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Transcript of Recorded Hearing

Date: August 2, 2023

Case: AC 23002 ESC 9401 Westphalia LLC

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In re:

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SE 4856 AC 23002 ESC 9401 WESTPHALIA LLC

9

RECORDED HEARING

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Wednesday, August 2, 2023

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20 Job No.: 503336

21 Pages: 1 - 108

22 Transcribed by: Jennifer Candela-Alvarez

1 HEARING EXAMINER MCNEIL: Okay. Good
2 morning, everyone. If you'd like to come on
3 camera, that would be great. I'm Maurene
4 McNeil, and I will be the zoning hearing
5 examiner today. And today is August 2nd, 2023.
6 We're here for Special Exception 4856
7 Alternative Compliance Request 23002 and a
8 request for a variance from a provision of
9 subtitle 25 of the county code pertaining to
10 specimen trees.

11 And this matter is being recorded.
12 So, everyone, if you could please not turn on
13 your mic unless you're speaking.

14 Finally, I don't see the People's
15 Zoning Counsel, but I think he will be coming
16 on, but I do see Mr. Biase.

17 And, Mr. Biase, would -- do you mind
18 starting without People's Zoning Counsel?

19 VINCE BIASE: Good morning, Madam
20 Examiner. Yes, that's fine.

21 HEARING EXAMINER MCNEIL: Okay. All
22 right, then. I will have counsel identify

1 themselves for the record. And I don't know if
2 I said -- excuse me. It's been a -- quite a
3 morning already. We're here for a request to
4 build an elderly housing development for 61
5 attached dwelling units as well off of
6 Westphalia Road.

7 So, Mr. Biase, introduce yourself for
8 the record, and you can supplement my
9 introduction. Also, one more before you start.
10 I apologize. If anyone here is opposed to this
11 request, let me know at some point because you
12 have a right to cross-examine witnesses. I
13 think someone may have been opposed, but I can't
14 tell looking right now.

15 And the other thing, because this is
16 a quasi-judicial hearing, you will have to come
17 on to camera when you're testifying. Okay.
18 Thank you.

19 Go ahead, Mr. Biase.

20 VINCE BIASE: Good morning, Madam
21 Hearing Examiner. For the record, Vince Biase
22 with CL Hatcher in Laurel, Maryland, on behalf

1 of the applicant. I'm pleased to represent ESC
2 9401 Westphalia, L.C., the applicant for this
3 special exception.

4 This morning, Madam Examiner,
5 testimony will show that the subject application
6 proposing 61 units of fee simple one family
7 attached dwellings for the elderly complies with
8 the necessary regulations and standards for
9 approval of a special exception.

10 Specifically, the proposed
11 development is for parcel 48, located at 9401
12 Westphalia Road, Upper Marlboro, Maryland. The
13 property is approximately ten acres and was
14 previously zoned RR, rural residential and MIO,
15 military installation overlay, pursuant to the
16 county's zoning ordinance in effect prior to
17 April 1, 2022, which I will refer to today as
18 the prior zoning ordinance.

19 The property is currently zoned
20 RR/MIO, pursuant to the county's current zoning
21 ordinance. This special exception application
22 is proposed under the prior RR and MIO Zone,

1 pursuant to section 27-1904 of the current
2 zoning ordinance, as an application for 61 units
3 of fee simple one family attached dwellings for
4 the elderly in the prior RR zone. The subject
5 application requires special exception approval.
6 More details will be provided through the
7 testimony of the four witnesses I will call
8 today.

9 Before I introduce the applicant's
10 witnesses, I would like to take a moment to
11 discuss planning staff and the planning board's
12 action on SE-4856, specifically as it relates to
13 the transmitted special exception case file.

14 At its April 20th hearing, the
15 planning board transmitted the full SE-4856 case
16 file to the zoning hearing examiner. Notably,
17 this case file included the applicant's full
18 special exemption application; planning staff's
19 April 5th technical staff report, which
20 recommended approval of the special exception
21 subject to conditions; two separate applicant
22 Planning Board exhibits, which were identified

1 as Applicant's Exhibit A and Applicant's Exhibit
2 B in the Planning Board record; and an April
3 19th memorandum from Maryland National Capital
4 Park and Planning Commission Development Review
5 Staff to the Planning Board.

6 Notably, Development Review staff's
7 April 19th memorandum, which is identified as
8 Exhibit 23, Lockhart and Hunt to Planning Board
9 in the ZHE record, recommended clarifications
10 and corrections to the April 5th technical staff
11 report. Specifically, Development Review
12 staff's memo recommends revisions to the
13 technical staff report to, one, remove language
14 requiring the applicant to satisfy the full 20
15 percent of total woodland conservation threshold
16 with on-site preservation; and, two, to correct
17 a technical error from the Prince George's
18 County Fire Department referral memo that was
19 drafted for another application but mistakenly
20 included in the technical staff report for
21 Alexander Landing.

22 As outlined in Development Review's

1 April 19th memo, planning staff supports the
2 applicant's proposed revisions to applicable
3 findings and conditions contained in the April
4 5th technical staff report.

5 Accordingly, the applicant's
6 references to Development Review staff's
7 proposed technical staff report today will be
8 distinguished as, quote, the technical staff
9 report, as amended by Development Review staff's
10 April 19th clarifying memo in order to refer to
11 a technical staff report that accurately
12 reflects planning staff's recommended findings
13 and conditions of approval.

14 With that clarification, I would like
15 to introduce the applicant's witnesses in
16 attendance today. The witnesses here this
17 morning include Ms. Jessie Alexander, the
18 current property owner. Ms. Alexander will
19 testify to the property's history and the
20 proposed senior housing use.

21 The second witness will be
22 Mr. Jude Burke, the applicant's authorized

1 representative, who will testify as to the
2 applicant's proposal and relevant community
3 outreach initiatives.

4 The third witness will be
5 Mr. David Nelson, a traffic engineer with street
6 traffic studies. Mr. Nelson will testify as to
7 traffic and transportation planning issues in
8 accordance with the traffic statement that was
9 prepared in support of this special exception
10 application.

11 The fourth and final witness today is
12 Mr. Mark Ferguson, a certified land planner,
13 architect, environmental design engineer with
14 RDA/Site Design, Inc. Mr. Ferguson will testify
15 as to a description of the site plan, the
16 characteristics of the property, planning and
17 design elements for the proposed senior housing
18 use, and the proposed development's
19 compatibility with the surrounding neighborhood.

20 Mr. Ferguson will also provide
21 testimony regarding the proposed development's
22 compliance with the intent, applicable

1 development standards, and all requirements of
2 the prior zoning ordinance for one family
3 attached dwellings for the elderly in the RR
4 zone.

5 Finally, Mr. Ferguson will provide
6 testimony regarding the application's
7 conformance with the applicable master plan and
8 the application's preservation of regulated
9 environmental features and approved natural
10 resources inventory and the Tree Conservation
11 Plan Type 2.

12 I also have with us Ms. Victoria
13 Ballestero and Mr. Andrew Brown of ATCS
14 Engineering as well as Mr. Chris Hatcher of CL
15 Hatcher. I will not necessarily call on Ms.
16 Ballesteros [sic], Mr. Brown, or Mr. Hatcher as
17 witnesses today. However, they may assist with
18 explaining necessary exhibits in order to
19 conduct this hearing virtually.

20 With that, Madam Examiner --

21 HEARING EXAMINER MCNEIL: Yeah. If
22 they may assist, we'll be calling them as

1 witnesses. I just want to clarify that problem.
2 I enjoy talking to everyone. That's great.
3 You're ready to proceed.

4 So is anyone signed on opposed to
5 this request? I see Mr. Hatcher.

6 MR. HATCHER: Counsel will only
7 assist the very able Mr. Biase as he works
8 through this special exception, Madam Examiner.

9 HEARING EXAMINER MCNEIL: Okay.

10 WANDA COLLINS: Ms. McNeil, Wanda
11 Collins is on the line, and, yes, I do oppose.

12 HEARING EXAMINER MCNEIL: Okay. And,
13 Ms. Collins, will you -- will you -- will you be
14 able to come on screen?

15 Ms. Collins?

16 WANDA COLLINS: I have a virtual
17 appointment, doctor's appointment, at 10:30; so
18 I won't be available to be present.

19 HEARING EXAMINER MCNEIL: Okay.
20 Well, let me ask you this: Do you -- I can call
21 people out of order. Would you like to testify
22 first? And you can come back in whenever you

1 can?

2 WANDA COLLINS: No. Because I want
3 to listen to what everybody is saying first.

4 HEARING EXAMINER MCNEIL: Okay.
5 Well, whenever you want to testify, you will
6 have to be on screen.

7 WANDA COLLINS: Okay.

8 HEARING EXAMINER MCNEIL: So your
9 doctor's appointment -- will it be over by 11?

10 WANDA COLLINS: Yes.

11 HEARING EXAMINER MCNEIL: It'll
12 probably take us till 11. Okay. I'll see you
13 then. And you're the only person?

14 WANDA COLLINS: I am.

15 HEARING EXAMINER MCNEIL: What about
16 -- who's Lawanda (phonetic)?

17 UNIDENTIFIED SPEAKER: Madam ZHE, Ms.
18 Lawanda is part of the council's tech support.

19 HEARING EXAMINER MCNEIL: Hi,
20 Lawanda. Okay. So only Ms. Collins, and we
21 have not seen Ms. Yambi (phonetic). Okay.

22 You may call your first witness,

1 Mr. Biase.

2 THE WITNESS: Madam Examiner, I show
3 Mr. Biase has perhaps lost his connection.

4 VINCE BIASE: Can you hear me now?

5 THE WITNESS: I can. Yes.

6 HEARING EXAMINER MCNEIL: Yes.

7 VINCE BIASE: We would call our first
8 witness, Ms. Jessie Alexander, please.

9 HEARING EXAMINER MCNEIL: Good
10 morning, Ms. Alexander.

11 MS. ALEXANDER: Good morning,
12 everyone.

13 HEARING EXAMINER MCNEIL: Do you
14 swear or affirm, under the penalties of perjury,
15 that the testimony shall give will be the truth
16 and nothing but the truth?

17 MS. ALEXANDER: I do.

18 HEARING EXAMINER MCNEIL: Okay. You
19 may proceed, Mr. Biase.

20 EXAMINATION

21 BY VINCE BIASE:

22 Q Good morning, Ms. Alexander. Can you

1 please state your full name and current address
2 for the record?

3 A Good morning, Mr. Biase. My full
4 name is Jessie Alexander, and my address is 9401
5 Westphalia Road, Upper Marlboro, Maryland,
6 20774.

7 Q Are you familiar with the property
8 which is the subject of this application?

9 A Yes, I'm quite familiar with the
10 property and because I reside on that particular
11 property right now.

12 Q And how long have you resided at the
13 subject property?

14 A My husband and I have lived at 9401
15 Westphalia Road for approximately 38 years.

16 Q What is your vision for the future
17 use of the property?

18 A Well, one of the things that I wish
19 for our property is to provide high-quality
20 housing opportunities for seniors in the
21 Westphalia community. And most of the existing
22 housing that I am familiar with in our community

1 consists of high-rise buildings and apartment
2 living style buildings, and I just thought the
3 proposed villas would be a wonderful option for
4 seniors, as myself, to age in place in our
5 community, and there are very limited
6 opportunities, as far as I know of, for this
7 type of housing. And my husband and I want our
8 property to offer more attractive and desirable
9 villa style housing for seniors as ourselves.

10 Q Is there a particular reason that you
11 want the subject property developed with a
12 senior housing use?

13 A Yes. It was important to me and my
14 husband to work with a developer like Elm
15 Street, and one of the things that we were asked
16 initially -- what would you like to see on the
17 property? And so the proposed community and
18 villa-style housing stands out and presents an
19 exciting opportunity for me and my neighbors to
20 age in place in the community that we live in.

21 Q And have you ever discussed the
22 proposed senior housing use with any of your

1 neighbors or members of the surrounding
2 community?

3 A Yes, I have in -- on an informal
4 basis, and, over the past 24 months, I've been
5 having informal conversations with my neighbors
6 regarding the property; and it's important for
7 us to continue those dialogues and continue
8 those conversations because every step of the
9 way, we will continue to engage as much as
10 possible and as much as appropriate so that our
11 community is aware of this exciting age-
12 restricted housing opportunity that will be
13 available.

14 VINCE BIASE: That will be all the
15 questions I have for Ms. Alexander, Madam
16 Examiner.

17 HEARING EXAMINER MCNEIL: Does anyone
18 have a question of Ms. Alexander?

19 Mr. Biase, it looks like Mr. Nelson
20 needs a new link into this hearing. Can you
21 email -- I'm emailing you and Mr. Walker-Bey.
22 Can you email him? Can you email Mr. Walker-Bey

1 Mr. Nelson's email, and we'll send him a new
2 link?

3 VINCE BIASE: Yes, I'll send that
4 over.

5 HEARING EXAMINER MCNEIL: Okay. And
6 since no one has questions, thank you, Ms.
7 Alexander.

8 MS. ALEXANDER: Thank you.

9 HEARING EXAMINER MCNEIL: And before
10 we proceed further, Mr. Biase, I forgot to have
11 you explain what Exhibit 69 and 70 were since
12 they were received by us in the past 24 hours.

13 VINCE BIASE: Yes, I believe it's
14 Exhibit -- there's Exhibit 68, which is a June
15 20th land use report which we are proposing to
16 enter into the record. Exhibit 69 is an updated
17 special exception site plan, and Exhibit 70 is
18 an updated TCP2. We will not be entering the
19 updated TCP2 into the record. We only wish to
20 enter in Exhibit 68, the land use report, as
21 well as Exhibit 69, the updated special
22 exception site plan.

1 MS. POTEAT: Your mic is off,
2 Maurene.

3 HEARING EXAMINER MCNEIL: Thank you,
4 Ms. Poteat (phonetic). Okay. Maybe later on
5 you'll explain why you're not doing the revised
6 TCP because normally we do approve those with
7 the special exception.

8 VINCE BIASE: Yes. I'll explain that
9 through testimony as provided later in the
10 hearing.

11 HEARING EXAMINER MCNEIL: Okay. Are
12 you ready for your next witness?

13 VINCE BIASE: Yes. We would call Mr.
14 Jude Burke as the next witness.

15 HEARING EXAMINER MCNEIL: Mr. Burke?

16 MR. BURKE: Good morning, Madam
17 Examiner.

18 HEARING EXAMINER MCNEIL: Good
19 morning.

20 Do you swear or affirm under the
21 penalties of perjury that the testimony you
22 shall give will be the truth and nothing but the

1 truth?

2 MR. BURKE: I do.

3 EXAMINATION

4 BY MR. BIASE:

5 Q Good morning, Mr. Burke. Can you
6 please state your full name and business address
7 for the record?

8 A My name is Jude Burke. Our business
9 address is 1355 Beverly Road, Suite 240, McLean,
10 Virginia, 22101.

11 Q And where are you currently employed?

12 A Elm Street Development.

13 Q What is your current position with
14 Elm Street Development?

15 A I'm the vice president at Elm Street.

16 Q Can you briefly summarize Elm Street
17 Development's previous work within Prince
18 George's County?

19 A I've been working on projects in
20 Prince George's County for Elm Street for 20
21 years now. Our projects in that time include
22 Glendale Forest, the Ridings at Upper Marlboro,

1 and Stonegate Estates, which are all single
2 family detached houses, also, The Park At
3 Addison Metro and The Crescent At Cherry Lane in
4 Laurel, which are -- both have a mix of single
5 family detached and attached houses.

6 Q Are you authorized to testify on
7 behalf of ESC 9401 Westphalia, L.C.?

8 A Yes. I am authorized to testify on
9 behalf of the applicant ESC 9401 Westphalia,
10 L.C.

11 Q Is the applicant registered to do
12 business in the state of Maryland and in good
13 standing?

14 A Yes. ESC 9401 Westphalia, L.C. is
15 registered as a limited liability company in the
16 state of Maryland and is in good standing.

17 Q Does ESC 9401 Westphalia, L.C. own
18 the subject property?

19 A No. It is the contract purchaser of
20 the property.

21 Q Were you involved in the decision to
22 develop the proposed senior housing for this

1 location?

2 A Yes.

3 Q How many units of senior housing are
4 proposed with this special exception
5 application?

6 A We're proposing 61 houses of fee
7 simple senior housing.

8 Q Approximately how many dwellings are
9 proposed per acre?

10 A 6.1 dwelling units are proposed per
11 acre.

12 Q And what type of single family
13 attached units are proposed?

14 A These are called villas. They are a
15 type of single family detached house designed
16 for seniors with all of the necessary living
17 spaces, such as owner's suite, kitchen, dining,
18 and laundry on the first floor. There's a
19 smaller upstairs level with a bathroom and a
20 couple extra rooms that can be used as guest
21 bedrooms or a study or hobby room and a
22 bathroom. Some may have a partial basement if

1 the lot they are on has a grade decline towards
2 the rear of the yard.

3 Q Can you elaborate on the proposed
4 design that's associated with these villas?

5 A We are proposing two different sizes
6 of villas on the special exception site plan.
7 There is a 24-foot-wide house with a one-car
8 garage and a 28-foot-wide house with a two-car
9 garage. Both sizes will have a minimum of 60
10 percent masonry on the front of the house,
11 including the entire first floor.

12 Houses that have highly visible end
13 walls, such as the houses where the side will be
14 facing Westphalia Road -- they will have masonry
15 on the first floor along with four points of
16 architectural fenestration on the first floor,
17 three points of architectural fenestration on
18 the second floor and enhanced roofline detail
19 and shutters on all the windows.

20 Q Or any on-site recreational
21 facilities proposed with this application?

22 A Yes, we proposed several on-site

1 recreational amenities for the use and enjoyment
2 of future residents and guests of the community.

3 Q Can you testify to the types of
4 recreational facilities that are proposed?

5 A The proposed recreational facilities
6 include a central gathering area with a 400
7 square foot covered pavilion surrounded by a
8 hard surface plaza with additional seating
9 spaces, landscaped beds, and low decorative
10 retaining walls. There will also be a community
11 garden for residents to plant the fruits or
12 vegetables or flowers of their choice and
13 walking trails, which will include a connection
14 to the adjacent Westphalia neighborhood park.

15 Q How will age restrictions be enforced
16 for the proposed senior community?

17 A Age restrictions will be enforced
18 through covenants approved by the Prince
19 George's County Council and recorded in the
20 county land records. A draft of the proposed
21 age-restricted covenants was submitted as part
22 of the special exception application.

1 Q Do you personally or Elm Street
2 Development perform any community outreach
3 related to this application?

4 A Yes. I began meeting with nearby
5 groups in the fall of 2021, first with Mr.
6 Riddell Duke and some of his neighbors in
7 Westphalia Estates, which is adjacent to the
8 Alexander property, also, with Mr. Melvin
9 Henderson and some of his neighbors in the
10 Little Washington Civic Association, and we have
11 continued meeting with those groups into 2023.

12 Our first public notice mailings to
13 advise nearby property owners, in accordance
14 with the zoning code, went out in January of
15 2022, and we have made subsequent mailings as
16 required at each step of the process and
17 expanded the list of recipients beyond the
18 minimum required by the Planning Department.

19 We met with Ms. Wanda Collins and
20 other nearby neighbors starting in January of
21 2023. We appreciate her bringing in some of the
22 other community members to those meetings.

1 We've had at least a couple follow-up meetings
2 with her.

3 We also met with Dr. Burden and some
4 of her neighbors on Valley Forest Drive about
5 two weeks ago.

6 Q Have you reviewed the statement of
7 justification, which is identified as Exhibit 4
8 in this matter?

9 A Yes, I reviewed the statement of
10 justification.

11 Q Do you further incorporate and adopt
12 as your testimony here today that statement of
13 justification?

14 A Yes, I do.

15 Q Are you familiar with the technical
16 staff report as amended by Development Review
17 staff's April 19th clarifying memo?

18 A Yes, I have reviewed the technical
19 staff report as amended by Development Review
20 staff's clarifying memo.

21 Q Do you agree with the technical staff
22 report's findings of fact, conclusions of law,

1 and proposed conditions of approval as amended
2 by Development Review staff's April 19th
3 clarifying memo?

4 A Yes, I do.

5 VINCE BIASE: That'll be all the
6 questions that I have for Mr. Burke, Madam
7 Examiner.

8 HEARING EXAMINER MCNEIL: Thank you,
9 Mr. Burke.

10 Does anyone have questions of Mr.
11 Burke? I believe -- oh, Mr. Brown's here.
12 Welcome. I just saw your email. You can
13 introduce yourself and ask any questions.

14 STAN BROWN: Yes. Good morning, Stan
15 Brown, People's Zoning Council. I apologize.
16 My building electricity was out, so I was either
17 going to have no electricity or air conditioner
18 and sit here and try to watch you guys, but I
19 couldn't even do that. So anyway, I'm on now.

20 Mr. Burke, I apologize. I didn't
21 hear the beginning of your testimony, but just
22 tell me real quickly what is your relationship

1 to the application?

2 THE WITNESS: Good morning. I am
3 vice president at Elm Street Development, and
4 each time we develop a project, we set up a
5 single purpose entity, a limited liability
6 company for that project. That way all the
7 applications and permits are in the name of that
8 entity. All the bonds are -- and the bank loan
9 is in the name of that entity, and that keeps
10 our projects separate from each other. So --

11 STAN BROWN: All right.

12 THE WITNESS: -- ESC 9401 Westphalia,
13 L.C. is a limited liability company that we at
14 Elm Street Development fully control.

15 STAN BROWN: All right. I didn't see
16 it in the -- in the file, but it may be in
17 there. Did Mr. Biase place in the file the SDAT
18 documentation showing that that entity is in
19 good standing in the state of Maryland?

20 VINCE BIASE: Yes.

21 THE WITNESS: Yes. I'm pretty sure
22 it's -- Oh, sorry.

1 VINCE BIASE: No. That certificate
2 of good standing is in the record, Mr. Brown.

3 STAN BROWN: Okay. All right. All
4 right. Good. I'll look for that.

5 VINCE BIASE: It is Exhibit 51.

6 STAN BROWN: All right. Great.

7 Great.

8 Also, Mr. Burke, you indicated that
9 you had met with various civic associations in
10 the community; correct?

11 THE WITNESS: Yes.

12 STAN BROWN: I didn't hear you
13 mention the Marlboro Ridge Community
14 Association. Did you meet with them?

15 THE WITNESS: I have not met with
16 Marlboro Ridge, no.

17 STAN BROWN: I mean, it's the larger
18 HOA just across Westphalia Road from this
19 project.

20 THE WITNESS: I'll have to check the
21 map on that. I'm happy to meet with them. I
22 have not heard from them, but I know they were

1 on our mailing list.

2 STAN BROWN: And that's what I was
3 going to ask. I know they are on the mailing
4 list, and it's just surprising that you didn't
5 get any response from them, but we can check
6 that out later. So that's all the questions I
7 have at the moment, and I appreciate it. Thank
8 you.

9 HEARING EXAMINER MCNEIL: And, Mr.
10 Biase, I didn't see -- I did see it at one
11 point, but I'm not sure -- what exhibit number
12 did you think was the SDAT approval to operate
13 within the state?

14 VINCE BIASE: It's Exhibit 61,
15 Certificate of good standing.

16 HEARING EXAMINER MCNEIL: There it
17 is. I can't read either. Thank you, sir.
18 Who's your next witness?

19 VINCE BIASE: Next, we would call Mr.
20 David Nelson.

21 HEARING EXAMINER MCNEIL: Mr. Nelson?

22 UNIDENTIFIED SPEAKER: We may still

1 be trying to get him --

2 HEARING EXAMINER MCNEIL: Oh, that's
3 right.

4 UNIDENTIFIED SPEAKER: -- a good link
5 for the meeting. I can try to call him and see
6 if he's received anything yet.

7 MS. POTEAT: I sent him an email.

8 HEARING EXAMINER MCNEIL: And so did
9 I, and so did Mr. Walker-Bey. So --

10 MS. POTEAT: Yambi is
11 having problems also, Maurene -- Ms. McNeil.

12 VINCE BIASE: Madam Examiner?

13 HEARING EXAMINER MCNEIL: Yes.

14 VINCE BIASE: Mr. Nelson is having a
15 personal conflict this morning and, if we can,
16 we'd like to move to another witness and allow
17 him some time to maybe return to the hearing
18 when he becomes available.

19 HEARING EXAMINER MCNEIL: Okay.
20 Who's your next witness?

21 VINCE BIASE: The next witness will
22 be Mr. Mark Ferguson.

1 THE WITNESS: Good morning, Madam
2 Examiner.

3 HEARING EXAMINER MCNEIL: Good
4 morning, Mr. Ferguson.

5 Do you swear or affirm, under the
6 penalties of perjury, that the testimony you
7 shall give will be the truth and nothing but the
8 truth?

9 THE WITNESS: Yes, I do.

10 HEARING EXAMINER MCNEIL: Thank you.

11 I don't know how this is happening,
12 but it looks like Ms. Robinson is calling into
13 the meeting.

14 VINCE BIASE: I'm Not sure if she's
15 muted. Okay.

16 HEARING EXAMINER MCNEIL: Okay, Mr.
17 Ferguson.

18 EXAMINATION

19 BY MR. BIASE:

20 Q Good morning, Mr. Ferguson.

21 A Good morning.

22 Q Your full name and business address

1 for the record.

2 A Good morning. My name is Mark
3 Ferguson. My business address is 5407 Water
4 Street, Suite 206 in historic downtown Upper
5 Marlboro, Maryland.

6 Q Where are you currently employed?

7 A I work with a company called RDA/Site
8 Design, Incorporated, which still trades as RDA.
9 It's a successor corporation to a company which
10 has been in business for -- since 1983, 40
11 years.

12 Q And what is your current position
13 with RDA?

14 A We don't do titles. I sign my
15 letters as senior land planner.

16 Q Mr. Ferguson, have you ever qualified
17 as an expert in land use planning before the
18 Prince George's County Zoning hearing examiner?

19 A Yes, I have on many occasions.

20 Q Is Exhibit 64 included in the ZHE
21 record, a copy of your resume?

22 A I did --

1 Q And if so --

2 A Yes. I did provide my current resume
3 to be submitted into the record.

4 HEARING EXAMINER MCNEIL: And it is
5 Exhibit 64, and his land planning statement is
6 Exhibit 68.

7 THE WITNESS: Thank you, Madam
8 Examiner.

9 BY MR. BIASE:

10 Q Does Exhibit 64 accurately reflect
11 your educational background and professional
12 experience?

13 A It does.

14 Q And did you Prepare the June 20th
15 land use report associated with the subject
16 application and now included as Exhibit 68?

17 A I did.

18 Q Do you further incorporate and adopt
19 as your testimony here today that June 20th land
20 use report?

21 A Yes, I do.

22 Q Are you familiar with the property

1 which is the subject of this application?

2 A I am.

3 Q Are you familiar with the site plan
4 associated with this special exception?

5 A Yes, I am.

6 Q What was the subject property's prior
7 base zone pursuant to the prior zoning
8 ordinance.

9 HEARING EXAMINER MCNEIL: Excuse me
10 one second. Do we want to admit him as a expert
11 witness?

12 VINCE BIASE: Yes. Sorry about that.

13 HEARING EXAMINER MCNEIL: Mr. Brown,
14 do you have any voir dire?

15 STAN BROWN: You know, it was
16 interesting. I was going to let him go on and
17 then reject everything Mark said. But, no,
18 since he's qualified.

19 THE WITNESS: Good to see you, Mr.
20 Brown.

21 STAN BROWN: Oh, look who's there.
22 Somebody coaching him in the background, huh?

1 THE WITNESS: It was only going to go
2 so far.

3 STAN BROWN: Exactly. Yeah. I have
4 no objection to Mr. Ferguson whatsoever.

5 VINCE BIASE: Thank you, Mr. Brown.

6 HEARING EXAMINER MCNEIL: Mr.
7 Ferguson, you haven't been rejected as an expert
8 witness since we last met, have you?

9 THE WITNESS: No, Madam Examiner, I
10 have not had that disprivilege [sic].

11 HEARING EXAMINER MCNEIL: Okay. Then
12 he will be accepted as an expert witness in the
13 area of land use planning.

14 VINCE BIASE: Thank you, Madam
15 Examiner.

16 HEARING EXAMINER MCNEIL: You may
17 continue.

18 VINCE BIASE: Thank you, Madam
19 Examiner.

20 Let me hold for a second. Mr. Burke,
21 did you have news for Mr. Nelson, or are you
22 just --

1 MR. BURKE: No, no. I was trying to
2 contact him, but I put my camera back on. Sorry
3 to interrupt.

4 UNIDENTIFIED SPEAKER: Okay. I
5 apologize. Mr. Biase. Thank you. I'm sorry.

6 VINCE BIASE: Yeah. All good.

7 EXAMINATION

8 BY MR. BIASE:

9 Q What was the subject property's prior
10 base zone, Mr. Ferguson, pursuant to the prior
11 zoning ordinance?

12 A It was in the RR zone prior to 2022.

13 Q What use is proposed for the subject
14 property?

15 A The applicant is proposing 61 single
16 family attached dwellings for the elderly.

17 Q Does this application seek approval
18 under the current or prior zoning ordinance?

19 A The prior.

20 Q And have you reviewed the prior
21 zoning ordinance's applicable regulations for
22 this use?

1 A Yes, I have.

2 Q Does the prior zoning ordinance
3 permit the proposed use at the subject property?

4 A It does.

5 Q Are the proposed one family attached
6 dwellings for the elderly use and special
7 exception site plan in harmony with the purposes
8 of the prior zoning ordinance?

9 A They are. So let me amend my prior
10 answer slightly. When I said that it does
11 permit the proposed use, it does permit it, of
12 course, subject to the approval of a special
13 exception which is why we're here today. It's
14 not a permitted use by right.

15 So the land use report does contain a
16 description of the property's conformance to the
17 purposes of the zoning ordinance as a whole, the
18 purposes of the RR zone specifically and, in
19 fact, the purpose of the -- of the MIO zones.
20 That information is relatively pro forma.
21 There's nothing that is particularly noteworthy
22 in that, and I would simply refer to the

1 contents of my land use report for the
2 discussion of that. I do put the discussion of
3 the master plan under the purpose of
4 implementing the master plans, but I'll discuss
5 that in more detail under the master plan
6 conformance criterion of section 27-317.

7 Q Is the proposed use in conformance
8 with the applicable requirements and regulations
9 of the prior zoning ordinance?

10 A With the -- with the grant of
11 alternative compliance and with -- provisionally
12 with the grant of variance from subtitle 25,
13 then, yes, it will be. Subtitle 25 is not part
14 of the zoning ordinance, but it is referred to
15 it as a requirement.

16 So, Madam Examiner, I'll leave that
17 to the legal people as to whether that
18 constitutes a requirement of subtitle 27 or not.
19 But certainly the variance is requested and is -
20 - its approval is indicated by the special
21 exception site plan. I will be testifying to
22 that later on, I believe, in more detail.

1 Q What is the applicable area master
2 plan for the subject property?

3 A It is the Westphalia and the
4 Westphalia sector plan and sectional map
5 amendment which was approved in 2007.

6 Q Have you reviewed the applicable
7 master plan?

8 A I have.

9 Q Does the master plan provide any
10 applicable recommendations, strategies,
11 policies, or goals for the subject property?

12 A It does. It provides, in fact, at
13 great length a number of goals and particularly
14 strategies that address planning and site design
15 all of which this property is in conformance
16 with. And I do discuss that at some length on
17 pages 6 through -- gosh -- 12 of my -- of my
18 land use report.

19 Again, I don't think that there's
20 anything that particularly needs to be
21 highlighted. I simply go through all of the
22 goals and recommendations that are applicable

1 individually and explain their conformance.
2 There are many, and this conforms to them all.
3 And in your expert opinion, will the proposed
4 use substantially impair the integrity of the
5 approved master plan?

6 A No, it will not.

7 Q What uses and zones are located
8 adjacent to the subject property?

9 A There are a -- there are a number.
10 So I describe that on pages 3 and 4 of the land
11 use report. I think it's probably worth
12 actually backing up a second and --

13 HEARING EXAMINER MCNEIL: While he's
14 backing up, Mr. Biase -- this may be where he's
15 going -- could you please explain about the
16 neighborhood of this property at the start and
17 the fact that there wasn't one in the technical
18 staff report --

19 THE WITNESS: Madam --

20 HEARING EXAMINER MCNEIL: -- because
21 the neighborhood sort of helps ground us with
22 everything else?

1 THE WITNESS: Madam Examiner,
2 apparently you are telepathic because --

3 VINCE BIASE: Yeah.

4 THE WITNESS: -- that is -- that is
5 precisely where I was going. The staff did not
6 define a neighborhood, and certainly that is
7 important for being able to find whether this
8 property is going to impair the use and
9 development of properties in the neighborhood.
10 It did describe the surrounding uses.

11 And to Mr. Biase's specific question,
12 those are to the west vacant land in the
13 commercial CGO, commercial general and office
14 CGO zone. To the south, Westphalia Park --
15 that's really sort of southeast, but land in the
16 LCD -- in the LCD zone to the east, single
17 family dwellings in the RR zone, and then to the
18 north Westphalia Road and across it single
19 family dwellings in the RR zone. But that's the
20 immediate abutting uses.

21 When you look at the neighborhood,
22 you do have to go a bit further out, and I think

1 the neighborhood more broadly informs the
2 criteria and the character -- the character of
3 the -- of the use and the criteria for approval.

4 So I've chosen some neighborhood
5 boundaries that are existing in physical. I've
6 also chosen some neighborhood boundaries that
7 are not yet existing in physical but are
8 planned, and I think the planning context is
9 certainly important because when one drives
10 around the immediate vicinity of the -- of the
11 property, particularly to the north and to the
12 east, the neighborhood has a fairly rural
13 aspect, but the character of the neighborhood is
14 actually planned to be much more dense and that
15 that density is only now being realized both by
16 ongoing development and by planned development.

17 So really, if you go on the west, I
18 go as far as Poplar Drive and Presidential
19 Parkway which together really form a part of
20 the, as yet, mostly unbuilt MC-634 right-of-way.
21 Beyond that line, the character changes from
22 broadly residential to industrial. So that's --

1 HEARING EXAMINER MCNEIL: I'm sorry
2 to interrupt again -- I really apologize -- but
3 could you tell me what those -- I saw MC-634
4 later. That said it was Presidential Parkway.
5 But could you spell out what those two are --
6 MC-631 and -634? Thanks.

7 THE WITNESS: So they are -- they are
8 designations for planned roadways in the master
9 plan of transportation.

10 HEARING EXAMINER MCNEIL: I'm so
11 sorry. I do know that --

12 THE WITNESS: No, no.

13 HEARING EXAMINER MCNEIL: -- but I
14 mean, do you know the names? Because later in
15 your report you say that MC-634 is the
16 Presidential Parkway unbuilt, but I never saw --
17 does 631 have a name or just MC-631?

18 THE WITNESS: 631 is the -- it's
19 unnamed because it's unbuilt. It is the
20 extension of Central Park Drive --

21 HEARING EXAMINER MCNEIL: Right. So
22 --

1 THE WITNESS: -- which runs through
2 the middle of Parkside.

3 HEARING EXAMINER MCNEIL: Thank you.
4 I'm sort of familiar with that area, but I
5 needed to hear names. Thank you.

6 THE WITNESS: Yes, ma'am. Yes,
7 ma'am. So I was discussing the neighborhood to
8 the west. MC-634, where Presidential Parkway
9 extended, really becomes the break in the
10 planned character from more generally
11 residential to industrial.

12 Along the north, I describe the
13 boundary as being the unbuilt MC634 right-of-
14 way, which Presidential Parkway runs to the
15 north and then curves to the east, roughly
16 paralleling the Capital Beltway. The Beltway,
17 frankly, could serve as a physical -- as a
18 physical barrier as well. The two are not that
19 different.

20 The east is the eastern edge of the
21 Westphalia Woods and Parkside developments which
22 is also the extension of Central Park Drive.

1 The MC-31 curves to the north. And then,
2 finally, to the south is Central Park Drive and
3 the extension of the MC-31.

4 So not only are those boundaries
5 generally a change in the character of the use
6 or physical boundaries, but they also define a
7 rough, you know, circle of approximately a mile
8 in radius surrounding the subject property. And
9 within that area, towards the west particularly,
10 you have higher density uses. You have some
11 existing multifamily and attached dwellings that
12 are in part of a multifamily development. You
13 have existing attached dwellings that are part
14 of Parkside development.

15 To the west, you have approved
16 attached dwellings that are parts of the
17 Westphalia development all along -- all of these
18 three are along Westphalia Road. You do have
19 the Capital Electrical Warehouse at the very
20 edge of the of the neighborhood which is -- used
21 to be in the MXT zone. I think it got put into
22 the RMF-48 or something silly, RMF-20 zone.

1 And then you have developing property
2 to the -- to the east, which will be more single
3 family detached in character, but, again, at
4 higher -- at certainly much higher densities
5 than the -- than the current character of the
6 neighborhood.

7 There are scattered industrial and
8 institutional uses as well throughout the
9 neighborhood, particularly to the north along
10 D'Arcy Road and, in fact, at the intersection of
11 D'Arcy and Westphalia Road just to the west of
12 the subject property, a very short distance,
13 there's an industrial property as well and
14 commercial property both across and to the --
15 and to the west.

16 So there is a fairly diverse
17 character that is of higher density and more in
18 conformance with the planned character of the
19 proposed development than the immediately
20 abutting uses would indicate.

21 HEARING EXAMINER MCNEIL: One last
22 question for me. I'm so sorry. So Mr. Brown's

1 Marlboro Ridge --

2 THE WITNESS: That is actually --

3 HEARING EXAMINER MCNEIL: -- is that
4 within the 10-mile radius?

5 THE WITNESS: It is not. That is
6 some distance to the southeast. So Marlboro
7 Ridge's principal access is off of Ritchie
8 Marlboro Road and the total development.

9 Mr. Brown, am I -- am I correct?
10 That's what you're --

11 STAN BROWN: Yes, you are correct.
12 But I was confused because, in looking at the
13 record, you guys sent notices to Lake Arbor
14 Civic Association as well as the Kettering Civic
15 Association, which are three to five miles east
16 of this project, well beyond Marlboro Ridge --

17 THE WITNESS: They are.

18 STAN BROWN: -- so I didn't
19 understand why you would not include Marlboro
20 Ridge with 900 plus homes, but yet you go all
21 the way over to Kettering and Lake Arbor and
22 (crosstalk) --

1 THE WITNESS: Yeah. So I think
2 Kettering and Lake Arbor are registered.
3 They're active associations and have registered
4 to receive notifications, but think -- I wasn't
5 involved in the outreach. I'm sure Mr. Burke
6 and Mr. Biase can testify to the interactions
7 with them.

8 STAN BROWN: Yeah. He didn't recall
9 earlier. I think what you guys do need to do,
10 whether Marlboro Ridge is registered or not,
11 send notice to them of your application because
12 I would think that they would want to
13 participate at some future point.

14 VINCE BIASE: Mr. Brown, I don't
15 believe it's registered, but we will reach out.

16 STAN BROWN: All right. Thank you.

17 THE WITNESS: Okay. Mr. Biase?

18 VINCE BIASE: Yeah.

19 BY VINCE BIASE:

20 Q Mr. Ferguson, in your expert opinion,
21 will the proposed use adversely affect the
22 health, safety, or welfare of residents or

1 workers in the area?

2 A In my opinion, it will not. The
3 development is well designed. It's compact. It
4 proposes only a single entrance from Westphalia
5 Road, and the development will be physically
6 buffered but perhaps separated is a -- is a
7 better term from the activity on Westphalia
8 Road, not just by plannings but by a masonry
9 wall, very similar in character to the one
10 that's proposed for the Heppy (phonetic)
11 development just down the street.

12 There are connections to the
13 adjoining parks, which will be an active benefit
14 to the health and welfare of these residents and
15 the -- and the broader community, and there will
16 be protections to -- going both ways, both to
17 the adjoining regulated natural features and
18 separating the proposed residents from them by
19 preservation of wooded buffers.

20 Q Are any buffering or screening
21 techniques employed to ensure compatible
22 relationships with the adjacent land uses?

1 A There are. So the landscape manual
2 does provide for buffering of incompatible uses.
3 This property is in conformance -- full
4 conformance with those requirements. The
5 property to the south is -- really has enhanced
6 buffers because of the presence of preserved
7 areas of woodland which will protect the
8 regulated natural features on the adjoining
9 property to the south.

10 The landscape manual does provide as
11 well for buffering along Westphalia Road, which
12 is a historic roadway, but that's not -- that's
13 not an adjoining land use, per se, as much as
14 public right-of-way.

15 Q In your expert opinion, will the
16 proposed use be detrimental to the use or
17 development of adjacent properties or the
18 general neighborhood?

19 A In my mind -- in my opinion, it will
20 not. As I discussed in my testimony about the
21 neighborhood, this property really is in
22 character in keeping with the character of the

1 neighborhood. Certainly, in my opinion, it
2 exists -- as it exists now but much more so as
3 it is planned to continue to develop into the
4 future.

5 Q Have you reviewed the Tree
6 Conservation Plan Type 2, ECP 2-006-2023
7 associated with the subject application and
8 included as Exhibit 50?

9 A I have.

10 Q Can you please elaborate on the
11 location of on-site specimen trees?

12 A So principally the trees are located
13 along the southern boundary of the -- of the
14 subject property. There is that -- in that
15 area, some steep slopes that run down to a
16 stream valley which exists directly to the
17 south. That is the -- that is the bulk of them.
18 There are a couple of trees, specimen trees, for
19 instance. Well, I see one that's unlabeled up
20 by the end of Jessie C. Lane right along
21 Westphalia Road. There's -- I beg your pardon
22 while I click around -- there's another one in

1 the middle of Alexander Avenue and Tallahassee
2 Trace, a couple in the middle of Tallahassee
3 Trace, but the vast majority of the trees are
4 along the property's southern and southeastern
5 perimeters.

6 Q To your knowledge, did the TCP2
7 change or go through several iterations prior to
8 acceptance with the special exception
9 application?

10 A It did. I mean, there was -- there
11 was certainly, in the in the record, substantial
12 back and forth between the applicant and staff
13 about the trees that were to be preserved, the
14 amount of them, whether or not all of -- or
15 whether or not the conservation threshold should
16 be met or -- that's really a misnomer -- whether
17 a number of trees in the amount of the
18 conservation threshold should be preserved on
19 site or not, and the outcome of those
20 discussions is really in the amendment to the
21 staff report in staff's April 19th memo.

22 Q Are any waivers or variances for

1 impacts to specimen trees or regulated
2 environmental features associated with this
3 special exception?

4 A There are -- there are variances to
5 remove a number of specimen trees, and the staff
6 has supported most of them. There are two that
7 are -- the staff does not support exactly, and
8 the applicant wishes to -- wishes to remove. So
9 those trees in question are referred to in the
10 findings. And let me page through the staff
11 report, 7 and 41, and the discussion is on page
12 14 of the staff report, and the staff recommends
13 that those trees be retained but evaluated in
14 the future for future entitlement reviews.

15 Because, however, we have a special
16 exception site plan before us, if there is a
17 future Development Review that would evaluate
18 those trees and that at such time those trees
19 were, in fact, recommended to be removed, then
20 the applicant would have to come back and amend
21 the special exception site plan to indicate that
22 removal.

1 So think this condition is really
2 putting the cart before the -- before the horse.
3 Specimen trees 7 and 41, Madam Examiner, are
4 right at the edge of the limit of disturbance.
5 I do discuss in my report that there are
6 certainly arguments to be made for their
7 removal, given -- particularly given their
8 proximity to existing development and in the
9 event of the illness or death of those trees,
10 they could, in fact, fall on the proposed
11 houses.

12 So it's necessary to look very
13 closely at their -- at the methods for their
14 preservation. It's possible that staff could
15 find at future study that there might be
16 mechanisms for them to be saved, or they might
17 agree that, no, they really should be taken
18 down, given their -- given their proximity which
19 is how I would intend to, pardon the pun, lean.

20 (00:53:16)

21 So in that case, Madam Examiner, my
22 recommendation would be for the variance to be

1 granted at this time. At the time of the future
2 development approval, there would be nothing
3 that would then prohibit them to be retained.
4 Right? But they couldn't be removed without, in
5 my opinion, without coming back to you for a
6 revised approval. So that's really the basis of
7 my discussion and recommendation in my -- in my
8 land use report regarding the specimen trees and
9 the variance to subtitle 25.

10 Q Does the proposed site plan conform
11 with the Type 2 Tree Conservation Plan?

12 A It does.

13 Q Are you familiar with the natural
14 resources inventory, NRI-005-2022 --

15 A I am.

16 Q -- associated with the subject
17 application?

18 A Yes, I am.

19 Q Can you please elaborate on the
20 location of on-site regulated environmental
21 features?

22 A I can. So there is only one very

1 small, isolated wetland pocket in the southeast
2 corner of the subject property. That wetlands
3 is proposed to be preserved. There is a very
4 small impact, a temporary impact that is
5 proposed to the buffer to that wetland to allow
6 for the installation of the sewer outfall for
7 the subject property.

8 HEARING EXAMINER MCNEIL: If I may --
9 I hate interrupting you. Is it possible for us
10 to pull those documents up and you point these
11 things out? And explain to me again why you're
12 talking to me about the tree conservation plans
13 and the NRI, et cetera. That is in your
14 background, I believe, but --

15 THE WITNESS: It is. I do -- I do
16 certainly work with them extensively. The --
17 was that the nature of your question -- my
18 foundation to testify on them? Or did you want
19 to know where the testimony was going?

20 HEARING EXAMINER MCNEIL: Well, I was
21 -- I guess I was really wondering why the
22 authors, who are here, aren't testifying to it.

1 THE WITNESS: So --

2 HEARING EXAMINER MCNEIL: Like
3 Ms. Ballestero mentioned has a report on the
4 tree (crosstalk)

5 THE WITNESS: They did prepare the
6 plan. I would say the answer, Madam Examiner,
7 is I had discussed it with Mr. Biase is just for
8 economy of your time and the time before this
9 hearing. I don't believe either Ms. Ballestero
10 or Mr. Brown actually was the qualified
11 professional, you know, who signed -- who signed
12 the plan in any case.

13 STAN BROWN: But, Mr. Ferguson, I had
14 the same question the Examiner just asked. I
15 was going to ask you at the conclusion of your
16 testimony.

17 THE WITNESS: Uh-huh.

18 STAN BROWN: In looking at the
19 statement of justification, it was signed by Ms.
20 Ballestero; correct?

21 THE WITNESS: Yeah, that is correct.

22 STAN BROWN: And it has in it a lot

1 of legal conclusions and what I would
2 characterize as land planning expert
3 conclusions, and I don't know -- we don't know
4 what Ms. Ballesteros qualifications are to make
5 the statements and the justification -- a
6 statement of justification.

7 Now I'm going to assume you want to
8 adopt some of her comments; is that correct?

9 THE WITNESS: That is correct. And,
10 again, I think you're being telepathic this time
11 with Mr. Biase, who had that as a question for
12 me later on in my questioning. And so, yes, I
13 do -- I do adopt -- I do adopt the statements in
14 the -- in the statement of justification -- in
15 the applicant's statement of justification
16 signed by Ms. Ballestero as my testimony as
17 well.

18 STAN BROWN: And without interrupting
19 his primary examination, though, when were you
20 retained in this case? Was it after the
21 justification statement was prepared and filed?

22 THE WITNESS: It was.

1 STAN BROWN: All right. No other
2 questions at the moment. Thank you.

3 THE WITNESS: Thank you, Mr. Brown.

4 So I see -- Madam Examiner, I'm sorry
5 if I -- did I -- did I answer your question? I
6 think that's where we were. Oops. You've
7 muted. You -- yeah.

8 HEARING EXAMINER MCNEIL: You're also
9 adopting anything that Mr. Brown prepared?

10 THE WITNESS: I certainly -- I don't
11 believe Mr. Brown prepared any statements that
12 have been entered into the record. I think Mr.
13 Brown prepared the plans themselves.

14 HEARING EXAMINER MCNEIL: Right.

15 VINCE BIASE: Yes. Ms. Ballestero
16 prepared the environmental letter of
17 justification which Mr. Ferguson referred to.

18 Madam Examiner, would it be helpful
19 still to pull up the exhibit that Mr. Ferguson
20 is speaking to -- the NRI?

21 HEARING EXAMINER MCNEIL: Yeah. And
22 it also might be helpful to anyone watching.

1 Remember, we could have folks watching online.
2 So if you could pull up the exhibit, and he
3 could point out --

4 VINCE BIASE: Yes. Exhibit 53 is the
5 Natural Resources inventory.

6 HEARING EXAMINER MCNEIL: Okay. So,
7 Ms. Bah, if you would pull up Exhibit 53.

8 VINCE BIASE: Mr. Nelson just popped
9 up.

10 DAVID NELSON: Hello?

11 VINCE BIASE: You're on hold for the
12 moment, Mr. Nelson, but good to see you.

13 DAVID NELSON: As it is. Thank you.

14 HEARING EXAMINER MCNEIL: As for
15 those watching, we've had so many goblins today.
16 Ms. Bah's mic doesn't work. Here it is.

17 Thank you.

18 And then Mr. Nelson -- poor guy has
19 been trying to get in for a while; so I
20 apologize for that.

21 VINCE BIASE: Ms. Bah, I think it
22 might be Exhibit 53-B that Mr. Ferguson can

1 orient the participants and those present to the
2 regulated environmental features. Yes.

3 THE WITNESS: Madam Examiner, if --
4 is it possible for me to be made a presenter to
5 take control of that screen and zoom and things
6 like that, or is that not possible?

7 HEARING EXAMINER MCNEIL: If it is,
8 Ms. Bah will do it shortly.

9 THE WITNESS: Yeah. It may not -- it
10 may not be.

11 BY VINCE BIASE:

12 Q Mr. Ferguson, are you able to orient
13 or elaborate on some of the regulated
14 environmental features shown on this?

15 A I can.

16 THE WITNESS: And I would ask Ms. Bah
17 to pan a little bit up further and move your
18 hand. Grab the thing and move it a little bit
19 up further and to the left, up and to the left.
20 Yeah. So if you grab the -- if -- with your
21 hand tool, grab the picture, and then move the
22 hand up into the left. I always find myself

1 describing this.

2 I am allowed to control the screen.

3 Let's see. Turn on control when you are ready.

4 Control. Okay. Now let's see. I do not want

5 to do that. It is hung. This is not good. I

6 think I'm going to relinquish -- now it is.

7 Here we go. Hand tool. I see. There's just a

8 fair amount of lag. Okay. I have this under

9 control. So what I'm going to do is move the

10 image up. Here we go, and now you can see the

11 southern part of the property.

12 The circles with dashed lines are all

13 the specimen trees, and you can see the density

14 of those specimen trees along the southern and

15 southwestern or -- excuse me -- southeastern

16 property lines, which I referred to earlier.

17 You can see a few specimen trees as my hand --

18 the cursor catches up that are in the

19 development area, but they're comparably --

20 comparatively few in number. And as soon as the

21 cursor catches up, then I will pan. No. That

22 was not -- I think this taking control was

1 probably a bad idea. Nope. Okay. I'm going to
2 relinquish control and ask Ms. Bah if she could
3 pan so that we can see the east side of the
4 property.

5 HEARING EXAMINER MCNEIL: And so as
6 Ms. Bah does that, north is to the top, so over
7 to the --

8 THE WITNESS: Correct.

9 HEARING EXAMINER MCNEIL: -- right?

10 THE WITNESS: Correct, Over to the
11 right and to the east. In this image, you can
12 see Ms. Alexander's house, which is in the
13 center of the property and is located by all of
14 the dimensions which extend across the property
15 to the south and to the east.

16 The teaser of my testimony is just in
17 the top left corner of where the screen is now.
18 Just beyond that, there is a very small area of
19 isolated wetlands which is the only regulated
20 natural feature on the -- on the subject
21 property or that and its buffer. And so as I
22 had mentioned before, there is a small impact

1 proposed to the buffer of that wetlands, a
2 temporary impact to allow for the installation
3 of the sewer outfall for the subject property,
4 and then that that temporary impact will be
5 restored after the completion of the
6 installation of the sewer, and staff has
7 indicated its support for that request.

8 BY VINCE BIASE:

9 Q Mr. Ferguson, have you reviewed the
10 letter of justification for impacts to
11 environmental features which is included as
12 Exhibit 45?

13 A I have.

14 Q Do you further incorporate and adopt,
15 as your testimony here today, that letter of
16 justification?

17 A I do.

18 Q In your expert opinion, does the
19 proposed site plan demonstrate preservation
20 and/or restoration of the regulated
21 environmental features on site to the fullest
22 extent possible?

1 A It does. The temporary impact is for
2 a utility installation only, and then that
3 temporary impact will be restored after the
4 completion of its construction.

5 Q Are any specific principal use
6 regulations required for one family attached
7 dwelling units for the elderly in the prior RR
8 zone?

9 A There are -- there are -- there are a
10 number of them that are provided in section 27-
11 252.01(b), and those are discussed on pages 17
12 through 21 of my land use report.

13 Q What is the gross tract area of the
14 subject property?

15 A It is ten acres exactly.

16 Q Is the subject property located
17 adjacent to a park that is owned by a public
18 agency?

19 A It is. In the very right edge of the
20 image that's now on the screen is the Westphalia
21 Park, which is owned and operated by the
22 Maryland-National Capital Park and Planning

1 Commission.

2 What road does the property front and have
3 proposed access to?

4 A It fronts on and has access from
5 Westphalia Road, which is a collector roadway.

6 Q And about how much linear frontage
7 does the property have on Westphalia Road, a
8 collector roadway?

9 A 918.51, about, feet.

10 Q How many dwelling units to the acre
11 are proposed?

12 A About 6.23 dwelling units are
13 proposed per net acre.

14 Q And what bulk regulations are
15 proposed with this application?

16 A Those are indicated on the special
17 exception site plan that -- in accordance with
18 the provisions of 27-352.01(b)(5). And so the
19 regulations are essentially the development that
20 is proposed by the special exception site plan.

21 VINCE BIASE: Ms. Bah, would it be
22 possible to show the site plan -- to pull that

1 up on the screen? I think it's included as
2 Exhibit 39-D.

3 THE WITNESS: And I think page 5 of
4 that exhibit is probably the one that's best.

5 VINCE BIASE: I think it's labeled as
6 site layout plan sheet.

7 THE WITNESS: I was going to suggest
8 the illustrative which is the colored one.

9 VINCE BIASE: That's page 5?

10 THE WITNESS: It is.

11 VINCE BIASE: Yes. Let's pull up
12 page 5.

13 THE WITNESS: Okay. I actually took
14 control and did that.

15 BY VINCE BIASE:

16 Q Great. Mr. Ferguson, can you please
17 demonstrate the location of proposed on-site
18 recreational facilities?

19 A I will. So the -- at the core of the
20 development is a plaza which has seating. It
21 has a gazebo. Adjacent to that are community
22 gardens, and then there is a trail network which

1 extends -- connects to the sidewalks on the side
2 of the street, extends around and past the
3 stormwater management facility and then down
4 into the developed recreational facilities in
5 the adjoining Westphalia Park.

6 Q Mr. Ferguson, how will age
7 restrictions be enforced for the proposed senior
8 community?

9 A Mr. Burke has really already
10 testified to that through the covenants, a
11 proposed copy of which are in the record.

12 Q Are the proposed dwelling units
13 clustered around a central focal point or public
14 space?

15 A They are. The recreational
16 facilities, which I just described with the
17 plaza, the gazebo, the seating. There's picnic
18 tables and bike racks there as well -- are
19 really right at the core of the -- of the
20 development.

21 Q Does the proposed layout avoid linear
22 design?

1 A It does. So as -- without creating
2 additional connections to Westphalia Road, the
3 layout really works to create a grid where you
4 have blocks of units that run in different
5 directions to create little subareas both of
6 public and private space in between the units.
7 And, of course, they are served by one longer
8 street, but most of the -- most of the units on
9 the north side of that street are oriented to
10 the subsidiary streets; so you do get a broken
11 up design in accordance with the intent of that
12 regulation of 27-352.01(b).

13 Q What percentage of the subject
14 property is devoted to open space, recreational
15 facilities, and social-oriented amenities?

16 A I put that number in my report, and

17 --

18 RECORDING: (Inaudible).

19 THE WITNESS: I beg your pardon? Oh,
20 that's -- I'm sorry.

21 A It was a lot more than the
22 requirement. I believe it was 40-something

1 percent, from memory, but don't remember where I
2 put that. Let's see.

3 THE WITNESS: Madam Examiner, I beg
4 your indulgence.

5 HEARING EXAMINER MCNEIL: (Crosstalk)

6 THE WITNESS: Unfortunately, because
7 of circumstances that led to the continuance,
8 this is no longer as fresh in my memory as it
9 was when I wrote it. Page 20 of my report.
10 Sorry. No, that's incorrect.

11 Mr. Biase, do you want to lead me to
12 the -- by the nose to where I put the answer?
13 Because I can't remember --

14 VINCE BIASE: Yes. Yes. I believe
15 it's on page 18 --

16 THE WITNESS: No. I'm looking at
17 page 18.

18 VINCE BIASE: -- Exhibit 68.

19 THE WITNESS: I'm looking --

20 HEARING EXAMINER MCNEIL: You're
21 talking about the 48?

22 VINCE BIASE: Forty-eight percent.

1 THE WITNESS: Yeah. Madam Examiner,
2 that's certainly the number that I remembered,
3 but I don't see where I wrote it. The slings
4 and arrows of advancing age, Madam Examiner --

5 VINCE BIASE: It's --

6 THE WITNESS: -- are brutal.

7 VINCE BIASE: Mr. Ferguson take a
8 look at page 21, subsection B.

9 THE WITNESS: Thank you, Mr. Biase.
10 My mind is only substantially decrepit, not
11 completely. So 48.6 percent of the land area is
12 an open space as I mentioned on page 21 of my
13 land use report.

14 BY VINCE BIASE:

15 Q And, specifically, what are the
16 dimensions of outdoor spaces that are intended
17 for active recreation? Are any proposed?

18 A There actually are not active
19 recreation spaces that are proposed. All of the
20 spaces, whether the seating areas, picnic tables
21 and the trail network, are really considered
22 passive recreation spaces.

1 Q Have you reviewed the applicant's
2 statement of justification included as Exhibit 4
3 in this matter?

4 A I have. And as I had testified in
5 response to Mr. Brown's earlier question, I do
6 adopt that as my testimony as well.

7 Q Are you -- are you familiar with the
8 technical staff report as amended by Development
9 Review staff's April 19th clarifying memo?

10 A I am.

11 Q Do you agree with the technical staff
12 report's findings of fact and proposed
13 conditions of approval as amended by Development
14 Review Staff's April 19th clarifying memo?

15 A I do with the provision that -- I
16 guess, as we discovered, I think they should
17 have found a fact of the -- of the neighborhood
18 and then I believe condition I-35 only specifies
19 the TCP have a note with the approval of the
20 specimen trees that planning staff had
21 recommended removal of. I would add trees 7 and
22 41 to that list.

1 Q Mr. Ferguson, are you familiar with
2 Exhibit 68 -- the updated site plan associated
3 with this special exception?

4 A I am.

5 Q Does the updated site plan address
6 each of the technical staff report's proposed
7 conditions of approval as amended by Development
8 Review staff's April 19th clarifying memo?

9 A It does. I did go through those
10 conditions one by one and specifically reviewed
11 each of those conditions -- specifically
12 reviewed the new site plan, Exhibit 69, for
13 conformance with those conditions and found that
14 they did.

15 Q And does the technical staff report,
16 as amended by Development Review staff's April
17 19th clarifying memo, propose any other
18 conditions of approval that must be addressed or
19 satisfied prior to certification of a special
20 exception site plan?

21 A So the tree conservation plan will
22 need to be amended, hopefully, Madam Examiner,

1 to include the approval of the removal of
2 specimen trees 7 and 41. That was really the
3 principal reason for not cluttering the record
4 with that plan because the plan, as was
5 tentatively given to you, includes the note
6 verbatim but doesn't allow for the removal of
7 those specimen trees, and that's the reason why
8 I recommend to Mr. Biase that it be withheld
9 from the record today pending your decision on
10 the fate or at least the interim fate of those
11 trees. As I mentioned earlier, your approval of
12 the variance would allow them to be retained
13 without -- would allow them to be retained
14 without further action on your part, but I don't
15 believe it would allow them to be removed
16 without this plan coming back before you for a
17 revision.

18 HEARING EXAMINER MCNEIL: So --

19 A Thank you, Mr. --

20 Sorry, Madam Examiner.

21 HEARING EXAMINER MCNEIL: -- due to
22 your expert --

1 Oh, I'm sorry, sir.

2 Due to your expertise, I want to
3 throw out this one thing because maybe you've
4 never seen this before. But if this application
5 were approved and if the TCP were approved with
6 a condition that allowed the removal later, have
7 you any reason to doubt that such a condition
8 could be satisfied?

9 THE WITNESS: Madam Examiner, I
10 believe you've confused me.

11 HEARING EXAMINER MCNEIL: Okay.

12 THE WITNESS: So if your -- if your
13 -- if your recommendation allows for the removal
14 of those trees, then certainly they can be
15 removed. If applicant and planning staff come
16 to agree on methods whereby they could be
17 preserved without proposing a danger to the --
18 abutting the nearby houses in the event of their
19 sickness or future death, then I believe they
20 could be preserved without need to come back to
21 you for a, you know, new variance.

22 Now I -- there's certainly legal

1 implications involved in that decision as to
2 what would need to come back to you for
3 approval. I only give you my read on it as
4 somebody who at least prepares these plans and
5 processes their approval regularly.

6 HEARING EXAMINER MCNEIL: Okay.

7 VINCE BIASE: Madam Examiner, those
8 are all the questions that I have for
9 Mr. Ferguson.

10 HEARING EXAMINER MCNEIL: Mr. Brown,
11 do you have any questions?

12 STAN BROWN: Yes, I have a couple.

13 But, first, Mr. Biase, Victoria
14 Ballestero -- does she plan to testify?

15 VINCE BIASE: She's not planning to
16 testify today.

17 STAN BROWN: All right. Mr.
18 Ferguson, my concern is this: You have been
19 qualified as an expert in land planning and
20 testified as such, and an expert is allowed to
21 review other documents and come to conclusions
22 based on documents that you have reviewed.

1 THE WITNESS: Yes, sir.

2 STAN BROWN: However, an expert is
3 not allowed to adopt factual findings of a lay
4 person as his or her own, and my problem with
5 this case is I'm reading the statement of
6 justification for alternative compliance and
7 specimen trees and the general justification
8 statement. That is prepared by Victoria
9 Ballestero, ATCS, PLC, and I'm going to assume
10 she is some type of an engineer. Is that
11 correct, Mr. Biase?

12 THE WITNESS: And I can answer that,
13 Mr. Brown. Ms. Ballestero is a registered
14 professional engineer.

15 STAN BROWN: All right. So she's a
16 registered professional engineer. Did she
17 prepare the site plans?

18 THE WITNESS: They were prepared
19 under her supervision.

20 STAN BROWN: All right. Who signed
21 the site plans?

22 THE WITNESS: Ms. Ballestero did, I

1 believe.

2 VINCE BIASE: Mr. Brown, if I could
3 for a moment.

4 STAN BROWN: Yes.

5 VINCE BIASE: It is our intention to
6 have Ms. Ballestero testify at a possible later
7 date with a continuance along with Mr. -- along
8 with Mr. Nelson, who is having some personal and
9 technical issues. We want to be sure to have
10 both those transportation -- an expert in
11 transportation planning, give them the
12 opportunity to testify in this hearing as well
13 as Ms. Ballestero.

14 STAN BROWN: All right. Well, that
15 will be helpful because otherwise I would have
16 to object to everything Mr. Ferguson adopted as
17 factual findings that were put forth by Ms.
18 Ballestero. That's just improper. And her
19 statement of justification includes many legal
20 conclusions which, as an engineer, she's not
21 qualified to provide.

22 That having been said, Mr. Ferguson,

1 let me ask you this.

2 THE WITNESS: Yes.

3 STAN BROWN: In reviewing the staff
4 report, it indicates a preliminary plan of
5 subdivision, of course, will be required in the
6 future; correct?

7 THE WITNESS: That is correct, yes,
8 sir.

9 STAN BROWN: Are there any other
10 development plans that have been approved for
11 not necessarily this project but for this
12 property prior to April 1, 2022?

13 THE WITNESS: I am not aware of any.

14 STAN BROWN: And this applicant plans
15 to -- assuming this application is approved for
16 a special exception, plans to apply for a
17 preliminary plan of subdivision under the old
18 ordinance; is that correct?

19 THE WITNESS: That is my
20 understanding, sir, especially -- I believe you
21 opined recently that, you know, like must go
22 with like. Right? You --

1 STAN BROWN: That's correct.

2 THE WITNESS: -- as not to be mixing
3 and matching.

4 STAN BROWN: That's correct. And so
5 I want the applicant to be clear that you have
6 chosen to proceed under the old ordinance. And
7 although there is a two-year window in which you
8 may proceed under the old ordinance, and then
9 there's several other 20-year provisions that
10 don't necessarily apply here, but since you've
11 chosen the old ordinance, you must proceed under
12 all development plans and/or entitlements under
13 the old ordinance. Otherwise, this application
14 cannot be approved.

15 I noticed in the special exception
16 justification, there are many statements as to
17 the criteria of a special exception, and Mr.
18 Ferguson always does an adequate job of that.
19 However, I have not heard one question asked of
20 this witness, nor any other witness, concerning
21 the case law requirements for a special
22 exception concerning adverse impacts in the

1 neighborhood. That's not mentioned in the staff
2 report either.

3 So, Mr. Ferguson, please, if you can,
4 tell me will this proposed special exception
5 have any adverse impacts in the neighborhood
6 that you have identified?

7 THE WITNESS: Thank you, Mr. Brown.
8 So I did speak to that in my -- in my report in
9 the -- in the conclusion. And what I said there
10 is that -- because this is a moderate density
11 use at a contextually appropriate location,
12 which is to say adjacent to a commercially zoned
13 tract -- it's across from an industrial use and
14 several institutional uses and a block to the
15 east away from comparable housing units in
16 Parkside and another approved detached dwelling
17 development which both abut Westphalia Road --
18 that the proposed development is compatible with
19 both its higher and lower density neighbors and
20 fits into the predominant low to moderate
21 character -- low to moderate density character,
22 which is planned for the general neighborhood,

1 and that to your -- to the specific point, at
2 this location this development does not
3 represent a more adverse impact to the
4 surrounding neighborhood -- the health, safety
5 and welfare of the surrounding neighborhood than
6 other properties more generally in the RR zone
7 throughout the county.

8 STAN BROWN: Okay. And in the staff
9 report, there's reference to the 2007 approved
10 Westphalia -- I'm sorry. Not the staff report,
11 justification statement on page 5 to the 2007
12 approved Westphalia sector plan and section map
13 amendment.

14 And then, reading the paragraph below
15 that, it just uses the general term master plan.
16 I'm assuming she is referring to the 2007
17 Westphalia sector plan. Is that the most recent
18 sector plan that concerns this property?

19 THE WITNESS: It is. It is. And the
20 confusion between the terms, Mr. Brown -- I'm
21 sorry. I was trying to say your title, but that
22 was going to be a mouthful. It's one that I

1 have -- I have made myself because the ordinance
2 typically refers to conformance to the master
3 plan but subsequent to that legislative
4 language, the concept of sector plans were
5 created about 30 years ago which are kind of
6 mini master plans. So sometimes the terms get
7 used interchangeably where perhaps they
8 shouldn't.

9 STAN BROWN: And that's what I wanted
10 to clarify because she goes on for a good three,
11 four, or five pages making that -- what I'm
12 going to nicely refer to as a confusion. But --
13 all right. So you clarified that point. So you
14 are adopting, from a land planning analysis, the
15 factual statements contained in the
16 justification statement; correct?

17 THE WITNESS: I do. And certainly
18 Ms. Ballestero may have found those facts, but
19 in my review of the neighborhood, the conditions
20 of the property, the plans that have been
21 prepared, I would have found the same facts had
22 I started from the beginning.

1 STAN BROWN: And one other thing I
2 did want to mention, though. In reading the
3 staff report, they tell us what the new
4 ordinance zone classifications are for the
5 surrounding properties.

6 THE WITNESS: Yes, sir.

7 STAN BROWN: And you were asked, and
8 another person was asked what are the zoning
9 classifications of the surrounding properties?
10 And everyone seems to always give the
11 classifications of the new zoning ordinance. I
12 may have missed it earlier, but if you will,
13 since you are proceeding under the old
14 ordinance, please tell me what are the zoning
15 classifications of the adjacent properties that
16 surround this property?

17 THE WITNESS: Okay. So immediately
18 to the west, the -- you know, Mr. Brown, I
19 thought I had written that into my report. So I
20 didn't. My memory, then, is immediately to the
21 west, the property was formerly zoned CSC.
22 Let's not rely on my memory. Let me open

1 PGAtlas, refer to the -- refer to the map. And

2 --

3 VINCE BIASE: Mr. Brown, we will
4 supplement the testimony provided today with
5 some direct responses to the questions you've
6 provided today -- that Mr. Ferguson has
7 provided.

8 STAN BROWN: That'd be great. All
9 right. No other further questions at the
10 present time. Thank you.

11 THE WITNESS: Okay. Mr. Brown, do
12 you want the prior zoning categories? I have
13 the information.

14 STAN BROWN: Yeah, if you have it,
15 please.

16 THE WITNESS: I do. So the property
17 to the west was, in fact, zone CSC. Across
18 Westphalia Road, all of the property is zoned
19 RR. The Westphalia Estates property to the east
20 is zoned RR. The MNCPPC on Westphalia Park is
21 zoned OS, and the property in Parkside to the
22 south -- it was zoned RM. If I just used an is

1 I certainly meant was in that statement.

2 STAN BROWN: No. That's fine. All
3 right. Thank you very much.

4 THE WITNESS: Thank you, Mr. Brown.

5 VINCE BIASE: Those are all the --

6 HEARING EXAMINER MCNEIL: Mr. -- oh,
7 I'm sorry.

8 Mr. Ferguson, other than -- if we
9 ignore the issue about the two specimen trees,
10 do you agree that Exhibit 39, the prior special
11 exception site plan, and Exhibit 50, concerning
12 the tree prior TCP plan, are now void? I didn't
13 understand why we use the prior SE plan to show
14 things. Is it now void given that scenario?

15 THE WITNESS: It is. So there was --
16 I would argue that the substance of the drawing
17 has remained unchanged. There were notes and
18 clarifications that were added as -- pursuant to
19 the conditions. So you can -- you can interpret
20 that as you will. But the new special exception
21 plan that was submitted as Exhibit 69 really was
22 submitted to incorporate the conditions in the

1 amended staff report.

2 HEARING EXAMINER MCNEIL: Okay. Let
3 me ask a different way. If this were approved,
4 I'd have to approve a special exception site
5 plan?

6 THE WITNESS: That's correct.

7 HEARING EXAMINER MCNEIL: Which one
8 are we --

9 THE WITNESS: And you would be
10 approving 69.

11 HEARING EXAMINER MCNEIL: Okay.
12 Thank you.

13 VINCE BIASE: Correct.

14 THE WITNESS: And then -- and then
15 presumably replacement 70 would come in with the
16 note addressing whatever conditions are
17 appropriate, given your -- given your action on
18 that question. I will say that some of the
19 conditions would perhaps be obviated by the
20 inclusion of 69. I believe condition I,
21 conditions as amended, would need to -- would
22 need to carry forward to reflect the recordation

1 of the easement and the condition to require
2 issuance of any wetland permits and whatever the
3 appropriate note is under original five, and
4 think that's new four -- is that right? One,
5 two, three -- yeah.

6 VINCE BIASE: Madam Examiner --

7 THE WITNESS: Yes, new four. It is
8 new four.

9 VINCE BIASE: -- in our supplement to
10 this testimony, we'll provide an analysis of how
11 the updated site plan and TCP2 address the
12 conditions provided from staff.

13 HEARING EXAMINER MCNEIL: Thank you.
14 I also -- one more question, and there may be
15 other people who have cross of you. Don't let
16 me lose the question. Mr. Brown asked for the
17 prior zoning categories, but that's for
18 historical purposes; correct? Or do you agree
19 that it's for historical purposes? Because
20 Section 27-1903 of the new ordinance allows you
21 to develop under the prior ordinance, but you
22 don't have those zones. The property was

1 rezoned with the CMA.

2 THE WITNESS: The -- correct. The
3 provisions of 27-352.01 do refer to adjoining
4 property, the zoning of adjoining property, and
5 so the historic zone of those properties is
6 relevant with regard to that finding. But if
7 you say what is the zoning of a piece of
8 adjoining property, I -- the new zoning is the
9 new zoning. That was -- that was adopted. So
10 I can't --

11 HEARING EXAMINER MCNEIL: Okay.

12 THE WITNESS: -- you know, Madam
13 Examiner --

14 HEARING EXAMINER MCNEIL: And I don't
15 mean -- I don't mean --

16 THE WITNESS: -- I think that's a
17 legal question.

18 HEARING EXAMINER MCNEIL: Okay.
19 Yeah, I guess. And it can be for beyond -- I
20 mean, I don't think it's at issue in this case,
21 but if the old section required something of a
22 zone that wasn't there before but is there now

1 --

2 THE WITNESS: Right.

3 HEARING EXAMINER MCNEIL: -- you all
4 would have had to meet that requirement, then.

5 THE WITNESS: I would. I would --
6 (crosstalk).

7 HEARING EXAMINER MCNEIL: I don't
8 think -- okay. Maybe we should ask you that.
9 Nothing in that section -- the zoning that you
10 have now does not trigger anything else in the
11 old sections, 352. --

12 THE WITNESS: No, not in my -- in my
13 opinion. So in this -- in the -- in the
14 property surrounding the subject, each --
15 unlike, say, the Capital Electric Warehouse at
16 the edge of the neighborhood, each of the
17 properties was given a corresponding zone. So
18 RR or R-R2RR, CSC to CGO, O-S to AG, RN to LCD.
19 So those are all the directly corresponding
20 zones between the old and the new ordinance and
21 the old and the new zones.

22 STAN BROWN: Yeah. But, see, the

1 problem is -- and it's not you're making, Mr.
2 Ferguson, or the applicant's making, but the
3 problem is the case law concerning special
4 exceptions and adverse impacts takes into
5 account the adjacent properties. And if you are
6 proceeding under the old ordinance, then you are
7 proceeding under the old ordinance for all
8 purposes, and you cannot parse out and say,
9 well, hey, all of the adjacent properties are
10 now zoned, let's say, for the sake of
11 discussion, industrial, and therefore there are
12 no adverse impacts.

13 HEARING EXAMINER MCNEIL: Okay.

14 STAN BROWN: Well, they're not
15 adjusted for your purposes because you are
16 proceeding under the old ordinance. And so, you
17 know, those are some of the issues that we are
18 going to have to deal with going forward, but it
19 is not a direct issue in your case today.

20 HEARING EXAMINER MCNEIL: Okay. And
21 we agree on that --

22 THE WITNESS: Yeah. I --

1 HEARING EXAMINER MCNEIL: -- Mr.
2 Brown. We -- unless, of course, there's some
3 property that was rezoned to ROS.

4 STAN BROWN: Correct. Exactly. You
5 see (crosstalk) --

6 HEARING EXAMINER MCNEIL: So you
7 don't have that, do you? That's what I was
8 asking. There's no property adjoining you in
9 the ROS zone, is it?

10 THE WITNESS: So originally it was
11 just plain old O-S and the current zoning is AG
12 which is the corresponding zone to O-S, not --

13 HEARING EXAMINER MCNEIL: And is it
14 separated --

15 THE WITNESS: -- not ROS.

16 HEARING EXAMINER MCNEIL: -- by an
17 arterial -- and is it separated by an arterial
18 roadway?

19 THE WITNESS: It is not. There are
20 no -- there are no arterial roadways within the
21 neighborhood.

22 UNIDENTIFIED SPEAKER: Madam

1 Examiner, People's Zoning Council, if I may, I
2 do believe that -- I do believe that, for
3 purposes of the adverse impact, the most
4 relevant zone would likely be the zones in the
5 prior ordinance since we are processing under
6 the prior zoning ordinance. However, I do
7 believe it is also factual that those zones only
8 exist for the purposes of the transitional
9 provisions that the council explicitly provided.
10 For our purposes, I do believe, since all of the
11 corollary zones are what they were consistent
12 with. Due to the matrix, I'm not entirely sure
13 this pretty novel thought and debate that we're
14 having is relevant for this application, but I
15 can certainly see how they would be
16 extraordinarily relevant in certain
17 circumstances where, for example, if there was
18 an M-X-T zone property and it was unclear how
19 they would be ultimately -- which zone they
20 would ultimately go to.

21 Again, I don't think that specific
22 issue is present in this case, but I do think it

1 --

2 STAN BROWN: So that you
3 know, we don't say that it's determinative in
4 this case, but it's relevant because the record
5 must be clear.

6 UNIDENTIFIED SPEAKER: Okay.

7 STAN BROWN: And so that's why we're
8 putting it on the record.

9 UNIDENTIFIED SPEAKER: Oh,
10 absolutely. Thank you very much. And I
11 appreciate y'all's indulgence.

12 HEARING EXAMINER MCNEIL: Actually, I
13 want to clarify one more thing just so it
14 doesn't pop up later. It's because you're under
15 B because A says that the subject property shall
16 not be adjoining property in the ROS or O-S in
17 the old ordinance, in 27-

18 THE WITNESS: Correct.

19 HEARING EXAMINER MCNEIL: -- 352.01.

20 But B --

21 THE WITNESS: Yes, Madam --

22 HEARING EXAMINER MCNEIL: -- we're

1 reading notwithstanding to give you a break from
2 that section.

3 THE WITNESS: Yes, Madam Examiner.

4 (Crosstalk)

5 HEARING EXAMINER MCNEIL: All right.
6 That was very esoteric, and I apologize to all
7 the nonlawyers in the group. Is anyone opposed
8 to this request have questions of Mr. Ferguson?
9 And I don't -- I don't note that anyone does.

10 But could Anna identify themselves
11 for the record? Is that -- do you all see Anna?

12 VINCE BIASE: I see her on my screen,
13 Madam Examiner.

14 HEARING EXAMINER MCNEIL: Right.
15 Okay. We're going to move on. The -- I don't
16 think I have other questions right now of Mr.
17 Ferguson.

18 So are you stating that you would
19 like a continuance at this time, or do you have
20 another witness?

21 VINCE BIASE: We would like to
22 request a continuance at this time, Madam

1 Examiner. If there are any other dates for a
2 potential hearing this month, we would
3 respectfully request a continuance to those
4 dates just in an abundance of caution. I know
5 we've had some issues this morning with logging
6 on to the platform for -- with our
7 transportation engineer, and we'd also like to
8 have Ms. Ballestero provide testimony as part of
9 this hearing.

10 HEARING EXAMINER MCNEIL: We have
11 hearings on the 9th and the 16th. So --

12 VINCE BIASE: We'll need to check
13 with the development team to ensure that Mr.
14 Nelson and Ms. Ballestero are available on those
15 dates, but --

16 HEARING EXAMINER MCNEIL: No, no.
17 You can't have those dates. So do you all have
18 --

19 VINCE BIASE: Oh, they're already --

20 HEARING EXAMINER MCNEIL: And, Mr.
21 Brown, can you look at your calendar? Are you
22 all available on the 23rd or 30th? And while

1 you're doing that, is there anyone opposed that
2 would like to testify today? You will be
3 invited to come back on the next date as well.

4 WANDA COLLINS: I'm ready. Can you
5 hear me?

6 HEARING EXAMINER MCNEIL: Who are
7 you? Say your name.

8 WANDA COLLINS: Ms. Collins.

9 HEARING EXAMINER MCNEIL: Oh, Ms.
10 Collins. Okay. Well, hold. Okay. Then if you
11 all don't mind, while you're looking at your
12 dates, let's have Ms. Collins testify.

13 WANDA COLLINS: Okay. First of all,
14 I'd like --

15 HEARING EXAMINER MCNEIL: Please
16 state your name. Wait a minute. Before you
17 testify, state your name on the record, and then
18 I'll swear you in.

19 WANDA COLLINS: Okay. Wanda Collins.

20 HEARING EXAMINER MCNEIL: Wanda
21 Collins. Ms. Collins, do you swear or affirm
22 under the penalties of perjury that the

1 testimony you shall give will be the truth and
2 nothing but the truth?

3 WANDA COLLINS: Yes.

4 EXAMINATION

5 BY HEARING EXAMINER MCNEIL:

6 Q Okay. So, first, give me your
7 address, and then explain to me what you'd like
8 to say about this application.

9 A 9400 Westphalia Road, Upper Marlboro,
10 Maryland, 20774.

11 Q Okay. Go ahead.

12 A First, I would like to say that
13 Jessie Alexander and I have been friends for a
14 long time, and it's nothing personal, but I do -
15 - I do oppose it. I think on January the 28th
16 of 2022, 52 people were sent certified mail to
17 formally inform everyone of the project, but
18 because my name was changed, I didn't receive
19 it; but subsequently I have met with Mr. Burke,
20 I guess, three times, and he went over the
21 project. I think they moved the driveway one
22 way, moved it the other way.

1 But anyway, I moved into a rural
2 residential area 31 years ago because the
3 neighborhood was quiet. I had peace of mind
4 until all the recent activities started going on
5 in the neighborhood. I live directly across
6 from the Alexanders' property, and I would be
7 directly impacted. I also believe that the
8 entrance into the development would be in close
9 proximity to my driveway. I know it moved a
10 couple of times.

11 I'm not sure, Mr. Burke, like, where
12 it is right now. I'm not sure. But with all
13 the building that's been going on over the past
14 few years, the traffic has increased, accidents
15 have increased, and drivers are speeding down
16 Westphalia Road like it's a race track. This
17 new plan -- it would increase the traffic even
18 more, and I'm concerned that these villas, which
19 my sister lives in one that is called a
20 townhouse that is made the same way with her
21 bedroom downstairs and everything, will decrease
22 the value of not just my property but the -- my

1 neighbors in the surrounding area and will be a
2 nuisance for the community for years.

3 I have received the -- a notice, not
4 notice but information from an HOA member who
5 knew about this project before we did. And by
6 we, I mean the, I guess, 13 families that
7 actually live on Westphalia Road that are
8 directly impacted by the whole thing. And I
9 just think that, you know, we should have been -
10 - we should have known about it before the HOAs
11 knew about it.

12 So, you know, HOAs do talk, and I got
13 a phone call and said, hey, did you know so-and-
14 so was going on? And I've talked to Jessie,
15 and, you know, she explained it to me, and I
16 understand sometimes people just have to give up
17 and go, but I'm not willing to give up what I
18 have and go just like that just because I'm
19 being forced to accept something that's not
20 rural residential.

21 Also, during the last month or so, I
22 don't know if I became a scapegoat, but there's

1 a sign posted at the end of my property that
2 says, Forest retention area which I was told
3 that I can't build on it.

4 The last thing I really want to
5 mention is with the construction in this area,
6 the trees to the left is still on my property
7 but to the left of me has been bombarded by
8 animals who have made that property their new
9 home. They're destroying the trees. They eat
10 my plants, and they just became a nuisance to my
11 household, and it's nothing I can do about it.
12 So they -- we invaded their space when we did
13 all the building in Parkside and now some more,
14 and now they're invading mine. And nobody -- I
15 can't get help from anybody to fight animals,
16 but that is the reason why I oppose this. Thank
17 you.

18 Q Yes. Ms. Collins, before, if they
19 have any questions, help me picture where all of
20 this is. So if I were on Pennsylvania Avenue --

21 A Yes.

22 Q -- I make a right? If I'm on

1 Pennsylvania Avenue going toward the Beltway, I
2 can make a right on Westphalia; correct?

3 A Correct.

4 Q And then I keep going down and
5 there's a park and planning rec on the left, and
6 I keep going down. And then is your property
7 going to be on the right or on the left of
8 Westphalia when I get down toward the
9 intersection with D'Arcy and --

10 A So once you cross over D'Arcy Road --

11 Q Uh-huh.

12 A -- I'm on the left-hand side. I am
13 directly across from --

14 Q Across the street. Okay. I got you.

15 HEARING EXAMINER MCNEIL: Does anyone
16 have questions of Ms. Collins?

17 STAN BROWN: Ms. Collins, I may have
18 missed it, but please, just give us your exact
19 address, please.

20 THE WITNESS: 9400 Westphalia Road,
21 Upper Marlboro, Maryland, 20774.

22 STAN BROWN: All right. And you are

1 the property owner of that property?

2 THE WITNESS: Yes.

3 STAN BROWN: All right. Thank you.

4 No other questions.

5 VINCE BIASE: I do not have any
6 questions, Madam Examiner.

7 Thank you for your testimony, Ms.
8 Collins.

9 HEARING EXAMINER MCNEIL: Thank you,
10 Ms. Collins.

11 THE WITNESS: Thank you.

12 HEARING EXAMINER MCNEIL: Ms. Anna,
13 can you unmute yourself? And can you come on
14 camera and tell us your last name? From our
15 side, it looks like you're not mute, but we
16 can't hear you. Okay. And that looks to be it.
17 Okay. I'll tell you what.

18 Can we take a five-minute break and
19 come right back on and talk about the
20 continuance and see if Ms. Anna can get on? She
21 said she can't unmute.

22 VINCE BIASE: That works.

1 HEARING EXAMINER MCNEIL: Maybe
2 you'll have to come back in, but we're planning
3 on continuing the matter, Ms. Anna; so you will
4 get a notice to be able to come back to that
5 next hearing.

6 And Ms. Collins, you'd be able to
7 come back and ask questions of witnesses, but
8 you've already testified; so you can come back
9 or not, whichever you prefer. Okay.

10 WANDA COLLINS: Thank you.

11 HEARING EXAMINER MCNEIL: Just a
12 five-minute break. Thank you all.

13 (Off the record.)

14 (On the record.)

15 HEARING EXAMINER MCNEIL: So, Ms.
16 Anna, are you still there?

17 DR. ANNA MCCALL: Yes, I'm here.

18 EXAMINATION

19 BY HEARING EXAMINER MCNEIL:

20 Q Okay. So state your full name and
21 address. And we understand that you're driving.
22 I don't know if you can turn on your camera, or

1 can you?

2 A So -- okay. So full name Anna
3 McCall. I'm at 3203 Valley Forge Drive in Upper
4 Marlboro. So Westphalia is my crossroad. I
5 have been -- I just want to say for the record
6 that many folks in my neighborhood -- we're all
7 in a group thread. I've tried to join this
8 meeting using the app, dialing in, and we've
9 been unsuccessful.

10 So there are several other people
11 that I know of that I would have liked in-person
12 present that could not join. I was actually --
13 had to be called by someone. So you -- I'm
14 present, but I can't -- I can't put my camera on
15 because I'm -- someone dialed me initially, and
16 I guess now I can't do it either.

17 Q Okay.

18 A I wanted --

19 A Before you go further, Ms. Anna, I
20 just want you to know that you -- we weren't
21 supposed to send that link to a group chat.
22 Everyone has to call in -- I mean, email me with

1 their address, asking to become a person, and
2 they get separate links. So we are --

3 A Okay. So my link --

4 Q -- going to continue this matter --

5 A Yeah.

6 Q -- and we're going to make that
7 anybody --

8 A My link --

9 Q Wait -- wait one more second. We're
10 going to make sure that anybody that wants to
11 become a person of record for that next hearing,
12 they have to send an email with their address
13 and emails.

14 So now tell me what you want to tell
15 me about the request.

16 A Okay. So about the request, just
17 officially, I did get a link personally to my
18 email, so just to be clear on that. So my -- I
19 just want to -- I want to second what
20 Ms. Collins had to say as a member of the
21 community, and I am in opposition at this moment
22 because I do have several concerns. Most of

1 this meeting I haven't been able to take part
2 in. I did hear some bits and pieces.

3 My number one issues -- two number
4 one issues are traffic concerns.

5 HEARING EXAMINER MCNEIL: Uh-oh. So
6 we can't hear you now, Ms. Anna. Oh, while
7 we're waiting, the 30th works best for us.

8 Does that work okay for council?

9 VINCE BIASE: The 30th works for us.

10 STAN BROWN: Yes. I'm available on
11 the 30th.

12 HEARING EXAMINER MCNEIL: Okay.
13 Okay. I don't know if Ms. Anna will be able to
14 come back. So this matter or -- okay. This
15 matter will be continued until August 30th at
16 9:30. It will also be a virtual meeting. We're
17 expecting, if possible, Mr. Biase to hear from
18 Ms. Ballestero and/or Mr. Brown and any other
19 witness that you have to conclude this matter.
20 Anyone that did not testify today in opposition
21 has a right to do so at that meeting. That
22 would include Ms. Anna McCall because we really

1 didn't hear the testimony from her today. I --

2 STAN BROWN: And, Mr. Biase, if you
3 could also send a notice to the Marlboro Ridge
4 Homeowners Association, even though they are not
5 registered, and place in the record at the next
6 hearing the fact that you've done that.

7 VINCE BIASE: Will do, Mr. Brown.

8 HEARING EXAMINER MCNEIL: Okay, then.
9 I apologize for the many goblins today that
10 interrupted our meeting. I appreciate everyone
11 who made it here today, and I will see you all
12 on the 30th of August at 9:30.

13 VINCE BIASE: Thank you.

14 HEARING EXAMINER MCNEIL: This
15 meeting is now concluded, Ms. Poteat.

16 MS. POTEAT: Thank you, Ms. McNeil.

17 HEARING EXAMINER MCNEIL: Thank you.

18 (End of recording.)
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CERTIFICATE OF TRANSCRIBER

I, Jennifer Candela-Alvarez, 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 any of the parties to this case and have no interest, financial or otherwise, in its outcome.



JENNIFER CANDELA-ALVAREZ
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