

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

IN THE MATTER OF:

Artis Senior Living, LLC

Applicant

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OZAH Case No. CU 15-05

Before: Lynn A. Robeson, Hearing Examiner
Office of Zoning and Administrative Hearings

**OPINION AND ORDER APPROVING A MINOR AMENDMENT
OF A CONDITIONAL USE AND RE-OPENING THE RECORD**

I. Background

Conditional Use No. 15-05 was granted by the Board of Appeals on April 13, 2016, (effective on April 25, 2016) to permit the Applicant, Artis Senior Living, LLC (Artis), to operate a residential care facility for more than 16 persons at 8301 River Road in Bethesda, Maryland. Exhibit 163. The Subject Property is Lot 13, Block 2, Clewerall Knolls Subdivision, and is zoned RE-2 (Residential Estate.) After approval of the original conditional use, the Board of Appeals approved a minor amendment to the conditional use plan permitting the installation of two location signs (approved on January 25, 2017 and effective February 13, 2017.) Exhibit 165.¹

On May 16, 2018, the Office of Zoning and Administrative Hearings (OZAH) received a request for a minor modification of the conditional use to permit installation of an 8-foot high privacy fence in the vicinity of the northern property line. Exhibit 166(a). At the Hearing Examiner's request, Artis confirmed that the fence met the setbacks required in the RE-2 Zone and

¹ The first minor amendment was filed with the Board of Appeals rather than the Hearing Examiner because the 2014 Zoning Ordinance had not yet clarified that all modifications of approved conditional uses must be filed initially with the Hearing Examiner. See, ZTA 16-16, Ordinance No. 18-25 (adopted February 7, 2017.) As that legislation makes clear, requests for amendments to conditional uses must be filed and approved by the Hearing Examiner.

the original conditional use approval. Exhibit 168. The Hearing Examiner approves the requested minor modification administratively because she finds that the secluded location of the fence will have minimal impact on the surrounding residential area and will not alter the nature, character and intensity of the original conditional use.

II. The Modification Request

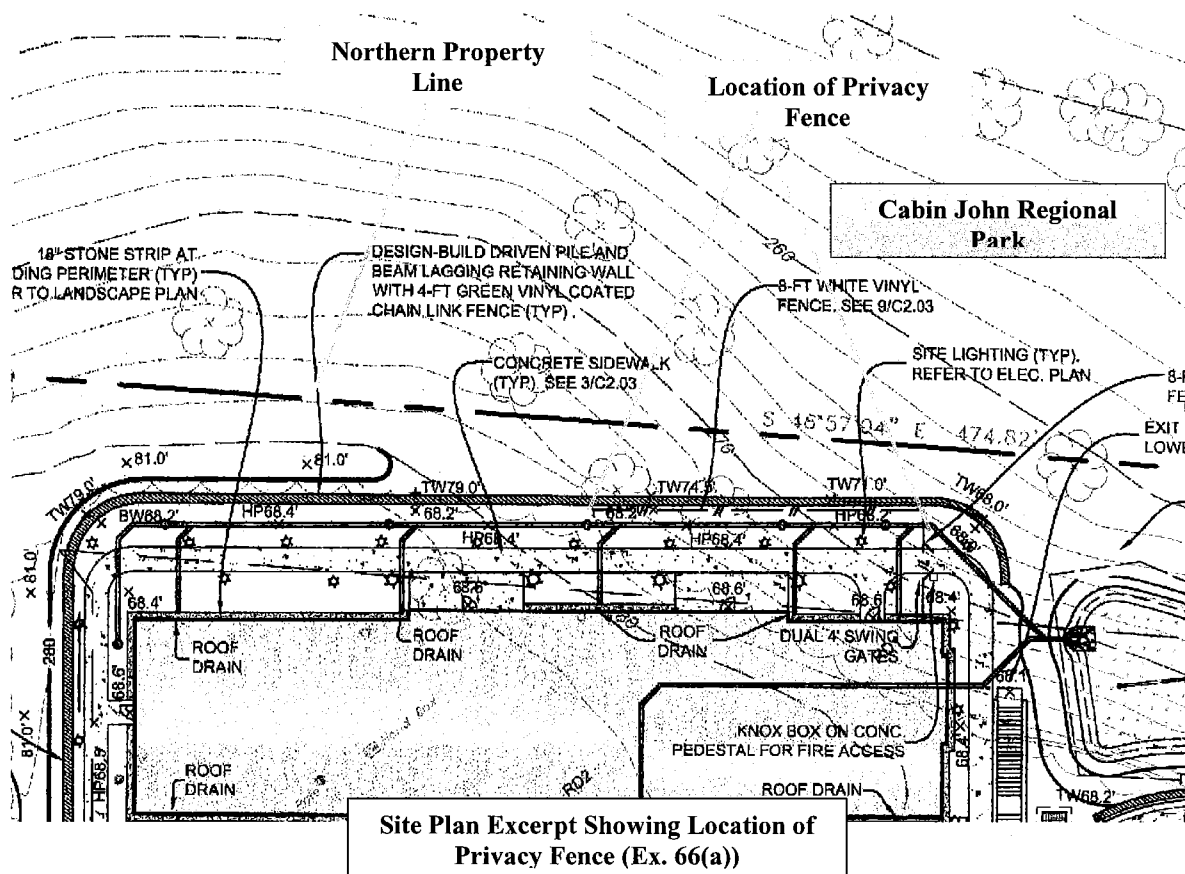
The conditional use approved for the property permits a 72-bed residential care facility for Alzheimer's and memory care patients. According to the Applicant, the conditional use plans originally approved by the Board of Appeals did not identify the need for the 8-foot fence along the rear property line because, "Artis believed that an 8-foot retaining wall could run the full distance of the property's rear boundary." Exhibit 166, p. 2. Artis further explains:

In preparing its construction plans for development of the Conditional Use, however, Artis discovered that the retaining wall would not effectively run for the full distance of the Property's rear boundary. Given the nature of the Conditional Use as a memory care facility, the rear yard of the property must be fully secured at all times. A supplemental fence is, therefore, required to enclose that portion of the yard not enclosed by the retaining wall.

Artis believes that the fence will have minimal impact on the surrounding area because it will be located adjacent to a forested area that is part of the Cabin John Stream Valley Park. Exhibit 166, p. 2):

...the proposed privacy fence is 8 feet tall and will be composed white vinyl material with lattice at the top. The property adjacent to where the new fence is proposed is a forested area that is part of the Cabin John Stream Valley Park and owned by the Montgomery County Parks Department. While the proposed fence will not face any properties improved with residential dwellings, the design and scale of the fence is compatible with the surrounding single-family residential community. In this respect, the proposed fence will not change the nature, character, or intensity of the Conditional Use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected when considered in combination with the underlying residential care facility.

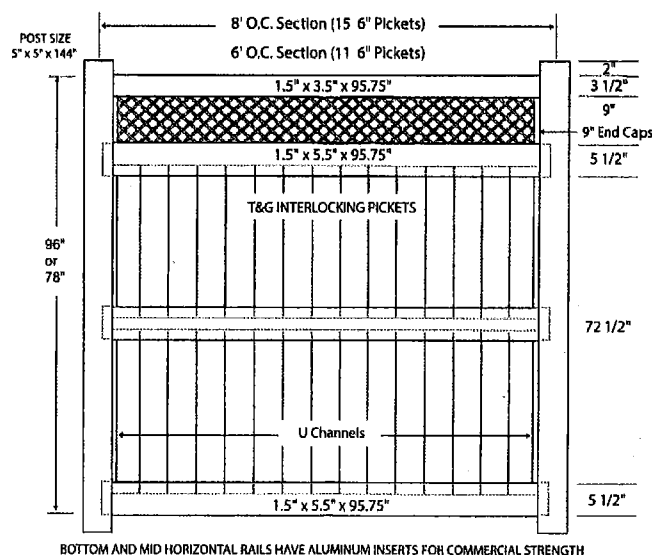
Artis submitted a revised conditional use plan (Exhibit 166(a), an excerpt of which is reproduced on the following page) showing the location of the proposed retaining wall.



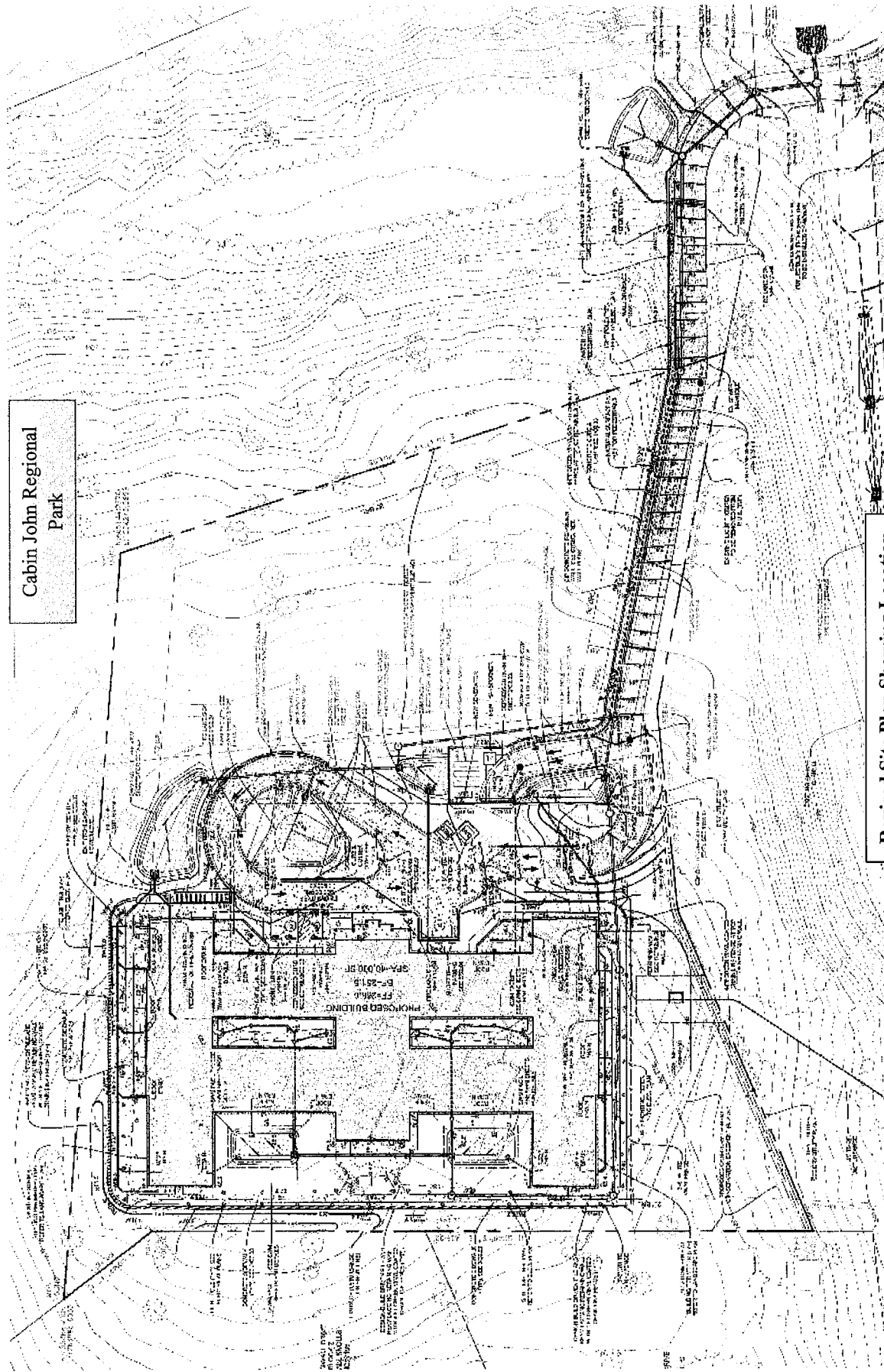
Another excerpt from the site plan, showing the location of the fence in relation to the larger site, is reproduced on the following page. Artis also submitted Technical Specifications showing the design of the fence proposed (Exhibit 166(b)):

Technical Specifications - Rainier Privacy Fence With Lattice

8' Tall x 8' or 6' Wide Sections



Privacy Fence



Cabin John Regional
Park

Revised Site Plan Showing Location
of Proposed Privacy Fence
Exhibit 166(a)

III. The Governing Law

Requests to amend a conditional use are governed by Zoning Ordinance §59.7.3.1.K.

Zoning Ordinance. That section defines major and minor amendments as:

§59.7.3.1.K.1.a. *A major amendment to a conditional use is one that changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.*

§59.7.3.1.K.2.a. *A minor amendment to a conditional use is one that does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.*

A major amendment application must “...follow[s] the same procedures, must meet the same criteria, and must satisfy the same requirements as the original conditional use application . . .” Zoning Ordinance §59.7.3.1.K.1.b. In contrast, a minor amendment, “. . . may be approved administratively by the Hearing Examiner.” *Id.*, §59.7.3.1.K.2.a.

IV. Evaluation and Decision

The Hearing Examiner finds that the fence proposed will not alter the nature, character, or intensity of the conditional use as originally approved nor create substantial adverse effects on the surrounding neighborhood and, therefore, may be approved administratively. The location of the fence along the eastern portion of the northern property line is significantly removed from the nearest residential properties. The fence’s remote location, combined with the buffering provided by the forested area of the park, supports a finding that it will have insignificant (if any) adverse impacts on the surrounding area. In addition, the fence minimizes any adverse impact on the residents of the community, as it is needed to provide a safe and secure environment. Thus, the fence will minimize adverse impacts to the residents as well as the surrounding residential area.

ORDER

Based on the foregoing, it is, this 4th day of June, 2018:

ORDERED, that the record of this case is hereby reopened to admit the Applicant's request for a minor modification to the site plan approved in Conditional Use Case No. 15-05 to admit the Applicant's request for a minor modification to the conditional use site plan (Exhibit 166), the amended conditional use site plan showing the privacy fence (Exhibit 166(a)), and the Technical Specifications for the privacy fence (Exhibit 166(b)) and e-mail correspondence between the Hearing Examiner and the Applicant confirming that the fence conforms to the setbacks of the original conditional use and the RE-2 Zone (Exhibit 168); and it is further

ORDERED, that the request for a minor amendment to Conditional Use 15-05 to permit the installation of an 8-foot tall white vinyl privacy fence at the location shown on the revised conditional use plan (Exhibit 166(a)) and to the specifications shown on Exhibit 166(b), is hereby **APPROVED**; and, it is further

ORDERED, that this modification and the continued use of the conditional use are subject to all terms and conditions imposed in connection with the initial approval, except as specifically amended by the Board of Appeals and the Hearing Examiner; and, it is further

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

application. A decision of the Hearing Examiner may be appealed on the basis of the Hearing Examiner's record to the Board of Appeals.

A handwritten signature in black ink, appearing to read 'L. Robeson', is written over a horizontal line.

Lynn A. Robeson
Hearing Examiner

NOTICES TO:

All parties entitled to notice at the time of the original filing
Current abutting and confronting property owners
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Rich Weaver, Planning Department
Planning Board
Local Civic Associations
Ehsan Motazedi, Department of Permitting Services
Alexandre A. Espinosa, Director, Finance Department

