

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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: APPLICATION OF GARRETT : Case No. 16-11
: GATEWAY PARTNERS, LLC :
: :
: :
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A hearing in the above-entitled matter was held on October 14, 2016, commencing at 9:31 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, Second Floor, RDMHR, Rockville, Maryland 20850 before:

Martin L. Grossman
Hearing Examiner

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A P P E A R A N C E S

Page:

ON BEHALF OF THE APPLICANT:

STEPHEN J. ORENS, ESQ.
JOSE L. ESPEJO, ESQ.
MCMILLAN METRO, P.C.
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* * * * *

WITNESSES:

William Landfair, Expert Land Planner	12
Dean Packard, Applicant, Expert Civil Engineer	23; 58
Steve Mulholland, Expert Architect	116
Michael Lenhart, Expert Transportation Consultant	131

* * * * *

E X H I B I T S

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1 to become a land use lawyer. I am not succeeding. I will
2 ask the others at the table to please introduce themselves,
3 starting at my far left.
4 MR. PACKARD: My name is Dean Packard, I am one of
5 the Applicants, and I am representing Packard and
6 Associates, the Civil Engineer.
7 MR. GROSSMAN: And you are one of the Applicants?
8 MR. PACKARD: Yes.
9 MR. ORENS: Yes. Mr. Packard will be testifying
10 in two capacities, one as the Applicant's representative,
11 and also as the Engineer who prepared the plans and
12 engineering report.
13 MR. GROSSMAN: Right. I saw his name in there as
14 the Engineer, I wasn't aware that he was also a co-
15 Applicant.
16 MR. ORENS: Okay.
17 MR. GROSSMAN: Mr. Landfair?
18 MR. LANDFAIR: My name is Bill Landfair, I'm a
19 Land Planner with VIKA Maryland here on behalf of the
20 Applicant.
21 MR. GROSSMAN: All right.
22 MR. ORENS: Also with us, Steve Mulholland who is
23 the Architect. Mr. Mulholland? And Mike Lenhart, who is
24 the Transportation Consultant.
25 MR. GROSSMAN: Mr. Lenhart.

P R O C E E D I N G S

1 MR. GROSSMAN: All right. Mr. Orens, are you
2 ready to proceed?
3 MR. ORENS: I am ready to proceed, Mr. Examiner.
4 MR. GROSSMAN: All right. And the Court Reporter
5 ready? I'll call the case, if I can find my glasses. Okay.
6 This is a public hearing in the matter of CU 16-11, Garrett
7 Gateway Partners, LLC, an application for a conditional use
8 under Zoning Ordinance Section 59.3.3.1.d.2.b, to develop a
9 19-unit townhouse living design for life community on a two-
10 acre property in the RE-1 Zone, and it's under the new
11 Design for Life criteria. The subject site is part of Lot
12 5, Block B in the Cashell Estate Subdivision, and is located
13 at 7009 Garrett Road in Derwood at the intersection of
14 Garrett Road and Redland Road. It is in the RE-1 Zone, and
15 is subject to the 2004 Upper Rock Creek Master Plans.
16 This hearing is conducted by the Office of Zoning
17 and Administrative Hearings. My name is Martin Grossman, I
18 will conduct the hearing, and write a report and decision on
19 the case. Will the parties identify themselves for the
20 record, please?
21 MR. ORENS: Thank you, Mr. Examiner. For the
22 record, Steve Orens with McMillan Metro, attorney for the
23 Applicant. Assisting me today is our Law Clerk, Jose Espejo
24 who is a fourth year law student that I'm trying to convince

1 MR. ORENS: And also in the room is A. Jeffrey
2 Jacobson, who is also one of the Applicants; and Bob Banner,
3 who has been working with us throughout this process.
4 MR. GROSSMAN: All right. Are all of those folks
5 going to be called as witnesses?
6 MR. ORENS: No. The witnesses will be Mr.
7 Packard, Mr. Landfair, Mr. Mulholland, and Mr. Lenhart.
8 MR. GROSSMAN: Okay. All right. Is there anybody
9 else in the audience who is not a witness to be called by
10 Mr. Orens who wishes to be heard today? Seeing no hands, I
11 take it there are no other participants in the hearing.
12 All right. Now, let me explain a little bit about
13 the nature of the proceedings, although I suspect that most
14 if not all of the members here know about it, a conditional
15 use, which is what is being applied for here, it's not a
16 variance, it doesn't vary from the statute, it requires
17 compliance with certain conditions, both general that apply
18 to all conditional uses, and specific ones that apply to
19 this particular type of conditional use. It used to be
20 called a special exception, conditional use is really a
21 better name for it as it is called under the new Code. And
22 my job here is not to examine whether there is a better use,
23 or a different use, but rather to see whether the proposed
24 use complies with the statutory requirements.
25 Let me go through a few preliminary matters, if

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1 there's anything amended for which I have not received
2 electronic copies, I do need electronic copies of all final
3 plans, maps, photos, statements, in Word for any that are
4 text, and in pdfs for any that are non-text matters. I
5 don't know that there is such a thing here, but if you have
6 any amended plans or anything like that, Mr. Orens, I want
7 to make sure that we get that, as well.

8 MR. ORENS: Mr. Examiner, the only two, if I may
9 stand, the only two large plans that are not already
10 received is the rendered site plan, and the aerial
11 photograph, reduced versions, I believe, can be provided
12 electronically.

13 MR. GROSSMAN: Okay.

14 MR. ORENS: There is one more exhibit that Mr.
15 Landfair may refer to, and we will provide that, also, hard
16 copy and electronically to the Hearing Examiner.

17 MR. GROSSMAN: That would be fine.

18 MR. ORENS: And --

19 MR. GROSSMAN: Okay.

20 MR. ORENS: -- I assume the affidavit of posting
21 is the next exhibit?

22 MR. GROSSMAN: It is. Let me get, before I get to
23 that let me just, a couple of other preliminary matters.
24 You filed a motion to amend on September 22, 2016, it was
25 noticed on September 28, 2016, it was unopposed, and it is

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1 granted. It is automatically granted under the notice that
2 we issued, but just to, so there's clarity in the record
3 here it has been granted.

4 The Technical Staff Report and the attachments,
5 and the Planning Board letter are automatically part of the
6 record here, but Planning Board Minutes are not part of the
7 record, and their testimony is not part of this record
8 either, unless somebody introduces it.

9 I'd ask you to have witnesses explain the
10 exception that you have sought regarding the common space
11 width that is mentioned in the Staff Report, or at least in
12 the Planning Board letter, and the two additional conditions
13 that were recommended at the, by the Planning Board as
14 indicated in their letter. I'd also ask that you have a
15 witness explain what you mean by the statement in footnote
16 one on page two of your amended statement in support, which
17 is Exhibit 40B, as in boy. That, quote, Section
18 59.3.3.1.d.2.b prohibits the issuance of a tax credit to the
19 developer/builder of a Design for Life community. I think
20 actually the opposite is true, but I'd like somebody to
21 explain that to me what you meant by that.

22 And finally, are there any other preliminary
23 matters that you wish to raise, Mr. Orens?

24 MR. ORENS: Excuse me. No, there are not, Mr.
25 Examiner, other than to pre-mark the two exhibits that are

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1 not yet in the record.

2 MR. GROSSMAN: Okay. All right. So, let's first,
3 the affidavit of posting. I notice that you had submitted
4 one, we had one prepared for you to sign, but you jumped the
5 gun and submitted one, and made us feel like we're behind
6 instead of ahead of you. Because my staff is always ahead
7 of me, so I don't -- all right. So, this will be Exhibit 51
8 is the affidavit of posting.

9 (Exhibit No. 51 was marked for
10 identification.)

11 MR. GROSSMAN: And now you have these other
12 exhibits you wish to identify?

13 MR. ORENS: Yes. If I may, Exhibit No. 52 is a
14 rendered version of the landscape and lighting plan.

15 MR. GROSSMAN: All right, rendered landscape --

16 MR. ORENS: That is -- a non-rendered version is
17 already in the record as part of the revised exhibits that
18 were submitted, along with the motion to amend.

19 MR. GROSSMAN: Right. And would you mark that on
20 there that it's Exhibit 52?

21 (Exhibit No. 52 was marked for
22 identification.)

23 MR. ORENS: Mr. Landfair, if you would?

24 MR. LANDFAIR: I'm sorry?

25 MR. ORENS: Would you mark that --

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1 MR. LANDFAIR: Yes.

2 MR. ORENS: -- as Exhibit 52. You want to put it
3 up in that box?

4 MR. LANDFAIR: Yes.

5 MR. ORENS: My handwriting is terrible.

6 MR. GROSSMAN: Not as bad as mine. My wife --

7 MR. LANDFAIR: Exhibit No. --

8 MR. GROSSMAN: My wife holds out, or used to just
9 before, she just retired this year, to her second grade
10 students an example of my signature as to what can happen to
11 you if you don't mind your penmanship.

12 MR. ORENS: And Exhibit No. 53 is the aerial
13 photograph that depicts the subject property with a star in
14 a red box, and significantly the as-built location of
15 Maryland State Route 200, otherwise known as the Intercounty
16 Connector.

17 MR. GROSSMAN: All right. Thank you
18 (Exhibit No. 53 was marked for
19 identification.)

20 MR. ORENS: I've been informed that the, this is
21 the only existing copy of the rendered plan --

22 MR. GROSSMAN: All right.

23 MR. ORENS: -- so we may ask permission to borrow
24 it and copy it before we return it.

25 MR. GROSSMAN: Okay. And to make an electronic

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1 copy of it?
2 MR. ORENS: Yes.
3 MR. GROSSMAN: Yes, usually when I prepare my
4 report and decision I usually --
5 MR. ORENS: Right.
6 MR. GROSSMAN: -- work off the electronic copies
7 of things, so --
8 MR. ORENS: We're pleased to be here today, Mr.
9 Examiner. This process started three years ago with the, an
10 idea that evolved into a Zoning Text Amendment that was in
11 many ways drafted by the senior staff at Park and Planning
12 with our systems that created the Design for Life use as a
13 conditional use in residential zones.
14 MR. GROSSMAN: And it is the first Design for Life
15 conditional that has been filed --
16 MR. ORENS: That is correct.
17 MR. GROSSMAN: -- or heard.
18 MR. ORENS: We determined, and the County Council
19 determined that the tax credit that was intended to
20 incentivize conditional use fully accessible homes and
21 communities was not working the way it was intended. While
22 there were a few individual homes that had been modified and
23 took advantage of the tax credit, there were no communities
24 that were being developed in Montgomery County that took
25 advantage of the tax credit. So, in order to incentivize

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1 Design for Life accessible, livable, accessible communities
2 the Zoning Text Amendment was enacted, and this is the first
3 application under that Text Amendment. Over the past year,
4 I believe, we have been working collectively and
5 collaboratively with the senior staff and the Planning Area
6 3 Staff at Park and Planning, and the site design that is
7 represented by Exhibit No. 52 is a result of that
8 collaborative effort. We worked with the Planning Board,
9 Planning Department's Design Excellence Team, as well as the
10 Planning Area 3 Team to come up with a design that
11 functioned in a way to provide accessibility not only
12 within, but outside in the common areas of the community.
13 The idea being that this is an integrated community where
14 individuals and families with persons with mobility
15 disabilities are not isolated in discreet communities, but
16 live side by side in the mainstream, where everybody can
17 live and visit in everybody else's community, home. We're
18 hopeful that this is a prototype that will be followed
19 throughout.
20 We are pleased to say that we agree totally with
21 the Staff Report and the Planning Board Recommendation, and
22 point out that the Planning Board has approved the Chapter
23 22A variance, forest conservation variance, and that we have
24 an approved preliminary forest conservation plan.
25 MR. GROSSMAN: Okay.

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1 MR. ORENS: I am going to be uncharacteristically
2 short today, not statute but verbal --
3 MR. GROSSMAN: I understand.
4 MR. ORENS: -- and allow the witnesses to present
5 the case to the Examiner, hopefully in more of a narrative
6 fashion, and we can move quickly. The first witness will be
7 Bill Landfair, followed by Dean Packard and Steve
8 Mulholland, and Mike Lenhart will be the cleanup batter.
9 MR. GROSSMAN: All right.
10 MR. ORENS: So, with the Examiner's approval I
11 will now call Mr. Landfair.
12 MR. GROSSMAN: Please do.
13 MR. ORENS: Bill, would you identify yourself for
14 the record?
15 MR. LANDFAIR: Yes, my name is William Landfair,
16 I am a Planning with VIKA Maryland located in Germantown,
17 Maryland.
18 MR. GROSSMAN: Would you raise your right hand
19 please?
20 (Witness sworn.)
21 MR. GROSSMAN: You may proceed.
22 MR. ORENS: Okay. Mr. Landfair, have you
23 previously qualified as an expert in land planning before
24 the Examiner?
25 MR. LANDFAIR: I have.

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1 MR. ORENS: And your resume with your educational
2 background and experience is already in the record?
3 MR. LANDFAIR: Yes.
4 MR. ORENS: Okay. I'm going to move right into
5 the procedural questions and ask just for the record if you
6 would please describe your familiarity with the Montgomery
7 County Zoning Ordinance with regard to conditional use
8 standards, both general and the specific standards in Zoning
9 Text Amendment 15-02, which is 59-3.1.d.2.b, which
10 established the Design for Life, are you familiar with the,
11 all of those standards?
12 MR. LANDFAIR: I am familiar with those standards.
13 MR. ORENS: And --
14 MR. GROSSMAN: Before you go any further, Mr.
15 Orens, I take it you're offering Mr. Landfair as --
16 MR. ORENS: I'm offering Mr. Landfair as an expert
17 in land planning.
18 MR. GROSSMAN: All right. And based on his resume
19 and his prior testimony as an expert before me in other
20 hearing examiners I accept him as an expert in land
21 planning.
22 MR. ORENS: Thank you. And I even had that
23 highlighted. And did you prepare a land planning report and
24 a revised report?
25 MR. LANDFAIR: Yes, I did.

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1 MR. ORENS: Okay. Referring to that report as
2 necessary would you please identify the property, and
3 describe the surrounding area, the neighborhood definition,
4 and the land uses within that area? And feel free to --
5 MR. LANDFAIR: Certainly.
6 MR. ORENS: And if you need a pointer there is
7 one.
8 MR. LANDFAIR: Thank you. I'd like to reference
9 to the Exhibit No. 53, aerial photograph which was just
10 entered into the record. And first, I'd like to call out
11 the location of the subject property, which is located at
12 the northeast quadrant of the intersection of Garrett Road
13 and Redland Road. The subject property is identified as
14 part of Lot 5 in the Cashell Estate Subdivision. It's
15 located on Tax Map GT341. The property address is 7009
16 Garrett Road. The property is two acres in size with
17 approximately 340 feet of frontage along Redland Road, and
18 240 feet of frontage along Garrett Road. The property is
19 improved with one single-family residence fronting on
20 Redland Road, the intent is to remove this residence to
21 accommodate the proposed development. It is accessed by a
22 gravel driveway off of Garrett Road. The remainder of the
23 site is kept primarily an open grass with some scattered
24 trees, a number of these trees, three, are actually specimen
25 trees, that is to say they are 30 inches or greater in size

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1 as measured at the diameter at breast height. And these
2 will require a variance if they are impacted as they will
3 be.
4 MR. GROSSMAN: Which I understand from Mr. Orens
5 that the Planning Board has approved?
6 MR. LANDFAIR: Correct. The topography reflects a
7 sloping grade from the northern half to the southern half,
8 from an elevation of approximately 480 feet to an elevation
9 of 458 feet along the southern property line. There are no
10 steep slopes, highly erodible soils, there's no flood plain
11 or other environmental constraints on the property.
12 MR. GROSSMAN: It's not in a special protection
13 area, or a primary --
14 MR. LANDFAIR: It's not in a special protection
15 area or any other kind of protection area. Right.
16 MR. ORENS: Mr. Landfair, if you would please
17 define the neighborhood within which the subject property is
18 located for the purpose of analysis?
19 MR. LANDFAIR: Certainly. I'll first refer to,
20 again, the same exhibit, Exhibit No. 53. When we originally
21 defined the neighborhood we defined it somewhat smaller than
22 the Staff definition, however, in retrospect we agree that
23 we defined the neighborhood too narrowly, and so we accept
24 the Staff definition of the neighborhood as it's found in
25 their Staff Report.

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1 MR. GROSSMAN: Right. That's at page six of the
2 Staff Report, in which they also have a photograph of
3 their --
4 MR. LANDFAIR: Correct. Correct. So, as they
5 note on page six of the Staff Report they define the
6 southern boundary as the ICC to the south, Shady Grove Road
7 to the west, Muncaster Mill Road to the north and the
8 northeast, and the rear of properties on the east side of
9 Apple Wood Lane to the east. And their rationale, and we
10 again agree with it, is that this area would include most of
11 the residents and people who would be frequenting and
12 traveling along either Redland Road or the park, local park,
13 Redland Park, which is directly opposite the subject
14 property.
15 MR. ORENS: And Mr. Landfair, what are the zoning
16 categories that are prevalent within the defined
17 neighborhood as defined by the Staff?
18 MR. LANDFAIR: The predominant land use in the
19 surrounding area, in the neighborhood is single-family
20 detached residential dwellings. Immediately adjacent to the
21 property to the north and to the east are seven acres of
22 land owned by Maryland State Highway Administration. This
23 land is being held in reserve for potential expansion of the
24 ICC. Further to the north and to the west are single-family
25 homes in the R-200 Zone. The property to the east and to

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1 the south, including the Maryland State Highway land is
2 zoned RE-1. To the south confronting on Garrett Road are
3 three homes, two of these homes actually front on Garrett
4 Road, the third home fronts on Redland Road.
5 MR. GROSSMAN: Are those homes currently occupied?
6 MR. LANDFAIR: I believe so. They appeared to be
7 when I drove by the site just the other day, they seemed to
8 be habitable homes. Yes.
9 MR. GROSSMAN: Has there been any interaction with
10 those owners?
11 MR. LANDFAIR: I'll have to defer to Mr. Orens on
12 that point.
13 MR. ORENS: I believe, Mr. Examiner, that there
14 has been seven interactions, we, Mr. Packard will describe
15 this, but we did have a community meeting with the, and
16 invited residents and representatives of civic associations.
17 Mr. Packard has had some contact and discussion with some of
18 the adjacent nearby property owners, and he will go into
19 that.
20 MR. GROSSMAN: Right. I note that there is
21 nothing in the file indicating a response from any member of
22 the community either for or against this project. By the
23 way, in terms of the defined area, you know, if the, based
24 on Mr. Lenhart's projection of the anticipated traffic I
25 would think that actually a smaller defined area might be as

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1 appropriate as the larger one selected by Staff. Usually we
2 define the surrounding area or neighborhood as that area to
3 be most directly affected by the proposed development
4 visually and by other sources of issues. And I'm not sure
5 that -- obviously, this particular, the surrounding area as
6 defined by Staff goes well beyond the visual --
7 MR. LANDFAIR: Yes.
8 MR. GROSSMAN: -- area, and I think likely well
9 beyond any area that could be affected by the projected
10 small amount of traffic that will be generated by this
11 development, and Staff accepted, there is no other evidence
12 here in terms of traffic projection other than what Mr.
13 Lenhart developed and what Staff accepted. So, but in any
14 event --
15 MR. ORENS: Yes.
16 MR. GROSSMAN: -- I don't mean to complicate this
17 more if everybody is accepting that defined area, I will.
18 MR. LANDFAIR: And that --
19 MR. ORENS: Well, if I may -- go ahead, Mr.
20 Landfair.
21 MR. LANDFAIR: That was the criteria that we
22 relied upon, that I relied upon when I drafted the land use
23 report --
24 MR. ORENS: Yes.
25 MR. LANDFAIR: -- the sight and sound, those

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1 properties that were closest to the subject property.
2 MR. GROSSMAN: Right. I use sight, sound, and
3 traffic affects, too, if something is put in place that will
4 develop a lot of traffic and problems for -- yes, sir?
5 MR. ORENS: Yes. I suspect, Mr. Examiner, that
6 the Staff also was looking at the, from a land use and
7 zoning perspective --
8 MR. GROSSMAN: Yes.
9 MR. ORENS: -- how the final location of the
10 Intercounty Connector, which is contrary to what the Master
11 Plan had recommended, effectively redefined the character of
12 the Garrett Road/Redland Road, thinking of Redland Road more
13 as the spine --
14 MR. GROSSMAN: Right.
15 MR. ORENS: -- within the neighborhood, and what
16 were the land uses on each side of that spine. In terms of
17 transportation traffic, Redland Road continues to be the
18 primary road that would serve the property, and the, while
19 the land uses may be within a larger defined neighborhood in
20 terms of the immediate impact from a transportation traffic
21 standpoint, I would suggest that the more narrow
22 neighborhood defining using Redland Road would be
23 appropriate, and I suspect Mr. Lenhart will have an opinion
24 on that.
25 MR. GROSSMAN: All right. Thank you.

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1 MR. ORENS: Thank you. All right. Mr. Landfair,
2 let's move on to the --
3 MR. LANDFAIR: Well, before we do that I just want
4 to make note that there are also besides single-family
5 residential detached homes in the neighborhood there are
6 three small subdivisions of townhouses in the neighborhood,
7 as well, as well as a small commercial crossroads located
8 the intersection of Muncaster Mill Road and Redland Road on
9 the northern end.
10 MR. ORENS: What's immediately across Redland Road
11 from the subject property?
12 MR. LANDFAIR: The Redland Local Park.
13 MR. ORENS: Now, with regard to the property
14 itself, in which zoning category is the property?
15 MR. LANDFAIR: It is zoned RE-1.
16 MR. ORENS: And is townhouse living permitted as a
17 conditional use under the Design for Life program in that
18 zone?
19 MR. LANDFAIR: Yes, it is.
20 MR. ORENS: And are there specific standards that
21 have been determined and established by the County Council?
22 MR. LANDFAIR: Yes, there are.
23 MR. ORENS: And if you would in a narrative
24 fashion, if you would please define those standards, explain
25 those standards, and explain how this application complies

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1 with the standards established in Section 59-3.3.1.d.2.b.2,
2 I'm glad they simplified it.
3 MR. GROSSMAN: Yes. I tell you, I, it took me 10
4 years to learn the old Zoning Ordinance, it was so much
5 easier to remember a citation when it was 59-G.13 or
6 something, instead of 18 decimal points.
7 MR. ORENS: I think from now on I'll just refer to
8 it as 59-3.3 et cetera.
9 MR. GROSSMAN: All right. Fair enough.
10 MR. LANDFAIR: And if I may, I'll be referring to
11 a number of sections, rather than restate Section 59-3.3.1,
12 I'd rather just reference roman numeral I through roman
13 numeral IX.
14 MR. GROSSMAN: That's fine.
15 MR. LANDFAIR: Thank you.
16 MR. ORENS: Proceed.
17 MR. LANDFAIR: So, the first section is roman
18 numeral i, and this makes reference to compliance with the
19 level two accessibility standards that are found in Section
20 52-18U of the County Code. The proposed Design for Life
21 community must meet or exceed the level two accessibility
22 standards as found in the Code. As Mr. Mulholland, the
23 Architect, will further explain, every proposed residential
24 dwelling unit will meet or exceed the level two
25 accessibility standards, and every dwelling will be

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1 accessible via a no-step entrance connected to an accessible
2 route to the unit's entry level at which an accessible
3 powder room or bathroom will be located. All interior
4 doorways will have at least a 32-inch nominal clear width.
5 The second section, roman numeral ii, references
6 bus service. Public bus service must be available on a road
7 abutting the site. There is an existing bus stop located on
8 the west side of Redland Road, and this will be made
9 available to both residents and visitors via a proposed
10 pedestrian crosswalk connecting to the interior path system
11 that will be established within this new community.
12 Roman numeral iii references Metro station. A
13 Metro station must be within two miles of the property. In
14 this case, the Shady Grove Metro station is within two miles
15 of this community.
16 MR. GROSSMAN: How far is it, exactly?
17 MR. LANDFAIR: Good question. Within the, as the
18 crow flies it's within two miles. If I may I'd like to
19 consult with our Engineer?
20 MR. GROSSMAN: Certainly.
21 MR. LANDFAIR: Mr. Packard?
22 MR. PACKARD: One point seven miles is what's been
23 agreed to in the Staff Report.
24 MR. GROSSMAN: Okay. Let me swear you in as a --
25 why don't you identify yourself for the record, Mr. Packard,

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1 and I'll swear you in.
2 MR. PACKARD: Dean Packard, co-Applicant and Civil
3 Engineer.
4 MR. GROSSMAN: Would you raise your right hand
5 please?
6 (Witness sworn.)
7 MR. GROSSMAN: Okay. And so you say it's 1.7
8 miles?
9 MR. PACKARD: Yes, sir.
10 MR. GROSSMAN: All right.
11 MR. LANDFAIR: The next section is roman numeral
12 four, and this makes reference to a public park or
13 recreation which must be located within 1,000 feet of the
14 site. In this case Redland Local Park is located directly
15 opposite the subject property on the opposite side of
16 Redland Road, and again, will be easily accessible via the
17 proposed pedestrian system that we'll be creating within the
18 community.
19 Roman numeral five references the grading on the
20 property, that it should not exceed five percent grade.
21 While this will be explained further by Mr. Packard, as
22 shown on our site plan, the grading for this project will
23 have a slope of less than five percent.
24 Roman numeral six, this makes reference to the
25 size, the minimum size restriction, which in this case is

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1 two acres. The subject property was surveyed in 1960 by the
2 then County Surveyor, R.K. Maddox, who determined that the
3 property was two acres in size, and the subject property has
4 remained that size to this date.
5 MR. GROSSMAN: Yes, actually just a skosh over two
6 acres, just multiplying out the square footage, like 2.00001
7 acres --
8 MR. LANDFAIR: Right.
9 MR. GROSSMAN: -- or something in that general
10 area.
11 MR. LANDFAIR: Close enough.
12 MR. ORENS: Which is better than 1.99999.
13 MR. GROSSMAN: Right. Because you wouldn't have
14 qualified.
15 MR. LANDFAIR: Roman numeral seven, this makes
16 reference to the density standards that are applicable. In
17 this case, the TMD optional method standards apply in place
18 of the conditional use, or RE-1 zoning standards. And as
19 shown on our conditional use plan, the application meets
20 those density standards, and the development standards for
21 the zone under the optional method. We will note, and as
22 will be further alluded to in the testimony that a waiver is
23 required under the alternative compliance provisions to
24 address the dimensional requirements of the open space
25 requirements.

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1 MR. GROSSMAN: All right. And -- well, I mean, I
2 saw that issue raised, and --
3 MR. LANDFAIR: Right.
4 MR. GROSSMAN: -- discussed, and from looking at
5 the development standards I see that you well exceed the
6 total area --
7 MR. LANDFAIR: We do.
8 MR. GROSSMAN: -- of open space required. What's
9 the basis for the waiver?
10 MR. LANDFAIR: I think the basis is that there
11 have been so many iterations of the plan, and Staff
12 recognizes on balance that we have substantially complied
13 not just with the requirements for the conditional use, but
14 with their sound planning principles that they have
15 reinforced in us over these many months that they feel that
16 we are within the intent of the Ordinance with respect to
17 the provision of open space, and if I may, I can show to you
18 where this particular area is that's effected.
19 MR. GROSSMAN: Please do.
20 MR. ORENS: Yes, would you please? And identify
21 the exhibit that you're using, please.
22 MR. LANDFAIR: I'm referencing Exhibit No. 51,
23 which is a rendered version of the landscape lighting plan,
24 and the area in question is along the driveway entrance off
25 of Redland Road, which fails to meet the full zoning

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1 standard.

2 MR. GROSSMAN: Well, where is the standard set up

3 that you're talking about? What is the standard that you're

4 seeking to vary?

5 MR. LANDFAIR: The, it's both the open, it's both

6 the, the total area, but the minimum area that's required in

7 terms of the width that is being provided. That in this

8 case while it's varied, it's relatively narrow along this

9 property line. It doesn't meet that minimum standard.

10 MR. GROSSMAN: That's the northern property line?

11 MR. LANDFAIR: It's the northern property line,

12 correct.

13 MR. GROSSMAN: All right.

14 MR. LANDFAIR: At the intersection of Redland

15 Road, adjacent to the main driveway leading into the

16 property.

17 MR. GROSSMAN: But you're not talking about the

18 total space, the total space you more than --

19 MR. LANDFAIR: No. Correct.

20 MR. GROSSMAN: What's the --

21 MR. LANDFAIR: It's the minimum width.

22 MR. GROSSMAN: Right. What's the section in the

23 Code that specifies the minimum width that you're not

24 meeting, is what I'm asking.

25 MR. ORENS: If I may, Mr. Examiner.

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1 MR. GROSSMAN: Yes.

2 MR. ORENS: We looked at this issue, we're talking

3 about two separate things (indiscernible). And I will have

4 Mr. Landfair verify factual basis. The open space area

5 centrally located in between the sticks of townhouses that

6 are parallel to Redland Road was designed to provide in

7 effects of unusable area, and it is slightly less than the

8 full width, and I think Mr. Packard will also go into that,

9 that would be required, and in order to have that area where

10 it is located the Planning Staff has recommended that a

11 waiver or alternative design be allowed. The other issue

12 has to do with the screening along the boundaries of the

13 property, and this is the new condition that was approved by

14 Staff. And the question is is it appropriate to have an

15 alternative compliance with the width of the screening

16 adjacent to the state highway proper? And I think there's

17 one other area where it is five feet -- not eight feet.

18 Whether it needs to be eight feet is a matter of

19 interpretation of the Zoning Ordinance, and this gets to

20 the, I think the statutory interpretation of what was meant

21 in the Text Amendment when it said the development standards

22 of the TMD medium density townhouse applied and superseded

23 all other standards. Our position with Staff was that under

24 those standards it didn't have to be eight feet, it could be

25 five feet. Staff disagreed, and Mr. Packard said we'll make

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1 it work, so we will make it work. I still believe candidly,

2 Mr. Examiner, that the five feet meets the standard, it is

3 certainly more than adequate for a screening with a fence

4 adjacent to the vacant State Highway property, and the

5 details of that Mr. Packard will go into.

6 MR. GROSSMAN: So, if I understand you correct,

7 Mr. Orens, there are now, there are two areas in which there

8 is the question of whether or not you need some kind of a, I

9 don't variance, but an exception of some kind, a waiver --

10 MR. ORENS: Or a waiver.

11 MR. PACKARD: A design waiver.

12 MR. ORENS: Yes. A design waiver.

13 MR. GROSSMAN: From the rules, one deals with the

14 open space with, and the other deals with the --

15 MR. ORENS: Screening.

16 MR. GROSSMAN: -- screening width. But I just

17 want the specific sections that apply that set these

18 disputed standards up. And I might say that there are two

19 different ways for me to deal with that, one is by the

20 alternative compliance route, and the other if both of those

21 standards are in Division Six of the Zoning Ordinance, which

22 I assume they are --

23 MR. ORENS: Correct.

24 MR. GROSSMAN: -- we have the authority as there

25 was an amendment to the Zoning Ordinance which gave the

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1 Hearing Examiner authority to apply those Division Six

2 standards only to the extent that compatibility required,

3 which is a more general, less detailed waiver, well, it's

4 not really a waiver position, it's just that, you know, we

5 don't necessarily have to apply it. So, I'd like it to be

6 addressed in that fashion, also, one out of the alternative

7 compliance, but also, two, as to whether or not the

8 additional width either in terms of the open space, or the

9 screening is required for compatibility.

10 MR. ORENS: Well, with regard to the screening,

11 Mr. Examiner, when --

12 MR. GROSSMAN: Well, I'd like the expert to

13 address it.

14 MR. ORENS: Okay.

15 MR. GROSSMAN: So, just so the record is clear

16 from --

17 MR. ORENS: That's fine.

18 MR. GROSSMAN: -- expert's testimony.

19 MR. ORENS: I will allow Mr. Landfair, first, and

20 then Mr. Packard, second --

21 MR. GROSSMAN: Okay.

22 MR. ORENS: -- to respond to the Examiner's

23 question. Mr. Landfair?

24 MR. LANDFAIR: So, first the applicable sections,

25 and there are two of them, the first that references the,

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1 and it's a 50-foot minimum width requirement, that section
2 is Section 6.3.5b.2 of the Zoning Ordinance.
3 MR. GROSSMAN: Okay.
4 MR. LANDFAIR: And then the second section which
5 references the screening requirements is Section 6.5.3 of
6 the Ordinance.
7 MR. GROSSMAN: Are there any subcategories on
8 that? 6.5.3, there's usually five or six other things that
9 follow that.
10 MR. ORENS: At least.
11 MR. GROSSMAN: That's at the specific standard it
12 set.
13 MR. LANDFAIR: Yes.
14 MR. PACKARD: If I may, the --
15 MR. ORENS: Mr. Packard, identify yourself for the
16 record.
17 MR. PACKARD: Dean Packard.
18 MR. GROSSMAN: Yes.
19 MR. PACKARD: It's 6.5.3.C, and there's two
20 applicable sections, we were originally working with the
21 Staff under 6.5.3.C.4, which is the townhouse section,
22 that's what the plan was designed for. And at the last go-
23 around with Staff they felt that it should be applied to
24 6.5.3.C.7, which is the conditional use --
25 MR. GROSSMAN: Right.

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1 MR. LANDFAIR: In residential zones.
2 MR. PACKARD: -- in residential zones, and this is
3 something that we will be narrowly defining --
4 MR. ORENS: Okay.
5 MR. PACKARD: -- in the coming day.
6 MR. ORENS: If I may, Mr. Examiner, I would like
7 to ask Mr. Landfair to identify a letter dated October 5,
8 2016 to Jonathan Casey, and the attachment to that, and
9 submit that into the record.
10 MR. GROSSMAN: All right.
11 MR. ORENS: Okay, Mr. Landfair, would you identify
12 what I have just handed you, please?
13 MR. LANDFAIR: Yes, this is a letter to Mr.
14 Jonathan Casey of the Park and Planning Commission from
15 Steve Orens.
16 MR. ORENS: And what is the reference subject of
17 the letter?
18 MR. LANDFAIR: The reference is this conditional
19 use application CU 16-11.
20 MR. ORENS: And is there an attachment to that
21 letter?
22 MR. LANDFAIR: Yes, there is.
23 MR. ORENS: And what is that attachment?
24 MR. LANDFAIR: That attachment is a section from
25 the 2014 Zoning Ordinance, specifically Division 3.3 titled

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1 residential uses, and then subtitle Section 3.3.1 household
2 living.
3 MR. ORENS: And what else?
4 MR. LANDFAIR: As well as Sections 6.5.1, which is
5 titled the intent; Section 6.5.2, which is the
6 applicability; Section 6.5.3, which is the screening
7 requirements.
8 MR. ORENS: And is it Section 6.5.3 that we are
9 addressing in response to the Examiner's questions?
10 MR. LANDFAIR: Yes, that's correct, 6.5.3.4
11 townhouse.
12 MR. ORENS: And are as Mr. Packard stated under
13 two sections that might arguably apply to the matter before
14 the Examiner?
15 MR. LANDFAIR: Yes, that section, which is number
16 four, townhouse, as well as number seven, which is the
17 conditional uses in agricultural rural residential or
18 residential detached zones.
19 MR. GROSSMAN: What's the date of the letter?
20 MR. LANDFAIR: The date of the letter is October
21 5th.
22 MR. GROSSMAN: Of 2016?
23 MR. LANDFAIR: 2016.
24 MR. ORENS: Yes. I would proffer, Mr. Examiner,
25 that the substance of the letter establishes the Applicant's

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1 position as to which applies, and if we may I will submit
2 that as Exhibit No. --
3 MR. GROSSMAN: Fifty-four.
4 MR. ORENS: -- 54.
5 (Exhibit No. 54 was marked for
6 identification.)
7 MR. ORENS: May I approach?
8 MR. GROSSMAN: Yes, sir. Thank you, sir.
9 MR. ORENS: Okay. Mr. Landfair, where were we?
10 MR. LANDFAIR: We had just finished with roman
11 numeral number seven, which made reference to the density
12 standards and the TMD optional method standards.
13 So, proceeding to Roman numeral eight, which makes
14 reference to parking, specifically that parking reductions
15 are prohibited, no parking reduction has been requested by
16 this application. More than the minimum parking for
17 townhouse dwellings is provided.
18 Roman numeral nine makes reference to handicap
19 accessible parking standards. Each townhouse will be
20 provided with one handicap accessible parking space, which
21 will include an eight-foot side access aisle as required.
22 MR. ORENS: Okay. Before we go further, Mr.
23 Landfair, in your opinion, your expert opinion as the Land
24 Planner is it your opinion that the proposed application
25 complies with the standards and requirements -- thank you --

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1 that apply in Section 59-3.3 et cetera with regard to
2 townhouse living conditional uses --
3 MR. LANDFAIR: Yes, I believe they do.
4 MR. ORENS: -- in specific? Are you also familiar
5 with the general standards that the Examiner must deal with
6 in terms of all conditional use applications?
7 MR. LANDFAIR: Yes, I am.
8 MR. ORENS: And are they found in 59-3.3.1.E.1?
9 MR. LANDFAIR: Yes.
10 MR. ORENS: And if you would go through those
11 provisions, and explain the extent to which the application
12 is subject to the conditions, and whether or not it
13 complies.
14 MR. LANDFAIR: Certainly.
15 MR. GROSSMAN: They're actually found at 59-
16 7.3.1.E.
17 MR. ORENS: Correct.
18 MR. LANDFAIR: I'm sorry, I have a typo in my own
19 notations. Thank you.
20 MR. ORENS: That's because he copied my typo.
21 MR. GROSSMAN: Typos have a way of getting copied,
22 unfortunately, yes.
23 MR. ORENS: Spell check doesn't help.
24 MR. GROSSMAN: No.
25 MR. LANDFAIR: So --

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1 MR. ORENS: Continue.
2 MR. LANDFAIR: -- referencing that section, the
3 first subsection A, or rather I should say does subsection
4 E1 apply with respect to any applicable previous approvals
5 for the property, and the answer is no, there are no prior
6 approvals for the property.
7 The next question is does the application satisfy
8 the requirements of the RE-1 Zone use standards? And we
9 believe the answer is yes, the application does satisfy the
10 requirements for the zone, as found under Division 59-4, and
11 the use standards as found under Division 59-3. We've
12 already discussed the necessary waivers that would be
13 required under the alternative compliance provisions, which
14 make reference to the dimensional width and the screening
15 that is to be required along the property line.
16 MR. ORENS: Is that in Division 6?
17 MR. LANDFAIR: Yes.
18 MR. ORENS: Okay.
19 MR. LANDFAIR: With regard to compatibility, the
20 application we believe does meet the applicable general
21 requirements under the Article 59-6. The application we
22 believe is compatible, the use, the proposed use is
23 residential, and in character with the surrounding
24 residential neighborhood.
25 MR. GROSSMAN: And is it compatible regardless of

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1 whether or not it complies with the width requirements for
2 screening and for --
3 MR. LANDFAIR: Yes.
4 MR. GROSSMAN: -- the open space?
5 MR. LANDFAIR: Yes, we believe it is.
6 MR. GROSSMAN: Okay.
7 MR. ORENS: Is it your professional opinion that
8 it is?
9 MR. LANDFAIR: Yes, it's my opinion that it is.
10 Yes. The next question relates to the Master Plan, will the
11 application conform with the recommendations of the
12 applicable Master Plan. We believe the answer is yes, it
13 will.
14 MR. ORENS: Before you go beyond the Master
15 Plan --
16 MR. LANDFAIR: Yes.
17 MR. ORENS: -- I do want to ask you some very
18 specific questions, if I may, and if you would approach the
19 exhibits again so I can point these out? Specifically with
20 regard to the RE-1 area identified in the Master Plan, and
21 the Master Plan location of the Intercounty Connector, are
22 you familiar with the, what the Master Plan recommended in
23 terms of the ICC's location, and how that might have
24 affected the subject property?
25 MR. LANDFAIR: Yes, I am.

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1 MR. ORENS: And you may want to refer to this
2 beautifully drawn exhibit. We will mark for identification
3 purposes as Exhibit No. 55.
4 (Exhibit No. 55 was marked for
5 identification.)
6 MR. ORENS: And explain what Exhibit No. 55
7 purports to depict?
8 MR. GROSSMAN: Thank you.
9 MR. ORENS: Here, you can have that one.
10 MR. LANDFAIR: This is an exhibit that includes
11 both an aerial, which makes reference to the subject
12 property and the immediate surrounding neighborhood, as well
13 as importantly showing the current location of the ICC,
14 located just to the south and to the east of the property.
15 The lower half of the exhibit is an exhibit taken from the
16 Master Plan, the 2004 Master Plan, which shows the preferred
17 alignment for the ICC.
18 MR. ORENS: And is that identified as F9?
19 MR. LANDFAIR: Correct, it's the heavy bold dashed
20 line identified with F9. And this alignment takes the ICC
21 further to the south than is currently existing today. And
22 this is important because it had major implications for what
23 effectively is the character of the neighborhood today. As
24 shown in the Master Plan by taking the alignment further to
25 the south it protected, if you will, or certainly didn't

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1 disrupt the surrounding RE-1 zoning and communities that are
2 to the east and to the southeast of the subject property.
3 MR. ORENS: How did Garrett Road function under
4 the Master Plan alignment?
5 MR. LANDFAIR: Previously it was an important
6 east-west link from Redland Road to Derwood and to the
7 communities further to the east.
8 MR. ORENS: And did it connect the area fronting
9 on Redland Road with the RE-1 area to the east that's
10 located between the R-200 area further to the east and Rock
11 Creek Park?
12 MR. LANDFAIR: Yes, it did.
13 MR. ORENS: And what happened as a result of the
14 realignment?
15 MR. LANDFAIR: Well, as a result that connection
16 has been broken, it's been terminated, and now Garrett Road
17 ends in a cul-de-sac just immediately to the east of the
18 property adjacent to the ICC.
19 MR. ORENS: And as a result of that the properties
20 adjacent, immediately adjacent to Redland Road are they in
21 terms of land use and functionality do they have any
22 relationship at all to the RE-1 area to the east?
23 MR. LANDFAIR: No, not anymore, not as a result of
24 this construction of the ICC.
25 MR. ORENS: Okay. Thank you. We would move

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1 admission of Exhibit No. 55.
2 MR. GROSSMAN: Well, all the exhibits we'll
3 address at the end. You can remind me if I forget. When
4 you said that the RE-1 area you're talking about is to the
5 west of the existing ICC, is that --
6 MR. LANDFAIR: The --
7 MR. GROSSMAN: -- what you -- you said to the
8 east. I just want to make sure we're talking in the right
9 directions here. Or are you saying that the present site as
10 it is cut off by the current ICC no longer has an
11 interaction with the area to the east of the ICC? I
12 understand that, also.
13 MR. ORENS: I believe, Mr. Landfair, is that what
14 you're saying?
15 MR. LANDFAIR: Yes.
16 MR. ORENS: And the subject property I'm pointing
17 to on Exhibit 53, the area outlined in red --
18 MR. GROSSMAN: Right.
19 MR. ORENS: -- and if you look very, very
20 carefully you can see where Garrett Road originally went
21 down towards Glen Oak Run, and the area between the subject
22 property and Garrett Court, which was off Garrett, or was
23 RE-1, then it went into R-200, I believe that's correct, Mr.
24 Landfair?
25 MR. LANDFAIR: Yes.

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1 MR. ORENS: And that's the area that was cut off
2 by the ICC.
3 MR. GROSSMAN: Right. And I saw that. I just
4 wanted to make sure that we were using east and west
5 correctly here, that's all.
6 MR. ORENS: That's why I have a GPS, Mr. Examiner.
7 Continue, Mr. Landfair.
8 MR. LANDFAIR: Thank you.
9 MR. ORENS: But, well, before you go on with that,
10 the other -- excuse me -- any site specific recommendations
11 for the subject property in the Upper Rock Creek Master
12 Plan?
13 MR. LANDFAIR: No.
14 MR. ORENS: Other than the zoning?
15 MR. LANDFAIR: Other than the zoning itself.
16 MR. ORENS: Okay. And are you familiar with the
17 housing goals of the Master Plan?
18 MR. LANDFAIR: Yes, I am.
19 MR. ORENS: Okay.
20 MR. LANDFAIR: Yes.
21 MR. ORENS: And are there specific recommendations
22 with regard to housing for the disabled as a need within the
23 Upper Rock Creek planning area?
24 MR. LANDFAIR: Yes, there's specific reference to
25 that.

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1 MR. ORENS: Do you have an opinion as to whether
2 or not the proposed conditional use will help to implement
3 those goals and objections?
4 MR. LANDFAIR: Absolutely.
5 MR. ORENS: What is your --
6 MR. LANDFAIR: I believe it will.
7 MR. ORENS: Thank you. Continue.
8 MR. GROSSMAN: What's the page reference to, well,
9 I guess they say in the Staff Report, Master Plan page 35
10 has the statement that --
11 MR. ORENS: It is page 35 of the --
12 MR. GROSSMAN: -- stresses the provision of
13 affordable housing, or assistance to those with diverse
14 housing needs, such as the elderly, physically disabled, and
15 those with mental illness, and equal opportunity to seeking
16 housing, Master Plan page 35. I take it that's what you're
17 referencing Mr. Landfair?
18 MR. LANDFAIR: Yes, that's correct.
19 MR. GROSSMAN: Okay.
20 MR. ORENS: Okay. Anything else on the Master
21 Plan?
22 MR. LANDFAIR: Yes. Just in brief. The Master
23 Plan, of course, is the 2004 approved and adopted Upper Rock
24 Creek Master Plan, and we've noted that it does not make
25 specific recommendations for the property other than to

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1 MR. LANDFAIR: Only one of those special
2 exceptions --
3 MR. GROSSMAN: And that was an accessory
4 apartment, you say?
5 MR. LANDFAIR: For an accessory apartment,
6 correct.
7 MR. GROSSMAN: Okay.
8 MR. LANDFAIR: Only the conditional use for the
9 child daycare facility, which is located on Redland Road is
10 close to the subject property. The others are all located
11 within their own subdivisions.
12 MR. ORENS: Okay. Based on that factual situation
13 would you now give us your opinion as to whether the
14 proposed conditional use will have any adverse affect on the
15 area, or alter its predominant residential character?
16 MR. LANDFAIR: We don't believe that it will, no.
17 MR. ORENS: Okay.
18 MR. LANDFAIR: Correct.
19 MR. ORENS: And I recognize that the next one will
20 also be discussed by Mr. Packard, but in your opinion as a
21 Land Planner will the proposed Design for Life community be
22 served by adequate public services and facilities, schools,
23 police, fire protection, water, sanitary sewer, public
24 roads, storm drainage, and other public facilities? If you
25 wish to defer to Mr. Packard I fully understand.

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1 MR. LANDFAIR: I will in terms of the details, but
2 I will note that the area is served by public utilities, and
3 these include electricity, telephone, water, and sewer. The
4 property is located in water category W3, and sewer category
5 S3, and there is an existing bus stop located just across
6 the roadway from the site.
7 MR. ORENS: Will it be required in the event that
8 the Hearing Examiner grants the conditional use will a
9 preliminary plan of subdivision and recordation of a final
10 plat be required?
11 MR. LANDFAIR: Yes, one will be.
12 MR. ORENS: And is that a process that it will be
13 undertaken by the Planning, Department of Planning Board?
14 MR. LANDFAIR: Yes, the Planning Board will have
15 an opportunity to further look at the adequacy of public
16 facilities at time of preliminary plan.
17 MR. ORENS: Thank you.
18 MR. GROSSMAN: Well, I think more specifically
19 under that Zoning Ordinance Section 59-7.3.1.E.f.i, where is
20 it? I guess it's ii, I mean, it's the Planning Board that
21 determines public facility adequacy, not the Hearing
22 Examiner at this hearing. Although I know it's noted in the
23 record that I think that point is also made by the Technical
24 Staff in its report that public facilities and services are
25 adequate, but the actual finding is made by the Planning

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1 Board in this type of case where subdivision is required.
2 MR. LANDFAIR: Right.
3 MR. ORENS: Right. And as a threshold matter, Mr.
4 Examiner, Mr. Packard will put the factual data into the
5 record --
6 MR. GROSSMAN: All right.
7 MR. ORENS: -- for you. Mr. Landfair, are you
8 familiar with the Zoning Ordinance definitions of inherent
9 and non-inherent adverse affects?
10 MR. LANDFAIR: Yes, I am.
11 MR. ORENS: And can you very briefly explain the
12 distinction between inherent and non-inherent adverse
13 affect, and specifically as it relates to this proposed
14 conditional use?
15 MR. LANDFAIR: Certainly. There are seven
16 commonly held characteristics to consider when analyzing the
17 inherent and non-inherent effects of a conditional use,
18 these are size, scale, scope, light, noise, traffic, and the
19 environment. And as applied to this Design for Life
20 community we believe the inherent physical and operational
21 characteristics include, one, an increase in the residential
22 density and the resulting massing of buildings necessary to
23 accommodate that density; two, an increase in the impervious
24 area necessary for parking and driveways; three, an increase
25 in lighting to ensure safety and security for walkways and

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1 parking areas; and four, an increase in traffic resulting
2 from residents and visitors. We believe the physical and
3 operational characteristics of this community will be
4 typical of similarly sized residential projects.
5 MR. ORENS: Okay. If I may characterize your
6 expert opinion, then, is it your opinion that there are no
7 non-inherent adverse affects that will result from the
8 approval of this conditional use?
9 MR. LANDFAIR: That's correct. There's nothing
10 unique about the road access, the environmental conditions,
11 or the physical geography of the property that would create
12 a non-inherent affect as a result of this proposed project.
13 Adjoining properties to the north and east are in State
14 ownership; across Redland Road to the west it's in County
15 ownership, it's a local park; all this will help serve to
16 minimize the impacts on nearby residential buildings in the
17 neighborhood. With respect to the project itself, the
18 building massing, the architecture with its traditional
19 design elements, and the landscaping will all help to
20 mitigate the view of the project along Redland Road. As
21 such, we believe there are no aspects of this development
22 that will affect the health or the safety or the welfare of
23 neighboring residents.
24 MR. ORENS: Okay. To sum up, then, Mr. Landfair,
25 in terms of compatibility, is it your opinion that the

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1 proposed townhouse living Design for Life project will be
2 compatible with the character of the defined residential
3 neighborhood?
4 MR. LANDFAIR: Yes, I believe that's the case. It
5 will be compatible with the surrounding neighborhood.
6 MR. ORENS: However, you are aware and have you
7 read the Staff Report and the Planning Board's
8 recommendation with regard to this application?
9 MR. LANDFAIR: I have. Yes.
10 MR. ORENS: And do you concur with the
11 recommendations of the Planning Board and the Staff,
12 particularly with the eight conditions that were proposed?
13 MR. LANDFAIR: Yes, I do.
14 MR. ORENS: And in your expert opinion does the
15 proposed conditional use meet or exceed each and every
16 standard and zoning requirement for approval?
17 MR. LANDFAIR: I believe it does. Yes.
18 MR. ORENS: And is it in substantial compliance
19 with the Upper Rock Creek Master Plan?
20 MR. LANDFAIR: I believe it is. Yes.
21 MR. ORENS: Did I forget anything?
22 MR. LANDFAIR: I don't think so.
23 MR. GROSSMAN: Well, I'll ask a question --
24 MR. ORENS: Okay. Thank you.
25 MR. GROSSMAN: -- regarding Condition 7 proposed

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1 in the Planning Board letter, which reads, and that's
2 Exhibit 50, at the time of preliminary plan the Applicant
3 must address the comments provided the M-NCPPC Department of
4 Parks in its e-mail dated August 26, 2016. I don't believe
5 a copy of that e-mail is in the record, is it?
6 MR. ORENS: It will be in a moment.
7 MR. GROSSMAN: All right. So, I don't know what
8 they're talking about.
9 MR. ORENS: Well, I think this is probably
10 something, Mr. Examiner, that Mr. Packard can go into in
11 greater detail. And the next exhibit number is --
12 MR. LANDFAIR: Fifty-six.
13 MR. GROSSMAN: Fifty-six.
14 MR. ORENS: -- 56.
15 (Exhibit No. 56 was marked for
16 identification.)
17 MR. ORENS: And --
18 MR. GROSSMAN: Thank you.
19 MR. ORENS: -- Mr. Landfair has just handed you a
20 copy of Mr. Harper's August 26 e-mail to Mr. Packard, and
21 with the Examiner's indulgence we'll have Mr. Packard go
22 into detail on this one.
23 MR. GROSSMAN: And Mr. Harper is?
24 MR. ORENS: Mr. Harper is -- who is Mr. Harper?
25 MR. PACKARD: Dean Packard. Mr. Harper is a

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1 Supervisor at the Montgomery County --
2 MR. GROSSMAN: Okay.
3 MR. PACKARD: -- Planning Commission Parks
4 Department, responsible for working with engineers and
5 applicants for impacts to, on the park property.
6 MR. GROSSMAN: All right.
7 MR. PACKARD: He will be the Supervisor in charge
8 of issuing the park permit.
9 MR. GROSSMAN: All right. So, e-mail from him to
10 Dean Packard. And this e-mail is with regard to storm water
11 management, or is there other things, too?
12 MR. ORENS: Mr. Packard?
13 MR. PACKARD: It is solely I regards to storm
14 water management.
15 MR. GROSSMAN: All right.
16 MR. PACKARD: And is part of my engineering report
17 that I was to testify to as part of the storm water
18 management which I may, I can go over now, or after we
19 conclude with Mr. Landfair.
20 MR. GROSSMAN: No, I'll wait. I just didn't know
21 what it was about because they don't say, and the Planning
22 Board letter just references this now Exhibit 56, it doesn't
23 say what it's about. Okay. And I take it that, Mr.
24 Landfair, that Condition 8 proposed in the Planning Board
25 letter, which is prior to preliminary plan, the Applicant

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1 must provide a landscape and lighting plan that complies
2 with the screening requirements for a conditional use in a
3 residential zone, Section 59-6.5.3.C.7 is the issue that you
4 had discussed, and what I'm not sure of in hearing your
5 agreement to the Technical Staff and the Planning Board, and
6 then hearing your testimony is, and I understand if you say
7 you agree with this proposed condition and yet you say that
8 the Applicant does not agree with the application of this
9 particular section. So, would you explain that to me? How
10 can you agree with this condition and still say that you
11 don't agree with it in your testimony?
12 MR. LANDFAIR: It's --
13 MR. ORENS: Would you like me to do that? I --
14 MR. GROSSMAN: Well, let's hear from the expert
15 first.
16 MR. LANDFAIR: I think it's a question of sort of
17 professional disagreement, if you will, two different
18 perspectives to the problem of ensuring adequate screening
19 and compatibility. And we believe on balance, and I think
20 Staff and the Planning Department would agree that on
21 balance that we are meeting the intent. So, we have this
22 disagreement in terms of how it's been interpreted, but we
23 believe in the end result of that we will meet the intent,
24 and we will be compatible. We recognize there's a process
25 to undertake that through this alternative method process,

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1 therefore, we agree with this Condition No. 8.
2 MR. GROSSMAN: Well, what I don't understand is
3 are you saying that you are agreeing to widen the amount of
4 screening as required by the implication of this additional
5 condition, or are you saying that you actually don't want
6 this condition, that you think that the screening as
7 specified does not have to be increased?
8 MR. LANDFAIR: I think we don't agree with the
9 widening of the landscape strip. We believe that it is
10 adequate in width, but we believe that there are
11 opportunities for adding additional landscaping, and doing
12 everything we can within the allotted space as shown on the
13 conditional use plan to improve it.
14 MR. GROSSMAN: Well, let's get down to brass tacks
15 here, can you meet, if we did not agree to waiving that
16 provision, decreasing the width of the landscaping is it
17 possible for the Applicant to do that or not? I understand
18 you arguing that it's not necessary.
19 MR. LANDFAIR: And not hold -- no, it would
20 require a revision to the current plan itself.
21 UNIDENTIFIED MALE SPEAKER: Mr. Grossman?
22 MR. GROSSMAN: Isn't that what the condition calls
23 for? Isn't that what the condition calls for, Condition 8?
24 It says -- maybe I'm misunderstanding, but that's what it
25 seems to say, prior --

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1 MR. LANDFAIR: Right.
2 MR. GROSSMAN: -- to preliminary plan the
3 applicant must provide a landscape and lighting plan that
4 complies with the screening requirement for a conditional
5 use in a residential zone.
6 MR. ORENS: If I may, Mr. Examiner, there --
7 MR. GROSSMAN: Yes.
8 MR. ORENS: -- are, there is a potential for
9 alternative compliance, and I believe that Mr. Packard will
10 also go into this in some detail, but what we are saying to,
11 we agree that we will comply with Condition No. 8. Our
12 interpretation of Condition No. 8 is that there is a process
13 for alternative compliance that would allow for a varying of
14 the width, so where it is physically not possible to
15 increase the width to eight, that the alternative compliance
16 would be the type of screening that would be used, such as a
17 fence, or additional landscaping in that area, and that is a
18 matter that will be addressed under the, at the time of
19 preliminary plan when we submit a landscape and lighting
20 plan as part of the preliminary plan application. That's my
21 understanding. Mr. Landfair?
22 MR. LANDFAIR: And I would agree with that, but
23 we'd also say that we don't believe that Staff's intent is
24 for us to widen that setback, that landscape strip in that
25 immediate area, that they recognize the constraints that we

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1 are faced with, and that they would like us to do everything
2 we can within the area that is shown on the plan to improve
3 it to the extent possible.
4 MR. GROSSMAN: All right. I wish they had said
5 that then in their Condition 8 because that's not what it
6 says. If they had said subject to alternative compliance,
7 subject to the Hearing Examiner saying that it's not
8 necessary for compatibility, it would be more clear. Not
9 that I necessarily have to follow this recommendation,
10 recommended condition, but --
11 MR. LANDFAIR: Right.
12 MR. GROSSMAN: -- I'm dealing with the wording of
13 the condition, and your statement that you agree, and
14 actually the Council's statement that you agree with
15 everything that Staff and the Planning Board said.
16 MR. LANDFAIR: Right.
17 MR. GROSSMAN: So, maybe you need to modify that.
18 I mean, I take it, Mr. Orens, that you don't really agree
19 with that Condition 8 as it's worded?
20 MR. ORENS: I, well, I agree with it as I
21 interpreted it, but if the interpretation is that there are
22 no alternative compliance, that alternative compliance is
23 not allowed then no, we do not agree that Condition No. 8 is
24 appropriate because we do not agree that it applies to this
25 particular conditional use, which is governed by the

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1 standards that apply to TMD, Townhouse Medium Density
2 optional method, which does not require an eight-foot area
3 for the screening. There is no specific requirement as to
4 width, and a five-foot, a variable width area that is five
5 feet, in some areas eight feet, plus, and others adjacent to
6 a State Highway right-of-way certainly in terms of
7 compatibility, and appropriate buffering, a fence at that
8 location will buffer the internal area of the site from any
9 future activity on a State Highway site, and there is
10 nothing on a State Highway site that needs to be buffered
11 from the townhouse community.
12 MR. GROSSMAN: Right. I'm not saying I disagree
13 with any of that, I'm just saying I want to make sure I
14 understand what exactly the Applicant's position is, because
15 as I said, you simultaneously said you adopt the Planning
16 Board's letter, and at the same time appear to make the
17 argument that you don't accept Condition No. 8, at least as
18 written. But I understand your position now.
19 MR. ORENS: Okay. Thank you for the opportunity
20 to clarify which position I was taking. Excuse me one
21 second.
22 (Discussion off the record.)
23 MR. GROSSMAN: All right.
24 MR. ORENS: Any further questions of --
25 MR. GROSSMAN: I do not have any further questions

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1 of Mr. Landfair.
2 MR. ORENS: Okay. Mr. Packard, would you identify
3 yourself again for the record?
4 MR. PACKARD: Dean Packard, acting as the co-
5 Applicant and Civil Engineer.
6 MR. ORENS: And what is the, what company are you
7 affiliated with, Mr. Packard?
8 MR. PACKARD: Packard and Associates, LLC is my
9 company I'm representing.
10 MR. GROSSMAN: All right. And you've already been
11 sworn in, so you may proceed.
12 MR. ORENS: And have you previously qualified as
13 an expert in land planning and civil engineering before the
14 Hearing Examiner?
15 MR. PACKARD: Yes.
16 MR. ORENS: Which Hearing Examiner?
17 MR. PACKARD: Francois Carrier.
18 MR. ORENS: And I -- your educational background
19 and your resume is in the record?
20 MR. PACKARD: Yes.
21 MR. GROSSMAN: What exhibit is that, by the way?
22 MR. ORENS: That would be Exhibit 40 -- if I may.
23 Very good question, Mr. Examiner, because I believe it was
24 included in the original packet that was submitted in
25 January, 2016, and is now advised as Exhibit No. 25.

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1 MR. PACKARD: A.
2 MR. GROSSMAN: Okay, 25A. So, hold on one second.
3 And Mr. Packard, you're currently licensed in the State of
4 Maryland as an Engineer?
5 MR. PACKARD: Yes, sir.
6 MR. GROSSMAN: Okay. All right.
7 MR. ORENS: I'd move Mr. Packard as an expert in
8 land planning, more pertinent, Civil Engineer.
9 MR. GROSSMAN: All right. You testified as a Land
10 Planner before Mr. Carrier, or as an Engineer?
11 MR. PACKARD: I testified as an Engineer, and I
12 was also qualified as a Land Planner at the same hearing.
13 MR. GROSSMAN: I see. All right. Well, in any
14 event, I don't know that you -- I see the resume in here, I
15 don't know what your background is in land planning. Do you
16 need Mr. Packard to be testifying as an expert in land
17 planning?
18 MR. ORENS: Not necessarily, as a factual witness
19 he will testify as to the site design.
20 MR. GROSSMAN: Okay. All right. In any event,
21 based on his resume and the fact that he's a licensed
22 engineer and has testified as an Engineer as well as a Land
23 Planner before Mr. Carrier, according to his testimony, I
24 accept him as an expert in civil engineering, and if you
25 find it necessary in terms of land planning we can talk

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1 about that, we'll go further into his qualifications.
2 MR. ORENS: Okay. Fine.
3 MR. GROSSMAN: We can do that now if you want?
4 MR. ORENS: In the prior hearing, Mr. Packard,
5 where you qualified as a Land Planner what precisely did you
6 testify to with regard to the planning element of that
7 project?
8 MR. PACKARD: I testified to the applicability of
9 the site in reference to the special exception qualification
10 that Mr. Landfair just testified in regards to Sections
11 7.3.1.E.1.
12 MR. ORENS: Okay. I believe that would be
13 cumulative and not necessary, so we'll --
14 MR. GROSSMAN: All right.
15 MR. ORENS: -- stay with Mr. Packard as a Civil
16 Engineer who prepared the site design, and dealt with the
17 engineering aspects of that for the moment.
18 MR. ORENS: All right. Do you have any
19 background, by the way, as land planning in terms of your
20 education or other professional activities?
21 MR. PACKARD: Not as far as education, but as far
22 as experience in the 30 years that I've practiced civil
23 engineering, and proposed, and did my own design, and as it
24 applies to the Zoning Ordinance and the Codes of Montgomery
25 County and the State of Maryland.

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1 MR. GROSSMAN: Are you a member of any
2 organizations that deal with land planning, or have any
3 certifications regarding land planning?
4 MR. PACKARD: I am not.
5 MR. GROSSMAN: Okay. All right. Yes, let's stick
6 with the --
7 MR. ORENS: I think that's wise.
8 MR. GROSSMAN: -- the accepting him as an expert
9 in civil engineering.
10 MR. ORENS: With regard to engineering, Mr.
11 Packard, did you coordinate and consult with Norton Land
12 Design in terms of landscape and lighting, and with Philips
13 Lighting North America in terms of determining the foot
14 candle impact of the subject property, of the proposal?
15 MR. PACKARD: I did, yes.
16 MR. ORENS: Okay. As the Applicant would you in a
17 narrative fashion summarize the Design for Life community,
18 how it differs from other communities; your involvement, how
19 you got involved in this process, and that gave rise to this
20 project?
21 MR. PACKARD: Dean Packard. I'll start by saying
22 I found this property in connection with another project
23 that I was working on that Jackie Simon was involved with.
24 And I worked with her long ago on this other project before
25 the Design for Life program had evolved and was approved.

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1 MR. GROSSMAN: Excuse me --
2 MR. ORENS: Let me interrupt for a second. Who is
3 Jackie Simon?
4 MR. GROSSMAN: That's what I was going to ask.
5 MR. ORENS: And why is her involvement
6 significant?
7 MR. PACKARD: Jackie Simon has been part of the, I
8 believe she's on the Housing Opportunities, Fair Housing
9 Opportunities Commission. She has been a champion of rights
10 for the disabled for at least 25 years.
11 MR. ORENS: I believe she's on the Commission for
12 Persons with Disabilities.
13 MR. PACKARD: Yes. That is correct. And she is,
14 she was the inspiration behind the whole Design for Life
15 program, and it was her involvement and motivation and I
16 guess desire to work, come up with the whole program working
17 with the County, and is what eventually took shape as what
18 the Design for Life Montgomery is now. I spoke with her
19 regarding this on the other project 10 years ago, and she,
20 we were just trying to figure out a way to apply something
21 as this at the time. The Design for Life, the intent of the
22 Design for Life is to provide visibility and livability
23 aspects to single-family attached or detached houses.
24 MR. ORENS: Let me ask you a question, if I may,
25 Mr. Packard. As a result of Jackie Simon's involvement with

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1 County Executive Leggett and the Department of Permitting
2 Services, did Montgomery County in fact adopt a Design for
3 Life program?
4 MR. PACKARD: Yes, they did.
5 MR. ORENS: Now, I've just handed you a fairly
6 large pamphlet, which we will mark as Exhibit No. 57.
7 (Exhibit No. 57 was marked for
8 identification.)
9 MR. ORENS: And can you identify what that is?
10 MR. PACKARD: This is the Design for Life
11 Montgomery program that was, it's a summary of what was
12 adopted, and this is the literature that is put out by the
13 Department of Permitting Services to educate the community
14 in what Design for Life is all about.
15 MR. ORENS: Is this an official publication of
16 Montgomery County?
17 MR. PACKARD: Yes, it is.
18 MR. ORENS: Mr. Examiner, if I can approach I
19 would like to --
20 MR. GROSSMAN: Certainly.
21 MR. ORENS: -- introduce Exhibit No. 57 into the
22 record. This is the program that Jackie Simon, who I
23 apologize, but a family emergency prohibited her from being
24 here today to testify. This is the program that was
25 initiated, and is part of what the Department of Permitting

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1 Services, and this was the jumping off point, if you will.
2 MR. GROSSMAN: Right.
3 MR. ORENS: So, yes. Continue, Mr. Packard.
4 MR. PACKARD: Yes. The Design for Life program is
5 to provide housing without steps where people of any age or
6 ability can live and/or access, you know, being friends, or
7 occupants of the home can live and visit the property. It
8 is not intended to be fully compliant with the Fair Housing
9 Act, nor is it considered universal design, they each have
10 their own specific definitions, but it is a hybrid of that
11 to try to achieve the accessibility of houses in a community
12 style application.
13 MR. GROSSMAN: I'm not sure what universal design
14 is, would you explain what that is?
15 MR. PACKARD: I don't know the, all the
16 intricacies of universal design, but the intent is
17 specifically to provide handicap access to buildings at all
18 levels. The fine details of this, you know, may be
19 explained further by Mr. Mulholland because he's the
20 Architect, but the intent of both of these programs are very
21 similar.
22 MR. GROSSMAN: Right.
23 MR. PACKARD: It's a technical difference.
24 MR. GROSSMAN: I mean, I'm not really directly
25 concerned with the intent of it unless there were a question

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1 of how to apply the law here, I'm concerned with making sure
2 that the application meets the requirement of the statute as
3 it was adopted by the Council. I'm not making policy here,
4 and, you know, it's clear that the Council intended this
5 form of conditional use, because they put it in the statute.
6 And so, I'm going to follow the statute, intent does come in
7 in interpreting a statute, if there's a question of how to
8 interpret some language in there. I'm not sure that there
9 is a question regarding that in this case.
10 MR. ORENS: Let me see if I can clarify, Mr.
11 Examiner. Mr. Packard, the Design for Life community
12 concept refers to an inclusive community, what is meant by
13 an inclusive community? What are we including in this
14 community that is not typical of your standard residential
15 townhouse, or detached house subdivision, how does it
16 differ?
17 MR. PACKARD: I'll answer that by first saying
18 that it's the opposite of an exclusive community. An
19 exclusive community being like the over 55 housing where
20 it's restricted to seniors, or a specific handicap housing.
21 Inclusive in our interpretation, and as interpreted by the
22 County where it's anybody of any age or ability can live all
23 together and interact in the same community.
24 MR. GROSSMAN: All right.
25 MR. ORENS: And the design of the community with

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1 the livability access standards is intended to encourage the
2 residency, if you will, of individuals with mobility
3 challenges, and other disabilities, in addition to
4 individuals who are not in any way mobility impaired, is
5 that correct?
6 MR. PACKARD: That is correct.
7 MR. ORENS: And is that embodied in the Zoning
8 Text Amendment that established this conditional use for the
9 Design for Life community?
10 MR. PACKARD: That is correct. The intent is that
11 it is not restricted to just older people, or handicapped
12 people, it's, the intent is that any able-bodied person can
13 live intermixed with people with accessibility challenges.
14 MR. ORENS: Okay. Mr. Examiner, I'm going to have
15 Mr. Mulholland testify as to the distinction between
16 visitability, livability, and that gets into the level one,
17 level two standards that the County Council embodied in the
18 Zoning Text Amendment.
19 MR. GROSSMAN: All right. All right.
20 MR. ORENS: So, if I may I'd like to move on to
21 your role as the Engineer --
22 MR. GROSSMAN: Yes.
23 MR. ORENS: -- and ask you a few of the primary,
24 other than the Staff at Park and Planning, if you were the
25 primary designer of the site to the property?

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1 MR. PACKARD: Yes, I was.
2 MR. ORENS: Okay. And if you would, referring to
3 the, several exhibits that we have, if you would describe
4 the site, the layout, and the collaborative process that
5 brought us to the design that we have to date? And Mr.
6 Examiner, there are some exhibits that are reproductions of
7 what's already in the record --
8 MR. GROSSMAN: All right.
9 MR. ORENS: -- I'm not sure how the Examiner wants
10 to handle that when we get to it.
11 MR. GROSSMAN: All right. Well, let's see what
12 you're talking about.
13 MR. ORENS: Okay.
14 MR. PACKARD: To describe the site --
15 MR. ORENS: When you refer to an exhibit please do
16 so by number.
17 MR. PACKARD: All right. So, to describe to the
18 site I will refer to what's in front of us now, which is
19 Exhibit 52 and is the rendered form of the landscape and
20 lighting plan --
21 MR. GROSSMAN: Okay.
22 MR. PACKARD: -- sheet 4 of seven. As Mr.
23 Landfair has said, you know, it is, we are at the northeast
24 corner of Redland Road and Garrett Road, it's a two-acre
25 parcel, and it is, it's sloping from north to south. What

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1 we're proposing to do is to provide one vehicular access off
2 of Redland Road, and have an internal circulation that has,
3 meets the fire department accessibility requirements. And
4 the idea of what we were trying to do is to create a
5 community with the way it is accessed.
6 There is, you know, we have the units that are
7 abutting Garrett Road and Redland Road, all front, face onto
8 the roads, so for a passerby the fronts of the buildings
9 will all look as if these are the front of the buildings.
10 MR. GROSSMAN: By these you mean the faces that
11 face the outside of the community?
12 MR. PACKARD: Correct.
13 MR. GROSSMAN: Okay.
14 MR. PACKARD: The accessible area to all the
15 townhouses will be from the internal circulation road by a
16 two-car garage on each of the units. The units on, that are
17 facing on Redland and Garrett all have the option for a deck
18 that is over the, over the driveway, which will be an
19 outside area for the residents to be in. The seven units
20 that are not facing the road will have a deck available in
21 the backyard on the other side of the garage.
22 The design restrictions that were the basis --
23 MR. GROSSMAN: On the ones that do not face the
24 road is that the backyard or the front yard?
25 MR. PACKARD: It is a little confusing, but in

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1 this case the, where the stoops and decks are for the seven
2 units not facing the roads are the backyards.
3 MR. GROSSMAN: Okay. And the others, the ones
4 that are facing roads, the frontage facing the road is
5 considered the front of the buildings?
6 MR. PACKARD: Technically yes. Yes.
7 MR. GROSSMAN: And how about not technically?
8 MR. PACKARD: Yes.
9 MR. GROSSMAN: Okay. All right.
10 MR. PACKARD: All right. And the design
11 considerations for how this all came about was the fact that
12 we have the five percent restriction so that it is to, for
13 the mobility access to the property, so the only way that we
14 came up to figure that would be to come in off of Redland
15 Road, and tailor the road to a maximum five percent grade so
16 that the sidewalks and internal circulation all work in
17 conjunction with the statute.
18 We have an extensive internal sidewalk network
19 that connects all of the drive, I'll call it a community
20 driveway, and with the individual driveways to the houses,
21 which connect to the common open space area in between the
22 centrally located lots, and they all connect to a five-foot
23 public sidewalk along Garrett Road, and along Redland Road,
24 which connects to a crosswalk at the corner of Redland and
25 Garrett, and that crosses the street to the bus stop and

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1 access to the Redland Local Park.
2 MR. GROSSMAN: Is that, the sidewalk areas are
3 they part of, are you dedicating that to the public, or is
4 that still part of your private property?
5 MR. PACKARD: The five-foot sidewalks that I
6 referred to on Redland and Garrett are part of the public
7 property that either exists or what we're dedicating to
8 Montgomery County.
9 MR. GROSSMAN: Well, I guess that's my question,
10 which is it? Do they exist now, those sidewalks?
11 MR. PACKARD: The sidewalks do not --
12 MR. ORENS: No.
13 MR. PACKARD: -- exist.
14 MR. GROSSMAN: So, will this be part of your
15 property that you're dedicating to the --
16 MR. PACKARD: Yes.
17 MR. GROSSMAN: Okay. Will you still then meet the
18 two-acre requirement since this is a two-acre tract?
19 MR. PACKARD: The two-acre tract, the area is, was
20 defined as pre-dedication, so per the statute, and as
21 interpreted by the Planning Commission and Planning Board is
22 that the two-acre applies to the original tract size.
23 MR. GROSSMAN: Okay.
24 MR. ORENS: So, if I may, Mr. Examiner, the two
25 acres refers to the gross tract area, which --

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1 MR. GROSSMAN: Okay.
2 MR. ORENS: -- includes areas of dedication as
3 part of the project.
4 MR. GROSSMAN: Okay. And just one other question
5 about, I noticed that the Staff report refers to the project
6 as Cashell Estates, I know that's the subdivision
7 designation, but, or at least the existing subdivision
8 designation as I understand it, but is that also the name of
9 your project, Cashell Estates, or is that --
10 MR. PACKARD: At this point we are calling it
11 Cashell Estates. There could be a different marketing name
12 in the future, but at this point it's Cashell Estates.
13 MR. GROSSMAN: Okay. Because I always identify a
14 case by the name of the Applicant, which is not Cashell
15 Estates, I just, Staff seemed to call it Cashell Estates,
16 which if that's not -- I mean, are you doing business as
17 Cashell Estates?
18 MR. PACKARD: No, that is --
19 MR. GROSSMAN: Okay.
20 MR. PACKARD: -- that is, there is a, the business
21 is being done by Garrett Gateway Partners.
22 MR. GROSSMAN: Okay. All right. So, I guess
23 that --
24 MR. ORENS: It's highly likely that the project
25 will be known in the future as Garrett Gateway.

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1 MR. GROSSMAN: I see. Okay. So, I'm not sure
2 why, how did it come to be designated by Staff, Technical
3 Staff, and I think also then by the Planning Board as
4 Cashell Estates when it's really Garrett Gateway?
5 MR. ORENS: I believe that that is the result of
6 the fact that the subject property is part of old Lot 5 in
7 the original Garrett Gateway area, and it's a very old
8 subdivision that frankly has no particular relevance today,
9 but --
10 MR. GROSSMAN: You mean the Cashell Estates
11 Subdivision?
12 MR. ORENS: Cashell Estates, but when you look at
13 how the property is identified in the tax records --
14 MR. GROSSMAN: Yes.
15 MR. ORENS: -- it is part of Lot 5, Cashell
16 Estates.
17 MR. GROSSMAN: I understand.
18 MR. ORENS: And that was the name that just stuck
19 with it for better or for worse.
20 MR. GROSSMAN: I don't have a problem with it,
21 it's just that it's, the name of the case is the name of the
22 Applicant, not its subdivision --
23 MR. ORENS: That's right, and --
24 MR. GROSSMAN: -- so ordinarily -- okay.
25 MR. ORENS: It probably should be changed, but --

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1 MR. GROSSMAN: Okay.
2 MR. ORENS: And it will be.
3 MR. GROSSMAN: All right. All right. Well, I
4 don't care what you name it ultimately --
5 MR. ORENS: Yes, I --
6 MR. GROSSMAN: -- it's not my --
7 MR. ORENS: -- understand.
8 MR. GROSSMAN: -- that's not my issue, I just want
9 to make sure I understood where that came from, I realized
10 it was a subdivision name, but I didn't know if you were
11 doing business --
12 MR. ORENS: Right.
13 MR. GROSSMAN: -- by that name or whatever. Okay.
14 Thank you.
15 MR. ORENS: If I can interrupt, the interior
16 roadway, is that a private drive, or is that a public road?
17 MR. PACKARD: The interior roadway is a private
18 common driveway.
19 MR. ORENS: Okay. Okay. You were I believe
20 describing the sidewalks along the public roads and how they
21 interconnect and relate to the pathways within the project.
22 If you would continue in that vein?
23 MR. PACKARD: Yes. The five-foot sidewalks are
24 the public access to the sidewalk network as required in the
25 application. The additional sidewalks are all internal, and

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1 they will be privately owned and maintained.
2 There are many aspects to the design, and the
3 slope is one of them, of course, and the facing is another
4 one. Another major aspect of the design was to create a
5 common open area that's designated for open space. The
6 statute calls for that 50 percent of the common open space
7 has to be open in a centrally located area, and working with
8 Staff for many months were determined that this was the most
9 appropriate area in the center of the project between, I
10 don't have the lot numbers on here.
11 MR. GROSSMAN: Right. But I see, you're pointing
12 to the area that shows a lot of greenery and open space on
13 the site. I don't know how else to designate it either, you
14 can designate it some other way.
15 MR. PACKARD: Okay. And the intent was to enhance
16 the visitorability of, you know, for anybody to use this
17 common area, accessed by a internal sidewalk running through
18 the property connection the public sidewalk on Redland Road
19 to an area that is on the east side of the project bounded
20 by a pergola, which is a, basically a covered seated area
21 for people to sit, relax, and watch children or tots play in
22 the designated play area.
23 MR. ORENS: Mr. Packard, there's one element that
24 is not clearly visible, but very I believe important to the
25 identification of that amenity area, and that has to do with

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1 the pavers within the private drive as a connector, would
2 you describe please what the characteristics of the pavers
3 will be to identify that amenity space where it crosses the
4 private drive?
5 MR. PACKARD: Yes. We have determined that in
6 order to provide the connectivity between the east and west
7 portions of the common open space area it would be
8 appropriate to designate the cross-area, if you want to call
9 it, the crosswalk area with brick pavers, or some stamped
10 concrete pavers that differentiate it from the black asphalt
11 area so that there is a connectivity between the two open
12 space areas.
13 MR. GROSSMAN: Okay.
14 MR. PACKARD: Also, within the open space area to
15 the east the rectangles represent garden plots, and the
16 garden plots are basically raised garden plots that are
17 accessible by wheelchair access so that anybody can use the
18 garden plots, you know, with any ability.
19 MR. GROSSMAN: They're not designated for specific
20 units or townhouses, they're just open to anybody who wants
21 to use a garden plot?
22 MR. PACKARD: Correct, within the community.
23 MR. GROSSMAN: Okay.
24 MR. PACKARD: And there is a, on each side of the
25 common driveway a circular pattern that will be, you know,

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1 decorated with a brick façade, and in the center of the two
2 kind of semi-circular areas that are colored in green here
3 will be an annual/perennial planting area for aesthetics.
4 And now, despite the numerous design features that go into
5 the project one of the main considerations was complying
6 with the storm water management criteria.
7 MR. ORENS: Before you get into storm water in
8 terms of other public facilities, in what water and sewer
9 category is the subject property?
10 MR. PACKARD: The water, the category is W1, or
11 W3S3.
12 MR. ORENS: What does that mean?
13 MR. PACKARD: W3S3 means that water and sewer is
14 available and accessible for connection.
15 MR. ORENS: Are there existing water and sewer
16 facilities in the public rights-of-way?
17 MR. PACKARD: There is a public water main running
18 underneath Redland Road, abutting the site that we have
19 access to connect to for service.
20 MR. ORENS: And sewer?
21 MR. PACKARD: The sewer is located about 250 feet,
22 300 feet down the road on Redland to the south, and we will
23 be petitioning WSSC to extend that to the property.
24 MR. ORENS: Now, under category S3 does that
25 category permit the extension of an existing sewer main to

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1 serve the property?
2 MR. PACKARD: Yes.
3 MR. ORENS: And once extended does the category
4 automatically change from S3 to S1 once it's extended?
5 MR. PACKARD: It will change the next time they
6 update the water and sewer categories.
7 MR. ORENS: Now, you were about to talk about
8 storm water management and drainage, and I believe there are
9 other exhibits that you will need to use to do that, if you
10 will get those, please?
11 MR. GROSSMAN: And before you do, let's take a
12 five-minute recess.
13 MR. ORENS: Thank you.
14 (Whereupon, at 11:26 a.m., a brief recess was
15 taken.)
16 MR. GROSSMAN: All right. We're back on the
17 record.
18 MR. PACKARD: Development standards?
19 MR. ORENS: I'm sorry?
20 MR. PACKARD: Development standards?
21 MR. ORENS: What about them?
22 MR. PACKARD: Do we need to go over it?
23 MR. ORENS: Let's -- yes. Yes, that's a binding
24 element. But now we're talking about storm water.
25 MR. GROSSMAN: Resume with Mr. Packard's

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1 testimony.

2 MR. ORENS: Okay. Mr. Packard, the exhibit you

3 are pointing to I believe is already in the record, is that

4 correct?

5 MR. PACKARD: Yes, that is in the record

6 identified as the storm water management concept plan.

7 MR. GROSSMAN: All right. So, that's exhibit,

8 this is --

9 MR. ORENS: That will be Exhibit 43.

10 MR. GROSSMAN: Okay.

11 MR. ORENS: Exhibits 43 are A, B, C, and D.

12 MR. GROSSMAN: Right. What are we looking at?

13 MR. ORENS: And what are we looking at?

14 MR. GROSSMAN: A, B, C, or D?

15 MR. PACKARD: We're looking at Exhibit A.

16 MR. GROSSMAN: Okay.

17 MR. ORENS: Exhibit A is one of four.

18 MR. GROSSMAN: Right.

19 MR. ORENS: Okay.

20 MR. PACKARD: Correct.

21 MR. ORENS: Okay. Would you describe the storm

22 water management concept that has been prepared and

23 submitted, and in your testimony explain the, to the

24 Examiner whether or not the plan complies with the

25 environmental site design standards?

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1 MR. PACKARD: Dean Packard. The storm water for

2 the property is based on the existing conditions, and

3 currently running north to south the property is practically

4 divided in two areas, one that drains to the east, and one

5 that drains to the west to Redland Road. We have designed

6 the site grading, and to channel the water in the northeast

7 corner to what I call landscape infiltration facility number

8 one. What that means is that it is basically an

9 infiltration tranche to collect, store, and overflow the

10 water onto the abutting State property to the east.

11 Moving further to the south in the property there

12 is, the water is collected in the drainage area behind

13 townhouses 30 through, on Lots 30 through 32, is collected,

14 drained to, and infiltrated into landscape infiltration

15 facility number two, and that also overflows onto the State

16 property to the east, per the, in compliance with the MDE

17 storm water management code adopted by Montgomery County.

18 The remainder of the property to the south and to

19 the west all collectively, the water is collected and

20 drained to micro-bioretenion facility number three, and

21 that is located at the corner of Redland Road and Garrett

22 Road, and that facility is drained into a proposed public

23 storm drain system that leaves the site, runs parallel to

24 Garrett Road, and crossing Redland Road into a storm drain

25 system that will continue on Exhibit 43-B, which is the

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1 second sheet to this thing.

2 MR. GROSSMAN: When this is completed will it meet

3 environmental site design requirements?

4 MR. PACKARD: Yes. We currently, as far as the

5 County has reviewed our storm water concept, we currently

6 meet all the criteria for the ESD storm water management

7 design for this site. What was alluded to in the letter

8 from the Parks Department before --

9 MR. GROSSMAN: Exhibit 56.

10 MR. PACKARD: Correct. Is that the offsite areas

11 where we are making improvements to Redland and Garrett Road

12 there's no storm water management available currently for

13 Redland or Garrett, and we're increasing the impervious area

14 in Garrett and Redland by adding a bike land and making

15 improvements to Garrett Road. That storm water management

16 cannot be contained on site, and it is a separate design

17 requirement to the storm water management concept that

18 provides storm water management for that.

19 MR. ORENS: Let me interrupt just to clarify. Did

20 you prepare a storm water management concept plan?

21 MR. PACKARD: Yes.

22 MR. ORENS: And what is the status of that plan at

23 the moment?

24 MR. PACKARD: We have been through reviews, and it

25 is, there is one comment left on the storm water management

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1 concept being reviewed by Montgomery County Department of

2 Permitting Services that applies to what I was just speaking

3 to, the offsite area that we're providing storm water

4 management for, and that was what precipitated the letter

5 from the Parks Department because we will be providing storm

6 water management on Redland Park.

7 MR. ORENS: When you say letter you're referring

8 to the e-mail that is now in the record?

9 MR. PACKARD: Yes.

10 MR. ORENS: And you have another exhibit, I

11 believe you were about to go to Exhibit 43-B, which is Plan

12 204 to illustrate the storm water management treatment for

13 the offsite additional impervious area, and how that relates

14 to the park on the west side of Redland Road?

15 MR. PACKARD: Yes.

16 MR. GROSSMAN: Well, before you do that, if I

17 understood your statement in response to Counsel's question,

18 your storm water management concept plan is currently under

19 review, is that correct?

20 MR. PACKARD: Correct.

21 MR. GROSSMAN: Okay. And I take it all of that

22 will be completed by preliminary plan --

23 MR. PACKARD: Correct.

24 MR. GROSSMAN: -- is that correct? Now, let me

25 return for a second to this, the proposed condition which,

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1 Condition No. 7 proposed by the Planning Board that at the
2 time of the preliminary plan you have to address the
3 comments in this e-mail, Exhibit 56. I don't think that I
4 can write a condition like that into a conditional use
5 decision. I would suggest that an alternative language,
6 something like that at the time of preliminary plan the
7 Applicant must comply with all applicable regulations, or
8 requirements for storm water management, something to that
9 effect, because I can't in effect incorporate an e-mail into
10 a condition in the way they have done, is something like
11 that agreeable to the Applicant?
12 MR. ORENS: Yes, it is, and let me just think for
13 a moment. I think that is adequate to cover the intent of
14 the Planning Board that at preliminary plan all the
15 requirements, and they by virtue of what he just said would
16 include what Mr. Harper suggested, which quite candidly
17 might change as the --
18 MR. GROSSMAN: Right.
19 MR. ORENS: -- you know, details become more
20 engineered in the process. So, I think the way you have
21 worded it, Mr. Examiner, creates the type of flexibility
22 that is needed so you're not saying that all seven or eight
23 paragraphs of Mr. Matthews have to be followed, but that
24 whatever requirements are they have to be met.
25 MR. GROSSMAN: Right. And I'm not --

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1 MR. ORENS: And that's --
2 MR. GROSSMAN: I guess I would say at --
3 MR. ORENS: -- that's the best way to deal with
4 it.
5 MR. GROSSMAN: -- preliminary plan Applicant must
6 comply with all applicable State and County storm water
7 management requirements.
8 MR. ORENS: That covers it.
9 MR. GROSSMAN: I think so. I --
10 MR. ORENS: Thank you.
11 MR. GROSSMAN: -- just don't see how we could do
12 it in the fashion that it's suggested in the proposed
13 conditions.
14 MR. ORENS: It is a little wordy.
15 MR. GROSSMAN: Right. Well, it also refers to
16 something elsewhere when somebody tries to enforce the
17 conditional use at a later time it makes it more
18 difficult --
19 MR. ORENS: Absolutely.
20 MR. GROSSMAN: -- to do that, especially since
21 some of these, as you point out, may be superseded by later
22 developments, either suggestions by DPS, or whatever, as to
23 conditions. Yes, I'm not sure how much more detail I need
24 to see on storm water management.
25 MR. ORENS: I don't think we need to go into any

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1 more detail than we already have on that particular issue.
2 So, in terms of storm water management, Mr. Packard, the
3 concept plan is pending one more comment, and it is an issue
4 that will be further resolved at the time of preliminary
5 plan, correct?
6 MR. PACKARD: Yes, I'd just like to add one thing
7 for clarity --
8 MR. GROSSMAN: Certainly.
9 MR. PACKARD: -- that some of the items on the e-
10 mail that we referred to as the exhibit apply to the park
11 permit, which actually extend beyond the preliminary plans.
12 So, we will seek to clarify, as you suggested, Mr. Examiner,
13 that we comply with everything required at the preliminary
14 plan.
15 MR. GROSSMAN: All right. So, I'm not
16 understanding, what is the park permit, what does that mean?
17 MR. PACKARD: The conditions are what they need to
18 issue permission for us to do the work on their property, as
19 opposed to a plan approval, or an easement, or something
20 else, the Parks Department has a permit process where they,
21 when we meet all the conditions in the e-mail exhibit we
22 will be granted a park permit.
23 MR. GROSSMAN: So, should we say amend the, my
24 proposed language to say at preliminary plan Applicant must
25 comply with all applicable State and County storm water

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1 management and permit requirements?
2 MR. ORENS: And -- correct. And any permit
3 requirements of the Department of Parks.
4 MR. GROSSMAN: Okay.
5 MR. ORENS: I think that covers everything.
6 MR. GROSSMAN: And any permit requirements of the
7 Park Department. And that would cover everything?
8 MR. PACKARD: Yes.
9 MR. GROSSMAN: Okay.
10 MR. ORENS: Let's move on to landscape and
11 lighting, which would you prefer to do first, landscape or
12 lighting?
13 MR. PACKARD: I have Exhibit 52 in my hand,
14 which --
15 MR. ORENS: Then we'll do landscape.
16 MR. PACKARD: -- we will talk about landscaping.
17 MR. ORENS: Okay. Was the landscaping plan
18 prepared as a collaborative effort between your company and
19 Norton Land Design?
20 MR. PACKARD: Yes.
21 MR. ORENS: And describe the landscape plan and
22 how it complies with the requirements of the conditional
23 use, and any reaction to the Staff comments with regard to
24 landscaping.
25 MR. PACKARD: Mr. Norton of Norton Land Design and

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1 I put together this plan to show the landscaping to comply
2 with the requirements of the Zoning Ordinance, and in
3 regards to the screening that we talked about before there
4 are, because the adjoining properties are either vacant or
5 residential properties there are screening requirements, and
6 we do meet the screening requirements on the, for the
7 eastern boundaries, and the eastern half of the northern
8 boundary. The question on the alternative compliance was
9 from the Redland Road to the end of the common driveway
10 here.
11 MR. GROSSMAN: How about the west and the south?
12 MR. PACKARD: The west and south, the west is
13 Redland Road, and the south is Garrett Road, those are
14 not --
15 MR. GROSSMAN: Do you meet the screening
16 requirements there?
17 MR. ORENS: Well --
18 MR. PACKARD: The requirements are to provide
19 street trees, and we meet the requirements providing the
20 street trees abutting those roads.
21 MR. GROSSMAN: Those are the only requirements?
22 MR. PACKARD: Those are the main requirements. We
23 have a requirement to provide landscaping on each of the
24 lots, and we have done so in the green colored areas as
25 foundation plantings facing the roadway on Garrett and

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1 Redland. And as far as the trees go, as they are situated
2 across the property.
3 MR. GROSSMAN: I guess what I'm asking you
4 specifically is you've mentioned that the issue that you had
5 was in one segment of the northern boundary, that you met
6 requirements on the rest of the north and east, and I'm just
7 asking you to complete the statement, do you meet all of the
8 landscaping requirements on the south and the west?
9 MR. PACKARD: Yes.
10 MR. GROSSMAN: Okay. So, now go ahead. Continue
11 with your --
12 MR. ORENS: Okay. With regard to landscaping, I
13 believe the Section is 59-6.4, and I believe you just
14 testified, Mr. Packard, that the primary function of
15 landscaping in this instance is the screening the property
16 from surrounding uses under Section 6.4.3, is that correct?
17 MR. PACKARD: Correct.
18 MR. ORENS: And you have achieved that standard?
19 MR. PACKARD: Correct.
20 MR. ORENS: Internally, beyond the perimeter are
21 you proposing any additional landscaping within the site?
22 MR. PACKARD: Yes, as I had just testified to a
23 few minutes ago, we're providing additional landscaping to
24 buffer the common open space area and the individual units,
25 which includes what we'll get to in a few minutes, the

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1 variance tree replacements. Additional landscaping will be
2 proposed within the storm water management, the three onsite
3 storm water management facilities, and that will be
4 addressed during permitting, construction drawings with the
5 Department of Permitting Services.
6 MR. ORENS: Is there a lighting plan?
7 MR. PACKARD: Yes, there is.
8 MR. ORENS: Would you please describe the lighting
9 plan? I believe that is one of the original --
10 MR. GROSSMAN: Before you leave this entirely, so,
11 was there anything else that you wanted to say about the one
12 segment about which you have a disagreement in terms of the
13 landscaping with Technical Staff? I thought you said that
14 he was going to address something else about that.
15 MR. ORENS: I did say that. Mr. Packard, would
16 you demonstrate for the Hearing Examiner the areas of the
17 perimeter where there is the width of the screening area?
18 MR. PACKARD: The --
19 MR. ORENS: And where is it required? For
20 example, along Redland Road and Garrett Road are there any
21 screening requirements there?
22 MR. PACKARD: There are no screening requirements
23 along Redland Road and Garrett Road.
24 MR. ORENS: Then the screening requirements fly on
25 the east and south boundaries of the property, correct?

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1 MR. PACKARD: Correct.
2 MR. ORENS: Okay. Starting with the south, would
3 you describe the width of the perimeter area where screening
4 is provided?
5 MR. PACKARD: If you're referring to the --
6 MR. ORENS: Yes.
7 MR. PACKARD: -- east, we are providing the eight-
8 foot screening requirement required for screening on the
9 east side.
10 MR. ORENS: So, regardless of which provision were
11 to be found to apply, the screening on the, what did you
12 say, was it the east?
13 MR. PACKARD: The east.
14 MR. ORENS: I always think down is south.
15 MR. GROSSMAN: Well, that's why I usually yell at
16 anybody who produces a plan where north is not facing up
17 because everybody gets confused.
18 MR. ORENS: Right.
19 MR. GROSSMAN: But I realize that the shape of
20 this particular lot made it difficult to do that, although
21 you can put it sideways on the easel if you wanted to.
22 MR. ORENS: I will continue to probably misdirect
23 it, but in any event on the east side it doesn't really
24 matter which provision applies, is that correct?
25 MR. PACKARD: Correct.

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1 MR. ORENS: Okay. Then on the south?
2 MR. PACKARD: No, north.
3 MR. ORENS: North side, describe the width of the
4 screening on the north side, moving, I guess, west from the
5 corner, that corner, yes. The northeast corner. Yes.
6 MR. PACKARD: We fully comply with the screening
7 requirements from the northeast corner moving west up and to
8 the driveway area that we had just previously discussed.
9 MR. GROSSMAN: About the halfway point, more or
10 less.
11 MR. PACKARD: Yes.
12 MR. ORENS: About halfway.
13 MR. PACKARD: From the halfway point to Redland
14 Road there is a narrow strip of open space that we have
15 heavily landscaped that is five feet wide. I think in the
16 planning report it calls it three feet, but it is five feet
17 wide, and that is the contention of the alternative
18 compliance, and we have reached assurances with the Planning
19 Commission that they, that what is being proposed as
20 designed is acceptable, it's a matter of which statute to
21 apply, and as to whether an alternative compliance will have
22 to be written. I think that they have already insinuated
23 that they will agree to it and accept it.
24 MR. GROSSMAN: Well, I don't know what insinuated
25 means in the context of what they said in their letter.

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1 Their letter says you're requesting an exception, it doesn't
2 say anything about that they have agreed to it. Whether or
3 not they agree to it, I mean, I still have the authority to
4 make the decision based on the standards in the Code, and
5 what I understand from compatibility, but I don't think
6 they've insinuated in their Planning Board letter that they
7 agree to the width that you presently have, which you say is
8 five feet, and the Staff says it's three feet.
9 MR. ORENS: I would agree, Mr. Examiner.
10 MR. GROSSMAN: But you said it's heavily
11 landscaped along that portion, that landscaping consists of
12 I see three trees there --
13 MR. PACKARD: Basically.
14 MR. GROSSMAN: -- what else is there?
15 MR. PACKARD: There's a retaining wall that
16 provides a visual buffer that's three feet tall.
17 MR. GROSSMAN: Three feet? Okay.
18 MR. PACKARD: Three feet tall, and there are 22,
19 actually 26, I'm sorry, hedge type shrubs that will be
20 planted here for screening.
21 MR. ORENS: Would they be on top of the retaining
22 wall?
23 MR. PACKARD: Correct.
24 MR. ORENS: They'd be higher than the retaining
25 wall?

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1 MR. PACKARD: Correct.
2 MR. ORENS: And how high, how tall will they be?
3 MR. PACKARD: They'll be four foot high, as
4 planted, and they will provide a seven-foot screening, so
5 between the retaining wall and the landscaping there will be
6 a seven-foot screening buffer.
7 MR. ORENS: Between the drive and the adjacent
8 State Highway property?
9 MR. PACKARD: Correct.
10 MR. ORENS: And what's the maximum height that the
11 hedge will grow to?
12 MR. PACKARD: The plant material will grow up to
13 eight to 10 feet tall.
14 MR. ORENS: So, ultimately, you would have a 17-
15 foot potentially high screen?
16 MR. PACKARD: Correct.
17 MR. GROSSMAN: So, it's four-foot tall at planting
18 you said?
19 MR. ORENS: Four-foot at planting.
20 MR. GROSSMAN: And will grown to how tall?
21 MR. PACKARD: Eight to 10 feet.
22 MR. GROSSMAN: You don't have a fence there? As I
23 recall in that particular provision, subsection seven, you
24 have an alternative to have, to some things by having a
25 four-foot tall fence, you don't have a fence proposed, or

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1 you do?
2 MR. PACKARD: That is part of the discussions on
3 the alternative compliance. If we are required to do the
4 alternative compliance we will be proposing a six-foot fence
5 along the property line.
6 MR. ORENS: I think, Mr. Examiner, in terms of
7 your determination of compliance, if you determine that for
8 compatibility purposes a fence would also be required, we
9 would accept that as a condition.
10 MR. GROSSMAN: Yes. And is that three-foot
11 retaining, that is I take it is above grade, it's three feet
12 above grade?
13 MR. PACKARD: The grade, the existing ground on
14 the State Highway property is higher, we're cutting the
15 grade down on our property, so it is above, it is actually
16 below the existing ground, but as you drive through the
17 community road it will be, you will see the wall sticking
18 up.
19 MR. ORENS: Is the grading required in order to
20 meet the five percent grade requirement?
21 MR. PACKARD: That was the intent of the
22 requirement, the necessity for the wall. Yes.
23 MR. ORENS: So, you will be cutting into the
24 subject property to meet the grade standard, and when the
25 driveway is installed it will be how many feet below the

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1 grade of the adjacent State property?
2 MR. PACKARD: In this location it will be three
3 feet below the State ground.
4 MR. ORENS: And in order to accommodate that
5 differential in grade you're going to do what? Retaining
6 wall?
7 MR. PACKARD: The retaining wall will be
8 installed.
9 MR. ORENS: Okay. And the landscaping that you
10 describe in relation to the retaining wall that would be
11 above the retaining wall?
12 MR. PACKARD: Correct.
13 MR. GROSSMAN: What I'm looking at now is the
14 question of compatibility with the adjacent State property,
15 and so, I'm asking from the vantage point of that adjacent
16 property to the north, is the retaining wall above the grade
17 that they would see, or is that at grade or below grade?
18 MR. PACKARD: The top of the retaining wall would
19 be at grade with adjoining State Highway property.
20 MR. GROSSMAN: Okay. So, from their perspective
21 that doesn't add any height to the screening?
22 MR. PACKARD: That's correct.
23 MR. GROSSMAN: Okay.
24 MR. PACKARD: It does not.
25 MR. GROSSMAN: So, what you're proposing now is in

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1 addition to the three trees is 26 bushes which will have
2 four feet of screening for that property to the north, is
3 that correct?
4 MR. PACKARD: Correct.
5 MR. GROSSMAN: And that will eventually grow to
6 eight to 10 feet of screening, the hedges?
7 MR. PACKARD: Correct.
8 MR. GROSSMAN: All right. And in your opinion is
9 that sufficient screening, and I guess we might ask Mr.
10 Landfair that question, too, to provide a compatible
11 connection with the property to the north?
12 MR. PACKARD: It is my, in my opinion it is, yes.
13 MR. GROSSMAN: Without a fence addition?
14 MR. PACKARD: Without a fence addition, yes.
15 MR. GROSSMAN: All right. Mr. Landfair?
16 MR. LANDFAIR: I would agree with that statement.
17 Yes.
18 MR. GROSSMAN: So, even without a fence, having a
19 row of hedges four feet tall provides sufficient screening
20 for the property to the north?
21 MR. LANDFAIR: At initial planting with the
22 understanding that --
23 MR. GROSSMAN: Right.
24 MR. LANDFAIR: -- when they mature that they will
25 be approximately 10 feet tall, correct.

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1 MR. GROSSMAN: How long does it take to mature?
2 MR. PACKARD: The plant would be 10 years.
3 MR. GROSSMAN: And how much does it grow every
4 year? So, you're saying it grows another, almost a foot
5 every year, is that what you're saying?
6 MR. ORENS: If you know.
7 MR. PACKARD: Six-tenths of a foot.
8 MR. GROSSMAN: I see. And --
9 MR. ORENS: In terms -- I'm sorry, go ahead.
10 MR. GROSSMAN: What exactly is the property to the
11 north?
12 MR. PACKARD: It currently is vacant woods, and it
13 was part of the original M-83 Master Plan extension of
14 Midcounty Highway that Mr. Orens and Mr. Landfair discussed
15 before.
16 MR. ORENS: Hypothetically, Mr. Examiner --
17 MR. GROSSMAN: Yes.
18 MR. ORENS: -- if M-83 is never built, this is
19 probably more than a hypothetical, and the Intercounty
20 Connector is not further extended in any matter, under the
21 existing zoning the property would be developed residential.
22 In terms of compatibility of adjacent uses, townhomes are
23 permissible, one family residential houses, and would be
24 presumed to be compatible with another residential community
25 there. So, in terms of determining what is needed as a

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1 screening between two essentially compatible uses we're
2 submitting to this testimony and from Mr. Landfair's
3 testimony that the proposed landscaping is more than
4 adequate to assure future compatibility. Certainly if it's
5 a state road, or just remains vacant as part of State
6 Highway property or County property there's no compatibility
7 concern. If it's developed in the future because it becomes
8 excess property, and it's developed under residential
9 zoning, again, a minimal amount of buffering or screening
10 would be appropriate between two compatible residential
11 uses.
12 MR. GROSSMAN: Right. I mean, my, I'm not bound
13 up by the specific provisions of the screening requirements
14 because I'm linked to compatibility, which is what my
15 standard is for that section, and so, that's why my question
16 is towards compatibility. I want to look back and see what
17 the Technical Staff said about compatibility in that area,
18 do you have a page reference for that, for the screening
19 requirements? Maybe it's on page 20.
20 MR. ORENS: I believe it starts on page,
21 landscaping starts on page 19 --
22 MR. GROSSMAN: Right.
23 MR. ORENS: -- and the first full paragraph on
24 page 20 specifically references the 59-6.5 provisions.
25 MR. GROSSMAN: Right.

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1 MR. ORENS: I think you have to start really at
2 the bottom of page 19, Mr. Examiner.
3 MR. GROSSMAN: Well, they say that Staff has
4 determined that the landscape screening requirements along
5 the northern property line from the entry off Redland Road
6 to approximately 145 feet along the property line meet the
7 requirements. All right. So, that's, yes. The width of
8 the screening area along there is narrower than either the
9 standard panels (indiscernible) due to the nature of the
10 condition to be used, the screening area is three feet wide,
11 although you say it's five feet wide, and approximately two
12 to three feet below grade, adjoining blah, blah, blah, the
13 property is required to be graded to five percent or less.
14 All right. So, the alternative design that they're talking
15 about is what? What is the alternative design? They're
16 talking just adding a six-foot fence? What is the
17 alternative design they're talking about?
18 MR. ORENS: I don't think they know, to be honest
19 with you.
20 MR. GROSSMAN: They haven't specified?
21 MR. ORENS: This is an, Mr. Examiner, this is an
22 issue that literally came up the day or two days before the
23 hearing before the Planning Board, which is why when we're
24 reading the Staff Report you're not finding any detailed
25 discussion of the issue. Staff reviewed the screening

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1 requirement based, I believe, on the provision that we have
2 submitted applied, and did not look at the distinction
3 between five feet and eight feet. There's nothing in the
4 report that would indicate that what is proposed does not
5 achieve the compatibility standard.
6 MR. GROSSMAN: Right.
7 MR. ORENS: What they're saying is that there's a
8 statutory technicality that required eight feet, what we
9 said is no, the statutory requirement doesn't require any
10 specific width, it's a matter of the professional judgment
11 of the Hearing Examiner, or the Staff, and the Applicant's
12 design professionals, and that's where it literally it was a
13 stalemate, if you will. Somebody had to blink --
14 MR. GROSSMAN: Right.
15 MR. ORENS: -- in order to get to the Planning
16 Board, I blinked.
17 MR. GROSSMAN: What if we posed that question to
18 Staff --
19 MR. ORENS: That's fine.
20 MR. GROSSMAN: -- at the completion of this
21 hearing, and just ask them that question, is it first of
22 all, are you correct, I would pose to them, in saying that
23 it is five feet not three feet, which is what they have in
24 their report; and number two, is the proposed, since they
25 haven't told me what the alternative plan is, is the

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1 proposed screening sufficient to provide compatibility?
2 MR. ORENS: I think that's the, that is the
3 question, I think asking --
4 MR. GROSSMAN: And let's see what --
5 MR. ORENS: -- both questions will provide the
6 clarity the Examiner needs.
7 MR. GROSSMAN: Okay.
8 MR. ORENS: Okay. I think we can --
9 MR. GROSSMAN: I wanted to take a look at the, for
10 a second at the actual landscape plan. Easement plan, I've
11 got every other plan in the world, I'm sure I've got this
12 one. Utility plan, landscape and lighting plan.
13 MR. ORENS: Now is that --
14 MR. GROSSMAN: Which is the main one, 41 what?
15 What is the main landscape and lighting plan?
16 MR. ORENS: Bear with me for a moment.
17 MR. PACKARD: 407.
18 MR. GROSSMAN: Pardon me?
19 MR. PACKARD: Sheet 407.
20 MR. GROSSMAN: Okay. I've got it.
21 MR. PACKARD: Which is Exhibit 41D as in dog.
22 MR. ORENS: Correct.
23 MR. GROSSMAN: What I was trying to determine in
24 looking at the actual plan is whether you could determine
25 from the plan itself that it actually scales out to five

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1 feet rather than three feet, and I'm not sure I can tell on
2 that. What is the scale on that? One inch equals 20 feet.
3 MR. ORENS: Mr. Packard is scaling it out as we
4 speak.
5 MR. GROSSMAN: All right.
6 MR. PACKARD: Mr. Examiner, as I scale the plan it
7 is, it scales to be four and a half feet to the back of the
8 wall, so --
9 MR. GROSSMAN: All right.
10 MR. PACKARD: -- I'll stand corrected to say that
11 it is from the back of the wall to the boundary line is four
12 and a half feet.
13 MR. GROSSMAN: Okay.
14 MR. ORENS: When you say the back of the wall is
15 that the surface of the wall closest to the State Highway
16 property?
17 MR. PACKARD: Yes.
18 MR. GROSSMAN: All right. So, what I'm seeing I
19 see what I presume to be the wall, the retaining wall, and
20 then a whole series of what appear to be Ys, those are the
21 bushes?
22 MR. PACKARD: Correct.
23 MR. GROSSMAN: Okay. And so, the distance from
24 what appears to be the wall to the property line is four and
25 a half feet?

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1 MR. PACKARD: Correct.
2 MR. GROSSMAN: Okay. I'm not sure where the
3 three, where, do you know where the three-foot measure came
4 from that they talk about?
5 MR. PACKARD: I am not sure.
6 MR. GROSSMAN: All right.
7 MR. ORENS: I think that may be an erroneous
8 measurement.
9 MR. LANDFAIR: Yes.
10 MR. GROSSMAN: Okay.
11 MR. LANDFAIR: I think it's just an error.
12 MR. GROSSMAN: All right. So, I guess my plan
13 would be to get some, I mean, I could just decide it based
14 on what you're testified since that's the evidence here, but
15 I think it would be respectful of the Technical Staff to get
16 their commentary on compatibility even if there were not a
17 fence, and I guess alternatively is that the alternative
18 they're suggesting, a six-foot tall fence to ensure a, I'm
19 not sure what they're suggesting?
20 MR. ORENS: Well, you might ask if that is their
21 suggestion. I think, Mr. Examiner, you're giving them an
22 opportunity to focus and reflect on what it is that they're
23 really looking for. As I said, this came up at the very
24 last minute --
25 MR. GROSSMAN: Right.

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1 MR. ORENS: -- long after the Staff Report was
2 prepared, and was communicated to me through a phone call
3 from Richard Weaver, who is the Area 3 Supervisor --
4 MR. GROSSMAN: Right.
5 MR. ORENS: -- who was somewhat apologetic that it
6 was coming up at the eleventh hour, but it came up, so it
7 had to be addressed. He addressed it in a condition that is
8 somewhat vague in what it means, and I think what you're
9 doing is giving them an opportunity to advise the Examiner
10 and the Applicant as to A) whether it's needed for
11 compatibility --
12 MR. GROSSMAN: Okay.
13 MR. ORENS: -- or whether it's needed as a
14 technical requirement to a standard that may or may not
15 apply.
16 MR. GROSSMAN: Okay.
17 MR. ORENS: Very good.
18 MR. GROSSMAN: Fair enough.
19 MR. ORENS: We can finish up with Mr. Packard very
20 quickly, I think. Lighting.
21 MR. PACKARD: Yes.
22 MR. ORENS: Is there something you want to add,
23 Mr. Packard?
24 MR. PACKARD: One thing.
25 MR. GROSSMAN: Yes?

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1 MR. PACKARD: Since Mr. Landfair mentioned the
2 fact of the waiver we were requiring, is it clear to the
3 Examiner that I, Mr. Landfair said I may add to that, is it
4 clear as to what we're asking for with the waiver?
5 MR. GROSSMAN: Well, you can add on whatever you
6 think is appropriate.
7 MR. ORENS: You're talking about the amenity space
8 in the center of the property?
9 MR. PACKARD: Correct.
10 MR. ORENS: Okay. What is the requirement, and
11 what are we asking for?
12 MR. PACKARD: The requirement is that 50 percent
13 of the common open space area be located in a centrally
14 located area, which we do comply with. We are required to
15 provide 20 percent open space on the whole site, which we've
16 complied with.
17 MR. GROSSMAN: I think you've provided
18 considerably more than 20 percent, as I recall.
19 MR. PACKARD: Correct.
20 MR. ORENS: Yes.
21 MR. LANDFAIR: Yes.
22 MR. GROSSMAN: What was the amount, just so
23 we're --
24 MR. PACKARD: We're providing 31.02 percent.
25 MR. GROSSMAN: Okay.

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1 MR. PACKARD: And so, there's a dimensional
2 requirement to provide a 50-foot width. Our width at the
3 eastern end is 50 feet, and it narrows to 18.2 feet between
4 the units that I'm pointing to now.
5 MR. ORENS: What units are those so that it's
6 clear on the record?
7 MR. PACKARD: It's Lots 22 and 23 is where the
8 18.2 feet is.
9 MR. ORENS: Okay. Between 22 and 23?
10 MR. PACKARD: Correct.
11 MR. ORENS: Okay. Continue.
12 MR. PACKARD: The Staff has determined, as Mr.
13 Landfair had testified, that we meet the overall intent of
14 what the open space was to provide, and they have accepted
15 what we have proposed, and have added the finding request
16 that a waiver be granted.
17 MR. GROSSMAN: Yes. Well, once again, you say
18 waiver, what waiver provision are you talking about? Are
19 you talking about the alternative compliance provision, is
20 that what you mean?
21 MR. ORENS: It's a waiver of the width
22 requirements, which I believe the Hearing Examiner is
23 authorized to grant.
24 MR. GROSSMAN: Well, I'm authorized to grant an
25 exception or a waiver, whatever you want, from the, from any

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1 of the compatibility or the Division 6 requirements, and I
2 don't see any issue at all regarding that, given that you
3 provide more than the required open space there. But I just
4 want to make sure that I understand when you say waiver what
5 you're talking about, because they didn't address it as
6 alternative compliance, per se.
7 MR. PACKARD: This is a separate issue from the
8 alternative compliance, as indicated on page 15 of the Staff
9 Report.
10 MR. GROSSMAN: Right.
11 MR. PACKARD: There is, at the bottom of the page
12 there's an asterisk which states the proposed common open
13 space does not entirely meet the 50-foot minimum requirement
14 and requires an exception. I stand corrected, it's
15 exception not waiver.
16 MR. GROSSMAN: Right. But -- all right. By
17 exception I take it what they mean is they require a finding
18 that that's not necessary for compatibility.
19 MR. PACKARD: Correct.
20 MR. GROSSMAN: That under my general evaluation
21 requirements --
22 MR. PACKARD: Correct.
23 MR. ORENS: If I may, Mr. Examiner --
24 MR. GROSSMAN: -- in 59-7 --
25 MR. ORENS: -- what Staff has said is that, and I

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1 quote from the Staff Report, page 15, the width ranges from
2 18 feet at the west, to 50 feet at the widest point, and
3 although the space does not meet the width requirements,
4 Staff believes that an exception is warranted because the
5 open space meets the intent of Division 6.3, and they're
6 recommending that the exception be granted as you're
7 authorized to do.
8 MR. GROSSMAN: But once again, they use the term
9 exception, I don't know if that appears in the Zoning
10 Ordinance anywhere. There's alternative compliance, and
11 there's a finding that it's necessary or not necessary
12 for --
13 MR. ORENS: Right.
14 MR. GROSSMAN: -- compatibility. Nowhere is it
15 called an exception, so I'm not sure that they weren't
16 referring to something that I'm not understanding. But if
17 the understanding is that what they're asking me to do is
18 say that it is sufficiently compatible and not necessary to
19 adhere to the technical provision of the Division 6, I don't
20 have an issue with that.
21 MR. ORENS: I know, I think that's what they're
22 saying.
23 MR. GROSSMAN: Okay. All right.
24 MR. ORENS: Perhaps not as artfully as the
25 Examiner just put it, but that is I think what they're

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1 saying.
2 MR. GROSSMAN: All flattery is gladly accepted by
3 the manager. All right.
4 MR. PACKARD: And the last thing would be the
5 development standards before we move on that really the
6 develop standards as shown on page 15 of the Staff Report
7 agree with our plan, and are in compliance with the TMD
8 Zone, optional method of development.
9 MR. GROSSMAN: All right.
10 MR. ORENS: Okay.
11 MR. GROSSMAN: I don't know who the appropriate
12 witness is to address the point I raised about the footnote
13 in your statement, your amended statement in support,
14 Exhibit 40B, in which you say, quote, Section 59-3.3.1.D.2.b
15 prohibits the issuance of a tax credit to the
16 developer/builder of a Design for Life community. What does
17 that mean in the context --
18 MR. ORENS: If I may, and I think I'm the
19 appropriate one to interpret the statute, Mr. Examiner.
20 During the Council's debate, discussion of the Text
21 Amendment 15-2 there was a question as to whether or not the
22 developer of the community should benefit by both the tax
23 credit authorized in Chapter 52, as well as the additional
24 density authorized under the text amendment for the
25 conditional use. And the Council concluded that the

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1 developer should not I think one of the Council Members said
2 double dip, so the developer for the period of time that the
3 developer owns the property cannot apply for a tax credit
4 under Chapter 52. And we have no, we don't disagree with
5 that. What is unclear to me is whether the languages by the
6 Council would prohibit or preclude the initial purchaser of
7 the units from obtaining the tax credit for having full
8 level two accessibility. And in terms of approving the
9 conditional use it is not an issue because we are not, the
10 developer is not claiming the tax credit. I'd have to go
11 back and read my statement to understand why I even bother
12 dealing with it at this point.
13 MR. GROSSMAN: Well, my -- the reason I got a
14 little confused is I know that one of the conditions that
15 you have to put in in terms of the statute is that no
16 property owner may seek a tax credit under 52I 18U or 5293E
17 except for tax credits for additional accessibility features
18 installed post-occupancy as described, blah, blah, blah.
19 So, the property owner couldn't do it, I assumed that meant
20 the subsequent owner, not the developer, so I was a little
21 confused by the reference in the footnote to say that the
22 developer had no, because I understood that the whole idea
23 here was to make incentives for developers to have this type
24 of Design for Life, so I wasn't sure what the incentive was
25 if you didn't get a tax credit.

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1 MR. ORENS: Well, the incentive is the --
2 MR. GROSSMAN: Perhaps you can straighten me out.
3 I agree that it's not going to be a part of what I decide.
4 Now I'm curious --
5 MR. ORENS: It's not abundantly clear as to what
6 was meant, I believe based on the discussions of the Council
7 that the intent was the developer would not have the double
8 benefit of both additional density and a tax credit. What's
9 unclear is what was intended down the road. The way it's
10 written no one gets the tax credit.
11 MR. GROSSMAN: Okay.
12 MR. ORENS: And again, I agree with you, that is
13 not an issue before the Hearing Examiner, and --
14 MR. GROSSMAN: I apologize for reading you a
15 footnote. I'm not sure anybody ever reads mine, so the
16 expectation is --
17 MR. ORENS: John Delany taught me years ago always
18 read the footnotes. Now, I -- this is something we're going
19 to ask the Council to clarify --
20 MR. GROSSMAN: Okay.
21 MR. ORENS: -- in the future, because candidly we
22 believe that the purchaser should get the tax credit, not
23 the developer, the developer doesn't get the tax credit, but
24 it should be. The other --
25 MR. GROSSMAN: So, the incentive for the developer

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1 to create the Design for Living is what?
2 MR. ORENS: The additional density --
3 MR. GROSSMAN: Density that you get --
4 MR. ORENS: -- that you get.
5 MR. GROSSMAN: -- for the -- okay. All right.
6 Well, you know, I just was curious about it because I didn't
7 understand that in the context of the language of the Code,
8 but as I say, it doesn't really play a part in what I have
9 to decide.
10 MR. ORENS: I agree.
11 MR. GROSSMAN: Okay.
12 MR. PACKARD: Your opinion is shared.
13 MR. ORENS: Okay. Mr. Packard, lighting, are you
14 going to have, will there be lighting, and would you
15 describe the type of lighting to be provided, and in so
16 doing from an engineering standpoint inform the Examiner as
17 to whether or not the foot candle illumination at the
18 property line is consistent with the standards in Section
19 6.4.4.E?
20 MR. PACKARD: I am looking now at the photometric
21 plan.
22 MR. ORENS: Which is Exhibit No. 41, I'm sorry.
23 MR. GROSSMAN: Let me have it.
24 MR. ORENS: It's Exhibit 41 --
25 MR. GROSSMAN: G.

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1 MR. ORENS: -- G.
2 MR. PACKARD: And as shown on the photometric plan
3 we comply with the .1 foot candles on the north and east
4 portions of the property, there are no restrictions on the
5 south or west because the lighting will be streetlights, and
6 streetlights aren't subject to the .1 foot candles.
7 MR. GROSSMAN: I see, by the way, that the, that
8 on the lower southeast corner, but still on the east there
9 is on reading of .3 foot candles, am I misunderstanding
10 this?
11 MR. ORENS: Not into the street.
12 MR. PACKARD: That is the streetlight and the
13 bleed off of the streetlight --
14 MR. GROSSMAN: I see.
15 MR. PACKARD: -- to the property to the east.
16 MR. GROSSMAN: So, you're saying that the actual
17 lighting from the site itself will not exceed the 0.1 foot
18 candle level, is that what you're saying?
19 MR. PACKARD: Correct.
20 MR. GROSSMAN: Because there are significant
21 numbers and readings above that, I guess generated by
22 streetlights, but --
23 MR. PACKARD: Correct.
24 MR. GROSSMAN: Okay.
25 MR. ORENS: Streetlights, Mr. Packard, are they

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1 standard County approved DOT streetlights?
2 MR. PACKARD: Correct.
3 MR. GROSSMAN: All right. And what about the
4 standard of not allowing any undue glare, et cetera, to
5 traverse into adjacent residential areas?
6 MR. PACKARD: The streetlights proposed will be of
7 an LED basis, and as they are described as being adequately
8 shielded to reduce glare.
9 MR. GROSSMAN: But I guess that doesn't entirely
10 answer my question, whether they're LED or not, I mean, and
11 they're shielded, will there be, will it meet the statutory
12 requirement for not having glare and undue lighting into the
13 adjacent residential areas, is the question.
14 MR. PACKARD: Yes, according to the Philips
15 Lighting designer, and the acceptance by the Planning Board,
16 yes, it does comply.
17 MR. GROSSMAN: Okay.
18 MR. ORENS: There's no undue glare that will
19 trespass, if you will, offsite onto the residential zoned
20 property owned by the State Highway or the County?
21 MR. PACKARD: Correct.
22 MR. GROSSMAN: Okay.
23 MR. ORENS: Forest conservation. And I believe
24 the record reflects, Mr. Packard, that a Chapter 22A
25 variance was requested and approved, is that correct?

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1 MR. PACKARD: Correct.
2 MR. ORENS: And in what manner will the project
3 comply with the, to the extent necessary with the forest
4 conservation standards in Chapter 22 of the County Code?
5 MR. PACKARD: We are proposing and it has been
6 accepted to take the 0.36 acres of required forest to an
7 offsite location.
8 MR. ORENS: Now, you heard Mr. Landfair's
9 testimony with regard to the absence of wetlands, streams,
10 floodplains, and other environmental features, and historic
11 and cultural features on the property, but there were none,
12 do you agree with that?
13 MR. PACKARD: I agree with that.
14 MR. ORENS: Okay. There are certain binding
15 elements of this project, is that correct, with regard to
16 the Design for Life standards?
17 MR. PACKARD: Yes.
18 MR. ORENS: And are you familiar with those
19 binding elements in terms of amenity space, parking?
20 MR. GROSSMAN: By binding elements you mean the
21 standards that are set out in the Code?
22 MR. GROSSMAN: Right. Right. And is it your
23 opinion from an engineering standpoint that all of those
24 binding elements can be achieved on site?
25 MR. PACKARD: Yes, it is.

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1 MR. ORENS: I have nothing further of Mr. Packard.
2 MR. GROSSMAN: Okay. I think we've badgered Mr.
3 Packard enough.
4 MR. ORENS: We never badger him enough.
5 MR. GROSSMAN: I take it, once again, the binding,
6 usually binding elements refers to something that's in a
7 site plan or development plan --
8 MR. ORENS: Right. I understand.
9 MR. GROSSMAN: -- the elements you're talking
10 about are the statutory requirements for this particular
11 conditional use, correct?
12 MR. ORENS: Right. Correct.
13 MR. GROSSMAN: Okay.
14 MR. ORENS: We have two more witnesses.
15 MR. GROSSMAN: All right. I'm sure that we'll
16 move along at a spritely pace.
17 MR. ORENS: We will. I'd like to call Mr.
18 Mulholland, and would you identify yourself and the name of
19 your company for the record, please?
20 MR. MULHOLLAND: My name is Steve Mulholland, I'm
21 an Architect with GTM Architects.
22 MR. ORENS: And I believe, Mr. Mulholland that
23 your resume was submitted as Exhibit No. 40F. Would you
24 describe your educational background?
25 MR. GROSSMAN: Before you do, would you raise your

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1 right hand, please?
2 (Witness sworn.)
3 MR. GROSSMAN: All right. You may proceed.
4 MR. ORENS: Okay. Describe your educational
5 background.
6 MR. MULHOLLAND: I have a Bachelor of Science in
7 Architecture from the University of Maryland School of
8 Architecture.
9 MR. ORENS: And are you a member in good standing
10 of the American Institute of Architects?
11 MR. MULHOLLAND: Yes, I am, since the year 2000.
12 MR. GROSSMAN: And licensed in the State of
13 Maryland?
14 MR. MULHOLLAND: No, I'm licensed in the District
15 of Columbia.
16 MR. GROSSMAN: Okay.
17 MR. ORENS: Mr. Mulholland is the consulting
18 architect in the project, when the actual construction plans
19 are prepared a Maryland licensed architect will prepare
20 those.
21 MR. GROSSMAN: Do we have any plans that Mr.
22 Mulholland has submitted in the record?
23 MR. ORENS: Only in terms of the conceptual
24 drawings for the conditional use application that are not
25 the construction level drawings that we would need to submit

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1 for a permit.
2 MR. GROSSMAN: I understand, but there's a
3 requirement and State law that any plans that are submitted
4 by a professional, and there are various sections in the
5 State law that cover different professions, must be
6 certified and sealed by that professional. Do we have any
7 for any plans submitted by Mr. Mulholland?
8 MR. ORENS: None of the plans have been sealed, as
9 they are, as I understand the conditional use process the
10 exterior façades are conceptual drawings, and the floor
11 plans are also conceptual drawings that are not required to
12 be sealed --
13 MR. GROSSMAN: Well --
14 MR. ORENS: -- of this process.
15 MR. GROSSMAN: -- okay, I -- it's not part of,
16 it's not that you have to have a final plan for any of these
17 as part of the conditional use process. What I'm saying is
18 that it's State law that requires that a public body not
19 accept a plan prepared by a professional that hasn't been
20 sealed. I can give you citations to it, I'm sure there's
21 one for architecture as well the others I've looked at for
22 surveyors and engineers and so on. So, let me look at the
23 particular plans you're talking about. What are the plans
24 that we're speaking about here?
25 MR. ORENS: Okay. Let's get those plans out if we

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1 can. The -- we're again looking at Exhibit 40G and H.
2 MR. GROSSMAN: Okay.
3 MR. MULHOLLAND: Some of these may be difficult
4 for you to read, if have another set there.
5 (Discussion off the record.)
6 MR. ORENS: What is Exhibit 40H, which is --
7 MR. MULHOLLAND: Do you want me to mark this?
8 MR. GROSSMAN: Well, I have, they're already --
9 MR. ORENS: They're already in the record.
10 MR. GROSSMAN: -- or in the file here. So, I see
11 40G and H in the file.
12 MR. MULHOLLAND: These aren't marked. For me to
13 refer to them I'm not clear on which ones --
14 MR. ORENS: Just mark them 40H.
15 MR. MULHOLLAND: And the plans are, is that a
16 different --
17 MR. GROSSMAN: Yes, they're 40G.
18 MR. ORENS: Now, Mr. Mulholland, did you prepare
19 the exterior renderings that are reflected on Exhibit 40H?
20 MR. MULHOLLAND: Yes --
21 MR. ORENS: And what does it show?
22 MR. GROSSMAN: Well, let's, before we get to that,
23 you haven't offered him as an expert in anything yet, so we
24 can take care of that.
25 MR. ORENS: Again -- okay. I do offer him as an

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1 expert in architecture and design.
2 MR. GROSSMAN: Okay. And based on his background,
3 his educational background and his licensure in the District
4 of Columbia I accept him as an expert in architecture and
5 design.
6 MR. ORENS: Thank you, sir.
7 MR. GROSSMAN: As to the other problem, I mean,
8 I'll take another look at the Maryland Code provisions to
9 see if that is somehow an obstacle here.
10 MR. ORENS: I will, likewise.
11 MR. GROSSMAN: And maybe, we will have, obviously,
12 a period in which we're going to be submitting a question to
13 Technical Staff, and waiting for a response from them after
14 we complete here today, so we'll have time to get this issue
15 rectified.
16 MR. ORENS: I apologize for that issue, Mr.
17 Examiner, I understand your position entirely, and we'll
18 deal with it.
19 MR. GROSSMAN: Okay. All right. Let's --
20 MR. ORENS: All right.
21 MR. GROSSMAN: -- proceed then.
22 MR. ORENS: As an expert would you please describe
23 the renderings of the townhouse units as shown on Exhibit
24 No. 40H?
25 MR. MULHOLLAND: As to illustrate compatibility

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1 with the neighborhood as part of the conditional use we
2 proposed designs that use indigenous materials from the
3 neighborhood, they have brick first floors throughout; and
4 lat siding second floors; the buildings are three stories
5 tall; they are simple gable roof, very common in the
6 neighborhood. The front elevations as shown on this exhibit
7 I'm pointing to --
8 MR. ORENS: And this exhibit being 40H?
9 MR. MULHOLLAND: 40H, provide a front porch
10 streetscape along Garrett, which are these units, and then
11 Redland Road.
12 MR. GROSSMAN: By these units you mean units to
13 the --
14 MR. MULHOLLAND: Units fronting --
15 MR. GROSSMAN: -- the south, or are they, is that
16 the north? Is that on upside down, or right side up,
17 which --
18 MR. ORENS: Yes, we put north up.
19 MR. GROSSMAN: You did put north up. Okay. So,
20 that's the southern portion.
21 MR. MULHOLLAND: Yes. So, on the, along Redland
22 Road --
23 MR. GROSSMAN: Okay.
24 MR. MULHOLLAND: -- the units that confront
25 Redland Road, we'll call those the rear-loaded --

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1 MR. GROSSMAN: Right.
2 MR. MULHOLLAND: -- garage units, they have a more
3 traditional sidewalk streetscape with front porch on the
4 interior units, and I refer to the interior units as the
5 middle of the three.
6 MR. GROSSMAN: Right.
7 MR. MULHOLLAND: And then they have a front
8 portico entry on the end units.
9 MR. GROSSMAN: Okay.
10 MR. MULHOLLAND: Because of the groups of three
11 that we have, townhouses in groups of three, with the
12 exception of the four, we felt it necessary to address the
13 side of these units with a little more interest, and they
14 have a side door in addition to a front door.
15 MR. GROSSMAN: Okay.
16 MR. MULHOLLAND: We feel that this design is very
17 compatible with the other neighboring properties in the
18 area.
19 MR. ORENS: I want to step back if I may, Mr.
20 Mulholland, for a moment. Setting aside the actual features
21 on the renderings, with regard to the conditional use
22 requirements for Design for Life are you familiar, or did
23 you become familiar with those standards and requirements
24 from an architectural access accessibility standpoint?
25 MR. MULHOLLAND: Yes.

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1 MR. ORENS: And is it your understanding that
2 these structures, these townhouses must be compatible with
3 the surrounding community, and must also meet the higher
4 level two accessibility standards set forth in the Zoning
5 Ordinance for Design for Life?
6 MR. MULHOLLAND: Yes. Yes.
7 MR. ORENS: Are you familiar with the standards in
8 Chapter 52 of the County Code that set forth the level one
9 and level two accessibility standards?
10 MR. MULHOLLAND: I am familiar --
11 MR. ORENS: Okay.
12 MR. MULHOLLAND: -- with those standards.
13 MR. ORENS: Can you describe what is required in
14 order to meet the level two, in order to comply with the
15 level two standards necessary for Design for Life
16 conditional use?
17 MR. MULHOLLAND: For Design for Life conditional
18 use you have to meet level two criteria, which is livable
19 standards. Level one standards are visitable. Level two
20 includes level one, so these units have to be visitable as
21 well as livable. The first standard is the accessible route
22 which requires that one exterior door must be at least 32
23 inches wide to provide an accessible route into the building
24 from the outside. We've designed these units, I'm going to
25 refer to the floor plans which are on Exhibit 40G, we've

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1 designed these units with entry through the garage, as a no-
2 step 32-inch minimum width access route to the level one,
3 visitable space, which includes a powder room, and we're
4 showing a bathroom here, a full bathroom, however, this is a
5 really a proof of concept, so we wanted to show the most
6 difficult challenge first. A powder room, we have options
7 for a bedroom, or it could be used as a living room/den for
8 visitability on the same level as the main entry door.
9 MR. GROSSMAN: Why isn't that also livability?
10 MR. MULHOLLAND: It could be livable per level
11 two, however, we don't have the kitchen -- well, yes it is
12 livable with a full bathroom and a bedroom. That would --
13 MR. GROSSMAN: Okay.
14 MR. MULHOLLAND: -- satisfy.
15 MR. GROSSMAN: Okay, you don't need the kitchen is
16 what you're saying, on that floor you do?
17 MR. MULHOLLAND: The level one standard requires
18 that the visitable spaces be on the same level as --
19 MR. GROSSMAN: Right.
20 MR. MULHOLLAND: -- the door, the entry door to
21 the exterior; level two is the livable which also, because
22 this is a townhouse --
23 MR. GROSSMAN: right.
24 MR. MULHOLLAND: -- it's three stories. The
25 kitchen, which is part of the livable level two, is on the

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1 next floor up.
2 MR. GROSSMAN: So -- all right. So, that's my, my
3 question is what, how is that livable if you can't access
4 the kitchen on the first floor?
5 MR. MULHOLLAND: It is livable by means of an
6 elevator which we've accommodated to the second floor. My
7 apologies.
8 MR. GROSSMAN: I see.
9 MR. MULHOLLAND: So, the level two criteria
10 standards require in addition to the visitable features that
11 we also provide a livable kitchen accessible, along the
12 accessible route, as well as an accessible bathroom, full
13 bathroom with either a bathtub or a shower, and a bedroom.
14 Those features, the kitchen, the livable kitchen is on the
15 second floor, again, by way of the elevator, which provides
16 a 30-inch by 48-inch mobility area for a wheelchair, and
17 that's critical to a lot of these spaces, they must
18 accommodate a wheelchair of those sizes.
19 MR. GROSSMAN: All of these units have elevators?
20 MR. MULHOLLAND: They do.
21 MR. GROSSMAN: Okay.
22 MR. MULHOLLAND: Yes.
23 MR. GROSSMAN: And you said the entry was through
24 the garage on these, is there also a door entry that meets
25 the standards, or is that not?

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1 MR. MULHOLLAND: There is the opportunity for a
2 door as the market demands.
3 MR. GROSSMAN: Okay.
4 MR. MULHOLLAND: And we've accommodated that door
5 through that side entry.
6 MR. GROSSMAN: Okay.
7 MR. MULHOLLAND: And then on the middle unit
8 plans, which are here, we have that door on the side, as
9 well, or on, next to the garage door. So, the --
10 MR. ORENS: In other words, Mr. Mulholland, while
11 the primary zero entry would be through the garage where
12 presumably the van would be parked, there is an alternative
13 zero entry door that will allow access from the outside into
14 the same area that would lead to the elevator, is that
15 correct?
16 MR. MULHOLLAND: Correct.
17 MR. GROSSMAN: Would -- the question said an
18 alternative, alternative to the door you would ordinarily
19 have, or alternative to the garage, or what do you mean
20 by --
21 MR. ORENS: In addition to, isn't it?
22 MR. MULHOLLAND: In addition to.
23 MR. ORENS: Is it an alternative or in addition
24 to?
25 MR. MULHOLLAND: In addition to.

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1 MR. GROSSMAN: Okay.
2 MR. ORENS: Thank you. Continue.
3 MR. MULHOLLAND: Excuse me. So, the barrier free
4 features, we'll call them barrier free as far as wheelchair
5 mobility, and if I could address Mr. Packard's use of
6 universal design, I don't use that term with the Design for
7 Living requirements because it has other connotations with
8 some federal guidelines --
9 MR. GROSSMAN: Okay.
10 MR. MULHOLLAND: -- and I don't want to confuse
11 this.
12 MR. GROSSMAN: Right. We don't need to get into
13 it.
14 MR. MULHOLLAND: Okay. Okay. So, the mobility
15 features that are unique to these plans are really seen in
16 the door sizes, which have to provide a minimum 32 inches in
17 the powder rooms.
18 MR. GROSSMAN: Okay.
19 MR. MULHOLLAND: And we've done that on the
20 livable side, and then also on the visitable side. Beyond
21 the kitchen, or the kitchen features include accessible
22 appliances where someone in a wheelchair can approach them
23 from the side, and they have 40 inches clear between
24 cabinets --
25 MR. GROSSMAN: Right.

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1 MR. MULHOLLAND: -- or countertops in this design.
2 MR. GROSSMAN: Okay.
3 MR. MULHOLLAND: The next requirement for level
4 two is a bedroom and full bathroom accessibility, which
5 we've provided on the third floor by way of the elevator.
6 That bedroom shown in the front of the units, I'm sorry, not
7 to be confused with the garage side of the units, has a
8 fully accessible bathroom with a shower, we're showing a
9 shower, and part of the accessibility is that bathroom also
10 includes blocking in the walls for future grab bars that can
11 be installed by the future owners. And as well, a walk-in
12 closet with ample space for wheelchairs. I believe --
13 MR. GROSSMAN: So, the standards include
14 accessible route with a 32-inch wide access way; accessible
15 kitchen, bathroom, and bedroom is for livability; and the
16 ability to put grab bars in, does that fairly summarize, or
17 was there anything else?
18 MR. MULHOLLAND: There are details of all of
19 those --
20 MR. GROSSMAN: No, but I mean, those are the
21 standards, the basic standards for livability,
22 accessibility --
23 MR. MULHOLLAND: Yes, to --
24 MR. GROSSMAN: -- that you're required to --
25 MR. MULHOLLAND: -- clarify, the route is 36

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1 inches wide --
2 MR. GROSSMAN: Okay.
3 MR. MULHOLLAND: -- but the passageways, the doors
4 are 32.
5 MR. GROSSMAN: Okay. So, accessible door route of
6 36, and door of 32. Okay.
7 MR. ORENS: Okay. Is it your testimony, then, Mr.
8 Mulholland, that the final floor plans in order to satisfy
9 the Design for Life standards must comply with the concept
10 plans that you have been testifying from in terms of
11 accessibility, elevator accessibility, exterior doorway and
12 garage accessibility, so that all three floors are fully
13 accessible?
14 MR. MULHOLLAND: Yes. These plans comply with
15 those standards.
16 MR. ORENS: And the final plans would have to
17 comply with these plans in terms of those standards?
18 MR. MULHOLLAND: Yes, the final plans --
19 MR. ORENS: You didn't talk about the garage. The
20 garage I would think is important because of what it has to
21 accommodate, if you would describe that, please?
22 MR. MULHOLLAND: So, each garage has a minimum
23 depth of 20 feet. It's intended as a two-car garage with,
24 to provide accessible parking and unloading of wheelchair
25 occupants, it would be a one-car with an eight-foot wide

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1 space next to it, and the parking bay requirements for an
2 accessible vehicle are eight feet wide by 18 feet deep. So,
3 we've accommodated that space with an additional eight feet
4 next to it, and what we're showing is an 18-foot garage with
5 an 16-foot garage door, single garage door.
6 MR. ORENS: Sufficient to accommodate a van with
7 handicapped accessories?
8 MR. MULHOLLAND: Yes.
9 MR. ORENS: Okay. In your expert opinion then,
10 Mr. Mulholland, will the proposed townhouse living units
11 comply with the level two, which includes level one
12 standards, and satisfy the standards required for Design for
13 Life conditional use?
14 MR. MULHOLLAND: Yes.
15 MR. ORENS: I have nothing further of this
16 witness.
17 MR. GROSSMAN: And in your opinion the design of
18 the exteriors will be compatible with the neighborhood?
19 MR. MULHOLLAND: Yes.
20 MR. GROSSMAN: Okay. I have no other questions.
21 MR. ORENS: Mr. Packard just informed me that he
22 and I both forgot to ask him how many parking spaces were
23 going to be provided --
24 MR. GROSSMAN: All right.
25 MR. ORENS: -- and we would proffer that there

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1 will be 60 parking spaces provided, which exceeds the
2 requirement. And our last witness who would also testify to
3 that --
4 MR. GROSSMAN: All right. We'll take another
5 little break --
6 MR. ORENS: okay.
7 MR. GROSSMAN: -- before the last witness.
8 MR. ORENS: I don't expect Mr. Lenhart to take a
9 lot of time.
10 MR. GROSSMAN: I understand, but I have to make a
11 call.
12 MR. ORENS: But I didn't expect Mr. Mulholland to
13 take a lot of time, what do I know.
14 MR. GROSSMAN: All right. We'll just take a five-
15 minute break.
16 MR. ORENS: Okay.
17 (Whereupon, at 12:43 p.m., a brief recess was
18 taken.)
19 MR. GROSSMAN: Okay. All right.
20 MR. ORENS: Mr. Lenhart, would you identify
21 yourself and the name of your company for the record?
22 MR. GROSSMAN: We're back on the record.
23 MR. LENHART: Yes, Michael Lenhart, Lenhart
24 Traffic Consulting.
25 MR. ORENS: Okay. You want to swear him in?

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1 MR. GROSSMAN: That's a good idea. Would you
2 raise your right hand, please?
3 (Witness sworn.)
4 MR. ORENS: I believe, Mr. Lenhart, your resume
5 has been submitted as Exhibit No. 26, and can you tell the
6 Examiner if you have previously qualified as an expert in
7 traffic and transportation planning?
8 MR. GROSSMAN: He has before me.
9 MR. ORENS: And I would move him as an expert in
10 traffic and transportation.
11 MR. GROSSMAN: Okay. And I forget if you, in
12 addition to your transportation planning title there's also
13 traffic engineering?
14 MR. LENHART: That's correct.
15 MR. GROSSMAN: Okay. So, I accept Mr. Lenhart as
16 an expert in transportation planning and traffic
17 engineering.
18 MR. ORENS: Okay. Mr. Lenhart, are you familiar
19 with the adequate public facilities requirements as they
20 apply to conditional uses for traffic, internal circulation,
21 and the like?
22 MR. LENHART: Yes.
23 MR. ORENS: And are you familiar with the
24 requirements for local area transportation review of the
25 Montgomery County Code?

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1 MR. LENHART: Yes.
2 MR. ORENS: And did you conduct an analysis and
3 prepare a traffic statement, and amended traffic statement
4 in connection with this application?
5 MR. LENHART: Yes, I did.
6 MR. ORENS: Were you required to do a formal LATR
7 study?
8 MR. LENHART: We were not.
9 MR. ORENS: And why not?
10 MR. LENHART: This project generates fewer than 30
11 peak hour trips, therefore it's exempt from LATR.
12 MR. ORENS: How many trips does it generate
13 morning and evening peak hours?
14 MR. LENHART: Nine trips in the morning peak hour,
15 and 16 trips in the evening peak hour.
16 MR. ORENS: Okay. Have you visited the site and
17 the surrounding area?
18 MR. LENHART: Yes, I have. I was out there as
19 recent as yesterday.
20 MR. ORENS: And can you describe the surrounding
21 road network and the transportation facilities that will
22 serve the subject property?
23 MR. LENHART: Yes.
24 MR. ORENS: Feel free to use any exhibits that
25 suit you, or not.

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1 MR. LENHART: Redland Road is a primary
2 residential road with a posted speed limit of 35 miles per
3 hour, a right-of-way of 70 feet up to Muncaster Mill Road to
4 the north, and then down to the south to Needwood and the
5 general vicinity.
6 MR. ORENS: And the location of the subject
7 property, what is the intersecting street?
8 MR. LENHART: Garrett Road.
9 MR. ORENS: And would you describe Garrett Road,
10 please?
11 MR. LENHART: Yes. Garrett Road is a small street
12 with a 16 to -- I beg your pardon, let me grab my -- I just
13 want to make sure I refer the correct --
14 MR. ORENS: Take your time.
15 MR. LENHART: -- width. Yes. Yes. A 40-foot --
16 I'm sorry. Thank you for indulging me. A 40-foot wide
17 right-of-way with variable pavement with 16 to 18 feet under
18 existing conditions. It used to be a through roadway, and
19 with the construction of the ICC it was bisected, and now
20 dead-ends approximately 600 feet east of Redland Road.
21 MR. ORENS: And how does it dead-end? I mean,
22 does it just stop, is there a cul-de-sac, what's there?
23 MR. LENHART: There is a cul-de-sac type of
24 turnaround that's been installed at the end, the east end.
25 MR. ORENS: And if you know, was that installed by

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1 State Highway when the ICC was built?
2 MR. LENHART: I believe that was, yes.
3 MR. ORENS: Okay. Would you describe the existing
4 traffic conditions on Redland Road, and is Redland Road the
5 primary road that will serve the subject property, and are
6 there any other roads that needed to be evaluated other than
7 Redland and Garrett?
8 MR. LENHART: To answer your question, yes, it's
9 the primary road, based upon the low number of trips here as
10 mentioned, the site is not subject to LATR analysis. And
11 with that in mind there are really not analyses of any study
12 intersections as it relates to capacity or traffic counts.
13 But we did look at Redland Road, Garrett Road, Redland Road
14 at the Redland Local Park, and Redland Road at the site
15 access, not in terms of trip generation and operational
16 level of service analysis, but more of a high level look in
17 terms of the layout, the location, and the functionality of
18 those access points and how they'll operate together.
19 MR. ORENS: If you would refer to the site plan, I
20 want to ask you a couple of questions about the relationship
21 between the park driveway entrance, and the proposed
22 driveway entrance to the subject property, and the
23 relationship between them, they are not directly across from
24 each other, is that correct?
25 MR. LENHART: That's correct.

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1 MR. ORENS: They are offset?
2 MR. LENHART: Yes, that's correct, they're offset
3 by approximately 100 feet, give or take a little bit.
4 MR. ORENS: Is a design exception going to be
5 needed to meet any of the standards?
6 MR. LENHART: Yes, a design exception is requested
7 due to the offset of those two driveways.
8 MR. GROSSMAN: Can you point to what you're
9 talking about, please?
10 MR. LENHART: Yes.
11 MR. ORENS: Can we have an exhibit that shows
12 that?
13 MR. LENHART: So, Redland Road, Garrett, and then
14 the local park, the Redland Local Park access point is
15 approximately I'm going to say 200 feet north of Garrett
16 Road, and approximately 100 feet south of our proposed
17 access on Redland Road. Approximately 300 feet, or 320
18 feet, perhaps, from Garrett Road to the property access on
19 the east side of Redland Road, and the offset between our
20 site access on the east side of Redland Road, and the local
21 park access on the west side of Redland Road, again, it's
22 about 100 feet as measured here, center line to center line
23 it's 113 feet on the site plan. And as I mentioned in my
24 supplemental letter for the record while these are offset,
25 they are offset in a positive direction, in a good

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1 direction, meaning that anybody traveling north on Redland
2 Road that wanted to make a left turn into a park, and
3 another vehicle that wanted to enter the site from
4 southbound Redland Road, making a left turn, those opposing
5 left turns northbound and southbound, would not conflict,
6 they would not be operating in the same space. If the site
7 access were actually south of the park entrance and you had
8 someone turning into the park, and someone turning into the
9 site you could end up with conflicting --
10 MR. GROSSMAN: Right.
11 MR. LENHART: -- space where those motorists are
12 trying to turn at the same time.
13 MR. GROSSMAN: What's the exhibit number of the
14 letter you're referring to? Your supplemental letter? I
15 think it's 40E.
16 MR. ORENS: Forty E, correct, dated June 21, 2016.
17 MR. GROSSMAN: Hold on one second while I take a
18 quick look at that. Okay. Okay.
19 MR. ORENS: Okay. In your opinion then, Mr.
20 Lenhart, will the offset create any safety or delay or
21 queuing problems along Redland Road?
22 MR. LENHART: No, it will not.
23 MR. GROSSMAN: Now, this, the design requirement I
24 take it you're saying is that there's a requirement that
25 these access points be opposite each other, is that --

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1 MR. LENHART: In general, yes.
2 MR. GROSSMAN: In general. And where is that
3 design requirement?
4 MR. ORENS: It's part of what we call the road
5 code.
6 MR. LENHART: Yes, I don't have --
7 MR. ORENS: We can get you --
8 MR. LENHART: -- I don't have that.
9 MR. ORENS: -- we can get you the exact --
10 MR. GROSSMAN: All right. But I guess the idea is
11 who, is there somebody that has to waive that requirement?
12 Is that, I guess that's --
13 MR. ORENS: Yes.
14 MR. GROSSMAN: And is there any, is that something
15 that I am reviewing other than the general sense of safety
16 in what you're proposing? Is there a waiver on my part?
17 MR. ORENS: No, I believe --
18 MR. GROSSMAN: Okay.
19 MR. ORENS: -- that there's a waiver on the part
20 of the Department of Transportation, and the person to whom
21 the request will be directed is Mr. Dewani, I'll spell his
22 name, A-V-I-N-A-S-H, D-E-W-A-N-I, and a design exception has
23 been discussed with DOT as part of the review process, and
24 the formal request will be made subsequent to this hearing.
25 I would suggest a condition would be that the design request

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1 has to be granted.
2 MR. GROSSMAN: Okay. So, you're saying that
3 that's an additional condition --
4 MR. ORENS: That is correct.
5 MR. GROSSMAN: -- for the special, for the
6 conditional use?
7 MR. ORENS: Right.
8 MR. LENHART: And the --
9 MR. GROSSMAN: Then I guess I will need the
10 specific --
11 MR. ORENS: We will provide that.
12 MR. GROSSMAN: -- the specific design
13 requirements --
14 MR. ORENS: Exactly.
15 MR. GROSSMAN: -- so that I can say what has to be
16 granted.
17 MR. ORENS: And we will provide that.
18 MR. GROSSMAN: Okay.
19 MR. ORENS: Okay.
20 MR. LENHART: I can talk about it more.
21 MR. ORENS: Okay. We have those with us?
22 MR. LENHART: Yes. So, this is from the DOT
23 manual policies and procedures for work within County
24 rights-of-way and easements --
25 MR. ORENS: Let's mark that as the next exhibit

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1 number.
2 MR. GROSSMAN: All right. We'll make that
3 Exhibit --
4 MR. ORENS: Fifty-eight.
5 (Exhibit No. 58 was marked for
6 identification.)
7 MR. ORENS: I have to find my list of exhibits
8 here. Okay, so 58 is the Montgomery County DOT, and what's
9 it called? Manual for --
10 MR. LENHART: Manual of policies and procedures
11 for work within County rights-of-way and easements.
12 MR. ORENS: Now, Mr. Lenhart --
13 MR. GROSSMAN: Okay. Pages?
14 MR. ORENS: -- referring to that --
15 MR. GROSSMAN: What are the pages that you're --
16 MR. LENHART: Page six --
17 MR. GROSSMAN: I think you have excerpts from this
18 manual, is that correct?
19 MR. LENHART: Yes, and I can read you the --
20 MR. GROSSMAN: And what are the pages that are --
21 MR. ORENS: And we'll put the document in.
22 MR. GROSSMAN: -- going to be the exhibit? What
23 are the pages that you --
24 MR. LENHART: Page six.
25 MR. GROSSMAN: Page six?

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1 MR. LENHART: Yes.
2 MR. GROSSMAN: Okay.
3 MR. LENHART: It states that the minimum preferred
4 tangent section between a driveway and an intersection shall
5 be 100 feet, exceptions can be granted for special
6 circumstances, for example, gas station, property line
7 limits, et cetera.
8 MR. GROSSMAN: So, it allows up to 100 feet of
9 difference, they don't have to be directly opposite each
10 other to meet that?
11 MR. LENHART: No, what that means that the minimum
12 preferred tangent section, so when you come out of our
13 driveway --
14 MR. GROSSMAN: Yes.
15 MR. LENHART: -- and you have the radius around
16 the driveway, and where that radius then becomes tangent
17 with Redland Road, at that --
18 MR. GROSSMAN: All right.
19 MR. LENHART: -- point of tangent if you measure
20 down in this case the park entrance isn't across the road,
21 but if you likewise take the radius coming out of the park
22 to the point where it becomes tangent with Redland Road, and
23 then measure the distance from that point of tangent to the
24 point of tangent with our driveway, that's a straight
25 tangent section of curve. We have 113 feet center line to

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1 center line, I don't have a scale.
2 MR. ORENS: Yes, you do.
3 MR. LENHART: I have a scale here.
4 MR. ORENS: Now you have a scale.
5 MR. GROSSMAN: Perhaps while he's doing that you
6 could let me take a look at Exhibit 58? You just marked,
7 the piece of the manual.
8 MR. ORENS: Take a deep breath.
9 MR. GROSSMAN: That would never work for me.
10 MR. LENHART: I'm going to estimate that the
11 tangent length between those two radius around the two
12 driveways are approximately 55 to 60 feet, the tangent
13 section is approximately 55 to 60 feet in length.
14 MR. GROSSMAN: Okay. So, how does that vary from
15 what is required by the regulation in question?
16 MR. LENHART: It says the minimum preferred shall
17 be 100 feet. We're --
18 MR. GROSSMAN: I see.
19 MR. LENHART: -- 55 to 60 feet.
20 MR. ORENS: Let me --
21 MR. GROSSMAN: I see.
22 MR. ORENS: If I may clarify just so, because I
23 was getting confused. Center line to center line is 113
24 feet, correct?
25 MR. LENHART: Correct.

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1 MR. ORENS: Tangent to tangent is less than 100
2 feet?
3 MR. LENHART: Yes.
4 MR. ORENS: And the preferred distance, not center
5 line to center line, but tangent to tangent is 100 feet, but
6 it's a preference not an absolute, is that correct?
7 MR. LENHART: That's correct.
8 MR. ORENS: And in order to vary from the
9 preferred distance what we call a design exception is a
10 process at the Department of Transportation that they have
11 the authority, jurisdiction, if you will, to approve, is
12 that correct?
13 MR. LENHART: That's correct.
14 MR. ORENS: And in your expert opinion is there
15 any safety or conflicting movement that would cause the
16 Department of Transportation not to approve the design
17 exception?
18 MR. LENHART: No, there's no. So, the reasons
19 stated before, the offset of the left turns is in the
20 preferred direction, number one; and number two, the
21 supplemental letter that we prepared discusses and projects
22 left turn traffic in and out of the site, and in and out of
23 the park entrance, and the turning movements in and out of
24 both are extremely low, and should not conflict with each
25 other.

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1 MR. ORENS: In your opinion then will the offset
2 driveways as depicted on the plan operate in a safe and
3 efficient manner with the design exception?
4 MR. LENHART: Yes.
5 MR. ORENS: Okay.
6 MR. GROSSMAN: Let me extrapolate that even a
7 little further. In your opinion will the other access
8 points, or all of the access points and internal circulation
9 of the proposed development operate in a safe and efficient
10 manner?
11 MR. LENHART: Yes.
12 MR. GROSSMAN: Let me go back for a second to this
13 question of the offset because I had misunderstood your
14 earlier testimony. So, the problem is if these access
15 points are too close to each other rather than, I had
16 thought you were saying that they should be either opposite
17 each other, or at some greater offset, is it, are you saying
18 that they shouldn't be opposite each other? That that's not
19 desirable?
20 MR. LENHART: No, that's either opposite each
21 other, or with a minimum preferred tangent separation of 100
22 feet.
23 MR. GROSSMAN: I see. Okay. I just wasn't -- all
24 right. So, I didn't actually misunderstand you. I just
25 wanted to make sure that was clear. Okay. All right.

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1 MR. ORENS: Okay. Site distance.
2 MR. LENHART: Site distance is adequate to the
3 south, to the north there has been discussion regarding
4 vegetation along the east side of Redland Road to the north
5 of our access that is in SHA right-of-way that once cleared
6 will resolve site distance issues and site distance will be
7 adequate.
8 MR. ORENS: Have you been advised by the Applicant
9 as to whether or not the State Highway Administration has
10 authorized the removal of the, if you will, interfering
11 plantings?
12 MR. LENHART: It's my understanding they have.
13 Yes.
14 MR. ORENS: Okay.
15 MR. GROSSMAN: Will, all of this, the question
16 with DOT, be part of the preliminary plan --
17 MR. ORENS: Yes.
18 MR. GROSSMAN: -- evaluation?
19 MR. ORENS: Absolutely.
20 MR. GROSSMAN: Well, let's hear it from --
21 MR. LENHART: Yes.
22 MR. GROSSMAN: So --
23 MR. LENHART: Absolutely.
24 MR. GROSSMAN: -- if I made the condition that
25 subject to preliminary plan approval, in order for

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1 preliminary plan to be approved DOT would have to agree to
2 the slightly reduced separation on the access points?
3 MR. LENHART: I would think that would be
4 reasonable.
5 MR. ORENS: Yes. That would be -- well, would
6 that, Mr. Lenhart, if you know, would that approval occur as
7 part of the Department of Transportation's recommendation on
8 the preliminary plan of subdivision?
9 MR. LENHART: Certainly prior to permitting, I
10 believe it would be at the time of preliminary plan, yes,
11 because they would be a referral agency in that review.
12 MR. GROSSMAN: Okay.
13 MR. ORENS: Did you -- are you familiar with the
14 internal private road and internal pathway system that was
15 proposed?
16 MR. LENHART: Yes.
17 MR. ORENS: And in your opinion will the internal
18 system operate in a safe and efficient manner?
19 MR. LENHART: Yes.
20 MR. ORENS: You were here when Mr. Packard
21 testified that the internal road system satisfies the
22 requirement of the fire and rescue services, do you agree
23 with that?
24 MR. LENHART: I do.
25 MR. ORENS: Okay.

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1 MR. GROSSMAN: Have fire and rescue services
2 opined on this yet themselves, or is this part of
3 preliminary plan, also?
4 MR. ORENS: Mr. Packard?
5 MR. PACKARD: Dean Packard to answer that. Yes,
6 we have shared our plan, and Marie Labar (phonetic sp.) of
7 the fire and rescue services is, agrees with, says our
8 design complies. Yes.
9 MR. GROSSMAN: Has she done it officially, or is
10 she just --
11 MR. PACKARD: Officially it'll be part of the
12 preliminary plan process.
13 MR. GROSSMAN: Okay. All right. Okay.
14 MR. ORENS: I would proffer that there was a Staff
15 meeting that included the Department of Transportation, the
16 Fire Marshal, and Park and Planning at which these issues
17 were discussed, and all three departments agreed that at
18 preliminary plan that the proposed design would be approved.
19 MR. GROSSMAN: Okay.
20 MR. ORENS: Bike path, we also heard Mr. Packard
21 testify, is there going to be a bike path? If so, where is
22 it going to be located?
23 MR. LENHART: Yes, there's a master plan on-road
24 bike path along Redland Road, and we are proposing to
25 construct a five-foot bike path along the east side of

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1 Redland Road on our frontage.
2 MR. ORENS: Is this project subject to
3 Transportation Policy Area review requirements?
4 MR. LENHART: It is.
5 MR. ORENS: And what are those for this one?
6 MR. LENHART: The Derwood area is this area, it's
7 passing for transportation, and failing for transit, or
8 passing for roadways, failing for transit, therefore it
9 would be required to pay a 25 percent impact tax of the,
10 TPAR impact tax on the transportation impact tax.
11 MR. ORENS: And is that part of the preliminary
12 plan provision?
13 MR. LENHART: That is, yes.
14 MR. ORENS: I have nothing further.
15 MR. GROSSMAN: Gee, I just had another question
16 but it's fled my mind as I was thinking about it. All
17 right. Well, in any event, okay. I take it we now have
18 a -- any additional exhibits?
19 MR. ORENS: Anything that we've got? No.
20 MR. GROSSMAN: All right. So, we have Exhibits 1
21 through 58 and their subparts, I take it you wish them all
22 admitted?
23 MR. ORENS: I do.
24 MR. GROSSMAN: All right. That motion is granted,
25 they are all admitted.

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1 (Exhibit Nos. 1-58 were
2 received into evidence.)
3 MR. GROSSMAN: And as well, I will admit any
4 additional things you have to file based on what we have
5 talked about here, and the response of Technical Staff, I
6 will admit their response, as well. When I e-mail them a
7 request for an additional information on compatibility for
8 the landscaping screening, that exchange will be part of the
9 record in both directions --
10 MR. ORENS: And --
11 MR. GROSSMAN: -- and I will CC you on the --
12 MR. ORENS: And I, can I presume I will have an
13 opportunity to comment on their comment, if necessary?
14 MR. GROSSMAN: Absolutely. So, will -- the
15 question is how long the record needs to remain open for
16 that? I would plan to e-mail them this afternoon, actually.
17 Let me get my calendar out here. All right. So, today is
18 the 14th. Do you think that 10 days will be sufficient for
19 them to respond?
20 MR. ORENS: Should be, but I doubt it.
21 MR. GROSSMAN: Now, don't be cynical now. That
22 would be the 24th of October, so why don't we say that we'll
23 ask them to respond by October 24. How much time do you
24 want to respond to whatever they say?
25 MR. ORENS: Same amount, 10 days.

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1 MR. GROSSMAN: Okay. So, that would be November 3
2 for Applicant's response. Is there any other time period
3 that we need to build into this, or that would be it?
4 MR. ORENS: I don't think so, Mr. Examiner, I
5 think that --
6 MR. GROSSMAN: I think that would be --
7 MR. ORENS: -- you should be able to close the
8 record at that point.
9 MR. GROSSMAN: Okay. So, and the record will
10 remain open for that purpose only, not for additional -- and
11 if there's public comment on what Technical Staff says, or
12 what you, you know, they can respond to that, but the record
13 will not remain open for additional public input on
14 everything else that we have had because that's what this
15 public hearing was for.
16 MR. ORENS: I agree.
17 MR. GROSSMAN: Okay. And so, the record will
18 remain open until the close of business on November 3. Did
19 we have anything else that we were going to have submitted
20 during that period of time?
21 MR. ORENS: The only other thing is I would ask
22 permission to remove the rendered plan so that we may copy
23 it.
24 MR. GROSSMAN: Yes. You can certainly do that. I
25 am -- let's see.

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