




**Milestone Senior Germantown: Preliminary Plan No. 120210110**

 Jeffrey Server, Planner Coordinator, Upcounty Planning, [Jeffrey.Server@montgomeryplanning.org](mailto:Jeffrey.Server@montgomeryplanning.org), (301) 495-4513  
 Sandra Pereira, Supervisor, Upcounty Planning, [Sandra.Pereira@montgomeryplanning.org](mailto:Sandra.Pereira@montgomeryplanning.org), (301) 495-2186  
 Patrick Butler, Chief, Upcounty Planning, [Patrick.Butler@montgomeryplanning.org](mailto:Patrick.Butler@montgomeryplanning.org), (301) 495-4561

**Staff Report Date:** 6-4-2021

**Description**

Request to create one lot for a five-story independent, affordable senior living facility with up to 111 dwelling units.

**Location:** Located on the east side of Frederick Road (MD-355), north of the intersection of High Point Drive and Frederick Road

**Master Plan:** 2009 *Germantown Employment Area Sector Plan*

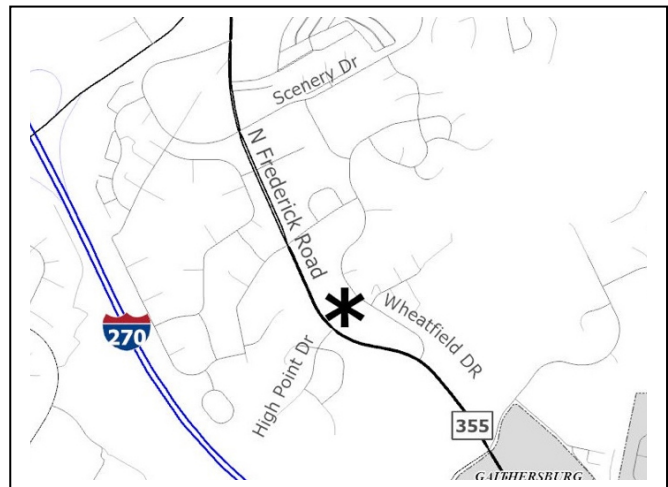
**Zone:** R-90

**Property Size:** 2.64 acres

**Applicant:** Edmondson & Gallagher Property Services, LLC

**Acceptance date:** December 2, 2020

**Review Basis:** Chapters 22A and 50



**Summary**

- Staff recommends Approval of the Preliminary Plan, with conditions.
- The Application conforms with Conditional Use Permit CU 20-02, which approved operation of an independent living facility for seniors or persons with disabilities with up to 111 units.
- The Application provides a minimum of 15 percent of the dwelling units to be permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income as per Section 59.3.3.2.C.2.c.iii. If units are to be 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.
- Meets requirements of Chapter 22A, Forest Conservation Law.
- Meets requirements of Chapter 19, Sediment and Erosion Control.
- The Application substantially conforms to the 2009 *Germantown Employment Area Sector Plan*.
- The Applicant will construct a 10-foot wide shared-use side-path across the property frontage on MD 355, consistent with the 2018 *Bicycle Master Plan*.
- No community correspondence has been received as of the date of this Staff Report.

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## **SECTION 1 – RECOMMENDATIONS AND CONDITIONS**

**PRELIMINARY PLAN NO. 120210110:** Staff recommends approval of the Preliminary Plan subject to the following conditions:

### **General Approval**

1. This Preliminary Plan is limited to one (1) lot for up to one hundred eleven (111) dwelling units for an Independent Senior Living Facility.

### **Adequate Public Facilities and Outside Agencies**

2. The Adequate Public Facilities (“APF”) review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.

### **Plan Validity Period**

3. The Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

### **Outside Agencies**

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated March 4, 2021, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated April 26, 2021, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”), Fire Department Access and Water Supply Section in its letter dated February 26, 2021, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

## **Other Approvals**

8. The Applicant must comply with conditions from the Hearing Examiner's Report and Decision, dated July 1, 2020, from the Office of Zoning and Administrative Hearings (OZAH) approving Conditional Use No. 20-02.

## **Environment and Noise**

### Forest Conservation

9. The Applicant must comply with the following conditions of approval of Final Forest Conservation Plan 120210110, approved as part of this Preliminary Plan.
  - a) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
  - b) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan ("FFCP"). Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
  - c) Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance, in a form approved by the M-NCPPC Office of the General Counsel, in an M-NCPPC approved off-site forest bank within the Seneca Creek watershed to satisfy the off-site reforestation requirement of 1.56 acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Seneca Creek watershed. If there are no credits available for purchase from a mitigation bank, the Applicant may satisfy the 1.56-acre mitigation requirement via fee-in-lieu payment to M-NCPPC.
  - d) The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

## **Transportation**

### Existing Frontage Improvements

10. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
  - a) All land necessary to accommodate one hundred twenty-five (125) feet from the existing pavement centerline along the Subject Property frontage for Frederick Road.
11. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MDSHA to ensure construction of a 10-foot-wide side-path along the Property frontage on Frederick Road.



12. Prior to the release of the first use and occupancy permit, the Applicant must provide documentation to M-NCPPC Staff that they entered into a contract for service for on-demand transportation for residents.

#### **Record Plats**

13. There must be no clearing or grading of the site prior to recordation of plat(s).

#### **Easements**

14. The record plat must show necessary easements.
15. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
16. At the time of record plat, the Applicant must provide an access easement for the use of the existing driveway or any portion thereof contained within the Subject Property for the use by the adjacent property to the south to be recorded in the land records.

#### **Moderately Priced Dwelling Units**

17. 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 and as required by the approved Conditional Use Decision CU 20-02.

#### **Certified Preliminary Plan**

18. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
19. The certified Preliminary Plan must contain the following note:

*Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

20. Prior to approval of the Certified Preliminary Plan, the following revisions must be made and/or information provided subject to M-NCPPC Staff review and approval:

- a) Update the data table to include provided MPDUs.

## SECTION 2 – SITE LOCATION AND DESCRIPTION

### Site Location

The property is identified as Parcel P507 on Tax Map FU 11, and is located on the east side of Frederick Road (MD-355), north of the intersection of High Point Drive and Frederick Road within the Fox Chapel district of the 2009 *Germantown Employment Area Sector Plan* area (“Subject Property” or “Property”).

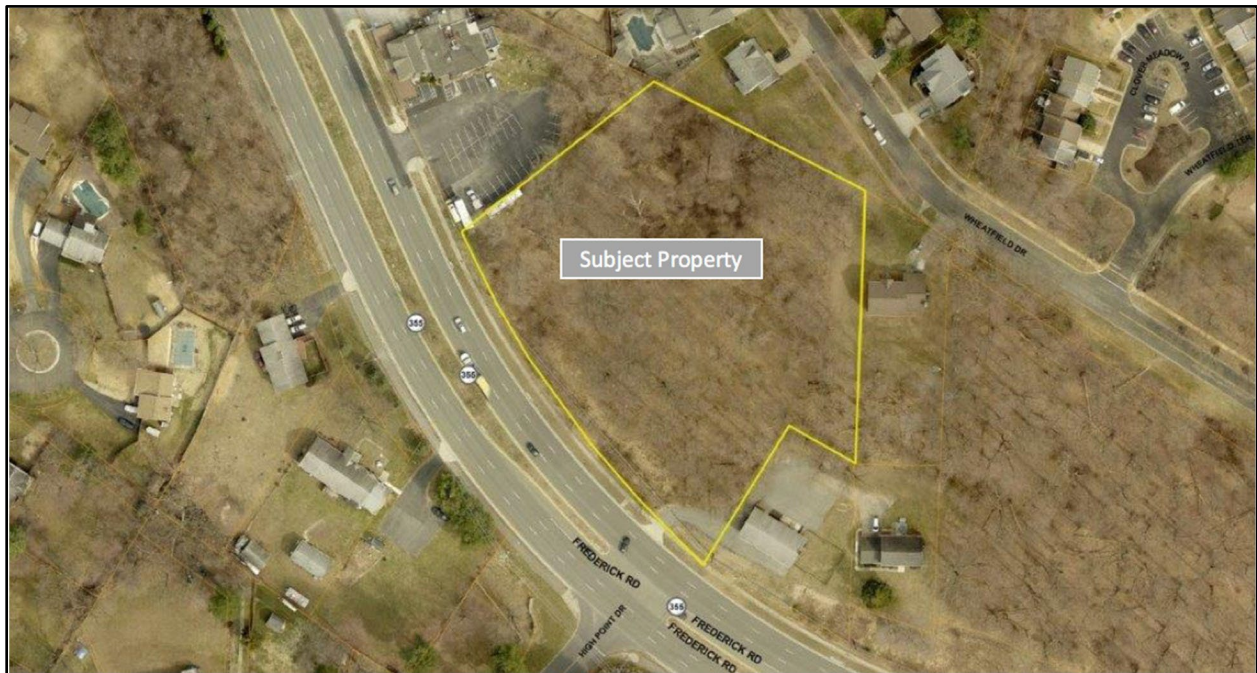


Figure 1 – Aerial View of the Subject Property

### Site Vicinity

Surrounding properties are predominantly suburban residential with limited commercial uses to the north, including a gas station, restaurant, fraternal club, and a credit union. Much of the area to the east was developed from 1992 to 1993 in the R-90 Zone. The residences directly across Frederick Road from the Subject Property were developed around 1962 in the R-200 Zone. The building housing the fraternal lodge and restaurant (adjacent property to the north) was built in 1940 in the NR Zone. South of the Property is a small portion of the Great Seneca Stream Valley Park.

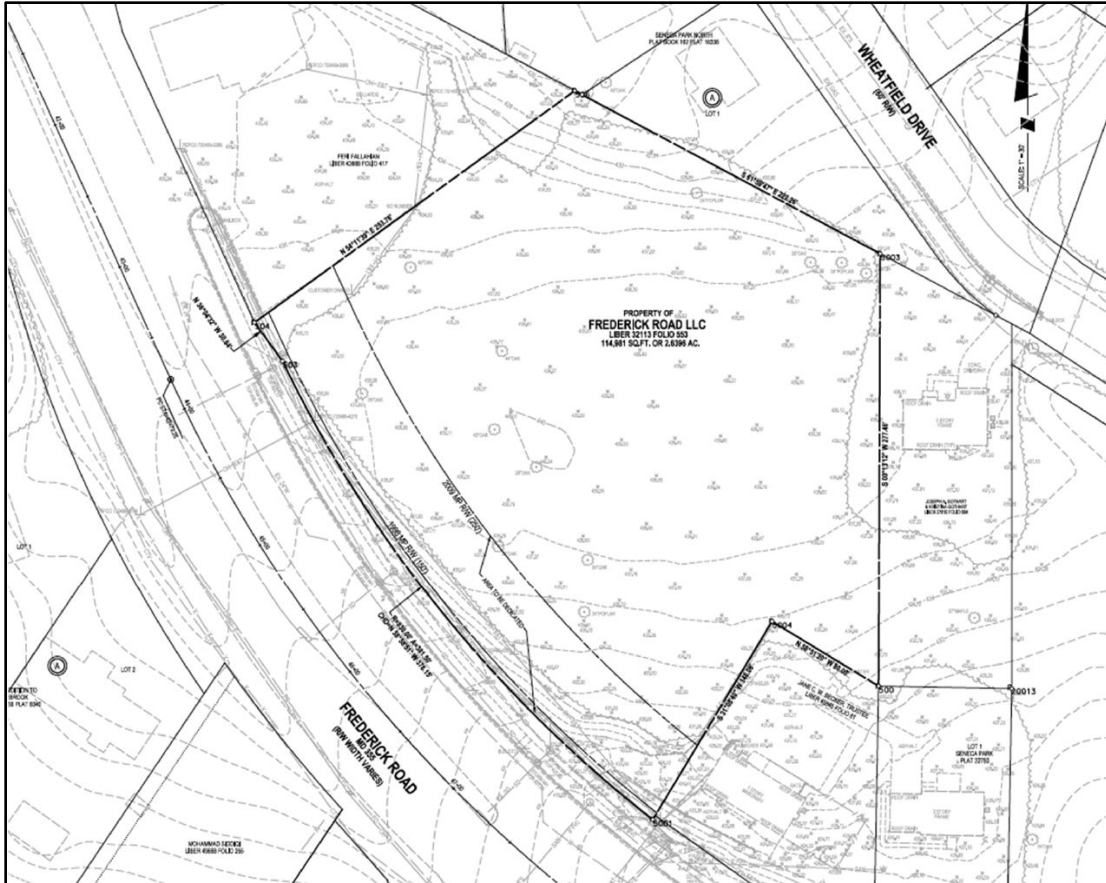


Figure 2 – Subject Property and Existing Conditions



Figure 3 – Zoning Map

## **Site Description**

The Property is an approximately 2.6-acre parcel of undeveloped, unimproved 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 at 420 feet along the south lot lines along Frederick Road, rises to about 440 feet in a flatter area in the center of the Property, and then decreases down to about 426 feet at the northern lot line. The parcel is irregularly shaped with 408 feet of frontage along Frederick Road. There are no wetlands, intermittent or perennial streams on or within 100 feet 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.

## **SECTION 3 – APPLICATIONS AND PROPOSAL**

### **Previous Approvals**

#### Conditional Use 20-02

Conditional Use 20-02 was approved on July 1, 2020 for the construction and operation of an independent senior living facility in a new 104,551 square foot, five-story, 111-unit apartment building. The senior living facility is comprised of a maximum of 111 units, with 97 one-bedroom and 14 two-bedroom units, and a maximum building height of 60 feet. The maximum number of employees is limited to six staff persons on duty at one-time during the weekday and three on the weekends. Occupancy for the residential dwelling units is restricted to senior adults, members of the household of a senior adult, and a resident care-giver as set forth in Section 59.3.3.2.C. The Conditional Use provides for 60 on-site parking spaces, with three handicapped accessible spaces and one van space, 27 long-term and one short-term bike parking spaces, and designated loading and drop-off areas. The frontage along Frederick Road (MD-355) includes a 10-foot-wide shared-use side-path which connects to the main entrance of the senior living facility by a lead-in walkway.

### **Current Application**

#### Preliminary Plan 120210110

The plan, designated as Preliminary Plan No. 120210110, Milestone Senior Germantown (“Preliminary Plan” or “Application”), proposes to create one (1) platted lot from one unplatted parcel for a senior living facility as defined by Section 59.3.3.2 of the Zoning Ordinance. This lot will contain a single building for the independent senior living facility and includes parking for residents, visitors, business vehicles, employees, and bicyclists. The facility will have up to 111 units, including 15% MPDU’s, and is focused on providing affordable senior dwelling units for persons with incomes below sixty percent AMI for Montgomery County.

The Application proposes front improvements along Frederick Road (MD-355) which, based on guidance from the 2018 *Bicycle Master Plan*, include the construction of a 10-foot wide shared-use side-path across the frontage of the Property.





Figure 4 – Illustrative Site Plan

#### SECTION 4 – ANALYSIS AND FINDINGS, 50.4.2.D

1. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape, and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and for the building use (Independent Senior Living) type contemplated for the Subject Property.

The lot was reviewed for compliance with the dimensional requirements for the R-90 Zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area and frontage and can accommodate the Independent Senior Living use, which can reasonably meet the width and setback requirements in that zone. A summary of this review is included in Table 1. The Preliminary Plan has been reviewed by other applicable County agencies, all of whom have recommended approval.

**Table 1 – Development Standards**

<b>R-90 Zone</b>	<b>Required by the Zone</b>	<b>Approved with Conditional Use</b>	<b>Proposed for Approval</b>
<b>Proposed Use</b>	-	Independent Living Facility for Seniors	Independent Living Facility for Seniors
<b>Gross Tract Area</b>	-	2.64 ac (114,981 SF)	2.64 ac (114,981 SF)
<b>Dedicated Area for Public Use</b>	-	0.51 ac (22,184 SF)	0.51 ac (22,184 SF)
<b>Net Tract Area</b>	-	2.13 ac (92,797 SF)	2.13 ac (92,797 SF)
<b>Lot (59.4.4.8.1) (min)</b>			
Lot Area	9,000 SF	114,981 SF (2.64 ac)	114,981 SF (2.64 ac)
Lot Width at Front Building Line	75'	381'	381'
Lot Width at Front Line	25'	407'	407'
<b>Lot Coverage (59.3.3.2.C.2.c.v) (max)</b>			
Compatible with Surrounding Uses	30%	20.75% (23,860 SF)	20.75% (23,860 SF)
<b>Density</b>			
Max. Units / Acre	Det. by Hearing Examiner	42 units / acre	42 units / acre
<b>Principal Building Setbacks (59.3.3.2.C.2.c) (min)</b>			
Front	50' <sup>1</sup>	50'	50'
Side	40' <sup>1</sup>	49'	49'
Sum of Side Setbacks	25'	82'	82'
Rear	25' <sup>2</sup>	73'	73'
<b>Building Height (59.3.3.2.C.2.c.iv) (max)</b>			
Independent Living Facility for Seniors or Persons with Disabilities	60' <sup>1</sup>	60'	60'
<b>Parking Setbacks (59.6.2.5.K) (min)</b>			
Front	6'	6'	6'
Side	16'	16'	16'
Rear	25'	25'	25'
<b>Parking Requirements (59.6.2.4.B)</b>			
Dwelling Units <sup>3</sup>	56 spaces	56 spaces	56 spaces
Employees (0.50 spaces/employee)	4 spaces	4 spaces	4 spaces
TOTAL	60 spaces	60 spaces	60 spaces
Standard	-	57 spaces	57 spaces
Handicap Accessible	-	3 spaces	3 spaces
Regular (H.C. Access.)	-	2 spaces	2 spaces
Van (H.C. Access.)	-	1 space	1 space
<b>Motorcycle Parking (59.6.2.3.C)</b>			

<sup>1</sup> Per 59.3.3.2.C.2.c - Use standards for an independent living facility for seniors or persons with disabilities.

<sup>2</sup> Per 59.4.4.8.B.2 - Equal to rear setback for a detached house in the R-90 zone.

<sup>3</sup> Per 59.6.2.3.I.2.b – Parking adjustment factor applied for a 50% reduction for Senior Housing.

2% of Vehicle Spaces, Max of 10 spaces	2 spaces	2 spaces	2 spaces
<b>Bicycle Parking (59.6.2.4.C)</b>			
Min. of 0.25 / DU, Max. of 50 spaces	28 spaces	28 spaces	28 spaces
Short-Term Parking	-	1 space	1 space
Long-Term Parking (95%)	-	27 spaces	27 spaces
<b>Parking Lot Landscaping (59.6.2.9.C.3)</b>			
North Planting Area	10' wide	25' wide	25' wide
East Planting Area	10' wide	16' wide	16' wide
West Planting Area	None	16' wide	16' wide
South Planting Area	6' wide	6' wide	6' wide
<b>Off-Street Loading (59.6.2.8.B.2)</b>			
1 space per 25,001 to 250,000 SF of GFA	1 space	1 space for 104,551 SF of GFA	1 space for 104,551 SF of GFA
<b>Green Area (59.3.3.2.C.2.c.viii.c) (min)</b>			
Green Area (net tract)	50% (46,399 SF)	50.5% (46,872 SF)	50.9% (47,260 SF)
Ground Level	-	37,372 SF	37,664 SF
Green Roof	-	9,500 SF	9,596 SF
<b>Dwelling Units</b>			
Total Dwelling Units	-	111 units (100%)	111 units (100%)
One Bedroom	-	97 units (87.39%)	97 units (87.39%)
Two Bedroom	-	14 units (12.61%)	14 units (12.61%)
<b>Moderately Priced Dwelling Units <sup>4</sup></b>	TBD with DHCA	TBD with DHCA	TBD with DHCA

## 2. *The Preliminary Plan substantially conforms to the Master Plan or Urban Renewal Plan*

The Preliminary Plan substantially conforms to the recommendations within the 2009 *Germantown Employment Area Sector Plan*.

### Land Use

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 Property is located in the Fox Chapel District, which is located in the southern most portion of the Sector Plan boundary. The Sector Plan recommends single-family residential land use for the Subject Property, and the R-90 Zone, and discusses interrelated themes to address challenges and opportunities with land development to "create opportunities for increased housing, including affordable housing . . ." (pg. 29). There are no specific recommendations in the Sector Plan concerning the Subject Property, and the Sector Plan confirmed the R-90 zoning of the Property, in which the proposed use is allowed as a conditional use. Prior to the adoption of the 2009 Sector Plan, the Property was originally zoned R-90. The Application substantially conforms with the general recommendations from the Sector Plan and is consistent with the Sector Plan's general land use and housing goals.

<sup>4</sup> Per 59.3.3.2.C.2.c.iii - 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.



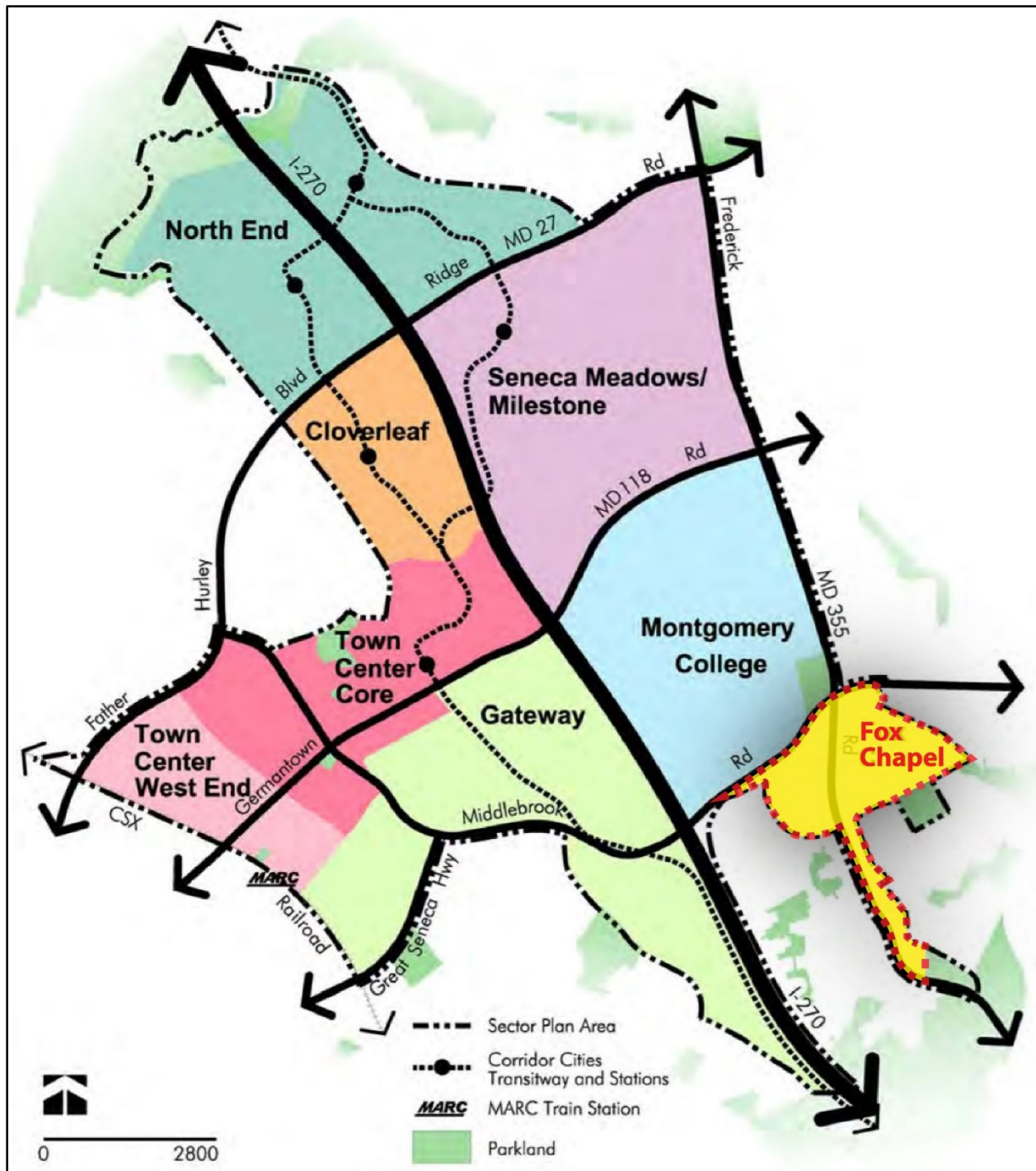


Figure 4 – Districts within the Master Plan Area

Specifically, the Application is compatible with the following general policies contained within 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.” (pg. 29). The Application complies with this recommendation by providing age-restricted affordable senior housing units within a full-service, elevator-served building with on-site amenities.

- “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.” (pg. 75). The senior living facility complies with the recommendation with the building having a maximum height of 60 feet and also meeting all setback requirements for the R-90 zone.
- “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.” (pg.29). The Subject Property is currently undeveloped with no existing affordable housing units. The Application consists of new senior affordable housing units. These units will meet the requirement of Zoning Ordinance Section 59.3.3.2.C.2.c.iii; therefore, the Application as proposed will result in no net loss of affordable housing. As such, the Application is consistent with this recommendation.

#### Environment

The Sector Plan does not have any specific environmental recommendations that would apply to the Subject Property. There are no wetlands, intermittent, or perennial streams on or within 100 feet of the Subject Property. No known rare, threatened, or endangered species exist on the Subject Property.

#### Transportation

The Application meets all transportation recommendations of the 2009 *Germantown Employment Area Sector Plan* as well as county-wide functional plans. Please refer to the following findings section on Public Facilities for specific improvements.

### 3. *Public Facilities will be adequate to support and service the area of the subdivision*

#### Roads and Other Transportation Facilities

Transportation access is adequate to serve the proposed development by this Preliminary Plan.

#### *Existing Facilities*

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.

#### *Proposed public transportation infrastructure*

The Applicant will provide a 125 ft. wide dedication from the centerline of Frederick Road to accommodate the 250 ft. ROW recommendation from the 2018 *Master Plan of Highways and Transitways*. This corridor will additionally carry the MD 355 Bus Rapid Transit (BRT), which is currently planned to be placed within the existing road ROW. The Applicant will construct a 10-ft. wide asphalt shared-use side-path along the east side of MD 355 along the frontage of the Subject Property to conform to the 2018 *Bicycle Master Plan*.

#### *Proposed private transportation infrastructure*

The Subject Property will be accessed via a single commercial access along Frederick Road. Internally, a 2-way drive aisle will circle the structure and provide access to parking along the perimeter. A sidewalk will be constructed on the interior side of the drive loop and connect to the proposed shared use path along Frederick Road along the driveway. The Applicant will enter into a contract for service for on-demand transportation for residents. A small portion of driveway, in use by the adjacent property owner to the south, currently encroaches on the Subject Property. As conditioned, this portion of driveway will be contained within an access easement to retain access to the neighboring property.

#### Local Area Transportation Review (LATR)

The Applicant submitted a transportation statement that says the Preliminary Plan generates 50 or fewer additional peak-hour person trips; therefore, the Application is exempt from review under the LATR guidelines (Attachment 8).

**Table 2 – Trip Generation**

Development	Units	Am Peak Hour			Pm Peak Hour		
		In	Out	Total	In	Out	Total
Senior Adult Housing (ITE 252)	110	7	14	21	15	12	27

#### Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lot. The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on February 26, 2021 (Attachment 7). The Fire Department Access Plan provides a fire code compliant entrance and drive to adequately access the proposed structure. The entrance and drive meet all the required turning radii, widths, and turnaround requirements for fire trucks serving the Subject Property. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy in effect at the time that the Application was submitted.

#### *4. All Forest Conservation Law, Chapter 22A requirements are satisfied*

The Subject Property is in compliance with all applicable requirements of the Forest Conservation Law.

#### Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation Plan ("NRI/FSD"), Plan No. 420191320, for the Subject Property was approved on March 29, 2019. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The Subject Property is 2.64 acres in size and is substantially forested with 2.29 acres of a mixed hardwood forest. There are nine specimen trees measuring 30-inches or greater diameter breast height ("DBH") within the forested area and one that is located just off-site. The Subject Property lies within the Middle Great Seneca Creek watershed, which is classified by the State of Maryland as Use I-P waters.

#### Preliminary Forest Conservation Plan

The Preliminary Forest Conservation Plan ("PFCP") was approved by the Planning Board on April 23, 2020, during the review of the Conditional Use application for the Subject Property, Plan No. CU2020-02. The PFCP showed the Net Tract Area on the PFCP Worksheet to be 2.81 acres which consists of the overall parcel size of 2.64 acres plus off-site disturbance of 0.17 acres for right-of-way improvements, pedestrian access, and utility connections. The Subject Property is in the R-90 Zone and is classified as High Density Residential ("HDR") as specified in the Section 22A-3 of Chapter 22A of the County Code and the Trees Technical Manual. The net tract area of the Property contains 2.29 acres of forest and the Applicant proposes to remove this forest. This results in a Total Reforestation/Afforestation requirement of 1.56 acres. The Applicant is proposing to satisfy this requirement by purchasing the appropriate credit in an off-site forest bank.

As part of the PFCP approval, the Applicant had submitted a request letter dated March 12, 2020 seeking a variance from Section 22A-12(b)(3) of the Forest Conservation Law ("FCL"). The Applicant proposed to impact one (1) and remove nine (9) trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the FCL. The Planning Board granted the variance request on April 23, 2020.

#### Final Forest Conservation Plan

The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A, and complies with the Montgomery County Planning Department's Environmental Guidelines.

The Final Forest Conservation Plan (FFCP) was submitted as part of this Application. The FFCP is in substantial conformance with the Preliminary Forest Conservation Plan.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied*

The Preliminary Plan Application received an approved stormwater plan approval from the Montgomery County Department of Permitting Services, Water Resources Section on April 26, 2021 (Attachment 6). The Application will meet stormwater management goals through the use of a green roof and microbioretention.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.*

There is no evidence, actual notice, or constructive notice of a burial site on the Subject Property. The Subject Property is not included in the Montgomery County Inventory.

7. *Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.*

The Application is in conformance with the conditions of Conditional Use 20-02.

## **SECTION 5 – COMMUNITY CORRESPONDENCE**

The Applicant has met all proper signage and noticing requirements for the Preliminary Plan Application. As of the date of this Staff Report, Staff has not received any correspondence from the community regarding this Application.

## **SECTION 6 – CONCLUSION**

The proposed lot meets all requirements established in the Subdivision Regulations in Chapter 50, Forest Conservation Law in Chapter 22A, and the proposed use substantially conforms to the recommendations of the 2009 *Germantown Employment Area Sector Plan*. Access to the lot is adequate and all public facilities and utilities have been deemed adequate to serve this Application. The Application was reviewed by other applicable County agencies, all of whom have recommended approval of the Application. Therefore, staff recommends approval of the Application, with the conditions as enumerated in the staff report.

## **ATTACHMENTS**

Attachment 1 – Statement of Justification

Attachment 2 – Preliminary Plan Composite

Attachment 3 – Final Forest Conservation Plan Composite

Attachment 4 – Conditional Use 20-04 Hearing Examiner’s Report and Decision, July 1, 2020

Attachment 5 – MCDOT Approval Letter, March 4, 2021

Attachment 6 – MCDPS Stormwater Management Approval Letter, April 26, 2021

Attachment 7 – MCDPS Fire Department Access Approval Letter, February 26, 2021

Attachment 8 – Transportation Statement

17 November 2020

**STATEMENT OF JUSTIFICATION**

Milestone Senior Living  
Preliminary Plan No. 120210110

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The Applicant in the above-referenced application for preliminary plan of subdivision approval submits the following Statement of Justification in support of its application.

**I. INTRODUCTION**

The 2.64 acre gross area parcel of land which is the subject of Plan Application No. 120210100 is also the property that has already experienced rigorous analysis in Conditional Use No. CU 20-02 approved by the Hearing Examiner on July 1, 2020. Condition 11 of the Hearing Examiner's Decision reads as follows:

11. Prior to issuance of any building permit for the subject conditional use, the Applicant or any successor in interest must obtain approval of a Preliminary Plan of Subdivision and Record Plat under Chapter 50 of the Montgomery County Code. The Applicant and any successors in interest must report to OZAH any proposed changes to the conditional use plans as a result of subdivision proceedings and must file a copy of the proposed amended plans with OZAH.

This preliminary plan application is intended to satisfy Condition No. 11 of the conditional use approval.

## **II. BACKGROUND INFORMATION**

The subject property is proposed to be developed with a five-story independent living for seniors' facility containing not more than 111 dwelling units. The record of Conditional Use Application No. CU 20-02 reflects the basis for the granting of the necessary conditional use.

## **III. CONFORMANCE WITH THE STANDARDS OF SECTION 50.4.2.D. ("REQUIRED FINDINGS")**

Preliminary Plan No. 120210100 complies with the applicable standards for the granting of the requested subdivision plan in the following manner:

*D. Required Findings. To approve a preliminary plan, the Board must find that:*

- 1. the layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59;*

The subject proposal is for the creation of a single lot. The boundaries of the proposed lot to be created are dictated by the current property lines and boundary lines after dedication of land for public rights-of-way. A single lot is appropriate for the use proposed and for the setting of the use.

- 2. the preliminary plan substantially conforms to the master plan;*

The relevant area Master Plan, the Germantown Employment Area Sector Plan, makes no recommendation regarding the shape, size or orientation of a lot or lots to be created by the subdivision process.

The Technical Staff's recommendation on CU 20-02, and the Hearing Examiner's conclusion, demonstrates that the independent living facility for services planned for this site is substantially in conformance with the recommendations of the Master Plan, due to the restricted height of the building and the delivery of affordable housing, a specific sector plan goal.

3. *public facilities will be adequate to support and  
service the area of the subdivision;*

The record for Conditional Use No. 20-02, demonstrates that all public facilities are adequate to serve the proposed use of this property. Public sewer and water lines abut the property on Frederick Road. The Applicant proposes to use "green roof" technology to serve the development and has received a stormwater management concept approval. All utilities – electric, cable, telephone, gas – are readily available to the site.

The record of Case No. CU 20-02 contains a traffic statement from the Applicant's traffic engineer explaining how the proposed use would generate less than 50 person trips and is, therefore, exempt from testing under the Local Area Transportation Review Guidelines. That same traffic statement is submitted as part of this preliminary plan application.

4. *all Forest Conservation Law, Chapter 22A  
Requirements are satisfied;*

A preliminary forest conservation plan was approved by the Planning Board after review and public hearing conducted on April 23, 2020. The Staff Report analyzing the PFCP, reviewed



in conjunction with Conditional Use Application No. CU 20-02, concluded that the application satisfied the provisions of Chapter 22A of the County Code.

5. *all stormwater management, water quality Plan, and floodplain requirements of Chapter 19 are satisfied;*

As reported previously, the project enjoys an approved stormwater management concept plan. The property is not located in an area for which a Water Quality Plan is required prior to development. A Site Development Stormwater Management Plan has been submitted to the Department of Permitting Services and is included in this submission.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M; and*

Not applicable.

7. *any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied.*

All 111 dwelling units will be available for residents of low income. The mix of units and the income levels of the residents will vary. The Applicant will coordinate with the Department of Housing and Community Development to determine the program(s) to be offered that will satisfy the requirements of Section 59.3.3.2.C.ii of the Zoning Ordinance relating to affordability of dwelling units.

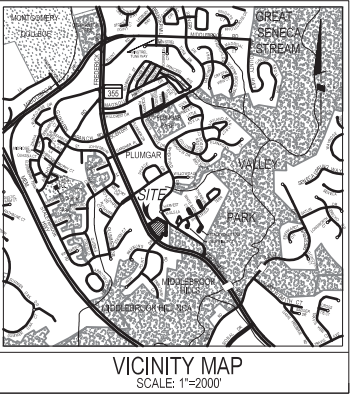
#### **IV. CONCLUSION**

The subject property, and the use proposed to be located on the property, has already gone through a rigorous review in which findings were made that the use was compatible with surrounding land uses, would not cause any undue harm to the surrounding neighborhood and would not adversely affect the health, safety or welfare of neighboring residents, visitors or employees.

For the reasons stated above, the Applicant asks that Preliminary Plan No. 120210100 be approved, with conditions as necessary.

MILESTONE SENIOR GERMANTOWN  
PRELIMINARY PLAN NO. 120210110

9TH ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND



DATA TABLE			
EXISTING ZONING:	R-90		
GROSS TRACT AREA:	2.64 AC	114,981 SF	
AREA DEDICATED TO PUBLIC USE:	0.51 AC	22,184 SF	
NET TRACT AREA:	2.13 AC	92,797 SF	
PROPOSED USE:	Independent Living for Seniors		
PROPOSED DEVELOPMENT:	111 DU		
Dwelling Units			
One Bedroom	97 DU	87.39%	
Two Bedroom	14 DU	12.61%	
Total	111 DU	100.00%	
100% of units for low income residents (60% of median income)			

DEVELOPMENT STANDARDS		
	Required	Provided
<b>LOT: (59.4.4.8.1) (min)</b>		
Lot area	9,000 SF	114,981 SF
Lot width at front building line	75 FT	381 FT
Lot width at front lot line	25 FT	407 FT
<b>BUILDING SETBACKS: (min) (59.3.3.2.C.2.c)</b>		
Front Setback (Indep.Living for Sen)	50 FT	50 FT
Side/Rear Setback (Indep.Living for Sen)	25 FT	49/73 FT
<b>PARKING SETBACKS: (59.6.2.5.K)</b>		
Front: (59.6.2.9.C.3)	6 FT	6 FT
Side: 2 times side setback for SFD house (59.6.2.5.K.2.b)	16 FT	16 FT
Rear: Equal to rear setback for SFD house (59.6.2.5.K.2.a)	25 FT	25 FT
<b>BUILDING HEIGHT: (59.3.3.2.C.2.c.iv) (max)</b>		
Independent Living Facility for Seniors/Persons with Disabilities	60 FT	60 FT
<b>LOT COVERAGE: (59.3.3.2.C.2.c.v) (max)</b>		
compatible with surrounding uses		20.75 %
		23,860 SF
<b>PARKING REQUIREMENTS: (59.6.2.4.B)</b>		
Dwelling units : 1 sp/du x 0.50*	56 SP	
Employees: 0.5 sp/employee	4 SP	
<b>TOTAL</b>	60 SP	60 SP
Standard		57 SP
Handicap Accessible		3 SP
Regular	2 SP	2 SP
Van Accessible	1 SP	1 SP
<b>Motorcycle (59.6.2.3.C)</b>		
2% of vehicle spaces, Maximum 10SP	2 SP	2 SP
<b>BICYCLE PARKING: (59.6.2.4.C)</b>		
Minimum: 0.25/DU, Maximum: 50	28 SP	28 SP
Short-Term Parking	1 SP	1 SP
Long-Term Parking (95%) - storage room on cellar level	27 SP	27 SP
<b>LOADING REQUIREMENTS: (6.2.8.B.2)</b>		
25,001-250,000 SF GFA	1 SP	1 SP
<b>GREEN AREA: (59.3.3.2.C.2.c.viii(c))</b>		
Minimum Green Area (net tract)	50 %	50.9 %
	46,399 SF	47,260 SF
Ground level green area		37,664 SF
Green roof		9,596 SF
<b>PARKING LOT LANDSCAPING: (59.6.2.9.C.3)</b>		
Perimeter Planting Area		
North Planting Area	10' wide	25' wide
East Planting Area	10' wide	16' wide
West Planting Area	None	16' wide
South Planting Area (H/C spaces)	6' wide	6' wide

\*Adjustment factor for Senior Housing (59.6.2.3.I.2.b)

LEGEND:	
-----	BOUNDARY LINE
-----	2009 R/W LINE
-----	1998 R/W LINE
-----	BRL LINE
-----	PUE LINE
-----	EXISTING CONTOUR LINE
-----	PROPOSED CONTOUR LINE
-----	L.O.D. LIMIT OF DISTURBANCE
-----	PROPOSED WOOD FENCE



LOCAL AREA MAP

APPLICANT  
FREDERICK ROAD SENIOR 4%  
OWNER LLC  
8245 BOONE BLVD., SUITE 640  
MCLEAN, VA 22102  
(703) 942-6610

ARCHITECT  
WIENECK & ASSOCIATES  
1100 VERMONT AVENUE NW, SUITE 800  
WASHINGTON, DC 20005  
(202) 349-0742

ATTORNEY  
MILLER, MILLER & CANBY  
200-B MONROE STREET  
ROCKVILLE, MD 20850  
(301) 762-5212

ENGINEER/ LANDSCAPE ARCHITECT  
SOLTESZ, INC.  
2 RESEARCH PLACE, SUITE 100  
ROCKVILLE, MD 20850  
(301) 948-2750

ENGINEER'S CERTIFICATE	
I HEREBY CERTIFY, TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, THAT THE PLAN SHOWN HEREON CONFORMS WITH THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS AS ADOPTED OCTOBER 1961 AND AS AMENDED THEREAFTER.	
SIGNATURE: _____	DATE: _____
PRINTED NAME: <u>Mahmut Agba</u>	TITLE: <u>Project Manager</u>
MD. REG. NO. <u>44048</u>	



**SOLTESZ, INC.**

Engineering  
Surveying  
Planning  
Environmental Sciences

Rockville  
Lanham  
Waldorf  
Leonardtown  
Frederick  
Soltesz DC, LLC

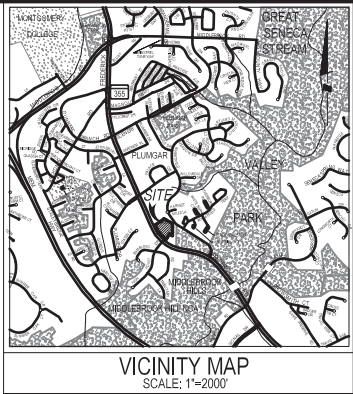
ROCKVILLE OFFICE  
2 Research Place, Suite 100  
Rockville, MD 20850  
P. 301.948.2750 F. 301.948.9067  
www.solteszco.com

NO.	REVISIONS			BY	DATE
DATE:	NOVEMBER 2020	CAD STANDARDS VERSION:	V8 - NCS		



# MILESTONE SENIOR GERMANTOWN FINAL FOREST CONSERVATION PLAN

120210110  
(9TH) ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND



PLANNING DEPARTMENT USE ONLY (E-PLANS)

FOREST CONSERVATION WORKSHEET						
Milestone Senior Germantown						
NET TRACT AREA:						
A. Total tract area						2.64
B. Addition to tract area (Off-site Work, etc.; construction required by this plan)						0.17
C. Land dedication acres (parks, county facility, etc.) ...						0.00
D. Land dedication for roads or utilities (not being constructed by this plan) ..						0.00
E. Area to remain in commercial agricultural production/use ...						0.00
F. Other deductions (specify) .....						0.00
G. Net Tract Area .....						2.81
LAND USE CATEGORY: (from <i>Trees Technical Manual</i> )						
Input the number "1" under the appropriate land use, limit to only one entry.						
	ARA	MDR	IDA	HDR	MPD	CIA
	0	0	0	1	0	0
G. Afforestation Threshold ...					15%	x F = 0.42
H. Conservation Threshold ...					20%	x F = 0.56
EXISTING FOREST COVER:						
I. Existing forest cover .....						2.29
J. Area of forest above afforestation threshold .....						1.87
K. Area of forest above conservation threshold .....						1.73
BREAK EVEN POINT:						
L. Forest retention above threshold with no mitigation ....=						0.91
M. Clearing permitted without mitigation .....						1.38
PROPOSED FOREST CLEARING:						
N. Total area of forest to be cleared .....						2.29
O. Total area of forest to be retained .....						0.00
PLANTING REQUIREMENTS:						
P. Reforestation for clearing above conservation threshold ....=						0.43
Q. Reforestation for clearing below conservation threshold ....=						1.12
R. Credit for retention above conservation threshold .....						0.00
S. Total reforestation required .....						1.56
T. Total afforestation required .....						0.00
U. Credit for landscaping (may not exceed 20% of "S") .....						0.00
V. Total reforestation and afforestation required .....						1.56
W. Total reforestation and afforestation provided on-site.....=						0.00
X. Total reforestation and afforestation provided off-site.....=						1.56

1.56 ACRES OF FOREST REMOVAL WILL BE MITIGATED BY PURCHASE FROM A MNCPPC APPROVED FOREST BANK.

## DEVELOPER'S CERTIFICATE

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 120210110 including, financial bonding, forest planting, maintenance, and all other applicable agreements.

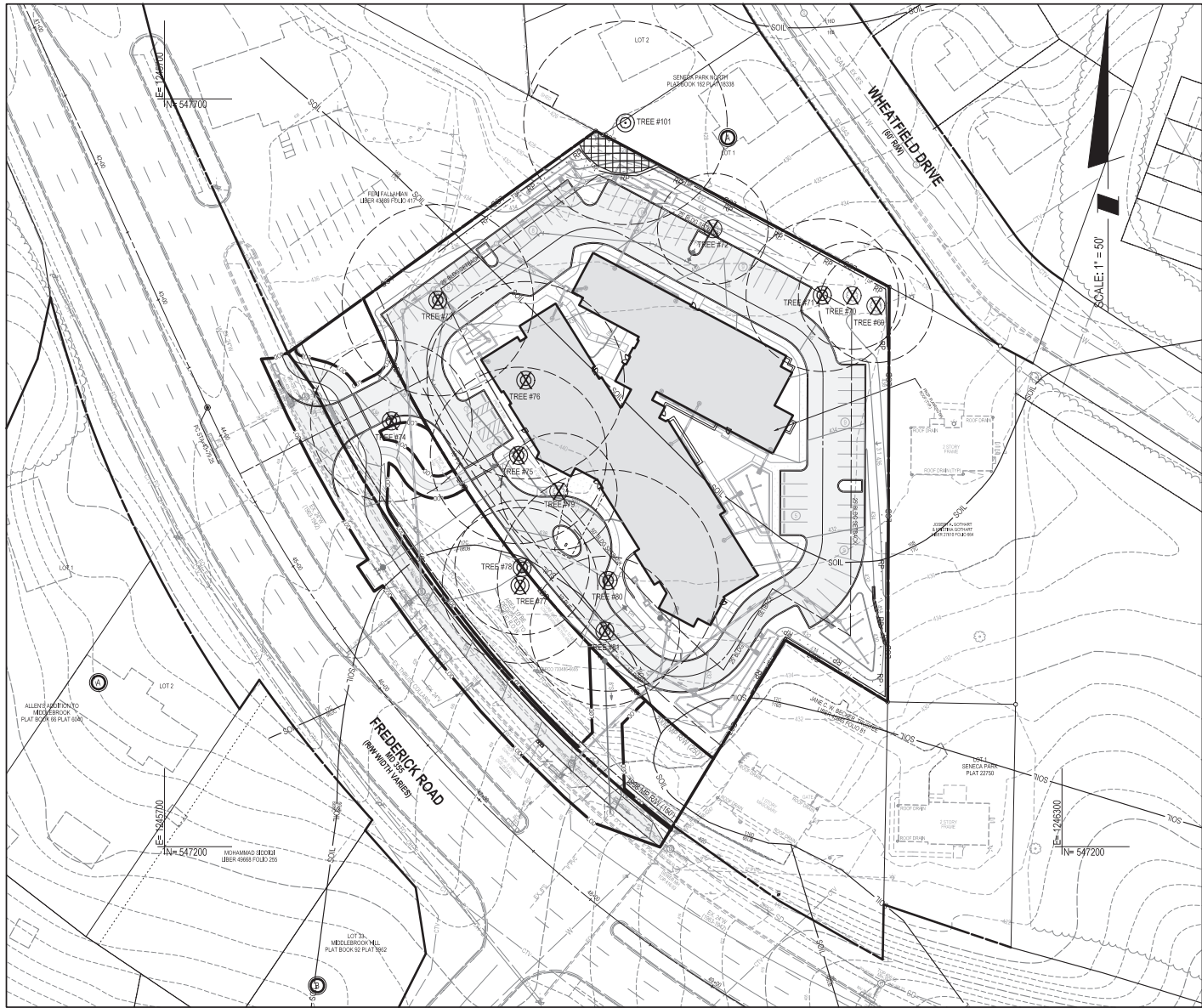
Developer's Name: FREDERICK ROAD SENIOR 4% OWNER LLC  
Printed Company Name

Contact Person or Owner: Jason Duguay  
Printed Name

Address: 8245 Boone Blvd., Suite 640, McLean VA 22102

Phone and Email: (703) 942-6610 JBD@scgdevelopment.com

Signature: \_\_\_\_\_



PLAN SCALE 1" = 50'

## FINAL FOREST CONSERVATION PLAN

SHEET FFCP-1	COVER SHEET & TREE REMOVAL PLAN
SHEET FFCP-2	FOREST CONSERVATION PLAN & TREE PLANTING PLAN
SHEET FFCP-3	FOREST CONSERVATION PLAN NOTES & DETAILS
SHEET FFCP-4	APPROVALS

## GENERAL NOTES:

1. THE EXISTING ZONE IS R-90.
2. TOTAL TRACT AREA: 2.64 ACRES.
3. AREA TO BE DEDICATED FOR PUBLIC R.O.W.: 0.51 ACRES.
4. THE PROJECT LIES WITHIN THE 2009 GERMANTOWN EMPLOYMENT AREA SECTOR PLAN.
5. THE SUBJECT PROPERTY LIES WITHIN THE MIDDLE GREAT SENECA CREEK WATERSHED.
6. THE SUBJECT PROPERTY IS NOT WITHIN A SPECIAL PROTECTION AREA.
7. UTILITY SERVICE TO BE PROVIDED BY POTOMAC EDISON, VERIZON, WASHINGTON GAS, AND COMCAST.
8. PUBLIC WATER AND SEWER SERVICE TO BE PROVIDED BY WASHINGTON SUBURBAN SANITARY COMMISSION (WSSC).
9. THE PROPERTY IS IN WATER AND SEWER CATEGORIES W-1, S-1, RESPECTIVELY.
10. THE SITE IS LOCATED ON WSSC MAP 226NW11.
11. THE SITE IS LOCATED ON TAX MAP GRID FU121, 11.
12. BOUNDARY AND TOPOGRAPHIC INFORMATION IS FROM FIELD SURVEY PERFORMED BY SOLTESZ, INC. DATED 01/07/2019.
13. THE LAYOUT OF ALL SITE ELEMENTS DEPICTED ON THIS PLAN, SUCH AS PARKING AND UTILITIES ARE APPROXIMATE AND SUBJECT TO CHANGE.
14. AN APPROVED NRIFSD EXISTS FOR THIS SITE: PLAN NUMBER 420191320, APPROVED ON 03/29/2019.
15. NO FLOODPLAIN EXISTS ON THE SITE.
16. NO WETLANDS AND/OR INTERMITTENT OR PERENNIAL STREAMS EXIST ON OR WITHIN 100 FEET OF THIS PROPERTY.
17. THERE ARE NO KNOWN RARE, THREATENED OR ENDANGERED SPECIES OCCURRING ON THIS PROPERTY.
18. THERE ARE NO DESIGNATED HISTORIC SITES ASSOCIATED WITH THE PROPERTY.
19. OFF-SITE REFORESTATION AND AFFORESTATION TO BE PROVIDED IN AN OFF-SITE FOREST BANK. A CERTIFICATE OF COMPLIANCE, WHICH SATISFIES THE 1.56 ACRE REFORESTATION REQUIREMENT, WILL BE PROVIDED PRIOR TO ANY CLEARING, GRADING OR DEMOLITION.
20. THE STORMWATER MANAGEMENT CONCEPT PLAN WAS APPROVED BY MCDPS ON 04/13/2020. THE SITE DEVELOPMENT STORMWATER MANAGEMENT PLAN WAS APPROVED BY MCDPS ON 04/26/2021.
21. WHERE PRACTICAL, TREES IN MD 355 R/W DEDICATION AREA WILL BE SAVED.

## LEGEND:

	TREE TO BE REMOVED
	EXISTING SPECIMEN TREE
	EXISTING SIGNIFICANT TREE
	EXISTING TREE WITH CRITICAL ROOT ZONE
	PROPOSED LIMIT OF DISTURBANCE
	PROPOSED BUILDING
	ROOT PRUNING
	TREE PROTECTION FENCE

## COVER SHEET & TREE REMOVAL PLAN

## FINAL FOREST CONSERVATION PLAN 120210110 MILESTONE SENIOR GERMANTOWN

GAITHERSBURG (9TH) ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND



1" = 50'

SHEET FFCP-1

OF 4

PROJECT NO.  
3851-01-00



Engineering  
Surveying  
Planning  
Environmental Sciences

ROCKVILLE OFFICE  
2 Research Place, Suite 100  
Rockville, MD 20850  
P. 301.948.2750 F. 301.948.9067

Rockville  
Lanham  
Waldorf  
Leonardtown  
Frederick  
Soltesz DC, LLC

www.solteszco.com

## MISS UTILITY NOTE

INFORMATION CONCERNING EXISTING UNDERGROUND UTILITIES WAS OBTAINED FROM AVAILABLE RECORDS. THE CONTRACTOR MUST DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AND UTILITY CROSSINGS BY DIGGING TEST PITS BY HAND, WELL IN ADVANCE OF THE START OF EXCAVATION. CONTACT "MISS UTILITY" AT 1-800-252-7777, 48 HOURS PRIOR TO THE START OF EXCAVATION. IF CLEARANCES ARE LESS THAN SHOWN ON THIS PLAN OR TWELVE (12) INCHES, WHOEVER IS LESS, CONTACT THE ENGINEER AND THE UTILITY COMPANY BEFORE PROCEEDING WITH CONSTRUCTION. CLEARANCES LESS THAN NOTED MAY REQUIRE REVISIONS TO THIS PLAN.

## APPLICANT

FREDERICK ROAD SENIOR 4% OWNER LLC  
8245 BOONE BLVD., SUITE 640  
MCLEAN, VA 22102

CONTACT: JASON DUGUAY  
(703) 942-6610

## MAP

5047

TAX MAP

FU 121, 11

WSSC 280 SHEET

226 NW 11

SITE DATUM

HORIZONTAL: NAD83

VERTICAL: NGVD29

## GRID

C3

ZONING CATEGORY:

R-90

WATERSHED:

MIDDLE GREAT

SENECA CREEK



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## **I. STATEMENT OF THE CASE AND DESCRIPTION OF PROCEEDINGS**

Filed on February 12, 2020, Edmonson & Gallagher Property Services, LLC (hereinafter “Applicant” or “E&G”) has applied for a conditional use for an Independent Living Facility for Seniors with up to 111 dwelling units under Section 59.3.3.2.C of the Zoning Ordinance. The subject property is identified as Parcel 507 of the Middlebrook subdivision (Tax Account No. 09-00767475), which is located on Frederick Road (Md. Rte. 355) about 0.2 miles north of Wheatfield Drive, Germantown, Maryland 20874. Exhibits 1, 52. The property is zoned R-90. *Id.*

On March 27, 2020, OZAH issued a Notice of Hearing scheduling the public hearing for May 11, 2020. Exhibit 30. Shortly thereafter, E&G amended its application. Exhibits 33, 34. OZAH issued a Notice of Motion to Amend on April 15, 2020. Exhibit 50.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued a report recommending approval of the application on April 23, 2020, subject to the following conditions (Exhibit 52, pp. 2-3):

- 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 issuance of any building permit for the subject conditional use, the Applicant must obtain approval of a Preliminary Plan [of] 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, that Applicant shall provide an access easement for the use of the existing driveway for the adjacent [property] 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 approval of a preliminary plan, the Applicant must obtain approval of a stormwater management concept plan.
- 11) The Applicant must comply with the approved forest conservation plan for the subject property.

At its meeting on April 23, 2020, the Planning Board recommended approval of the application with the conditions recommended by Staff. Exhibit 58. The Board also approved a Preliminary Forest Conservation Plan (PFCP) for the project. Exhibit 56.

The public hearing proceeded as scheduled on May 11, 2020.<sup>1</sup> The Applicant presented six witnesses: Mr. James H. Edmonson, a representative of the Applicant, Ms. Jane Przygocki, a land planner, Mr. Michael Wiencek, Jr., an architect, Mr. Mahmut Agba, a professional civil engineer, Mr. Daniel Park, a landscape architect, and Ms. Nicole White, a transportation planner and traffic engineer. Except for Mr. Edmonson (the Applicant), all were qualified as experts in their respective fields. 5/11/20 T. 35, 76, 113, 123, 136. The record was left open to June 21, 2020 to receive a proposed condition from the Applicant regarding provision of shuttle program to nearby services

---

<sup>1</sup> Due to the COVID-19 pandemic, the public hearing was held remotely via Microsoft Teams to ensure the safety of participants.



and for Staff's review of the condition. 5/11/20 T. 142-143. E&G provided the proposed condition on May 15, 2020, and Staff recommended approval of the condition on the same day. Exhibits 62, 70.

Shortly after the May 11<sup>th</sup> public hearing adjourned, the Hearing Examiner was notified that an adjacent property owner who lives on Wheatfield Drive, Mr. Joseph Gothard, had tried to join the public hearing but had been unable to do so.<sup>2</sup> Exhibit 59(a). The same day, the Hearing Examiner offered to reopen the public hearing to permit Mr. Gothard to testify. Exhibit 59. Mr. Gothard agreed and submitted two letters listing his concerns about the project. Exhibits 60, 73. The Hearing Examiner reconvened a second public hearing on May 21, 2020. Mr. Gothard appeared at that hearing. In response to Mr. Gothard's testimony, the Hearing Examiner asked the Applicant to explore moving the dumpster further from Mr. Gothard's house and to revise the landscaping closest to his home. The record was held open until June 16, 2020 for the Applicant to submit revised plans by May 28, 2020, to receive comments from Mr. Gothard by June 3, 2020, for Staff's review of any revisions by June 12, 2020, and for the Applicant's comments on Staff's recommendations by June 16, 2020. 5/21/20 T. 114.

The Applicant submitted revised plans removing the dumpster entirely and proposing an alternative trash disposal system. Exhibit 72. E&G also revised the landscape plans to respond to concerns expressed by Mr. Gothard at the public hearing. Exhibit 72. Staff confirmed that the revised plans conformed to the requirements of the Zoning Ordinance and informed the Hearing Examiner that any changes needed to the PFCP (due to the revised landscaping) would be addressed during approval of the Final Forest Conservation Plan (FFCP). Exhibit 83. Mr. Gothard submitted additional correspondence questioning whether the Zoning Ordinance permitted heights of 60 feet.

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<sup>2</sup> The May 11, 2020 public hearing adjourned at 12:52 p.m. Approximately 45 minutes later, OZAH received the notification from staff of the Montgomery County Council that Mr. Gothard had been unable to join the public hearing. Exhibits 59(a).

Exhibits 74, 76, 77. The Hearing Examiner responded by providing the Zoning Ordinance provisions governing the permitted height of this use. Exhibits 75, 77. The record closed on June 16, 2020, after E&G submitted a revised Conditional Use Site Plan certified by a professional engineer (Exhibit 81(a)) and a Landscape and Lighting Plan (Exhibit 81(b)) certified by a licensed landscape architect.

## **II. FACTUAL BACKGROUND**

### **A. Subject Property**

The unimproved property consists of 2.64 acres on the east side of Frederick Road. Exhibit 52, p. 4; 5/11/20 T. 49. Mature tulip poplars and oaks populate 2.24 acres of the property, with an understory of honeysuckle and multiflora rose. *Id.* The property has varied topography with steep slopes in some areas. Exhibit 52, p. 4. Ms. Przygocki testified that the property's highest point is at its center. The site slopes away from the center and is relatively flat except around the perimeter. There are steep slopes toward Frederick Road at the southern edge of the property. Slopes exist along the northern perimeter near Frederick Road but are not as steep. 5/11/20 T. 47-49.

Staff advised that the site has approximately 408 feet of frontage along Frederick Road. Exhibit 54, p. 4.<sup>3</sup> According to Ms. Przygocki, the right-of-way required for Frederick Road was expanded in 2009 from 150 to 250 feet to accommodate a bus rapid transit line. E&G will provide the full 250-foot right of way. 5/11/20 T. 51.

Staff advises that there are no sensitive environmental areas on the subject property. Exhibit 52, p. 4. Adjacent properties include a single-family detached home along Frederick Road to the south. Driveway access to that home is through the subject property from Frederick Road.

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<sup>3</sup> At the public hearing, Ms. Przygocki testified that the site has 412 feet of frontage on Frederick Road. 5/11/20 T. 49. The Hearing Examiner does not find this slight discrepancy sufficiently relevant to require resolution.

The same access drive serves another home to the south. E&G plans to provide an access easement for both properties. A fraternal club with a seafood truck in the parking lot borders the property to the north. Mr. Gothard's house sits approximately 16 feet east of the eastern property line. Exhibit 52, p. 4; 5/11/20 T. 52-55; 5/21/20 T. 11. An aerial photograph of the property (Exhibit 52, p. 4) from the Staff Report, is shown below:

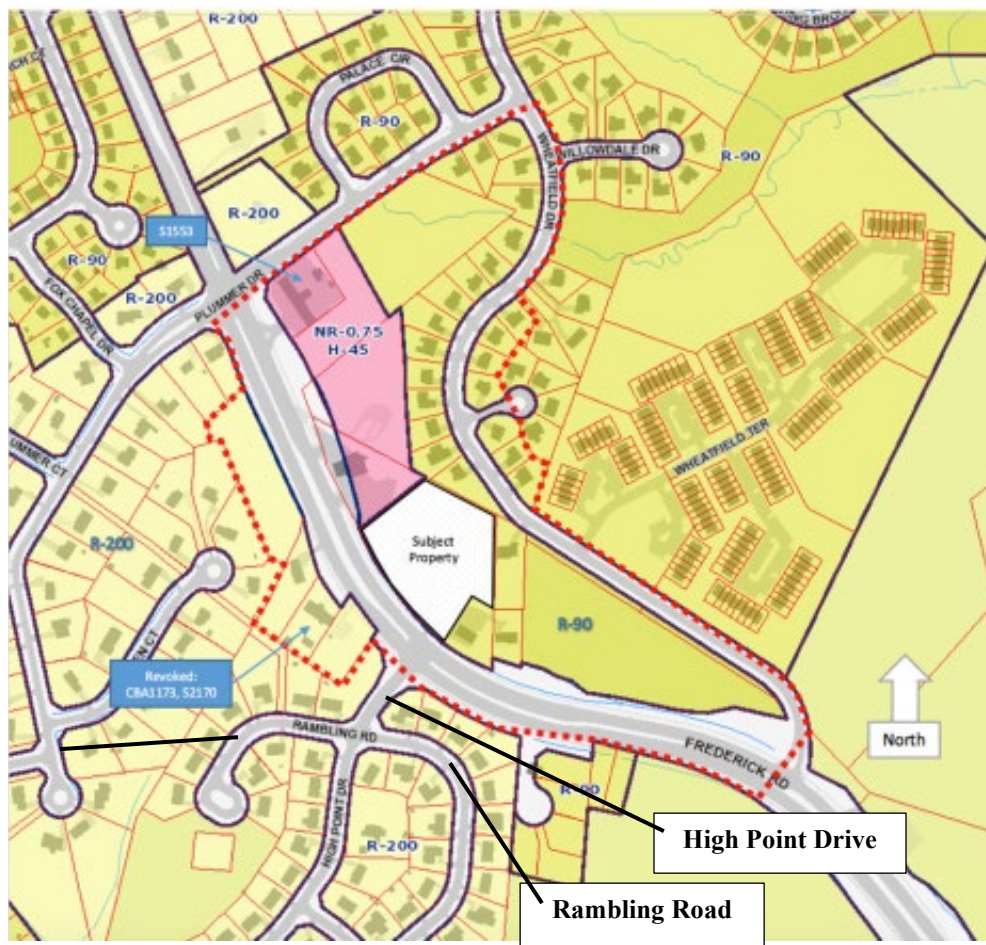


## B. Surrounding Area

The “surrounding area” of a proposed conditional use is the area that will experience direct impacts from the use. It is delineated and characterized to determine whether the proposed use will be compatible with the properties that will be impacted. Once delineated, the Hearing Examiner must assess the character of the area to determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff and the Applicant concur on the delineation of the surrounding area. Ms. Przygocki defined the boundaries as Frederick Road between Wheatfield Drive and Plummer Drive to the

west, and Wheatfield Drive to the south and east, and Plummer Drive to the north. She opined that the area directly impacted should comprise all the adjacent and confronting properties, those accessed from Wheatfield Drive and those confronting the property along Frederick Road. She did not include properties across Frederick Road slightly to the south because the front yards do not face Frederick Road. 5/11/20 T. 44-46. A figure from the Staff Report (Exhibit 52, p. 6, below) shows the area delineated by Staff and the Applicant in red:



Staff characterized the neighborhood as consisting “primarily of suburban residential with limited commercial uses, including a gas station, restaurant, fraternal club, and a credit union. According to Staff, the neighborhood to the east was developed in 1992 and 1993, the confronting residences (across Frederick Road) were developed circa 1962. The adjacent fraternal lodge and restaurant is from 1940. The green area at the southern tip of the neighborhood boundary is a

small portion of the Great Seneca Stream Valley Park. Exhibit 52, p. 6. Staff advises that there are no pending development approvals within the surrounding area. *Id.* Ms. Przygocki characterized the surrounding area as a single-family detached neighborhood, mixed with commercial and office uses. 5/11/20 T. 47.

The Hearing Examiner accepts Staff's and the Applicant's delineation of the surrounding area with the addition of those properties on the south side of Frederick Road along High Point Drive and Rambling Road. These have direct views of the subject property from the rear of these properties and therefore will be directly impacted by the project. There is no need to include the right-of-way along Frederick Road without acknowledging that these homes are impacted as well.

This addition does not change the character of the neighborhood as determined by Staff. It is a mix of suburban residential in single-family detached zones (*i.e.*, R-200 and R-90) with nodes of commercial uses in the Neighborhood Retail Zone.

### **C. Proposed Use**

E&G proposes to construct and operate an Independent Living Facility for Seniors with 111 dwelling units. Mr. Edmonson testified that he is the lead developer for the property. He is involved in two different entities, E&G Property Services, LLC, which is mainly a property management company, and E&G Group 2, LLC, which is a development entity that serves as a guarantor for the affordable housing projects they develop. He and a partner formed their business in 1982 to develop affordable housing. Since then, they have developed or acquired approximately 10,000 affordable housing units. 5/11/20 T. 10-11.

E&G's goal is to create an independent living facility for people of low and moderate income that will provide amenities and opportunities like those available in market rate senior living projects. They want their residents to lead full and enriched lives despite having lower incomes. 5/11/20 T. 16-17.

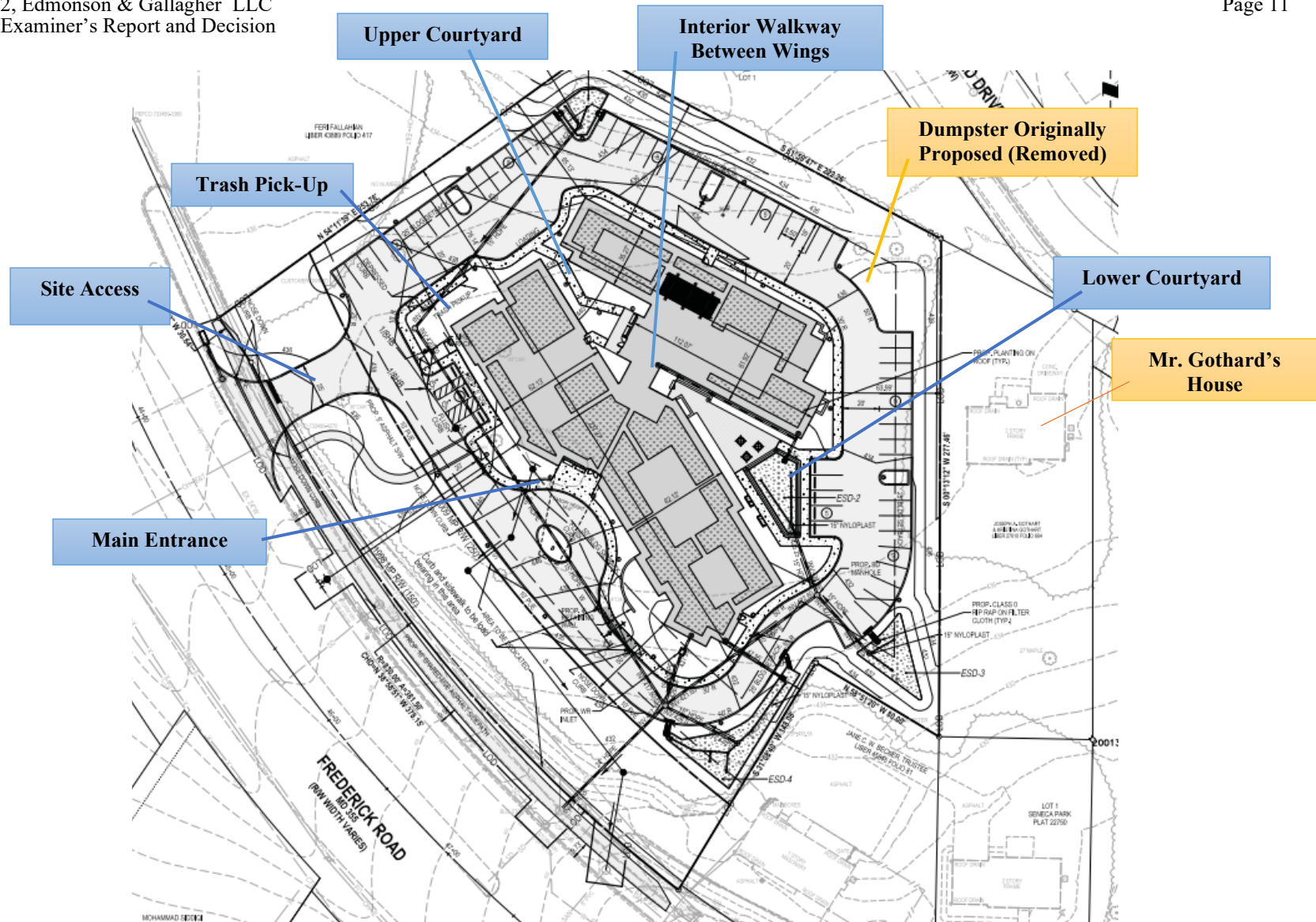


The Applicant projects the unit mix to be 97 one-bedroom and 14 two-bedroom units. The latter accommodate couples that wish to live together if they meet the age criteria. Development will be financed through low-income property tax credits. To qualify for that financing, the building must have the same appearance as a market-rate development. 5/11/20 T. 15-18. There will be a primary and secondary entrance to the main floor with a main lobby. Amenities will include courtyards, a cybercafé, a library, a fitness room, and a rooftop garden. Mr. Edmonson testified that the project will look much different than what is stereotypically thought of as “low-income housing.” 5/11/20 T. 18. An architectural elevation showing the front of the facility (viewed from Frederick Road), is shown below (Exhibit 51(b)):












### **1. Site Plan and Floor Plans**

Ms. Przygocki described the Conditional Use Site Plan, an excerpt of which (Exhibit 81(a)) is shown on the next page. The entrance drive from Frederick Road will be closer to the property's northern boundary to ensure SHA sight distance standards for a commercial entrance. Because Md. Rte. 355 is a divided highway at that point, the entrance will be right-in, right-out so that no one must cross the median. Internal circulation consists of a loop drive surrounding the building. The building has two wings that open to interior courtyards for use by the residents. The front



**Conditional Use Site Plan  
Exhibit 81(a)**

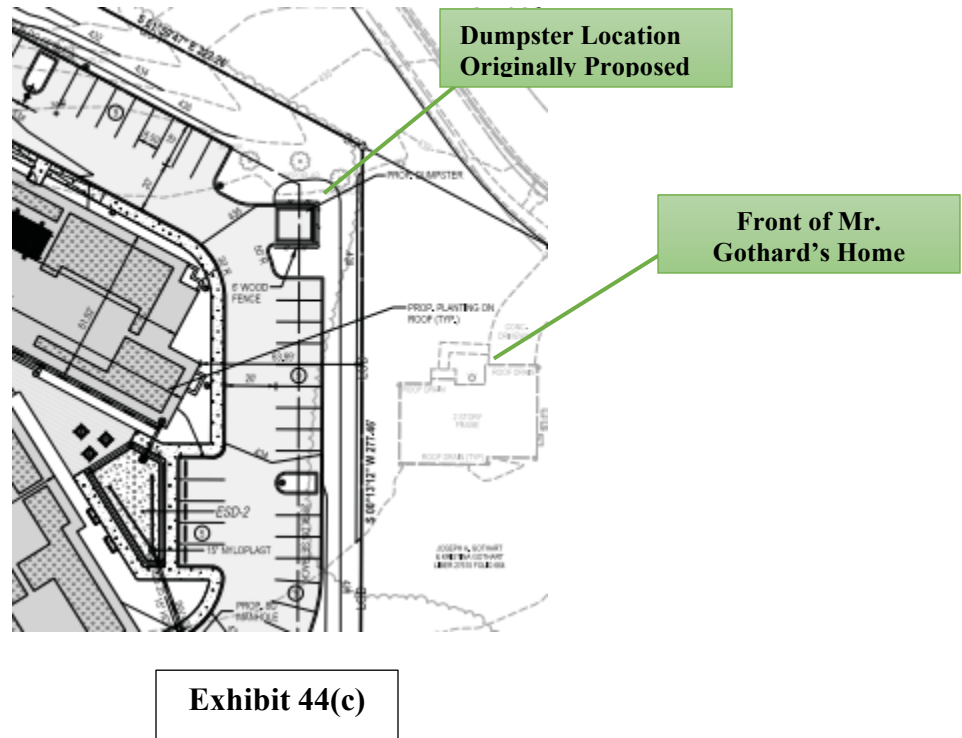
<u>LEGEND:</u>	
	BOUNDARY LINE
	2009 R/W LINE
	1998 R/W LINE
	BRL LINE
	PUE LINE
	EXISTING CONTOUR LINE
	PROPOSED CONTOUR LINE
	LIMIT OF DISTURBANCE
	PROPOSED WOOD FENCE

entrance has an ADA accessible drop-off under a front canopy or porte-cochere. All walkways on the site have been designed to be ADA accessible. 5/11/20 T. 55-58.

The Applicant is providing 60 parking spaces, with loading areas and drop-off. Three spaces are handicapped accessible, including on van space. The plan includes one short-term and 27 long-term bicycle parking spaces. *Id.* T. 59. The limited use standards require a setback of 50 feet from the front right-of-way, which must be green space. Except for the access drive and ADA parking spaces, the project meets this standard. *Id.* T. 65.

As originally submitted, the conditional use site plan showed a dumpster in the northeast corner of the site, near the property line adjacent to Mr. Gothard's front yard. Exhibit 44(c). An excerpt from the initial Conditional Use Site Plan (Exhibit 44(c)) is on the following page. In response to concerns raised by Mr. Gothard, the Applicant agreed to amend the Conditional Use Site Plan by eliminating the dumpster entirely. Exhibit 72. Instead, E&G will utilize a waste disposal method that is mostly internal to the building. The alternative operations for disposing of trash are summarized in Part II.C.3.c of this Report.





The Applicant's expert in architecture, Mr. Wiencek, described the interior layout of the building. The building consists of two wings that create two triangular interior courtyards. The different wings are linked by an interior walkway at various levels. Due to the grade, the southern courtyard is about one-story lower than the northern courtyard. This will appear lower from the interior walkway than the northern courtyard, which is at grade. 5/11/20 T. 81-82.

A fitness center will be in the northeast corner of the ground (cellar) floor. The corridor there widens to include an elevator that goes to the main lobby. Another elevator is in the northwest corner of the smaller rear wing. T. 82-83. Amenities include the fitness center, a library, and a computer room that will provide Wi-Fi access to residents that don't have it. South of that on the ground floor is an unplanned amenity space. They have used this kind of space in the past for visiting hairdressers and community events. E&G has not yet established a program for this space. 5/11/20 T. 52-54.

The first floor includes the main lobby, with a concierge/security desk. Offices with a conference room and secure storage are located behind the security desk. A package pick-up spot, elevator, and mail room are off the main lobby. A very large community room with a kitchenette will be just to the left of the main entrance for community meetings, parties or other gatherings. They've situated a small vestibule between the community room and the lobby where people can wait for visitors, cabs or Ubers, or meet other residents. The remainder of the front southern wing will be residences. Access to the rear wing is through an enclosed corridor with a one-story lounge where people can view the courtyards. The remainder of the wing contains residences and an elevator that leads to the ground floor and to the rooftop garden. Floors 2-4 are primarily residences with gathering spaces to sit and meet. Floorplans for all floors (Exhibit 51(b)) are shown on the next page. 5/11/20 T. 87-90.

## **2. Site Landscaping, Lighting and Signage**

### *a. Landscaping.*

Mr. Park testified that there are four main components to the landscaping proposed, some of which are required and some of which are in addition to what's required: (1) perimeter plantings, (2) base plantings around the buildings, (3) ornamental courtyard plantings, and (4) street tree plantings along the southern edge of the property. 5/11/20 T. 12. Fifty percent of the site must green area. The landscape plan accomplishes this well by using ornamental woody and ground cover shrubs to create a very attractive environment. The landscaping plan satisfies the numerous technical requirements of the Zoning Ordinance. *Id.* T. 129-130. The landscaping goes beyond those requirements by providing additional setbacks around the parking area. The setback for parking facilities is 10 feet. E&G is providing a 16-foot setback along the eastern edge and a 25-foot setback at the northern property line to provide additional screening. 5/11/20 T. 132.



4 FOURTH FLOOR PLAN  
ASIST



2 FIRST FLOOR PLAN  
ASIST



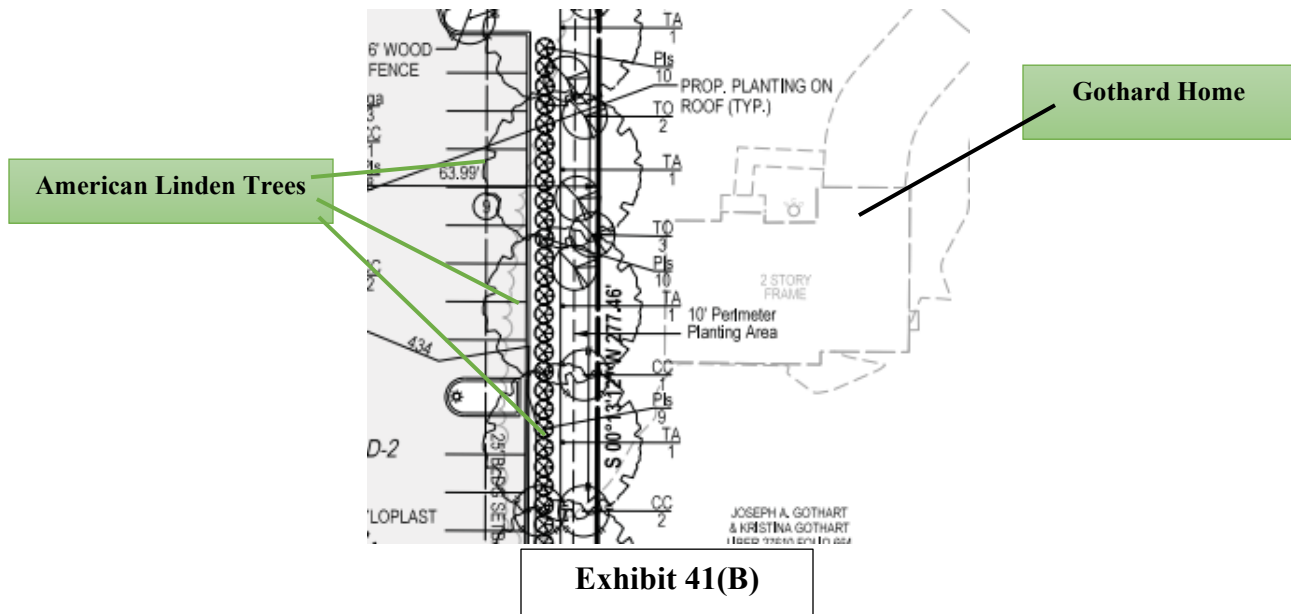
3 SECOND & THIRD FLOOR PLAN  
ASIST



1 CELLAR FLOOR PLAN  
ASIST

Floor Plans  
Exhibit 51(b)

The Landscape Plan originally proposed showed American Linden trees along the property line closest to Mr. Gothard's house, (Exhibit 41(b), below):

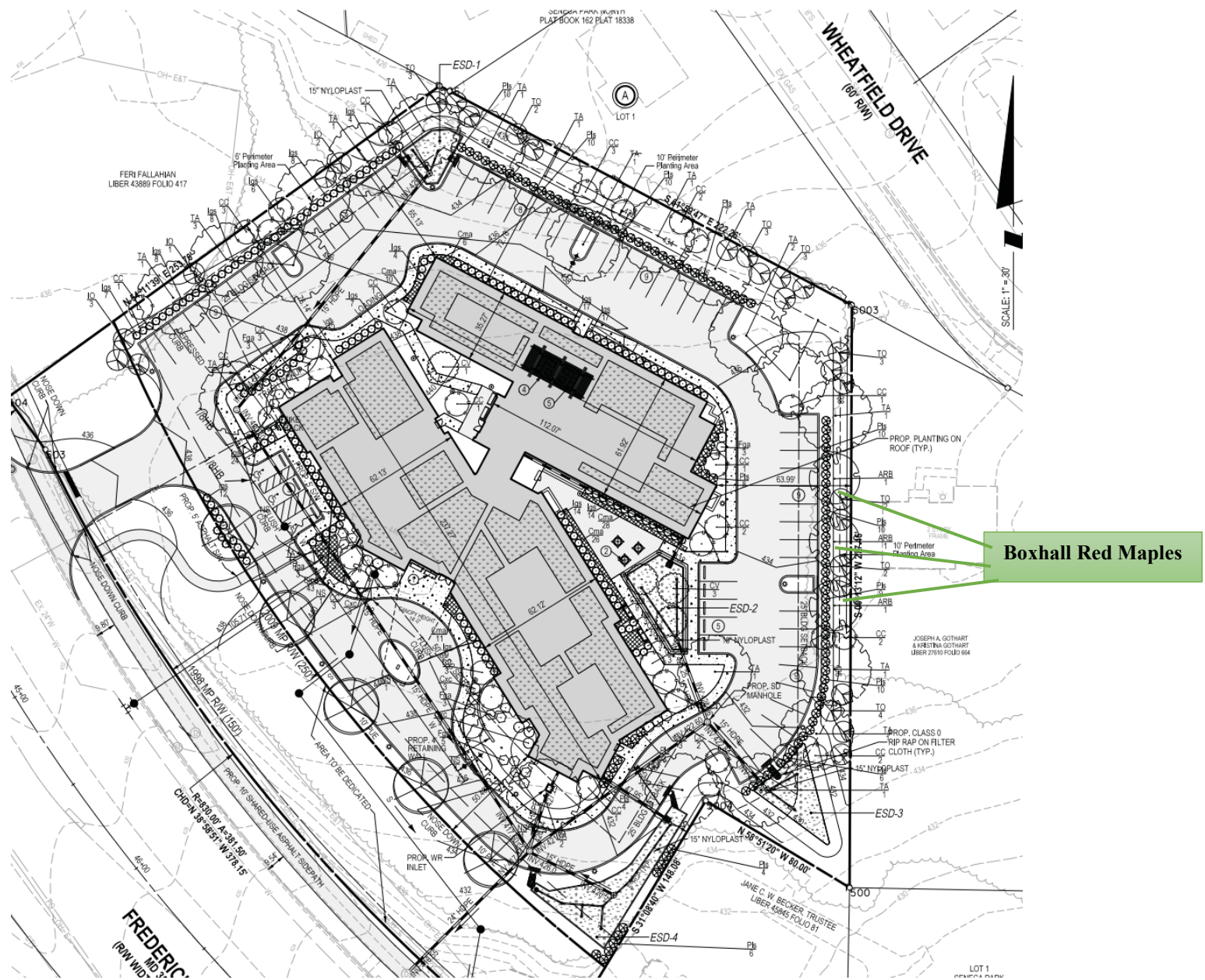


In response to concerns raised by Mr. Gothard at the public hearing, the Applicant amended its Landscape Plan to remove three of the American Linden trees closest to Mr. Gothard's house and substituted Bowhall red maples Exhibit 81(b). The Applicant described the revisions in a letter to the Hearing Examiner (Exhibit 72):

The most important changes occur along the common property line between the subject property and the Gothard residence. The three (3) *Tilia Americana* (American Linden) trees shown on Exhibit 41(b) adjacent to Mr. Gothard's property have been replaced with three (3) *Acer rubrum* "Bowhall" (Bowhall Red Maples). The Bowhall variety are deciduous variety that at full maturity are far less broad than the originally proposed Linden trees. The Bowhill [sic] will be more narrow, compact and upwardly branching. The trees will be planted approximately eight (8) feet from the common property line. With a full spread of approximately fifteen feet in 25+/- years, the branches should not extend over the common property line. The planting bed between the property line and the parking surface will have additional understory plantings including a solid 6-foot evergreen hedge (cherry laurel), flowering redbud trees and arborvitae (evergreen) trees.

Staff confirmed that the revised landscaping plan conformed to the requirements of the Zoning Ordinance. Exhibit 83. Excerpts from the revised Landscaping Plan (Exhibit 81(b)) is shown on the following pages.





**Landscape Plan  
Exhibit 81(b)**

LANDSCAPE PLANT SCHEDULE-MILESTONE MONTGOMERY, LLC						
<b>DECIDUOUS TREES</b>						
QTY	KEY	BOTANICAL NAME	COMMON NAME	SIZE	TYPE	REMARKS
3	ARB	<i>Acer rubrum</i> 'Bowhall'	Bowhall Red Maple	3" Cal.	B&B	Single-Stem, Full
5	NS	<i>Nyssa sylvatica</i>	Black Gum	3" Cal.	B&B	Single-Stem, Full
26	TA	<i>Tilia amerciana</i>	American Linden	3" Cal.	B&B	Single-Stem, Full
<b>EVERGREEN TREES</b>						
QTY	KEY	BOTANICAL NAME	COMMON NAME	SIZE	TYPE	REMARKS
6	IO	<i>Ilex opaca</i>	American Holly	10' Ht.	B&B	Single-Stem, Full
22	TO	<i>Thuja occidentalis</i>	American Arborvitae	10' Ht.	B&B	Single-Stem, Full
<b>ORNAMENTAL TREES</b>						
QTY	KEY	BOTANICAL NAME	COMMON NAME	SIZE	TYPE	REMARKS
36	CC	<i>Cercis canadensis</i>	Eastern Redbud	10' Ht.	B&B	Multi-Stem, Full
4	CV	<i>Chionanthus virginicus</i>	Fringe Tree	10' Ht.	B&B	Multi-Stem, Full
<b>SHRUBS</b>						
QTY	KEY	BOTANICAL NAME	COMMON NAME	SIZE	TYPE	REMARKS
12	Cxc	<i>Caryopteris x clandonensis</i>	Blue-Mist Shrub	36" Ht.	Cont. #4	Full, 5' O.C.
17	Fga	<i>Fothergilla gardenii</i>	Dwarf Fothergilla	30" Ht.	Cont. #3	Full, 4' O.C.
177	lgs	<i>Ilex glabra</i> 'Shamrock'	Inkberry	30" Ht.	Cont. #4	Full, 4' O.C.
107	Pls	<i>Prunus laurocerasus</i> 'Schipkaensis'	Schipka Cherry Laurel	36" Ht.	Cont. #4	Full, 5' O.C.
<b>GROUND COVER</b>						
QTY	KEY	BOTANICAL NAME	COMMON NAME	SIZE	TYPE	REMARKS
151	Cma	<i>Convallaria majalis</i>	Lily-of-the-Valley	1 Gal.	Cont. #1	Full, 2' O.C.

**Landscape Plan Legend  
Exhibit 81(b)**

*b. Lighting.*

The Applicant's Photometric Plan proposes two types of fixtures. Exhibit 41(e); Exhibit 52, p. 14. Mr. Parks testified that one type is a full-mounted 12-foot fixture to illuminate the parking surfaces. The second is 3-foot high light with dome-top louvers to illuminate the walkways for pedestrians, particularly at the drop-off area and the courtyards. The parking lot pole lights have an outside shield to directly light away from the property lines. The maximum illumination at the property line will be 0.01 footcandles. 5/11/20 T. 133.

*c. Signage.*

Staff reports that there will be no signage on the property. Exhibit 52, p. 15.

### **3. Operations**

*a. Staffing.*

Mr. Edmonson described site operations. Staff for this facility typically includes two administrative employees, a site manager and a clerk, and two maintenance employees. They are requesting to have a maximum of six employees to handle special activities or additional maintenance as the building ages. Typical office hours for employees will be Monday through Friday from 9:00 a.m. to 5:00 p.m. and Saturday morning. There is an on-call employee available when the office is not staffed to handle maintenance emergencies. T. 18-20.

*b. Waste Disposal and Generators.*

In response to concerns expressed by Mr. Gothard during the public hearing, E&G has removed the exterior dumpster shown on the original site plan and proposes to implement a waste disposal system that is mostly internal to the building. E&G writes (Exhibit 72):

The potential relocation of the waste dumpster caused the Applicant and its architects to reconsider its entire program of waste disposal. The result is that, with some modest internal modifications, Edmondson [sic] & Gallagher is now proposing to use a more modern and much more sophisticated system of garbage and waste collection and disposal.

What will now happen is that there will be chutes on each floor of the residential building(s). Residents will deposit their waste into those chutes. Controls will separate recycling materials from regular waste. At the bottom of the chute in a trash room there is a moving sorter that shifts to drop recycling materials into a container called a "toter." The alternative shift function will deliver trash to a special trash compactor after which the compacted waste is delivered to another set of "toters." Compaction results in the need for fewer toters and greater mobility for the toters. All toters are on wheels and can be easily maneuvered by one person. Then, an hour or two before the regularly scheduled pick up of waste is expected to occur, maintenance staff will roll the toters out to the concrete pad located at the northwest end of the front building which is shown on the amended site plan. A garbage truck will pull up alongside the concrete pad (there will be a "depressed



curb” between the drive lane and the sidewalk) and the waste removal company staff will manually unload the “toters” into the garbage truck and the truck will proceed in a clockwise fashion around the building to exit the site.

Mr. Wiencek testified that the generators will be in the interior of the building and will vent to the roof. This will prevent odors from spreading inside the building and mitigate noise from the generators. 5/11/20 T. 86.

*c. Shuttle Service for Residents.*

In its Report, Staff made the following comment on shuttle service for the project (Exhibit 52, p. 10):

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.

At the public hearing, the Applicant clarified that the shuttle plan referenced was one to transport residents to nearby services, rather than one to handle peak parking on-site. 5/11/20 T. 21. Mr. Edmonson testified that (1) many residents would have cars to transport themselves to various activities, and (2) that it was far too early in the development process to specify a vendor or service that may provide transportation for group activities. *Id.* T. 20-24. At the request of the Hearing Examiner, the Applicant proposed the following condition on shuttle service (Exhibit 62):

The Applicant will contract with a service provider to offer on-demand van and/or shuttle service to transport residents to destinations with medical services, shopping areas, recreation and other community services.

**D. Environmental Issues**

Staff advises that there are no environmentally sensitive features of the site. Exhibit 52, p. 4. The Planning Board has approved a Preliminary Forest Conservation Plan for the subject property. Exhibit 56.

### **E. Community Response**

Mr. Joseph Gothard, who owns the adjacent property to the east of the site, testified to eight concerns that he had with the proposed use, which he summarized in letters sent in advance of the May 21, 2020 public hearing. Exhibit 60, 73. First, Mr. Gothard expressed concern that the project would devalue his property. He asked for objective evidence, based on other E&G projects, that this would not occur. 5/21/20 T. 8; Exhibit 73.

Second, Mr. Gothard wanted evidence that no fencing or other barriers erected on the subject property would damage his property. *Id.*

Mr. Gothard was also concerned about damage to his property from trees on the subject property. *Id.* He testified that his home had been damaged in the past by limbs falling from the existing trees. The drainage system under his basement had been damaged by tree roots spreading from trees on the subject property. 5/21/20 T. 78-79. His house is approximately 16 feet from the common property line. *Id.* T. 37. He requested that trees bordering his property be setback further from his property line to reduce the potential for damage. Exhibit 73.

Another major concern of Mr. Gothard's was the proposed location of the dumpster, behind the independent living facility but near his front yard. He was concerned about noise, odors, and rodents emanating from the dumpster. When E&G offered to restrict times for waste pick-up, Mr. Gothard testified that his wife works 12-hour night shifts and he worked during the day. They did not wish to hear the noise at any time. 5/21/20 T. 51-52.

Mr. Gothard's fifth and six requests were to prevent all storm drainage from entering his property and to implement measures to prevent rodents and pests from entering his property. Mr. Gothard also wished to ensure that noise from the facility, and particularly the dumpsters, did not adversely affect his property. Exhibit 73.

Finally, Mr. Gothard believes that the building is too high and does not fit in with the residential community surrounding it, despite the creative use of colors on the façade. Exhibit 73; 5/21/20 T. 99.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set standards are both specific (to a particular use) and general (applicable to all conditional uses). The specific standards applied to an Independent Living Facility for Seniors are in Section 59.3.3.2.C.2.b of the Zoning Ordinance. The general standards (termed “Necessary Findings” in the Zoning Ordinance) for all conditional uses are found in Section 59.7.3.1.E. An applicant must prove that the use proposed meets all specific and general standards by a preponderance of the evidence. The Hearing Examiner concludes that Applicant has done so in this case, with the conditions of approval included in Part IV of this Report.

#### **A. Necessary Findings (General Standards, Section 59.7.3.1.E)**

The relevant standards and the Hearing Examiner's findings for each standard are discussed below.<sup>4</sup> For discussion purposes, the general standards may be grouped into four main areas:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

#### ***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;***

---

<sup>4</sup> Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: There is no dispute that there are no previous approvals for the subject site (Exhibit 52, p. 16). This provision is inapplicable.

***b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;***

Conclusion: This subsection requires review of the development standards of the R-90 Zone contained in Article 59.4; the use standards for an Independent Living Facility for Seniors contained in Article 59.3; and the applicable development standards contained in Article 59.6. Each of these Articles is discussed below in Parts III.B, C, and D of this Report, respectively). For the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

### **1. Substantial Conformance with the Master Plan**

***c. substantially conforms with the recommendations of the applicable master plan;***

The Germantown Employment Area Sector Plan (Sector Plan or Plan) guides the development of this property. Exhibit 52. Located at the southernmost tip of the Sector Plan area, the property lies within the “Fox Chapel” District of the Sector Plan. *Plan*, p. 13. The Plan reconfirmed the property’s R-90 Zoning. *Id.*, p. 17. Staff advises that the Plan does not contain any site-specific recommendations for the subject property. Exhibit 52, p. 12. One of the Plan’s goals is to maintain housing types suitable for all ages, including the ability of older residents to either age in place or move to retirement communities within the area. The Plan committed to providing this housing without a “net loss” of affordable housing. *Plan*, p. 29. The Plan also recommended limiting the height of buildings fronting Frederick Road to 60 feet. *Id.* at 75.

Staff concluded that the proposed facility meets these goals. The project will add affordable housing where none currently exists and will serve the senior population. The height of the project is under the 60-foot limit recommended by the Sector Plan. Exhibit 52, pp. 12-13.

According to Ms. Przygocki, the Plan envisions this to be a transitional area. It recommends heights of up to 60 feet along Frederick Road, transitioning downward toward the east. This building will be lower than 60 feet. The Plan recommended retaining the R-90 Zoning for the property; an independent living facility for seniors is permitted by conditional use in that zone. 5/11/20 T. 67. Ms. Przygocki also noted that the development will provide the full amount of right-of-way recommended by the Sector Plan. 5/11/20 T. 66-67.

Conclusion: Based on this record, the Hearing Examiner agrees that the independent living facility for seniors will substantially conform to the recommendations of the Sector Plan. As the entire building is income restricted, it increases the affordable housing stock in the area. The project obviously accomplishes the Plan's goal to ensure that residents of all ages may continue to live within the Sector Plan area. This project reserves space for seniors, one of the target groups referenced in the Plan. The Hearing Examiner agrees with Ms. Przygocki that the potential for this use was envisioned by the Plan when it reconfirmed the R-90 Zoning.

***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;***

Ms. Przygocki testified that the only special exception in the neighborhood is a gas station at the corner of Plummer Drive and Frederick Road. 5/11/20 T. 62. Staff concluded (Exhibit 52, p. 17):

This finding is satisfied...the Project substantially conforms to the policies [sic] 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...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.

Conclusion: The Hearing Examiner agrees the proposed conditional use will not increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely. She has already found that the project conforms to the Sector Plan. The only other conditional use is within the Neighborhood Retail Zone rather than a single-family residential zone. The building setbacks and landscaping sufficiently buffer this use from adjacent residential uses. For reasons stated in Part III.A.4 of this Report, she agrees with Staff that the project will be compatible with the surrounding area.

## **2. Adequate Public Services and Facilities**

*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 to 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 services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*

*ii. if a preliminary subdivision plan 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; and*



Conclusion: The Hearing Examiner is not required to make a finding regarding the adequacy of public services and facilities in this case because a preliminary plan of subdivision will be required after this approval. Exhibit 52, p. 17. Nevertheless, traffic and storm drainage issues can have impacts on compatibility with the neighborhood, and thus some discussion of those issues is warranted. Storm drainage was a concern raised by Mr. Gothard.

The primary test for the adequacy of road, transit and pedestrian capacity is outlined in the Planning Board's Local Area Transportation Review (LATR) Guidelines. The Applicant presented expert testimony and evidence that the project will generate fewer than 50 person trips and is therefore exempt from testing under the Guidelines. *Local Area Transportation Review Guidelines* (Fall 2017), p. 8; 5/11/20 T. 136-137; Exhibit 22.

E&G's expert in civil engineering, Mr. Mahmut Agba, testified that water and sewer will be available to the site through a 16" water main and 8" sewer main that exist along Frederick Road. Later in the process, the Applicant will be required to submit a hydraulic analysis to the WSSC to determine whether any transmission or treatment problems exist. At present, they are unaware of any. Mr. Wiencek testified that, if necessary, E&G will use interior pumps for the sprinkler system if the current water pressure can't support the system. 5/11/20 T. 114-118.

The record also supports a finding that stormwater management facilities will be adequate to serve the use. Mr. Agba testified that the Montgomery County Department of Permitting Services has approved a stormwater management concept plan for the property that includes four micro-bioretenention facilities, mainly to treat runoff from the parking lot. These will connect to the existing storm drain systems along Frederick Road. 5/11/20 T. 119-120. The building also has a "green roof" to treat stormwater there that also doubles as an amenity. 5/11/20 T. 92. From this evidence, the Hearing Examiner finds that the approved storm drainage will be adequately managed on the subject property without adverse effects on neighboring properties.

Mr. Agba also testified that other public facilities were available to the site, including electric, cable, telephone and gas. T. 118-119. The Hearing Examiner finds from this evidence that public facilities will be adequate to serve the proposed use.

### **3. No Undue Harm from Non-Inherent Adverse Effects**

***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 a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on the surrounding area. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, do not justify the denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects may be a basis to deny a conditional use, alone or in combination with inherent effects, if they cause “undue” harm to properties in the surrounding area.

Staff concluded that the following physical and operational characteristics are inherent to an Independent Living Facility for Seniors (Exhibit 52, p. 18):

- 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 association with trash collection and trucks;
- Emergency electrical generator; and
- Lighting.

The Hearing Examiner agrees with Staff's list and adds noise stemming from generators as another inherent adverse characteristic of this use.

Ms. Przygocki opined that all the operational and physical characteristics of the site and its impacts are inherent to the use. The traffic and noise from this facility will be like other independent living facilities around the country. 5/11/20 T. 67-68. In her opinion, it will have no undue adverse impacts on the surrounding area; she believes that it is very much like other independent living facilities for seniors around Montgomery County. T. 68. Staff apparently found that the varied topography is a non-inherent physical site characteristic (Exhibit 52, p. 18):

Non-inherent characteristics are unique to the physical location, operation, or size of a proposed use. In this case, the Property and the surrounding property have varied topographic change that helps to reduce the visual impact of the Project from adjoining properties are 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 Hearing Examiner doesn't find enough evidence in this record that the topography is unique to this site to consider it a non-inherent site characteristic. She agrees with Staff that the project as revised does not result in undue adverse effects requiring denial of this application.

Mr. Gothard's testimony could suggest that the proximity of his home to the existing mature trees is a non-inherent site characteristic. Both Staff and Ms. Przygocki analyzed this finding before Mr. Gothard participated in the public hearing. Mr. Gothard testified that his house had suffered damage from trees on the subject property because it was only sixteen feet from the property line. The Hearing Examiner finds the proximity of existing mature trees doesn't rise to the level of a "non-inherent" physical site condition because the existing conditions that caused

the past damage (the proximity of mature tulip poplar and oaks on the subject property) will be mitigated upon development of this facility. Even if the proximity of these large trees to Mr. Gothard's house were a non-inherent existing site characteristic, the revised landscape plan addresses compatibility concerns. Evidence presented by E&G states that the trees nearest Mr. Gothard's property will be Bowhall red maples, which have a smaller canopy than the Linden trees originally proposed and will not overhang the property line. Thus, there is no evidence in this record that Mr. Gothard will suffer "undue" adverse effects from the landscaping proposed.

Mr. Gothard was also concerned that the housing values in the surrounding neighborhood because the housing proposed is affordable. Mr. Gothard asked the Applicant to (Exhibit 73):

...provide relevant information based on objective evidence from other low-income housing built by them and others that focus on tax credits and other benefits to the investors and operators. Approvals should consider that building this facility shall either be positive to the community or at least neutral (not to negatively impact the community.)

While this section of the Zoning Ordinance mentions the economic impact to property values, there is nothing in this record indicating that an affordable housing project is a non-inherent adverse characteristic of a proposed use, particularly as the Sector Plan's goal is to maintain the level of affordable housing in the area. Therefore, the Hearing Examiner includes the testimony on the impact to property values in the next section of this Report (discussing the compatibility of the use with the surrounding area.)

#### **4. Compatibility with the Neighborhood**

Several sections of the Zoning Ordinance require a proposed conditional use be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.1 includes the standards of approval below:

***d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.***

Section 59.7.3.2.E.2 contains an additional requirement for conditional uses in single-family detached zones:

***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 concluded that the project met the standard of 59.7.3.1.E.1.d because (Exhibit 52, p. 16):

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 area...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 found that the project was compatible with the neighborhood (Section 59.7.3.1.E.1.2) because (*Id.* at 18) because:

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[s], townhomes and commercial uses, such as a restaurant and credit union buildings. Therefore, the proposed residential building is not out of character and is compatible with the surrounding residential neighborhoods.

The Applicant's architect, Mr. Michael Wiencek, testified at length of the steps taken to buffer the use from surrounding residences and to make it blend with the locale. Because the site is elevated above Frederick Road, views of the facility will be prominent. E&G did not want the building to overpower nearby residential uses, so it included significant articulation to break up the mass. The building uses materials that are reminiscent of residential materials in the area in different colors. The façade will include a combination of red and gray brick and cementitious siding and batten. He opined that the result creates a vertical look to the building, which they

believe will serve as an entrance point to Germantown. 5/11/20 T. 93-94. A “fin” at the top of the building creates a base, shaft, and cap to the building. *Id.* at T. 96. In his opinion, this gives the building will have a certain “presence” along the Frederick Road corridor at a reduced scale. 5/11/20 T. 101. E&G kept the height under the maximum permitted by the Zoning Ordinance to avoid “overpowering” surrounding residences. 5/11/20 T. 97. The building will be 47 feet high, using the formula for calculating height prescribed by the Zoning Ordinance. The Zoning Ordinance requires that height be measured from the average grade along the front façade, in this case, Frederick Road. The building ranges between 45 feet and 55 feet from any grade. *Id.* T. 99. *Id.* T. 101.

Mr. Wiencek testified that he used a combination of landscaping and the grade, which is higher at the perimeter, to buffer views of the building from adjacent properties. When viewed from adjacent properties, the trees will appear taller. They’ve also added smaller trees and landscaping around the building to break up the mass of the building itself. T. 97-98. Mr. Park testified that the landscaping goes beyond those requirements by providing additional setbacks around the parking area. The setback for parking facilities is 10 feet. E&G is providing a 16-foot parking setback along the eastern edge and a 25-foot setback at the northern property line to provide additional screening. 5/11/20 T. 132.

Mr. Wiencek opined that the proposed facility will be compatible with Mr. Gothard’s property due to setbacks, landscaping, and the use of grade. Siting the parking in the looped configuration enabled the Applicant to place the parking below the grade of Mr. Gothard’s property. The parking is 3 feet below the first level of Mr. Gothard’s home. E&G created a landscaped berm leading up to Mr. Gothard’s property, which further screens the parking lot. 5/21/20 T. 21-22. The landscaping area along Mr. Gothard’s property is 16 feet wide, more than is required by the Zoning Ordinance. *Id.* T. 22.



Significant setbacks also buffer the use from Mr. Gothard's property. The building will be set back 64 feet from Mr. Gothard's property line and 80 feet from his house. It is set into the grade to reduce the appearance of the height in order to reduce its visual impact. The building ranges between 40 to 50 high along that side and doesn't come to grade until eastern corner. 5/21/20 T. 22-23.

Mr. Wiencek reinforced Mr. Park's opinion that the landscaping chosen will further mitigate views of the property. The area closest to Mr. Gothard has arborvitae under the deciduous trees to block view of the parking and the building. The building at that location steps away from the parking and there are rosebud trees planted close to the building to create layered views underneath the arborvitae and laurel. T. 24-25. With the grades, berm and landscaping, the closest tall trees will appear taller than they actually are and the combined landscaping will screen the whole face of the building. T. 30. Mr. Park testified that tree roots from the new landscaping will not affect Mr. Gothard's property in the same way as the existing trees. In his opinion, the new roots will more likely grow toward the development than those of the existing trees because of the berm that will be built around the perimeter of the property. 5/21/20 T. 76. The Applicant revised the landscape plan to place Bowhall red maples closest to Mr. Gothard's property, which have a smaller canopy than existing trees and will not spread beyond the property line. Exhibit 72.

Mr. Wiencek also addressed Mr. Gothard's concern that the project would decrease property values in the area. He testified that that his firm has designed over 90,000 units of multi-family housing. Approximately 70 percent of those units have been affordable or mixed-income developments. 5/21/20 T. 39. He believes that his firm was instrumental in changing the visual look of low-income housing today compared to what was built in the 1970's. The latter were easily identifiable as "affordable" housing. When someone drives by this building, they will think

it's a great location and they would like to live there. People will inquire about living in the affordable buildings they design, only to find out that their income must qualify. *Id.*, T. 40.

Mr. Wiencek testified that the financing instruments for these types of development require high standards for design. If this were for market rate units, he would not have to use as much brick on the building. Low-income tax credit financing demands that these facilities look attractive to make sure that lower income or economically disadvantaged residents didn't experience a negative connotation like the big, blank boxes developed in the 1970's. *Id.* T. 41. His firm has 100-150 design awards, 70% of which are for affordable projects at the State, local, national and international levels. *Id.*

Mr. Wiencek is unaware of any instance where these projects have impacted property values in the neighborhood. To the contrary, he knows of instances where these projects have been a catalyst for improvement in the remainder of the neighborhood. *Id.* T. 43. As an example, he cited to a project his firm designed in Reston, Va. The project was in a neighborhood surrounded by high-end homes and townhomes along a golf course. After completion, the neighbors from high-end properties asked his firm to redo their properties because they felt the affordable project looked better than theirs. His firm has done several other projects where the new affordable buildings brought more investment into the surrounding community because it set a higher standard for people to meet and feel comfortable. *Id.* T. 43.

Conclusion: Section 59.7.3.1.E.2.d examines whether the Sector Plans goals are achieved in a manner compatible with the area. Section 59.7.3.1.E.2. requires an examination of the compatibility of the use with the character of the residential neighborhood in which it is located, regardless of the goals of the Sector Plan

The Hearing Examiner has adopted Staff's characterization of the existing neighborhood as being primarily suburban residential with nodes of commercial uses. She already found that the

use fulfills the goals of the Sector Plan; she further finds that it does so in a manner that is compatible with the surrounding area. Key to this finding are a number of factors, including (1) the use of grade to lower the appearance of the height, (2) the height of the building (lower than the maximum permitted), (3) the landscaping designed to screen from the perimeter as well as break up the mass of the building, (4) the residential materials and building articulation on the facade, and (5) the building's setback from adjacent residential properties. The building generally is 13 feet below the maximum height permitted for this use and only 12 feet above the height permitted for dwellings in the R-90 Zone.<sup>5</sup> Setting the building into the grade, as testified by Mr. Wiencek, causes the actual heights to be lower than the 47 height at places. Mr. Wiencek testified that the highest portion of the building along Mr. Gothard's property is 50 feet high but dips lower than that. The perimeter berm makes the trees appear higher and the layered landscaping mitigates views of the building from several perspectives. Additional landscaping near the building also breaks up its mass. The building elevations in the record (Exhibit 51(b)) reinforce Mr. Wiencek's testimony that the façade materials echo residential uses in the area and the building articulation reduces the building's scale.

Mr. Gothard's concerns about the height of the project may stem from the assumption that the building will be 60 feet tall, as represented in the Applicant's Amended Statement of Justification and the Staff Report. It is significantly less than this. Even so, the Hearing Examiner finds that the actual height, buffering, use of grade, and setbacks described above will mitigate its visual impact and will render it compatible with the surrounding area.

The Hearing Examiner agreed with Mr. Gothard that the location of the dumpster and the resulting noise from trucks unloading was incompatible with the residential use of his property.

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<sup>5</sup> The maximum height of dwellings in the R-90 Zone is 35 feet. *Zoning Ordinance*, §59.4.4.8.B.3.

The Applicant has since eliminated the dumpster and proposed a waste removal system entirely internal to the building except for pick-up in the area on the other side of the building and out of view from Mr. Gothard's property. Adherence to the trash removal system proposed by the Applicant will be made a condition of approval of this conditional use. The Hearing Examiner finds that removal of the dumpster also addresses Mr. Gothard's concerns about noise from the facility. The waste disposal will either be internal to the building or on the side of the building furthest from Mr. Gothard's property. The record demonstrates that the generators are also internal and vented to the roof, mitigating noise produced by those.

While Mr. Gothard expressed general complaints about rodents and pests, there is little specific evidence in this record to support a finding that problems from pests will occur, particularly as the dumpster has been removed.

The Applicant has also adequately addressed Mr. Gothard's concerns regarding tall trees proximate to his property line. The evidence in this case indicates that the canopy of the Boxhall red maples now shown on the Landscape and Lighting Plan (Exhibit 81(b)) will not overhang his property.

Finally, the Hearing Examiner finds that the affordable nature of this project will not affect property values. While the record indicates that housing for low- to moderate-income individuals may have been a deterrent to increased property values many years ago, there is nothing in this record indicating that it remains so. E&G has presented ample evidence that the financing of projects using low-income tax credit incentives demands high architectural and construction standards and that these projects have not impaired but even *increased* property values in other areas.

For these reasons, the Hearing Examiner finds that the use is compatible with the surrounding neighborhood in a manner consistent with the Sector Plan and will not adversely affect the character of the surrounding area.

***Section 59.7.3.1.E.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.***

Conclusion: The application satisfies all specific requirements for the conditional use, and with the conditions imposed, meets the standards required for approval.

### **B. Development Standards of the Zone (Article 59.4)**

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-90 Zone, contained in Article 59.4 of the Zoning Ordinance. Staff included a table (Exhibit 52, p.11, on the next page) in its report comparing the minimum development standards of the R-90 Zone to what is proposed in this application.

Conclusion: With the exception of the height of the building, which is lower than listed on Staff's table, the parking calculations (discussed in Part III.D.1 of this Report), and certain setbacks (discussed in Part III.C), there is nothing to contradict Staff's assessment of compliance with the remaining development standards of the Zone.<sup>6</sup> The lower height only supports this conclusion. The Hearing Examiner finds that the proposed facility complies with the standards of the R-90 Zone.

Mr. Gothard questioned several times whether the R-90 Zone permits independent living facilities for seniors to be a maximum of 60 feet high. Exhibits 74, 76, 77. The Hearing Examiner concludes that it clearly does. Section 59.3.3.2.C.2.c.iv of the Zoning Ordinance states, "The

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<sup>6</sup> The Applicant's Amended Statement of Justification states that the height will be 60 feet. Thus, Staff apparently relied on the Applicant for this information. Nevertheless, the architectural plans submitted, and the testimony of the architect, indicate that the height will be 47 rather than 60 feet. Exhibit 51(b); 5/11/20 T. 99. As the architect prepared the plans used at the public hearing, the Hearing Examiner accepts his testimony as to the height of the building. The parking calculations and building setbacks are discussed *infra*.

**Table 1 – Development Standards**

<b>Development Standards (R-90)</b>	<b>Required</b>	<b>Proposed</b>
Lot (min.)		
Lot Area	9,000 sq. ft.	114,981 sq. ft. (2.64 acres)
Lot width at front building line	75 ft.	381 ft.
Lot width at front lot line	25 ft.	407 ft.
Density (max. units/acre)	Determined by Hearing Examiner	42 units per acre
Lot Coverage (max.)	30%	20.75%
Principal Building Setbacks (min.)		
Front	50 ft. <sup>1</sup>	50 ft.
Side	40 ft. <sup>1</sup>	49 ft.
Sum of Side Setbacks	25 ft.	82 ft.
Rear	25 ft. <sup>2</sup>	73 ft.
Building Height (max.)	60 ft. <sup>1</sup>	60 ft.
Parking Setback (min.) <sup>3</sup>		
Front	6 ft.	6 ft.
Rear	25 ft.	25 ft.
Side	16 ft.	16 ft.
Parking Requirements		
Dwelling Units <sup>4</sup>	56 spaces	56 spaces
Employees	4 spaces	4 spaces
Bicycle, short-term	1 spaces	1 space
Bicycle, long-term	27 space	27 spaces
Parking Lot Landscaping		
North Planting Area	10 ft. wide	25 ft. wide
East Planting Area	10 ft. wide	16 ft. wide
West Planting Area	None	16 ft. wide
South Planting Area	6 ft. wide	6 ft. wide
Off-Street Loading (59.6.2.8.B.2)	1 space per 25,001 to 250,000 SF of GFA	1 space provided for 104,551 SF of GFA
Green Area (min.) (59.3.3.2.C.2.c.viii.c)	50% (In the R-90 zone)	50.51% (46,872 sq. ft.) Ground level (37,372 sq. ft.) Green roof (9,500 sq. ft.)

<sup>1</sup>Per 59.3.3.2.C.2.c (Use standards for indep. living facility for seniors or person w/disabilities)

<sup>2</sup>Per 59.4.4.8.B.2 (Equal to rear setback for detached house in R-90 zone)

<sup>3</sup>Per 59.6.2.5.K (Facilities for conditional uses in residential detached zones)

<sup>4</sup>Per 59.6.2.3.I.2.b (Parking adjustment factor applied 50% reduction for senior housing)

**Staff Report Table 1  
Exhibit 52**

maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is 60 feet... without regard to any other limitation in this Chapter.” While the Hearing Examiner may modify the height proposed, she does not do so here because she finds it compatible with the surrounding area. In this case, the height is 47 feet, lower than permitted.

**C. Use Standards for an Independent Living Facility for Seniors  
(Section 59.3.3.2.C.2.b.)**

The specific use standards for approval of an Independent Living Facility for Seniors or Persons with Disabilities are set out in Section 59.3.3.2.C.2.b. of the Zoning Ordinance.

**Zoning Ordinance §59.3.3.2.C.**

***C. Independent Living Facility for Seniors or Persons with Disabilities***

***1. Defined***

*Independent Living Facility for Seniors or Persons with Disabilities means a building containing dwelling units and related services for senior adults or persons with disabilities. Independent Living Facility for Seniors or Persons with Disabilities includes meal preparation and service, day care, personal care, nursing or therapy, or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations.*

The Zoning Ordinance defines a “senior adult” as “A person who is 62 years of age or older.”

*Zoning Ordinance, §59.1.4.2.*

Conclusion: E&G’s Amended Statement of Justification states that it meets this definition as does the Staff Report. Exhibits 34, 52. Mr. Edmonson testified that the facility will be used to provide housing for seniors. 5/11/20 T. 14. A condition of approval will require that occupants meet the age ranges specified by the Zoning Ordinance for this use. As conditioned, the Hearing Examiner agrees and so finds.

***2. Use Standards***

***a. Where an Independent Living Facility for Seniors or Persons with Disabilities 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.*

Conclusion: A condition of approval will require the above. Therefore, the use as conditioned will meet this requirement.

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



Conclusion: For this standard, Staff states that it is, “[a]cknowledged by the Applicant.” Exhibit 52, p. 20. The Applicant did not expressly say whether employees will or will not live on site, however, testimony about contacting on-call staff outside of staff hours suggests that they will not. 5/11/20 T. 19. The Zoning Ordinance does not prohibit Staff from living on-site. Therefore, the employees may live on-site provided that the number of staff does not exceed the six employees approved by this application.

*iii. Occupancy of a dwelling unit is restricted to the following:*

*(a) a senior adult or person with disabilities, as defined in Section 1.4.2, Defined Terms;*

*(b) the spouse of a senior or disabled resident, regardless of age or disability;*

*(c) a resident care-giver, if needed to assist a senior or disabled resident; or*

*(d) in a development designed primarily for persons with disabilities rather than senior adults, one parent, daughter, son, sister, or brother of a handicapped resident, regardless of age or disability.*

*(e) Age restrictions must 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.*

Conclusion: A condition of approval will require compliance with the age restrictions stated above. The use as proposed and conditioned meets these requirements.

***b. 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 7.3.1, 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.*

Ms. Przygocki identified the services available to residents of the project within a one-mile radius. According to her, there are multiple commercial services, including hair salons, medical clinics and recreational activities. Holy Cross Hospital is within 1.9 miles, as are many medical clinics as you approach Montgomery Village. There are additional shopping opportunities along Md. Route 124 (Montgomery Village Avenue) as well. T. 43. Both fire and police stations are within 4 miles. She opined that there are more than ample services nearby to serve the residents of the project. These include everything from medical services to veterinary services, to hairdressers, movies and shopping. 5/11/20 T. 43, 72-73.

Testimony described several methods by residents could access these services. Mr. Wiencek testified that a Ride-On bus stop will be located directly in front of the building along Frederick Road. 5/11/20 T. 103. Mr. Edmonson testified that most of the residents will drive because this facility is designed for independent seniors. In other projects, management does periodically arrange transportation for group events, which is supplied by both for-profit and non-profit organizations. Because the project is two years from being built, it is too early for them to identify with specificity what services may be available to take residents to group events or to provide individuals that do not drive with transportation to nearby services. *Id.* T. 124. To address the issue of providing transportation to area services, the Applicant proposed the following condition (at the request of the Hearing Examiner) (Exhibit 62):

The Applicant will contract with a service provider to offer on-demand van and/or shuttle service to transport residents to destinations with medical services, shopping areas, recreation and other community services.

Conclusion: The Applicant provided the map required by this section. Exhibit 8. From the evidence in this record, the Hearing Examiner finds that this criterion for approval has been met, with the condition proposed. Ms. Przygocki's uncontroverted testimony regarding the variety of services within an easily accessible radius demonstrates that there are many services to support the

varied the needs of senior residents. While many of the residents will drive, there will also be bus service and on-demand transport to reach these services, if needed.

*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.*

Conclusion: The Applicant does not propose ancillary or retail services to non-residents. Exhibits 52, p. 21; Exhibit 34. This will be made a condition of approval of the use.

*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.*

The income levels are defined as follows (*Zoning Ordinance*, §5.1.4.1):

1. Very Low Income: Income at or below 50% of the area median income (as determined annually by the U.S. Department of Housing and Urban Development) adjusted for household size.
2. Low Income: At or below 60% of the area median income (as determined annually by the U.S. Department of Housing and Urban Development), adjusted for household size.
3. Moderately Priced Dwelling Unit (MPDU): Any dwelling unit that meets the requirements for a moderately priced dwelling unit in Chapter 25A.

Conclusion: Mr. Edmonson testified that the occupancy of the units will meet these income requirements. In its application to the Montgomery County Housing Commission, the Applicant proposes to reserve twelve of the units for those with incomes below 30% of the area median, 10 units for those with incomes between 30-50% of the area median, 51 units for residents with incomes between 50-60% of the area median, and 38 units for households that are under 70% of the area median. There will be no market rate units. 5/11/20 T. 28-31.

This housing mix currently proposed clearly meets the required standards but may be further refined with the Housing Commission. A condition of approval will require compliance

with this provision of the Zoning Ordinance. Given Mr. Edmonson's uncontroverted testimony and with the condition of approval, the use as proposed and conditioned will meet this criterion of approval. 5/11/20 T. 29-31.

*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.*

Conclusion: As already explained, the building height proposed is 47 feet. This standard is met.

*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 concluded that the application met this standard because (Exhibit 52, p. 22):

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.

Conclusion: The Hearing Examiner has already found that the building is compatible with the surrounding area. For the same reasons stated in Section III.A.4 of this Report, she finds that this standard has been met.

*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.*

Conclusion: The Conditional Use Site Plan demonstrates that the property is setback 50 feet from the right-of-way for Frederick Road. Exhibit 82(a). Except for the access road to the facility, the access for adjacent homes to the south, and the ADA parking spaces, the area will be maintained as green area. Exhibit 81(a); 5/11/20 T. 65.

*vii. The minimum side and rear setback is 25 feet or as specified by the relevant zone, whichever is greater.*

Conclusion: The R-90 Zone establishes a minimum side building setback of 8 feet and a minimum rear setback of 25 feet for a principle structure. *Zoning Ordinance*, §59.4.4.8.2. Therefore, the 25-foot setback applies both to the rear and sides of this property, as both are equal to or greater than required in the R-90 Zone.<sup>7</sup> The conditional use site plan (Exhibit 81(a)) shows that the side setback from the eastern property line is 64 feet, the side setback from the northwestern property line is 65 feet, and the rear setback is 72 feet. The application exceeds this standard.

*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;*

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

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

*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.*

Conclusion: Staff and the Applicant agree that the amount of green area meets the 50% requirement for projects in the R-90 Zone. 5/11/20 T. 64-65; Exhibit 52, p. 11. Based on this uncontroverted evidence, the Hearing Examiner finds that the application meets this requirement.

#### **D. General Development Standards (Article 59.6)**

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. The applicable

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<sup>7</sup> Staff does not explain why it found the minimum required side setback to be 40 feet. Exhibit 52, p. 11. Nor does Staff explain how the “sum of side setbacks” can be 25 feet, when it found the minimum side setback to be 40 feet. The Staff Report also lists only a single proposed side setback of 49 feet. According to the Conditional Use Site Plan, the side setbacks are different. One is 64 feet and one is 65 feet. Exhibit 81(a). Neither is 49 feet. Thus, the proposed sum of side setbacks should be 129 feet, and not the 82 feet stated by Staff.

requirements, and whether the use meets these requirements, are discussed below. The proposed use and Zone do not require the review of Division 6.1 for Site Access, Division 6.3 for Open Space and Recreation, or Division 6.6 for Outdoor Storage.

### **1. Parking and Loading**

Parking, queuing, and loading standards are governed by Division 6.2 of the Zoning Ordinance.<sup>8</sup> For an Independent Living Facility for Seniors, the required number of vehicle parking spaces is based on the number of dwelling units and the maximum number of employees on a shift. Zoning Ordinance §59.6.2.4.B. calls for 1 parking space for each dwelling unit plus 0.5 spaces for each employee. The Ordinance permits a reduction of 50% reduction from this for senior housing. *Zoning Ordinance*, §59.6.2.3.I.2.b. Thus, the minimum required spaces for the dwelling units would be 56 spaces.<sup>9</sup>

Staff advises that four spaces for employees are required; however, the Hearing Examiner could find nothing in the record explaining how this was calculated. Exhibit 52, p. 11. The Zoning Ordinance requires 0.5 spaces for each employee. Six employees would require 3 spaces for a total of 59 spaces, without any reduction for senior housing. The Applicant proposes a total of 60 spaces. Exhibit 34. As the number proposed is higher than the minimum number required, she does not need to resolve this issue.

In addition to vehicle parking spaces, the Zoning Ordinance requires short-term and long-term bicycle parking spaces. *Zoning Ordinance*, §59.6.2.4.B. The minimum required for the proposed use is .25 per dwelling unit, or 28 spaces.<sup>10</sup> *Id.* Ninety-five percent of these (or 27 spaces) must be long-term. The Applicant's Amended Statement of Justification provides (Exhibit

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<sup>8</sup> Queuing requirements apply only to uses with drive-thrus, and therefore do not apply to this use. *Zoning Ordinance*, §59.6.2.7.A.

<sup>9</sup> The calculation is: (111 dwelling units x 0.5 (senior housing reduction) = 55.5 x 1 (dwelling unit) = 55.5. Fractional spaces are rounded up to the nearest whole number. *Zoning Ordinance*, §59.6.2.3.A.1.

<sup>10</sup> 111 (dwelling units) x .25 (bicycle spaces) = 27.75.

34):

The Applicant will be supplying a bike storage room in the building. The room will host 27 indoor (long-term) spaces. Additionally, 1 bike rack will be provided outdoor on the grounds for short-term bike storage.

The Hearing Examiner will include a condition of approval requiring the long-term bicycle parking spaces inside the facility.

Staff advises that the facility will consist of 104,551 square feet of gross floor area, necessitating one loading space. The Zoning Ordinance requires group living uses with between 25,001 square feet and 250,000 square feet to have 1 loading space. *Zoning Ordinance*, §59.6.2.8.B.2. Both Staff and the Applicant confirm that E&G will provide the loading space on-site, which is shown on the Conditional Use Site Plan. Exhibits 52, 81(a); 5/11/20 T. 58.

Conclusion: Based on the record summarized above, the Hearing Examiner finds that the proposed facility meets all parking and loading requirements of the Zoning Ordinance.

### **3. Site Landscaping and Screening**

Conclusion: Division 6.4 of the Zoning Ordinance sets minimum standards for site landscaping, which are intended to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” §59.6.4.1. Section 59.5.3.A.1. provides that “*Screening is required along a lot line shared with an abutting property that is vacant or improved with an agricultural or residential use.*”

The Hearing Examiner accepts Staff's assessment (Exhibit 83) and the undisputed statement of the Applicant (Exhibit 72) and finds that the revised Landscape and Lighting Plan (Exhibit 81(b)) meets the technical requirements of Division 6.4 and 6.5. The Hearing Examiner has already concluded that the landscaping shown is compatible with the surrounding uses; compliance with the technical requirements is necessary only to the extent needed to ensure compatibility.



#### **4. Outdoor Lighting**

Conclusion: The outdoor lighting proposed for the conditional use was discussed in Part II.C.2. of this Report and Decision. As indicated there, permissible lighting levels for a conditional use are specified in Zoning Ordinance §59.6.4.4.E., which provides,

*Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.*

E&G submitted a Photometric Plan that showed illumination levels at the property lines adjacent to single-family detached homes at 0.0 footcandles. Exhibit 41(e). Mr. Park testified that the maximum illumination at the property line will be 0.1 footcandles. The Photometric Plan shows that the slightly higher levels are located property line adjacent to the fraternal club. He also opined that the lighting plan met the technical requirements of the Zoning Ordinance. 5/11/20 T. 131-134.

Conclusion: Based on the undisputed evidence described above, the Hearing Examiner finds that the outdoor lighting proposed conforms to the requirements of the Zoning Ordinance.

#### **5. Conditions of Approval Recommended by Staff**

The Staff Report contains three recommended conditions (Conditions 6 through 8) that apply to issues to be addressed at the time of subdivision. As these are not related to this zoning approval, the Hearing Examiner does not impose them here.

#### **IV. Conclusion and Decision**

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Edmonson & Gallagher (CU 20-02) for a conditional use under Section

59.3.3.2.C.2.b. of the Zoning Ordinance to build and operate an Independent Living Facility for Seniors on property described as Parcel 507 of the Middlebrook subdivision (Tax Account No. 09-00767475), in Germantown, Maryland, is hereby **GRANTED**, 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 (Exhibit 81(a)) and Landscaping Plan (Exhibit 81(b)). The Applicant must file copies with OZAH of any plans modified after subdivision of the property.
2. The locations and types of light fixtures shall be consistent with the Applicant's Photometric Plan (Exhibit 41(e)).
3. No more than 111 independent living units are allowed in the facility.
4. The maximum number of employees is limited to six (6) persons on-site at one time on weekdays. The maximum number of employees is limited to three (3) persons on-site at one time on weekends.
5. The Applicant must implement the waste disposal method described in Exhibit 72. The use of an exterior dumpster is prohibited.
6. The Applicant will contract with a service provider to offer on-demand van and/or shuttle service to transport residents to destinations with medical services, shopping areas, recreation and other community services.
7. No ancillary or retail services to non-residents are permitted on-site.
8. Occupancy of the dwelling units shall be in accordance the provisions of Zoning Ordinance Sections 59.3.3.2.C.2.a.iii (age of occupants) and 59.3.3.2.C.2.c.iii (income levels of occupants), and any amendment thereto.
9. The Applicant must supply a bike storage room within the building large enough to accommodate 27 long-term bicycle spaces.
10. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.
11. Prior to issuance of any building permit for the subject conditional use, the Applicant or any successor in interest must obtain approval of a Preliminary Plan of Subdivision and Record Plat under Chapter 50 of the Montgomery County Code. The Applicant and any successors in interest must report to OZAH any proposed changes to the conditional use plans as a result of subdivision proceedings and must file a copy of the proposed amended plans with OZAH.
12. Prior to any land disturbing activities, the Applicant must receive approval of a Final Forest Conservation Plan by the Montgomery County Planning Board.

13. The facility must be operated in accordance with all applicable County noise regulations.
14. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 1st day of July 2020.



---

Lynn Robeson Hannan  
Hearing Examiner

#### NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

#### **PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:**

**The Board of Appeals website sets forth these procedures for filing documents:**

**Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request and will contact you regarding scheduling.**

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Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTIFICATION OF DECISION TO BE SENT TO:

Jody S. Kline, Esquire

Attorney for the Applicant

Mr. Joseph Gothard

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Robert Kronenberg, Deputy Director, Planning Department

Phillip Estes, Planning Department

Greg Nichols, Manager, Department of Permitting Services

Victor Salazar, Department of Permitting Services

Michael Coveyou, Director, Finance Department

Charles Frederick, Esquire, Associate County Attorney



MONTGOMERY COUNTY, MARYLAND

July 1, 2020

TO: Parties to OZAH Case No. CU 20-02, *Edmonson & Gallagher Property Services, Inc.*

FROM: Montgomery County Office of Zoning and Administrative Hearings

SUBJECT: Notification of Decision and Applicable Procedures

On July 1, 2020, the Hearing Examiner issued a Report and Decision in **OZAH Case No. CU 20-02, Application of Edmonson & Gallagher Property Services, Inc.**, approving a conditional use under Zoning Ordinance §59.3.3.2.C.2. of the Zoning Ordinance to operate an Independent Living Facility for Seniors on property described as Parcel 507 of the Middlebrook subdivision (Tax Account No. 09-00767475), which is located on Frederick Road (Md. Rte. 355) approximately 0.2 miles north of Wheatfield Road, Gaithersburg, Maryland 20874, 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 (Exhibit 81(a)), Landscaping Plan (Exhibit 81(b)). The Applicant must file copies with OZAH of any plans modified after subdivision of the property.
2. The locations and types of light fixtures shall be consistent with the Applicant's Photometric Plan (Exhibit 41(e)).
3. No more than 111 independent living units are allowed in the facility.
4. The maximum number of employees is limited to six (6) persons on-site at one time on weekdays. The maximum number of employees is limited to three (3) persons on-site at one-time on weekends.
5. The Applicant must implement the waste disposal method described in Exhibit 72. The use of an exterior dumpster is prohibited.
6. The Applicant will contract with a service provider to offer on-demand van and/or shuttle service to transport residents to destinations with medical services, shopping areas, recreation and other community services.
7. No ancillary or retail services to non-residents are permitted on-site.
8. Occupancy of the dwelling units shall be in accordance the provisions of Zoning Ordinance Sections 59.3.3.2.C.2.a.iii (age of occupants) and 59.3.3.2.C.2.c.iii (income levels of occupants), and any amendment thereto.

9. The Applicant must supply a bike storage room within the building large enough to accommodate 27 long-term bicycle spaces.
10. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.
11. Prior to issuance of any building permit for the subject conditional use, the Applicant or any successor in interest must obtain approval of a Preliminary Plan of Subdivision and Record Plat under Chapter 50 of the Montgomery County Code. The Applicant and any successors in interest must report to OZAH any proposed changes to the conditional use plans as a result of subdivision proceedings and must file a copy of the proposed amended plans with OZAH.
12. Prior to any land disturbing activities, the Applicant must receive approval of a Final Forest Conservation Plan by the Montgomery County Planning Board.
13. The facility must be operated in accordance with all applicable County noise regulations.
14. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

The full text of the Hearing Examiner's report is available at the following website address: [http://www.montgomerycountymd.gov/OZAH/spec\\_excep.html](http://www.montgomerycountymd.gov/OZAH/spec_excep.html). Any person receiving this notice who does not have access to the internet or to a printer may request a paper copy of the report by stating in writing that he or she lacks internet or printer access. Any interested person may also make a paper copy of the report, at a cost of ten cents per page, by visiting our office, temporarily located in the Broome School (First Floor), 751 Twinbrook Parkway, Rockville, Maryland 20851. For further information on obtaining a paper copy, please call the Office of Zoning and Administrative Hearings at 240-777-6660.

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cc: Jody S. Kline, Esquire  
Attorney for the Applicant  
Mr. Joseph Gothard  
Barbara Jay, Executive Director, Montgomery County Board of Appeals  
Robert Kronenberg, Deputy Director, Planning Department  
Phillip Estes, Planning Department  
Greg Nichols, Manager, Department of Permitting Services  
Victor Salazar, Department of Permitting Services  
Michael Coveyou, Director, Finance Department  
Charles Frederick, Esquire, Associate County Attorney





## DEPARTMENT OF TRANSPORTATION

Marc Elrich  
*County Executive*

Christopher Conklin  
*Director*

March 4, 2021

Mr. Jeffrey Server, Planner Coordinator  
Up-County Division  
The Maryland-National Capital  
Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan No. 120210110  
Milestone Senior Center

Dear Mr. Server:

We have completed our review of the revised preliminary plan uploaded to eplans on February 12, 2021. A previous version of this plan was reviewed by the Development Review Committee (DRC) at its meeting on December 22, 2020. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Montgomery County Department of Permitting Services in the package for record plats, storm drain, grading or paving plans, or application for access permit. This letter and all other correspondence from this department should be included in the package.

Significant Plan Review Comments

1. We strongly recommend that the Maryland State Highway Administration (MSHA) and the Maryland-National Capital Park & Planning Commission (MNCP&PC) ensure that the applicant install the 10-foot, shared-use path along the Frederick Road (MD 355) site frontage per the December 2018 Bicycle Master Plan. Final location might shift per the future Bus Rapid Transit (BRT) alignment. Prior to the permit stage, coordinate with Mr. Corey Pitts, MCDOT BRT manager, at 240-777-7217 or [corey.pitts@montgomerycountymd.gov](mailto:corey.pitts@montgomerycountymd.gov).
2. The applicant will be required to upgrade the existing bus stop along Frederick Road (MD 355) at the southern corner of the property by installing a 6-foot bench and a minimum 10-foot wide by 7-foot deep concrete pad with a 5-foot minimum clearance from the front of the bench to the front of the pad. At or before the permit stage, please contact Mr. Wayne Miller of our Division of Transit Services to coordinate these improvements. Mr. Miller may be contacted at 240-777-5836 or at [Wayne.Miller2@montgomerycountymd.gov](mailto:Wayne.Miller2@montgomerycountymd.gov).

**Office of the Director**

101 Monroe Street 10<sup>th</sup> Floor · Rockville Maryland 20850 · 240-777-7170 · 240-777-7178 FAX  
[www.montgomerycountymd.gov](http://www.montgomerycountymd.gov)

*Located one block west of the Rockville Metro Station*

Standard Plan Review Comments

3. Provide the necessary dedication from the centerline of Frederick Road (MD 355) in accordance with the Master Plan.
4. We defer to MSHA for all access and improvements along Frederick Road (MD 355).
5. The sight distance for the proposed access shall be approved by MSHA.
6. The storm drain analysis was reviewed and is acceptable to MCDOT. No improvements are needed to any downstream, County-maintained storm drain system for this plan.
7. Provide on-site handicap access facilities, parking spaces, ramps, etc. in accordance with the Americans with Disabilities Act.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at [william.whelan@montgomerycountymd.gov](mailto:william.whelan@montgomerycountymd.gov) or (240) 777-2173.

Sincerely,

*William Whelan*

William Whelan  
Development Review Team  
Office of Transportation Policy

SharePoint/transportation/directors office/development review/WhelanW/120210110 Milestone Senior Center - MCDOT Letter 030121.docx

cc: Plan letters notebook

cc-e: Jane Przygocki	Soltész
Chris Van Alstyne	MNCP&PC
Kwesi Woodroffe	MSHA
Marie LaBaw	MCDPS FRS
Corey Pitts	MCDOT DTE
Wayne Miller	MCDOT DTS



## DEPARTMENT OF PERMITTING SERVICES

Mark Elrich  
County Executive

Mitra Pedoeem  
Director

April 26, 2021

Mr. Mahmut Agba, PE  
Soltesz, Inc.  
2 Research Place, Suite 100  
Rockville, MD 20850

Re: **SITE DEVELOPMENT STORMWATER  
MANAGEMENT PLAN** *for*  
Milestone Germantown Senior Living  
Conditional Use Plan#: CU20-02  
PP#:1020210110  
SM File #: 285945  
Tract Size: 114,981 sq.ft. or 2.64 ac  
Total Concept Area: 114,981 sq.ft. or 2.64 ac  
Zone: R-90  
Lots/Block:  
Parcel(s): 507, L.32113/F.005533 to be  
subdivided to dedicate right-of-way and create a  
buildable lot  
Watershed: Great Seneca/Class I  
New Development

Dear Mr. Mahmut:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above-mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via Green Roof and Microbioretention.

The following items will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.



2425 Reedy Drive, 7<sup>th</sup> Floor, Wheaton, MD 20902 | 240-777-0311  
[www.montgomerycountymd.gov/permitting-services](http://www.montgomerycountymd.gov/permitting-services)

4. All facilities must be designed using latest available MCDPS guidance documents.
5. Provide documentation of approval of adequacy of downstream SHA storm drain system.
6. Project specific structural design and computations is required for Micro-bioretenention planter boxes.
7. Final design plans should include to scale, project specific sections for ESD facilities. Consider contacting staff prior to preparing sections for review.
8. This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mary Fertig at 240-777-6202 or at [mary.fertig@montgomerycountymd.gov](mailto:mary.fertig@montgomerycountymd.gov).

Sincerely,



Mark C. Etheridge, Manager  
Water Resources Section  
Division of Land Development Services

MCE: MMF

cc: N. Braunstein  
SM File # 285945

ESD: Required/Provided 9.800 cf / 10,266 cf  
PE: Target/Achieved: 2.0" / 2.0"  
STRUCTURAL: N/A  
WAIVED: N/A



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**Department of Permitting Services  
Fire Department Access and Water Supply Comments**

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**DATE:** 26-Feb-21  
**TO:** Mahmut Agba  
Soltesz, Inc  
**FROM:** Marie LaBaw  
**RE:** Milestone Senior Germantown  
120210110

---

**PLAN APPROVED**

1. Review based only upon information contained on the plan submitted **26-Feb-21** .Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.



## MONTGOMERY COUNTY FIRE AND RESCUE SERVICE

Date: November 12, 2020

### Fire Lane Establishment Order

Pursuant to Section 22-33, Montgomery County Code, 1971, as amended, you are hereby notified that a Fire Lane has been established as described in this order. You are hereby ordered to post fire lane signs and paint curbs/pavement as identified below. When signs or paint work has been completed, this order will authorize the enforcement of this Fire Lane by appropriate police or fire officials. Compliance with this order must be achieved within 30 days of receipt when any of the following conditions are met:

- One or more structures addressed from the subject road are occupied;
- The road or accessway is available for use and at least one building permit for an address on the subject road has been issued; or
- The road or accessway is necessary fire department access.

LOCATION: North side of Frederick Rd (MD 355) at High Point Drive, Germantown MD

---

Delineate all areas where indicated by signs and/or paint.

☒ **SIGNS** -- (See attached diagram for location of sign placement)



(Red letters on white background)

Signs must be posted so that it is not possible to park a vehicle without being in sight of a sign. Signs may be no further apart than 100 feet.

3 one-way  
12 two-way

15 total signs

☐ **PAINT** -- (See attached diagram when painting is required)

Paint must be traffic yellow with lines of sufficient width to be readily identifiable/readable by motor vehicle operators.

---

Signature of Order Writer/I.D. #

Cc: Fire Code Enforcement Section  
Attachment: Fire Lane Diagram

## FIRE LANE ESTABLISHMENT FORM

BUILDING OR SUBDIVISION NAME: Milestone Senior Germantown

FIRE LANE LOCATION/ADDRESS: \_\_\_\_\_

North side of Frederick Road (MD 355) at High Point Drive, Germantown, MD

See attached drawing for designated fire lanes:

I have received the drawing and instructions for installing the designated fire lanes on property not owned by state or local government.

NAME AND TITLE OF PROPERTY REPRESENTATIVENAME: Benjamin C. Miller TITLE: Manager, Frederick Road Senior 4% Owner LLCSIGNATURE: PHONE: 703-475-5015 DATE: 11/12/2020

ADDRESS (where processed order will be mailed):

8245 Boone Blvd., Suite 640, McLean, VA 22102-----  
The designated fire lanes are the minimum necessary for fire/rescue access and are in accordance with Section 22-33 of the Fire Safety Code.

NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

STA.#: \_\_\_\_\_ I.D.#: \_\_\_\_\_ DATE: \_\_\_\_\_

Comments: \_\_\_\_\_  
-----Fire Lane Installed Per Order

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

0092N/23



MILESTONE SENIOR GERMANTOWN FIRE LANE ORDER PLAN  
9TH ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND

DATE	JANUARY 2021
------	--------------

SHEET 1  
OF 1

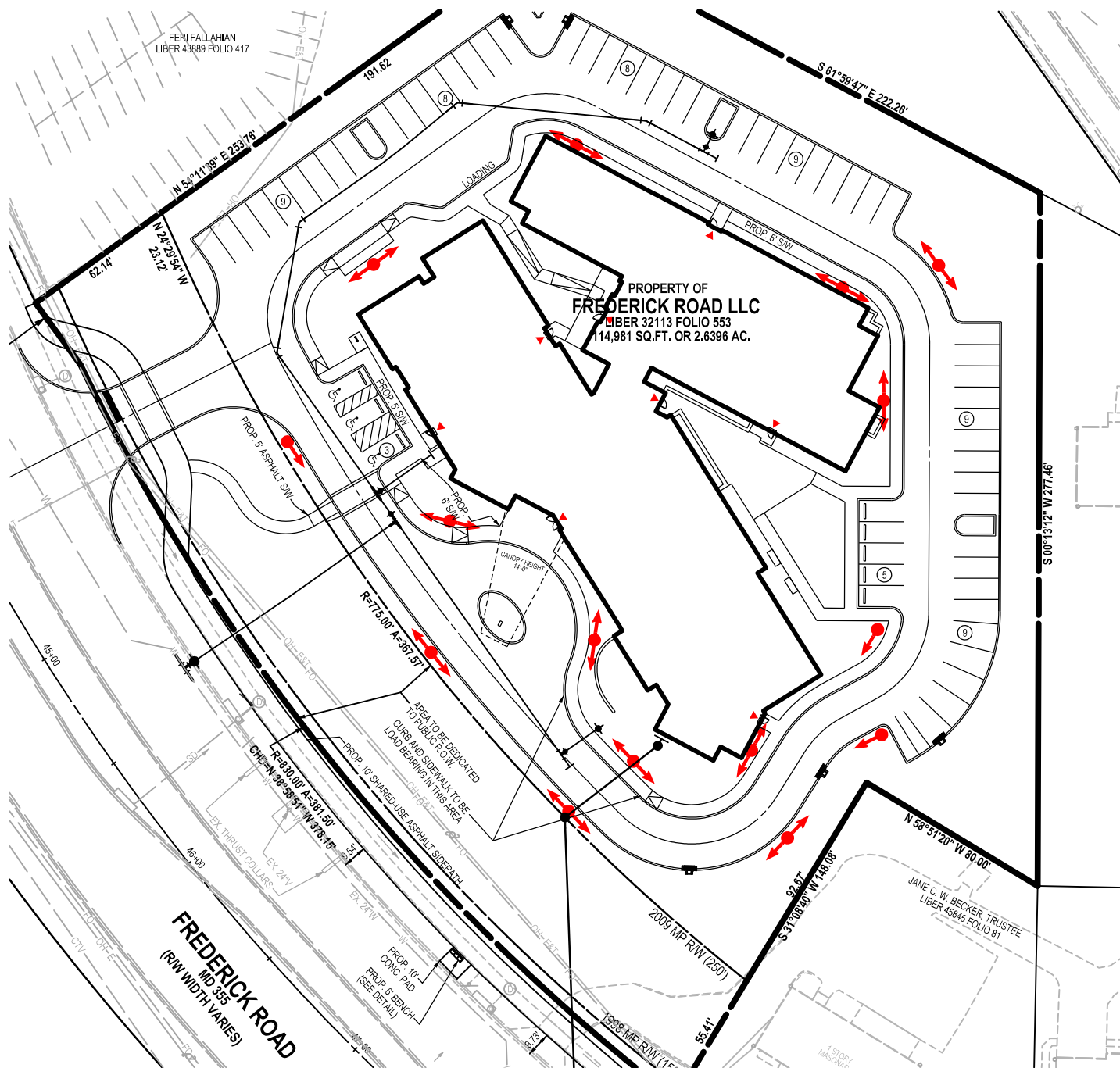
p:\38510100\Planning\Prel\Sheet\_Files\Preliminary Plan\Fire Lane Order\32-FIRE-LN-ORDER-120210110.sht Scale= 59.9999 sf / in. User= JWhims PLTdrv= PDF\_Grey\_300.pltctg Pentbl= TEXT\_SUB.tbl 1/21/2021 4:36:33 PM



Diagram illustrating a vertical clearance over a driveway. A sign is mounted on a pole that is 7.00' high. The pole is positioned 1.00' from the curb. The driveway is 1.00' wide.



FIRE LANE NO PARKING SIGN DETAILS





**symmetra** design

## **MEMORANDUM**

**TO:** Chuck Bowley

**FROM:** Robert Howard  
Nicole A. White, P.E., PTOE

**DATE:** April 30, 2019

**RE:** Milestone Montgomery – 19101 Frederick Rd – Transportation Study Exemption

## **INTRODUCTION**

Milestone Montgomery is a proposed independent living facility for seniors located at 19101 Frederick Road (MD 355) in Germantown, Maryland. The project is planned to include 110 dwelling units and 67 parking spaces. The site is zoned R-90 and Conditional Use approval will be required. The project lies within the Germantown Master Plan Area and the Germantown East Policy Area.

The following memorandum provides justification for the project to be exempt from submitting a complete transportation study. As outlined in Montgomery County Local Area Transportation Review (LATR), *Projects that are projected to generate less than 50 total weekday peak hour person trips need to only submit a transportation study exemption statement.*

## **TRIP GENERATION**

The projected vehicle trips associated with the proposed 110-unit independent living facility for seniors were developed using the Institute of Transportation Engineer's (ITE) Trip Generation Manual, 10<sup>th</sup> Edition – Senior Adult Housing – Attached (Land Use Code 252). The Senior Adult Housing rate was adjusted using the Rate Adjustment Factor for the Germantown East Policy Area, which is 95%. The vehicle trips were then converted to person trips by dividing the total number of vehicle trips by the Germantown East Policy Area auto mode split of 61.5%.

Table 1 below provides projected peak hour vehicle and person trips for the proposed project.

727 15th Street, NW  
12th Floor  
Washington, DC 20005

Phone 202 370 6000  
Fax 202 370 6001  
mail [www.symmetradesign.com](http://www.symmetradesign.com)

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**Table 1 – Proposed Peak Hour Trip Generation (vehicle and person trips)**

MILESTONE MONTGOMERY		AM Peak Hour			PM Peak Hour		
Land Use	Units	0.20x-0.18			0.24x+2.26		
		IN	OUT	TOTAL	IN	OUT	TOTAL
<b>252 - Senior Adult Housing (proposed vehicle trips)</b>	<b>110</b>	<b>7</b>	<b>14</b>	<b>21</b>	<b>15</b>	<b>12</b>	<b>27</b>
<b>PROPOSED PERSON TRIPS<sup>1</sup></b>		<b>12</b>	<b>22</b>	<b>34</b>	<b>24</b>	<b>20</b>	<b>44</b>

As shown in Table 1, the independent living facility for seniors would result in 34 person trips during the AM peak hour and 44 person trips during the PM peak hour. Both the AM and PM peak hours would generate less than 50 person trips. Therefore, a TIS would not be required for the project in accordance with LATR guidelines.

## CONCLUSIONS

In conclusion, the Milestone Montgomery independent living facility for seniors located at 19101 Frederick Road will generate less than 50 peak hour person trips. Projects that are projected to generate less than 50 total weekday peak hour person trips need to only submit a transportation study exemption statement. Therefore, the development should be exempt from submitting a TIS as outlined in the LATR/TPAR Guidelines.

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<sup>1</sup> Person trips were calculated by dividing the ITE peak hour trips by the auto mode split for the Germantown East Policy area (61.5%)



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## **Milestone Montgomery**

### **Appendix**

727 15th Street, NW  
12th Floor  
Washington, DC 20005

Phone 202 370 6000  
Fax 202 370 6001  
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727 15th Street, NW  
12th Floor  
Washington, DC 20005

Phone 202 370 6000  
Fax 202 370 6001  
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## VIII. Appendices

### Appendix 1a. Institute of Transportation Engineers Vehicle Trip Generation Rate Adjustment Factors

Appendix Table 1a: ITE Vehicle-Trip Generation Rate Adjustment Factors					
Policy Area #		Residential	Office	Retail	Other
1	Aspen Hill	97%	98%	99%	97%
2	Bethesda CBD	79%	63%	61%	62%
3	Bethesda/Chevy Chase	87%	81%	85%	79%
4	Burtonsville Town Center	96%	96%	99%	97%
5	Chevy Chase Lake	87%	81%	85%	79%
6	Clarksburg	100%	101%	100%	100%
7	Clarksburg Town Center	100%	101%	100%	100%
8	Cloverly	99%	101%	100%	101%
9	Damascus	101%	100%	100%	100%
10	Derwood	94%	94%	87%	94%
11	Fairland/Colesville	96%	96%	99%	97%
12	Friendship Heights	78%	70%	73%	70%
13	Gaithersburg City	88%	86%	76%	85%
14	Germantown East	95%	95%	97%	91%
15	Germantown Town Center	89%	91%	89%	90%
16	Germantown West	93%	90%	92%	88%
17	Glenmont	90%	91%	96%	91%
18	Grosvenor	81%	84%	75%	80%
19	Kensington/Wheaton	91%	92%	96%	92%
20	Long Branch	91%	92%	96%	92%
21	Montgomery Village/Airpark	93%	102%	93%	102%
22	North Bethesda	83%	87%	71%	82%
23	North Potomac	97%	100%	100%	100%
24	Olney	99%	100%	99%	100%
25	Potomac	97%	98%	96%	98%
26	R&D Village	89%	88%	80%	90%
27	Rockville City	88%	94%	87%	98%
28	Rockville Town Center	79%	80%	70%	79%
29	Rural East	99%	99%	98%	100%
30	Rural West	100%	100%	100%	100%
31	Shady Grove Metro Station	89%	88%	77%	88%
32	Silver Spring CBD	77%	65%	58%	65%
33	Silver Spring/Takoma Park	83%	83%	82%	84%
34	Takoma/Langley	83%	83%	82%	84%
35	Twinbrook	81%	80%	74%	79%
36	Wheaton CBD	85%	85%	76%	84%
37	White Flint	79%	78%	72%	78%
38	White Oak	89%	90%	91%	88%

Appendix Table 1b: Mode Split Assumptions by Policy Area						
Policy Area #	Development Type	Auto Driver	Auto Passenger	Transit	Non-Motorized	Total
14 Germantown East	Residential	61.5%	26.9%	4.3%	7.4%	100%
	Office	72.1%	21.1%	1.8%	5.0%	100%
	Retail	70.1%	25.3%	1.1%	3.5%	100%
	Other	69.5%	23.2%	2.5%	4.8%	100%
15 Germantown Town Center	Residential	57.7%	27.0%	5.4%	9.9%	100%
	Office	69.2%	20.4%	4.5%	5.8%	100%
	Retail	64.5%	26.5%	2.5%	6.4%	100%
	Other	68.2%	20.1%	5.3%	6.4%	100%
16 Germantown West	Residential	60.4%	26.9%	4.1%	8.6%	100%
	Office	68.2%	22.9%	3.2%	5.8%	100%
	Retail	66.4%	27.6%	1.2%	4.8%	100%
	Other	67.0%	23.5%	3.3%	6.2%	100%
17 Glenmont	Residential	58.4%	24.8%	10.0%	6.8%	100%
	Office	69.5%	16.8%	8.2%	5.6%	100%
	Retail	69.5%	22.7%	4.0%	3.9%	100%
	Other	69.1%	16.9%	8.4%	5.6%	100%
18 Grosvenor	Residential	52.3%	25.8%	11.9%	10.0%	100%
	Office	63.4%	16.5%	13.3%	6.8%	100%
	Retail	54.7%	27.5%	8.4%	9.5%	100%
	Other	61.0%	17.2%	15.4%	6.3%	100%
19 Kensington/Wheaton	Residential	59.1%	25.4%	8.1%	7.4%	100%
	Office	69.6%	18.6%	6.1%	5.7%	100%
	Retail	69.8%	23.8%	2.1%	4.3%	100%
	Other	69.8%	18.7%	5.6%	5.9%	100%
20 Long Branch	Residential	54.0%	21.0%	10.1%	14.9%	100%
	Office	63.0%	10.7%	15.1%	11.2%	100%
	Retail	59.5%	17.2%	6.9%	16.4%	100%
	Other	63.8%	10.5%	14.0%	11.6%	100%
21 Montgomery Village/Airpark	Residential	59.9%	26.8%	4.6%	8.6%	100%
	Office	77.7%	15.1%	2.9%	4.3%	100%
	Retail	67.7%	25.1%	1.7%	5.4%	100%
	Other	77.4%	15.1%	2.8%	4.7%	100%
22 North Bethesda	Residential	53.8%	25.9%	8.0%	12.3%	100%
	Office	65.8%	18.4%	8.6%	7.3%	100%
	Retail	51.6%	28.4%	6.1%	14.0%	100%
	Other	62.4%	19.5%	9.4%	8.7%	100%
23 North Potomac	Residential	63.0%	27.1%	3.0%	7.0%	100%
	Office	75.7%	18.6%	0.8%	4.8%	100%
	Retail	72.4%	24.1%	0.6%	2.9%	100%
	Other	75.8%	18.8%	1.0%	4.4%	100%
24 Olney	Residential	64.3%	26.4%	3.3%	6.1%	100%
	Office	76.3%	19.4%	0.7%	3.6%	100%
	Retail	72.1%	24.8%	0.5%	2.6%	100%
	Other	76.3%	19.5%	0.7%	3.5%	100%
25 Potomac	Residential	62.6%	26.8%	4.1%	6.5%	100%
	Office	74.4%	19.3%	2.2%	4.1%	100%
	Retail	69.8%	25.7%	1.8%	2.7%	100%
	Other	74.8%	19.5%	2.1%	3.7%	100%
26 R&D Village	Residential	57.3%	27.3%	5.7%	9.7%	100%
	Office	66.7%	23.5%	4.4%	5.4%	100%
	Retail	58.0%	34.1%	2.0%	6.0%	100%
	Other	68.8%	22.4%	3.8%	5.1%	100%

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