

I. STATEMENT OF THE CASE AND DESCRIPTION OF PROCEEDINGS.....	3
II. FACTUAL BACKGROUND.....	6
B. Surrounding Area.....	7
C. Proposed Use.....	9
1. Site Plan and Floor Plans.....	10
2. Site Landscaping, Lighting and Signage	14
<i>a. Landscaping.</i>	<i>14</i>
<i>b. Lighting.</i>	<i>18</i>

<i>c. Signage.</i>	19
3. Operations	19
<i>a. Staffing.</i>	19
<i>b. Waste Disposal and Generators.</i>	19
<i>c. Shuttle Service for Residents.</i>	20
D. Environmental Issues	20
E. Community Response.....	21
III. FINDINGS OF FACT AND CONCLUSIONS OF LAW	22
A. Necessary Findings (General Standards, Section 59.7.3.1.E).....	22
1. Substantial Conformance with the Master Plan.....	23
2. Adequate Public Services and Facilities	25
3. No Undue Harm from Non-Inherent Adverse Effects	27
4. Compatibility with the Neighborhood	29
B. Development Standards of the Zone (Article 59.4)	36
C. Use Standards for an Independent Living Facility for Seniors	38
D. General Development Standards (Article 59.6).....	43
1. Parking and Loading.....	44
3. Site Landscaping and Screening	45
4. Outdoor Lighting.....	46
5. Conditions of Approval Recommended by Staff	46
IV. Conclusion and Decision	46

I. STATEMENT OF THE CASE AND DESCRIPTION OF PROCEEDINGS

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

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

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

- 1) Physical improvements to the Subject Property are limited to those shown on the Applicant's Conditional Use site plan, landscaping plan, and lighting plan that are part of the submitted application.
- 2) The maximum number of dwelling units is limited to 111 units and as such units are limited pursuant to Zoning Ordinance Section 59.3.3.2.C.a.iii.
- 3) The maximum number of employees is limited to six (6) persons on duty at one-time on weekdays. The maximum number of employees is limited to three (3) persons on duty at one-time on weekends.
- 4) The Applicant and any successors in interest must comply with the requirement of Zoning Ordinance Section 59.3.3.2.C.2.c.iii, that a minimum of 15 percent of the dwelling units are permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs.
- 5) Prior to issuance of any building permit for the subject conditional use, the Applicant must obtain approval of a Preliminary Plan [of] Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.

- 6) At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with the 2018 *Bicycle Master Plan* recommendations for a minimum 10-foot wide shared-use side-path along the east side of Frederick Road (MD 355) along the frontage of the subject property, or an alternative method of compliance as acceptable by Planning Department staff.
- 7) At the time of Preliminary Plan of Subdivision, the Applicant must illustrate on the preliminary plan a lead-in walkway to connect from the proposed shared use path along Frederick Road (MD 355) directly to the main building entrance.
- 8) At the time of Preliminary Plan of Subdivision, that Applicant shall provide an access easement for the use of the existing driveway for the adjacent [property] to the south to the satisfaction of Planning Department staff.
- 9) At the time of the Hearing Examiner decision and pursuant to Zoning Ordinance Section 59.3.3.2.C.2.c.i, the Applicant shall provide details concerning the operation of a resident shuttle program to be reviewed by the Hearing Examiner.
- 10) Prior to approval of a preliminary plan, the Applicant must obtain approval of a stormwater management concept plan.
- 11) The Applicant must comply with the approved forest conservation plan for the subject property.

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

The public hearing proceeded as scheduled on May 11, 2020.¹ The Applicant presented six witnesses: Mr. James H. Edmonson, a representative of the Applicant, Ms. Jane Przygocki, a land planner, Mr. Michael Wiencek, Jr., an architect, Mr. Mahmut Agba, a professional civil engineer, Mr. Daniel Park, a landscape architect, and Ms. Nicole White, a transportation planner and traffic engineer. Except for Mr. Edmonson (the Applicant), all were qualified as experts in their respective fields. 5/11/20 T. 35, 76, 113, 123, 136. The record was left open to June 21, 2020 to receive a proposed condition from the Applicant regarding provision of shuttle program to nearby services

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

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

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

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

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

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

II. FACTUAL BACKGROUND

A. Subject Property

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

Staff advised that the site has approximately 408 feet of frontage along Frederick Road. Exhibit 54, p. 4.³ According to Ms. Przygocki, the right-of-way required for Frederick Road was expanded in 2009 from 150 to 250 feet to accommodate a bus rapid transit line. E&G will provide the full 250-foot right of way. 5/11/20 T. 51.

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

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

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

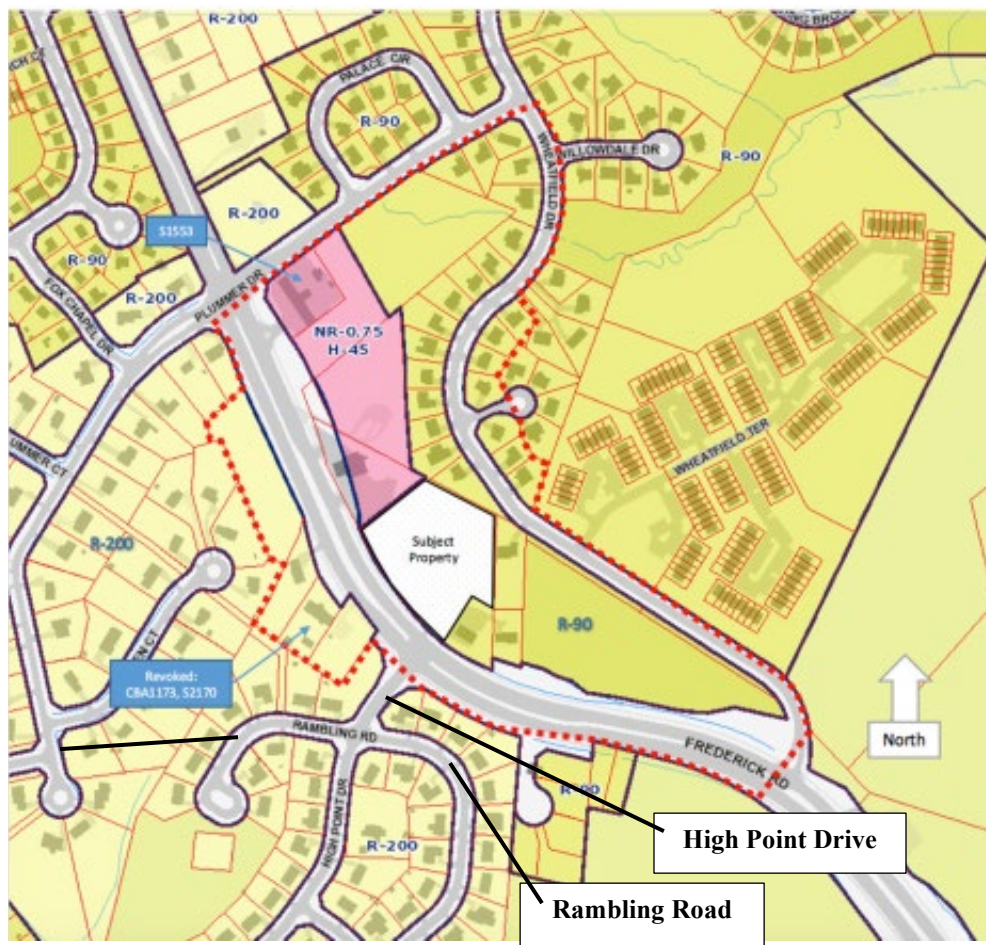


B. Surrounding Area

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

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

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



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

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

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

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

C. Proposed Use

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

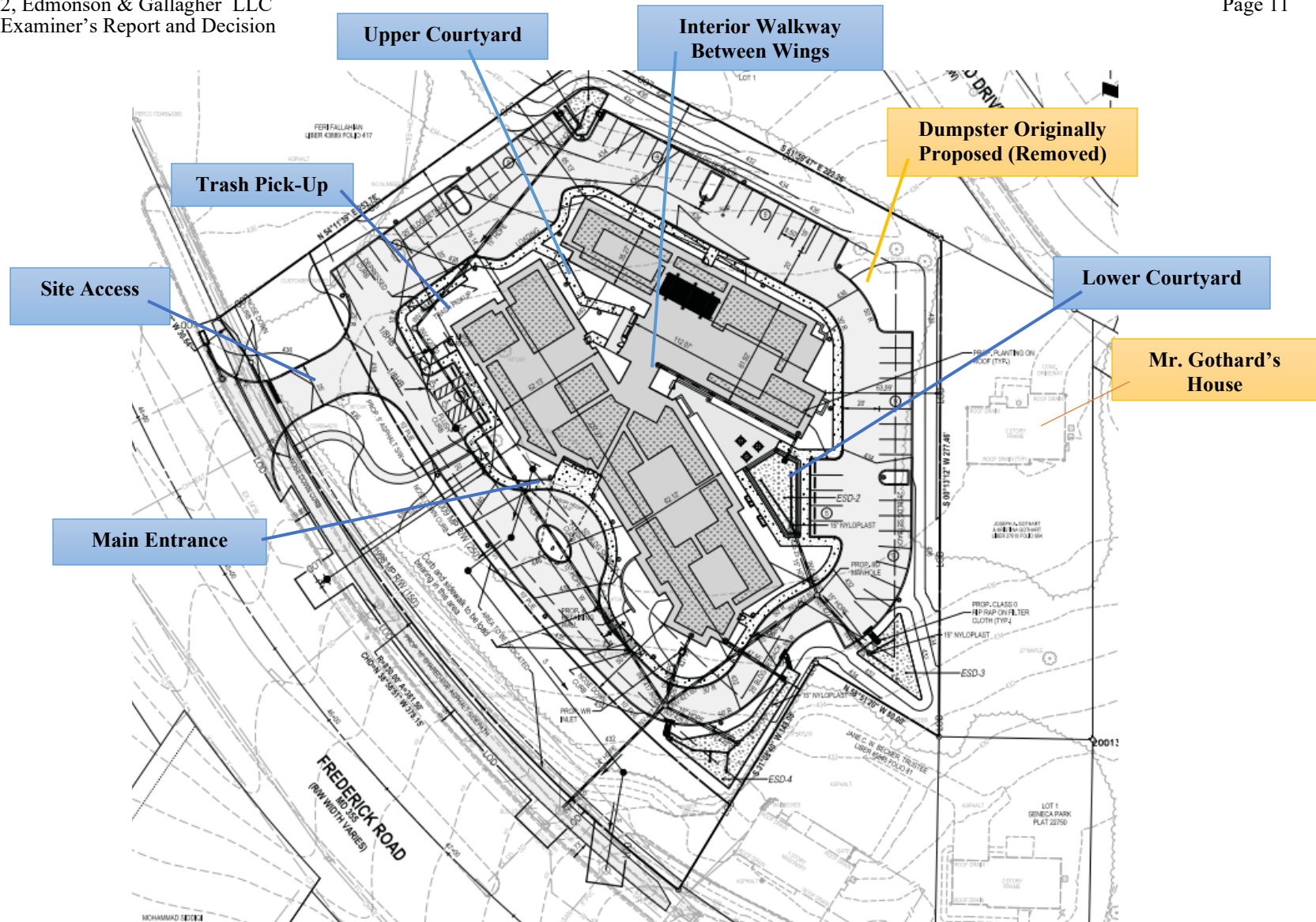
E&G's goal is to create an independent living facility for people of low and moderate income that will provide amenities and opportunities like those available in market rate senior living projects. They want their residents to lead full and enriched lives despite having lower incomes. 5/11/20 T. 16-17.

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












1. Site Plan and Floor Plans

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



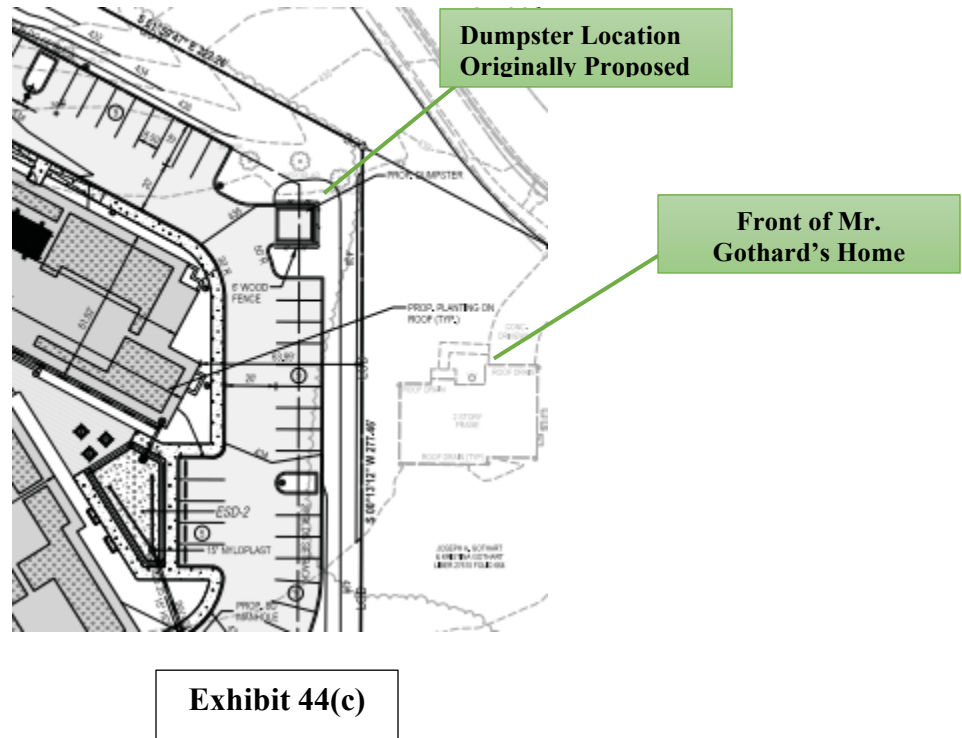
**Conditional Use Site Plan
Exhibit 81(a)**

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

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

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

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



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

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

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

2. Site Landscaping, Lighting and Signage

a. Landscaping.

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



4 FOURTH FLOOR PLAN
ASIST



2 FIRST FLOOR PLAN
ASIST



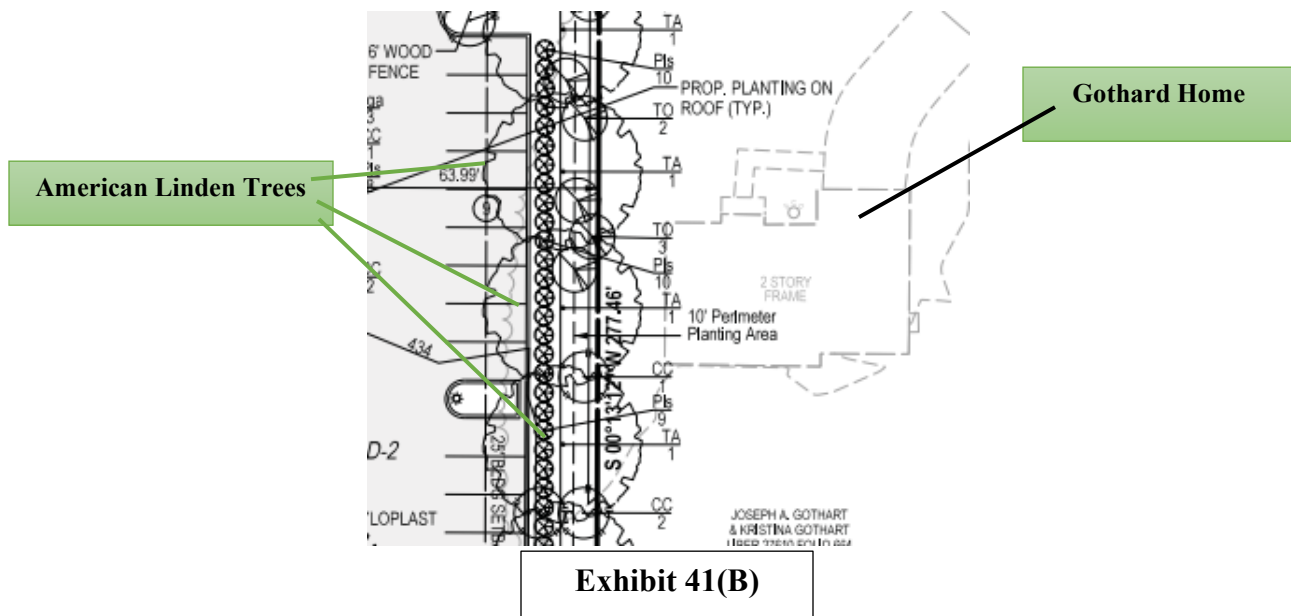
3 SECOND & THIRD FLOOR PLAN
ASIST



1 CELLAR FLOOR PLAN
ASIST

Floor Plans
Exhibit 51(b)

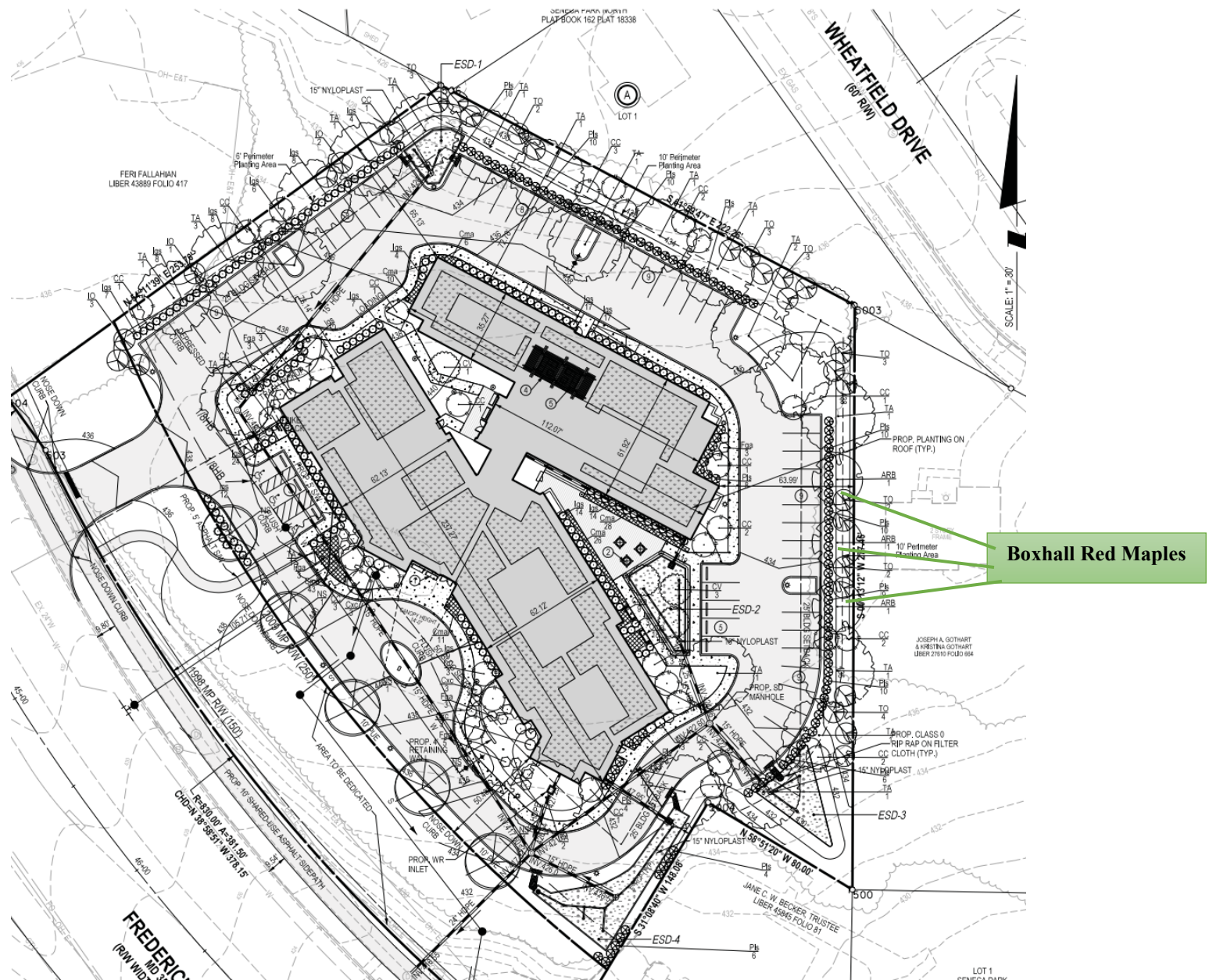
The Landscape Plan originally proposed showed American Linden trees along the property line closest to Mr. Gothard's house, (Exhibit 41(b), below):



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

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

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



Landscape Plan
Exhibit 81(b)

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

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

b. Lighting.

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

c. Signage.

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

3. Operations

a. Staffing.

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

b. Waste Disposal and Generators.

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

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

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

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

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

c. Shuttle Service for Residents.

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

At this time, a final shuttle plan has not been selected. The Applicant indicates that the level of shuttle service will be determined based upon resident need and by a number of factors including demographics of residents, personal mobility needs, regular and special events, and cost. A final shuttle program will be provided to the Hearing Examiner for review and decision.

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

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

D. Environmental Issues

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

E. Community Response

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

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

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

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

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

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

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

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

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

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

1. Substantial Conformance with the Master Plan

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

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

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

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

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

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

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

This finding is satisfied...the Project substantially conforms to the policies [sic] and recommendations contained in the Master Plan. There are no residential areas that would be adversely affected or altered by the Project because the Project is a residential use and the site is sufficiently buffered and located away from existing residential neighborhoods. Furthermore...only one conditional use/special exceptions currently exist in the vicinity. As such, there would not be an overconcentration of conditional uses in the area.

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

2. Adequate Public Services and Facilities

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

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

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

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

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

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

3. No Undue Harm from Non-Inherent Adverse Effects

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

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

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

- Vehicle and pedestrian trips to and from the Property;
- Parking for residents and employees;

- Varied hours of operation;
- Noise or odors associated with vehicles;
- Noise or odors association with trash collection and trucks;
- Emergency electrical generator; and
- Lighting.

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

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

Non-inherent characteristics are unique to the physical location, operation, or size of a proposed use. In this case, the Property and the surrounding property have varied topographic change that helps to reduce the visual impact of the Project from adjoining properties are residential uses to the north and east. Further, proposed landscaping is typical of that found in the adjoining neighborhoods and as proposed further reduces impacts.

The Hearing Examiner doesn't find enough evidence in this record that the topography is unique to this site to consider it a non-inherent site characteristic. She agrees with Staff that the project as revised does not result in undue adverse effects requiring denial of this application.

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

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

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

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

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

4. Compatibility with the Neighborhood

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

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

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

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

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

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

The character of the surrounding area is residential, consisting of single-family attached and detached homes. The Project will not alter the character of the area...because the use is residential in character and adequately buffered with landscaping, and sufficiently located away from any sensitive land uses or dwelling units.

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

There is a variety of building scales, forms, and design details exhibited in the neighborhood. The architecture of the Project is contemporary in design and form. The visual character of the neighborhood is mixed with detached dwelling[s], townhomes and commercial uses, such as a restaurant and credit union buildings. Therefore, the proposed residential building is not out of character and is compatible with the surrounding residential neighborhoods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 59.7.3.1.E.3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

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

B. Development Standards of the Zone (Article 59.4)

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

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

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

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

Table 1 – Development Standards

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

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

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

³Per 59.6.2.5.K (Facilities for conditional uses in residential detached zones)

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

**Staff Report Table 1
Exhibit 52**

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

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

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

Zoning Ordinance §59.3.3.2.C.

C. Independent Living Facility for Seniors or Persons with Disabilities

1. Defined

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

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

Zoning Ordinance, §59.1.4.2.

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

2. Use Standards

a. Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a limited use, it must satisfy the following standards:

i. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.

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

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

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

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

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

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

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

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

(e) Age restrictions must satisfy at least one type of exemption for housing for older persons from the familial status requirements of the federal “Fair Housing Act,” Title VIII of the Civil Rights Act of 1968, as amended.

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

b. Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1, Conditional Use, and the following standards:

i. The site or the proposed facility has adequate accessibility to or provides on-site public transportation, medical service, shopping areas, recreation and other community services frequently desired by senior adults or persons with disabilities. The application must include a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.

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

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

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

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

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

ii. The Hearing Examiner may restrict the availability of ancillary services to nonresidents and specify the manner in which this is publicized. Retail facilities may be included for the exclusive use of the residents of the building.

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

iii. A minimum of 15% of the dwelling units is permanently reserved for households of very low income, or 20% for households of low income, or 30% for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs under Executive regulations. Income levels are defined in Section 1.4.2, Defined Terms.

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

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

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

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

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

iv. The maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is 60 feet and the maximum density is determined by the Hearing Examiner under the development standards of Section 3.3.2.C.2.b.vi through Section 3.3.2.C.2.b.ix, without regard to any other limitation in this Chapter.

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

v. Height, density, coverage, and parking must be compatible with surrounding uses and the Hearing Examiner may modify height, density, coverage, and parking to maximize the compatibility of buildings with the residential character of the surrounding neighborhood.

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

While the footprint, massing and building height are not typical of the adjacent residential neighborhood, the existing site conditions, topography, landscaping, and placement of the building maximize the compatibility of the building with the surrounding area. Additionally, the project is also located adjacent to commercial uses and is not incompatible with such uses.

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

vi. The minimum front setback is 50 feet. Except for an access driveway, this setback area must be maintained as green area; however, if development does not exceed the height limit of the applicable Residential zone, the minimum setback specified by the zone applies.

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

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

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

viii. The minimum green area is:

(a) 70% in the RE-2, RE-2C, and RE-1 zone, except where the minimum green area requirement is established in a master plan;

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

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

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

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

D. General Development Standards (Article 59.6)

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

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

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

1. Parking and Loading

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

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

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

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

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

¹⁰ 111 (dwelling units) x .25 (bicycle spaces) = 27.75.

34):

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

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

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

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

3. Site Landscaping and Screening

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

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

4. Outdoor Lighting

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

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

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

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

5. Conditions of Approval Recommended by Staff

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

IV. Conclusion and Decision

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

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

59.3.3.2.C.2.b. of the Zoning Ordinance to build and operate an Independent Living Facility for Seniors on property described as Parcel 507 of the Middlebrook subdivision (Tax Account No. 09-00767475), in Germantown, Maryland, is hereby **GRANTED**, subject to the following conditions:

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

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

Issued this 1st day of July 2020.



Lynn Robeson Hannan
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

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

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

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

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

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

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

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

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

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

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

NOTIFICATION OF DECISION TO BE SENT TO:

Jody S. Kline, Esquire

Attorney for the Applicant

Mr. Joseph Gothard

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Robert Kronenberg, Deputy Director, Planning Department

Phillip Estes, Planning Department

Greg Nichols, Manager, Department of Permitting Services

Victor Salazar, Department of Permitting Services

Michael Coveyou, Director, Finance Department

Charles Frederick, Esquire, Associate County Attorney