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Transcript of Hearing - Day 2

Date: June 1, 2022

Case: Heritage Gardens Land, LLC

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Transcript of Hearing - Day 2
Conducted on June 1, 2022

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1	A P P E A R A N C E S :	2	1	P R O C E E D I N G S	4
2	ON BEHALF OF MONTGOMEY COUNTY OFFICE OF		2	(On the record at 9:31 a.m.)	
3	ZONING AND ADMINISTRATIVE HEARINGS:		3	HEARING EXAMINER ROBESON HANNAN: -- Potomac.	
4	LYNN ROBESON HANNAN, HEARING OFFICER		4	Are there any -- one thing I didn't say last time is,	
5			5	please don't use -- there's some idiosyncrasies of doing	
6	ON BEHALF OF THE APPLICANT:		6	this virtually. Please don't use the chat to communicate	
7	PATRICIA HARRIS, ESQUIRE		7	because there was a chat message from Ms. Baker	
8	LERCH, EARLY & BREWER, CHTD.		8	yesterday, and all she did was let me know she had to	
9	7600 Wisconsin Avenue, Suite 700		9	leave the meeting and that she would be here today. But	
10	Bethesda, MD 20814		10	don't use the chat because we can't have ex parte	
11	Phone: 301-986-1300		11	communication.	
12			12	The other thing is, you'll see you're being	
13	ON BEHALF OF GREATER SOUTH GLEN NEIGHBORHOOD		13	recorded. That's -- that's not an official recording.	
14	ASSOCIATION AND THE WEST MONTGOMERY COUNTY CITIZENS		14	It's -- we do that simply to allow the court reporter a	
15	ASSOCIATION:		15	backup because sometimes things get garbled in -- in	
16	DAVID BROWN, ESQUIRE		16	Teams. And the other thing about Teams is please don't	
17	LAW FIRM OF KNOPF & BROWN		17	interrupt each other because that makes it much more	
18	401 E. Jefferson Street, #206		18	difficult.	
19	Rockville, MD 20850		19	If you want to speak, you can raise your hand;	
20	Phone: 301-545-6100		20	or, if you have an objection, you know, you can object.	
21			21	But once there's an objection, please, everybody stop	
22	ALSO PRESENT TELEPHONICALLY:		22	speaking.	
23	JOE LORETE, COURT REPORTER		23	All right. Now today -- we got through both	
24			24	the case in chief on the Traffic Report, the applicant's	
25			25	case in chief, and the rebuttal. I'm going to see if --	

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2 (5 to 8)

<p>5</p> <p>1 I don't usually ask people to repeat testimony. I'm 2 going to see if Mr. Baker is here. I do not see her. I 3 apologize for the delay. I'm just going through the 4 attendance list. I do not see her on the attendance 5 list. So, we will see if she shows up, but what I'd like 6 to do is have Mr. Park just summarize, and maybe bring up 7 the pictures he showed yesterday of the view from Ms. 8 Baker's property. So, if she does show up, I don't like 9 to delay cases, but just in case.</p> <p>10 So, what we're doing now is having the 11 parties -- those in opposition or whether they're -- who 12 want to comment on any of the applicant's testimony that 13 was introduced yesterday, this is your time to do it.</p> <p>14 Mr. Brown, I'm going to -- I forgot to ask you 15 to identify -- both parties to identify yourselves for 16 the record. Mr. -- do you -- can you do that briefly?</p> <p>17 MS. HARRIS: Certainly. For the record, 18 Patricia Harris with Lerch, Early and Brewer, on behalf 19 of the applicant.</p> <p>20 MR. BROWN: And David Brown of Knopf and Brown 21 for the Greater South Glen Neighborhood Association and 22 the West Montgomery County Citizens Association.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay, thank 24 you.</p> <p>25 Mr. Brown, I'm going to start with you. Is</p>	<p>7</p> <p>1 disappeared.</p> <p>2 MR. MAGGIN: Yeah. For some reason it keeps 3 going in and out.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay. Well, 5 you're appeared for now. Mr. Maggin, you're still under 6 oath.</p> <p>7 MR. MAGGIN: Right.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: So, let's -- 9 let's go with your testimony while you're visible.</p> <p>10 MR. MAGGIN: All right.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: And go ahead.</p> <p>12 MR. MAGGIN: All right. If we could bring up 13 Exhibit 167?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: I will do so. 15 Just a second. Why isn't this coming out. Okay, let me 16 try this one more time. I apologize.</p> <p>17 Okay. You should be viewing it now.</p> <p>18 MR. MAGGIN: Yes, I see it.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Now, Mr. 20 Maggin, you've disappeared again.</p> <p>21 MR. MAGGIN: Let's try again. I keep flicking 22 it and it keeps going off.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: : There, 24 good job, thank you. Okay. So, you should be seeing 25 Exhibit --</p>
<p>6</p> <p>1 there anybody that you wish to call as a witness?</p> <p>2 MR. BROWN: Yes. Mr. Rick Maggin will testify, 3 and I believe he will be the only witness I'll be 4 calling.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. 6 Maggin?</p> <p>7 MR. MAGGIN: Yes, I'm here.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. Can 9 you turn your camera on, please?</p> <p>10 MR. MAGGIN: I'm turning it on, but I'm having 11 problems with my laptop this morning, and it doesn't seem 12 to be working properly.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay. Do the 14 parties have any objection if he testifies without being 15 visible?</p> <p>16 MS. HARRIS: We don't have any objection. I 17 mean it's not like -- I will say --</p> <p>18 MR. BROWN: No objection.</p> <p>19 MS. HARRIS: -- it's not ideal. But I don't 20 know how we get around it.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Ahh. Well, 22 it's a moot point. For the record, Mr. Maggin has 23 appeared.</p> <p>24 MS. HARRIS: And then he disappeared.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: But he</p>	<p>8</p> <p>1 MR. MAGGIN: But I don't see the exhibit. For 2 some reason, the app is not working correctly today.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: How's that.</p> <p>4 MR. MAGGIN: Okay.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay, go 6 ahead.</p> <p>7 (The witness' microphone malfunctioned 8 throughout his following testimony.)</p> <p>9 MR. MAGGIN: All right. I just want to take a 10 few minutes to point out some important issues on the 11 exhibit. If you look at the Heritage Gardens Site Plan, 12 you'll note that the properties that are being developed 13 are extremely close to the existing property line, and 14 much of this all (inaudible) around the south end of the 15 property.</p> <p>16 You'll also notice there are 17 two-acre 17 adjacent home sites, which is extremely different from 18 any other projects that are compared to in Mr. Kagan's 19 report, I believe? If you go down to the Brandywine Home 20 Site in the lower left-hand -- I'm sorry Brandywine 21 (inaudible) project in the lower left corner, you'll note 22 that the manager, All Services, was still the borders of 23 property on one side. Falls Road Golf Course borders two 24 other sides. And there's a single home on (inaudible) 25 Drive that's (inaudible) borders it, as well.</p>

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3 (9 to 12)

<p style="text-align: right;">9</p> <p>1 If you go onto the Spectrum site, the Spectrum</p> <p>2 sites to (inaudible) River, a major thoroughfare. You</p> <p>3 have (inaudible) acre properties, a couple of them, to</p> <p>4 the -- I guess it's west. And then you have 3-acre</p> <p>5 properties joining (inaudible). If you (inaudible) and</p> <p>6 other homesites adjoin that property.</p> <p>7 If we move to the -- I'm sorry, exhibit 169 --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay, you</p> <p>9 should be seeing it.</p> <p>10 MR. MAGGIN: I'm sorry. 169 will be next, but</p> <p>11 if we move to 172, that's what I -- I'm still trying to</p> <p>12 get my camera to work (inaudible) but anyhow Exhibit 172</p> <p>13 clearly shows that the elderly housing facility has</p> <p>14 stream buffers all around the perimeter and is also</p> <p>15 adjacent to 2-acre sites.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>17 MR. MAGGIN: And now, if you go to Exhibit 169.</p> <p>18 169 shows a summary of 10827 Lockhart Road, which again,</p> <p>19 and I seem to be repeating myself, but it did come up</p> <p>20 again in testimony yesterday by Mr. Kagan. It showed the</p> <p>21 single property that was adjacent to Brandywine, and it</p> <p>22 was very much impacted by the close proximity.</p> <p>23 Mr. Kagan said he spoke with Marcia Shuman, who</p> <p>24 is the selling agent. I spoke to the buyer's agent, and</p> <p>25 in fact I had her over to my house to give me an</p>	<p style="text-align: right;">11</p> <p>1 MR. MAGGIN: Yeah, I have tried. For some</p> <p>2 reason I'm having problems with the application. First,</p> <p>3 I couldn't get internet connection from my laptop. It</p> <p>4 seems to have shut off this morning when I tried to open</p> <p>5 it. And now I'm having a very difficult time because</p> <p>6 when I'm listening to you all, all I hear is echoes.</p> <p>7 MS. HARRIS: Would it help at all if you did</p> <p>8 turn off your camera?</p> <p>9 MR. MAGGIN: It is off now.</p> <p>10 MS. HARRIS: Well, we can see you.</p> <p>11 MR. MAGGIN: That's a still shot.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: That's</p> <p>13 frozen. Would it help -- what I find sometimes, have you</p> <p>14 tried rebooting?</p> <p>15 MR. MAGGIN: I did. I did that this morning.</p> <p>16 That's the only way I even got this to come up at all.</p> <p>17 MS. HARRIS: Is there a call-in number? It's</p> <p>18 just really hard to follow him.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: There is a</p> <p>20 call-in number on our website. Let me just share --</p> <p>21 MR. MAGGIN: Okay.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. If you</p> <p>23 -- do you see my screen?</p> <p>24 MR. MAGGIN: I see it. Let me try that.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: There is a</p>
<p style="text-align: right;">10</p> <p>1 evaluation of what she thought the pending development</p> <p>2 would do. The buyer's agent told me explicitly the client</p> <p>3 represented discounted the purchase price because the</p> <p>4 close proximity to the Brandywine development. And so,</p> <p>5 because the house had been sitting on the market for an</p> <p>6 extreme amount of time, based on comparable properties in</p> <p>7 the area, as you can see, the sales price per square foot</p> <p>8 was discounted by about 23 percent from average sales</p> <p>9 price of Potomac Home. That's significant.</p> <p>10 What Mr. Kagan failed to point out was that</p> <p>11 (inaudible) major factors influencing value. Those</p> <p>12 (inaudible) two-acre lots do not live near adjacent</p> <p>13 multi-family housing. The demand for homes will be</p> <p>14 severely impacted and limited, and we have already felt</p> <p>15 the economic impact of pending project by --</p> <p>16 MS. HARRIS: May I interrupt for one second? I</p> <p>17 don't know if it's just me, but I am having a very</p> <p>18 difficult time understanding Mr. Maggin. It's like it</p> <p>19 fades in and out. It's hard to comprehend everything</p> <p>20 he's saying.</p> <p>21 THE REPORTER: This is Joe, the court reporter.</p> <p>22 I'm also having that issue. I was just about to ask about</p> <p>23 that issue. If there's any way that we can get -- maybe</p> <p>24 Mr. Maggin like, if he can like fix his mike or</p> <p>25 something, because it's coming in and out.</p>	<p style="text-align: right;">12</p> <p>1 call-in number right where my curser is pointing. I can</p> <p>2 leave the screen up if you want to try calling into the</p> <p>3 meeting.</p> <p>4 MR. MAGGIN: Yeah, I'm doing that right now.</p> <p>5 5768.</p> <p>6 (Pause)</p> <p>7 MR. MAGGIN: Could somebody read that</p> <p>8 conference number to me? For some reason it says --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: I will. It's</p> <p>10 -- it's -- you ready? It's 770-990-843 pound. You need me</p> <p>11 to read that again?</p> <p>12 THE REPORTER: Also, did you want me to go off</p> <p>13 the record?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: No, let's --</p> <p>15 there's some issues here I'd like to stay on the record,</p> <p>16 please.</p> <p>17 THE REPORTER: Okay. No problem.</p> <p>18 (Pause)</p> <p>19 MR. MAGGIN: It keeps telling me they can't</p> <p>20 find the meeting with that number.</p> <p>21 MS. HARRIS: We can hear you.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Well, your</p> <p>23 voice quality -- your voice quality -- your picture is</p> <p>24 frozen, but your voice quality is better. Do you want to</p> <p>25 try and proceed?</p>

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4 (13 to 16)

13	<p>1 MR. MAGGIN: Sure. Let's try it again.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>3 MR. MAGGIN: I'm trying to think where I --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: I think we</p> <p>5 were on one -- do you have -- it was the exhibit showing</p> <p>6 -- the exhibit showing the -- you were testifying on the</p> <p>7 discounted value of the 10827 Lockhart.</p> <p>8 MR. MAGGIN: Right, right. Okay. I think I</p> <p>9 finished that.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: And I can't</p> <p>11 remember -- oh, here it is, 169. Are you seeing that?</p> <p>12 MR. MAGGIN: I do not see that.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay, hold</p> <p>14 on.</p> <p>15 MR. MAGGIN: Ms. Robeson, I'm finished with</p> <p>16 that exhibit though.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>18 MR. MAGGIN: If I could just speak a minute</p> <p>19 about the Grovesnor that Mr. Kagan had referenced</p> <p>20 yesterday.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>22 MR. MAGGIN: The Grovesnor is in an urban</p> <p>23 setting. The largest lots are five to six thousand-foot</p> <p>24 on the adjacent properties and the properties across the</p> <p>25 street. The -- the -- trying to compare that project</p>	15	<p>1 pointing out that they're very different, that the</p> <p>2 homesites are much larger and that those are single-</p> <p>3 family homes, not multi-family.</p> <p>4 If we could next turn Exhibit 1 --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: When you say</p> <p>6 homesites, you mean the lot sizes.</p> <p>7 MR. MAGGIN: I mean existing properties, sorry.</p> <p>8 Yes.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Yes. Okay.</p> <p>10 Go ahead.</p> <p>11 MR. MAGGIN: If we could turn to Exhibit 171 --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Now you</p> <p>13 should be seeing it.</p> <p>14 MR. MAGGIN: I see it, but you need to scroll</p> <p>15 down to get the full impact. That -- that gives you a</p> <p>16 scaled version of a comparison between a single-family</p> <p>17 lot adjacent property, which happens to be mine, versus</p> <p>18 the five lots below, both showing a duplex and a triplex,</p> <p>19 and the amount of green space surrounding. Just to give</p> <p>20 you a visual of the relationships and open space</p> <p>21 comparison between the two.</p> <p>22 And I'll just wrap it up because I know it's</p> <p>23 very difficult to hear, and I'm hearing all kinds of</p> <p>24 echoes as well, and I'm sorry about that. The engineers</p> <p>25 have done a very good job of following the program laid</p>
14	<p>1 with Heritage Potomac is like trying to compare bananas</p> <p>2 and (inaudible). There's nothing similar about them.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>4 MR. MAGGIN: The other thing I wanted to point</p> <p>5 out is some additional testimony yesterday pointed to</p> <p>6 some surrounding properties around the new project on</p> <p>7 River Road, pointing out that they were less than two-</p> <p>8 acre homesites adjacent to two-acre homesites. And in</p> <p>9 particular they pointed to Conestoga Way. Just to</p> <p>10 clarify, the properties on Conestoga Way are about</p> <p>11 17,000-18,000 feet in size as opposed to 6,000 foot on</p> <p>12 the Heritage site, and they are single-family homes, not</p> <p>13 multi-family homes.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Wait. Now</p> <p>15 I -- can you repeat that? What was your point, that --</p> <p>16 MR. MAGGIN: Whoever testified on -- I can't</p> <p>17 remember her name -- she testified --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Prekajski,</p> <p>19 Ms. Prekajski.</p> <p>20 MR. MAGGIN: Correct. She was pointing out</p> <p>21 some adjacent developments to two-acre developments.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>23 MR. MAGGIN: Trying to create a similarity</p> <p>24 between what's proposed by the applicant on the Heritage</p> <p>25 Potomac site, and these existing developments. And I'm</p>	16	<p>1 out by the applicant. They have succeeded in cramming out</p> <p>2 as much gross square footage --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Wait. You're</p> <p>4 breaking up. Can -- can you stop for a minute? And</p> <p>5 maybe we can slow down your speech just so we can hear</p> <p>6 it. Is your cell phone turned off?</p> <p>7 MR. MAGGIN: It is.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>9 You started to say something about the engineer, and I</p> <p>10 couldn't -- I couldn't understand it.</p> <p>11 MR. MAGGIN: Okay. Is this any better?</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>13 MR. MAGGIN: Okay. I was just saying that I</p> <p>14 think the engineers have done a good job of following the</p> <p>15 program laid out by the applicant. They've succeeded in</p> <p>16 cramming out as much gross square footage into the</p> <p>17 buildable area as possible. However, this is not a</p> <p>18 (inaudible). This is a conditional use, subject to review</p> <p>19 by the Hearing Examiner to ensure the compatibility with</p> <p>20 the adjacent neighborhood and adjacent neighbors, who</p> <p>21 overwhelmingly oppose the project as it's currently</p> <p>22 designed.</p> <p>23 Elderly housing is not objectionable to the</p> <p>24 neighbors. It was said numerous times yesterday that we</p> <p>25 objected to elderly housing. That's just completely</p>

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5 (17 to 20)

<p>17</p> <p>1 false.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Wait. You're</p> <p>3 breaking up again. Just -- just back up. You were</p> <p>4 saying something about elderly housing, and I didn't</p> <p>5 catch -- I didn't understand it.</p> <p>6 MR. MAGGIN: I'm saying yesterday's testimony a</p> <p>7 number of people pointed out that the neighbors object to</p> <p>8 elderly housing.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Oh, I see.</p> <p>10 MR. MAGGIN: I want to make it clear that the</p> <p>11 neighbors do not object to elderly housing as it</p> <p>12 (inaudible).</p> <p>13 It's unfortunate that the applicant chose to</p> <p>14 spend an enormous amount of time and resources trying to</p> <p>15 find a way to hide their development from the adjacent</p> <p>16 properties. Clearly lacking compatible open space</p> <p>17 relationships. Those resources would have served</p> <p>18 everybody (inaudible) with the neighbors to fix the site</p> <p>19 plan, which in my opinion and the neighbors' opinion is -</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Wait. I</p> <p>21 couldn't, I'm sorry I couldn't hear you. Slow down</p> <p>22 again. Can you repeat that? I've got -- what I've got is</p> <p>23 the applicant spent a lot of time trying to hide the</p> <p>24 development rather than create compatible relationships.</p> <p>25 MR. MAGGIN: Right. And I'm just pointing out</p>	<p>19</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Wait, I -- I</p> <p>2 -- you're cutting out again. I got, it requires years to</p> <p>3 grow and a lot of maintenance because of deer damage.</p> <p>4 What were you going to say after that?</p> <p>5 MR. MAGGIN: I'm just saying it's my feeling if</p> <p>6 the property were properly designed, that type of</p> <p>7 screening wouldn't be necessary.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: I understand.</p> <p>9 MR. MAGGIN: As you see throughout the rest of</p> <p>10 the community.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. I'm</p> <p>12 sorry, I'm just taking these notes.</p> <p>13 Ms. Harris, do you have any questions of Mr.</p> <p>14 Maggin?</p> <p>15 MS. HARRIS: I do not. Thank you.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, do</p> <p>17 you have any redirect?</p> <p>18 MS. HARRIS: How could -- how can there be</p> <p>19 redirect if there was no cross?</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Oh, good</p> <p>21 point.</p> <p>22 Mr. Maggin, what would be the -- the spacial</p> <p>23 relationship -- yesterday there was talk about</p> <p>24 eliminating the loop area to bring the houses further</p> <p>25 from the property line. They're 30 feet, I think. What</p>
<p>18</p> <p>1 that the resources would have been better served by</p> <p>2 (inaudible) discussions with the neighbors to fix the</p> <p>3 site plan which, in our opinion, is the source of the</p> <p>4 problem.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>6 MR. MAGGIN: And that's all I have to say, and</p> <p>7 I'm sorry about the microphone and camera issue.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Now, do you</p> <p>9 have any comment on the landscaping that was presented?</p> <p>10 MR. MAGGIN: The landscaping that was</p> <p>11 presented, as I mentioned yesterday, is an improvement</p> <p>12 over what was previously presented. The -- there is no</p> <p>13 substitute for a masonry wall, as a masonry wall --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Wait.</p> <p>15 There -- just -- I'm sorry to keep interrupting. You</p> <p>16 said there is no substitute for what?</p> <p>17 MR. MAGGIN: For a masonry wall ten-feet high</p> <p>18 because of the immediate (inaudible) of blocking</p> <p>19 visibility from all the multi-family units, lights and so</p> <p>20 forth. The plants, the additional planting Mr. Park</p> <p>21 proposed, require years to grow and fill in. They</p> <p>22 require an enormous amount of maintenance to keep them</p> <p>23 healthy and to keep the deer away from them for years and</p> <p>24 years and years. And my feeling is had the property been</p> <p>25 designed properly to begin with --</p>	<p>20</p> <p>1 is the spacial relationship that you're looking for?</p> <p>2 MR. MAGGIN: I think somebody suggested a</p> <p>3 single stem road going --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Wait, I'm</p> <p>5 sorry. I couldn't hear you. A what?</p> <p>6 MR. MAGGIN: Somebody had suggested a single</p> <p>7 road going from south to north on the property toward the</p> <p>8 lodges, and having the resident units located close to</p> <p>9 the road to provide for buffering between the residential</p> <p>10 neighbors.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>12 MR. MAGGIN: And (inaudible) it would</p> <p>13 eliminate --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: It would be a</p> <p>15 what? I -- I -- it keeps cutting out. It would be what?</p> <p>16 MR. MAGGIN: It would eliminate a number of</p> <p>17 units, but would make a significant improvement in the</p> <p>18 site plan. Reducing the height of the lodge by one story</p> <p>19 would also make a significant improvement to the</p> <p>20 neighbors that are close to that area, and frankly to me,</p> <p>21 because I won't see that building (inaudible) as well.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. Now I</p> <p>23 am going to ask Ms. Harris, do you have any questions</p> <p>24 based on my questions?</p> <p>25 MS. HARRIS: I do not, thank you.</p>

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6 (21 to 24)

21	23
<div>1 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</div> <div>2 you for your testimony, Mr. Maggin.</div> <div>3 MR. MAGGIN: Thank you. And I'm sorry about</div> <div>4 that, the condition of the microphone.</div> <div>5 HEARING EXAMINER ROBESON HANNAN: All right.</div> <div>6 So, Mr. Brown -- you may be excused Mr. Maggin, although</div> <div>7 you're more than welcome to continue to, you know,</div> <div>8 monitor the hearing.</div> <div>9 Mr. Brown, do you have any other witnesses?</div> <div>10 MS. HARRIS: You're on mute.</div> <div>11 MR. BROWN: I'm sorry. No other witnesses.</div> <div>12 HEARING EXAMINER ROBESON HANNAN: Okay. Is</div> <div>13 there anyone else present that -- in the hearing that is</div> <div>14 not called by either Mr. Harris or Mr. Brown that would</div> <div>15 like to say something? Okay, I see no hands raised. Oh,</div> <div>16 Ms. McGrath.</div> <div>17 MS. MC GRATH: Yes, thank you.</div> <div>18 HEARING EXAMINER ROBESON HANNAN: Okay.</div> <div>19 MS. MC GRATH: Now, I'm not clear if this a</div> <div>20 time for a general statement on the whole proposal or</div> <div>21 just related to statements that were made yesterday,</div> <div>22 testimony that was done yesterday.</div> <div>23 HEARING EXAMINER ROBESON HANNAN: Done</div> <div>24 yesterday. The testimony that was said yesterday.</div> <div>25 MS. MC GRATH: Okay. All right -- So --</div>	<div>1 not visual like Mr. Maggin, but a direct connection to</div> <div>2 the building of the lodge and the townhouses. And I'm</div> <div>3 basically testifying in opposition to the Heritage</div> <div>4 Gardens proposal.</div> <div>5 MS. HARRIS: I'm going to object to this.</div> <div>6 MS. MC GRATH: Oh, okay.</div> <div>7 MS. HARRIS: This certainly seems like it</div> <div>8 should have been in during the opponent's section of the</div> <div>9 case. This isn't rebuttal testimony or sur-rebuttal. I</div> <div>10 think it's outside the scope.</div> <div>11 MS. MC GRATH: Okay. Then I will limit it to</div> <div>12 the comments by Mr. Park on landscaping yesterday. Is</div> <div>13 that --</div> <div>14 MS. HARRIS: That's fine.</div> <div>15 MS. MC GRATH: Okay. So, from an environmental</div> <div>16 impact viewpoint, for over ten years Dr. Suzanne Simard</div> <div>17 has shown research that trees communicate and share</div> <div>18 nutrients under the ground, and water, and information.</div> <div>19 And the networking of trees for roots through mycelium</div> <div>20 networks, fungi, have a huge -- are a huge part of what a</div> <div>21 forest is. There's a lot more going on under the ground</div> <div>22 than we can see. And this is what keeps a forest alive.</div> <div>23 Clearcutting a forest is one level of</div> <div>24 destruction of a forest. But regrading, which Mr. Park</div> <div>25 said would be done for the building of the lodge,</div>
22	24
<div>1 HEARING EXAMINER ROBESON HANNAN: And Ms.</div> <div>2 McGrath, did you -- sorry. Did you testify at the first</div> <div>3 hearing?</div> <div>4 MS. MC GRATH: I did. I spoke at the first</div> <div>5 hearing, but I was in Italy on an iPad and I couldn't --</div> <div>6 I don't know if I was actually sworn in, or if I just</div> <div>7 made a comment.</div> <div>8 HEARING EXAMINER ROBESON HANNAN: Well, let's</div> <div>9 just swear you in. Can you please turn on your camera</div> <div>10 and -- okay. Thank you. Can you raise your right hand?</div> <div>11 Do you solemnly affirm under penalties of perjury that</div> <div>12 the statements you're about to make are the truth, the</div> <div>13 whole truth, and nothing but the truth?</div> <div>14 MS. MC GRATH: I do.</div> <div>15 HEARING EXAMINER ROBESON HANNAN: And can you</div> <div>16 just state your name, address and email address for the</div> <div>17 record please?</div> <div>18 MS. MC GRATH: Yes. My name is Patty McGrath,</div> <div>19 I live at 11007 Edison Road in Potomac. My email address</div> <div>20 is pattymcgrath08@aol.com.</div> <div>21 HEARING EXAMINER ROBESON HANNAN: Thank you.</div> <div>22 MS. MC GRATH: Okay. I have lived in this home</div> <div>23 for 42 years, and my home is physically closer to the</div> <div>24 nursing facility than the nursing facility is to South</div> <div>25 Glen Road. So, I have a direct interest and an impact,</div>	<div>1 regrading removes the entire mycelium network and makes</div> <div>2 the damage all the more severe, and it will harm any and</div> <div>3 all trees that were connected via the mycelial networks.</div> <div>4 So, this goes to the building of the lodge and the</div> <div>5 building of townhomes within 30 feet of neighbors'</div> <div>6 properties. And all of the mature trees that will be</div> <div>7 removed from the network are responsible for water</div> <div>8 infiltration and aquafer replenishment. And that aquafer</div> <div>9 replenishment area is far beyond the limits of the</div> <div>10 property.</div> <div>11 So, the regrading and the forest removal will</div> <div>12 impact all of the neighbors' properties and the general</div> <div>13 hydrology of the entire region, including my home.</div> <div>14 While the justification for mature tree removal</div> <div>15 and cutting out forest floor by regrading on the basis of</div> <div>16 invasive species is not sensible. Invasive species are</div> <div>17 ephemeral and do not have root systems comparable to 100-</div> <div>18 year-old trees. So, the effect of damage of building the</div> <div>19 row of townhouses against neighbors' properties, 30-feet</div> <div>20 away from their property, is going to have an effect on</div> <div>21 all of the forest systems and the trees that are</div> <div>22 connected underground. So, this effect relates to the</div> <div>23 lodge and as well as to the townhomes.</div> <div>24 And to your point about the question about what</div> <div>25 would be the effect of eliminating the central loop of</div>

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7 (25 to 28)

<p>25</p> <p>1 townhouses, I think the further away from existing forest 2 the construction is, the less damage there will be. 3 However, if the entire property -- if the revised plan 4 with fewer townhomes was approved and the clearcutting 5 and regrading extends to the edges of the property, the 6 environmental damage would be similar. The recovery of 7 trees that have been planted in totally regraded land is 8 far less effective than if a tree is cut down and the 9 existing mycelium network is still intact, and a new tree 10 is put in its place. So, the mycelium networks have to 11 be protected as well as the root systems for a new 12 forest, in essence, to regrow. 13 So, that is my testimony related to the 14 environmental issues that were discussed yesterday. 15 HEARING EXAMINER ROBESON HANNAN: Okay. Thank 16 you. 17 MS. MC GRATH: Thank you. 18 HEARING EXAMINER ROBESON HANNAN: Is there 19 anything else? 20 MS. MC GRATH: I don't know at what point we 21 would be permitted to give any testimony about the 22 project as a whole. But this relates to what was 23 discussed yesterday. The other thing -- oh, I'm sorry, I 24 forgot. 25 The other thing related to yesterday's</p>	<p>27</p> <p>1 in the same alignment that it is now, and a controlled 2 intersection was put there, that would be the safest 3 alternative. And I don't know if that means, you know, 4 fewer townhomes, but I think the safest alternative is a 5 controlled intersection where everyone can see where 6 everyone else is going. 7 HEARING EXAMINER ROBESON HANNAN: Okay. 8 MS. MC GRATH: Thank you. That was the other 9 thing that was mentioned yesterday. I could not believe 10 that the Traffic Report stated, Number 11, that it was an 11 elimination of conflict of turn -- of turning by putting 12 in a new driveway. It's the exact opposite of what I 13 would see as a driver, as a person who has driven that 14 road for 42 years. 15 HEARING EXAMINER ROBESON HANNAN: Okay. 16 MS. MC GRATH: Thank you. 17 HEARING EXAMINER ROBESON HANNAN: Ms. Harris, 18 any questions? 19 MS. HARRIS: No questions. Thank you. 20 HEARING EXAMINER ROBESON HANNAN: Okay. I see 21 a hand up from Mr. Wank. Mr. Wank, can you turn your 22 camera on please? 23 MR. WANK: Sure. I'm clicking my camera 24 button, but it doesn't want to go on. My microphone 25 seems to go on and off; but my video, it says it isn't</p>
<p>26</p> <p>1 testimony is the proposal to move the entrance and exit 2 from an alignment with Norton Road and beside the B'nai 3 Tzedek Temple driveway to -- I believe it's 50 feet 4 further west. This would create a nightmare, absolute 5 nightmare intersection, and I have no idea how a traffic 6 expert would allow a multi-family driveway to be offset 7 from an existing uncontrolled intersection. It is an 8 absolute invitation to disaster. I have a hard time 9 getting out of South Glen Road, and I have a decent line 10 of sight both ways. The people coming out of -- but I 11 cannot see Norton Road. If -- the people coming out 50 12 feet west of that intersection will not be able to see or 13 judge someone coming through Norton Road, as well as 14 people zipping down South Glen from the other direction. 15 People would be able to get into the development easily 16 from that driveway. It would be impossible and life- 17 threatening to get out of it. And that -- I'm not a 18 traffic expert, but I have driven that corner for many, 19 many years. I'm scared to death when I have to make a 20 lefthand turn from Norton Road onto South Glen because of 21 the line-of-sight issues that Ms. Brigham talked about 22 yesterday. But adding another major in and out 23 intersection between Norton and South Glen is absolutely 24 a dangerous and ill-fated idea. 25 If -- in my opinion, if the driveway were kept</p>	<p>28</p> <p>1 supported in your browser. 2 HEARING EXAMINER ROBESON HANNAN: Okay. Do the 3 parties have an objection -- are you in Safari? 4 MR. WANK: Yes, I am, in fact. 5 HEARING EXAMINER ROBESON HANNAN: Yeah, you 6 have to use Chrome. Do you have Chrome? 7 MR. WANK: I do have Chrome, if you want to 8 wait for me to reboot and go into Chrome. 9 HEARING EXAMINER ROBESON HANNAN: I would do 10 that, and then let's see if there's any -- is there 11 anyone else here -- Mr. Wank, while you're doing that -- 12 is there anyone else that wishes to testify? Okay. I 13 see none other. 14 While Mr. Wank reboots and uses Chrome, let's 15 take a ten-minute break and we'll be -- well, just -- 16 we'll be back at 10:30. Thank you. 17 (Off the record from 10:16 a.m. to 10:30 a.m.) 18 HEARING EXAMINER ROBESON HANNAN: Mr. -- I see 19 Mr. Wank, so I assume that Chrome worked. 20 Is Mr. Brown here? 21 MR. BROWN: I am. 22 HEARING EXAMINER ROBESON HANNAN: And the court 23 reporter. And the court reporter? 24 THE REPORTER: Yes, I'm here. 25 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</p>

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8 (29 to 32)

<p>29</p> <p>1 you. Mr. Wank, if you would please raise your -- you did 2 not appear at the first hearing, correct? 3 MR. WANK: That's correct. 4 HEARING EXAMINER ROBESON HANNAN: Okay. Please 5 raise your right hand. Do you solemnly affirm under 6 penalties of perjury that the statements you're about to 7 make are the truth, the whole truth and nothing but the 8 truth? 9 MR. WANK: I do. 10 HEARING EXAMINER ROBESON HANNAN: Please state 11 your name, address and email for the record. 12 MR. WANK: Steven Wank, 10921 Edison Road, 13 Potomac, Maryland 20854. stevew@mail.nih.gov. 14 HEARING EXAMINER ROBESON HANNAN: I'm sorry, 15 stevew@ what? 16 MR. WANK: Mail, M-a-i-l, .nih -- 17 HEARING EXAMINER ROBESON HANNAN: Oh. 18 MR. WANK: -- .gov. 19 HEARING EXAMINER ROBESON HANNAN: Okay. Thank 20 you. What would you like to say? 21 MR. WANK: I would like to comment regarding 22 the testimony given yesterday by the guest, labeled as 23 Soltesd, S-o-l-t-e-s-d. I understand she goes by another 24 name, but I have never -- 25 HEARING EXAMINER ROBESON HANNAN: Prekajski,</p>	<p>31</p> <p>1 So, the whole predication for this project was 2 for providing a need for elder living, in this case 3 independent living, she was commenting on. And I just 4 don't see that her argument is consistent with the actual 5 planned project, and that the planned project does not 6 meet the need that she described. And that's -- 7 I will also make the comment that if you look 8 at the average age of all the people who live around this 9 property, I haven't done an analysis, so I will say that 10 up front, as this is sworn testimony. But most people 11 living around it are over 70, and they're aging in place, 12 and they have -- that doesn't mean there's no need, but 13 it isn't clear to me that this project satisfies the need 14 that she described. And that's all I have to say. Thank 15 you. 16 HEARING EXAMINER ROBESON HANNAN: Thank you. 17 Ms. Harris, any questions? 18 MS. HARRIS: No, thank you. 19 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, 20 any questions? 21 MR. BROWN: No questions. Thank you for your 22 testimony, Mr. Wank. 23 HEARING EXAMINER ROBESON HANNAN: Thank you. 24 You may be excused as a witness. You're welcome to hang 25 around.</p>
<p>30</p> <p>1 Ms. Prekajski? 2 MR. WANK: Yes. In her testimony, and I may 3 not have it exactly right, but the tenor of her -- part 4 of her testimony was in regard to the justification for a 5 special exemption for this project, Heritage Gardens. 6 And she gave a nice background about the need for 7 independent living in Montgomery County, and in Potomac, 8 in particular. And she commented on the Master Plan and 9 how the plan can change over time. It's sort of a 10 living document. And one of the justifications was that 11 there wasn't sufficient independent living for elderly in 12 the age of 75 to 83-years old. 13 And so, my comment, or contesting of her 14 argument, is that the 74 units have an age requirement of 15 62 or older. They are also extremely expensive. And 16 it's unclear to me logically how units that could be 17 purchased by someone 62 -- it will take 13 years until 18 they become 75 and beyond, to 83 -- how that solves the 19 problem. She said there were 754 unit planned, but less 20 than half of those, 20 years later, actually exist. So, 21 the need of a 75- to 83-year-old won't be addressed for 22 13 years if someone who's 62 buys it now. 23 And it's only 74 units. She said there's 24 something like 370-odd units that are needed based on the 25 plan, and probably more.</p>	<p>32</p> <p>1 MR. WANK: Thank you. 2 HEARING EXAMINER ROBESON HANNAN: Okay. Is 3 there anyone else in this hearing that would like to 4 testify? Okay, I see no hands raised, and I hear no 5 request; so with that, Ms. Harris, do you have any 6 witnesses you'd like to say just to -- or bring on just 7 to address some of the concerns raised? 8 MS. HARRIS: No. I think we can adequately 9 address those in our closing remarks. Thank you. 10 HEARING EXAMINER ROBESON HANNAN: Oh wait. I 11 just saw Mr. Brig -- or is it Ms. or Mr. Brigham -- hand 12 is raised? 13 MS. BRIGHAM: It's Mrs. Brigham. We have the 14 same laptop. 15 HEARING EXAMINER ROBESON HANNAN: I figured. 16 MS. BRIGHAM: I just had a couple of things I 17 would like to say, and it's kind of off the top of my 18 head after listening to everybody else. But I did want to 19 thank the crew that came through and talked about 20 planting trees along our property line. I appreciate 21 that very much. 22 I still have a concern about my special 23 exception. And I don't know if you remember this, but I 24 have an active special exception for keeping horses at my 25 home. And I have hesitated to bring my horse back</p>

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9 (33 to 36)

<p>33</p> <p>1 because I am very concerned about the noise from the 2 construction and the chaos and the trees being cut down, 3 and I just feel like it's not going to be safe. And I 4 just feel like my special exception is being totally 5 neglected and basically it doesn't exist because I will 6 not be able to use it during the construction period. 7 So, that's still a very big concern for me and I haven't 8 heard anybody say how that could be remedied. 9 And then, I also wanted to say something about 10 the last person who spoke yesterday about planting along 11 the stream and the stream valley. And I haven't heard 12 anybody mention about where the WSSC Pipeline goes along 13 there, because it seems like if you're planting along 14 there, and then WSSC comes along and has to make a 15 repair, or hook in, or whatever, that's all going to be 16 totally demolished again. So, I'm not sure how that 17 works. So, I think that's something that they need to 18 consider, as well. 19 And then one of my neighbors called me early 20 this morning and she said: Would you please ask if the 21 road will handle two fire trucks passing, if there was a 22 fire in the property. So -- and I don't know who would 23 answer that, but anyway. So, that's what I have at the 24 moment. 25 HEARING EXAMINER ROBESON HANNAN: Okay, thank</p>	<p>35</p> <p>1 question. 2 MS. MC GRATH: Item No. 6 talks about the owner 3 of the cottage ownership lot must enter into a service 4 contract with Sage Life, or its successor operator of the 5 lodge, for the provision of independent living services 6 to the occupants of the cottage ownership lot, and this 7 obligation will run with title to the cottage ownership 8 lot. 9 HEARING EXAMINER ROBESON HANNAN: Okay. From 10 what are you -- from what are you reading? 11 MS. MC GRATH: I'm reading from one of the 12 exhibits from Lerch, Early, Brewer, Exhibit 126A. 13 HEARING EXAMINER ROBESON HANNAN: Okay. 14 MS. MC GRATH: I should have said that at the 15 beginning. 16 HEARING EXAMINER ROBESON HANNAN: That's fine. 17 Okay. It should be on your screen. 18 MS. MC GRATH: Yes. Okay. So, if you go to 19 Page 3, it's the very last point. 20 HEARING EXAMINER ROBESON HANNAN: Okay. And 21 what is your question on that? 22 MS. MC GRATH: So, yesterday I thought there was 23 a comment that someone said that the townhomes would be 24 occupied by the owner and their own personal caregiver. 25 And it wasn't necessarily clear to me whether that</p>
<p>34</p> <p>1 you. Ms. Harris, any questions? 2 MS. HARRIS: No, thank you. 3 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, 4 any questions? 5 MR. BROWN: No questions. 6 HEARING EXAMINER ROBESON HANNAN: Okay. Ms. 7 Harris, do you have a Fire Access Plan in the record? 8 MS. HARRIS: Yes. We have an approved Fire 9 Access Plan, and as Mr. Stemann -- Stemann testified 10 yesterday, I think we answered the question that Ms. 11 Brigham just raised about the width of the road, which is 12 more than 20 feet. 13 HEARING EXAMINER ROBESON HANNAN: Okay. All 14 right. I see Ms. McGrath again? 15 MS. MC GRATH: I had a question about the -- I 16 don't know at what point, or if it's too late, to ask a 17 question about the property ownership statement, about 18 the Master HOA, Item 6 -- 19 HEARING EXAMINER ROBESON HANNAN: Why don't you 20 -- okay. First of all, I need your camera on. 21 MS. MC GRATH: Oh, okay. I'm sorry. 22 HEARING EXAMINER ROBESON HANNAN: And, Ms. 23 Brigham, can you put your hand down please? Mrs. 24 Brigham? She must not be able to hear me. 25 Okay, go ahead, Ms. McGrath. What is your</p>	<p>36</p> <p>1 personal caregiver could be someone that the owner 2 contracted with separately, or would that only be someone 3 who came through the nursing authority, or whatever, of 4 the lodge, through Sage. 5 HEARING EXAMINER ROBESON HANNAN: I did hear 6 that comment. 7 Ms. Harris, do you have anybody that can clar -- 8 I guess -- do you have anybody -- 9 MS. HARRIS: Yeah. And I'm sorry, I am not 10 clear on the question, so if it could be repeated, or if 11 you could summarize, Ms. Robeson, and then I can direct 12 it to the appropriate person? 13 HEARING EXAMINER ROBESON HANNAN: I think it's 14 the lady from Sage Life -- I apologize. Her name is 15 escaping me. 16 MS. HARRIS: Ms. Address. 17 HEARING EXAMINER ROBESON HANNAN: Yes. The 18 question is can these lot owners have their own private 19 caretakers outside of Sage's caretakers? 20 MS. HARRIS: And I can answer that, as well, or 21 maybe Mr. Wormald can. I can see that Ms. Address is not 22 on the line right now. 23 HEARING EXAMINER ROBESON HANNAN: Right. 24 MS. HARRIS: So, certainly there are services 25 provided in connection with independent living and the</p>

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10 (37 to 40)

<p>37</p> <p>1 assisted living. And so, the first line of defense, or 2 approach, if you will, would be that the services are 3 provided with -- from within the Sage operation. But 4 like any other independent living facility that we are 5 aware of, and as reflected actually in the ITE numbers as 6 well, it's not uncommon for people to have outside 7 support care. That's been contemplated. I think Mr. 8 Brown even noted that. I mean, he made the point that, 9 well, those caretakers obviously can't be live-ins, and 10 he recognize that the ordinance doesn't provide for that. 11 But -- so, to answer the question, yes there could be an 12 additional caretaker that is not Sage-related. And I 13 would ask Mr. Wormald if he has any other color on that 14 that he would like to add.</p> <p>15 MR. WORMALD: No, I agree. There might be some 16 level of -- likely some level of coordination with Sage, 17 but yeah, you know, it would be whatever is in the best 18 interest of the residents relative to their needs. So --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Well, I had -- 20 I do see Mr. Kabatt on. Mr. Kabatt, can you turn your 21 camera on for a moment please? He may be just 22 monitoring.</p> <p>23 MR. KABATT: I was muted there. So, what -- I'm 24 sorry, you had a question?</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Can you turn</p>	<p>39</p> <p>1 older, who has no intention of using nursing facilities, 2 that they would not be inclined to enter into a binding 3 service contract with Sage Life. And apparently, they're 4 not under any -- are they still under an obligation to 5 enter that service contract with Sage Life that will run 6 with the title to this ownership lot, is my question. If 7 they don't have any intention, or desire, to use that, 8 that would be another encumbrance on the title of a home 9 that I would -- I should be able to feel free to sell to 10 someone else who meets the minimum requirements. You 11 have to be 62 years old or over.</p> <p>12 MS. HARRIS: There will be a service component 13 that every owner of the IL cottages is obligated to sign 14 and participate in. I mean, so there's going to be a 15 level of services that are provided.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Well, this -- 17 as I read No. 6, it says they have to sign-up for the 18 services.</p> <p>19 MS. HARRIS: That's what I was trying to say 20 inarticulately.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. So, 22 they're going to have to sign-up for the services, 23 whether they want to use them or not.</p> <p>24 MS. HARRIS: Correct. And as we testified, we 25 know very few people that move into communities that</p>
<p>38</p> <p>1 your camera on, please?</p> <p>2 MR. KABATT: Yes, hold on. Okay, is that good?</p> <p>3 HEARING EXAMINER ROBESON HANNAN: That's good, 4 thank you. For the -- yesterday, I think you testified 5 that you -- would the trip generation count account for 6 privately independent caretakers outside of Sage Life? 7 Would those traffic counts include the IT -- the trip 8 generation rates include those for the independent 9 living?</p> <p>10 MR. KABATT: Yes. It doesn't -- again, it 11 counts all trips coming in and out, so it doesn't 12 discriminate against any -- any trips, whether they be 13 visitors, or independent caregivers, or family, or staff 14 by Sage.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay. Did 16 that answer your question, Ms. McGrath?</p> <p>17 MS. MC GRATH: Well, partially. I didn't have 18 the traffic consideration. My consideration -- my 19 question is about the relationship between the owner and 20 the lodge, and Sage.</p> <p>21 My own personal prediction is that these homes 22 are not going to sell to people with more than a million 23 dollars to buy a townhome, and who have lived long enough 24 to figure out what's a good deal and what isn't. And so, 25 if these homes are occupied by someone 62 years old or</p>	<p>40</p> <p>1 provide a level of services if you don't need to avail 2 yourselves of the services, either presently or 3 anticipatorily in the very near future. And Ms. -- I 4 think Ms. Andress testified to that MS. effect.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Ms. McGrath, 6 does that answer your question?</p> <p>7 MS. MC GRATH: Well, the way I understand the 8 response is that someone must sign this agreement, but 9 the agreement is not an exclusive right by Sage to 10 provide any services that are desired. The homeowner is 11 free to contract those services with anyone they please.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: And what is 13 your -- you know, how does that relate to the conditional 14 use?</p> <p>15 MS. MC GRATH: How it relates to the 16 conditional use is that, my take is that the townhomes 17 will be purchased by persons who do not have a need, or a 18 desire to have a permanent relationship with a continuing 19 care nursing facility. The nursing facility has no 20 obligation to admit someone who then requires nursing 21 care. They can just say that well, they require 22 hospitalization so we're not qualified. So, depending on 23 their occupancy or what -- so the entire structure of the 24 conditional use justification for building townhomes in 25 front of a nursing facility is -- for me is tenuous, and</p>

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11 (41 to 44)

<p>41</p> <p>1 so, this condition just illustrates the fact that it's a 2 very thin connection between -- if the homes -- if the 3 townhomes were owned by one entity, one solid entity, 4 that was responsible and liable for all of the property, 5 then it would be a completely different relationship. 6 But this unique homeownership plan allows the financial 7 risk to be completely separated from the nursing 8 facility, and all the cost of even -- the cost of 9 building, as Mr. Wormald said yesterday, would be in 10 advance if possible, so that building the whole operation 11 and then maintaining it is the responsibility of not the 12 lodge, of the individual homeowners. And so, that 13 really gets at -- it's the uniqueness of this home 14 ownership nursing facility relationship that for me is 15 very thin. It's a very thin connection. 16 HEARING EXAMINER ROBESON HANNAN: Is your 17 concern that the maintenance isn't going to occur? Or 18 that it is not going to operate as a -- essentially a -- 19 some level of CC -- Continuing Care -- 20 MS. MC GRATH: My concern is that ultimately 21 these homes will not be able to be sold to people only 62 22 years of age and older, that they will be occupied -- 23 even the document itself says a minimum of 80 percent of 24 the dwelling units must be occupied by at least one 25 person who is 55 years of age and older. And when the</p>	<p>43</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Mr. Wormald, 2 do you want to just address that concern? Not the 3 environmental stuff, but the, you know, concern that it's 4 not a workable project. 5 MR. WORMALD: Yeah, I mean, I think we've 6 testified to this extensively, but -- you know, both on 7 multiple levels, both the need that we have gotten -- not 8 only the need that is expressed demographically, but also 9 our -- all of the expressions of interest we have 10 received for this specific community have been 11 significant. 12 You know, Sage Life are one of the top 13 operators in the country. They do a fantastic job. 14 Their product is always in high demand. You know, as I 15 testified previously, too, the way we're selling these is 16 we're putting the weight on pre-selling the majority of 17 the homes. So -- and that's really what people prefer, 18 as well, so they can appoint their homes exactly the way 19 they want them. And so, yeah, this is not an area of 20 concern that we have. It really gets to the topic of 21 demand. 22 She's -- they're basically positing that there 23 is not enough demand for what we're proposing, and I 24 think, you know -- again from the abundance of 25 testimony and everything we've heard through this</p>
<p>42</p> <p>1 houses don't sell -- when the townhomes don't sell, and 2 this has happened in many other -- 3 HEARING EXAMINER ROBESON HANNAN: I see what 4 you're saying. 5 MS. MC GRATH: -- townhouse developments of -- 6 that are built specially for aging, and then they don't 7 sell, and then the special exception for that house has 8 to be eliminated or someone will go bankrupt, or 9 whatever. So -- 10 HEARING EXAMINER ROBESON HANNAN: So, you're 11 saying you will -- and I'm not taking the position, I'm 12 just phrasing what you're saying -- rephrasing what 13 you're saying. You're concerned that this is going to 14 end up just being luxury townhomes in the RE-2 Zone. Is 15 that what your concern is? 16 MS. MC GRATH: Yes, yes. I have no concern 17 about the nursing facility, except for the fact that it's 18 going to destroy the forest, the mature forest behind it. 19 But having a nursing facility where there was an empty 20 school is a wonderful plus for the community. But 21 putting 45 townhouses in front of it is not either 22 environmentally sustainable or sustainable economically 23 under the conditions which have been designed for, that 24 are the justification for building them in the first 25 place.</p>	<p>44</p> <p>1 hearing, I think it's pretty -- yeah, it's pretty 2 clear to me anyway. I mean we're very confident 3 Sage, Wormald. You know, we've been in business 4 over a half century, we know what we're doing, you 5 know. So, I think -- I think it will be highly 6 successful, and we'll do a beautiful job for the 7 neighborhood. 8 MS. HARRIS: I would also point out the levels 9 of independent living services that are provided that Ms. 10 Andress testified to that will be provided in the 11 independent living units. 12 HEARING EXAMINER ROBESON HANNAN: All right. 13 Ms. McGrath, you have heard the response. Anything else 14 you would like to say? 15 MS. MC GRATH: No, thank you. That was the 16 total thing. Thank you very much. 17 HEARING EXAMINER ROBESON HANNAN: Is there 18 anyone else that would like to testify? Seeing and 19 hearing none, I just -- I did have a question for Mr. 20 Wormald. 21 Did you ever consider reducing the density of 22 this project? 23 MR. WORMALD: Well, as you know, we've been at 24 this for -- is my mike on? 25 HEARING EXAMINER ROBESON HANNAN: Yes, I know.</p>

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12 (45 to 48)

<p>45</p> <p>1 MR. WORMALD: We've been at this for four 2 years, or whatever it's been, and we have reduced the 3 density maybe eight times already in consult with Staff. 4 We've meticulously fine-tuned it, you know. We've 5 negotiated the park locations exactly -- we had to redo 6 the plan because they wanted the park to be larger and in 7 a specific location. So, we've accommodated Staff's 8 request for that. We've -- you know we've really gone --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: I know you 10 may have done that with Staff. I guess my question is, I 11 wasn't a hundred percent persuaded by Ms. Prekajski. I 12 have not made up -- you know, I don't have a decision, 13 but I just wondered if you -- I guess my concern is 14 the -- it's 30 feet. My concern is the proximity to 15 those houses on the western property line. And, you 16 know, I don't know -- I know that you've been through 17 many iterations. I was the hearing examiner on the very 18 first iteration that didn't include the nursing -- or the 19 (indiscernible). But is there any -- and I understand -- 20 I think Mr. Park's testimony is a big improvement. I do 21 think that. But did you consider just giving -- I just 22 didn't find the juxtaposition between the R-200 homes and 23 the -- the -- it's that relationship on the western 24 property line that I find concerning. Even though 25 overall your density is much lower than other projects,</p>	<p>47</p> <p>1 house, but --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: But the 3 likelihood of getting -- you see, that's what 4 everybody -- the comparison to what you could do in the 5 RE-2 Zone, you're going to have two-acre lots, just like 6 I said to Ms. Prekajski yesterday.</p> <p>7 MR. WORMALD: And we do not --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: I just find 9 the comparison -- and I think the problem is all 10 the -- even though overall, I do think the open space is 11 a benefit, certainly, but the useable space forces all 12 the development, you know, into basically one area. And 13 even -- I was not persuaded by your pictures. I'm trying 14 to find that exhibit from Ms. Prekajski. But I'm not -- 15 I'm not find --</p> <p>16 I wasn't persuaded necessarily by your pictures 17 showing the relationship of, you know, yeah. Your 18 dwelling units are 3,000 each, that's normal. Your 19 homes, the duplexes and triplexes may be 5-to 8,000 20 square feet. That in isolation is maybe comparable, but 21 when you look at the massing of the structures, you know, 22 I tend to agree with Mr. Maggin that it's not -- it's not 23 compatible.</p> <p>24 And so, I guess what I'm asking you is -- it 25 just -- I'm not saying it has to be RE-2. I'm not. But</p>
<p>46</p> <p>1 it's that relationship on the western property line that 2 I find -- still find a little difficult.</p> <p>3 Do you have any comment on that?</p> <p>4 MR. WORMALD: Yeah. No, absolutely, sure. I 5 mean, we've -- you know, we've extensively reviewed all 6 this from the, you know, initial meetings in the gym way 7 back when with residents, to the current, but, you know, 8 some of the things we looked at is -- I mean, our -- you 9 know, our basic approach to this has been let's look 10 at -- what is -- if we were to build a single-family home 11 in that same location, what's the rear setback, what are 12 the side setbacks, how could we mass it to mimic a 13 single-family neighborhood? And that's exactly what 14 we've done. We've respected the rear and side setbacks 15 of the structures.</p> <p>16 But also, we've plugged -- we've pushed and 17 pulled on the images, you know, I mean -- so, you know if 18 you push them back another 30 feet, it's not going to do 19 much, you know. Honestly, if you do -- we could redo the 20 renderings of that again and show you what that would 21 look like, but it's basically the same experience.</p> <p>22 I mean the key is the landscaping. I really 23 believe that. I think that's kind of the thing that's 24 really, you know, an element that -- and keep in mind, in 25 the RE-2, there would be no landscape requirement for a</p>	<p>48</p> <p>1 when you look at that R-200 versus RE-2 picture yesterday 2 that Ms. Prekajski testified to, you know, you're under 3 all the -- when you look at the property as a whole, yes. 4 You're under all the development standards. You're under 5 the maximum. The problem is -- that's looking at it as a 6 whole, and it's not looking at the massing on this 7 particular area. And to me -- what was that exhibit?</p> <p>8 MS. HARRIS: I think it was the Surrounding 9 Community Exhibit that showed the R-200s to the R-2?</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Yeah.</p> <p>11 MS. HARRIS: It was -- I'll tell you in a 12 moment. It was Exhibit 70. And I can pull it up if 13 you'd like.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Yeah, if you 15 would, that would help. Okay, can -- that's good. Now, 16 can you go back to -- was it Coxwards (phonetic) Road or 17 something?</p> <p>18 MS. HARRIS: Yes. So, I could. I think the 19 point --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. In 21 looking -- okay. This -- I look at this here and I just 22 don't see. Can you go -- can you scroll out, zoom out? 23 Keep going. Okay, keep -- there. I just don't see this 24 as compat -- the same as this. Really, it's this --</p> <p>25 MS. HARRIS: Well, when you say this, you don't</p>

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13 (49 to 52)

<p style="text-align: right;">49</p> <p>1 see this compared to this. Can you clarify what you</p> <p>2 mean by this?</p> <p>3 HEARING EXAMINER ROBESON HANNAN: I'm sorry.</p> <p>4 MS. HARRIS: That's okay.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: I apologize.</p> <p>6 I don't see the relationship between the R-200 and the</p> <p>7 RE-2 as a justification for the relationship along that</p> <p>8 western property line.</p> <p>9 MS. HARRIS: And can you articulate why you</p> <p>10 don't? Because when we -- when our land planner looked</p> <p>11 at that and we looked at that, we saw quite the opposite.</p> <p>12 But if I could, let me just --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: I understand.</p> <p>14 But what I'm looking at, can you back out? No, back out.</p> <p>15 MS. HARRIS: I am backing out. You mean zoom</p> <p>16 in or back out?</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Zoom into the</p> <p>18 subject property. See, this -- I don't know how big the</p> <p>19 homes are on those R200 lots, but I don't see them as</p> <p>20 being 8,000 square feet, or maybe even 5,000 square feet.</p> <p>21 And the thing that keeps coming to mind is just kind of</p> <p>22 this wall.</p> <p>23 MS. HARRIS: Well, I would say, if you look at</p> <p>24 these -- the R-200 lots and you look at the setbacks and</p> <p>25 just, for instance, compare this unit to that unit, and</p>	<p style="text-align: right;">51</p> <p>1 the massing of these structures along the western</p> <p>2 property line are not similar at all to the adjacent</p> <p>3 property.</p> <p>4 MS. HARRIS: But, Ms. Robeson, when you have a</p> <p>5 multi-family-story assisted living facility next to a</p> <p>6 single-family home and you found compatibility, and</p> <p>7 there's probably 20 cases in the county where they have</p> <p>8 compatibility, we know that the single-family homes don't</p> <p>9 look like that multi-family structure. And so, what I'm</p> <p>10 struggling with is, yes, there will be more massing</p> <p>11 there. Mr. Park testified about the level of landscaping</p> <p>12 buffer which will conceal a considerable amount from Day</p> <p>13 1. What adverse impact is being created?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: I have fewer</p> <p>15 problems with the lodge than I do with the proximity of</p> <p>16 the massing of these homes 30 feet. And I worked on</p> <p>17 Friends House. I did their major modification, and they</p> <p>18 have cottages, or I think the call them lodges, too. But</p> <p>19 it wasn't -- it's just this -- there is more spacing and</p> <p>20 less mass. And I also did Graves Hewitt Grosvenor.</p> <p>21 MS. HARRIS: Yes. As did I.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: That was just</p> <p>23 the assisted living -- it was -- I think it was memory</p> <p>24 care.</p> <p>25 MS. HARRIS: It was assisted living. But you</p>
<p style="text-align: right;">50</p> <p>1 then go to the distance between our -- the cottage units,</p> <p>2 it's not dissimilar. I mean I -- we haven't measured it,</p> <p>3 but --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: But it's the</p> <p>5 massing. You've got a lot of massing. Well, all I'm</p> <p>6 saying is this -- this is the relationship that I'm</p> <p>7 struggling with, right along this western property line.</p> <p>8 It is much different -- I don't care RE-2, but when you</p> <p>9 look at the houses on -- that are adjacent, on the</p> <p>10 property line, they are not 30 feet from the setback</p> <p>11 line. And I'm going to pull it up now.</p> <p>12 MR. WORMALD: If I could just say, too, if we</p> <p>13 were to build this as a single-family -- I wish we could</p> <p>14 bring up our single-family land plan that we did, but --</p> <p>15 just the geometry of it, but what would sell --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: It's not</p> <p>17 the --</p> <p>18 MR. WORMALD: Oh, I'm sorry.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: It's not the</p> <p>20 sing -- it's not -- I'm not saying it should be single-</p> <p>21 family. I'm just saying, I guess the thing I keep</p> <p>22 thinking of is just these are big structures when you</p> <p>23 compare the RE-2 structures. You're going to have more</p> <p>24 density with townhouses. That's true. I mean, and I'm</p> <p>25 not saying townhouses shouldn't be here. I'm just saying</p>	<p style="text-align: right;">52</p> <p>1 had assisted living within 20 or 30 feet of million-</p> <p>2 dollar townhouses. And there was a compatibility --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Yes, but they</p> <p>4 were townhouses. They weren't in an RE-2 Zone. And they</p> <p>5 had small -- I think it was R-60.</p> <p>6 MS. HARRIS: It was.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: And -- and</p> <p>8 so, you know, that's -- this is not R-60.</p> <p>9 MR. WORMALD: If I could make a couple quick</p> <p>10 little --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: I haven't</p> <p>12 decided. I'm just -- after seeing Mr. Maggin's exhibits,</p> <p>13 that kind of quantified -- or -- yeah, quantified, I</p> <p>14 guess, or articulated my own concerns.</p> <p>15 MS. HARRIS: But I think -- if I could, and I</p> <p>16 want Mr. Wormald to chime in, that exhibit -- to use Mr.</p> <p>17 Maggin's analogy, was apples and bananas. He was</p> <p>18 comparing an ownership lot to a record lot. The</p> <p>19 ownership lot of which is .5 percent of the entire record</p> <p>20 lot.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: That's not</p> <p>22 what I'm doing. I'm not -- forget the ownership lots</p> <p>23 because you can't -- I agree with you, that you can't use</p> <p>24 the ownership lots, and the lot coverage and all that</p> <p>25 kind of stuff because this is -- you know, I don't</p>

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14 (53 to 56)

<p>53</p> <p>1 know -- I still don't understand if this is going to be a 2 condo or what. But a condo is one plat with percentage 3 ownerships. 4 But as I said, you know, the relationship 5 with -- I have less trouble with the lodge. I think that 6 the grade and the relationship is -- and the surrounding 7 woods are -- are a good buffer. I thought your lighting 8 was excellent response to some of the neighbors' 9 concerns. 10 Now, maybe your -- I do agree that your 11 landscaping proposal is a huge improvement. I guess I'm 12 just saying that, did you ever consider moving these 13 further from the lot line and eliminating these units? 14 MS. HARRIS: And I guess I would say a couple 15 things. One is, the relationship of the back-to-back 16 structure, as the land planner testified, 154 feet, and 17 we already indicated that that relationship exists 18 elsewhere in the neighborhood. So, that's not unique, 19 the 154 at 154. 20 To do as you suggested, which is put a center 21 spine -- or someone suggested, sorry -- and move all the 22 properties in, you would probably end up with a setback 23 of approximately 60 feet, which is 300 times the 24 requirement. And think about it. Here, the structure in 25 question is something that is very similar to a single-</p>	<p>55</p> <p>1 MS. HARRIS: Ms. Robeson, if I could put up -- 2 just because I think it may be helpful, and then -- 3 sorry, hit the wrong one. And then I want -- this is 4 Exhibit 43, I believe. And then I think Mr. Wormald 5 wanted to chime in. 6 MR. WORMALD: Yeah. 7 MS. HARRIS: I mean, again, from Planning 8 Staff's view of this, the Planning Board, our expert land 9 planner, and looking in the context of the entire area, 10 we thought it's a compatible layout that weaves in with 11 the rest of the surrounding area. 12 HEARING EXAMINER ROBESON HANNAN: Well, you 13 know, I guess just 'cause they decided that, I guess 14 you're saying their expert testimony outweighs -- 15 MS. HARRIS: No, no, I don't. Because I 16 know -- I wouldn't be so naïve as to think that. 17 HEARING EXAMINER ROBESON HANNAN: You know, the 18 Planning Board, they haven't -- well -- 19 MS. HARRIS: But if you look at the -- I mean, 20 except for one duplex, the relationship here is 21 unit-to-unit. 22 HEARING EXAMINER ROBESON HANNAN: But I mean 23 just looking at this -- well, we can argue. I 24 understand where you're coming from. Okay? 25 MS. HARRIS: Mr. Wormald, did you want to make</p>
<p>54</p> <p>1 family home. It's not a multi-family home that -- I mean 2 a multi-family structure. 3 Now, what I would say, and I don't -- you know, 4 could there be a surgical removal of one unit or so, and 5 provide more space along that western property line? 6 That probably could happen. But to think that we should 7 reconfigure to put a center street and then move all the 8 units in, we end up eliminating the open space that Staff 9 made us go back and refine because they wanted to make it 10 larger, and they wanted it centrally located. So then 11 suddenly, you've taken away the amenity to the community 12 simply so that the -- that there could be even greater 13 setbacks along the western property line. And -- 14 HEARING EXAMINER ROBESON HANNAN: Well 15 that's -- that's a good point, and maybe the answer to my 16 concern is surgically -- surgically, you know, reducing 17 the number of triplexes. 18 MS. HARRIS: I would need to consult with the 19 applicant about that. 20 HEARING EXAMINER ROBESON HANNAN: I understand, 21 and as I said, I haven't made up my mind. I -- but I 22 think it only fair to tell you what my concerns are. And 23 I guess Mr. Maggin's testimony kind of -- on rebuttal -- 24 kind of gelled those concerns. I'm far less concerned 25 with the eastern property line.</p>	<p>56</p> <p>1 any comments? 2 MR. WORMALD: Just -- I mean, just a couple if 3 I could. I mean the project's, you know, at the edge of 4 economic feasibility, in terms of, you know, we hire all 5 these staff to service the independent living units. 6 That's just one variable that we have to factor in. We 7 feel like we've minimized the project. 8 The other thing that I've experienced over the 9 four years is that the site plan is somewhat deceiving 10 because the site is so large, you know, things can appear 11 -- and there's all these lines and everything. This 12 exhibit is actually much more helpful, but things can 13 appear much more compressed than they really are. I mean 14 the distance between Mr. Maggin's house, for example, and 15 the cottage is about a half a football field away, just 16 to give you some concept. And maybe actually stand out 17 there and look at it. It feels more reasonable than 18 perhaps, you know, we can experience on paper, looking at 19 this screen. 20 The other thing I just wanted to say too is if 21 we were to come in here and build a single-family 22 project, what's really getting built in Potomac these 23 days? I mean I was born and bred and raised in 24 Potomac -- are large, very large mansions. And there 25 probably would be eleven very large mansions of a width</p>

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15 (57 to 60)

<p>57</p> <p>1 much larger than even our triplex. And I wish I could 2 show our single-family land plan to demonstrate how that 3 would come together, but it's actually a very similar 4 placement to our western wall properties. 5 So, that's a couple things I just wanted to 6 express. 7 HEARING EXAMINER ROBESON HANNAN: Okay. 8 MS. HARRIS: Ms. Robeson, before we get into -- 9 I assume that the next stage is closing argument. 10 HEARING EXAMINER ROBESON HANNAN: It is. 11 MS. HARRIS: But could we have -- give us ten 12 minutes? 13 HEARING EXAMINER ROBESON HANNAN: Certainly. 14 Certainly. Do you need 'til -- let's do 'til 11:30. 15 MS. HARRIS: Perfect. 16 HEARING EXAMINER ROBESON HANNAN: Okay. 17 (Off the record from 11:16 a.m. to 11:30 a.m.) 18 HEARING EXAMINER ROBESON HANNAN: Mr. Lorete, 19 are you ready? 20 THE REPORTER: Yes, ma'am. 21 HEARING EXAMINER ROBESON HANNAN: Thank you. 22 Okay. So, I guess I've said about what -- you 23 know, all I can do and express my concerns. So, we can 24 proceed to closing statements. 25 MS. HARRIS: Thank you, Ms. Robeson. Before we</p>	<p>59</p> <p>1 Through all of these items and all the 2 exhibits, the applicant has demonstrated that the 3 proposed conditional use application satisfies the zoning 4 ordinance requirements, including the conditional use 5 requirements of 59:7.3.1(e) for the redevelopment of the 6 property with a residential care facility. This truly is 7 an excellent project, particularly given its proximity to 8 the Potomac Village. 9 In considering the subject conditional use, 10 it's important to remember the history of the project. 11 For over 50 years, it has been a school from Pre-K to 12 Eighth Grade, and the school was on the cusp, as you have 13 heard, of expanding to a 400 student Pre-K through high 14 school facility. With this comes noise, traffic, and 15 light. And there can be no doubt that those improvements 16 from the school would have been far more intense than the 17 proposed use. And it's for this reason that there are, 18 in fact, several members of the neighborhood who have 19 indicated they thought that this was an appropriate use 20 for this site. 21 I first want to start with noting the obvious, 22 and actually Mr. Maggin did allude to this in his 23 testimony this morning. This is a large property; it's 24 30 acres. And in comparison, many recent conditional 25 uses were 4 or 5 acres. And with a property of 30 acres</p>
<p>58</p> <p>1 do so, I just wanted to note that we would like to make 2 sure that all the exhibits 1 through -- I believe we're 3 up to 176 are entered into the record, with the exception 4 of Exhibit 116, which was Mr. Rosenthal's Power Point 5 that the Hearing Examiner determined would not be entered 6 into the record. 7 With that, I'll proceed with my closing 8 statement. I will say in advance, I think I'm over your 9 15 minute -- 15-20 minute suggest, but by not -- 10 HEARING EXAMINER ROBESON HANNAN: It's fine. 11 MS. HARRIS: Okay, thank you. 12 So, through the testimony of our witnesses, 13 plus the information in the record, including all of the 14 applicant's expert reports, the Staff Report, the 15 Planning Board's recommendations -- 16 HEARING EXAMINER ROBESON HANNAN: Ms. Harris, 17 I'm really sorry to interrupt you. Can you stop sharing 18 your screen? 19 MS. HARRIS: Oh, I'm sorry. 20 HEARING EXAMINER ROBESON HANNAN: Or somebody's 21 sharing their screen. 22 MS. HARRIS: That was me. 23 HEARING EXAMINER ROBESON HANNAN: Okay. It 24 just -- it's a little distracting. Go ahead. 25 MS. HARRIS: I definitely agree.</p>	<p>60</p> <p>1 comes more adjacent property owners. It's not uncommon 2 for immediate neighbors to object to a conditional use. 3 No one likes change. We get that. But the larger the 4 parcel, the more adjacent neighbors. And, in fact, we've 5 thought throughout this hearing that if we had 6 consolidated this onto four or seven acres, we would have 7 had less adjacent neighbors, and you likely would have 8 heard from less -- less surrounding neighbors. But in 9 any event, we know that a plebiscite of the neighborhood 10 does not determine zoning. 11 Throughout the case, the opposition has 12 repeatedly attempted to create issues when, in fact, no 13 issues exist. I'm going to hit these categorically, but 14 I'm first going to start with the issue of compatibility. 15 And it sounds like, based on the discussion that we just 16 had, that that's probably the most important issue in 17 this case. The opposition appears to contort 18 compatibility with comparability. The zoning ordinance 19 does not require the development standards for a 20 residential care facility to be equal or comparable to 21 those of an RE-2 -- of the underlying zone, in this case 22 the RE-2 Zone. We know this because we can compare the 23 various development standards and see that they allow for 24 significant differences. An obvious example is when you 25 look at density. In the RE-2 Zone, the limits allows</p>

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16 (61 to 64)

<p>61</p> <p>1 only one single-family per two acres; where, with a 2 residential care facility, it allows 15 dwelling units 3 per acre and 36 beds per acre. Thus, the mere fact that 4 there are differences between the standards of the 5 project and the surrounding neighborhood is not relevant. 6 Similarly, the fact that this project will be 7 visible from adjacent uses is also not relevant. Nowhere 8 in the code does it suggest that a conditional use, or 9 any use for that matter, cannot be visible from an 10 adjacent or surrounding property. What the zoning 11 ordinance does want to ensure and requires is that the 12 conditional use will be compatible with the surrounding 13 area. And this can be achieved through lots of different 14 approaches, including those that this project 15 incorporates. These things include items such as 16 locating the lodge at the lowest elevation of the 17 property, providing very low density compared to what is 18 permitted, providing residentially styled independent 19 living cottages that are comparable in size to many of 20 the surrounding homes in the area, and the preservation 21 of a significant number of trees. 22 I think we would all agree that the 23 compatibility provision is, in fact, quite subjective. 24 The ordinance provides that mere compliance with the 25 zoning ordinance standards does not demonstrate</p>	<p>63</p> <p>1 low-density development. But any way you slice this 2 project, by unit count, by square footage and FAR, by 3 omitting the 13 acres, the project is low density and 4 well below the standard. And by way of comparison, the 5 Brandywine project was 34 beds per acre versus this 6 project, which is 8 beds per acre. 7 However, because compliance with the 8 development standards is not necessarily a measure of 9 compatibility, it's important to emphasize a number of 10 other factors. And in this regard, I do want to focus on 11 the compatibility of the independent living cottages. 12 We'll start with the fact -- and I mentioned this just a 13 moment ago -- that both the Planning Board and the 14 Planning Staff determined that the project was compatible 15 with the surrounding neighborhood. The Staff Report 16 notes that the cottages are of comparable scale to the 17 surrounding neighborhood, and that the architecture and 18 site layout will blend well with the area. 19 Height is often a factor when you're evaluating 20 compatibility. Certainly, this is not the case here. 21 The height of the cottages is less than many of the 22 houses in the surrounding area and well below the zoning 23 ordinance. The architecture and size of the duplexes and 24 triplexes is comparable to many of the homes in the area. 25 And in this regard, Mr. Wormald testified that the</p>
<p>62</p> <p>1 compatibility in and of itself, and the Hearing Examiner 2 alluded to this during yesterday's hearing. We accept 3 this. But compliance with the zoning ordinance does 4 serve as a starting point, if you will, for providing 5 sort of a quantifiable starting point for evaluating 6 compatibility. And by all measures, this conditional use 7 is significantly lower than the zoning ordinance's 8 requirements where there are maximum development 9 standards, land in those cases where the zoning ordinance 10 requires a minimum development standard, the project is 11 significantly higher. Our Land Planner testified to this 12 extensively, so I'm not going to go into those details 13 again. 14 It is, however, worth mentioning the density 15 issue. Critically, even when you eliminate 13 acres of 16 the site that are environmentally reserved, which is in 17 and of itself an unprecedented approach, the project 18 still is well below the development standards. I mean, 19 think about this. When you take out approximately 20 one-third of the property, take it out of the equation, 21 the project still is providing only a fraction, less than 22 one-third, of the density allowed by the zoning 23 ordinance. And on this note, Ms. Lee erroneously 24 testified that the project was more intensive than the 25 Brandywine Senior Living Project, and she was looking for</p>	<p>64</p> <p>1 starting point for the design of this entire project was 2 to make sure that it was context sensitive. In fact, 3 when we first presented this project to Planning Staff, 4 their comment was, this is a brilliant solution to 5 providing independent living in a non-institutional type 6 of structure. 7 There was no testimony, and nor could there be, 8 about any quantifiable impact from the cottages -- 9 impacts that could be the basis of an incompatibility 10 finding. There's no testimony regarding adverse impacts 11 from shadows, from noise, blocking of sun, or offensive 12 odors. The only thing you heard with respect to the 13 cottages is that the structure will be visible from an 14 adjacent house, a home that the closest distance is half 15 a football field away, 154 feet. And as the Land Planner 16 testified, this relationship is not uncommon throughout 17 the neighborhood. The 154 feet separate structures, the 18 proposed cottages and the existing homes, that are from a 19 height, massing, and architectural standpoint very 20 similar. 21 When the Hearing Examiner considers this, we 22 ask that you think about the conditional use residential 23 care facility cases. And in those cases and instances, 24 the focus was on the compatibility of a multi-story 25 building with a single-family home. In those cases,</p>

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17 (65 to 68)

<p>65</p> <p>1 those are two very dissimilar structures. And yet, in 2 all cases they were deemed to be compatible. And not 3 because the size and the massing was similar, we know 4 that that certainly wasn't the case. But instead, 5 because in those cases the multi-family building was 6 residential in character, or it's height stepped down to 7 a height closer to the single-family residential height, 8 or because landscaping was provided.</p> <p>9 And in this case, the proposed independent 10 living cottages and the adjacent homes are already 11 like-to-like structures in terms of height, massing, and 12 architecture. And while we recognize that the plan 13 clearly shows that the layout of the cottages will be 14 more concentrated than the layout of adjacent single- 15 family area, as the discussion that we had immediately 16 before the break indicated, that difference pales in 17 comparison to all the other cases where a multi-family 18 building was being evaluated against a single-family home 19 in an effort to find compatibility.</p> <p>20 As Mr. Park testified, the landscape buffer 21 from Day 1 will conceal a good portion of the cottages. 22 And certainly, by Year 7, the vast majority of the 23 cottages will be concealed. And it's hard to make a case 24 that something is incompatible when it is hardly visible.</p> <p>25 Now having said all that and based on the</p>	<p>67</p> <p>1 approval, and then provide to the Hearing Examiner, in 2 order that the record is updated, revised plans to show 3 the elimination of the lot. What we don't want to have 4 to do is go around a cycle and have yet another hearing 5 before the Hearing Examiner simply to eliminate a lot a 6 lot that would create a considerable amount more of open 7 space along that westerly property line.</p> <p>8 In regard to the lighting standards, the 9 ordinance requires .1 foot-candles at the property line, 10 as Mr. Park testified, and the lighting exhibit 11 confirmed, along the entire property line we're providing 12 zero foot-candles. In some instances, they reach into 13 the property more than 350 feet and, actually, in some 14 instances, they extend all the way from the east property 15 line to the west property line, where the measurement is 16 zero foot-candles.</p> <p>17 Just touching briefly on this issue, lighting, 18 as we know, is an inherent characteristic. It's an 19 accepted characteristic of a senior housing project. The 20 opponents tried to create the impression that in this 21 area of Potomac, one mile from the center, that it's a 22 dark sky area and that the project will adversely affect 23 their ability to stargaze. We know from the exhibits 24 that that simply is not the case. There's no shortage of 25 lights in this area. And as Mr. Park and Mr. Skyhart</p>
<p>66</p> <p>1 discussion that we just had before the break, I would 2 suggest in an effort to get the Hearing Examiner 3 comfortable with this project, a condition -- and I am 4 going to share my screen for a moment and put up Exhibit 5 144a.</p> <p>6 We believe that -- first of all, as I just 7 testified, we believe that this project is wholly 8 compatible. But if the Hearing Examiner does not, we 9 would suggest a surgical approach to achieving that 10 compatibility. And how we think that could be done is by 11 the elimination of Ownership Lot 31. We would be willing 12 to take that property and instead, put it into HOA 13 control, make a little pocket park in that area. That 14 would increase the openness of the project -- of the 15 relationship of the house to what seemed to be the 16 primary concern, which is Lot 3, and we would agree, 17 given a number of things, including the angle of the 18 house on Lot 4, and then the angling of the remaining 19 triplexes along -- as you move further up north in the 20 property.</p> <p>21 Now in suggesting that condition, I would also 22 suggest to the Hearing Examiner, given that the applicant 23 has been at this process for four years, a condition that 24 -- that requires that lot to be eliminated at the time of 25 preliminary plan, and get an approved preliminary plan</p>	<p>68</p> <p>1 (phonetic) testified, the applicant, in response to the 2 concerns the community addressed, and in an effort to be 3 a good neighbor, hired a lighting consultant during this 4 hearing in February, worked closely with them, and have 5 come up with a number of revisions to make sure that the 6 lighting will not be an issue on this project.</p> <p>7 In terms of property values, Kevin Kagan, an 8 appraiser and an expert in real estate development, land 9 valuation and appraisals, testified that it was his 10 expert opinion that the use would not have an adverse 11 impact on the surrounding property values. Mr. Kagan 12 evaluated four senior projects and concluded that their 13 presence did not adversely impact the surrounding 14 property values. This included Brightview Grove 15 residential care facility, which was -- where the 16 facility was in very close proximity, and highly visible, 17 to the adjacent and high-end one million-plus townhomes. 18 I need to emphasize that the potential economic impact 19 analysis only comes into play if the conditional use has 20 non-inherent adverse effects. And we believe that the 21 applicant has demonstrated that there are no non-adverse 22 effects as a result of the conditional use, and thus this 23 analysis should not even be required. However, in the 24 event the Hearing Examiner feels differently, we do want 25 to address this.</p>

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18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 Second of all, I would note that if, in fact, 2 the section is relevant, the test is whether the project 3 will cause undue harm. Mr. Rosenthal, the opponent's 4 witness, who is neither an appraiser nor an expert in 5 land valuation, testified that the use would adversely 6 impact his future property values. And I believe we 7 heard similar testimony from Mr. Maggin and Ms. Baker. 8 Critically, in Maryland, pursuant to Ray vs. 9 Mayor and City Council of Baltimore, a homeowner is 10 qualified to testify about the current value of his 11 property, but not about how future development might 12 affect property values. Accordingly, neither Mr. 13 Rosenthal, nor Ms. Baker, nor Mr. Maggin is competent to 14 testify on the future value of his or her property or 15 other properties. In Ray, the Maryland Court of Appeals 16 held that a property owner can testify as a lay witness 17 about their property's current value, but that an expert 18 testimony is required for testimony about whether the 19 value of property will increase or decrease because of 20 future development. 21 In terms of need, the opponent's expert witness 22 questioned whether there would be a need for Heritage 23 Potomac Senior Care Community, and then we just heard 24 more testimony about that this morning. There should not 25 be any discussion of this issue given that need is not a</p>	<p style="text-align: right;">71</p> <p>1 private educational institution re-establishes itself on 2 this property, or, in fact, whether 11 Potomac mansions 3 get developed on the property, that the property is going 4 to redevelop, and there's going to be construction on the 5 property. And so, to the extent that the horses may be 6 upset, that's an issue that's going to exist irrespective 7 of this project. Ms. Brigham did just indicate, and we 8 knew from previous discussions with her, that her horses 9 are currently offsite, boarded elsewhere for different 10 reasons, and thus, there are solutions available to 11 address this issue. 12 In terms of the ownership issue, the opposition 13 has repeatedly attempted to make the legal structure of 14 Heritage Potomac and the ownership aspects of independent 15 living cottages a cause of concern, as if a conditional 16 use -- I'm sorry, my pages got mixed up. Sorry. Okay. 17 As if a conditional use in a multi-family ownership 18 project cannot co-exist. However, we know this is 19 incorrect. The zoning ordinance not only contemplates 20 that, there's precedent. And in that regard, we ask the 21 Hearing Examiner to take administrative notice of 22 Conditional Use Case 16-11, that was the application of 23 Garrett Gateway Partners. In that case, the conditional 24 use was approved for 19 fee ownership designed for life 25 townhouses. The conditional use in that case reflected</p>
<p style="text-align: right;">70</p> <p>1 requirement in the zoning ordinance. However, it was 2 raised, and so I want to briefly address it. 3 Ms. Lee testified that there's been, quote: "An 4 explosion of senior living facilities in Potomac", when 5 in fact only one half of the target has been reached, 6 and, as we know, none of those have been independent 7 living units. The applicant's Land Planner's testimony 8 speaks for itself in respect to this issue. First of 9 all, as the census data indicates, the senior population 10 in this area has exploded. There's 104 percent increase 11 from 2000 to 2019 in the senior population. The senior 12 housing goals of the 2002 Master Plan were established 13 based on prior lower projections of the senior 14 population; and again, even then, only half of the units 15 have materialized. 16 And then finally, we now, as a matter policy 17 from the county's housing overpopulation study, and the 18 County Council's adoption of the Zoning Text Amendment 19 that allowed for this property -- this project, that the 20 county is trying to encourage senior housing of this 21 sort. 22 Ms. Brigham testified about -- her concern 23 about her conditional use and the horses on her property, 24 and that they'll be upset by construction. I think it's 25 fair to say whether this project is approved, whether a</p>	<p style="text-align: right;">72</p> <p>1 the fact that there would be 19 separate holders of the 2 conditional use. Multiple holders of a conditional use 3 and enforcement thereof is neither complicated nor 4 unprecedented. Moreover, the County Council specifically 5 contemplated that some independent living senior units 6 may be owned individually, and has noted -- that I noted 7 yesterday, the MPDU Law actually requires that for-sale 8 independent living units need to make a donation to the 9 Housing Initiative Fund. And that provision was 10 specifically adopted by the Council in recognition that 11 yes, senior living -- independent living units could be 12 owned in fee simple. The applicant's legal structure 13 memo cogently explains the legal structure and controls 14 for the community. Importantly -- and I think this is 15 very important, because DPS is the agency charged with 16 the enforcement of the conditional use, it was their 17 opinion after reviewing the proposed legal structure, 18 quote: "DPS doesn't foresee any difficulty in its ability 19 to enforce any conditions associated with Conditional Use 20 22-01. Our only recommendation would be that one of the 21 conditions clearly identify the owner of the lodge to be 22 responsible for adherence of all conditions, as well as 23 remitting the yearly Conditional Use Fee." Unquote. 24 In terms of the legal documentation, opposition 25 has stated that if approved, a condition of approval</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 should be that the applicant must provide draft HOA 2 documents and declarations of covenants to demonstrate 3 compliance with the Housing of Older Persons Act. This 4 is unnecessary and premature. The applicant fully 5 acknowledges and testified that prior to the issuance of 6 the first Use and Occupancy Permit, the HOA will be 7 established, and the Declarations of Covenants will be 8 recorded in the land records. Requiring drafts of these 9 documents now serves no purpose and is unprecedented. 10 These controlling documents are prepared much later in 11 the process. As provided by proposed conditional -- 12 Condition No. 15, they will be prepared and recorded 13 prior to the issuance of the first Use and Occupancy 14 Permit. 15 Mr. Brown also expressed an issue -- I'm sorry. 16 I'm going to move on to traffic. In almost every single 17 zoning case, opponents argue that the traffic impact from 18 the proposed use will be unacceptable and burden the 19 community. This likely occurs because any new use will, 20 in fact, generate traffic. But that's not the test. Mr. 21 Kabatt testified that even when this use is evaluated 22 using the most stringent criteria, meaning applying a 23 higher trip rate for the independent living cottages, not 24 taking credit for the prior school years, and using pre- 25 Covid trip counts, all intersections pass, and they pass</p>	<p style="text-align: right;">75</p> <p>1 violates the environmental laws or regulations. All they 2 allege is that certain approaches appear to be contrary 3 to their interpretation of some of the strategies and 4 suggestions that appear in a document that describes 5 itself as a memorandum. 6 First, our experts have testified that the 7 project is consistent with these documents. But we must 8 also point out that these supporting documents are not 9 laws and they're not regulations. They are documents 10 that are technical appendices to the Potomac Subregion 11 Master Plan, which is in itself a guiding document. 12 The opponents presented no expert on 13 environmental matters. In contrast, three of the 14 applicant's expert witnesses testified about 15 environmental issues, and there were reports or plans in 16 the record from two others. In addition, the 17 environmental staff of both Park and Planning and DPS 18 have thoroughly reviewed and approved the NRI, including 19 the delineation of the stream valley buffer, the flood 20 plain and wetlands, and the classification of the slopes 21 and soils. Staff has also approved the Storm Water 22 Management Concept and the Preliminary Forest 23 Conservation Plan. 24 While we respect Ms. Lee and her passion, she 25 admitted that she is not a scientist, she's not a</p>
<p style="text-align: right;">74</p> <p>1 comfortably below the maximum 14-50 trip threshold. 2 Opponents expressed concern regarding the 3 morning Eastbound Q on South Glen Road; however, as Mr. 4 Kabatt testified, the use will be generating minimal 5 trips during this period of time, given that the 11-7 6 shift, which has only five employees anyway, is generally 7 leaving before these Qs even develop. Traffic simply is 8 not an issue in this case. 9 Now, turning -- and I'm sure you'll be glad to 10 hear -- turning to our last substantive issue, which is 11 environment. The opposition has expressed concern about 12 the environment. We respect this, and we said at the 13 beginning, one of the driving forces for the design of 14 this project was to preserve the environment. You heard 15 Mr. Park testify that it is quite unusual that a project 16 does not trigger a forest conservation requirement. And 17 yet, this project does not because the applicant is 18 preserving a significant amount of trees above the 19 threshold that triggers forest conservation. 20 Further, you heard that while there is a 21 maximum lot occupancy of 25 percent, in this case the lot 22 occupancy is going to be almost half of this, at 13.9 23 percent. 24 In trying to make their case, the opposition 25 does not say, and nor can they say, that the applicant</p>	<p style="text-align: right;">76</p> <p>1 forester, and she's not an expert on environmental 2 matters. Despite not being an expert, Ms. Lee attempted 3 to re-delineate the stream valley buffer based on her lay 4 opinion as to what constitutes hydraulically adjacent 5 soils. 6 She first attempted this argument at the 7 Planning Board and was rebuffed by both the Planning 8 Board and the Environmental Staff. Petitioner further 9 testified that no priority forest within the stream 10 valley buffer would be removed. Further, petitioner 11 testified to the attempts that have been made to minimize 12 the removal of the priority forest located outside the 13 stream valley buffer. These attempts, which included 14 clustering the development, adjusting the building form, 15 and tucking the foundation walls into the grade, have, in 16 fact, been successful in that only .58 acres of the 17 priority forest will be removed. And as Mr. Park 18 testified, that portion which will be removed is 19 seriously overgrown with invasives, and as such, is of 20 compromised quality. 21 While there's no code or regulation requiring 22 any compensation for the removal of this .58 acres, the 23 petitioner, nonetheless, is taking such compensatory 24 actions. First, the replanting the .5 acres next to the 25 existing Priority Forest that Mr. Park testified would</p>

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20 (77 to 80)

<p>77</p> <p>1 ultimately be an environmental benefit. And second, 2 they're providing an additional 2.1 acres of supplemental 3 plantings. 4 Ms. Lee also attempted to discredit the 5 county's findings with respects to slopes and soils based 6 on her lay interpretation of the environmental 7 guidelines. Staff, however, disagreed with this, as did 8 the Planning Board. 9 In contrast, petitioner's expert concluded that 10 there were not highly erodible soils in the area of the 11 development and Mr. Steiman, in his testimony, provided 12 references to two separate documents, which were county 13 environmental documents, that make it clear that the 14 soils are not highly erodible steep slopes in the area of 15 the development. 16 In terms of trees, there is minimal impact to 17 the critical root zone of the offsite trees along the 18 western property line, and Mr. Park testified that it is 19 expected that all these trees will remain. 20 Finally, we'll close with the fact that 13 21 acres of this project, almost one-half of the site, is 22 environmentally protected and will not be developed. And 23 even when you exclude these 13 acres from any density 24 calculation, the project is still well below the density 25 standards of the zoning ordinance, and less dense than</p>	<p>79</p> <p>1 were making a list of things that we wanted to make sure 2 would be reflected on a condition, but if there's 3 anything else that comes to mind that could be shared, I 4 think that would be helpful for that exercise. 5 So, with that, we very much appreciate the 6 Hearing Examiner's time, Mr. Brown's time, the 7 neighborhood's time, and again, I just want to re- 8 emphasize, our goal is to be a good neighbor, and that 9 when this project is constructed, it will weave 10 seamlessly into the surrounding area to the enjoyment of 11 all -- the entire area. Thank you. 12 HEARING EXAMINER ROBESON HANNAN: Thank you. 13 Mr. Brown? I hear an echo. Does someone have a cellular 14 device on? Does anybody else hear an echo? Now it's 15 gone. I don't hear it. So go ahead, Mr. Brown. 16 MR. BROWN: This project is the product of an 17 untested, unproven alliance between a real estate 18 developer, Wormald, and a provider of senior care 19 services, Safe Life. Untested because despite repeated 20 opportunities to show how the concept, quasi-independent 21 living homeownership for younger seniors linked to 22 assisted living and memory care for older seniors on the 23 same property, has no track record of popular acceptance 24 anywhere in the nation outside of the continuing care 25 retirement community, which this project most surely is</p>
<p>78</p> <p>1 the other three relatively recent senior projects, 2 Brandywine, Artis and Spectrum. 3 In conclusion, we're very proud of this 4 application and how we arrived here today. It's the 5 applicant's goal to be a good neighbor. We believe that 6 the design solution that this project presents provides 7 an innovative way to address the county's increasing need 8 for senior housing in the context sensitive manner. The 9 applicant has taken extensive measures to ensure that the 10 project is context sensitive. 11 The project complies with the county zoning 12 ordinance development standards and environmental 13 regulations, it's compatible with the surrounding 14 neighborhood, and addresses an increasing need for 15 diverse senior housing. 16 As I mentioned yesterday, and we hope that the 17 Hearing Examiner will give this significant 18 consideration, we think it would be helpful if we had the 19 opportunity to proffer conditions of approval, obviously 20 the same for Mr. Brown, that could be used in the event 21 the Hearing Examiner decides to approve this case. Based 22 on our discussion earlier, we obviously have some 23 insights as to what Hearing Examiner's lingering concerns 24 are, but if there are any others that could be shared 25 with the applicant -- as we went through the hearing, we</p>	<p>80</p> <p>1 not. 2 This project began with an effort to create a 3 paper mache senior living facility out of a closed school 4 campus where all senior services were optional and would 5 be provided mostly offsite. For the real estate 6 developer, that held out the prospect for density of 7 development triple what could be done under RE-2. It 8 never got off the ground thanks to a fair amount of 9 skepticism presented to Osau (phonetic) that this was not 10 the real thing in senior care. But visions of 11 sugarplums, selling townhouses in the RE-2 zone at this 12 site, still danced in their heads. The original 13 application was withdrawn and redesigned adding a real 14 independent living/assisted living/memory care building 15 and significantly more density in the townhouses. All 16 this was packaged with a ZTA to match. This found 17 receptive ears at the Planning Board and the District 18 Council for both the ZTA and for the matching project. 19 And so it was done without the applicant first ever 20 constructively engaging with the adjacent neighborhood 21 with a view toward achieving a project acceptable to all. 22 And that is why we are here today evaluating this unique, 23 unproven amalgam of senior living. 24 Just ask yourself, as our expert, Susan Brecht, 25 pointed out, how appealing to seniors is the notion that</p>

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21 (81 to 84)

<p style="text-align: right;">81</p> <p>1 if you want to join the community for life, and not have 2 to leave, short of, of course, need for a nursing home, 3 you must buy your way into home ownership, maybe with a 4 mortgage, only to likely need to later sell the home so 5 you can afford to move up to the next care level, from 6 independent living to assisted living, or perhaps all the 7 way to memory care.</p> <p>8 No evidence was presented, other than the 9 unrestrained enthusiasm of Ms. Andress and Mr. Wormald, 10 that the age-restricted units would sell like the 11 proverbial hot cakes in this framework. The 12 uncontradicted evidence that was presented was that 13 selling in fee simple to the 62 and over set, where the 14 minimum age restriction continues indefinitely, the 15 owner's death being no impediment, is a hard sale to 16 make. I summarized Ms. Lee's research and testimony on 17 this problem in Exhibit 173, our phase-in plan 18 recommendation. The Lerch Early experience at Potomac 19 Mews confirms the need for a phase-in plan that requires 20 completion of at least some occupancy of the lodge before 21 the cottage units are built.</p> <p>22 The zoning ordinance requires a senior care 23 community to provide a continuing of residential 24 occupancy and health care services for seniors. This 25 community must include both assisted living and</p>	<p style="text-align: right;">83</p> <p>1 they did not need and did not want any such services 2 imposed upon them. Just one more example of the 3 shakiness of this untested alliance.</p> <p>4 The applicant's response to this is that there 5 is no requirement for determination of such personal need 6 upon the sale of a cottage unit. Maybe so, but if you're 7 not in the need group, you're outside the definition of 8 residential care facility, and necessarily outside the 9 definition of senior care community, even if you meet all 10 the specific requirements otherwise established for 11 inclusion in the subset senior care community.</p> <p>12 So, just imagine one of the enthusiasts who 13 testified in favor of the project coming along ready to 14 buy, but not ready to admit any need for personal 15 services. This owner, and other such owners, would be 16 welcomed by the applicant and take the facility further 17 and further away from the requirement of being persons in 18 need, and further and further into it being nothing more 19 than an age-restricted community of individual homeowners 20 where there is no longer any rationale for the increased 21 density in housing types that come with various types of 22 residential care facilities.</p> <p>23 Now, even if this definitional problem were to 24 somehow go away, it is certainly the case that the 25 complicated ownership and management structure</p>
<p style="text-align: right;">82</p> <p>1 residential independent dwelling units. Assisted living 2 must be available from the start. Therefore, the lodge 3 must be built before, or at the same time, as the first 4 townhouse. The applicant's explanation sounds as if it 5 will be just the opposite. Clear the land and sell the 6 townhouses on spec before the lodge is built.</p> <p>7 Turning to the issue of compliance with the 8 zoning ordinance, it's hardly surprising that the project 9 comes fairly close to checking all the boxes for 10 approval. After all, the applicant wrote the ZTA to suit 11 its needs. But in the rush to legal authenticity, one 12 key mistake was made. As detailed in our Exhibit 93, 13 Senior Care Community, the term, is quite explicitly a 14 subset of the larger class of conditional uses called 15 Residential Care Facility. A simple Venn Diagram makes 16 clear that when S as a subset of R, S for Senior Care and 17 R for Residential Care, as here, then S must by 18 definition have all of the attributes of R. One of those 19 attributes is that all R's, all residential care 20 facilities, serve persons in need of personal service, 21 assistance in daily living, or special protection.</p> <p>22 But the applicant does not want to comply with 23 this constraint. Among the few people it found to 24 testify how anxious they were to buy and move into one of 25 the cottage units were a couple of prospects who said</p>	<p style="text-align: right;">84</p> <p>1 contemplated by the applicant is a noninherent feature of 2 this facility. It has a fee simple ownership requirement 3 that is not inherent in any other community of senior 4 citizens residents anywhere so far as the record in this 5 case reveals. Our expert, Susan Brecht, knew of none, 6 and found that the examples offered by Ms. Andress were 7 quite different. Now, I emphasize, this is not a claim 8 that there is no need for more senior facilities in the 9 Potomac subregion. It is a claim that what is being 10 provided is not what is needed.</p> <p>11 Now, what adverse effects flow from this 12 noninherent feature of the project? You have 45 duplex 13 or triplex units where a conventional RE-2 zone would 14 have produced under 15. The cottage units do not emulate 15 the surrounding neighborhood in terms of bulk and size, 16 or in terms of open space around each home. Their close 17 proximity to each other produces a much more crowded 18 together living arrangement than in the neighborhood, so 19 much so, that compatibility depends on walling them off 20 from site, the unending procession of closely spaced 21 duplexes and triplexes on the western side of the 22 property by adding vegetative screening walls. Such 23 walls are not characteristic of the rest of the 24 neighborhood where every home is on a two-acre lot that 25 is at least three-quarters open space. So, while</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 vegetative walls might alleviate incompatibility 2 somewhat, it will still leave the character of the 3 neighborhood irreversibly changed, and not for the 4 better. 5 Looking at compatibility from above, rather 6 than at ground level, you will see that the dense packing 7 together of townhomes here is not to be found anywhere 8 else in a much wider sweep of the Potomac subregion. We 9 find you, Ms. Robeson, to be right on the mark in 10 expressing that you are not convinced, as the applicant 11 apparently is, that an appropriate framework for 12 compatibility analysis is to consider the R-200 developed 13 lots in the surrounding area which are adjacent to RE-2 14 development. 15 It is important to remember that in both the 16 RE-2 and the R-200 zones the lot coverage requirement is 17 25 percent maximum. This means that when an RE-2 18 developed lot is abutting an R-200 developed lot both 19 will have open space of about 75 percent. Now on an 20 absolute basis, since the RE-2 lot is typically four 21 times the size of the R-200 lot, there's four times as 22 much open space. But if an RE-2 lot abuts four R-200 23 lots, and that's a likely scenario -- you could just look 24 at the maps -- that adds up to an acre and a half of open 25 space on the four R-200 lots, much of it in the rear,</p>	<p style="text-align: right;">87</p> <p>1 senior care community unless the person happens to meet 2 the restrictions on age and affiliation spelled out in 3 the zoning ordinance. In the lodge, all needs for 4 residents are included in a single package. In the 5 cottage units, nothing more than a meal plan appears 6 officially mandated via the service contract, so far as 7 we have been able to determine. Unit maintenance and 8 housekeeping are a given in the lodge, but not in the 9 cottage units. In the lodge, everything is under one 10 roof; in the cottage units, one provides for oneself, or 11 travels to the lodge, or to the Potomac Village for 12 needs. 13 On the issue of adverse impact on property 14 values, it defies common sense to suppose that in an open 15 area such as this, a four-story lodge and a closely 16 spaced collection of 45 townhomes will not have a greater 17 negative effect on property values than would RE-2 18 including the zoning of single-family homes instead. 19 Also, little credence should be given to Mr. 20 Kagan's presentation of home appreciation rates elsewhere 21 where four other senior facilities have been built in 22 Potomac. This facility is unlike any of those in many 23 ways. Even if it is true that the other areas studied 24 showed no adverse impact on home appreciation rates due 25 to the introduction of a senior living facility in the</p>
<p style="text-align: right;">86</p> <p>1 facing the RE-2 lot, or on the side. That is much more 2 open space than you will find on the site plan between 3 the row of closely spaced duplexes and triplexes that 4 abut any of the western side RE-2 properties, such as Mr. 5 Maggin's. 6 If you are inclined to salvage a less dense, 7 but more compatible fit at this location, we have 8 suggested a quite plausible option, a little more 9 aggressive than the loss of the single lot, as has just 10 now been suggested by Ms. Harris. The only reason there 11 is a loop in the main roadway is to squeeze in more 12 townhouse units. It wasn't put there to add more open 13 space in a single small area inside that loop. By 14 changing the design to a single spine drive from South 15 Glen to the lodge, nine townhomes would be lost, but much 16 compatibility would be gained. Rear yards facing the 17 project boundary could easily be 50 feet or more on all 18 sides. 19 Now the applicant also touts the highly 20 integrated, interconnected nature of the entire project, 21 when in reality that attribute applies to the lodge 22 alone. There, help for residents is omnipresent. In the 23 cottage units there can be no live-in help, no live-in 24 help at all. That seems to be -- has sort of been 25 forgotten in the process. That's a requirement for the</p>	<p style="text-align: right;">88</p> <p>1 neighborhood, that says nothing reliable about the impact 2 here in the next case. It's like a stockbroker pitch 3 asking you to invest in Stock No. 5 because he's picked 4 four winners in a row. There is no guarantee of a good 5 result, and our evidence suggests ample reason to be 6 concerned about neighboring property values. 7 Turning now to the question of maintaining the 8 age-restricted status of the community, who has both the 9 incentive and the ability to keep it that way? Certainly 10 not DPS; certainly not the lodge owner who has the 11 ability, but not the incentive, for rigorous enforcement. 12 Others might have the incentive, but not the ability. 13 Consider, for example, the requirement that 80 percent of 14 the units be occupied by someone over 55, as Ms. McGann 15 pointed out. Only the lodge owner will have access to 16 the data to enforce this; but why is it in the lodge 17 owner's interest to do so? A key feature of the HOPA is 18 to provide assurance to seniors that their age-restricted 19 community will remain so, not become more normalized in 20 age due to lax enforcement. 21 In this and other ways the applicant complains 22 that we're asking for rules and requirements that are not 23 normal and customary in other senior living communities. 24 The short answer is that this is not a normal senior 25 living facility. This is a first of its kind facility,</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 and it simply will not work as intended unless there is a 2 climate of rigorous enforcement of the rules. Instead, 3 we see the rules simply buried away in a recorded 4 covenant document that likely soon will be forgotten 5 unless beefed up considerably. The senior care community 6 rules on occupancy and age restriction are intentionally 7 more onerous than those for other kinds of residential 8 care facilities and merit an enforcement program sturdier 9 than the one once every two years look required under 10 HOPA.</p> <p>11 For example, the applicant rebels at the 12 requirement that ownership of the cottage units be 13 limited to natural persons, as we suggested. Perhaps it 14 is okay to expand ownership beyond individuals to a trust 15 controlled by the trustee who is the occupant. Okay. 16 But if ownership is extended beyond that, to an LLC or a 17 corporation, such an entity could buy up the lion's share 18 of the cottage units and turn it into a rental community, 19 which is typically high in turnover. The applicant may 20 not care about this. After all, he's sold the units. 21 But what about the owners? Who would pay a million 22 dollars plus to own and live in a triplex unit where 23 there are renters on both sides that come and go every 24 year or so? In the same vein, a unit should be the 25 owner's Maryland domicile, which means an intention to</p>	<p style="text-align: right;">91</p> <p>1 furtherance of avoiding the cottage units becoming rental 2 community. The lodge owner should closely regulate and 3 control who is occupying each unit.</p> <p>4 In conclusion, much of what I have discussed is 5 oriented toward improving the project into something 6 workable and practicable. If you were to adopt all of 7 these recommendations, perhaps one could hope that would 8 be the end result. But our overall impression of this 9 project, with an amalgam of features borrowed from other 10 concepts in senior living but never put together quite 11 like this, is that it is doomed to failure. There are 12 ample noninherent adverse effects, enough that the right 13 decision is to save everyone a lot more time and trouble 14 and expense by deciding now that this project at this 15 location does not merit a test drive for such feasibility 16 and should be put mercifully to rest before its defects 17 become reality.</p> <p>18 But if you do decide to let the applicant go 19 forward with its self-invented senior care community, all 20 of the conditions and restrictions that Greater South 21 Glen Neighborhood Association and West Montgomery County 22 Civic Association have recommended should be implemented.</p> <p>23 As a final word, I would say when Ms. Harris 24 pointed out at the very beginning of her closing argument 25 that this property was used more intensively before, and</p>
<p style="text-align: right;">90</p> <p>1 live there permanently for at least 130 days a year under 2 Maryland law. What kind of community would you have if 3 owners were invariably gone more than half a year every 4 year?</p> <p>5 Lastly, I note that where the applicant agrees 6 or disagrees with our eight proposed covenants terms in 7 the cottage units as was set forth at Pages 6 and 7 of 8 Exhibit 165, the applicant's response was submitted last 9 Friday afternoon in Exhibit 174. I haven't had time to 10 write out a response. I note that we accept the 11 applicant's proposed change to Covenant No. 7, allowing 12 no impact home occupations. The applicant appears to 13 accept our Covenants No. 1 and 2, and doesn't really 14 disagree with our Covenants No. 5 and 6. That leaves 3,4 15 and 8.</p> <p>16 Three is about certifying compliance with 17 mortgage obligations. The community, as should be the 18 lodge owner, has an interest in seeing that these 19 expensive units not fall into abandonment due to default 20 on mortgage payments.</p> <p>21 No. 4 is a prohibition on accessory structures. 22 If the applicant wants to allow accessory structures on 23 the ownership lots, it should explain what it has in 24 mind.</p> <p>25 No. 8 is a prohibition on leasing. This is in</p>	<p style="text-align: right;">92</p> <p>1 it could be worse, even under single-family development 2 under the RE-2 Zone, those are irrelevant considerations. 3 This project must rise or fall on its own merit as a 4 conditional use. And for all those reasons, we say that 5 the conditional use should be denied.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Thank you. 7 All right. Ms. Harris, you have a rebuttal. 8 I think you're on mute. 9 MS. HARRIS: My apologies. 10 HEARING EXAMINER ROBESON HANNAN: No worries. 11 MS. HARRIS: Thank you. So, very briefly, in 12 terms of the ownership of the independent living units, 13 ownership of an independent living unit is not unique. 14 One need only go a mile or two down Rive Road to Fox Hill 15 to see condominium units that are independent living 16 units that are owned by seniors. There are other similar 17 projects in the neighborhood -- I mean, in the county. 18 Mr. Brown gives us way too much credit for creating some 19 very unique senior project. It's not that unique. And 20 as our witnesses pointed out, there are examples of 21 similar type structures, maybe not in Montgomery County, 22 which is exactly what the County Council recognized when 23 they adopted the Zoning Text Amendment, but in other 24 areas, including counties right across the river. And 25 one of the reasons for adopting this Zoning Test</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 Amendment was to try to make sure that the seniors, the 2 aging seniors in the Potomac area will in fact stay in 3 the county. 4 I feel like I need to address, because Mr. 5 Maggin raised it and then Mr. Brown raised it, this issue 6 of the applicant not engaging the community. And that 7 just certainly is not correct. When we first started 8 this project, we had several on-site open houses, on 9 site. Mr. Wormald had individual meetings with the 10 residents, he had coffee with several of them to discuss 11 the project. It was clear after those discussions and as 12 we saw from, I'll call it Round 1, that the community 13 wasn't happy with the project. 14 When we came to Round 2, which is the current 15 conditional use, we again went beyond the notice 16 requirements. We sent individual letters to all adjacent 17 and confronting property owners and said: hey, we want to 18 talk to you. Contact us and we would be more than happy 19 to re-engage and have a discussion about this. Not a one 20 took us up on that. So, to suggest that the property 21 owner, the applicant -- excuse me -- has not reached out 22 to the community is just false, and tries to set -- 23 create an impression, a negative impression, which just 24 certainly isn't the case. 25 In terms of the suggestion that this community</p>	<p style="text-align: right;">95</p> <p>1 feels that there needs to be a surgical removal of a 2 townhouse to create more open space along the western 3 property line, we don't think that's needed, that's 4 probably the appropriate solution. 5 As Mr. Wormald said, there are economies of 6 scale to providing, you know, whether it's assisted 7 living or the independent living units, and we're closely 8 reaching that minimum threshold. When we first started 9 this project, while I don't have the number in front of 10 me, I think there were 80 or so independent living units 11 on the property. And that has decreased now to almost 50 12 percent of that, 45. And I would submit that a 20 13 percent reduction -- a 20 percent reduction, which would 14 also result in a setback 300 times the requirement, 15 there's been no testimony as to why that's needed. 16 Finally, in terms of the legal structure, 17 unfortunately I feel like this is another example where 18 issues are being created where the issues just simply 19 don't exist. Mr. Brown has raised a number of 20 speculative issues. Well, this could happen, or that 21 could happen. DPS is charged with enforcing and 22 inspecting all conditional uses. This one would be no 23 different. There would also be additional controls, as 24 we have set forth in our legal structure memo, and we 25 would submit that those are more than adequate to ensure</p>
<p style="text-align: right;">94</p> <p>1 should go above and beyond any other residential care 2 facility to require showings of need versus simply a 3 requirement of 62-plus, is unprecedented. Now the 4 reality is that most people that move into an independent 5 living community do so because they know that their needs 6 are starting to become -- are increasing and that their 7 abilities are being compromised. And in fact, for those 8 of us that have gone through this process we know that 9 often it's -- those individuals do so kicking and 10 screaming. But there are some seniors who, for whatever 11 reason, are more prepared. And as an anticipation of 12 knowing, oh, I can't drive at night; I need reminders 13 about my meds; or whatever the case may be, and that 14 those needs are increasing, that they're going to move 15 into an independent living facility in anticipation of 16 meeting those needs very soon. 17 So, I would say that this community should not 18 -- no additional requirements should be imposed upon this 19 project that have not been imposed on any other senior 20 project within the entire county. 21 The suggestion that a compromised design which 22 would eliminate the nine cottage units within the circle 23 is Draconian. That would result in a 20 percent decrease 24 in the cottage independent living units. There is simply 25 no need for that. As we said, if the Hearing Examiner</p>	<p style="text-align: right;">96</p> <p>1 that this project works and functions and operates in 2 accordance with the conditional use, in accordance with 3 all county, state, and federal laws, and that whatever 4 requirements are imposed to ensure compatibility, that 5 those are continually maintained. And so, with that, we 6 conclude our remarks. Thank you. 7 HEARING EXAMINER ROBESON HANNAN: Thank you. 8 Let me just get to -- you had mentioned conditions. 9 MS. HARRIS: Yes. 10 HEARING EXAMINER ROBESON HANNAN: There's a 11 typical condition that we usually put on that says, all 12 development is subject to the approved conditional use 13 and site plan -- that doesn't include the height. Do you 14 have a problem with a condition maxing -- capping height 15 at 40 feet? 16 MS. HARRIS: For the independent living 17 cottages, no. 18 HEARING EXAMINER ROBESON HANNAN: Yes. I'm 19 sorry, yes. 20 MS. HARRIS: Yes. That is fine. 21 HEARING EXAMINER ROBESON HANNAN: Now, I've got 22 DPS saying this is enforceable. Do you have a problem 23 with a condition stating that the legal structure will be 24 -- and I haven't -- this is not taking a position on Mr. 25 Brown's arguments. It's just -- I want to get these out</p>

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25 (97 to 100)

<p>97</p> <p>1 of the way. Do you have a problem with a condition 2 stating that the legal structure would be substantially 3 the same as set out in whatever -- I can't remember the 4 exhibit, but there's an exhibit where you set out your 5 legal structure? 6 MS. HARRIS: Yes. We are fine with that, and 7 then I believe actually, there was an initial memo on 8 March 23rd, and then a response to -- 9 HEARING EXAMINER ROBESON HANNAN: Right. 10 MS. HARRIS: -- questions, and then we further 11 elaborated last Friday. So, no issue with that 12 condition. 13 HEARING EXAMINER ROBESON HANNAN: Now, what I 14 would like you -- on the lot -- was it Lot 31? 15 MS. HARRIS: Yes. 16 HEARING EXAMINER ROBESON HANNAN: That you were 17 going to -- I want -- this is the deal. I referred it 18 back to Planning's desk, the revised landscaping. I 19 haven't heard from them, and maybe I need to be clearer, 20 I have to leave the record open for a minimum of 30 -- a 21 maximum of 30 days. 22 Also, there are cases that say I can't approve 23 a conditional use plan that -- and defer, you know, the 24 final aspects of the plan to a future approval. Is it 25 possible for you to get a revised -- if you're simply</p>	<p>99</p> <p>1 MS. HARRIS: But no other -- 2 (Crosstalk) 3 HEARING EXAMINER ROBESON HANNAN: I agree with 4 you. 5 MS. HARRIS: Okay. So, within two weeks, is 6 that possible, and I'm looking at the Soltez Team. Or -- 7 HEARING EXAMINER ROBESON HANNAN: Do you mean 8 Mr. -- is Mr. Steven here? 9 MS. HARRIS: He's in the back room with Mr. 10 Park -- 11 MR. PARK: Yes, Pat, can you give us a second? 12 I want to talk to Mr. Steven about the MPS update for the 13 storm water concept. That's outside of the Park and 14 Planning approval, so give us a second here. 15 MS. HARRIS: Yes. 16 HEARING EXAMINER ROBESON HANNAN: Do you need 17 to do that if you're removing impervious area? 18 MS. HARRIS: I actually think -- 19 HEARING EXAMINER ROBESON HANNAN: Well, I'll 20 let -- I'll let them discuss it. 21 My other question is, we had talked yesterday 22 about perhaps a condition requiring maintenance and 23 replacement of the revised landscaping by the -- I don't 24 know which -- 25 MS. HARRIS: The HOA.</p>
<p>98</p> <p>1 emptying out a lot and putting landscaping in, is it 2 possible for you to submit -- and it should go to 3 Planning and myself at the same time -- a revised 4 conditional use plan, without that lot, and what would be 5 the timing of that? How fast -- and I don't want to 6 delay the case. The bottom line is there's a delay 7 already until I hear from Planning Staff, I don't know 8 how long that delay is going to be. But -- and frankly, 9 well, I don't want to delay -- as you may know, we're 10 short staffed, and I am going to try my best not to have 11 to extend the time for the decision. But I can be 12 writing a decision, you know, while these reviews are 13 taking place because the reviews are relatively, you know 14 -- any further comments would be limited to the changes 15 on the plan. So -- 16 MS. HARRIS: So -- okay. 17 HEARING EXAMINER ROBESON HANNAN: Go ahead. 18 MS. HARRIS: Well, what -- I think we could do 19 that in relatively short order, and I need to defer to 20 our engineers, but let me just clarify. Obviously, there 21 are a lot of plans in the record, so what I would submit 22 is that it's a change to the Conditional Use Plan, and a 23 change to the Landscape and Lighting Plan. 24 HEARING EXAMINER ROBESON HANNAN: Yeah, that 25 was -- that's what I was --</p>	<p>100</p> <p>1 HEARING EXAMINER ROBESON HANNAN: -- HOA. 2 Which HOA would it be, the overall? The umbrella HOA. 3 Do you have an issue with that? 4 MS. HARRIS: No. And Mr. Wormald, if I say -- 5 if you disagree with any of my responses, scratch your 6 nose or something. 7 HEARING EXAMINER ROBESON HANNAN: Or you can 8 just answer. 9 MR. PARK: Ms. Harris, Daniel Park. For the 10 Soltaz Team, we believe we can get a revised Conditional 11 Use Plan, Landscaping Lighting Plan and Stormwater 12 Management updates by the 17th of June. 13 MS. HARRIS: Thank you. 14 HEARING EXAMINER ROBESON HANNAN: What is that, 15 the 17th of June? Okay, today's the first. Okay. 16 Well, what we can do is this. Well, I need to 17 give Planning at least two weeks to review it. And then 18 what we typically do is have them provide comments and 19 then give everyone else the opportunity to comment on 20 Planning's comments. But I do think it's faster -- I 21 can't leave it for Preliminary Plan. I could make a 22 requirement to do it as a minor modification after 23 Preliminary Plan, but then you're subject to a whole 24 hearing again. So, I think it's the most efficient to do 25 it in this proceeding. So, if you can submit it by</p>

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26 (101 to 104)

<p>101</p> <p>1 6/17/22, I'm going to contact Planning today and see if 2 they can review it within two weeks. So, two weeks would 3 be -- I guess it would have -- would it have to go to DEP 4 too? 5 MS. HARRIS: So -- 6 HEARING EXAMINER ROBESON HANNAN: Mr. Park, 7 does it have to go to DEP, too, for the stormwater? 8 MR. PARK: DPS. 9 (Crosstalk) 10 MS. HARRIS: If I could comment on that? 11 HEARING EXAMINER ROBESON HANNAN: Yes. 12 MS. HARRIS: So, the stormwater management -- 13 we have an approved Stormwater Management Concept. As 14 you pointed out, wait a minute, why do you have to revise 15 the concept if you're creating more pervious. But we do 16 because that's the requirement. 17 HEARING EXAMINER ROBESON HANNAN: Impervious. 18 MS. HARRIS: We wouldn't be increasing the 19 pervious. 20 HEARING EXAMINER ROBESON HANNAN: Oh, you're 21 right. You're right. 22 MS. HARRIS: So, we know -- and an approved 23 storm water management concept while you like them, it's 24 not a -- it's my understanding it's not a requirement. 25 So, is there any --</p>	<p>103</p> <p>1 MR. BROWN: I have no -- what is the -- what is 2 the -- what is the issue? 3 HEARING EXAMINER ROBESON HANNAN: The issue -- 4 the finalized -- I'm asking the applicant for a revised 5 Conditional Use and Landscape Plan showing ownership Lot 6 31. Am I correct on that, Ms. Harris? Ownership Lot 31 7 -- 8 MS. HARRIS: Correct. 9 HEARING EXAMINER ROBESON HANNAN: -- as a 10 pocket park. I am asking them -- or open space, whatever 11 you want to call it, but we're moving that cottage. And 12 I'm asking them to submit that plan by June 17th. I am 13 proposing to give the Planning Staff two weeks to review 14 it, which would be July 1st. Then I'm proposing the 15 comments, any comments on Planning Staff's comments and 16 the revised plan, by July 8th. 17 MR. BROWN: I have no problem with that 18 scheduling. 19 HEARING EXAMINER ROBESON HANNAN: Now that 20 would leave the record open -- no, we'll have the 21 transcript anyway by that time. So, what I'm going to 22 do, just to give a fudge factor, is we're going to stick 23 with those dates, but because I haven't talked to 24 Planning Staff, I'm going to leave the record open until 25 July 15th, just because I haven't -- in case we need to</p>
<p>102</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Well, it 2 is of a conditional use because this substitutes as site 3 plan, but maybe I'm wrong. Hold on a second. If you can 4 just bear with me a moment. Okay. All I do need is the 5 concept. You're right. So that's fine. 6 MS. HARRIS: Okay. 7 HEARING EXAMINER ROBESON HANNAN: All right. 8 So, let's do this, I'll expect a revised Conditional Use 9 Plan and Landscape Plan on 6/17, and you submit that -- 10 you're supposed to submit amendments to the Planning 11 Staff directly, but submit them to both of us, and then I 12 will leave the record open, and Mr. Brown, you can weigh 13 in on this if you if you wish, I will leave the record 14 open until July first for Planning Staff to receive 15 comments -- to provide comments, and then I can leave the 16 record open to July 8th to provide comments on Planning 17 Staff's comments. 18 Now, Mr. Brown -- and that's, you know, 19 assuming I can get in to catch -- you know, that I can 20 get Planning Staff to agree to this. 21 MS. HARRIS: And within that period -- 22 HEARING EXAMINER ROBESON HANNAN: Mr. Brown -- 23 MS. HARRIS: Oh, I'm sorry. 24 HEARING EXAMINER ROBESON HANNAN: -- do you 25 have an objection to that?</p>	<p>104</p> <p>1 change those dates. But I'm not changing -- those - 2 that will be the timeframe that I give to everybody. And 3 during this time, I will be working on my decision. So, 4 hopefully, you know, this will not be -- it won't -- 5 technically I have 30 days from the 15th to write my 6 decision. Hopefully, I will not need that much time 7 because I know this has been a long project for you. 8 MS. HARRIS: Will we have the opportunity, Ms. 9 Robeson, to submit draft conditions for your 10 consideration? And if so, by when would you like those? 11 HEARING EXAMINER ROBESON HANNAN: I would -- 12 well, why don't we do it, the draft conditions -- how 13 long do you think you'd need to do that? 14 MS. HARRIS: Well, unfortunately we are running 15 into another vacation schedule conflict, so I think -- 16 and it's not -- by the, I think July -- I mean, I'm 17 sorry. June 17th, is that correct, Ken? Would that 18 work? 19 MR. WORMALD: Sure. 20 HEARING EXAMINER ROBESON HANNAN: So, both the 21 Amended Conditional Use Plan and Landscape Plan will be 22 in by June 17th. 23 MS. HARRIS: Yes. 24 HEARING EXAMINER ROBESON HANNAN: And then 25 comments on the condition -- you can always do these</p>

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Conducted on June 1, 2022

27 (105 to 108)

<p>105</p> <p>1 ahead of time -- but they will be due on 7/8, as well.</p> <p>2 MS. HARRIS: July 8?</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Yes. July</p> <p>4 8th, as well.</p> <p>5 MS. HARRIS: Okay.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, do</p> <p>7 you have any comments on the way that we're proposing to</p> <p>8 proceed?</p> <p>9 MR. BROWN: I'm afraid that I have a question</p> <p>10 that may be regarded as impertinence, but I feel I must</p> <p>11 ask it in order to properly advise my clients. Spending</p> <p>12 time on conditions is something that I might recommend to</p> <p>13 them if it has already -- if I should be under the</p> <p>14 impression that the decision about this case has already</p> <p>15 been made. My clients are going to ask me, based on this</p> <p>16 discussion, if you have already made up your mind about</p> <p>17 this case, and I really don't know how to answer that</p> <p>18 question.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Well, I don't</p> <p>20 know how to answer it either because the fact is I have</p> <p>21 not. And --</p> <p>22 MR. BROWN: That's a perfectly fine answer. I</p> <p>23 am sorry to have to -- have to have asked it.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: I struggled</p> <p>25 with the compatibility issue as we discussed, and I am</p>	<p>107</p> <p>1 one -- you must communicate with every -- list of people</p> <p>2 who have testified here. I have them in a group. I had</p> <p>3 to get special permission to have a group outside of the</p> <p>4 county, but I will add Mr. Wank, because I don't think</p> <p>5 he's in it. But you must include that group on your</p> <p>6 email, okay?</p> <p>7 All right. With that, I am going to adjourn</p> <p>8 this public hearing. The record will stay open 'til July</p> <p>9 15th, but the record is only staying open to receive an</p> <p>10 Amended Landscape and Conditional Use Plan to remove the</p> <p>11 ownership unit that we discussed, comments on that, and</p> <p>12 proposed conditions from the applicant, and then comments</p> <p>13 on all of those things from the parties. Okay. So, I'm</p> <p>14 not going to receive additional opposition letters or</p> <p>15 anything like that. All right?</p> <p>16 Okay, with that, I do think all the parties,</p> <p>17 they've spent a lot of time and a lot of analysis on this</p> <p>18 case, and it was excellent -- both were excellently</p> <p>19 presented, and I do appreciate that. Okay, with that,</p> <p>20 I'm going to adjourn, leaving the record open 'til July</p> <p>21 15th. Thank you.</p> <p>22 MS. HARRIS: Thank you for your time.</p> <p>23 MR. BROWN: Thank you.</p> <p>24 (Hearing adjourned at 12:49 p.m.)</p> <p>25</p>
<p>106</p> <p>1 including -- I am asking for the revised landscape plan</p> <p>2 so that that option is available. But I have not decided</p> <p>3 the case.</p> <p>4 MR. BROWN: Thank you very much. I am sorry to</p> <p>5 have had to -- have found it necessary to ask you the</p> <p>6 question.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: It's not</p> <p>8 impertinent. I can understand why -- I'm trying to clean</p> <p>9 up details now during the hearing so -- so that we have a</p> <p>10 method of proceeding.</p> <p>11 MR. BROWN: Thank you.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: And I always</p> <p>13 do worry about that when I start asking for conditions</p> <p>14 and changes that people will think it's a done deal, but</p> <p>15 it is not. And as I said, I did -- I have struggled.</p> <p>16 So, I just want the op -- all the options available.</p> <p>17 Does that help you?</p> <p>18 MR. BROWN: Very much. Thank you.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>20 MR. BROWN: I have no problem with the</p> <p>21 schedule.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>23 Anything from anybody else before -- and just remember</p> <p>24 for those who are in the audience but are not represented</p> <p>25 by Mr. Brown, whenever you communicate with me, I have</p>	<p>108</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC</p> <p>2 I, JOE LORETE, Court Reporter, do hereby certify that</p> <p>3 I am the officer before whom the foregoing hearing was</p> <p>4 taken; that said proceedings were electronically recorded</p> <p>5 by me; and that I am neither counsel for, related to, nor</p> <p>6 employed by any of the parties to this case and have no</p> <p>7 interest, financial or otherwise, in its outcome.</p> <p>8 IN WITNESS WHEREOF, I have hereunto set my hand and</p> <p>9 seal this 9th day of June, 2022.</p> <p>10</p> <p>11 <i>Joe Lorete</i></p> <p>12 -----</p> <p>13 JOE LORETE, Notary Public</p> <p>14 For the State of Maryland</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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CERTIFICATE OF TRANSCRIBER

I, Kathleen Simmons, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by and of the parties to this case and have no interest, financial or otherwise, in its outcome.

Kathleen Simmons

Kathleen Simmons

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