**Item B. Milestone Senior Germantown, Independent Living Facility for Seniors or Persons with Disabilities, Conditional Use No. 2020-02**

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**Completed: 04/10/2020**

- Request: Conditional use approval to operate an independent living facility for seniors or persons with disabilities with 111 units.
- Location: On Frederick Road approximately 0.2 miles north of the intersection of Wheatfield Drive, Germantown, MD 20876.
- Property Size: 2.64 acres
- Zoning: Residential-90 (R-90)
- Applicant: Edmondson & Gallagher Property Services, LLC
- Filing Date: February 12, 2020
- Planning Board Hearing: April 23, 2020
- Hearing Examiner Hearing: May 11, 2020

- Staff recommends approval of the conditional use application with conditions.
- A separate staff report discusses the forest conservation law requirements of Chapter 22A.
- As conditioned, the conditional use conforms to Sec. 59.4.4.8 (Residential - 90 Zone), Sec. 59.7.3.1 (Conditional Use) and Sec. 59.3.3.2.C (Independent Living Facility for Seniors or Persons with Disabilities) of the Montgomery County Zoning Ordinance.
- The proposed use is consistent with the 2009 *Germantown Employment Area Sector Plan*.
- The Project complies with Montgomery County Environmental Guidelines, as conditioned.
- There are no significant land use or environmental impacts associated with the request.
- Currently, the property is unimproved.
Section I: Staff Recommendations and Conditions of Approvals

Staff recommends approval of Conditional Use No. 2020-02 to build and operate an independent living facility for seniors or persons with disabilities, subject to the following conditions:

1) Physical improvements to the Subject Property are limited to those shown on the Applicant’s Conditional Use site plan, landscaping plan, and lighting plan that are part of the submitted Application.

2) The maximum number of dwelling units is limited to 111 units and as such units are limited pursuant to Zoning Ordinance Section 59.3.3.2.C.a.iii.

3) The maximum number of employees is limited to six (6) persons on duty at one-time on weekdays. The maximum number of employees is limited to three (3) persons on duty at one-time on weekends.

4) The Applicant and any successors in interest must comply with the requirement of Zoning Ordinance Section 59.3.3.2.C.2.c.iii, that a minimum of 15 percent of the dwelling units are permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs.

5) Prior to the issuance of any building permit for the subject conditional use, the Applicant must obtain approval of a Preliminary Plan Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.

6) At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with the 2018 Bicycle Master Plan recommendations for a minimum 10-foot-wide shared-use side-path along the east side of Frederick Road (MD 355) along the frontage of the subject property, or an alternative method of compliance as acceptable by Planning Department staff.

7) At the time of Preliminary Plan of Subdivision, the Applicant must illustrate on the preliminary plan a lead-in walkway to connect from the proposed shared use path along Frederick Road (MD 355) directly to the main building entrance.

8) At the time of Preliminary Plan of Subdivision, the Applicant shall provide an access easement for the use of the existing driveway for the adjacent to the south to the satisfaction of Planning Department staff.

9) At the time of the Hearing Examiner decision and pursuant to Zoning Ordinance Section 59.3.3.2.C.2.c.i, the Applicant shall provide details concerning the operation of a resident shuttle program to be reviewed by the Hearing Examiner.
10) Prior to the approval of the Preliminary Plan of Subdivision application, the Applicant must obtain approval of the storm water management concept plan from the Montgomery County Department of Permitting Services.

11) The Applicant must comply with the approved forest conservation plan for the subject property.
Section II: Project Description

A. Background and Location
Accepted for filing on February 12, 2020 and pursuant to Section 59.7.3.1, the Applicant has requested approval of a conditional use to allow the construction and operation of a 111-unit independent living facility for seniors or persons with disabilities in the R-90 zone (Project). The subject property is identified as parcel P507, located on the east side of Frederick Road (MD-355), approximately 0.2 miles north of the intersection of Wheatfield Drive and Frederick Road in Germantown, Maryland (Subject Property or Property).

![Aerial view of the subject Property](image)

Figure 1 – Aerial view of the subject Property

B. Site Description
The Property is an approximately 2.6-acre parcel of undeveloped land. Access to the Property is from Frederick Road. Presently, there is a paved driveway from Frederick Road that provides access to the adjacent property to the south. The Property has varied topography with areas of relatively steep slopes covered with mature trees on the entire property. The elevation starts 420 ft. along the south lot lines along Frederick Road, rises to about 440 ft. in a flatter area in the center of the Property, and then decreases down to about 426 ft. at the northern lot line. The parcel is irregularly shaped with 408 ft. of frontage along Frederick Road.

There are no wetlands, intermittent or perennial streams on or within 100 ft. of the Property. No known rare, threatened, or endangered species exist on this Property. There are no designated historic sites on or near the Property.

Figure 2 (below) shows the existing Property conditions.
C. Neighborhood Description

For the purposes of determining the compatibility of the Project, it is necessary to delineate and characterize the surrounding neighborhood. The Applicant has offered a proposed definition of the neighborhood to include the area most likely to be affected by the Project, which comprises all abutting and confronting properties (Figure 3). Staff concurs and accepts this proposed definition of the neighborhood.

The boundary of the defined neighborhood is comprised of residential property lines and street rights-of-way. The neighborhood boundary begins at the intersection of Plummer Drive and Frederick Road, follows south along Frederick Road to the intersection of Wheatfield Drive, then north roughly along Wheatfield Drive to Plummer Drive, and west on Plummer Drive to the intersection of Frederick Road.
This neighborhood itself consists primarily of suburban residential with limited commercial uses, including a gas station, restaurant, fraternal club, and a credit union. Much of the neighborhood to the east was developed from 1992 to 1993. The residences directly across Frederick Road from the Property were developed around 1962. The building housing the fraternal lodge and restaurant (adjacent property to the north) was built in 1940. South of the Property, a small portion of the Great Seneca Stream Valley Park lies within the southern portion of the neighborhood.

There is no known pending or proposed development approvals within the defined neighborhood vicinity.
There are no prior conditional uses associated with the Property. However, located about 600 ft. to the north of the Property is Special Exception No. S-1553 (Figure 3). This special exception, which was approved in 1988, authorized a gas station to operate at 19235 Frederick Road. The site remains in operation as a gas station and car wash.

Two other prior special exceptions located at 19114 Frederick Road were approved and have been revoked. In 1961, via CBA-1173-A, the Board of Appeals granted a permit to authorize the operation of a care home for not more than five patients. In 1996, the Board of Appeals granted approval in S-2170 to allow a group residential facility for up to 14 elderly persons. Later in 2002, the Board of Appeals revoked both CBA-1173-A and S-2170.

D. Zoning and Land Use History
The Property is zoned R-90 and is unimproved. The Germantown Employment Area Sector Plan (Sector Plan, Master Plan) was adopted in 2009 and is applicable for this Property. The Property lies within the Fox Chapel district of the Sector Plan. The sector plan recommended residential (single-family) land use for the Property and the R-90 zone. Prior to the adoption of the 2009 Sector Plan, the Property was also zoned R-90. There are no specific recommendations in the Sector Plan for the Property.

E. Proposed Use
The Project consists of the construction and operation of an independent senior living facility in a new 104,551 sq. ft., five-story, 111-unit apartment building (See Figures 5 and 6). Proposed are 97 one-bedroom and 14 two-bedroom units. The maximum height of the building is 60 ft. The entire Property is subject to the conditional use review.

As described in the Applicant’s statement of justification narrative, the Project meets the definition and use standards for an independent living facility for seniors or persons with disabilities. The Applicant indicates that a majority of units will be reserved for persons with incomes below 60 percent of the average median income (AMI) for Montgomery County. And the Applicant further states that occupancy of dwelling units will be restricted to senior adults, members of the household of a senior adult, and a resident care-giver.
Figure 4 Proposed site plan rendering.
Amenities
The facility will include a lobby, lounge, library, fitness room, internet café, outdoor courtyards, picnic/seating areas, patio/seating area, rooftop amenity sitting area, and on-site property management.

Resident Staff Support
Support staff for residents includes a property manager, assistant manager, and maintenance staff. Typically, administrative staff will be present on weekdays between the hours of 9:00 am and 6:00 pm, and during evenings and weekends if special events for residents are planned. However, the residential community will operate 24 hours per day, seven days per week, and 365 days per year and the Applicant anticipates some level of staffing present at all times. The maximum weekday staff employed at one-time are six (6). The maximum weekend staff employed at one-time are three (3). Occasional special events may require addition staff present for the special event. Specialists may visit the facility to conduct programs beneficial to
senior residents. Examples of such programs are bridge or card game lessons, educational or travel presentations, or wellness classes.

Access and Parking
Vehicular ingress and egress are from Frederick Road (MD 355) via a 25 ft. wide commercial driveway. The driveway aisle and passenger drop-off area are set back approximately 54 ft. from the front property line. The parking lot consists of sixty (60) surface parking spaces surrounding the sides and rear of the building, with handicapped parking located near the front entrance. One off-street loading area is provided on the northwest side of the building. There are also 28 bicycle parking spaces provided in a secure bike storage room inside the building.

Shuttle Services
At this time, a final shuttle plan has not been selected. The Applicant indicates that the level of shuttle service will be determined based upon resident need and by a number of factors including demographics of residents, personal mobility needs, regular and special events, and cost. A final shuttle program will be provided to the Hearing Examiner for review and decision.

Landscaping
To accommodate the Project including the building, parking areas, drive aisles, and utilities, the Applicant proposes to clear the existing forested area. The forested area contains nine specimen trees, which are proposed to be removed. One additional off-site specimen tree will also be impacted and may necessitate removal.

The Applicant proposes to install the required perimeter landscaping, trees and other landscaped areas including parking lot landscaping. Some landscaped areas are designed for storm water management. Deciduous, evergreen and ornamental trees are provided throughout the Property. Ornamental shrubs are planted near the building foundation and outdoor seating areas. The north perimeter landscape consists of a 25 ft. planting area of hedging and trees. On the eastern and western borders, proposed is a 16 ft. perimeter planting of hedges and trees. The southern (front) perimeter will be planted with a 6 ft. planting area of trees and shrubs. Parking areas contain landscaped islands with deciduous trees intended to provide visual interest, shade, and to reduce the “heat island” effects of the surface parking lot.

Preliminary Plan
As part of a separate application, the Applicant indicates that a preliminary plan of subdivision application will be submitted pursuant to the approval of this conditional use application.

Forest Conservation Plan
This conditional use application is subject to the forest conservation law. A separate staff report details the requirements and how the applicant will comply Chapter 22A of the Montgomery County Code. The Planning Board must take an action separate action on the forest conservation plan before making a recommendation on the conditional use application.

Section III: Analysis
A. Development Standards

The following table displays the relevant R-90 development standards for the Property. The conditional use application is applicable to the entire Property. The Project complies with the following development standards:

Table 1 – Development Standards

<table>
<thead>
<tr>
<th>Development Standards (R-90)</th>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot (min.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot Area</td>
<td>9,000 sq. ft.</td>
<td>114,981 sq. ft. (2.64 acres)</td>
</tr>
<tr>
<td>Lot width at front building line</td>
<td>75 ft.</td>
<td>381 ft.</td>
</tr>
<tr>
<td>Lot width at front lot line</td>
<td>25 ft.</td>
<td>407 ft.</td>
</tr>
<tr>
<td>Density (max. units/acre)</td>
<td>Determined by Hearing Examiner</td>
<td>42 units per acre</td>
</tr>
<tr>
<td>Lot Coverage (max.)</td>
<td>30%</td>
<td>20.75%</td>
</tr>
<tr>
<td>Principal Building Setbacks (min.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front</td>
<td>50 ft.¹</td>
<td>50 ft.</td>
</tr>
<tr>
<td>Side</td>
<td>40 ft.¹</td>
<td>49 ft.</td>
</tr>
<tr>
<td>Sum of Side Setbacks Rear</td>
<td>25 ft.</td>
<td>82 ft.</td>
</tr>
<tr>
<td></td>
<td>25 ft.²</td>
<td>73 ft.</td>
</tr>
<tr>
<td>Building Height (max.)</td>
<td>60 ft.¹</td>
<td>60 ft.</td>
</tr>
<tr>
<td>Parking Setback (min.)³</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front</td>
<td>6 ft.</td>
<td>6 ft.</td>
</tr>
<tr>
<td>Rear</td>
<td>25 ft.</td>
<td>25 ft.</td>
</tr>
<tr>
<td>Side</td>
<td>16 ft.</td>
<td>16 ft.</td>
</tr>
<tr>
<td>Parking Requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dwelling Units⁴</td>
<td>56 spaces</td>
<td>56 spaces</td>
</tr>
<tr>
<td>Employees</td>
<td>4 spaces</td>
<td>4 spaces</td>
</tr>
<tr>
<td>Bicycle, short-term</td>
<td>1 space</td>
<td>1 space</td>
</tr>
<tr>
<td>Bicycle, long-term</td>
<td>27 space</td>
<td>27 spaces</td>
</tr>
<tr>
<td>Parking Lot Landscaping</td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Planting Area</td>
<td>10 ft. wide</td>
<td>25 ft. wide</td>
</tr>
<tr>
<td>East Planting Area</td>
<td>10 ft. wide</td>
<td>16 ft. wide</td>
</tr>
<tr>
<td>West Planting Area</td>
<td>None</td>
<td>16 ft. wide</td>
</tr>
<tr>
<td>South Planting Area</td>
<td>6 ft. wide</td>
<td>6 ft. wide</td>
</tr>
<tr>
<td>Off-Street Loading (59.6.2.8.B.2)</td>
<td>1 space per 25,001 to 250,000 SF of GFA</td>
<td>1 space provided for 104,551 SF of GFA</td>
</tr>
<tr>
<td>Green Area (min.) (59.3.3.2.C.2.c.viii.c)</td>
<td>50% (In the R-90 zone)</td>
<td>50.51% (46,872 sq. ft.)</td>
</tr>
</tbody>
</table>

¹Per 59.3.3.2.C.2.c (Use standards for indep. living facility for seniors or person w/disabilities)
²Per 59.4.4.8.B.2 (Equal to rear setback for detached house in R-90 zone)
³Per 59.6.2.5.K (Facilities for conditional uses in residential detached zones)
⁴Per 59.6.2.3.I.2.b (Parking adjustment factor applied 50% reduction for senior housing)

B. Master Plan
The Project is subject to the policies and recommendations contained in the 2009 Germantown Employment Area Sector Plan. The Sector Plan established eight districts that reflect decreasing commercial and residential density and the desire to transform Germantown’s central employment corridor into a vibrant town center and mixed-use districts. These districts include: Town Center, West End Neighborhood, Gateway, Cloverleaf, North End, Seneca Meadows/Milestone, Montgomery College, and Fox Chapel.

The Project is compatible with the following general policies contained in the Sector Plan:

- **New housing should be suitable for both young and old, and for those with all ranges of physical ability. Units will be served by elevators and have at-grade entrances, wide hallways to accommodate wheelchairs, and other features. Seniors should be provided with options to either age in place or move to retirement communities, and planning should facilitate both options.** (2009, p. 29)

  The Project consists of age-restricted affordable senior housing units in a full-service elevator building with on-site amenities as show on the site plan and described above in Section II of this report. As conditioned, the Project is consistent with this recommendation.

- **Building heights should not exceed 60 feet along MD 355, stepping down in height to 50 to 60 feet along the eastern edge of the district to be compatible with existing residential neighbors.** (2009, p. 75)

  The Project’s building has a maximum height of 60 ft. and meets all setbacks required for the R-90 zone. Therefore, the Project is consistent with this recommendation.

- **A commitment to no net loss of affordable housing will help preserve existing affordable and workforce housing especially the existing subsidized rental units and MPDUs such as properties owned, operated, or financed by the HOC.** (2009, p.29).

  The Property is currently undeveloped with no existing affordable housing units. The Project consists of new senior affordable housing units. Such units must comply with
the requirement of Zoning Ordinance Section 59.3.3.2.C.2.c.iii, that a minimum of 15 percent of the dwelling units are permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. Therefore, the Project as proposed will result in no net loss of affordable housing. As such, the Project is consistent with this recommendation.

C. Transportation
Master-Planned Roadway and Bikeways
The Property is located along Frederick Road (MD 355), identified by the 2018 Master Plan of Highways and Transitways as a 6-lane Major Highway with a 250 ft. right-of-way; additional right of way dedication will be required as part of a subsequent preliminary plan application and has been shown on the conditional use plan. The 2018 Bicycle Master Plan recommends a 10-ft. wide, asphalt shared-use sidepath along the east side of MD 355 along the frontage of the Property. The applicant has agreed to construct the path with designs to be finalized as part of the subsequent preliminary plan.

Pedestrian and Bicycle Facilities
There is an existing sidewalk along the MD 355 frontage of the Property. As discussed herein, the 2018 Bicycle Master Plan requires a 10 ft. wide shared use sidepath to be built along the frontage to replace the sidewalk; however, as detailed above, Staff recommends that the applicant finalize this as part of the subsequent preliminary plan application. Internal to the site, the Applicant proposes an ADA-compliant sidewalk running from the shared-use path directly to the main building entrance. Additional walkways are provided along the parking area to accommodate pedestrian circulation to all building entrances and courtyard areas. Staff recommends that the final pedestrian circulation plan be approved as part the preliminary plan subdivision application.

Public Transit Service
Ride-On Route 55 operates along Frederick Road between the Germantown Town Center and the Shady Grove Metrorail Station with half hour headways on weekdays only. The nearest bus stop is located in front of the Property.

Local Area Transportation Review
The proposed application is for 111 units for independent senior living (ITE code 252). According to the Institute of Transportation Engineer’s (ITE) 10th Edition Trip Generation Manual and adjusted for the Germantown East Policy Area, this project will produce a net increase of 33 AM peak-hour person trips and 42 PM peak-hour person trips. The Applicant is not required to submit a traffic study to satisfy the LATR test because the proposed land use generates fewer than 50 peak-hour person trips within the weekday morning and evening peak periods.

Circulation and Connectivity
The Property is accessed by a proposed commercial driveway onto Frederick Rd. (MD 355). There are no existing or proposed turning lanes or acceleration/deceleration lanes (right or
left) to access the driveway on Frederick Road and none are required. As determined by the Maryland State Highway Administration and Planning Staff, there are no sightline or access issues with the proposed driveway location, which is safe and adequate for the proposed uses. A lead-in walkway will connect from the proposed shared use path along MD 355 directly to the main building entrance. Internal to the site, circulation is provided via a two-way drive aisle surrounding the central structure. This drive aisle will adequately serve the proposed parking and loading zone. A sidewalk is provided along the interior rung of the loop to enable safe pedestrian access. An additional passenger drop off zone is proposed in front of the main entrance of the building fronting MD 355. The circulation pattern, as proposed, is safe and adequate for the use. An easement for the existing driveway for the adjacent property to the south as well as the final shuttle service program will be provided as part of a subsequent preliminary plan of subdivision.

Therefore, the proposed use is consistent with the 2018 Master Plan of Highways and Transitways, and the 2018 Bicycle Master Plan.

D. **Landscaping**

   The Project’s parking lot landscaped areas, tree canopy and perimeter plantings meet or exceeds the required landscaping as required by Sec. 6.2.9.C as shown on the Applicant’s landscape plan and as discussed above in Section II of this report. Additionally, the Applicant provides additional interior landscaping around the building and patio areas consisting of shrubs, trees, groundcover, and other deciduous and perennial plantings. The Applicant proposes to install 23 over-story trees which will provide the required 25 percent minimum parking lot canopy coverage. As such, the landscaping plan satisfies the requirements of Sec. 6.4.3 (General Landscaping Requirements). This standard is satisfied.

E. **Screening**

   As discussed above in Section II of this report an on the Applicant’s landscape plan, the Applicant proposes to install perimeter landscaping, trees and other landscaped areas including parking lot landscaping. The landscape plan meets the requirements of Section 6.5.3 by providing at least the minimum required perimeter planting area with canopy trees, understory trees, and shrubs. Further, the Project provides a landscaped berm on the east and north property lines, further screening the site and parking areas from off-site views. As such, the screening plan satisfies the requirements of Sec. 6.5.3 (Screening Requirements). This standard is satisfied.

F. **Lighting**

   The photometric plan provided by the Applicant shows the projected lighting intensity across the entire Property in foot-candles, locations where lighting fixtures will be mounted, and manufacturer’s specifications on the lighting fixtures being proposed. The following exterior lighting is proposed:
### Table 2 – Proposed Light Fixtures

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Description</th>
<th>Height</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>Free-standing light poles</td>
<td>12 feet</td>
<td>Full-cut off fixture with light emitting diode assembly.</td>
</tr>
<tr>
<td>12</td>
<td>Louver bollard lights</td>
<td>3 feet</td>
<td>Light directed downward with light emitting diode assembly.</td>
</tr>
</tbody>
</table>

All lights are LED fixtures are designed to eliminate horizontal light cast. The photometric plan predicts that no light above 0.0 foot-candles will spill across any Property boundary and onto adjoining property. The lighting plan is adequate, providing visibility to the areas for vehicular and pedestrian circulation during nighttime hours. The lighting will not have a negative impact to neighboring residences with either direct light or light glare. As such, the lighting plan satisfies the requirements of Sec. 6.4.4 (General Outdoor Lighting Requirements). This standard is satisfied.

**G. Signage**  
No signs are proposed at this time for the conditional use. As such, this standard is not applicable.

**H. Environment**  
There are no wetlands, intermittent or perennial streams on or within 100 ft. of the Property. No known rare, threatened, or endangered species exist on this Property. Therefore, this standard is satisfied.

**I. Community Concerns**  
At the time of the publication of the staff report, no communication has been received by staff from community organizations or members of the public.
Section IV: Compliance with Necessary Findings
Section 59.7.3.1.E Conditional Use
E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

   a. Satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

      **Staff Response:** This finding is satisfied. Currently, the Property does not have any previous approvals and is undeveloped. The Project consists of a new 111-unit age-restricted (senior) apartment building. Therefore, with the approval of the preliminary forest conservation plan, variance, conditional use and subsequent Preliminary Plan, the Project complies with the applicable requirements under an approved conditional use.

   b. Satisfies the requirements of the zone, use standards under Article 59.3 (Uses and Use Standards), and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6 (General Development Requirements);

      **Staff Response:** This finding is satisfied. The Project satisfies applicable provisions under Article 59.3 (Uses and Use Standards) as shown in Section III of this report. The Project satisfies applicable provisions under Article 59.6 (General Development Requirements) as shown in Section III of this report. Therefore, with the approved conditional use, this finding is satisfied.

   c. Section 59.7.3.1.E.1.c: Substantially conforms with the recommendations of the applicable master plan.

      **Staff Response:** As discussed in Section III of this report, this finding is satisfied.

   d. Is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan.

      **Staff response:** This finding is satisfied. This finding includes both Master Plan analysis and other compatibility considerations. The Master Plan issues have been discussed in the preceding section. The character of the surrounding area is residential, consisting of single-family attached and detached homes. The Project will not alter the character of the surrounding neighborhood in a manner inconsistent with the master plan because the use is residential in character and adequately buffered with landscaping, and sufficiently located away from any sensitive land uses or dwelling units. Staff concludes that the Project will be harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the Sector Plan.
e. Section 59.7.3.1.E.1.e: Will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area.

Staff Response: This finding is satisfied. As discussed in Section III of this report, the Project substantially conforms to the polices and recommendations contained in the Master Plan. There are no residential areas that would be adversely affected or altered by the Project because the Project is a residential use and the site is sufficiently buffered and located away from existing residential neighborhoods. Furthermore, as discussed above in Section II, only one conditional use/special exceptions currently exist in the vicinity. As such, there would not be an overconcentration of conditional uses in the area.

f. Section 59.7.3.1.E.1.f: will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. If a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public facilities, including schools, police and fire protection, water, sanitary sewer, public roads, or storm drainage; or

ii. If a preliminary plan of subdivision is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage.

Staff Response: This finding is satisfied. Adequate public services and facilities will be reviewed as part of subsequent preliminary plan of subdivision.

g. Section 59.7.3.1.E.1.g: will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

i. The use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;

ii. Traffic, noise, odors, dust, illumination or lack of parking; or

iii. The health, safety or welfare of neighboring residents, visitors or employees.
Staff Response: This finding is satisfied. The inherent physical and operational characteristics associated with a senior residential apartment building will not cause undue harm to the neighborhood.

The inherent characteristics include:

- Vehicle and pedestrian trips to and from the Property;
- Parking for residents and employees;
- Varied hours of operation;
- Noise or odors associated with vehicles;
- Noise or odors associated with trash collection and trucks;
- Emergency electrical generator; and
- Lighting.

These characteristics are inherent and typically associated with similar uses and do not exceed what is normally expected. Residential uses adjoining the Property to the north and east are well-buffered from the Project in distance, topography, and by existing and proposed landscape.

Non-inherent characteristics are unique to the physical location, operation, or size of a proposed use. In this case, the Property and surrounding property have varied topographic change that helps to reduce the visual impact of the Project from adjoining residential uses to the north and east. Further, proposed landscaping is typical of that found in the adjoining neighborhoods and as proposed further reduces impacts.

The Project’s non-inherent characteristics would not cause an adverse effect with regard to inherent or non-inherent characteristics, or combination thereof, or in any of the following categories: the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood; traffic, noise, odors, dust, illumination or lack of parking; or the health, safety or welfare of neighboring residents, visitors or employees.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Staff Response: This finding is satisfied. There is a variety of building scales, forms, and design details exhibited in the neighborhood. The architecture of the Project is contemporary in design and form. The visual character of the neighborhood is mixed with detached dwelling, townhomes and commercial uses, such a restaurant and credit union buildings. Therefore, the proposed residential building is not out of character and is compatible with the surrounding residential neighborhoods.
3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

**Staff Response:** Acknowledged by the Applicant.

4. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.

**Staff Response:** This finding is not applicable. The Applicant does not propose an agricultural conditional use. The Project is a conditional use approval for an independent living facility for seniors or persons with disabilities.

5. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:
   i. Filling Station;
   ii. Light Vehicle Sales and Rental (Outdoor);
   iii. Swimming Pool (Community); and
   iv. the following Recreation and Entertainment Facility use: swimming pool, commercial.

**Staff Response:** The finding is not applicable. The Project is a not a filling station, light vehicle sales and rental (outdoor), swimming pool (community); or a swimming pool, commercial. The Project is an independent living facility for seniors or persons with disabilities.

6. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:
   i. Funeral Home; Undertaker;
   ii. Hotel, Motel;
   iii. Shooting Range (Outdoor);
   iv. Drive-Thru
   v. Landfill, Incinerator, or Transfer Station; and
   vi. a Public Use Helipad, Heliport or a Public Use Helistop.

**Staff Response:** This finding is not applicable. The Project is not a funeral home, undertaker, hotel, motel, shooting range (outdoor), drive-thru, landfill, incinerator, transfer station,
public use helipad, heliport or a public use helistop. The Project is an independent living facility for seniors or persons with disabilities.

Section 59.3.3.2.C Conditions for Approval of Independent Living Facility for Seniors or Persons with Disabilities
2. Use Standards:¹

a. Where an Independent Living Facility for Seniors is allowed as a limited use, it must satisfy the following standards:

i. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.

Staff Response: Acknowledged by the Applicant.

ii. Resident staff necessary for the operation of the facility are allowed to live on-site.

Staff Response: Acknowledged by the Applicant.

iii. Occupancy of a dwelling unit is restricted to the following:
   a) a senior adult, as defined in Section 1.4.2, Defined Terms;
   b) other members of the household of a senior adult, regardless of age;
   c) a resident care-giver, if needed to assist a senior resident; or
   d) person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist seniors as defined in that program.
   e) If imposing age restrictions that would limit occupancy otherwise allowed by this Subsection, the facility must only impose age restrictions that satisfy at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, as amended, or the state Fair Housing Act, Subtitle 7 of Title 20 of the Annotated Code of Maryland, State Government Article, as amended.

Staff Response: Acknowledged by the Applicant.

b. Where an Independent Living Facility for Persons with Disabilities is allowed as a limited use, it must satisfy the following standards:

¹ Pursuant to Sec. 59.3.3.2.c, where a conditional use for an Independent Living Facility is allowed as a conditional use, findings for limited use standards and conditional use standards are required.
i. The facility must meet all applicable federal, state, and County licensure, certificate, and regulatory requirements.

**Staff Response:** Acknowledged by the Applicant.

ii. Resident staff necessary for the operation of the facility are allowed to live on-site.

**Staff Response:** Acknowledged by the Applicant.

iii. Occupancy of a dwelling unit is restricted to the following:
    a) a person with disabilities, as defined in Section 1.4.2, Defined Terms;
    b) other members of the household of a person with a disability, regardless of age;
    c) a resident caregiver, if needed to assist a resident with a disability; or
    d) a person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist persons with disabilities as defined in that program.

**Staff Response:** Acknowledged by the Applicant.

c. *Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.7, Conditional Use, and the following standards:*

    i. **The site or the proposed facility has adequate accessibility to or provides on-site public transportation, medical service, shopping areas, recreation and other community services frequently desired by senior adults or persons with disabilities.** The application must include a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.

**Staff Response:** As conditioned, this standard is satisfied. The Applicant indicates, as discussed in Section II above, they will provide shuttle transportation to surrounding commercial, medical, and public services as needed for their senior residents.

    ii. **The Hearing Examiner may restrict the availability of ancillary services to nonresidents and specify the manner in which this is publicized. Retail facilities may be included for the exclusive use of the residents of the building.**

**Staff Response:** This standard is not applicable. No ancillary services to non-residents are proposed. No retail facilities are proposed.
iii. A minimum of 15% of the dwelling units is permanently reserved for households of very low income, or 20% for households of low income, or 30% for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs under Executive regulations. Income levels are defined in Section 1.4.2, Defined Terms.

Staff Response: This standard is satisfied. As conditioned, the Applicant will provide at least the minimum number of units required for households of low income or MPDU income as required or agreed to with the County Department of Housing and Community Affairs.

iv. The maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is 60 feet and the maximum density is determined by the Hearing Examiner under the development standards of Section 3.3.2.C.2.b.vi through Section 3.3.2.C.2.b.ix, without regard to any other limitation in this Chapter.

Staff Response: This standard is satisfied. The proposed building height is 60 ft. and meets the 60 ft. maximum allowed. Applicant acknowledges the maximum density is determined by the Hearing Examiner.

v. Height, density, coverage, and parking must be compatible with surrounding uses and the Hearing Examiner may modify height, density, coverage, and parking to maximize the compatibility of buildings with the residential character of the surrounding neighborhood.

Staff Response: This standard is satisfied. While the footprint, massing and building height are not typical of the adjacent residential neighborhood, the existing site conditions, topography, landscaping, and placement of the building maximize the compatibility of the building with the surrounding area. Additionally, the Project is also located adjacent to commercial uses and is not incompatible with such uses.

vi. The minimum front setback is 50 feet. Except for an access driveway, this setback area must be maintained as green area; however, if development does not exceed the height limit of the applicable Residential zone, the minimum setback specified by the zone applies.

Staff Response: This standard is satisfied. As shown on the Applicant’s site plan and in Table 1 of this report, no structure is located within 50 ft. of the front setback.

vii. The minimum side and rear setback is 25 feet or as specified by the relevant zone, whichever is greater.
Staff Response: This standard is satisfied. As shown on the Applicant’s site plan and in Table 1 of this report, the side and rear setbacks are greater than 25 ft. and comply with the requirements of the R-90 zone.

viii. The minimum green area is:

   a) 70% in the RE-2, RE-2C, and RE-1 zone, except where the minimum green area requirement is established in a master plan;

   Staff Response: This standard is not applicable. The Property is located in the R-90 zone.

   b) 60% in the R-200 zone; and

   Staff Response: This standard is not applicable. The Property is located in the R-90 zone.

   c) 50% in the R-60, R-90, and Residential Townhouse zones.

   Staff Response: This standard is satisfied. As shown on the applicant’s site plan the minimum proposed green area is 50.1 percent.

ix. The Hearing Examiner may reduce the green area requirement by up to 15% if it is necessary to accommodate a lower building height for compatibility reasons.

   Staff Response: This standard is not applicable. The Project satisfies the minimum amount of green area.
Section V: Conclusion
The proposed independent living facility for seniors or persons with disabilities, as recommended in Section I of this report, satisfies all applicable requirements for the approval of a conditional use as specified in the Montgomery County Zoning Ordinance and is consistent with the recommendations of the 2009 Germantown Employment Area Sector Plan. Planning staff recommends approval of Conditional Use No. 2020-02.

Attachments
1. A - Proposed site plan and landscape/lighting plan, architecture plans
2. B - Site photographs
Photo 3 – Northward view of front property line and Frederick Road.
III. PLANTING PROCEDURES FOR TREES

1. PREPARING THE SITE

   a. Clear all existing vegetation from the area to be planted, if not already
      done.

   b. Expose all soil areas to be planted.

   c. Prepare the planting site by removing all debris, rocks, and
      other obstructions.

2. PLANTING

   a. Dig a shallow hole that is at least twice the diameter of the root
      ball.

   b. Place the tree in the hole and adjust it to the desired location.

   c. Fill the hole with the removed soil, tamping it down to
      secure the tree.

   d. Water the tree thoroughly after planting.

IV. PLANTING PROCEDURES FOR SHRUBS

1. PREPARING THE SITE

   a. Clear all existing vegetation from the area to be planted, if not already
      done.

   b. Expose all soil areas to be planted.

   c. Prepare the planting site by removing all debris, rocks, and
      other obstructions.

2. PLANTING

   a. Dig a shallow hole that is at least twice the diameter of the root
      ball.

   b. Place the shrub in the hole and adjust it to the desired location.

   c. Fill the hole with the removed soil, tamping it down to
      secure the shrub.

   d. Water the shrub thoroughly after planting.

V. PLANTING PROCEDURES FOR GRASS

1. PREPARING THE SITE

   a. Clear all existing vegetation from the area to be planted, if not already
      done.

   b. Expose all soil areas to be planted.

   c. Prepare the planting site by removing all debris, rocks, and
      other obstructions.

2. PLANTING

   a. Lay out the grid and rows to be planted.

   b. Plant the grass seed mixture in the marked rows.

   c. Water the area thoroughly after planting.

VI. PLANTING PROCEDURES FOR VEGETATION

1. PREPARING THE SITE

   a. Clear all existing vegetation from the area to be planted, if not already
      done.

   b. Expose all soil areas to be planted.

   c. Prepare the planting site by removing all debris, rocks, and
      other obstructions.

2. PLANTING

   a. Lay out the grid and rows to be planted.

   b. Plant the vegetation seed mixture in the marked rows.

   c. Water the area thoroughly after planting.
Photo 1 - Front view of subject property from Frederick Road.
Photo 2 - Rear view of Property from Wheatfield Drive.
Photo 4 Southward view of front property line and Frederick Road.