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ESC 8215 SPRINGFIELD L.C. : Case No. SE-22002

: AC-23008

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Maurene McNeil  
Hearing Examiner

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1    A P P E A R A N C E S

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3    On Behalf of the Applicant:

4    Chris Hatcher, Esq.

5    On Behalf of People's Zoning Counsel:

6    Stan Brown, Esq.

7    On Behalf of Wingate HOA:

8    Sean E. Suhar, Esq.

9    On Behalf of Howard and Tanya Aldag:

10   Michele Rosenfeld, Esq.

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

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3                                    MS. MCNEIL:    Good morning  
4    everyone.    I'm Maureen McNeil, your examiner.  
5    We're here on Wednesday, May 7th, and we're here  
6    for a continuation of Special Exception 22002  
7    alternative compliance 23008 applicant ESC  
8    Springfield Road L.C.    Now, I'm confused because  
9    my computer is telling me to unmute.    Let me  
10   ignore my computer.    Okay.    Sorry, everyone.  
11   Technology.

12                                   And this hearing is held because  
13   the applicant has filed a request for a variance  
14   from one of the requirements of the prior zoning  
15   ordinance that noted that the property for this  
16   particular special exception needs to be twelve  
17   acres in size, twelve contiguous acres.    Before  
18   we start, I'll let all counsel identify  
19   themselves for the record, and I'll remind you  
20   that everyone needs to press off when they're not  
21   speaking.    Thanks.

22                                   Start with Mr. Suhar.

23                                   MR. SUHAR:    Good morning.    My name  
24   is Sean Suhar.    I'm an attorney here on behalf of  
25   my client, Wingate Homeowners Association,

1 Incorporated. Thank you.

2 MR. HATCHER: Good morning. My  
3 name is Chris Hatcher. I'm an attorney here  
4 representing the applicant in this matter.

5 MS. ROSENFELD: Michele Rosenfeld,  
6 legal counsel to Mr. and Mrs. Aldag, who are  
7 parties of record.

8 MR. BROWN: Stan Brown, People's  
9 Zoning Counsel.

10 MS. MCNEIL: Mr. Hatcher, are you  
11 ready to proceed?

12 MR. HATCHER: Yes, Madam Examiner.  
13 Good morning, Madam Examiner, People's Zoning  
14 Counsel. For the record, my name is Chris  
15 Hatcher with CL Hatcher L.C. here on behalf of  
16 the applicant, ESC 8215 Springfield L.C., for  
17 special exception 22002, alternative compliance  
18 23008, and now the associated variance  
19 application.

20 Through the entire process, the  
21 applicant has consistently maintained the  
22 property contains a minimum of twelve contiguous  
23 acres, as required by the prior zoning ordinance.  
24 The applicant continues to maintain this  
25 position. However, in an abundance of caution

1 and in the alternative -- in the alternative, the  
2 applicant intends to submit additional evidence  
3 into the record to support an area of variance.  
4 With that, the applicant respectfully requests  
5 Mark Ferguson to the stand.

6 MS. MCNEIL: Good morning, Mr.  
7 Ferguson.

8 MR. FERGUSON: Good morning, Madam  
9 Examiner.  
10 Whereupon,

11 MARK FERGUSON,  
12 a witness called for examination by counsel for  
13 the Applicant, was duly sworn, and was examined  
14 and testified as follows:

15 MR. HATCHER: Madam Examiner. Mr.  
16 Ferguson, since this is a continuation of a  
17 previous case, Mr. Ferguson has been qualified as  
18 an expert in land use planning. I just want to  
19 make sure that that is still clear in the record.

20 MS. MCNEIL: Yes, of course he's  
21 still an expert in land use planning.

22 DIRECT EXAMINATION BY MR. HATCHER:

23 Q Mr. Ferguson, can you please state your  
24 full name and business address for the record?

25 A My name is Mark Ferguson. My business

1 address is 5407 Water Street, Suite 206, Upper  
2 Marlboro, Maryland -- historic downtown Upper  
3 Marlboro, Maryland.

4 Q Where are you currently employed?

5 A At a firm called Site Design  
6 Incorporated.

7 Q What is your current position there  
8 with your employer?

9 A We don't do titles, but I sign my  
10 letters as senior land planner.

11 Q And again, as a belt and suspenders,  
12 Mr. Ferguson, have you ever been qualified as an  
13 expert in land use planning before Prince  
14 George's County zoning hearing examiner?

15 A I have on many occasions.

16 Q Madam Examiner has already noted that  
17 you were admitted as an expert in land use  
18 planning. Are you familiar with the required  
19 funding necessary for the approval of variance  
20 contained in Section 27-230 of the prior zoning  
21 ordinance?

22 A I am.

23 Q Have you reviewed the required findings  
24 necessary for an approval of a variance contained  
25 in Section 27-230 of the prior zoning ordinance?

1           A     I have.

2           Q     Are you familiar with the revised  
3     supplement justification requesting variance  
4     prepared by the applicant known as -- that was  
5     submitted into the exhibit in the record binder?

6           A     Yes, I am.

7           Q     Have you reviewed the revised  
8     supplement statement justification request and  
9     variance?

10          A     I have.

11          Q     Do you agree with the findings and  
12     conclusions contained in the revised supplement  
13     statement justification request and variance?

14          A     I do.

15          Q     What standard of the prior zoning  
16     ordinance does the applicant seek a variance  
17     from?

18          A     There is a provision of an additional  
19     requirement for approval of a planned retirement  
20     community.

21                   MS. MCNEIL:  If I may stop you  
22     right there.  We have to speak up a little more  
23     or put the mics a little closer.  Thanks.

24                   THE WITNESS:  Okay.  There is a  
25     provision in Section 27-295 that provides that a



1 planned retirement community shall have up to  
2 twelve acres, at least twelve contiguous acres.

3 BY MR. HATCHER:

4 Q Would you please describe the  
5 applicant's specific variance request?

6 A There is a contention that a portion of  
7 the property which has been prescriptively used  
8 by the -- or which has been used by the public  
9 for Spring Hill Road should be subtracted from  
10 the twelve contiguous acres. If that is -- if  
11 that area is subtracted, then the area of the  
12 property would only be 11.92-something acres.  
13 And so it is -- it is that provision for which  
14 the variance has provisionally been requested.  
15 Is that -- is that a correct characterization?

16 MR. SUHAR: I'm going to object.  
17 I don't believe he's qualified as a land  
18 surveyor. Apologies. I'm objecting to his  
19 statement about -- his opinion about the acreage  
20 of the property because he's not qualified as a  
21 land surveyor. He's qualified as -- I think what  
22 it was said was he's an expert in land use  
23 planning.

24 MR. BROWN: He can opine as an  
25 expert on all the documents that are in the file

1 he has reviewed and given his opinion based on  
2 that.

3 MS. MCNEIL: So I would overrule.  
4 But I would ask that you refresh your memory,  
5 looking at the statement of justification to tell  
6 us the exact acreage and the exact amount of the  
7 variance. Thank you.

8 MR. BROWN: Thank you.

9 THE WITNESS: Madam Examiner, page  
10 1 provides that the -- the applicant's belief is  
11 12.0091 acres. And page 2 of the statement of  
12 justification provides that if the area occupied  
13 by -- or used by the public were subtracted, that  
14 it would be 11.9278 acres at the top of page 2 of  
15 the supplemental Statement of Justification.

16 MS. MCNEIL: Thank you.  
17 (Indiscernible). There were two supplemental  
18 statements of justification.

19 MS. ROSENFELD: Madam Hearing  
20 Examiner, maybe if we -- I apologize. May I  
21 speak?

22 MS. MCNEIL: Yes, ma'am.

23 MS. ROSENFELD: I believe maybe we  
24 can have it listed as an exhibit number.

25 MS. MCNEIL: Right. They are

1 marked. And by the way, we're up to twenty-seven  
2 exhibits. But if you could tell us whether it's  
3 17-B or 21.

4 THE WITNESS: Mr. Hatcher, you'll  
5 have to do that. In fact, I reprinted mine, so  
6 mine doesn't look like yours, but I can -- I can  
7 see from the layout that even though I squished  
8 the spacing down, it looks like the same.

9 MS. MCNEIL: When I look at  
10 Exhibit 21, which is updated April 29th, the  
11 second page does say that it contains  
12 approximately 12.0091.

13 THE WITNESS: Okay. So that's the  
14 difference. I printed mine out from a file and  
15 squeezed the text so that it would be shorter.  
16 So it's on -- it's on page 1 on my page, but  
17 probably not in the exhibit that's in the record.

18 MS. MCNEIL: Okay. But you agree  
19 again that it's -- I mean, from what you've  
20 reviewed, that the acreage is --

21 THE WITNESS: 12.0091.

22 MS. MCNEIL: And the --

23 THE WITNESS: With the -- the  
24 Springfield Road area included, and 11.9278 if  
25 the Springfield area were to be excluded.

1                   MR. BROWN: And just so the record  
2 is clear, there's no signature on the  
3 supplemental Statement of Justification dated  
4 April 29th, 2025. So who is the author of that  
5 document?

6                   MR. SUHAR: And this is the reason  
7 for --

8                   MS. MCNEIL: And then  
9 (indiscernible).

10                  MR. SUHAR: Oh. I'm sorry. I  
11 apologize. I was just going to supplement.

12                  THE WITNESS: Supplement the  
13 supplement?

14                  MR. HATCHER: The document was  
15 created by the applicant and the team, the civil  
16 engineer, the land use planner, and all the  
17 various disciplines contributed to the document.

18                  MR. BROWN: We can't have a team  
19 effort authored the document. I mean, somebody  
20 individually must sign it. It's their work  
21 product.

22                  MR. HATCHER: Then the applicant  
23 will request that the record remain open so that  
24 we can have a signature placed on the document.

25                  MR. BROWN: Well, no, we don't

1 have to open the record.

2 Mr. Ferguson, do you adopt the  
3 Statement of Justification as your own?

4 THE WITNESS: I contributed to the  
5 drafting. I did not draft the -- the -- the text  
6 of it. I believe Mr. Martin was the principal  
7 drafter. Mr. Hatcher is correct. It was a sort  
8 of a team effort, but I think Mr. Martin did most  
9 of the --

10 MR. BROWN: Who is Mr. Martin?

11 THE WITNESS: Mr. Martin is seated  
12 in the front row there. Mr. Hatcher's associate.

13 MR. BROWN: All right. So the  
14 applicant's attorney, if you come up here and  
15 sign one of our exhibits, that would be helpful.

16 MS. MCNEIL: But also, he didn't  
17 answer your question. You asked, did he adopt  
18 it?

19 MR. BROWN: Yeah, exactly.

20 MS. MCNEIL: Would he adopt?

21 THE WITNESS: I am prepared to do  
22 so. I do agree with the -- with the contents and  
23 the conclusions.

24 MR. BROWN: All right. So we'll  
25 have Mr. Martin sign a copy. If you have a have

1 a copy, you can bring that up, and that will be  
2 the actual exhibit.

3 MR. HATCHER: Just for  
4 clarification purposes, what exhibit is this in  
5 the record?

6 MS. MCNEIL: Well, it's good to  
7 ask you. Should we assume that 17-B was  
8 superseded by 21?

9 MR. HATCHER: Correct.

10 MS. MCNEIL: Okay. So it's  
11 Exhibit 21. Oh, we'll wait until a break. I  
12 think Mr. Martin will need a copy to sign. Okay.  
13 Do you have any objection now, after hearing all  
14 of that, Mr. Suhar?

15 MR. SUHAR: Yes, even more so.  
16 This is the point that -- my client's position is  
17 that the property is -- that the subject property  
18 is smaller than what Mr. Ferguson is testifying  
19 to. And therefore, he is not quali -- well, I'm  
20 sorry. He was designated as a -- or he testified  
21 that he is an expert in land use planning. He is  
22 not a boundary line surveyor. He is not a  
23 professional surveyor in the state of Maryland.  
24 And he can't testify to the size of the property.

25 MS. MCNEIL: Oh, if I may, Mr.

1 Brown. He can testify to what the record shows  
2 in this matter. You can cross-examine him if you  
3 disagree as to that amount and see what he tells  
4 you about. But he has a right to testify on  
5 zoning ordinance and all the exhibits in the  
6 matter and having gone -- well, I'm not going to  
7 testify for him. So I'm going to overrule it  
8 this time, but you may be able to bring it again  
9 later.

10 MR. SUHAR: Okay. Thank you for  
11 your consideration.

12 MR. HATCHER: And as a --

13 MS. MCNEIL: Question?

14 BY MR. HATCHER:

15 Q People's Zoning Counsel asked it, but I  
16 think it's worth reiterating. Do you adopt the  
17 findings contained in what has now been labeled  
18 Exhibit 21?

19 A Yes, I will.

20 Q Does the zoning ordinance contain  
21 language excluding variances from Section 27-395  
22 or from planned development community standard?

23 A It does not. There is a long list of  
24 things for which variances may not be granted in  
25 Section 27 through 29 of the prior ordinance, but

1 additional requirements are not one of those  
2 exclusions.

3 Q Does the prior zoning ordinance permit  
4 the approval of a variance in conjunction with  
5 the approval of a special exception?

6 A It does in several places, among them  
7 27-316.

8 Q In your expert opinion would you, with  
9 the approval of the applicant's variance, request  
10 the planned retirement community so substantially  
11 alter the planned retirement community criteria  
12 such that the resulting planned retirement  
13 community use would no longer be a use that was  
14 contemplated in the Comprehensive Zoning Scheme?

15 A In -- in my opinion, no. My opinion is  
16 that the -- the difference between twelve acres  
17 and 11.9278 acres is de minimis.

18 Q In your expert opinion, is the subject  
19 property physically unique or unusual in a manner  
20 different from the nature and surrounding  
21 properties with respect to exceptional  
22 narrowness, shallowness, shape, exceptional  
23 topography, topographic conditions, or other  
24 extraordinary conditions peculiar to the specific  
25 parcel?



1           A     In my opinion, it is. And the -- the  
2     condition is -- is the unusual condition, namely  
3     the occupation by the public of a portion of the  
4     deeded acreage under Spring Hill -- under  
5     Springfield Road.

6           Q     In your expert opinion, does the  
7     particular uniqueness, unusualness, or  
8     peculiarity of the subject property cause a  
9     zoning provision to impact disproportionately  
10    upon the property such that strict compliance  
11    with the provisions will result in a peculiar,  
12    unusual, practical difficulty to the owner of the  
13    property?

14          A     It does. So I had referred to the  
15    additional condition of -- of 27-395, and the  
16    full cite is (a)(1) -- I'm sorry, (a)(3)(B),  
17    which provides that the subject property shall  
18    contain at least twelve contiguous acres. So if  
19    the area under Springfield Road is deemed to not  
20    be contiguous, then the regulation would not --  
21    would not permit use.

22          Q     How about in the neighborhood?

23                   MR. SUHAR: I'm going to object to  
24    that statement -- oh, I'm sorry.

25    (Indiscernible). I understand he's an expert --

1 expert testifying -- oh, I'm sorry. In my view  
2 is now testifying, giving a legal -- I'm so  
3 sorry.

4 MR. HATCHER: Mind you, this is --

5 MR. SUHAR: Yeah, I can state this  
6 again in shorter version. I'm objecting to Mr.  
7 Ferguson's testimony because he's offering a  
8 legal opinion on statutes, regulations, and so  
9 forth. And he's not qualified as such. He's not  
10 an attorney.

11 MR. HATCHER: Just as a point of  
12 clarification, he's testifying to his experience  
13 and the information that he has said in the  
14 record for over a year. If that was  
15 intentionally a -- if that objection had any  
16 validity, then perhaps Mr. Suhar could have said  
17 that in 2023, in December, when the two hearings  
18 that occurred, when Mr. Ferguson said very  
19 similar things.

20 Additionally, the question in and  
21 of itself just seeks to get Mr. Ferguson's expert  
22 opinion based on the facts that he knows and that  
23 are in the record based on the criteria in the  
24 zoning ordinance.

25 MR. SUHAR: I have nothing further

1 to add.

2 THE WITNESS: Madam Examiner, is  
3 it appropriate for me to add something?

4 MS. MCNEIL: Not yet.

5 I would ask that you try to get  
6 more of the facts that leads to an argument that  
7 is unique versus him saying it's unique, because  
8 that is a provision of the law that we all  
9 determine -- not we all, that I and the counsel  
10 will have to determine. So if you could just --

11 MR. HATCHER: Absolutely. Could  
12 you --

13 MS. MCNEIL: -- reframe your  
14 question. So I guess it was sort of a granted in  
15 part. Okay.

16 MR. SUHAR: Thank you very much.

17 BY MR. HATCHER:

18 Q Did you provide a supplement to your  
19 land use report that speaks to the uniqueness,  
20 unusualness, or peculiarity of the subject  
21 property?

22 A I did.

23 Q And does your land use report focus on  
24 that uniqueness, peculiarity, or unusuality as it  
25 relates to the specific neighborhood?

1           A     It does.

2                     UNIDENTIFIED SPEAKER:

3           (Indiscernible).

4                     MS. MCNEIL:   It's Exhibit 26.

5                     MR. HATCHER:   Thank you.

6                     BY MR. HATCHER:

7           Q     Can you go over the contents of that of  
8     that supplemental justification?

9           A     I can.   So I did conduct a -- a  
10   detailed analysis of all of the properties in the  
11   entire neighborhood for the -- each of their  
12   conditions of ownership of or up to frontage --  
13   road frontage and road rights of way.   What I  
14   found is that within the neighborhood, and I just  
15   by -- by counting one, two, three, four, 1,138  
16   lots or parcels within the neighborhood that I  
17   had previously defined in earlier testimony.

18           Of those 1,138 lots and parcels, I counted  
19   1085 which are subdivided lots or parcels which  
20   have dedicated road frontage, which there was  
21   dedication by their -- their subdivision plats.

22                     MR. SUHAR:   I'm sorry.   What was  
23   the number?

24                     THE WITNESS:   Which number?   I'm  
25   sorry.   1,138 lots and parcels total in the

1 neighborhood, of which 1085 are platted lots or  
2 parcels. There are fifty-three remaining parcels  
3 which are of unsubdivided acreage, one of them  
4 being the subject property. Of the other fifty-  
5 two, I looked at the deeds of record for each one  
6 of those properties and read the legal  
7 description to identify where the legal  
8 description claimed ownership up to.

9                   And I found that of those fifty-  
10 two, forty-seven run to the edge or with the  
11 right of way line or some other description, or  
12 else there are six, I believe -- six where there  
13 is actually no reference to the location of any  
14 road in the legal description.

15                   There are five properties, not  
16 counting the -- the -- the current -- not  
17 counting the subject, which are described as  
18 running out to the center of the road and  
19 therefore would have the same condition of  
20 potential prescriptive use of some of their  
21 property. So five within 1,138 is less than one  
22 half of a percent of the properties in the  
23 neighborhood. And to me -- and Madam Examiner,  
24 what I can do -- I can see you did not get a full  
25 print of the exhibit that was mailed in. That is

1 the entire exhibit that is electronic when you  
2 print it out by hand. Unless you specify the  
3 paper size, it comes out small.

4 MS. MCNEIL: So hold on. Can I  
5 ask -- can I ask one question? Did any of you  
6 get the full print? I mean, Ms. Rosenfeld or Mr.  
7 Suhar? So it's just a matter of how we printed  
8 it?

9 THE WITNESS: It matters how you  
10 printed it. So the electronic copy would show  
11 you the full thing, but if you just hit print,  
12 you'll get just get eight and a half by eleven --

13 MS. MCNEIL: Okay.

14 THE WITNESS: -- as -- as I did  
15 when I first printed my report.

16 MS. MCNEIL: You print the map on  
17 Exhibit 26. But if you would share it so they  
18 can see it as you're speaking.

19 THE WITNESS: And so, Mr. Suhar,  
20 as I refer to it in the addendum, the defined  
21 neighborhood is outlined in red. The 1085  
22 platted lots and parcels are in orange. Parcels  
23 that are in green do not claim owner -- are  
24 unsubdivided acreage which do not claim ownership  
25 out to the center line of the road. Parcels in

1 blue and the outlined in blue subject --

2 MS. MCNEIL: Can we wait one  
3 second? I forget we're in a wonderful digital  
4 Zoom hearing. So can someone pull up Exhibit 27?  
5 And its last page is the map.

6 THE WITNESS: It is. And that  
7 should --

8 MR. SUHAR: Is it this this map?

9 THE WITNESS: Yes, it is.

10 MR. SUHAR: Yeah, I'm objecting to  
11 this map because I haven't seen this before.  
12 But --

13 MR. HATCHER: It was submitted  
14 into the record timely.

15 MR. SUHAR: Also, Mr. Ferguson has  
16 referred to deeds that I don't believe are in the  
17 record.

18 MR. HATCHER: It's all referenced  
19 in documents.

20 MR. SUHAR: It's legal  
21 descriptions in -- I'm sorry?

22 MR. HATCHER: It's all in the  
23 documents supplement. He references all the  
24 documents in the supplement.

25 MR. SUHAR: Well, he was referring

1 to deeds and legal descriptions of properties  
2 that I'm not familiar with, and I have no idea  
3 what this map -- I mean, I don't know where these  
4 addresses are on this map. I don't know what  
5 the -- and I haven't -- he's testifying to the  
6 description of these properties going out to the  
7 center line when there's absolutely nothing in  
8 this document.

9 MS. MCNEIL: So if we could --  
10 let's hold that objection and allow you to  
11 cross-examine him.

12 MR. SUHAR: Okay.

13 MS. MCNEIL: And now the Exhibit  
14 26 is up. The last page is the same map as the  
15 one that is in hard copy in front of us?

16 THE WITNESS: Yes, ma'am.

17 BY MR. HATCHER:

18 Q Just for the record, and for those that  
19 that might not be in person, can you go -- can  
20 you describe this exhibit one more time?

21 A I can. So this -- the -- the area  
22 outlined in red is the neighborhood that I  
23 defined in 2023 when we were first here. It  
24 is -- it is surrounded by Wingate Road to the  
25 west, Lanham Severn Road to the south, Maple



1 Avenue to the east, Duckettown Road, and then  
2 extended to Good Luck Road on the north.

3 The subject property is outlined in blue,  
4 roughly in the center of the defined  
5 neighborhood. The properties have been colored  
6 within the outlined area to correspond to the  
7 status that I described in my earlier testimony,  
8 namely parcels that are -- lots and parcels that  
9 are orange have been subdivided and platted and  
10 therefore have road frontage that's been  
11 dedicated.

12 Parcels that are in green are unsubdivided  
13 acreage, which have legal descriptions that do  
14 not run to the center of the roadway. Parcels  
15 that are in blue and including the subject, which  
16 is outlined in blue, do have descriptions that  
17 run to the center lines of either Duckettown --  
18 or Duckettown Road or Springfield Road.

19 Q And you personally reviewed and created  
20 this exhibit?

21 A I personally prepared it.

22 Q Can you reiterate what the overall  
23 acreage of the area that's presumed to be  
24 prescriptive is?

25 A In accordance with Exhibit 21, 3542

1 square feet or 0.0813 acres.

2 Q In your expert opinion, is the proposed  
3 area variance the minimum reasonable necessary to  
4 overcome the exceptional physical  
5 (indiscernible)?

6 A It is. It's enough to get it to -- to  
7 allow for the property to meet the area standard.

8 Q In your expert opinion, can the  
9 proposed area variance be granted without  
10 substantially (sic) impairment to the intent,  
11 purpose, and integrity of the general plan or any  
12 area master plan, section plan, and transit  
13 district development plan affecting the subject  
14 property? Before you answer that, Mr. Ferguson,  
15 please feel free to reference your Land Use  
16 Planning Analysis, which analyzes all of the  
17 master plans, which has been in the record since  
18 2023.

19 A Yeah. Thank you. I believe that was  
20 Exhibit -- I have it marked as Exhibit 102 in the  
21 record of the earlier hearings. And my answer  
22 simply would be to direct you back to my  
23 testimony earlier in the case where I felt that  
24 the entire project would actively implement the  
25 master plan, its recommendations for providing

1 housing, such as is being provided by the --  
2 proposed to be provided by this plan -- subject  
3 planned retirement community.

4 Q And in light of the master plan and the  
5 uniqueness, do you believe that this unique  
6 situation creates a hardship?

7 A Well, if -- if one cannot find the  
8 twelve contiguous acres exist, then the section  
9 which -- which I cited as a -- as a planner --  
10 and I would point out that planners are the  
11 people who are charged with interpreting the  
12 ordinance and when applications come in. It's  
13 our job to --

14 MR. SUHAR: Objection.

15 THE WITNESS: Thank you.

16 MS. MCNEIL: Basis?

17 MR. SUHAR: He's testifying to  
18 what -- I think what land planner or planners --  
19 some kind of planners have said or what their  
20 role is -- I'm not sure what basis that he's able  
21 to -- in his expert opinion, able to opine about  
22 the planning staff or something, I guess, is what  
23 he was saying.

24 MS. MCNEIL: He said part of his  
25 duty as a land planner is to look at existing

1 laws and make determinations based on it. I  
2 don't think that's the same as being the lawyers  
3 at the end who will argue. And it's just --  
4 that's all I can say now.

5 MR. SUHAR: I understand.

6 MS. MCNEIL: Do you have anything  
7 to add?

8 MR. BROWN: No. I mean, I agree.  
9 He's opining within his expertise as a planner as  
10 to what planners do, whether they are in the  
11 county government or in private practice.

12 MR. SUHAR: Thank you very much.

13 BY MR. HATCHER:

14 Q And does that hardship create a  
15 practical difficulty?

16 A Can we go back to -- ask me the  
17 question again, because I was in the middle when  
18 Mr. Suhar entered his objection? Frankly, threw  
19 me off my train of thought.

20 Q Right. The question related to the  
21 unique nature of the presumed --

22 A Thank you. Thank you. So what -- what  
23 I was testifying to is that if you cannot find  
24 that twelve acres exist without a variance, then  
25 that regulation would say you -- you can't meet

1 the regulation, the additional requirement for  
2 the special exception. And without being able to  
3 meet that requirement, notionally, at least --

4 MR. BROWN: Actually, what Mr.  
5 Hatcher's question was -- before the objection  
6 was, how does the inability to have a variance  
7 create a hardship on this property owner?

8 THE WITNESS: Thank you. Thank  
9 you, Mr. Brown. And if you can't meet that  
10 regulation, you can't have the project. That  
11 would be the -- that would be the hardship. It  
12 would deprive the applicant of the ability to  
13 carry out the project.

14 BY MR. HATCHER:

15 Q As well as the practical difficulty?

16 A That's a -- that's a that's a very  
17 practical difficulty.

18 Q In your expert opinion, will the  
19 proposed area variance substantially impair the  
20 use and enjoyment of the adjacent properties?

21 A In -- in my opinion, it will not. As I  
22 testified earlier, I believe that the -- the  
23 difference between 12 acres and 11.9278 is de  
24 minimis. I think that my earlier testimony was  
25 that the project would not impair the use or

1 enjoyment of the property in the context of the  
2 special exception findings, and I continue to  
3 hold that opinion.

4 Q And just to reiterate, in your expert  
5 opinion, is the practical difficulty caused by  
6 the exclusion of the presumed prescriptive  
7 easement area self-inflicted by the owner of the  
8 property?

9 A It is not.

10 MR. HATCHER: I have no additional  
11 questions for this witness.

12 MS. MCNEIL: Ms. Rosenfeld, do you  
13 have any questions?

14 MS. ROSENFELD: Yes. Thank you,  
15 Ms. Hearing Examiner. I do.

16 CROSS-EXAMINATION BY MS. ROSENFELD:

17 Q Mr. Ferguson, I'd like to draw your  
18 attention first to Exhibit 26, the Lands Planning  
19 Analysis, which you earlier spoke about.

20 A The supplemental from this -- this  
21 hearing -- the -- with the breakdown of all of  
22 the properties and the map?

23 Q Yes, yes. Thank you.

24 A Yes, yes. Thank you.

25 Q That's correct.

1           A     Okay.

2           Q     Looking at the map itself, I see you  
3     have the subject property outlined in blue.  
4     Across the street, Springfield Road on that same  
5     map, there's one property outlined in blue and  
6     directly across from the subject property another  
7     outlined in green.

8           A     Yes.

9           Q     Can you identify for me in your list  
10    the tax map/parcel which one is the green  
11    directly across from the subject and which one is  
12    the blue?

13          A     The green is tax map 28, parcel 80,  
14    with a deed of -- of record at 36242 -- liber  
15    36242 at folio 376. The blue is tax map 28 at  
16    parcel 81, liber 7937 at folio 968; 7937968  
17    describes that land is running to the center of  
18    the Springfield Road.

19          Q     And looking at your list and looking at  
20    the at the map, how would I independently know  
21    that those references correlate to those  
22    particular parcels?

23          A     You'd have to ask me.

24          Q     Oh, we have all morning?

25          A     We do.

1           Q     Okay.  So those two parcels, maybe we  
2     can -- let me hold off a minute.  The blue one is  
3     which one?

4           A     The blue one on Springfield Road is  
5     parcel 81.

6           Q     Okay.  And the green one directly  
7     across the street is parcel 80?

8           A     Parcel 80, yes.

9           Q     Okay.  Now moving -- would it be to the  
10    east along Springfield, to the next green one,  
11    next to the blue?

12          A     It would -- it would be south.

13          Q     South?  Moving south?

14          A     Yes.

15          Q     The next southerly one would be which  
16    parcel?

17          A     Parcel 82.

18          Q     Okay.  And the one beyond that?

19          A     Parcel 83.

20          Q     And then there, down the road, the next  
21    one would be?

22          A     Parcel 2.

23          Q     Parcel 2?  And the next one?

24          A     Is on the other side of the road,  
25    parcel 133.



1           Q     Oh, wait, wait, wait. The one across  
2 the street is which one?

3           A     Parcel 133.

4           Q     Okay. And then the next one?

5           A     Parcel 85.

6           Q     Is the one back on the other side of  
7 Springfield?

8           A     Back on the other side of Springfield,  
9 correct.

10          Q     And then to go back, the very last one  
11 on Springfield, to the south, along that string,  
12 the green and the blue, and then the subsequent  
13 greens, what's that very last parcel?

14          A     Can you point to it on your copy of the  
15 map, please?

16          Q     That one?

17          A     That one, I believe, is -- oh, that one  
18 may be 83. I think that 2 is actually to the  
19 north of that. I think the 2, parcel 2, and  
20 parcel 82 share the Perkins Chapel Road.

21                   MS. MCNEIL: If I may for the --  
22 I'm so sorry. For the people online and even for  
23 me, I'm going to try to point with the pointer to  
24 see what you all are saying. So the subject  
25 property is outlined in blue, and the interior is

1 not blue. Which parcels are you all talking  
2 about now?

3 THE WITNESS: So on the west side  
4 of Spring Hill Road, across from the subject  
5 property -- I'm sorry. What did I say?  
6 Springfield Road. The property immediately  
7 opposite that is triangular, parcel 80. Blue,  
8 immediately to the south, is parcel 81. Then a  
9 larger, mostly rectangular property is 82, then  
10 one to the south of that smaller is 83 -- I'm  
11 sorry, is parcel 81. 82 is the big one. 83  
12 immediately to the -- one, two, three, four. Can  
13 I have a pencil, please?

14 MR. BROWN: Ms. Rosenfeld, I mean,  
15 to help you with regards to the parcel number and  
16 tax ID number, if you would look at your exhibit,  
17 the map surrounding the property, all of the  
18 parcels and tax numbers are identified around the  
19 property, including the property.

20 MS. ROSENFELD: I don't know if --

21 THE WITNESS: I do have that as  
22 well. Where is that?

23 MS. ROSENFELD: Okay. Thank you  
24 very much.

25 THE WITNESS: Yeah. Yeah. I

1 thought I printed that out and brought it with  
2 me, but I don't see it. So -- but I did -- I did  
3 catch up with -- with my own -- so I'm sorry.  
4 Where were we? If we can -- if we can pull up  
5 yours, that may illustrate the issue better.

6 MR. BROWN: Hers are not going to  
7 show the other roadway in the neighborhood.

8 THE WITNESS: No, they -- they  
9 will not. What I --

10 MR. BROWN: Exactly. But I don't  
11 think it's necessary to go through all that with  
12 all those properties.

13 THE WITNESS: But what I will say  
14 generally is that I started at Maple Avenue --

15 MR. BROWN: Right.

16 THE WITNESS: -- went west along  
17 Duckettown Road, south along Springfield Road. I  
18 went west to pick up the two on Lanham Severn  
19 Road. And then I came east on Lanham Severn  
20 Road, up Cowan Lane, up Church Road, and then up  
21 Park Avenue.

22 MR. BROWN: Yeah, so I think for  
23 Ms. Rosenfeld's purposes, the exhibits that she  
24 has is sufficient for identifying the parcels by  
25 tax number. I mean, if she wants later, we can

1 put in the record a copy of the tax map for those  
2 other properties that you identify. But we don't  
3 need to go through, Ms. Rosenfeld, you would  
4 agree, what the parcel number, tax map number is  
5 for all of those parcels that he's identified,  
6 correct?

7 MS. ROSENFELD: Thank you.

8 THE WITNESS: And certainly, Mr.  
9 Brown, I do have copies of all of the deeds as  
10 well. And it was, you know, about 300 pages. So  
11 I thought, do you -- do you want them asked for?

12 MR. BROWN: No, we don't need  
13 them, no.

14 MR. HATCHER: And just as a point  
15 of clarification, all of these are a matter of  
16 public record as well.

17 BY MS. ROSENFELD:

18 Q So Mr. Ferguson, if I understand your  
19 testimony correctly, the properties that are  
20 either green or blue along Springfield Road have  
21 property descriptions that include part of the  
22 Springfield Road right of way?

23 A No, only the blue.

24 Q Only the blue has?

25 A Only the blue.

1           Q     And yet the others either they do or do  
2     not include a reference to the middle of a road?

3           A     They do not. Only the blue -- the blue  
4     ones have a reference to the center of the road.  
5     The green ones have a reference to the edge of  
6     the road, edge of the right of way, or in six  
7     cases, no identifiable reference to a roadway at  
8     all.

9           Q     Okay. And so if there's no  
10    identifiable reference to a road, are you  
11    presuming that it does not include a road?

12          A     I'm not making a presumption at all.

13          Q     Okay. So it could?

14          A     It could. It would need some -- some  
15    detailed investigation. We'd have to plot the  
16    descriptions around effectively, do some  
17    surveying to make a determination.

18          Q     Okay. So looking at the properties in  
19    green and the one in blue on Exhibit --

20          A     26.

21          Q     -- on the map attached to Exhibit 26,  
22    are you in a position sitting here now to say  
23    with definitively that none of these include  
24    prescriptive right of way in their descriptions?

25          A     What I am prepared to say is that

1 parcel 81 in blue does have a description which  
2 runs to the center line of the road, and  
3 therefore, almost inescapably would have  
4 prescriptive right of way. But the others,  
5 because they run to the edge of the right of way  
6 or the edge of the road, depending on the  
7 terminology in the deed, do not in the same way.

8 Q But they could include some of the --

9 A No, I don't -- I don't think --

10 Q -- prescriptive right of way?

11 A No, I don't think they could.

12 Q Okay. Even without doing the metes and  
13 bounds going through the description?

14 A No, I did look at every one -- or I  
15 looked at the metes and bounds description of  
16 every property. For instance for tax map 28,  
17 parcel 112, which is on Duckettown Road, just to  
18 the west of Horse Pen Road, there is no reference  
19 to a roadway at all.

20 Q And do you know whether or not that  
21 description might include the entire width of a  
22 roadway?

23 A It might include up to the center line.  
24 It might include to the edge. It might go short  
25 of the edge. We don't know. That's why I say I

1 make no presumption about those at all, those  
2 six.

3 Q Okay. Okay. Understood. And then if  
4 I could draw your attention to page 3 of your  
5 description.

6 A Yes.

7 Q If we look at -- this is about -- I  
8 don't know, a little more than halfway down, tax  
9 map 28, page 58.

10 A Parcel 58, yes.

11 Q Parcel 58, which says, "No explicit  
12 road reference in legal description".

13 A Correct.

14 Q Can you say definitively that there's  
15 no prescriptive easement within the boundaries?

16 A That is -- that is one of those six  
17 that I -- that I was referring to just a second  
18 ago. So there are six properties with that  
19 description starting at tax map 28, parcel 112 on  
20 the first page, and then beginning at -- then  
21 continuing with parcel 28 -- map 28, parcel 62;  
22 also map 28, parcel 58; map 28, parcel 59; map  
23 29, parcel 63; and map 29, parcel 64. None of  
24 those six refer to the road in -- at all in  
25 their -- in their legal descriptions.

1           Q     Okay. And in addition to those that  
2     have no legal description or those that it's  
3     unclear as to whether or not there's a  
4     prescriptive right of way within the property  
5     boundaries, are there other categories of  
6     properties in your list where you are unable to  
7     determine if a prescriptive right of way might be  
8     located within the parcel boundaries?

9           A     The only ones where I'm unable to  
10    determine are the ones where I cited no explicit  
11    road reference in the legal description. All of  
12    the other descriptions, as I have cited in the  
13    excerpts, talk specifically about going to the --  
14    on set on the southerly side, or excluding the  
15    land within the right of way, or on the south  
16    edge of a county road, or on the west side of  
17    Springfield Road, or in the southerly line.

18                So something where you can determine that  
19    they're only claiming ownership to the edge  
20    rather than to the center. The properties to the  
21    center are four on Duckettown Road, which is --  
22    or which are, excuse me, parcel 36 to a point in  
23    the center of the Bowie/Duckettsville Road;  
24    parcel 34, at a point in the center of the  
25    Bowie/Duckettsville Road; parcel 115 to the



1 center of the Duckettown Road; parcel 114 to the  
2 center of the Duckettown Road. All of those  
3 four, by the way, on tax map 28. And then  
4 finally parcel 81 to the center, to a point in  
5 the center of the Springfield Road. All of the  
6 others explicitly say to the edge or the side.

7 Q With respect to the remaining  
8 properties that are shown along the road frontage  
9 of Springfield Road, would you describe them as  
10 record plats? Are they properties that have gone  
11 through the subdivision process?

12 A If -- if they are colored orange, yes.

13 Q Okay. And do you know if any of those  
14 subdivided properties included prescriptive  
15 easement land within them before they were  
16 subdivided?

17 A I do not.

18 Q Okay.

19 A They don't anymore.

20 Q Once the subject property -- assuming  
21 hypothetically, the property goes through  
22 subdivision after the project is approved --

23 A Yes.

24 Q -- and once it is recorded as a record  
25 plat -- would that be required as part of the

1 process?

2 A It will.

3 Q Okay. At that point, would the  
4 property show the land within Springfield Road or  
5 would that be excluded from its legal  
6 description?

7 A It would be excluded.

8 Q All right. And so as you sit here now,  
9 you're not able to tell me whether any of the  
10 recorded lots, subdivided lots, at some point  
11 included any of the prescriptive easement?

12 A In the past?

13 Q Right.

14 A I'm not.

15 Q Turning your attention to what's been  
16 marked as Exhibit 21, the updated supplemental  
17 Statement of Justification.

18 A Yes.

19 Q I believe I understood your testimony  
20 earlier to be that if this project were approved,  
21 it would not substantially impair the use or  
22 enjoyment of adjacent properties. Did I hear  
23 your testimony correctly?

24 A Yes, you did.

25 Q There is in the record a letter dated

1 May 2nd, 2025, from Howard and Tanya Aldag --

2 MS. ROSENFELD: And Madam Hearing  
3 Examiner, I apologize. I don't have the exhibit  
4 number for this document.

5 MS. MCNEIL: I apologize to all of  
6 you that we don't seem to have the updated  
7 exhibit list yet, but I just saw it for the  
8 record.

9 MR. BROWN: What is the date of  
10 your letter?

11 MS. ROSENFELD: May 2nd, 2025. It  
12 was filed --

13 MR. BROWN: So it would be in the  
14 recent exhibits, then. All right.

15 MS. ROSENFELD: -- on Friday just  
16 before noon.

17 MR. BROWN: All right. She just  
18 filed that.

19 MS. MCNEIL: So you mean your  
20 letter? The Aldags have their own?

21 MS. ROSENFELD: Oh, no. This  
22 is --

23 MS. MCNEIL: Okay.

24 MS. ROSENFELD: -- the one filed  
25 by Mr. and Mrs. Aldag.

1                   MR. HATCHER: Just to clarify, in  
2 what capacity were they speaking in that letter?

3                   MR. BROWN: Well, let's just hold  
4 on a second.

5                   MS. ROSENFELD: They are parties  
6 of record. They are nearby property owners.

7                   MR. HATCHER: Parties of record,  
8 laypeople?

9                   MS. ROSENFELD: Yes. That's  
10 correct.

11                  MS. MCNEIL: This might be a good  
12 opportunity for a five-minute break. I don't  
13 know what I have to do digital -- I mean,  
14 technically to go into break, but can we have a  
15 five-minute break? Pause the record?

16                  (Whereupon a recess was taken)

17                  MS. MCNEIL: Okay. Just before we  
18 start back with Ms. Rosenfeld's cross, do want to  
19 note for the record that the exhibits may have  
20 been marked differently online than they have  
21 been in this hearing. So the numbers will  
22 change, probably, but it will still be all the  
23 same documents. Sorry for any inconvenience.

24                  MS. ROSENFELD: Thank you.

25       ///

1 RESUMED CROSS-EXAMINATION BY MS.

2 ROSENFELD:

3 Q Mr. Ferguson have you had a chance to  
4 look at what's been marked as Exhibit 28, May 2nd  
5 letter submitted by parties of record Howard and  
6 Tanya Aldag?

7 A I did get a chance to look it over  
8 briefly in the break.

9 Q Okay. And in that letter they -- they  
10 make a statement that the property owner knew --  
11 this is on page 2. I'm just going to read the  
12 first sentence of the third paragraph. "Thus,  
13 the stewards and developer knew many years before  
14 submitting the special exception, the zoning  
15 board, that there was not twelve" contiguous --  
16 not twelve "acres of contiguous land". Do you do  
17 you agree with that statement?

18 A I have no knowledge of what they  
19 believed or knew.

20 Q And I'd like to turn back to what's  
21 been marked as Exhibit 21, the April 29th  
22 supplemental statement. And I believe you said  
23 that you adopted this.

24 A I do.

25 Q Okay.

1           A     Yes.

2           Q     Looking at page 3, under the analysis,  
3     there's a comment. The last clause of that  
4     comment section says, "Public roads are generally  
5     created by eminent domain and/or the express  
6     agreement of the owner of the property, e.g.  
7     dedication"; is that correct?

8           A     I would say that's generally a correct  
9     statement, yes.

10          Q     Okay. So dedication would be when a  
11     property owner dedicates as part of a subdivision  
12     plat?

13          A     Or independently by deed. It can be  
14     done in either way.

15          Q     Thank you. Turning to page 5 of that  
16     same exhibit, last comment. There's a  
17     affirmative statement that says in the middle of  
18     that comment paragraph, "The prescriptive  
19     easement was not created by an agreement between  
20     the owner of the property and a third party". Do  
21     you have firsthand knowledge as to that  
22     statement?

23          A     I think it is a very reasonable  
24     presumption to make. Prescription is when  
25     typically many members of -- many members of the

1 public use it.

2 Q I'm not asking for -- I'm not asking  
3 for your opinion as to what a prescriptive  
4 easement is. So that statement is based on a  
5 presumption of yours? You don't have  
6 firsthand --

7 A It is based on a presumption of mine.  
8 I do not have knowledge of any contracts or  
9 agreements.

10 MR. HATCHER: I object to the --

11 MS. ROSENFELD: I'm not -- you're  
12 not --

13 MR. HATCHER: I can't object?

14 MS. MCNEIL: Maybe you can't,  
15 because he already answered.

16 MR. HATCHER: Oh, I -- yeah,  
17 clearly. I object to the question primarily  
18 because there were other experts that testified  
19 to the nature of the presumed prescriptive  
20 easement, particularly the expert land surveyor  
21 that was on the record before. So to the extent  
22 that there are questions, those related to that,  
23 there are certainly already documented in the  
24 record by an expert.

25 MS. ROSENFELD: Well, that may be,

1 but I'm questioning the expert that's before us  
2 today for purposes of this variance hearing. And  
3 he testified that --

4 MS. MCNEIL: To keep us moving,  
5 I'm overruling.

6 BY MS. ROSENFELD:

7 Q The next sentence of that same comment  
8 says, "Indeed, the prescriptive easement created  
9 by the county's construction of Springfield Road  
10 within the boundaries of the property without the  
11 permission of the owner of the property". Again,  
12 do you have firsthand knowledge as to that  
13 statement?

14 A I do not. I do just believe it's a  
15 reasonable presumption.

16 Q Do you have any firsthand knowledge as  
17 to as to whether or not the property owner ever  
18 filed an adverse possession claim against the  
19 county with respect to the roadway?

20 A I do not.

21 Q Do you have any knowledge as to whether  
22 or not the property owner ever filed a takings or  
23 eminent domain claim against the county with  
24 respect to Springfield Road?

25 A I do not.



1                   MR. BROWN: I mean, I'm confused  
2 by that question. A private owner cannot make a  
3 claim for eminent domain. Are you asking him  
4 really did the county or did the state make a  
5 claim for eminent domain?

6                   MS. ROSENFELD: You are correct.  
7 Let me rephrase that as two questions.

8                   BY MS. ROSENFELD:

9           Q     To your knowledge, did the county or  
10 state ever file an eminent domain claim against  
11 the property owner?

12          A     Not to my knowledge.

13          Q     To your knowledge, did the property  
14 ever -- did the property owner ever file an  
15 inverse condemnation claim against the county or  
16 state for its use of Springfield Road?

17          A     Not to my knowledge.

18                  MS. ROSENFELD: Brief indulgence.  
19 Just one moment. I just want to make sure.

20                 MR. BROWN: And just to clarify,  
21 also, Ms. Rosenfeld, you asked him whether or not  
22 the property owner ever filed an adverse  
23 possession claim. It's the position of the  
24 applicant that they own the property, so they  
25 would never file an adverse possession claim

1    against the county or the state.  What you really  
2    mean is, did the state or did the county ever  
3    file an adverse possession claim against the  
4    property owner.

5                   BY MS. ROSENFELD:

6           Q     If the witness would answer that  
7    question, please.

8           A     From my perspective, that's a legal  
9    question, but I have no knowledge of the county  
10   or the state filing an adverse possession claim  
11   against the property.

12                   MS. ROSENFELD:  Thank you.

13                   Madam Hearing Examiner, I have no  
14   have no further questions.

15                   MS. MCNEIL:  Thank you.

16                   Mr. Suhar?

17                   MR. SUHAR:  Thank you.

18                   CROSS-EXAMINATION BY MR. SUHAR:

19           Q     Mr. Ferguson, so you testified earlier  
20   to the size of the subject property in this case,  
21   right?

22           A     I -- I did.

23           Q     Okay.  And what basis did you use to  
24   come to your conclusions as to the size of the  
25   property?

1           A     The evidence that is --

2           Q     The things that you used?

3           A     The evidence that is in the record.  So

4   I have seen the survey prepared by -- by Mr.

5   Jones, which -- and -- and the deed that is now

6   on record, which -- both of which describe the

7   property as containing the 12.0091 acres.

8           Q     But you didn't consider the five

9   easements that were conveyed by the property

10  owner to WSSC, did you?

11          A     When you say I didn't consider them,

12  I'm certainly aware of their existence.

13          Q     Okay.  Did you consider them in your

14  analysis?

15          A     Absolutely.

16          Q     Okay.  Then how --

17          A     And when I say -- excuse me, let me --

18  let me be clear.

19          Q     Well, I'm asking the question.

20          A     No, I just want to be clear.  Well, let

21  me answer the question --

22                   MR. HATCHER:  I object.

23                   THE WITNESS:  -- you asked

24  earlier.

25                   MR. HATCHER:  (Indiscernible).

1 MS. MCNEIL: Allow him --

2 MR. SUHAR: Okay.

3 MS. MCNEIL: -- some indulgence.

4 MR. SUHAR: Sure.

5 THE WITNESS: My analysis of the  
6 entire project absolutely considered the presence  
7 of the easements in -- I -- I looked at -- the  
8 survey with Mr. Jones, came to the conclusion  
9 that there were 12.0091 gross acres within the  
10 property. And that is the basis of my opinion of  
11 12.0091 acres. I was aware of them, but the  
12 12.0091 acres is based on the entirety of the  
13 property's gross area.

14 BY MR. SUHAR:

15 Q Okay. So when you deduct the  
16 prescriptive easement in the roadway, you came to  
17 less than twelve acres, right?

18 A If one -- I presumably -- I do agree  
19 that the property contains 12.0091 contiguous  
20 acres. If one were to subtract the 3,542 square  
21 feet of area, which the survey identifies as  
22 being under Springfield Road, then you would get  
23 less than twelve acres, 11.9278.

24 Q Okay. Great. So then did you also  
25 consider -- you did not consider the other

1 easements on the property, right, that were  
2 granted to by the property owner to WSSC?

3 A Well, I testified that I --

4 Q You familiar with them, that you're  
5 aware of them, but you didn't take that into your  
6 calculation as to the size of the property less  
7 the easements on the property. You didn't  
8 consider the WSSC deeds, did you?

9 A I did consider them, and I do not  
10 believe that they should be subtracted from  
11 the -- from the -- the gross acreage or the  
12 contiguous acreage.

13 Q Why is it that one easement could be  
14 subtracted, but not the others?

15 A I don't believe the one easement should  
16 be subtracted.

17 Q Okay. But you said -- you testified  
18 earlier that if you subtract that property, that  
19 that's creating a hardship for your property and  
20 that it's unique.

21 A The key word in that sentence, of  
22 course, is if.

23 Q You didn't consider the other five  
24 easements, right? Yes or no?

25 MR. HATCHER: Objection. Asked

1 and answered. That's been the third time asked  
2 the question.

3 MR. SUHAR: I don't know what his  
4 answer is.

5 MS. MCNEIL: I will sustain. He  
6 did say that he didn't think they needed to be  
7 subtracted from the gross acreage. So he knows  
8 of them, but --

9 MR. SUHAR: But he didn't say yes  
10 or no that he did or he didn't. He said he  
11 didn't think he did, but --

12 THE WITNESS: No, no, I did not.  
13 I said, I --

14 MR. HATCHER: Objection.

15 THE WITNESS: Thank you.

16 MR. HATCHER: Asked and answered  
17 three times.

18 MR. SUHAR: Is the answer no?

19 MS. MCNEIL: I would --

20 MR. HATCHER: Just a point of  
21 clarification, if we're going to use gross, let's  
22 just make sure we're using the language in the  
23 ordinance, which is contiguous.

24 MR. SUHAR: I didn't use the word  
25 gross.

1 THE WITNESS: I specifically did  
2 and intentionally did.

3 MR. SUHAR: Yep.

4 MS. MCNEIL: Okay. Hear the  
5 easement question one last time.

6 THE WITNESS: I have --

7 MS. MCNEIL: Let him ask.

8 THE WITNESS: Go ahead.

9 MR. SUHAR: Thank you.

10 BY MR. SUHAR:

11 Q You did not consider the twelve -- you  
12 did not subtract or consider the five easements  
13 that were granted by the property owner to WSSC;  
14 that's right, that's correct, isn't it?

15 A That is not correct. I testified twice  
16 before that I did consider them, but I did not  
17 subtract them.

18 Q Okay. So the answer is you did not  
19 subtract them, then?

20 A I did not subtract them.

21 Q Okay. Thank you. Now, you testified  
22 that you are supported and agree with the  
23 Statement of Justification -- supplemental  
24 Statement of Justification, right?

25 A Yes.

1           Q     That was submitted by the applicant?

2           A     Yes, I did.

3           Q     Which is not the property owner, but  
4     that's the applicant, correct?

5           A     That is correct.

6           Q     Okay. Now, in this statement of  
7     justification, there is a comment on page 3 that  
8     the property is unique and unusual with respect  
9     to the extraordinary condition of the presumed  
10    existence. There's also a statement that the  
11    particular uniqueness and peculiarity of the  
12    specific property causes an impact  
13    disproportionately upon the property.

14          A     Yes.

15          Q     Now, what data did you use to come to  
16    that conclusion?

17          A     Which conclusion? I'm sorry.

18          Q     That the property is unique, peculiar?

19          A     Okay. So the conclusion that I reached  
20    came from my reading of the Cromwell case, which  
21    describes unique as having a customized meaning  
22    in zoning law. And the substance of that  
23    opinion, to me, said that unique in the context  
24    of zoning means --

25          Q     I just want to know what data you



1     relied upon.

2                     MR. HATCHER:   You asked a  
3     question; you got to let the witness answer.

4                     MR. SUHAR:    I'm not asking about  
5     case law.   I'm asking about the data that you  
6     relied upon to come to the conclusion that this  
7     property is peculiar or unique.

8                     MR. HATCHER:   And Mr. Suhar,  
9     please let the witness answer the question.

10                    MS. MCNEIL:   That's true, but I  
11     would overrule in that instead of him saying --  
12     he needs to say the facts.

13                    THE WITNESS:   Well, Madam  
14     Examiner --

15                    MS. MCNEIL:   He'll argue -- no,  
16     you know the law.   Don't get me wrong; we just  
17     can't let you argue the law.   There are facts  
18     that you think makes it unique.   Just say what  
19     they are.

20                    THE WITNESS:   Yes, no, but -- and  
21     all I was saying was that my understanding of the  
22     law led me to conduct an analysis where I looked  
23     at all of the 1,185 pieces of property and found  
24     that five of them, other than the subject, also  
25     had descriptions that affirmatively ran to the

1 center of their abutting roadways, and that --

2 MR. SUHAR: Okay. But if you have  
3 the --

4 THE WITNESS: I'm not -- Mr.  
5 Suhar, please let me finish.

6 MR. HATCHER: I object. He's got  
7 to let the witness answer the question based on  
8 the facts that he asked for.

9 MS. MCNEIL: I sustain. Go ahead.  
10 Answer the question.

11 THE WITNESS: And what I found  
12 based on that data was that less than one half of  
13 the percent met the standard that I was -- read  
14 in Cromwell of unique, unusual, or peculiar  
15 within the neighborhood.

16 BY MR. SUHAR:

17 Q And can you tell us what is the  
18 neighborhood here?

19 A The neighborhood, as I testified  
20 earlier, I defined in the earlier hearings as on  
21 the West by Wingate Road, on the south by Lanham  
22 Severn Road, on the east --

23 Q I understand what you testified to.

24 A -- by Maple Road and Bowie.

25 Q What did you base that neighborhood on?

1 What defines the neighborhood other than what  
2 you're saying?

3 A On the east by Maple Road and on the  
4 north by Duckettown Road and --

5 Q Based on what, sir? Based on what  
6 definition in county law?

7 MS. MCNEIL: So he's going to --

8 THE WITNESS: Badger me?

9 MS. MCNEIL: No, no, no, no. He's  
10 telling you the neighborhood, and then you'll  
11 explain why you chose that neighborhood.

12 THE WITNESS: I certainly will. I  
13 certainly will, and I did, based on my experience  
14 as a planner, whereby I make a judgment based on  
15 the nature of the use and the nature of the  
16 surrounding uses as to how far it is reasonable  
17 to consider the impacts associated with a use  
18 on -- on the surrounding areas and at what point  
19 do they diminish to a -- a really de minimis  
20 neighborhood. And those -- those neighborhood  
21 boundaries are most often determined by  
22 substantive barriers, whether they're natural,  
23 such as rivers or ravines or wooded areas, or  
24 physical, such as larger roadways. In this case,  
25 it's larger roadways that that determine the

1 neighborhood boundaries.

2 BY MR. SUHAR:

3 Q But you didn't use any definition by  
4 Prince George's County as to what the  
5 neighborhood is, right?

6 A There is no definition.

7 Q You came up with a --

8 A Sorry.

9 Q You just came up with your own  
10 definition for what the neighborhood is here,  
11 right?

12 A There is no definition by Prince  
13 George's County. They always rely on planners to  
14 come up with one.

15 Q Why did you exclude my client's  
16 neighborhood?

17 A I did not. Your client is Wingate.  
18 And approximately 240 lots within Wingate are  
19 within the defined neighborhood.

20 Q Okay. Well, Wingate has 256 lots.

21 A Could be.

22 Q I'm just wondering how you came up with  
23 this, other than just your own idea of what a  
24 neighborhood is.

25 MR. HATCHER: Asked and answered.

1 BY MR. SUHAR:

2 Q It didn't also include all of the  
3 single-family lots that surround this, which you  
4 have a red line drawn around, your boundary line,  
5 right?

6 A All of the single-family lots within  
7 the red line are within the defined neighborhood,  
8 and those outside of the red line --

9 Q But you can't define --

10 A -- in my opinion --

11 Q You can't use anything -- you can't  
12 tell me how you came up with the definition for  
13 the neighborhood?

14 MS. MCNEIL: Okay. I'm going --

15 MR. SUHAR: Your definition,  
16 right?

17 MS. MCNEIL: I'm going to overrule  
18 now because he did. He gave you an answer.

19 MR. SUHAR: Okay. All right.  
20 Thank you. I'll move on.

21 BY MR. SUHAR:

22 Q So do you happen -- do you know what  
23 the definition of unique is?

24 A Within the context of Cromwell, it  
25 refers in its resolution to unique, unusual,

1 or --

2 Q I don't want to know about -- I don't  
3 want to know about Cromwell.

4 MR. HATCHER: He literally asked  
5 him the question. He's providing response.

6 MS. MCNEIL: I think that was an  
7 objection. I would sustain, because he may not  
8 give you the answers you want, but he's giving  
9 you his answer.

10 MR. HATCHER: And you asked the  
11 question.

12 MR. SUHAR: I just wanted to know  
13 if he knows what the definition of unique is.

14 MS. MCNEIL: And he gave you.

15 MR. SUHAR: Well --

16 MS. MCNEIL: Well, you said within  
17 Cromwell. Did we cut you off before you said  
18 what unique was?

19 THE WITNESS: It is a customized  
20 meaning in zoning law, according to Cromwell,  
21 which is unique, unusual, or peculiar within the  
22 neighborhood.

23 BY MR. SUHAR:

24 Q What you're saying is the definition of  
25 unique is being unique.

1           A     I'm saying the opposite of that, sir.

2           Q     Did you agree with the dictionary's --

3           A     I'm saying the opposite of that.

4           Q     -- definition of unique, which is being  
5     the only one of its kind, unlike anything else --  
6     would you agree with that?

7           A     In this case, I would not, because I am  
8     directed by Cromwell, in my opinion, to use the  
9     customized decision of unique in Maryland land  
10    use law.

11          Q     The answer is no, right?  You wouldn't  
12    agree?

13                   MR. HATCHER:  I object to the  
14    question.

15                   BY MR. SUHAR:

16          Q     Would you agree with multiple times a  
17    question?

18                   MR. HATCHER:  It's been asked and  
19    answered multiple times.

20                   MS. MCNEIL:  Sustained.  But he  
21    moved on.  He's moving on to the next one.

22                   BY MR. SUHAR:

23          Q     Would you agree with the definition for  
24    peculiar meaning unusual and strange sometimes in  
25    an unpleasant way?

1                   MR. BROWN: Mr. Suhar, you really  
2   need to ask him a more specific question when you  
3   ask him about definition. You need to make a  
4   make a distinction. Is the definition a term of  
5   art as used in Maryland, unique in hardship? Or  
6   are you asking him in the common knowledge of a  
7   dictionary what is the definition of unique, what  
8   is the definition of peculiarity, what is the  
9   definition of hardship? They're two separate  
10   questions.

11                  MR. SUHAR: Yeah, I understand.  
12   But the Cromwell case --

13                  MR. BROWN: Right. But --

14                  MR. SUHAR: -- definitely tells us  
15   about uniqueness.

16                  MR. BROWN: As a term of art.

17                  MR. SUHAR: There's only one in  
18   the neighborhood.

19                  MR. BROWN: That's correct. So  
20   you need to ask him those two questions because  
21   they're two different answers.

22                  MR. SUHAR: Right.

23                  BY MR. SUHAR:

24                  Q     So are there any other properties in  
25   what you have defined as the neighborhood that



1 are similar -- have a similar situation to the  
2 subject property?

3 A I have testified that there are five  
4 others.

5 Q Okay. All right. And what data did  
6 you use to determine that?

7 A As I testified, I looked at the deeds  
8 of record of all of the properties within the  
9 defined neighborhood which have not been through  
10 the land subdivision process. I read all of  
11 their --

12 Q But what are the address of the other  
13 five?

14 A I can give you the tax map and parcel,  
15 which is identifiable. And that's -- that's in  
16 Exhibit 26 -- or 21. I'm sorry.

17 Q Do you have copies of those deeds?

18 A I do.

19 Q Do you have them with you today?

20 A I can email them into the record. I  
21 have them -- a link to them.

22 Q Why didn't you bring them today?

23 A Because --

24 MR. HATCHER: I object to these  
25 series of questions. This -- A, they've already

1   been asked by counsel right next to us. B, the  
2   witness has already provided an explanation  
3   regarding the 300 pages of documents that require  
4   us to submit. What we did was provide -- what  
5   the expert did was provide an exhibit, an excerpt  
6   of what it said, tax ID number. Surely Mr. Suhar  
7   can take a look at the exhibit and see what he's  
8   referencing.

9                   MS. MCNEIL: Mr. Ferguson, do you  
10   accept that proffer from your counsel as to why  
11   you didn't bring everything today?

12                   THE WITNESS: It is absolutely the  
13   case that that it is 300 pages plus of -- of  
14   paper.

15                   MR. SUHAR: Well, he is testifying  
16   to this very point, Madam Hearing Examiner, that  
17   what he's saying is, is that -- he's testifying  
18   as to what these five other properties are, or I  
19   just can't accept his word from what these deeds  
20   purportedly say. I doubt that the deeds are  
21   longer than what all the other deeds in the  
22   record are, which are just a couple of pages.

23                   MR. BROWN: But Mr. --

24                   MR. SUHAR: It would not have been  
25   onerous for him to bring a copy of the deeds that

1 show the legal descriptions in these cases.

2 MR. BROWN: But Mr. Suhar, he is  
3 an expert. Under Maryland law, an expert is  
4 allowed to summarize his opinion based upon  
5 voluminous documents. He is not required to  
6 submit them in evidence or to bring them here.  
7 He's not.

8 MR. SUHAR: I have no problems  
9 with that, Mr. Brown. What I do have a problem  
10 with that he's specific -- he's not just giving  
11 his opinion about a particular matter, like land  
12 use, okay? What he's specifically -- he's  
13 specifically referring to five other properties  
14 and describing them as being similar to the  
15 subject property. But then he's saying  
16 everything else is not similar.

17 MR. BROWN: And that's his  
18 opinion.

19 MR. SUHAR: And well --

20 MR. BROWN: There's nothing  
21 improper about that.

22 MR. SUHAR: -- I want to know what  
23 document that he has used.

24 MR. BROWN: He has looked at the  
25 deeds.

1                   MR. SUHAR: I'm entitled to ask  
2 that.

3                   MR. BROWN: And you've asked it,  
4 and he told you, I have looked at the deeds. He  
5 doesn't have to have them.

6                   MR. SUHAR: I think he does.

7                   MR. BROWN: No, he doesn't.

8                   But Mr. Ferguson?

9                   THE WITNESS: Mr. Brown?

10                  MR. BROWN: Would you please  
11 submit into the record, before this record  
12 closes, all of the deeds that you reviewed, okay?  
13 But we're --

14                  MR. HATCHER: Madam Examiner?

15                  MS. MCNEIL: Wait, if I may just  
16 stop you for one second.

17                  MR. HATCHER: Go ahead.

18                  MS. MCNEIL: Can we all agree that  
19 it could be the five similar ones?

20                  MR. BROWN: Oh, yeah. Yeah. Or  
21 just the five similar ones?

22                  THE WITNESS: Okay. So yes, I  
23 can. I can at this moment email into the record  
24 a link where all of the deeds have been uploaded.  
25 So you can do that right this second.

1                   MR. BROWN: Yeah, but we're not  
2 going to do that.

3                   THE WITNESS: Okay.

4                   MR. BROWN: But we don't -- we  
5 don't need to -- we don't need to review.

6                   MR. SUHAR: I thought that the  
7 record was closed last Friday.

8                   MR. BROWN: And the record is  
9 closed. But you're missing my point. It is not  
10 necessary for an expert to put in voluminous  
11 records that they have reviewed to come to their  
12 opinion.

13                  MR. SUHAR: Well, actually, I  
14 disagree.

15                  MR. BROWN: Those are the rules.

16                  MR. SUHAR: In discovery,  
17 typically -- I know there's no discovery in this  
18 case, but in discovery, we can ask for diagrams.  
19 And we're entitled to documents that the expert  
20 has relied upon in rendering their opinion. So I  
21 can move on because I think we've kind of --

22                  MS. MCNEIL: I know the record's  
23 closed in one sense, but in the other sense, this  
24 is it, forever. And I had a question about the  
25 five. So I would like information on the five

1     because I'd like to know the size of them.

2                     MR. SUHAR:   I appreciate that so  
3     much, but --

4                     MR. HATCHER:   And just --

5                     MR. SUHAR:   -- Madam Hearing  
6     Examiner, what we're not -- what we're not -- I'm  
7     sorry, Chris.   I'm sorry, Mr. Hatcher.   What  
8     we're not able to see are all the deeds for the  
9     rest of the properties in this.   All we're doing  
10    here is assuming that those properties, based on  
11    what this man has testified to, that they're not  
12    similar --

13                    MR. HATCHER:   No.

14                    MR. SUHAR:   -- to those five  
15    properties.   But they're also not unique.

16                    MR. HATCHER:   I just seriously  
17    object to this.   It was --

18                    MS. MCNEIL:   You told us some  
19    information about all of these properties within  
20    this exhibit, did you not?

21                    THE WITNESS:   I did.

22                    MS. MCNEIL:   (Indiscernible).

23                    THE WITNESS:   Yes, ma'am.   You  
24    would.   Now, what I did not provide you was a  
25    listing of the record plats of all of the plats

1    which had been -- which are of record within the  
2    neighborhood.

3                   BY MR. SUHAR:

4           Q     Is this because you didn't look at  
5    them?

6           A     Because I was interested in land which  
7    was not subdivided, which had not already  
8    dedicated right of way.

9                   MR. BROWN:   And --

10                  MS. MCNEIL:   He wouldn't need it.

11                  MR. BROWN:   And his opinion really  
12   goes beyond what is necessary.  It is totally  
13   inappropriate for him to be required to bring in  
14   deeds that are not on Springfield Road.  The  
15   critical inquiry here is of those properties that  
16   are on Springfield Road that do or do not have  
17   prescriptive easement that impact them.  That's  
18   really the critical issue.  So I mean, if you  
19   really want deeds, that's all you need to look  
20   at.

21                  MR. SUHAR:   Okay.  But he's  
22   testifying as to what --

23                  MR. HATCHER:   And as a finer --  
24   and as a finer point, Madam Hearing Examiner and  
25   People's Zoning Counsel specifically asked

1 everybody to submit any new material or reframed  
2 material by a specific date and a specific time.  
3 You and/or your client have that information by a  
4 specific date on a specific time. Those are all  
5 things that you could have looked up and crossed  
6 specifically on this. He's not required to do  
7 your job.

8 MS. MCNEIL: Okay. We'll move on  
9 to your next question.

10 MS. ROSENFELD: Madam Hearing  
11 Examiner, if I just -- I just would like to make  
12 one point on the record. I heard the statement  
13 that the only relevant properties here are those  
14 that are fronting on Springfield Road, and I for  
15 the record would like to note my objection to  
16 that conclusion in that this expert had  
17 determined he was going to use a defined  
18 neighborhood to establish uniqueness. And I just  
19 want to note that I don't -- for the record, I'm  
20 going to make a --

21 MR. BROWN: I agree with you what  
22 you're saying.

23 MS. ROSENFELD: Okay. Thank you.

24 MR. BROWN: What I was trying to  
25 make is to simplify the argument of needing the



1 deeds for every property in the neighborhood.

2 MS. ROSENFELD: Understood.

3 MR. BROWN: The real critical  
4 issue is the prescriptive easement that impacts  
5 properties that front on Springfield Road.

6 MS. ROSENFELD: Thank you.

7 MR. BROWN: All right.

8 MS. MCNEIL: Do you have a  
9 different question?

10 MR. SUHAR: Yes. I'm almost  
11 finished.

12 BY MR. SUHAR:

13 Q And you also -- the statement of --  
14 the Supplemental Statement of Justification  
15 discusses least restrictive use type. But this  
16 is -- the least restrictive use of property would  
17 be the variance to allow for a planned retirement  
18 community. But that's not the least restrictive,  
19 is it?

20 A I'm sorry. Refer me specifically to  
21 the statement you're discussing.

22 Q Well, I guess what I'm -- what I'm  
23 trying to get at here is that the property can be  
24 developed with single-family detached homes under  
25 the RR zoning; is that correct?

1           A     That is correct.

2           Q     Okay. Then the statement of  
3     justification discusses that -- or it says that  
4     there will not be an impact upon neighboring  
5     properties. And you agreed with that, right?

6           A     Again, please refer me exactly to the--

7           Q     Well, that was your testimony before.

8           A     Please refer me exactly to the portion  
9     of the statement that you're referring to.

10          Q     Okay. So it's the comment at the  
11     bottom of page 3 and going on to the top of page  
12     4, where it says, "The impact and practical  
13     difficulties resulting from the prescriptive  
14     easement is peculiar and unique to the property,  
15     and is not an impact that would usually be  
16     experienced by other developers of planned  
17     retirement communities in the prior RR zone".

18          A     Okay. I do agree with that statement.

19          Q     Okay. Now, the other properties, could  
20     they potentially be used?

21          A     Not without a substantive variance. So  
22     they are all substantively smaller than the  
23     subject, much less than twelve acres.

24          Q     So there would be --

25                   MS. MCNEIL: Excuse me one second.

1 Are we talking about all other properties or the  
2 five?

3 THE WITNESS: I'm sorry. Thank  
4 you, Madam Examiner. I took his question to mean  
5 the other five. If that was not correct --

6 BY MR. SUHAR:

7 Q But there would be an impact upon them,  
8 right?

9 A I'm sorry. I don't understand the  
10 question.

11 Q There would be an impact upon  
12 neighboring properties.

13 A I'm sorry. I don't understand. The --  
14 the -- the sentence that you just referred me to  
15 talked in this case about an impact to the  
16 applicant that would not exist.

17 Q No.

18 A Well, that's --

19 Q I'm talking about other properties.

20 A Okay. But that's not what you asked in  
21 the previous statement. So re-ask your question,  
22 yeah, please.

23 Q There will be an impact upon  
24 neighboring properties, correct?

25 A There -- every -- every land use has an

1 impact on neighboring properties.

2 Q Okay. And so what data did you use to  
3 come to that conclusion? Just because you say  
4 so?

5 A Just because I say so. Every -- every  
6 new land use changes the characteristics of the  
7 environment, whether it's removal of trees,  
8 whether it's the -- the addition of an additional  
9 car to the road, whether it's addition of a  
10 square foot of impervious area. Every new land  
11 use has an impact.

12 Q You're probably not aware, Mr.  
13 Ferguson, that there's a property being --  
14 currently being developed adjacent to --

15 MR. HATCHER: Object to the  
16 question. It's not in the scope. I don't even  
17 know what we're talking about. It's not a  
18 subject to the variance.

19 MR. BROWN: Well, Mr. Hatcher, you  
20 keep making these speaking objections. I mean,  
21 you know, just object and --

22 MR. HATCHER: Object.

23 MR. BROWN: -- just rule.

24 MS. MCNEIL: If I may, I want to  
25 go back one second. And that might help with the

1 questioning. You asked him originally to look at  
2 page 3 and the top of page 4, "The impact and  
3 practical difficulties resulting from the  
4 prescriptive easement is peculiar and unique to  
5 the property" -- that's the subject property --  
6 "and is not an impact that would usually be  
7 experienced by other developers of planned  
8 retirement communities". So he never got to  
9 answer that one. And then I think you have gone  
10 on to the one about, "such variants will not  
11 substantially impair the use and enjoyment of  
12 adjacent properties".

13 MR. SUHAR: That's right.

14 MS. MCNEIL: So can he go back --  
15 can he just answer both of those and then your  
16 next question about --

17 MR. SUHAR: Please.

18 MS. MCNEIL: Okay.

19 THE WITNESS: Yeah. So thank you,  
20 Madam Examiner, because you're -- you're getting  
21 to the point. I was trying to answer that -- the  
22 impact that I had -- was confused about, Mr.  
23 Suhar's questioning, was when he had referred me  
24 to the sentence on pages 3 and 4 of the  
25 supplemental; that was referring to an impact on

1 the applicant. So to your point about will the  
2 variance substantially impair the use and  
3 enjoyment of adjacent properties --

4 MS. MCNEIL: Before you go there,  
5 because I needed the -- I wanted to hear the  
6 answer. So is your impact different from the  
7 other five properties?

8 THE WITNESS: Well, the -- the --  
9 again, the impact that's referred to on pages 3  
10 and 4 isn't referred to the other properties. It  
11 refers to an impact on the applicant. The  
12 hardship is the impact.

13 MS. MCNEIL: I'm sorry. You're  
14 right. Would anybody else in that area that  
15 tried to do a planned retirement community -- are  
16 you impacted differently from any of them if they  
17 tried to do it?

18 MR. SUHAR: That's the question I  
19 was getting.

20 MS. MCNEIL: Yeah.

21 THE WITNESS: So is the hardship  
22 different for this property than for other  
23 properties? Okay. So the -- the -- the -- the  
24 substance of that, without speaking to external  
25 impacts on other properties, but rather an

1 impact, a hardship to the applicant. It's my  
2 opinion that the hardship to the applicant only  
3 deals with what is the effect on the applicant  
4 once you get to the question of is there -- are  
5 there unique circumstances.

6                   So my testimony is that the  
7 unique, in the customized sense that Cromwell  
8 says, is that there are five out of -- five  
9 others out of 1,185 in the neighborhood. And so  
10 to me, that meets the uniqueness test. Then we  
11 can look at is there a hardship. My testimony is  
12 that the hardship is if there aren't twelve acres  
13 because of this unusual situation, then the  
14 hardship on the applicant is he can't carry out  
15 the development of a planned retirement  
16 community.

17                   That's a different question than  
18 would a planned retirement community here have a  
19 different or greater substantial impact on the  
20 use and enjoyment of additional properties were  
21 it somewhere else, i.e. the Schulz question,  
22 right? So that's a different question. And I --

23                   MS. MCNEIL: (Indiscernible).

24                   THE WITNESS: Right. Correct.

25                   MS. MCNEIL: (Indiscernible).

1

2 THE WITNESS: Correct.

3 MS. MCNEIL: (Indiscernible).

4 THE WITNESS: All of those  
5 properties are substantially less than twelve  
6 acres.

7 MS. MCNEIL: (Indiscernible).

8 UNIDENTIFIED SPEAKER:  
9 (Indiscernible).10 THE WITNESS: Yeah. Yeah, but  
11 yeah, all of the questions seem to be not quite  
12 getting there, but -- but that is right. That is  
13 the heart of --

14 MS. MCNEIL: (Indiscernible).

15 THE WITNESS: Well, yours finally  
16 did. Yours finally did. Yeah.

17 MS. MCNEIL: Okay.

18 (Indiscernible). I didn't do this, but I think  
19 all he was going to say is, and we know this in  
20 the record that there has been other development  
21 in the area near this property. So are you  
22 considering all of that? Consider that -- all of  
23 that and let us know why or why not this variance  
24 would substantially impair the use and enjoyment  
25 of adjacent properties.



1                   THE WITNESS:   So what -- what I  
2   did testify earlier, Madam Examiner, is that --  
3   is that I consider the 0.0722-acre variance  
4   that's being sought, or the 3,542 acres of land  
5   occupied under Spring Hill Field Road, not the  
6   same thing, as de minimis in the context of what  
7   are the impacts of this project.  If you reduce  
8   the land area available to the project, will it  
9   still be able to do all of the things that a  
10  planned retirement community is supposed to do?

11                   And I testified to that in -- in  
12  earlier -- in earlier hearings.  So my belief is  
13  that the impact would not be greater because of  
14  the variance, and my testimony earlier is that  
15  the project as a whole would not have a  
16  substantially greater impairment to the use or  
17  enjoyment of adjacent properties than a planned  
18  community -- planned retirement community would  
19  irrespective its location in the RR zone.

20                   BY MR. SUHAR:

21           Q     Do you still hold that position with  
22  respect to the adjacent property that is being  
23  developed with two-plus acre lots --

24           A     I do.

25           Q     -- by Mid-Atlantic builders?

1           A     I do.

2           Q     How is that?  It's substantially  
3     different than this -- than this applicant's  
4     proposed property.

5           A     It is.  But -- but the question is not  
6     what is the character of the neighborhood, and  
7     will the -- will the proposed development change  
8     the character of the of the neighborhood.  The  
9     question is, will the grant of a variance or the  
10    grant of the approval of a special exception  
11    substantially impair the use and enjoyment of the  
12    adjacent properties?

13          Q     You said that every property is  
14    impacted by land use.

15          A     I did.

16          Q     I think that this -- wouldn't you agree  
17    that this will have an impact upon the  
18    neighboring property, directly next door to the  
19    subject property?

20          A     Would I agree it would have an impact?  
21    Yes, it would.

22                   MR. SUHAR:  That's all I need to  
23    know.

24                   MR. BROWN:  I mean, isn't --

25                   MR. SUHAR:  Thank you.  I have no

1 further questions.

2 MS. MCNEIL: Mr. Brown, do you  
3 have any questions?

4 MR. BROWN: I mean, not really,  
5 but I think, Mr. Suhar, what's your question,  
6 really is, the last question is, whether or not  
7 the granting of this variance and/or the special  
8 exception will have a negative, adverse impact on  
9 properties in the neighborhood. That's your  
10 question. You asked whether it would have any  
11 impact. His answer is yes, it would have impact.  
12 But you really want to ask him --

13 CROSS-EXAMINATION BY MR. BROWN:

14 Q Mr. Ferguson, would the grant of the  
15 special exception and/or the variance have a  
16 negative adverse impact on other properties in  
17 the neighborhood?

18 A So I would answer that question in an  
19 extended way by saying that at the base level,  
20 yes, of course it will have a negative impact.  
21 So when I -- when I was testifying to impacts  
22 from whether it was loss of trees or additional  
23 traffic or additional impervious area, all of  
24 those are negative -- negative impacts.

25 But what the question is, is that -- is that

1 is this special exception -- does it have a  
2 greater adverse impact than one might expect from  
3 other land retirement communities in the RR zone?  
4 So the decision has been made by the District  
5 Counsel that, yes, we can permit these with the  
6 grant of a special exception.

7 So with the grant of the special exception,  
8 we have to charge, do we meet the criteria of  
9 27 317(a), and I testified a year ago -- plus  
10 ago -- year and a half ago that we do. And do we  
11 meet the additional requirements of 27-395 and  
12 with the grant -- presuming that this variance is  
13 required with the grant of the variance, we  
14 would.

15 Q And looking at your exhibit, the map,  
16 which exhibit number is that?

17 A I believe it's 26, page 4 of 26.

18 Q All right. So nailing down to the  
19 critical issue here is of the five properties  
20 that are impacted by the prescriptive easement,  
21 how many of them are eleven-plus acres or more?

22 A One. I'm sorry, none of the five. One  
23 of the -- of the six --

24 Q Of the six?

25 A -- within the neighborhood includes the

1 subject, including the subject, only the subject.

2 Q Only the subject property, correct?

3 A Only the subject.

4 Q So from the standpoint of uniqueness as  
5 it relates to a retirement community, this  
6 property is unique because it is the only one  
7 that meets the requirement of approximately  
8 twelve acres contiguous to comply; is that  
9 correct?

10 A So I would say you are -- you are  
11 taking the standard away from the Cromwell  
12 standard to the dictionary standard.

13 Q Right.

14 A And under your -- under your  
15 construction, I would agree with that.

16 Q And looking at the entire neighborhood  
17 that you have identified, generally,  
18 approximately how many lots within that  
19 neighborhood are eleven or more contiguous acres?

20 A I believe this is the only one.  
21 There's some parcels at the very eastern edge of  
22 the neighborhood as you get right up beside old  
23 Bowie that are slightly under ten, but none are  
24 as close to twelve as the subject.

25 MR. BROWN: No other questions.

1 Thank you.

2 MS. ROSENFELD: Thank you very  
3 much. Just several questions.

4 RECROSS-EXAMINATION BY MS. ROSENFELD:

5 Q Looking at the defined neighborhood as  
6 you delineated it, and I'm back on the map  
7 attached to Exhibit 26, going from the properties  
8 that you had identified in green and blue run  
9 south along Springfield road. Is there a reason  
10 why you did not extend the neighborhood to the  
11 several lots just north of the red boundary on  
12 Springfield Road?

13 A Not explicitly, no. I certainly found  
14 that the -- you do need to have a boundary to  
15 every neighborhood.

16 Q Of course.

17 A And very frequently major roadways are  
18 boundaries, and that is whether Springfield --  
19 Good Luck Road, the short section of Springfield  
20 Road, and Duckettown Road are appropriate major  
21 boundaries. Some of those lots on the east  
22 northeast of the of the parcels facing Spring  
23 Hill Road -- facing Springfield Road are not yet  
24 developed, which entered into, you know, the mix.

25 Q So for those -- those, I assume, are --

1 would those be the parcels fronting on  
2 Springfield Road to the north -- in the northeast  
3 quadrant of your neighborhood?

4 A I'm sorry. Which those?

5 Q The ones -- I think I'm looking  
6 northeast of the intersection of Springfield Road  
7 and Duckettown.

8 A So I believe those are the properties  
9 that you are referring to. And I was -- were you  
10 asking if, when in the context of those, were  
11 those undeveloped?

12 Q That's correct.

13 A No, I was referring to the platted  
14 subdivision to the east of those.

15 Q Ah, okay. So for the parcels that have  
16 frontage on Springfield Road to the north of your  
17 neighborhood --

18 A Yes.

19 Q -- the Duckettown intersection --

20 A Yes.

21 Q -- is there a reason why you excluded  
22 those from your neighborhood?

23 A I -- as I just testified, ultimately, a  
24 neighborhood does need to have boundaries. And  
25 because major roads are very often boundaries,

1 and Good Luck, Springfield, Duckettown road or  
2 major roads, that was the choice I made.

3 Q Do you know if those properties extend  
4 over the Springfield Road?

5 A I do not. I did not look at the deeds  
6 for those properties.

7 Q So sitting here right now, you couldn't  
8 testify that they are or are not encumbered with  
9 a prescriptive easement?

10 A I cannot.

11 MR. BROWN: And just for the  
12 record, this case is on remand, and the examiner,  
13 I believe, accepted a neighborhood in this case  
14 already.

15 MS. ROSENFELD: Okay.

16 MR. BROWN: Okay?

17 MS. ROSENFELD: All right. So  
18 this is based on the neighborhood that's already  
19 in the record?

20 MR. BROWN: Yes, correct.

21 MS. ROSENFELD: Thank you. I  
22 appreciate that. I did not -- I did not  
23 understand that.

24 BY MS. ROSENFELD:

25 Q And then my last couple of questions,



1 do the variance -- does the variance have  
2 anything to do with any structures on the  
3 property? Do you need this variance to modify  
4 any kind of structural setbacks or other  
5 requirements?

6 A No. I mean, Springfield -- the  
7 hesitation Springfield Road under the zoning  
8 ordinance is a structure, anything constructed or  
9 built.

10 Q Excluding Springfield?

11 A But excluding Springfield Road, no.

12 Q Okay. And so it really is solely as to  
13 the area or the amount of real property --

14 A Correct.

15 Q -- contained in the lot itself or the--

16 A Correct.

17 Q -- development?

18 MS. ROSENFELD: Okay. Thank you.

19 I have no other questions.

20 MS. MCNEIL: Your welcome.

21 MS. MCNEIL: Any other witnesses?

22 MR. HATCHER: No other witnesses.

23 No other questions.

24 MS. MCNEIL: Okay. Any witnesses

25 from either of you?

1                   MR. SUHAR: No witnesses. Thank  
2 you.

3                   MS. ROSENFELD: Just one moment to  
4 speak with my clients.

5                   (Whereupon a recess was taken)

6 Whereupon,

7                   HOWARD ALDAG,  
8 a witness called for examination by counsel for  
9 the Howard and Tanya Aldag, was duly sworn, and  
10 was examined and testified as follows:

11                  MS. MCNEIL: State your name and  
12 address, and then tell us what you would like.

13                  THE WITNESS: Howard Aldag, 8485  
14 Springfield Road in Glendale, Maryland. I am  
15 actually going to give a summary. No, I wrote  
16 actually an extensive one for the record. I  
17 wrote an extensive testimony for the record, but  
18 I'm going to actually do a summary of it because  
19 some of it you have already heard.

20                  My summary will actually have  
21 about, you know, regarding there's no hardship  
22 regarding the property. It will also have where  
23 the special exception and variance will  
24 negatively affect the surrounding area and  
25 contradicts the spirit of the zoning code. And I

1 was going to talk about traffic. So I'll have to  
2 do, I'll get started.

3 First off, Tanya and I, we are  
4 here to strongly oppose the variance regarding  
5 the Stewart (phonetic) property. This  
6 development is a planned retirement community  
7 that is out of character with a rural residential  
8 neighborhood, and it directly conflicts with the  
9 zoning intent of the RR zoning. This variance  
10 should not be approved.

11 There is no hardship regarding the  
12 property. Not once, but twice in the zoning  
13 hearings, it was shown that there are not twelve  
14 acres of continuous acreage for development. And  
15 according to the SDAT, the two deeds from 2018,  
16 401916 and 00567, are associated with 8215  
17 Springfield Road for the assessment year 2023.  
18 Based on those deeds, 8215 Springfield Road is  
19 identified in relevant part as Tax Map 28 and  
20 parcel 131.

21 The SDAT indicates that the legal  
22 description for all the parcel 131 consists of  
23 approximately ten or more acres. That is  
24 recombined with another deed on July 1, 2010.  
25 SDAT also indicates that the property land area

1 for parcel 31 is 11.94 acres, i.e. more than ten  
2 but less than twelve acres. SDAT further  
3 indicates that the assessment year 2023, 8215  
4 Springfield Road was identified as map 28, parcel  
5 131 -- was not land assessed as containing twelve  
6 or more acres.

7 Mark Ferguson, land planner for  
8 the applicant, testified that the subject  
9 property would be less than twelve acres when the  
10 prescriptive easement is conveyed out of the  
11 parcel 131 as defined by SDAT. Then Stephen  
12 Jones, land surveyor for applicant, testified  
13 that the prescriptive easement, approximately  
14 3,524 square feet, was conveyed in one of the  
15 deeds provided in the record, which was  
16 deducted -- results in a legal description of the  
17 property area as defined by SDAT being 11.83  
18 acres, less than at least twelve contiguous acres  
19 required for planning retirement community use.  
20 And that is 12-2023 PRP, you know, page --  
21 paragraph 25, 26 ZHE exhibits at 782/Exhibit 107.  
22 And there's -- you can look that up as part of  
23 testimony.

24 We further do not agree with the  
25 comments of the supplemental Statement of the

1 Justification transmitted on 4/30/25. The  
2 analysis section 24-230, Section 6, there is no  
3 way that the county would, without the Stewarts  
4 knowledge or permission spend at least an  
5 estimated \$200,000 to build the road and maintain  
6 the roadway for over thirty years using their  
7 property.

8                   There is no condemnation or  
9 government taking record, and for over thirty  
10 years there have been no demand letters or filed  
11 claims from the Stewarts for return of the  
12 property or for compensation. Even if the  
13 property was twelve acres and the area under the  
14 pavement will never be returned to the Stewarts  
15 and is not part of the property due to the  
16 actions and the lack of actions by the Stewarts,  
17 Honey (phonetic) won't give up the road.

18                   Thus, the Stewarts and the  
19 developer knew many years before submitting the  
20 special exception to the zoning board that there  
21 was not twelve acres of continuous land. When it  
22 was shown they did not have twelve acres, they  
23 pursued this variance to rectify the land issue  
24 so that they could continue with the special  
25 exception.

1                   They thought that parcel size was  
2   so close that the special exception would be  
3   approved and the project -- and the size of the  
4   parcel would not be scrutinized. Having a  
5   property smaller -- that is smaller than what the  
6   zoning requires is not a hardship relating to the  
7   physical property. Also, finding twelve acres of  
8   contiguous land is not unusual or a hardship in  
9   the area.

10                   For instance, a twelve-acre parcel  
11   just became available on Greenbelt Road, which  
12   would make a much larger site and location for a  
13   planned retirement community. It is a better  
14   location next to a shopping center, under two  
15   miles from the hospital, and is on public  
16   transportation. The other note is in the  
17   subdivision that is abutting and across the  
18   street, also were larger than twelve acres too,  
19   so.

20                   While this was all being done,  
21   twelve acres was actually pretty -- pretty  
22   common. In existence -- in essence, they tried  
23   to pull a fast one on the zoning board and  
24   community. As you can see, there is no hardship  
25   plea that would justify granting this variance.

1 They knew the parcel was too small for the  
2 project year -- years before they submitted for  
3 the special exception. They even paid their  
4 taxes on the property in 2023 for a parcel that  
5 was less than twelve acres.

6                   Next, the special exception and  
7 variance will negatively surround the area and  
8 contradicts the spirit of the zoning code. On  
9 Springfield Road, there has been approximately  
10 150 detached family homes approved under  
11 construction. There is no commercial  
12 multi-family dwellings or other buildings on  
13 Springfield Road. It's just a two-lane road with  
14 houses on it.

15                   To put the retirement community on  
16 this road will negatively impact the community  
17 and change the rural residential nature of the  
18 Springfield Road area. Having single-family  
19 houses is much different than having a retirement  
20 community. There will be fifty-seven attached  
21 houses with one entrance on eleven acres that  
22 will need to have more services coming into the  
23 property, such as ambulances, nursing care,  
24 wheelchair transportation, other community  
25 services that are related to elderly communities.

1                   There are no hospitals or shopping  
2   centers two miles or less from the property, as  
3   discussed in the zoning requirements, making this  
4   property not appropriate fit for the use. This  
5   proposed construction on the Stewarts' property  
6   is so extensive it is so -- too dense and  
7   compatible -- is not compatible with the area.

8                   Being that the county has approved  
9   the construction of approximately 150 houses and  
10  all the construction is presently going on, the  
11  time to approve this project has passed. The  
12  approved present construction on Springfield Road  
13  has already maximized the infrastructure and  
14  volume the road can handle. This project is not  
15  compatible use, then contradicts the spirit of RR  
16  zoning.

17                  Literally adding this project to  
18  what has already been approved would destroy the  
19  rural nature of the immediate and surrounding  
20  area. This project was designed to maximize  
21  revenue, not functionality, and does not take in  
22  to account its negative impact on the immediate  
23  area.

24                  Next topic I'm going to touch on  
25  is traffic. Traffic, each house has unit -- has



1 a two-car driveway. And in the published  
2 demographic -- demographics, the average  
3 household in Bowie has two vehicles. Thus, we're  
4 looking at approximately a maximum of 114 cars  
5 that would be added to the overused Springfield  
6 Road. Finally, this project has all only one  
7 entrance for ingress and egress, which is not  
8 sufficient in handling the incoming and on -- and  
9 the going traffic of this subdivision. This  
10 would be an unacceptable traffic jam inside the  
11 project subdivision in -- on Springfield Road  
12 every day. To move them in and out of one  
13 entrance will take more time, and this road is  
14 busy already.

15                   This development is supposed to be  
16 a planned retirement community. Per Bowie,  
17 Maryland demographics, the average age of the  
18 retirement in Bowie is sixty-five years of age.  
19 This project is for fifty-five-plus years of age,  
20 which means the occupants may have an additional  
21 ten years of working after purchasing a home in  
22 the subdivision. That means that the traffic in  
23 the rush time periods would be similar to other  
24 houses in the immediate area and would not be  
25 greatly diminished in traffic load, as was

1 portrayed in the retirement community developer's  
2 testimony.

3                   The traffic concerns of our  
4 neighborhood include -- there is a substantial  
5 cut-through traffic from the USDA Beltsville  
6 Agricultural Research Center. The current  
7 traffic volume is such that it is difficult to  
8 safely return onto Springfield Road from  
9 driveways, intersections, and residential  
10 streets. Area residents experience substantial  
11 delay in turning from driveways onto Springfield  
12 Road and from stop-sign-controlled intersections  
13 such as Springfield Road and Lanham Severn Road  
14 to Springfield Road, Lake Glen Drive, and Good  
15 Luck Road, Springfield Road, and when turning  
16 from Springfield Road onto Lanham Severn Road.

17                   Personally, I'm only a -- both my  
18 properties are just one property away from the  
19 Stewarts. I need to plan an extra ten minutes to  
20 get out of my driveway to be on time if I have a  
21 meeting. It is already that busy and we still  
22 have 150, you know, homes that need to be  
23 delivered probably in the next, you know, six  
24 months. I believe that these concerns are valid  
25 and could be exacerbated by the traffic from the

1     Stewarts' property, plus other future  
2     developments affecting the Springfield Road.

3                     This adding traffic could lead to  
4     significant safety concerns and delay everyone  
5     owning property abutting Springfield Road. And  
6     unfortunately, the Stewart property and the  
7     subdivisions that are being built right now  
8     basically fall under the threshold for a full  
9     traffic impact study. Thus, you know, we don't  
10    have the information from an impact study to show  
11    the actual impact on Springfield Road.

12                    But already Springfield Road, you  
13    know, sometimes, you know, there are up to ten  
14    cars back, back, back, back going through at rush  
15    hour. And it is almost dangerous coming and  
16    going out of my driveway. I basically recommend  
17    that the zoning hearing examiner deny the  
18    variance because this project has environmental  
19    issues, is too high of a density of housing for a  
20    rural -- for a rural residential area, and is not  
21    compatible with the surrounding housing units.

22                    It is demonstrated that there  
23    are -- is no urgent need for this retirement  
24    community, will increase the amount of traffic on  
25    Springfield Road, and is a dysfunctional

1 community layout with just one ingress and  
2 egress. This project will diminish the area for  
3 every resident if it is allowed to proceed.

4 I want to be clear that my wife  
5 and I do not support this variance or this  
6 project. This use is not compatible with the  
7 surrounding neighborhood. Retirement community  
8 is not appropriate land use on Springfield Road.  
9 This use is just a way to have almost three to  
10 five times the density of use on this piece of  
11 land using a variance so that the developer may  
12 obtain a special exception for the retirement  
13 community.

14 This is not an acceptable project  
15 for the surrounding residents and will change the  
16 Springfield Road area forever. This variance  
17 should not be approved. And this is from my wife  
18 and I.

19 MS. MCNEIL: Thank you.

20 Any questions, Mr. Brown?

21 I should have started. Anyone?

22 Thank you, sir.

23 THE WITNESS: Thank you.

24 MS. MCNEIL: Thank you, Mr. Aldag.

25 MR. HATCHER: Madam Examiner, just

1 to keep the record clear, I think anybody who was  
2 on Zoom had the ability to cross-examine this  
3 witness and our expert witness.

4 (Pause)

5 MS. MCNEIL: So we did check to  
6 see if anyone was in chat or if anyone was  
7 opposed to this hearing online and -- I mean on  
8 Zoom, and it doesn't appear to be anyone.

9 MR. HATCHER: Excellent. Thank  
10 you.

11 MS. MCNEIL: Thank you for  
12 pointing that out. So at this time, is there  
13 anything additional from counsel?

14 MS. ROSENFELD: The procedure --  
15 are there going to be closing arguments. Is that  
16 what you're asking or are you asking for  
17 additional --

18 MS. MCNEIL: Either.

19 MS. ROSENFELD: Okay.

20 MS. MCNEIL: Are there any  
21 additional witnesses?

22 MS. ROSENFELD: I have no  
23 additional witnesses. I would like to make a  
24 closing.

25 MS. MCNEIL: Okay. And would you

1     like to make a closing statement as well?

2                     MR. HATCHER:   Variant.

3                     MS. MCNEIL:   Okay.   All right.   Go  
4     to the gentlemen first this time.   Mr. Suhar?

5                     MR. SUHAR:   Thank you very much.  
6     (Indiscernible).

7                     Do I have to repeat any of that  
8     or -- okay.   All right.   Okay.   All right.   So  
9     the easement does not make the subject property  
10    unique and unusual from surrounding properties.  
11    Pursuant to the Cromwell v. Ward case, unless  
12    there's a finding that the subject -- that the  
13    property is unique, unusual, or different, the  
14    process stops here, and the variance should be  
15    denied without any consideration to practical  
16    difficulty or unreasonable hardship.

17                    But if there is a finding that the  
18    property is unique, which I don't see how, based  
19    on the testimony and evidence presented today,  
20    then a variance can only be granted if the  
21    alleged uniqueness and peculiarity of the  
22    specific property causes a zoning provision to  
23    impact disproportionately upon that property.

24                    In this case, the applicant argues  
25    that the impact and practical difficulties

1 resulting from the prescriptive easement are  
2 peculiar and unique to the subject property and  
3 that it is not an impact that would usually be  
4 experienced by other developers of planned  
5 retirement communities in the prior RR zone.

6                   We disagree because the  
7 prescriptive easement is not unique, unusual, or  
8 different. Rather, the prescriptive easement is  
9 comprised of a public roadway which affects every  
10 property and owner of every developer of a  
11 property on Springfield Road. In addition, the  
12 special exceptions requirement that the property  
13 consist of twelve contiguous acres is not unique  
14 to the Stewart property alone.

15                   Such requirement applies to every  
16 property in the neighborhood which applies for a  
17 special exception for a planned retirement  
18 community. The strict application of the special  
19 exception requirements will also not have or will  
20 not create hardship because the applicant and  
21 owner of the subject property are not prevented  
22 from development under the general rural  
23 residential zoning.

24                   In other words, the owner and  
25 applicant of the property can still develop the

1 property without a variance. They can still  
2 develop the property under the rural residential  
3 zoning. There's no evidence to suggest that a  
4 denial of the variance requested by the applicant  
5 would deprive the applicant or the owner of the  
6 property from beneficial use of the subject  
7 property.

8                   In other words, this wouldn't be  
9 similar to like a takings by the government by  
10 not granting the variance. They could still  
11 develop the property. There's no hardship. But  
12 if there is a finding that the property is  
13 unique, unusual, or different, and if there's a  
14 finding of hardship, a variance may only be  
15 granted if the variance is the minimum reasonably  
16 necessary to overcome the exceptional physical  
17 conditions.

18                   Again, the applicant claims that  
19 the prescriptive easement is a physical  
20 condition, which it is not. The applicant also  
21 claims that the grant of a variance is minimal.  
22 That's also untrue. There are five additional  
23 easements granted to WSSC. They remain part of  
24 the record. In fact, I had included certified  
25 copies of these easements that were certified by



1 the Clerk of Courts in Prince George's County,  
2 which reduces the developable area to just 11.13  
3 acres, not just under twelve acres, which is what  
4 the applicant's attorney and witness were  
5 claiming earlier today and in their statement of  
6 justification.

7                   Therefore, this variance would  
8 have a significant impact upon the twelve  
9 contiguous acre requirement, which is a critical  
10 requirement of the special exception for a  
11 planned retirement community -- critical. In  
12 addition to the foregoing, the applicant claims  
13 that granting a variance in this case will not  
14 create a substantial impairment to the intent,  
15 purpose, and integrity of the general plan or any  
16 area master plan.

17                   We disagree with this claim also  
18 because the entire neighborhood is comprised of  
19 lots which are zoned rural residential. My  
20 client's properties in Wingate are zoned rural  
21 residential estate. This is all low density.  
22 The entire neighborhood, the entire area is  
23 comprised of low-density development, which  
24 consists of lots which exceed two acres -- I'm  
25 sorry.

1                   The adjacent property under  
2   development, currently under development,  
3   consists of lots which exceed two acres in size.  
4   This is a new development that's being developed.  
5   It's Glendale Estates by Mid-Atlantic builders,  
6   currently under construction immediately next  
7   door to the subject property. So we believe that  
8   not only will this have an impact upon Wingate  
9   Homeowners Association lots properties, but it  
10   will also have a significant impact, negative  
11   impact, upon the adjacent property that's  
12   currently being developed. I wonder if they even  
13   know about this. So -- at least prospective  
14   buyers.

15                   In addition, the 256 residential  
16   lots in Wingate, which is directly across the  
17   road from the subject property, are all zoned  
18   residential estate and are between one and two  
19   acres or more. There is no use in the  
20   neighborhood which is a planned retirement  
21   community, and none of the lots -- as stated by  
22   Mr. Aldag. And none of the lots are comprised of  
23   fifty-seven attached homes or a high-density  
24   community like what is being proposed by the  
25   applicant in this case.

1                   In addition, the applicant has not  
2   presented any evidence to prove that a variance  
3   will avoid causing a substantial impairment to  
4   the intent, purpose, and integrity of the general  
5   plan or any area master plan. Therefore, the  
6   applicant's request for a variance should not be  
7   granted. It should be denied.

8                   The applicant also claims that a  
9   variance will not substantially impair the use  
10   and enjoyment of adjacent properties. We  
11   disagree with this also because the granting of a  
12   variance in this case will substantially alter  
13   the criteria for the granting of the special  
14   exception, so that the criteria of the special  
15   exception would be swallowed by the variance to  
16   the extent that the special exception would not  
17   be a use that was contemplated in the  
18   Comprehensive Zoning Scheme in respect to any  
19   particular special exception. Therefore, the  
20   applicant's request for a variance should be  
21   denied.

22                   I'm not convinced, Madam Hearing  
23   Examiner, that there was a substantial amount of  
24   evidence, really, any evidence, to support the  
25   applicant's claims. If a variance is granted,

1 the essential character of the neighborhood would  
2 be altered and negatively impacted. I strongly  
3 believe that in my heart. And my client very  
4 much believes that as well.

5 The applicant's experts have not  
6 proven otherwise. The special exception should  
7 be denied because the applicant has not proven  
8 that the subject property consists of twelve  
9 continuous acres, and they haven't proven -- they  
10 haven't proven that the property is unique or  
11 that there's a hardship based on the uniqueness.  
12 For that, the variance should also be denied.  
13 Thank you very much for allowing me to be heard.

14 MS. MCNEIL: Thank you.

15 Ms. Rosenfeld?

16 MS. ROSENFELD: Thank you. I'm  
17 sorry. I'd like to start by drawing your  
18 attention to Exhibit 21, which is the updated  
19 April 29th, 2025 supplemental Statement of  
20 Justification. And at the very end of this  
21 letter there are two footnotes that are included.  
22 They were presented for the first time with the  
23 submission just before last week's hearing.

24 And footnote 12 notes that the  
25 prior zoning ordinance, which applies to this

1 case, does not exclude variances from being  
2 applied to the general standards for a special  
3 exception. Footnote 13, however, notes a second  
4 provision of the zoning code, which applies to  
5 variances being granted in connection with a  
6 special exception. And just for the convenience  
7 of everybody, I have a printout of that provision  
8 that's quoted in section -- in footnote 13.

9                   And what I'd like to note is that  
10 the last sentence of that of that Section 27-  
11 316 -- and this is not evidence. This is just  
12 for the convenience of the participants. This is  
13 variances in conjunction with special exception  
14 approval, and it talks about the authority that  
15 the district counsel has in in that regard. And  
16 the last sentence says, "Variances granted under  
17 the authority of this section are applicable only  
18 to the structure or use the variance was granted  
19 in conjunction with".

20                   Now, clearly in land use and  
21 zoning terms, structure and use have very  
22 specific meanings. The variance that's been  
23 requested in this case doesn't apply to either.  
24 It does not apply to a structure. We heard that  
25 from expert testimony. And the use that is the

1 subject of this special exception application is  
2 the planned retirement community use.

3                   What is at issue here is a  
4 variance requesting a deviation from the minimum  
5 property requirement associated with this special  
6 exception. And so when we look at Section  
7 27-395, which is the zoning code provision  
8 governing planned retirement community, findings  
9 include things like this. The District counsel  
10 shall find that the proposed use will serve the  
11 needs of the community. The proposed use will  
12 not adversely affect the character. Regulations  
13 governing uses and structures are generally  
14 waived for purposes of this special exception.

15                   And then we go to the next -- to  
16 27-395(a)(3)(B). The subject property shall  
17 contain at least twelve contiguous acres. The  
18 variance here that's being requested and clearly  
19 reiterated repeatedly in the statement of  
20 justification is not a request for a variance  
21 from a structure, and it's not a request for a  
22 variance from a use. It is a request for a  
23 variance from the subject property size, which is  
24 something different entirely.

25                   Now, what I also would like to

1 refer you to are two other provisions in the  
2 zoning code that I think shed some clarity on  
3 this in case there's any question in your mind,  
4 and that are the definitions of nonconforming use  
5 and of use.

6                   And the nonconforming use  
7 definition -- I'm only doing this in alphabetical  
8 order -- 27-107.01 of the definitions, "A  
9 nonconforming use is the use of any building  
10 structure or land", and it says, "The term shall  
11 include any building, structure, or land use in  
12 connection with a nonconforming use".

13                   So in this case, the definition of  
14 nonconforming use clearly includes building, a  
15 defined term in the code; structure, a defined  
16 term in the code; or land. Now, use itself,  
17 which is a separate definition, is either the  
18 purpose for which a building structure or land is  
19 designed, arranged, or intended. The use in this  
20 case, of course, is the planned retirement  
21 community use, or an activity, occupation,  
22 business, or operation carried on or in a  
23 building structure or parcel of land. So use and  
24 structure are distinct from property or land.

25                   So I bring you back to Section 27-

1 316, "Variances in conjunction with special  
2 exception approval", which limits the district  
3 counsel's authority to grant a variance in  
4 conjunction with special exception approval to  
5 only the structure or use the variance was  
6 granted in conjunction with.

7                   So it's our position that, as a  
8 matter of law, an application of the governing  
9 provisions of the Prince George's County Zoning  
10 Code, the district counsel does not have the  
11 legal authority to grant the requested variance.  
12 Now, assuming simply for the purpose of argument  
13 that the district counsel ultimately does not  
14 agree with that reading of the code, the variance  
15 should also be denied because it does not meet  
16 the threshold question as to whether or not this  
17 property in fact satisfies the uniqueness  
18 requirement.

19                   When you look at the Statement of  
20 Justification in Exhibit 21, the sole basis  
21 argued in support of why this property is unique  
22 is that there is a prescriptive easement that  
23 impacts the size of the property. We heard  
24 expert testimony that, in fact, that is not a  
25 unique characteristic. We have the defined



1 neighborhood as shown in the map attached to  
2 Exhibit 26 that includes multiple properties.

3                   The expert testified that, at  
4 least based on his analysis, there are at  
5 least -- I believe it was five, maybe six other  
6 properties that also are affected by prescriptive  
7 easements. And we also heard the expert testify  
8 that there are other properties that were platted  
9 that he was unable to determine if, prior to  
10 platting, they had been affected by a  
11 prescriptive easement or not.

12                   Regardless they ultimately were  
13 able to develop, even though they had been,  
14 presumably some of them, subjected to a  
15 prescriptive easement. The question of  
16 uniqueness in this case does not go to the  
17 question of whether or not this property is  
18 twelve acres. The question of uniqueness in this  
19 property goes to whether or not the prescriptive  
20 easement is a unique characteristic that would  
21 merit a variance, assuming the district counsel  
22 even has the authority to grant one.

23                   So when you look at the Cromwell  
24 case, which has been mentioned several times  
25 today, what constitutes a unique characteristic?

1 It's something that goes to the physical  
2 characteristics of the property itself.  
3 Exceptional narrowness, shallowness, shape of  
4 specific parcels of property, or exceptional  
5 topographical conditions or other extraordinary  
6 situations of specific parcels.

7                   So in this case, that's not what  
8 we have in this situation. We don't have  
9 something specifically unique. We don't have  
10 bedrock underneath; we don't have wetlands; we  
11 don't have a stream buffer that's limiting  
12 development of the property because it's  
13 bisecting the usable area. We don't have any of  
14 that.

15                   What we have is a prescriptive  
16 easement that runs at least the length of -- or  
17 the width of the defined neighborhood and on  
18 other roads as well. So that is not -- the  
19 prescriptive easement itself is not a unique  
20 characteristic because it's common among other  
21 properties within the neighborhood. And as I  
22 mentioned also, not only is the acreage of the  
23 almost twelve acres not unique, it's certainly  
24 not cited as a unique characteristic in the  
25 application itself.

1                   As for hardship, it's clear from  
2 the record that the applicant and property owner  
3 knew for decades that this property was less than  
4 twelve acres. It was a matter of public record  
5 in the SDAT records. They were paying taxes on  
6 less than twelve acres for some period of time.  
7 So to the extent that they argue a hardship, it  
8 really is a self-imposed hardship.

9                   They knew at the time they filed  
10 this application, or should have known, that it  
11 didn't meet the twelve-acre requirement. And  
12 frankly, the fact that they're here in the last  
13 minute now asking for a variance only  
14 underscores, to me, the fact that they either  
15 were careless or not paying attention to what the  
16 actual size of the property was. That's on them.  
17 That's not on my clients or the community.

18                  Finally, with respect to --  
19 assuming we even get to this point, the question  
20 of substantial impairment to the intent of the  
21 master plan and adverse impacts on the  
22 neighboring properties. You heard Mr. Aldag  
23 testify as to his firsthand personal knowledge,  
24 his firsthand experience that even under current  
25 conditions that he has to wait sometimes ten

1 minutes to get out of his driveway.

2                   And that's before this subdivision  
3 is developed only one or two lots away from where  
4 he now lives. This is a variance. We are not at  
5 the time of special exception. We're not at the  
6 time of preliminary plan. This is not the time  
7 where traffic studies are considered. We're not  
8 here to prove APFO.

9                   We are here to prove or determine  
10 your role to make recommendations as to whether  
11 or not this use potentially has adverse impacts  
12 on the surrounding community or otherwise impairs  
13 the intent of the master plan. And the traffic  
14 impacts alone on this small road, and adding the  
15 number of additional housing units, certainly  
16 based on the factual testimony of my clients,  
17 will do that.

18                  And I think I had one more point  
19 to make. Oh, yes, I did. Thank you. In  
20 closing, what I'd like to remind you is that, as  
21 stated in Cromwell, the general rule is that the  
22 authority to grant a variance should be exercised  
23 sparingly and only under exceptional  
24 circumstances. And I submit to you that even had  
25 this been a robust set of evidence in support of

1 the application, it wouldn't justify that, given  
2 the fact that under the code, the district  
3 counsel from the outset doesn't have the  
4 authority to grant the type of variance that's  
5 being requested here. It should be denied only  
6 on those grounds.

7                   And then beyond that the applicant  
8 has not demonstrated that the prescriptive  
9 easement is unique. More than that, they've  
10 proven that it is not in any respect unique  
11 within the defined neighborhood given their  
12 knowledge of the size of the property for  
13 decades, the owners. There's no hardship.

14                   And then I ask that you look  
15 carefully at the testimony from my clients, which  
16 clearly demonstrate from firsthand personal,  
17 factual knowledge that there will be impairment  
18 to the neighborhood, and this does not do justice  
19 to the recommendations of the master plan. We  
20 ask that you deny the variance. Thank you.

21                   MR. HATCHER: Thank you, Madam  
22 Examiner, People's Zoning Counsel. I'll try to  
23 keep my comments relatively short. I'd first  
24 like to thank planning staff, CHC staff, and  
25 other stakeholders, including your respective

1 clients, for participating in the numerous  
2 hearings over the course of the last year and a  
3 half. I would also like to remind or inform, in  
4 certain instances, counsel that this is here on  
5 remand and it is part of the broader record in  
6 association with the special exception.

7                   So the expert testimony of the  
8 expert land surveyor, the expert testimony of the  
9 transportation engineer, the expert testimony of  
10 the land planner multiple times are all contained  
11 within this record, and all can be used in  
12 conjunction with whatever the district counsel  
13 and the zoning hearing examiner decide to do with  
14 the variance, as well as the alternative  
15 compliance and associated special exception.

16                   So to be clear, the applicant has  
17 asserted through direct testimony through letters  
18 from various county and state agencies, through  
19 various deeds, that they believe that -- and  
20 that -- as that in its own way confirmed that the  
21 property is indeed twelve acres. Despite that  
22 evidence, there seems to be some concern that the  
23 area that makes up Springfield Road, presumably  
24 established through prescription, cannot be  
25 included for purposes of the twelve contiguous

1 acre threshold.

2                   This concern can be broken down  
3 into two separate issues. One, is the property  
4 twelve acres? We have testimony. We have  
5 written correspondence from DPW&T. We have  
6 written correspondence from SDAT. We have  
7 several expert witnesses, and we have a deed  
8 which all seem to suggest or claim expressly that  
9 the property is indeed twelve acres.

10                   So to the extent that there are  
11 there are assertions that are made that the  
12 client or the government definitively knew what  
13 the acreage of the property is is not necessarily  
14 substantiated in evidence that was put into the  
15 record. Additionally, when you take a look at  
16 case law, it seems to suggest that a prescriptive  
17 easement -- that when a prescriptive easement  
18 does exist, which hasn't been confirmed on this  
19 property, however, it is presumed to exist for  
20 very obvious reasons, that perfect title by  
21 prescription, and I quote, "in the easement" will  
22 vest to the public. Even under that  
23 interpretation, consistent with additional case  
24 law, the fee still goes to the property owner,  
25 the Stewarts, and under that scenario, the

1 property would indeed be twelve acres.

2                   Through this discussion about  
3 whether it is twelve acres or not twelve acres,  
4 an interesting academic discussion came up  
5 regarding, well, it has to be twelve useable  
6 acres. I find no -- the applicant finds no  
7 substantiation in that interpretation in the  
8 zoning ordinance or in the language of the zoning  
9 ordinance. We actually requested and submitted  
10 into the record every reference to the planned  
11 retirement community in the zoning ordinance by  
12 legislation. And none of those pieces of  
13 legislation suggest that. And nor does their  
14 legislative history on those pieces of  
15 legislation, also submitted into the record, even  
16 suggest that interpretation was what the counsel  
17 intended when they adopted that legislation. It  
18 makes no distinguishment. Contiguous means  
19 contiguous with nothing more.

20                   Despite the evidence presented in  
21 the case, the legislation, the case law, deeds,  
22 and all the other evidence by direct or letters  
23 submitted into the record, the applicant believes  
24 in sort of a belt and suspenders method of  
25 advocacy, though only in the alternative do they



1 submit this variance for a twelve-acre  
2 requirement to the PRC, which notably is exactly  
3 what the ZHE requested in their remand order to  
4 for it to be sent down for that purpose, and is  
5 expressly what the district counsel asked when  
6 they remanded it back to the ZHE.

7                   So we were only doing what was  
8 specifically requested by the governing authority  
9 at the appropriate time. Now, what you heard  
10 today was direct testimony, along with all the  
11 rest of the testimony through over the year and a  
12 half -- for about a year about the master plan  
13 compliance, about the specific criteria of  
14 findings that need to be found for purposes of  
15 granting a variance.

16                   You have direct testimony from an  
17 expert who is qualified, who spoke to every  
18 criteria, who actually created a document which  
19 expressly goes to uniqueness for purposes of the  
20 neighborhood that was previously established and  
21 still remains. Now, the counsel has brought up a  
22 pretty interesting issue regarding what 27-316  
23 states about what a special exception -- what a  
24 variance can do during the course of the special  
25 exception.

1                   When you take a take -- when you  
2   take a look at the underlying zone, and  
3   particularly the table of uses in the underlying  
4   zone, you'll find the planned retirement use,  
5   which is exactly what is referenced in 27-316,  
6   structure or use. This is a variance to the use  
7   which we are requesting through the course of the  
8   special exception, which is expressly permitted  
9   and expressly not rejected by the prior zoning  
10  ordinance.

11                   That information is pretty  
12  important, because when you look at the case law  
13  and -- the case law included in the supplement  
14  submitted into the record, that is exactly what  
15  the circuit court looks like for this type of  
16  issue, when you're requesting a variance as part  
17  of the exception. There were reasons why we  
18  asked our expert witness those questions, and  
19  that is why.

20                   As it relates to uniqueness, you  
21  heard direct testimony and you have direct  
22  written testimony from an expert who, despite  
23  best efforts, no one could really impeach  
24  regard --

25                   UNIDENTIFIED SPEAKER:

1 (Indiscernible).

2 MR. HATCHER: Fair enough. Fair  
3 enough. About regarding the uniqueness of the  
4 property and how a prescriptive easement along  
5 Springfield Road now, there's only five, maybe  
6 six properties, six properties in total, which  
7 present the same specific issue in the  
8 neighborhood established.

9 Unique? The applicant has found  
10 no definition of unique that suggests that it can  
11 be the only property. There's no definition of  
12 uniqueness is the only property. And candidly,  
13 out of over a thousand -- out of over a thousand  
14 properties in the neighborhood, suggesting that a  
15 prescriptive easement along Springfield Road is  
16 common, just don't see the substantiation of that  
17 in the evidence that was presented in the record.

18 With that, the applicant  
19 respectfully requests that the ZHE recommend  
20 approval of this application, Special Exception  
21 22002, the Associate Alternative Compliance  
22 23008, and the variance with this. Thank you.

23 MS. MCNEIL: Thank you.

24 I don't know if I should wait and  
25 put it only in the decision. But I really want

1 to ask you something, Ms. Rosenfeld. If you knew  
2 that in 27-316 -- this is the authority for the  
3 ZHE and the counsel to grant a variance, but  
4 practice in other sections of our code would then  
5 allow the Board of Appeals to grant one if we  
6 couldn't. So knowing that, would that change --  
7 does that mean anything to you? I just want to  
8 give you the opportunity to know that that is the  
9 case in this county.

10 MS. ROSENFELD: If we were before  
11 the Board of Appeals, I wouldn't be making this  
12 argument. But the proceeding that we are in  
13 right now, this decision on the variance will  
14 return to the district counsel. And so I think  
15 the scope of their authority is circumscribed  
16 under 27-316.

17 MS. MCNEIL: Okay. And I guess I  
18 didn't finish it. The other thing I was  
19 thinking -- and I'm just throwing it out there --

20 MS. ROSENFELD: Sure.

21 MS. MCNEIL: -- because everybody  
22 has a right to make an argument. The other  
23 thing, though, because of that, I think this  
24 section is here when we're dealing with the  
25 special exception use, and something about the

1 use, which is 395, requires the variance. That's  
2 just a different interpretation. And you don't  
3 have to argue back and forth. I just wanted you  
4 to know how I was thinking because --

5 MS. ROSENFELD: Right.

6 MS. MCNEIL: -- it's not coming  
7 back to me. And so either way, whatever I come  
8 up with, you all will argue to the counsel, so  
9 you'll be able to say --

10 MS. ROSENFELD: Sure.

11 MS. MCNEIL: -- I agree with you,  
12 or I was crazy not to, and given the reasons that  
13 I just gave you.

14 MS. ROSENFELD: And I certainly  
15 respect that reading. I do think that based on  
16 the other provisions that I gave to you, the  
17 zoning code does distinguish between structure  
18 use and property.

19 MS. MCNEIL: Mr. Brown?

20 MR. HATCHER: For the record, the  
21 Madam Hearing Examiner asked us to submit certain  
22 documents into the record. Is that still the  
23 desire?

24 MS. MCNEIL: It was just about the  
25 five, all the information on the five. And

1 please, when you submit it, give it to all  
2 counsel. And please, do you think you can do it  
3 this week?

4 MR. HATCHER: Yes.

5 MS. MCNEIL: Okay. So by close,  
6 maybe 12 noon on Friday you'll have it to us?

7 MR. HATCHER: Tomorrow at the  
8 latest.

9 MS. MCNEIL: All right. And I  
10 thank you all for being here. And this record  
11 will close as soon as we get that information.  
12 And a decision has to come out very quickly. And  
13 then any person of record has a right to appeal  
14 the decision to the district counsel, or they're  
15 probably calling it up because they have the  
16 other part. Thank you all. Have a great day.

17 (Whereupon, the proceedings were  
18 concluded.)

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## 1 C E R T I F I C A T E

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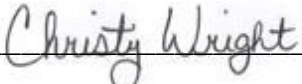
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4 I, Christy Wright, certify that the foregoing  
5 transcript is a true and accurate record of the  
6 proceedings.

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11 CHRISTY WRIGHT

12

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18 Date: May 20, 2025

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