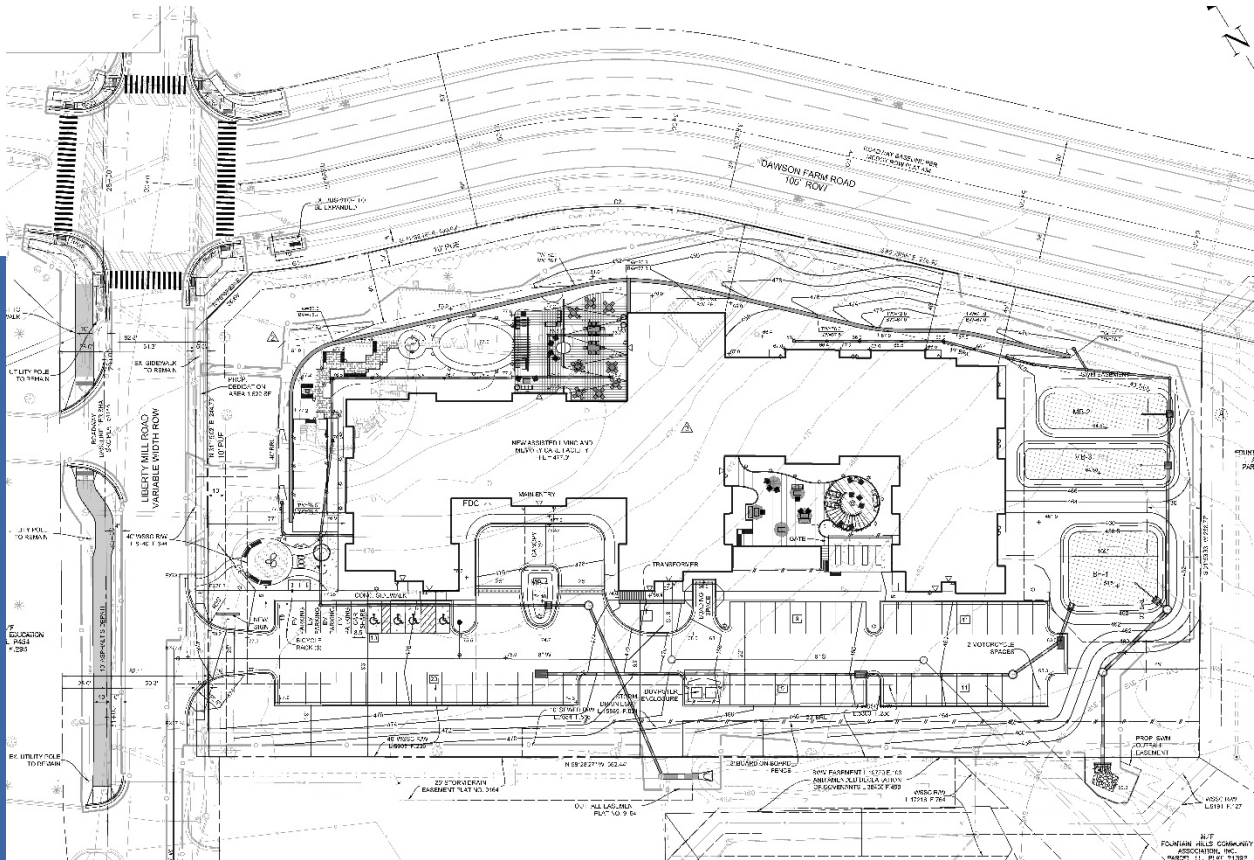


LIBERTY MILL ROAD

PRELIMINARY PLAN AMENDMENT 12017021D



Request to extend the Preliminary Plan Validity by three years and Adequate Public Facilities (APF) determination by two years, including a subdivision waiver to limit the findings required to grant an APF extension.

COMPLETED: 5/19/2025

PLANNING BOARD HEARING DATE: 5/29/2025

MCPB ITEM NO. 11

Planning Staff



Jonathan Casey, Planner III, Upcounty Planning, Jonathan.casey@montgomeryplanning.org, 301-495-2162

Nkosi Yearwood, Planning Supervisor, Upcounty Planning, Nkosi.yearwood@montgomeryplanning.org, 301-495-1332

Patrick Butler, Chief, Upcounty Planning, Patrick.butler@montgomeryplanning.org, 301-495-4561

LOCATION/ADDRESS

19115 Liberty Mill Road, southeast quadrant of the intersection of Liberty Mill Road and Dawson Farm Road

MASTER PLAN

1989 *Germantown Master Plan*

ZONE

R-200

PROPERTY SIZE

3.59 acres

APPLICANT

Flournoy Development Group, LLC

ACCEPTANCE DATE

January 13, 2025

REVIEW BASIS

Chapter 50



Summary:

- The Applicant made a timely request to extend the validity period for both the Preliminary Plan Validity and the APF Validity for the development.
- Staff recommends that the Preliminary Plan validity period be extended three years, until January 15, 2028.
- Staff recommends that the Adequate Public Facilities validity period be extended two years until January 15, 2029.
- Staff supports the Applicant's request for a subdivision waiver of certain findings necessary to approve the APF extension.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN NO. 12017021D

Staff recommends approval with conditions of the Preliminary Plan Amendment to extend the Preliminary Plan and Adequate Public Facilities (APF) validity periods. All site development elements shown on the latest electronic version of the Preliminary Plan Amendment No. 12017021D, as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the conditions below. The following Conditions 13 and 14 modify the previously approved conditions. All other conditions remain in full force and effect.

Modified Conditions

ADEQUATE PUBLIC FACILITIES

13. The Adequate Public Facilities (“APF”) review for the Preliminary Plan Amendment will remain valid for ~~five (5) two (2) years from the current expiration date until January 15, 2029.~~ ~~the initiation date as defined in the Montgomery County Code Section 50.4.3.J.5.~~

PRELIMINARY PLAN VALIDITY PERIOD

14. The Preliminary Plan Amendment will remain valid for ~~36 months~~ three (3) years until January 15, 2028. ~~from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to before~~ 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.

SECTION 2: SITE DESCRIPTION

VICINITY

The Property is identified as Parcel 515 on Tax Map EU341 and is located at 19115 Liberty Mill Road (“Subject Property” or “Property”), in the southeast quadrant of the intersection of Liberty Mill Road and Dawson Farm Road in the 1989 *Germantown Master Plan* (“Master Plan”) area. The Property is located within the Clopper Village, CL-2 Analysis Area of the Master Plan.

The surrounding area is comprised of predominantly residential uses consisting of detached residential properties and townhouses in the R-200 Zone. The nearest structures to the Property are the Fountain Hills townhouses to the southeast, two detached residential houses to the south, a one-

story vacant commercial building (former post office) to the southwest, the Germantown Elementary School directly across Liberty Mill Road to the west, and a detached residential dwelling across Dawson Farm Road to the north. All these properties are within the R-200 Zone. Other nearby properties include a mix of two and three-story detached residential properties and townhouses.



Figure 1 – Vicinity and Zoning Map

PROPERTY DESCRIPTION

The Property consists of 3.63 acres, zoned R-200, and is improved with a 2,584 square foot, two-story single-unit detached residential dwelling and several detached accessory buildings. The Property has frontage on Liberty Mill Road and Dawson Farm Road; however, access to the Property is only from Liberty Mill Road via a semi-circular driveway with two separate driveway aprons.

The existing improvements are located towards the northwest corner of the Property. Along with three significant trees, the remainder of the Property consists primarily of lawn, ornamental grass, landscape, and various trees. The Property is also encumbered along the southern and part of its

western property lines by a 40-foot-wide Washington Suburban Sanitary Commission (WSSC) easement for a 30-inch sewer main. In addition, there is an overlapping storm drain easement for a 24-inch storm drain line following the southern Property line.

The Property is generally rectangular in shape, except that it follows the curvature of Dawson Farm Road on the northern Property line. The topography gently slopes from the front of Liberty Mill Road to the rear (eastern Property line). There are 269 feet of frontage along Liberty Mill Road and 569 feet on Dawson Farm Road.

A portion of a stream valley buffer, generated by an off-site stream, is on the southeast corner of the Property. There are no known rare, threatened, or endangered species on this Property.



Figure 2 – Subject Property

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS

CONDITIONAL USE NO. 2017-02

On January 13, 2017 (corrected on March 22, 2017), the Hearing Examiner approved Conditional Use No. 2017-02, Chestnut Ridge/Arden Courts, to construct a 64-bed Residential Care Facility with 44 parking spaces, on the Subject Property. Conditional Use No. 2017-02 contemplated retaining the existing single-unit detached dwelling on one 0.53-acre lot and creating a second 3.09-acre lot for the Residential Care Facility. The accompanying Preliminary Forest Conservation Plan ("PFCP") No. CU2017-02, was approved on November 10, 2016, by Planning Board Resolution MCPB No. 16-120.

PRELIMINARY PLAN NO. 120170210

On July 24, 2017, the Planning Board approved Chestnut Ridge/Arden Courts at Germantown, Preliminary Plan No. 120170210 by Resolution MCPB No. 17-069, to create two lots on 3.62 acres of land in the R-200 zone; one lot was approved for an existing dwelling and the second for a 64-bed Residential Care Facility, approved by Conditional Use No. 2017-02, Arden Courts of Germantown (Attachment A). The accompanying Final Forest Conservation Plan ("FFCP") No. 120170210 was also approved by the same resolution.

PRELIMINARY PLAN NO. 12017021A

The preliminary plan amendment was submitted for forest conservation purposes to modify the limits of disturbance to account for the removal of the existing residence and associated tree variance impacts and sidewalk improvements in the right-of-way. However, the Applicant ultimately did not progress with this application.

PRELIMINARY PLAN NO. 12017021B

This preliminary plan application was assigned an application number but was never accepted by the Intake and Regulatory Coordination Division. As a result, this application was withdrawn.

CONDITIONAL USE 20-09

Conditional Use No. 20-09, which superseded CU No.2017-02, was approved on December 21, 2020, for a Residential Care Facility with up to 125 beds (Attachment B) in a single building on the Subject Property. A minor modification to CU 20-09 was subsequently approved on August 23, 2021, to reallocate the 125-beds in 119 units to 125 beds in 123 units, eliminate the approved parking garage,

and provide a surface parking lot and make additional minor site and landscape improvements (Attachment C).

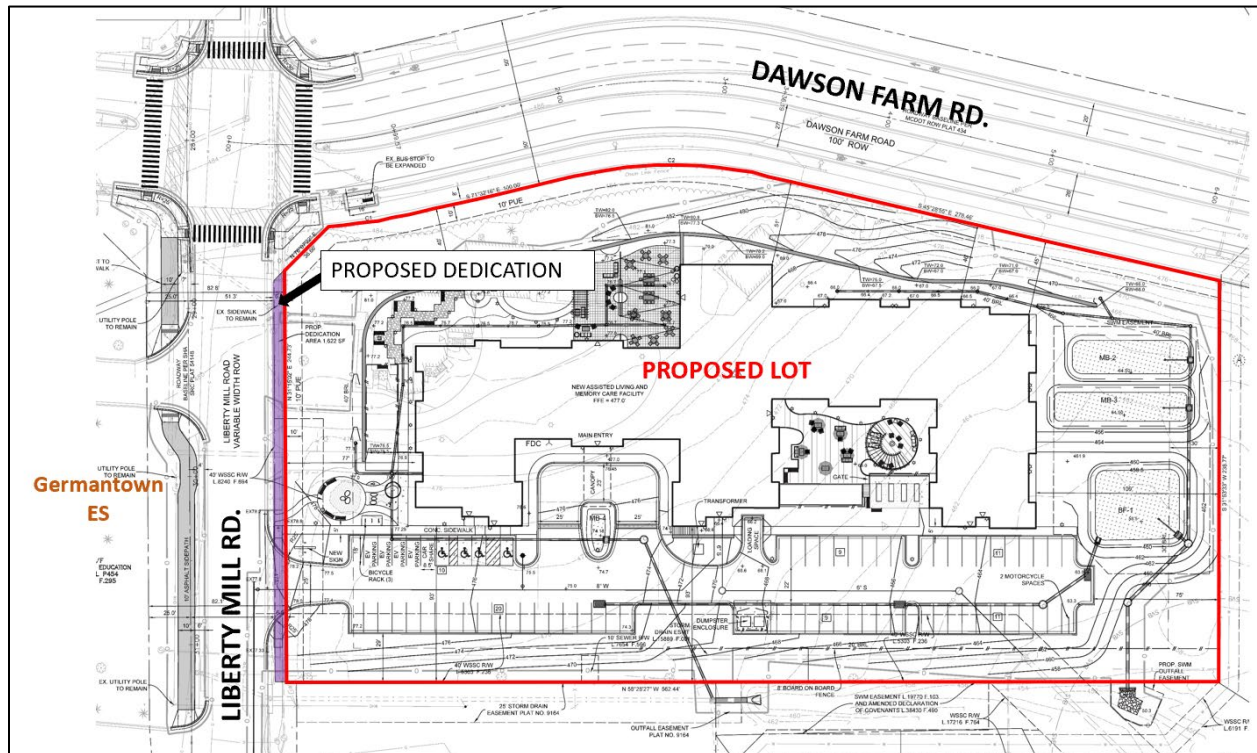


Figure 3 – Preliminary Plan 12017021C

PRELIMINARY PLAN 12017021C

On October 28, 2021, the Planning Board approved Liberty Mill Road, Preliminary Plan Amendment No. 12017021C by Resolution MCPB No. 21-123, to create one 3.59-acre lot (3.63 acres prior to right-of-way dedication along Liberty Mill Road) in the R-200 zone for approved Conditional Use 20-09 (Attachment D). The Amendment proposed to raze the existing house and expand the building from a 64-bed Residential Care Facility (Over 16 Persons) to a 125-bed Residential Care Facility (Over 16 Persons). The accompanying Final Forest Conservation Plan (“FFCP”) No. 12017021C was also approved by the same resolution. The Preliminary Plan was granted a validity period of 36 months, and an Adequate Public Facilities (APF) validity period of five (5) years from the initiation date¹ which was January 15, 2022.

¹ Resolution MCPB No.21-123 was mailed on December 16, 2021. The Subdivision Regulations establish that the Preliminary Plan initiation date is 30 days after the date the resolution is mailed, unless an appeal is filed.

PROPOSAL

PRELIMINARY PLAN 12017021D

On January 13, 2025², Flournoy Development Group, LLC (“Applicant”) submitted Liberty Mill Road, designated Preliminary Plan Amendment No. 12017021D (“Application” or “Amendment”), the subject Application, which includes a request for an extension of the Preliminary Plan Validity period by three (3) years, from January 15, 2025 until January 15, 2028 and extend the APF validity period by two (2) years from January 15, 2027 until January 15, 2029. The Application also seeks approval of a waiver to provide relief from specific findings required to extend the adequate public facilities validity. As discussed in this Staff Report, the Applicant’s requests are justified and Staff recommends the Planning Board approve the extensions and associated waiver. No additional modification or physical changes are proposed.

SECTION 4: COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements. As of the date of this Staff Report, no correspondence has been received.

SECTION 5: PRELIMINARY PLAN 12017021D FINDINGS AND ANALYSIS

This Application is being reviewed under Section 50.4.2.H and Section 50.4.3.J.7, which allow the Planning Board to extend a preliminary plan validity period and APF validity period, respectively, pursuant to a series of findings.

The Applicant is also requesting a waiver, through Section 50.9.3.A, from the provisions of Section 50.4.3.J.7.d.i of the Montgomery County Code regarding the criteria for extensions of Adequate Public Facility periods for non-residential development.

Except as modified below, the proposed Preliminary Plan Amendment does not alter the intent of the previous findings, which remain applicable.

PRELIMINARY PLAN VALIDITY AND APF VALIDITY EXTENSION (W/ WAIVER)

² The Applicant filed a timely preliminary plan validity extension request with the Planning Department on November 22, 2024, before the Preliminary Plan validity expired on January 15, 2025. The Application was accepted on January 13, 2025.

PRELIMINARY PLAN VALIDITY EXTENSION

According to Section 50.4 of the County Code, the validity period associated with a preliminary plan requires that all approved lots and parcels be recorded by Record Plat within the preliminary plan validity period established in the Planning Board Resolution. Resolution No. 21-123 established a 36-month validity period for the Preliminary Plan with an initial expiration date of January 15, 2025.

Section 50.4.2.H.1 of the Montgomery County Code authorizes the Board to approve a preliminary plan validity period extension, subject to the following criteria:

1. Extension request

- a) Only the Board is authorized to extend the validity period. The applicant must submit a request to extend the validity period of an approved preliminary plan in writing before the previously established validity period expires.***

The Applicant filed a timely preliminary plan validity extension request with the Planning Department on November 22, 2024, before the Preliminary Plan validity expired on January 15, 2025. The Application was accepted on January 13, 2025.

- b) The Director may approve a request to amend the validity period phasing schedule of an approved preliminary plan if the length of the total validity period of the preliminary plan is not extended. The applicant must submit the request in writing before the previously established validity period of the phase expires.***

Not Applicable

- c) The written request must detail all reasons to support the extension request and include the anticipated date by which the plan will be validated. The applicant must certify that the requested extension is the minimum additional time required to record all plats for the preliminary plan.***

The Applicant has provided a Statement of Justification (SOJ) dated for the requested extension to the plan validity (Attachment E). Without a timely request extending the Preliminary Plan's validity expired, the Preliminary Plan would have otherwise expired on January 15, 2025.

As discussed in the Applicant's SOJ, additional time is requested because of unanticipated market conditions and a lack of financing.

The request for 3-year extension of the validity period will allow the Applicant additional time to find an equity partner and secure bank financing, finalize the purchase of the Property and subsequently file a record plat, validating the Preliminary Plan.

An additional reason to support the extension is that, per the conditions of approval for Preliminary Plan amendment 12017021C, the Applicant must construct an off-site side path and intersection improvements that will greatly benefit the public and improve pedestrian and bicycle connectivity to the adjacent elementary school (Figure 4).

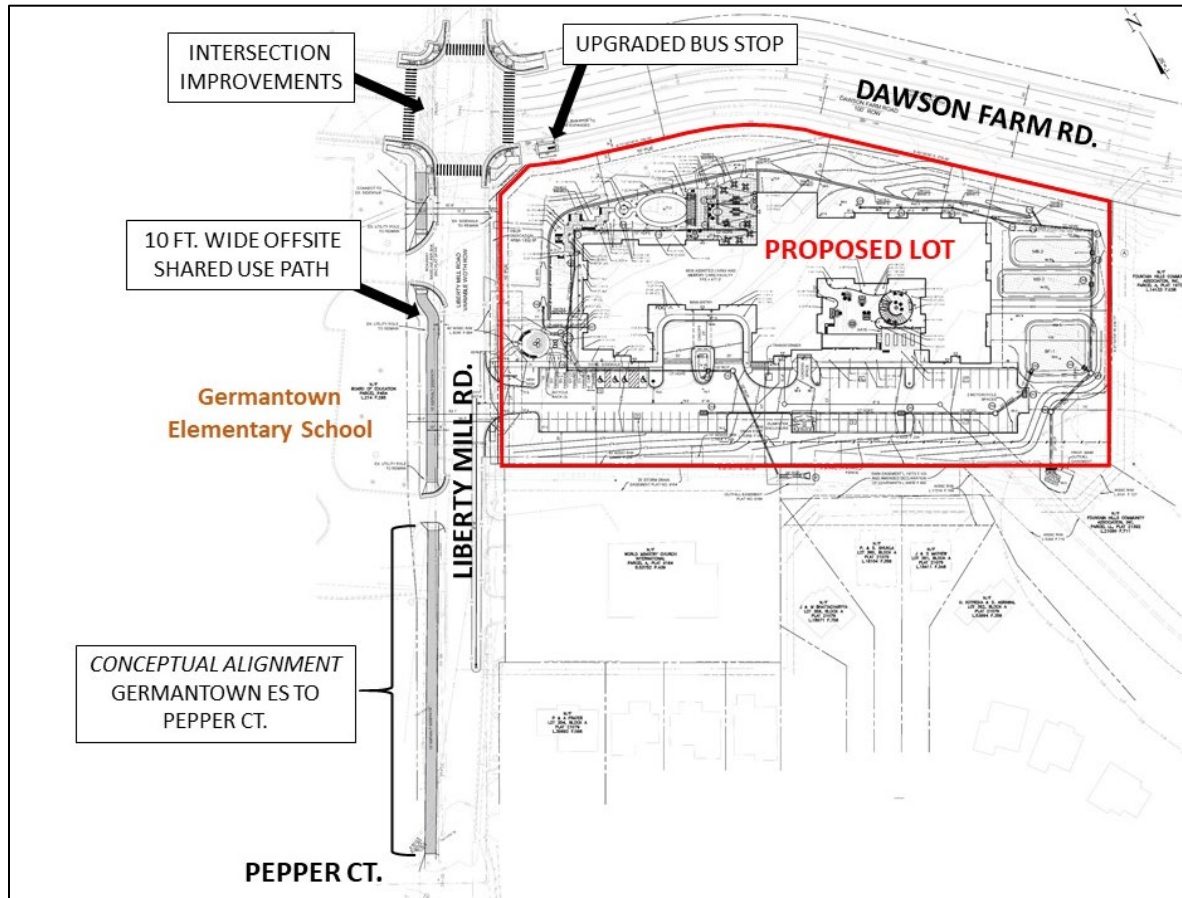


Figure 4 – Approved Preliminary Plan 12017021C

1. Effect of failure to submit a timely extension request.

The request was received in a timely manner; therefore, the sub-sections herein do not apply.

2. Grounds for Preliminary Plan Extension

- a. The Board may only grant a request to extend the validity period of a preliminary plan if the Board finds that:
 - i. delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or

- ii. the occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.*
- b. The applicant bears the burden of establishing the grounds in support of the requested extension.*

As explained in the Applicant's Statement of Justification and generally summarized below, the Applicant's ability to validate the Preliminary Plan has been impaired due to significant, unanticipated events, beyond the Applicant's control. Despite the impediments, the Applicant has continuously worked to move this Project forward.

In 2020, the Applicant contracted to purchase the Subject Property from the O'Dell family, filed a Conditional Use Application CU20-09 to operate the residential care facility on the Property, and filed a preliminary plan amendment. Shortly thereafter, the COVID-19 pandemic began causing inflation, supply chain issues, and increased building costs. To keep the Project viable and on track, the Applicant was forced to value engineer some development elements, which were incorporated through amending the Conditional Use and submitting Preliminary Plan Amendment 12017021C.

Following the approval of Preliminary Plan Amendment 12017021C, in March 2022, uncertainty in the national and local senior housing market began, evident by rising interest rates and performance of unrelated local senior housing projects, resulting in the loss of the necessary equity partner. The Applicant could then not execute the previously secured bank financing, and ultimately, the operating commitment could not be retained. Without an equity partner and bank financing, the Applicant could not validate the Preliminary Plan. Prematurely recording a record plat, before obtaining financial backing would also likely cause an undue hardship on the O'Dell's, the existing Property owner, because real estate taxes would prematurely increase.

The Applicant has shown their continued commitment to the Project by seeking a new equity partner and bank financing. Flournoy has requested and received approvals to extend the Conditional Use each year and renegotiated the purchase agreement with the O'Dell's to maintain a good relationship and retain the purchase contract. As stated above, the increase in interest rates did play a major role in the delays that have occurred and necessitated extending the Preliminary Plan's validity.

3. Planning Board considerations for extension.

- a. The Board may condition the grant of an extension on a requirement that the applicant revise the plan to conform with changes to the requirements of this Chapter since the plan was approved.*

No significant changes have been made to the Subdivision Regulations since the last amendment was approved.

- b. The Board may deny the extension request if it finds that the project, as approved and conditioned, is no longer viable. The Board must consider whether the project is capable of being financed, constructed, and marketed within a reasonable time frame. The Applicant must demonstrate the project's viability upon request by the Board or the Director.*

The Applicant requests a reasonable extension to complete the documents necessary to record the plat. The viability of the Project is largely reliant on favorable market conditions, which the Applicant cannot predict. However, given the Applicant's experience with this type of development, the Applicant's efforts to maintain the existing entitlements and requested extensions are evidence that the Applicant believes the development remains viable.

ADEQUATE PUBLIC FACILITIES (APF) VALIDITY EXTENSION

Section 50.4.3.J.7 of the Montgomery County Code authorizes the Board to extend the validity period for a determination of APF, subject to the following findings:

7. Extensions.

- a. Application.** *Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.*
- i. The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.*

The Applicant filed the request to extend the current APF validity period on November 22, 2024, before January 15, 2027, the current expiration date.

- ii. *The applicant must submit a new development schedule or phasing plan for completion of the project for approval.*

The development of the residential care facility is a single-phase project, subject to the proposed APF validity period.

- iii. *For each extension of an adequate public facilities determination:*

- (a) *the applicant must not propose any additional development above the amount approved in the original determination;*

No additional development is proposed.

- (b) *the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;*

No additional conditions are proposed.

- (c) *the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;*

A transportation impact study was not required as a part of the Preliminary Plan 12017021C because the residential care facility was shown to generate less than 50 net new peak-hour person trips, according to the Applicant’s LATR Exemption Statement dated May 4, 2020. Since the Preliminary Plan 12017021C was approved, a new Growth and Infrastructure Policy (GIP) was adopted (2024-2028), which changed the threshold for a transportation impact study to projects that will generate 30 or more net new vehicle trips. The approved residential care facility with up to 125 beds and 35 employees is estimated to generate a net increase of 21 vehicle trips in the morning peak hour and a net increase of 27 vehicle trips in the evening peak hour. A summary of the trip generation analysis is provided in Table 1 below. Since the Project is still under the new GIP threshold for providing a transportation impact study, 30 net new vehicle trips, the Project would still be exempt from completing a transportation impact study.

Table 1: Trip Generation Analysis

		ITE Trip Generation Vehicle Rates		Adjusted Vehicle Rates Germantown West Policy Area		Total Vehicle Trips	
		AM	PM	AM	PM	AM	PM
Existing	Single-family house (1 unit)	1	1	1	1	1	1

Proposed	Assisted Living Facility (125 beds) (ITE Code 254)	23	30	22	28	22	28
Net Change						21	27

(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot; and

Not Applicable because the lot is not part of a subdivision covered by a previous APF determination.

(e) if the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.

Not Application because the approved use does not generate school aged children.

Section 50.4.3.J.7.d of the Subdivision Regulations sets forth the specific criteria below that must be satisfied for approval of the extension of the Preliminary Plan APF determination for a nonresidential³ or mixed-use subdivision development, as follows:

d. Nonresidential or mixed-use subdivisions.

i. The Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:

(a) the Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;

(b) all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and

³ Residential Care Facility is considered nonresidential per Section 8-30(b)(2) of the Montgomery County Code: “Non-residential development means any development that does not contain only any type of dwelling or dwelling unit (including a multiple-family building, mobile home or townhouse) as defined in Section 59-A-2, and any extension, addition, or accessory building”.

(c) the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:

(1) structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed; or

(2) structures that comprise at least 5 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60 percent of the total gross floor

The Preliminary Plan has not been validated; therefore, the Applicant has not obtained a building permit or commenced construction. The Applicant, as expressed in the Statement of Justification, is requesting a waiver from the findings delineated under 50.4.3.J.7.d.i.

SUBDIVISION WAIVER – SECTION 50.9.1

Section 50.9.1 of the Subdivision Regulations authorizes the Board to modify or waive any portion of the Subdivision Regulations. In granting a waiver, the Planning Board must make certain findings, set forth in Section 50.9.3.A.

Per Section 50.9.3., to grant a waiver, the Planning Board must find that:

- 1. due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

As noted above, since Preliminary Plan 12017021C was approved, practical difficulties from the unanticipated economic shift and loss of financial backing have prevented the Applicant from validating the Preliminary Plan. The Applicant has been unable to satisfy the requirements of 50.4.3.J.7.d.i because the Preliminary Plan must be validated before pulling building permits, occupancy permits and constructing infrastructure, the primary criteria in 50.4.3.J.7.d.i. In this case, the strict application of this section is not needed to ensure public health, safety and general welfare. However, if this Application is approved and implemented, the required improvements associated with this Project will improve elements of public safety by upgrading existing pedestrian and bicycle connections, and the project will add to a more complete community with much needed housing to allow for aging in place within Germantown.

- 2. the intent of the requirement is still met; and*

The intent of the APF review findings is to determine if the public facilities and services, including roads, other transportation facilities, water and sewer service, schools, police stations, firehouses and health clinics are adequate to support proposed development,

according to the latest Growth and Infrastructure Policy. Similarly, the findings for extending APF are intended to determine if a new APF review is required and if the Applicant is progressing forward on a development or artificially inflating the development pipeline, which has impacts on other proposed development. The Applicant is requesting a two-year extension of the APF, which is reasonable, considering the proposed Preliminary Plan validity extension and the efforts made to bring this project to fruition. Furthermore, the existing APF approval is valid until January 15, 2027, and no significant changes have occurred in the vicinity of the Subject Property that would necessitate a new APF review.

3. *the waiver is:*

- a. the minimum necessary to provide relief from the requirements; and*
- b. consistent with the purposes and objectives of the General Plan.*

As discussed, the Applicant cannot meet the criteria to extend a non-residential development because the Preliminary Plan must be validated before meeting any of the thresholds identified in the criteria. As such, a waiver of Section 50.4.3.J.7.d is the minimum necessary to provide relief from the requirements. If approved, this Application, including the waiver, will provide a reasonable amount of time for the Applicant to secure new financial backing. Once realized, this development will provide additional housing within Montgomery County and housing options for the aging population who require assisted living, memory care or both. The waiver is not inconsistent with the objectives of the General Plan (Thrive 2050) because the development will ultimately provide a wider variety of housing types and support aging community members, potentially allowing them to age in place. Bicycle, pedestrian, and vehicular (car and bus) infrastructure will also be improved, which is important given the proximity to the Germantown MARC Rail Station.

SECTION 6: CONCLUSION

The Amendment meets all requirements established in the Subdivision Regulations after considering the requested waiver and amended conditions at the beginning of this report, Staff recommends approval of a 3-year Preliminary Plan validity period extension and a 2-year extension of the APF validity period. Except as modified within this report, the proposed Preliminary Plan Amendment does not alter the intent of the previous conditions and findings, which remain applicable.

ATTACHMENTS

Attachment A – Preliminary Plan No. 120170210

Attachment B – Conditional Use 20-09 Hearing Examiner’s Report and Decision, December 21, 2021

Attachment C – Amended Conditional Use 20-09 Hearing Examiner’s Report and Decision, August 23, 2021

Attachment D – Preliminary Plan Amendment No. 12017021C, Resolution MCPB No. 21-123

Attachment E – Statement of Justification



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 17-069
Preliminary Plan No. 120170210
Chestnut Ridge/Arden Courts at Germantown
Date of Hearing: July 24, 2017

JUL 31 2017

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on July 24, 2017, Arden Courts of Germantown MD, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 3.62 acres of land in the R-200 zone for an existing dwelling and for a 64-bed residential care facility, located at the southeast corner of the intersection of Liberty Mill Road and Dawson Farm Road ("Subject Property"), in the Germantown Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170210, Chestnut Ridge/Arden Courts at Germantown ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 14, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 24, 2017, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170210 to create two lots on the Subject Property, subject to the following conditions:¹

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Approved as to
Legal Sufficiency:

Christina Soud 7/20/17
8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
MNCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

1. This Preliminary Plan is limited to two lots: Lot 1 for an existing single-family residence which will remain, and Lot 2 for a proposed 64-bed residential care facility.
2. The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan ("FFCP") No. 120170210, approved as part of this Preliminary Plan, subject to the following conditions:
 - a. Prior to the start of any demolition, clearing, grading or construction on the Property, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank for 0.49 acres (21,344.4 square feet), of mitigation credit.
 - b. Prior to the start of any demolition, clearing, grading or construction on the Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 0.07 acres of onsite new forest planting.
 - c. Prior to the start of any demolition, clearing, grading or construction on the Property, the Applicant must submit a two year Maintenance and Management Agreement approved by the M-NCPPC Office of General Council. The Maintenance and Management Agreement is required for all forest planting areas credited toward meeting the requirements of the Forest Conservation Plan, including the reforestation of environmental buffers.
 - d. The Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements as shown on the approved Final Forest Conservation Plan (FFCP) and as specified by the M-NCPPC Forest Conservation Inspector.
 - e. Afforestation plantings that are located outside the limits of disturbance must occur within the first planting season following the release of the sediment and erosion control permit by Montgomery County Department of Permitting Services.
 - f. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved FFCP.
 - g. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
 - h. The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any

demolition, clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.

3. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated May 19, 2017, and hereby 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 provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
5. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Resolution.
7. The Applicant must dedicate and show on the record plat(s) an additional approximately 6.5 feet from the existing property line along Liberty Mill Road to allow the sidewalk to be within the public right-of-way.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section, in its stormwater management concept letter dated July 27, 2016, and hereby 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, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section, in its letter dated May 23, 2017, and hereby 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 amendments do not conflict with other conditions of Preliminary Plan approval.
10. The Applicant must comply with conditions of Board of Appeals Resolution No. 2017-02 approving Conditional Use Application CU 2017-02, Arden Courts of Germantown.
11. The record plat must show necessary easements.
12. 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".

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, 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 Application satisfies all applicable sections of the Subdivision and Zoning Ordinance. The lot size, width, shape, orientation, internal circulation and parking are appropriate for the subdivision given the Master Plan recommendations and the use proposed for the Property. The rectangular block design is appropriately scaled for the parcel to be divided into two lots – a 22,675 square-foot lot for the existing single family home, and a 133,639 square-foot lot for the approved 64-bed residential care facility. Lot 1 will create an appropriate setting for the existing house, detached garage and mature trees along the north and western boundaries of the lot. Additional trees and landscaping will be provided along the shared boundaries between Lot 1 and Lot 2. Lot 2 will accommodate development on the Property with the facility set back approximately 80 feet from the southern property boundary, and approximately 42 feet from Dawson Farm Road. The Preliminary Plan provides for adequate open, landscaped areas along the periphery of the Site. The lots are in compliance with the dimensional requirements for the R-200 Zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in this zone.

2. *The Preliminary Plan substantially conforms to the Master Plan.*

The Preliminary Plan substantially conforms to the recommendations within the 1989 Approved and Adopted Germantown Master Plan. The Master Plan locates the Property within the Clopper Village CL-2 Analysis Area, a 7-acre area that includes the former Germantown Post Office location and the Subject Property. The Clopper Village Land Use and Zoning Recommendations (table 10, page 61), recommends residential uses under the R-200 Zone, up to 13 units, and the area is a suitable location for child day-care center by special exception.

The Master Plan, on page 63, also provides the following recommendations relevant to this Application:

- *"This Master Plan recommends that this area retain its R-200 zoning."*

The Property retains its R-200 zoning classification.

- *"Because of its location in a residential area and adjacent to an arterial road it would be suitable for a child or elderly day-care center, religious facility or other similar use. The existing post office site and building might well be able to be converted into a child day-care center."*

A Residential Care Facility is similar to an elderly day-care center, one of the recommended uses for the CL-2 Analysis Area. The Planning Board finds that the one-story, 64-bed, residential care facility would be compatible with the adjacent old post office site and building if converted into a child day-care facility.

- *"The property is not suitable for special exception uses that are not compatible with the existing single-family detached character of this area. Retail or similar uses should be located at other, more appropriate locations."*

The use is analogous to an elderly day-care center, which is recommended in the Master Plan. Compatibility with the existing single-family detached character of the area is also noted as a key consideration. The one-story Residential Care Facility is residential in character and compatible with the existing single-family detached development in the area. The three gable ends on the wings of the building help to articulate the roofline, and visually breaks up the mass of the building. A minimum 12-foot wide landscape buffer will be provided along the southern property line where single family detached homes are located, and a minimum 20-foot wide landscape buffer wide buffer will be provided along the eastern property line where townhouses are located. Therefore, the facility will be compatible with the surrounding residential development.

Land Use

The Master Plan notes that *"although Germantown's elderly population is modest, it is expected to increase as Germantown continues to grow and its population matures and housing opportunities are broadened."* (p. 141). The

Master Plan further notes that *"housing for the elderly will be needed in Germantown, as will nursing homes. Programs and day-care centers for the elderly parents of Germantown residents may also be needed."* (p. 141). The Residential Care Facility will help to meet the demand for a greater range of housing options in the area, in particular for the elderly.

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

Roads and Transportation Facilities

Transportation access is adequate to serve the development by this Preliminary Plan. The northernmost access off Liberty Mill Road will remain in its current location to provide access to the existing residence on Lot 1. The southernmost access off Liberty Mill Road will be shifted further southward to provide additional separation between the two driveways. During the Conditional Use process, MCDOT approved the proposed access location for the residential care facility.

Master-Planned Roadways and Bikeways

In accordance with the 1989 *Germantown Master Plan* and the 2005 *Countywide Bikeways Functional Master Plan*, Dawson Farm Road is recommended as a four-lane divided arterial, A-254, with a 100-foot wide right-of-way and no bikeway. The existing right-of-way is 100 feet.

Liberty Mill Road is not listed in the *Germantown Master Plan* but was formerly the major highway route MD 118 before it was relocated to the north of the site. Liberty Mill Road is a functional primary residential street. While the right-of-way varies on Liberty Mill Road, the right-of-way in front of the Subject Property is approximately 75-76 feet, which meets the overall primary residential street right-of-way requirement of 70 feet. The Applicant must dedicate approximately 6.5 additional feet of right-of-way to include the sidewalk within the right-of-way, as requested by Planning Staff, for a total of approximately 82 feet of total right-of-way from the opposite property line.

Note that without the right-of-way dedication proposed by the Applicant, the corner property at the intersection of Liberty Mill Road and Dawson Farm Road meets the corner lot truncation requirements set forth in Chapter 50 (50.4.3.E.2.f.iii). The right-of-way dedication for the sidewalk along Liberty Mill Road reduces the truncation distance along the Liberty Mill Road

segment, but the actual intersection corner does not move and therefore the Planning Board supports the reduced width truncation given traffic safety and operations remain the same and the truncation distance is approximately 22 feet along Liberty Mill Road instead of 25 feet.

Pedestrian and Bicycle Facilities

The Preliminary Plan provides a 5-foot wide lead-in sidewalk from Liberty Mill Road. Liberty Mill Road has existing 5-foot wide sidewalks with approximately 3-foot wide green panels on both sides. Dawson Farm Road has an existing 8-foot wide shared use path with a 7-foot tree panel on the south side and a 5-foot wide sidewalk with a 6-foot wide tree panel on the north side. Dawson Farm Road also has bike lanes on either side of the street extending from Germantown Road on the north to Great Seneca Highway (MD 119) on the south.

The intersection of Liberty Mill Road and Dawson Farm Road has handicap ramps with detectable warning strips at all corners and crosswalks across all intersection approaches. However, there are only one handicap ramp per corner instead of the preferred two handicap ramps – one for each direction of travel from the corner.

The Preliminary Plan has one bike rack that supports two bikes and one bike locker that holds two bikes located near the main entrance to the building. These facilities provide the four bicycle spaces the Applicant offered to provide during the Conditional Use process.

Local Area Transportation Review (LATR)

The Local Area Transportation Review (LATR) analysis was performed using the most recently adopted Subdivision Staging Policy (SSP), which requires projects that generate more than 50 peak-hour person trips to perform additional analysis of the impacts of their project to ensure there are adequate public facilities.

The peak-hour trip generation estimated for the development was based on trip generation rates from the *Institute of Transportation Engineers (ITE) Trip Generation Manual, 9th edition*. Trip generation rates were calculated using the assisted living facility code, which best matched the use, and the number of beds within the facility as the unit of measure, because the number of beds is a constant element of the project in the future unlike employees. The 64-bed assisted living facility would generate nine peak-hour vehicle trips within the weekday morning peak period and 14 peak-hour vehicle trips within the evening peak period. These vehicle trips were adjusted using the appropriate Germantown West Policy Area adjustment factors to determine peak-hour person trips. This adjustment resulted in 14

peak-hour person trips within the weekday morning peak period and 22 peak-hour person trips within the evening peak period. The Applicant was not required to submit a traffic study to satisfy the LATR transportation test because the land use generates fewer than 50 peak-hour person trips within the weekday morning and evening peak periods.

Although the number of employees was also known for the project (20 in Shift 1, 10 in Shift 2, and 5 in Shift 3), the trip generation was not calculated using ITE rates based on the number of employees because these ITE rates did not have separate AM and PM peak hour trip generation rates. However, assuming a reasonable one AM peak hour and one PM peak hour trip per employee plus several guest trips during the peak hour, trip generation during the peak hours would still be lower than the 50 peak-hour person trip threshold under the new SSP at any of the shift change. Furthermore, because the project's peak hour of trip generation (i.e., shift changes) would not overlap with typical peak hours of surrounding roadways, there would be no adequate public facility issues for transportation.

Transportation Impact Tax and Transportation Policy Area Review (TPAR)

The Application was submitted after January 1, 2017, therefore the Applicant is no longer subject to the 2012-2016 Subdivision Staging Policy Transportation Policy Area Review (TPAR) test/tax. The Applicant will be required to pay the updated General District Transportation Impact Tax to Montgomery County DPS in lieu of the TPAR payment.

The Applicant submitted a transportation statement that says the 30,300 square-foot, 64 bed residential care facility generates 50 or fewer additional peak-hour person trips, therefore, the Application is exempt from review under the LATR guidelines.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

Environment

The Application meets the requirements of Chapter 22A of the Montgomery County code. Staff approved a Natural Resources Inventory/Forest Stand Delineation for the Property on February 5, 2016 (NRI/FSD No. 420161070). The Property has no forest, however there is a small segment of stream valley buffer (SVB) in the lower southeast corner that extends from an off-site stream.

Development of this Property generates a 0.56-acre afforestation planting requirement. This afforestation requirement will be met by planting 0.07-acre of the on-site SVB and purchasing credits in an off-site forest mitigation bank for the remaining 0.49-acres. Although the 0.07-acre afforestation planting is smaller than the minimum size to be considered forest, this area is immediately adjacent to off-site forest in an SVB protected in a Category I Conservation Easement and thereby increases the overall size of protected forest in this SVB.

The FFCP submitted by the Applicant on February 27, 2017 conforms to the Preliminary Forest Conservation Plan approved by the Planning Board on November 10, 2016 as part of the Conditional Use Application, No. CU 2017-02.

Forest Conservation

The Board finds that, as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. On November 10, 2016, the Planning Board approved the Applicant's request for a tree variance from Chapter 22A and the Preliminary Forest Conservation Plan. No changes to that variance are necessary for this Application.

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

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS water resources division on July 27, 2016. The Application will meet stormwater management goals using micro bioretention and pervious pavement.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration 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 must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 31 2017 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Monday, July 24, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board



MONTGOMERY COUNTY, MARYLAND

December 21, 2020

TO: Parties to OZAH Case No. CU 20-09, *Flournoy Development Group*

FROM: Montgomery County Office of Zoning and Administrative Hearings

SUBJECT: Notification of Decision and Applicable Procedures

On December 21, 2020, the Hearing Examiner issued a Report and Decision in **OZAH Case No. CU 20-09, Application of Flournoy Development Group**, for a conditional use to establish a Residential Care Facility for more than 16 persons under §59.3.3.2.E.2.c. The Decision approves the application for a conditional use to operate a Residential Care Facility for more than 16 persons under §59.3.3.2.E.2.c at 19115 Liberty Mill Road, Germantown, Maryland, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Applicant's conditional use site plan, landscaping plan, and lighting plan that are part of the submitted Application.
2. The maximum number of residential care units is limited to 125 beds in accordance with Montgomery County Zoning Ordinance Section 59.3.3.2.E (Residential Care Facility).
3. The maximum number of employees is limited to 35 persons on-duty at one-time.
4. Prior to the issuance of any building permit for the subject conditional use, the Applicant must amend or obtain approval of a Preliminary Plan of Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.
5. The Applicant must comply with or amend the Final Forest Conservation Plan No. 120170210 in accordance with the approval or amendment 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 west side of Liberty Mill Road, or an alternative method of compliance as acceptable by Planning Department staff.
7. At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with requirements to provide a minimum 5-ft. wide sidewalk along the frontage of the Subject Property with Liberty Mill Rd.

8. The testing of any on-site generator or similar equipment shall be conducted during weekday afternoon hours as to mitigate any disturbance to community members and residents alike.

The full text of the Hearing Examiner's report is available at the following website address: 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 in the County Council Office Building, 100 Maryland Avenue, Suite 200, Rockville, Maryland 20850. For further information on obtaining a paper copy, please call the Office of Zoning and Administrative Hearings at 240-777-6660.

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues 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.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

The Board of Appeals may be contacted at:

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.

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF: *
FLOURNOY DEVELOPMENT GROUP, LLC *

Applicant *

For the Application *

Casey Cirner, Esquire *

(Attorney for the Applicant) *

Kenneth Jones *

Brian Connelly *

Colleen Bowers *

Janet Meyer *

Katherine Wagner *

Charles Sabin *

OZAH Case No. 20-09

Before: Derek J. Baumgardner, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On July 7, 2020, Flournoy Development Group (“Flournoy” or “Applicant”) filed an application seeking a conditional use to establish a Residential Care Facility over 16 persons under §59.3.3.2.E.2.c of the Zoning Ordinance. The application proposes construct and operate a 125-bed residential care facility with assisted living and memory care units. The property is located at 19115 Liberty Mill Road, Germantown, Maryland (Tax Account No. 09-00776388) and is zoned R-200.

On September 22, 2020, OZAH issued a Notice of Public Hearing scheduling this matter to be heard on October 30, 2020.

On October 1, 2020, Applicant filed a Motion to Amend the application. OZAH issued Notice with regards to the amendment on October 6, 2020, and no objection was received.

On October 8, 2020, Planning Staff issued its report recommending approval of the application with conditions. Exhibit 40. The Planning Board subsequently approved the project by unanimous vote. The conditions recommended by Planning Staff and affirmed by the Board were as follows (Exhibit 40, p. 2):

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 residential care units is limited to 125 beds in accordance with Montgomery County Zoning Ordinance Section 59.3.3.2.E (Residential Care Facility).
3. The maximum number of employees is limited to 35 persons on-duty at one-time.
4. Prior to the issuance of any building permit for the subject conditional use, the Applicant must amend or obtain approval of a Preliminary Plan of Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.
5. The Applicant must comply with or amend the Final Forest Conservation Plan No. 120170210 in accordance with the approval or amendment 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 west side of Liberty Mill Road, or an alternative method of compliance as acceptable by Planning Department staff.
7. At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with requirements to provide a minimum 5-ft. wide sidewalk along the frontage of the Subject Property with Liberty Mill Rd.

The public hearing proceeded as scheduled on October 30, 2020. Six witnesses testified for the Applicant: Charlie Sabin, Director of Senior Housing Development, Flournoy Development Group, LLC; Kenneth D. Jones, Project Manager and Professional Engineer; Brian J. Donnelly, Principal and Professional Landscape Architect; Colleen E. Bowers, Professional Landscape Architect; Janet Meyer, professional architect; and Katherine Wagner, professional engineer. Two members of the community, Mr. Pankaj Shukla and Mr. Matthew Jacob, participated in the hearing and offered recommendations to mitigate any potential harms to adjacent properties resulting from stormwater runoff, sound, and lighting elements of the project.

After a thorough review of the record in this case, including all documents and testimony, the Hearing Examiner approves the conditional use with the conditions included in Part IV of this Report for the following reasons.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property, unrecorded Parcel P515, consists of 3.59 acres and is generally rectangular in shape except that it follows Dawson Farm Road along its northern property line. Existing improvements are located towards the northwest corner of the property and include a 2,584 square foot, two-story single-unit house with detached accessory buildings. While the property has

frontage to both Liberty Mill Road and Dawson Farm Road, access to the property is from Liberty Mill Road by way of a driveway apron with two access points. Along with three significant trees, the remainder of the property consists primarily of lawn but also ornamental grass, landscape, and a variety of trees. Exhibit 8, p. 1-2.

The property is encumbered along the southern and a portion of its western property lines by a 40-foot- wide Washington Suburban Sanitary Commission (WSSC) easement for a 30-inch sewer main. Along the southern property line, there is an overlapping storm drain easement for a 24-foot storm drain line and there is a portion of a stream valley buffer on the southeast corner of the property generated by an off-site stream. The topography gently slopes from west (front) to east (rear), from Liberty Mill Road to the eastern property line. The property enjoys 269 feet of frontage along Liberty Mill Road and 569 feet of frontage along Dawson Farm Road. *See* Exhibit 40; *See also* Exhibit 8. Figure 1 (Exhibit 40, p. 3) below shows an aerial view of the property. Figure 2 (Exhibit 40, p. 4) below shows the existing conditions of the subject property.



Figure 1 – Aerial view of the subject Property

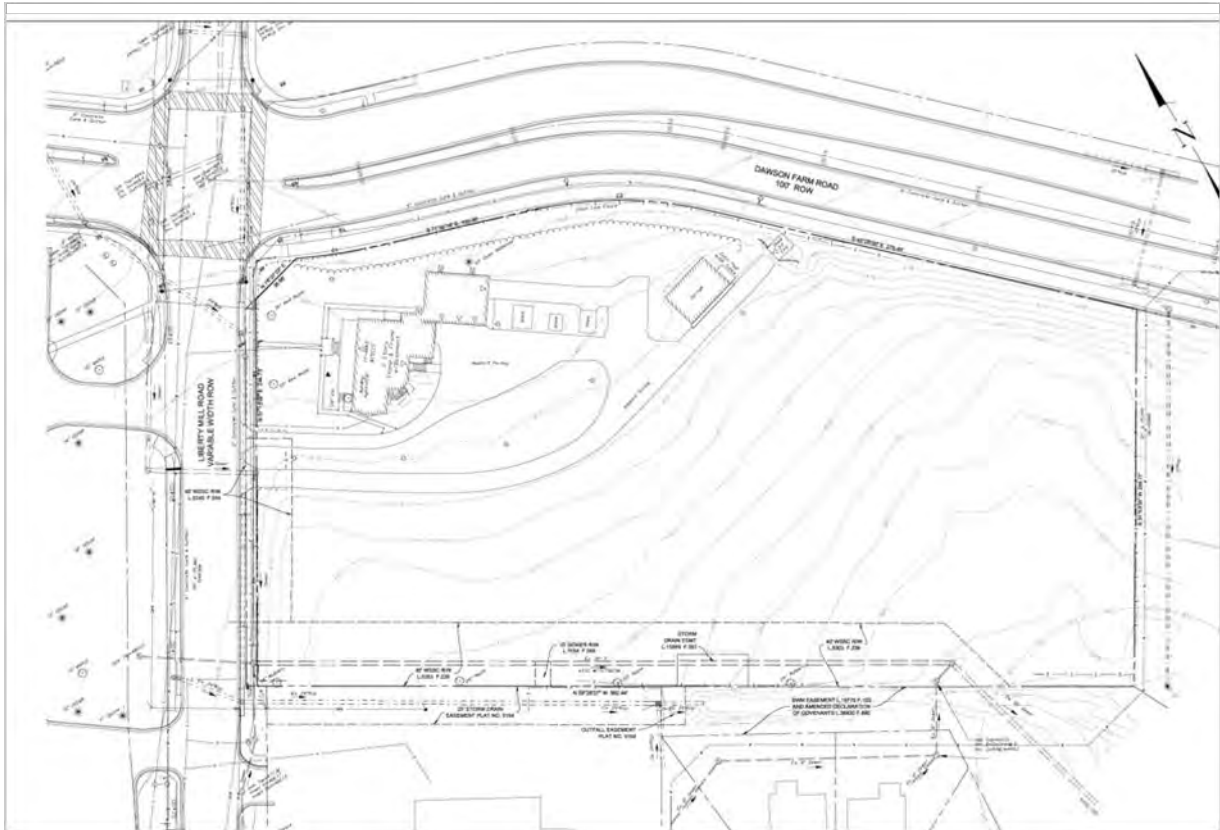


Figure 2 – Existing conditions of the subject property

B. Surrounding Neighborhood

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood”, which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff concurs with the Applicant’s delineation of the surrounding neighborhood and its characterization as primarily residential with single-family and townhouse development in the R-

200 zone as well as proximate compatible institutional uses including an elementary school¹ and religious assembly². The neighborhood boundaries for purposes of this evaluation were confirmed by Flournoy's designated expert in site planning, Mr. Donnelly. T. 60. The delineation of the surrounding neighborhood as proposed by the Applicant and accepted by Staff is defined by the boundaries of Germantown Road (MD Route 118) to the northwest, Accent Way and Fountain Hills Drive to the southwest, Great Seneca Highway to the southeast, and Dawson Farm Road to the northeast. Exhibit 8, p. 4. This area comprises several types of uses but remains predominantly single-family residential housing. Single-family detached dwelling units dominate the northeastern and southern boundary, the majority of which are 5,000 to 10,000 square foot lots on cul-de-sac streets and residential streets with a 50-foot right of way. *Id.* To the south of the site, are single-family detached residential homes, zoned R-200/TDR-6 and an open space parcel containing a forested area and stream valley buffer. To the north, separated from the Property by Dawson Farm Road, are single-family detached residential homes on 20,000 to 35,000 square foot wooded lots. *Id.* The delineated neighborhood for this analysis is shown below as Figure 3 on page 8 of this report. Exhibit 40, p. 6.

C. Proposed Use

Flournoy proposes to raze existing structures on the property and construct and operate a residential care facility with 102 units of assisted living and 17 units of memory care for a total of 119 residential care units. Exhibit 40, p. 7. The 119 residential care units will have a total of 125 beds. *Id.* The resulting 98,955 gross square foot, three- to four-story building is configured in a rectangular footprint with three wings and has a pitched roofline. The structure resembles the style,

¹ Germantown Elementary School

² A former U.S. Post Office building now used for religious assembly

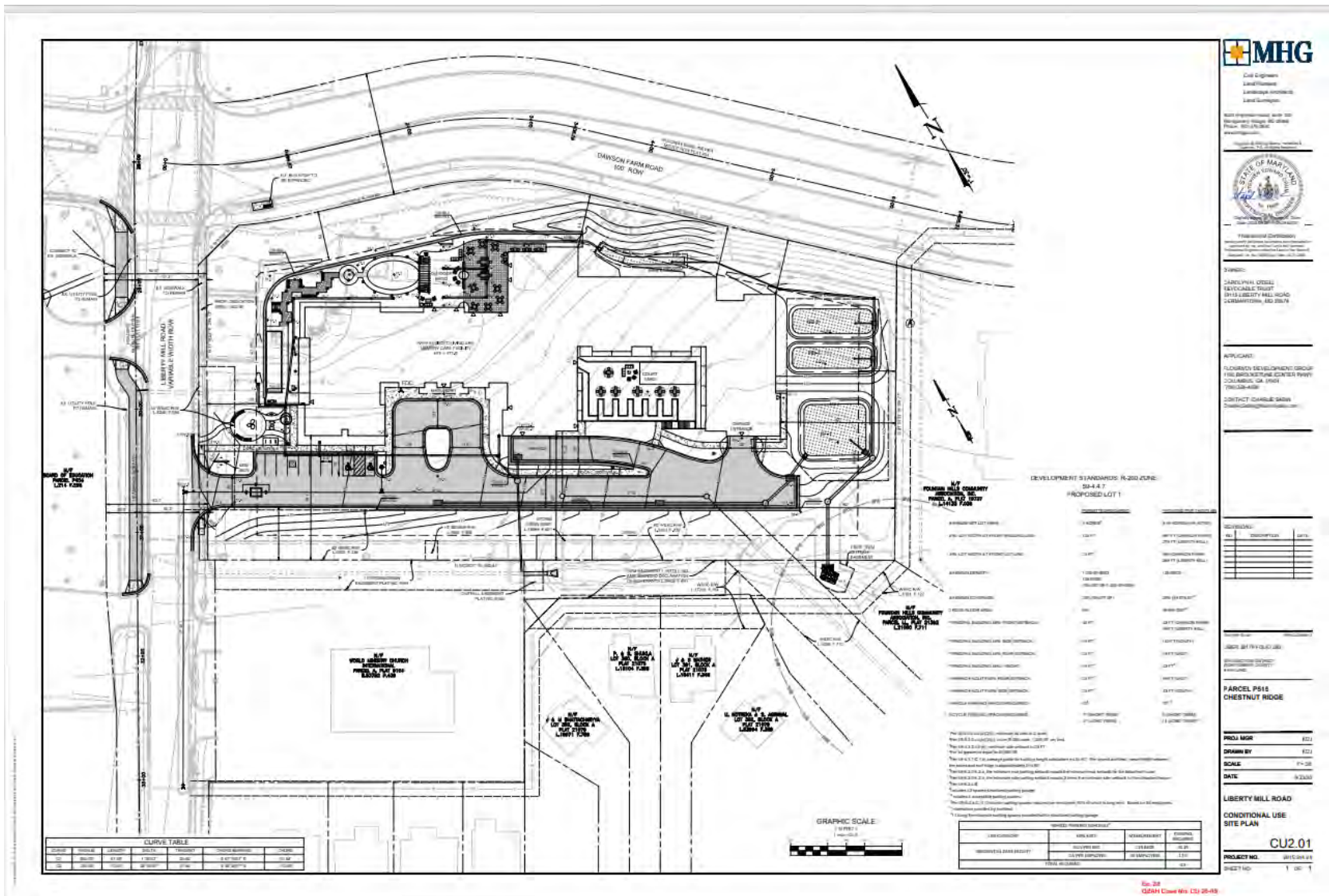
materials, and massing typically found in an apartment building of similar size in the larger community. *Id.*



Figure 3 – Zoning map with subject property (R-200) and the defined neighborhood (red-dashed line)

1. Conditional Use Site Plan

The conditional use site plan below shows the proposed structure, landscaping, lighting, vehicular access, parking, and topographical features of the subject property at the time of the filing of this requested conditional use. Flournoy submitted a revised landscape and lighting plan following the conclusion of the hearing that amplifies landscaping at the request of community members to better screen the property from adjacent properties.



Conditional Use Site Plan – Exhibit

2. Operations

a. Staffing.

A maximum number of 35 employees will work in three shifts that change at approximately 7:00 a.m., 3:00 p.m., and 11:00 p.m. Exhibit 40, p.11. The facility will operate 24 hours every day with a level of care and diversity of services offered customary to similar facilities including meal preparation, household chores, managing medications, medical treatments, personal services, and social or recreational activities. *Id.*

b. Amenities.

In addition to customary services offered at a residential care facility described above, this application proposes additional amenities to include outdoor spaces (discussed below), fitness room, living room, bistro, dining room, demonstration kitchen, wellness room, medical center, card/pub room, theater, art studio, bar, salon, laundry room, porch, and balconies.

c. Trash Pick-Ups, Deliveries, and Transportation

Deliveries and services include customary trash and recycling management on an as needed basis at least 2-3 times per week. Exhibit 40, p. 12. Trash receptacles are proposed to be located inside the building and will be moved outdoor for service. *Id.* Deliveries like packages, food, and supplies will be managed similar to those received at other residential properties and the proposed residential care facility will include a circular driveway and drop-off area located directly adjacent to the front entrance. A truck loading/receiving area will be located adjacent to the parking area for larger loading and receiving of bulk goods. *Id.*

Flournoy states that a shuttle service will be provided for residents to provide transportation to appointments and other excursions with five shuttle bus runs per week for medical needs,

shopping, and other events. Generally, shuttle services will occur between the hours of 9:00 a.m. and 3:00 p.m. Exhibit 8; Exhibit 40.

3. Transportation and Parking

Vehicular ingress and egress are consolidated into a single point at Liberty Mill Road via a 25 ft. wide commercial driveway, which leads to the passenger drop-off area, parking area, and truck receiving area³. Exhibit 40, p. 10; Exhibit 5, p. 4. This replaces the two-point drive apron currently serving the existing single-family home. The parking garage consists of sixty-three (63) partially subterranean parking spaces, with ten (10) surface parking spaces located near the front building entrance for a total of seventy-three (73) on-site parking spaces. Exhibit 40, p. 10. Sixteen (16) long- and short-term bicycle parking spaces are also provided. *Id.*

Dawson Farm Road is classified as a four-lane arterial road with 100 feet right-of-way (ROW). Liberty Mill Road is classified as a two-lane primary residential street with a 70-foot ROW. As part of the subsequent preliminary plan application, an additional 6.5 to 6.8 feet of width amounting to 1,622 square feet of ROW will be dedicated on the south side of Liberty Mill Road to accommodate sidewalk facilities. Staff opines that all other ROW requirements are met. Exhibit 8; Exhibit 40.

a. Pedestrian and Master Planned Bicycle Facilities

The 2018 Bicycle Master Plan recommends a 10-foot-wide shared-use-path (SUP) to be constructed along this segment of Liberty Mill Road, the side of road unspecified. As part of the subsequent preliminary plan, the Applicant will construct the SUP on the north side of Liberty Mill along the frontage of the Germantown Elementary School. This side of the road was chosen as a continuation of the recommended SUP that is to be built on the north side on the section of

³ Access to the property will be consolidated into a single point that is in the same location approved under CU 17-02

Liberty Mill Road above Dawson Farm Road. This will additionally provide direct connectivity to Germantown Elementary School. Exhibit 8; Exhibit 40.

b. Public Transit Service

Ride-on routes 71 and 75 provide service directly in front of the Subject Property on Dawson Farm Road. As part of the subsequent Preliminary Plan, the Applicant will reconstruct this bus stop. Additionally, Ride-on route 61 provides service along Germantown Road, approximately 1,000 ft. to the northwest. Exhibit 8; Exhibit 40.

c. Local Area Transportation Review

Flournoy's transportation statement includes Table 3, reproduced below, which shows that the proposed use will generate a net of 34 a.m. and 49 p.m. peak-hour net new person trips. Exhibit 10.

Development	Measure	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Existing Single-Family Home	Dwelling	0	(2)	(2)	(2)	0	(2)
Assisted Living Facility	Employees	23	13	36	19	32	51
Net New Person Trips	--	--	--	34	--	--	49

Table 3 – Trip Generation

Staff and the Applicant agree that the trip generation rate falls below the 50-person peak-hour Local Area Transportation Review (LATR) threshold and is exempt from additional review. Exhibit 8; Exhibit 40. Ms. Katherine Wagner, Flournoy's designated expert in traffic engineering, confirmed that LATR is not required for this project. T. 116. Exhibit 10. Mr. Wagner further testified that the proposed improvements would not cause any undue harm as to traffic or parking, or will cause any undue harm as to the use and peaceful enjoyment or development potential of the abutting and confronting properties or the general neighborhood, and that the conditional use will have no detrimental effect on vehicular and pedestrian traffic safety T. 118.

4. Landscaping and Lighting

a. Landscape Plan

The property currently enjoys woodland strips along its northern, southern, and eastern boundaries. Flournoy proposes additional landscaping to further obscure the building and activities on the property from view. Varieties of shade and evergreen trees are proposed along the drive aisle and open yard areas to obscure views from adjacent properties. Exhibit 40, p. 10. Shade trees are proposed along the perimeter of the parking area to provide the required tree canopy coverage (See Figure 6 and Table 1 below, Exhibit 40). In accordance with a subsequent amended forest conservation plan and new preliminary plan applications⁴, three identified significant trees on the north side of the Property will be retained and monitored by an arborist during the removal of the existing house and other improvements. *Id.* at 11. Figure 8 on page 17 below shows the proposed landscaping surrounding the surface parking area. Exhibit 40.

Mr. Shukla and Mr. Jacob, community members, raised concerns regarding screening in their letter of concern. Exhibit 38. Ms. Colleen Bowers, Flournoy's designated expert in landscape architecture, addressed these concerns in part at the hearing by stating:

"All of the plant sizes have been adjusted to give a more significant size upon initial installation of the plants. Any shrubs to be put in will have a 3 to 4 foot minimum height, while trees are also larger. Any of the shade trees listed on the plan will be at 2-½ to 3 inch upon planting, which means they are about 14 to 15 feet tall. And then evergreens in any of the smaller flowering trees will also be a little larger at I think the minimum is seven feet and most of them will be more within the eight to nine foot range." T. 76-77.

Ms. Bowers further stated that:

"And when we are putting the new plantings in, alot of them are planted in a triangular, which is a staggered pattern. This also helps rather than just having a straight line of plantings; it provides alot more depth and variety and you're going to get better coverage from the plantings because they overlap one another. So it's a more substantial screen. Another thing we were taking into account as far as the seasonality, so evergreen versus

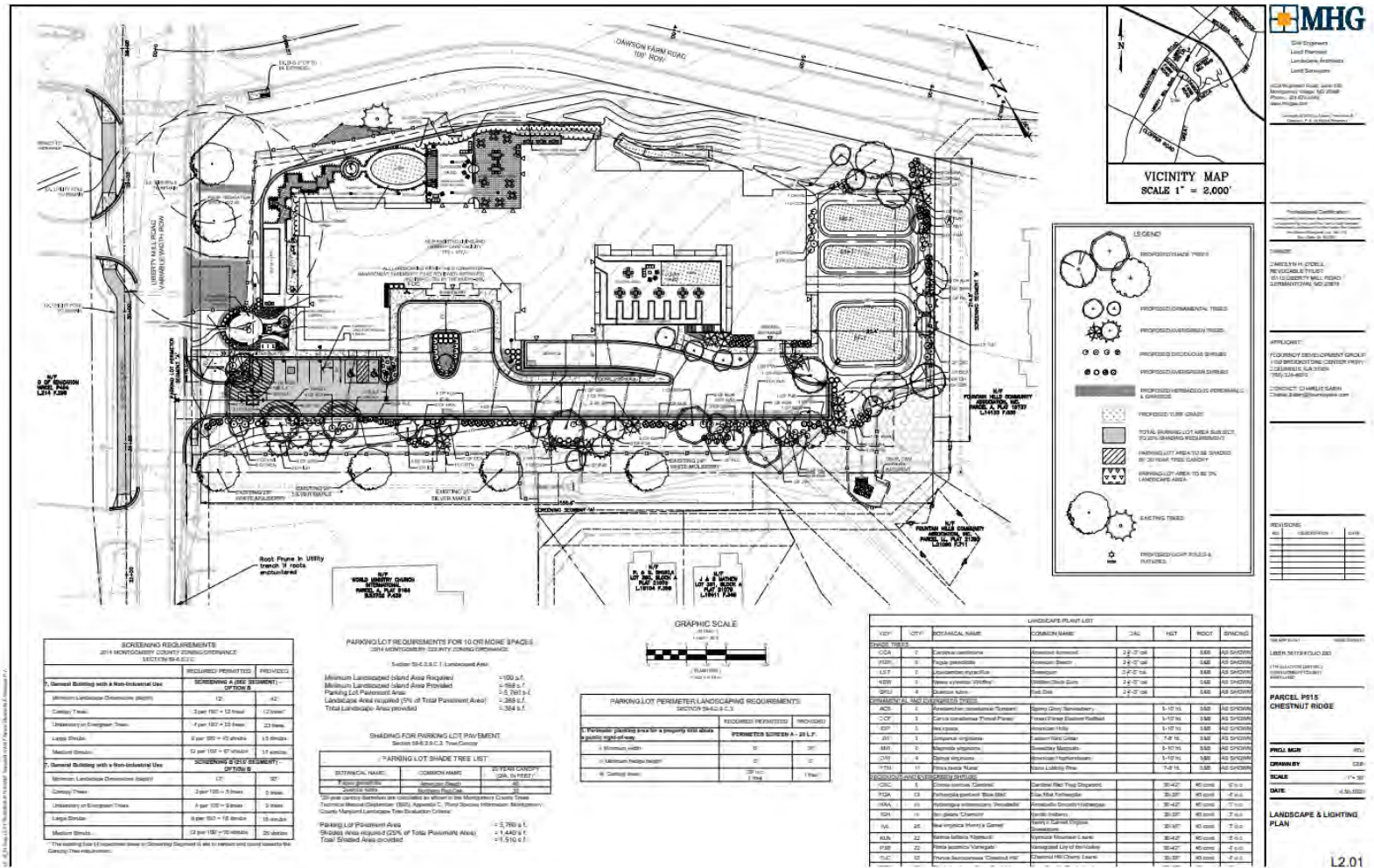
⁴ Preliminary plan for subdivision will be required following this approval

deciduous, we tried to provide as many evergreens as we could under the constraints of the planting per linear foot obviously, for both trees and shrubs. But we do have a couple of deciduous species in there. I know since they gave us their statement of concern in October, we have switched out a few tree species for the specific reason that they are not evergreen, they are deciduous. And we're going to maintain them as deciduous trees because we need this shade trees and the understory trees." T. 78.

Flournoy submitted a revised landscape plan to OZAH on November 4, 2020, reflecting the enhanced landscaping requested by Mr. Shukla and Mr. Jacob and testified to by Ms. Bowers on the record to better obscure views of the residential care facility from adjacent properties. *See* page 16 below.

b. Lighting

The photometric plan on page 18 below shows in detail the projected lighting intensity, locations where lighting fixtures will be mounted, and manufacturer's specifications on the lighting fixtures being proposed. Exhibit 30(d). Mr. Shukla, a community, raised the idea of motion sensors on outdoor lighting to help mitigate any impact of light emanating onto adjacent properties or being visible to neighboring properties. Flournoy's designated expert in architecture, Ms. Janet Meyer, testified that this could cause the impression of "flickering" light which would be more disruptive to the community, whereas the light levels proposed would be less disruptive ambient light. T. 94-95. Ms. Meyer also expressed the opinion that motion sensors may be disruptive for residents of the residential care facility. T. 95.



Revised Landscape & Lighting Plan (unmarked exhibit)

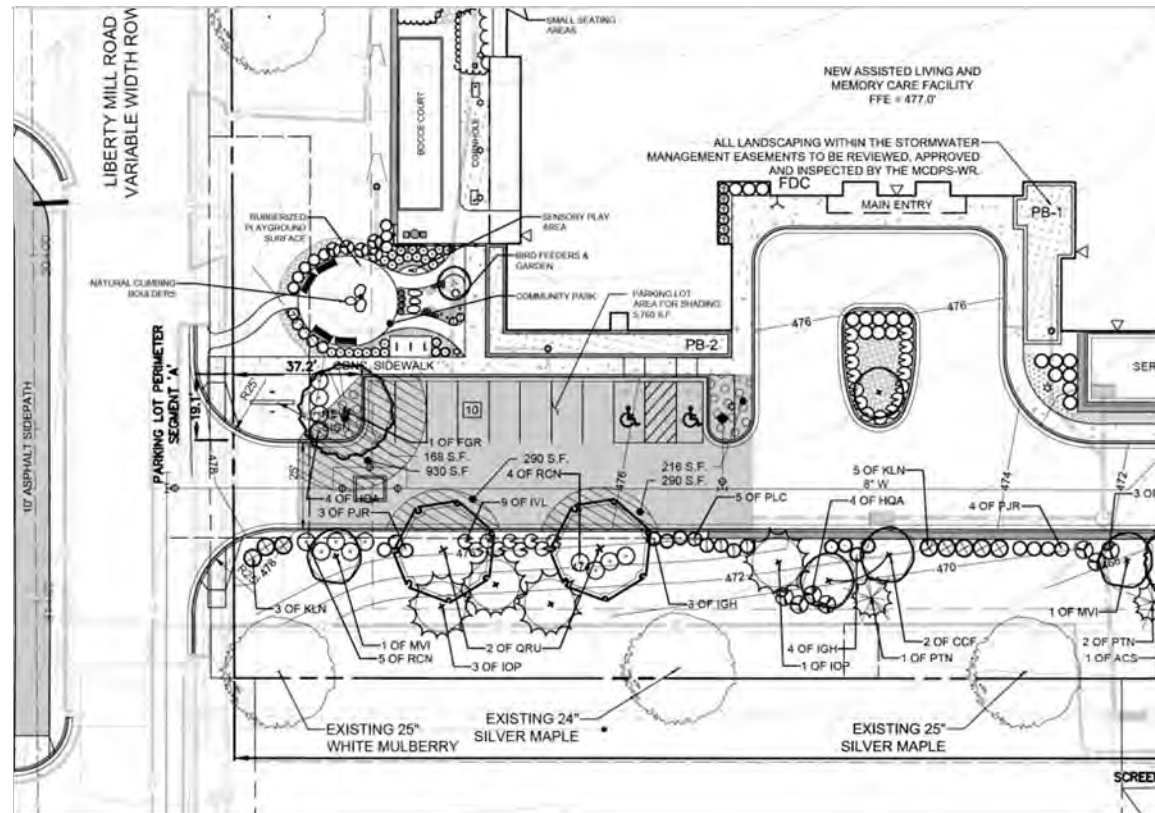


Figure 8 – Landscape plan for the surface parking lot (shaded) near the main entrance of the building

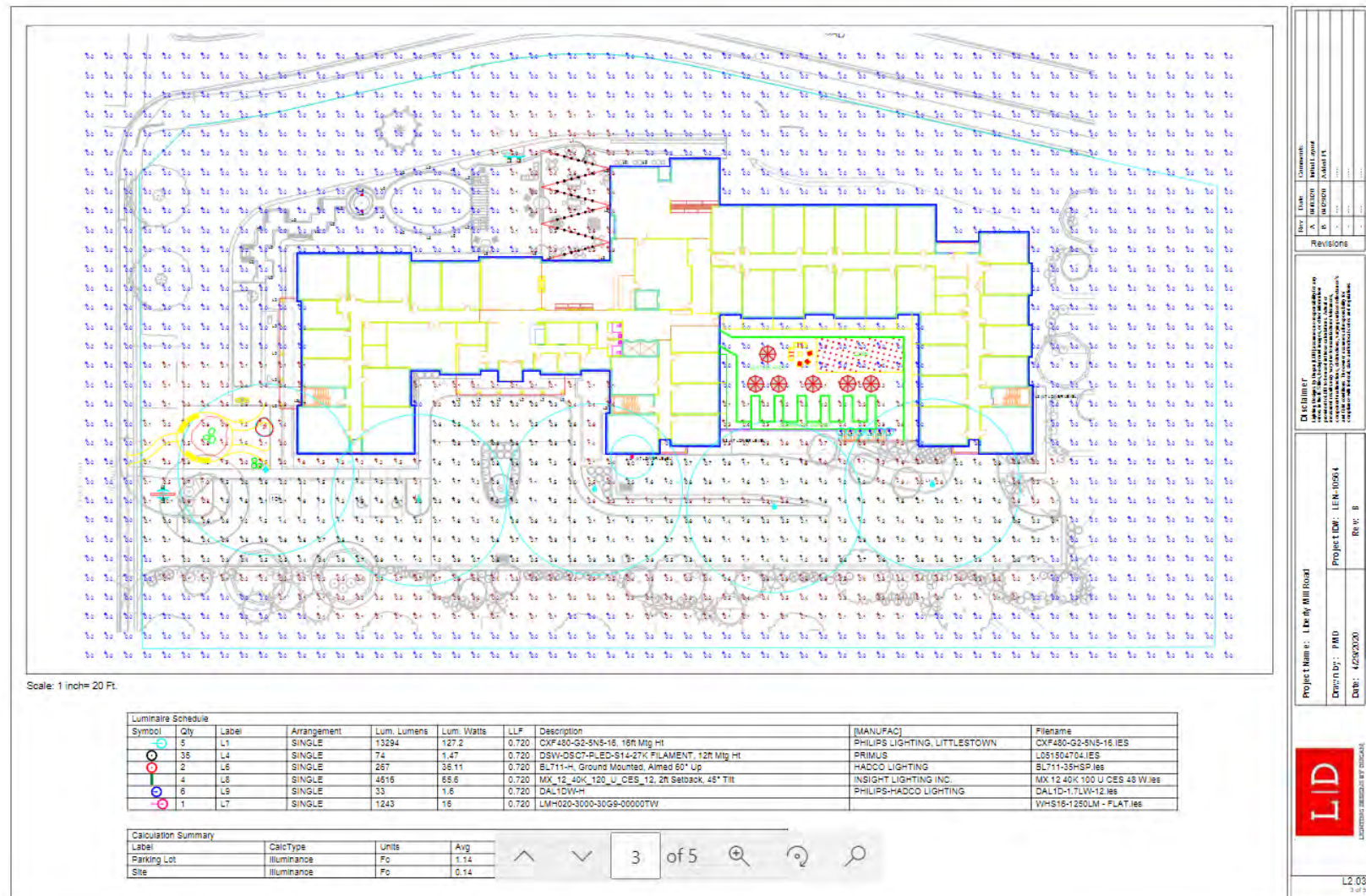


Exhibit 30(d) - Photometric Plan

Staff opines that the lighting plan is adequate and safe for vehicular and employee movement and meets the requirements under Section 59.6.4.4. Exhibit 40, p. 16. The proposed lighting illuminates the site entrance, provides visibility to the employee parking areas, and provides area lighting near the structures. *Id.* The photometric plan shows that the lighting will not extend onto adjoining properties and will not exceed the 0.1 foot-candle standard at the side and rear property lines. "The lighting, with no direct light or light glare, will not have a negative impact on neighboring properties." Exhibit 40, p. 16. The five pole mounted lighting fixtures are mounted at a height of 16-feet above grade and are full cut-off, LED fixtures. *Id.* Ms. Meyer testified that the fixtures themselves can be changed without altering the wattage of the lighting provided. T. 94.

D. Environmental Issues

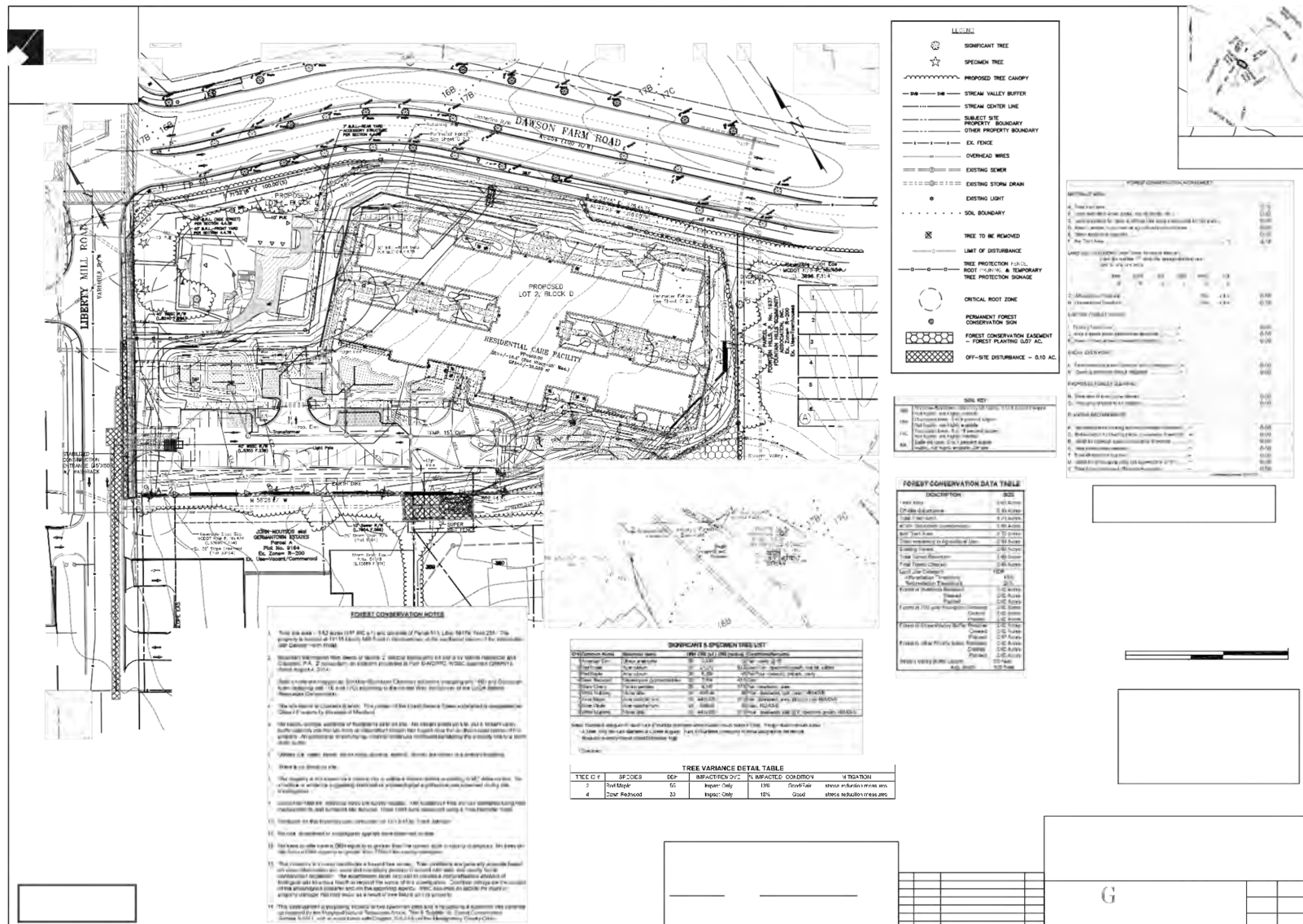
On July 24, 2017, a forest conservation plan was approved as part of Preliminary Plan No. 120170210 and Conditional Use No. 2017-02. *See* p. 21, below. While this forest conservation plan was completed for a different development project, the impacts of the proposed project are substantially similar with respect to the forest conservation requirements for the subject case. The existing forest conservation plan remains valid for the property, and therefore, forest conservation requirements are satisfied with this conditional use review. Staff opines and Flournoy agrees that the final forest conservation plan will be revised as part of the subsequent preliminary plan amendment that will be required following this approval. Exhibit 40, p. 12. There are no known rare, threatened, or endangered species that exist on the subject property. Exhibit 40, p. 17. And while no seeps, springs, wetlands or floodplains exist on the property, a stream buffer extends into the property from an intermittent stream that flows just south along the southern property boundary

of the property and continues northwest, parallel to the southwest boundary of the property. No development is proposed within the stream buffer, however, and therefore no environmental mitigation is required under this conditional use analysis. A previously approved Stormwater Management Concept Plan is currently in place and will remain without substantial change, subject to preliminary plan of subdivision review. *See* Exhibit 33. Mr. Jones also testified extensively regarding stormwater drainage, the site's topography, and how alternatives to address stormwater runoff were discussed. T. 41-43.

E. Community Response

Two community members testified at the hearing, Mr. Pankaj Shukla and Mr. Matthew Jacob, as to their concerns but offered recommendations for approval with conditions. The record also contains correspondence from Mr. Shukla and Mr. Jacob relating to concerns about the project that community members would like addressed during this conditional use hearing process. Exhibit 38; T. 11.

[space intentionally left blank to accommodate Forest Conservation Plan on page 20 below]



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 legislative standards are both specific to a use (in Article 59.3 of the Zoning Ordinance) and general (*i.e.*, applicable to all conditional uses, in Division 59.7.3 of the Zoning Ordinance). The specific standards applied in this case are those for a residential care facility for more than sixteen (16) persons. *Montgomery County Zoning Ordinance*, §59.3.3.2.E.2.c. “The appropriate standard to be used in determining whether a requested [conditional use] would have an adverse effect and, therefore, should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a [conditional use].” *Montgomery County v. Butler*, 417 Md. 271, 275 (2010).

Weighing all the testimony and evidence of record under a preponderance of the evidence standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, satisfies all of the specific and general requirements for the use and does not present any adverse effects above and beyond those inherently associated with such a use.

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve all conditional uses are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's findings for each standard, are set forth below.

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;

The proposed conditional use will replace Conditional Use CU2017-02, which was never completed. Mr. Ken Jones, Flournoy's designated expert in environmental engineering, testified that they will subsequently amend Preliminary Plan 120170210 and the final forest conservation plan as a condition of approval for this use. T. 47.

Conclusion: With the subsequent revised preliminary plan of subdivision, the Hearing Examiner concurs with Staff and the Applicant that the proposed conditional use satisfies this requirement. The proposed residential care facility replaces the previously approved but never actualized conditional use, which replaces the current lawful use of the property as a single-family residential home.

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;

This subsection reviews the following: (1) development standards of the R-200 Zone (Article 59.4); (2) the specific use standards for a residential care facility over 16 persons (Article 59.3.3.2.E.2.c); and (3) the development standards for all uses (Article 59.6). The Hearing Examiner addresses these standards in Part III.C, D, and E of this Report.

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

The subject property is located within the 1989 *Germantown Master Plan* and is subject to the policies and recommendations contained therein. The Master Plan establishes six villages separate in identity and unique in character that provide mixed housing types all inter-connected by a functional pedestrian/bikeway/roadway system, including a downtown area with more mixed uses. The subject property is located in the Clopper Village area of the Master Plan. Clopper Village is generally located south of the MARC rail line and east of Germantown Road, and

extends south to the greenbelt. Exhibit 40, p. 14. It also includes the Germantown historic district near the MARC rail station. While this particular property is not referenced in the Master Plan, Staff opines that it is compatible with the following recommendations contained in the Master Plan:

“The intent of this Plan is to promote a mix of housing types that can accommodate families of varying ages and income levels and allow opportunities for them to continue living in Germantown as their needs and tastes change.” Exhibit 40, p. 14 citing the Germantown Master Plan, 1989, p. 9.

Further, “The Master Plan identifies the Property as within Analysis Area No. CL-2. Due to its proximity to Dawson Farm Road (an arterial roadway) and being located in a residential area, the Property is “suitable for a child or elderly day-care center, religious facility or other similar use.” Germantown Master Plan, 1989, p. 63. This use is similar to an elderly day-care center in that both facilities provide services and activities to assist with daily living for seniors but is a less intense use because 1) the residents live on-site, 2) generally do not drive personal vehicles, and 3) utilize shuttle services for transportation. Such services generally include social activities, health care, meals, and recreation. Both elderly daycare centers and residential care facilities would generate similar morning and afternoon vehicular traffic from staff and deliveries.

Staff opines that the proposed use is compatible with the recommendations of the 1989 Germantown Master Plan as the project consists of residential housing for seniors who need personal services, supervision, and assistance with daily activities. “The residential care facility provides a needed housing type, in a residential setting, that enables seniors to remain near families in Germantown.” Exhibit 40, p. 14. Mr. Donnelly, Flourney’s site planning expert, confirmed the project’s compatibility with the Master Plan. T. 62. “Yes, it not only conforms, it actually implements a big portion of that plan to provide the senior housing.” *Id.* at 64.

The proposed building is designed to be compatible with the surrounding residential area. *See* Germantown Master Plan, 1989, p. 63. The proposed structure incorporates several residential architectural elements such as a gabled roof, residential-styled, windows, and punctuated massing. The façades incorporate stone elements and other materials that are compatible with nearby residential properties. Sloping topography, a retaining wall, and existing and proposed landscaping will effectively screen vehicle movements and the truck receiving area from off-site views. Therefore, the proposed structure is consistent with this recommendation.

Conclusion: The Hearing Examiner agrees with Staff that the proposed use substantially conforms to the Plan. The 1989 Germantown Master Plan does not prohibit or otherwise proscribe the use and the proposed conditional use maintains the residential character of both structure and use in compliance with the Plan by providing needed residential housing for seniors in this community.

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

Staff opines and the testimony of Ms. Meyer and Mr. Sabin support the finding that the proposed building is designed to be compatible with the surrounding residential area in furtherance of the 1989 Germantown Master Plan. *See* Plan at p. 63. The proposed structure incorporates several residential architectural elements such as a gabled roof, residential-styled, windows, and punctuated massing. The facades incorporate stone elements and other materials that are compatible with nearby residential properties. Sloping topography, a retaining wall, and existing and proposed landscaping will effectively screen vehicle movements and the truck receiving area from off-site views. The proposed use as a residential care facility for older adults maintains the residential character of the neighborhood as it provides residential housing for older adults.

Conclusion: The Hearing Examiner concurs that the proposed use is both consistent with and harmonious to the character of the surrounding neighborhood in conformance with the Plan. A residential care facility, by its very nature, is a residential use. The proposed structure is compatible with the surrounding residential community and will be designed specifically to maintain the residential character of this community. Therefore, the Hearing Examiner finds that approval of this conditional use is harmonious to and will not materially alter the character of the surrounding neighborhood.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Staff notes that no other active conditional uses or special exceptions exist in the defined neighborhood. Increasing the number of conditional uses to one – the proposed residential care facility – will not affect the area adversely or later the predominantly residential nature of the area.

Conclusion: The Hearing Examiner concurs with Staff that increasing the number of conditional uses does not sufficiently affect the area adversely or alter the predominantly residential nature of the area.

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

The subject property was approved for a similar conditional use in CU2017-02 for a 64-bed residential care facility but was never constructed. Preliminary Plan of subdivision No. 120170210 for a two-lot subdivision of this site and associated with CU2017-02 was approved but never platted. As this project will be required to go through subsequent preliminary plan of subdivision, an adequate facilities test is not required as part of this conditional use analysis. Nonetheless, Mr. Jones testified that adequate public facilities do exist on site to serve the proposed use. T. 46. Ms. Wagner, Flournoy's traffic expert, testified that the proposed development will be adequately served by existing public roads. T. 118.

Conclusion: As this project will be required to go through subsequent preliminary subdivision plan, an adequate facilities test is not required as part of a conditional use analysis. However, the Hearing Examiner notes that based upon the evidence and testimony in the record, including the testimony of Mr. Jones, Applicant's expert in civil engineering, there do not seem to be any concerns regarding adequate public facilities that would not be able to be addressed through the development process.

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.*

This standard requires the Hearing Examiner to identify inherent and non-inherent adverse effects of the proposed use on nearby properties and 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, are not enough to deny 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.* A conditional use may be denied if it will have non-inherent adverse effects, alone or in combination with inherent effects, that cause “undue” harm to the surrounding neighborhood.

Staff opines that the inherent characteristics of this use include: vehicle and pedestrian trips to and from the property; parking for residents and employees; varied hours of operation; noise or odors associated with vehicles, noise or odors associated with trash collection and trucks; the presence of an emergency electrical generator; and lighting. These characteristics are inherent and typically associated with similar uses and do not exceed what is normally expected for the proposed project. Residential uses adjoining the subject property to the south and east are well-buffered from the site in distance, topography, and by existing and proposed landscaping. Staff does not identify any non-inherent adverse impacts with the proposed residential care facility located at this particular site. Flournoy’s designated expert in site planning, Mr. Donnelly, agreed

with Staff's assessment and concurred that no non-inherent adverse impacts would result from this conditional use. T. 64-66.

Community members, Mr. Shukla and Mr. Jacob, raised concerns relating to noise generated from a planned on-site electricity generator. Ms. Meyer responded that the generator in question would be housed entirely within the proposed facility. T. 96. Ms. Meyer further stated that the room that housed the generator would be properly insulated for safety and sound purposes, which would be required under building code, and these efforts were equally to ensure that adjacent properties and facility residents would not be impacted by the generator. Id. Ms. Meyer agreed that the required monthly testing of the generator would only be conducted during weekday afternoon hours, when least disruptive to neighbors and facility residents alike. T. 105.

Conclusion: The Hearing Examiner finds that the proposed use will not cause undue harm to the character of the surrounding area due to any non-inherent adverse effects, alone or in combination with any inherent effects. This application and the testimony provided at the hearing did not provide any facts to cause the Hearing Examiner to conclude the residential care facility proposed would have any material adverse impact on the property. The use described by applicant's witnesses both with regards to the property's characteristics, size, and proximity to neighboring lots as well as the operation of the use itself cause the Hearing Examiner to conclude that all impacts are inherent adverse impacts of a residential care facility and that staffing, lighting, noise, and traffic are all within the ordinary bounds of a residential care facility with 125 beds. A condition relating to the testing of the generator will be included as a condition of this approval below.

The Hearing Examiner concurs with Staff as to the inherent adverse impacts of a residential care facility over 16 persons and finds that no non-inherent adverse impacts accrue to this property

due to any physical or operational characteristics of the proposed residential care facility not necessarily associated with this use or created by an unusual characteristic of the site.

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.

The proposed structure incorporates several residential architectural elements such as a gabled roof, residential-styled, windows, and punctuated massing. The facades incorporate stone elements and other materials that are compatible with nearby residential properties. Sloping topography, a retaining wall, and existing and proposed landscaping will effectively screen vehicle movements and the truck receiving area from off-site views. Exhibit 40, p. 15; Exhibit 8, p. 26.

Conclusion: The Hearing Examiner finds the proposed structure to be compatible with the character of this residential neighborhood based on the architectural design, the materials proposed to be used in its construction, and the design elements utilized to conceal or mitigate the impact of the parking areas both through landscaping and the partially subterranean parking garage.

B. Development Standards of the Zone (R-200)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-200 Zone, contained in Article 59.4 of the Zoning Ordinance. Table 2 (Exhibit 40) below identifies the development standards applicable to this application:

Development Standard	Permitted/Required	Provided
Minimum Lot Area	20,000 sq. ft.	156,307 sq. ft.
Minimum Lot Area, Use ¹	3.44 acres (1,200 sq. ft. * 125 beds)	3.59 acres
Minimum Lot Width at Front Building Line	100 ft.	487 ft. (Dawson Farm Rd.) 279 ft. (Liberty Mill Rd.)
Minimum Lot width at Front Lot Line	25 ft.	569 ft. (Dawson Farm Rd.) 269 ft. (Liberty Mill Rd.)
Maximum Density	130 beds ² 1,200 sq. ft. per bed 156,307 sq. ft. / 1,200 = 130	125 beds
Maximum Coverage	25% (39,077 sq. ft.)	25% (39,076 sq. ft.)
Gross Floor Area	Not applicable	98,955 gross sq. ft.
Minimum Front Setback, Principal Building	40 ft.	42 ft. (Dawson Farm Rd.) 79 ft. (Liberty Mill Rd.)
Minimum Side Setback, Principal Building	20 ft.	100 ft. (south)
Minimum Rear Setback, Principal Building	30 ft.	93 ft. (east)
Maximum Height, Principal Building	50 ft.	43 ft. (south)
Parking Facility Minimum Rear Setback	30 ft.	80 ft. (east)
Parking Facility Minimum Side Setback	24 ft.	43 ft. (south)
Vehicle Parking Spaces Required (Residential Care Facility)	49 spaces ³ 0.25 per bed 0.50 per employee	73 spaces ⁴ (0.25 * 125 = 31.25) (0.50 * 35 = 17.5) 31.25 + 17.5 = 48.75
Bicycle Parking Space Required	4 ⁵ long-term spaces	6 short term, 10 long term

Table 2 – Development Standards

Staff opines that all development standards have been met or exceeded. Exhibit 40. Flournoy's designated expert in civil engineering, water resources, and environmental engineering, Mr. Ken Jones, confirmed that all development standards are met under the proposed plan for construction. T. 16-38.

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds based on this record

that all development standards required in the R-200 zone have been satisfied.

C. Use Standards Specific to a Residential Care Facility (59.3.3.2.E)

The specific use standards for approval of a residential care facility, generally, are set out in §§ 59.3.3.2.E.2.1 of the Zoning Ordinance:

1. Defined. In General

Residential Care Facility means a group care or similar arrangement for the care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living, or for the protection of the individual, in which:

- a. the facility must meet all applicable Federal, State, and County certificate, licensure, and regulatory requirements;**
- b. resident staff necessary for operation of the facility are allowed to live on-site; and**
- c. the number of residents includes members of the staff who reside at the facility, but does not include infants younger than 2 months old.**

Flournoy states that the project is dedicated to assisted living and individuals diagnosed with Alzheimer's disease and other forms of memory loss and dementia. Exhibit 8, p. 9. Flournoy asserts that the proposed residential care facility will be designed to conform to Federal, State and County certificate, licensure and regulatory requirements. As described by testimony, staff will not live on-site. The residential care facility, which the Applicant refers to as a residential care community, will contain common dining facilities, a centralized kitchen to serve all residents, shared living rooms and family rooms, pantries, and laundry facilities. *Id.* at p. 10. The facility will offer resident services, including a beauty salon/barber shop, health center, post office, bistro, arts and crafts area and community center. Residents will have access to a series of outdoor courtyards, garden area, and pathways. All on-site services will only be accessible to residents and their families. The facility will provide a shuttle service facilitate group outings for residents and their

guests. As the lot area is 156,307 square feet, and in accordance with Section 59-3.3.2c.ii.(d)(2)(i) of the Code and based upon a ratio of 1,200 square feet per bed, the maximum lot density is 130 beds. The proposed total number of beds is 125 which is less than the maximum density.

Conclusion: The Hearing Examiner finds that the proposed use as conditioned meets this definition. A condition of approval will require that all operations and personnel must meet and maintain all Federal, State, and County certificates, licensure, and regulatory requirements. Based upon the uncontested record in this case, all other definitional requirements of this provision have been met.

c. Residential Care Facility (Over 16 Persons)

i. Where a Residential Care Facility (Over 16 Persons) is allowed as a limited use, and the subject lot abuts or confronts a property zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use, site plan approval is required under Section 7.3.4.

ii. Where a Residential Care Facility (Over 16 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

(a) The facility may provide ancillary services such as transportation, common dining room and kitchen, meeting or activity rooms, convenience commercial area or other services or facilities for the enjoyment, service or care of the residents. Any such service may be restricted by the Hearing Examiner.

(b) A group home for children must provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children who will use the facility.

(c) Where residential dwelling units are provided

(1) the maximum residential density per lot area is 15 units per acre or the maximum density allowed in the zone, whichever is greater; and

(2) the minimum green area is 50%.

(d) Where facility size is based on the number of beds, not dwelling units, the following lot area is required:

(1) In the R, RC, and RNC zones, 2,000 square feet per bed or 5 acres, whichever is greater.

(2) In all other zones, the minimum lot area is 2 acres or the following, whichever is greater:

(i) in RE-2, RE-2C, RE-1, and R-200 zone: 1,200 square feet per bed;

- (ii) in R-60, R-90, and R-40 zone: 800 square feet per bed;
 - (iii) in TLD, TMD, THD, R-30, and R-20 zone: 600 square feet per bed; and
 - (iv) in R-10: 300 square feet per bed.
- (e) The minimum side setback is 20 feet.
- (f) In the R-10 and R-20 zones, the development standards of the apartment building type apply, except as modified by Section 3.3.2.E.2.c.
- (g) Independent dwelling units must satisfy the MPDU provisions of Chapter 25 (Section 25.A-5).
- (h) In a continuing care retirement community, occupancy of any independent dwelling unit is restricted to persons 62 years of age or older, with the following exceptions:
 - (1) the spouse of a resident, regardless of age;
 - (2) another relative of a resident, 50 years of age and older;
 - (3) the resident widow, widower, or other surviving relative of a resident who dies while residing at the continuing care retirement community, is allowed to remain even though the resident widow, widower, or other surviving relative has not reached the age of 62. A minimum of 80% of the dwelling units must be occupied by at least one person per unit who is 55 years of age or older.
- (i) Height, density, coverage, and parking standards must be compatible with surrounding uses; the Hearing Examiner may modify any standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.
- (j) In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.

The proposed conditional use of a residential care facility will provide ancillary services for the enjoyment, service, and care of residents. Exhibit 40, p. 22. The Applicant proposes services which are customary (medical, fitness programming, laundry services) along with select elevated-level services (theater, art studio). Additionally, the Applicant will provide regular shuttle service for residents, as described above in this report. *Id.* The project is based on the number of beds, not dwelling units and is located in the R-200 zone with a lot area 156,307 square feet. Accordingly, the maximum yield is 130 beds ($156,307 / 1,200 = 130$). As the project proposes 125 beds, Staff opines that this standard is satisfied. Exhibit 40, p. 23.

The property is located on a corner lot with two front yards, one rear yard, and one side yard. The proposed side yard setback is 101 feet, which is at least 20 feet. For these reasons, Staff opines that yard setbacks are satisfied. *Id.*

The planned residential care facility will consist of 125 beds in a new three- to four-story 42-foot height residential building. There exists a variety of height, density, coverage, and architecture in the neighborhood and the visual character of the neighborhood includes detached dwellings, townhomes, an elementary school, a former post office building and open space. Most of the proposed parking is located in a subterranean garage, with only ten surface spaces provided near the primary building entrance. The project is buffered with landscape and by distance from adjoining uses and structures. Staff opines that the proposed residential care use, building, and parking configuration are not out of character and are compatible with the surrounding neighborhood. *Id.* at 24.

Conclusion: The Hearing Examiner finds that the proposed residential care facility for more than 16 persons meets the standards and requirements of this section. The facility will house residents with elder care disabilities and will provide appropriate amenities and facilities to provide necessary care in a residential setting. Height, density, coverage, and parking standards are compatible with surrounding uses and maintain the residential character of the neighborhood. Lastly, this property is not in an AR zone.

D. General Development Standards (Article 59.6)

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

1. Parking Standards

a. Number of On-Site Spaces

The proposed parking garage consists of 63 partially subterranean parking spaces, with ten surface parking spaces located near the front building entrance. Sixteen long- and short-term bicycle parking spaces are also provided. With the combined parking spaces between the surface parking lot as well as the parking garage, Staff advises and the Applicant's parking plan shows a total of 73 parking spaces, exceeding the minimum 49 spaces required by the Zoning Ordinance. Exhibit 40, p. 13. Staff opines that the parking standards are therefore met and exceeded under this proposal.

Conclusion: The Applicant has adequately demonstrated that the minimum standards of the Zoning Ordinance are met, as seventy-three (73) parking spaces are being provided to support this use, whereas only forty-nine (49) are required. *See* Zoning Ordinance §59.6.2.4.B.

b. Parking Lot Location, Setbacks, and Requested Waivers

59.6.2.5.K

Facilities for Conditional Uses in Residential Detached Zones

Any off-street parking facility for a conditional use that is located in a Residential Detached zone where 3 or more parking spaces are provided must satisfy the following standards:

1. Location

Each parking facility must be located to maintain a residential character and a pedestrian-friendly street.

2. Setbacks

a. The minimum rear parking setback equals the minimum rear setback required for the detached house.

b. The minimum side parking setback equals 2 times the

minimum side setback required for the detached house.

c. In addition to the required setbacks for each parking facility:

i. the required side and rear parking setbacks must be increased by 5 feet for a parking facility with 150 to 199 parking spaces; and

ii. the required side and rear parking setbacks must be increased by 10 feet for a parking facility with more than 199 parking spaces.

Staff advises that there are no setback concerns related to this application and opines that the parking area does not impact the residential character of the surrounding area. Exhibit 40, p. 24. Further, the proposed parking garage consists of 63 partially subterranean parking spaces, with ten surface parking spaces located near the front building entrance. Sixteen long- and short-term bicycle parking spaces are also provided. Exhibit 40, p. 13.

Conclusion: Based on the evidence in the record, the parking area is effectively screened from neighboring lots does not disrupt the residential character of the neighborhood.

2. Site Perimeter Landscaping and Screening

Division 6.4 and 6.5 of the Zoning Ordinance set 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 6.5.2. excludes single-family detached homes from the technical screening requirements of the Zoning Ordinance, provided that the use is compatible with the neighborhood:

In the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

Section 59.6.5.3.A.1 states that:

Screening is required along a lot line shared with an abutting property that is vacant or improved with an agricultural or residential use.

Section 6.5.3.C.7 sets out specific landscape requirements for conditional uses in Residential Detached Zones. The subject property is within a Residential Detached Zone, R-200, and abuts other properties on two sides within the same zone that are improved with residential and religious institutional uses. Exhibit 40, p. 16. Since there are abutting properties improved with residential uses to both the east and south of the property, the Applicant must ensure adequate screening in these directions under Section 6.5.3.C.7. *Id.* As shown on the Applicant's revised landscape and landscape plan, the general landscaping and screening provide is composed of canopy trees, understory trees, evergreen trees, large and medium shrubs. Adequate screening is provided along the east and south property lines. Staff concludes that the landscaping meets or exceeds the requirements under Section 59.6.5.3.C.7 (Screening Requirements) and Section 59.6.4.3 (General Landscaping Requirements) as shown on the Applicant's landscape plan below on page 36.

Staff opines that the project meets the 25 percent minimum tree canopy coverage requirement by providing a total of 1,510 square feet of tree canopy coverage for a parking lot pavement area of 5,760 square feet. Exhibit 40, p. 16. Staff further states that the project meets the perimeter planting requirements through a combination of canopy trees, evergreen trees, large and medium size shrubs and an 8-foot high, composite wood privacy fence with a minimum of at least 10-foot-wide planting area along the entire perimeter of the conditional use site and Property.

Conclusion: Staff advises that landscaping proposed along the northern and western property lines meet the specific landscaping requirements of Section 59.6.5.3.C.7. Based on this evidence, and

having none to the contrary, the Hearing Examiner concludes that the screening along those property boundaries is compatible with the surrounding area.

3. Outdoor Lighting

The outdoor lighting proposed for the conditional use was discussed in Part II.C.2. of this Report and Decision. As a benchmark for compatibility, the Zoning Ordinance caps permissible levels of illumination (from new lighting) at 0.5 footcandles along the property line. For conditional uses, the permissible lighting level is reduced to 0.1 footcandles along a property line that abuts single-family detached homes (Zoning Ordinance, §6.4.4.E):

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.

The photometric plan provided by the Applicant shown on page 39 below shows the projected lighting intensity across the entire property in foot-candles, locations where lighting fixtures will be mounted, and manufacturer's specifications on the lighting fixtures being proposed. Exhibit 30 (a).

Staff opines that the lighting plan is adequate and safe for vehicular and employee movement and meets the requirements under Section 59.6.4.4. Exhibit 40, p. 16. The proposed lighting serves multiple purposes, including illumination of the site entrance, visibility lighting in the employee parking areas, and area lighting near the structures. The photometric plan shows that the lighting will not cause glare on adjoining properties, nor will it exceed the 0.1 foot-candle standard at the side and rear property lines. The lighting, with no direct light or light glare, will not have a negative impact on neighboring properties. The five pole mounted lighting fixtures are mounted at a height of 16-feet above grade and are full cut-off, LED fixtures.

Conclusion: From this evidence, the Hearing Examiner finds that the lighting on the property will be at residential levels compatible with the surrounding residential area and adjacent uses.

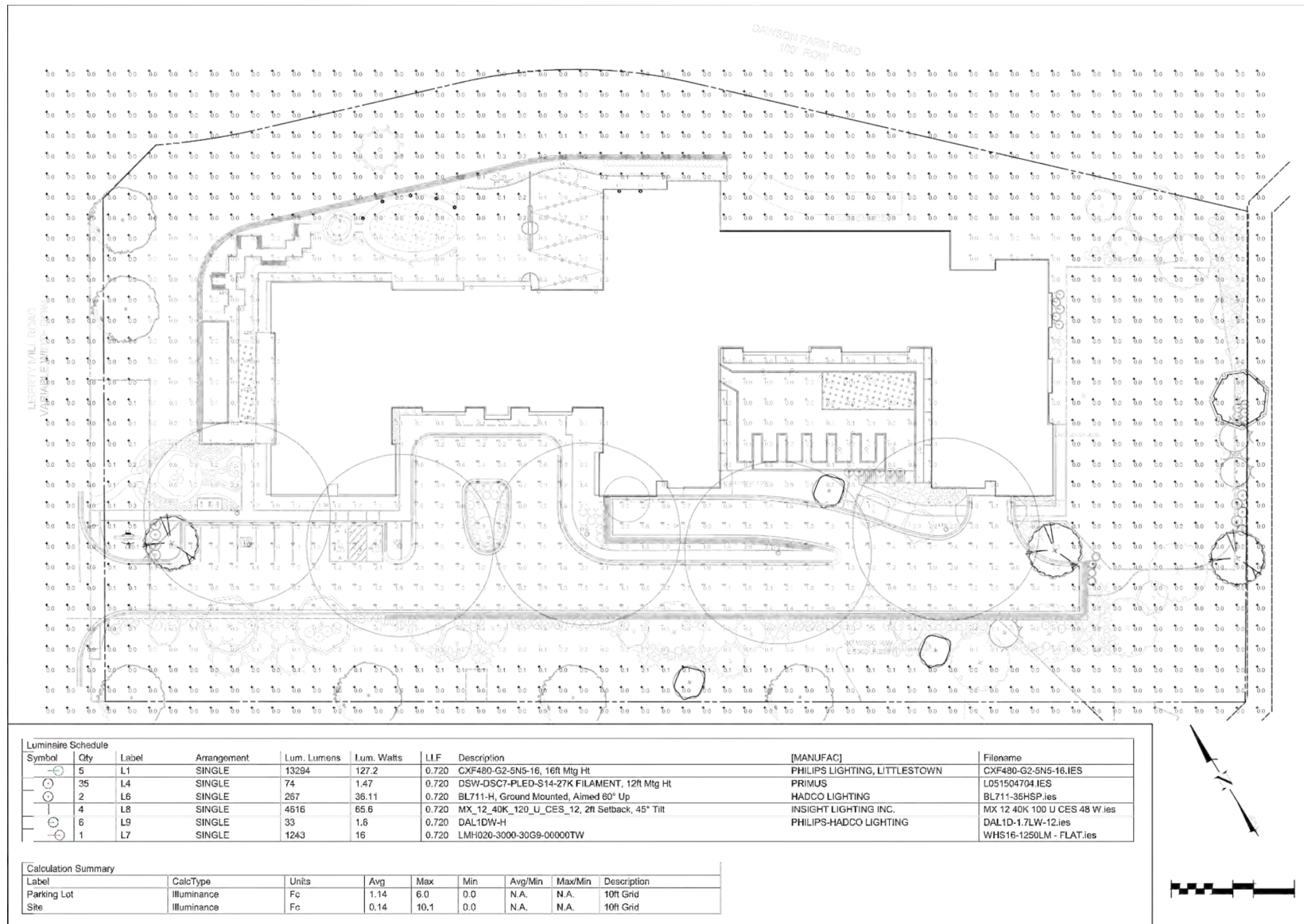


Exhibit 30(a) - Lighting Plan

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, the Hearing Examiner hereby **GRANTS** the Applicant's request for a conditional use under Section 59.3.3.2.E.2.c. of the Zoning Ordinance to operate a residential care facility for more than sixteen (16) persons at 19115 Liberty Mill Road in Germantown, Maryland, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Applicant's conditional use site plan, landscaping plan, and lighting plan that are part of the submitted Application.
2. The maximum number of residential care units is limited to 125 beds in accordance with Montgomery County Zoning Ordinance Section 59.3.3.2.E (Residential Care Facility).
3. The maximum number of employees is limited to 35 persons on-duty at one-time.
4. Prior to the issuance of any building permit for the subject conditional use, the Applicant must amend or obtain approval of a Preliminary Plan of Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.
5. The Applicant must comply with or amend the Final Forest Conservation Plan No. 120170210 in accordance with the approval or amendment 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 west side of Liberty Mill Road, or an alternative method of compliance as acceptable by Planning Department staff.
7. At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with requirements to provide a minimum 5-ft. wide sidewalk along the frontage of the Subject Property with Liberty Mill Rd.
8. The testing of any on-site generator or similar equipment shall be conducted during weekday afternoon hours as to mitigate any disturbance to community members and residents alike.

Issued this 21st day of December 2020.



Derek J. Baumgardner
Hearing Examiner

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 with the Board:

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.

.

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

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 sent to:

Casey Cirner, Esquire
Charlie Sabin, Applicant
Ken Jones
Pankaj Shukla
Matthew Jacob
Barbara Jay, Executive Director, Board of Appeals
Phillip Estes, Planning
James Babb, Treasury Division

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

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COPIES TO:

Casey Cirner, Esq.

Attorney for the Applicant

Charlie Sabin, Applicant

Ken Jones

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Stephanie Dickel, Planning Department

Phillip Estes, Planning Department

Michael Coveyou, Director, Finance Department

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:

**FLOURNOY DEVELOPMENT
GROUP, LLC**

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OZAH Case No. CU 20-09
(Minor Modification)

Before: Derek J. Baumgardner, Hearing Examiner

**ORDER ADMINISTRATIVELY APPROVING A MINOR AMENDMENT TO
CONDITIONAL USE CU 20-09**

I. BACKGROUND

On December 21, 2020, the Hearing Examiner approved the above-referenced conditional use for a residential care facility for more than sixteen (16) persons (a 125-bed residential care facility with assisted living and memory care units) at 19115 Liberty Mill Road in Germantown, Maryland. The conditions of approval included the following:

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 residential care units is limited to 125 beds in accordance with Montgomery County Zoning Ordinance Section 59.3.3.2.E (Residential Care Facility).
3. The maximum number of employees is limited to 35 persons on-duty at one-time.
4. Prior to the issuance of any building permit for the subject conditional use, the Applicant must amend or obtain approval of a Preliminary Plan of Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.
5. The Applicant must comply with or amend the Final Forest Conservation Plan No. 120170210 in accordance with the approval or amendment 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 west side of Liberty Mill Road, or an alternative method of compliance as acceptable by Planning Department staff.

7. At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with requirements to provide a minimum 5-ft. wide sidewalk along the frontage of the Subject Property with Liberty Mill Rd.
8. The testing of any on-site generator or similar equipment shall be conducted during weekday afternoon hours as to mitigate any disturbance to community members and residents alike.

II. The Amendment Request

On July 13, 2021, OZAH received a request from the Applicant, Flournoy Development Group, LLC, to amend the approved conditional use to allow Flournoy to make certain changes to the site design, architecture, amenities and interior of the approved 125-bed residential care facility. Exhibit 50. Flournoy states: “construction costs continued to escalate and market demands continued to evolve due to the COVID-19 global pandemic, prompting the Petitioner to reevaluate the project’s economic viability, resident unit mix and design, and amenities, which culminated in the following proposed minor amendments (Exhibit 50):

- ☐ Exclusively providing surface parking in lieu of structured parking
- ☐ Reconfiguring the loading space, service entrance and dumpster locations
- ☐ Enhancing the landscaping and parking facility screening along the southern Property boundary
- ☐ Reallocating the 125-beds to 123 units instead of 119 units
- ☐ Changing the unit mix to add 2-bedroom units and more 1-bedroom units, instead of studios
- ☐ Adding private balconies to certain units
- ☐ Reserving the building third floor for memory care
- ☐ Adding a lower building level
- ☐ Revising the floor plans
- ☐ Relocating the generator to the north side of the lower level
- ☐ Enhancing resident amenities by adding a dog park, partitioned outdoor dining, memory care terrace on the 3rd floor, canopy covered main entrance
- ☐ Enhancing the exterior architectural features, decreasing building height and lot coverage, tweaking the footprint shape and reducing its size
- ☐ Updating the stormwater management plan to treat the additional surface parking, the utility plan, forest conservation plan and fire access plan to reflect the parking facility amendment.

These amendments are described in detail in the Applicant's request, attached hereto and incorporated herein as Appendix A.

On July 15, 2021, the Hearing Examiner referred the proposed minor amendments to Staff of the Planning Department for their review.

On July 30, 2021, OZAH received Staff's evaluation of the proposed minor amendments which found that "the proposed changes as shown would have a substantial adverse effect and would require a major amendment." Exhibit 54. Subsequent to this evaluation, and in consultation with Planning Staff, Flournoy modified its request per the recommendations of Planning Staff. Exhibit 55.

On August 9, 2021, Flournoy filed a revised request for minor amendment with the modifications proposed by Planning Staff with revised renderings, attached hereto and incorporated herein as Appendix B. Exhibit 56. Flournoy states:

Petitioner submitted to Technical Staff on August 5, 2021, a revised south front elevation with an enhanced fenestration that eliminates any blank walls and enriches the residential compatibility of the proposed building. The below direct comparison of the elevations (revised and initially proposed with the July 13, 2021 minor amendment request) depict the fenestration enhancements:



REVISED FRONT ELEVATION

As such, Technical Staff stated, in pertinent part in its August 5, 2021 e-mail, which is attached hereto and incorporated herein as Exhibit B, that: The planning team finds that the revisions are acceptable and consistent with the Planning Board's finding for CU 20-09 dated October 8, 2020. The revisions have successfully addressed our concerns regarding the blank walls and impact to the surrounding neighborhood. Accordingly, Technical Staff supports the administrative approval of the minor amendment request.

III. The Governing Law

Requests to amend a conditional use are governed by §59.7.3.1.K of the Zoning Ordinance, which distinguishes between “minor” and “major” amendments. A “minor” amendment is one that “does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.” *Zoning Ordinance*, §59.7.3.1.K.a.2. A “major” amendment is one that “changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected when considered in combination with the underlying conditional use.” Major amendments must follow the same procedures as the original conditional use while minor amendments may be approved administratively by the Hearing Examiner. *Id.*

IV. Opinion and Decision

The revised plans submitted by Flournoy show a wide variety of modifications to the original approval granted on December 21, 2021. *See* Appendix A. These modifications include, but are not limited to, building footprint, location of fixtures and amenities, landscaping, parking, and occupancy, among other modifications. While the requested changes are many in number, they are not substantial in scope and the amendment proposes a slightly reduced occupancy than previously approved. Given the nature of the proposed changes and, upon revision based on Planning Staff’s evaluation (*See* Appendix B), one would not reasonably expect substantial adverse effects on the surrounding neighborhood from the changes proposed.

Based on this record, the Hearing Examiner agrees with the Applicant and Planning Staff that the proposed amendments are “minor” as that term is defined under §59.7.3.1.K of the Zoning

Ordinance because they do not change the nature, character, or intensity of the conditional use. The Hearing Examiner further finds that the proposed minor amendments do not materially alter the proposed use or operation to such a degree that a major modification would be prudent or necessary.

ORDER

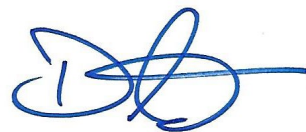
Based on the foregoing, it is, this 23rd day of August 2021:

ORDERED, that the request for a minor amendment to Conditional Use No. CU 20-09, allowing changes to the previously approved residential care facility and in conformance with the Applicant's representations contained as **APPENDIX** and **APPENDIX B** is hereby administratively **APPROVED**; and it is further

ORDERED, that physical improvements to the subject property are limited to those shown on the Applicant's Revised Conditional Use Site Plan (Exhibit 54(a) and (b)) and Landscape and Lighting Plan (Exhibits 54(d) through (f)). The Applicant must file copies with OZAH of any plans modified after subdivision of the property.

ORDERED, that this amendment and the continued use of the conditional use are subject to all terms and conditions imposed in connection with the initial approval, except as specifically amended by the Hearing Examiner in this Opinion and Order. The Conditional Use holder is directed to comply fully with all applicable county, state and federal regulations; and, it is further

ORDERED, that pursuant to Section 59.7.3.1.K.2.b. of the Zoning Ordinance, any party may request a public hearing on the Hearing Examiner's action within 15 days after this decision is issued. **The request for public hearing must be in writing and must specify the reason for the request and the nature of the objection or relief desired.** If a request for a hearing is received, the Hearing Examiner must suspend his administrative amendment and conduct a public hearing to consider whether the amendment substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood. If the Hearing Examiner determines that such impacts are likely, then the amendment application must be treated as a major amendment application. A decision of the Hearing Examiner may be appealed on the basis of the Hearing Examiner's record to the Board of Appeals.



Derek J. Baumgardner
Hearing Examiner

NOTICES TO:

Phillip Estes, Planning Department
Benjamin Berbert, Planning Department
Casey Cirner, Attorney for Applicant
Flournoy Development Group, LLC, Applicant
Barbara Jay, Executive Director
Montgomery County Board of Appeals

All parties entitled to notice at the time of the original filing:

Abutting and Confronting Property Owners (or a condominium's council of unit owners or renters, if applicable)
Civic, Renters' and Homeowners' Associations within a half mile of the site
Any Municipality within a half mile of the site

Casey L. Cirner
301.517.4817
ccirner@milesstockbridge.com

OZAH MINOR AMENDMENT

VIA ELECTRONIC MAIL AND REGULAR MAIL
(ozah@montgomerycountymd.gov)

APPENDIX A

July 13, 2020

Hearing Examiner Lynn Robeson Hannan, Director
Hearing Examiner Derek Baumgardner
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850

Re: Minor Amendment to Conditional Use CU 20-09
Flournoy Development Group, LLC (“Petitioner”)
Residential Care Facility

Dear Hearing Examiner Hannan and Hearing Examiner Baumgardner:

On behalf to the Petitioner, we hereby submit this request for a minor amendment to Conditional Use CU 20-09, to make certain changes to the site design, architecture, amenities and interior of the 125-bed residential care facility approved at 19115 Liberty Mill Road in Germantown (“Property”). The proposed minor amendment is described in more detail herein and includes the following amended plans and documents, attached hereto and incorporated herein:

Plan/Document	Plan #	Replacing Exhibit #
1. Statement of Operations		5
2. Conditional Use Cover Sheet	CU1.01	11(a)
3. Conditional Use Site Plan	CU2.01	28
4. Utility Plan	CU2.03	29
5. Landscape & Lighting Plans	L2.01	47
6. Landscape & Lighting Plans	L2.02 & L2.03	30(b)
7. Landscape & Lighting Plans	L3.01 – L3.03	30(c) - (e)
8. Final Forest Conservation Plan	L8.01 & L8.02	31(a) & 15(b)
9. SWM Concept Plan	CU4.01	32 & 33
10. Fire Apparatus Access Plan	CU2.02	34 & 35
11. Storm Drainage Study	1 – 4	43
12. Conceptual Rendered Site Plan	A1.01	42
13. Floor Plans	A1.02-A1.05	12(b)-(n)
14. Elevations	A1.06 & A1.07	12(i)-(m)
15. Perspectives	A1.08-A1.12	12(g)-(h)
16. Unit Matrix	A1.13	12(b)

Introduction

In December 2020, the Hearing Examiner for the Office of Zoning and Administrative Hearings (the “HE”) approved, with conditions, CU 20-09 for a 125-bed residential care facility at the Property. No subsequent appeal was filed and on February 26, 2021, the Petitioner filed Preliminary Plan No. 12017021C (the “Preliminary Plan”) with the Maryland-National Capital Park and Planning Commission¹ (“M-NCPPC”) to implement CU 20-09.² Simultaneously, however, construction costs continued to escalate and market demands continued to evolve due to the COVID-19 global pandemic, prompting the Petitioner to reevaluate the project’s economic viability, resident unit mix and design, and amenities, which culminated in the following proposed minor amendments:

- Exclusively providing surface parking in lieu of structured parking
- Reconfiguring the loading space, service entrance and dumpster locations
- Enhancing the landscaping and parking facility screening along the southern Property boundary
- Reallocating the 125-beds to 123 units instead of 119 units
- Changing the unit mix to add 2-bedroom units and more 1-bedroom units, instead of studios
- Adding private balconies to certain units
- Reserving the building third floor for memory care
- Adding a lower building level
- Revising the floor plans
- Relocating the generator to the north side of the lower level
- Enhancing resident amenities by adding a dog park, partitioned outdoor dining, memory care terrace on the 3rd floor, canopy covered main entrance
- Enhancing the exterior architectural features, decreasing building height and lot coverage, tweaking the footprint shape and reducing its size
- Updating the stormwater management plan to treat the additional surface parking, the utility plan, forest conservation plan and fire access plan to reflect the parking facility amendment.

Authority

The HE may administratively approve (without a public hearing) a minor amendment to a HE approved conditional use, if the minor amendment “does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.” § 59.7.3.1.K.2 of the Montgomery County Zoning Ordinance; §26 of the Office of Zoning and Administrative Hearings (“OZAH”) Amended Land Use Rules of Procedure (“OZAH Rules of Procedure”).

¹ As part of the Preliminary Plan review, M-NCPPC has requested additional frontage improvements, beyond those set forth in CU 20-09 conditions of approval 6 & 7 and therefore, improvements to the Dawson Farm/Liberty Mill Road intersections are depicted on the amended Conditional Use Plan CU2.01.

² The Planning Board hearing for the Preliminary Plan is pending adjudication of this minor amendment.

Conditional Use Minor Amendment

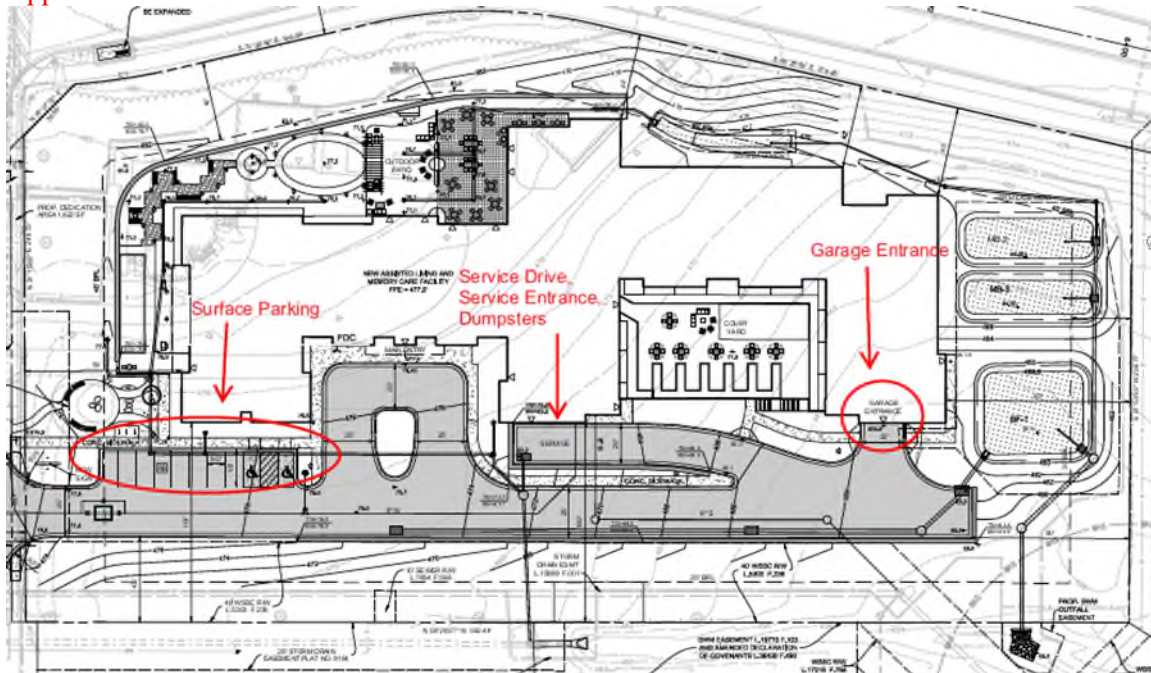
The proposed amendment modifies the site design, interior operational features and floor plans, while enhancing the landscaping, architectural design and resident amenities, to make an overall improvement to the residential care facility. The proposed amendment, while detailed, is minor in nature and can be approved administratively by the HE because it will not change the nature, character or intensity of the approved residential care facility, at all, or to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

Surface Parking

The crux of this minor amendment is the exclusive use of surface parking for the residential care facility instead of the approved mix of surface and structured parking.

The approved site layout for CU 20-09 includes a parking facility with 10 surface parking spaces situated on the north side of the access drive immediately upon entering the Property that includes 4 ADA parking spaces, 2 of which are van accessible, and 63 structured parking spaces accessible at the southeast corner of the building, which includes 2 electric vehicle (EV) charging stations. OZAH Ex. 28. There is also a separate service drive to a service entrance that functions as a loading space for deliveries and an area for dumpsters to be placed outside for trash pick-up. *Id.*

Approved Conditional Use Plan



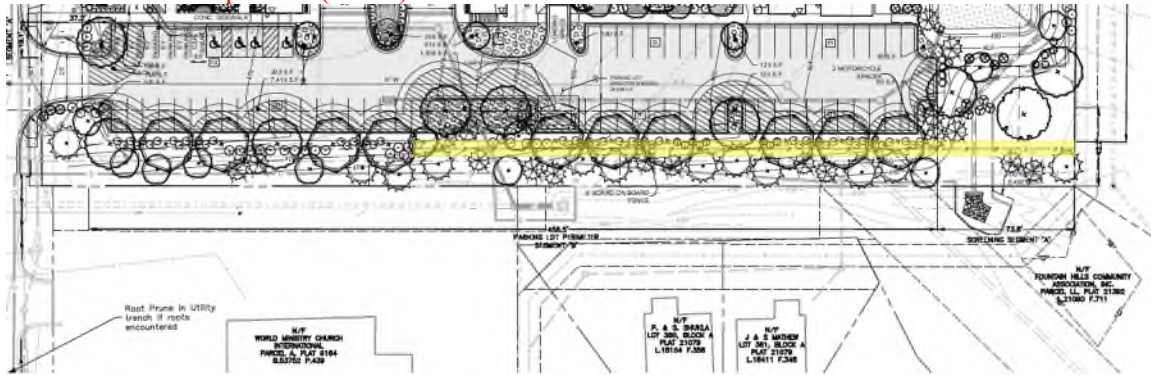
(Excerpt Ex. 28)

The amendment proposes a surface parking facility with 72 parking spaces, including the 4 ADA parking spaces, 2 of which are van accessible, and 4 EV charging spaces,³ plus 2 motorcycle spaces

³ While there is no statutory requirement to provide EV charging parking spaces for a parking facility of this size, the Petitioner has opted to include such spaces in its project.

neighboring properties from headlights of vehicles entering, exiting or parking at the Property, the fence will extend approximately 355' west from the eastern Property boundary line. (L2.01); See highlighted area below:

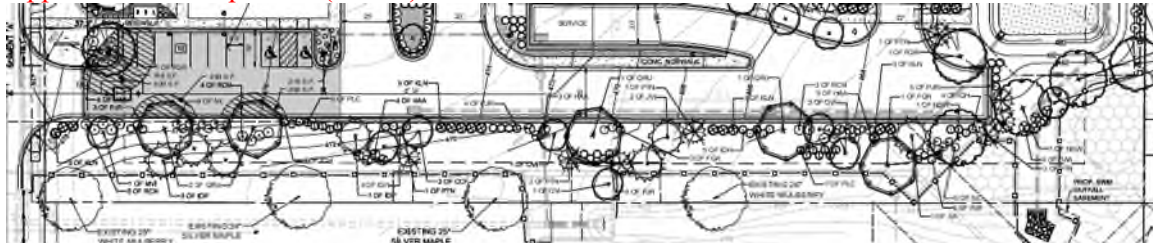
Amended Landscape Plan (L2.01)



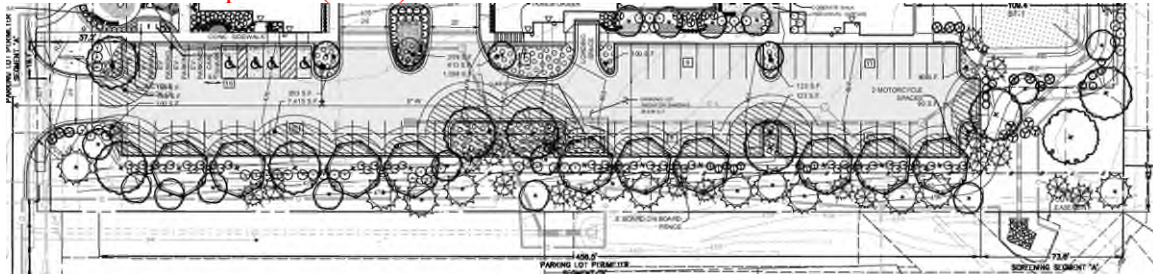
In addition, a 29' wide area between the southern edge of the parking facility and southern Property line will provide substantial year-round screening of the parking facility, dumpster enclosure and building through the strategic placement of specifically selected trees and shrubs (L2.01). The landscaping in this area consists of the Parking Lot Perimeter Landscaping (Segment B), Screening Segment A, Parking Lot Shade Trees and additional landscaping south of the Property entrance, which totals 46 shade, ornamental and evergreen⁷ trees and 103 deciduous and evergreen shrubs, which, coupled with the 8' fence, will prevent any vehicular headlight trespass, and constitute more substantial screening in this area than the approved landscaping, which provided 35 trees and 112 shrubs. *Id.*; See, OZAH Ex. 47. Furthermore, adherence to the parking lot shading and perimeter landscaping requirements triggered by the additional surface parking spaces, requires replacement of the 4 existing trees along the southern Property line, as reflected on the enclosed amended Forest Conservation Plan. (L8.02). The below plan excerpts clearly show the improvement to the landscape screening in this area:

⁷ The Petitioner made certain changes to the amended Landscape & Lighting Plan (L2.01) to accommodate Mr. Jacob's request to include more evergreen, rather than deciduous, trees along the parking facility perimeter confronting his and Mr. Shukla's properties.

Approved Landscape Plan (Ex. 47)



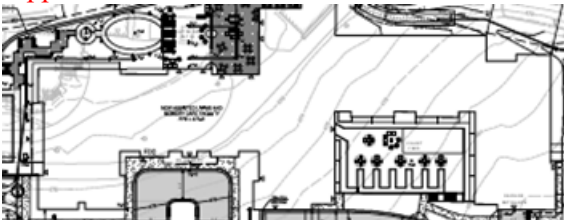
Amended Landscape Plan (L2.01)



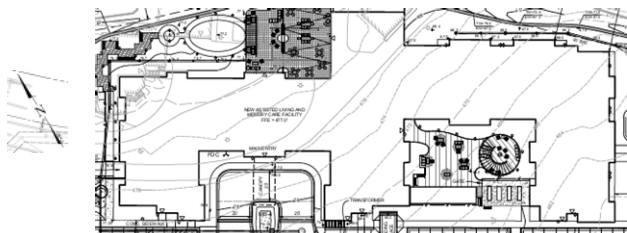
Building Footprint

A slight variation in the building footprint, as depicted by the below side-by-side comparison, is also proposed:

Approved Condition Use Plan



Amended Conditional Use Plan



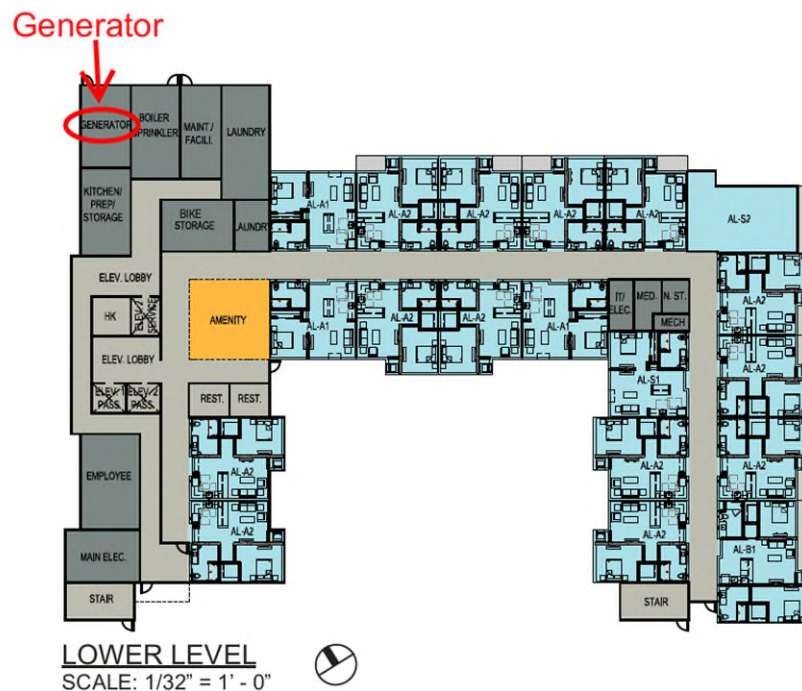
Specifically, there is a slight reconfiguration to the west side of the footprint. The amendment reduces the eastern part of the building, thereby shifting the footprint towards the west and increasing the rear building setback from 93' to 109' feet. (CU2.01). The building projections added to certain locations on the southern building façade, however, cause the entire side yard setback to be reduced by 8' (101' to 93' feet), but practically, this only occurs at the projection locations. *Id.* The variation to the north side of the building footprint requires the retaining wall to be extended along the entire length of the north side of the residential care facility. *Id.* However, the height of the building is being reduced by 2'. *Id.*

Residential Units, Floor Plan Amendments, Interior Amenities

CU 20-09 approved a 125-bed residential care facility with 119 units, including 102 assisted living units on the 1st through 3rd floors and 17 memory care units on the 3rd floor. OZAH Ex. 12(b). This amendment will reallocate the 125 approved beds to 123 units to provide a more diverse unit mix

that favors 1-bedroom units, instead of studio units, and includes 2-bedroom assisted living units, for a total of 85 assisted living units and 38 memory care units. (A1.01). While 4 units are being added to the building, this does not increase the intensity of the use or density because the number of beds will remain at 125, as initially approved, and the Petitioner is not proposing any staffing changes.

Furthermore, in lieu of the structured parking, a lower building level is proposed, which will include assisted living units and accommodate the back of house space previously located on the upper levels. (A1.02). This amendment also includes relocation of the generator and bike storage room from the prior approved structured parking to the north side of the lower level of the building, which will eliminate any proposed noise impacts from the generator upon the neighbors to the south, although the Petitioner is not proposing to amend the related condition⁸ of approval. *Id.*



The elimination of the structured parking and addition of the lower level will increase the overall gross floor area of the building to 117,976 square feet without increasing the building footprint. (CU.01). The revised floor plans will utilize this additional gross floor area to increase the unit sizes and mix. (A1.02-A1.05). The revised floor plans also reprioritize, not eliminate, the resident amenities, such as increasing the size of the demonstration kitchen on the 1st floor and consolidating back of house space on all the floors. *Id.* This has a significant positive impact for memory care because the building can now devote the entire 3rd floor to memory care and add more memory care amenities, such as a second terrace, dining room and bath/spa and more units. (A1.05).

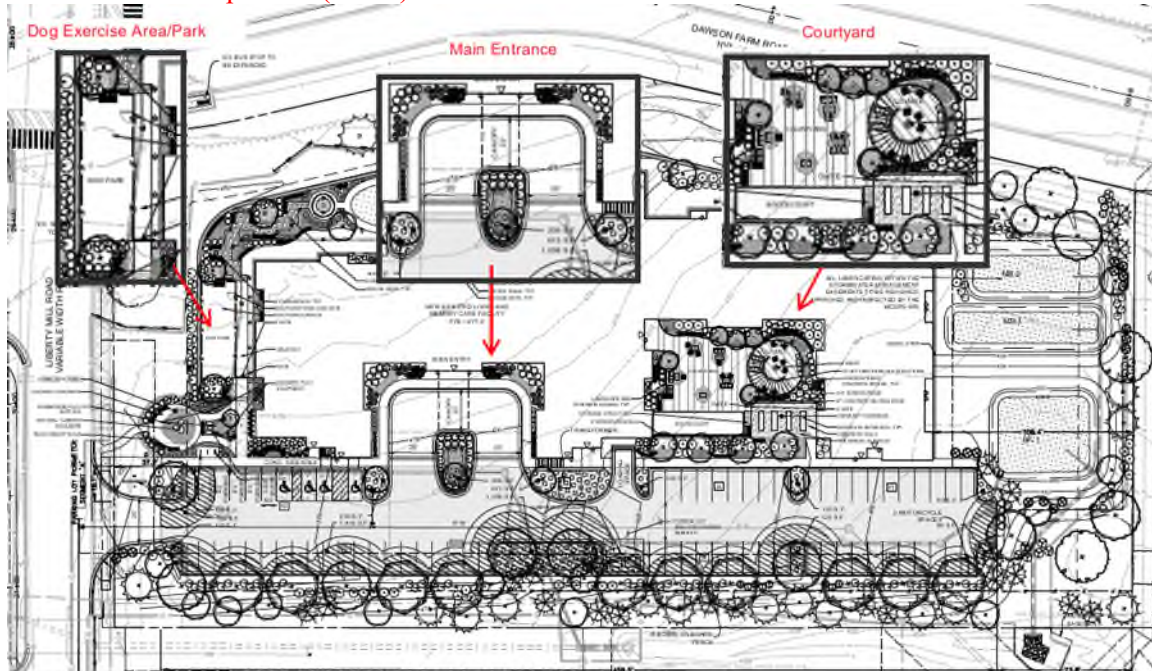
⁸ CU 20-09 condition of approval 8 provides that “[t]he testing of any on-site generator or similar equipment shall be conducted during weekday afternoon hours as to mitigate any disturbance to community members and residents alike.”

Outdoor Amenity Space

The elimination of the structured parking will establish the building courtyard at grade with a direct gated connection to the internal pedestrian circulation system. (L2.01). This will also reduce the residential care facility lot coverage from the maximum 25% or 39,076 sf to 21.3% or 33,330 sf because the courtyard is now excluded from the lot coverage calculation. (CU2.01).

Petitioner also proposes improvements to the outdoor resident amenity spaces by adding a resident dog exercise/park along the west side of the building where the bocce ball court was located and relocating the bocce ball court to the courtyard, where it has added an accessory storage structure and a fire pit and seating under a pergola. (L2.01). The resident dog park will be fenced and screened from Liberty Mill Road with various shrubs and ornamental trees. *Id.* The Petitioner has also enhanced the landscaping around the main building entrance and added a canopy for covered building access, all as depicted directly below. *Id.*

Amended Landscape Plan (L2.01)



Furthermore, additional features are proposed for the main patio at the north side of the building fronting Dawson Farm Road, such as partitioned outdoor dining, pergola features and a fire place.

Architectural Design

The residential care facility will continue to be compatible with the surrounding neighborhood because of its residential design and use of farmhouse rustic design elements similar in character to the surrounding neighborhood. The revised design, however, includes a mansard roof instead of a pitched roof, but it will provide the same noise barrier for any rooftop mechanical equipment, such as the AC units. (A1.08-A1.12). Instead of horizontal cement siding the Petitioner proposes cementitious lap siding coupled with the various stone elements. *Id.* The massing and scale of the building will remain compatible with the surrounding neighborhood through the continued use of

wings and gabled elements, and will be further broken down into visually smaller components through the use of open roof patios and accent porches, large storefront windows at the pedestrian level and the top floor level. *Id.* Despite these architectural changes, the proposed residential care facility will blend seamlessly into the surrounding neighborhood.

Stormwater Management Plan

The stormwater management concept plan has been updated to reflect the treatment of water runoff from the additional imperviousness generated by the increased number of surface parking spaces. CU4.01. While no substantive revisions are proposed to this plan, micro-biorentention facility (MB-3) has been enlarged and additional stormwater water will be discharged from the riprap outfall proposed on the adjoining property. *Id.* The revisions to this plan also triggered an update to the Utility Plan. (CU2.03).

Lighting

The additional surface parking spaces triggered the addition of 1 parking lot pole light, which has been added to the east of the proposed entrance sign, shifting the remaining 5 pole lights to the east. (L3.01). This amendment still provides illumination at a rate of 0.0 footcandles at the Property line, except in one location where the illumination is 0.01 footcandles, which is still in accord with the zoning requirements. §59.6.4.4.E, Montgomery County Zoning Ordinance; *Id.* The Petitioner also proposes to reduce the number of decorative string light bulbs over the main patio (L4) and to eliminate light fixtures L2 (inverted large bracketed wall lantern) in exchange for additional L3 fixtures (landscape bollards) that are also not included in the calculations. *Id.* Petitioner also proposed to eliminate the L5 (Inverted large bracketed wall lantern) and L7 and increase the number of L9 LED deck light fixtures and adding L10 fixtures, which are also excluded from the calculations because of the minimal illuminance. *Id.*

Justification

The proposed minor amendment may be approved administratively because it will not change the nature, character or intensity of the approved residential care facility to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. First and foremost, no part of the proposed amendment will increase the intensity of the residential care facility because the Petitioner is not increasing the number of residents by adding beds to the facility and is not proposing to increase the number of staff beyond the 35 approved. The Petitioner is merely proposing to reallocate the 125 approved beds within and among units internal to the building, which will have no effect on the surrounding neighborhood, but benefit the facility residents.

Second, the expansion of the surface parking facility, reconfigured and relocated loading space, service entrance and dumpsters will not change the nature or character of the residential care facility to an extent that substantial adverse effects on the surrounding neighborhood are reasonably anticipated because the Petitioner has gone to such great lengths to mitigate any trespass from vehicular headlights entering, exiting and parking at the Property through the use of a significantly tall board-on-board fence and substantial landscaping, which it has reviewed with the neighbors to the south. In addition, the amended dumpster location will not result in substantial adverse effects on the surrounding neighborhood from odor, sight or noise because it will have two times the screening via the landscaping and fence and dumpster enclosure. Furthermore, the Petitioner

scheduling trash pick-up during times that will not disturb sleeping residents or neighbors will mitigate any adverse impacts from any noise generated by the proposed dumpster location.

Third, the proposed amendment will increase the amount of landscaping around the building and enhance the building's residential character and compatibility with the surrounding area, which will have a net positive effect upon the surrounding neighborhood.

Fourth, the overall reduction in site lighting will adhere to the zoning ordinance illumination requirements at all Property lines and have no substantial effects upon the surrounding neighborhood due to the significant landscape screening and proposed fence. The amenity space improvements will not have any substantial adverse effects because the Petitioner proposes to fence and screen the resident dog exercise area/park along the Liberty Mill Property frontage, away from the surrounding residential properties, and plans to add landscaping along the courtyard to screen the relocated bocce ball court.

Fifth, the relocation of the generator will provide more than adequate noise attenuation for the neighbors to the south of the Property and the remaining internal building changes, including the addition of a lower level, floor plan revisions and the proposed unit mix, will have no impact on the surrounding neighborhood.

Finally, the changes to the civil plans, such as the Stormwater Management Concept, Utility and Fire Apparatus Access Plans stem from the surface parking facility expansion and will not have adverse effects upon the surrounding neighborhood.

Conclusion

For the foregoing reasons, the Petitioner respectfully requests administrative approval of the minor amendment.

In furtherance of the request, also enclosed is a filing fee in the amount of \$2,462.00, updated notice list and labels. We appreciate your consideration of this minor amendment request and should you need any additional information or have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Casey L. Cirner

cc: **via e-mail**

Mr. Pankaj Shukla

Mr. Mathew Jacob

Jeff Chai, President Fountain Hills Community Association, Inc.

Jonathan Casey, M-NCPPC

Charlie Sabin, Director of Senior Housing Development, Flournoy Development Group, LLC

Kenneth D. Jones, PE, MHG

Casey L. Cirner
301.517.4817
ccirner@milesstockbridge.com

OZAH MINOR AMENDMENT

APPENDIX B

VIA ELECTRONIC MAIL AND REGULAR MAIL
(ozah@montgomerycountymd.gov)

August 9, 2020

Hearing Examiner Lynn Robeson Hannan, Director
Hearing Examiner Derek Baumgardner
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850

Re: Supplement to July 13, 2021 Minor Amendment Request
Conditional Use CU 20-09 Residential Care Facility
Flournoy Development Group, LLC ("Petitioner")

Dear Hearing Examiner Hannan and Hearing Examiner Baumgardner:

To supplement the Petitioner's July 13, 2021 Minor Amendment Request for CU 20-09, please find enclosed herewith: (1) Revised Front Elevation (A1.14); and (2) Revised Perspective (A1.15). The enclosed revised architectural drawings shall replace A1.06, A1.08, A1.10 and A1.11, filed as part of the July 13, 2021 Minor Amendment Request.

By way of background, on July 13, 2021, the Petitioner submitted a request for a minor amendment to Conditional Use CU 20-09 to make certain changes to the site design, architecture, amenities and interior of the 125-bed residential care facility approved at 19115 Liberty Mill Road in Germantown ("Property"). On July 30, 2021, Technical Staff of the Maryland-National Capital Park and Planning Commission issued a memorandum to Hearing Examiner Baumgardner commenting on the minor amendment request, which provided in pertinent part:

Figure 2 below shows the proposed architectural changes of the south front elevation. The proposed architectural creates a significant departure from the original design and aesthetic. The fenestration seems to relate only to the floor plan and ignores much of the facade and exterior views. A significant portion includes walls with no windows, doors, or design treatment. Most of the blank wall areas extend four stories in height (about 41 feet) and are predominately facing two-story dwellings. A building of this scale and height having substantial areas of blank walls is inconsistent with the residential character of the area and would have substantial adverse effects.

For these reasons, staff believes the proposed changes as shown would have a substantial adverse effect and would require a major amendment. Staff would welcome the opportunity to explore options with the applicant that would address impacts and accommodate the request.

A copy of Technical Staff's July 30, 2021 memorandum is attached hereto and incorporated herein as **Exhibit A**.

In light of the aforesaid comments, Petitioner submitted to Technical Staff on August 5, 2021, a revised south front elevation with an enhanced fenestration that eliminates any blank walls and enriches the residential compatibility of the proposed building. The below direct comparison of the elevations (revised and initially proposed with the July 13, 2021 minor amendment request) depict the fenestration enhancements:



REVISED FRONT ELEVATION



FRONT ELEVATION

Figure 2 Proposed Architecture CU 2020-09

As such, Technical Staff stated, in pertinent part in its August 5, 2021 e-mail, which is attached hereto and incorporated herein as **Exhibit B**, that:

The planning team finds that the revisions are acceptable and consistent with the Planning Board's finding for CU 20-09 dated October 8, 2020. The revisions have successfully addressed our concerns regarding the blank walls and impact to the surrounding neighborhood.

Accordingly, Technical Staff supports the administrative approval of the minor amendment request.

Page 3

As such, the Petitioner respectfully requests administrative approval of the minor amendment request, as supplemented, and appreciates your consideration of the enclosed supplemental information.

Very truly yours,



Casey L. Cirner

cc: **via e-mail**

Mr. Pankaj Shukla

Mr. Mathew Jacob

Jeff Chai, President Fountain Hills Community Association, Inc.

Phillip Estes, M-NCPPC

Jonathan Casey, M-NCPPC

Charlie Sabin, Director of Senior Housing Development, Flournoy Development Group, LLC

Kenneth D. Jones, PE, MHG



REVISED FRONT ELEVATION



DATE: July 30, 2021

TO: Derek Baumgardner, Hearing Examiner
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Suite 200
Rockville, Maryland 20850

FROM: Phillip Estes, AICP, Planner Coordinator
Don Zeigler, AICP, Master Planning Supervisor

SUBJECT: CU 20-09 (Liberty Mill)
Staff comments on minor amendment application

Planning staff has reviewed the request for a minor amendment to CU 20-09, as described in the applicant's letter dated July 13, 2020.

A minor amendment may be granted administratively if the amendment "does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use" (59-7.3.1.K.2.a).

As shown in Figure 1 below, the approved south front elevation (which directly faces a residential neighborhood) shows an architectural fenestration that is compelling, detailed, and without large areas of blank walls. The arrangement of the windows and doors are consistent across the facade, and it presents itself as compatible in a residential setting. In its decision of October 8, 2020, the Planning Board found the originally proposed architecture to be in character with the surrounding neighborhood.

Figure 2 below shows the proposed architectural changes of the south front elevation. The proposed architectural creates a significant departure from the original design and aesthetic. The fenestration seems to relate only to the floor plan and ignores much of the facade and exterior views. A significant portion includes walls with no windows, doors, or design treatment. Most of the blank wall areas extend four stories in height (about 41 feet) and are predominately facing two-story dwellings. A building of this scale and height having substantial areas of blank walls is inconsistent with the residential character of the area and would have substantial adverse effects.

For these reasons, staff believes the proposed changes as shown would have a substantial adverse effect and would require a major amendment. Staff would welcome the opportunity to explore options with the applicant that would address impacts and accommodate the request.

Should you have any questions or comments, please feel free to contact us at Phillip.Estes@montgomeryplanning.org or 301-495-2176.



Figure 1 Approved Architecture CU 2020-09



Figure 2 Proposed Architecture CU 2020-09

Cirner, Casey L.

From: Estes, Phillip <Phillip.Estes@montgomeryplanning.org>
Sent: Thursday, August 5, 2021 3:07 PM
To: Cirner, Casey L.; Baumgardner, Derek
Cc: Butler, Patrick; Zeigler, Donnell; Tesfaye, Elsabet; Casey, Jonathan; Johnson, Nana; 'Ken Jones'; Pankaj Shukla; mjacob@shahpe.com; jeffchai@outlook.com; Mortensen, Paul; Duke, Roberto
Subject: [EXTERNAL] Re: CU 20-09 Minor Amendment - 19115 Liberty Mill Road - Residential Care Facility

EXTERNAL

Hi Casey,

Thank you for submitting the revised front elevation for review.

The planning team finds that the revisions are acceptable and consistent with the Planning Board's finding for CU 20-09 dated October 8, 2020. The revisions have successfully addressed our concerns regarding the blank walls and impact to the surrounding neighborhood.

The planning team sincerely appreciates the applicant's effort to address staff's comments. As such, we can forgo meeting today at 4:00.

Thank you, Phillip

Phillip Estes, AICP

Planner Coordinator

Montgomery County Planning Department
2425 Reddie Drive, Floor 13, Wheaton, MD 20902
Phillip.Estes@montgomeryplanning.org
o: 301.495.2176



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[Sign up](#) for the plan's e-letter and receive updates and helpful information as we work to imagine a new future for Fairland and Briggs Chaney.

[Tell us](#) what is great and what can be improved in Fairland and Briggs Chaney.

From: Cirner, Casey L. <ccirner@milesstockbridge.com>
Date: Thursday, August 5, 2021 at 12:46 PM
To: Estes, Phillip <Phillip.Estes@montgomeryplanning.org>, Baumgardner, Derek <Derek.Baumgardner@montgomerycountymd.gov>

Cc: Butler, Patrick <patrick.butler@montgomeryplanning.org>, Zeigler, Donnell <Donnell.Zeigler@montgomeryplanning.org>, Tesfaye, Elsabett <elsabett.tesfaye@montgomeryplanning.org>, Casey, Jonathan <Jonathan.Casey@montgomeryplanning.org>, Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>, 'Ken Jones' <kjones@mhgpa.com>, Pankaj Shukla <pnshukla@yahoo.com>, mjacob@shahpe.com <mjacob@shahpe.com>, jeffchai@outlook.com <jeffchai@outlook.com>
Subject: RE: CU 20-09 Minor Amendment - 19115 Liberty Mill Road - Residential Care Facility

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Good afternoon Phillip,

Please find attached a revised south front elevation and perspective for the proposed residential care building.

In light of the comments in M-NCPPC's July 30, 2021 memorandum to the Hearing Examiner, Flournoy Development Group has revised the fenestration of the south front elevation to eliminate blank walls and enhance the residential compatibility of the building. A direct comparison of the elevations (revised and initially proposed) are below for your convenience.

Please let me know if we should still meet virtually today at 4 p.m. to discuss.

Regards,
Casey



REVISED FRONT ELEVATION



FRONT ELEVATION

Figure 2 Proposed Architecture CU 2020-09



Casey L. Cirner
Miles & Stockbridge
direct: +1 (301) 517-4817 | cell: +1 (301) 642-3450

For COVID-19 information and resources, please visit our [Coronavirus Task Force page](#).

From: Estes, Phillip <Phillip.Estes@montgomeryplanning.org>
Sent: Monday, August 2, 2021 12:14 PM
To: Cirner, Casey L. <ccirner@milesstockbridge.com>; Baumgardner, Derek <Derek.Baumgardner@montgomerycountymd.gov>
Cc: Butler, Patrick <patrick.butler@montgomeryplanning.org>; Zeigler, Donnell <Donnell.Zeigler@montgomeryplanning.org>; Tesfaye, Elsabett <elsabett.tesfaye@montgomeryplanning.org>; Casey, Jonathan <Jonathan.Casey@montgomeryplanning.org>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; 'Ken Jones' <kjones@mhgpa.com>; Pankaj Shukla <pnshukla@yahoo.com>; mjacob@shahpe.com; jeffchai@outlook.com
Subject: [EXTERNAL] Re: CU 20-09 Minor Amendment - 19115 Liberty Mill Road - Residential Care Facility

EXTERNAL

Would 3:45 on Thursday work out for you?

From: Cirner, Casey L. <ccirner@milesstockbridge.com>
Date: Monday, August 2, 2021 at 11:50 AM
To: Estes, Phillip <Phillip.Estes@montgomeryplanning.org>, Baumgardner, Derek <Derek.Baumgardner@montgomerycountymd.gov>
Cc: Butler, Patrick <patrick.butler@montgomeryplanning.org>, Zeigler, Donnell <Donnell.Zeigler@montgomeryplanning.org>, Tesfaye, Elsabett <elsabett.tesfaye@montgomeryplanning.org>, Casey, Jonathan <Jonathan.Casey@montgomeryplanning.org>, Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>, 'Ken Jones' <kjones@mhgpa.com>, Pankaj Shukla <pnshukla@yahoo.com>, mjacob@shahpe.com <mjacob@shahpe.com>, jeffchai@outlook.com <jeffchai@outlook.com>
Subject: RE: CU 20-09 Minor Amendment - 19115 Liberty Mill Road - Residential Care Facility

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Good morning Phillip,

Thank you for your comments. Do you have any time this Thursday or Friday to discuss your comments with the Applicant and its architect?

Regards,
Casey

p.s. Because Hearing Examiner Baumgardner is copied hereto, to avoid any ex parte communications, I have also copied hereto Mr. Shukla, Mr. Jacob and Mr. Chai.



Casey L. Cirner
Miles & Stockbridge
direct: +1 (301) 517-4817 | cell: +1 (301) 642-3450

For COVID-19 information and resources, please visit our [Coronavirus Task Force page](#).

From: Estes, Phillip <Phillip.Estes@montgomeryplanning.org>
Sent: Friday, July 30, 2021 1:21 PM
To: Baumgardner, Derek <Derek.Baumgardner@montgomerycountymd.gov>
Cc: Cirner, Casey L. <ccirner@milesstockbridge.com>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Zeigler, Donnell <Donnell.Zeigler@montgomeryplanning.org>; Tesfaye, Elsabett <elsabett.tesfaye@montgomeryplanning.org>; Casey, Jonathan <Jonathan.Casey@montgomeryplanning.org>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>
Subject: [EXTERNAL] Re: CU 20-09 Minor Amendment - 19115 Liberty Mill Road - Residential Care Facility

EXTERNAL

Hi Derek,

Attached is the planning department's comments on the request for minor amendment of CU 20-09. Please let us know if you need anything else or would like to discuss.

Thank you, Phillip

Phillip Estes, AICP

Planner Coordinator

Montgomery County Planning Department
2425 Reedie Drive, Floor 13, Wheaton, MD 20902

Phillip.Estes@montgomeryplanning.org

o: 301.495.2176



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[Sign up](#) for the plan's e-letter and receive updates and helpful information as we work to imagine a new future for Fairland and Briggs Chaney.
[Tell us](#) what is great and what can be improved in Fairland and Briggs Chaney.

From: Baumgardner, Derek <Derek.Baumgardner@montgomerycountymd.gov>
Date: Thursday, July 15, 2021 at 5:19 PM
To: Estes, Phillip <Phillip.Estes@montgomeryplanning.org>, Berbert, Benjamin <benjamin.berbert@montgomeryplanning.org>
Subject: FW: CU 20-09 Minor Amendment - 19115 Liberty Mill Road - Residential Care Facility

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Hi Phil,

By way of this email OZAH is forwarding the attached request for minor amendment with accompanying documents for Planning's review and comment. Please me know if you need anything else. Thanks!

Kind regards,

Derek J. Baumgardner
Hearing Examiner
Office of Zoning and Administrative Hearings
100 Maryland Avenue
Rockville, MD 20850
Ph: (240) 777-6667
Fax: (240) 777-6665

From: Cirner, Casey L. <ccirner@milesstockbridge.com>
Sent: Tuesday, July 13, 2021 5:39 PM
To: Office of Zoning and Administrative Hearings <OZAH@montgomerycountymd.gov>
Cc: Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Sabin, Charlie <Charlie.Sabin@flournoydev.com>; Shukla, Pankaj <pankaj.shukla@zebra.com>; 'Ken Jones' <kjones@mhgpa.com>; mjacob@shahpe.com <mjacob@shahpe.com>; jeffchai@outlook.com <jeffchai@outlook.com>; 'Casey, Jonathan' <Jonathan.Casey@montgomeryplanning.org>
Subject: CU 20-09 Minor Amendment - 19115 Liberty Mill Road - Residential Care Facility

[EXTERNAL EMAIL]

Good afternoon OZAH,

Please find attached the following:

1. Minor Amendment Request Letter
2. Copy of Filing Fee Check in the amount of \$2,462.00
3. Petitioner's First Amended Statement in Support and Statement of Operations (clean and redline)
4. Notice List
5. Copy of Mailing Labels

The amended plans listed in the request letter will be sent separately via our leapfile transfer system.

A hard copy of this minor amendment request is being mailed regular mail.

Let me know if you have any questions or need any additional information.

Regards,
Casey

Casey L. Cirner

11 N. Washington Street | Suite 700 | Rockville, MD 20850-4229
D: +1 301.517.4817 | C: +1 301.642.3450 | F: +1 301.841.7986



vCard | ccirner@MilesStockbridge.com



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MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 21-123
Preliminary Plan No. 12017021C
Liberty Mill Road
Date of Hearing: October 28, 2021

DEC 16 2021

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on July 24, 2017, the Planning Board, by Resolution MCPB No. 17-069, approved Preliminary Plan No. 120170210, to create two (2) lots on 3.63 acres of land in the R-200 zone, located at 19115 Liberty Mill Road, in the southeast quadrant of the intersection of Liberty Mill Road and Dawson Farm Road ("Subject Property"), in the Germantown West Policy Area and 1989 *Germantown Master Plan* ("Master Plan") area; and

WHEREAS, on March 12, 2021, Flournoy Development Group, LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to create one 3.59-acre lot (3.63 acres prior to right-of-way dedication along Liberty Mill Road) for a Residential Care Facility, Over 16 Persons, as approved by Conditional Use No. 20-09 on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12017021C, Liberty Mill Road ("Preliminary Plan," "Amendment," or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated October 15, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 28, 2021, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

2425 Reedie Drive, 14th Floor, Wheaton, Maryland 20902 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc.org

Approved as to
Legal Sufficiency: /s/Emily Vaias
M-NCPPC Legal Department

WHEREAS, on October 28, 2021, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Verma, with a vote of 4-0; Chair Anderson, Commissioners Cichy, Patterson and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12017021C to create one lot for a Conditional Use (Residential Care Facility, Over 16 Persons) subject to the following conditions which supersede and replace in their entirety all conditions related to Preliminary Plan No. 120170210:¹

All site development elements shown on the latest electronic version as of the date of the Staff Report submitted via ePlans to the M-NCPPC are required except as provided by the following conditions:

1. This Application is limited to one (1) lot for a Residential Care Facility (over 16 persons) for 125-beds.
2. The Applicant must comply with conditions from the Hearing Examiner's Report and Decision, dated December 21, 2020, and as amended on August 23, 2021, from the Office of Zoning and Administrative Hearings (OZAH) approving Conditional Use No. 20-09.
3. The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan No. 12017021C, which is an amendment to Final Forest Conservation Plan No. 120170210, subject to the following conditions:
 - 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. 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 Certified Final Forest Conservation Plan, the Applicant must revise the Amended Final Forest Conservation Plan ("FFCP") to show that the 2,300 square feet (0.05 acres) of stream valley buffer not being placed into a Category I Conservation Easement is being added to the FFCP Afforestation Requirement of 0.59 acres resulting in a total FFCP afforestation requirement of 0.64 acres.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- d. Prior to any demolition, the Applicant must schedule a pre-demolition meeting with M-NCPPC Inspection Staff and DPS Sediment Control Inspection Staff to verify the staked limits of disturbance as shown on the FFCP and any necessary tree protection measures, within the immediate vicinity of the proposed demolition as determined by the M-NCPPC Inspection Staff.
 - e. Prior to any clearing, grading or construction for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Great Seneca Creek watershed to satisfy the afforestation requirement for a total of 0.64 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 Great Seneca Creek watershed or by making a fee-in-lieu payment if mitigation credits are not available at any bank.
 - f. 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.
4. There shall be no clearing or grading of the site prior to recordation of plat(s).
 5. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated October 7, 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.
 6. 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 October 14, 2021, and hereby 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 amendments do not conflict with other conditions of the Preliminary Plan approval.
 7. The Planning Board has reviewed and accepts the recommendations of the MCDPS – Water Resources Section in its stormwater management concept letter dated July 20, 2021, and hereby 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 provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

8. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
9. The Applicant must provide right-of-way dedication of a variable width (tapered along the Property frontage) to establish the following total right-of-way width for Liberty Mill Road and show on the Certified Preliminary Plan and Record Plat:
 - a. 82.0 feet from the southwest Property corner to the opposite right-of-way line; and
 - b. 82.9 feet from the northwest Property corner to the opposite right-of-way line.
10. Prior to the recordation of plat(s), the Applicant must ensure construction of the following off-site improvement(s) by satisfying MCDOT requirements to:
 - a. Construct a 10-foot-wide shared use path on the north side of Liberty Mill Road, from the intersection of Dawson Farm Road and Liberty Mill Road to the intersection of Liberty Mill Road and Pepper Court, approximately 630 feet.
 - b. Upgrade the existing bus stop at the southeast corner of Dawson Farm Road and Liberty Mill Road.
 - c. Provide curb ramps approximately 10-foot-wide at the intersection of Liberty Mill Road and Dawson Farm Road, as shown on the Certified Preliminary Plan and subject to final approval at right-of-way permitting.
11. Prior to release of the final Use and Occupancy Certificate, the Applicant must construct all off-site pedestrian and bicycle improvements.
12. The record plat must show necessary easements.
13. The Adequate Public Facilities (APF) review for the Preliminary Plan will remain valid for five (5) years from its initiation date as defined in the Montgomery County Code, Section 50.4.2.J.5.
14. This Preliminary Plan Amendment 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.
15. The Certified Preliminary Plan must contain the following note:

“Unless specifically noted on this plan set 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 approval of a building permit. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”

16. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
17. Certified Preliminary Plan
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 minimum lot size calculation in the data table to reflect the square footage per bed requirement in Section 59.3.3.2.E.2.c.ii.d.2.i.
 - b. Illustrate a 10-foot-wide asphalt shared use path along the north side of Liberty Mill Road extending from Dawson Farm Road to Pepper Court.
 - c. Illustrate bicycle accessible 10-foot-wide curb ramps at the intersection of Liberty Mill Road and Dawson Farm Road at the following five locations:
 - i. Southwest quadrant (two ramps),
 - ii. Southeast quadrant/corner of the Subject Property (one ramp crossing Liberty Mill Road); and
 - iii. Northeast quadrant (one ramp on the south side crossing Dawson Farm Road).

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

This Preliminary Plan Amendment and the following findings supersede all previous Planning Board findings for Preliminary Plan No. 120170210.

1. *The layout of the subdivision, including size, width, shape, orientation and density of lot(s), 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 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 type and approved conditional use contemplated for the Property.

The lot was reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area and frontage and can accommodate the Residential Care Facility (Over 16 Persons) which can reasonably meet the width and setback requirements in that zone. A summary of this review is included in Table 1 of the Staff Report. The Preliminary Plan has been reviewed by other applicable County agencies, all of whom have recommended approval.

2. *The Preliminary Plan substantially conforms to the Master Plan.*

The Amendment is subject to the policies and recommendations contained in the 1989 *Germantown Master Plan*. The Master Plan discusses interrelated themes to address challenges and opportunities with respect to land development, housing, community identity, community facilities, and employment. It establishes six villages distinguished by their own identity and character, to provide a mix of housing types at varying prices, all inter-connected by a functional pedestrian/bikeway/roadway system. A town center was also designated to be developed as the downtown area of Germantown with major retail, offices, high density residential, and a cultural arts center.

The Property is located in the Clopper Village area of the Master Plan. Clopper Village is generally located south of the MARC rail line and east of Germantown Road and extends south to the Germantown greenbelt. It also includes the Germantown historic district near the MARC rail station.

The Property is not specifically referenced in the Master Plan; however, it is consistent with the intent of the Master Plan and compatible with the following recommendations contained in the Master Plan:

*"The intent of this Plan is to promote a mix of housing types that can accommodate families of varying ages and income levels and allow opportunities for them to continue living in Germantown as their needs and tastes change."*²

The Amendment consists of residential housing for seniors who need personal services, supervision and assistance with the activities of daily living. The residential care facility provides a needed housing type, in a residential setting, that enables seniors to remain near families in Germantown. Therefore, the Project is consistent with this recommendation.

*"The Master Plan identifies the Property as within Analysis Area No. CL-2. Due to its proximity to Dawson Farm Road (an arterial roadway) and being located in a residential area, the Property is "suitable for a child or elderly day-care center, religious facility or other similar use."*³

The proposed Residential Care Facility (Over 16 Persons) is similar to an elderly day-care center in that both facilities provide services and activities to assist with daily living for seniors. Such services generally include social activities, health care, meals, and recreation. Both facilities would generate similar morning and afternoon vehicular traffic and deliveries. However, the use is a less intense use because 1) the residents live on-site, 2) generally do not drive personal vehicles, and 3) utilize shuttle services for transportation. Therefore, the Project is consistent with this recommendation.

Transportation

As discussed below, the Preliminary Plan is consistent with the transportation elements of the 2018 *Master Plan of Highways and Transitways*, the 2018 *Bicycle Master Plan*, and 1989 *Germantown Master Plan*.

Master-Planned Roadways

The Subject Property has frontage on Dawson Farm Road and Liberty Mill Road. Dawson Farm Road is classified as a four-lane arterial road with a 100-foot right-of-way (ROW). Dawson Farm Road is built to its full master plan width, including four travel lanes, dual bike lanes, a 5-foot sidewalk on the north side and an 8-foot-wide shared use path on the south side.

Liberty Mill Road is classified as a two-lane primary residential street with a 70-foot ROW. The existing ROW is 75 feet wide and improved with two travel lanes and 5-foot-wide sidewalk on both sides. The existing sidewalk along the Property's frontage is located on the Subject Property.

² Germantown Master Plan, 1989, p. 9.

³ Germantown Master Plan, 1989, p. 63.

Proposed Improvements

As conditioned, the section of Liberty Mill Road from Dawson Farm Road to Pepper Court will be improved on the north side with a 10-foot-wide shared-use path.

The 2018 *Bicycle Master Plan (BMP)* recommends a 10-foot-wide shared-use-path (SUP) to be constructed along this segment of Liberty Mill Road; however, the BMP doesn't specify which side of the road the shared-use path should be constructed on. The north side of Liberty Mill Road, along the frontage of the Germantown Elementary School is preferable because it will be easily accessible by students and is on the same side as the northern segment of Liberty Mill Road east of Dawson Farm Road towards the railroad tracks. Installing the path on the southside would have negative impacts to the Subject Property, among them being the removal of a large specimen tree. This proposal places the shared used path on the north side of Liberty Mill Road, abutting the Germantown Elementary School. This improvement is to be constructed in lieu of construction along the immediate frontage of the Subject Property, which already includes an existing sidewalk and green panel.

The Bicycle Master Plan additionally recommends a shared use path on the south side of Dawson Farm Road fronting the Subject Property. At present, a shared use path as well as an on-street bike lane are provided along the frontage. However, the sidepath is constructed to an 8-ft wide standard, which is below the minimum 10-ft-wide standard of the Bicycle Master Plan. However, impacts to the existing frontage to expand the sidepath to current standards would be significant, including the removal of all existing mature trees fronting the road on the Subject Property, currently providing shade and screening, and requiring additional ROW dedication beyond the Master Plan requirement of 100-foot width. The shift of the Property line would additionally require the redesign of the building to meet setback requirements, causing a revision to the approved Conditional Use plan. Additionally, concerns over the adequacy of the 8-foot-wide standard are significantly reduced by the presence of the on-street bike lane, which provides an alternative for cyclists, as is the shoulder on Dawson Farm Road. In lieu of improving this section of path along Dawson Farm Road, the Applicant has agreed to construct an off-site 10-foot-wide shared use path to extend from the frontage of the Germantown Elementary School to Pepper Court to the south.

As conditioned, the Applicant will also improve all four of the existing bike/ped crossings for the Dawson Farm Road / Liberty Mill Road intersection by reducing turning radii of the existing corners and installing the most up-to-date ADA and bike/ped crossing standards, which will slow turning vehicles and improve bike/ped safety. The adjacent Ride On bus stop pad will also be expanded to 10 feet by 7 feet, and a 6-foot bench will be installed, as required by MCDOT.

To accommodate the existing sidewalk within the public ROW, the Applicant is dedicating an additional variable 6.5 feet to 6.8 feet of ROW width on the south side of Liberty Mill Road. All other ROW requirements are satisfied. As conditioned, the Preliminary Plan satisfies the requirements of the 2018 *Bicycle Master Plan*.

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

Access

Transportation access is adequate to serve the development by this Preliminary Plan. The Application has been reviewed by the MCDOT who in their letter dated October 7, 2021, determined that the lot has adequate vehicular access and sight distance.

Local Area Transportation Review

A transportation statement has been provided along with this Application. The Subject Property is located in the Germantown West Policy Area. As shown in Table 2 in the Staff Report, the use will generate a net of 34 AM and 49 PM peak-hour net new person trips. The trip generation rate falls below the 50-person peak-hour Local Area Transportation Review (LATR) threshold and is exempt from additional review.

Circulation and Connectivity

The Property will be accessed via a new driveway off Liberty Mill Road. The driveway will provide direct access to the main entrance, service bay, and surface parking. A lead-in walkway will connect the entrance to the sidewalk along Liberty Mill Road. Access and circulation, as provided, are safe and adequate for the use.

Public Transit Service

Ride-on routes 71 and 75 provide service directly in front of the Subject Property on Dawson Farm Road. As conditioned, the Applicant will reconstruct this bus stop with a larger pad and new bench. Additionally, Ride-on route 61 provides service along Germantown Road, approximately 1,000 ft. to the northwest.

Schools Facilities Test

A Residential Care Facility (Over 16 persons) does not produce any school aged children. Therefore, this Application is exempt from school facilities testing.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lot. The Subject Property is in the W-1 and S-1 water and sewer service categories, respectively, and utilizes public water and sewer service. There is adequate sewer and water facilities to serve the Property through the on-site sewer main and water line in Liberty Mill Road.

The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on October 14, 2021. The Fire Department Access Plan provides fire code compliant access from Liberty Mill Road to the Residential Care Facility. 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 2020-2024 Growth and Infrastructure Policy in effect at the time that the Application was submitted.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420161070 for this Property was approved on February 5, 2016. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The NRI/FSD calls out the Property to be a total of 3.63 acres (prior to right-of-way dedication) with no forest on the Subject Property. The NRI/FSD shows an intermittent stream that begins approximately 50-ft offsite off of the southeast corner of the Property. The associated stream valley buffer ("SVB") extends onto the Subject Property with about 2,900 sq ft (0.07 acres) being on the Property.

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law and is in compliance with the Montgomery County Planning Department's Environmental Guidelines.

On March 12, 2021 the Applicant submitted an amendment to the approved FFCP addressing the requirements of Chapter 22A of the of the Montgomery County Forest Conservation Law ("FCL") and Forest Conservation Regulations. The Subject Property is zoned R-200 and assigned a Land Use Category of High Density Residential as defined in Section 22A-3 of the FCL and in the Land Use Table of the Trees

Technical Manual. This results in an afforestation requirement of 15% and a conservation threshold of 20% of the Net Tract Area.

As shown on the FFCP, the total Net Tract Area for forest conservation purposes is 3.90 acres. This includes the gross tract of 3.63 acres plus 0.27 acres for offsite work associated with this Application. There is no forest on the Subject Property which results in an afforestation requirement of 0.59 acres. The Applicant proposes to meet this requirement through purchasing the necessary credits in an off-site forest bank or submitting a fee-in-lieu payment if no forest banks are available.

The approved NRI/FSD and the FFCP approved with the Preliminary Plan both show a small segment of SVB on the Subject Property in the southeast corner of the site of about 2,900 sq. ft. (0.07 acres). The original FFCP showed no encroachments into the SVB. However, the current FFCP Amendment shows a SWM outfall and easement in the area of the SVB. This SWM outfall and easement bisect the SVB and create two small segments of 300 sq. ft. and 2,000 sq. ft. that would typically be placed into a Category I Conservation Easement. In addition, the onsite SVB is disconnected from the main SVB of the intermittent stream by an existing WSSC easement along the southern property line of the Subject Property. In this very specific case, recording two small segments of standalone separate Category I Conservation Easements does not support the ecological concept of a Category I Conservation Easement. These small standalone Conservation Easement areas also create a very difficult condition to enforce. Therefore, as conditioned, the Applicant will not record a Category I Conservation Easement over the SVB on the Subject Property and will add the area of 2,300 sq. ft. (0.05 acres) of SVB to the 0.59-acre afforestation requirement on the amended FFCP resulting in a total FFCP requirement of 0.64 acres.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the CRZ impact to three (3) Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board finds that the

Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship is caused by the necessary layout of the development on the Property and the conditions of the subject trees. The three trees requested to be impacted are all located within the developable area of the Property and the inability to remove these trees would potentially render the Property undevelopable for a residential care facility (over 16 persons), which is a significant and reasonable use of the Property. Therefore, the Applicant has a sufficient unwarranted hardship to justify a variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the Variance will not confer a special privilege on the Applicant as the impact to the three trees is due to the location of the trees and necessary site design requirements. Therefore, the granting of this Variance is not a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested Variance is based upon the existing site conditions and necessary design requirements of this Application.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested Variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being impacted will not be removed and are not located within a stream buffer, wetland or special protection area. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

No mitigation is required for Protected Trees impacted but retained.

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

The Preliminary Plan received an approved stormwater management plan approval from the Montgomery County Department of Permitting Services, Water Resources Section on July 20, 2021. The Application will meet stormwater management goals via biofiltration and microbioretention facilities.


BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 16 2021 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Patterson, with Chair Anderson and Commissioners Cichy and Patterson voting in favor of the motion, Commissioner Rubin abstaining, and Commissioner Verma absent at its regular meeting held on Thursday, December 2, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board



Casey L. Cirner
301.517.4817
ccirner@milesstockbridge.com

April 30, 2025

Artie Harris, Chair
and the Commissioners of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
2425 Reedie Drive, 14th Floor
Silver Spring, Maryland 20902

Re: Amended¹ Extension of Validity Period and Adequate Public Facilities Determination
Liberty Mill Preliminary Plan 12017021D (“Preliminary Plan”)
Residential Care Facility (over 16 persons)

Dear Chair Harris and Commissioners of the Planning Board:

The applicant, Flournoy Development Group, LLC (“Flournoy”), respectfully requests validity period and adequate public facilities determination extensions for the Preliminary Plan, which approved development of a 125-bed residential care facility with assisted living and memory care, associated parking and outdoor resident amenities (“Project”) on one (1) lot located at 19115 Liberty Mill Road in Germantown (“Property”). Specifically, Flournoy requests, pursuant to §§ 50.4.2.H, 50.4.3.J and 50.9.1 of the Montgomery County Code (“Subdivision Regulations”), a three (3) year extension of the Preliminary Plan validity period (until January 15, 2028), a two (2) year extension of the adequate public facilities (“APF”) determination for the Preliminary Plan (until January 25, 2029), and a subdivision waiver to limit the findings required for the grant of an APF extension under the existing circumstances (collectively the “Extensions”). The Extensions are necessary to protect and preserve the Project permits, approvals and investment from the delays suffered from post pandemic market conditions that have stalled the private equity investment and bank financing in senior housing necessary to validate the Preliminary Plan, obtain civil and building permits and construct the Project.

I. Background

In 2020, Flournoy contracted to purchase the Property and immediately sought entitlements for the Project, including, filing a concept plan (520200160) to receive initial Project feedback from the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission (“M-NCPPC”), a conditional use (CU-20-09) to operate the residential care facility under the Property’s R-200 zoning, and amendments to the Property’s original preliminary plan to construct the Project.² On February 25, 2020, Flournoy introduced the Project to M-NCPPC staff at

¹ This amended request is being filed to correct the application number, the expiration date of the Preliminary Plan and date of the requested validity period extension.

² The original Preliminary Plan 120170210 for the Property approved two lots, one for the existing detached dwelling and one for an approximate 60-bed residential care facility and was not validated by that applicant.

a meeting and to the community on February 26, 2020 at a separate meeting, both of which were conducted less than 30-days prior to the pandemic shutdown. Flournoy continued to move the Project forward after the shutdown, anticipating a June 2022 construction start date because no one contemplated the lasting impact of the pandemic on the financial market, and senior housing.

Conditional Use CU 20-09 was the first entitlement approved for the Project pursuant to a December 21, 2020, decision of the Hearing Examiner of the Office of Zoning and Administrative Hearings (“OZAH”). The Preliminary Plan was subsequently approved by the Montgomery County Planning Board of the M-NCPPC on December 16, 2021, by Resolution MCPB No. 21-123, and certified by M-NCPPC staff on March 25, 2022. Simultaneously with the Preliminary Plan, Flournoy negotiated an off-site stormwater outfall easement for the Project from the adjoining community association and purchase contract extensions from the Property owners, Bert and Caroline O’Dell (the “O’Dells”), which required the payment of non-refundable deposits to be credited against the purchase price at closing. Flournoy also released the Project consultant to prepare the record plat, engaged the Project architect to prepare Project design documents for the construction documents, and filed for WSSC and civil permits.³

Work on the Project did not stop, however, inflation, supply chain delays and rising material costs during the pandemic caused Flournoy to value engineer the Project to reestablish its economic viability. As a result, Flournoy modified CU 20-09 to convert the structured parking to surface parking, implement other cost savings and enlarge the rooms to respond to the post-pandemic market demands.⁴ In preparation of the building permit application, Flournoy further modified CU 20-09 to resolve plan discrepancies, make other changes and conform to the conditions of Preliminary Plan approval by adding the off-site right-of-way improvements.⁵

Flournoy’s progress was derailed in late March 2022 when the national and local senior housing markets began to show uncertainty through rising interest rates, escalations on a national level and the performance of unrelated projects in the local market, all of which caused Flournoy’s equity partner to reconsider its investment in the Project. The loss of its equity partner caused a domino effect on the Project financing and Flournoy was unable to execute the bank financing

Flounory filed concept plan 520200160 on March 4, 2020, conditional use CU 20-09 on May 5, 2020 and three preliminary plans amendments on May 5, 2020 (12017021A), July 2, 2020 (12017021B) and February 26, 2021 (12017021C) to: a) revise the approved Final Forest Conservation Plan (12017021A); b) extend the preliminary plan validity period and APF determination (12017021B); and c) establish one lot and increase the density in accordance with Condition No. 4 of CU 20-09 (12017021C). The amendments were consolidated into the Preliminary Plan (12017021C) because procedural timing converged and the Montgomery County Council adopted Ordinance 19-12 to automatically extend preliminary plan validity periods and adequate public facilities determinations for 2 years, which nullified Preliminary Plan 12017021B.

³ In February and March 2022, Flounory filed Sediment Control Permit #287957 and Right of Way Permit #386032 with the Department of Permitting Services, and a System Extension Permit and Site Utility Permit with the Washington Suburban Sanitary Commission.

⁴ Pursuant to OZAH Order Administratively Approving a Minor Amendment to Conditional Use CU 20-09 (“Order”) dated August 23, 2021, the Project was modified to convert the structured parking to surface parking, change the architecture, footprint and amenities and update the floor plan to enlarge the rooms to respond to market demands.

⁵ Pursuant to OZAH Order dated March 17, 2022, CU 20-09 was modified to address a building height discrepancy amongst the civil, architectural and approved CU 20-09 plans, make certain architectural changes to refine the interior layout to improve operational efficiency and add the off-site frontage improvements required as a condition of Preliminary Plan approval.

commitments it secured from two lending institutions. It was also unable to retain the Project operator commitment it secured from a special approval to allow the operator near one of its existing facilities.

An equity partner and bank financing are necessary for Flournoy to close on the Property purchase, plat the Property, obtain the remaining civil and building permits, and commence construction of the Project. Despite its best efforts, Flournoy has yet to secure an equity partner for this Project because of the current market constraints.⁶ To protect the viability of the Project entitlements, Flournoy has requested and received approvals to extend CU 20-09 each year since its initial December 21, 2022, expiration date.⁷ To maintain its Property interest, Flournoy negotiated in 2023, and continues today, to pay monthly amounts to the O'Dells for purchase contract extensions.⁸ Flournoy now requests this extension of the Preliminary Plan validity (set to expire on January 15, 2025) and the APF determination (set to expire January 15, 2027), until the market improves to where Flournoy can access the bank and equity financing necessary to complete all the outstanding Project tasks (close on the Property acquisition, plat the Property, obtain civil and building permits and construct the Project).⁹ Flournoy remains committed to moving this Project forward once the markets are open and continues to desire to expand its footprint in Montgomery County, Maryland beyond the residential care facility that it constructed and operates at 17001 Georgia Avenue in Olney (Cadence Olney).

II. Preliminary Plan Validity Period Extension

Section 50.4.2.H.1 of the Subdivision Regulations authorizes the Planning Board to extend a preliminary plan validity period. Section 50.4.2.H.3.a of the Subdivision Regulations sets forth the specific decision standards that must be satisfied for approval of the Preliminary Plan validity period extension, which are: (i) delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or (ii) the occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement

⁶ Since September 2022, continues to attend various in-person meetings and conferences with equity groups, and attends annually the National Investment Center for Senior Housing & Care Conference in Washington, D.C. that convenes senior housing equity partners, lenders, owners and operators to address industry challenges.

⁷ OZAH is authorized to extend conditional uses in 1-year increments pursuant to Section 59.7.3.1.I of the Montgomery County Zoning Ordinance and therefore, an extension must be requested annually to protect the conditional use approval.

⁸ Charlie Sabin, Flournoy's Vice President of Development, has established and maintained a very special relationship with the O'Dells, visiting them and their family members in Florida, Georgia and Maryland on a regular basis, which is indicative of the mutual desire of the parties to see this Project through once financial markets allow.

⁹ The Preliminary Plan was approved subject to 17 conditions. Condition 13 provides that "[t]he Adequate Public Facilities (APF) review for the Preliminary Plan will remain valid for five (5) years from its initiation as defined in the Montgomery County Code, Section 50.4.2.J.5. Condition 14 states that "[t]his Preliminary Plan Amendment will remain valid for 35 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."

the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended. The following statements demonstrate how the proposed request satisfies these requirements:

Flournoy is unable to secure the necessary Project financing due to the occurrence of multiple significant, unusual and unanticipated events, beyond its control, which resulted from the pandemic and substantially impair its ability to validate the Preliminary Plan. Most notable is the Federal Reserve's increase in interest rates, and retention of those high interest rates, to combat inflation on a national level. The high interest rates continue to signal a market risk to lenders and prevent lending, except to the senior housing giants.

Senior housing development was flourishing prior to the pandemic and money was lent at the typical 5–7-year term. Those loan terms are now coming due at a time when interest rates are high, making it difficult for providers to refinance or extend their loans. As a result, the senior housing real estate investment trusts are acquiring facilities for a fraction of their loan amount because banks will lend to these senior housing giants to protect the bank's existing investments in these providers. This perpetuates a market fraught with risk and detracts from banks lending for new senior housing projects.

Although the Federal Reserve cut interest rates by 50 basis points on September 18, 2024, and by 25 basis points on December 18, 2024, the capital markets unique to senior housing, especially for new senior housing developments, remain frozen and banks continue to have low risk tolerance for lending. The necessary time has not passed for an interest rate cut to positively impact the market and it typically impacts refinances before an impact, if any, is seen on new construction financing.

On top of that, construction material costs increased exponentially during the pandemic and have not returned to pre-pandemic rates, increasing the overall Project cost and the amount of money to be borrowed to construct the Project at all time high interest rates. Care level costs in the senior housing market were simultaneously adjusted to increase staff wages. This operating cost increase, compounded by the high interest rates, makes it more difficult for a senior housing facility to pay its operating costs and debt service, even when occupancy rates are above 95%. As a result, banks require interest reserves for loans in advance, which increases the amount of money an equity partner must advance, frustrating Flournoy's ability to find an equity partner and making the prospect of borrowing money economically prohibitive.

Equity partners have also shied away from this locale. A challenge specific to this geographic area is that the major senior housing equity partner is still not investing in new projects in this area because of its existing investments. This continues to stifle interest from other equity partners and an equity partner is needed to secure bank financing once at reasonable interest rates.

Without Project financing from an equity partner and a bank, Flournoy's ability to validate the Preliminary Plan is substantially impaired. Before validating the Preliminary Plan, Flournoy must secure the Project financing to purchase the Property and position itself to complete all outstanding Project tasks. In addition, recording the plat prior thereto would likely increase the real property taxes for the Property and unnecessarily burden the property owners, the O'Dells.

Flournoy would suffer an exceptional or undue hardship if the Preliminary Plan were not extended because it would lose the substantial investment in time and money in the Project. As evidenced

above, Flournoy has undertaken substantial efforts to obtain and retain the entitlements, its interest in the Property and the existing permits for the future implementation of the Project.

None of the occurrences preventing the validation of the Preliminary Plan were caused by Flounory. However, the Federal Reserve's retention of high interest rates is a governmental delay, not caused by Flournoy, which has prevented Flournoy from validating the Preliminary Plan because it cannot secure the necessary Project financing under the current market conditions.

III. APF Extension & Subdivision Waiver

Section 50.4.3.J.7 authorizes the Board to extend the APF determination for approved developments subject to certain findings. Section 50.4.3.J.7.d of the Subdivision Regulations sets forth the specific decision standards that must be satisfied for approval of the extension of the Preliminary Plan APF determination for nonresidential development, as follows:

- d. *Nonresidential or mixed-use subdivisions.*
 - i. *The Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:*
 - (a) *the Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;*
 - (b) *all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and*
 - (c) *the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:*
 - (1) *structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed;*
 - or*
 - (2) *structures that comprise at least 5 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60 percent of the total gross floor area approved for the project have been built or are under construction.*

Flournoy has not validated the Preliminary Plan and has therefore, not obtained a building permit or commenced construction of the residential care facility at the Property. As such, Flournoy requests the Planning Board waive these requirements for the grant of the requested APF extension for the reasons discussed below.

The Planning Board may waive or modify any portion of the Subdivision Regulations pursuant to § 50.9.1. Section 50.9.3.A of the Subdivision Regulations sets forth the specific decision standards that must be satisfied for approval of a waiver to limit the findings that must be satisfied in § 50.4.3.J.7 to extend an APF determination for nonresidential development. The following statements demonstrate how the proposed request satisfies these requirements:

- 1. *due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

It is a practical difficulty that Flournoy is unable to validate the Preliminary Plan prior to its expiration because of the post-pandemic high interest rates and frozen capital markets impacting Project financing and increased construction costs, all as articulated in Section II above. As a result, a building permit has not been issued for construction of this single-phase Project, preventing Flournoy from meeting the requirements for extending an APF determination set forth in § 50.4.3.J.7.d of the Subdivision Regulations. Although the APF determination for the Preliminary Plan remains valid for two more years (until January 15, 2027), Flournoy seeks to extend it simultaneously and conterminously with the Preliminary Plan validity period to preserve MNCPPC's resources and streamline the applicable processes, as Flournoy would otherwise require a second application and public hearing process to extend the APF. The application of § 50.4.3.J.7.d of the Subdivision Regulations to an APF extension for the Project is not needed to ensure the public health, safety, and general welfare because the Project meets the APF requirements provided in the 2024-2028 Growth and Infrastructure Policy and Subdivision Regulations, if the Project's adequacy was tested today thereunder.

Pursuant to § 50.4.3.J.7.d of the Subdivision Regulations, the Planning Board "may only approve a preliminary plan when it finds that public facilities will be adequate to support and service the subdivision. Public facilities and services to be examined for adequacy include roads and transportation facilities, sewer and water service, schools, police stations, firehouses, and health clinics."

Vehicular circulation to the Property is proposed to remain via the single driveway on Liberty Mill Road approved by the Preliminary Plan. As set forth in the Gorove Slade Traffic Statement dated May 4, 2020, the proposed use generates less than 50 vehicle trips and therefore, Local Area Traffic Review (LATR) is not necessary under the 2024-2028 Growth and Infrastructure Policy. Based on the minimal number of vehicular trips that will be generated by the Project, there are adequate transportation facilities to serve the use.

The school test is not applicable because the Project is for senior housing.

Other available public facilities and services are adequate to serve the proposed Project. As the Property is in the S-1 and W-1 sewer and water categories, there is adequate sewer and water service to serve the Project through the on-site WSSC sewer main and the connection to water service in Liberty Mill Road. There is also adequate existing storm drainage to serve the use.

Adequate police and fire protection also serve the Property. The nearest fire station (Station 22) is approximately one mile from the Property near the intersection of Maryland Route 118 and Clopper Road, Station 29 is approximately 1.5 miles from the Property on Crystal Rock Drive, and a fire hydrant will be installed onsite for the necessary water supply. Montgomery County Police 5D (Germantown) will serve the Property and is also approximately 1.5 miles from the Property on Aircraft Drive in Germantown. However, the 2024-2028 Growth and Infrastructure Policy assumes police, fire, and health facilities are adequate unless the appropriate agency identifies a problem therewith.

2. *the intent of the requirement is still met; and*

The intent of § 50.4.3.J.7.d of the Subdivision Regulations is ascertaining if the APF determination made under the relevant entitlement approval has vested through the investment and progress of the project so that a new APF determination that could generate additional applicant obligations is unjust and/or unconstitutional. Because the Project meets the adequacy standards of the 2024-2028 Growth and Infrastructure Policy and Subdivision Regulations, as articulated in 1 above, and is exempt from LATR, the intent of § 50.4.3.J.7.d of the Subdivision Regulations is still met with the requested waiver.

3. *the waiver is: (a) the minimum necessary to provide relief from the requirements; and (b) consistent with the purposes and objectives of the General Plan.*

The waiver is the minimum necessary to provide relief from the requirements because it limits the requirements for extending the Project's APF determination to those that the Project can meet. The waiver is consistent with the purposes and objectives of the General Plan because it preserves the entitlements required for construction of a residential care facility in Germantown consistent with the General Plan's recommendation to providing housing "...for older adults...[with]...services sized and designed to meet their household needs." Thrive Montgomery 2050, p.132.

This request otherwise complies with the remaining requirements for granting an APF extension set forth in § 50.4.3.J.7 of the Subdivision Regulations. The following statements demonstrate how the proposed request satisfies those requirements:

- a. *Application. Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.*
 - i. *The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.*

The APF determination expires on January 15, 2027, and therefore, this request is filed before the applicable validity period expiration in compliance with this requirement.

- ii. *The applicant must submit a new development schedule or phasing plan for completion of the project for approval.*

The Preliminary Plan approved the development of one residential care facility to be constructed in one phase and construction is planned to commence prior to the expiration of the extended APF period.

- iii. *For each extension of an adequate public facilities determination:*
 - (a) *the applicant must not propose any additional development above the amount approved in the original determination;*

Flournoy does not propose any development above the amount approved by the Preliminary Plan.

- (b) *the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;*

This requirement is noted.

- (c) *the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;*

No additional development has occurred within the project vicinity rendering all nearby intersections in the project vicinity within acceptable levels. Therefore, an additional traffic study is unwarranted, and the development of the Project is not adverse to the public interest.

- (d) *an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot; and*

This requirement is not applicable to the Preliminary Plan because its approval replaced any prior APF determination for the Property.

- (e) *if the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.*

The Project will not generate any students because it is for senior housing. Notwithstanding, as discussed above, the Project meets the adequacy test under the Subdivision Regulations and the 2024-2028 Growth and Infrastructure Policy.

- b. *The Board may approve an amendment to the new development schedule approved under Section 4.3.J.7.a.ii if the applicant shows that financing has been secured for either: (i) completion of at least one new building in the next stage of the amended development schedule; or (ii) completion of infrastructure required to serve the next stage of the amended development schedule.*

This requirement is not applicable because there is no development schedule for the Project.

- c. *Exclusively residential subdivisions....*

The Preliminary Plan was approved for a residential care facility with 125-beds (not dwelling units) and therefore, the Project is nonresidential. Accordingly, this requirement does not apply.

d. Nonresidential or mixed-use subdivisions.

This requirement cannot be strictly met for the reasons articulated above and Flournoy requests a waiver from the requirement.

e. Applications with significant infrastructure investment.

This requirement does not apply to the Project.

f. The validity period of a finding of adequate public facilities is not automatically extended under any circumstance, including when an applicant has completed all conditions imposed by the Board at the time of preliminary plan approval to meet adequate public facilities requirements.

Flournoy notes this provision and has filed this APF extension request.

g. If a new adequate public facilities determination is required under this Subsection, the procedures in Chapter 8, Section 8-32 apply.

Flournoy submits that a new APF determination is not required because it is requesting an extension of a valid Preliminary Plan APF determination rather than reinstatement of an expired APF determination. Notwithstanding, the APF test requirements are met as articulated above.

h. No combination of extensions of APF validity approved under Section 4.3.J.7 may exceed a total of 12 years from the date of the original APF expiration.

Flournoy requests a two-year APF extension, for a total of seven (7) years, in compliance with this requirement.

Conclusion

Flournoy believes the lack of senior housing inventory resulting from the increased interest rates is becoming apparent and hopes that this will start to thaw the market. Flournoy remains patient and positive and seeks the requested Extensions to enable it to secure an equity partner and bank financing, once the Federal Reserve takes actions that results in reasonable interest rates. For this and the foregoing reasons, Flournoy respectfully requests that the Montgomery County Planning Board of the M-NCPPC grant the Extensions.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Casey L. Cirner
Encl.

cc: Charlie Sabin, Director of Senior Housing Development, Flournoy Development Group, LLC
Patrick La Vay, MHG