

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
PETITION OF : Case No. S-2882  
HAWTHORN DEVELOPMENT, LLC : OZAH No. 15-07  
:  
:  
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A hearing in the above-entitled matter was held on October 19, 2015, commencing at 9:51 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson  
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Robert R. Harris, Esq.

Lerch, Early & Brewer

3 Bethesda Metro Center, Suite 460

Bethesda, Maryland 20814

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Dan Roach	8	--	--	--
Dan Wilhelm	43	--	--	--
Bill Vest	48	--	--	--
Scott Dunn	54	--	--	--

E X H I B I T S

Exhibit No.		Marked/Received
51	Resume of Dan Roach	9
52	PowerPoint Presentation	14
53	Aerial Photo of Vicinity	32
54	Resume of Bill Vest	48
55	Resume of W. Scott Dunn	54

1 P R O C E E D I N G S

2 MS. ROBESON: This is a public hearing in the  
3 application of Board of Appeals Case No. S-2882, OZAH Case  
4 No. 15-07, requesting a special exception for a 141 bed  
5 domiciliary care facility located at 13716 New Hampshire  
6 Avenue, Silver Spring, Maryland.

7 My name is Lynn Robeson, I'm the hearing examiner  
8 in the case. I'm going to take all the evidence and  
9 testimony today. I will make a recommendation to the Board  
10 of Appeals, who will have the final decision on the case.

11 The Board of Appeals, for anyone -- I don't know if there's  
12 any one new to this process, but the Board of Appeals does  
13 not take any additional evidence. So, whatever you have to  
14 say on the case, you need to say it today. All right?

15 Would the parties identify themselves for the record.

16 MR. HARRIS: Good morning. For the record, I'm  
17 Bob Harris, with Lerch, Early & Brewer, representing the  
18 applicant.

19 MR. ROACH: Dan Roach, with Lenity Architecture,  
20 speaking on behalf of Hawthorn Retirement Group.

21 MS. ROBESON: Thank you.

22 MR. WILHELM: I'm Dan Wilhelm, President of  
23 Greater Colesville Citizen's Association.

24 MS. ROBESON: Okay.

25 MR. HARRIS: Ma'am, we do have two other witnesses

1 who will be speaking. We can either introduce them now or  
2 later, whichever you prefer.

3 MS. ROBESON: Later is fine, thanks. Is there  
4 anyone here that is not going to be called by the applicant,  
5 except for Mr. Wilhelm? Okay, I see two hands. Okay, what  
6 we'll do is, each party gets to make an opening statement.  
7 The applicant will present their testimony, and you can  
8 question -- all the testimony is under oath and subject to  
9 cross-examination. So, you may ask questions of the  
10 applicant's witness. The applicant can ask questions of  
11 you.

12 MR. HARRIS: Madam Examiner, I probably should  
13 have explained this before. The young woman behind me is an  
14 associate attorney in our office. She'd better not question  
15 me.

16 MS. ROBESON: Well, welcome. Do you want to  
17 introduce yourself?

18 MS. ROGERS: I'm Liz Rogers, with Lerch, Early &  
19 Brewer.

20 MS. ROBESON: Well, welcome. Welcome to Land Use.  
21 Yes, sir?

22 MR. MESS: I am Charles Mess, and I am the owner  
23 of the property.

24 MS. ROBESON: Oh, okay.

25 MR. MESS: I'm here to --

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1 MS. ROBESON: To support it?  
2 MR. MESS: Yes.  
3 MS. ROBESON: Oh, wow, okay. Well now we're down  
4 to Mr. Wilhelm. So that's okay. All right. Well, with  
5 that, do you want to make an opening statement?  
6 MR. HARRIS: Just one thing that I would want to  
7 clarify. We do have three witnesses, each will have certain  
8 testimony, and Mr. Roach has a short PowerPoint presentation  
9 he's going to offer. I want to clarify one thing for the  
10 record. I know there was some communication back and forth  
11 with staff about the special exceptions in the area, and the  
12 report back to you was correct, that there are three in the  
13 area. But, the reality is that two of them are accessory  
14 apartments. And, the third one is the 2881 case --  
15 MS. ROBESON: The other one.  
16 MR. HARRIS: -- the other that was just approved.  
17 I think he had listed the -- one of the special exceptions  
18 is -- what was it Liz?  
19 MS. ROGERS: A telecommunications company.  
20 MR. HARRIS: Right.  
21 MS. ROBESON: Well, I have to tell you, we do have  
22 a lot of new staff, so what I've asked him to do -- but I  
23 would like your expert to clarify, because I don't know what  
24 -- what I've done is asked him to characterize the area,  
25 which he really didn't do, you know, as far as -- is it

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1 primarily residential? Is it residential with commercial?  
2 If there's non-residential along the road? The other thing  
3 I've asked him to do is, readdress those issues. Now, I  
4 would like if your expert, who is maybe more familiar with  
5 this type of thing, I would like him or her to address that,  
6 if that's acceptable to you.  
7 MR. HARRIS: We will try to do that, sure.  
8 MS. ROBESON: Then I at least have something in  
9 the record that addresses the issue. Okay?  
10 MR. HARRIS: Yes, exactly. We will try to do  
11 that.  
12 MS. ROBESON: I appreciate that. So that is the  
13 one outstanding item. I was hoping to get something back to  
14 me by today, but I may have to -- well, we normally leave  
15 the record open 10 days to include the transcript. So, I'm  
16 going to tell him get it in by sundown. Okay?  
17 MR. HARRIS: Okay.  
18 MS. ROBESON: So thank you for that. I'm glad you  
19 raised it. Now, anything else?  
20 MR. HARRIS: I'm sorry. One other prefatory  
21 statement or comment. I did see the Planning Board did  
22 submit a letter indicating their decision to recommend this  
23 at their worksession, a week and a half or so ago, and we  
24 were obviously pleased with that. What the letter doesn't  
25 reflect is that they were very complimentary as to the

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1 changes that the applicant made.  
2 MS. ROBESON: The reduction in the height?  
3 MR. HARRIS: Yes, that's correct.  
4 MS. ROBESON: Okay. All right.  
5 MR. HARRIS: Okay. So, our first witness will be  
6 Dan Roach.  
7 (Witness sworn.)  
8 BY MR. HARRIS:  
9 Q Let me ask your name and position.  
10 MS. ROBESON: Address.  
11 BY MR. HARRIS:  
12 Q And address, yes.  
13 A Sure.  
14 MS. ROBESON: Oh, before we start, did you have an  
15 opening statement, Mr. Wilhelm?  
16 MR. WILHELM: Well, you have in the record a copy  
17 of the letter I sent Park and Planning, to say we support  
18 this. I'm more here to clarify issues, or if something  
19 comes up to help yourself understand the question you asked,  
20 I can also explain what's going on around the area.  
21 MS. ROBESON: Okay. Let's get to that when your  
22 time to testify comes. All right.  
23 MR. HARRIS: And, Mr. Wilhelm has been very great  
24 to work with, he and his organization, on this. It's been a  
25 pleasure.

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1 MS. ROBESON: Awesome.  
2 BY MR. HARRIS:  
3 Q Dan, your name?  
4 A My name's Dan Roach. I'm a partner with Lenity  
5 Architecture. My street address, my work address, 3150  
6 Kettle Court, Southeast. That's in Salem, Oregon. I'm a  
7 partner and shareholder in Lenity Architecture. I'm also  
8 the architect of record for this project, and as well as the  
9 other application, I'm the architect of record there as  
10 well.  
11 MS. ROBESON: That's 2881, you mean?  
12 MR. ROACH: Yes. So, I can answer in terms of  
13 some nuances on the differences in the uses, if that was the  
14 question you need.  
15 MS. ROBESON: Wonderful. Well -- go ahead.  
16 MR. HARRIS: I've passed out a copy of a brief  
17 resume for Mr. Roach. Let's see, can we have that marked as  
18 an exhibit?  
19 MS. ROBESON: I think it's 51, because we did  
20 accept the affidavit of posting as 50. So, 51 will be  
21 resume of Daniel Roach.  
22 (Exhibit No. 51 was marked for  
23 identification.)  
24 BY MR. HARRIS:  
25 Q Would you highlight what your professional

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1 qualifications are?  
2 A Again, I'm a partner and a shareholder in Lenity  
3 Architecture. I've been a licensed architect since 1998.  
4 I'm licensed in over 40 states in the U.S., and three  
5 Canadian Provinces. I've been working with Hawthorn for,  
6 well, most of my architectural career. I've been involved  
7 in more than 200 senior housing projects. I'm the architect  
8 of record on approximately 75 of those. I'm a member of the  
9 American Institute of Architects. I'm certified by --  
10 MS. ROBESON: Okay, I'm convinced that you have a  
11 lot of experience. Are you asking to qualify him as --  
12 MR. HARRIS: Yes, ma'am. As an expert in land  
13 planning architecture. Land planning and architecture.  
14 MS. ROBESON: Okay. Are you licensed in Maryland?  
15 MR. ROACH: I am.  
16 MS. ROBESON: Okay. Have you ever testified as an  
17 expert before?  
18 MR. ROACH: In Maryland?  
19 MS. ROBESON: No, anywhere.  
20 MR. ROACH: Yes. Yes, regularly.  
21 MS. ROBESON: Okay. I am going to -- I'm sorry,  
22 Mr. Harris, it was land planning and?  
23 MR. HARRIS: And architecture.  
24 MS. ROBESON: And architecture. I'm going to  
25 qualify you as an expert. Do you have any objection?

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1 MR. WILHELM: No.  
2 MS. ROBESON: Okay. Go ahead, Mr. Roach.  
3 MR. ROACH: Okay. Well, I'd like to start, first  
4 of all, with a slide presentation just quickly go over  
5 Hawthorn's experience. The principals of Hawthorn  
6 Retirement Group have been involved in senior housing for  
7 approximately 30 years. They started back in the '70's with  
8 multi-family housing, but soon got into senior housing.  
9 They were the creators of Holiday Retirement Corporation,  
10 which was, at the time, one of the largest providers of  
11 senior housing in the country. In 2006 they sold, and the  
12 principals of Hawthorn Retirement -- or the Holiday  
13 principals formed Hawthorn Retirement Group. It's  
14 essentially the same family that started in the '70's.  
15 But, throughout their history, they've provided  
16 senior housing for more than 35,000 seniors in the U.S.  
17 Well really in North America. We have projects all over the  
18 United States, Canada, some in the UK, and other countries.  
19 So they have quite an extensive history in serving seniors.  
20 Currently we're working on projects in Maine, North  
21 Carolina, Washington, Massachusetts. You see the list here.  
22 All over North America. Hawthorn produces, with Lenity  
23 Architecture, we work on probably 10 to 12 projects a year,  
24 and have been doing so for quite a number of years.  
25 Lenity Architecture has a long history with

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1 Hawthorn Retirement Group. We're the fourth iteration of a  
2 company that started with then Holiday Retirement back then.  
3 I've been involved, as I said earlier, I've been involved  
4 with this group for 20 years. But we're -- one of the  
5 services that we provide for them is exactly this, besides  
6 the architecture, we provide land use and entitlement  
7 services for them. So we regularly speak on their behalf.  
8 So we have an intimate knowledge of their operations. So,  
9 it's a service that we offer.  
10 In terms of the senior housing spectrum, which I  
11 think is probably important to note right off the bat,  
12 they're really levels of care for seniors. Probably the  
13 most basic level is senior apartments or age restricted  
14 living. The next level would be independent or congregate  
15 care, or domiciliary care, in this case, which is what we're  
16 offering. Those would be folks who -- a friend that I work  
17 with, calls it Friday night services -- things that you --  
18 the lifestyle you want to have on Friday night, you don't  
19 want to cook, you don't want to clean, you don't want to  
20 deal with the house, you just want to relax and have a nice  
21 evening. Hawthorn provides that for their residents year  
22 round. And we'll talk about the specific services in a few  
23 minutes.  
24 The next level would be assisted living or  
25 assisted living memory care, which is the other application.

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1 MS. ROBESON: You mean S -- when you say other  
2 application, S-2881?  
3 MR. ROACH: Yes, S-2881, yes. So that is an  
4 assisted living memory care. That's the next level.  
5 MS. ROBESON: Okay, I understand.  
6 MR. ROACH: So, that will be a licensed care  
7 facility where residents might need help with bathing or  
8 taking medication, or even sometimes eating. Then there's  
9 another portion of that building that's for memory care  
10 folks who might either suffer from dementia, Alzheimer's, or  
11 some sort of injury that might affect their memory. So it's  
12 a different -- it's a different use. It's a complimentary  
13 use. Oftentimes these are located near each other, and the  
14 two buildings -- well, they compliment each other. Folks  
15 may, in some situations, folks may be living in an assisted  
16 living and they're being over served, so they find they're a  
17 better fit in an independent living, such as this  
18 application. Or, the opposite, they're not getting enough  
19 services, so they'll move over to a different facility. So  
20 that's how those uses work together.  
21 The next level would be nursing. So again, folks  
22 who may actually be confined to a bed. And then, of course,  
23 the very last would be any end of life services. So that's  
24 kind of the senior housing spectrum.  
25 MR. HARRIS: Excuse me, let me interrupt. We have

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1 a hand-out of the presentation here.  
2 MS. ROBESON: Okay, unless there's any objections,  
3 this is going to be 52, which is the PowerPoint  
4 presentation.  
5 (Exhibit No. 52 was marked for  
6 identification.)  
7 MS. ROBESON: Okay, go ahead, Mr. Roach.  
8 MR. ROACH: So the next slide here shows, I  
9 apologize it's a little washed out here. But, the next  
10 slide here really shows the site in two directions. On the  
11 left is our site, and then, New Hampshire Boulevard to the  
12 north, and the slide on the right is our site and New  
13 Hampshire Boulevard to the south. And, what we wanted to  
14 show here was the real nature of the neighborhood. New  
15 Hampshire is a six lane state highway, a divided state  
16 highway. It's a major transportation corridor for the area.  
17 It provides direct access to the inter-county connector to  
18 the north, and Randolph Road to the south.  
19 There are homes along New Hampshire that face New  
20 Hampshire. But, some of those have been converted to small  
21 businesses. Most of the newer subdivisions that are along  
22 New Hampshire are -- they have access to New Hampshire, but  
23 the neighborhoods themselves are really perpendicular, so  
24 they kind of -- they access the neighborhood -- the  
25 neighborhood is created by an internal road rather than on

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1 New Hampshire Avenue itself. To the south of our site is a  
2 major commercial district with full service retail. There  
3 are franchise restaurants, gas stations, that sort of thing.  
4 It's a major --  
5 MS. ROBESON: It's making me hungry.  
6 MR. ROACH: To the north of our site is primarily  
7 churches of all sizes. Directly adjacent to our site is  
8 quite a large church that's very active to the north.  
9 MS. ROBESON: Is that the Cambodian Buddhist?  
10 MR. ROACH: It's the Cambodian Society, yes. And  
11 then, in a few slides you'll see the assisted living that is  
12 proposed further up. But, the point of the slide is really  
13 to show that the -- New Hampshire Boulevard is really a  
14 neighborhood unto itself. It doesn't really reflect a  
15 residential neighborhood per se. It's that corridor kind of  
16 establishes its own neighborhood which is more business.  
17 MS. ROBESON: You mean the uses directly abutting  
18 650 are more non-residential in nature, and then behind them  
19 are the single family neighborhoods?  
20 MR. ROACH: Yes.  
21 MS. ROBESON: Okay.  
22 MR. ROACH: Yes. It kind of happens in layers.  
23 MS. ROBESON: Okay.  
24 MR. ROACH: Correct. The next few slides are  
25 existing views. This is the view of the site as it is with

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1 a single family home that's actually a commercial operation.  
2 It's a business. And then here again, is our site. Again,  
3 a closer view to the north is the Cambodian Buddhist  
4 Society, which you see there is quite a large operation with  
5 parking immediately adjacent to the north. And then to the  
6 south, there are some residential uses, but what's important  
7 is, right in here is a rather large --  
8 MS. ROBESON: Okay, let me just stop you for one  
9 second. We have a transcript. So when you say here, the  
10 transcript doesn't know, and that's what the Board reviews.  
11 So, if you could just kindly describe what you're pointing  
12 to.  
13 MR. ROACH: So, to the south of the site, along  
14 the south property line, about midway along the property  
15 line --  
16 MS. ROBESON: Directly below the yellow --  
17 MR. ROACH: Directly below the yellow star  
18 indicating the site, is a structure that is a hobbyist  
19 garage, as our neighbor describes it, where they're  
20 repairing automobiles and things of that nature.  
21 MS. ROBESON: I see.  
22 MR. ROACH: So, it's sort of a quasi-business use.  
23 MS. ROBESON: Okay. And what does business on the  
24 subject property?  
25 MR. ROACH: I believe it's a tax office.

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1 MS. ROBESON: Okay, that's fine.  
2 MR. MESS: CPA.  
3 MR. ROACH: And here is an aerial with our site  
4 superimposed on the -- our proposed site superimposed on it.  
5 You see that we have access to New Hampshire. Direct access  
6 to New Hampshire Avenue. What's proposed is a right in,  
7 right out. And we can talk about that later when we get  
8 into the traffic. But, what I wanted to demonstrate here is  
9 how much open space is around the site. It's quite  
10 spacious. The building is set back. We'll have some closer  
11 shots here in a minute, but the building is set back from  
12 the southern property line, as that's our nearest  
13 residential neighbor.  
14 This slide shows, well, just that -- the distances  
15 to our nearest occupied structures. The majority of the  
16 buildings that you see here are residential. The structure  
17 that's directly across New Hampshire to the east is a  
18 church, but the remaining are single family residences. But  
19 you see our closest neighbor is 160 feet away. So it's  
20 quite a distance.  
21 Looking at local senior housing needs, there is a  
22 definite need in the area. We've got the statistics here to  
23 show -- part of this was extracted from Hawthorn's -- they  
24 did a market analysis. But also, a lot of the information  
25 here is from the Maryland Department of Planning. But you

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1 can see here the senior housing -- or the need for senior  
 2 housing -- is going to increase considerably. I think the  
 3 point of this slide, is my last bullet point here, we've  
 4 identified nine facilities within seven miles of our  
 5 facility. And, at this point, they're anywhere from 90 to  
 6 100 percent full, and some with waiting lists. So, the  
 7 senior housing is not keeping up with demand, especially in  
 8 the area.

9 So the residents and the lifestyle. Typically our  
 10 residents are in their 80s. They do not require medical  
 11 assistance in contrast to other uses. The folks generally  
 12 live within 10 miles. They generally don't drive, or  
 13 perhaps shouldn't drive, so their kids might want them to  
 14 give up the keys. Services include meals, housekeeping,  
 15 activities, on-site management, transportation and  
 16 utilities. And there are no buy-in fees. So there's a  
 17 couple of important points, by providing these services, for  
 18 example, meals, they're provided in a central dining area.  
 19 Because of that, there is not a lot of demand on water and  
 20 sewer in the area because folks aren't cooking in their  
 21 suites. There is not a lot of water usage.

22 By providing on-site management, the residents are  
 23 -- they're safe around the clock. But also, neighbors have  
 24 someone to interact with should they have any questions or  
 25 comments with management. They're not calling Oregon.

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1 They're dealing with the folks right there on-site. The  
 2 transportation is probably the most important element for a  
 3 couple of different reasons. Most people, when they get to  
 4 the point in their life where they don't want to drive, or  
 5 they shouldn't be driving, they're looking for our services,  
 6 but we're also, by providing transportation, we're relieving  
 7 a lot of the transportation demands in the area. So, folks,  
 8 we're still taking them to their doctors and to shopping,  
 9 and all of the things that they need to do. But often,  
 10 we're doing it off peak, because when we're all going to  
 11 work, they're having a meal. So it kind of lightens the  
 12 load on the traffic.

13 And lastly, the buy-in fees. This is an important  
 14 model for Hawthorn. By not having a buy-in fee, residents  
 15 -- literally, they put \$100 down, and they pay their first  
 16 month's rent. There's a one year lease agreement to secure  
 17 the rent, but it's not a long term contract. It's not a  
 18 huge commitment. So, many residents in the area are going  
 19 to be able to move in without a great financial commitment.  
 20 So it's within financial reach of a lot of people.

21 I think it's also important to say this is a  
 22 privately funded -- Hawthorn is privately funded, so we  
 23 don't seek any sort of tax dollars to operate. The site,  
 24 itself, it's a transitional site. It buffers -- our use  
 25 buffers the residents to the south from some of the uses

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1 such as the church to the north of us. We're located near  
 2 single and multi-family neighborhoods so that the residents  
 3 who live in the area can still feel like they're part of the  
 4 area. They don't have to move away to change their  
 5 lifestyle. We have excellent access to city services with  
 6 no impact on traffic, especially during peak hours. We've  
 7 got ample parking for our staff and guests, and we'll be  
 8 providing a landscape open park-like setting for the  
 9 residents, and for the neighborhood to enjoy.

10 Here's our site. The two arrows here are  
 11 indicating the two major segments of the building. This is  
 12 really a three and four-story building. So, on the left  
 13 side, the arrow on the left side is pointing to the four-  
 14 story. The arrow on the right side is pointing to the  
 15 three-story wing end, and it's not only -- and you'll see in  
 16 a building elevation here, but not only has the one-story  
 17 been removed, the building itself has been offset by one  
 18 floor depth. So we're essentially 20 feet difference from  
 19 ridge to ridge.

20 MS. ROBESON: Okay.

21 MR. ROACH: The next two arrows here indicate the  
 22 one and two-story sections of the building. The idea of the  
 23 building, itself, is to step down as we go closer to  
 24 entrance points for residents, so that the building achieves  
 25 more of a pedestrian scale. The roof cascades down to one

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1 and two-stories in a lot of areas so folks feel -- so it  
 2 feels more residential, less institutional. The site has  
 3 access off New Hampshire. Again, we'll be having a right  
 4 in, right out. This arrow also, if you look just north of  
 5 the entrance there you'll see where we're proposing a small  
 6 monument sign for the building.

7 MS. ROBESON: Okay. Is that a path on the north  
 8 side?

9 MR. ROACH: Around the back of the building,  
 10 that's a fire access lane.

11 MS. ROBESON: Oh, a fire access lane. Okay.

12 MR. ROACH: Yes. Now, you will notice though that  
 13 there is a circulation path around the entire building. The  
 14 residents, part of the program is to provide recreation,  
 15 outdoor recreational space, for the residents. So, we  
 16 designed a path that not only connects to the right-of-way,  
 17 but circulates throughout the site.

18 MS. ROBESON: Oh, I see it.

19 MR. ROACH: So a resident could walk around the  
 20 entire building as their exercise for the day, and often  
 21 they do.

22 MS. ROBESON: Okay. That's the white shown on the  
 23 site plan?

24 MR. ROACH: Yes.

25 MS. ROBESON: Okay.

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1 MR. ROACH: Yes, immediately adjacent to the  
2 building.  
3 BY MR. HARRIS:  
4 Q Would you explain the activities on the north side  
5 of the building, as well?  
6 A Yes. We've got a number of activities spaces.  
7 We've got a bocce court, which seems to be pretty popular  
8 these days. We've got some raised planter beds. We've got  
9 a fire pit. A lot of areas for the folks to go outside and  
10 enjoy themselves while they're still on the premises. I  
11 think it's important to note the lighting. The lighting  
12 fixtures will be full cutoff. The parking lot fixtures are  
13 about anywhere from 12 to 14 feet tall, so they're fairly  
14 short as parking lot standards go. We'll meet dark sky  
15 requirements.  
16 MS. ROBESON: What is dark sky requirements?  
17 MR. ROACH: Dark sky means basically, from the sky  
18 you're not up-lighting. Hotels have a tendency to do this,  
19 they want you to see them from the highway. We don't do  
20 that. We don't wash the building in light. Really, the  
21 only up-light that we have, if we're allowed to is up-light  
22 on the flag. We usually have a flag standard.  
23 MR. ROBESON: Okay. Mr. Harris, is he the person  
24 to ask about lighting?  
25 MR. HARRIS: Yes, he can. And I'll point out the

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1 record, Exhibits 42G and H, contain the site lighting and  
2 photometric plans.  
3 MS. ROBESON: I think I looked at the photometric  
4 plan, and I think I'm reading it wrong, because I thought it  
5 said zero point -- we have a standard of 0.1 at the property  
6 line, and I'm not sure the photometric plan was showing me  
7 the property line. Can you just address -- I thought there  
8 were some areas that were 0.2. And it's 42, you're correct,  
9 Mr. Harris, it's 42G. And, if you look on the southern,  
10 there's a couple of places on the southern, in the bio-  
11 retention facilities where it says 0.2, 0.2. But then, just  
12 below it, it says zero, zero, zero. So, I guess, I'm -- can  
13 you just address that because that is a requirement.  
14 There's one also over where the label, private fence to be  
15 field located, there's another one there. And there's some  
16 on the, a few on the north side. So, I'm not sure if  
17 they're reflecting what it is at the property line, because  
18 right on the property line on the southern end it's all  
19 zero, zero, zero, zero.  
20 MR. ROACH: The intention, of course, is zero at  
21 the property line. I think graphically --  
22 MS. ROBESON: Is that plus sign -- tell me this --  
23 is that plus sign, is that the location where the reading is  
24 -- if you want to approach, I'll show you where I'm talking  
25 about. That may be faster. So is this microbiorentention?

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1 MR. ROACH: Yes.  
2 MS. ROBESON: Now I'm looking at it upside down.  
3 MR. ROACH: Yeah.  
4 MS. ROBESON: See here, this says .2.  
5 MR. ROACH: Right. But if you look -- this is the  
6 property line.  
7 MS. ROBESON: Okay, that was my question. Okay.  
8 So at the property line it's zero?  
9 MR. ROACH: Yes.  
10 MS. ROBESON: That's not the property line. All  
11 right. The .2s are not located at the property line?  
12 MR. ROACH: Correct.  
13 MS. ROBESON: Okay. That was my question.  
14 Thanks.  
15 MR. ROACH: And it's not an exact science, but  
16 just in detail, the fixtures themselves have, literally have  
17 shields.  
18 MS. ROBESON: Full cutoff?  
19 MR. ROACH: Yes. So that the light goes down and  
20 not out.  
21 MS. ROBESON: Okay.  
22 MR. ROACH: It is important. You know, we do,  
23 again, we don't wash the building in light. We do have  
24 fixtures at the patios for the residents. But it's more  
25 residential. Conceptually, the concerns neighbors would

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1 have about light, we would also have on-site. We don't want  
2 it to be bright. We don't want it to feel like you're at a  
3 shopping mall. So we want it to feel residential. So the  
4 lighting reflects that. In terms of path lighting, they're  
5 small down lights so the residents can get around.  
6 MS. ROBESON: That's fine. As long as it's zero  
7 at the property line, I'm good with that.  
8 MR. ROACH: Okay. The next slide is our landscape  
9 plan. I think the important note here is that the site will  
10 be extensively landscaped. In particular though, along the  
11 southern property line, we'll have a fence, and also as  
12 Staff had recommended, and we agree with, a lot of Evergreen  
13 trees planted along the southern property line for  
14 screening, anywhere from 8 to 10 feet at planting. So we're  
15 going to do that.  
16 MS. ROBESON: What type of fence, board-on-board  
17 or?  
18 MR. ROACH: It'll be a wood fence. We do what we  
19 call a good neighbor fence. So it actually has two sides,  
20 so there will be alternating --  
21 MS. ROBESON: Oh, okay, I understand.  
22 MR. ROACH: Yeah. So, I mean, you could, if you  
23 got down on the fence, you could look through it, but as you  
24 look directly at it, they'll be quite a bit of privacy.  
25 MS. ROBESON: That's fine.

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1 MR. ROACH: And the site does feature more than a  
2 hundred trees throughout.  
3 BY MR. HARRIS:  
4 Q Is that trees being planted or existing today?  
5 A Planted, yes.  
6 MS. ROBESON: And, does the -- I get my zoning  
7 ordinances -- in the 2004 zoning ordinance there's some  
8 requirements for parking, shading and, you know, the trees  
9 have to shade a particular -- someone's saying yes, yes. Do  
10 you meet those requirements?  
11 MR. ROACH: Yes.  
12 MS. ROBESON: Okay.  
13 MR. ROACH: Yes, we do.  
14 MS. ROBESON: Good. All right, thanks.  
15 MR. ROACH: And, here again, are the building  
16 elevations that the arrows indicate the three-story section  
17 that we recently created. So you can see that the top and  
18 bottom elevations are probably the best to describe what  
19 we've done. You can see that it's three stories, and we've  
20 offset it one floor height.  
21 MS. ROBESON: I see. And the B elevation is what  
22 faces New Hampshire?  
23 MR. ROACH: Yes.  
24 MS. ROBESON: Okay.  
25 MR. ROACH: Yes. And, I've got some perspectives

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1 that show that. In fact, we're getting into that now. So,  
2 and this probably shows up better on --  
3 MS. ROBESON: It does.  
4 MR. ROACH: But, you see here, this is a model of  
5 the siting context, and we've also modeled some of the  
6 structures in the neighborhood so you can see kind of how it  
7 fits in. But, this demonstrates the offset pretty well, we  
8 think.  
9 MS. ROBESON: I see it. It does, that's quite  
10 helpful.  
11 MR. ROACH: And another shot from the south, you  
12 can see the offset as well. And, to the north of us, you  
13 can see the proposed assisted living memory care on the  
14 other side, literally, on the other side of the Cambodian  
15 Society.  
16 MS. ROBESON: Okay.  
17 MR. ROACH: But again, we think both uses will be,  
18 will compliment each other very well. This is a view to the  
19 southwest from New Hampshire Boulevard, so you can see the  
20 building. The grade sinks down a little there, but you see  
21 the impact is pretty minimal.  
22 MS. ROBESON: Okay.  
23 MR. ROACH: And this is moving north, viewing  
24 southwest. You're moving just a little north of the site.  
25 And there's some existing trees between us and the Cambodian

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1 Society that are pretty substantial. They're on their  
2 property, so they'll remain. But it wanted to show there  
3 that the screening from our, especially in this direction,  
4 is quite significant. And this is to the northwest. Again,  
5 you can see both, both proposals. But this is from across  
6 the street looking west, kind of northwest. This is from  
7 Notley, I believe. Yes, I believe. And you can see this  
8 is, you can see the other structures and ours off in the  
9 distance there. This is also up at the top of the hill on  
10 Notley looking down northeast. And, you can see our  
11 building, but it's not a huge impact.  
12 This is a conceptual view to the entry. There are  
13 a couple differences in what we will be building. First of  
14 all, the monument sign won't be there. And then also, on  
15 the right side of the slide where you see that four-story  
16 section, the very right side, that wing is actually, we've  
17 taken a story off and we've dropped it down. This rendering  
18 doesn't reflect that, unfortunately.  
19 So here are some photos of actual buildings that  
20 we've built. This is a project that we did in Massachusetts  
21 a couple of years ago, that's quite successful. But it is a  
22 four-story. It's in a similar area, similarly located on a  
23 major street close to residential, and close to businesses.  
24 But I wanted to show you kind of the fit and finish, and  
25 level of quality that the building will have. And also, the

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1 landscaping.  
2 MS. ROBESON: Okay.  
3 MR. ROACH: Here's a shot in the courtyard behind  
4 the building, quite extensively landscaped and the public  
5 spaces are, we feel like, are pretty exciting for the  
6 residents.  
7 MS. ROBESON: Okay.  
8 MR. ROACH: The typical building layout. The  
9 building, as I said, there are a variety of services that we  
10 provide our residents. The building itself, the blue area  
11 is all of the common space. It's about 30 percent of the  
12 building is open space for residents to recreate. We've got  
13 a dining room, a private dining area. We've got a movie  
14 theater, beauty salon, exercise rooms. Just lots and lots  
15 of spaces for the residents to enjoy themselves. The orange  
16 and the yellow areas, those are some of the resident suites.  
17 And then the gray is some of the service areas.  
18 These are typical studio and one bedroom plans.  
19 The arrows are indicating the sleeping areas, and also sort  
20 of the kitchenettes. We, as I said, all the meals are  
21 included in the rent. But they do have areas in their  
22 suites where they can, if they want to heat up something or  
23 have a friend over and do a little entertaining, we've given  
24 them a three quarter high refrigerator, and kind of a  
25 convenience sink, and some cabinets. There are no cooking

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1 facilities. If a resident wants to have a microwave, they  
2 can. We don't supply that, but we do wire for it.  
3 But the other thing to show here is that, 99  
4 percent of the suites have balconies. So they all have  
5 access to the outside. They either have patios or  
6 balconies. The next is a two bedroom plan showing again,  
7 the sleeping areas and the kitchenette. But they're pretty  
8 spacious. The units, the suites vary anywhere from 450  
9 square feet on a studio to 900 to 1100 square feet for a two  
10 bedroom.  
11 MS. ROBESON: Okay.  
12 MR. ROACH: Some photos of actual suites of the  
13 residents you can see here.  
14 MS. ROBESON: All right.  
15 MR. ROACH: This is a photo of the main dining  
16 area that you can see is quite open. It's a two-story  
17 space. It's pretty -- this is the main activity space, so  
18 lots and lots happens, there's lots and lots of activity  
19 that happens here. And then some seating areas that are  
20 just off the main dining area. But again, more  
21 opportunities for folks to socialize and recreate. Private  
22 dining. If a resident wants to celebrate a birthday, have  
23 their family over, you've got the facility just to do that.  
24 We also have in one of the areas, I don't have a photo of it  
25 here, but we do have areas for, if a resident wants to cook,

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1 we have, in the activity room, we do have a kitchen that  
2 they can use to cook, if they want to bake cookies, or make  
3 something for a party, they certainly can. A coffee lounge.  
4 Again, another opportunity for folks to socialize.  
5 Library. And this is one we're particularly proud  
6 of. We do have a movie theater, it's for the residents  
7 only. But this was an idea we had a few years ago, and  
8 we've worked through many iterations, but we're pretty proud  
9 of how it's turned out. It's very successful. But again,  
10 this is not the kind of thing where you have -- we're not  
11 charging admission.  
12 MS. ROBESON: Right, right.  
13 MR. ROACH: So it's just for the residents to come  
14 and enjoy themselves. Regarding the zoning standards --  
15 MR. HARRIS: Before we get to that, let me  
16 interrupt here one minute, and pass out another exhibit  
17 here. And, I apologize for the crude nature of this. I  
18 wasn't fully prepared on this until ten minutes --  
19 MS. ROBESON: We take crude.  
20 MR. HARRIS: Yes, indeed.  
21 MS. ROBESON: Okay. This will be 53. Can you  
22 just describe what this is, Mr. Harris?  
23 MR. HARRIS: This is an aerial photograph of the  
24 vicinity of the special exception, showing New Hampshire  
25 Avenue running through the center of it. It does go beyond

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1 the area identified by the Staff as the neighborhood. But  
2 it does show other special exceptions both within the  
3 neighborhood and beyond it.  
4 MS. ROBESON: Okay, wonderful. Thank you very  
5 much.  
6 (Exhibit No. 53 was marked for  
7 identification.  
8 BY MR. HARRIS:  
9 Q Mr. Roach, looking at this, would you identify  
10 where the site is on this?  
11 A It's the star. So that would be right there.  
12 Q Okay. And the crosshatched box north of the star,  
13 can you describe what that is?  
14 A That would be the site S-2881, the assisted living  
15 memory care that's a special exception that was recently  
16 approved.  
17 Q Okay. And then the box to the right on the east  
18 side of New Hampshire Avenue, S-2573, can you describe what  
19 that is?  
20 A The accessory apartment use, that special  
21 exception there.  
22 MR. HARRIS: And Madame Examiner, that is the  
23 special exception that the Staff had incorrectly identified  
24 as a telecommunications facility.  
25 MS. ROBESON: I was wondering. Okay. There's no

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1 real difference between an accessory apartment and a  
2 telecommunication facility, is there?  
3 MR. HARRIS: Yeah, right. There is a  
4 telecommunication facility down in the Cloverly area, where  
5 the Verizon Dial Center is. But that's outside of the  
6 neighborhood, and not this, yes.  
7 BY MR. HARRIS:  
8 Q And then so, and then further to the east, S-1099,  
9 can you identify that?  
10 A That's also an accessory apartment special  
11 exception.  
12 MR. HARRIS: Now that is, Madame Examiner, outside  
13 of the area that the Staff identified as the neighborhood,  
14 but we thought we'd show it just because it was nearby.  
15 MS. ROBESON: Okay.  
16 BY MR. HARRIS:  
17 Q And then going northward on New Hampshire Avenue,  
18 1388?  
19 A A child daycare.  
20 MR. HARRIS: And, we searched the records, Madame  
21 Examiner, that special exception has been revoked, so it's  
22 no longer in place.  
23 MS. ROBESON: Great. Thank you.  
24 BY MR. HARRIS:  
25 Q And then, CBA-3034, can you identify what that is?

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1 A Is that an accessory apartment there?  
2 Q No. I'm sorry. Yeah, you weren't briefed on --  
3 that's also outside of the neighborhood, I think.  
4 MS. ROBESON: It is.  
5 MR. HARRIS: That happened to be a non-resident  
6 dentist, but also revoked. And then S-1367, I think they  
7 identified that within the neighborhood.  
8 MR. ROACH: Accessory apartment.  
9 MR. HARRIS: And, I believe that still exists.  
10 And then S-80, which again, is outside of the identified  
11 neighborhood.  
12 MS. ROBESON: Correct. Correct.  
13 MR. ROACH: Which is a riding stable.  
14 BY MR. HARRIS:  
15 Q So, to your knowledge, is that the extent of the  
16 special exception uses both in the neighborhood and  
17 immediately adjoining?  
18 A Yes.  
19 Q Okay, thank you.  
20 MS. ROBESON: And, in your opinion, is this going  
21 to represent -- the addition of this, after reviewing  
22 Exhibit 53, is the approval of this going to result in an  
23 over concentration of special exceptions in the  
24 neighborhood?  
25 MR. ROACH: In my opinion, no.

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1 MS. ROBESON: Okay. Can you just explain that  
2 briefly?  
3 MR. ROACH: Well, some of the special exceptions  
4 that are -- I think probably because of the use. If you're  
5 looking at the concentration of the special exception uses,  
6 I don't think that it would be an over concentration. It's  
7 not changing the nature of the neighborhood, which I think  
8 is the goal of limiting the number of special exceptions.  
9 The neighborhood itself is already changed from, I think the  
10 original residential that it was perhaps years ago.  
11 MS. ROBESON: Along New Hampshire.  
12 MR. ROACH: Along New Hampshire Avenue. So I  
13 don't think that this is changing anything that's already  
14 going on, so it wouldn't -- so it's not an over  
15 concentration, in my opinion.  
16 MS. ROBESON: Let me just go through. I think the  
17 ones that are in the neighborhood, and correct me if I'm  
18 wrong, is S-1367, which is an accessory apartment, correct?  
19 MR. ROACH: Yes.  
20 MS. ROBESON: And then there's 2881, which is the  
21 related facility. And then the only other one that might be  
22 in the neighborhood, I'm not sure, is S-2573, which is also  
23 an accessory apartment, correct? What I'm getting at is --  
24 MR. HARRIS: I'm showing him a copy of the  
25 neighborhood map that the Staff had prepared.

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1 MS. ROBESON: Sure.  
2 MR. ROACH: So, if you look at, really there is,  
3 well, one has been revoked. But, again, I think,  
4 considering the goal of limiting special exceptions and over  
5 concentration would really change the nature of the  
6 neighborhood, and I don't think that these two -- or that  
7 this special exception would change -- is really changing --  
8 MS. ROBESON: Well, what I'm getting out is, do  
9 you agree that the special exceptions that are in the  
10 neighborhood have a relatively low impact, two accessory  
11 apart -- the ones that I see are two accessory apartments.  
12 MR. ROACH: Uh-huh.  
13 MS. ROBESON: So, this in addition to the -- just  
14 the minor accessory apartments, would you agree that it  
15 doesn't, you know, the other two, the accessory apartments,  
16 have a minimal impact on the neighborhood?  
17 MR. ROACH: Yes.  
18 MS. ROBESON: Okay.  
19 BY MR. HARRIS:  
20 Q And, are you aware whether the Staff and the  
21 Planning Board concluded, made that same conclusion?  
22 A They did.  
23 MS. ROBESON: Okay, all right. Thank you. Go  
24 ahead. I may have interrupted your flow.  
25 MR. ROACH: No, that's fine. So, the next slide

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1 here, I think that, well, really, the next couple of, the  
2 next part of my presentation is really the standards that we  
3 need to meet. I've got a couple of slides here that show  
4 some of the physical standards, zoning standards on the  
5 site.  
6 MS. ROBESON: Okay, and this is in the PowerPoint?  
7 MR. ROACH: Yes, it is. This is slide no. 34 and  
8 35. And, you can see here what the standards are. What's  
9 required and what we provided. And without going through  
10 every single one of them, I wanted to point out a couple of,  
11 what we feel are fairly important ones. First of all, the  
12 side yard, the side yard minimum is 12 feet. We're  
13 providing 60 plus feet. It varies as you move along the  
14 property line, but the minimum that we're providing is 60  
15 feet. On the rear yard, what's required is 30 feet. We're  
16 providing 113 feet. And then, the street setback from New  
17 Hampshire, what's required is 40 feet, and we're providing  
18 131 feet. So, we feel like, we feel that the design is,  
19 provides ample buffer all the way around the site to all of  
20 the uses.  
21 MS. ROBESON: Okay.  
22 MR. ROACH: And again, just here showing, this  
23 outlines the setbacks that I just read, basically.  
24 MS. ROBESON: Motorcycle spaces?  
25 MR. ROACH: Yes.

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1 MS. ROBESON: I know. I know it's in the  
2 ordinance. I'm teasing.  
3 MR. HARRIS: I had a chuckle over that one as  
4 well.  
5 MR. ROACH: It's even funnier when you do  
6 motorcycle spaces in Oregon when it rains constantly.  
7 MS. ROBESON: Yeah, right.  
8 MR. ROACH: So, the next part of the presentation,  
9 I actually just wanted to go through -- our supplemental  
10 letter of justification, of support.  
11 MR. HARRIS: Exhibit 42A, Madame Examiner.  
12 MS. ROBESON: Okay.  
13 MR. ROACH: And, I wanted to just read, just a  
14 couple of the headings and talk about them. I wanted to  
15 read sections 4, 7 and 8. So, starting on page 7 of 19,  
16 section 4, special exception standards for domiciliary care.  
17 The zoning ordinance does allow this kind of facility in  
18 this area provided we meet certain standards. And I'll just  
19 read here, shown as subsequent statement, the Silver Spring  
20 retirement residence meets the standards of the special  
21 exception requirements for its use. Each item is addressed  
22 below. Portions of that code that do not -- we just, we  
23 struck out sections that didn't matter or that didn't  
24 pertain.  
25 MS. ROBESON: Okay, that's fine.

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1 MR. ROACH: (a) A nursing home of any size or  
2 domiciliary care for more than 16 residents may be allowed  
3 if the Board can find it as a prerequisite that the use will  
4 not adversely affect the present character or future  
5 development of the surrounding residential community due to  
6 bulk traffic, noise and number of residents. The use will  
7 be housed in buildings architecturally compatible with other  
8 buildings in the surrounding neighborhood, and the use will  
9 be adequately protected from noise, air pollution and other  
10 potential dangers.  
11 This is technically, again, although this is  
12 technically an institutional use, it's a very low intense  
13 use. The building itself is residential in nature.  
14 Hopefully, I've demonstrated that in the slides. We're  
15 compatible with the area. Because of the use, we're low  
16 impact because of our traffic and water usage, and some of  
17 the other things that I've outlined. The proposed density  
18 is a compatible use within this area, and the number of  
19 residents meets the threshold of density limitations in the  
20 code, so we're not too big.  
21 MS. ROBESON: Okay.  
22 MR. ROACH: Let's see. Additionally, as detailed  
23 in section 5 below, the building greatly exceeds the minimum  
24 setback requirements for such uses in the zone, which are  
25 deemed appropriate to ensure compatibility. So we've

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1 provided enough buffer between us and the neighbors to be  
2 compatible. We've also located our activity spaces to the  
3 north, on the north side of our facility, so our neighbors  
4 along the south aren't going to be disturbed by any of our  
5 activity. We also provide a quiet buffer between ourselves  
6 and our neighbors to the south. And we are below the limit  
7 for the number of beds that are required. We are currently  
8 proposing 155 beds, so we're below that standard.  
9 MS. ROBESON: I thought you were down to 141.  
10 MR. ROACH: That's beds. 141 suites equals 155  
11 beds.  
12 MS. ROBESON: Oh, okay.  
13 MR. ROACH: Yes. So we had to look at it from two  
14 points. There's a unit and a bed calculation.  
15 MS. ROBESON: Okay.  
16 MR. ROACH: We also meet, well, as I showed in the  
17 slide before, we either meet or exceed all of the  
18 development standards for this.  
19 MS. ROBESON: Okay.  
20 MR. ROACH: So in the next section, is how we  
21 conform with the White Oak Master Plan. And there's quite a  
22 bit here, so if it gets to be too tedious, just tell me to  
23 quit reading.  
24 BY MR. HARRIS:  
25 Q Let me interject here one thing. You're speaking

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1 from Exhibit 42A.  
2 A Yes.  
3 Q And, is it fair to ask you whether you adopt the  
4 content of that statement as testimony of yours?  
5 A I do.  
6 MS. ROBESON: Thank you. I don't know if we, if  
7 since you've adopted it as your own testimony, I don't think  
8 you, unless someone has questions, I don't think we have to  
9 go through everything. The only question I would have is  
10 just, I think, there's language somewhere in this master  
11 plan saying that, something like the special exceptions  
12 along New Hampshire shouldn't impact the residential  
13 character of neighborhoods. But, I could be wrong. But,  
14 can you just address that briefly?  
15 MR. ROACH: Well, --  
16 MS. ROBESON: Oh here, well you've got it. So  
17 you've got it in here. Special exception, page 24, evaluate  
18 new request and their impact on the character of the  
19 neighborhood. Okay. Require new requests for special  
20 exception uses along major transportation corridors be  
21 compatible with their surroundings. So just, if you could,  
22 I'm looking on page 13 of 42A, there's a quote from the  
23 master plan. So, if you could address that, otherwise we  
24 can, you know I will accept this as your own testimony.  
25 MR. ROACH: Well, in terms of impact, we actually,

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1 I feel like we have a positive impact. We're not taking  
2 away from the neighborhood. We're certainly adding to it  
3 because of the residential character of the building,  
4 because of our generous setbacks, because of our low traffic  
5 generation, our low noise generation, and light generation,  
6 we feel like -- and, addressing the need in the area, we  
7 fell like it's, all of this equals positive impact to the  
8 neighborhood. We're certainly adding to it rather than  
9 taking away.

10 MS. ROBESON: Okay. So, the rest you're adopting  
11 as your own testimony?

12 MR. ROACH: Yes.

13 MS. ROBESON: Okay.

14 BY MR. HARRIS:

15 Q Okay, let's turn to the conditions for, the  
16 general conditions for a special exception that are outlined  
17 at pages 14 through 18, I think, of this, in order to  
18 abbreviate this proceeding, with the hearing examiner's  
19 consent, those all, do you adopt those statements as part of  
20 your testimony as well?

21 A I do.

22 MS. ROBESON: Okay.

23 MR. HARRIS: Thank you. I think that's all we  
24 have for Mr. Roach, unless you have any questions or Mr.  
25 Wilhelm does.

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1 MS. ROBESON: Okay. Mr. Wilhelm, do you have any  
2 questions or are you here basically to make a statement?

3 MR. WILHELM: Well, I'd like to clarify a couple  
4 of things with him. It doesn't change the gist of what he's  
5 talking about, but just clarify for the record.

6 MS. ROBESON: Okay, as long as it's in questions,  
7 you know, to him.

8 MR. HARRIS: For what it's worth, Madame Examiner,  
9 if you're comfortable with it, and Mr. Wilhelm wants to  
10 speak now, and then he could be dismissed, because that  
11 would be fine with us.

12 MS. ROBESON: Okay, why don't we do that, and then  
13 you can address whatever he says.

14 (Witness sworn.)

15 MS. ROBSEON: Please state your name and address  
16 for the record.

17 MR. WILHELM: I'm Dan Wilhelm. I live at 904  
18 Cannon Road, Silver Spring, Maryland 20904.

19 MS. ROBESON: Okay, thank you. Go ahead.

20 MR. WILHELM: On Exhibit 53, I'd just like to  
21 clarify special exception S-280, or special exception 80,  
22 the riding stable one?

23 MS. ROBESON: Yes.

24 MR. WILHELM: The last time I was involved with  
25 this property was about two years ago. The state owned that

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1 property, when they bought when they built the ICC, it  
2 remains vacant, and I didn't know it was a special exception  
3 on it, but it's, the last time I was there it was empty and  
4 we were trying to get it occupied because it's an eyesore at  
5 this point.

6 MS. ROBESON: Okay, so the S-80 is defunct is what  
7 you're saying?

8 MR. WILHELM: It's defunct. They took so much  
9 land for the ICC. There isn't really space for a riding  
10 stable anymore.

11 MS. ROBESON: Okay, thank you for that  
12 clarification.

13 MR. WILHELM: So actually that helps the  
14 applicant.

15 MS. ROBESON: Yes.

16 MR. HARRIS: Thank you for the clarification.

17 MR. WILHELM: Actually, the place is infested by  
18 snakes.

19 MS. ROBESON: Now that changes the character of  
20 the neighborhood.

21 MR. WILHELM: Yes, we wanted to have them taken  
22 care of. But anyway, the other thing is on, I think it was  
23 your briefing Exhibit 52.

24 MS. ROBESON: I think that's the PowerPoint.

25 MR. WILHELM: The PowerPoint. And on page 8 of

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1 that PowerPoint, anyway, this is where you've got local  
2 senior housing facilities in the area.

3 MS. ROBESON: Oh, okay.

4 MR. WILHELM: There's two other senior housing  
5 facilities in Colesville, and I thought they were  
6 independent living, but you can maybe clarify. One is at  
7 Randolph and, basically at the intersection of Fairland.

8 And the other one is on Randolph, I want to say about a mile  
9 from New Hampshire Avenue to the west. And these are --

10 MS. ROBESON: Wait, where's the first one?

11 MR. WILHELM: On Randolph. On East Randolph at --

12 MS. ROBESON: At Fairland?

13 MR. WILHELM: At Fairland.

14 MS. ROBESON: Okay, and where's the other one?

15 MR. WILHELM: The other one is on Randolph about a  
16 mile west of New Hampshire Avenue. I don't remember. I  
17 thought they were independent living, but I'm not sure.

18 It's been a long time since I've looked. I don't think --

19 my point is just to clarify in the record, his point is  
20 senior housing is still needed. I agree with that  
21 statement.

22 MS. ROBESON: Okay. You just are being more  
23 exact?

24 MR. WILHELM: I'm trying to be more exact.

25 MS. ROBESON: Are you an attorney?

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1 MR. WILHELM: I'm an engineer.  
 2 MS. ROBESON: That's even worse. Yeah, okay.  
 3 Okay, go ahead.  
 4 MR. WILHELM: I find it comes back to bite us if,  
 5 sometimes if you're not exact.  
 6 MS. ROBESON: Okay, I appreciate that.  
 7 MR. WILHELM: But he may know if they're senior,  
 8 or independent living or not. I don't remember.  
 9 MR. ROACH: I don't have the market analysis in  
 10 front of me. What Hawthorn's market analysis generally does  
 11 is, we look at operations that we consider competition. So,  
 12 if it was left off of our report for some reason they're  
 13 offering something that we would think is not in competition  
 14 with us. That's basically, so --  
 15 MS. ROBESON: But now we know they're there.  
 16 MR. WILHELM: They're there, and they're a  
 17 reasonable size, and as far as I know, they're pretty  
 18 occupied. I don't deal with them, but I still agree with  
 19 the statement that there's a need for senior housing in the  
 20 area.  
 21 MS. ROBESON: Okay. Now, is there anything else  
 22 you'd like to say, and then Mr. Roach can address it?  
 23 MR. WILHELM: I guess from the community  
 24 standpoint, we view New Hampshire Avenue mostly as  
 25 residential. There's a number of churches up and down New

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1 Hampshire Avenue. As you pointed out, there's a number of  
 2 special exceptions. And, I guess the bottom line, we don't  
 3 think the special exception changes that character of the  
 4 neighborhood.  
 5 MS. ROBESON: Okay, thank you.  
 6 MR. WILHELM: But, we view it more as a  
 7 residential nature, and there's a lot of churches up and  
 8 down New Hampshire Avenue.  
 9 MS. ROBESON: Okay.  
 10 MR. WILHELM: A few years ago the Washington Post  
 11 characterized New Hampshire Avenue as highway to heaven, so.  
 12 MS. ROBESON: Actually, I guess I should disclose,  
 13 I have driven this part of New Hampshire, and there are a  
 14 lot of churches. I often get in trouble because I'm  
 15 looking, some of them are unusual too.  
 16 MR. WILHELM: Yes. The last time I counted, which  
 17 has been a number of years, we had 12 churches within GCCA  
 18 boundary, and there's been more added since then. A number  
 19 of them have been converting houses, but there's also the  
 20 big ones like the Cambodian Temple.  
 21 MS. ROBESON: Okay. Any response to that  
 22 testimony?  
 23 MR. HARRIS: No, ma'am.  
 24 MR. ROACH: Other than thank you.  
 25 MS. ROBESON: Okay, anything else from Mr. Roach?

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1 MR. HARRIS: No, I don't think so.  
 2 MS. ROBESON: Okay, thank you very much, Mr.  
 3 Roach. You may be excused. And your next witness is?  
 4 MR. HARRIS: Next witness is Bill Vest.  
 5 MS. ROBESON: I'm sorry, can you spell that? Or  
 6 he'll have to spell it.  
 7 (Witness sworn.)  
 8 BY MR. HARRIS:  
 9 Q Mr. Vest, would you state your name, business  
 10 address, and position for the record, please?  
 11 A Sure. My name is Bill Vest. I work with Timmons  
 12 Group. Our address is 20110 Ashbrook Place, Suite 100,  
 13 Ashburn, Virginia. I've been with Timmons Group for 12  
 14 years. I am the Office Manger in our Ashburn location.  
 15 MS. ROBESON: Okay, just for the record, Exhibit  
 16 54 is resume of Bill Vest.  
 17 (Exhibit No. 54 was marked for  
 18 identification.)  
 19 MS. ROBESON: Go ahead, Mr. Harris.  
 20 BY MR. HARRIS:  
 21 Q Maybe we could cut right to the chase. You've  
 22 been admitted as an expert in civil engineering and  
 23 landscaping here in a prior special exception?  
 24 A Yes, sir.  
 25 MS. ROBESON: In the S-2881?

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1 MS. HARRIS: 2881, yes, ma'am.  
 2 MS. ROBESON: Okay. I will accept you as an  
 3 expert in traffic engineering.  
 4 MR. VEST: Civil.  
 5 MS. ROBESON: Oh, civil engineering. Okay, sorry.  
 6 Go ahead.  
 7 BY MR. HARRIS:  
 8 Q Did you prepare a report that was submitted with  
 9 the original application involving -- that addressed  
 10 engineering and environmental issues?  
 11 A Yes, sir. We prepared an engineering and  
 12 environmental assessment of the site.  
 13 MR. HARRIS: Madame Examiner, that is identified  
 14 in the record as Exhibit 16.  
 15 MS. ROBESON: Okay.  
 16 BY MR. HARRIS:  
 17 Q And, we'll go into more detail, but do you adopt  
 18 that report as your testimony here today?  
 19 A Yes, sir.  
 20 Q Okay. So, tell us a little bit about the site  
 21 topography and how that relates to this application?  
 22 A Okay. Not to sound too much like an engineer, but  
 23 the site, we looked at the site for constructability. The  
 24 site does have a considerable amount of fall from the west  
 25 to the east. So, from the west to New Hampshire has about

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1 22 foot of fall. The drainage is working from west to east  
2 on the site. It has silt loam soil type, so it's very well  
3 drain and suitable for construction of this type.  
4 Q Let's turn to storm drainage and storm water  
5 management. Have you also looked at those issues for this  
6 application?  
7 A We have. We did a conceptual storm water  
8 management design for the site looking at implementing as  
9 many ESDs as we could to the site.  
10 MS. ROBESON: To the maximum extent practicable?  
11 MR. VEST: To the maximum extent possible,  
12 practical, yes, ma'am. Not only are we going to use  
13 bioretention, which is an infiltration practice to recharge  
14 groundwater. We are also going to use pervious pavement to  
15 also promote infiltration. And the site has a tremendous  
16 amount of landscaping, as you can see. So that's also going  
17 to be part of our environmental site design.  
18 BY MR. HARRIS:  
19 Q And has the Park and Planning Staff done initial  
20 reviews of that in connection with their evaluation of the  
21 special exception?  
22 A Yes.  
23 Q And do they agree that the site can provide  
24 suitable storm drainage and storm water management?  
25 A Yes, sir.

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1 Q And will that be addressed more specifically at a  
2 preliminary plan of subdivision application?  
3 A Yes, sir.  
4 Q Okay. Turning to erosion and sediment control  
5 during construction. Can you give a brief synopsis of how  
6 this application will address those issues?  
7 A Sure. Following County standards, the site will  
8 have a multi-phase ENS plan, Erosion and Sediment Control  
9 Plan, where perimeter controls will go in first to ensure no  
10 sediment laden material or stormwater runs off to either  
11 property to the north, south, or to New Hampshire. So full  
12 perimeter controls will be in place. There will be  
13 inspections throughout construction monthly, plus after a  
14 large storm event to ensure those controls are in place.  
15 The site will also have a safety fence, especially along New  
16 Hampshire Avenue, so no pedestrians wander into the  
17 construction site.  
18 Q And again, will those issues be addressed at  
19 preliminary plan and at building permit?  
20 A Yes, sir.  
21 Q In terms of the natural resource inventory and  
22 forest stand delineation, did you submit one and was it  
23 approved by Park and Planning Staff?  
24 A Yes, sir, on both. NRI was prepared, so was a  
25 forest stand delineation. Both were prepared, submitted and

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1 approved.  
2 Q Is the site within any special protection area?  
3 A It is not. It is within the Paint Branch and  
4 North Branch. But, however, is not within any special  
5 protection areas.  
6 Q Are there any forest streams, wetlands, flood  
7 plane or environmental constraints?  
8 A No, there are not, which make this an ideal  
9 development site along New Hampshire.  
10 Q Have you prepared a preliminary forest  
11 conservation plan?  
12 A Yes, we have.  
13 Q And, does that meet the requirements of the  
14 County's forestry standards?  
15 A It does.  
16 MS. ROBESON: Has that been approved?  
17 MR. VEST: It has been approved. There are --  
18 MS. ROBESON: By the Planning Board?  
19 MR. VEST: By Amy Lindsey of the Staff.  
20 MS. ROBESON: Is it in the record?  
21 MR. HARRIS: It is in the record. That is part of  
22 the Staff report.  
23 MS. ROBESON: Okay. You don't have to explain. I  
24 just couldn't remember. Okay, go ahead.  
25 BY MR. HARRIS:

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1 Q In terms of utility service, is there available  
2 utility service for the site?  
3 A There are available utilities to the site  
4 including water, sanitary sewer, gas, telephone,  
5 telecommunication and electric. They'll all be extended to  
6 the site. Underground water will circulate the building for  
7 fire protection. As Mr. Roach pointed out, water use for  
8 this site is actually less than the average dwelling unit.  
9 It's significantly lower, so they'll be less burden on the  
10 water, and then for the sanitary sewer for this concentrated  
11 use.  
12 Q In terms of noise, do you have any concern about  
13 being able to address the County's noise requirements?  
14 A No concerns to address. The building  
15 construction, the setback from New Hampshire, plus the  
16 extensive landscaping should mitigate any noise impact  
17 either from the building or to the building itself.  
18 Q In terms of public services and facilities. Do  
19 you have any knowledge about the anticipated effect of this  
20 facility?  
21 A I do not anticipate any adverse effects to any of  
22 the public utilities, including the roads, schools.  
23 Obviously, I don't think there's going to be too many school  
24 children coming from this use. Although there might be  
25 volunteers from the facility to local schools, but as far as

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1 police, fire protection, or any of the utilities we just  
2 talked about, I don't envision any adverse impact from this  
3 development.  
4 Q Okay. And I think one of your colleagues is going  
5 to address traffic.  
6 A Yes, sir.  
7 MR. HARRIS: We have no other questions for Mr.  
8 Vest.  
9 MS. ROBESON: Do you have any corrections, Mr.  
10 Wilhelm?  
11 MR. WILHELM: No, ma'am.  
12 MS. ROBESON: You may be excused.  
13 MR. HARRIS: Okay, our last witness is Scott Dunn.  
14 MS. ROBESON: Good job, Mr. Harris. Not like the  
15 other case.  
16 MR. HARRIS: A lot different about that.  
17 MS. ROBESON: Thank you. I think we're up to 55,  
18 will be resume of W. Scott Dunn.  
19 (Exhibit No. 54 was marked for  
20 identification.)  
21 (Witness sworn.)  
22 MS. ROBESON: Go ahead, Mr. Harris.  
23 BY MR. HARRIS:  
24 Q Mr. Dunn, would you state your name and business  
25 address, and position for the record?

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1 A Sure. My name is Scott Dunn. I'm a Senior  
2 Project Manager with Timmons Group. My address is 1001  
3 Boulders Parkway, Suite 300, Richmond, Virginia 23235.  
4 MS. ROBESON: Thank you.  
5 BY MR. HARRIS:  
6 Q And, I forgot to ask you beforehand whether you  
7 have been admitted as an expert in Montgomery County before?  
8 A No. No, sir, I have not.  
9 Q Have you testified as an expert in civil  
10 engineering and transportation engineering in other cases?  
11 A Yes, sir, I have.  
12 Q Okay.  
13 MR. HARRIS: Madame Examiner, we offer Mr. Dunn as  
14 an expert in both civil engineering and transportation  
15 engineering, although today his testimony would concern  
16 transportation issues.  
17 MS. ROBESON: Okay, you're qualified in Maryland  
18 now.  
19 MR. DUNN: Two states now.  
20 BY MR. HARRIS:  
21 Q Okay. So, have you looked at this application in  
22 connection with the County's transportation and traffic  
23 requirements? And, if so, what conclusions have you  
24 reached?  
25 A Yes. Looked at the application, and based on the

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1 number of units being proposed and calculated the trip  
2 generation estimate based on the ITE numbers which, when  
3 compared to what was contained in the Staff report, were  
4 very similar, somewhat consistent. They calculated with a  
5 different method, but they are in about the same range.  
6 MS. ROBESON: Well, they have to use a particular  
7 method. Are you using the LATR method?  
8 MR. DUNN: Well actually, if they calculated the  
9 trip generation estimates based off information provided by  
10 the client. If you look at the LATR rates in the appendix,  
11 they're actually less than what is shown in the Staff  
12 report. So the Staff report is conservative with respect to  
13 the traffic.  
14 MS. ROBESON: We have many new people at Planning.  
15 Well, you know, just for the record.  
16 MR. DUNN: Sure. Sorry to confuse things.  
17 MS. ROBESON: No, it's not. Just tell me the LATR  
18 numbers. That's all I want to know, because that's what I'm  
19 bound by. I'm not bound by what you tell Staff.  
20 MR. DUNN: Using the trip generation rates from  
21 the LATR, the proposed development will generate five  
22 morning trips and 10 afternoon trips.  
23 MS. ROBESON: So it's lower than what Staff said?  
24 MR. DUNN: Yes.  
25 MS. ROBESON: Okay. Well, that's good news,

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1 right?  
2 MR. DUNN: It is. And, you know, again, the  
3 Staff's numbers and these numbers are both below the 30 trip  
4 threshold.  
5 MS. ROBESON: Yes.  
6 BY MR. HARRIS:  
7 Q So, is it your understanding then that it is de  
8 minimis and that it is considered acceptable?  
9 A It is. We are looking at an impact of anywhere  
10 from five to seven peak hour vehicles at each of the  
11 adjacent crossovers which will have minimal impacts on the  
12 road. We have about 3,000 cars during the a.m. and p.m.  
13 peaks out there.  
14 MS. ROBESON: Okay. Do you mind just giving me  
15 your numbers again?  
16 MR. DUNN: The numbers from the LATR?  
17 MS. ROBESON: Yes.  
18 MR. DUNN: Yes. The morning peak was 5 trips.  
19 And the afternoon was nine. And, that was based on the trip  
20 generation rates shown on --  
21 MS. ROBESON: Is that the ITE?  
22 MR. DUNN: No, that's actually the LATR in the  
23 appendix, Table 1-2.  
24 MS. ROBESON: All right. Okay, that's good news.  
25 It's all good.

1 BY MR. HARRIS:

2 Q And, let's see, have you also looked at the access  
3 to and from the site on New Hampshire Avenue and, if so,  
4 does that meet County and State standards?

5 A Yes. One access point proposed is a right in,  
6 right out on a median divided highway. There's no potential  
7 for people to exit, make a left hand turn. And based on the  
8 Staff report, and information obtained from the State  
9 Highway Administration, there are no foreseeable problems  
10 with it. It's replacing the existing driveway.

11 MS. ROBESON: There was, I think in the Staff  
12 report there were some concerns about a U-turn, having to  
13 make a U-turn. Can you just address those for the record?

14 MR. DUNN: Sure. In the Staff report it's  
15 indicated there may be a potential for up to four northbound  
16 U-turns at Orchard Drive. The crossover there is sufficient  
17 width, and actually provides 24 foot of storage given the  
18 turn lane and the existing median.

19 MS. ROBESON: Okay.

20 MR. DUNN: So, vehicles exiting Orchard Lane to  
21 make a left hand turn to head south on New Hampshire will be  
22 able to drive across, stop in the middle, and proceed south.  
23 Those making a U-turn, there's sufficient distance for those  
24 people to stay closer to the median nose, and not interfere  
25 with the crossing traffic.

1 MS. ROBESON: Okay. All right.

2 BY MR. HARRIS:

3 Q And based on the traffic volumes for New Hampshire  
4 Avenue, do you see any problem being created by the  
5 estimated four U-turns?

6 A No. The traffic generated by the entire site is  
7 approximately one percent of the existing traffic on the  
8 road. And again, the adjacent Cambodian Temple does not  
9 generate a lot of traffic in the morning or afternoon peak.

10 MS. ROBESON: Non-peak?

11 MR. DUNN: Exactly.

12 MS. ROBESON: Non-peak traffic?

13 MR. DUNN: Yes.

14 MR. HARRIS: We have no further questions for Mr.  
15 Dunn.

16 MS. ROBESON: Good answer. Mr. Wilhelm?

17 MR. WILHELM: I have no comments.

18 MS. ROBESON: You don't want to take on another  
19 engineer, here?

20 MR. WILHELM: I'm a communications engineer.

21 MS. ROBESON: Oh, okay.

22 MR. WILHELM: But, I'm very big into traffic, and  
23 there's -- the amount of traffic in here is minimal. And, I  
24 tell people actually to use U-turns coming out of the  
25 neighborhood, it's a lot safer. And, because trying to

1 cross six lanes of traffic is a bear. So, I encourage  
2 people to do it, but a lot of people think I'm crazy, but  
3 that's, I think U-turns is the way to go.

4 MS. ROBESON: Okay. Well, anything else, Mr.  
5 Harris?

6 MR. HARRIS: We have nothing else. No, ma'am.

7 MS. ROBESON: Would you like to make a closing  
8 statement?

9 MR. HARRIS: I'm pleased to have wrapped up this  
10 hearing so quickly. I'm pleased to have the Staff support.  
11 The Planning Board support, and Mr. Wilhelm's support.  
12 Thank you.

13 MS. ROBESON: Well, I really do appreciate -- I  
14 have to tell you, I appreciate your very thorough  
15 presentation. It was very nice and accurate. Anyway, I do  
16 appreciate it, and with that, what I'm going to do is this,  
17 I don't want to hold you guys up for Staff. So, I do have  
18 to keep the record open for 10 days to get the transcript  
19 in. So, 10 days is -- today's the 19th -- the 29th. If  
20 that's a weekend, then it'll be the following business day.  
21 But I'm going to keep the record open. I see Mr. Harris, do  
22 you --

23 MR. HARRIS: The 29th, that's a Thursday, ma'am.

24 MS. ROBESON: Okay. I'm going to keep the record  
25 open until the 29th. I'm going to ask Staff for comments no

1 later than the 24th. And that, you know, if you want to say  
2 something about their comments, it'll be, you know, you can  
3 submit something on the 29th. And then we'll get the  
4 transcript also, and we'll be good to go.

5 MR. HARRIS: And, just -- you had started out this  
6 morning by talking about Staff comments that had to do with  
7 the neighborhood and the impact that this would have on the  
8 neighborhood?

9 MS. ROBESON: Exactly.

10 MR. HARRIS: Okay. Fine, thank you.

11 MS. ROBESON: And that's it. I mean, I feel  
12 comfortable from what you've presented today that I enough  
13 to make a decision. But since I've asked Staff, I'm going  
14 to let them respond, okay?

15 MR. HARRIS: That sounds fine. Okay.

16 MS. ROBESON: And there's definitely no  
17 telecommunications tower in the neighborhood. Yes, sir?

18 MR. MESS: The 24th is a Saturday. Does that have  
19 any effect on your --

20 MS. ROBESON: Oh yes. Yes. I rushed in here  
21 without my calendar. I apologize. The 26th. Does that  
22 give you enough time -- I don't think Staff is going to say  
23 anything that's --

24 MR. HARRIS: No. They've been very supportive, so  
25 I'm -- that's perfectly fine with us.

1 MS. ROBESON: Okay. I do appreciate -- thank you  
2 for the thorough presentation, and with that, I'm going to  
3 adjourn the hearing, and the record will be open until the  
4 29th.

5 MR. HARRIS: Thank you.

6 MS. ROBESON: Thank you.

7 (Whereupon, at 11:13 a.m., the hearing was  
8 concluded.)  
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1 C E R T I F I C A T E

2 DEPOSITION SERVICES, INC., hereby certifies that  
3 the attached pages represent an accurate transcript of the  
4 electronic sound recording of the proceedings before the  
5 Office of Zoning and Administrative Hearings for Montgomery  
6 County in the matter of:

7 Petition of Hawthorn Development, LLC

8 Special Exception No. S-2882

9 OZAH No. 15-07  
10  
11

By:

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14  
15 Keena Lukacinsky, Transcriber  
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<b>\$100 (1)</b> 19:15	<b>addressing (1)</b> 42:6	<b>along (15)</b> 7:2;14:19,21;16:13, 14;25:10,13;35:11,12; 37:13;40:4;41:12,20; 51:15;52:9	<b>approximately (3)</b> 10:8;11:7;59:7	<b>away (4)</b> 17:19;20:4;42:2,9
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