? 9 MR. MALM: What we're showing is a conceptual 10 rendering of a townhome that we've built before. We're 11 building it right now in Clarksburg called The Seneca. 12 However, that is not a Design for Life unit, so we 13 would intend to, of course, make the necessary Design 14 for Life tweaks for Muncaster. 15 DR. KOSARY: But I'm just referencing this 16 because actually, on your Exhibit 10, you do have these 17 units identified as The Seneca. 18 MR. MALM: It's meant to be a conceptual 19 rendering. I don't believe the Design for Life changes 20 we'll be making will make any changes to the exterior 21 of the units. However, there will be, you know, minor 22 changes to the inside in order to be Design for Life 23 compatible. 24 DR. KOSARY: Now, you also indicate on 25 Exhibit 10 that your MDPU's, though, are at least</p>	<p>24</p> <p>1 2,000-square-foot unit as opposed to a 2 2,500-square-foot unit. And of course, those are 3 approximate. 4 THE HEARING EXAMINER: Right. Okay. 5 MR. WALLACE: Just one redirect. 6 THE HEARING EXAMINER: Yep. 7 MR. WALLACE: Mr. Malm, have you developed 8 MPDUs in Montgomery County before, specifically 9 Montgomery County, not -- 10 MR. MALM: Yes. 11 MR. WALLACE: -- Rockville or Gaithersburg? 12 MR. MALM: Craftmark has a long history of 13 building MPDUs in Montgomery County. And we delivered 14 our most recent MPDU townhomes in Clarksburg in 15 December of 2023, so very recently. 16 MR. WALLACE: And will the MPDUs in this 17 project conform with all requirements of the county for 18 design MPDUs? 19 MR. MALM: Yes. We're very familiar with 20 those requirements, and these will comply. 21 MR. WALLACE: Thank you. 22 THE HEARING EXAMINER: Okay. Thank you. You 23 may be excused for now. 24 And Mr. Wallace, do you want to call your 25 next witness?</p>

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7 (25 to 28)

<p>25</p> <p>1 MR. WALLACE: My next witness is Scott 2 Wolford. And Mr. Wolford will be testifying as an 3 expert in land planning. 4 THE HEARING EXAMINER: Mr. Wolford, would you 5 raise your right hand, please? 6 Whereupon, 7 SCOTT WOLFORD, 8 being first duly sworn or affirmed to testify to the truth, 9 the whole truth, and nothing but the truth, was examined 10 and testified as follows: 11 THE HEARING EXAMINER: Okay. Go ahead, Mr. 12 Wallace. 13 MR. WALLACE: Please state your name, 14 occupation, and business address for the record. 15 MR. WOLFORD: Scott Wolford, W-O-L-F-O-R-D. 16 I'm a certified planner and licensed landscape 17 architect with Colliers Engineering, C-O-L-L-I-E-R-S. 18 And my email address is Scott, S-C-O-T-T dot Wolford, 19 W-O-L-F-O-R-D at Colliers, C-O-L-L-I-E-R-S, E-N-G dot 20 com. And my business address is 6240 Old Dobbin Lane 21 in Columbia, Maryland. 22 MR. WALLACE: And have you previously 23 testified before the hearing examiner in Montgomery 24 County as an expert? 25 MR. WOLFORD: Yes, on numerous occasions.</p>	<p>27</p> <p>1 MR. WALLACE: -- landscape architecture? 2 THE HEARING EXAMINER: Oh, I didn't hear that 3 one. 4 MR. WALLACE: He is a -- 5 THE HEARING EXAMINER: Is that how you were 6 qualified before? 7 MR. WOLFORD: Yes. 8 THE HEARING EXAMINER: Okay. That's fine. 9 MR. WOLFORD: Yeah, I'm a certified planner 10 and a registered landscape architect. 11 THE HEARING EXAMINER: Okay. 12 MR. WALLACE: And I have a resume, but it 13 sounds like we've been admitted? Okay. 14 THE HEARING EXAMINER: Yeah. 15 MR. WALLACE: Okay. And are you familiar 16 with the property that is the subject of this 17 application and the surrounding area? 18 MR. WOLFORD: Yes, I am. 19 MR. WALLACE: And are you familiar with the 20 R-200 zoning classification and the specific 21 requirements for this type of a conditional use? 22 MR. WOLFORD: Yes, I am. 23 MR. WALLACE: Okay. And did you review the 24 statement in support of the application, which is 25 Exhibit 3, the planning staff report, which is Exhibit</p>
<p>26</p> <p>1 MR. WALLACE: Anything of most recent or? 2 MR. WOLFORD: I was in front of this zoning 3 hearing examiner for a daycare about a year and a half 4 ago. I'm just going to -- 5 MR. WALLACE: That's fine. And your area 6 is -- 7 THE HEARING EXAMINER: Which one was that? 8 For some reason I -- 9 MR. WOLFORD: The Primrose. 10 THE HEARING EXAMINER: I thought so. 11 MR. WOLFORD: Immediately adjacent to Dr. 12 Kosary's house. 13 THE HEARING EXAMINER: Yes. Yes. Okay. 14 So Dr. Kosary, do you have any objections to 15 qualifying Mr. Wolford as a expert in land planning? 16 DR. KOSARY: No. He's been qualified before 17 you at least one time that I'm aware of. 18 THE HEARING EXAMINER: Okay. With that, go 19 ahead, Mr. Wolford. 20 MR. WALLACE: Are you familiar with the 21 property that is the subject of this conditional use 22 application? 23 Oh, I'm sorry. He's been admitted as an 24 expert in land planning and -- 25 THE HEARING EXAMINER: Yes.</p>	<p>28</p> <p>1 30, and the land use planning report, which was just 2 admitted into the record? 3 MR. WOLFORD: Yes. 4 THE HEARING EXAMINER: Exhibit 35. 5 MR. WALLACE: Right. 6 MR. WOLFORD: Yes. 7 MR. WALLACE: Right. Thank you. And did you 8 agree with the conclusions in those documents that the 9 application complies with the applicable zoning 10 standards? 11 MR. WOLFORD: Yes, I do. 12 MR. WALLACE: Okay. And did Planning staff 13 outline a surrounding neighborhood for the project? 14 MR. WOLFORD: Yes, they did. 15 MR. WALLACE: And using Exhibit 4 which is 16 the zoning map, can you please review for the examiner 17 staff's delineated neighborhood? 18 MR. WOLFORD: Staff delineated the 19 neighborhood -- 20 THE HEARING EXAMINER: Can we get exhibit -- 21 MR. WALLACE: Oh, I'm sorry. Yes. 22 MS. PARSONS: Which one? 23 MR. WALLACE: Exhibit 4. 24 THE HEARING EXAMINER: Exhibit 4. 25 MR. WALLACE: Okay.</p>

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<p>29</p> <p>1 MR. WOLFORD: Staff delineated that the</p> <p>2 neighborhood as the property -- the subject property</p> <p>3 with the church on it to the immediate east or</p> <p>4 southeast, the single-family detached homes to the</p> <p>5 south of it, several of the detached homes across</p> <p>6 Redland Road to the south, the immediate townhouse</p> <p>7 community to the west, and several of the houses across</p> <p>8 Muncaster Mill Road immediately north of the property.</p> <p>9 THE HEARING EXAMINER: Okay. On this</p> <p>10 exhibit, can you describe where the subject property</p> <p>11 is?</p> <p>12 MR. WOLFORD: The subject property on this</p> <p>13 exhibit has -- it's the lot with a dot in it. Can I</p> <p>14 walk up there and point?</p> <p>15 THE HEARING EXAMINER: Yes.</p> <p>16 MR. WOLFORD: Is that easiest?</p> <p>17 UNIDENTIFIED SPEAKER: This right here?</p> <p>18 MR. WOLFORD: Yeah. It's the two lots that</p> <p>19 are right there.</p> <p>20 THE HEARING EXAMINER: Okay. For the</p> <p>21 record --</p> <p>22 UNIDENTIFIED SPEAKER: It's the three. It's</p> <p>23 the three. It's this one, this one, and this one.</p> <p>24 THE HEARING EXAMINER: It's the three lots to</p> <p>25 the southeast of Sabrina Terrace?</p>	<p>31</p> <p>1 MR. WALLACE: I was --</p> <p>2 MR. WOLFORD: All right.</p> <p>3 THE HEARING EXAMINER: Yeah, it's in the</p> <p>4 staff report too, isn't it?</p> <p>5 MR. WOLFORD: Yes.</p> <p>6 MR. WALLACE: Okay. Right. And do you agree</p> <p>7 with the --</p> <p>8 THE HEARING EXAMINER: In Exhibit 30?</p> <p>9 MR. WALLACE: Right. And do you agree with</p> <p>10 that delineation?</p> <p>11 MR. WOLFORD: I think that the neighborhood</p> <p>12 would be slightly larger because I would define the</p> <p>13 neighborhood as the properties that are immediately</p> <p>14 adjacent and impacted by the proposed development and</p> <p>15 the properties adjacent that the tenants or the</p> <p>16 residents of the proposed project would use. So I</p> <p>17 would have included the retail shopping centers to the</p> <p>18 northwest, which includes the CVS and the U.S. Postal</p> <p>19 Service and some of those other buildings.</p> <p>20 THE HEARING EXAMINER: Right. It may be</p> <p>21 helpful to put up Exhibit 30. I think it's 30.</p> <p>22 MR. WALLACE: The staff report?</p> <p>23 THE HEARING EXAMINER: Yeah. On page 5</p> <p>24 because that shows me where --</p> <p>25 Can you do that, Michelle?</p>
<p>30</p> <p>1 MR. WALLACE: That's correct.</p> <p>2 THE HEARING EXAMINER: Okay.</p> <p>3 UNIDENTIFIED SPEAKER: Southwest or south --</p> <p>4 THE HEARING EXAMINER: South --</p> <p>5 MR. WALLACE: West.</p> <p>6 THE HEARING EXAMINER: Well, I don't know</p> <p>7 where north is. I didn't check where north is. I</p> <p>8 think it's southeast.</p> <p>9 UNIDENTIFIED SPEAKER: It is.</p> <p>10 MR. WALLACE: Okay. Southeast? Okay. Yeah,</p> <p>11 so I see how you're doing the --</p> <p>12 MS. PARSONS: Trying to get this to go away.</p> <p>13 MR. WALLACE: I see how you're doing the</p> <p>14 southeast. That's fine.</p> <p>15 THE HEARING EXAMINER: Plan south right -- or</p> <p>16 left. No. Right.</p> <p>17 MR. WALLACE: Okay.</p> <p>18 THE HEARING EXAMINER: Anyway, let's go on.</p> <p>19 MR. WALLACE: Okay. And staff's delineation</p> <p>20 was what of the neighborhood, just as to delineation?</p> <p>21 MR. WOLFORD: You want me to go through that</p> <p>22 again?</p> <p>23 MR. WALLACE: Oh, yeah. I'm sorry if you</p> <p>24 did. I was --</p> <p>25 MR. WOLFORD: Okay. All right.</p>	<p>32</p> <p>1 MS. PARSONS: Exhibit 30, page 5?</p> <p>2 (Pause.)</p> <p>3 THE HEARING EXAMINER: Okay. So tell us</p> <p>4 what -- based on this Exhibit 30, page 5, what would</p> <p>5 you include?</p> <p>6 MR. WOLFORD: I would have included the</p> <p>7 retail -- the two retail centers to the northwest --</p> <p>8 THE HEARING EXAMINER: Okay.</p> <p>9 MR. WOLFORD: -- which is out Redland Road,</p> <p>10 out to the intersection with Muncaster Mill.</p> <p>11 THE HEARING EXAMINER: Why would you have</p> <p>12 included those?</p> <p>13 MR. WOLFORD: Because it's more of the</p> <p>14 neighborhood and these are -- those are places that</p> <p>15 these residents will be going to get service in their</p> <p>16 pharmacies, mail post office, things like that, instead</p> <p>17 of just the immediate adjacent properties.</p> <p>18 THE HEARING EXAMINER: Okay. Anything else</p> <p>19 that you would have included?</p> <p>20 MR. WOLFORD: I would have included also the</p> <p>21 townhouse community north of Muncaster Mill up to</p> <p>22 Horizon Terrace, which is in the upper left-hand side</p> <p>23 across Muncaster Mill, Lisa Drive to the left.</p> <p>24 THE HEARING EXAMINER: Okay.</p> <p>25 MR. WOLFORD: And that street is Horizon</p>

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<p>33</p> <p>1 Terrace.</p> <p>2 THE HEARING EXAMINER: It's northwest of the</p> <p>3 existing surrounding community?</p> <p>4 MR. WOLFORD: Yes.</p> <p>5 MR. WALLACE: And Mr. Wolford, with your</p> <p>6 delineation of the neighborhood being a little</p> <p>7 different than staff's, are there any substantive</p> <p>8 issues with that, though, in terms of compliance with</p> <p>9 any of the applicable zoning requirements?</p> <p>10 MR. WOLFORD: No.</p> <p>11 MR. WALLACE: No? Okay. We just thought it</p> <p>12 was important to put on the record what Mr.</p> <p>13 Wolford's --</p> <p>14 THE HEARING EXAMINER: How would you</p> <p>15 characterize -- well, it does have a little bit of</p> <p>16 effect on how you characterize the neighborhood. How</p> <p>17 would you characterize your neighborhood as opposed to</p> <p>18 how Staff characterized the neighborhood?</p> <p>19 MR. WOLFORD: I would characterize the</p> <p>20 neighborhood of an eclectic mix of uses that make up a</p> <p>21 community or a neighborhood. There's townhouses, two</p> <p>22 story; there's three-story townhouses. There's</p> <p>23 single-family detached homes. There's a church. And</p> <p>24 there's a retail center that has a CVS, various</p> <p>25 restaurants, a postal service, and other uses in it</p>	<p>35</p> <p>1 sloping. It has two existing driveways onto Muncaster</p> <p>2 Mill Road, and on the lots is two homes and a number of</p> <p>3 outbuildings.</p> <p>4 MR. WALLACE: Okay. And then using Exhibit</p> <p>5 10, which is the conditional use plan, can you provide</p> <p>6 a little more detail about the project? We've heard</p> <p>7 from Mr. Malm in general terms about it, but more</p> <p>8 detail as to parking, the development that's proposed,</p> <p>9 et cetera.</p> <p>10 MR. WOLFORD: Uh-huh. Yes. So the proposed</p> <p>11 development consolidates the two single-family detached</p> <p>12 driveways on Muncaster Mill into one entrance, which is</p> <p>13 directly south of Lisa Lane on the north side of</p> <p>14 Muncaster Mill. It comes into the project with a</p> <p>15 private driveway, which units front on, and off of</p> <p>16 that, then there's a loop that goes to the west to get</p> <p>17 to the access to the back for the rear-loaded garages</p> <p>18 that front onto Private Street A on this exhibit. And</p> <p>19 then there are two spur roads that come off to the east</p> <p>20 with units -- with alleyways that front onto them for</p> <p>21 the access to the garages.</p> <p>22 Along Muncaster Mill Road, there's several</p> <p>23 stormwater management facilities proposed. Along the</p> <p>24 east property line, between this subject property and</p> <p>25 the adjacent church, there are several proposed</p>
<p>34</p> <p>1 that serve the immediate neighborhood.</p> <p>2 THE HEARING EXAMINER: So in yours, it would</p> <p>3 include that commercial component?</p> <p>4 MR. WOLFORD: Yeah, because it --</p> <p>5 THE HEARING EXAMINER: Neighborhood</p> <p>6 commercial?</p> <p>7 MR. WOLFORD: -- it's a little more urbanized</p> <p>8 area than what the staff report has as their</p> <p>9 neighborhood. Their neighborhood is pretty much just</p> <p>10 residential with a church. And I don't think that</p> <p>11 exactly characterizes the neighborhood.</p> <p>12 THE HEARING EXAMINER: Now, are there any</p> <p>13 special -- in your defined neighborhood, are there any</p> <p>14 conditional uses or special exceptions that aren't</p> <p>15 listed in the Staff report?</p> <p>16 MR. WOLFORD: No, there are not.</p> <p>17 THE HEARING EXAMINER: Okay. You can go</p> <p>18 ahead. I've finished my questions.</p> <p>19 MR. WALLACE: Sure. And using Exhibit 9, the</p> <p>20 existing conditions plan, can you review for the</p> <p>21 hearing examiner the existing conditions of the</p> <p>22 property?</p> <p>23 MR. WOLFORD: Yes. The property is 4.46</p> <p>24 acres, and it fronts on Muncaster Mill Road. It</p> <p>25 existing today is predominantly open lawn, very gently</p>	<p>36</p> <p>1 stormwater management locations which act as a buffer</p> <p>2 for Muncaster Mill and a buffer from the church to this</p> <p>3 particular community. And then there's a -- in -- on</p> <p>4 the east side of the property, there's a substantial</p> <p>5 lawn area or common -- kind of a commons for the</p> <p>6 community with benches around it.</p> <p>7 And then at the south end of the project,</p> <p>8 there is an open-play lawn area and a small active tot</p> <p>9 lot facility with benches around it. And then the rest</p> <p>10 of the development is the driveways, the curb cuts for</p> <p>11 the units, sidewalks and the pathways that lead</p> <p>12 throughout the community.</p> <p>13 MR. WALLACE: Okay. And then let's go to</p> <p>14 Exhibit 11, which is the lighting plan. So can you</p> <p>15 just review the site lighting proposed for the</p> <p>16 community?</p> <p>17 MR. WOLFORD: Yeah, so this is the plan that</p> <p>18 was in the record. The developer is proposing seven</p> <p>19 community scale lights on Street A.</p> <p>20 THE HEARING EXAMINER: What's a community</p> <p>21 scale?</p> <p>22 MR. WOLFORD: Well, it's only a --</p> <p>23 THE HEARING EXAMINER: How tall?</p> <p>24 MR. WOLFORD: It's only a 14-foot tall pole</p> <p>25 with a small carriage lantern. They're typical of what</p>

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<p>37</p> <p>1 is throughout Montgomery County and communities. As 2 opposed to, like, a commercial parking lot or a retail 3 space would have a much higher standard and would cast 4 light over a longer distance. 5 And you can see from this, the seven lights 6 are located immediately adjacent to Street A to light 7 that corridor coming into the community off of 8 Muncaster Mill Road. And then this really is -- it's 9 interesting because they're really lighting the road 10 for safety and the -- what are the fronts of the units 11 that front onto that. So that's -- even though it's a 12 Private Street A, that's kind of the quasi-public space 13 of this community. 14 And then you can see from the foot candles on 15 here, the only -- so the lights, because of the height 16 of them, are very well shielded from the adjacent 17 commute properties because they're only on that main 18 streets, Private Street A, with three-story residences 19 on either side of them, which would cut down for glare 20 directly into anybody else's property. And then when 21 you look at the foot candles on this closely, they did 22 print what the foot candles were on all the 23 adjoining -- on all the abutting property lines. And 24 it's at zero everywhere because the lights are only 25 along Street A.</p>	<p>39</p> <p>1 turning plan that's been submitted and approved which 2 shows that a fire truck can circulate adequately 3 through the community, which is also the way that 4 service and delivery trucks would circulate through the 5 community. 6 THE HEARING EXAMINER: And I think I saw an 7 approved fire access plan? 8 MR. WOLFORD: Yes. 9 THE HEARING EXAMINER: Yeah. Okay. 10 MR. WALLACE: That's Exhibit 22. 11 THE HEARING EXAMINER: Okay. 12 MR. WALLACE: And my intention was to have 13 our civil engineering expert speak to that. 14 THE HEARING EXAMINER: Oh, that's fine. 15 MR. WALLACE: But -- 16 MR. WOLFORD: Sorry to get ahead. 17 MR. WALLACE: No, that's okay. I don't think 18 he'll be saying much more than that, but -- 19 MR. WOLFORD: Certainly. 20 MR. WALLACE: That's fine. So in addition to 21 meeting -- does the provided parking meet the 22 requirements of the zoning ordinance? And in addition, 23 will it provide adequate visitor parking, in your 24 opinion? 25 MR. WOLFORD: Yes, it will.</p>
<p>38</p> <p>1 THE HEARING EXAMINER: Did you take into 2 account any lighting fixtures that are on the 3 houses -- on the townhouses? 4 MR. WOLFORD: No, we didn't on -- when this 5 plan was prepared. 6 THE HEARING EXAMINER: So are there -- like, 7 on the rear of the houses, are there lighting fixtures? 8 MR. WALLACE: It's probably a question for 9 Mr. Malm. 10 THE HEARING EXAMINER: Okay. 11 MR. WALLACE: Which he's happy to come back 12 up for that, or -- 13 THE HEARING EXAMINER: I mean, we can take 14 that later. 15 Go ahead. 16 MR. WOLFORD: And what's proposed on here is 17 43 rear-load garage townhouse units. They're three 18 story with an elevator. Each unit has a one-handicap 19 parking stall inside the unit and another 20 handicap -- another parking stall provided. So there's 21 two parking stalls for each unit, which exceeds the 22 requirement. 23 And then along Street A on the east side, 24 there are 10 parallel parking stalls provided for 25 guests when they come. And then there is a fire truck</p>	<p>40</p> <p>1 MR. WALLACE: Okay. Using the landscape 2 plan, which is Exhibit 27, could you just describe the 3 landscaping proposed for the community and buffering 4 for adjacent sites? 5 MR. WOLFORD: So the plan proposes to do 6 frontage improvements along Muncaster Mill Road, 7 curb/gutter, a mow strip which will have street trees 8 that you see there. Those are the round circles. 9 There's three to the west and four to the south. And 10 then a sidewalk which will kind of clean up the road 11 frontage right there on either side of the main 12 entrance. 13 And then immediately behind that, there's 14 several stormwater management facilities which will be 15 heavily landscaped and provide both shrubs, understory, 16 and canopy trees. And then you can see along the 17 common property line to the east, which is at the 18 bottom of the page adjacent to the church, there's a 19 substantial amount of landscape along there, not only 20 the landscaping that's in the stormwater management 21 facilities but immediately other landscaping along 22 there. And then there's landscaping across the south 23 side of the property along the trails and the play area 24 and the open lawn area. 25 And immediately across from that, on the rear</p>

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41	<p>1 yard of the three abutting single-family detached lots, 2 there's also a forest preservation easement on that so 3 that the buffer is -- 4 THE HEARING EXAMINER: Where is -- I'm sorry. 5 where is the forest preservation easement? 6 MR. WOLFORD: Along the -- on the abutting 7 three single-family detached lots to the south, on the 8 diagonal. 9 THE HEARING EXAMINER: Okay. 10 MR. WOLFORD: Their rear yards have a 11 substantial forest conservation easement on it. So 12 there's additional buffer between what we're proposing 13 to provide and what is already there for those 14 residences. And then there are street trees throughout 15 the project, on the private streets. 16 MR. WALLACE: So in your opinion, will the 17 proposed landscaping and buffering and retained 18 vegetation provide screening that provides 19 compatibility for the adjacent uses? 20 MR. WOLFORD: Yes. 21 MR. WALLACE: Okay. The staff report has 22 information about the compliance with the zoning 23 requirements for the R-200 zone for this type of 24 development, this conditionally use R-200 zone. Are 25 you in agreement with those?</p>	43	<p>1 trying to provide into the community. 2 THE HEARING EXAMINER: Well, wait a minute. 3 There's seven units are clearly -- did that -- 4 MR. WOLFORD: The seven units meet the 5 affordability, but the other units in terms of their 6 handicap accessibility meet these other requirements -- 7 THE HEARING EXAMINER: I -- okay. 8 MR. WOLFORD: -- recommended in the master 9 plan. 10 THE HEARING EXAMINER: Okay. Now I 11 understand what you're saying. 12 MR. WOLFORD: Sorry. 13 THE HEARING EXAMINER: No, it's okay. 14 MR. WALLACE: And what about other 15 county -- I'm sorry. Anything else on the 2004 master 16 plan? 17 MR. WOLFORD: No. 18 MR. WALLACE: So in your opinion, this 19 project is in substantial compliance with the 20 applicable recommendations? 21 MR. WOLFORD: Yes. Yes, it is. 22 MR. WALLACE: What about other general county 23 plans? 24 MR. WOLFORD: Well, there's the 2050 plan, 25 and there's also a lot of statements in there, I don't</p>
42	<p>1 MR. WOLFORD: Yes. 2 MR. WALLACE: It was not our intention to 3 walk through those. 4 THE HEARING EXAMINER: That would be good. 5 MR. WALLACE: Yes. Okay. But we wanted to 6 at least put it out there. 7 Moving on to master plan issues. Are you 8 familiar with the 2004 Upper Rock Creek Master Plan? 9 MR. WOLFORD: Yes, I am. 10 MR. WALLACE: And can you please review the 11 recommendations of that master plan as they apply to 12 the property or the development proposed? 13 MR. WOLFORD: Well, there are no specific 14 requirements or recommendations in the Upper Rock Creek 15 Master Plan as to this particular property. But there 16 is -- there's a very good statement in there in the 17 general use -- general land use and zoning 18 recommendations. And I'll read this to you because 19 it's very well done. It says, Provision of affordable 20 housing of assistance to those with diverse housing 21 needs, such as elderly, the physically disabled, and 22 those with mental impairments, and of equal opportunity 23 in seeking housing. 24 So it's a pretty strong statement, and it 25 pretty much matches what the developer in this case is</p>	44	<p>1 have all of them specifically, that also support 2 diversity, provision of housing for handicap and 3 accessibility. So there's a lot of support in there. 4 THE HEARING EXAMINER: You mean Thrive? 5 MR. WOLFORD: Yeah, Thrive. Uh-huh. 6 MR. WALLACE: And are those -- the Thrive 7 2050 plan, in terms of this project, is that discussed 8 in the land planning report was prepared? 9 MR. WOLFORD: Yes. 10 MR. WALLACE: And again, you didn't prepare 11 the land planning -- 12 MR. WOLFORD: Yes. 13 MR. WALLACE: -- report, but you reviewed it? 14 MR. WOLFORD: Yes. 15 MR. WALLACE: And you're in agreement -- 16 MR. WOLFORD: Yes. 17 MR. WALLACE: -- with those statements in 18 there? So we would -- and you adopt those statements? 19 MR. WOLFORD: Yes. 20 MR. WALLACE: Okay. And is there -- are you 21 aware of a county -- a general housing policy in the 22 county? 23 MR. WOLFORD: Yes. 24 MR. WALLACE: And again, does this further 25 the general -- the county's general housing policy for</p>

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12 (45 to 48)

<p>45</p> <p>1 providing additional housing for underserved 2 populations? 3 MR. WOLFORD: Yes, it does. 4 MR. WALLACE: Okay. And again, is that 5 discussed in the land planning report? 6 MR. WOLFORD: Yes, it is. 7 MR. WALLACE: Okay. Thank you. And Mr. 8 Wolford, you're aware of the general criteria for 9 special -- conditional uses to be compatible with, not 10 cause undue harm, et cetera, in the -- 11 MR. WOLFORD: Yes. 12 MR. WALLACE: Okay. 13 MR. WOLFORD: Yes. 14 MR. WALLACE: I'm happy to walk through each 15 of those, but I -- is it your opinion that this 16 application satisfies each of those criteria? 17 MR. WOLFORD: Yes, it does. 18 MR. WALLACE: Okay. 19 THE HEARING EXAMINER: For the reasons set 20 forth in the staff report? 21 MR. WALLACE: He's already testified that he 22 supports the -- well, I'm not going to speak for him. 23 THE HEARING EXAMINER: Well, I thought that 24 was general -- the general development standards. 25 MR. WALLACE: Yes.</p>	<p>47</p> <p>1 THE HEARING EXAMINER: The other question I 2 had, is the civil engineer going to address the 3 distance to the Metro? Mr. Wilford is happy to do 4 that. 5 THE HEARING EXAMINER: Okay. 6 MR. WALLACE: Mr. Wilford -- 7 THE HEARING EXAMINER: I just had questions 8 of exactly how you measured it and where the property 9 line of the Metro was and whether it should be measured 10 as the crow flies or by accessibility, how someone 11 would actually get there. 12 MR. WALLACE: Sure. So I think a starting 13 point would be, did you review Staff's response to the 14 hearing examiner's question about how distance is 15 measured and how this distance was measured from this 16 property to the Metro? 17 MR. WOLFORD: Yes, I did. 18 MR. WALLACE: And that email is dated January 19 26th, I believe? Was it Friday that Mr. Beall -- 20 MR. WOLFORD: Yes. 21 MR. WALLACE: -- responded to you? 22 THE HEARING EXAMINER: I don't see that on 23 the -- 24 MR. WALLACE: I don't think it's made it into 25 the record yet. I assume that was the --</p>
<p>46</p> <p>1 THE HEARING EXAMINER: He said he agreed with 2 the staff report. 3 MR. WALLACE: Correct. 4 THE HEARING EXAMINER: Are you taking the 5 position as far as the general criteria in 7.3.1.E.1 6 something? 7 MR. WOLFORD: Yes. 8 THE HEARING EXAMINER: Okay. So -- yeah. 9 MR. WOLFORD: Yes. 10 MR. WALLACE: And again, I'm just for sake of 11 framing it -- 12 THE HEARING EXAMINER: No, that's fine. 13 MR. WALLACE: -- but I haven't -- 14 THE HEARING EXAMINER: That's fine. 15 MR. WALLACE: Okay. In anticipation of Ms. 16 Kosary's question about the size of the public 17 areas -- of the park areas, we have that information. 18 The math was done by the civil engineer. 19 THE HEARING EXAMINER: Okay. 20 MR. WALLACE: That can be relayed to Mr. 21 Wolford, and he can relay it. Or the civil engineer 22 can talk about it. Whatever is preferred. 23 THE HEARING EXAMINER: Let's use the civil 24 engineer. 25 MR. WALLACE: That's fine.</p>	<p>48</p> <p>1 THE HEARING EXAMINER: It could not -- it may 2 be -- 3 MR. WALLACE: I just figured that was because 4 the lateness of the -- 5 THE HEARING EXAMINER: Yeah. 6 MR. WALLACE: And because it went directly to 7 you, I figured it would be into the record at some -- 8 THE HEARING EXAMINER: I'm hoping it went to 9 our staff too. But go ahead. Why don't you go ahead. 10 I'll find it, and then -- 11 MR. WALLACE: We can bring it up. And Mr. 12 Wolford can read it. It's fairly short. I think he 13 has it as an -- 14 MR. WOLFORD: Me? 15 MR. WALLACE: We have it -- oh, yeah. 16 MR. WOLFORD: I'm looking for it right now. 17 Let's do this. Let's take a very short 18 break. Well, how long does it -- do you think it'll 19 take to find it? 20 MR. WOLFORD: I have it. 21 THE HEARING EXAMINER: Oh, okay. 22 MR. WALLACE: So the hearing examiner asked 23 technical staff at Park and Planning to opine as to how 24 they measure the distance, in particular the distance 25 from this property to Metro, which is one of the</p>

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13 (49 to 52)

49	1 criteria for the conditional use requirement, as you 2 know, Mr. Wolford, 2,000 -- I'm sorry, 2 miles. 3 Can you please read staff's response, who the 4 staff was -- 5 MR. WOLFORD: Yeah, so the zoning area 6 examiner emailed the question to Mark Beall, who was 7 the staff reviewer and planner on this project. And 8 Mark Beall replied on January 26th at 3:32:02 in the 9 afternoon: 10 Good afternoon. I apologize for the delay in 11 getting back to you. This is Mark Beall -- to the 12 zoning examiner. Distances in the zoning ordinance are 13 measured in a straight line, in parentheses, as the 14 crow flies from one property line to another property 15 line. In this case, I actually measured in a straight 16 line from a few feet inside the property for this 17 application and measured to the entrance to the tunnel 18 where the person would walk into the station from the 19 outside. If you measure to the actual Metro property 20 line, it measures 1.72 miles. 21 MR. WALLACE: Okay. And do you agree with 22 that determination by technical staff? 23 MR. WOLFORD: Yes. When there's no specific 24 recommendation in Montgomery County as to how to 25 measure distance, it's always from property line to	51	1 Dr. Kosary? 2 DR. KOSARY: I have no questions for Mr. 3 Wolford. Other people on the -- 4 THE HEARING EXAMINER: I see -- 5 DR. KOSARY: Other people on the -- there are 6 other people on the -- oh. I need to start my video. 7 Excuse me. 8 I have no questions for Mr. Wolford, but I'm 9 noting that there are other people who have come on to 10 the Zoom call -- 11 THE HEARING EXAMINER: Yes. 12 DR. KOSARY: -- who may actually have some 13 questions. 14 THE HEARING EXAMINER: Okay. Is there anyone 15 on the Zoom call that would like to ask a question? I 16 see a hand raised, but all I see is Andrew. 17 MR. EINSMANN: Yes. My name is Andrew 18 Einsmann. I'm from the Shady Grove Advisory Committee. 19 We work on the planning -- 20 THE HEARING EXAMINER: Okay. Slow -- 21 MR. EINSMANN: -- the Derwood area. 22 THE HEARING EXAMINER: Thank you. Slow down 23 a minute, and I need to get a few details from you. I 24 need your name. 25 MR. EINSMANN: Andrew Einsmann.
50	1 property line in a straight line. 2 MR. WALLACE: So in your experience with 3 other projects in the county, is that how distance 4 measurements and distance requirements have been 5 applied? 6 MR. WOLFORD: Yes. 7 THE HEARING EXAMINER: Okay. And did he -- I 8 guess he used the measuring tool on the atlas, or you 9 don't know? 10 MR. WALLACE: I will say based on previous 11 discussions with him, that's what he used. But I don't 12 want to speak to this particular instance. 13 THE HEARING EXAMINER: Yeah. Okay. 14 MR. WALLACE: I wanted to point out that Mr. 15 Malm has done this measurement as well, and he's happy 16 to come up here and speak to how he did it and what he 17 came up with. 18 THE HEARING EXAMINER: We can do that later. 19 MR. WALLACE: Okay. 20 THE HEARING EXAMINER: Okay. Okay. Anything 21 else? 22 MR. WALLACE: On this issue, no, unless if 23 you have questions, he certainly -- 24 THE HEARING EXAMINER: I think you had most 25 of my questions.	52	1 THE HEARING EXAMINER: Okay. Can you spell 2 your last name, please? 3 MR. EINSMANN: E-I-N-S-M-A-N-N. 4 THE HEARING EXAMINER: And your address? 5 MR. EINSMANN: 6705 Applewood Place, Derwood, 6 Maryland. 7 THE HEARING EXAMINER: Okay. And your email 8 address? 9 MR. EINSMANN: D-R-E-W-S-T-E-R-7-1-1 at Yahoo 10 dot come. 11 THE HEARING EXAMINER: Okay. Now, this is a 12 time for questions. You will get a chance to testify. 13 Do you have any specific questions right now of Mr. 14 Wolford? 15 MR. EINSMANN: Yes. When they come to 16 measuring that, are they measuring it from the furthest 17 point -- the closest point, meaning the woods part 18 where your preservation -- roughly where your 19 preservation area is, or the street part? 20 MR. WOLFORD: I believe it's measured from 21 inside the property corner to inside the property 22 corner. 23 THE HEARING EXAMINER: I think he's asking -- 24 MR. WALLACE: Is to be which -- 25 THE HEARING EXAMINER: -- which property

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14 (53 to 56)

53	1 corner. 2 MR. WALLACE: -- property corner. And he was 3 referring to the property corner that has the wooded 4 area. 5 MR. WOLFORD: Yes. Yes. Which would be the 6 southwest corner of the property. 7 MR. EINSMANN: So you -- so there's a 8 potential that there's a significantly longer distance 9 for a vehicle or a walker or any person that uses 10 normal transportation to get from the location to the 11 Metro? 12 MR. WOLFORD: That is correct. But for the 13 purposes of the zoning ordinance, it's measured 14 according to the way that Montgomery County does it, as 15 a crow flies from property line to property line. 16 MR. EINSMANN: Yeah, I'm just confirming that 17 humans don't fly like crows. That's all. 18 MR. WOLFORD: Yes. 19 MR. EINSMANN: Thank you. 20 THE HEARING EXAMINER: Okay. Thank you. 21 Does anyone else like to ask a question? 22 DR. KOSARY: I actually have a follow up to a 23 statement that Mr. Wolford just made. 24 Can you point us where in the zoning 25 ordinance the standard for measurement is? Is it -- is	55	1 from one site to the other. 2 MR. EINSMANN: Thank you. 3 THE HEARING EXAMINER: Okay. Is there anyone 4 else that would like to ask Mr. Wilford a question? 5 Okay. Hearing none, Mr. Wallace, do you have 6 any redirect? 7 MR. WALLACE: Just a couple. 8 Mr. Wilford, you testified before that this 9 project will provide a sidewalk along its frontage? 10 MR. WOLFORD: Correct. Yes. 11 MR. WOLFORD: And are you -- are you aware of 12 existing bus service along Muncaster Mill Road? 13 MR. WOLFORD: Yeah. There are several buses 14 out there. I don't know the numbers. I can look them 15 up for you if you want to know right now. 16 MR. WALLACE: They are in the record in 17 various places. We can certainly -- 18 THE HEARING EXAMINER: Well, 19 don't -- let -- we can come back -- we can take a 20 break. And when we take a break, if you could look 21 that up for us. 22 MR. WALLACE: Sure. And Mr. Wolford, are you 23 aware of other circumstances in the zoning ordinance 24 where there's more specificity as to how distance gets 25 measured or what -- from what to what?
54	1 this actually dictated in the zoning ordinance, or is 2 the zoning ordinance in fact silent? 3 MR. WOLFORD: I -- we just -- we -- I have 4 traditionally followed what the staff directs us to do 5 from the Maryland-National Capital Park and Planning 6 Commission when we're measuring distances. 7 DR. KOSARY: But you're not aware of any 8 specific citation -- 9 MR. WOLFORD: No. 10 DR. KOSARY: -- spelling out what verse 11 within the zoning ordinances says, thou shall do it 12 this way? 13 MR. WOLFORD: No. We follow the direction of 14 the staff at MNCPPC. 15 DR. KOSARY: Okay. So you're saying, This is 16 just the way we've always done it? 17 MR. WOLFORD: Yes, as we're directed. 18 DR. KOSARY: Okay. Thank you. 19 MR. EINSMANN: So one last question. Are you 20 aware that there are no bike lanes or sidewalk ways 21 that go directly from this property all the way to that 22 Metro station? 23 MR. WOLFORD: I'd have to defer to the 24 transportation planner who's going to come up later on 25 to discuss, you know, the mobility and accessibility	56	1 MR. WOLFORD: Yes, but I can't -- at the 2 moment, I just can't remember exactly what that is, but 3 I have had to do that in the past. 4 MR. WALLACE: Okay. 5 MR. WOLFORD: But I'll get that answer for 6 you. 7 MR. WALLACE: Yeah, we can -- 8 THE HEARING EXAMINER: Yeah, that would be 9 important. Thanks. 10 MR. WALLACE: Right. 11 THE HEARING EXAMINER: Okay. Anything else? 12 MR. WALLACE: And I do appreciate 13 the -- given that some of these questions are coming in 14 later than expected, that's fine, for us to have a 15 chance to look at some things. 16 THE HEARING EXAMINER: Okay. Any recross? 17 Okay. Hearing none, we'll move on. 18 Who is your next witness? 19 MR. WALLACE: Next witness is Phil Hughes. 20 He's a civil engineer. 21 THE HEARING EXAMINER: Civil engineer. Let 22 me do this. I have to fix one technical problem here. 23 So in the transition, we're going to take a five-minute 24 break. 25 (A recess was taken.)

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15 (57 to 60)

57	1 THE HEARING EXAMINER: Back on the record. 2 And we'll be getting Mr. Beall's email about the 3 distance. We'll have copies for everybody soon. 4 So with that, please raise your right hand. 5 Whereupon, 6 PHILLIP HUGHES, 7 being first duly sworn or affirmed to testify to the truth, 8 the whole truth, and nothing but the truth, was examined 9 and testified as follows: 10 THE HEARING EXAMINER: Okay. Go ahead, Mr. 11 Wallace. 12 MR. WALLACE: Okay. Mr. Hughes, can you 13 state your name and business address for the record? 14 MR. HUGHES: It's Phillip Hughes. I work 15 with Charles P. Johnson and Associates at 1751 Elton 16 Road, Suite 300, in Silver Spring. 17 MR. WALLACE: Okay. And please explain 18 your -- 19 THE HEARING EXAMINER: And your email, 20 please. 21 MR. HUGHES: Oh, sorry. It's PHughes, 22 H-U-G-H-E-S, at CPJA dot com. And my last name is 23 spelled H-U-G-H-E-S. 24 THE HEARING EXAMINER: Thank you. 25 MR. WALLACE: And your position with CPJ?	59	1 but I didn't want to ask a question. I just didn't 2 know because you were only asking people on Zoom -- 3 THE HEARING EXAMINER: Oh. 4 MS. HELMS: -- if they had questions. And 5 I'm in the room. So I wanted to -- 6 THE HEARING EXAMINER: I apologize. 7 MS. HELMS: But I didn't have a specific 8 question for him. 9 THE HEARING EXAMINER: For Mr. Wolford? 10 MS. HELMS: No. I didn't have a specific 11 question for him. I was just curious why only people 12 on Zoom were being asked if they had questions. 13 THE HEARING EXAMINER: Because -- 14 MS. HELMS: That's why I asked. 15 THE HEARING EXAMINER: You know why? Because 16 this is new for us. 17 MS. HELMS: Okay. 18 THE HEARING EXAMINER: And I didn't realize 19 that that was -- I thought everybody that was in 20 operation was on Zoom, so it's my bad. 21 MS. HELMS: It's okay. 22 THE HEARING EXAMINER: Okay? 23 MS. HELMS: That's why I was trying to 24 clarify. 25 THE HEARING EXAMINER: That's -- okay. So
58	1 MR. HUGHES: I'm their land development 2 operations manager. 3 MR. WALLACE: And do you have any 4 professional certifications? 5 MR. HUGHES: Yes. I'm a licensed PE in both 6 Maryland and Virginia. 7 MR. WALLACE: Okay. And have you been 8 qualified as an expert in civil engineering before the 9 hearing examiner? 10 MR. HUGHES: Yes, I have previously. 11 MR. WALLACE: Okay. I'd move Mr. Hughes as 12 an expert in civil engineering. I have his resume. I 13 can do further voir dire. 14 THE HEARING EXAMINER: We have all that. 15 Does anyone who is listening have an 16 objection to qualifying him as an expert in civil 17 engineering? Okay. 18 Hearing none, I'm going to put you on hold 19 for a minute because I was told during the break that 20 someone wanted to ask Mr. Wolford a question and didn't 21 know how to do it remotely. 22 So is there someone in the meeting that wants 23 to -- we can recall Mr. Wolford. Is there someone that 24 wanted to ask him a question? 25 MS. HELMS: I think she was referring to me,	60	1 you can ask away anytime you wish. 2 MS. HELMS: Okay. Thank you. 3 THE HEARING EXAMINER: All right. Let's 4 continue with -- I was asking if -- I didn't hear any 5 objections to having Mr. Hughes qualify as an expert in 6 civil engineering. So we will do that. He's so 7 qualified. 8 MR. WALLACE: Okay. And can you just 9 describe the services CPJ provided for this 10 application? 11 MR. HUGHES: CPJ does land development, 12 planning, and engineering services, and has done all of 13 those for this project. 14 MR. WALLACE: Okay. And are you 15 familiar -- so you're familiar with property and the 16 surrounding area? 17 MR. HUGHES: Yes, I am. 18 MR. WALLACE: And you visited the site? 19 MR. HUGHES: Yes, I have. 20 MR. WALLACE: Okay. Let's just -- let's 21 start with stormwater management. 22 MR. HUGHES: Okay. 23 MR. WALLACE: Are you familiar with the state 24 and county stormwater management requirements for 25 residential government?

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16 (61 to 64)

<p>61</p> <p>1 MR. HUGHES: Yes, I am.</p> <p>2 MR. WALLACE: Okay. And can you -- did you</p> <p>3 prepare a stormwater management concept plan?</p> <p>4 MR. HUGHES: Yes. We prepared a stormwater</p> <p>5 management concept plan that was submitted to DPS and</p> <p>6 approved by the review agency.</p> <p>7 MR. WALLACE: And is that -- that's Exhibit</p> <p>8 19 in the record?</p> <p>9 MR. HUGHES: I believe.</p> <p>10 MR. WALLACE: Okay. Oh, I'm sorry. Here you</p> <p>11 go.</p> <p>12 MR. HUGHES: Thanks.</p> <p>13 MR. WALLACE: And if you could please bring</p> <p>14 Exhibit 19 up, please.</p> <p>15 Okay. Can you please just briefly describe</p> <p>16 the stormwater management facilities proposed for the</p> <p>17 project?</p> <p>18 MR. HUGHES: The site uses Environmental Site</p> <p>19 Design, ESD, facilities to meet the required PE for the</p> <p>20 runoff for the site. We're using microbial retention</p> <p>21 along with some landscape infiltration facilities to</p> <p>22 treat the initial runoff. And then to make sure that</p> <p>23 we're not increasing the runoff to any adjacent</p> <p>24 properties such as the church that's to the east, we're</p> <p>25 providing 100-year attenuation through underground</p>	<p>63</p> <p>1 MR. WALLACE: Okay. And can you please bring</p> <p>2 up Exhibit 22?</p> <p>3 Can you please review -- and this plan has</p> <p>4 been approved by County Department of Permitting</p> <p>5 Services?</p> <p>6 MR. HUGHES: Yes. It has been reviewed and</p> <p>7 approved by Marie Labaw of the county.</p> <p>8 MR. WALLACE: And just please describe how</p> <p>9 vehicles would access -- emergency vehicles would</p> <p>10 access the site.</p> <p>11 MR. HUGHES: Emergency vehicles will access</p> <p>12 off of Muncaster. And they have -- travel up the main</p> <p>13 spine road, and then there are turning radius that</p> <p>14 allows the fire truck to back up and turn around, and</p> <p>15 also provide adequate walking distance to each of the</p> <p>16 fronts and rears of the units.</p> <p>17 MR. WALLACE: Okay. And then moving on to</p> <p>18 forest conservation.</p> <p>19 Could you please bring up Exhibit 15</p> <p>20 and -- 15A is fine.</p> <p>21 And did CPJ prepare a preliminary forest</p> <p>22 conservation plan?</p> <p>23 MR. HUGHES: Yes, we did.</p> <p>24 MR. WALLACE: And was this conservation plan</p> <p>25 approved by Montgomery County Planning Board?</p>
<p>62</p> <p>1 storage facilities that reduce the runoff rate</p> <p>2 from -- to pre-development rates.</p> <p>3 MR. WALLACE: Okay. And this concept plan</p> <p>4 has been approved by the County Department of</p> <p>5 Permitting Services?</p> <p>6 MR. HUGHES: Yes, it has.</p> <p>7 MR. WALLACE: The DEP? Okay.</p> <p>8 MR. HUGHES: Yes, it has.</p> <p>9 MR. WALLACE: Moving on. Using the utility</p> <p>10 plan, could you please --</p> <p>11 Exhibit 8, please.</p> <p>12 Could you just describe, please, the -- how</p> <p>13 the townhouse community was served by what utilities?</p> <p>14 MR. HUGHES: Well, the utility plan shows the</p> <p>15 water and sewer layout for the site. This has been</p> <p>16 submitted to WSSC for hydraulic planning review and</p> <p>17 approved, which means they've approved the layout and</p> <p>18 also the capacity in their systems to serve the site.</p> <p>19 So there's adequate capacity for water and sewer.</p> <p>20 And we've also coordinated with electric, and</p> <p>21 there is gas available in the roadway. So there are</p> <p>22 enough wet and dry utilities to serve this site.</p> <p>23 MR. WALLACE: Okay. And did CPJ prepare a</p> <p>24 fire access plan for the project?</p> <p>25 MR. HUGHES: Yes, we did.</p>	<p>64</p> <p>1 MR. HUGHES: Yes, it was.</p> <p>2 MR. WALLACE: Okay.</p> <p>3 THE HEARING EXAMINER: Just on that, we need</p> <p>4 the resolution. The code prohibits us from granting a</p> <p>5 conditional use without consideration of the approval</p> <p>6 of the forest con plan. So if you could submit it if</p> <p>7 you haven't done so. The planning board --</p> <p>8 MR. WALLACE: Exhibit 29?</p> <p>9 THE HEARING EXAMINER: Is that in both of</p> <p>10 them?</p> <p>11 MR. WALLACE: That's an excellent question.</p> <p>12 But if not, we can certainly --</p> <p>13 THE HEARING EXAMINER: Okay.</p> <p>14 MR. WALLACE: -- get it.</p> <p>15 THE HEARING EXAMINER: Because I will need</p> <p>16 that. I didn't see it, but yeah, I could be wrong</p> <p>17 as --</p> <p>18 MR. WALLACE: And I could --</p> <p>19 THE HEARING EXAMINER: -- I just</p> <p>20 demonstrated, so.</p> <p>21 MR. WALLACE: Exhibit 29? Yes, please.</p> <p>22 THE HEARING EXAMINER: I don't see it in</p> <p>23 here.</p> <p>24 MR. WALLACE: Okay. We will certainly get it</p> <p>25 to you. I assume the record is going to be left open?</p>

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17 (65 to 68)

<p>65</p> <p>1 THE HEARING EXAMINER: Yeah.</p> <p>2 MR. WALLACE: Yes, we'll certainly get it to</p> <p>3 you. So yeah, that's fine. We attended a hearing, and</p> <p>4 it was done. So there's --</p> <p>5 THE HEARING EXAMINER: I'm sure -- I'm not</p> <p>6 doubting you. We just need it.</p> <p>7 MR. WALLACE: Yeah. And if you could just</p> <p>8 bring the plan up, that would be appreciated.</p> <p>9 MS. PARSONS: I'm sorry. Which is it?</p> <p>10 MR. WALLACE: Exhibit 29 -- I'm sorry. It's</p> <p>11 15A, please.</p> <p>12 And if you could just briefly walk through</p> <p>13 what the proposed forest conservation will be.</p> <p>14 MR. HUGHES: The proposed forest</p> <p>15 conservation, we're saving numerous trees around the</p> <p>16 perimeter of the site and specimen trees. And then</p> <p>17 anything above that, we are replacing at the county's</p> <p>18 required rate. I think it's a quarter of -- .25 to 1</p> <p>19 for every one we're removing.</p> <p>20 So there are additional trees that are</p> <p>21 provided throughout the site along the entry road and</p> <p>22 along the interior and the perimeter of the site to</p> <p>23 compensate for any forest that is removed. Also,</p> <p>24 there's really not a lot of forest on this site. It is</p> <p>25 mostly an open grass area. So it's kind of perfectly</p>	<p>67</p> <p>1 as with Mr. Wolford you're familiar with the general</p> <p>2 and specific requirements for granting special</p> <p>3 exceptions. And from a civil engineering perspective</p> <p>4 do you -- is it your opinion that the application meets</p> <p>5 those requirements?</p> <p>6 MR. HUGHES: Yes, it does.</p> <p>7 MR. WALLACE: And again, happy to go into</p> <p>8 more detail, but if that's adequate on that issue.</p> <p>9 THE HEARING EXAMINER: Okay.</p> <p>10 MR. WALLACE: All right. I have no other</p> <p>11 questions for --</p> <p>12 THE HEARING EXAMINER: I did have a question.</p> <p>13 What's a civil engineering perspective? What do you</p> <p>14 look at? You look at storm water --</p> <p>15 MR. HUGHES: How everything fits together to</p> <p>16 make sure that you're providing adequate services, how</p> <p>17 the storm water fits in, and how the utilities are run.</p> <p>18 And then we also look at --</p> <p>19 THE HEARING EXAMINER: Fire access.</p> <p>20 MR. HUGHES: -- how it intermingles with the</p> <p>21 layout to make sure that it's creating a cohesive kind</p> <p>22 of environment and you're not just placing everything</p> <p>23 in there to fit it.</p> <p>24 THE HEARING EXAMINER: But you're -- but you</p> <p>25 look at requirements for stormwater, for --</p>
<p>66</p> <p>1 suited for this. There's not a lot of clearing</p> <p>2 required.</p> <p>3 MR. WALLACE: Okay. And will there be an</p> <p>4 existing forest conservation area maintained?</p> <p>5 MR. HUGHES: Yes, and that is connecting to</p> <p>6 the forest conservation area that was already brought</p> <p>7 up. It's on the adjacent single-family lots to make</p> <p>8 something a little bit more contiguous. It combines</p> <p>9 together to make like, you know, a larger forested</p> <p>10 area.</p> <p>11 MR. WALLACE: Okay. And did CPJ prepare a</p> <p>12 site distance analysis for the proposed access road off</p> <p>13 of Muncaster?</p> <p>14 MR. HUGHES: Yes, we did.</p> <p>15 MR. WALLACE: Okay. And if you could bring</p> <p>16 up these -- Exhibit 20, please.</p> <p>17 Could you please review the site distance</p> <p>18 evaluation for the site?</p> <p>19 MR. HUGHES: Yes. The site distance</p> <p>20 evaluation was submitted with the stormwater concept.</p> <p>21 And it meets the 325 feet required by MCDOT, which DOT</p> <p>22 is actually more stringent than AASHTO. AASHTO only</p> <p>23 requires 305 feet. So it exceeds that. And actually,</p> <p>24 there's greater site distance beyond that.</p> <p>25 MR. WALLACE: Okay. Thank you. And again,</p>	<p>68</p> <p>1 MR. HUGHES: Water, sewer, fire access, and</p> <p>2 we also look at site grading to make sure that we're</p> <p>3 meeting the -- you know, what is it -- the conditional</p> <p>4 use standards.</p> <p>5 THE HEARING EXAMINER: Okay. I just want to</p> <p>6 make sure the record shows what that mean -- that</p> <p>7 meant, so.</p> <p>8 MR. WALLACE: As an aside, if I may have an</p> <p>9 aside.</p> <p>10 THE HEARING EXAMINER: Yeah.</p> <p>11 MR. WALLACE: The criteria, as you know, are</p> <p>12 awkward.</p> <p>13 THE HEARING EXAMINER: Yes.</p> <p>14 MR. WALLACE: And so generally, when I -- I</p> <p>15 don't want to suggest that civil engineering -- a civil</p> <p>16 engineering is testifying as to an architectural</p> <p>17 compatibility, for example, or whatever.</p> <p>18 THE HEARING EXAMINER: Right.</p> <p>19 MR. WALLACE: So that's why I sometimes use</p> <p>20 the phrase civil engineering perspective, architectural</p> <p>21 perspective.</p> <p>22 THE HEARING EXAMINER: Right. That's fine.</p> <p>23 MR. WALLACE: Yes.</p> <p>24 THE HEARING EXAMINER: You're fine. Okay.</p> <p>25 So anything -- any other questions or?</p>

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18 (69 to 72)

69	1 MR. WALLACE: No. And again -- well, there 2 was a question about the size of the area. And Mr. 3 Hughes can answer that question, but we can wait until 4 it's asked again a little bit -- 5 THE HEARING EXAMINER: No, you can go ahead 6 and -- 7 MR. WALLACE: If you could bring up the 8 conditional use plan, please, Exhibit 10. 9 A question was asked earlier as to, I 10 believe, the size of the proposed public use spaces on 11 the site. Could you please walk through what 12 approximate size is? 13 MR. HUGHES: Well, the multi-age play area is 14 required by Montgomery County to be 2,500 square feet. 15 So it meets that requirement. You also have the 16 exterior sidewalks around it that add to that area. 17 And as you move east to the site, there's 18 additional seating areas along that pathway. I don't 19 have the exact measurement of those. The interior area 20 of lawn space between the units, it's more southeast of 21 the site -- 22 MR. WALLACE: I'm going to actually try. 23 THE HEARING EXAMINER: Yes, try it. Go for 24 it. 25 (Pause.)	71	1 Plan left. 2 THE HEARING EXAMINER: That's fine. 3 MR. WALLACE: Plan left. The open space area 4 delineated, shown on plan left. Okay. We've described 5 that before as multi? 6 MR. HUGHES: Age. 7 MR. WALLACE: And that area is approximately? 8 MR. HUGHES: 2,500 square feet. 9 MR. WALLACE: Which is a size required -- 10 MR. HUGHES: By Montgomery County. 11 MR. WALLACE: -- for a play area? Okay. 12 Moving into the center of the plan, in the 13 lower portion of the project site area, this space 14 here. 15 MR. HUGHES: Yes. 16 MR. WALLACE: Approximate area of that? 17 MR. HUGHES: About 5,000 square feet. 18 MR. WALLACE: That's approximately 5,000 19 square feet? 20 MR. HUGHES: Uh-huh. 21 MR. WALLACE: And then what -- do you know 22 which features are in this area here? And this area 23 here, again, is center of the plan, large open space 24 area. 25 MR. HUGHES: That has some boardwalks, some
70	1 MR. HUGHES: It's towards the center of the 2 site. That is roughly about 5,000 square feet. 3 THE HEARING EXAMINER: Okay. 4 MR. WALLACE: And actually -- 5 MR. HUGHES: That -- 6 MR. WALLACE: Yeah. 7 THE HEARING EXAMINER: Well, let me -- but -- 8 MR. WALLACE: I was -- 9 THE HEARING EXAMINER: Go ahead. 10 MR. WALLACE: Okay. Would this help? 11 THE HEARING EXAMINER: Uh-huh. 12 MR. WALLACE: Okay. So if we could 13 start -- I'm sorry. If we could start with this area 14 here. And how did you describe that earlier? 15 MR. HUGHES: That is the multi-age play area. 16 That is about 2,500 square feet. 17 THE HEARING EXAMINER: Now, the transcript 18 doesn't pick up where you point. 19 MR. WALLACE: I was about to speak more 20 specific. 21 THE HEARING EXAMINER: Oh. 22 MR. WALLACE: So I am pointing to the -- 23 MR. HUGHES: Area with the play equipment 24 outlined on it that's central to -- 25 MR. WALLACE: Plan left. How about that?	72	1 seating areas, but mostly it's passive recreation 2 space. 3 MR. WALLACE: Okay. Were there any other 4 large open -- or size of open space areas that you want 5 to point out? 6 MR. HUGHES: There are some to the east 7 of -- or plan south of -- 8 MR. WALLACE: So plan south. 9 MR. HUGHES: -- but towards the east of the 10 tot lot, or the multi-age play area, there's 11 additional -- if you go up to the north in front of 12 those units -- I'll point for you. 13 MR. WALLACE: Yeah, why don't you go there. 14 MR. HUGHES: There are additional seating 15 areas and benches in this area also along this pathway. 16 THE HEARING EXAMINER: And that area is plan 17 left that -- with the multi -- 18 MR. HUGHES: Correct. 19 THE HEARING EXAMINER: -- multi-age play 20 area? 21 MR. HUGHES: Correct. 22 MR. WALLACE: And that multi-age play area, 23 would you say -- with also with the proximity and the 24 connection through trails to the forest conservation 25 area, does that read as -- and function actually as a

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19 (73 to 76)

<p>73</p> <p>1 larger area than the 2,500 square feet?</p> <p>2 MR. HUGHES: Yes. Yes.</p> <p>3 MR. WALLACE: Okay. It might be helpful to</p> <p>4 provide a measurement of the entire section we're</p> <p>5 talking about because I think that's the intention that</p> <p>6 it reads and operates as well.</p> <p>7 THE HEARING EXAMINER: Which property is the</p> <p>8 church property?</p> <p>9 MR. HUGHES: Plan south. So that's</p> <p>10 the -- adjacent to the south -- I'm sorry, plan -- the</p> <p>11 bottom of the plan.</p> <p>12 THE HEARING EXAMINER: Okay.</p> <p>13 MR. HUGHES: So it'd be to the east, and the</p> <p>14 south and the east.</p> <p>15 THE HEARING EXAMINER: I see it.</p> <p>16 Okay. You were going to give a measurement</p> <p>17 of -- what was your last question?</p> <p>18 MR. WALLACE: So a -- in addition to the</p> <p>19 2,500 square feet for the multi-age play lot, there are</p> <p>20 other open space features and forest conservation areas</p> <p>21 that are meant to operate as a public -- as a public</p> <p>22 amenity and public space. That's a larger area than</p> <p>23 2,500 square feet. And he could probably -- little</p> <p>24 calculation. Give an approximate.</p> <p>25 MR. HUGHES: I would say looking at that,</p>	<p>75</p> <p>1 MR. HUGHES: I believe so, yes.</p> <p>2 MR. WALLACE: Okay. And I didn't speak to</p> <p>3 the public access easement because it's a legal issue,</p> <p>4 but -- in my view. But also, Mr. Wolford can speak to</p> <p>5 it as well, or Mr. Malm.</p> <p>6 THE HEARING EXAMINER: I think it's better</p> <p>7 if --</p> <p>8 MR. WALLACE: Okay.</p> <p>9 THE HEARING EXAMINER: -- Mr. Wolford does</p> <p>10 it.</p> <p>11 MR. WALLACE: That's fine. So I have no</p> <p>12 further questions for Mr. Hughes.</p> <p>13 THE HEARING EXAMINER: Okay. For those in</p> <p>14 the room or on Zoom, are there any questions for Mr.</p> <p>15 Hughes?</p> <p>16 Okay. Hearing none, you may proceed with</p> <p>17 your next witness.</p> <p>18 MR. WALLACE: Okay. Thank you. My next</p> <p>19 witness is Joe Caloggero. Thank you.</p> <p>20 THE HEARING EXAMINER: Please raise -- well,</p> <p>21 you're already raising your right hand.</p> <p>22 Whereupon,</p> <p>23 JOSEPH J. CALOGERO,</p> <p>24 being first duly sworn or affirmed to testify to the truth,</p> <p>25 the whole truth, and nothing but the truth, was examined</p>
<p>74</p> <p>1 you're probably a little over double what the --</p> <p>2 MR. WALLACE: That's fine.</p> <p>3 MR. HUGHES: -- you know, what the tot lot</p> <p>4 area is. So I think you're looking at probably 5- to</p> <p>5 6,000 square feet total there -- because there is</p> <p>6 also -- at the end of the main entry road, I forgot to</p> <p>7 mention, there's a -- I don't know, it was like a</p> <p>8 pergola there.</p> <p>9 MR. WALLACE: And that pergola is supposed to</p> <p>10 be located --</p> <p>11 MR. HUGHES: It's right at the entry road,</p> <p>12 so.</p> <p>13 MR. WALLACE: As you come in the entry road,</p> <p>14 it's the feature at the end of the entry road?</p> <p>15 MR. HUGHES: Yeah. It's right in front of</p> <p>16 the tot lot.</p> <p>17 MR. WALLACE: Right. Okay.</p> <p>18 MR. HUGHES: So with the passive lawn area</p> <p>19 and the tot lot and the rest of the amenity space,</p> <p>20 you're probably looking at 10- to 11,000 square feet.</p> <p>21 MR. WALLACE: And this is a point that</p> <p>22 actually Mr. Wolford -- but I'll ask Mr. Hughes in case</p> <p>23 he knows. Is it your understanding -- because I think</p> <p>24 we've discussed this before -- that that area will be</p> <p>25 subject to a public access easement?</p>	<p>76</p> <p>1 and testified as follows:</p> <p>2 THE HEARING EXAMINER: Go ahead, Mr. --</p> <p>3 MR. WALLACE: Okay. Please state your name</p> <p>4 and business address for the record.</p> <p>5 MR. CALOGERO: Name is Joe Caloggero.</p> <p>6 That's C-A-L-O-G-G-E-R-O, vice president with The</p> <p>7 Traffic Group, 9900 Franklin Square Drive, Suite H,</p> <p>8 Baltimore 21236.</p> <p>9 MR. WALLACE: And what's your position with</p> <p>10 Traffic Group?</p> <p>11 MR. CALOGERO: Vice --</p> <p>12 THE HEARING EXAMINER: I just need an email.</p> <p>13 MR. CALOGERO: Oh, sorry. JCaloggero at</p> <p>14 Trafficgroup dot com.</p> <p>15 THE HEARING EXAMINER: Thank you.</p> <p>16 MR. WALLACE: And your position with Traffic</p> <p>17 Group?</p> <p>18 MR. CALOGERO: Vice president in charge of</p> <p>19 our engineering and design section. And in this case,</p> <p>20 lead traffic engineer for the project.</p> <p>21 MR. WALLACE: So you're -- so you have</p> <p>22 certification as a traffic engineer?</p> <p>23 MR. CALOGERO: Yes.</p> <p>24 MR. WALLACE: Okay. And have you previously</p> <p>25 testified before the hearing examiner in Montgomery</p>

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20 (77 to 80)

<p>77</p> <p>1 County as an expert in traffic engineering and 2 planning? 3 MR. CALOGGERO: Yes, in front of the hearing 4 examiner and in front of the planning board. 5 THE HEARING EXAMINER: Okay. Does anyone 6 have any objections? 7 Is it a traffic engineer that you want to be 8 qualified as? 9 MR. CALOGGERO: Well, I'm a -- I'm a 10 professional engineer. I'm a professional traffic 11 operations engineer and I'm a professional 12 transportation planner. So I can be qualified as a 13 traffic engineer -- 14 THE HEARING EXAMINER: Okay. How about this? 15 Traffic -- transportation engineer and planner? 16 MR. CALOGGERO: That's fine. 17 THE HEARING EXAMINER: Does anyone have any 18 objections to qualifying Mr. Caloggero in that 19 capacity? 20 Okay. Hearing none. 21 MR. WALLACE: Okay. And are you familiar 22 with the subject -- conditional use application before 23 us? 24 MR. CALOGGERO: Yes. 25 MR. WALLACE: Okay. And did you prepare a</p>	<p>79</p> <p>1 again, this is one hour during the peak hour in the 2 morning, and again, one hour at the peak hour of the 3 evening. 4 So again, there are multiple hours in a day, 5 obviously. But the -- these volumes are based on 6 national statistics. 7 THE HEARING EXAMINER: Yes. Okay. 8 MR. WALLACE: And so your traffic impact 9 statement was using applicable county standards? 10 MR. CALOGGERO: Correct. Yes. 11 MR. WALLACE: Okay. And just to explain what 12 LATR means? 13 MR. CALOGGERO: It's a localized traffic 14 study. 15 THE HEARING EXAMINER: Local Area 16 Transportation Review guidelines. 17 MR. CALOGGERO: Correct. 18 MR. WALLACE: And so when you say you're 19 exempt from LATR, what's the meaning of that in terms 20 of the impact of the project on surrounding the roads 21 and multiple networks? 22 MR. CALOGGERO: It means that based on the 23 county, that there's just a minimal impact on the 24 surrounding roadway network and there's not a need to 25 go through further detailed studies of intersections,</p>
<p>78</p> <p>1 traffic -- a person-trip impact statement for the 2 project? 3 MR. CALOGGERO: Yes, I did. 4 MR. WALLACE: And is that in the record as 5 Exhibit 6? 6 MR. CALOGGERO: It is. 7 MR. WALLACE: And could you please review 8 what it shows? 9 MR. CALOGGERO: Sure. So as required, we 10 prepared a trip generation study for the site 11 development. And based on that study, we looked at 12 peak-hour trips and total person trips. So the 13 peak-hour vehicular trips is 17 in the morning, 22 in 14 the evening, projected. And that equates to, in 15 calculations, to total person trips of 23 in the 16 morning, 30 in the evening. And since we're under 50, 17 an LATR is not required, just due to the minimal 18 impact. 19 THE HEARING EXAMINER: Are the numbers so low 20 because it's a senior -- is this age restricted? No, 21 it's disability. 22 MR. CALOGGERO: No. It's -- well, we're 23 basing it off of -- we're utilizing townhomes, and 24 townhomes does have a lesser trip generation rates 25 than, per se, a single-family home development. And</p>	<p>80</p> <p>1 per code. 2 MR. WALLACE: And the intersection studies 3 are to determine the adequacy of the intersections for 4 additional trips? 5 MR. CALOGGERO: That is correct. 6 MR. WALLACE: Okay. And then generally, did 7 you review the plans and the project for safe access 8 onto and from Muncaster Mill Road? 9 MR. CALOGGERO: Yes, I did. 10 MR. WALLACE: Okay. And we have testimony in 11 the record as to site distance. But can you just 12 review that again? 13 MR. CALOGGERO: Yes, of course. So per 14 county code, the site distance meets the minimum 15 required, and it also actually goes further than the 16 minimum required visually. So right now we're showing 17 that we meet the minimum code requirement of 325 feet 18 in each direction. But when you're at the stop sign at 19 the access point looking to the left, you can see over 20 500 feet, and looking to the right, you can see over 21 1,400 feet. So it does provide for access. We're not 22 just meeting the bare minimum. 23 MR. WALLACE: Okay. And is that not only 24 county standards but any other agency standards? 25 MR. CALOGGERO: Yes. It would meet the state</p>

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21 (81 to 84)

<p>81</p> <p>1 requirements because that's -- it would be acceptable 2 based on 40 miles an hour per AASHTO, which is what the 3 state follows. 4 MR. WALLACE: And is Muncaster Mill a state 5 road? 6 MR. CALOGGERO: Yes, it is. 7 MR. WALLACE: So what agency is responsible 8 for determining whether your project is providing safe 9 access to and from the state road? 10 MR. CALOGGERO: The State Highway 11 Administration. 12 MR. WALLACE: Okay. And does State Highway 13 Administration review access permits for projects that 14 abut state roads? 15 MR. CALOGGERO: They do. 16 MR. WALLACE: Okay. And can you describe 17 your work with State Highway on reviewing these 18 proposed -- these plans and proposed access? 19 MR. CALOGGERO: Yes. We submitted plans to 20 State Highway and received their conditional approval 21 for access to this location. They've asked us, 22 as -- part of their review was to ensure that we 23 continue the, what I'm going to call, southbound. 24 Presently, just north of the site, there's a southbound 25 lane -- there's two southbound lanes. The one on the</p>	<p>83</p> <p>1 this project coming out? 2 MR. CALOGGERO: It provides for safe access 3 and egress off of Muncaster Mill Road by providing that 4 additional lane. 5 MR. WALLACE: Okay. And if you could please 6 bring up Exhibit 38A, which is the staff report with 7 attachments. 8 THE HEARING EXAMINER: Do you have a page? 9 MR. WALLACE: Yeah, I will just point out 10 that the last attachment is the email from State 11 Highway Administration staff to Mr. Caloggero providing 12 conditional approval of the project -- of the plan, 13 which then will be further reviewed at the time of an 14 access permit. And so just pointing out that that's in 15 the record. And that was the exhibit that Mr. 16 Caloggero was talking about that was approved by State 17 Highway. 18 MR. CALOGGERO: Okay. 19 MR. WALLACE: Okay. And then even though 20 you're not required to do so, did you study traffic 21 conditions on Muncaster Mill Road that are experienced 22 by the adjacent townhouse community at Sabrina Terrace, 23 which I think is named Shady Grove Square (sic), I 24 believe? 25 MR. CALOGGERO: Yes, we did.</p>
<p>82</p> <p>1 right side drops to the one to the left. 2 The State Highway wants us to continue that 3 lane across our site into the church site where there's 4 a right turn lane entering the church. 5 MR. WALLACE: And actually, if I could ask 6 for Exhibit 34 to be shown. 7 MR. CALOGGERO: Yeah, it's much better 8 visual. 9 MR. WALLACE: You got ahead of me. I was 10 trying to bring it up and -- okay. 11 So is this -- is this an exhibit that was 12 presented to State Highway? 13 MR. CALOGGERO: Yes, it is. 14 MR. WALLACE: Okay. And again, could you 15 just walk through what it shows? 16 MR. CALOGGERO: Sure. So the red is the 17 additional lane that I just described. To the north of 18 the red area is the existing second lane that goes 19 southbound and we're going to be widening to provide 20 that second lane all the way across our site, ending at 21 the right turn lane into the church. So effectively, 22 it's going to be a combined acceleration/deceleration 23 lane. And then again, it ends at the church. 24 MR. WALLACE: And so how does this turn lane 25 affect or improve traffic conditions as they relate to</p>	<p>84</p> <p>1 MR. WALLACE: Okay. And what did your 2 assessment show? 3 MR. CALOGGERO: So since the access points 4 are similar, the trips would be a little bit less at 5 Sabrina Terrace. We thought it would be a good idea to 6 do an evaluation of traffic coming into and out of that 7 development to see how it would -- to see how that 8 operates today and how we can show how our access would 9 work as well. 10 So we did two things. We did a stop sign 11 delay study. A stop sign delay study is exactly what 12 it sounds like. We're calculating how long it takes a 13 vehicle to leave the stop sign when accessing Muncaster 14 Mill Road from the development. And we found that on 15 average, in the morning, there was a 10 second per 16 vehicle, it took -- meaning it takes 10 seconds per 17 vehicle on average to enter the road. In the evening, 18 it increased. And that was at 30 seconds per vehicle. 19 Then in addition to the stop sign delay 20 study, we did what was called a gap analysis. So a gap 21 analysis looks at the number of available gaps in the 22 road, meaning the time between when one car passes past 23 the site to the next car passes the site. So it can be 24 determined in general and on average how many 25 availability slots there are to enter the road.</p>

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22 (85 to 88)

85	1 So we did calculations based on that in the 2 morning peak hour. We had six combined gaps between 3 six and seven seconds. And let me explain the gaps. 4 Again, so a two-way gap would be a combined gap between 5 north and southbound traffic. 6 What's important here, and my observations 7 also show what's important here, is the traffic 8 signalized intersection to the north provide numerous 9 southbound gaps. And those southbound gaps alone, we 10 have 11 gaps between 6 and 7 seconds in the morning, 59 11 gaps between 8 and 29 seconds, and then 20 gaps greater 12 than 30 seconds. 13 And what happens out here, which is allowed 14 per Maryland vehicle law, is that vehicles who want to 15 turn left, they get a gap from southbound, they enter 16 the middle, which is a two-way left turn lane, and they 17 use that to go into the left turn lane. And 18 eventually -- we didn't visually see them merging in, 19 but either they were going to the left turn lane or 20 merging into the through lane, which again is an 21 acceptable maneuver per the Maryland vehicle code. 22 So we had the same calculations in the 23 evening. Similar numerous gaps southbound. We had a 24 decent amount of two-way gaps. But again, by being 25 able to enter Muncaster Mill Road via the two-way left	87	1 seen. Is that my understanding? 2 THE HEARING EXAMINER: Correct. And -- but 3 we're going to deal with that. 4 DR. KOSARY: Okay. 5 THE HEARING EXAMINER: So just sit tight for 6 now. That's why I asked for the information. So we 7 need to get it entered -- 8 DR. KOSARY: Thank you. 9 THE HEARING EXAMINER: We need to get it into 10 the record, and we may need to give some extra time for 11 those who are opposing this to review it. 12 MR. WALLACE: That's fine. I appreciate 13 that. And again, the question came up, I believe, last 14 week. And so we're doing our best we can to be 15 responsive to it. 16 THE HEARING EXAMINER: Okay. I understand 17 that it was -- I understand that. And sometimes the 50 18 trips, if there are safety issues, the 50 trips isn't 19 on the radar -- or, you know, if they did a traffic 20 study, they'd have to do a safety analysis. And so 21 sometimes when you get the traffic statement, it's not 22 on the radar. 23 So we've got the issue here, and you've 24 responded. Thank you very much. And -- but now we 25 need to allow people a little bit of time to review it,
86	1 turn lane, the numerous southbound gaps do provide that 2 accessible safe access. 3 MR. WALLACE: And so you're -- sorry. 4 THE HEARING EXAMINER: Can I just ask you, is 5 that in the record? 6 MR. WALLACE: This is not in the record. We 7 were addressing, again, questions that came up late in 8 the process. It is material we may choose to put into 9 the record. If it would be helpful, we can. 10 THE HEARING EXAMINER: Well, I think it would 11 be a good idea to supplement the record with that. 12 MR. WALLACE: We can certainly do that in the 13 period that the record be left open. 14 THE HEARING EXAMINER: Okay. At least, you 15 know -- at least whatever you studied -- I mean, 16 whatever you used. 17 MR. WALLACE: Sure. 18 THE HEARING EXAMINER: Okay. Thanks. 19 DR. KOSARY: Can I make a point, Madam 20 Examiner? 21 THE HEARING EXAMINER: I didn't understand 22 that. Could you repeat that, please? 23 DR. KOSARY: Oh, can I make a comment? I 24 mean, we're talking about entering new information 25 about studies on traffic that nobody on this call has	88	1 I think. Okay? 2 MR. WALLACE: I would point out that 3 typically, an LATR, it addresses the adequacy of 4 facilities. Safety is reviewed in general when plans 5 are reviewed. LATR has a -- somewhat of a different 6 function, though. 7 THE HEARING EXAMINER: No. Now LATR has a 8 component that requires a safety review -- 9 MR. WALLACE: For -- 10 THE HEARING EXAMINER: -- and accident 11 studies and all that kind of stuff. Pedestrian safety, 12 traffic safety. So it does have a safety component. 13 MR. WALLACE: Right. And again, we're on a 14 state highway, though. 15 THE HEARING EXAMINER: But that -- 16 MR. WALLACE: So State Highway issues the 17 access permits; the county DOT does not. 18 THE HEARING EXAMINER: But it goes beyond the 19 access permit. This is a condition -- it goes to 20 compatibility. 21 MR. WALLACE: Right. And -- 22 THE HEARING EXAMINER: So it can meet state 23 standards, but if it's -- you know, if there's safety 24 issues, then that's a conditional use issue. 25 MR. WALLACE: right. So again, just bringing

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23 (89 to 92)

<p>89</p> <p>1 us back to what the -- what your assessment showed, 2 will the trips generated by this project have any 3 appreciable impact on the adjacent townhouse community 4 in terms of safe turning movements to and from 5 Muncaster Mill Road? 6 MR. CALOGGERO: No, it will not. 7 MR. WALLACE: Okay. So in your expert 8 opinion from a traffic and transportation engineering 9 standpoint, will the proposed conditional use be served 10 by adequate public facilities for on public roads? 11 MR. CALOGGERO: Yes, it will. 12 MR. WALLACE: And in your expert opinion, 13 will the proposed access road accommodate safe and 14 efficient turning movements to and from Muncaster Mill 15 Road? 16 MR. CALOGGERO: Yes, it will. 17 MR. WALLACE: And from your expert -- in your 18 expert opinion from a transportation engineering 19 standpoint, is it your opinion that the proposed 20 conditional use will not have a detrimental effect in 21 vehicular and pedestrian traffic or safety? 22 MR. CALOGGERO: That is correct. It will 23 not. 24 MR. WALLACE: Okay. 25 THE HEARING EXAMINER: Okay. Any questions?</p>	<p>91</p> <p>1 questions. 2 MS. HELMS: So I understand there hasn't been 3 a traffic study, and I honestly don't know what that 4 really involves. But I'm curious about the middle turn 5 lane that's turning both ways in the center, if anybody 6 looked at that because there is -- I'm not trying to 7 testify, but there -- there's a lot of traffic that 8 just flies up the middle there. And I personally have 9 a lot of trouble getting out of my driveway, especially 10 in the evenings or getting into my driveway because 11 people are running up that middle lane, and they're not 12 using it for what the purpose is intended. 13 THE HEARING EXAMINER: Okay. Okay. Let me 14 do this really fast. 15 MS. HELMS: Yeah, that's fine. 16 THE HEARING EXAMINER: Please raise your 17 right hand. 18 MS. HELMS: Sorry. 19 Whereupon, 20 KRISTY HELMS, 21 being first duly sworn or affirmed to testify to the truth, 22 the whole truth, and nothing but the truth, was examined 23 and testified as follows: 24 THE HEARING EXAMINER: Now, are you going to 25 testify? This is a time just for questions because</p>
<p>90</p> <p>1 MS. HELMS: I do. 2 THE HEARING EXAMINER: Okay. Do you want to 3 come up to the table? 4 MS. HELMS: If you want me to, sure. 5 THE HEARING EXAMINER: And we'll get your 6 name and address and -- 7 MS. HELMS: Sure. 8 THE HEARING EXAMINER: -- grill you. No. 9 You're grilling them. 10 MS. HELMS: No, I'm not going to grill. I 11 just have a couple question. I'm sorry. 12 THE HEARING EXAMINER: Okay. Please 13 just -- yes. 14 MS. HELMS: Kristy Helms, H-E-L-M-S. And I 15 live at 7001 Muncaster Mill Road. So directly across 16 from -- 17 THE HEARING EXAMINER: Okay. And can I get 18 your email? 19 MS. HELMS: Sure. Kristy, K-R-I-S-T-Y, dot 20 Helms, H-E-L-M-S, 74 at Gmail dot com. 21 THE HEARING EXAMINER: Okay. Now this is a 22 time -- you can testify later. 23 MS. HELMS: Okay. 24 THE HEARING EXAMINER: But this is just a 25 time to ask questions. So go ahead if you have any</p>	<p>92</p> <p>1 they get to ask you questions -- 2 MS. HELMS: Right. 3 THE HEARING EXAMINER: -- on your testimony 4 later. 5 MS. HELMS: Okay. 6 THE HEARING EXAMINER: So do you have a 7 specific -- is your question about the middle turn 8 lane? 9 MS. HELMS: Yeah. Did they look at that and 10 how that effect -- what traffic is coming up the middle 11 lane that's not using it properly, and how that's going 12 to affect people getting in and out at that 13 intersection with Lisa Drive, but the cross -- 14 MR. CALOGGERO: Well, again, based on 15 our -- we did a -- the stop sign delay study and the 16 gap study. And that would pick up all of the illegal 17 maneuvers, as you call it, which we're not, 18 unfortunately, responsible for drivers who -- 19 MS. HELMS: Right. 20 MR. CALOGGERO: -- take it upon themselves to 21 drive illegally. So I can understand what's happening 22 and visually seeing it as if there's a queue that 23 extends past the left turn lane to go south on Redland, 24 and people want to be able to get into that left turn 25 lane, they'll unfortunately use the two-way left turn</p>

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24 (93 to 96)

<p>93</p> <p>1 lane to get all the way up to the traffic that won't by 2 pass the through queue. 3 MS. HELMS: Right. I just didn't know if 4 anybody had looked at how often that was happening and 5 how it might cause an issue. 6 MR. CALOGGERO: We did not. 7 MS. HELMS: Okay. That was my only question. 8 THE HEARING EXAMINER: Good -- that's a good 9 question. Thank you. 10 Okay. Any other questions? Okay. Hearing 11 none, would you please -- 12 You may be excused, Mr. Caloggero. 13 MR. CALOGGERO: Thank you. 14 THE HEARING EXAMINER: And do you want to 15 call your next witness? 16 MR. WALLACE: I actually have no other 17 witnesses. 18 THE HEARING EXAMINER: Okay. I have a 19 question, and maybe -- I think this might be one for 20 Mr. Malm, if you don't mind coming back up. 21 MR. MALM: Sure. 22 THE HEARING EXAMINER: If you can sit over 23 here. 24 MR. MALM: Oh, sorry. 25 THE HEARING EXAMINER: We have the cameras.</p>	<p>95</p> <p>1 MR. MALM: I just caution, though, this is on 2 someone else's property. 3 THE HEARING EXAMINER: I -- that's why I'm 4 asking. 5 MR. MALM: And so if they -- and they are 6 willing to put it on their property. If whatever the 7 church says, No, we don't want it on our property but 8 we want a fence, they're willing to put it on their 9 property. But right now we're not a hundred percent 10 sure if it can be designed to avoid trees, stormwater 11 management, et cetera, completely on our property, 12 somewhat on their property, somewhat on the church's 13 property, et cetera. 14 So it's not a question of whether the 15 applicant is willing to put up a fence. We just would 16 not want to be restricted to where that would go 17 because we just don't know yet, if that makes sense. 18 THE HEARING EXAMINER: Okay. So -- okay. 19 Let me think about that one. 20 MR. MALM: Right. And we do have a 21 preliminary plan coming up, so we certainly, again, 22 happy to work with you in any way. 23 THE HEARING EXAMINER: Well, this isn't 24 really a preliminary plan issue -- 25 MR. MALM: Yeah.</p>
<p>94</p> <p>1 Thank you so much. 2 MR. MALM: No problem. 3 THE HEARING EXAMINER: We'll get the hang of 4 this. There is a compatibility issue with the church, 5 and you say -- would you object to a condition 6 requiring you to put a fence on the church's property, 7 or -- 8 MR. MALM: We've committed to building that 9 fence, and we are going to build it. So you know -- 10 THE HEARING EXAMINER: But how do I -- it's 11 not that I don't trust you, honestly. But do you want 12 a minute to think? 13 MR. MALM: I'm sorry. Procedurally, I'm just 14 in unfamiliar waters here, so. 15 THE HEARING EXAMINER: No, it's fine. I 16 trust you. But would you object to a condition in the 17 special exception? And if you want it -- in the 18 conditional use requiring that fence. But it's -- if 19 you want to think about it, that's fine. 20 MR. MALM: There is -- there's no need 21 to -- we've talked about this. I've talked about this 22 with my client. They're okay with the condition to 23 have a fence as a requirement of this conditional use 24 approval. 25 THE HEARING EXAMINER: Okay.</p>	<p>96</p> <p>1 THE HEARING EXAMINER: -- unfortunately. So 2 I think that -- well, there may be something that we 3 can do just to submit -- a condition requiring you to 4 submit proof that the fence has been built, whether 5 it's on your property or their property or -- 6 MR. MALM: Completely acceptable. I -- 7 UNIDENTIFIED SPEAKER: Yes, absolutely. 8 THE HEARING EXAMINER: Okay. All right. So 9 with that, based on my questions, does anyone have any 10 questions of Mr. Malm? Okay. 11 Hearing none, we can take a -- 12 Now, Mr. Wolford, were you going to get us 13 some information -- 14 MR. WOLFORD: I have it. 15 THE HEARING EXAMINER: I'm sorry? 16 MR. WOLFORD: I have it. 17 THE HEARING EXAMINER: Okay. Can we take 18 that now? And then we'll take a lunch break and -- 19 MR. WALLACE: That's -- however you'd like to 20 proceed. 21 THE HEARING EXAMINER: Yeah, we'll take it 22 now. 23 MR. WOLFORD: There were two things -- for 24 the record, Scott Wolford with Colliers Engineering. 25 There were two questions that you had asked me,</p>

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25 (97 to 100)

<p>97</p> <p>1 one -- or that the opposition had possibly asked. I 2 can't remember who it was. It was about the ride-on 3 bus. So there are two ride-on bus routes that serve 4 the property. 5 There's the ride-on bus 53, which has a stop 6 about 80 feet northwest of the property on Muncaster 7 Mill Road. That connects to Shady Grove Metro Station 8 and to the Glenmont Metro Station. And it runs peak 9 hours during the week on a 50-minute interval. 10 And then there's the bus 57, which does the 11 same thing. It runs every 25 minutes, and it runs 12 seven days a week. So that's the bus service. It's 13 immediately available. 14 THE HEARING EXAMINER: I'm sorry. What was 15 the second one? 16 MR. WOLFORD: 57. 17 THE HEARING EXAMINER: And the first one was? 18 MR. WOLFORD: 53. 19 THE HEARING EXAMINER: And what did 57 run? 20 MR. WOLFORD: 57 runs seven days a week, on a 21 25-minute interval. 22 MR. WALLACE: And just to make the hearing 23 examiner's life a little easier, this information is in 24 the staff report. 25 THE HEARING EXAMINER: Okay.</p>	<p>99</p> <p>1 THE HEARING EXAMINER: Can you identify the 2 text amendment? And we're going to have to add that to 3 the record. 4 MR. WOLFORD: It is -- 5 THE HEARING EXAMINER: It should be a ZTA 6 number. 7 MR. WALLACE: It's a ZTA 15-02, and this was 8 adopted April 21st, 2015. And I mean, we're happy to 9 put it into the record. The information, of course, is 10 public record. 11 THE HEARING EXAMINER: Yes, but we're going 12 to add it to the record. 13 And for those watching, if you want to look 14 it up, you can go to the county council website, and 15 they have a legislation and -- oh, thank you, Michelle. 16 She's got it. Find legislation and 17 resolutions. And you have to go up to ZTA. But you 18 will be able to look at it. But we are going to put it 19 in the record. 20 MR. WALLACE: It's at 15-02. 21 THE HEARING EXAMINER: 2. 22 MR. WALLACE: Yes. 23 MR. WOLFORD: And on page 5, it 24 explains -- if you're ready? 25 THE HEARING EXAMINER: I'm ready.</p>
<p>98</p> <p>1 MR. WOLFORD: It's on page 15 in the staff 2 report. 3 THE HEARING EXAMINER: Okay. 4 DR. KOSARY: Can I ask a question of Mr. 5 Wolford? 6 THE HEARING EXAMINER: Well, let him finish 7 his second -- 8 DR. KOSARY: Okay. 9 THE HEARING EXAMINER: -- and then we'll 10 get -- 11 DR. KOSARY: I'm sorry. I thought he was 12 finished. 13 THE HEARING EXAMINER: Okay. Go ahead. I 14 think he has a second topic. 15 MR. WALLACE: If she'd like to ask the 16 question, it's fine. 17 THE HEARING EXAMINER: No, no. Let's go. 18 MR. WOLFORD: Then the other question that 19 was asked was about the -- how distance is measured. 20 THE HEARING EXAMINER: Yeah. 21 MR. WOLFORD: So I just -- I'm going from the 22 way that it's measured in the text amendment, which 23 allowed this type of use in the R-200, so. 24 THE HEARING EXAMINER: Okay. Okay. 25 MR. WOLFORD: Yes?</p>	<p>100</p> <p>1 MR. WOLFORD: Oh. It explains the criteria 2 for the Design for Life conditional use and what 3 they're really looking for. So it has to be within 5 4 miles of a hospital, 2 miles of a metro rail, 1,000 5 feet of a park and bus service abutting the road. 6 And what they were really doing in that 7 summary, and it says right here, is they're looking for 8 more urbanized areas where this type of conditional 9 use -- 10 THE HEARING EXAMINER: Can you go to -- I'm 11 sorry. Can you go to -- 12 MR. WOLFORD: Page 5. 13 THE HEARING EXAMINER: -- page 5? 14 Now, this is the ZTA. You must be reading 15 from something else. 16 MR. WALLACE: Yes. If you just want to 17 identify what you're reading from. 18 MR. WOLFORD: Yeah, it's the memorandum to 19 the Planning, Housing, and Economic Development 20 Committee from Jeff Zyontz, who was the legislative 21 attorney. 22 THE HEARING EXAMINER: Okay. Then we're 23 going to have to get that in the record. I don't think 24 that's online, but we'll have to get it in the record. 25 MR. WOLFORD: Okay.</p>

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26 (101 to 104)

<p>101</p> <p>1 MR. WALLACE: It is. It's probably buried, 2 though. 3 MR. WOLFORD: But we can get it to you. So 4 in that -- in this case, what they were doing was 5 measuring distances the way that traditionally they're 6 measured for zoning purposes. And then you would ask 7 the question, Are there instances where they are more 8 specific about the way they measure distances? 9 And I've got that -- I've got an example of 10 that right here. So in zoning in Montgomery County and 11 Park and Planning, distances traditionally have been 12 measured as a straight line between two points for 13 these uses. And then the question was, Are there 14 specific points where it's not measured that way? 15 And there are in Montgomery County. I just 16 want to point out one case where it was measured 17 differently. And it's in the zoning ordinance, under 18 the transit. 19 MR. WALLACE: Okay. Transit proximity? 20 MR. WOLFORD: Yeah. Yeah. So in this 21 case -- and this has -- this is in the zoning 22 ordinance, and it's on page 4-98. 23 THE HEARING EXAMINER: Well, give us a 24 section because some people use the online version. 25 MR. WOLFORD: Okay. It's 59.4.7.3 and it's</p>	<p>103</p> <p>1 THE HEARING EXAMINER: Oh, I see what you're 2 saying. Never mind. I understand. 3 MR. WOLFORD: So when they don't have a 4 specific measurement, the staff and the industry have 5 always just measured it as a straight line. And that's 6 traditionally the way that's been done. 7 So someone had said, Is there a specific 8 place where they get more specific? And I just pointed 9 out an example, which is not even related to this case, 10 but it's an example of how specific the zoning 11 ordinance gets when they do want you to measure 12 something other than property line to property line in 13 a straight line. 14 THE HEARING EXAMINER: Okay. All right. 15 MR. WALLACE: So -- 16 THE HEARING EXAMINER: Go ahead. 17 MR. WOLFORD: -- just to recap. So Mr. 18 Wolford, is there anything in the legislative history 19 of the ZTA that suggests that the measurement shouldn't 20 be property line -- nearest property line as the crow 21 flies to a spot on the Metro property? 22 MR. WOLFORD: No. It just says -- it just 23 says, the traditional way, property line to property 24 line, straight line. 25 MR. WALLACE: Right.</p>
<p>102</p> <p>1 B, Transit Proximity. Now, in this case, this is not a 2 section of the zoning ordinance that has any 3 applicability to this case at all. This is an example 4 of where -- if there is something specific, where they 5 want it measured a certain way, they really do call it 6 out in the zoning ordinance, other than property to 7 property is a straight line. 8 So in this case, it says -- and it's under 9 Transit Proximity, B, and it's on how to measure 10 transit proximity, not related to this case, just a 11 specific how they do when they want it done a different 12 way. Hold on here. I'll find it. 13 A project is abutting or confronting a 14 transit station or stop if it shares a property line or 15 easement line. Oh. All distances for transit 16 proximity are measured from the nearest transit station 17 entrance or bus stop entrance. 18 So that's a -- so in the -- if they want a 19 specific method of measurement, it's in the zoning 20 ordinance, and they tell you exactly how to measure it. 21 And there's a case where they tell you exactly how to 22 measure it. When it's not, it has always been measured 23 as a -- 24 THE HEARING EXAMINER: What case? 25 MR. WOLFORD: What's that?</p>	<p>104</p> <p>1 MR. WOLFORD: There's no specific reference 2 to where you start and how you measure that along a 3 travel path or anything else like that. 4 MR. WALLACE: And is it -- is your 5 understanding from the email from technical staff that 6 their measurement took it from the property line as the 7 crow flies not only to the metro property line but also 8 to a spot on the Metro property that is close to the 9 entrance? 10 MR. WOLFORD: Yes. And that was the email 11 from Mark Beall on January 26th at 3:02 or something in 12 the afternoon. 13 MR. WALLACE: Okay. And again, in your 14 experience and as an expert in land planning in 15 Montgomery County, the measurement used by staff is the 16 correct one? 17 MR. WOLFORD: Yes. 18 MR. WALLACE: And there's nothing, again, in 19 the legislative history of the ZTA to suggest 20 otherwise? 21 MR. WOLFORD: No. 22 MR. WALLACE: And is this an area that you 23 consider urbanized which was the intent of the criteria 24 as stated in the legislative history of the ZTA? 25 MR. WOLFORD: Yes. Yes, it was -- it is.</p>

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27 (105 to 108)

<p>105</p> <p>1 MR. WALLACE: Okay.</p> <p>2 THE HEARING EXAMINER: Okay. Do I have</p> <p>3 questions from anyone on --</p> <p>4 DR. KOSARY: I have a question. Madam</p> <p>5 Examiner, I have a question for Mr. Wolford.</p> <p>6 THE HEARING EXAMINER: Yes. Go ahead, Ms.</p> <p>7 Kosary -- Dr. Kosary.</p> <p>8 DR. KOSARY: Mr. Wolford, you stated that</p> <p>9 both ride-on bus Route 53 and 57 serve this site? Does</p> <p>10 Route 57 actually have a stop on Muncaster Mill?</p> <p>11 MR. WOLFORD: No. It is about a third of a</p> <p>12 mile away.</p> <p>13 DR. KOSARY: Okay.</p> <p>14 MR. WOLFORD: Which is easy walking</p> <p>15 condition.</p> <p>16 DR. KOSARY: So the only bus route on</p> <p>17 that -- that is on Muncaster Mill, which abuts your</p> <p>18 site, is Route 53?</p> <p>19 MR. WOLFORD: Bus 53 is on Muncaster Mill</p> <p>20 Road, yes.</p> <p>21 DR. KOSARY: Okay. Thank you.</p> <p>22 MR. EINSMANN: And can I ask a question?</p> <p>23 THE HEARING EXAMINER: Yes, Mr. Einsmann.</p> <p>24 MR. EINSMANN: So based on the ZTA, these are</p> <p>25 supposed to be Design For Use (sic) properties.</p>	<p>107</p> <p>1 MR. WALLACE: Okay. So --</p> <p>2 MR. WOLFORD: And we meet that requirement.</p> <p>3 MR. WALLACE: Okay.</p> <p>4 MR. WOLFORD: Every unit. And that's the</p> <p>5 zero threshold that Mr. Malm talked about and</p> <p>6 everything for accessibility.</p> <p>7 MR. WALLACE: So Design For Life doesn't</p> <p>8 necessarily mean a person -- a resident can't drive?</p> <p>9 MR. WOLFORD: Correct.</p> <p>10 MR. WALLACE: Okay.</p> <p>11 THE HEARING EXAMINER: Okay. Anyone else</p> <p>12 have any questions? We're going to break for lunch</p> <p>13 after this.</p> <p>14 Okay. Hearing none, Mr. Wolford, if you</p> <p>15 could give me what you were reading from, I can scan it</p> <p>16 in. And hopefully, I have everyone's email address,</p> <p>17 and we can get it to people during the lunch break.</p> <p>18 UNIDENTIFIED SPEAKER: May I approach?</p> <p>19 THE HEARING EXAMINER: Yes.</p> <p>20 Okay. We can go off the record while we do</p> <p>21 this.</p> <p>22 (A recess was taken.)</p> <p>23 THE HEARING EXAMINER: So in the interim, you</p> <p>24 may not have -- you may not have seen it. Hopefully,</p> <p>25 we did email this.</p>
<p>106</p> <p>1 Wouldn't we not be talking about walking distance</p> <p>2 because a lot of the people who are on Design For Use</p> <p>3 (sic), the intent is not for them to be walking long</p> <p>4 distances?</p> <p>5 THE HEARING EXAMINER: You can't do that.</p> <p>6 MR. WOLFORD: No, because that's not --</p> <p>7 THE HEARING EXAMINER: For the record --</p> <p>8 MR. WOLFORD: Yes. Sorry.</p> <p>9 THE HEARING EXAMINER: -- Mr. Wallace was --</p> <p>10 MR. WOLFORD: Okay.</p> <p>11 THE HEARING EXAMINER: -- whispering to Mr.</p> <p>12 Wolford.</p> <p>13 MR. WOLFORD: No, because walking distance</p> <p>14 isn't a criteria of the conditional use approval.</p> <p>15 MR. EINSMANN: Okay. Thank you.</p> <p>16 MR. WALLACE: And can I ask Mr. Wolford a</p> <p>17 question?</p> <p>18 THE HEARING EXAMINER: Well, let me just make</p> <p>19 sure there's no other questions.</p> <p>20 Are there any other questions?</p> <p>21 Okay. Hearing none, yeah, you may redirect.</p> <p>22 MR. WALLACE: Mr. Wolford, are you aware of a</p> <p>23 requirement to have a handicapped parking space for</p> <p>24 conditional -- for Design For Life development?</p> <p>25 MR. WOLFORD: Yes.</p>	<p>108</p> <p>1 And I'm going to mark this as -- Exhibit 36</p> <p>2 are copies of the Mark Beall email responding to the</p> <p>3 distance. Okay. So then Exhibit 37 is a scan of the</p> <p>4 pages from the Fed Committee Memorandum dated 3/12/15.</p> <p>5 Now, let me put that down. I did</p> <p>6 pull -- I've been here too long. But I remembered, and</p> <p>7 I sent this to you in an email.</p> <p>8 Are the Zoom -- are the remote participants</p> <p>9 ready?</p> <p>10 MS. PARSONS: Yes, ma'am.</p> <p>11 THE HEARING EXAMINER: Okay. I sent -- I had</p> <p>12 Nana send an email. After 2015, there was a bill that</p> <p>13 was -- a ZTA, Zoning Text Amendment, that was</p> <p>14 introduced by Councilmember Riemer to clarify or to</p> <p>15 modify the distance requirements from the Metro. And</p> <p>16 there was also -- just had it in my files because our</p> <p>17 office reviews zoning text amendments.</p> <p>18 It's zoning text amendment, I think, 20-03,</p> <p>19 and it should be in your email. And there's a staff</p> <p>20 report from Park and Planning on it. It expired. But</p> <p>21 it was attempting to -- and you don't have to answer me</p> <p>22 now. I just want to try and flesh this out. It was</p> <p>23 attempting to clarify that the .2 miles was a radius</p> <p>24 instead of another type of measurement. And it was</p> <p>25 also supposed to clarify the road abutting the site,</p>

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28 (109 to 112)

<p>109</p> <p>1 that phraseology too.</p> <p>2 So I think we're going to have to leave the</p> <p>3 record open for some things like the traffic issues.</p> <p>4 But I throw that out there because I don't know what</p> <p>5 effect, I just remembered it, and it's directly on</p> <p>6 point. But they never acted on it because the bill</p> <p>7 expired. But it does give a glimmer of how people were</p> <p>8 interpreting that section.</p> <p>9 Okay? And I don't expect an answer today,</p> <p>10 but I throw it out there. And I haven't made a</p> <p>11 decision in any respect. I'm just saying the</p> <p>12 15-02 -- ZTA, what was it, 15-02 was not the end of the</p> <p>13 story. But they wanted -- they were trying to -- what</p> <p>14 I've read of ZTA 20-03 is they were trying to give more</p> <p>15 flexibility to the measurements so they could get more</p> <p>16 developments. So you take a look at that.</p> <p>17 MR. WALLACE: Right. I'd note they also were</p> <p>18 looking to increase the distance, for example, to a</p> <p>19 public park. So they were trying to expand the</p> <p>20 applicability of it, I believe. Having said that, it</p> <p>21 wasn't adopted. I didn't -- I don't believe it went to</p> <p>22 a committee at the council. And I would wonder how</p> <p>23 dispositive it is of issues, but I appreciate it.</p> <p>24 THE HEARING EXAMINER: No. I just</p> <p>25 remember --</p>	<p>111</p> <p>1 CAROL KOSARY,</p> <p>2 being first duly sworn or affirmed to testify to the truth,</p> <p>3 the whole truth, and nothing but the truth, was examined</p> <p>4 and testified as follows:</p> <p>5 THE HEARING EXAMINER: Okay. And you stated</p> <p>6 your name and address and we have your email?</p> <p>7 DR. KOSARY: Right. So I don't have to state</p> <p>8 my name and address again. I will anyway.</p> <p>9 Good afternoon, everybody. I'm Carol Kosary,</p> <p>10 and I've resided at 7416 Needwood Road, in the Upper</p> <p>11 Rock Creek Master Plan Area for the past 27 years. For</p> <p>12 disclosure's sake, I have to state that I'm president</p> <p>13 of the Greater Shady Grove Civic Alliance and co-chair</p> <p>14 of the Shady Grove Sector Plan Implementation Advisory</p> <p>15 Committee. I'm here solely as a resident of this area,</p> <p>16 and my testimony does not represent the views of any</p> <p>17 organization to which I may be affiliated.</p> <p>18 Just as some background, this conditional use</p> <p>19 is often referred to as Design For Life townhouse</p> <p>20 living. Design For Life is actually a Montgomery</p> <p>21 County property tax incentive program legislatively</p> <p>22 enacted by the county council which was effective July</p> <p>23 1st, 2014. The intent was actually to encourage</p> <p>24 construction of new homes or the retrofitting of</p> <p>25 existing homes which -- with features which would make</p>
<p>110</p> <p>1 MR. WALLACE: Yeah.</p> <p>2 THE HEARING EXAMINER: -- I'm not taking a</p> <p>3 position that it's --</p> <p>4 MR. WALLACE: Yeah, I get that.</p> <p>5 THE HEARING EXAMINER: I just put it out</p> <p>6 there because -- for the parties because it is on</p> <p>7 point. Well, at least deals with the issue; it doesn't</p> <p>8 dispose of the issue.</p> <p>9 MR. WALLACE: Right. I appreciate that.</p> <p>10 With that, I think we are on the -- those in</p> <p>11 opposition. And is there anyone here who would like to</p> <p>12 testify in opposition to this application?</p> <p>13 DR. KOSARY: I would, Madam Examiner.</p> <p>14 THE HEARING EXAMINER: Is that Dr. Kosary?</p> <p>15 Okay. I see you now.</p> <p>16 DR. KOSARY: Yes. Yep.</p> <p>17 THE HEARING EXAMINER: All right.</p> <p>18 DR. KOSARY: I think that there are others</p> <p>19 also.</p> <p>20 THE HEARING EXAMINER: Well, we'll call</p> <p>21 every -- you know, we'll give everybody an opportunity.</p> <p>22 All right.</p> <p>23 So Dr. Kosary, you may have stated your name,</p> <p>24 and can you raise your right hand?</p> <p>25 Whereupon,</p>	<p>112</p> <p>1 these homes more universally accessible.</p> <p>2 A misperception of Design For Life is that</p> <p>3 it's solely focused on individuals who are in some ways</p> <p>4 permanently impaired. In actuality, however, this</p> <p>5 concept encompasses design features which can serve all</p> <p>6 ages and all stages of life. It considers families</p> <p>7 with small children, for example, people who want to</p> <p>8 age in place, as well as people who may be temporarily</p> <p>9 or permanently impaired, as well as accommodating</p> <p>10 friends and family who may have mobility issues or may</p> <p>11 just be visiting with a small child and an extremely</p> <p>12 large stroller.</p> <p>13 The main takeaway is that the county's Design</p> <p>14 For Life program addresses things that you can do to</p> <p>15 make the interior of a home more accessible to people</p> <p>16 of all ages and all stages of life. It's focused on</p> <p>17 the inside. As the Disney Imagineers would say, This</p> <p>18 conditional use pluses the Design For Life concept. It</p> <p>19 takes the required level two features that enhance the</p> <p>20 interior accessibility of a home and adds requirements</p> <p>21 to the -- to enhance the exterior accessibility,</p> <p>22 features which enhance the ability of the occupants of</p> <p>23 the home to access their life outside their home. In</p> <p>24 effect, this conditional use strives to build inclusive</p> <p>25 Design For Life communities.</p>

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29 (113 to 116)

<p>113</p> <p>1 The first thing this conditional use does to 2 help get residents out into the world is a requirement 3 that there must be at least one handicapped accessible 4 parking space per dwelling unit. In fact, it basically 5 provides enough space to park a handicapped accessible 6 van. 7 The next set of requirements state that the 8 proposed site must be within a certain distance to a 9 Metro station and a public recreation or park facility. 10 And to tell you the truth, I think that the method for 11 measuring distance is still in question. I mean, 12 you -- I was going to touch on ZTA 20-03, you've 13 already done that, was introduced on September 29th, 14 2020 and included amendments to revise the distance 15 standards from a Metro station and recreational 16 facilities. And that's a direct quote from the cover 17 page of this ZTA. 18 And so as you were mentioning, it was 19 proposing to actually designate that these -- the Metro 20 station and the park or recreation facility was -- were 21 to be measured as a radius. As you said, as you noted, 22 the ZTA expired. Actually, the ZTA met with strong 23 opposition which is why it was -- why it ended up 24 expiring. 25 So Madam Examiner, I actually think the</p>	<p>115</p> <p>1 Another requirement -- excuse me. I need to 2 take a drink. Another requirement of this conditional 3 use states that a public recreation or park facility 4 must be within 1,000 feet of the site. The closest 5 recreational focused public, and I emphasize public 6 strongly, underline that and bold it, facility to this 7 site is Redland Local Park, which is located at 17210 8 Redland Road. It is a 10.12 acre, or 444,827 square 9 foot, facility owned and operated by Maryland-National 10 Capital Park and Planning Commission. 11 This park features a large playground, a park 12 pavilion which can be reserved, a soccer field, tennis 13 courts, and an exercise trail. It also has off-street 14 parking for over 30 cars, as well as more limited 15 on-street parking. It actually doesn't matter how you 16 measure the distance. This facility is more than 1,000 17 feet from this proposed site. As the crow flies, it is 18 slightly under 1,200 feet. 19 Using the built transportation 20 infrastructure -- 21 THE HEARING EXAMINER: Ms. Kosary, I 22 couldn't -- using? 23 DR. KOSARY: Using the built transportation 24 infrastructure. 25 THE HEARING EXAMINER: Okay. But as the crow</p>
<p>114</p> <p>1 method of measurement to be used in evaluating these 2 requirements is actually your decision. All I will say 3 is that the required standards of this conditional use 4 were designed to enhance accessibility to a resident's 5 life outside their home. 6 As Andrew said, crows fly. Humans, however, 7 do not. And we're generally limited to the built 8 transportation infrastructure, roads, bike lanes, 9 sidewalks, things like that, for our access. So 10 utilizing the built transportation infrastructure, this 11 site is about 2.8 miles, according to Google Maps, from 12 the Shady Grove Metro Station, which is located at 13 15903 Somerville, which is spelled S-O-M-E-R-V-I-L-L-E, 14 Drive. 15 There, it would involve a left-hand turn on 16 the side onto Muncaster Mill Road, a left-hand turn at 17 the Muncaster Mill-Redland intersection onto Redland 18 Road, and a right-hand turn at the Redland-Somerville 19 intersection onto Somerville Drive, which takes you 20 directly to the south Metro park lot -- south Metro 21 parking lot and the station. The distance is slightly 22 less, but still over two miles if you walk because you 23 can cut through a Metro parking lot. However, I would 24 discourage walking because I think, as it was mentioned 25 earlier, a great deal of Redland Road lacks sidewalks.</p>	<p>116</p> <p>1 flies, what is it? 2 DR. KOSARY: As the crow flies, it is 3 slightly under 1,200 feet. 4 THE HEARING EXAMINER: But is it above 1,000? 5 DR. KOSARY: It is greater than 1,000. 6 THE HEARING EXAMINER: Okay. I'm sorry. Go 7 ahead. 8 DR. KOSARY: It is more than 1,000 feet from 9 this proposed site. Using the very, you know, liberal 10 closest -- closest to closest, yeah, it is 11 1,100-and-something feet. 12 THE HEARING EXAMINER: Okay. 13 DR. KOSARY: Using the transportation 14 infrastructure, according to Google Maps, it's 15 six-tenths of a mile by car. By foot, it's five-tenths 16 of a mile because, again, you can cut through a parking 17 lot. 18 Madam Examiner, the applicant is asking you 19 to accept an alternative reality of what constitutes a 20 public park and accept a 2,500-square-foot area or 21 maybe -- although it's not spelled out on Exhibit 10 22 which only identifies the 2,500-foot multi-age play 23 area. Maybe it's a little more than 2,500 square feet. 24 Who knows. That they're going to equip -- they're 25 going to equip this area, how big it is, with a couple</p>

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<p>117</p> <p>1 of benches and one or two pieces of playground 2 equipment, and somehow through some sort of an 3 agreement, are going to open this area to the public. 4 Just let this sink in. We are talking 2,500 5 square feet, maybe a bit more, a few benches, and some 6 playground equipment compared to the 10.12 acre public 7 local park that they're not close enough to with all 8 its many, many recreational amenities. Public parks 9 are owned and managed by some component of government, 10 be it city, county, state, tribal, or federal, or by an 11 entity created by government, such as a metropolitan 12 park district, or in the case of Montgomery County, by 13 the Maryland-National Capital Park and Planning 14 Commission, which was chartered by the state of 15 Maryland in 1927. 16 Public parks have yearly budgets for their 17 maintenance, provided by the government and sometimes 18 also supported by user fees. The location of public 19 parks is made known to the public. They have signs. 20 They are advertised in publications and on websites. 21 They are accessible to the public. They have street 22 addresses. They have contact information. They have 23 parking or are readily accessible by public 24 transportation, bike lanes, or sidewalks. They are not 25 hidden deep inside of a community with limited access.</p>	<p>119</p> <p>1 property owned by the Shady Grove Square HOA in order 2 to provide access to Redland Road and the Route 57 3 ride-on bus. 4 It's my understanding that the Shady Grove 5 Square HOA has actually responded to this request, and 6 they will not be granting the easement. This is well 7 within their rights. This proposed pathway would run 8 through an area of their property that's wooded and 9 provide screening to the end unit townhome closest to 10 Redland Road. It also abuts an area that is under a 11 forest conservation easement. 12 Further, this path would run close to homes 13 in Shady Grove Square. It's basically not Shady Grove 14 Square's responsibility to provide connectivity. The 15 fact of the matter is that there is bus service on an 16 abutted road. However, the available bus service does 17 not provide the level of accessibility to public 18 transportation that this conditional use envisioned. 19 This site is extremely car dependent. 20 Finally, I just want to touch briefly on OZAH 21 Exhibit 15, which is the preliminary forest 22 conservation plan. 23 Madam Examiner, I know you weren't 24 responsible for this plan. I just wanted to get 25 something on the record.</p>
<p>118</p> <p>1 The applicant is actually missing the entire 2 point of this requirement, which is to provide access 3 to a public recreationally focused amenity to the 4 residents of the proposed Design For Life community. 5 It is not the point of this requirement to take a 6 small, private amenity that is part of the common open 7 space that you would expect to have been provided to a 8 community of this size and through some sort of 9 mechanism, make it available to anyone who wanders in 10 off the street. 11 Moving on, I want to briefly touch on the 12 requirement for public bus service on an abutting road. 13 The planning staff report, which is OZAH Exhibit 30, 14 discusses the limitations of ride-on bus Route 53. 15 Basically, the purpose of Route 53 is to provide 16 limited weekday rush-hour bus service between areas in 17 Olney and the Shady Grove in Glenmont Metro Stations, 18 it stops on Muncaster Mill just because it needs to, 19 beyond Muncaster Mill to get to Shady Grove a couple of 20 times during the a.m. and p.m. rush hours. 21 The ride-on route which serves this area is 22 Route 57, which runs along Redland Road in this area. 23 And as everybody's pointed out, Redland Road does not 24 abut this site. Page 14 and 15 of the staff report 25 discuss the need for a public access easement across</p>	<p>120</p> <p>1 On OZAH Exhibit 15B, if somebody wants to 2 bring that up, I want to note that many of the trees 3 from number 11 to number 33 are actually on Shady Grove 4 Square's property. These trees, which are all eastern 5 white pines or evergreen and will provide the only 6 screening between the existing Shady Grove Square 7 Townhomes and this proposed development. 8 So you brought it up, and you can see where 9 they are, at the very top on the property line, 11 10 through 33. 11 Okay. I want to turn now to -- 12 THE HEARING EXAMINER: Dr. Kosary, are you 13 saying their critical-route zones are going to be 14 impacted or? 15 DR. KOSARY: That's what I'm going to say. 16 If you want to pull up -- 17 THE HEARING EXAMINER: No, but are you 18 saying -- okay. Then back to screening. 19 DR. KOSARY: Yeah. Yeah. 20 THE HEARING EXAMINER: Is it your testimony 21 that the trees are not going to provide sufficient 22 screening? 23 DR. KOSARY: No. I'm just saying that the 24 trees are going to be -- the trees are what's going to 25 be there to screen this existing townhouse development</p>

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31 (121 to 124)

121	<p>1 from this proposed application. If you want to go to</p> <p>2 OZAH Exhibit 15C, though, which is the detailed sheet.</p> <p>3 THE HEARING EXAMINER: Okay. We're there.</p> <p>4 DR. KOSARY: Okay. You've got the table,</p> <p>5 specimen, champion, and historic trees.</p> <p>6 THE HEARING EXAMINER: Okay.</p> <p>7 DR. KOSARY: Okay. You want to note, though,</p> <p>8 the column labeled Status. If you go to 11 through 33,</p> <p>9 every tree on this list that's labeled either safe or</p> <p>10 safe, parentheses, impacted is actually a tree that is</p> <p>11 on the Shady Grove Square HOA's property.</p> <p>12 And I want you to note the column labeled CRZ</p> <p>13 Impacted. And you're right, CRC is short for Critical</p> <p>14 Root Zone. For anybody who doesn't know, the critical</p> <p>15 root zone of a tree is the zone in which the majority</p> <p>16 of the tree's root's life, pretty much 85 percent of</p> <p>17 tree roots will be found in the top 24 percent of the</p> <p>18 soil. Of those, the majority of the roots that supply</p> <p>19 the nutrients and water to the tree are found in the</p> <p>20 uppermost layer, just below the soil surface. Note</p> <p>21 that the critical root zone impacted for the tree's</p> <p>22 labeled safe, parentheses, impacted ranges from 35</p> <p>23 percent to 46 percent.</p> <p>24 We're all aware that construction damages</p> <p>25 trees. Most assume that damage occurs due to</p>	123	<p>1 numerous issues with this application that I think</p> <p>2 you're going to have to consider, Madam Examiner. So</p> <p>3 thank you.</p> <p>4 THE HEARING EXAMINER: How many trees did you</p> <p>5 say would be 40 --</p> <p>6 DR. KOSARY: Ten out of twenty trees are</p> <p>7 greater than 40 percent.</p> <p>8 THE HEARING EXAMINER: Okay.</p> <p>9 DR. KOSARY: It just demonstrates the density</p> <p>10 of --</p> <p>11 THE HEARING EXAMINER: And is the LOD, the</p> <p>12 Limits of Disturbance -- I'm looking for that.</p> <p>13 DR. KOSARY: Yeah.</p> <p>14 THE HEARING EXAMINER: I see it. Okay.</p> <p>15 DR. KOSARY: Yeah, it's pretty much up to the</p> <p>16 property line. This is pretty dense.</p> <p>17 THE HEARING EXAMINER: Okay. All right.</p> <p>18 Anything else?</p> <p>19 DR. KOSARY: No.</p> <p>20 THE HEARING EXAMINER: Okay. And Mr.</p> <p>21 Wallace, do you have questions for Dr. Kosary?</p> <p>22 MR. WALLACE: Just a couple.</p> <p>23 Dr. Kosary, first of all, I just want to make</p> <p>24 sure. I don't think you're asking -- what is your</p> <p>25 doctorate in? So they know your testimony's considered</p>
122	<p>1 trenching. Probably the biggest source of damage due</p> <p>2 to construction is because of soil compaction caused by</p> <p>3 heavy construction vehicles and just people going and</p> <p>4 piling excavated dirt over the critical root zone. As</p> <p>5 a generic rule of thumb, 20 percent of the root system</p> <p>6 of a tree can be damaged before the tree shows signs of</p> <p>7 injury. If 40 percent or more of the root system is</p> <p>8 damaged, the tree is probably going to die.</p> <p>9 Ten of the twenty Shady Grove Square trees on</p> <p>10 this list are shown to have a 40 percent or greater</p> <p>11 impact due to their critical root zone. Now, what a</p> <p>12 lot of people don't realize is that trees damaged</p> <p>13 through construction activity can take several years to</p> <p>14 show the impact of damage. So a lot of times, people</p> <p>15 don't get the cause and effect.</p> <p>16 So I just want to give a heads up to Shady</p> <p>17 Grove Square's HOA that if this application is approved</p> <p>18 and several years after construction, their trees start</p> <p>19 dying that they know what the reason is. You know,</p> <p>20 that -- and that we've given -- now given the</p> <p>21 developers of this application, actually, also a heads</p> <p>22 up that they're probably going to be creating quite an</p> <p>23 issue for their neighbors.</p> <p>24 And so I'm going to just wrap up here. And</p> <p>25 basically, all I can say is that there are actually</p>	124	<p>1 expert. I --</p> <p>2 DR. KOSARY: No, if you remember from</p> <p>3 Primrose. I think you were there.</p> <p>4 THE HEARING EXAMINER: No, he wasn't.</p> <p>5 MR. WALLACE: Mr. Wolford was.</p> <p>6 DR. KOSARY: Mr. Wolford? Yes, I believe he</p> <p>7 was.</p> <p>8 MR. WALLACE: Different Scott. It's okay.</p> <p>9 DR. KOSARY: Oh, different Scott. You're</p> <p>10 your evil twin. I'm statistics. Actually, I'm a</p> <p>11 numbers person.</p> <p>12 MR. WALLACE: Okay. Given that's you're</p> <p>13 stating --</p> <p>14 DR. KOSARY: But I'm also Montgomery County</p> <p>15 Master Gardner.</p> <p>16 MR. WALLACE: Okay. Thank you.</p> <p>17 DR. KOSARY: And I have had trees that have</p> <p>18 been damaged by construction.</p> <p>19 MR. WALLACE: Okay. And you live at 7416</p> <p>20 Needwood?</p> <p>21 DR. KOSARY: That's correct.</p> <p>22 MR. WALLACE: And about how far is that from</p> <p>23 the site?</p> <p>24 DR. KOSARY: About a mile.</p> <p>25 MR. WALLACE: Okay. Just a little over a</p>

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32 (125 to 128)

<p>125</p> <p>1 mile, maybe? About a mile?</p> <p>2 THE HEARING EXAMINER: If you know.</p> <p>3 DR. KOSARY: Property line to property</p> <p>4 line -- since -- seeing as that property line to</p> <p>5 property line, you're at, like, about 1 point --</p> <p>6 MR. WALLACE: As the crow flies.</p> <p>7 DR. KOSARY: You're about 1.2 miles from the</p> <p>8 subway station, and I'm about a mile from the subway</p> <p>9 station. I would say it's about a mile.</p> <p>10 MR. WALLACE: Okay. And are you aware of</p> <p>11 some of the definitions and descriptions in the county</p> <p>12 zoning ordinance regarding public use space and public</p> <p>13 amenity space?</p> <p>14 DR. KOSARY: Public use space and public</p> <p>15 amenity space?</p> <p>16 MR. WALLACE: Yes.</p> <p>17 DR. KOSARY: I'm actually rather aware of</p> <p>18 what the intent of this conditional use, what it</p> <p>19 involved because basically, I've been a member of the</p> <p>20 Greater Shady Grove Civic Alliance for quite a number</p> <p>21 of years, and Dean Packard, who is actually the man who</p> <p>22 developed Parc Redland which is the one and only Design</p> <p>23 For Life conditional use that's been approved up until</p> <p>24 date, spoke with us numerous times about -- and he's</p> <p>25 the one that put the ZTA 15 on the --</p>	<p>127</p> <p>1 many? Forty-three?</p> <p>2 MR. WALLACE: But you're aware that they're</p> <p>3 there. Okay. Thank you.</p> <p>4 DR. KOSARY: Yes.</p> <p>5 MR. WALLACE: I don't have any other</p> <p>6 questions for Dr. Kosary.</p> <p>7 THE HEARING EXAMINER: Okay. Anything you'd</p> <p>8 like to say in response to those -- just in response to</p> <p>9 those questions?</p> <p>10 DR. KOSARY: None.</p> <p>11 THE HEARING EXAMINER: Okay. Thank you very</p> <p>12 much, Dr. Kosary.</p> <p>13 DR. KOSARY: You're welcome.</p> <p>14 THE HEARING EXAMINER: Anyone else that would</p> <p>15 like to testify?</p> <p>16 MS. TAYLOR: I would.</p> <p>17 THE HEARING EXAMINER: And you are?</p> <p>18 MS. TAYLOR: My name is Alicia Taylor.</p> <p>19 THE HEARING EXAMINER: Okay. Ms. Taylor,</p> <p>20 can you put your video on, please?</p> <p>21 MS. TAYLOR: Yes.</p> <p>22 THE HEARING EXAMINER: Okay. Thank you.</p> <p>23 What would you like to say?</p> <p>24 MS. TAYLOR: So I'm Alicia Taylor. I</p> <p>25 purchased this --</p>
<p>126</p> <p>1 MR. WALLACE: But it sounds like you're not</p> <p>2 familiar with definitions in the zoning ordinance</p> <p>3 regarding public use space or public facilities and</p> <p>4 amenities?</p> <p>5 DR. KOSARY: I'm telling you that</p> <p>6 that -- the -- Mr. Packard's intent for this</p> <p>7 conditional use was that it was a public park or a</p> <p>8 public recreation facility. It was something that was</p> <p>9 run by the government, not something that you waived a</p> <p>10 wand over and said, Have at it, public. And that it</p> <p>11 was actually, like I said, to provide the amenities to</p> <p>12 the residents of the Design For Life community, not to</p> <p>13 take just a bit of common space that you would be</p> <p>14 providing to the community to begin with and open it up</p> <p>15 to anybody and their brother.</p> <p>16 MR. WALLACE: Okay. You have -- had</p> <p>17 submitted testimony into the record about the cost of</p> <p>18 the units that were proposed. Did you understand that</p> <p>19 there were MPDUs as part of this project?</p> <p>20 DR. KOSARY: Yes, I did. And I'm -- don't</p> <p>21 know where you're going with this.</p> <p>22 MR. WALLACE: I'm just asking if you're aware</p> <p>23 that there's affordable units that are provided as part</p> <p>24 of this project?</p> <p>25 DR. KOSARY: You've got seven out of how</p>	<p>128</p> <p>1 THE HEARING EXAMINER: Oh, I'm sorry. Please</p> <p>2 raise your right hand.</p> <p>3 MS. TAYLOR: Yes.</p> <p>4 Whereupon,</p> <p>5 ALICIA TAYLOR,</p> <p>6 being first duly sworn or affirmed to testify to the truth,</p> <p>7 the whole truth, and nothing but the truth, was examined</p> <p>8 and testified as follows:</p> <p>9 THE HEARING EXAMINER: Okay. And state your</p> <p>10 name, address, and email address for the record.</p> <p>11 MS. TAYLOR: Okay. My name is Alicia Taylor.</p> <p>12 My address is 17504 Sabrina Terrace, Derwood, Maryland</p> <p>13 20855. My email address is Alicia, A-L-I-C-I-A, dot</p> <p>14 CGTaylor at gmail.com</p> <p>15 THE HEARING EXAMINER: Okay. And what would</p> <p>16 you like to say?</p> <p>17 MS. TAYLOR: I'm more going to talk about the</p> <p>18 dangers of trying to come in and out of Sabrina</p> <p>19 Terrace. I did share a video showing how there's a</p> <p>20 blind hill coming from Redmond Road onto Muncaster Mill</p> <p>21 Road where people, again, do not do the speed limit;</p> <p>22 they go much faster. And pulling in and out of Sabrina</p> <p>23 Terrace, I know they said there was like a 10-second</p> <p>24 stop gap for us to pull from Sabrina Terrace on -- to</p> <p>25 make a left onto Muncaster Mill Road. It's inaccurate.</p>

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129	<p>1 I usually have to wait until the light turns red in</p> <p>2 order for myself to safely turn onto Muncaster Mill</p> <p>3 Road.</p> <p>4 THE HEARING EXAMINER: Are you talking</p> <p>5 southbound or northbound?</p> <p>6 MS. TAYLOR: Going toward -- I guess that</p> <p>7 would be my --</p> <p>8 THE HEARING EXAMINER: Or left or right, I</p> <p>9 mean, out of the --</p> <p>10 MS. TAYLOR: From Sabrina Terrace, I would be</p> <p>11 making a left onto Muncaster Mill Road. And in that</p> <p>12 section, there is the center turning lanes that people</p> <p>13 are supposed to use to turn in and onto Muncaster Mill</p> <p>14 Road. But unfortunately, the general public use that</p> <p>15 road as their own turning -- or their own personal</p> <p>16 travel lane.</p> <p>17 Give me one moment. I do have children here.</p> <p>18 So onto Muncaster Mill Road from Sabrina</p> <p>19 Terrace, especially making that left, it's usually a</p> <p>20 fight to get onto it. Just last week, there was a</p> <p>21 pretty bad road rage incident where somebody was just</p> <p>22 traveling past Lisa Drive down the center lane as their</p> <p>23 own travel lane, and there wasn't traffic for the</p> <p>24 light. They just wanted to get to that turning lane</p> <p>25 faster to turn left onto Redland Road. And that is a</p>	131	<p>1 recorded accidents. So that does not include the</p> <p>2 accidents that do not get reported to the police</p> <p>3 department because they don't come out for every fender</p> <p>4 bender.</p> <p>5 There -- you see them coming up -- because</p> <p>6 what happens is there's a merge lane from Muncaster</p> <p>7 Mill for the two lanes to merge together on Muncaster</p> <p>8 Mill Road.</p> <p>9 I apologize. I need to move because they're</p> <p>10 getting a little rowdy.</p> <p>11 So it's just a very dangerous intersection.</p> <p>12 No one obeys the laws, unfortunately. You can't expect</p> <p>13 people to obey the laws, but when we have an instance</p> <p>14 where it's constantly being broken and no one's doing</p> <p>15 what they're supposed to be doing on the road to</p> <p>16 respect other drivers, it becomes very dangerous and</p> <p>17 scary.</p> <p>18 THE HEARING EXAMINER: Now, where did you say</p> <p>19 the 15 recorded accidents were?</p> <p>20 MS. TAYLOR: Were between Redland Road on</p> <p>21 Muncaster Mill Road and Bowie Mill. Now, Bowie Mill is</p> <p>22 just about two miles from Sabrina Terrace. And just</p> <p>23 last year, there was a young girl, 17 years old,</p> <p>24 crossing at a crosswalk, was hit by a car, and the two</p> <p>25 dogs died. I don't know her condition to this day.</p>
130	<p>1 daily occurrence for us.</p> <p>2 Again, when I'm leaving to take my children</p> <p>3 to school at 8:45, I have to wait for that light to</p> <p>4 turn red so no one's coming over Muncaster Mill Road</p> <p>5 from Redland Road so I can safely make it to that</p> <p>6 intersection. So I'm not sure how these stopgaps study</p> <p>7 was done.</p> <p>8 Another thing, I -- it sounds like where</p> <p>9 they're saying there might be 50 cars coming in and out</p> <p>10 of that new development during peak hours, obviously</p> <p>11 that development's not there, and this just seems to</p> <p>12 be, well, they just figured out these numbers. I'm not</p> <p>13 sure how. But with the traffic on Muncaster Mill Road,</p> <p>14 it is horrendous, especially during rush hour, peak</p> <p>15 hours of traffic. Just sitting for two miles at Bowie</p> <p>16 Mill, which is south of Sabrina Terrace, you can expect</p> <p>17 to wait 15 to 20 minutes to go down to get to Redland</p> <p>18 Road.</p> <p>19 So I find it very hard to believe that they</p> <p>20 think that's only going to add 50 more cars during peak</p> <p>21 hours when that development's not there. Again, I did</p> <p>22 share a video where we were turning into my development</p> <p>23 with our children in the backseat, and we almost had a</p> <p>24 head-on collision. According to the police department</p> <p>25 too, there's -- just in the last year, there were 15</p>	132	<p>1 But I know it was a pretty bad accident. And the bad</p> <p>2 accidents happen quite often on this road, especially</p> <p>3 at night.</p> <p>4 For some reason, we just hear these car drag</p> <p>5 races up and down Muncaster Mill Road because people</p> <p>6 are trying to get in front of each other because of</p> <p>7 that little merge area. And now, if you're going to</p> <p>8 extend that merge area, it's just only going to make</p> <p>9 that issue even worse.</p> <p>10 THE HEARING EXAMINER: Well, is the merge</p> <p>11 area in the middle of the road? Because they're</p> <p>12 extending it as an accel/decel cell on the -- abutting</p> <p>13 the property.</p> <p>14 MS. TAYLOR: So on Muncaster Mill from</p> <p>15 Redland Road, there's two lanes going southbound, and</p> <p>16 the merge lane is -- it ends right after Sabrina</p> <p>17 Terrace. So my understanding, they're going to take</p> <p>18 that merge lane and extend it for the new development</p> <p>19 to go through.</p> <p>20 THE HEARING EXAMINER: I see. Okay. All</p> <p>21 right. And you said 15 recorded.</p> <p>22 MS. TAYLOR: Recorded. Reported.</p> <p>23 THE HEARING EXAMINER: So that means</p> <p>24 reported?</p> <p>25 MS. TAYLOR: They're reported, yes.</p>

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<p>133</p> <p>1 Reported --</p> <p>2 THE HEARING EXAMINER: To the police?</p> <p>3 MS. TAYLOR: Yes.</p> <p>4 THE HEARING EXAMINER: Okay. Anything else?</p> <p>5 Take your time.</p> <p>6 MS. TAYLOR: I was just really disappointed</p> <p>7 to find out that the builders found a loophole to not</p> <p>8 do a whole traffic study after we -- my husband and I</p> <p>9 spoke with them last year. We told them our concerns</p> <p>10 for the traffic and how dangerous the intersection</p> <p>11 already is for us to even get into our neighborhood.</p> <p>12 I could send countless amounts of videos</p> <p>13 showing people crashing, racing, using the central lane</p> <p>14 and not allowing people that need to use the central</p> <p>15 lane to get onto Muncaster Mill. It's countless. And</p> <p>16 it's just, it's dangerous. It honestly is dangerous.</p> <p>17 And I'm really disappointed that they didn't</p> <p>18 do what they said that they were going to do.</p> <p>19 There's -- they told us they were going to do what the</p> <p>20 state requirement is. But they found a loophole and</p> <p>21 decided not to do any further research or investigating</p> <p>22 of any of that.</p> <p>23 Another thing was is that we also asked for a</p> <p>24 fence between the two properties. And I'm surprised</p> <p>25 they didn't mention that as well.</p>	<p>135</p> <p>1 p.m. peak-hour vehicle trips from this project. So</p> <p>2 just for your own information. If you heard something</p> <p>3 different, I just want to clarify that. And --</p> <p>4 MS. TAYLOR: Right. And it's -- but there's</p> <p>5 no real facts or numbers. Those are just what you guys</p> <p>6 are guessing or what your opinion might be of what will</p> <p>7 happen at that time. There's no guarantee of that.</p> <p>8 MS. TAYLOR: Actually, it is based -- I'm</p> <p>9 sorry. I correct myself.</p> <p>10 MS. TAYLOR: Are they actual numbers?</p> <p>11 MR. WALLACE: It's 17 and 22. And that's</p> <p>12 based -- it's based on trip generation rates that are</p> <p>13 established by the traffic planning and engineering</p> <p>14 industry and accepted by the county. But I appreciate</p> <p>15 your position of what you deal with on a daily basis.</p> <p>16 I get it. One --</p> <p>17 MS. TAYLOR: And we told them last year that</p> <p>18 it's really dangerous and that they need to do a full</p> <p>19 study. And they implied that they were going to do the</p> <p>20 full research, but then they found their loophole, and</p> <p>21 they don't have to do it anymore.</p> <p>22 MS. TAYLOR: And just a question: Has your</p> <p>23 community ever asked for, like, a speaking camera or</p> <p>24 anything like that?</p> <p>25 MS. TAYLOR: Yes.</p>
<p>134</p> <p>1 THE HEARING EXAMINER: Okay. Anything else</p> <p>2 you'd like to say?</p> <p>3 MS. TAYLOR: No. I just -- I really wish</p> <p>4 there were -- there would be a full study of how</p> <p>5 dangerous this intersection is because it is a blind</p> <p>6 hill and people are speeding on it.</p> <p>7 THE HEARING EXAMINER: Okay. Thank you very</p> <p>8 much.</p> <p>9 MS. TAYLOR: Thank you.</p> <p>10 THE HEARING EXAMINER: Okay. Is there anyone</p> <p>11 else that would like to testify in opposition?</p> <p>12 MR. EINSMANN: Yes.</p> <p>13 MR. WALLACE: I'm sorry. Before you move</p> <p>14 on --</p> <p>15 THE HEARING EXAMINER: Oh, I'm sorry. You do</p> <p>16 get to ask her questions.</p> <p>17 MR. WALLACE: Yeah, just a couple.</p> <p>18 THE HEARING EXAMINER: I'm sorry.</p> <p>19 Ms. Taylor, do you mind putting your camera</p> <p>20 back on? The applicant gets to ask you questions about</p> <p>21 your testimony.</p> <p>22 MS. TAYLOR: Okay.</p> <p>23 MR. WALLACE: Hi. Just a couple quick</p> <p>24 questions. One, I don't know. You may have heard 50</p> <p>25 vehicle trips, but the -- it's 23 in the a.m. and 30</p>	<p>136</p> <p>1 MR. WALLACE: And --</p> <p>2 MS. TAYLOR: At Redland Road and Muncaster</p> <p>3 Mill, always -- we've always been asking for speed</p> <p>4 cameras.</p> <p>5 MR. WALLACE: Okay.</p> <p>6 MS. TAYLOR: And they don't commit. And it's</p> <p>7 funny because Redland Middle School is right down the</p> <p>8 street, and there's no light -- there's no speed</p> <p>9 cameras there. There's never been one on Muncaster</p> <p>10 Mill Road. Redland Road, there has been, but it's not</p> <p>11 a constant basis.</p> <p>12 MS. TAYLOR: Okay. And then we appreciate</p> <p>13 that -- you know, we did meet with the community, with</p> <p>14 your community. We don't -- our team doesn't remember</p> <p>15 a promise of a fence, but we're happy to explore it</p> <p>16 with you. And that's something that we're amenable to</p> <p>17 it. It's certainly -- if we had just taken that from</p> <p>18 the meetings, we would have been advanced on that</p> <p>19 consideration. But we're definitely willing to</p> <p>20 consider it now, assuming again that your entire</p> <p>21 community agrees that this is something that they want.</p> <p>22 So, we're --</p> <p>23 MS. TAYLOR: I know the community, especially</p> <p>24 everyone that lives on Muncaster Mill Road, does not</p> <p>25 want another million-dollar townhouse community when</p>

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<p>137</p> <p>1 there's no affordable housing for your average 2 Montgomery County resident. And to have 43 townhomes 3 piled on top of each other in less than five acres, and 4 just to have this one driveway to come in and out, in 5 an area that's really difficult for us who currently 6 live here, is just going to add to the chaos. 7 MR. WALLACE: Okay. Again, we're happy to 8 explore a fence if that's what your community would 9 like. We just -- we weren't aware that that was 10 something that there is, you know, a desire for. 11 I have no other questions. 12 MS. TAYLOR: Thank you. 13 THE HEARING EXAMINER: Okay. Anything else, 14 Ms. Taylor? 15 MS. TAYLOR: No, ma'am. Thank you. 16 THE HEARING EXAMINER: Thank you. Okay. 17 Now I think we're going to Mr. Einsmann? 18 MR. EINSMANN: That is correct. 19 THE HEARING EXAMINER: Is that your hand 20 raised? 21 MR. EINSMANN: Yeah, I was just saying, yeah, 22 opposition. That's all. And then I needed to raise my 23 hand anyway. 24 Whereupon, 25 ANDREW EINSMANN,</p>	<p>139</p> <p>1 cause congestion. And my daughter tried to 2 drop -- tried to ride on that 53 bus. It's never on 3 time. It's not really something I would be 4 seeing -- deem as reliable and accessible that you can 5 use because again, as someone mentioned, it's only used 6 on -- during rush hour, going one way or the other. 7 So that's all of the comments I have. I just 8 wanted to -- and the final thing, as Alicia did say, 9 that's a blind intersection. It's almost four-way 10 traffic because that left turn -- that left -- that 11 middle lane, also people used to drive by people. So 12 it's -- I understand. It's law breaking; you can't 13 test that. 14 But at the end of the day, where this left 15 turn would be is just so dangerous because people are 16 going either to the right to merge and speed past 17 people in the center lane or to the left because you 18 have that double left-turn lane, which is supposed to 19 only be for turns versus other things. 20 THE HEARING EXAMINER: Can I just check. 21 What intersection are you referring to? 22 MR. EINSMANN: Muncaster Mill and Redland 23 Road. 24 THE HEARING EXAMINER: Oh, okay. 25 MR. EINSMANN: It's right up the street.</p>
<p>138</p> <p>1 being first duly sworn or affirmed to testify to the truth, 2 the whole truth, and nothing but the truth, was examined 3 and testified as follows: 4 THE HEARING EXAMINER: Now, before I begin, I 5 must have taken your email address down incorrectly. 6 Do you mind giving it to me again? 7 MR. EINSMANN: Yep. I'll do an easier one. 8 Andrew underscore Einsmann, E-I-N-S-M-A-N-N, at Yahoo 9 dot com. 10 THE HEARING EXAMINER: Okay. Thank you. 11 MR. EINSMANN: The first thing, for 12 disclosure, as I said, I'm on that same board that 13 Carol was on. The address, you already have, 6705 14 Applewood Place, Derwood. 15 So I'm on the opposite side of the street, 16 similar to the woman that asked the question earlier. 17 And I just want to iterate -- just reiterate simply 18 what Alicia said and what she has said. That 19 intersection during rush hour is already a failed 20 intersection. I have lived and owned property on this 21 street for 20 years. They tried with the ICC to 22 alleviate the rush hour traffic, but there are times 23 when that is a 20-minute wait going west, or you guys 24 call it north, on Muncaster Mill Road already. 25 So any cars being added are just going to</p>	<p>140</p> <p>1 It's a downhill. People fly down that hill to get 2 right there. I'd say it's about a quarter mile from 3 Lisa. 4 THE HEARING EXAMINER: Right. Right. 5 MR. EINSMANN: And that intersection's been 6 failed over 20 years. That's one of the reasons why 7 they did the ICC is they wanted to relieve the stress 8 on that intersection. And it did nothing. 9 You can -- it's a mile wait some nights or 10 more from -- going, as I say, north -- you call it 11 northbound, I call it westbound, towards Montgomery 12 Village, Gaithersburg. I can't -- I never can get out. 13 THE HEARING EXAMINER: Okay. I understand. 14 Thank you. 15 Mr. Wallace? 16 MR. WALLACE: This may be a repeat of the 17 question you just asked, but I was multitasking. 18 Are you saying that you experienced a queue 19 from backing up onto Muncaster Mill from the Redland 20 intersection? 21 MR. EINSMANN: Correct. I'm at Applewood 22 Place. I can't get out in between the hours of 6 and 8 23 unless someone lets me out. People constantly block 24 the intersection making the left turn in because they 25 don't obey the keeping-the-intersection-free laws. And</p>

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<p>141</p> <p>1 it's from -- it's earlier than that because the school 2 buses started. When the school buses dropped off kids 3 on Muncaster Mill Road, that's what instigates the 4 backup. And the backup exists until at least 7:00 at 5 night. 6 So when school's not in session like today, 7 there's a little bit more of reprieve. Maybe at about 8 5, 5:30 is when the backup start. But when school is 9 in session, when the kids get dropped off from Sequoia, 10 there's a bus stop at my community, there's a bus stop 11 at Jacob's, there's a bus stop up the road, and when 12 they do all those bus stops, the road backs completely 13 up. 14 MR. WALLACE: Right. And that's your current 15 condition, right? 16 MR. EINSMANN: Yes. 17 MR. WALLACE: Yes. Okay. 18 MR. EINSMANN: But it's been like that -- I 19 own 17620 Applewood Place, which is right across the 20 street from this development. And I've lived 21 there -- I lived there previously, 20 years. And it 22 was like that 20 years ago as well. 23 MR. WALLACE: And do you know about how 24 far -- where Applewood intersects with Muncaster Mill, 25 about how far that is from the site?</p>	<p>143</p> <p>1 trying to be put on Muncaster Road just north of that 2 intersection as well because there's a -- Dunkin' 3 Donuts is trying to put something very near that 4 intersection too. And it's not a good intersection to 5 put stuff in right now because congestion. 6 THE HEARING EXAMINER: It had a weird 7 configuration as I recall, but I could be 8 misremembering. 9 MR. EINSMANN: Nope. Nope. You're right. 10 And the weird configuration is when you're going north 11 or westbound on Muncaster Mill Road, you have a left 12 turn signal -- 13 THE HEARING EXAMINER: That's it. 14 MR. EINSMANN: -- while everything else is 15 just the left yield. So that's one of the weird things 16 about it. The reason why is because someone died where 17 the CVS is about 10 years ago, and you can still see 18 the memorial. So in order to -- 19 THE HEARING EXAMINER: Well, I could be 20 wrong. I'm just remembering that. 21 MR. EINSMANN: Yep. So that's one of the 22 things. The other thing is, you can go three to two 23 lanes on Muncaster -- or two to one lane on Muncaster 24 Mill road, that intersection. Those are the two 25 things. And tight turns. There's a lot.</p>
<p>142</p> <p>1 MR. EINSMANN: From the site? Twenty-four 2 miles. It's right by St. Francis Church. 3 MR. WALLACE: Okay. Thank you. 4 No other questions, Judge. I just wanted to 5 get a sense of where he lived. 6 THE HEARING EXAMINER: Was that the -- do you 7 have more questions? 8 MR. WALLACE: No. 9 THE HEARING EXAMINER: I think we have a lot 10 of testimony on that intersection, but I can't find 11 the -- it was in Primrose. But I can't find it. In 12 any event -- 13 MR. WALLACE: I'm sorry. Which intersection 14 are you talking? 15 THE HEARING EXAMINER: Redland and Muncaster 16 Mill. 17 MR. WALLACE: Muncaster Mill Road. In 18 Primrose? 19 THE HEARING EXAMINER: I think it was, but I 20 could be misremembering because there were several 21 dysfunctional -- yes. 22 MS. PARSONS: Andrew is raising his hand. 23 THE HEARING EXAMINER: I'm sorry. 24 MR. EINSMANN: Madam Inspector (sic), you're 25 probably starting to get stuff from the Dunkin' that's</p>	<p>144</p> <p>1 THE HEARING EXAMINER: All right. Thank you. 2 Mr. Wallace, do you have any additional 3 questions based on my questions? 4 MR. WALLACE: No. 5 THE HEARING EXAMINER: No? Okay. Now we can 6 move on to rebuttal. Would you like a break of 15 7 minutes before we get into it, or? 8 MR. WALLACE: Fifteen minutes is probably not 9 needed. Maybe just five minutes. 10 THE HEARING EXAMINER: Five minutes? 11 MS. HELMS: Excuse me. I wanted to say 12 something. 13 THE HEARING EXAMINER: Oh, I didn't -- I will 14 get used to this hybrid format. Now you're there. I 15 wondered where you went. 16 MS. HELMS: Now I'm at home. 17 THE HEARING EXAMINER: Okay. Ms. Helms, I 18 apologize. 19 MS. HELMS: That's okay. I'm sorry I 20 interrupted you. 21 THE HEARING EXAMINER: And it's always you I 22 mess up on. I don't know what it is. But anyway -- 23 MS. HELMS: It's okay. 24 THE HEARING EXAMINER: -- please raise your 25 right hand.</p>

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<p>145</p> <p>1 Whereupon, 2 KRISTY HELMS, 3 being first duly sworn or affirmed to testify to the truth, 4 the whole truth, and nothing but the truth, was examined 5 and testified as follows: 6 THE HEARING EXAMINER: I think I already 7 swore you in, but this will be for the forthcoming 8 testimony. Go ahead. 9 MS. HELMS: So I wanted to back up what 10 Andrew and I think it was Alicia were saying. I live 11 across -- directly across from where the townhouses 12 will be put in. And I have the worst time getting out 13 of my house onto Muncaster Mill, especially if I want 14 to go what you guys are calling southbound because 15 people run up that middle lane that's supposed to be 16 the double turn lane. 17 Also, in the evenings, when I use the double 18 turn lane to try and get into my own house, I have to 19 sit there, and I would say at least once a week, 20 somebody comes up, and I'm scared to death that I'm 21 going to get hit head on. There needs to, minimum, if 22 they put those townhouses there, a light at Lisa Drive 23 and that intersection where they're putting the 24 townhouses, minimum, because somebody is going to get 25 killed.</p>	<p>147</p> <p>1 MR. WALLACE: Just a couple of minutes. I 2 think there's a couple of loose ends that we need to 3 put into, but I -- just a couple minutes to talk about 4 it. 5 THE HEARING EXAMINER: Now, did you do any 6 research of accident data for this? Were you -- under 7 the LATR, I think it's 500 feet you would have to 8 do -- report on accident data. Do you have any of 9 that, or? 10 MR. CALOGGERO: Not presently, no. 11 THE HEARING EXAMINER: Is it possible to get 12 that? 13 MR. CALOGGERO: Yes. 14 THE HEARING EXAMINER: And I'll let you take 15 a look at -- I'd swear I think it was the Primrose 16 decision, but anyway, which is CU 18-08. But -- 17 I'm sorry? 18 MR. WALLACE: Mr. Wolford was part of the 19 Primrose case, and I was just seeing if he remembers 20 offhand. 21 THE HEARING EXAMINER: Remembered it? Well, 22 he was not -- he was lucky not to be the transportation 23 planner. 24 MR. WALLACE: Right. I'm sure he -- but 25 we'll look into it as well. I mean, I'm not going to</p>
<p>146</p> <p>1 I actually probably -- I don't know how long 2 ago it was, but the lady would not let me call the 3 police. Watched a lady try to pull out of Lisa Drive 4 to make a left onto what would be -- what we're calling 5 South Muncaster Mill. And somebody was coming up that 6 middle lane and hit her, like, hit the front of her car 7 and spun her car partially because she couldn't see 8 that they were coming up and they were using the turn 9 lane illegally. They were just using it to get up to 10 the light. 11 And they got into a huge screaming fight, but 12 the lady would not let me call the police. So it did 13 not go on record. There are accidents out there all 14 the time, and it's very dangerous. At minimum, that 15 there needs to be a light put in there. 16 And that's all I have to say. 17 THE HEARING EXAMINER: Thank you. 18 Mr. Wallace, any questions? 19 MR. WALLACE: No. 20 THE HEARING EXAMINER: Okay. Thank you. 21 MS. HELMS: Thank you. 22 THE HEARING EXAMINER: And is there anyone 23 else that would like to testify? 24 Okay. Hearing none, do you need a couple of 25 minutes?</p>	<p>148</p> <p>1 speculate why daycare center in that area of town would 2 have that information in there, but that's fine. We'll 3 look at it as well, as I'm sure you will. 4 THE HEARING EXAMINER: Well, it may -- as I 5 said, I may be misremembering. 6 MR. WALLACE: Right. It's between -- they 7 looked at intersections at Redland and Muncaster Mill. 8 But I could be wrong. So anyway -- 9 MR. WALLACE: But also, to answer your 10 question, we can get into this as we finish up, but 11 part of what we will be resubmitting in addition to the 12 gap analysis and the other information that Mr. 13 Caloggero has already testified to, the accident 14 history. 15 THE HEARING EXAMINER: That would be helpful, 16 I think. 17 MR. WALLACE: Yes. Absolutely. 18 THE HEARING EXAMINER: And if you did an 19 LATR, you'd have to do a speed analysis, too. But it 20 seems to me that it's clear that people are speeding. 21 Or at least, there is -- are people speeding out there. 22 And is -- what -- well, I'll let you do your 23 rebuttal, and then if I have further questions. Let me 24 just give you an idea of my questions. 25 MR. WALLACE: Sure.</p>

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149	1 THE HEARING EXAMINER: And then maybe you can 2 address them on your rebuttal. On the public amenity 3 space, are you going to have signs at the entrance? 4 Because that space, if you're driving on -- it may meet 5 the definition of the code. But if you're driving on 6 Muncaster Mill, are you going to even know that that 7 space is there? 8 And my second question is, is that going to 9 be owned by the HOA? 10 MR. WALLACE: You can answer -- 11 THE HEARING EXAMINER: And my -- 12 MR. WALLACE: Oh, sorry. 13 THE HEARING EXAMINER: Well, let -- we'll let 14 a witness testify. 15 MR. WALLACE: Yeah. 16 THE HEARING EXAMINER: And is -- are the HOA 17 fees going to fund the maintenance of that space? 18 And I guess that's a public road, then, going 19 in, the spine road? 20 MR. WALLACE: No. That's private road, 21 subject to a public access easement. 22 THE HEARING EXAMINER: Specifically for the 23 park? 24 MR. WALLACE: In general, if it's a private 25 road, there has to be covenants on it that allow access	151	1 some expert testimony that says, you know -- I'll look 2 again at the landscaping you propose on that. We're 3 all having trouble -- plan north, I'll say. 4 But were -- you know, do you have a plan if 5 those trees do die? And we've had experts -- you know, 6 they die over time, as Dr. Kosary said. So what is 7 your answer to the fact that these trees have that 40 8 percent CRZ impact? 9 And my other question was -- and I'd like to 10 know why you feel like this meets the amenity -- or the 11 intent of the law. It may meet the letter of -- is 12 this a situation where it meets the letter of the law 13 and not the intent? Or -- I'm sorry. I'm just going 14 through my notes. 15 Okay. I think that's all I had from the 16 hearing. So -- and what's your response to the fact 17 that people are using that accel -- or using the turn 18 lanes to head to the light? Is there any 19 possibility -- and I know you have to go through SHA, 20 but we've had this before, and maybe it's not warranted 21 here. I mean, I doubt there's enough for a light, but 22 they've use bollards. It's just, do you think that's 23 warranted to -- so that people can't use it as a 24 through lane? So that's another question. 25 All right. With that, how long would you
150	1 to it. 2 THE HEARING EXAMINER: Okay. 3 MR. WALLACE: Unrelated to the park. But -- 4 THE HEARING EXAMINER: Okay. Gotcha. But is 5 there any restriction? Is it -- does it meet public 6 road standards? Because usually, they make private 7 roads private so they don't have to do the full width 8 of the -- 9 MR. WALLACE: He can testify to it, or I can 10 tell you it does meet the public road standards. 11 THE HEARING EXAMINER: Okay. Well, I'll 12 wait -- I'm telling you my questions for rebuttal. 13 MR. WALLACE: Okay. 14 THE HEARING EXAMINER: So will there be 15 signage? How will people know it's there? The fence 16 along -- was it Ms. -- my name went blank. 17 MR. WALLACE: Ms. Taylor? 18 THE HEARING EXAMINER: Yes. That -- 19 MR. WALLACE: That's the one along the 20 townhouse community. 21 THE HEARING EXAMINER: Yes. And I do have a 22 question about the trees because we've had expert 23 testimony before that if you impact more than like 24 35 -- 30 or 40 percent of a critical root zone, the 25 tree is probably going to die. And so I'd like to hear	152	1 like for a break? 2 MR. WALLACE: Again, I think 15 minutes, 3 tops. 4 THE HEARING EXAMINER: Okay. So we will 5 break now. It's 1:38, and we will come back at -- how 6 about 1:55? 7 MR. WALLACE: Okay. 8 THE HEARING EXAMINER: Thank you. 9 MR. WALLACE: Thank you. 10 (A recess was taken.) 11 THE HEARING EXAMINER: Okay. We're back on 12 the record. 13 Would you please raise your right hand? 14 Whereupon, 15 TRACY MCABEE, 16 being first duly sworn or affirmed to testify to the truth, 17 the whole truth, and nothing but the truth, was examined 18 and testified as follows: 19 THE HEARING EXAMINER: And would you state 20 your name and address for the record? 21 MR. MCABEE: Tracy McAbee. 22 THE HEARING EXAMINER: What's the 23 first -- can you spell the first name? 24 MR. MCABEE: T-R-A-C-Y. Last name is M-C, 25 capital A, B as in boy, E-E.

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<p>153</p> <p>1 THE HEARING EXAMINER: Okay. And your street 2 address? 3 MR. MCABEE: My street address is 8720 4 Cresthill, one word, C-R-E-S-T-H-I-L-L, Court. And 5 that's in Laurel, Maryland. 6 THE HEARING EXAMINER: And your email 7 address? 8 MR. MCABEE: My first initial and last name. 9 So it's TMcAbee, so it's T-M-C-A-B-E-E, at 10 PropertyManagementInc. That's all one word, no spaces. 11 Property Management I-N-C dot com. 12 THE HEARING EXAMINER: Wait. I'm -- I messed 13 that up. It's property -- 14 MR. MCABEE: Property management I-N-C, which 15 is short for incorporated. 16 THE HEARING EXAMINER: But management is 17 spelled out? 18 MR. MCABEE: Everything's spelled out. I 19 apologize. Everything's spelled out. Dot com. 20 THE HEARING EXAMINER: Okay. Thank you. 21 MR. MCABEE: Yes. 22 THE HEARING EXAMINER: Okay. What would you 23 like to say? 24 MR. MCABEE: Okay. Well, when it comes to 25 those trees, those trees have been there a very long</p>	<p>155</p> <p>1 MR. MCABEE: It was also mentioned about a 2 fence between the two communities. I had a meeting, 3 myself, the board president, and a representative from 4 Craftmark. And we did talk about having a fence 5 between the two properties. We would like to have 6 that. 7 THE HEARING EXAMINER: Well, if you put a 8 fence -- well, I guess you would have to put it on the 9 applicant's side because if you put a fence in, that's 10 going to further impact those trees if you put it right 11 up against the property line. 12 MR. MCABEE: Exactly. That's another one of 13 my points that I was going to make. 14 THE HEARING EXAMINER: So do you have a 15 recommendation as to where the fence should go 16 vis-a-vis the CRZ, the critical root zones of the 17 trees? 18 MR. MCABEE: I don't know how far those 19 routes -- I can't speak to how far the routes go -- 20 THE HEARING EXAMINER: Okay. 21 MR. MCABEE: -- and how a fence being 22 constructed will impact that. Someone has to be an 23 expert to tell me that. 24 THE HEARING EXAMINER: Okay. 25 MR. MCABEE: But that's -- those are my</p>
<p>154</p> <p>1 time. And when the young lady that was speaking 2 earlier about the -- if, you know, you dig around them 3 and they start, you know, falling and stuff like that, 4 that is a big concern for us too. Those are -- 5 THE HEARING EXAMINER: Now, when you say us, 6 do you live in that Shady -- 7 MR. MCABEE: No. I'm property manager for 8 that community. 9 THE HEARING EXAMINER: Oh, okay. I 10 understand. 11 MR. MCABEE: So I have to go there when 12 there's an issue with the trees with the -- either the 13 county or my tree experts when we're doing some tree 14 removal or trimming. And they are extremely high, very 15 old, very high trees. 16 And one of my concerns was, yeah, when you 17 start digging around those trees, yes, they will start 18 weakening and start either falling on the new property 19 or the old property, which you really want to avoid. 20 So when I heard her testify about that, I said, I need 21 to say something about those trees because they are so 22 high and so old that I don't even know how they're 23 going to sustain any construction around them without 24 either falling on the new side or the old side. 25 THE HEARING EXAMINER: Okay.</p>	<p>156</p> <p>1 concerns. And just visiting the property, coming in 2 and out is a nightmare for me, even when the schools 3 are over. 4 THE HEARING EXAMINER: You mean traffic-wise? 5 MR. MCABEE: The traffic-wise going north and 6 south. 7 THE HEARING EXAMINER: And when do you visit 8 the property? 9 MR. MCABEE: The time frame would be anywhere 10 from 9 a.m. to 4 p.m. Monday through Friday. 11 THE HEARING EXAMINER: Okay. 12 MR. MCABEE: I do site visits twice a month. 13 THE HEARING EXAMINER: Okay. 14 MR. MCABEE: And that's all I 15 wanted -- that's all I needed to -- 16 THE HEARING EXAMINER: Well, thank you. 17 MR. MCABEE: I was really concerned about 18 those trees more than anything, not just for Shady 19 Grove Square but for the new community as well. 20 THE HEARING EXAMINER: Okay. 21 MR. MCABEE: Because they are so tall. 22 Really tall. 23 THE HEARING EXAMINER: Okay. What are they, 24 by the way? 25 MR. MCABEE: I don't know the exact name of</p>

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<p>157</p> <p>1 them. I mean, if I need to pull that, I can get that 2 information, but -- 3 THE HEARING EXAMINER: No, no, no. I think 4 it's on the plan. 5 MR. MCABEE: But it's a mixture of evergreens 6 and ash trees and stuff like that. 7 THE HEARING EXAMINER: Okay. All right. 8 Thank you. Now, this is subject -- Mr. Wallace can ask 9 you -- 10 MR. MCABEE: Oh, yeah. Definitely. 11 THE HEARING EXAMINER: -- questions about 12 your testimony. 13 Mr. Wallace, go ahead. 14 MR. WALLACE: I don't think we have any 15 questions. Obviously, we're going to be -- we're 16 talking more about the trees and the -- you raise a 17 good point about the fence. If you put one in, it can 18 further damage root zones, but -- 19 THE HEARING EXAMINER: Well, you'd have to 20 move the fence back from the property line. 21 MR. WALLACE: Right. Yeah. So -- but again, 22 we'll address at least the trees in our further 23 testimony. 24 THE HEARING EXAMINER: Okay. 25 MR. MCABEE: Thank you so much.</p>	<p>159</p> <p>1 then do a U? 2 MR. CALOGGERO: Yeah. Well, they'd have to 3 completely change their travel patterns. And there's 4 some -- 5 THE HEARING EXAMINER: Why can't they use 6 bollards? 7 MR. CALOGGERO: Well, that would be the same 8 thing. You'd be limiting something. So you're -- 9 THE HEARING EXAMINER: Right. 10 MR. CALOGGERO: -- they need that turn lane 11 to make left turns, either northbound or southbound. 12 There are driveways up and down this corridor. So we 13 need to ensure that everyone can make proper turning 14 movements. So -- 15 THE HEARING EXAMINER: Right. 16 MR. CALOGGERO: And it's up to the state, at 17 the end of the day. We can't enforce any conditions 18 upon State Highway. But if they deem this road to be 19 unsafe and they want to change everyone's access to a 20 right-in/right-out, they have every right to do so and 21 have done so. 22 But at this time, it doesn't look like they 23 would do such a thing. So they must deem it okay. 24 THE HEARING EXAMINER: Okay. But we don't 25 know if they have been monitoring the accident history.</p>
<p>158</p> <p>1 THE HEARING EXAMINER: Thank you very much 2 for coming. I'm glad you got in at the last minute. 3 MR. MCABEE: And I apologize for that. 4 THE HEARING EXAMINER: No, that's fine. 5 Okay. With that, now we're going to take a 6 break until 2:00. 7 (A recess was taken.) 8 MR. WALLACE: So we're going to try to walk 9 through responses to your questions, not necessarily in 10 any particular order, just kind of as Mr. Caloggero is 11 up here anyway. So there was a question asked about 12 using the turn lanes, the light, and if that could be 13 managed through a road design change. 14 And so I would ask Mr. Caloggero that 15 question, and he can provide a response, if that's 16 okay. 17 THE HEARING EXAMINER: Okay. 18 MR. CALOGGERO: Unfortunately, the way the 19 road is established at this time, there's -- I mean, 20 one of the only things you could really do, which would 21 eliminate a lot of access, is drop a median in certain 22 locations and change the access to a 23 right-in/right-out. 24 THE HEARING EXAMINER: And then they'd have 25 to go whatever the direction is, east or south, and</p>	<p>160</p> <p>1 MR. CALOGGERO: Correct. And again, so it 2 would be a philosophical change to the road. 3 THE HEARING EXAMINER: Right. 4 MR. CALOGGERO: You know what I mean? 5 THE HEARING EXAMINER: I understand. 6 MR. CALOGGERO: But again, it's people 7 driving irresponsibly and driving in violation of the 8 law. 9 THE HEARING EXAMINER: I understand that, but 10 we have had cases before where they have worked with 11 SHA to -- if -- but right now we don't know the -- what 12 I'm hoping to get after the hearing is an idea of what 13 the accident history looks like. And we don't, you 14 know, know. But we have had people before, where 15 warranted, work with the state to get the improvements 16 needed. 17 MR. CALOGGERO: Sure. 18 THE HEARING EXAMINER: So -- 19 MR. WALLACE: Just as a follow up, Mr. 20 Caloggero. In your experience when State Highway is 21 reviewing plans for a road, would they take into 22 consideration information about accident history and 23 things like that in terms of granting access 24 permanently? 25 MR. CALOGGERO: In my opinion, they will.</p>

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<p>161</p> <p>1 THE HEARING EXAMINER: Okay.</p> <p>2 MR. WALLACE: So I believe that was the only</p> <p>3 question that Mr. Caloggero would be answering.</p> <p>4 THE HEARING EXAMINER: Okay.</p> <p>5 MR. WALLACE: And then if I could call --</p> <p>6 THE HEARING EXAMINER: Wait. Are there any</p> <p>7 questions of --</p> <p>8 Wait. I have to --</p> <p>9 MR. WALLACE: Oh, sorry.</p> <p>10 THE HEARING EXAMINER: Are there -- does</p> <p>11 anyone have any questions of Mr. Caloggero?</p> <p>12 I see Ms. Taylor. Okay. Ms. Taylor, you're</p> <p>13 still under oath.</p> <p>14 Mr. Caloggero, do you mind coming back up?</p> <p>15 MS. TAYLOR: It's not so much a question.</p> <p>16 But I wanted to state that last year when Muncaster</p> <p>17 Mill Road was being resurfaced, there used to be</p> <p>18 ballards right before the Lisa Drive intersection to</p> <p>19 try to stop people from doing that as often. But when</p> <p>20 they resurfaced this road, and I called myself, the</p> <p>21 State Highway Administration, to have those ballards</p> <p>22 reinstalled, they still haven't done it.</p> <p>23 But that still doesn't help with once</p> <p>24 that -- once people get around it, they find ways</p> <p>25 around it and continue to break the law. And again,</p>	<p>163</p> <p>1 MS. TAYLOR: I did, and they still haven't</p> <p>2 put the ballards back up. So I don't know what else to</p> <p>3 do.</p> <p>4 THE HEARING EXAMINER: Did they respond to</p> <p>5 your email?</p> <p>6 MS. TAYLOR: I called them, and they said,</p> <p>7 yes, we'll do that because the ballards used to be</p> <p>8 there up until last year where they resurfaced the</p> <p>9 road.</p> <p>10 THE HEARING EXAMINER: So they --</p> <p>11 MS. TAYLOR: So it hasn't been quite a</p> <p>12 year --</p> <p>13 THE HEARING EXAMINER: So they said they</p> <p>14 would put them up --</p> <p>15 MS. TAYLOR: Yeah.</p> <p>16 THE HEARING EXAMINER: -- and then they just</p> <p>17 haven't?</p> <p>18 MS. TAYLOR: They have not.</p> <p>19 THE HEARING EXAMINER: Any other questions?</p> <p>20 MR. WALLACE: No. But just going forward, if</p> <p>21 this project's approved, we're happy to work as we</p> <p>22 continue through the next stage of the process to get</p> <p>23 State Highway to do something, which I don't think</p> <p>24 affects our project one way or the other, but we</p> <p>25 certainly deal with them on a regular basis.</p>
<p>162</p> <p>1 it's -- people breaking the law is out of everyone's</p> <p>2 control, so.</p> <p>3 And then when you're talking about putting a</p> <p>4 hard median, there's -- I don't know how many houses</p> <p>5 there are right there on Muncaster Mill Road. I</p> <p>6 couldn't tell you how many there are. There's</p> <p>7 definitely maybe about 30, if not more, that use those</p> <p>8 turnways to get into their driveways during rush-hour</p> <p>9 traffic. So I think that would just make it more</p> <p>10 difficult for the people who currently live on</p> <p>11 Muncaster Mill Road to have to put a hard median in the</p> <p>12 middle.</p> <p>13 THE HEARING EXAMINER: Okay. All right.</p> <p>14 Thank you.</p> <p>15 Anything else?</p> <p>16 MR. WALLACE: Just a quick question for Ms.</p> <p>17 Taylor, actually.</p> <p>18 THE HEARING EXAMINER: Sure. Yeah. Of whom?</p> <p>19 MR. WALLACE: Ms. Taylor.</p> <p>20 THE HEARING EXAMINER: Oh, sure.</p> <p>21 MR. WALLACE: Did you say that you contacted</p> <p>22 State Highway Administration?</p> <p>23 MS. TAYLOR: I did.</p> <p>24 MR. WALLACE: And did you raise your safety</p> <p>25 concerns with them?</p>	<p>164</p> <p>1 So I'd just offer that. I don't know if it's</p> <p>2 a condition, but --</p> <p>3 THE HEARING EXAMINER: Okay. Just a second.</p> <p>4 Do you have a question of Mr. -- go ahead, Ms. Helms.</p> <p>5 MS. HELMS: I'm sorry. I was also going to</p> <p>6 follow up. I also contacted the state about the</p> <p>7 ballards being there, and I actually had emailed with</p> <p>8 them as recently as this morning. And all they'll say</p> <p>9 to me is they're in the process or we're working on it.</p> <p>10 They won't give me an answer.</p> <p>11 They did say they had -- a couple months</p> <p>12 back, that they had to order them from somewhere and</p> <p>13 they had to be fabricated. So I mean, I don't know</p> <p>14 beyond my latest email this morning, which was they're</p> <p>15 working on it, and I asked for clarification. But I</p> <p>16 haven't been heard back of what they're working on it</p> <p>17 means.</p> <p>18 THE HEARING EXAMINER: Okay. Thank you.</p> <p>19 That was helpful.</p> <p>20 Okay. Anyone else that wants to ask a</p> <p>21 question?</p> <p>22 Okay. Hearing none, did you want to</p> <p>23 have -- did you have anything else for --</p> <p>24 MR. WALLACE: No, not for Mr. Caloggero.</p> <p>25 THE HEARING EXAMINER: Okay. Thank you.</p>

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165	1 MR. WALLACE: And so if Mr. Wolford could 2 come up. And Mr. Wolford will respond to your 3 questions about the trees. 4 THE HEARING EXAMINER: Go ahead. 5 MR. WOLFORD: So I just -- I wanted to go 6 through -- oh, sorry. I wanted to just briefly discuss 7 the process of the approval of the forest conservation 8 plans under the county's law and the state forest 9 conservation law. 10 So this project currently has submitted a 11 preliminary forest conservation plan and a waiver 12 because when you disturb or remove significant trees, 13 you have to apply for a waiver. So the plan was 14 prepared under the direction of the landscape architect 15 and an arborist and submitted to the park and 16 planning -- Maryland-National Capital Park and Planning 17 Commission. 18 And their staff and arborist reviewed the 19 plan and has approved the plan and the waiver that is 20 out there. 21 THE HEARING EXAMINER: And what's the waiver 22 from? 23 MR. WOLFORD: Whenever you disturb parts of a 24 critical root zone of a significant or a specimen tree 25 or want to remove that tree, you have to give them the	167	1 saved, so specimen trees -- 2 MR. WOLFORD: Correct. 3 MR. WALLACE: -- and therefore, variance was 4 approved for the removal? 5 MR. WOLFORD: And the variance also includes 6 the disturbance of critical root zones -- 7 MR. WALLACE: And the disturbance of -- 8 MR. WOLFORD: -- of other trees that are out 9 there. 10 MR. WALLACE: Right. 11 MR. WOLFORD: So everybody's looked at the 12 trees to be removed and the trees that we're all trying 13 to save and the critical root zone and what can be done 14 with them. Okay? 15 So the next step is -- and now I'm in the 16 staff report. On page 3, it says, The applicant must 17 submit a final forest conservation plan for review and 18 approval before obtaining a sediment-erosion control 19 permit from Montgomery County Department of Permitting 20 Services for the subject property. 21 So there is -- there's -- this is the 22 preliminary. There is a final plan out there that's 23 got to be prepared by the staff for the developer and 24 his arborist and reviewed again before they can get the 25 sediment-erosion control plan. So it's a pretty
166	1 justification for why that has to be done on the 2 property. 3 MR. WALLACE: And just -- 4 MR. WOLFORD: Yes. 5 MR. WALLACE: -- Mr. Wolford refer to a 6 waiver. You may know it as tree variance. Just -- 7 THE HEARING EXAMINER: Oh. Okay. Yeah. 8 MR. WOLFORD: Sorry. Sorry. 9 MR. WALLACE: Okay. 10 MR. WOLFORD: Yeah. 11 THE HEARING EXAMINER: Thank you. 12 MR. WOLFORD: So that's what's been done. 13 The developers, arborists and landscape architecture 14 team has looked at the site and then provided plans to 15 the Maryland-National Capital Park and Planning 16 Commission, their staff and arborists. And they've 17 agreed that the preliminary forest conservation plan is 18 an approved plan, and the variance is approved for the 19 disturbance that they're proposing to do. But that's 20 not the last step. 21 If you look at the staff report on page -- 22 MR. WALLACE: So just to be clear -- 23 MR. WOLFORD: Yes. 24 MR. WALLACE: -- the plans approved right now 25 include trees that were determined not to be able to be	168	1 lengthy and detailed thing. 2 THE HEARING EXAMINER: I guess the question, 3 though, is are the -- so are you saying that the 4 planning board has said it's okay that these trees 5 might be sacrificed? 6 MR. WOLFORD: It -- what the staff says is 7 that the way the plan is currently prepared and 8 submitted with the information they have, that this 9 project is enabled to move to the next step, which is a 10 much more detailed review of the trees and the 11 condition of the trees and what happens to the trees. 12 So this -- 13 THE HEARING EXAMINER: But the next step 14 would be -- they're not going to change their mind and 15 say, You have to set back more from those trees? 16 MR. WALLACE: Let me -- well, Mr. Wolford, 17 for the trees that are shown impacted with the 40 18 percent that were pointed out by one of the 19 adjacent -- or one of the folks testifying, what will 20 be the process for the review of them at the next 21 stage? 22 MR. WOLFORD: Well, with that final forest 23 conservation plan, we have -- it's item number 4. The 24 applicant must provide ISA-certified arborist report 25 and tree protection measures at the time of the final

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1 forest conservation plan.	1 correct?
2 MR. WALLACE: Let's stop there for a second.	2 MS. PARSONS: Yeah.
3 MR. WOLFORD: Yes.	3 MR. WALLACE: Okay. So that's 15C.
4 MR. WALLACE: And does that mean that it's a	4 THE HEARING EXAMINER: So do you know -- 15C?
5 plan to save those trees that it implemented has a	5 MR. WALLACE: Yes. And if--
6 likely -- likelihood of saving those trees?	6 THE HEARING EXAMINER: Do you know which
7 MR. WOLFORD: That's what the arborist is	7 ones?
8 going to tell us at the next step --	8 MR. WOLFORD: The two that are in good
9 THE HEARING EXAMINER: Well --	9 condition is 20 and 21.
10 MR. WOLFORD: -- based upon --	10 THE HEARING EXAMINER: Okay.
11 THE HEARING EXAMINER: -- no he doesn't --	11 MR. WOLFORD: 20 is to be saved, and 21 is to
12 MR. WOLFORD: Yeah. Go ahead.	12 be removed. I believe it's inside the limited
13 THE HEARING EXAMINER: I don't want to	13 disturbance.
14 testify, but I've been through these before. And	14 THE HEARING EXAMINER: So you're saying the
15 generally what they do is they take measures -- and you	15 existing conditions are fair to poor?
16 can correct me if I'm wrong. They say, We're going to,	16 MR. WOLFORD: Correct. But that doesn't
17 you know, trim the roots, and we're going to do all	17 change the approach that we take with an ISA-certified
18 this extra watering and extra mulch, and that'll give	18 arborist in the next step because the goal is to have
19 the best chance possible to save these trees. But it	19 that person tell the developer and commit to, that
20 doesn't guarantee -- it doesn't change -- that's the	20 measures that need to be done to ensure that as many of
21 expert testimony that I have heard before.	21 these trees as possible could survive through the
22 MR. WOLFORD: You're correct. There is no	22 construction process. And that'll say stuff like,
23 assurance. And if you look at the list of trees,	23 instead of just digging next to the trees, first take a
24 there's only two trees of all the trees on there that	24 ditch witch and cut the roots, so when you dig it up
25 are in good condition.	25 and pull it, you're not pulling the roots back to the
170	172
1 MR. WALLACE: And just to be clear which	1 ball of the tree and injuring the tree.
2 trees we're talking about, these are the trees along	2 It also -- because you're reducing sometimes
3 the --	3 the root -- critical root zone, there's also a measure
4 MR. WOLFORD: Yes.	4 taken to reduce the canopy head and take some dead wood
5 MR. WALLACE: Okay.	5 out of the top that may be too much weight for the
6 MR. WOLFORD: Along the common property line.	6 tree, and you try to get a balance between the top of
7 So all the trees are --	7 the tree and the root ball. And then there's the other
8 THE HEARING EXAMINER: Wait. Let me just --	8 measures that you talked about, you can -- to help them
9 MR. WOLFORD: Yes. Go ahead.	9 through the period of time would be to do deep-root
10 THE HEARING EXAMINER: -- get to the trees	10 fertilizing, watering, remove the sod over top of the
11 because --	11 tree roots, and put down bark mulch which keeps the
12 MR. WALLACE: And it might be helpful to put	12 tree roots cool and eliminates the competition for
13 up exhibit --	13 water, and then water them.
14 THE HEARING EXAMINER: I don't want to -- is	14 So those are all the things that will come up
15 it the forest conservation plan?	15 in the next stage with the certified arborist.
16 MR. WALLACE: Yeah, Exhibit 15.	16 MR. WALLACE: And as a reminder, Mr. Wolford
17 THE HEARING EXAMINER: Usually there's a list	17 was admitted as an expert in landscape architecture.
18 where the trees are numbered.	18 THE HEARING EXAMINER: I remember that.
19 MR. WALLACE: Yes, and that's on --	19 Has anyone communicated with the properties,
20 MR. WOLFORD: That's on -- it's on the next	20 the townhouses this information about their trees?
21 sheet. It looks like this. Sorry. I know you don't	21 MR. WALLACE: Again, there were meetings with
22 like boards.	22 this community, and there's been back and forth on
23 THE HEARING EXAMINER: Oh.	23 other issues. This has been in the public record.
24 MS. PARSONS: 15 A, B, or C?	24 THE HEARING EXAMINER: No, I'm not -- I'm
25 MR. WALLACE: That's the detail sheet,	25 just asking. I'm not saying you did anything wrong.

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<p>173</p> <p>1 MR. WALLACE: Yeah. I don't know if this</p> <p>2 specificity was discussed with them, but certainly, you</p> <p>3 know, the general development and how it was perceived</p> <p>4 was discussed with them.</p> <p>5 THE HEARING EXAMINER: Okay.</p> <p>6 MR. WOLFORD: But I think there's an</p> <p>7 opportunity -- once the arborist report and tree</p> <p>8 protection plan comes in, I assume that the developer</p> <p>9 would enjoy having a meeting with them to talk about</p> <p>10 what could be done to preserve those trees.</p> <p>11 THE HEARING EXAMINER: Well, yes, because</p> <p>12 they're probably going to have to -- they may have to</p> <p>13 go in on the other properties to do some of the tree --</p> <p>14 MR. WOLFORD: Most of them are on the other</p> <p>15 property, correct.</p> <p>16 THE HEARING EXAMINER: -- and to do the tree</p> <p>17 save measures.</p> <p>18 MR. WOLFORD: Yes.</p> <p>19 THE HEARING EXAMINER: So -- but we don't</p> <p>20 know if they're going to agree to that.</p> <p>21 MR. WOLFORD: You -- my assumption has always</p> <p>22 been if we're all in favor of trying to save trees, the</p> <p>23 temporary access to the adjoining piece of property for</p> <p>24 the tree protection measures that we have to do is</p> <p>25 usually always welcomed because they're getting value</p>	<p>175</p> <p>1 MR. WOLFORD: Oh, okay. All right.</p> <p>2 MR. WALLACE: Okay. There's a retaining wall</p> <p>3 along the portion of that property line. It's</p> <p>4 approximately how many feet?</p> <p>5 MR. HUGHES: Two feet to four and a half</p> <p>6 feet, so it's a low retaining wall.</p> <p>7 MR. WALLACE: I'm sorry. You gave a height.</p> <p>8 I'm talking about linear distance.</p> <p>9 MR. HUGHES: Oh. I don't know linear</p> <p>10 distance off the top of my head. Let's see.</p> <p>11 MR. WALLACE: Roughly. And along that</p> <p>12 portion of the fence can be installed along the</p> <p>13 retaining wall if, again, as desired by the community.</p> <p>14 The balance of the portion which would be outside the</p> <p>15 retaining wall of the linear portion of the fence could</p> <p>16 be installed as well, and that could affect some of the</p> <p>17 trees, if that's where you're going. But at least a</p> <p>18 portion of it would be on the retaining wall, and that</p> <p>19 could be accommodated without additional impacts.</p> <p>20 THE HEARING EXAMINER: Okay. Well,</p> <p>21 usually -- I guess I'm concerned --</p> <p>22 MR. HUGHES: And concerning --</p> <p>23 THE HEARING EXAMINER: -- because usually we</p> <p>24 have all this detail up front, and I don't know. We'll</p> <p>25 ponder it, but --</p>
<p>174</p> <p>1 out of this.</p> <p>2 THE HEARING EXAMINER: They (indiscernible)</p> <p>3 of the fence.</p> <p>4 MR. WOLFORD: Along with the fence, yes. But</p> <p>5 they're getting value out of this. Okay. Sorry.</p> <p>6 MR. WALLACE: Well, I -- the fence is a</p> <p>7 little bit of a -- I can talk about the fence now?</p> <p>8 Because that may come into play as well.</p> <p>9 THE HEARING EXAMINER: Yeah.</p> <p>10 MR. WALLACE: So there's a retaining wall.</p> <p>11 And I'll just ask: retaining wall along a</p> <p>12 portion of that side?</p> <p>13 MR. HUGHES: Yes.</p> <p>14 MR. WALLACE: Okay. There's a retaining</p> <p>15 wall --</p> <p>16 THE HEARING EXAMINER: Wait. Wait. You have</p> <p>17 to come up and --</p> <p>18 MR. WALLACE: Okay.</p> <p>19 THE HEARING EXAMINER: The transcript has to</p> <p>20 know who's --</p> <p>21 MR. WALLACE: I could've asked Mr. Wolford,</p> <p>22 actually, but that's fine.</p> <p>23 THE HEARING EXAMINER: Okay. No, everybody</p> <p>24 stay up.</p> <p>25 MR. WALLACE: Everyone.</p>	<p>176</p> <p>1 MR. WALLACE: But -- well, Mr. Wolford, if a</p> <p>2 tree is lost along this property line, does it affect</p> <p>3 your determination that this project is compatible with</p> <p>4 the adjacent development?</p> <p>5 MR. WOLFORD: No, it doesn't. And this is</p> <p>6 all already stated.</p> <p>7 THE HEARING EXAMINER: Why? I'm not</p> <p>8 challenging you; I just want to make sure the record</p> <p>9 has your reasoning in it.</p> <p>10 MR. WOLFORD: Because the developer is</p> <p>11 already committed to a certain amount of planting on</p> <p>12 site to make up for the basal area of loss of the</p> <p>13 specimen trees or the significant trees that they are</p> <p>14 removing.</p> <p>15 THE HEARING EXAMINER: And that would be on</p> <p>16 the landscape plan?</p> <p>17 MR. WOLFORD: It's in the forest</p> <p>18 conservation -- yes, it's all shown on the landscape</p> <p>19 plan. And there's also, I believe, an offsite</p> <p>20 mitigation requirement.</p> <p>21 MR. WALLACE: I think --</p> <p>22 THE HEARING EXAMINER: No. That's different</p> <p>23 from the landscape.</p> <p>24 MR. WOLFORD: Okay.</p> <p>25 THE HEARING EXAMINER: I'm talking about</p>

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<p>177</p> <p>1 screening and buffering right now.</p> <p>2 MR. WOLFORD: Oh, no, all those trees</p> <p>3 are -- all the trees that are planted are already shown</p> <p>4 on the landscape plan.</p> <p>5 MR. HUGHES: And I don't believe that</p> <p>6 adjacent property trees are counted towards your</p> <p>7 landscaping and screening requirements on site.</p> <p>8 THE HEARING EXAMINER: No, they aren't. They</p> <p>9 aren't. You're correct. But I'm trying to get a sense</p> <p>10 of what can be done.</p> <p>11 So if it's a retaining wall, there's a</p> <p>12 definite possibility. How far does the -- do you know</p> <p>13 how far the retaining wall goes?</p> <p>14 MR. HUGHES: It's about 130 feet, but a lot</p> <p>15 of it is not classified as retaining wall because it's</p> <p>16 around two feet to two and a half feet in height, so</p> <p>17 it's more of a landscape wall.</p> <p>18 THE HEARING EXAMINER: Okay.</p> <p>19 MR. HUGHES: So it only, for a small portion</p> <p>20 of probably like 60 feet, does it start to rise up to</p> <p>21 that four- to five-foot range.</p> <p>22 THE HEARING EXAMINER: Can you -- but is it</p> <p>23 enough to put a foundation -- fence foundation, you</p> <p>24 know, fence, anchor, the cement, and the posts and</p> <p>25 everything like that?</p>	<p>179</p> <p>1 we are in the process. There's still the final forest</p> <p>2 conservation plan and the arborist assessment and then</p> <p>3 working with the neighbors to try to make sure that</p> <p>4 everybody's happy with the way the trees are saved.</p> <p>5 We just -- this is only as far as we are in</p> <p>6 the process right now.</p> <p>7 MR. WALLACE: And I'd also note that there</p> <p>8 was nothing in the technical staff's report or the</p> <p>9 planning board's recommendation that said -- for</p> <p>10 approval that said as a condition of, you know, our</p> <p>11 recommendation of approval, you have to save every tree</p> <p>12 that's located off site.</p> <p>13 THE HEARING EXAMINER: No, but we have denied</p> <p>14 conditional uses, I can think of three of them, because</p> <p>15 of the impact of the trees off site because they're not</p> <p>16 your trees. And technical staff, you know, sometimes</p> <p>17 they may not have that long history, which we won't</p> <p>18 discuss. So I mean, if you look at Primrose, that was</p> <p>19 one of them, with the LOD right up to the property</p> <p>20 line.</p> <p>21 What about -- are you going to store</p> <p>22 construction equipment right up to the -- it</p> <p>23 would -- also town of -- what's the little town with</p> <p>24 the railroad? Washington Grove. That was one of them.</p> <p>25 There's a couple of them where the development was</p>
<p>178</p> <p>1 MR. HUGHES: I'm sure they could. They do</p> <p>2 amazing things.</p> <p>3 THE HEARING EXAMINER: So that -- but I want</p> <p>4 to know --</p> <p>5 MR. HUGHES: Yeah, they can. I'm --</p> <p>6 THE HEARING EXAMINER: -- if they will do it.</p> <p>7 MR. HUGHES: They can. They can put the</p> <p>8 posts in it. If they need to make it a little bit</p> <p>9 longer to go through it. If you're talking about a</p> <p>10 seven-foot privacy fence on top of the wall where, you</p> <p>11 know, then I'm sure they can get posts down through it</p> <p>12 to get into the dirt.</p> <p>13 THE HEARING EXAMINER: Now, is that on their</p> <p>14 property?</p> <p>15 MR. HUGHES: Our property -- or client's</p> <p>16 property.</p> <p>17 THE HEARING EXAMINER: The retaining wall?</p> <p>18 MR. HUGHES: It's all our client's property.</p> <p>19 THE HEARING EXAMINER: Okay. But that -- so</p> <p>20 that would not affect your -- what's on your</p> <p>21 landscaping plan?</p> <p>22 MR. HUGHES: No, ma'am.</p> <p>23 THE HEARING EXAMINER: Okay.</p> <p>24 MR. WOLFORD: And this whole process is</p> <p>25 already all spelled out. Unfortunately, this is where</p>	<p>180</p> <p>1 going to impact offsite trees.</p> <p>2 MR. WALLACE: Well, I think the question has</p> <p>3 to be, though, what about the impact affects a finding</p> <p>4 required for special exception approval?</p> <p>5 THE HEARING EXAMINER: Compatibility.</p> <p>6 MR. WALLACE: And that's what Mr. Wolford</p> <p>7 just testified to, then.</p> <p>8 THE HEARING EXAMINER: He's saying, Mr.</p> <p>9 Wolford, as I understand you, that you're going to take</p> <p>10 every measure to preserve those trees, correct?</p> <p>11 MR. WOLFORD: That's what the arborist is</p> <p>12 going to recommend. And I know your point.</p> <p>13 THE HEARING EXAMINER: I know that you will</p> <p>14 take every measure --</p> <p>15 MR. WOLFORD: Yes.</p> <p>16 THE HEARING EXAMINER: -- but we have had</p> <p>17 testimonies where in certain situations, every measure</p> <p>18 is not going to be enough. So I'm just saying. I'm</p> <p>19 not deciding. I'm pushing you a little bit.</p> <p>20 But it -- you know, we don't usually approve</p> <p>21 special exceptions that are going to impact somebody</p> <p>22 else's property. That's the whole thing about</p> <p>23 compatibility. And we have done it before. And so</p> <p>24 you're not relying on those trees for screening. But</p> <p>25 is your property going to impact their property?</p>

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<p>181</p> <p>1 That's what I'm really looking at.</p> <p>2 MR. WOLFORD: And at the point where we are</p> <p>3 right now, our professional team, the developers and</p> <p>4 the staff at Park and Planning --</p> <p>5 THE HEARING EXAMINER: Don't --</p> <p>6 MR. WOLFORD: Okay.</p> <p>7 THE HEARING EXAMINER: You don't have to</p> <p>8 mention staff at Park and Planning.</p> <p>9 MR. WOLFORD: Okay.</p> <p>10 THE HEARING EXAMINER: I've read their</p> <p>11 report.</p> <p>12 MR. WOLFORD: Okay.</p> <p>13 THE HEARING EXAMINER: So if you have</p> <p>14 something different to say than Park and Planning,</p> <p>15 it -- why do you think it's going to survive?</p> <p>16 MR. WALLACE: I think he's testified that</p> <p>17 that is -- that the process that we -- as going forward</p> <p>18 are taking the measures and putting them down as</p> <p>19 requirements to ensure as best as possible that these</p> <p>20 trees survive, which is an accepted practice in every</p> <p>21 single Montgomery County case, where there are --</p> <p>22 THE HEARING EXAMINER: Yes, that's true, but</p> <p>23 I don't see that many cases with 40 -- that many trees</p> <p>24 at 40 percent of the CRZ. So if your testimony is most</p> <p>25 of them are poor, in poor condition, and are going to</p>	<p>183</p> <p>1 think the trees will be in better health after</p> <p>2 construction than they are today. They have probably</p> <p>3 not been properly pruned. There's probably a lot of</p> <p>4 compaction over top of the root zone.</p> <p>5 THE HEARING EXAMINER: But we don't really</p> <p>6 know that -- can you eliminate the probably and just</p> <p>7 say -- I mean, nobody's studied these trees.</p> <p>8 MR. WOLFORD: An arborist and a landscape</p> <p>9 architect for the applicant has, and that's how they</p> <p>10 get the ranking.</p> <p>11 THE HEARING EXAMINER: Well, maybe something</p> <p>12 from them saying what's going to happen, you know. How</p> <p>13 likely is it that -- I mean, most of the trees on that</p> <p>14 chart are in poor condition. So what is the likelihood</p> <p>15 of success of all these measures?</p> <p>16 MR. WALLACE: That's something we can --</p> <p>17 THE HEARING EXAMINER: Maybe you can do that.</p> <p>18 MR. WALLACE: We can accommodate that. I</p> <p>19 thought it was clear from Mr. Wolford's earlier</p> <p>20 testimony that part of the process of -- for coming up</p> <p>21 with tree-save measures, even on ones that are fair or</p> <p>22 poor or whatever, is doing measures that will make them</p> <p>23 healthier after. So that is, again, the normal course</p> <p>24 of the next step in the process. If you want</p> <p>25 additional information about that, we're happy to --</p>
<p>182</p> <p>1 die anyway, I mean, that's kind of just -- if there's</p> <p>2 anything you can think to address that.</p> <p>3 And we're going to leave the record open</p> <p>4 because I think Mr. -- we owe Dr. Kosary the</p> <p>5 safety -- or the gap study. If we can get information</p> <p>6 on the --</p> <p>7 MR. WALLACE: Accidents.</p> <p>8 THE HEARING EXAMINER: Yes. Thank you.</p> <p>9 You're a better man than I, Charlie Brown. You know,</p> <p>10 just, I'm looking for two things.</p> <p>11 One is, and I know it can't be a guarantee,</p> <p>12 but we really don't have that many cases where this</p> <p>13 whole line of trees is going to be impacted. And you</p> <p>14 can read Primrose. So --</p> <p>15 MR. WALLACE: So --</p> <p>16 THE HEARING EXAMINER: I'm trying to get to a</p> <p>17 comfort level that it's not going to be -- you know,</p> <p>18 you say there's only two trees in good condition.</p> <p>19 Well, that's just saying we're going to exacerbate the</p> <p>20 one -- you know, exacerbate the death of the ones in</p> <p>21 poor condition.</p> <p>22 MR. WALLACE: No.</p> <p>23 MR. WOLFORD: No. Under no circumstances am</p> <p>24 I saying that. I think under -- an arborist preparing</p> <p>25 a plan for the proper maintenance of these trees, I</p>	<p>184</p> <p>1 THE HEARING EXAMINER: Well, I would like to</p> <p>2 know what the likelihood of these trees -- just</p> <p>3 understanding that you can never say, Absolutely, this</p> <p>4 tree is going to be okay.</p> <p>5 MR. WALLACE: Right.</p> <p>6 THE HEARING EXAMINER: But if you can say</p> <p>7 something that the likelihood that their lives will be</p> <p>8 extended, you know, you can say that. Just something</p> <p>9 that it's not going to -- what I want to know is it's</p> <p>10 not going to put them in a worse position.</p> <p>11 MR. WALLACE: And that is the intent of the</p> <p>12 next step in the process --</p> <p>13 THE HEARING EXAMINER: I understand. But</p> <p>14 I --</p> <p>15 MR. WALLACE: -- so that will be what is part</p> <p>16 of the record before you.</p> <p>17 THE HEARING EXAMINER: Well, I've had a lot</p> <p>18 of expert testimony (sic), so maybe I'm concerned.</p> <p>19 MR. WALLACE: Understood.</p> <p>20 THE HEARING EXAMINER: So if you could kindly</p> <p>21 address that concern.</p> <p>22 MR. WALLACE: And I think the other -- what</p> <p>23 we're also doing, I think, is proffering this fence,</p> <p>24 which trees stays or goes, this fence will also provide</p> <p>25 screening and privacy.</p>

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<p>185</p> <p>1 THE HEARING EXAMINER: Right.</p> <p>2 MR. WALLACE: Okay. So we are, I think --</p> <p>3 THE HEARING EXAMINER: And could that</p> <p>4 be -- that's on your property, correct?</p> <p>5 MR. WALLACE: Yes. Yes.</p> <p>6 THE HEARING EXAMINER: All the way up that</p> <p>7 line?</p> <p>8 MR. WALLACE: We believe we can install it</p> <p>9 completely on our property.</p> <p>10 THE HEARING EXAMINER: Okay. Then that could</p> <p>11 be a condition of approval, although usually we have a</p> <p>12 rendering of, is it a white vinyl fence; is it a wooden</p> <p>13 board on board? Usually we actually have that in the</p> <p>14 records so people --</p> <p>15 MR. WALLACE: We are -- as part of our</p> <p>16 submission, we will have a detail sheet for the</p> <p>17 proposed fence, yeah.</p> <p>18 THE HEARING EXAMINER: That would be good.</p> <p>19 MR. WALLACE: Absolutely.</p> <p>20 THE HEARING EXAMINER: Okay. We're solving</p> <p>21 the world's problems.</p> <p>22 MR. WALLACE: One at a time.</p> <p>23 THE HEARING EXAMINER: Okay. And so I would</p> <p>24 also like -- okay. Let me do this. Let me see if</p> <p>25 there is anyone, just as a surrebuttal -- does anyone</p>	<p>187</p> <p>1 more likely to be detrimental? And that's what I would</p> <p>2 like in a post-hearing document, would like an arborist</p> <p>3 to opine to. Okay?</p> <p>4 All right. So let me just -- is there anyone</p> <p>5 else that would like to speak?</p> <p>6 Okay. Hearing none, I'm going to make</p> <p>7 sure --</p> <p>8 MR. WALLACE: Actually, I did have one</p> <p>9 question for Ms. Taylor. I just need to ask my client</p> <p>10 something, if I could.</p> <p>11 THE HEARING EXAMINER: Okay. Ms. Taylor,</p> <p>12 are you still there, please?</p> <p>13 MS. TAYLOR: Yes, I'm here.</p> <p>14 THE HEARING EXAMINER: Thank you.</p> <p>15 MR. WALLACE: It's just -- Ms. Taylor, I</p> <p>16 don't expect you to speak for your entire community.</p> <p>17 But do you have a sense of what kind of fence you'd</p> <p>18 like to see?</p> <p>19 MS. TAYLOR: Just a privacy fence, I'm sure.</p> <p>20 I wouldn't really -- I don't think we're too concerned</p> <p>21 about the cosmetic looks of a fence.</p> <p>22 MR. WALLACE: Okay. That's fine. We</p> <p>23 just -- if there was any guidance or whatever, we would</p> <p>24 appreciate it, but we can certainly provide something,</p> <p>25 and you can comment on it if you choose.</p>
<p>186</p> <p>1 have -- in the remote or present audience have any</p> <p>2 comments on the applicant's rebuttal statements?</p> <p>3 I see Ms. Taylor?</p> <p>4 MS. TAYLOR: Yes.</p> <p>5 THE HEARING EXAMINER: Go ahead, Ms. Taylor.</p> <p>6 MS. TAYLOR: When we met with them last year</p> <p>7 again, we did bring up the point of conservation</p> <p>8 easement and trees and our concerns about all the</p> <p>9 construction and how construction could lead to some of</p> <p>10 the trees possibly falling onto one of the houses</p> <p>11 because they're very tall trees. Our goal is that we</p> <p>12 just had the county come in last summer, this past</p> <p>13 summer, 2023, and inspect with an arborist all the</p> <p>14 trees.</p> <p>15 And they cleared all the trees that they told</p> <p>16 us that are healthy, and the ones that needed to be</p> <p>17 removed, we removed. So I don't know where they're</p> <p>18 getting that there's only two healthy trees out of I</p> <p>19 don't know how many are back there. But I've not heard</p> <p>20 from anybody, especially our arborist that comes every</p> <p>21 six months to check on the trees, that there are only</p> <p>22 two healthy trees.</p> <p>23 THE HEARING EXAMINER: Okay. So then the</p> <p>24 question is, the question -- we're back to my question</p> <p>25 is, is the impact more likely to improve the health or</p>	<p>188</p> <p>1 MS. TAYLOR: Right. And a lot of this</p> <p>2 discussion we had last year with the builders and our</p> <p>3 concerns about the trees, wanting a fence, that was one</p> <p>4 of our big concerns, and the traffic coming in and out.</p> <p>5 Those were our three big things.</p> <p>6 And knowing that you only have to do the</p> <p>7 minimum requirements of doing your research and getting</p> <p>8 all the actual tests done, it kind of puts me in a</p> <p>9 position that I'm not comfortable with it. You're only</p> <p>10 required to do the minimum and not do full-scale</p> <p>11 studies and research of the trees, of the traffic, and</p> <p>12 how it will affect the local area.</p> <p>13 THE HEARING EXAMINER: I'm sorry. I think</p> <p>14 they may have studied the trees; they just don't have</p> <p>15 the -- we'll see. But okay. Thank you very much for</p> <p>16 your testimony.</p> <p>17 MS. TAYLOR: You're welcome.</p> <p>18 THE HEARING EXAMINER: Anything else from the</p> <p>19 applicant?</p> <p>20 MR. WALLACE: Not on this issue. There were</p> <p>21 a couple more questions you had that we have responses</p> <p>22 to.</p> <p>23 THE HEARING EXAMINER: The park.</p> <p>24 MR. WALLACE: The park, yes.</p> <p>25 THE HEARING EXAMINER: Okay. Go ahead.</p>

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<p>189</p> <p>1 MR. WALLACE: Okay. So first, again, there</p> <p>2 will be a public access easement recorded over the park</p> <p>3 which allows the public to access during reasonable</p> <p>4 hours. It's the exact same type of restrictions on</p> <p>5 access that a Park and Planning park would have, for</p> <p>6 example. So closure at dusk, for example. Closure for</p> <p>7 when there's maintenance needs, et cetera.</p> <p>8 So that's something that's been discussed</p> <p>9 with Park and Planning. They would review the easement</p> <p>10 and confirm that it was acceptable to them.</p> <p>11 As far as signage, it hadn't been</p> <p>12 contemplated, but it's certainly something that can be</p> <p>13 accommodated. A sign that, you know, indicates a</p> <p>14 public park area available to the general public.</p> <p>15 THE HEARING EXAMINER: I have to say, in a</p> <p>16 sense, Dr. Kosary's testimony that this was supposed to</p> <p>17 bring people -- include people into the larger</p> <p>18 community, and it does make sense that if you want</p> <p>19 to -- you know, I haven't decided the issue on whether</p> <p>20 you can create your own park but -- to meet the</p> <p>21 requirement.</p> <p>22 But it does make sense to -- if you're going</p> <p>23 to have a park at the end of this private road, to know</p> <p>24 about it.</p> <p>25 MR. WALLACE: You know, as this project was</p>	<p>191</p> <p>1 said no. When you open a public park, you get all</p> <p>2 sorts of people coming in there, and a lot of</p> <p>3 residential -- I don't mean that -- I don't mean ne'er</p> <p>4 do wells necessarily, just people that people don't</p> <p>5 know. And so you do get resistance sometimes.</p> <p>6 MR. WALLACE: I'm not commenting on why</p> <p>7 they're not allowing access onto their site. I'm</p> <p>8 commenting that by providing a public park on our</p> <p>9 property, we are integrating ourselves into the larger</p> <p>10 community and inviting them into our community, into</p> <p>11 this new community. And that's exactly what the</p> <p>12 legislative history said was the purpose of these</p> <p>13 criteria is -- yeah.</p> <p>14 THE HEARING EXAMINER: Okay.</p> <p>15 MR. WALLACE: And it's exactly what you just</p> <p>16 said: invite people on, signage along the front.</p> <p>17 Again, we're providing a connection on our site to</p> <p>18 their property line that leads directly to this public</p> <p>19 park. If they choose to use it, great. That's the</p> <p>20 whole idea.</p> <p>21 So again, we are very much integrated with</p> <p>22 the community by having this park on site. And if you</p> <p>23 look at the definitions in the zoning ordinances on</p> <p>24 public-use space, public amenities, there's no</p> <p>25 requirement that they're public -- that they're Park</p>
<p>190</p> <p>1 being planned, actually one of the things we</p> <p>2 contemplated was the connection, for example, to the</p> <p>3 adjacent community that they apparently don't want,</p> <p>4 although they could access it onto our site, I guess,</p> <p>5 without their community. That is a connection that</p> <p>6 they're going to have this resource, the amenity, the</p> <p>7 Shady Grove folks. We're providing a trail connection</p> <p>8 up to the point of their property line. They can</p> <p>9 choose not to let it be extended, but they can get on</p> <p>10 it and get right to the park.</p> <p>11 That's the whole idea. If you look at the</p> <p>12 legislative history -- again, this is -- the exhibit</p> <p>13 already on the record is 30- --</p> <p>14 THE HEARING EXAMINER: 36? 37? I can't</p> <p>15 remember.</p> <p>16 MR. WALLACE: And talking about the criteria</p> <p>17 like proximity to a local park, these criteria assure</p> <p>18 that conditional use rules go to land connected to the</p> <p>19 surrounding community. You can't connect it any more</p> <p>20 than putting the park on the property. So to me --</p> <p>21 THE HEARING EXAMINER: No. I think they mean</p> <p>22 the larger community.</p> <p>23 MR. WALLACE: That's what I'm saying. And</p> <p>24 bringing that community in to this -- yeah.</p> <p>25 THE HEARING EXAMINER: Yes. But they've</p>	<p>192</p> <p>1 and Planning parks, let's just put it that way,</p> <p>2 dedicated to the county of Park and Planning.</p> <p>3 THE HEARING EXAMINER: So is there a sidewalk</p> <p>4 in front of the Shady Grove -- of the townhouses, just</p> <p>5 to the -- now I'm getting confused on west and north.</p> <p>6 MR. WALLACE: If we could just put up the</p> <p>7 conditional use plan, please.</p> <p>8 THE HEARING EXAMINER: Exhibit 10, I think.</p> <p>9 MR. WALLACE: Condition, yeah. 10. That may</p> <p>10 help.</p> <p>11 So we're providing a sidewalk along our</p> <p>12 frontage. If you're talking about on Muncaster Mill?</p> <p>13 THE HEARING EXAMINER: Yeah. What is</p> <p>14 their -- do they have a sidewalk connection?</p> <p>15 MR. WALLACE: Along Muncaster Mill Road?</p> <p>16 THE HEARING EXAMINER: Yes, to your property.</p> <p>17 MR. WALLACE: Yes, and we're extending it</p> <p>18 across our frontage.</p> <p>19 THE HEARING EXAMINER: Okay.</p> <p>20 MR. WALLACE: And if you go to that plan</p> <p>21 again, please. And you go to the upper left-hand</p> <p>22 corner, you can see how we're connecting a trail -- a</p> <p>23 connection to their property line. That's a</p> <p>24 requirement of Park and Planning. And if they want --</p> <p>25 THE HEARING EXAMINER: I don't see the</p>

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<p>193</p> <p>1 connection -- oh, I do see the connection.</p> <p>2 MR. WALLACE: Right.</p> <p>3 THE HEARING EXAMINER: I got it.</p> <p>4 MR. WALLACE: There. Exactly. And not only</p> <p>5 their community but obviously, the single families that</p> <p>6 are right there. Well, single families can just walk</p> <p>7 across, but their backyards. So -- and that is a</p> <p>8 fairly accessible -- it's (indiscernible) people.</p> <p>9 THE HEARING EXAMINER: What is that property</p> <p>10 just east -- plan right of Redland Road? Is that a</p> <p>11 homeowner's association?</p> <p>12 MR. WALLACE: That's -- I believe a open</p> <p>13 space, HOA parcel.</p> <p>14 THE HEARING EXAMINER: Okay. But -- okay.</p> <p>15 So people north of Roslyn Avenue can't access</p> <p>16 that -- cannot access that?</p> <p>17 MR. WALLACE: Unless there's</p> <p>18 easements -- yeah, I don't know.</p> <p>19 THE HEARING EXAMINER: Okay.</p> <p>20 MR. WALLACE: They would have to walk out</p> <p>21 onto Muncaster.</p> <p>22 THE HEARING EXAMINER: To your knowledge?</p> <p>23 MR. WALLACE: To my knowledge, no. They'd</p> <p>24 have to walk out onto Muncaster.</p> <p>25 THE HEARING EXAMINER: Okay.</p>	<p>195</p> <p>1 THE HEARING EXAMINER: Yeah. Okay. I</p> <p>2 just -- I wanted to know. Thank you.</p> <p>3 MR. WALLACE: Yes. And yes, the HOA will</p> <p>4 cover maintenance as part of -- it's a common element.</p> <p>5 MR. HUGHES: And I think when you're talking</p> <p>6 about Roslyn there, I believe that's part of that</p> <p>7 townhouse community up there. It's all kind of</p> <p>8 integrated.</p> <p>9 MR. WALLACE: Good point. Thank you.</p> <p>10 MR. HUGHES: Yeah. So that townhouse</p> <p>11 community is on both sides, so you're just seeing half</p> <p>12 of it. There are additional townhouses on the other</p> <p>13 side that are part of that community.</p> <p>14 THE HEARING EXAMINER: Okay. Do you have an</p> <p>15 issue, I assume, saying that the park shall be</p> <p>16 maintained in a clean and safe condition at all times?</p> <p>17 MR. WALLACE: No.</p> <p>18 THE HEARING EXAMINER: Just because sometimes</p> <p>19 HOA-funded things --</p> <p>20 MR. WALLACE: And that's acceptable, and</p> <p>21 obviously, as a condition of the special approval -- I</p> <p>22 will continue to call it special</p> <p>23 exception -- conditional use approval. If it's not</p> <p>24 being done, they can come and raise that point with the</p> <p>25 board. So that's absolutely fine.</p>
<p>194</p> <p>1 MR. WALLACE: Onto the sidewalk, though, so.</p> <p>2 THE HEARING EXAMINER: Yeah. Does Roslyn</p> <p>3 have a sidewalk connect -- the sidewalk connection goes</p> <p>4 all the way up to Roslyn Avenue?</p> <p>5 MR. WALLACE: We are checking. If it goes in</p> <p>6 front of the Shady Grove community, it doesn't</p> <p>7 necessarily matter because they could walk out onto</p> <p>8 the -- from the corner of their property, I would --</p> <p>9 MR. HUGHES: I believe there's a sidewalk all</p> <p>10 the way up to Redland. I believe it's 11 foot.</p> <p>11 THE HEARING EXAMINER: Okay.</p> <p>12 MR. HUGHES: You know, it goes around, not on</p> <p>13 that side, but on the Muncaster side.</p> <p>14 THE HEARING EXAMINER: Yeah.</p> <p>15 MR. HUGHES: There's a sidewalk runs that</p> <p>16 whole length that runs south.</p> <p>17 THE HEARING EXAMINER: Okay.</p> <p>18 MR. HUGHES: And it's 11-foot shared-use</p> <p>19 path, I think, for most of its length.</p> <p>20 THE HEARING EXAMINER: Okay.</p> <p>21 MR. HUGHES: And 11 --</p> <p>22 MR. WALLACE: You know, the -- I know the</p> <p>23 church may have their own rec -- you know, play</p> <p>24 facilities, but they're certainly accessible to us that</p> <p>25 they're not far from us.</p>	<p>196</p> <p>1 THE HEARING EXAMINER: Well, they can raise</p> <p>2 it with DPS too.</p> <p>3 MR. WALLACE: Or DPS, yeah. Yeah.</p> <p>4 THE HEARING EXAMINER: Because --</p> <p>5 MR. WALLACE: As enforcement, yeah.</p> <p>6 THE HEARING EXAMINER: I mean, I haven't</p> <p>7 decided on Dr. Kosary's argument. I'm just trying to</p> <p>8 get an idea of exactly what we're looking at now.</p> <p>9 MR. WALLACE: No, absolutely. And the</p> <p>10 intention is that it is as accessible as -- I won't say</p> <p>11 as maintained as a Park and Planning park because some</p> <p>12 are, but maintained as a nice amenity.</p> <p>13 THE HEARING EXAMINER: Okay.</p> <p>14 MR. WALLACE: I -- there was a question of</p> <p>15 fees. Again, the HOA's, you know, maintaining that.</p> <p>16 THE HEARING EXAMINER: But it won't be lit?</p> <p>17 MR. WALLACE: I -- are we showing lighting on</p> <p>18 landscape plan?</p> <p>19 MR. HUGHES: Yes. But not for the park.</p> <p>20 Are you talking about for the park area?</p> <p>21 THE HEARING EXAMINER: Yeah.</p> <p>22 MR. HUGHES: No. I think it was dusk to</p> <p>23 dawn.</p> <p>24 MR. WALLACE: Again, like Park --</p> <p>25 THE HEARING EXAMINER: Just checking.</p>

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50 (197 to 200)

<p>197</p> <p>1 MR. WALLACE: Yes. Just, like, Park and 2 Planning parks, some of them close at dusk. When we 3 structured this with -- that was the intent, is to try 4 to make it as accessible as a typical neighborhood 5 public park. And I don't use neighborhood in the 6 specific, but you know, typical park. 7 THE HEARING EXAMINER: Okay. Anything else? 8 MR. WALLACE: I think that covers -- 9 THE HEARING EXAMINER: So for traffic, we 10 need the accidents. And we need the accidents report 11 and the accident data, I mean, and the -- your gap 12 study. 13 MR. WALLACE: Correct. It also studies the 14 delay it takes for them to get onto the -- for that 15 community to get onto the road. 16 THE HEARING EXAMINER: And that was for the 17 Shady Grove townhouses -- 18 MR. WALLACE: Correct. 19 THE HEARING EXAMINER: -- correct? Okay. 20 Anything else? 21 MR. WALLACE: Oh, yes, the -- it's a private 22 road. It's built to public road standards, and it's 23 subject to the typical public -- the declaration of 24 covenants for private roads, which allows access -- 25 THE HEARING EXAMINER: Now, where are</p>	<p>199</p> <p>1 So with that, anyone have anything else? 2 Last call. 3 Okay. Hearing none, let's go through some 4 dates. Those items that you -- we just discussed, how 5 long do you think it's going to take for you to put 6 those together? 7 MR. WALLACE: We think that we'd be prepared 8 to resubmit in response -- a responsive resubmission 9 two weeks from today. 10 THE HEARING EXAMINER: Okay. And don't 11 forget, if you put a fence, if you -- you need to show 12 the fence on the plan. 13 MR. WALLACE: Yes. 14 THE HEARING EXAMINER: Okay. Two weeks from 15 today would be February 12th. So the applicant's 16 documents would be due February 12th, 2024. 17 MR. WALLACE: I just want to double check 18 because we don't -- 19 (Counsel and client confer.) 20 MR. WALLACE: Since I -- I'd -- 21 THE HEARING EXAMINER: Now, the other thing 22 to factor in is, when you submit a revised plan, we 23 have to send it -- the zoning ordinance requires it to 24 send it to Park and Planning. Usually they're very 25 fast if it's not major improvements, but the addition</p>
<p>198</p> <p>1 people -- if people come to that park and they don't 2 want to walk, they want to drive, where -- you've got 3 10 guest spaces. Is that sufficient for public use of 4 a park? 5 I know I'm throwing you a curveball question 6 here, but are people -- I want to make sure if it's for 7 the public that it's not just essentially used for 8 private. You don't have to answer now. You can 9 address it in whatever documentation you submit. 10 MR. WALLACE: Okay. 11 THE HEARING EXAMINER: But you know, if 12 people want to come and they see the sign and they say, 13 Let's go see this park, are they going to be able to 14 park? 15 MR. WALLACE: They are going to have the 16 right to park there. 17 THE HEARING EXAMINER: Well, they have 10 18 spaces on the road, right? 19 MR. WALLACE: Right. We'll provide a 20 response. I can tell you on anecdotal information that 21 there are Montgomery County public parks that don't 22 have dedicated parking to them in neighborhoods. 23 But -- 24 THE HEARING EXAMINER: That's -- you can say 25 that, so that's good. Okay.</p>	<p>200</p> <p>1 of a fence and a sign. You have to show the sign too. 2 MR. WALLACE: Location plus text. 3 THE HEARING EXAMINER: And if you want a sign 4 that's bigger than the -- whatever is permitted in the 5 zone, we typically put a thing on there saying you can 6 go -- you know, we approve if you go to the sign 7 variance board. 8 MR. WALLACE: The sign -- 9 THE HEARING EXAMINER: And if I find it 10 compatible, they can consider that at the sign variance 11 board. 12 MR. WALLACE: Do you want the text of the 13 sign as well? 14 THE HEARING EXAMINER: We usually get it. 15 MR. WALLACE: Okay. And so I think that it 16 might be safer, if it's okay with my client, to go to 17 the end of that week, not the 12th. So we're going to 18 actually suggest the end of that week. 19 THE HEARING EXAMINER: The 16th? 20 MR. WALLACE: 16th. 21 THE HEARING EXAMINER: Or the following 22 Monday, which is President's Day, I think, but 23 whichever you prefer. 24 MR. WALLACE: I think the 16th. 16th. 25 THE HEARING EXAMINER: Okay. So 2/16th is</p>



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51 (201 to 204)

<p>201</p> <p>1 when applicant's -- now, I have to give some time for 2 the -- those in opposition to absorb the information 3 and respond. So your information and the arborist, the 4 arborist -- okay. 5 So your information will be due Friday, 6 2/16/24. 7 Is Dr. Kosary or Ms. Taylor -- I don't see 8 Mr. Einsmann, Ms. Helms, how long do you think you 9 would need to be able to review and comment? 10 DR. KOSARY: Well, see, I thought you 11 generally gave 10 days or 14 days or something. 12 THE HEARING EXAMINER: Well, we don't have a 13 set time, but I can certainly do that if you want to 14 say the 19th was -- is -- I mean, the 16th is when 15 theirs is due. We can give you to March 1st, which is 16 two weeks. I don't want to take it much longer than 17 that, but -- because it's a limited amount of 18 information. But we can do March 1st. 19 DR. KOSARY: Does that work for you, Ms. 20 Taylor? 21 MS. TAYLOR: Yes. I can make -- March 1st, 22 you said? 23 THE HEARING EXAMINER: Yes. 24 MS. TAYLOR: That -- yes. I think that 25 should be fine. And I'll see about the arborist that</p>	<p>203</p> <p>1 going to ask for it by February 23rd, but I can -- 2 Ms. Taylor, do you think -- how soon do you 3 think you could get that to Mr. Wallace? 4 MS. TAYLOR: Oh, I think all I have to do is 5 send a message to Tracy McAbee and have him submit the 6 reports that we had just recently done in regards to 7 the trees and conservation easement because that's a 8 fairly -- it's probably no more than six, seven months 9 old, so. 10 THE HEARING EXAMINER: Okay. How about if I 11 say -- is it okay -- do you think you could get that by 12 February -- wait a minute. Not February. 13 MS. TAYLOR: What I can do is I'll go ahead 14 and send him an email right now and have him submit 15 just a -- 16 THE HEARING EXAMINER: That would be great. 17 If you -- 18 MS. TAYLOR: -- just, like, a (indiscernible) 19 email -- go ahead. Yes? 20 THE HEARING EXAMINER: No, that would be 21 good. If you could get it by the end of this week, 22 that would be great. 23 MS. TAYLOR: Okay. I will send an email 24 right now. 25 MR. WALLACE: It's appreciated. And best</p>
<p>202</p> <p>1 we've had come through here just this past summer to 2 check the trees and that we -- and the conservation 3 easement and have -- try to get their reports. 4 THE HEARING EXAMINER: Well, that you -- I 5 think if you have that, you should provide that to the 6 applicant in advance of March 1st. Otherwise, I got to 7 give the applicant, you know, another week. So if you 8 can get that together in a week, by February -- 9 MS. TAYLOR: Yeah. 10 THE HEARING EXAMINER: So 2/16 is the 11 applicant's information. 12 I'm sorry. 2/23 would be any information you 13 have on -- was it on the trees? 14 MS. TAYLOR: Correct. I know there was a 15 report recently done, even per the county's request, 16 with our arborist about the trees. That was just done 17 this summer. So I can ask Tracy McAbee, the property 18 manager, to send that over. 19 THE HEARING EXAMINER: Okay. 20 MR. WALLACE: May I ask, would it be possible 21 for us to get that report before our response is due? 22 Because we'd -- we would prefer to work with someone 23 with similar information. It would just be helpful to 24 us, I think. 25 THE HEARING EXAMINER: Sure. Well, I was</p>	<p>204</p> <p>1 efforts, we understand if, you know, it doesn't quite 2 happen by then, but it would really be appreciated. 3 MS. TAYLOR: No worries. Happy to help. 4 THE HEARING EXAMINER: Okay. So the property 5 manager will get the report on the trees by 2/2, which 6 is Friday. The applicant will make its submission on 7 2/16. And then the opposition will have a chance to 8 comment on 3/1. 9 Okay. Anything else? And then the record 10 will close on 3/1. 11 Is there anything else? 12 MR. WALLACE: That's all I've got. 13 THE HEARING EXAMINER: Thank you very much. 14 MR. WALLACE: Thank you. 15 THE REPORTER: Did you want a copy of the 16 transcript? 17 MR. WALLACE: Yes, please. 18 THE REPORTER: Okay. I have you at Miles & 19 Stockbridge, correct? 20 MR. WALLACE: Yes. 21 THE REPORTER: Okay. And did you want just a 22 standard? 23 MR. WALLACE: Yes. How many days is that? 24 THE REPORTER: I think they normally get it 25 in 10 business days. What's the --</p>

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52 (205 to 208)

<p>205</p> <p>1 THE REPORTER: It might be seven if there's 2 nothing -- 3 MR. WALLACE: Yeah, what's the rush? 4 THE REPORTER: I'm not sure what the pricing 5 is for rush. How soon did you want -- would you need 6 it? 7 MR. WALLACE: End of the week. 8 THE REPORTER: Okay. So I can put it in for 9 -- did you just want to be reached out about price for 10 that or -- 11 MR. WALLACE: No. You can go ahead and do 12 that. 13 THE REPORTER: Okay. 14 MR. WALLACE: Yeah. 15 THE REPORTER: So I'll put in for end of the 16 week, so five days. And -- okay. 17 (Off the record at 2:56 p.m.) 18 19 20 21 22 23 24 25</p>	<p>207</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 3 I, Bonnie Torrez, do hereby certify that this 4 transcript was prepared from the digital audio recording of 5 the foregoing proceeding; that said transcript is a true 6 and accurate record of the proceedings to the best of my 7 knowledge, skills, and ability; and that I am neither 8 counsel for, related to, nor employed by any of the parties 9 to the case and have no interest, financial or otherwise, 10 in its outcome. 11 12 13 14  15 _____ 16 BONNIE TORREZ, CET-1213 17 February 2, 2024 18 19 20 21 22 23 24 25</p>
<p>206</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 3 I, Cody Handlir, the officer before whom the 4 foregoing proceedings were taken, do hereby certify that 5 any witness in the foregoing proceedings were fully sworn; 6 that the proceedings were recorded by me and thereafter 7 reduced to typewriting by a qualified transcriptionist; 8 that said digital audio recording of said proceedings are a 9 true and accurate record to the best of my knowledge, 10 skills, and ability; and that I am neither counsel for, 11 related to, nor employed by any of the parties to this case 12 and have no interest, financial or otherwise, in its 13 outcome. 14 15 16 17  18 _____ 19 CODY HANDLIR, 20 NOTARY PUBLIC FOR THE STATE OF MARYLAND 21 22 23 24 25</p>	

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