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I. STATEMENT OF THE CASE

Filed on September 2, 2014, the Petitioner, Mt. Jezreel Baptist Church, seeks a special exception for housing and related facilities for senior adults under §59-G-2.35 of the *2004 Zoning Ordinance*.¹ The subject property is located at 420 East University Boulevard, Silver Spring, Maryland, and is zoned R-60.

OZAH issued notice of a public hearing for February 6, 2015. Exhibit 15(b). On December 5, 2014, the Petitioner requested an indefinite postponement of the hearing, which OZAH granted. Exhibits 16, 17. The Petitioner filed a motion to amend the petition on March 27, 2015, and shortly after, the Petitioner asked to reschedule the hearing to August 17, 2015. Exhibits 18 and 19. OZAH issued the Notice of the Rescheduled Hearing and Notice of Petitioner's motion to amend the petition on April 28, 2015.

Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report recommending approval of the special exception with nine conditions in June, 2015. On July 2, 2015, the Planning Board also recommended approval, adopting the conditions proposed by Staff. Exhibits 23, 24. In its recommendation, the Planning Board suggested that a publicly shared use path be provided along the southern property line and that the size of the patio be reduced to lower the height of the retaining wall.² Exhibit 24.

The Petitioner revised the design to reduce the size of the patio, which permitted a reduction in the size of the retaining wall on the southeastern portion of the site. Exhibit 25. OZAH issued notice of the amendment on August 7, 2015.

¹ All citations in this Report are to the *2004 Zoning Ordinance*.

² The shared pathway is not shown on the special exception plan and the Board agreed that a decision on whether to require it should be deferred to preliminary plan review. Exhibit 24. Any change to the plan incorporating a shared bike path would require a modification to the special exception site plan.

The public hearing proceeded on the date to which it was rescheduled (August 17, 2015). The Hearing Examiner left the record open until September 14, 2015, to permit the Petitioner time to submit a revised plan to Technical Staff for review. The Hearing Examiner also asked Staff to comment on corrected population counts for the facility submitted at the public hearing. T. 149.

The Petitioner submitted revised plans on August 26, 2015, and on September 14, 2015, requested to keep the record open to permit Staff more time to review the revisions. The record remained open until October 20, 2015. Exhibit 50. The Petitioner submitted additional revisions to the site plan on September 22, 2015, and Staff issued its Supplemental Report on October 16, 2015. Exhibits 51, 52. Petitioner filed a letter stating it had no comments on the Supplemental Report and the record closed on October 20, 2015. Exhibit 53.

II. FACTUAL BACKGROUND

A. The Subject Property

Located at 420 E. University Boulevard, the subject property contains approximately 3.18 acres that are part of a larger 9.73-acre site owned by Mt. Jezreel Baptist Church. It is located approximately 1,625 feet south of the intersection of University Boulevard and Franklin Avenue, as shown on the vicinity map (Exhibit 23, p. 1, below):



The larger parcel is home to both the church and an associated elementary school. Staff advises that the larger property currently consists of two unrecorded parcels. An unimproved right of way (i.e., Malibu Drive) is located along the southern property line. The 9.73-acre parcel is rectangular in shape, with approximately 500 feet of frontage on University Boulevard. The southern property line also has 110 feet of frontage on Malibu Road, a portion of which is an unimproved “paper street.” Exhibit 51(b).

The church and the school occupy the western side of the larger property, closest to University Boulevard. Access is provided by a circular driveway with parking along the sides. Staff advises that the primary entrance is located at the southwestern corner of the site. There are secondary access points further north on University Boulevard: a right-in, right-out entrance at the northwest corner, and a right-in only from University Boulevard at approximately the mid-point of the property frontage. Exhibit 23, p. 4.

The 3.18-acre special exception area is located on the eastern, undeveloped portion of the property, which is relatively flat with existing forest and vegetation along the northern, eastern and southern lot lines. There are steep slopes ranging from 15% to 25% on the southern and eastern property lines that prevent physical access from Malibu Drive. Exhibit 23. An aerial photograph (Exhibit 23) showing existing conditions on the 9.73 acre parcel, is shown on the following page.

B. Surrounding Neighborhood

Compatibility of the special exception is generally determined with reference to those properties that will be directly impacted by the proposed development. The area that will be impacted, or the “surrounding area or neighborhood” is defined and then characterized in order to see whether the special exception will be compatible with the area.



**Aerial View of Subject Property
Exhibit 23, p. 4**

Staff defined the boundaries of the neighborhood as Franklin Avenue to the north, Northwest Branch Stream Valley Park to the east, Piney Branch Road to the south, and Long Branch Parkway to the west (Exhibit 23, p. 4, shown on the following page).

Commercially zoned properties are clustered at the intersection of University Boulevard and Piney Branch Road, at the southern end of the neighborhood. Properties there are zoned Commercial/Residential Town (CRT) with floor area ratios between 1.5 and 2.5. Staff reports that these are developed with commercial uses. There are two multi-family high-rise buildings zoned R-10 located along Piney Branch Road to the south. According to Staff, the neighborhood also contains several institutional uses, including elementary schools and churches. *Id.* There are a number of special exceptions in the surrounding area, listed below (Exhibit 23, p. 9):

- S-79 for non-residential medical practitioner approved on May 9, 1972;
- S-631 group residential facility approved August 2, 1978;
- S-763 for a service organization approved January 21, 2981;
- S-844 for a veterinary hospital approved November 24, 1982;
- S-952 for an accessory apartment approved on August 1, 1984;
- S-1081 for an accessory apartment approved on July 30, 1986;
- S-1424 for senior housing approved July 28, 1987;
- S-S-1718 for a boarding house approved on October 10, 1989; and
- S-2639 for a telecommunication facility (monopole) approved July 27, 2005.

The Petitioner's expert in land planning and landscape architecture, Mr. Kevin Foster, agreed with Staff's delineation of the boundaries of the surrounding area. He opined that the neighborhood is characterized as primarily residential, with some commercial uses toward Piney Branch Avenue, several institutional uses, and the park property to the east. Existing homes in the neighborhood were mostly built in the 1950's and 1960's with some infill development in the 1970's that included ranch style or split-level homes. Subsequently, there's been a lot of infill development with some townhouses and some two and a half story single-family detached homes, along with institutional uses such as churches and schools. T. 67. Mr. Foster also pointed out that there are three-story townhouses directly to the south of the property as well as three-story houses on the cul-de-sac just to the south of that. T. 65-66.

The Hearing Examiner finds that the neighborhood consists primarily of a mix of residential uses, including single-family attached and detached homes and multi-family uses further to the south, where there is a concentration of multi-family and commercial uses. The Hearing Examiner agrees with Mr. Foster that the character of the single family attached and detached homes vary depending on when they were built; newer homes tend to be larger and as many as three stories in height.

C. The Master Plan

The property is subject to the *2000 East Silver Spring Master Plan* (Master Plan or Plan). The Plan does not mention this specific property, although it confirms the R-60 Zone. Exhibit 23, p. 10. The Plan does contain guidelines relating to special exception uses along University Boulevard (*Plan*, p. 29):

Land uses next to commercial centers along New Hampshire Avenue and University Boulevard, including special exceptions, should follow these site development guidelines:

1. Screening from residential uses should be required for existing buildings and parking;
2. New or expanded structures should be sensitive to the character and the scale of the adjoining neighborhoods. Buildings should not be significantly larger than nearby structures.

Staff concluded that the senior housing facility conformed to these guidelines because it is adequately screened from nearby residential uses and the architectural style is in keeping with the character of the surrounding neighborhood. Exhibit 23, p. 10.

Mr. Foster opined that the proposed development meets the recommended guidelines in the Master Plan because the building and parking areas are screened from the nearby residential properties. The building's location behind the church screens it from University Boulevard and the afforestation and forest conservation areas surrounding the north, east and southern property

lines screen the building from adjacent residential communities. T. 65. In his opinion, the three-story building has a residential style consistent with the character of this part of Silver Spring, particularly because there are three-story townhouses directly to the south of the property, rendering the proposed building consistent with the scale of the existing neighborhood. T. 65-66.

D. Proposed Use

The Petitioner seeks approval of an independent living facility for individuals aged 62 or older containing 56 one-bedroom apartments and 19 two-bedroom apartments for a total of 103 residents.³ T. 99-101.

Reverend Eldridge Spearman described the project and why the church considers senior housing to be part of its mission. He testified that the church was originally organized in 1873 in the District of Columbia as a Baptist congregation. It moved to the subject property in 1996. The property was formerly a synagogue and they have retained some of the character of the synagogue in their sanctuary. Their mission is founded upon six pillars, which include service to the community, providing a house of worship, evangelism, education (including supporting members of the congregation who attend college and neighborhood schools), economic development, and pastoral care. T. 32-33.

The congregation runs a number of mission projects, both at home and abroad, as part of their evangelism mission. He stated they have mission partners in Liberia, South Africa, Brazil, Kenya and Guyana. They are also sending a team to the Ninth Ward in New Orleans to help

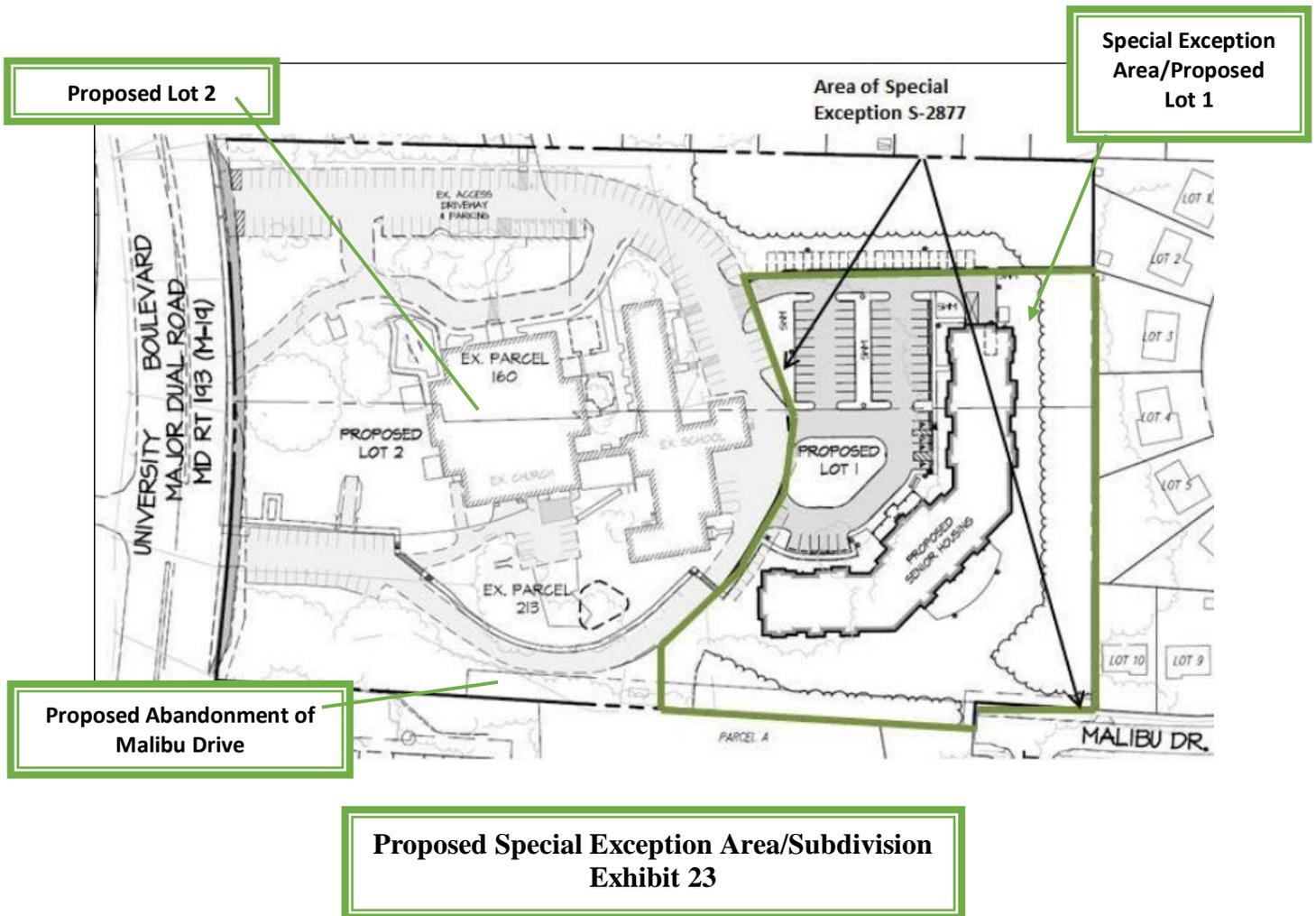
³ Ms. Donna Creedon, Senior Development Manager for Mission First Housing Corporation, explained that the original Staff Report limited the total number of residents to 86 because it assumed that all units would be one-bedroom. Mission typically assigns 1.15 person for each one-bedroom unit because there are some one-bedroom apartments that have a married couple or siblings living in them. Mission assumes that two individuals will occupy two-bedroom units. Ms. Creedon testified that, with 56 one-bedroom apartments, or 64 residents, and 19 two bedroom apartments, or an additional 38 potential residents, the total comes to 102 residents. T. 99-101. Staff concluded that the use proposed will have 103 residents, as the total comes to 102.4 when calculated according to the multipliers supplied by Ms. Creedon.

rebuild after Hurricane Katrina. In the immediate community, they provide support and services to people with a variety of needs. T. 33. Reverend Spearman testified that the congregation has a “sense” or a “spirit” of being actively engaged in the community as witnesses, and to support the needs of those in the neighborhood, as they perceive them. T. 34.

Because they have nine acres, the congregation looked at ways the property could be used to serve the community, according to Reverend Spearman. Another property nearby, the Korean Senior Housing Development, gave them the idea of serving the community by providing an affordable senior living facility. As a result, they began to look for a partner to help them develop senior housing, which he believes is a growing need. After reaching out to several potential developers, they chose Mission First Development Corporation (Mission First) to develop the property for affordable senior housing. T. 34.

Because the Petitioner does not wish to encumber all 9 acres of the larger property with financing for the senior housing, it proposes to subdivide the property into two lots. Exhibit 23, Attachment C. As noted, the special exception will occupy only approximately one-third of the existing 9-acre parcel; after subdivision, the subject property will be approximately 3.71 acres and the church’s property will be 6.55 acres. A graphic from the Staff Report (Exhibit 23, p. 5, on the following page) shows the relationship between the special exception area (proposed Lot 1) and the property to be retained by the church (proposed Lot 2).

When the property is subdivided, the Petitioner plans to request abandonment of the unimproved portion of Malibu Drive. Staff informs that this would add approximately 11,950 square feet to the subject property (proposed Lot 1). Failure to abandon Malibu Drive, however, does not impact the special exception approval. Exhibit 23, p. 11.



Mr. Logan Schutz, the Petitioner's expert architect, testified that his firm used several techniques to minimize the scale of the building and make it compatible with the surrounding residential community. He reduced scale of the building by providing a significant amount of residential articulation. He also enhanced its compatibility with the neighborhood by using exterior materials that replicate what exists in the neighborhood. A rendered elevation of the front of the building, provided by the Petitioner and included in the Staff Report, is shown on the following page (Exhibit 23, p. 6).



Rendering of Entrance to Proposed Elderly Housing

**Rendering of Front Entrance
Exhibit 23, p. 6**

According to Mr. Schutz, there are a lot of split level homes in the surrounding area, usually with gable roofs. Rather than having just a straight peaked roof line along the entire building, he steepened the roof pitch and raised the roof at the center by two feet to accentuate the entry. T. 77-78. The building will be approximately 40 feet high at its tallest point, above the entrance, and 38 feet high along the remaining portions. While the R-60 Zone normally limits building heights up to 35 feet, special standards governing housing for seniors permit a maximum height of six stories if the additional height is compatible with the general character of the neighborhood. Mr. Schutz opined that a flatter roof pitch would have looked much more commercial or institutional; the steeper pitch and higher height at the entrance breaks up the roof planes. There is additional articulation along the roof above the entrance, such as returning gables and bays. T. 92. Mr. Schutz testified that other buildings in the neighborhood, mostly institutional buildings, are taller than 35 feet. In his opinion, the additional height is compatible with the neighborhood. T. 92-93.

The three-story height also provides an appropriate transition between the church and the three-story townhomes to the south, in his opinion. T. 82-84.

The exterior materials will include a type of brick that is reminiscent of brick exteriors in the neighborhood. Cementitious panels break up the HardiePlank siding, which is also cementitious and almost maintenance free. They've included a large number of windows, many of the single hung because those are common in the neighborhood, to get lots of lights emanating from the use, and have alternated colors on the exterior to further break up the building's scale. T. 82-83.

As shown, the Petitioner also proposes a landscaped entry at the front entrance, with flowers that will be changed seasonally. Mr. Logan's firm has discovered that seniors like to sit out on the front porch and watch people come and go. They have had projects that back to lakes, and the first units that rent are those that face the parking lot rather than the lake. They also incorporate a rear patio extending off of the great room to allow parties or other events where people would like to go in and out. The alignment of the building will allow sun to hit both the entrance and the patio. T. 79-80. The rear of the building is articulated as well because the proposed landscaping and existing forest are deciduous, revealing the building during the winter. T. 92-93.

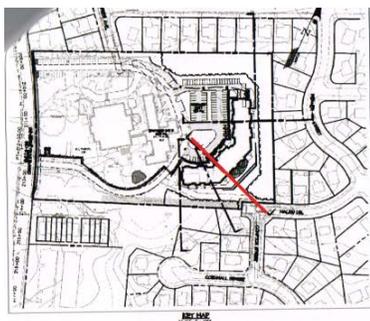
Both Mr. Logan and Mr. Foster testified that the building's "L-shaped" configuration and location behind the existing church further screen the use. Mr. Logan selected an "L-shaped" building to reduce the length of the corridors and to tuck it in behind the existing church without having a large mass visible from University Boulevard. From the southern access point on University Boulevard, one will see the only southern end of the building. If one uses the primary access in the southwest corner, one will begin to see the entrance only after proceeding further into

the site. T. 77. Mr. Foster testified that parking is screened from adjoining uses because it is separated from adjacent residential properties by the building and by reforestation and afforestation areas along the northern, eastern, and southern property lines. T. 53.

1. Site Plan

The special exception site plan includes only the area entitled “Proposed Lot 1,” highlighted in green on page 12 of this Report. Because the church, school and senior housing will be integrated on the site, the Petitioner also submitted an “Overall Site Plan” showing all the uses on both lots. These plans (Exhibits 51(b) and (c)) are shown on the following pages. A lighted sidewalk running from the senior housing facility to University Boulevard will provide a pedestrian connection to transit. Staff recommended a condition of approval requiring a public access easement covering the full width of the driveway to be shown on the preliminary plan to ensure access to the senior housing facility from University Boulevard (Exhibit 23, p. 2).

During its presentation to the Planning Board, Staff highlighted the impact of a retaining wall on the properties confronting the southern property line, shown on a previous version of the site plan. A graphic demonstrating this impact (Exhibit 28) from Staff’s presentation is below:



Section From Malibu Drive
Showing Building &
Retaining Walls



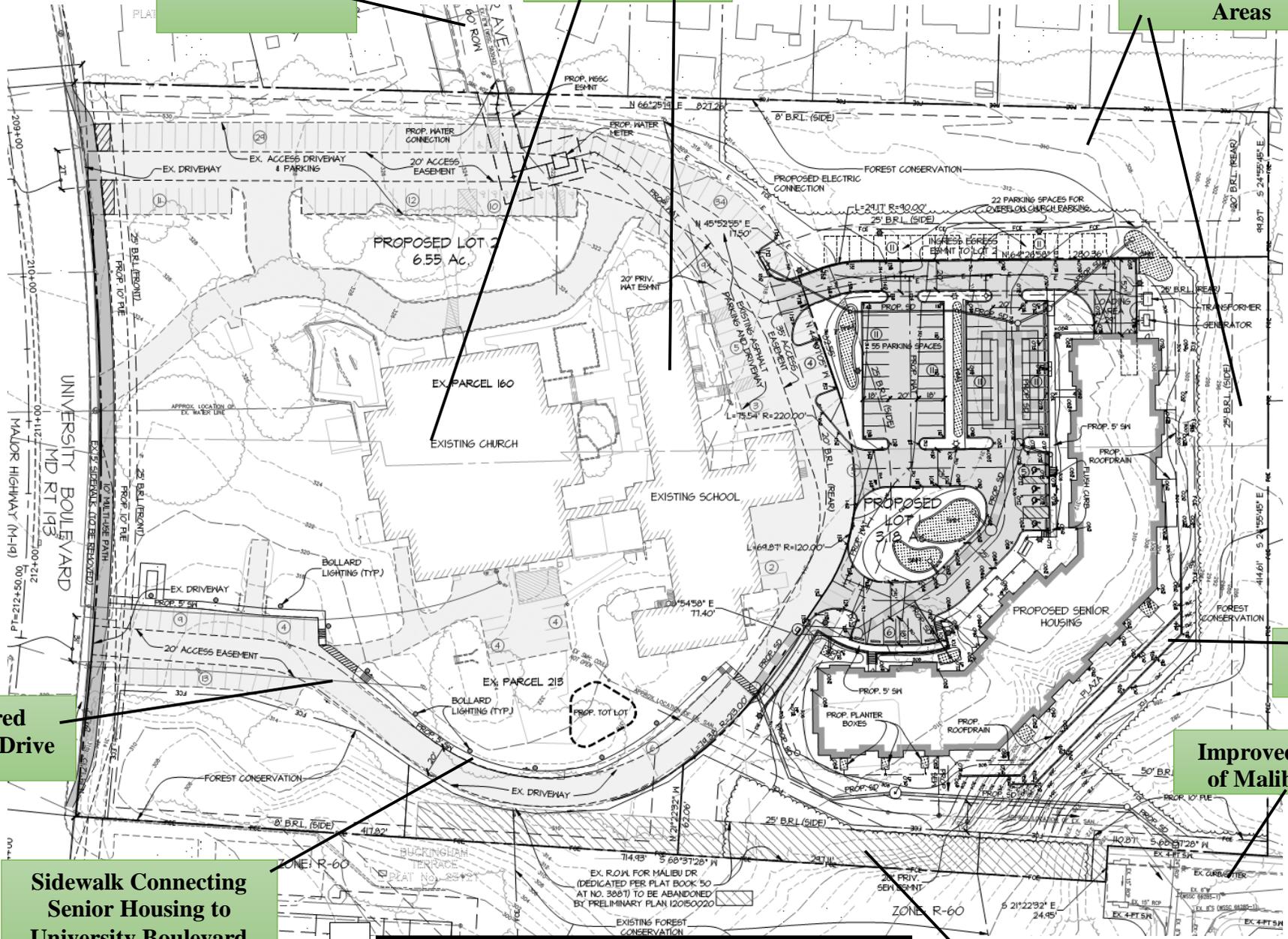
Greer Drive

Church/School
(Proposed Lot 1)

Forest Conservation
Areas



NORTH



Shared
Access Drive

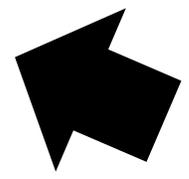
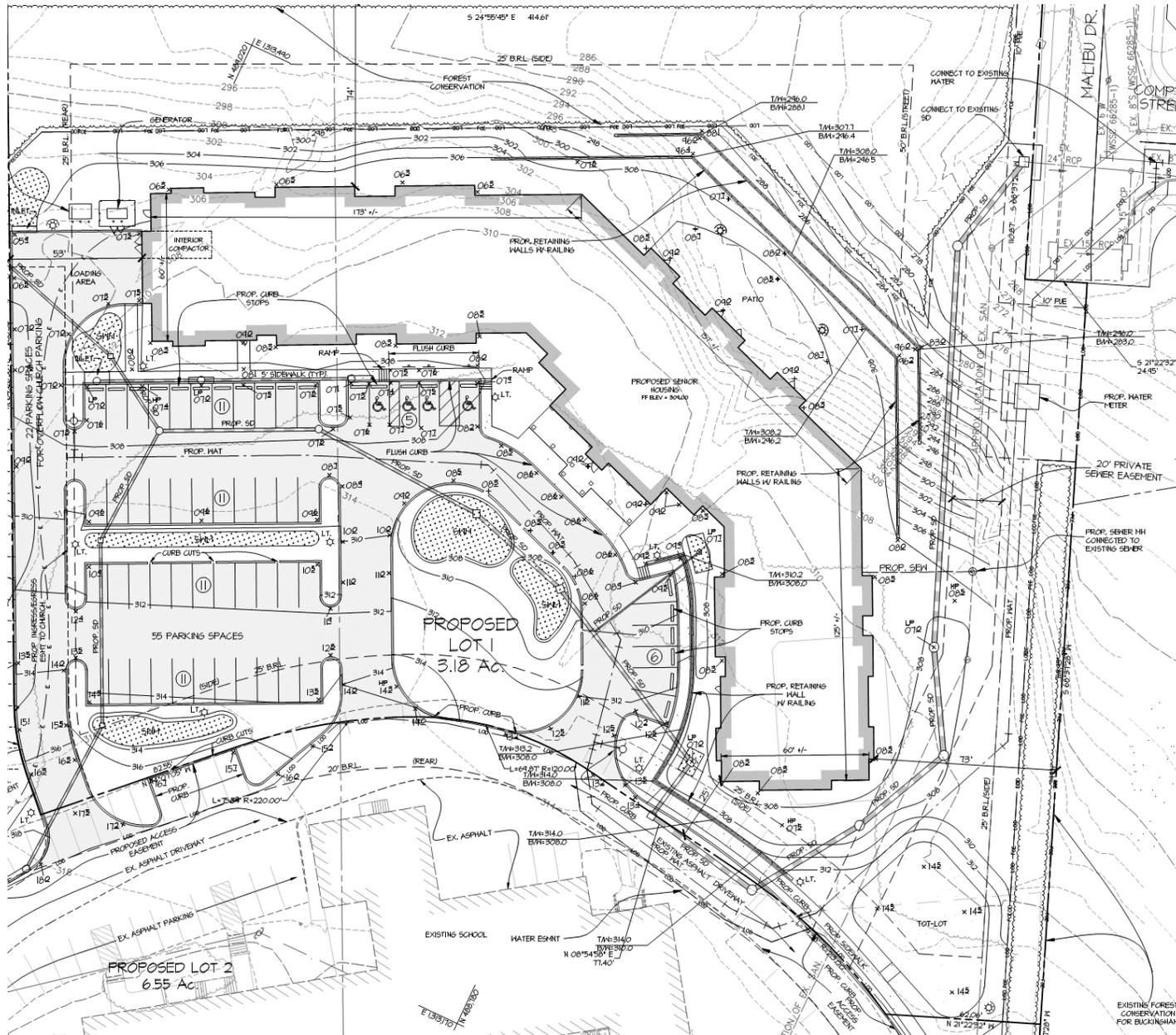
Retaining
Wall

Improved Portion
of Malibu Drive

Sidewalk Connecting
Senior Housing to
University Boulevard

Overall Special Exception Site Plan
Showing Both Proposed Lots
Exhibit 51(b)

Malibu Drive
Abandonment



NORTH

Special Exception
Site Plan
Exhibit 51(c)

LEGEND

	EX. CONTOURS
	PROP. CONTOURS
	EX. BUILDING
	PROP. BUILDING
	EX. STREAM
	EX. CURB
	PROPOSED CURB
	EX. SIDEWALK
	PROPOSED SIDEWALK
	EX. ELECTRIC
	EXISTING OVERHEAD WIRE
	EX. UTILITY POLE
	PROPOSED ELECTRIC
	PROPOSED ELECTRIC
	EX. GAS
	EX. SAN.
	PROPOSED SAN.
	EX. WATER
	PROPOSED WATER
	EX. STORM DRAIN
	PROPOSED STORM DRAIN
	PROPOSED LOD
	REMOVED PROPERTY LINE
	EX. PROPERTY LINE
	PROPOSED PROPERTY LINE
	FOREST CONSERVATION
	PROPOSED PAVEMENT
	SIDEWALK
	PROP. LIGHT

**Legend for Special Exception
Site Plan
Exhibit 51(c)**

The Planning Board suggested lessening the impact of the retaining wall by reducing the size of the rear patio and bringing the retaining wall closer to the building. This permits the Petitioner to (1) decrease the height of the wall, (2) increase the terraced area between the walls, and (3) increase the on-site forest conservation area, decreasing the amount of off-site mitigation required. The Petitioner made these revisions, shown on the following page (Exhibit 51(i)).

Technical Staff recommended approval of the revised site plan with a revised condition relating to forest conservation (*see*, Part II.F. of this Report.)



**Site Plan Revisions for Retaining Wall
Exhibit 51(i)**

2. Operations

Ms. Donna Creedon testified regarding the proposed operations of the facility. She is the Senior Development Manager of Mission First, a 501(c)(3) corporation which develops affordable housing and provides resident services. Ms. Creedon testified that the owner of the property will be a single-purpose limited liability company. Because the projects are developed with tax credit investors, owners will include the investors, Mt. Jezreel, and Mission First. She suggested that there should be a condition of approval granting the special exception in the name of Mount Jezreel or an entity to be designated in the future.⁴ T. 97.

Typically, there will be three or four full-time equivalent employees: one full-time property manager, a porter, and a maintenance tech. At certain times, they would have a fourth staff person there, typically during the initial lease up period when things are busy with people moving in, or at times when income re-certifications have to be done. Business hours typically range between 8:30 a.m. and 5:30 p.m. Because this facility will be strictly independent living, it is not staffed around the clock and there are no health care professionals on-site. They do not offer

⁴ The Hearing Examiner does not recommend a condition granting the application to an unknown entity as this would eliminate the Board's ability to review the effectiveness of the original conditions after ownership is transferred. This review is required by Section 59-G-1.3(g) of the 2004 Zoning Ordinance, which provides: -1.3(g) provides:

The terms and conditions of a special exception may be reviewed by the Board, Hearing Examiner, or District Council, as the case may be, for good cause shown, upon a transfer of land ownership to determine the effectiveness of the conditions placed on the use and for new conditions to be established, if determined necessary. A review on a transfer of land ownership may take place at the request of the Department of Permitting Services, any aggrieved person, or at the initiative of the Board of Appeals, only upon a showing of substantial evidence that the terms and conditions of the original grant are ineffective for preventing adverse effects. Parties entitled to notice must be notified of the review and a public hearing held on reasonable notice. If, after the public hearing, it is determined that the terms and conditions of the special grant are not effective or the special exception is or will be operated in a manner previously unanticipated, new conditions may be established to address the adverse effects on nearby properties and the general neighborhood. It is the responsibility of the special exception holder to notify the Board of Appeals of any change in land ownership or change in circumstances or conditions affecting the special exception.

any type of assisted living, and residents are restricted to individuals 62 years of age or older, as required by the Zoning Ordinance. T. 102-104.

Mission strives to build and manage properties where seniors can be as active as they would like to be. They do not provide food or meal service and residents are expected to prepare their own meals. Mission does, however, provide a range of activities in which residents may participate. One of the major jobs of the property manager is to create a calendar of activities that could include speakers coming into the building to lecture about health and wellness, or professionals to do blood pressure screenings; there could be entertainment such as movie nights, BINGO, or mahjong, as well as arts and crafts, field trips to places of interest and to the library. The church has several 12- to 16-person vans that it will make available to residents to take them different places for shopping, medical needs and recreational activities. T. 105-106.

There will be a range of affordable units in the building. Five percent of the units will be available for residents earning 30 percent of the area median income, seven percent will be rented at 40 percent of the median income, 15 percent will be rented to individuals who earn 50% of the area median income, and others will be restricted to individuals earning 60% of the area median income. Eleven percent of the units will be unrestricted; typically Mission tries to target those for residents who might earn 80 to 90 percent of the median income. T. 107-108. This *pro forma* may change somewhat until they apply for the low income housing tax credit allocation, at which time it must be set and they will be legally bound to that distribution. This mix will meet the requirements of the Zoning Ordinance. T. 108.

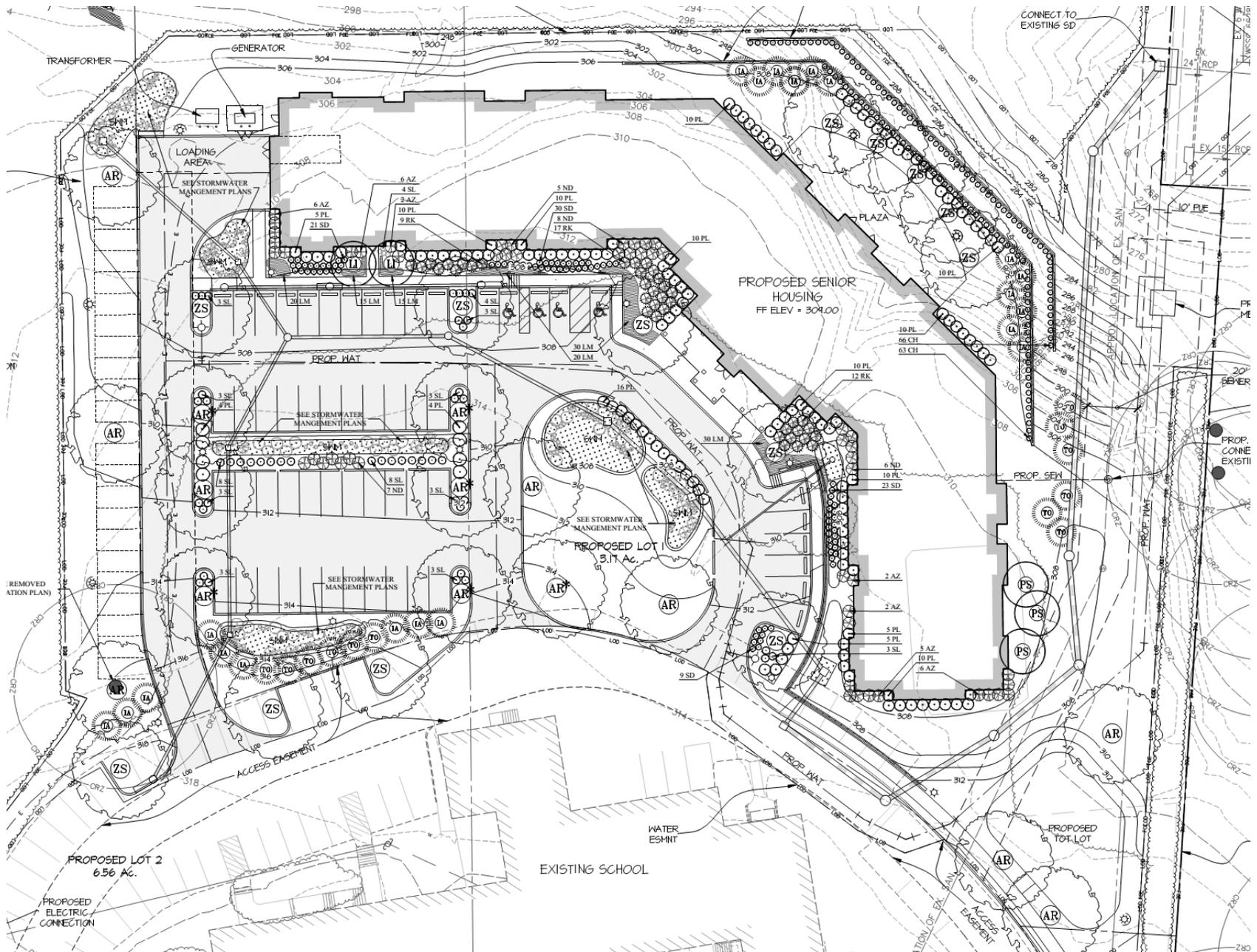
The activity levels for the use will be compatible with the neighborhood, Ms. Creedon believes. They want the residents to be active, but given the residents' ages, most of the activity will be inside the building. Based on her experience developing senior housing (she has developed

11 senior housing facilities), she does not foresee any adverse impacts to the community from residents of the facility. In her opinion, there will be no adverse impact from operations, noise, odor, fumes or anything else that will be objectionable to the neighborhood. They have moved toward using trash compactors rather than dumpsters because it's much easier to control odors on the site. T. 110.

3. Landscaping and Lighting

Mr. Foster described the proposed landscaping. Screening is provided by retained forest and afforestation, which will be preserved by a forest conservation easement. The Petitioner proposes to retain 1.4 acres of forest, located in a 100-foot retention area along the northern property line of proposed Lot 2 and approximately a 50-foot retention area on the eastern property line of both Lots 1 and 2. There will be a mixture of retention and afforestation on the southern property line. T. 61-62. The Petitioner proposes to plant river birch and red maple along the northern portion of the eastern property line. These are typically medium sized shade ornamental trees to match the scale of the building. According to Mr. Foster, river birches are a decorative tree with exfoliating bark that grows to approximately 40 feet in height, approximately the height of the building. The red maple will be taller. Further south along the eastern property line, the Petitioner proposes flowering amelanchiers and red bud trees, which are also ornamental trees. These trees will mask approximately half of the façade from adjacent properties to the east. T. 70-73.

Staff reports that lighting for the property will not exceed 0.1 footcandles at any property lines, as is demonstrated by the Petitioner's photometric study. Fixtures will be installed with shields to prevent spillage onto other properties. Exhibit 23, p. 19; Exhibit 51(h). The Petitioner's landscape plan (Exhibit 51(f) and (g)) is shown on the following pages.



PLANT SCHEDULE

KEY	QTY.	BOTANICAL NAME	COMMON NAME	SIZE	CONDITION	COMMENTS
TREES						
AR	15	<i>Acer rubrum</i> 'Jamestown'	Jamestown Red Maple	25-3' cal. 12-14' ht.	B4B	Min. 6' branching ht.
ZS	13	<i>Zelkova serrata</i>	Japanese Zelkova	25-3' cal. 12-14' ht.	B4B	Min. 6' branching ht.
EVERGREEN TREES						
IA	22	<i>Ilex x attenuata</i> 'Fosteri'	Foster's Holly	10' min. ht.	B4B	Std.
TO	12	<i>Thuja occidentalis</i> 'Nigra'	Dark American Arborvitae	10' min. ht.	B4B	Std.
ORNAMENTAL TREES						
II	2	<i>Lagerstroemia</i> x. 'Natchez'	White Flowering Crape Myrtle	25-3' cal. & 10' min. ht.	B4B	Std., Multi-stem, Min. 6' branching ht.
PS	3	<i>Prunus serrulata</i> 'Kwanzan'	Kwanzan Cherry	25-3' cal. & 10' min. ht.	B4B	Std., Single stem, Min. 6' branching ht.
SHRUBS						
AZ	29	<i>Azalea</i> 'Delaware Valley'	Delaware Valley White Azalea	18-24" Ht.	#3 Cont.	White, Prune after bloom
ND	21	<i>Nandina domestica</i> 'Gulf Stream'	Gulf Stream Heavenly Bamboo	18-24" Ht.	#3 Cont.	White
PL	129	<i>Prunus laurocerasus</i> 'Otto Luyken'	Otto Luyken Cherry Laurel	24-36" Ht.	#3 Cont.	White blooms, evergreen
RK	38	<i>Rosa</i> x. 'Knockout'	Knockout Rose	24-36" Ht.	#3 Cont.	Pink/Red Blooms
SL	48	<i>Spiraea</i> 'Little Princess'	Little Princess Spiraea	18-24" Ht.	#3 Cont.	White
PERENNIALS, GROUNDCOVERS & VINES						
CH	129	<i>Cotoneaster horizontalis</i>	Rockspray Cotoneaster	18-24" Ht.	#3 Cont.	Yellow, variegated leaves
SD	83	<i>Hemerocallis</i> 'Stella d'Oro'	Stella D'Oro Daylily	#2	Cont.	Yellow flowers, 18' o.c.
LM	145	<i>Liriope muscari</i> 'Big Blue'	Big Blue Liriope	1 gal.	Cont.	

4. Site Circulation, Parking and Access

1. Circulation: Mr. Todd Reddan, the Petitioner's expert civil engineer, described the on-site circulation. He stated that traffic is expected to enter the site at the southern entrance, which is a full movement entrance. While northbound traffic on University Boulevard could conceivably enter at the middle or northern access points, the southern driveway would be the first they encountered and will have the highest traffic volume. T. 25. The circulation will continue through the southernmost driveway to the proposed parking for the senior housing. The drive aisle continues along the front of the building and loops back to the church's property. There is a drive aisle that provides access for an internal trash compactor at the northernmost end of the building. T. 25-26. He opined that there is sufficient room for a trash truck to maneuver into the space, turn around, and leave the site from the northern access point onto University Boulevard. This keeps circulation for the trash truck separate from circulation for visitor and resident parking. T. 26-27. He confirmed that his site visit did not reveal anything on the property that would require changes to existing grades. T. 27.

A new, lighted sidewalk will provide a pedestrian connection from the site to an existing sidewalk and transit on University Boulevard. Staff found that, "[t]his new sidewalk creates a new, safe, lighting, pedestrian link from the site into the immediate neighborhood." Exhibit 23, p. 12.

2. Parking: The site plan shows 55 parking spaces, which will be located in the rear and side yards of the special exception use.

Three waivers are required for different parking setbacks in the Zoning Ordinance. The setback requirements for the proposed development are set forth in §§59-E-2.81(a) and 59-E-

2.83(b) of the Zoning Ordinance. Section 59-E-2.83(b) imposes specific setbacks on special exceptions in residential zones:

(b) Setbacks. Each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone.

Section 59-E-2.81(a) mandates an additional parking setback from *adjoining* properties in a single-family detached zone, in this case, the property to be retained by the church (i.e., proposed Lot 2):

(a) Where a parking facility is within a residential zone or adjoins land in a residential zone that is neither recommended for commercial or industrial use on an approved and adopted master or sector plan, nor used for public or private off-street parking, nor in a public right-of-way that is 120 feet or more in width, residential setbacks apply as follows: All parking surfaces, spaces and driveways must be set back a distance not less than the applicable front, rear or side yard setback required for the property in the residential zone that adjoins or confronts the applicable boundary of the parking facility. In addition, screening must be provided in accordance with the screening requirements of section 59-E-2.9.

To understand these waivers, it is important to understand the relative orientation of the two lots. The *front* of proposed Lot 1 (the subject property) is along Malibu Drive or the southern property line. The rear yard of Lot 1 is the northern property line and the two side yards for Lot 1 are along the east and west property lines. Exhibit 23, p. 23. The rear yard for proposed Lot 2 (where the church and school are located) abuts the western property line (or side yard) of the subject property. An exhibit prepared by the Petitioner illustrates the three setback waivers (shown on the following page).

Mr. Reddan explained the need for three waivers as follows:

Rear Yard Setbacks for Proposed Lot 1: The northern property line forms the rear yard of the proposed Lot 1 (i.e., the subject property.) Section 2.83(b) of the Zoning Ordinance requires parking to be setback by the amount of the building setback in the R-60 Zone.

The rear building setback in the R-60 Zone is 20 feet. Due to the shared use, the parking drive aisle takes up the entire rear yard, the Petitioner is requesting a waiver of 20 feet for that setback. T. 40-41.

Side Yard Setback for Proposed Lot 1: The western part of the subject property is considered the side yard of proposed Lot 1. Section 2.83(b) of the Zoning Ordinance mandates that side setbacks for special exception parking facilities be twice the required side yard building setback in the R-60 Zone, which is 8 feet for one side and 18 feet for both sides. *Id.*, §59-C-1.323, §59-E-2.83(b). The parking lot is setback from the western property line by only 7 feet, and the access aisle is not setback at all. The Petitioner is requesting a waiver of the minimum side yard setback required in Lot 1. T. 40-42; Exhibit 23, p. 23.

Setback from Rear Yard of Lot 2: The rear yard of the *church's* property is also zoned R-60 and borders the side yard of the subject property. Section 2.81 requires that parking adjoining a single-family detached residential zone must be setback the same distance required by the zoning on the adjoining property. The rear yard setback for the R-60 Zone is 20 feet, which means that the parking on the subject property must be setback that amount from the subject property's western property. Because the parking facility is only 7 feet from property line between the church's property and the subject property, Petitioner requires a 20-foot waiver from the parking setback contained in Section 2.81. T. 42-45.

E. Public Facilities (Water, Sewer, and Traffic)

The requested special exception will require approval of a preliminary plan in order to create Lots 1 (the subject property) and 2 (the property to be retained by the church); thus, the Planning Board will make the final determination on the adequacy of public facilities.

Nevertheless the Petitioner presented evidence that public facilities will be adequate to serve the use.

Mr. Ron Welke, the Petitioner's expert in traffic engineering and transportation planning, opined that the senior housing facility will generate fewer than 30 weekday peak hour trips in the morning and evening. Therefore, no traffic study is required.

The petition is able to meet Transportation Policy Area Review Guidelines as well. The site is located within the Silver Spring/Takoma Park traffic policy area, which requires a transportation mitigation payment due to inadequate transit. The Petitioner will pay 25% of the general district transportation impact tax prior to release of building permits. Thus, both the Local Area Transportation Review and the Transportation Policy Area Review requirements are met. T. 115.

Mr. Welke testified that when both properties are subdivided, the Planning Board will consider the impact of traffic from all uses on the 9.73-acre parcel (i.e., the senior living facility, the church, and the school). Mr. Cherian Eapen, the lead transportation planner for this development, has already submitted a traffic study for the preliminary plan approval in January, 2015, which has been accepted by the Planning Board, the State Highway Administration, and the County Department of Transportation. The only improvement recommended is a shared use path across the frontage of the property. T. 114-118.

In its Supplemental Report (Exhibit 52), Staff confirmed that the increased number of residents (i.e., from 86 to 103) did not increase the number of trips that would be generated by the proposed use because the LATR trip generation rate is based on the number of units, rather than the number of residents. Thus, the estimated trips for the use remains under 30 peak hour trips and no traffic study is required (Exhibit 52, p. 5):

TABLE 1
SUMMARY OF SITE TRIP GENERATION
PROPOSED SENIOR ADULT HOUSING

	AM Peak Hour (total)	PM Peak Hour (total)
75 Senior Adult Dwelling Units	15	19

Trip generation for Senior Adult Dwelling Units based on ITE LUC 252.

Mr. Reddan testified that other public facilities are available to serve the use. The church is currently served by existing water service, with separate fire and domestic water lines. It is also served by an existing sanitary sewer, which may be extended to the subject property. The Petitioner has received approval of a preliminary stormwater management concept plan from the Department of Permitting Services. Exhibit 18(f). According to Mr. Reddan, stormwater on the site will comply with current State of Maryland environmental site design regulations: there will be micro-bio retention facilities on the landscaped island in front of the main entrance, in tree and planter boxes and other areas throughout the site. T. 124-125. As the proposed use is restricted to independent living for seniors 62 years of age or older, it will not impact schools in the area.

F. Environmental Impacts

Staff advises that the larger (i.e., 9.73-acre) property contains 2.97 acres of existing forest. As revised, the Petitioner proposes to clear 1.50 acres of on-site forest and to protect 1.47 acres of retained forest on the larger property. Under the County's Forest Conservation Law (Chapter 22A of the County Code), the Petitioner must plant 1.21 acres. The Petitioner proposes to plant 0.64 acres of forest on the property, which together with the 1.47 acres of retained forest result in 2.11 acres of on the larger property. This will be placed within a Category I Conservation Easement. Not all of the retained forest will be located on proposed Lot 1 after subdivision; it will, however, be protected by a Category I Forest Conservation Easement.

Staff reports that the project is not eligible to make a fee-in-lieu payment for the balance of the 1.21 acres required. Exhibit 52, p. 6. Nevertheless, the project may use the “off-site forest mitigation bank” to meet the additional .57 acres of required planting. Staff supported the revisions reducing the size of the retaining wall because it increase the amount of on-site reforestation. *Id.* at 7.

The property also requires a waiver from the Forest Conservation Law to impact the critical root zones (CRZ) of specimen trees on the property. The Planning Board approved these variances at its meeting on June 4, 2015. Mr. Foster described the requested variances. Construction will require removal of a Norway maple that is 33 inches in diameter, which is an invasive species. There is a tot lot for the school on the subject property—the location where they proposed to relocate the tot lot contains the maple. The construction will also require disturbance to the critical root zones of two other specimen trees; one is a 34-inch red maple and one a 53-inch red oak along the southern property line. These impacts were necessary to construct the sidewalk along the southern driveway, which provides residents pedestrian access to University Boulevard. The final variance is necessary to impact the critical root zone of a 43-inch white mulberry in front of the church because the Master Plan requires a shared use bike path along University Boulevard. Conditions requiring compliance with the approved forest conservation plan will be imposed by the Planning Board when the preliminary plan is approved. T. 62-63.

The Planning Board has approved a Preliminary Forest Conservation Plan (PFCP) for the subject property. Exhibit 18(d). The approved PFCP is based on the original design presented to the Planning Board (before the revisions to the retaining wall). Revisions resulting from changes to the retaining walls will be made when the Final Forest Conservation Plan is approved.

G. Community Concerns

Mr. Howard Weiss, who lives on Weaver Street adjacent to the east side of the subject property, expressed several concerns about the proposed use. His house is located approximately parallel to the northern face of the building. T. 127.

Mr. Weiss expressed concerns about the security of his home because of the possibility that individuals would cross through the property to his rear yard. He believes that the large amount of existing vegetation on the eastern property line discourages people from passing through the church property to the rear yards of residents along Weaver Street. He is concerned that removing that vegetation will make this crossing much more desirable for someone to enter their rear yards and commit a crime. In the past six years, his house has been broken into three times. Each time, the perpetrator entered through the rear but had to exit through the front because of the vegetation on the subject property. If the special exception is approved, it appears that people do not even have to park on the street in front because they can go back through the subject property. T. 127-128.

When he moved into his house in 1982, there was a trail going through the forest and he used to see kids using the trail frequently as a way of getting through. When they first moved to the property, someone attempted to break into his car, and he believes they came through the subject property. T. 129.

Mr. Weiss's second concern relates to noise from the use, but he believes that the Petitioner's presentation at the public hearing has addressed these concerns. He has some concerns about traffic because a traffic study has not yet been done. He knows from experience that people tend to park on Greer Avenue and Lowander Lane and then cross into the church property because there is a set of steps there. This happens frequently when there is an event at the church or school

because it is easier to access University Boulevard from those roads rather than the church's driveway. He thinks that a traffic study should include how the proposal will affect nearby parking on the side streets. T. 130-131.

He was also concerned that the building will be as high as 40 feet, although he is glad that it has been moved further west from the property line. He noticed that there was no timeline for completion and wanted to know how long it would take to construct the building so they can monitor people who go in and out of the site. T. 132-133.

Mr. Samuel Jones lives at 9147 September Lane and also expressed some concern about the proposal. His concern stems from an incident that occurred when a large truck got stuck on the steep grade at the southern access point to University Boulevard. He witnessed the truck enter on the north side of the site. When it tried to leave by the southern access to University, it bottomed out at the top of the incline and the frame rested on the pavement. The truck was stuck there until a tow truck came to get them out. The need for tow trucks at access points in the neighborhood is happening more frequently. He questioned whether the proposed project would result in this happening more or whether the Petitioner would fix the ramp so that vehicles may get in and out safely. T. 7-8. Mr. Jones testified that this was one incident, but he was concerned that it would happen again. The truck he witnessed was approximately 53 feet long, with a trailer that was completely full. The trailer hit the pavement and the truck couldn't move at all. T. 28.

On rebuttal, Mr. Schutz testified that the security of the site, in his opinion, will improve because the proposed facility will put "more eyes on the street." T. 136. Lighting will circle the entire property and, while it cannot spill over on to neighboring properties, it will illuminate the grounds because they also have concerns that someone could come up and enter through one of the lower windows. Windows circle the entire buildings; there are as many windows on the rear

as there are on the front. Right now, the area where the parking will be is very dark and there's an open area where people could go. After development, that won't be a possibility, and individuals crossing there would be seen as they pass through the lights. Because of their own concerns about safety, there will be security cameras on some of the doors, and they could place cameras on the rear of the property to service the loading area. He also stated that seniors are very concerned about what occurs around them. If they see people they don't recognize or who look suspicious, they call quite often. T. 138.

In response to Mr. Weiss's concerns, Reverend Spearman testified that he also is very concerned about security, both as a church and as the operator of an elementary school. Seniors are also concerned about security. He assured Mr. Weiss that the property and the project would be as secure as possible. T. 134.

With regard to the parking along Greer Avenue, Reverend Spearman testified that the church's experience in recent years is that members of its congregation do not misuse the parking on Greer Avenue. He takes Mr. Weiss's comments seriously. T. 134.

During the special exception approval process, the congregation has engaged with the Franklin Knolls and Clifton Park Civic Associations. Members of those communities have joined with the church in shaping the project, and in fact, they have reduced its size based on the community's response, so they are very responsive to community concerns. T. 135. Before they begin construction, Reverend Spearman testified, the church will invite the community back to inform them of the timeline on the project and what has been approved. T. 135.

III. SUMMARY OF THE HEARING

The Petitioner presented six witnesses on behalf of the Petitioner, including Reverend Spearman and Ms. Creedon on behalf of Mission First. The four remaining witnesses for the

Petitioner were experts: Mr. Logan Schutz, an expert in architecture, Mr. Todd Reddan, an expert in civil engineering, Mr. Kevin Foster, an expert in land planning and landscape architecture, and Mr. Ron Welke, an expert in traffic engineering and transportation planning. Two individuals appeared in opposition to the proposed development. These included Mr. Samuel Jones and Mr. Howard Weiss. Testimony of witnesses is included in this Report where relevant.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, the use conforms to the applicable master plan, and 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 have the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

As discussed in the following pages, based on the testimony and evidence of record, the Hearing Examiner concludes that the use, as modified, will meet both the general requirements for special exceptions and the specific requirements spelled out in Zoning Ordinance §59-G-2.35 for housing for senior adults, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Ordinance § 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 for senior adults. Characteristics of the proposed modifications that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modifications that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff listed the following inherent characteristics associated with Housing and Related Facilities for Senior Adults and persons with Disabilities (Exhibit 23, p. 17):

- (1) buildings and structures;
- (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 the generator, trash pick-up and deliveries.

The Hearing Examiner agrees, in general, with this list. The Petitioner's land planner, Kevin Foster, testified that there are no non-inherent adverse effects associated with this facility.

T. 66. Technical Staff agreed, stating (Exhibit 23, p. 18):

Staff finds that the physical and operational characteristics of the proposed use are no different than what is normally associated with elderly housing facilities. The proposed landscaping on the grounds and in the parking area will continue the existing general residential character of the neighborhood. Noise associated with trash pick-ups as well as deliveries to the proposed use will not be excessive. Adequate parking is available to serve future residents, visitors and employees to the special exception use. The property is served by a transit stop located along the site's frontage on MD 193. Therefore, based on the submitted plans, the applicant's statement of operations and other submitted documentation, staff does not find any non-inherent adverse effects associated with the application.

The Hearing Examiner finds that the inherent characteristics of an age restricted, independent living facility are similar to any multi-family residential facility, except that residents are older and there will be many fewer children around, thus reducing noise and car trips. Due to differences in the number of dwelling units which may exist in any given senior housing residence, the size of the building and parking facilities will vary considerably, as will the amount of traffic generated. Thus, no particular size or scale can be identified as an inherent characteristic.

The Hearing Examiner agrees with Staff that size and scale of the facility do not seem excessive for the area and the operational characteristics are not excessive. Based on the entire record, the Hearing Examiner finds that the proposed special exception would not have any non-inherent adverse effects on the neighbors.

B. General Standards

The general standards for a special exception are found in Zoning Code Section 59-G-1.21(a). The Technical Staff reports and the Petitioner's exhibits and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 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: Zoning Ordinance §59-C-1.31(a) permits housing for seniors or those with disabilities as a special exception in the R-60 Zone.

(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: The proposed development would comply with the standards and requirements for housing for seniors set forth in Code §59-G-2.35, as detailed 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 an approved and adopted 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 property at issue is subject to the *East Silver Spring Master Plan*, approved and adopted in 2000. Staff concluded that the improvements proposed are consistent with the Plan's goal to preserve the neighborhood character, invest in the community, and improve the quality of residents' lives. Mr. Foster testified that the siting of the building to screen it from University Boulevard, the forest conservation and landscaping on the north, east and south sides of the

property meet the Plan's recommended guidelines for special exceptions. The Hearing Examiner agrees and so finds.

- (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. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: Technical Staff found that the proposed modifications would be in harmony with the general character of the neighborhood, considering population density, design, scale and bulk of the proposed new structures. Exhibit 23, p. 18. Staff based its conclusion on the distance of the building from nearby residences and buffers provided by the forest conservation easements and landscaping along the northern, eastern and southern lot lines. The Hearing Examiner also notes that the building's L-shape configuration screens it from view along University Boulevard and it is well articulated both on the front and on the rear sides.

- (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: The evidence supports the conclusion that the requested modifications would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. The use is residential in nature, and exterior materials are reminiscent of those use in the surrounding neighborhood. The building is well articulated and the grounds are well landscaped. The proposed building conforms to the

residential character of the neighborhood, and will fit harmoniously within the context of the surrounding residential uses and the general neighborhood.

- (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: Staff concluded that the use will not cause any objectionable adverse effects because the exterior lighting fixtures will be maintained with shields to prevent spillage on adjacent properties. Exhibit 23, p. 19. The Petitioner submitted a photometric study showing the illumination at the property lines would be 0.0 footcandles. Exhibit 51(h). Mr. Schutz testified that the generator will be located in the northern portion of the site in the front of the building and will be isolated acoustically. A noise study will be required at the time of preliminary plans to ensure that County noise levels will be met on all property lines. Staff advises that use of the site will not generate noise in an obtrusive manner. Based on this evidence, the Hearing Examiner finds that this standard has been met.

- (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: Staff concluded that this additional special exception would not alter the character of the area because the majority of the approved special exception uses are residential in nature, such as accessory apartments, and group homes and elderly housing. Exhibit 23, p. 19. Because the building here will be well screened from adjoining communities and generate minimal traffic, the Hearing Examiner agrees and so finds.

- (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: Mr. Weiss raised concerns about the security of the site once the existing, invasive, vegetation is removed because it acts as a barrier to any criminals exiting from the rear of his property. Mr. Schutz, however, testified that the lighting on the rear of the building would enhance security, particularly because there will be full time residents able to detect suspicious activity. While the Hearing Examiner understands Mr. Weiss's concerns, there is no evidence concretely demonstrating that the existing vegetation protects the properties on Weaver Street from burglaries. In addition, the Hearing Examiner finds Mr. Schutz's testimony opining that "eyes on the street" combined with lighting will enhance security at this location to be credible. While the Hearing Examiner suggests that the Petitioner install a security camera on the rear of the building, the evidence supports the conclusion that the development as proposed would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (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.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 52, p. 5) with 103 residents, and the evidence supports this conclusion, as discussed in Part II. E. of this report. Combined traffic generated by the church, school and senior living facility will be studied further at the time of preliminary plan review. The Hearing Examiner finds that this standard has been met.

- (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 does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board 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 special exception application was submitted.

Conclusion: Both Staff and Mr. Welke presented evidence and testimony that the use will generate fewer than 30 peak hour morning and evening trips and, therefore, a traffic study is not required for LATR review. Exhibit 52, pp. 4-5; T. 115-116. Mr. Welke also testified that the Petitioner will pay 25% of the general district transportation impact tax prior to release of a building permit, satisfying TPAR. Staff further reports that the Petitioner will be required to provide a traffic study for the entire (i.e., 9.73-acre) site at the time it is subdivided into proposed Lots 1 and 2. Exhibit 23, p. 20. Mr. Reddan further testified all other utilities are adequate to serve the use and that the Petitioner is able to provide stormwater management on-site meeting the requirements of Chapter 19 of the County Code. Based on this evidence, the Hearing Examiner finds that public facilities will be adequate to serve the senior living facility proposed here.

(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: Staff recommended that Church's right-in access point in the middle of the larger property's frontage on University Boulevard be eliminated when the two lots are subdivided, but concluded that the proposed access to the special exception use is adequate and efficient, provided the Petitioner records a public access easement for the full width of the 20-foot driveway at preliminary plan. A new sidewalk from the subject property through proposed Lot 2 will connect

residents to an existing sidewalk along University Boulevard and provide access to public transit. The Hearing Examiner concludes that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards: Housing for Senior Adults

The specific standards for senior adult housing are found in Code § 59-G-2.35. The Technical Staff report and the Petitioner's exhibits and testimony provide sufficient evidence that the proposed modifications would be consistent with the specific standards, as outlined 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: Ms. Creedon testified regarding the current *pro forma* for income levels to be served (T. 108), summarized in the following table:

	No. of Units	Sub-Total	Minimum Percentage Required	Percentage Provided
Total Units	75			
Very Low Income		20	15%	27%
30%/Median	4			
40% Median	5			
50% Median	11			
Low Income (60% Median)	47	47	20%	62%
Unrestricted	8	8	N/A	11%

At the public hearing, Ms. Creedon testified that the unit mix will meet the requirements of the Zoning Ordinance. T. 108. The mix summarized above exceeds the minimum requirements of the Zoning Ordinance because the Petitioner need only provide one of the minimum percentages (i.e., the minimum percentage of very low income *or* the minimum percentage for low income units). The Hearing Examiner recommends a condition of approval requiring the unit mix to meet one of the minimum requirements in this section, so that the exact mix may be tracked through the remaining development process.

(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: Staff advises that a transit stop is located at an existing sidewalk along the church's frontage on University Boulevard that is used by two Metro bus routes and one Ride-On bus route. A sidewalk will connect the subject property to the sidewalk along University Boulevard. According to Staff, the special exception is close to several public facilities, including the Long Branch Community Center (over $\frac{3}{4}$ miles from the site), the Long Branch Public Library (approximately 1.5 miles from the site), and the Arliss Avenue Shopping Center (slightly more than 1 mile from the property.) Exhibit 23, p. 27. In addition to public transit, the Petitioner

proposes to run shuttle vans (owned by the church) for the residents' medical and shopping needs.

T. 106. This evidence supports a finding that the proposed facility will have adequate accessibility to public transportation, medical services, recreational and shopping services.

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

Conclusion: Staff advises that the subject property is well-setback from traffic noise on University Boulevard and that a noise study will be required with review of the preliminary plan. The Hearing Examiner concludes that the Petitioner has met this standard of approval, as did Staff.

- (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*

Conclusion: Petitioner indicates that this facility will be strictly for independent living rather than disabled residents. Ms. Creedon testified that residents will be 62 years of age or older, as required by Section 59-A-2.1 of the Zoning Ordinance, and no staff will reside on the site. T. 108. The use as proposed meets this standard, and the Hearing Examiner recommends a condition requiring compliance with this provision.

(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: Not applicable. This facility is strictly for independent living. T. 103.

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: Staff found that the application will comply with this provision because “[t]he applicant’s statement indicates that the applicant will comply with the requirements of the federal ‘Fair Housing Act,’ Title VIII of the Civil rights Act of 1968 and will demonstrate its compliance with that law at the appropriate time in the review process.” Exhibit 23, p. 28. The use as proposed meets this standard, and the Hearing Examiner recommends a condition requiring this.

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

Conclusion: Not applicable. No staff will reside on the property. T. 103.

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

(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.*

Conclusion: Because Lot 1 (the subject property) fronts on Malibu Avenue, the front setback is measured from that location, although the grades there prevent it from being used for physical access to the site. Because the building exceeds the minimum height in the R-60 Zone (i.e., 35 feet), the front setback required is 50 feet. Staff reports that the building will be setback approximately 138 feet from Malibu Drive, 50 feet of which will be planted with trees and maintained as green area. Exhibit 23, p. 28. Therefore, the front setback provided meets this standard.

The proposed building meets or exceeds the minimum side and rear yard setbacks in the R-60 Zone. The minimum side yard setback in the R-60 Zone is 8 feet and the combined width of

both yards must be 18 feet. *2004 Zoning Ordinance*, §1.323(b)(1). Staff advises that the building will be setback approximately 30 feet from side lot lines. The minimum setback from the rear lot line is 20 feet and the setback provided is 50 feet, thus satisfying this setback. Exhibit 23, p. 28.

(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.*

Conclusion: The maximum building height in the R-60 Zone is 35 feet. *Id.*, §59-C-1.327. The Petitioner's proposed building will be three stories, or 40 feet, in height. Mr. Schutz testified that the additional height makes the building more compatible with the area because the roof pitch is steeper, making it less institutional, and the additional bump up at the entrance adds articulation to break up the mass of the building. Staff found the height acceptable because the building will be setback by 500 feet from University Boulevard and 117 feet from the nearest residence. Exhibit 23, p. 29. Staff further concluded (Exhibit 23, p. 29):

The bulk and scale of the building has been designed to achieve a compatible residential appearance with the defined neighborhood. The proposed retaining walls along the eastern and southern property lines will be terraced and generously landscaped with evergreen and deciduous trees that will mitigate the views of the proposed development from surrounding residential areas. The existing onsite forested areas and existing vegetation coupled with new plantings along the southern, eastern, and northern lot lines will also diminish the proposed building's 5 feet, 2-inch increase in height from nearby residential uses. The requested additional building height conforms to the general character of the defined neighbor[hood] when considering the limited traffic, parking conditions, [and] population density generated by the proposed use.

The Hearing Examiner agrees with these findings, and notes that the additional height is both well-screened from the community and that the steeper pitch of the roof (necessitating the additional height) enhances the compatibility of the development with the surrounding neighborhood.

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

Conclusion: Lot coverage in the R-60 Zone is limited to 35% of the lot. *2004 Zoning Ordinance*, §59-C-1.328. With the abandonment of the unimproved portion of Malibu Drive, lot coverage will be 18 percent of the site. Without the abandonment, Staff advises that lot coverage would be 19% of the property, both well within the maximum coverage permitted in the R-60 Zone. Exhibit 23, pp. 29-30. This standard has been met.

- (4) *Minimum green area:*
- (A) *R-60, R-90, and the RT Zones: 50 percent*
 - (B) *R-150 and R-200 Zones: 60 percent*
 - (C) *RE-1, RE-2, and RE-2C Zone: 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 is necessary to accommodate a lower building height for compatibility reasons.

Conclusion: The petition meets this green area requirement with or without abandonment of Malibu Drive. Fifty-four percent of the lot will be green area if Malibu Drive is abandoned and 51% will be green area if it is not abandoned. Exhibit 23, p. 30.

(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 standards for moderately priced dwelling units.

Conclusion: Not applicable. The site is in the R-60 Zone.

- (e) *Maximum density:*

In the Rural, Rural Cluster, RE-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: Staff determined that this requirement was met because the special exception meets all of the development standards of the Zone and the Petitioner has indicated it will comply with the requirements of Section 26-5(a) of the Montgomery County Code. Exhibit 23, p. 30. The use as proposed meets this requirement and the Hearing Examiner recommends a condition requiring compliance with Chapter 26 of the Code.

(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-E-3.33(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: The Petitioner has provided more than the minimum number of parking spaces required. Staff calculated that the use requires 53 spaces (as shown in the table from the Staff Report, Exhibit 23, p. 31, below), and the Petitioner is providing 55 spaces:

Unit Type	Parking Ratio	Spaces Required
56 1 bedroom units	0.65	37
19 2 bedroom units	0.85	16
Total parking Required		53
Total Parking Provided		55

The parking lot will require waivers from three setbacks requirements, as discussed in Part IV.D of this report.

(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.*

Conclusion: This provision is not mandatory, because the listed services “may be included.” Nevertheless, Mr. Schutz testified that the building has been designed to promote group activities. His firm strives to design buildings with spaces that can flow into each other, thus providing expanded areas for activities and also private areas where friends may gather in small groups. The spaces inside and outside the buildings are designed to be “see through.” T. 82. The main room is called a “living room,” which then spills out into the outdoors. This permits resident’s apartments to act as bedrooms and encourage them to come out of their apartments and become involved in events that happen within the home. T. 80-82.

Ms. Creedon testified that Mission First strives to build and manage properties where seniors can be as active as they would like to be. Mission First provides a range activities for residents. The church will make its vans available to residents to take them different places. T. 105-106.

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

Conclusion: 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: A vicinity map is in the record as Exhibit 10.

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

Conclusion: A condition so requiring has been recommended.

(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 or persons with disabilities 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

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 in Section G-2.*

Conclusion: Except for the height of the building, the site plan meets all development standards for the R-60 Zone, as demonstrated in a table from the Staff Report (Exhibit 23, p. 22) shown on the following page. As discussed above, specific standards for this use permit higher heights than those in the underlying zone if compatible with the surrounding area. The Hearing Examiner has already found that the three-story (or approximately 40-foot) height is compatible, and finds that all other standards of the R-60 Zone have been met.

TABLE 4
DEVELOPMENT STANDARDS IN THE R-60 ZONE

Standards	Required	Proposed
Minimum Lot Area	6,000 sq ft	3.18 acres ¹
Minimum Lot Width at street line	25 ft	110 ft
Minimum Building Setback from Street	25 ft	138 ft
Minimum Building Setback from adjoining lot		
--side lot line	8/18 ft	30 ft
--rear lot line	20 ft	50 ft
Maximum Building Height	35 feet	4 stories at 40 ft. 2 inches ²
Maximum Building Coverage	35%	18%

¹The entire property consisting of the existing church and the proposed use consists of approximately 9.73 acres, including the Malibu Drive abandonment of 11,950 square feet. The applicant is proposing to construct the elderly housing facility on only 3.18 acres of the site which includes the abandoned right-of-way for Malibu Drive.

²Section 59-G-2.35 (c) (2) of the Zoning Ordinance for housing and related facilities for the senior adults and persons with disabilities, states "maximum building height: 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."

**Table Showing Compliance with Development Standards in the R-60 Zone
Exhibit 23, p. 22.**

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

Conclusion: The development provides the minimum number of parking spaces. Because the use is coordinated with what will be the church’s property on proposed Lot 2, it will need three waivers from setbacks required for special exception parking facilities in single-family detached residential zones. Section 59-E-4.5 of the Zoning Ordinance permits the Board of Appeals to waive the parking setback requirements in the following circumstances:

When approving an application, the Director, Planning Board, Board of Appeals, or Hearing Examiner may waive any requirement in this Article not necessary to accomplish the objectives in Section 59-E-4.2, and in conjunction with reductions may adopt reasonable requirements above the minimum standards. Any request for a waiver under this Section must be referred to all adjoining property owners and affected citizen associations for comment before a decision on the requested waiver.

The objectives for parking facilities are found in Section 59-E-4.2, which are:

(a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.

(b) The safety of pedestrians and motorists within a parking facility.

(c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.

(d) The provision of appropriate lighting, if the parking is to be used after dark.

The parking criteria that the special exception must meet (from Sections 59-E-2.81 and 59-E-2.83 of the 2004 Zoning Ordinance), and the Hearing Examiner's recommended findings are listed below:

Sec. 59-E-2.83.

(a) Location. Parking facilities must be located to maintain a residential character and a pedestrian-friendly street orientation.

Conclusion: To the north and east, the forest conservation area will screen the parking with existing trees and additional plantings. A sidewalk will connect the facility to an existing sidewalk on University Boulevard. The church and school are located on the western side of the property and no parking adjoins the southern lot line. The Hearing Examiner finds that the location of

parking maintains the residential character of the area and provides safe pedestrian connections, as did Technical Staff.

(b) Setbacks. Each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone.

Conclusion: The above section requires that parking in the rear (northern) yard of the subject property be setback by 20 feet, the minimum rear yard building setback in the R-60 Zone. *2004 Zoning Ordinance*, §59-C-1.323(b). Because access road occupies the entire rear yard, the Petitioner requires a 20-foot waiver of this setback.

The section above also requires the parking on the western side of the subject property to be setback twice the minimum side yard setback of the R-60 Zone, which is 8 feet. Because the parking facility is only 7 feet from the western property line, and the parking access is entirely within the setback, approval of this special exception will require a waiver of 16 feet from this setback.

Section 59-E-2.81(a) contains additional setback requirements if *adjoining* lots are within a single-family detached zone. Because the church is also within the R-60 Zone, these setbacks apply here. The relevant requirement of this section (i.e., §59-E-2.81(a)) is:

All parking surfaces, spaces and driveways must be set back a distance not less than the applicable front, rear or side yard setback required for the property in the residential zone that adjoins or confronts the applicable boundary of the parking facility.

As already noted, the rear yard building setback in the R-60 Zone is 20 feet. Here, the western property line (or side yard) of proposed Lot 1 adjoins the rear yard of proposed Lot 2 (the church property), thus requiring a setback of 20 feet from the common property line. *See*, Exhibit 23, pp. 22-23.

The Hearing Examiner agrees with Staff that the waivers meet the requirements of Section 59-E-4.5. The waivers are necessary along the common property lines between the church and the subject property and permit coordinated access for the school, the church, and the senior living facility. Both Mr. Reddan and Staff concluded that the joint access and circulation on the site will be safe and efficient. The waivers required on the western property line of the subject property do not impact the surrounding community because they are located between the church school and the senior housing facility. The waiver needed from the setback along the northern property line is screened by the 100-foot wide forest conservation area. The Hearing Examiner finds that the setbacks proposed will not adversely impact the surrounding community and will promote safe and efficient on-site circulation, thus meeting the objectives for parking facilities in Section 59-E-4.2 of the Zoning Ordinance.

The last requirement for parking facilities in residential zones contained in Section 2.83 is:

Section 2.83(c).

(d) Shading of paved areas. Trees must be planted and maintained throughout the parking facility to assure that at least 30 percent of the paved area, including driveways, are shaded. Shading must be calculated by using the area of the tree crown at 15 years after the parking facility is built.

Conclusion: Staff advises that the landscape plan demonstrates that trees will shade 33% of the paved area within fifteen years. Exhibit 23, pp. 24-25. Having no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

- (c) **Minimum frontage.** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*
- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
 - (2) *Sand, gravel or clay pits, rock or stone quarries.*
 - (3) *Sawmill.*
 - (4) *Cemetery, animal.*

- (5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
- (6) *Riding stables.*
- (7) *Helipport and helistop.*

Conclusion: This section is 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 stated in Part II.F of this Report, the property is subject to the Montgomery County Forest Conservation Law, and the Planning Board has approved the Preliminary Forest Conservation Plan (PFCP). Exhibit 8(a). The Petitioner must make a minor revision to the PFCP for the changes to the retaining wall near Malibu Drive. Because the revisions are relatively minor, the Hearing Examiner recommends a condition of approval requiring the Final Forest Conservation Plan to show the revisions for the retaining wall on Exhibit 51(i).

- (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: This section is not applicable because the subject site is not in a special protection area. Exhibit 23, p. 25.

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

Conclusion: According to Mr. Foster, the identification sign for the proposed facility will be located on Proposed Lot 2 and is therefore not a part of this special exception request.

- (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: Staff agreed with the Petitioner that the fiber and cement panels, brick, and other exterior materials replicate those in the surrounding area and will create a compatible residential appearance. Both Staff and the Petitioner also agree that the building's "L-shape" and its location behind the church, combined with significant screening, will minimize the minor height increase over the maximum permitted in the R-60 Zone. Exhibit 23, pp. 25-26. In addition, the building's planes are broken up by a significant amount of residential articulation and the step up in height above the entrance. The Hearing Examiner finds that the proposed structure will achieve a residential scale and appearance for the surrounding area.

(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: The photometric study in the Lighting Plan demonstrates that the proposed lighting will not exceed 0.1 foot candles at adjoining property lines. Exhibit 51(h). All fixtures proposed will have shields to direct light downwards.

V. RECOMMENDATION

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that this petition, in which Petitioner Mt. Jezreel Baptist Church seeks approval of a special exception for housing and related facilities for senior adults under §59-G-2.35 of the 2004 Zoning Ordinance, be ***granted*** with the following conditions:

1. The Petitioner shall be bound by all of their testimony and exhibits of record, and by the testimony of their witnesses and representations of counsel identified in this report.
2. All development on the property must comply with the approved site plan (Exhibits 51(c) through (e)), Landscape Plan (Exhibits 51(f) and (g)) and Lighting Plan (Exhibit 51(h)).
3. The facility is limited to a total of 75 units (56 one-bedroom units and 19 two-bedroom units) and 103 residents.
4. The maximum number of employees is four with no more than three on-site at any one time.
5. Trash pick-up must occur after 9:00 a.m. on weekdays.
6. The facility must provide a shuttle service to transport residents to medical services, shopping areas, recreational and other community services frequently desired by senior adults.
7. Minimum unit sizes must comply with the relevant standards of Chapter 26, titled "Housing Standards," of the Montgomery County Code, as amended.
8. The Petitioner must obtain approval of a preliminary plan of subdivision under Chapter 50 of the Montgomery County Code.
9. At the time of Preliminary Plan, the Petitioner must submit a noise study to measure potential noise impacts to the site. Noise emanating from the property must comply with the requirements of Chapter 31B of the Montgomery County Code.
10. At the time of Preliminary Plan, the Petitioner must show a Public Access Easement measuring at least 20 feet in width over the entire length of the existing driveway to provide access from the subject property to University Boulevard.
11. Residents must be limited to adults 62 years of age or older or their spouses with incomes meeting the requirements of §2.35(a) of the 2004 Zoning Ordinance. Age restrictions must at all times 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.
12. The Final Forest Conservation Plan must incorporate the revisions to the retaining wall shown in Exhibit 51(i).
13. Prior to demolition or any land disturbing activities occurring onsite, the Petitioner must receive approval from the M-NCPPC Office of the General Council for a Certificate of Compliance for an off-site forest mitigation bank for an equivalent credit of 0.57 acres or as determined by the Final Forest Conservation Plan.

14. Petitioner must obtain and maintain all appropriate licensing from Montgomery County and the State of Maryland for continuing operation of an age-restricted, rental housing facility for independent seniors.
15. Petitioner must construct, staff and operate this senior housing facility in accordance with all federal, state and local requirements.
16. 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: November 3, 2015

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal line extending to the right.

Lynn A. Robeson
Hearing Examiner