

I. STATEMENT OF THE CASE

On December 19, 2013, Petitioner, Victory Housing, Inc., (VHI) filed a petition for a special exception pursuant to §59-G-2.35 of the Zoning Ordinance (housing and related facilities for senior adults and persons with disabilities). Petitioner seeks to build and operate a four-story, 105 unit affordable senior housing facility on 2.51 acres of land owned by Montgomery County and identified as Lot P790, White Oak Subdivision, located at Milestone Drive, Silver Spring, Maryland, in the R-90/TDR Zone (Tax Account No. 05-0255525) (Lease Area). Exhibits 1(a) and 3(a). The address for the proposed facility shown on the Detailed Preliminary Plan (Site Plan) is 1090 Milestone Drive, Silver Spring, Maryland. Exhibit 43. Petitioner filed the petition for special exception pursuant to an executed Agency Authorization agreement (Agency Authorization) with the County dated October 11, 2013 (Exhibit 9).

The 2.51 acre lease area is part of a 12.79 acre tract of land owned by the County consisting of Lots P790, P731 and P725 (County Property) and is located on the northeast quadrant of the intersection of Columbia Pike (US Route 29) and New Hampshire Avenue (MD 650). The County property is being developed in three phases: Phase I: Third District Police Station (Police Station); Phase II: Senior Housing; and Phase III: Future Stewart Lane Interchange. The western portion of the County's property is developed with the police station approved as a mandatory referral (#MR 2009742) by the Planning Board on December 16, 2010. Exhibit 40. At that time, the Planning Board approved a Preliminary Forest Conservation Plan (PFCP) for the police station requiring amendment of the PFCP and a separate Final Forest Conservation Plan (FFCP) for each phase of development of the county's property.

Petitioner subsequently advised the county that it would be beneficial and more efficient if the county's property (12.79 acres) was subdivided into a single lot and subject to a record plat of subdivision. In a letter dated June 18, 2014, an Extended Agency Authorization was executed

granting Petitioner the authority to seek Preliminary Plan of Subdivision and record plat approval to subdivide the county's property into a single lot. Exhibit 38, Attachment 6. Petitioner subsequently filed a Preliminary Plan of Subdivision. Exhibit 38.

The public hearing was originally scheduled for May 9, 2014, in a Notice of Hearing issued January 10, 2014. Exhibit 21(b). At Petitioner's request, the hearing was postponed and rescheduled for September 26, 2014, in a Notice of Rescheduled Public Hearing issued April 22, 2014 (Exhibit 28). In a letter dated September 3, 2014, Petitioner requested to amend the Petition and submitted Revised PFCP's and a memorandum on the General Development Standards per Section 59-G-1.23 (Exhibit 36 (a)-(e)). To allow sufficient time for review of the revised plans and preparation of the Technical Staff report, the September 26, 2014, hearing was rescheduled for October 17, 2014. A Notice of Rescheduled Public Hearing and Motion to Amend Petition was issued on September 5, 2014 (Exhibit 37).

In a memorandum dated October 2, 2014, Technical Staff recommended approval of the special exception petition subject to specified conditions (Exhibit 38). On October 2, 2014, the Planning Board voted unanimously to recommend approval of the special exception, with modification of condition No. 3 (Exhibit 40). In a separate memorandum also dated October 2, 2014, Technical Staff recommended approval of the Amended PFCP for the proposed senior housing facility (Phase II) subject to specified conditions (Exhibit 39). The residential community to the north of the lease area, Sherbrooke Woods, submitted a letter of support of the proposed senior housing facility (Exhibit 38, Attachment 4).

The public hearing was held on October 17, 2014. Petitioner presented four witnesses and there was no opposition testimony. Petitioner submitted updated site plans, landscape plans, color

renderings of the building elevations and exterior, and a Revised FFCP filed with the Preliminary Plan of Subdivision. (Exhibits 43, 45-47, 49, 51 and 52-53).

During the hearing, Petitioner, through the testimony of VHI President, James Brown, Jr., testified that the original Petition was filed in the name of VHI “on behalf of a single entity to be formed and named in the future that will be a subordinate affiliate of, and controlled by Victory Housing, Inc.” Exhibits 1(a) and 3(a)). Mr. Brown advised that since the original filing, Petitioner had formed a single-purpose entity and wholly-owned and subordinate affiliate named “Victory Crossing, LP” (VC), the creation of which is necessary to utilize low-income housing credits for the proposed senior housing facility. Accordingly, Mr. Brown requested to amend the original Petition to substitute VC for VHI as the Petitioner and grantee of the special exception. Petitioner subsequently submitted a revised Petition to substitute VHI’s successor, VC, as the Petitioner and special exception grantee (Exhibit 59). VC will enter into a 75 year ground lease with the County to operate the proposed senior housing facility which will be known as “Victory Crossing”. T. 24-27; 37-38.

The record was held open until November 3, 2014, to allow Petitioner time to submit additional information requested by the Hearing Examiner which was provided in a letter dated October 22, 2014 (Exhibit 55). The record closed as scheduled on November 3, 2014. The record was reopened on November 20, 2014, to allow admission of additional documents requested by the Hearing Examiner and post-hearing exchange with Mr. Kline (Exhibits 58 and 59). The record closed the same day.

On December 15, 2014, the Hearing Examiner requested written confirmation from the necessary county agency affirming authority to extend the Agency Authorization to name and authorize VHI’s successor, VC, as the special exception grantee (Exhibit 61). To allow Petitioner sufficient time to obtain the amended authorization, the record was reopened by Order issued

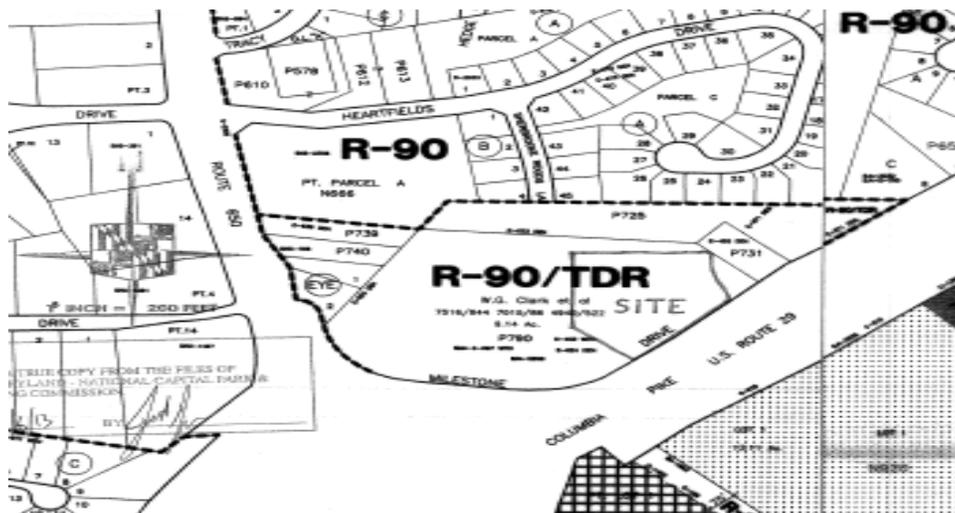
December 19, 2014, and scheduled to close December 30, 2014 (Exhibit 64). At the Petitioner's request, the closing of the record was extended to January 12, 2015, by Order dated December 30, 2014 (Exhibits 65 and 66). The amended agency authorization (Exhibit 67 (a)) was filed and received into the record on January 6, 2015. The record closed as scheduled on January 12, 2015.

For the reasons that follow, the Hearing Examiner recommends that the petition be approved subject to conditions.

II. FACTUAL BACKGROUND

A. The Subject Property

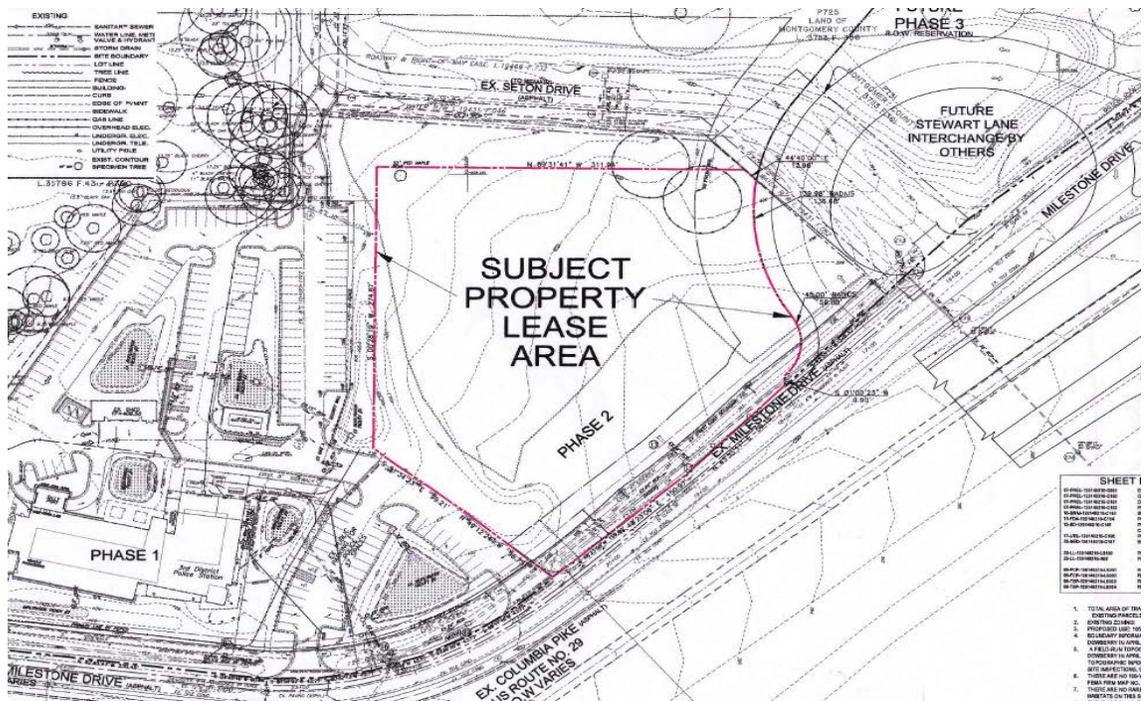
The subject property consists of approximately 2.51 acres located in the northeast quadrant of the intersection of US Route 29 and New Hampshire Avenue. The property is in the R-90/TDR Zone and within the boundaries of the 1997 *White Oak Master Plan*. The proposed use is permitted by special exception. The lease area lot is part of a 12.79 acre tract of land owned by the County which is being developed in three phases. The Zoning Map for the area (Exhibit 11(a)) is shown below:



The western portion of the county's property is currently developed with the police station occupying approximately 8.56 acres. The 2.51 acre lease area lot for the proposed senior housing facility will be located to the east of the police station secure parking lot and west of the area reserved

for the Stewart Lane interchange. The lease area lot is bound by Milestone Drive to the southeast. The north lot line is south of Seton Drive which is a public use right of way connecting Sherbrooke Woods Lane to Milestone Drive. Milestone Drive is a two-lane service road running parallel to US Route 29 and connecting to New Hampshire Avenue to the west. Access to the proposed senior housing facility will be via a shared entrance off of Milestone Drive.

The Preliminary Plan showing the existing conditions of the lease area including the lot tabulation for the entire property is shown below. (Exhibit 45):



LOT TABULATION		
Lot 1	Overall Lot Area	482,412 Sq Ft; 11.08 Acres
	3rd District Police and Forest Area	373,047 Sq Ft; 8.56 Acres
	Lease Area: Victory Crossing	108,365 Sq Ft; 2.51 Acres
	Parcel A Right of Way Reservation	74,516 Sq Ft; 1.71 Acres

Technical Staff described the property as follows (Exhibit 38, p. 3):

The property is a partially wooded vacant site. The forested area consists of both pine and deciduous trees. The topography is relatively level with a slight upward slope from Milestone Drive. The property is not located in the Special Protection Area (SPA). The Property is approved as W-1 for its water category and has received approval for S-1 sewer category.

An aerial photograph showing the location of the subject property is included in the Technical Staff Report (Exhibit 38, p. 3):



Aerial Photo

B. The Neighborhood and its Character

Technical Staff determined that the surrounding area for the purpose of determining compatibility of the proposed use was bounded by Heartfields Drive to the north, US Route 29 to the east, Lockwood Drive to the south, and New Hampshire Avenue to the west. The Hearing Examiner agrees with Technical Staff's delineation of the neighborhood boundaries as depicted on the neighborhood map staff provided on Attachment 2 to the Technical Staff Report (Exhibit 38):



The character of the surrounding neighborhood is a mix of residential, commercial and institutional land uses which Technical Staff described as follows (Exhibit 38, p. 4):

The Sherbrooke community located immediately north of the Property consists of single-family detached homes located in the R-90 Zone. Adjacent to the Property to the west are three single-family detached homes that front onto New Hampshire Avenue. Sunrise Assisted Living (S-2308), also zoned R-90, is located northwest of the Property at the southeast intersection of Heartsfield Drive and New Hampshire Avenue. The White Oak Library is located across Heartsfield Drive within walking distance of the proposed senior housing facility. The southwest quadrant of Columbia Pike and New Hampshire Avenue is zoned R-H and is developed with a high-rise residential apartment complex. The southeast quadrant is zoned C-2 and is developed with the White Oak shopping center, and directly across Columbia Pike from the Property are mid-rise apartments located in the R-20 Zone.

To this description, the Hearing Examiner would add that the northwest quadrant of the intersection of US Route 29 and New Hampshire Avenue is a mix of residential uses zoned RE-1, R-200 and R-90 which includes single-family detached and townhomes located along New Hampshire Avenue to the south at US Route 29. Thus, with this modification, the Hearing Examiner agrees with Technical Staff's description of the character of the surrounding area and finds the area includes a mix of residential, commercial and institutional land uses.

C. Proposed Use

1. Petitioner's Proposal

According to VHI President, James Brown, Jr., VHI is the non-profit housing division of the Catholic Archdiocese of Washington specializing in the development and operation of affordable housing with an emphasis on senior housing. VHI operates approximately 30 affordable housing communities within the metropolitan area, 15 of which are located in Montgomery County. Believing this to be an appropriate location for an affordable senior housing facility, the county approached VHI to consider submitting a proposal to build and operate an affordable senior housing facility on the lease area lot. T. 24-25 and 27.

Based on his many years of experience overseeing the operation and development of other affordable senior housing communities, Mr. Brown believes the location at the crossroads of US Route 29 and New Hampshire Avenue is “terrific” for an affordable senior housing facility because of its close proximity to shopping, transit and other community services and amenities. He noted that the nearest residential home is approximately 230 feet from the proposed building to the north and is separated by a forested area and Seton Drive. The building will be further insulated by the secure parking lot for the police station to the west. T.35-37 and 43-48.

Petitioner seeks approval to construct a four-story, 105 unit affordable senior housing facility on the lease area lot. VHI’s successor, VC, will enter into a 75 year ground lease with the county to build and operate the facility. This will be an independent living facility known as “Victory Crossing” with a total occupancy of 158 residents. The facility is intended for independent seniors over the age of 62 years who are generally in good health and do not require the daily medical and personal care services (e.g., meals, housekeeping, on-staff nursing care, etc.) typically provided at an assisted living facility or nursing home. There will be a maximum of 4 staff on site and the hours of operations will be 8:30 a.m. to 5:00 p.m. Sunday thru Saturday. T. 27-30 and 37-41.

The four story facility will be approximately 99,100 square feet in size and have a total of 105 units. There will be 80 one-bedroom units and 25 two-bedroom units, which will include 6 handicapped accessible units and 2 visual and hearing-impaired units.

Technical Staff advises (Exhibit 38, p. 20):

The Applicant’s submittal statement indicates that approximately 90 percent of the proposed units are intended for individuals with income at or below 60% of the HUD “Area [Median] Income” for Montgomery County. Of the proposed 105 units, 10 one-bedroom units will be offered at 40% of the Area Median Income (“AMI”), 30 one-bedroom units will be offered at 50% of the AMI, 40 one-bedroom units will be offered at 60% of the AMI, 15 of the two-bedroom units will be offered at 60% of the AMI, and 10 of the two-bedroom units will be offered at market rates.

Mr. Brown confirmed that Petitioner is committed to reserving all but 10 units for individuals making at or below 60% of the AMI (e.g., low-income). Reserving 90% of the units for low-income households more than exceeds the minimum requirements of Section 59-G-2.35(a) which provides:

A minimum of 15 percent of the dwelling units is permanently reserved for households of very-low income, or 20 percent for household of low-income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations.

Consistent with VHI's mission to provide as much affordable housing as possible, Mr. Brown confirmed that Petitioner intends to offer a mix of units reserved for households in the different income levels (e.g., very-low, low and moderate income). However, he clarified that the actual percentage of units in the different income level categories as described above and in the Technical Staff report (Exhibit 38, p. 20) will likely change and be determined by agreement with DHCA as required by Section 59-G-2.35(a) closer to the time they secure financing for the project. He noted that the agreement with DHCA will be required prior to the issuance of the building permits. T. 31-34. Since the agreement with DHCA will be executed at a later date, Petitioner agreed to the following condition which is recommended in Part V of this report (Exhibit 55):

Applicant must satisfy the requirements of Section 59-G-2.35(a) as evidenced by a written agreement with the Department of Housing and Community Affairs prior to commencement of construction of the proposed senior housing facility.

2. The Site Plan

The four-story building will be built in the shape of a "J" connecting three sections. The covered main entrance into the facility is located in the center section of the building and faces west towards the police station secure parking area, the circular driveway and 80 space parking area for the facility. The building will be located in the center of the lot and setback approximately 50 feet

from Milestone Drive to the south. The north side of the building is setback approximately 25 feet to the lease area lot line and approximately 230 feet to the property line for the entire site (12.79 acres) to the north. The east side of the building is setback approximately 73 feet from the lease area lot line with area reserved for the Stewart Lane interchange to the northeast.

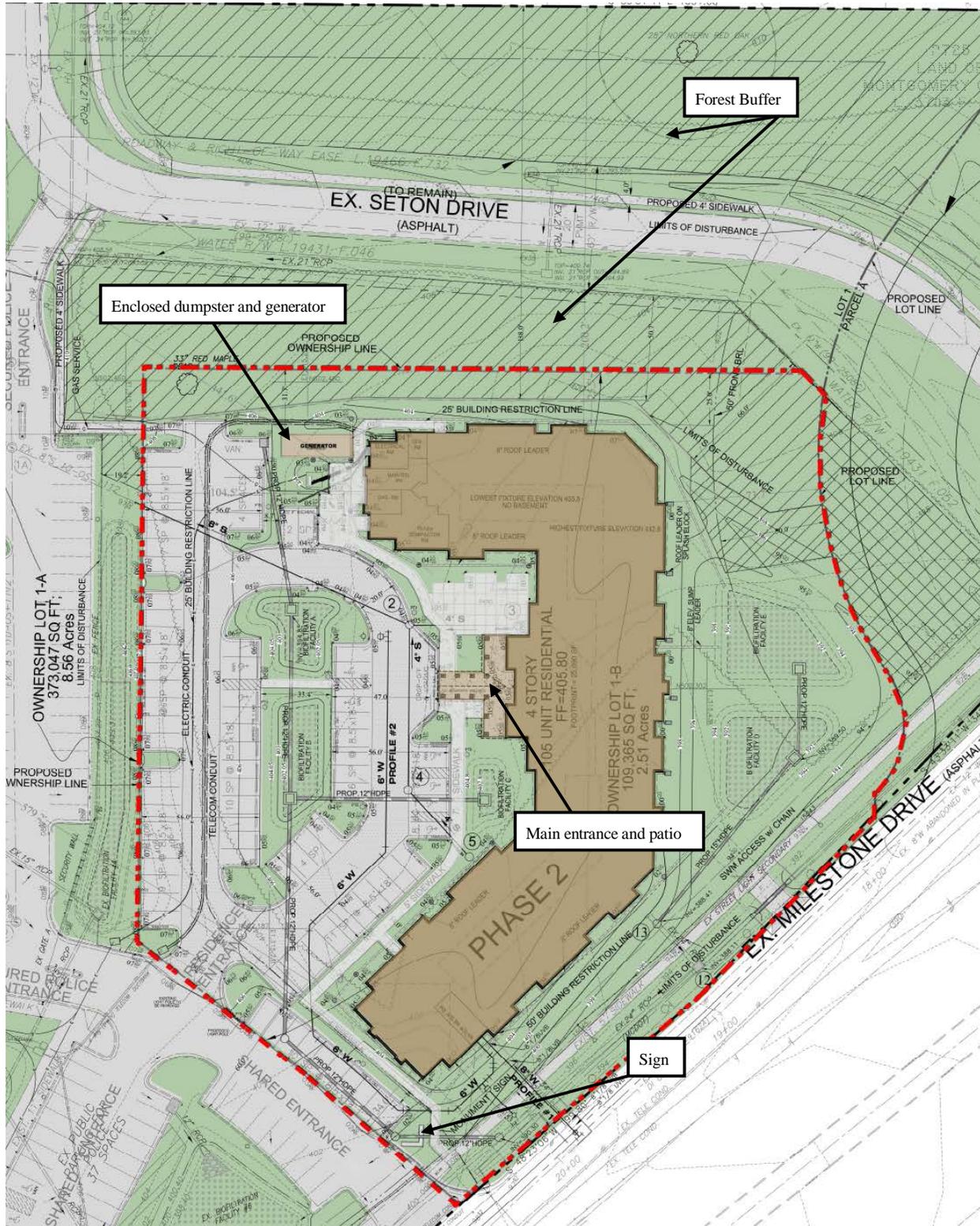
Vehicular access to the circular driveway is via a separate entrance off the first entrance to the shared driveway off Milestone Drive. The drop-off and loading area is set back from the parking lot loop to provide easy access to the covered entrance which also serves as an outdoor seating area for residents. There is an open air patio to the north side of the covered entrance.

Sidewalks along the west side of the building will provide easy pedestrian access to the existing sidewalk system along Milestone Drive to the south and Sherbrooke Woods Lane and Seton Drive to the north. Technical Staff reports (Exhibit 38, p. 10):

The Applicant is proposing a 4-foot-wide sidewalk along the north side of Seton Drive and 4-foot-wide lead-in-sidewalks from Milestone Drive and Seton Drive. From Milestone Drive and Seton Drive, residents and staff could walk to nearby bus stops on New Hampshire Avenue and Columbia Pike and White Oak Library in the northeast corner of New Hampshire Avenue/Heartsfield Drive intersection. A handicapped ramp and crosswalk across Seton Drive are needed and recommended to connect to the lead-in sidewalk. Staff is recommending one bike rack to store at least two bicycles in front of the main entrance to the proposed special exception.

Petitioner's land planner, Kevin Mack, testified that based on comments from DPS Staff, the proposed sidewalk along the north side of Seton Drive will be relocated to the south side. This will eliminate the need for a mid-block crosswalk across Seton Drive at the secure exit for the police station without affecting the desired connectivity to the existing sidewalk system within the residential neighborhood and other services and amenities like the public library along New Hampshire Avenue. T. 85-86; 103-107.

The Detailed Preliminary Site Plan (Site Plan) is shown below. (Exhibit 43):



The Zoning Notes and parking tabulations from the Site Plan are shown below (Exhibit 43):

ZONING NOTES		
For 109,365 Sq Ft Leased Area		
	<u>REQUIRED</u>	<u>PROVIDED</u>
BUILDING SETBACKS:		
STREET	50'	50.0' MIN
SIDE	16'	16.0' MIN
REAR	25'	25.0' MIN
GREEN SPACE :	50% MIN; 54,603 SF	53.5%; 58,531 SF
BUILDING HEIGHT:	4 STORIES MAX	4 STORIES
LOT COVERAGE:	30% MAX; 32,810 SF	22.9%; 25,050 SF
PARKING LOT:	25,327 SF	
INTERIOR GREEN:	5% MIN, 1,266 SF	29.6%; 7,506 SF
PAVEMENT COVERAGE:	30% MIN, 7,598 SF	30.2%; 7,659 SF

PARKING TABULATION (SENIOR HOUSING)

105 TOTAL UNITS:		
80 - 1 Bed/1 Bath Units		
25 - 2 Bed/2 Bath Units (10 Market Rate)		
MPDU UNITS:		
1 Bedroom Units:	0.85 sp x 80 DU	= 68.00 spaces
2 Bedroom Units:	1.15 sp x 15 DU	= 17.25 spaces
Total Base Parking		= 85.25 spaces
Credit per Section 59-E-3.33(b) = 0.20 for MPDU Units		
	0.80 x 85.25 DU	= 68.20 Spaces
MARKET RATE UNITS:		
2 Bedroom Units:	1.15 sp x 10 DU	= 11.50 spaces
TOTAL PARKING REQUIRED:		79.7 Spaces
TOTAL PARKING PROVIDED:		80 Spaces
Standard Spaces @ 8.5' x 18'		72
HC Standard Accessible Sp @ 8'x18'		2
HC Universal Accessible Sp @ 8'x18'		6
Event Bus @ 12'x30'		1

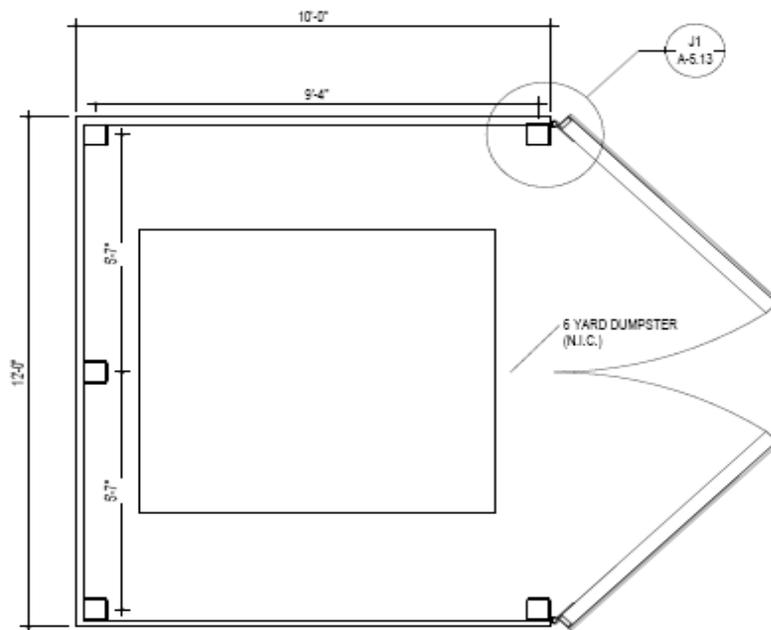


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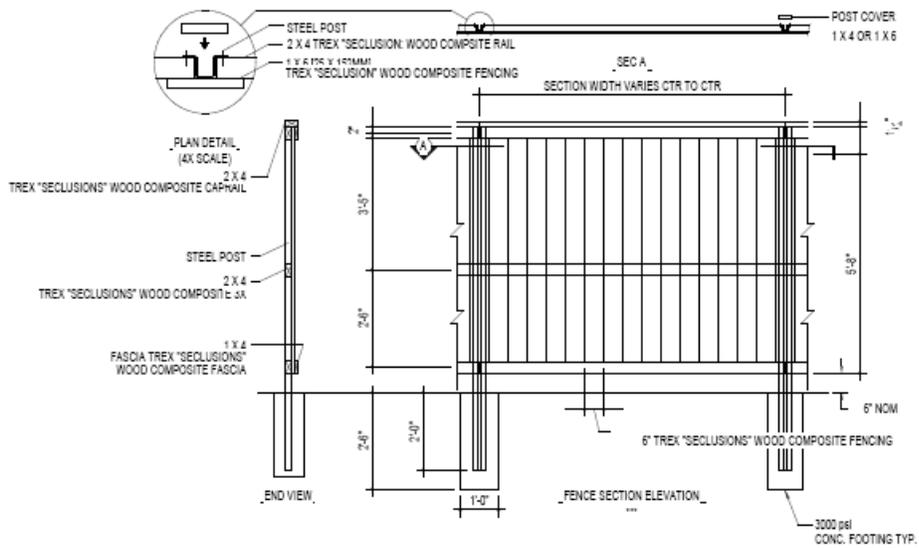
1. TOTAL AREA OF TRACT: 12.79 AC.; + 556,928 SQ. FT.
EXISTING PARCELS P790, P725, P731
2. EXISTING ZONING: R-90/TDR-6
3. PROPOSED USE: 105 SENIOR HOUSING UNITS ON 2.51 Ac LEASE LOT.
4. BOUNDARY INFORMATION FROM A BOUNDARY SURVEY PREPARED BY DEWBERRY IN APRIL, 2008.
5. A FIELD-RUN TOPOGRAPHIC SURVEY OF THE SITE WAS CONDUCTED BY DEWBERRY IN APRIL, 2008 AND JULY, 2013. ADDITIONAL ADJACENT TOPOGRAPHIC INFORMATION WAS TAKEN FROM AVAILABLE RECORDS AND SITE INSPECTIONS. CONTOUR INTERVAL: 2 FEET.
6. THERE ARE NO 100-YEAR FLOODPLAINS ON THIS SITE ACCORDING TO FEMA FIRM MAP NO. 24031C0390D.
7. THERE ARE NO RARE, THREATENED & ENDANGERED SPECIES, OR CRITICAL HABITATS ON THIS SITE ACCORDING TO AVAILABLE RECORDS.
8. THERE ARE NO HISTORIC RESOURCES ON SITE ACCORDING TO AVAILABLE INFORMATION (WWW.MDMERLIN.NET).
9. WATERSHED: PAINT BRANCH, USE CLASS III.
10. NO STREAMS OR WETLANDS WERE OBSERVED ON THE SITE, NOR ARE IDENTIFIED ON THE NF&WS WETLAND MAP.
11. NO CHAMPION TREES OR TREES WITHIN 75% OF A STATE CHAMPION ARE LOCATED ON-SITE.

The ground mounted entrance sign for the facility will be located on the southeast corner of the property located along Milestone Drive. The utilities, enclosed dumpster and emergency generator for the building are located north of the parking area and west of the north wing of the building. The dumpster will be enclosed with a 6 ½ foot fence.

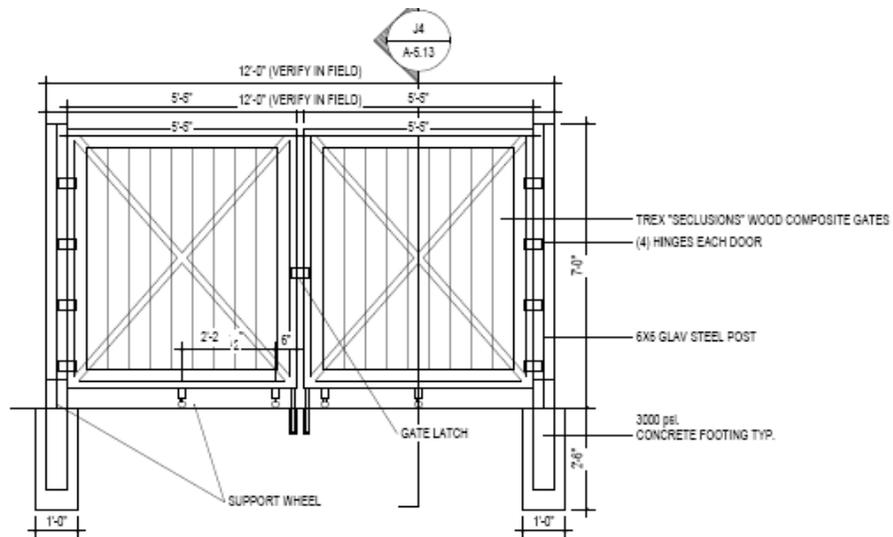
The detailed drawings for the dumpster enclosure are shown below and on the next page (Exhibit 17):



A9 TRASH ENCLOSURE PLAN
3/8" = 1'-0"



A4 TRASH ENCLOSURE FENCE DETAIL
3/8" = 1'-0"



D4 TRASH ENCLOSURE GATE ELEVATION
3/8" = 1'-0"

Technical Staff summarized the features and materials of the proposed building as follows

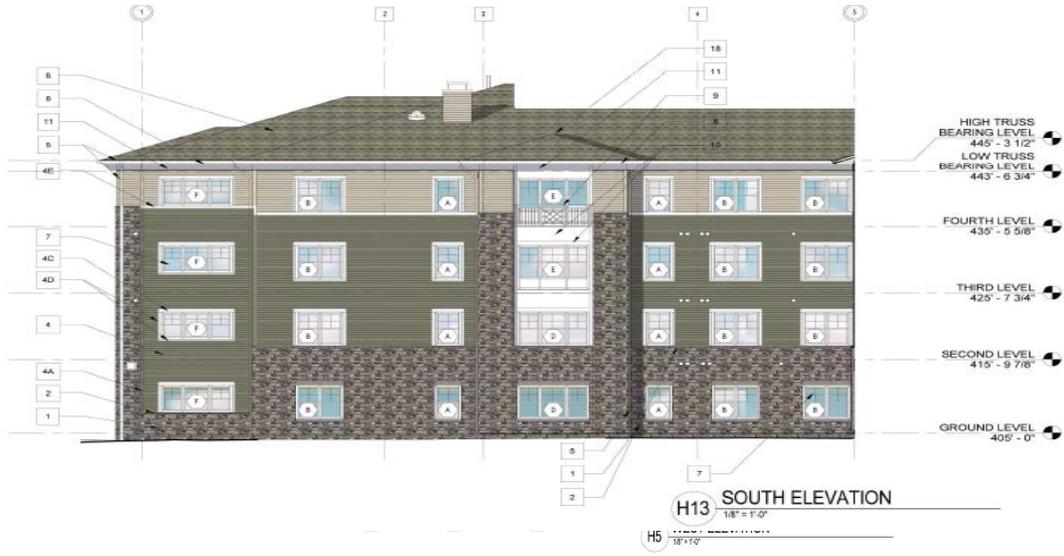
(Exhibit 38, p. 5):

Based on the building elevations submitted by the Applicant, the proposed building will have a maximum height of approximately 53 feet. The four-story building will be designed in a neo-Craftsman style with hip roofs and projecting bays with hip roofs. This style of building will be compatible with the surrounding residential community, which contains gable and hip-roof style homes. The base of the building will be a faux stone that extends up the bay projections and the main entrance, breaking up the building elevations and creating vertical elements that highlight the building entry. The corners of the building are framed and highlighted with light color panels. Balconies are used for the top floor apartments to articulate the top. A large front porch and canopy help break down the scale of the building while providing a gathering place for seniors.

Petitioner submitted color renderings of the front of the building and building elevation drawings shown below and on the next page (Exhibits 51-53):



VICTORY CROSSING



**ELEVATION KEYED NOTES:**

1	MANUFACTURED STONE	4C	5" VINYL WINDOW LINEAL	8	PRE-FINISHED ALUMINUM WRAPPED FASCIA	14	CELLULAR PVC COLUMN
2	MANUFACTURED STONE SILL	4D	3 1/2" VINYL WINDOW LINEAL	9	POWDER COATED DECORATIVE ALUMINUM RAILINGS	15	CELLULAR PVC FASCIA
3	MANUFACTURED STONE HEADER	4E	5" VINYL DOUBLE CHANNEL LINEAL	10	FIBER CEMENT PANELS & TRIM	16	STONE CAP AT COLUMN BASE
4	DOUBLE 5" VINYL SIDING	5	ALUM. GUTTERS & DOWNSPOUTS	11	CELLULAR PVC TRIM BOARD	17	FRT WOOD CANOPY
4A	5" VINYL CORNER CAP	6	30 YR. ARCHITECTURAL GRADE ROOF SHINGLES	12	STANDING SEAM METAL ROOF	18	RIDGE VENT
4B	3/4" VINYL INSIDE CORNERPOST	7	FIBERGLASS SINGLE-HUNG WINDOWS	13	ALUMINUM STOREFRONT SYSTEM		

Petitioner's architect, Bruce Mongrain, testified that the building was designed to be compatible with the surrounding residential community. The building incorporates architectural features and materials used to create residential character and scale. This will be achieved by the use of residential materials which include manufactured stone, vinyl siding, fiber cement panels, fiberglass single-hung windows, arched rooflines, and decorative railings. He noted that the use of different materials, colors and textures provides a visual break in the building's façade, as well as a more interesting and residential looking building. The exterior wall system will be insulated with foam and covered with an insulating sheathing on the exterior of the building. The pitched roof is one of the features that gives the building not only a residential appearance, but also provides space to hide the mechanical systems (e.g., condensing units) that would normally be located on the ground along the exterior of the building. By hiding these units within the roof, the sound and visual impacts normally associated with the units on the ground is eliminated. T. 140-141.

Mr. Mongrain confirmed that the four-story building (53 feet) height limit exceeds the maximum 2 ½ stories (35 feet) permitted in the R-90 Zone. However, additional height is permitted pursuant to Section 2.35 (c) (2) which states: “Additional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking.”

Mr. Mongrain testified that the height of the building is visually mitigated by the downward slope of the lot towards Milestone Drive. He noted that as a result of the sloping topography, the roof-line of the four-story building appears to be approximately 3 feet higher than the roofline of the single-family homes to the north instead of the additional 1 ½ stories had the lot been level with the adjacent residential community. The height is further mitigated by the existing forest buffer and landscaping surrounding the building. In his professional opinion, Mr. Mongrain stated the proposed building as designed and landscaped is residential in appearance and scale and is compatible with the general character of the neighborhood. T. 129-131; 144-147.

Technical Staff agreed and reports (Exhibit 38, p. 14):

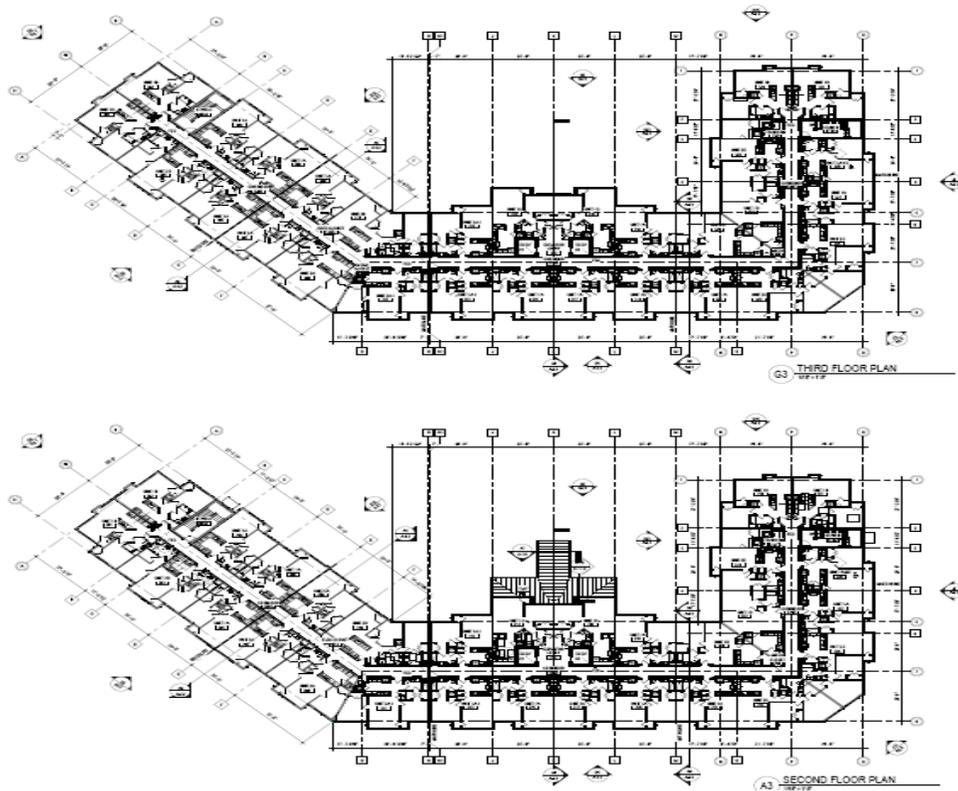
The senior housing facility will be in harmony with the general character of the surrounding residential neighborhood considering population density, design, scale and bulk of the proposed new structure. The proposed four-story building will be located approximately 225 feet from the nearest single-family home. The scale and height of the new building will be constructed with minimal impact on the natural environment. Adequate parking will be provided for residents and visitors.

Mr. Mongrain also provided a summary of the building interior. Access to the main lobby is through the main entrance via a telephone entry system. Staff offices and community spaces for the residents will be located off the main lobby on the first floor primarily located in the center wing of the building. Community spaces for the residents include a sunroom, library, computer room, arts and craft room, game room, community room, theater, kitchen, wellness center and fitness room.

According to Mr. Mongrain, the average one-bedroom unit will be approximately 681 square feet in size and the average two-bedroom unit will be approximately 903 square feet in size. T. 143-144.

The Floor plans submitted by the Petitioner are shown below and the next page (Exhibits 59(b)):





3. Landscaping and Lighting

The Preliminary Landscape Plan is shown on the following page (Exhibit 47). According to Petitioner's landscape architect, Kevin Mack, the five bio-filtration facilities shown on the landscape plan are an integral part of the site design and serve to enhance the residential character of the proposed senior housing facility. The bio-filtration facilities will be heavily vegetated with native perennials and grasses surrounded with a mix of native shrubs and a canopy of native trees. The two bio-filtration facilities located on the east side of the lease area provide a visual extension of the existing forest conservation buffer. The remaining bio-filtration facilities will be located on the west side of the building. One will be located on the south side of the main entrance and two will be located within the center islands for the circular driveway and parking lot.



**Exhibit 47
Landscape Plan**

PLANT SCHEDULE EXCLUDING STORMWATER MANAGEMENT							
TREES							
KEY	Native	Quant	Botanical Name	Common Name	Size	Root	Comments
CK		3	Cornus kousa	Kousa Dogwood	7'-8'	B&B	
LA		4	Lagerstroemia 'Arapahoe'	Arapahoe Crape Myrtle	7'-8'	CONT	
IOS	Y	4	Ilex opaca 'Satyr Hill'	Satyr Hill Holly	6'-7'	CONT	
NS	Y	9	Nyssa sylvatica	Black Gum	2"-2 1/2" Cal	CONT	
PO		16	Prunus 'Okame'	Okame Cherry	2"-2 1/2" Cal	B&B	
QB	Y	8	Quercus bicolor	Swamp White Oak	2"-2 1/2" Cal	B&B	
ZS		19	Zelkova serrata 'Village Green'	Village Green Zelkova	2"-2 1/2" Cal	B&B	
SHRUBS							
KEY		Quant	Botanical Name	Common Name	Size	Root	Comments
BMA		23	Buxus microphylla 'Antarctica'	Antarctica Dwarf Boxwood	24"-30"	B&B	
CAS	Y	21	Clethra alnifolia 'Sixteen Candles'	Sixteen Candles Summersweet	18"-24"	CONT	
IC		11	Ilex crenata 'Soft Touch'	Soft Touch Holly	18"-24"	CONT	
IVR	Y	6	Ilex verticillata 'Red Sprite'	Red Sprite Winterberry	18"-24"	CONT	
IG		15	Ilex glabra 'Shamrock'	Shamrock Inkberry	18"-24"	CONT	
MP	Y	2	Myrica pensylvanica	Northern Bayberry	3'-3 1/2'	CONT	
PM		33	Pinus mugo 'Slowmound'	Slowmound Mugo Pine	18"-24"	CONT	
RR		14	Rosa 'Radrazz' Knockout Rose	Red Knockout Rose	#3 Cont	CONT	
SN		27	Spiraea nipponica 'Snowmound'	Snowmound Spiraea	24"-30"	CONT	
VD	Y	13	Viburnum dentatum 'Muffin-top'	Muffin-top Viburnum	18"-24"	CONT	
WM		49	Wiegela 'My Monet'	My Monet Weigela	#3 Cont	CONT	
Perennials & Groundcover							
KEY		Quant	Botanical Name	Common Name	Size	Root	Comments
CAT		171	Cotoneaster apiculatus 'Tom Thumb'	Tom Thumb Cotoneaster	#3 Cont	CONT	30" O.C.
HD		19	Hemerocallis 'Lavender Stardust'	Reblooming Daylily	#1 Cont	CONT	24" O.C. Mixed
HD		19	Hemerocallis 'Pumpkin Festival'	Reblooming Daylily	#1 Cont	CONT	24" O.C. Mixed
HD		19	Hemerocallis 'Strawberry Candy'	Reblooming Daylily	#1 Cont	CONT	24" O.C. Mixed
NF		39	Nepeta x faassenii 'Blue Wonder'	Blue Wonder Catmint	#1 Cont	CONT	24" O.C. Mixed
JC		332	Juniperus conferta 'Blue Pacific'	Blue Pacific Juniper	#2 Cont	CONT	36" O.C.
VM		69	Vinca Minor 'Ralph Shugart'	Ralph Shugart Vinca	4" Pot	FLATS	10" O.C.

**Exhibit 47
Landscape Plan**

Mr. Mack confirmed that the trees will provide sufficient shade to cover 30% of the paved area as required by Section 59-E-2.83(d). The entire frontage along Milestone Drive will be planted with a row of ornamental cherry

The plant list reflects a wide variety of large shade, ornamental and evergreen trees and shrubs and perennials (Exhibit 47, shown on the following page). Technical Staff reports (Exhibit 38, p. 6):

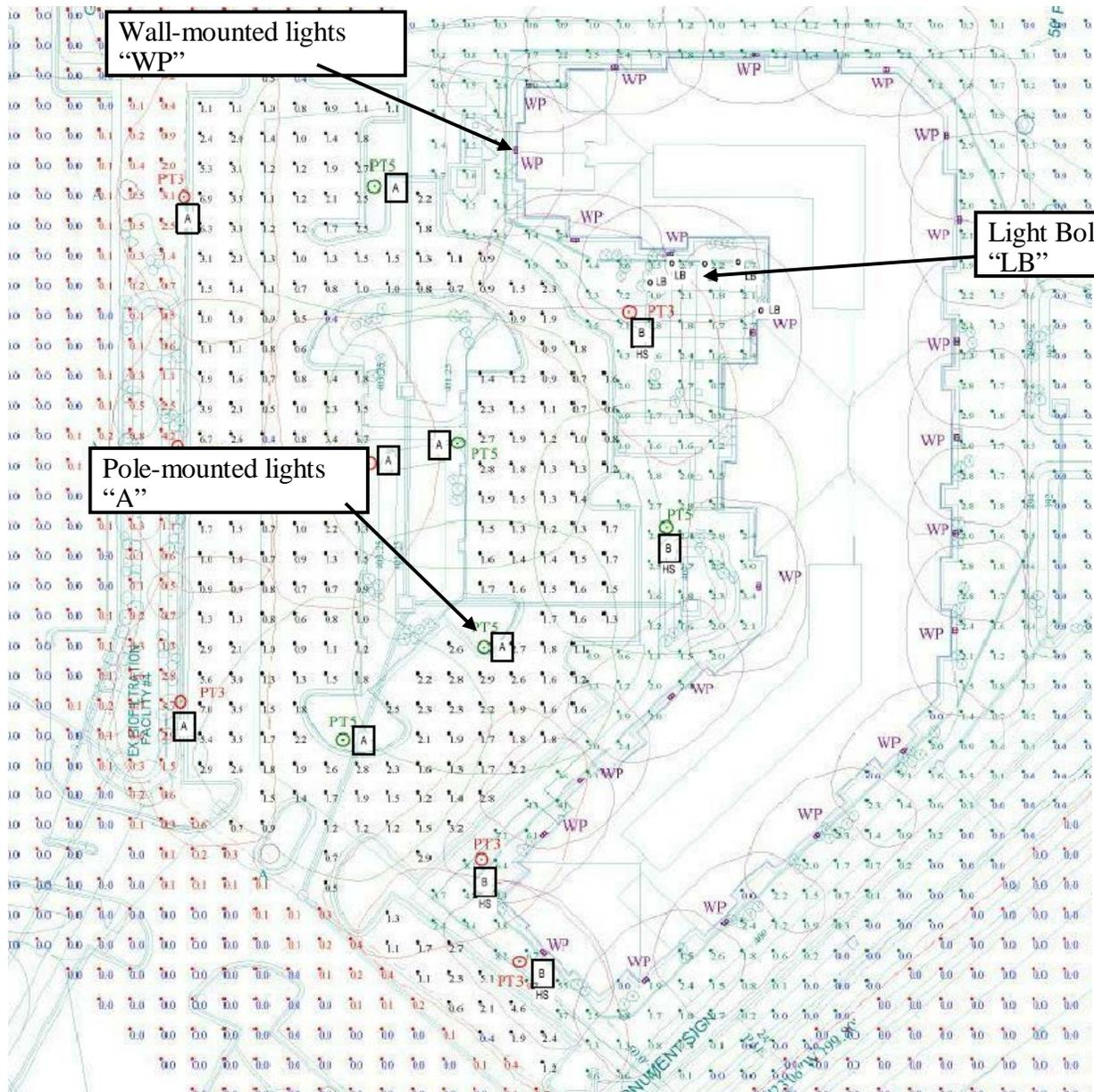
The grounds of the proposed senior housing facility will be well-landscaped with plantings that provide an attractive setting and in an amount that exceeds the County's minimum planting requirements. Parking areas will be screened from neighboring properties by the use of evergreen vegetation along the perimeter. Foundation plantings will be provided along the base of the building to soften the building to the ground connection. The outdoor amenities area, including the patio, will be surrounded by plantings to provide screening and a landscaped separation from the parking areas.

SWM Overall Plant List							
MICRO-BIORETENTION FACILITY PLANT SCHEDULE							
TREES							
KEY	Native	Quant	Botanical Name	Common Name	Size	Root	Comments
BN	Y	2	Betula nigra	River Birch	7'-8"	B&B	Multi-stem
NS	Y	3	Nyssa silvatica	Black Gum	2"-2 1/2"	B&B	
TD	Y	4	Taxodeum disticum	Bald Cypress	2"-2 1/2"	B&B	
SHRUBS							
KEY		Quant	Botanical Name	Common Name	Size	Root	Comments
CS	Y	75	Cornus sericea	Redosier Dogwood	18"-24"	CONT	Multi-stem
IGS	Y	19	Ilex glabra 'Shamrock'	Shamrock Inkberry	18"-24"	CONT	
IVA	Y	3	Ilex verticillata 'Apollo'	Apollo Winterberry (male)	18"-24"	CONT	
IVR	Y	35	Ilex verticillata 'Red Sprite'	Red Sprite Winterberry	18"-24"	CONT	
MP	Y	47	Myrica pensylvanica	Northern Bayberry	3'-3 1/2'	CONT	
MIX A							
Seed Mix:			Panicum rigidulum	Redtop Panic Grass	30%		
1/2 Lb per			Schizachyrium scoparium	Little Bluestem	20%		9950 SF Total
1000 SF			Elymus virginicus	Virginia Wild Rye	50%		4.98 Lb Seed
PLUGS							
		Quant				Randomly Mix Plants	
	Y	248	Andropogon gerardii	Big Bluestem	4" Pot	CONT	24" O.C.
	Y	248	Asclepias incarnata	Swamp Milkweed	4" Pot	CONT	24" O.C.
	Y	248	Aster novae-angliae	New England Aster	4" Pot	CONT	24" O.C.
	Y	248	Helianthus angustifolius	Swamp Sunflower	4" Pot	CONT	24" O.C.
	Y	696	Iris versicolor	Blue Flag	4" Pot	CONT	24" O.C.
	Y	696	Lobelia siphilitica	Great Blue Lobelia	4" Pot	CONT	24" O.C.
	Y	248	Rudbeckia fulgida	Orange Coneflower	4" Pot	CONT	24" O.C.
	Y	99	Vernonia noveboracensis	New York Ironweed	4" Pot	CONT	24" O.C.
		2731	Total				

**Exhibit 47
Landscape Plan**

The lighting will consist of “down light” wall-mounted fixtures on the building and several pole-mounted lights for the parking area. The wall mounted lights will be located 10 feet above ground level to illuminate the perimeter of the building. As described by Mr. Mack, the light fixtures include a “house side shield” which blocks light spillage into the building or beyond the perimeter of the lease area lot. T. 96-100.

Technical Staff advises that as a result of the shielding feature, the light levels at the property line “will be nearly zero” and will not exceed 0.1 foot candles at the side and rear lot lines. Staff further found that the proposed lighting is consistent with the residential use of the property and will not “cause glare or reflection into abutting properties.” Exhibit 38, pp. 14 and 19. The locations of the exterior lighting are identified on the Photometric Study submitted by the Petitioner (Exhibit 6(b), on the next page).



**Photometric Study
Exhibit 6(b)**

Details of the proposed exterior lighting are shown below and on the next page (Exhibit 6(b)):

Luminaire Schedule								
Symbol	Qty	Label	Arrangement	Lum. Lumens	Total Lamp Lumens	LLF	Description	Lum. Watts
	23	WP	SINGLE	2401	N.A.	0.850	121-3-35LA-700-NW	36
	5	PT5	SINGLE	8686	N.A.	0.850	UX180GA25NA5NNSN	124
	7	PT3	SINGLE	8808	N.A.	0.850	UX180GA23NA5NNSN	124.1
	5	L8	SINGLE					

ALL POST TOP FIXTURES ARE SHOWN MOUNTED AT 15 FEET ABOVE FINISHED GRADE
 ALL WALL MOUNTED FIXTURES ARE SHOWN MOUNTED AT 10 FEET ABOVE FINISHED GRADE

HS-HOUSE SHIELDS

Calculation Summary

Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min
Building Perimeter FC at Grade	Illuminance	Fc	1.02	9.2	0.0	N.A.	N.A.
FC Beyond Prop Line at Grade	Illuminance	Fc	0.05	4.2	0.0	N.A.	N.A.
Paved Area FC at Grade	Illuminance	Fc	1.82	7.1	0.4	4.55	17.75

ALL VALUES SHOWN ARE HORIZONTAL MAINTAINED FOOTCANDLES AT GRADE
 FIXTURE DISTRIBUTION TEMPLATES ARE SHOWN AT 0.25MFC FOR REFERENCE USE ONLY
 VALUES DO NOT INCLUDE CONTRIBUTION FROM ADJACENT STREET OR PROPERTY LIGHTING

EN 1246216

LED Bollard (DB30) Specification Sheet

Project Name:	Location:	MFG: Philips Hadoo
Fixture Type:	Catalog No.:	Qty:



Ordering Guide

Example: DB30 A A0 12L E

Product Code	DB30	LED Bollard
Finish	A H	Black Bronze
Optics	A0	Symmetric
Wattage	12L	12.5W LED
Voltage	E	120V

LED Bollards



Page 1 of 4

121 LED Performance Scence - Generation 2

The Philips Gardco 121 LED Performance Scence provides an energy efficient, architecturally pleasing solution for wall mount applications. The sloped surface ribs of the die cast aluminum housing create a distinctly unique aesthetic element and perform important functions in the Philips Gardco thermal management system. 121 Generation 2 luminaires feature high performance Class 1 LED systems. The high performance LED optical systems produce full cutoff performance, minimizing glare and light trespass. Philips Gardco's LED technology provides maximized light output and maximum energy savings.



PREFIX	OPTICAL SYSTEM	LED WATTAGE	LED SELECTION	VOLTAGE	FINISH	OPTIONS
<input type="text"/>						

Enter the order code into the appropriate box above. Note: Philips Gardco reserves the right to refuse a configuration. Not all combinations and configurations are valid. Refer to notes below for exclusions and limitations. For questions or concerns, please consult the factory.

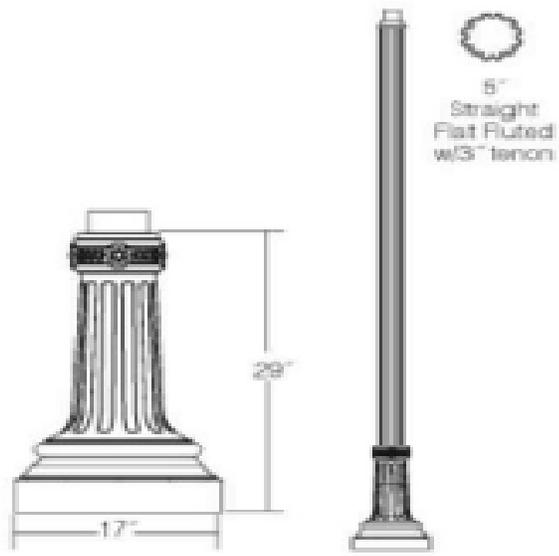
PREFIX

121	121 LED Performance Scence - Constant Voltage / Full Light Output
121-MR	121 LED Performance Scence - Motion Response
121-DIM	121 LED Performance Scence - 0 - 10V Dimming
121-APD	121 LED Performance Scence - Automatic Profile Dimming
121-DCC	121 LED Performance Scence - Dual Circuit Control

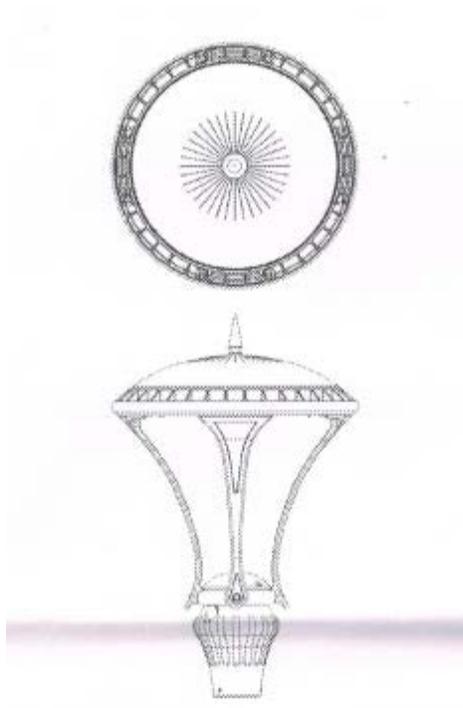
OPTICAL SYSTEM

2	Type 2	All optical systems are supplied with a clear glass lens (optional 4 Diffuse Lens (DL) option is available. See OPTIONS on Page 2.
3	Type 3	
4	Type 4	
MT	Medium Throw	

Wall Packs



**Light Pole
Exhibit 6(b)**

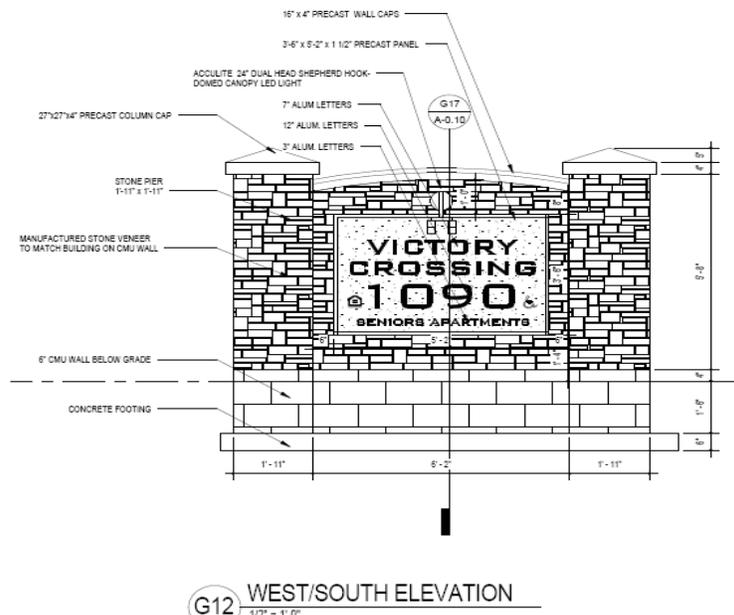


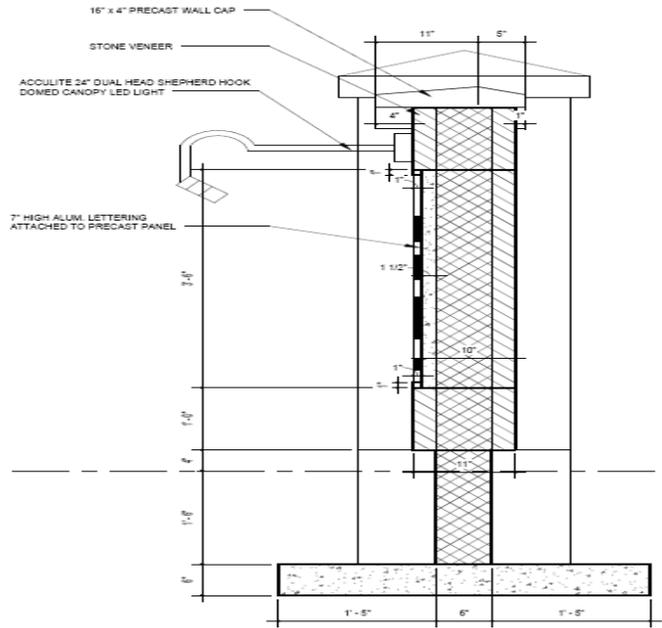
**Light Pole Fixture
Exhibit 6(b)**

4. Signage

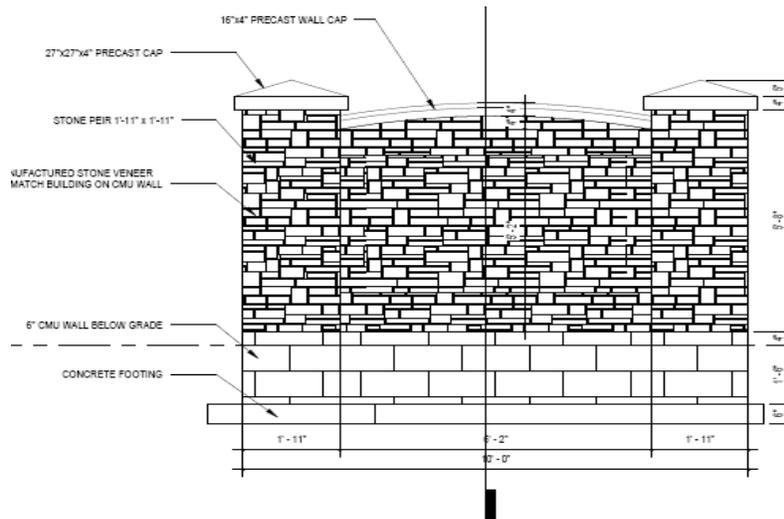
Petitioner proposes to place a monument entrance sign at the southeastern corner of the site near the vehicular entrance to the property. Technical Staff reports that the entrance sign is approximately 10' x 6'9" for a total of 67.5 square feet. The sign will be located approximately 27 feet from the nearest property and will not obstruct any building aperture. Exhibit 38, p. 18. Mr. Mongrain testified that the entrance sign will be constructed of concrete block in the shape of a "V" with stone facing to match the stone on the building. It will include the name of the building "Victory Crossing", the street number, and the fair housing symbol. Technical Staff reported that the sign will be illuminated from a hidden ground light directed towards the sign which is consistent with Petitioner's Statement of Operations. Exhibit 3(a) and 38, p. 18. However, Mr. Mongrain testified that the sign will be illuminated from the top by an LED light. He described the light fixture as a "Shepard's Hook" which hangs over the top of the sign directing the light downward onto the sign. T. 131-136.

Petitioner submitted plans for the entrance sign, shown below and on the next page (Exhibit 16):





G17 WALL SECTION
1" = 1'-0"



G7 EAST/NORTH ELEVATION
1/2" = 1'-0"

Exhibit 16

Technical Staff advises that the sign meets the lighting requirements of Section 59-F-4.1(e). However, a variance from the Sign Review Board will be required because the sign area is larger than permitted under the Zoning Ordinance. Exhibit 38, p. 18. Pursuant to Section 59-F-4.2 (3) (A) (2),

the sign area for a permanent entrance sign into a multi-family development “must not exceed 40 square feet per sign.” The proposed sign is 67.5 square feet in size. Thus, Petitioner will file for a variance from the Sign Review Board. The following condition is recommended in Part V of this report:

A sign permit must be obtained for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is constructed. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform to all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

Regardless of the extent to which a variance will be needed, the Board of Appeals must first decide whether it would be compatible with the area. While Technical Staff did not comment on the sign’s compatibility with the area, the Hearing Examiner finds that based on the evidence of record the sign’s size would not be excessive in relation to the site or its location facing Milestone Drive. According to Mr. Mack, the proposed sign is comparable to the entrance sign for the police station which is approximately 7’ x 5’ in size and is located west of the second driveway of the shared entrance. The sign will be faced with stone matching the building and will not obstruct the building aperture. Therefore, the Hearing Examiner finds that the proposed sign would be compatible with the area.

5. Operations

Mr. Brown testified that the hours of operation will be from 8:30 a.m. to 5:00 p.m. seven days a week. There will be no more than four employees on-site at one time. Staff will include a manager, assistant manager, maintenance manager and activities director. There will be no staff living in the facility or be on-site after hours. There will be a wellness center on-site for a visiting nurse who will periodically (e.g., monthly) visit during non-peak hours. The visiting nurse will provide limited services that may include blood pressure and weight checks and nutritional counseling as needed.

Additional services typical of an independent facility will include guest speakers, exercise classes and other social activities depending on resident need and interest. T. 29-30; 37-41.

Indoor community spaces for the residents include a sunroom, library, computer room, arts and craft room, game room, community room, theater, kitchen, wellness center and fitness room. Outdoor activities will be limited to the outdoor patio and seating area at the covered entrance.

The trash dumpster will be located on the north side of the parking lot and enclosed with a 6 ½ foot fence. Trash pick-up will occur twice a week and recycling pick-up will be once a week. As a condition of approval, Technical Staff provided (Exhibit 38, p. 2):

4. Except in emergencies, regular deliveries are limited to Monday through Friday, 8:30 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 5:00 p.m., and trash pick-up is limited to Monday through Friday, 9:00 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m.

Technical Staff advises that Petitioner “shares a van among several projects operated by Victory Housing that will be used to provide transportation to off-site facilities such as shopping, religious, community or recreational facilities, and medical service.” Exhibit 38, p. 23.

6. Community Input

VHI President, James Brown, Jr., testified that Petitioner held 5 pre-submission community meetings with the adjacent residential community. The minutes of the meetings and a letter of support from the Sherbrooke Homeowners Association dated October 13, 2014, are provided in the Technical Staff report. Exhibit 38, Attachment 4. He stated that they developed a good working relationship with the community. The input from the community resulted in modifications to their original proposal which included reducing the height of the building from 5 stories to 4. They also reduced the number of units from 123 to 105 units. In their letter of support, the community reiterated their concerns regarding parking, landscape, lighting and maintaining the forest buffer. They also asked for “assurances that construction vehicles will not travel through [the] neighborhood to access the

construction site.” *Id.* Mr. Kline stated that construction traffic will access the property via Milestone Drive off Stewart Lane and US Route 29. T. 161-167.

7. Public Facilities and Parking

a. Public Facilities (Traffic, Water and Sewer):

Technical Staff advises that Petitioner will be required to obtain preliminary plan approval under Chapter 50 of the Montgomery County Code because the county property (12.79 acres) will be platted into a single lot. Exhibit 38, p.15. Petitioner filed a Preliminary Plan. Pursuant to Zoning Ordinance §59-G-1.21(a)(9)(A) the Planning Board and not the Board of Appeals will ultimately determine the adequacy of public facilities. However, this section also requires that “approval of a preliminary plan of subdivision must be a condition of granting the special exception.” Such a condition is recommended in Part V of this report.

Petitioner’s transportation and traffic expert, Chris Kabatt, testified that based on a traffic analysis conducted in 2013, the senior housing project use alone generated less than 30 peak-hour trips and a traffic study was not required. Exhibit 10. However, since the entire site is being platted into a single lot Petitioner was required to include the traffic analysis for both uses to determine if a traffic study was required. In June 2014, after the police station opened, Petitioner conducted a driveway count of the vehicles entering and exiting the police station and determined that a traffic study was required because both uses would generate more than 30 peak-hour trips. T. 160-161; 170-172.

Technical Staff provided the following table and summary confirming the need for a traffic study which will be required at the time of Preliminary Plan review (Exhibit 38, p. 11):

Residential Land Use	Number of Units	Weekday Peak-Hour	
		Morning	Evening
Built Third District Police Station	Existing Peak-Hour Traffic	17	14
Proposed Victory Housing	105 units	21	26
Total of Both Land Uses		38	40

Local Area Transportation Review [LATR]

The table above shows the number of peak-hour trips generated by the existing and proposed land uses during the weekday morning and evening peak hours (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.):

The number of weekday peak-hour trips were based on actual driveway counts collected in June 2014 for the existing 3rd District Police Station. The number of peak hour trips for the proposed building was determined using trip-generation rates for “senior adult housing attached” units from the Institute of Transportation Engineer’s *Trip Generation Manual*.

Although the additional peak hour trips are less than 30 for the proposed special exception use only, a traffic study is required to satisfy LATR for the overall site (including the Police Station) because the proposed land use generates 30 or more total (i.e., existing and additional) peak-hour trips within the weekday AM and PM peak periods. As conditioned, the traffic study will be required at the time of Preliminary Plan review.

Transportation Policy Area Review

A transportation impact tax payment is not required to satisfy the Transportation Policy Area Review (TPAR) test because the Code does not require a TPAR payment for “multi-family senior” residential units.

Mr. Kabatt testified that at the time of the hearing they were in the process of conducting the traffic study. He provided an update on the progress of the traffic study and reported that the congestion intersection of US Route 29 and Stewart Lane currently operates above an acceptable congestion standard.. As a result, he anticipates that Petitioner will likely have to take measures to mitigate the senior housing site’s minimal impact on the intersection. Possible mitigation options include geometric improvements at the intersection or other non-auto improvements such as sidewalks or payment to a capital facilities project. He clarified that the possible mitigation options will not alter or affect the design of the proposed senior housing site. Further, he stated that in his professional opinion, the shared driveway off Milestone Drive and the interior circulation system for the property is safe, adequate and efficient for the proposed use. T. 155-159; 161-167.

Technical Staff advises that the Property is approved as W-1 for its water category and has received approval for S-1 sewer category. Petitioner's land planner, Kevin Mack, testified that the sewer and water to the site will be adequate to serve the proposed use. The new water service will be taken from the existing water line at Milestone Drive. A branch stub will be established off the line that provides sewer service to the police station. T. 101-103.

b. Adequacy of Parking Provided:

Base parking requirements for the proposed senior housing facility are determined by Zoning Ordinance §59-E-3.7 which specifies different parking standards by policy area and number of bedrooms per unit. The proposed facility is in the Northern Central Parking Policy Area which requires 0.85 parking spaces for one bedroom units and 1.15 parking spaces for two or more bedrooms per unit. The facility will have a total of 105 units which will include 80 one-bedroom units and 25 two-bedroom units. Thus, the total base parking requirement for the 105 unit facility would be 96.75 spaces calculated as follows: 80 one-bedroom units x 0.85 = 68 spaces and 25 two-bedroom units x 1.15 = 28.75. Section 59-E-3.7 further provides that "[t]he base requirement may be reduced in accordance with the credit provisions of Section 59-E-3.33" which provides up to a 20% reduction in the parking requirements for "units that are required to be at or below the price levels for moderately priced dwelling units specified in accordance with Chapter 25A of [the] Code."

In this case, all but 10 of the two-bedroom units will be reserved for households with income at or below 60 percent of the area median (e.g., low-income). The base parking requirements for the low-income units would be a total of 85.25 spaces (80 one-bedroom units x 0.85 space and 15 two-bedroom units x 1.15 spaces). The 20% reduction would eliminate 17.05 spaces for a total of 68.20 spaces required for the low-income units. An additional 11.50 spaces would be required for the 10 market rate two-bedroom units (10 x 1.15 = 11.50). Thus, the total number of parking spaces required

for this facility is 79.7 spaces. Petitioner is providing a total of 80 parking spaces which will include 72 standard spaces (8'5" x 18'), 8 handicapped accessible spaces (8'x18') and one event bus space (12' x 30'). Based on this evidence, the Hearing Examiner finds that the proposed parking for this facility satisfies the parking requirement of Section 59-E-3.7 and Section 59-E-3.33 of the Zoning Ordinance.

There are 10 parking spaces along the east side of the shared entrance off Milestone Drive and 70 head-in and double-loaded parking spaces along both sides of the circular driveway. The remaining parking spaces on the west side of the shared driveway will be restricted for visitor parking for the police station. However, Mr. Mack noted that parking on the grass shoulder along Milestone Drive is permitted and unrestricted. T. 77-80; 85; 87.

D. Master Plan

The subject property lies within the *1997 White Oak Master Plan*. The Plan provides specific recommendations for this property which in 1997 was part of a 37 acre undeveloped tract of land identified as the "Milestone Drive Properties." At that time, there were seven properties ranging in size from .5 to 22.7 acres. The Plan recommends a mix of single-family detached and single-family attached homes. To provide an appropriate transition to the adjacent residential community, the Plan specifically recommended the single-family detached homes be located within the northern end of the property and the townhomes to be located closer to the intersection of US Route 29 and New Hampshire to the south. The Plan provides: "[t]o achieve this mix and location of units, the Plan recommends R-90 zoning for the northern and largest parcel and R-90/TDR at a density of six units per acre for the southern six parcels." Plans for development should provide an adequate level of compatibility with the surrounding neighborhood and noise buffering to mitigate the effects of noise

from US Route 29 and New Hampshire as well as “pedestrian and bicycle access to the White Oak Library.” Exhibit 7, p. 20.

Technical Staff concluded that the proposed senior housing facility is consistent with the Plan because the senior housing is a residential use and will be located in the southeastern section of the Milestone Drive property which is recommended for a multi-family development of townhomes at a higher density. Technical Staff reasoned that the increase in density with the proposed use “can be supported by the existing infrastructure and facilities in the area without any negative impact on the surrounding land uses and population.” Exhibit 38, p. 8.

Technical Staff also noted the Plan’s housing objective is to “[m]aintain housing for people of varying incomes, ages, and lifestyles and continue to provide a variety of housing types that will permit households with changing needs to find suitable accommodation within the White Oak Master Plan area.” The Plan specifically expresses an intent to “[e]ncourage housing for elderly and handicapped at locations adequately served by public transportation, shopping, and community facilities [and the] development of innovative housing and a variety of housing types for all income ranges.” Exhibit 7, p. 18.

Technical Staff provided the following rationale to support the conclusion that the proposed senior housing facility at this location is consistent with the Plan’s housing objectives and recommendations (Exhibit 38, p. 8):

The Master Plan recognized the importance of providing affordable elderly housing and care options within the Plan’s area, stating there will be a significant increase of persons over the age of 70 and limited number of housing opportunities for this segment of the population. The Plan recommended encouraging the provision of affordable elderly housing facilities at appropriate locations in the planning area that could support the needs of the population, including locating such facility along bus routes and near shopping and public facilities (p.66). This property is situated near several public facilities and the White Oak Shopping Center, and is served by Metro bus and Ride-On Bus routes and can therefore be considered a good location for elderly housing.

According to Technical Staff, there are two bus stops close to the property. One is located at the intersection of New Hampshire Avenue and Heartfields Drive and the other is located at Stewart Lane and Columbia Pike. Exhibit 38, p. 10. Technical Staff also reports that Petitioner will offer transportation to residents to nearby shopping, religious, community or recreation facilities and medical services in a van shared with other VHI communities. Exhibit 38, p. 23. In the Statement of Operation, Petitioner identified the medical facilities, recreation and community services located within a 4.5 mile radius of the site. Community and recreation services include a senior center, meals-on-wheels, the Department of Health and Human Services, shopping, and the public library. Exhibit 3(a).

Technical Staff also found consistency with the following recommendations regarding evaluating special uses for compatibility with the surrounding residential community (Exhibit 7, p. 24):

- Require new requests for special exception uses along major transportation corridors and in residential communities to be compatible with their surroundings. Front yard set-back should be maintained.
- Avoid front yard parking because of its commercial appearance. Side and rear parking should be screened from view of surrounding neighborhoods.
- Require new buildings or any modification or additions to existing buildings to be compatible with the character and scale of the adjoining neighborhood.
- Avoid placing large impervious areas in the Paint Branch watershed due to its environmental sensitivity.

The front of the building is set back 50 feet from Milestone Drive to the south. Parking is located on the west side of the building. The view of the parking from the residential community to the north will be screened by the forest buffer and evergreen plantings along the perimeter of lease area lot line (rear of property). The proposal uses architectural details and materials to create

residential character and scale. The height of the building is visually mitigated by the sloping topography of the lot. Thus, the building will be compatible with the character and scale of the adjoining neighborhood. Technical Staff found “[t]he development proposal shows the minimum amount of pavement necessary to adequately and safely circulate vehicles, residents and pedestrians, while the building footprint is compact, and multi-level to minimize the on-site imperviousness.” Exhibit 38, p. 9.

The Hearing Examiner agrees that the petition is consistent with the Master Plan for the reasons stated by Technical Staff.

E. Transportation

Technical Staff reports that a Transportation Management District (TMD) has not been established in the *White Oak Master Plan* area. According to the *1997 White Oak Master Plan* and *2005 Countywide Bikeways Functional Master Plan*, the sector-planned roadways and bikeways for the surrounding area includes New Hampshire Avenue, Columbia Pike and Stewart Lane. Milestone Drive, Sherbrooke Woods Lane and Seton Drive are not listed in the *White Oak Master Plan*. Exhibit 38, p. 9.

Technical Staff includes the following summary of transit, current public transportation projects, public transit service and pedestrian and bicycle facilities in the vicinity of the proposed senior housing facility (Exhibit 38, p. 10):

Master Plan Transitway

The 2013 *Countywide Transit Corridors Functional Master Plan* recommends the Bus Rapid Transit (BRT) Corridor 9, “US 29 Corridor” along Columbia Pike (US 29) south of Lockwood Drive and north of Stewart Lane with the BRT shifted onto Stewart Lane and Lockwood Drive. The nearest BRT station is recommended to be at the intersection of New Hampshire Avenue (MD 650) and Lockwood Drive.

Current Public Transportation Projects

Besides the BRT study above, the other current public transportation projects are as follows:

The SHA's CTP Project MO8875170, US 29, Columbia Pike interchange at Stewart Lane, has approximately 30% design or preliminary investigation funding only, but none for engineering or construction. The Applicant's plan shows the right-of-way for this future interchange.

SHA's CTP Project MO8445176, US 29, Columbia Pike/Stewart Lane interchange to add additional left-turn/through lane on southbound US 29 is in the early design stage with the Project Impact Report approved, but further design work is currently on hold.

Available Transit Service

The following public transit is available along the nearby major highways:

- Metrobus routes K6, Z9, Z11, Z13, and Z29 currently operate along Columbia Pike near the property frontage south of Stewart Lane.
- Metrobus routes Z6m Z8, Z9, Z11, Z13 and Z29, Ride On Route 10, and Maryland Transit Administration's Commuter Bus Routes 915 and 929 currently operate through the Columbia Pike/Stewart Lane intersection and along Columbia Pike near the property frontage north of Stewart Lane.
- Metrobus routes C8 and Z2 and Ride On Route 21 currently operate along New Hampshire Avenue near the Property frontage.

The nearest bus stops are located at the intersections of New Hampshire Avenue and Heartfields Drive and Columbia Pike and Seton Drive-Stewart Lane.

Pedestrian and Bicycle Facilities

The existing sidewalks include the following:

5-foot wide along the north side of Milestone Drive

4-foot wide on both sides of Sherbrooke Woods Lane

The Applicant is proposing a 4-foot wide sidewalk along the north side of Seton Drive and 4-foot-wide lead-in sidewalks from Milestone Drive and Seton Drive. From Milestone Drive and Seton Drive, residents and staff could walk to the nearby bus stops on New Hampshire Avenue and Columbia Pike and White Oak Library in the northeast corner of New Hampshire Avenue/Heartfields Drive intersection. A handicapped ramp and crosswalk across Seton Drive are needed and recommended to connect the lead-in-sidewalk. Staff is recommending one bike rack to store at least two bicycles in front of the main entrance to the proposed special exception.

As discussed in Part II. C. 2 of this report, Petitioner's land planner, Kevin Mack, testified that based on comments from DPS, the proposed sidewalk along the north side of Seton Drive will be relocated to the south side. This will eliminate the need for a mid-block crosswalk across Seton Drive. T. 85-86.

Based on the information provided in this section, Technical Staff included the following conditions which are recommended in Part V of this report (Exhibit 38, p. 2):

7. The Applicant must coordinate the design plans with the Maryland State Highway Administration (SHA) regarding their Capital Transportation Program (CTP) Project M08875170, for a US 29, Columbia Pike Interchange at Stewart Lane;
8. The Applicant must provide one inverted-U bike rack for two bikes, or the equivalent, in front of the main entrance. The final location may be modified at Preliminary Plan review;

F. Environment

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD #420050860) for the entire site was approved on November 2, 2004, and recertified on March 18, 2009. Exhibit 8(c). The western portion of the site has since been developed as the Third District Police Station. As a result, Technical Staff advises that “there is approximately 6.2 acres of forest on-site.” Exhibit 38, p. 11.

Technical Staff reports that the property is located within the Paint Branch watershed (State Use III, or non-tidal cold water). The property is outside of the Special Protection Area. Technical Staff found “there are no streams, wetlands, floodplains, or environmental buffers located on the property [and] [t]he proposed project is in compliance with the *Environmental Guidelines*.” Exhibit 38, p. 11.

a. Stormwater Management:

The site will be developed in accordance with the Environmental Site Design Guidelines for Stormwater Management. The Stormwater Management Concept for the property was approved by the Department of Permitting Services in a memorandum dated December 6, 2013. Exhibit 38, Attachment 5. Petitioner is proposing the use of five micro bio-retention facilities on the property. Two will be located on the east side of the property and three on the west side. Two facilities will be located in the center island of the circular driveway and parking lot. The facilities will be heavily

vegetated with native perennials and grasses and surrounded with a mix of native shrubs and a canopy of native trees. T. 80-84.

b. Forest Conservation:

The property is subject to the Montgomery County Forest Conservation Law. The Planning Board approved a PFCP for the entire site with the Mandatory Referral (#MR2009742) for the police station on December 16, 2010. At that time, the Planning Board required amendment of the PFCP and a separate FFCP for each phase of development. Petitioner amended the PFCP to incorporate the proposed 105 unit affordable senior housing facility within the existing Third District Police Station site. Technical Staff summarized the amendments as follows (Exhibit 39, pp.3-4):

The previously approved PFCP shows 2.69 acres of forest retention, 0.99 acres of forest planting, and 0.19 acres of landscape credit (Attachment 3). Montgomery County recorded Category I Conservation Easements by deed over all areas of forest retention and planting and Category II Conservation Easements by deed over individual trees given landscape credit. The applicant proposes minor alterations to the recorded easements and will abandon the existing easement and re-record all easements by record plat. The proposed amendment shows 2.70 acres of forest retention, 1.02 acres of forest planting, and 0.24 acres of landscape credit. The differences in acreages are due to changes in dedication area for the future Stewart Lane Interchange.

In a memorandum dated October 2, 2014, Environmental Technical Staff found that the proposed amendments meets the Planning Board's conditions of approval for MR2009742 (Phase I) and recommended the Planning Board approve the Amended PFCP with conditions. Exhibit 39. Petitioner submitted a Revised Final Forest Conservation Plan which will be reviewed during subdivision. Exhibit 49.

c. Traffic Noise Impact:

At this location, the property is exposed to associated traffic noise from US Route 29 and New Hampshire Avenue. A Transportation Environmental Noise Analysis and an on-site acoustical survey were conducted to determine the exterior noise level exposures to the facility and outdoor areas and

the resulting impact on the interior noise levels. The criteria used for the study is as follows (Exhibit 38, Attachment 3):

The primary noise descriptor used by HUD, Montgomery County, and other governing and lending agencies to describe environmental noise is the day-night average level (DNL or L). The day-night level is a 24-hour average level with nighttime (10 p.m. to 7 a.m.) noise levels increased by 10 dBA to account for increased sensitivity to noise at night.

The goal of the noise standard used by HUD and others is to archive interior noise levels that do not exceed 45 DNL in residential dwelling. Based on numerous tests and studies, the HUD noise guidelines assume that a normal building's exterior construction will provide 20 dBA of noise reduction. Thus, residential buildings exposed to noise levels less than 65 DNL are considered "acceptable" and should result in interior noise levels less than 45 DNL. Residential sites exposed to noise levels between 65 and 75 DNL are considered "normally unacceptable" and may require upgraded constructions to achieve noise levels less than 45 DNL. Residential sites exposed to noise [levels] exceeding 75 DNL are considered "unacceptable" and residential development in these zones is discouraged. Noise levels in outdoor recreational spaces should not exceed 65 DNL.

It was determined that the primary source of traffic noise to the site was from US Route 29 and not New Hampshire Avenue which is further from the site with less traffic. Based on traffic data obtained from the 2012 traffic volume maps published by the Maryland State Highway Administration, preliminary findings showed that the "southeast building face will be exposed to noise levels in the 69-70 DNL range." Exhibit 38, Attachment 3, p. 2. To confirm the calculated values, an on-site acoustical study was performed. The results revealed that the exterior noise level was 68 DNL confirming the conclusion that the building will be moderately noise impacted and "may require [upgraded] construction methods and materials." *Id.*

The acoustical consultants evaluated the building's construction, including materials and windows for sound attenuation to ensure that the interior noise levels will not exceed 45 DNL. The building's wall construction will be 2x6 wood framing with batt insulation and an interior layer of 5/8 gypsum wallboard. They exterior will be further insulated with sections of vinyl siding which has an

estimated sound transmission class [STC] rating of 39 and stone siding with a rating exceeding 45-STC. While the consultants determined that the building's construction and materials provided sufficient sound attenuation, they recommended that the windows be upgraded to a window with a minimum 28-STC rating "to ensure interior noise levels do not exceed 45 DNL." Exhibit 38, Attachment 3, p. 2.

Mr. Mongrain testified that the glass and frames for the standard single-hung windows for the building have a 23-STC rating. As recommended, the windows along the southeast side of the building facing US Route 29 will be upgraded with windows that have a minimum 28-STC rating. T. 124-129. He stated that the "J" shape of the building provides the main entrance and patio area with protection from the environmental and noise impacts from US Route 29. T. 121-124. Technical Staff agreed that the building will protect the only outdoor activity space for the facility from the traffic noise impacts from US Route 29. Exhibit 38, p. 12.

Mr. Mongrain confirmed that Petitioner will comply with the conditions of approval (e.g., conditions nos. 9 and 10) that require the building to be inspected for compliance with the findings of the noise study dated October 25, 2013. T. 126-127.

III. SUMMARY OF TESTIMONY

The Petitioner presented the four witnesses who testified in support of the Petition. The President of VHI, James A. Brown, Jr., testified as to the operations of the proposed use. Petitioner presented testimony from three expert witnesses: 1) Kevin D. Mack, qualified as an expert in site design and planning; 2) Bruce Mongrain, an architect; and 3) Chris L. Kabatt, a traffic engineer. Portions of their testimony are set forth herein where relevant. Their entire testimony is summarized in an appendix to this report, which is incorporated herein.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and

non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with Housing and Related Facilities for Senior Adults and persons with Disabilities (i.e., housing for senior adults). Characteristics of the proposed use that are consistent with the “necessarily associated” characteristics of housing for senior adults will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with housing for senior adults or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff described the physical and operational characteristics necessarily associated with housing and related facilities for senior adult and persons with disabilities as follows (Exhibit 38, p. 12):

- 1) buildings and structures, as well as outdoor passive areas for the residents and visitors;
- 2) lighting;
- 3) traffic to and from the site by staff, visitors and residents;
- 4) deliveries of supplies and trash pick-up;
- 5) parking areas;
- 6) noise associated with garbage pick-up and normal deliveries to individual residents.

To this description, the Hearing Examiner would add that one would expect housing for senior adults to produce some noise generated by equipment for the facility, such as the generator, and by occasional outdoor activities of residents and their families. The Hearing Examiner believes that these

factors are inherent in housing for senior adults, by their nature, although their impact will vary significantly according to the nature of the housing for senior adults, its size and its location.

In the subject case, because the residents will be elderly and less likely to drive or work full-time, a relatively small amount of additional traffic will be generated, mostly by staff and visitors. Technical Staff found there would be no non-inherent adverse effects associated with the proposed use because the existing forest buffer and proposed landscaping will maintain the general character of the neighborhood, adequate parking is available for the residents, visitors, and employees, noise associated with trash pick-up and deliveries will be minimal, the dumpster will be enclosed, and the site has good access to major transportation routes and accessibility to public transportation. Exhibit 38, pp. 12-13. The Hearing Examiner agrees with Technical Staff and would add that the building's design and use of residential features and materials is compatible with the characteristic of the adjacent residential community. Further, the building's height is visually mitigated by the sloping topography of the lot. The Hearing Examiner also finds that any noise impact from the generator will be mitigated or eliminated by the forested area and evergreen screening along the perimeter of the lot to the north. As a result, she finds that there are no non-inherent impacts associated with this petition.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the testimony and exhibits of the Petitioner provide ample evidence that the general standards would be satisfied in this case.

Section 59-G-1.21. General conditions.

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: A housing facility for senior adults and persons with disabilities is a permissible special exception in the R-90/TDR Zone, pursuant to Code §59-C-1.31.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: With the recommended conditions of approval, the proposed use complies with the specific standards set forth in § 59-G-2.35 for a housing and related facilities for senior adults and persons with disabilities, as outlined in Part IV.C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject site lies within the geographic area covered by the 1997 *White Oak Master Plan* which was discussed at length in Part II. D of this Report. Based on the evidence in this case, and having none to the contrary, the Hearing Examiner finds that the petition is consistent with the goals of the Plan as well as the recommended zoning.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Technical Staff concluded that the use will be in harmony with the general character of the neighborhood because “[t]he proposed four-story building will be located approximately 225

feet from the nearest single-family home [and] [t]he scale and height of the new building will be constructed with minimal impact on the natural environment.” Exhibit 38, p. 14. The Hearing Examiner agrees and further finds that the sloping topography, landscape and forest buffer significantly mitigate any impacts from the use on the adjacent single-family homes. Further, the outdoor activity will be minimal and limited to the main entrance and patio area which is nestled in the center of the building facing west toward the police station and away from the residential community to the north. The projected number of peak hour trips generated by the senior housing facility will likely not have a significant impact on nearby roadways. Based on the evidence of record, the Hearing Examiner finds that the proposed use will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: As discussed in Part II of this report and in response to General Standard 4, above, there is no evidence that the use, as proposed, will be detrimental to the use, peaceful enjoyment economic value or development of surrounding properties or general neighborhood. The Hearing Examiner agrees with Technical Staff’s assessment that the building as designed will be compatible with the adjacent single-family neighborhood, the parking areas will be screened, outdoor activities will be limited and sufficient landscaping around the building will soften the building/ground connection.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff concluded that the use will not have any objectionable adverse effects because the exterior lighting proposed will not cause glare or reflection into abutting properties, a conclusion supported by the Petitioner's photometric study. Outdoor activity will be limited and noise associated will be minimal given its protected location in the center of the building. Further, by hiding the facilities condensing units in the space provided in the pitched roof, the noise and visual impacts of these units is eliminated. Based on the evidence of record, the Hearing Examiner finds that the proposed use will not cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff found two active special exceptions in the surrounding neighborhood. The Sunrise Assisted Living Facility (S-2308) located at the southeast intersection of New Hampshire Avenue and Heartfields Drive and an accessory apartment (S-2833) located at 1000 Heartfields Drive. Technical Staff found that "the proposed use is a residential use that will not alter the character of the predominantly residential character of the neighborhood." Exhibit 38, p. 15. The Hearing Examiner agrees with Technical Staff and finds that this standard has been met.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at

the subject site. Instead, the proposed use will benefit the community by providing an affordable independent living senior housing facility.

- (9) *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.*
- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: The special exception sought in this case would require approval of a preliminary plan of subdivision. Therefore, the adequacy of public facilities will be determined by the Planning Board at subdivision, and approval of the preliminary plan of subdivision is a recommended condition in Part V of this report, as required by this section of the Zoning Ordinance. Nevertheless, the evidence, which is discussed in Part II. C. 6 of this report, supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found that “the application satisfies transportation related requirements and will not reduce safety of vehicular or pedestrian traffic.” Exhibit 38, p. 16. Staff also found that

access to the site and on-site circulation is safe and efficient. Further, the design of the parking lot “provides for a safe and efficient separation of vehicular and pedestrian activities within the subject property.” *Id.* This finding is supported by the testimony of Petitioner’s traffic engineer, Chris Kabatt. T. 155-159. There being no evidence to the contrary, the Hearing Examiner so finds.

C. Specific Standards

The testimony and the exhibits of record (including the Technical Staff Report, Exhibit 38) provide sufficient evidence that the specific standards required by Section 59-G-2.35 are satisfied in this case, as described below.

Sec. 59-G-2.35. Housing and related facilities for senior adults and persons with disabilities.

A special exception may be granted for housing and related facilities for senior adults or persons with disabilities, subject to the following provisions:

(a) *Prerequisites for granting:*

(1) *A minimum of 15 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Income levels are defined as follows:*

(A) *“MPDU income” is the income limit determined by the Department of Housing and Community Affairs in the administration of the moderately priced dwelling unit (MPDU) program, as prescribed by Chapter 25A.*

(B) *“Low income” is income at or below 60 percent of the area median income adjusted for household size.*

(C) *“Very low income” is income at or below 50 percent of the area median income adjusted for household size.*

(D) *“Area median income” is as determined annually by the U.S. Department of Housing and Urban Development.*

Conclusion: VHI's President, James Brown, Jr., testified that the senior housing facility will have 105 units (80 one-bedroom units and 25 two bedroom units). Ten of the two-bedroom units will be at market rate. The remaining 95 units, or 90% of the 105 units, will be permanently reserved for individuals with income at or below 60 of the area median income (i.e., "low-income") which exceeds the minimum 20% requirement for the low-income category. Petitioner intends to offer a mix of units reserved for households in the different income levels (e.g., very-low, low and moderate income). Mr. Brown noted that Petitioner's original proposal of the mix of units to be offered at the different income levels as provided in the Technical Staff report on page 20 will likely change and be determined by agreement with DHCA closer to the time they secure financing for the project. Since the agreement will be executed at a later date, Petitioner agreed to a condition which is recommended in Part V. of the report.

(2) The site or the proposed facility has adequate accessibility to or provides on-site public transportation, medical service, shopping areas, recreational and other community services frequently desired by senior adults or persons with disabilities.

Conclusion: The site is conveniently located at the intersection of US Route 29 and New Hampshire Avenue with access to major transportation routes and public transportation. There are several bus stops within walking distance to the site. In the Statement of Operations, Petitioner identified the various medical, recreation and community services and shopping located within a 4.5 mile radius of the property. The public library is within walking distance to the site. The White Oak Shopping center is located across US Route 29 from the property. Technical Staff reports that Petitioner shares a van with other VHI communities and will offer residents transportation to nearby shopping, religious, community, recreation or medical facilities. Based on this record, the Hearing Examiner finds that

the residents living at the proposed senior housing facility will have adequate access to needed services.

(3) *The site or the proposed facility is reasonably well protected from excessive noise, air pollution, and other harmful physical influences.*

Conclusion: The building will be in the shape of “J” and will be located in the center of the lot. The only external outdoor space will be located in the center of the building facing west. Based on the findings of Transportation Environmental Noise analysis and on-site acoustical study, the southeast portion of the building is exposed to traffic noise from US Route 29. Exhibit 38, Attachment 3.

Technical Staff reports (Exhibit 38, p.):

A noise analysis demonstrated that the projected noise levels exceed the 65 dBA Ldn guidelines applied to external activity spaces. However, this facility does not include any external activity spaces adjacent to US 29 and the building will shield all other proposed external activity areas. Therefore, only architectural methods will be used to mitigate for noise, with a building shell analysis provided at time of building permit to certify that the interior noise levels will not exceed the 45 dBA Ldn standard.

As discussed in Part II. E of this report, Petitioner will upgrade the windows to have a minimum 28-STC rating and will comply with Technical Staff’s conditions of approval (condition nos. 9 and 10) requiring certification from an acoustical engineer that the noise mitigation recommendations in the October 25, 2013, noise study report have been met. Exhibit 38, p. 2. These conditions are recommended in Part V of this report. With these conditions, the Hearing Examiner finds that this standard has been met.

(b) *Occupancy of a dwelling unit is restricted to the following:*

- (1) *A senior adult or person with disabilities, as defined in Section 59-A-2.1;*
- (2) *The spouse of a senior or disabled resident, regardless of age or disability;*
- (3) *A resident care-giver, if needed to assist a senior or disabled resident; or*

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

Conclusion: Petitioner has indicated that occupancy will be for senior adults 62 years of age and older.

Additional Occupancy Provisions are:

(5) *Age restrictions must comply with at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair housing Act," Title VIII of the Civil Rights Act of 1968, and subsequent amendments thereto. (In that Act, "familial status" refers to discrimination against families with children.)*

Conclusion: Pursuant to Section 807 of the Fair Housing Act, discrimination based on familial Status does not apply to "housing for older persons" which is defined as "intended for, and solely occupied by, persons 62 years of age or older." Exhibit 59. Zoning Ordinance § 59-A-2.1 provides that a "senior adult" is a "person who is 62 years of age or older." Occupancy in the proposed facility by definition is restricted to senior adults and therefore persons 62 years or older. Therefore, the proposed senior housing facility is exempt under the Fair Housing Act.

(6) *Resident staff necessary for operation of the facility are also allowed to live on site.*

Conclusion: Petitioner indicated there will be no staff living on-site.

(c) *Development standards, other than density, in residential zones where allowed by special exceptions:*

(1) *Minimum setbacks:*

(A) *From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified by the zone applies.*

(B) *From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater.*

(2) *Maximum building height: four stories or the height of the applicable zone, whichever is less. Additional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.*

(3) *Maximum lot coverage: As specified by the relevant zone.*

(4) *Minimum green area:*

(A) *R-60, R-90, and RT Zones: 50 percent*

(B) *R-150 and R-200 Zones: 60 percent*

(C) *RE-1, RE-2, and RE-2C Zones: 70 percent, except where the minimum green area requirement is established in an approved and adopted master plan.*

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

Conclusion: Technical Staff found that the proposed use complies with all the development standards except for the height of the building. The proposed four-story facility (53 feet) exceeds the maximum 2 ½ stories (35 feet) height permitted in the R-90/TDR zone. However, as provided by Section 2.35(c)(2) “[a]dditional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.” Technical Staff found that “the design, scale and height of the proposed building [conforms] to the general character of the neighborhood.” Exhibit 38, p. 16. The proposal uses architectural details and materials to create a building with residential character and scale. Further, the height of the building is visually mitigated by the sloping topography of the lot and is approximately 3 feet higher than the roofline of the adjacent residential community. The forest buffer and proposed landscaping will further mitigate the size of the building. Based on this, the Hearing Examiner concurs with Technical Staff and finds that the

proposed four-story building will be in conformity with the general character of the neighborhood. The applicable Development Standards are shown on the Table from the Technical Staff Report shown below (Exhibit 38, p. 16).

	<u>Required</u>	<u>Proposed</u>
Minimum Lot Area	9,000 sq. ft.	2.51 acres
Minimum Lot Width		
--at front building line	75 ft.	330 ft.
--at street line	25 ft.	272 ft.
Minimum Setback from Street (59-G-2.35(c)(1))	50 ft.	50 ft.
Minimum Setback from Adjoining Lot (59-G-2.35(c)(1))		
--side lot lines	25 ft.	25 ft.
--rear lot line	25 ft.	25 ft.
Maximum building height (59-G.2.35 (c)(2))	2 1/2 stories or 35 ft.*	4 stories at 52.3 ft. (max.)
Maximum Building Coverage	35%	22.9%
Minimum Green Area	50%	53.5%

**59-G-2.35 permits four stories or the height limit of the applicable zone, whichever is less.*

Additional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.

Staff finds that the proposed building complies with the applicable development standards. In terms of the proposed building height higher than the maximum allowed in the zone, Section 59-G-2.35(c)(2) specifies that up to six stories is permitted. In this case, the design, scale and height of the proposed building conform to the general character of the neighborhood.

- (d) *Development standards, other than density, in the R-30, R-20, R-10 and R-H Zones are as specified by the relevant zone in Section 59-C-2.41, except that the lot coverage and building setbacks may be modified as specified in Section 59-C-2.42 concerning standard for moderately priced dwelling units.*

Conclusion: Not Applicable. This site is in the R-90/TDR Zone.

- (e) *Maximum density:*

In the Rural, Rural Cluster, R-2, RE-2C, RE-1, R-200, R-150, R-90, R-60, R-40, RT-6, RT-8, RT-10, and RT-12.5 Zones, the number of units is governed by the overall size of the building as determined in accordance with the development standards by Paragraph(c) of this section. Minimum unit size is governed by the minimum space and other relevant standards of Chapter 26, title "Housing Standards," of this Code, as amended.

Conclusion: According to Technical Staff, the proposed building complies with the development standards for the R-90/TDR Zone and proposed use. Chapter 26 of the Montgomery County Code, title Housing and Building Maintenance Standards, Section 26-5(a) provides:

(a) Floor area, dwelling unit. Every dwelling unit must contain at least 150 square feet of floor area for the first occupant and at least 100 additional square feet of floor area for every additional occupant. The floor area of that part of any room where the ceiling height is less than 5 feet or where the room width is less than 7 feet must not be considered in computing the habitable space of the room to decide its maximum permissible occupancy.

Petitioner's architect, Bruce Mongrain testified that the average one-bedroom unit will be approximately 681 square feet in size and the average two-bedroom unit will be approximately 903 square feet in size. T. 143-144. Thus, the size of the units exceeds the minimum floor area requirements of the Housing and Building Standards. The Hearing Examiner agrees with Technical Staff and finds that the proposed development complies with this section.

(f) Parking and loading:

Parking must be provided in accordance with the provisions of Section 59-E-3.7 and Section E-2.83. The Board must require adequate scheduling and long-term continuation of any services for which parking credits are granted in accordance with Section 59-E3.33(b) and may require additional parking for any facilities and services provided in accordance with Paragraph (g)(2) of this section, if they serve nonresident senior adults or persons with disabilities. When considering the need for additional parking, the Board may consider the availability of nearby public or private parking facilities.

Conclusion: As discussed in Part II. C. 6 of this report, the parking requirements for the proposed use are met. The total number of parking spaces required for this development is 79.7 and Petitioner is proposing 80 parking spaces. This total includes a 20% credit reduction as provided by Section 59-E-3.33 for "units that are required to be at or below the price level for moderately priced dwelling units specified in accordance with Chapter 25 A of the Code." The 80 parking spaces will include 72

standard spaces, 8 handicapped accessible spaces and one event bus space. The Hearing Examiner concurs with Technical Staff and finds that the proposed application satisfies the parking requirements.

(g) *Additional provisions:*

(1) *One or more of the following ancillary facilities and services may be included to serve the residents and possibly nonresident senior adults or persons with disabilities. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized.*

- (A) *Provision for on-site meal service;*
- (B) *Medical or therapy facilities or space for mobile medical or therapy services;*
- (C) *Nursing care;*
- (D) *Personal care services;*
- (E) *Day care for senior adults or persons with disabilities;*
- (F) *On-site facilities for recreation, hobbies or similar activities;*
or
- (G) *Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services. An application for a special exception for this use must include an expansion plan showing the location and form of any expansions expected to be made in the future on the same site.*

Conclusion: VHI President, James Brown, Jr., testified that the “Victory Crossing” facility will be an independent senior housing living facility. It is intended for senior adults over the age of 62 years old who are generally in good health and do not require daily medical and personal care services (e.g., meals, housekeeping, on-staff nursing care, etc.) typically provided at an assisted living facility or nursing home. There will be a wellness center and a visiting nurse will visit periodically to provide limited services that may include blood pressure and weight checks and nutritional counseling as

needed. Additional services typical of an independent facility will include guest speakers, exercise classes and other social activities depending on resident need and interest. Staff will include an activities director. T. 27-30 and 37-41. The proposed facility will include a sunroom, library, computer room, arts and craft room, game room, community room, theater, warming kitchen, wellness and fitness center. Outdoor space includes a covered sitting area at the covered entrance and open patio. Further, Petitioner will share a van with other VHI communities and provide residents with transportation off-site facilities and services such as shopping, religious, community or recreational facilities, and medical services. The Hearing Examiner finds that this standard has been met.

(2) *Retail facilities may be included to serve exclusively the residents of the building.*

Conclusion: Not applicable. Petitioner does not propose any retail facilities on site.

(3) *The application must contain a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.*

Conclusion: Technical Staff reports Petitioner provided this information with the application.

(4) *Construction is subject to all applicable Federal, State and County licenses or certificates.*

Conclusion: A condition requiring compliance is recommended in Part V. of this report.

(h) *Provisions governing facilities approved prior to March 7, 1990:*

(1) *A housing facility for senior adults or persons with disabilities existing before May 6, 2002, is a conforming use and structure, and may be continued in accordance with the terms and conditions of the special exception grant. Modifications may be approved that are in compliance with the special exception standards in effect at the time the modification is filed. If damaged, the facility may be rebuilt, repaired or reconstructed as it existed on May 6, 2002.*

(2) *A housing facility for senior adults existing on March 7, 1990, or for which a petition was approved prior to March 7, 1990, located on property containing at least 85 acres of land, may be extended, enlarged, or modified in accordance with the special exception standards in effect prior to March 7, 1990.*

Conclusion: Not applicable.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) *Development Standards. Special Exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or Section G-2.*

Conclusion: The discussion and table provided in the previous section, Part IV.C (c) of this report, demonstrates that the proposed use complies with all the applicable development standards. Exhibit 38, p. 16.

(b) *Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As discussed above, the applicable parking standards for the number of parking spaces have been met. Technical Staff found that the requirements for setbacks, shading and landscaping of parking facilities provided for in Article 59-E have also been met. Exhibit 38, pp. 17-18. The Detailed Preliminary Plan (Exhibit 43) and the Preliminary Landscape Plan (Exhibit 47) support this conclusion. Based on this, the Hearing Examiner finds that the parking requirements of this section have been satisfied.

(c) *Minimum frontage * * **

Conclusion: Not applicable.

(d) *Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not*

approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: As discussed in Part II. E of this report, the property is subject to the Montgomery Forest Conservation Law. The Planning Board approved a PFCP for the entire site (12.79 acres) with the Mandatory Referral (#MR2009742) for the police station on December 16, 2010. At that time, the Planning Board required amendment of the PFCP and a separate FFCP for each phase of development. The proposed senior housing facility is Phase II. Petitioner amended the PFCP to incorporate the proposed 105 unit senior housing facility within the existing Third District Police Station site. In a memorandum dated October 2, 2014, Environmental Technical Staff found the proposed amendment meets the Planning Board's conditions of approval for MR2009742 (Phase I) and recommended Planning Board approval with conditions. Exhibit 39. Petitioner submitted a Revised Final Forest Conservation Plan (Exhibit 49). Since this case must go through subdivision, the Planning Board will review the final forest conservation plan at that time. The following condition has been recommended in Part V of this report:

The proposed development must comply with the conditions of the Amended Preliminary Forest Conservation Plan, until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

*(e) **Water quality plan.** If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Since the subject site is not in an SPA, this provision is inapplicable to this case.

The Stormwater Management Concept Plan was approved by DPS on December 6, 2013. Exhibit 38, p. 18.

(f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: Petitioner proposes a monument entrance sign measuring 10' x 6'9" for a total of 67.5 square feet in size. The sign will be located at the southeastern corner of the site near the vehicular entrance to the property and will be illuminated from the top. The light fixture will hang over the top directing the light on the sign. Technical Staff found that the lighting will comply with the requirements of Section 59-F-4.1(e). Petitioner will need to obtain a sign permit and variance from the Sign Review Board. The Hearing Examiner recommends the following condition in Part V of this report:

Petitioner must obtain a permit for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform to all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

(g) **Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As mentioned above, Technical Staff and the Hearing Examiner concluded that the residential character of the subject site will be maintained, given the architectural design and materials used to create residential character and scale, the forest buffer, setbacks and landscaping. Technical Staff found that the "proposed building provides a transition between the White Oak Shopping Center, the Maryland US 29 corridor, the Sunrise Assisted Living Community, and the residential community

locate to the rear.” Exhibit 38, p. 19. The Hearing Examiner agrees and finds that the proposed building will thus be compatible with the neighborhood.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: Technical Staff found that the proposed wall-mounted and pole-mounted light fixtures “have been designed to be unobtrusive and consistent with the residential use of the property.” Exhibit 38, p. 19. Technical Staff found that the proposed lighting will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard along the property lines. Petitioner’s photometric study lighting plan supports this conclusion. Having no evidence to the contrary, the Hearing Examiner finds that the proposed lighting meets the above standard.

Based on the record in this case, the Hearing Examiner concludes that Petitioner has satisfied the general and specific requirements for the special exception it seeks. In sum, the domiciliary care home use proposed by Petitioner should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2873, seeking a special exception to construct and operate housing and related facilities for senior adults and persons with disabilities at 1090 Milestone Drive, Silver Spring, Maryland, be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in this report;
2. The maximum allowable number of units must not exceed one-hundred and five (105) units (80 one-bedroom units and 25 two-bedroom units);
3. A maximum of four employees will be present on site at any one time and the hours of operation for staff will be from Sunday to Saturday, 8:30 a.m. to 5:00 p.m.;
4. Except in emergencies, regular deliveries are limited to Monday through Friday, 8:30 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 5:00 p.m., and trash pick-up is limited to Monday through Friday, 9:00 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m.;
5. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code; if changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Board of Appeals;
6. At Preliminary Plan, the Applicant must submit a traffic study for the entire site to satisfy Local Area Transportation Review (LATR) test;
7. The Applicant must coordinate the design plans with the Maryland State Highway Administration (SHA) regarding their Capital Transportation Program (CTP) Project M08875170, for a US 29, Columbia Pike Interchange at Stewart Lane;
8. The Applicant must provide one inverted-U bike rack for two bikes, or the equivalent, in front of the main entrance. The final location may be modified at Preliminary Plan review;
9. Prior to the issuance of building permits for affected units, the Applicant must provide the following to Staff: Certification from an engineer that specializes in acoustical treatment that the building shell will attenuate the projected exterior noise levels to an interior level not to exceed 45 dBA, Ldn, as identified in the noise analysis report dated October 25, 2013;
10. Prior to the issuance of Use and Occupancy Certificates, the Applicant must provide the following to Staff: Certification from the builder that the facility is constructed in accordance with recommendations of an engineer who specializes in acoustical treatment that the projected exterior noise levels will be maintained to an interior level not to exceed 45 dBA, Ldn, as identified in the noise analysis report dated October 25, 2013;
11. The proposed development must comply with the conditions of the Amended Preliminary Forest Conservation Plan, until approval of the Final Forest

- Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan;
12. Applicant must satisfy the requirements Section 59-G-2.35(a) as evidenced by a written agreement with the Department of Housing and Community Affairs prior to commencement of construction of the proposed senior housing facility;
 13. Petitioner must obtain a permit for the proposed monument entrance sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform to all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board;
 14. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: February 11, 2015

Respectfully submitted,



Tammy J. CitaraManis
Hearing Examiner

APPENDIX

Summary of Testimony

The hearing was held on October 17, 2014. Petitioner, Victory Housing, Inc., (VHI) was represented by Jody Kline, Esquire, who presented four witnesses: 1) James A. Brown, Jr., President of VHI; 2) Kevin D. Mack, a site design and land planner; 3) Bruce Mongrain, an architect; and 4) Chris L. Kabatt, a traffic engineer.

Petitioner submitted an Affidavit of Posting (Exhibit 42). Mr. Kline gave a brief overview of the various land uses surrounding the property as shown on the Zoning Vicinity Map (Exhibit 11(a)). He also advised, as outlined in paragraph two of the Statement of Operations (Exhibit 3(a)), that Petitioner had formed a single-purpose entity and wholly subordinate affiliate of VHI named “Victory Crossing, LP” (VC). Mr. Kline noted that Petitioner, through the testimony of Mr. Brown, wished to amend the original application to substitute VC for VHI as the Petitioner in this case. T. 9-16. [Petitioner subsequently filed an Amended Petition for Special Exception to reflect this substitution (Exhibit 59(a)).]

1. James A. Brown, Jr. (T. 24-48):

Mr. Brown testified that he is the President of VHI which is the nonprofit housing arm of the Catholic Archdiocese of Washington, specializing in the development and operation of affordable housing with an emphasis on senior housing. There are approximately 30 affordable housing communities within the metropolitan area and VHI operates 15 communities within Montgomery County. T. 24-25.

Mr. Brown confirmed Petitioner’s request to amend the Petition to substitute VC for VHI as the Petitioner in this case. He explained that VC is an affiliate organization of VHI and partnership, the creation of which is necessary to utilize low-income housing tax credits. VHI will be the controlling entity for VC and he and VHI will be responsible for ensuring compliance with any terms and conditions associated with the granting of the special exception. Mr. Brown

accepted the findings and conclusions stated in the Technical Staff Report (Exhibit 38) and agreed to comply with the conditions stated therein and as modified by the Planning Board (Exhibit 40). T. 25-26; 37-38.

Mr. Brown testified that Montgomery County officials approached VHI to consider submitting a proposal to build an affordable senior housing community on 2.51 acres of a 12.79 acres tract of land owned by the county located at the crossroads of New Hampshire Avenue and Route 29 in White Oak. The original plan was for the purchase and sale of the property. However, the contract was converted into a 75 year ground lease. VC will be the lessee. T. 27.

Petitioner held 5 community meetings with the adjacent residential community known as “Sherbrooke Woods.” He stated they developed a good working relationship with the community and as a result of the input they received from the community they reduced the height of the building from 5 to 4 stories and reduced the number of units from 123 to 105. The community sent a letter of support for the proposed senior housing project. (Exhibit 38, Attachment 4) He further noted that the architecture and materials for the building are designed to be compatible with the adjacent residential neighborhood. T. 28.

The building will have 105 units which will include 80 one-bedroom units and 25 two-bedroom units with a total occupancy of 158. The building is intended for independent seniors who are typically still in good health and in their 70’s. There will be a wellness center on-site for a visiting nurse who will periodically come in during non-peak hour periods. The visiting nurse will provide limited services likely to include blood pressure and weight checks and nutrition counselling as needed. There will be no nurse on staff as this will not be an assisted living facility. Mr. Brown hopes to add services as the population ages in place but notes that residents in need of daily medical and personal care services (e.g., meals, housekeeping, etc.) can be referred to one

of their 6 assisted living communities in the area to meet their needs. Additional services typical for an independent senior housing facility will include guest speakers, entertainers, exercise classes or other activities depending upon resident need and interest. There will be no more than 4 staff on-site. The staff will include a manager, assistant manager, maintenance manager and activities director. The hours of operation will be from 8:30 a.m. to 5:00 p.m. every day of the week. There will be no staff after hours or living on-site. T. 29-30; 37-41.

VHI's mission is to provide affordable housing. He noted that 10 units will be market rate and the remaining 95 will be affordable to individuals making at or below 60% of the average median income. Mr. Brown noted that the percentage of units in the different income level categories (e.g., very-low, low and moderate income) as described in the Technical Staff report (Exhibit 38, p. 20) were accurate at the time this information was provided to staff. However, the actual percentages for each income level will likely change and are to be determined by agreement with the Department of Housing and Community Affairs (DHCA). VC will enter into an agreement with DHCA to determine the exact percentages for each income level closer to the time they secure financing for the project. The agreement with DHCA will be required prior to the issuance of a building permit. Petitioner will be subject to the mandates of the low-income housing tax credit program to ensure the units will remain affordable for a long time. In sum, Mr. Brown reiterated that VHI is committed to provide and follow the affordable housing mandates imposed by the county which must be met before the county will enter into the 75 year ground lease with VC. T. 31-34. [Mr. Kline agreed to an additional condition of approval that Petitioner will have an executed agreement with DHCA in compliance with Section 59-G-2.35. T. 151-153.]

Based on his experience overseeing the operation and development of other senior housing communities, Mr. Brown believes the location of the property at the crossroads of Route 29 and

New Hampshire Avenue is “terrific” for the proposed affordable senior housing community given its close proximity to shopping, transit, and other amenities. The nearest residential home is approximately 230 feet from the proposed building to the north which is separated by a forested area and Seton Road. The building is further insulated by the secure parking lot for the police station to the west. Mr. Brown pointed out that because of the downward slope of the property toward Route 29, the building height will be approximately the same height or possibility no more than three feet higher than the single-family homes to the north. The proposed senior housing is a residential use which will not have an objectionable nature (i.e., fumes, light, noise, activity, etc.) to the surrounding neighborhood. Based on these factors, Mr. Brown believes the location and proposed use is in harmony and compatible with the adjacent residential neighborhood and does not violate the recommendations in the Master Plan. T. 35-37; 43-48.

2. Kevin D. Mack (T. 49-111; 135-136):

Kevin Mack is a licensed landscape architect with 27 years of experience. He testified as an expert in land planning and site design. He is a senior land planner and landscape architect for Dewberry Consultants, LLC. He supervised the design of this project and was involved in the development of the Third District Police Station (Police Station). T. 49-56. [Mr. Kline explained that Petitioner filed a Preliminary Plan and Subdivision for the entire property which reflects three phases of development (e.g., Phase I – police station; Phase II – senior housing; and Phase III – future interchange at Stewart Lane) showing a single lot and Parcel A. T. 74.]

Mr. Mack described the property as shown on the Preliminary Plan - Existing Conditions (Exhibit 45) and Overall Preliminary Subdivision Plan (Exhibit 46). [Mr. Kline noted that Exhibit 45 is the same as Exhibit 14.] Mr. Mack testified that the 2.51 acre lease area (Lease Area) for the proposed senior housing building is part of a 12.79 acre tract of land owned by Montgomery

County. The county property is located in the northeast quadrant of New Hampshire Avenue and Route 29 (Property). The police station is located in the western portion of the property. The lease area is east of the police station secure parking lot and bound by Milestone Drive, a service road running parallel with Route 29 to the southwest. Separate entrances to the police station and lease area are off Milestone Drive. To the north and northwest of the county's property is a forest conservation area, a private road (Seton Road) and a single-family subdivision (Sherbrooke Woods). The northeast section of the property is an area noted in the Master Plan for a future split-grade interchange for Stewart Lane and shown on the Preliminary Plan as a right of way reservation.

Mr. Mack testified that the property was previously used as a farm. The northern half of the property is forested. There is an existing and recorded forest conservation buffer located to the north and west of the police station. Along the northwest side of the police station is a common driveway off of Milestone Drive with access to New Hampshire Avenue and three single-family homes and a vacant lot. To the northwest is an existing senior housing facility, Sunrise House. He characterized the remaining forest on the property as "low-quality regenerated forest" that is inundated with invasive species primarily located in the lease area to be cleared for the proposed senior housing building. T. 57-62.

Mr. Mack testified that when the Sherbrooke Woods Subdivision was developed the only exit from the development was a right-turn only onto New Hampshire Avenue. As a temporary measure, Seton Road was created over private property (not owned by the county at that time) to establish a connection and public-use easement to Milestone Drive. The road was never dedicated and is currently owned by DGS. It connects Sherbrooke Woods Lane, a dedicated 60-foot-wide right of way, with Milestone Drive which is controlled by a stop sign. Petitioner's original plan

was to relocate Seton Road. However, Mr. Mack explained that the Sherbrooke Woods community was adamant that the Seton Road connection remain in perpetuity to maintain the connection with Milestone Drive. T. 62-64; 163.

Mr. Mack testified that the future interchange at Stewart lane was established in the White Oak Master Plan. Petitioner's right-of-way reservation is based on a preliminary study conducted by the State Highway Administration (SHA) which shows a modified diamond interchange at this location. The raised and split exit ramps will cross over Route 29 and loop back to Milestone Drive to serve local traffic on both sides of Route 29. Mr. Mack noted that there are no funds or a six-year plan for design or construction of this intersection project. T. 65-66. The intersection is controlled by a signal. T. 163-164.

Mr. Mack reported that they did a preliminary and final forest conservation plan as part of the development of the police station. The forested area is west and northwest of the police station and along the northern section from the single-family homes to Seton Road. The existing forest area was cleaned of invasive plant species and new trees were planted a year ago. The majority of the large trees (26 to 42 inch diameter) are located along the north side of the property. The area north of Seton Road includes pines and other mixed evergreens with a height ranging from 15 to 40 feet tall. The 65 foot forested area south of Seton Road and along the east side of the lease area includes 45 to 55 foot tall deciduous trees with a mix of evergreen. He believes the existing forested areas provide a good buffer between the proposed development and single family homes to the north. T. 66-68.

The existing wooded area of pines trees located along the east side of the property will remain until the future interchange is developed. The distance between the east side of the building and the future interchange is approximately 73 feet. The forest and vegetative buffer will extend

along the rear of the building to the north and east with additional landscaping along the southwest portion of the building which runs parallel with Milestone Drive and as shown in the Preliminary Landscape Plan (Exhibit 47). Mr. Mack provided the history behind approval of the Revised Final Forest Conservation Plan for the lease site (Exhibit 49). T. 70-77; 89-95.

He described the site and building layout as shown on the Preliminary Detailed Plan (Exhibit 43). The “J” shape of the building was designed to provide a noise buffer between Route 29 and the main entrance and outdoor recreational spaces (e.g., covered entrance with outdoor seating and an open space patio) which are located towards the northern end of the building and facing west. The building also provides noise buffering to the single family home located to the north.

Petitioner has a reciprocal ingress/egress easement with the county to provide access to the site via the two public access driveways off of Milestone Drive. Access to the police station is through a security gate located just off the second entrance to the shared driveway to the northwest. The entrance to the lease area parking lot is off the first entrance to the shared driveway on the northeast side. A security fence and wall is located just west of the lease area parking lot. The lease area parking lot loops to the north and west of the building back to the shared driveway. There is head-in and double-loaded parking along both sides of the parking lot driveway. The parking lot provides 80 spaces which exceeds the required 79.7 spaces required for the 105 unit building. This includes 10 spaces located within the lease area and along the east side entrance to the shared driveway off Milestone Drive. The remaining parking spaces on the shared public access driveways will be restricted for visitor parking for the police station. However, parking on the grass shoulder on Milestone Drive will be permitted. There is a drop-off and loading area at

the covered entrance to the building. The utilities, dumpster and emergency generator for the building are located north of the parking lot loop. T. 77-80; 85; 87; 108-110.

The site will be developed in accordance with the Environmental Site Design guidelines (ESD) for storm water management. The concept storm water management plan for the property was approved by Department of Permitting Services (DPS) in December 2013 (Exhibit 48). Mr. Mack identified the five micro bio-retention facilities planned for the site as shown on the Detailed Preliminary Plan (Exhibit 43). The micro-filters will be heavily vegetated with native perennials and grasses and surrounded with a mix of native shrubs and a canopy of native trees. These facilities are an integral part of the site design and serve to enhance the residential character of the facility.

The parking lot island serves to break up the potential mass of parking spaces into a single-row parking lot loop and complies with the special condition for senior housing that the parking lot be landscaped to cover 30% of the paved area. He pointed out that while these bio-retention facilities are maintained and mowed, they provide the effect of a visual extension of the forest conservation buffer along the north and side of the lease area. As noted in the landscape plan (Exhibit 47), there will be a row of ornamental cherry trees along Milestone Drive which will connect and provide visual continuity with the existing landscaping and storm water management facilities of the police station. T. 80-84; 87-88.

An existing sidewalk extends along Milestone Drive from Seton Drive to New Hampshire Avenue. The site includes sidewalk connections along the front of the building to the south at Milestone Drive and to the north along the police station exit at Seton Drive. Mr. Mack noted that based on comments from DPS, Petitioner will move the proposed sidewalk located on the north side of Seton Drive (not within the lease area) will be relocated to the south side. This will

eliminate the need for a mid-block crosswalk across Seton Drive at the police station exit without affecting the desired pedestrian connectivity to the existing sidewalk system of the adjacent residential community and other services and amenities along New Hampshire Avenue, including the public library and the shopping center. T. 85-86; 103-107.

Mr. Mack testified that the proposed lighting fixtures for the site, as shown on the photometric lighting study (Exhibit 6(b)), meets the requirements of the code. The wall-mounted “down-light” fixtures on the building will be located approximately 10 feet off the ground. The fixtures include a “house side shield” which blocks the light into the building as well as prevent light spillage beyond the perimeter of the lease area. The lighting is residential and compatible with the adjacent neighborhood. T. 96-100.

Mr. Mack confirmed that sewer and water to the site will be adequate to serve the proposed use. He explained that the “water will be a new service that will be taken from the existing water line in Milestone Drive, and [the] sewer service will be a branch stub off of the sewer service that serves the police station[.]” In Mr. Mack’s opinion, the proposed use satisfies all the development standards required under the code. Further, the proposed use will not be detrimental to the use and enjoyment of properties in the surrounding neighborhood and will not adversely affect the health, safety and welfare of the residents, visitors or people who live near the site. T. 101-103.

During Mr. Mongrain’s testimony, Mr. Mack provided a description of the size and location of the public facility sign for the police station as shown on the Preliminary Plan (Exhibit 43). It is a two-faced single panel sign that is approximately 7’ x 5’ and located west of the second shared entrance off of Milestone Drive. T. 135-136.

3. Bruce Mongrain (T. 112-150):

Bruce Mongrain is an architect licensed in Maryland and Washington, DC, with 29 years of experience in building construction and architectural design. He is a member of the AIA and a member of the CSI (Construction Specifications Institute). He testified as an expert in architecture. Mr. Mongrain is the lead architect for this project and has been employed with Grimm and Parker Architects for the past 10 years. T. 112-115.

Mr. Mongrain testified that he has worked on other Victory Housing, Inc., projects. The proposed building was designed to be compatible with the adjacent residential homes and incorporated materials and other features of the traditional Craftsman style. He described the residential features of the building as shown in the color photographs of the exterior of the building in Exhibit 51 (Building Elevations). The west elevation shows the main “covered” entrance to the building which provides an outdoor seating area for the residents. To the right of the covered entrance is an open patio area. The interior doors into the main entrance of the building are secure and access is via a telephone entry system. T. 116-120.

The building materials include manufactured stone, vinyl siding, fiber cement panels, fiberglass single-hung windows and decorative railings. He noted the use of different textures and two colors for the vinyl siding emphasize the vertical “bump-outs” to provide a visual break in the building’s façade provides for a more interesting and residential looking building (Exhibit 51). The arched roofline and Juliet balconies accentuate the main entrance and upper levels of the building. The pitched roof not only gives the building a residential appearance it provides space to hide the mechanical systems (i.e., condensing units) that would normally be on the ground along the exterior of the building. The exterior wall system (2 by 6 framing) will be insulated with foam and covered with an insulating sheathing on exterior of the building. The glass and frames for the single-hung residential looking windows are insulated for sound attenuation. The shape of the

building provides the main entrance and patio area with protection from the environmental and noise impacts from Route 29 (Exhibit 43). T. 121-124; 136-137; 140-142.

An on-site field noise study was conducted to determine the impact of the traffic noise from Route 29 and New Hampshire Avenue on the interior noise levels of the building which cannot exceed 45 decibels. The study revealed that the traffic noise day-night decibel levels exceed 65 in the southeast portion of the building which is closest to Route 29 (Exhibit 38, Attachment 3). The acoustical consultants (Exhibit 38, Attachment 3) evaluated the buildings construction and found that the exterior wall system sections were given a sound transmission rating (STC) of 39 and the stone section a STC rating of 45 which Mr. Mongrain stated was very good for sound attenuation. However, it was recommended that the windows along the east side of the building (facing Route 29) be upgraded from the standard 23-STC rating to windows with a minimum 28-STC rating to ensure interior noise levels do not exceed 45-decibels once the units are complete. He confirmed that the building will be inspected for compliance with the findings of the noise study and the conditions of approval in the Technical Staff report (conditions nos. 9 and 10). T. 125-129; 147-150.

The building will be four stories or 53 feet to the peak of the roofline as illustrated in Exhibit 51 (Building Elevations). The first floor will have 10 foot ceilings and the remaining floors will have 9 foot ceilings. He testified that the height of the building is visually mitigated by the sloping topography of the lot. As a result, the four story building appears to be approximately three feet higher than the adjacent single-family homes. The forested area and extensive landscaping around the building also provide a visual buffer. T. 129-131; 144-147.

The monument sign for the facility will be constructed of concrete block with stone facing in the shape of a "V" as shown on Exhibit 16. The sign will be located on the southeast corner or

first entrance to the shared driveway off Milestone Drive as shown on Exhibit 43 (Preliminary Plan). The sign will be illuminated from the top by a LED light. He referred to the light fixture as a “Shepard’s hook” that hangs over the face of the sign thereby directing the light downward. Petitioner will seek a variance for the sign from the Sign Review Board. [Mr. Mack provided details for the police station sign as a comparison.] T. 131-136.

Mr. Mongrain testified that in his expert opinion the building design, materials used to construct the building and lighting will give it a residential appearance that is compatible with and in harmony with the adjacent residential community. T. 138-143.

He described the interior of the building. The one-bedroom units will be 681 square feet and the two-bedroom units will be 903 square feet. The building will also include 6 handicapped accessible and 2 visual and hearing impaired units. Residents will have access to the following amenities located on the first floor: a large multipurpose room, sunroom, arts and crafts room, wellness center, library, and fitness center. Office space for the limited staff is also located on the first floor. T. 143-144.

4. Chris Kabatt (T. 155-172):

Chris Kabatt is a traffic engineer licensed in Maryland and employed with Wells and Associates. He testified as an expert in traffic engineering and transportation planning. Based on his review of the Preliminary Plans (Exhibit 43) for this project, Mr. Kabatt testified that the shared driveway off Milestone Drive and interior circulation system for the property is safe, adequate and efficient for the proposed use. T. 155-159.

He testified that his firm provided a traffic statement for the proposed use in July 2013 (Exhibit 10). [Mr. Kline added that they did not anticipate that the property would be subdivided when the traffic statement was issued. The traffic statement was based on the proposed use and

did not include the entire 12.79 acre property.] T. 168. Since that time, the police station has opened and the subdivision review for the entire property is in process. Transportation Staff advised that when the subdivision plans are reviewed for adequate public facilities Petitioner must include the entire property to determine whether a traffic study is required. After the police station opened, as instructed by staff, Wells and Associates did a driveway count of the vehicles entering and exiting the police station during peak hours in June 2014 and determined that a traffic study is required. He testified that they are in the middle of completing the subdivision traffic study. T. 160-161; 170-172.

Recognizing that the traffic study was still being conducted, Mr. Kline asked Mr. Kabatt to provide an update on the progress of the study. He testified that intersection at Route 29 and Stewart Lane “operates beyond a congestion standard.” He stated this was an existing condition that will require them to provide some type of mitigation to be determined during the subdivision review process. Possible mitigation options include geometric improvements at the intersection or other non-auto improvements such as sidewalks or payment to a capital facilities project. Seton Road terminates at Milestone and is controlled by a stop sign. Stewart Lane at Route 29 is controlled by a signal. [Mr. Kline noted that construction traffic will access the property via Milestone Drive off Stewart Lane and Route 29.] T. 161-167.