

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF:
FLOURNOY DEVELOPMENT GROUP, LLC

Applicant

For the Application

Casey Cirner, Esquire
 (Attorney for the Applicant)
 Kenneth Jones
 Brian Connelly
 Colleen Bowers
 Janet Meyer
 Katherine Wagner
 Charles Sabin

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OZAH Case No. 20-09

Before: Derek J. Baumgardner, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

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

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

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

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

1. Physical improvements to the Subject Property are limited to those shown on the Applicant's conditional use site plan, landscaping plan, and lighting plan that are part of the submitted Application.
2. The maximum number of residential care units is limited to 125 beds in accordance with Montgomery County Zoning Ordinance Section 59.3.3.2.E (Residential Care Facility).
3. The maximum number of employees is limited to 35 persons on-duty at one-time.
4. Prior to the issuance of any building permit for the subject conditional use, the Applicant must amend or obtain approval of a Preliminary Plan of Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.
5. The Applicant must comply with or amend the Final Forest Conservation Plan No. 120170210 in accordance with the approval or amendment of a Preliminary Plan of

Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.

6. At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with the 2018 *Bicycle Master Plan* recommendations for a minimum 10-foot-wide shared-use side- path along the west side of Liberty Mill Road, or an alternative method of compliance as acceptable by Planning Department staff.
7. At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with requirements to provide a minimum 5-ft. wide sidewalk along the frontage of the Subject Property with Liberty Mill Rd.

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

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

II. FACTUAL BACKGROUND

A. The Subject Property

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

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

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



Figure 1 – Aerial view of the subject Property



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

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

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

C. Proposed Use

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

¹ Germantown Elementary School

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

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

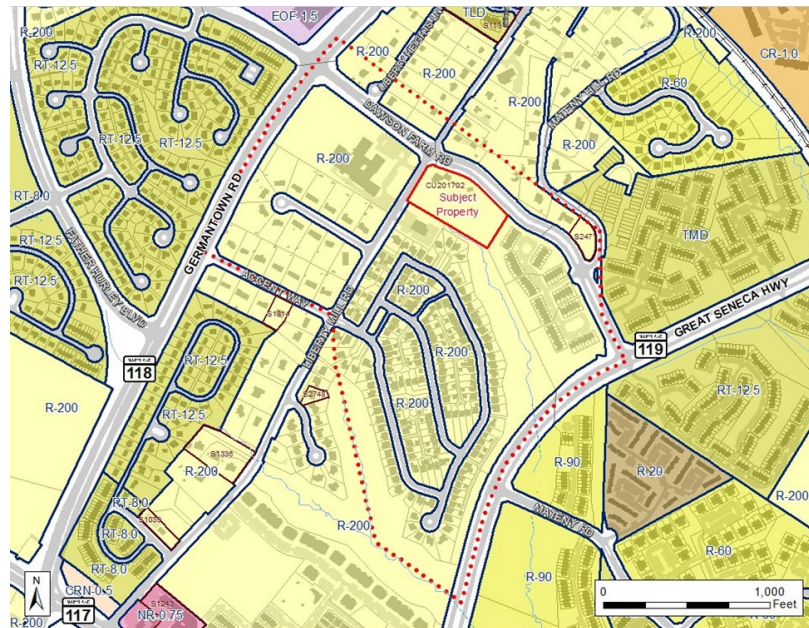
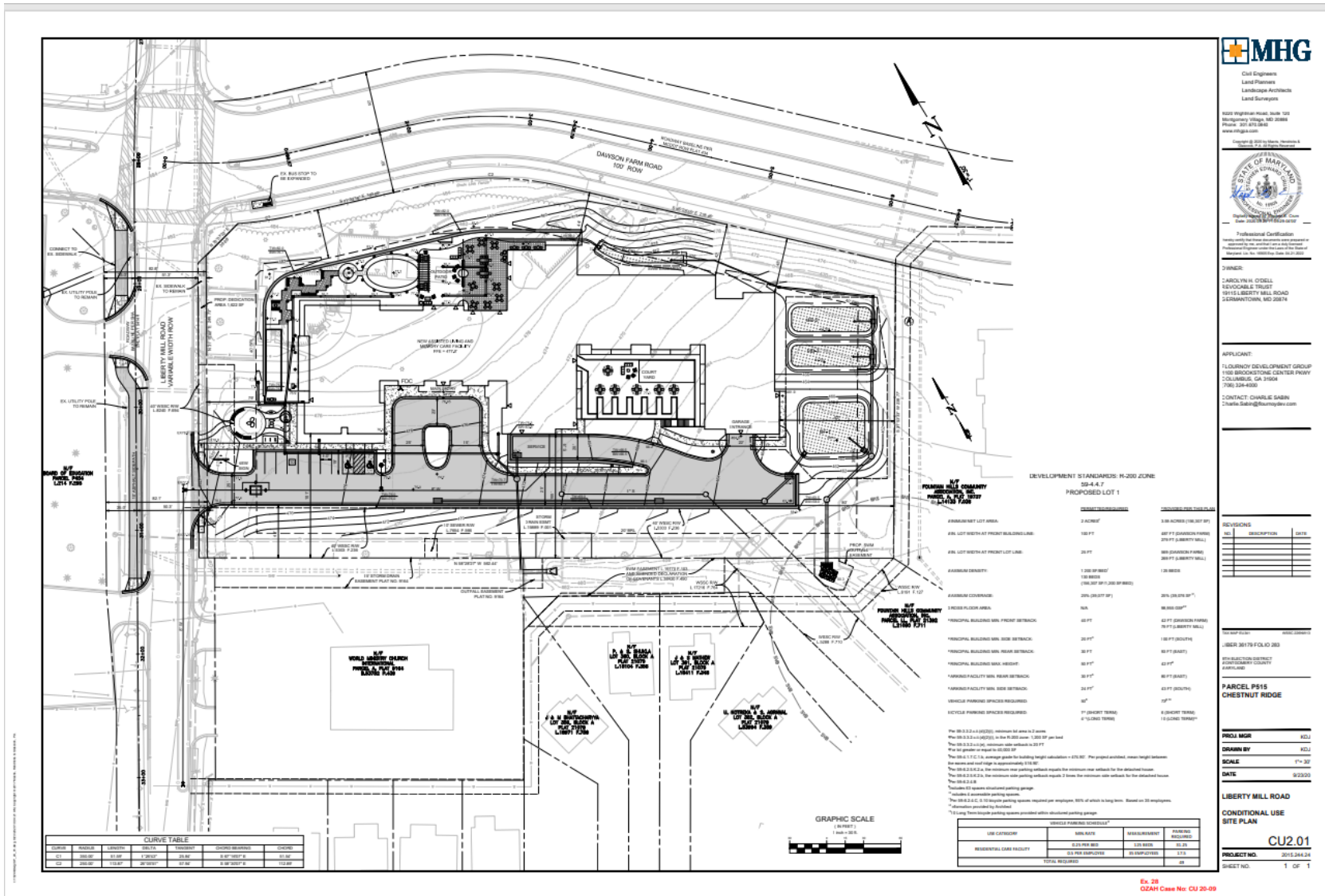


Figure 3 – Zoning map with subject property (R-200) and the defined neighborhood (red-dashed line)

1. Conditional Use Site Plan

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



Conditional Use Site Plan – Exhibit

2. Operations

a. Staffing.

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

b. Amenities.

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

c. Trash Pick-Ups, Deliveries, and Transportation

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

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

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

3. Transportation and Parking

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

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

a. Pedestrian and Master Planned Bicycle Facilities

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

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

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

b. Public Transit Service

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

c. Local Area Transportation Review

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

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

Table 3 – Trip Generation

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

4. Landscaping and Lighting

a. Landscape Plan

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

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

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

Ms. Bowers further stated that:

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

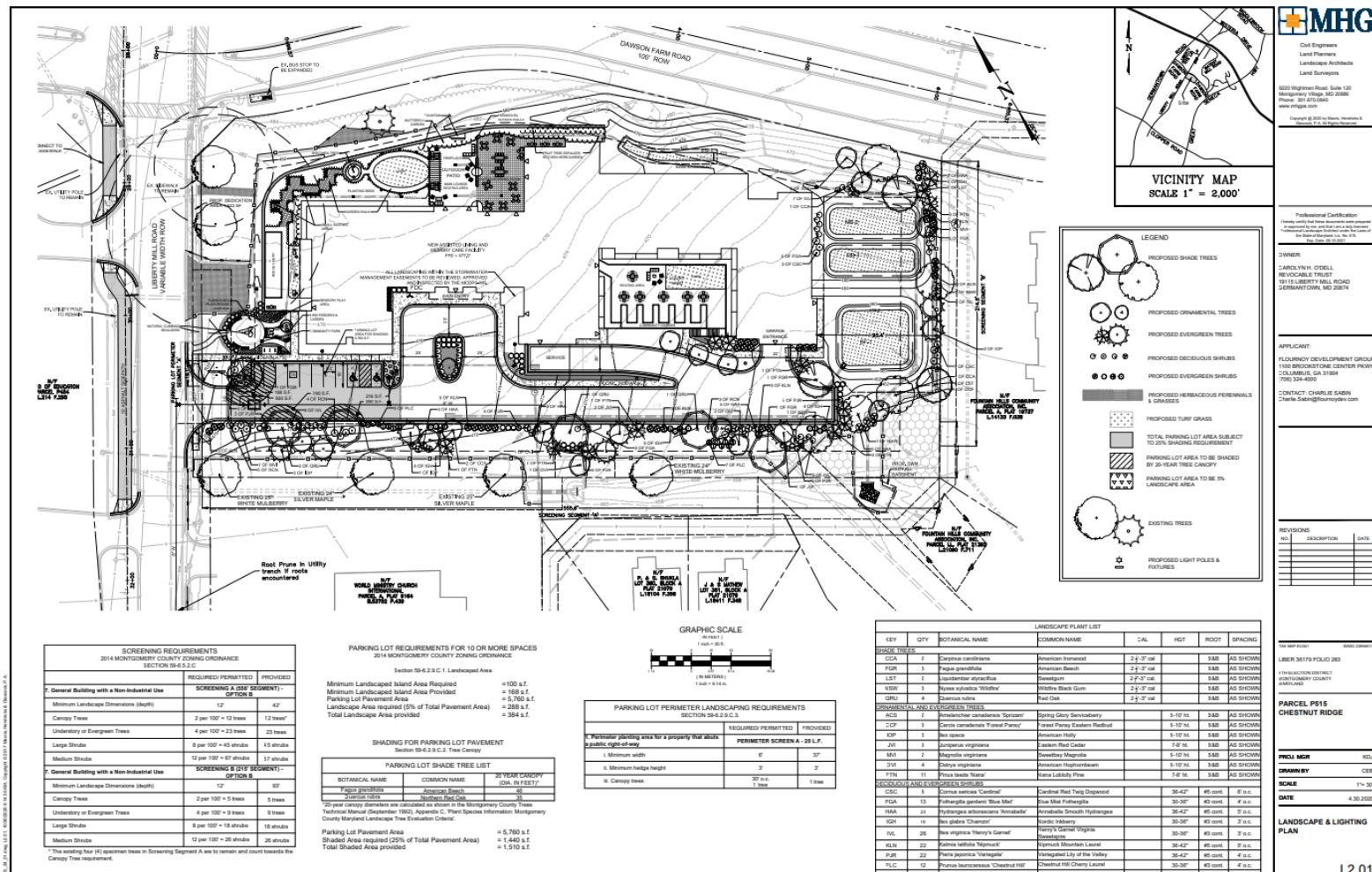
⁴ Preliminary plan for subdivision will be required following this approval

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

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

b. Lighting

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



Revised Landscape & Lighting Plan (unmarked exhibit)

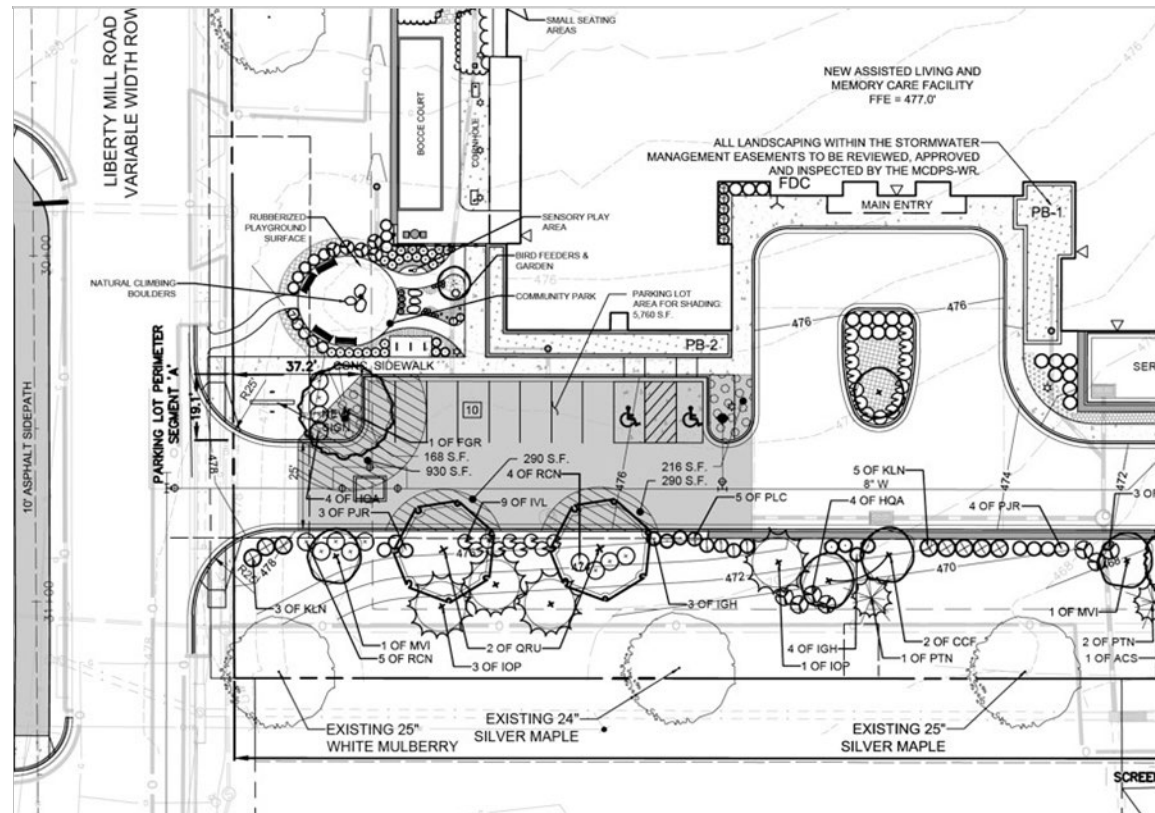


Figure 8 – Landscape plan for the surface parking lot (shaded) near the main entrance of the building

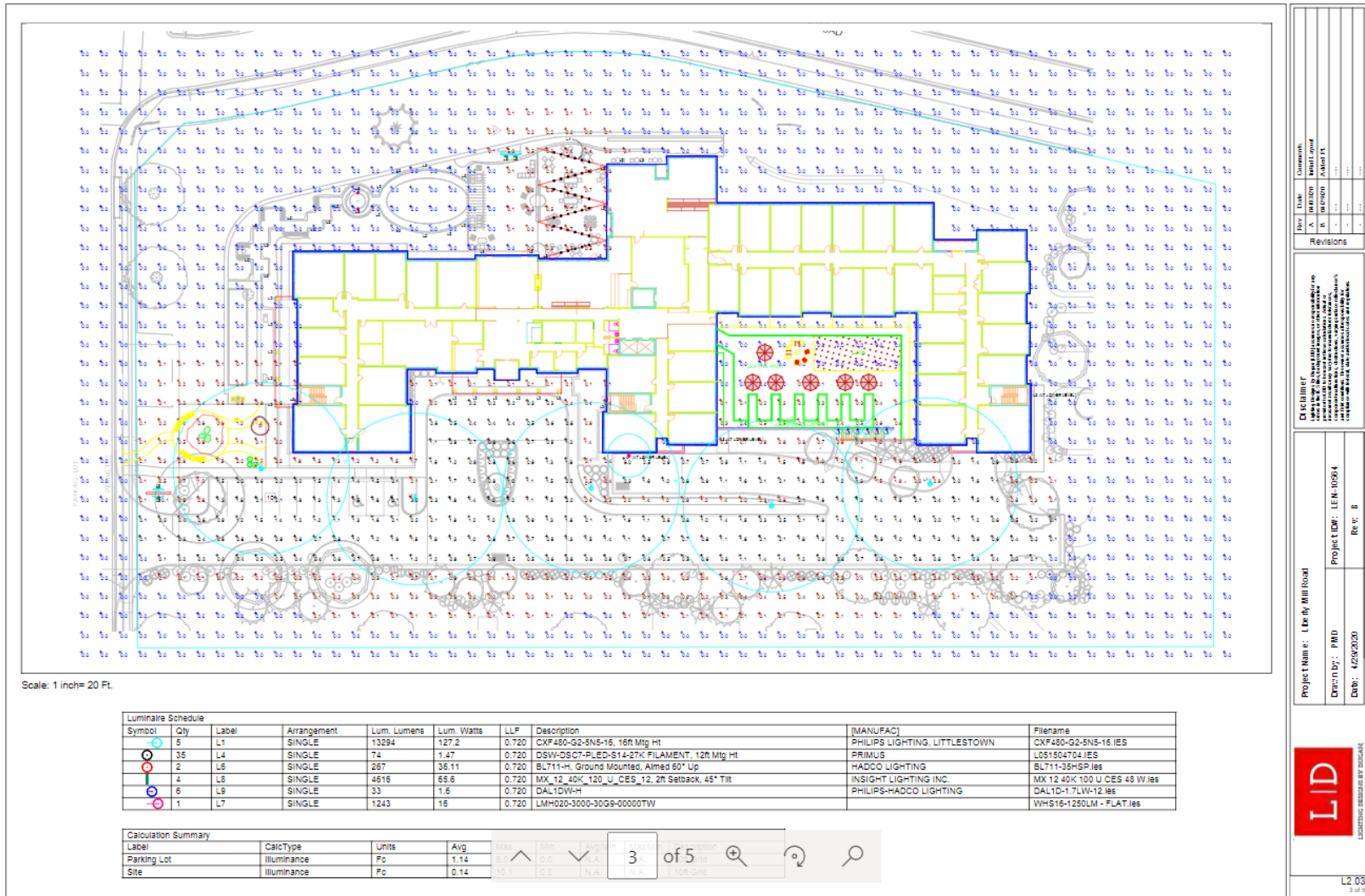


Exhibit 30(d) - Photometric Plan

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

D. Environmental Issues

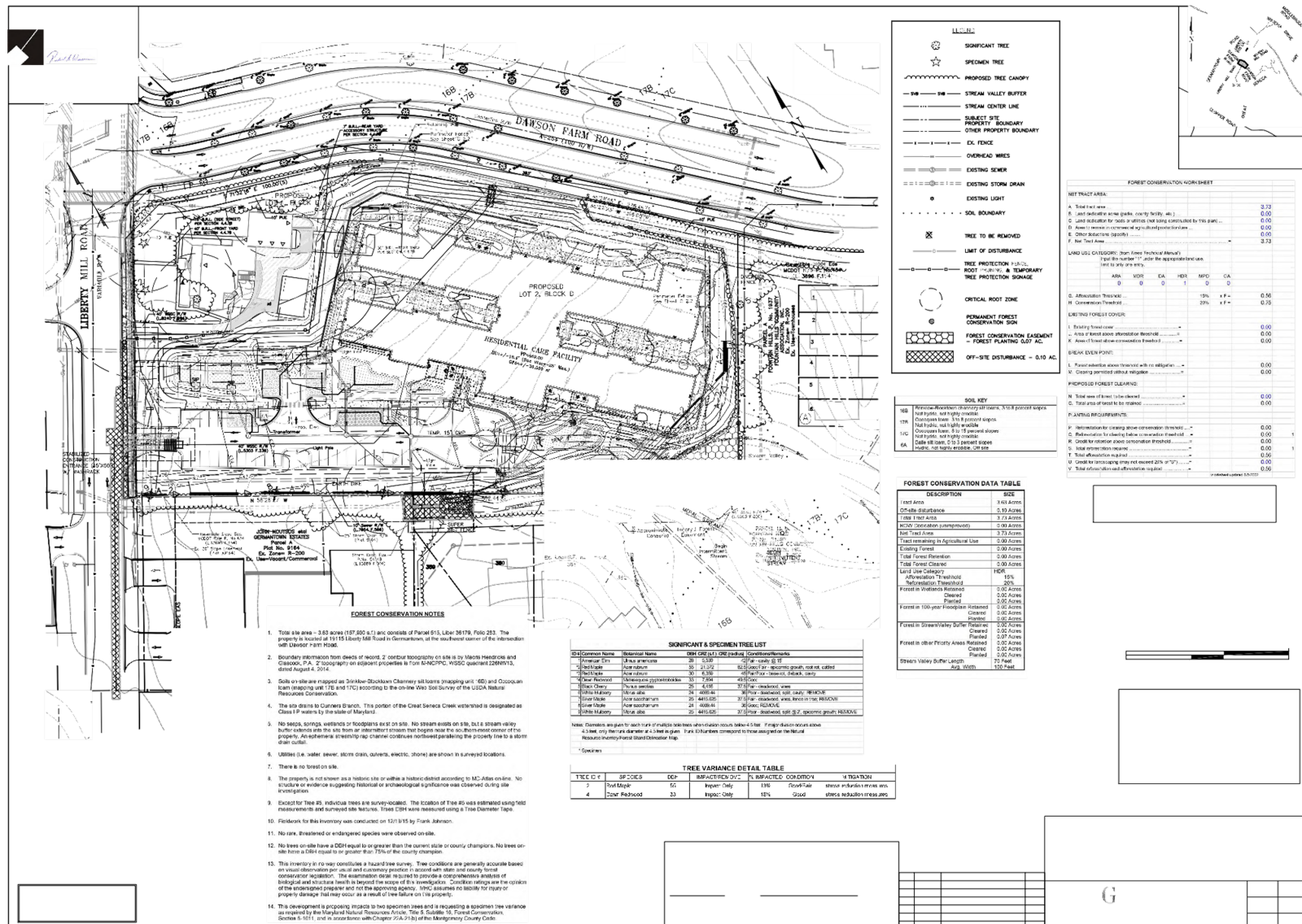
On July 24, 2017, a forest conservation plan was approved as part of Preliminary Plan No. 120170210 and Conditional Use No. 2017-02. *See* p. 21, below. While this forest conservation plan was completed for a different development project, the impacts of the proposed project are substantially similar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

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

E. Community Response

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

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



Forest Conservation Plan, Preliminary Plan No. 120170210

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

A. Necessary Findings (Section 59.7.3.1.E)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find

that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

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

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

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

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

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

This standard requires the Hearing Examiner to identify inherent and non-inherent adverse effects of the proposed use on nearby properties and the surrounding area. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not enough to deny a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* A conditional use may be denied if it will have non-inherent adverse effects, alone or in combination with inherent effects, that cause “undue” harm to the surrounding neighborhood.

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

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

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

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

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

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

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

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

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

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

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

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

Table 2 – Development Standards

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

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

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

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

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

1. Defined. In General

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

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

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

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

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

c. Residential Care Facility (Over 16 Persons)

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

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

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

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

(c) Where residential dwelling units are provided

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

(2) the minimum green area is 50%.

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

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

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

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

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

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

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

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

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

D. General Development Standards (Article 59.6)

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

1. Parking Standards

a. Number of On-Site Spaces

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

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

b. Parking Lot Location, Setbacks, and Requested Waivers

59.6.2.5.K

Facilities for Conditional Uses in Residential Detached Zones

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

1. Location

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

2. Setbacks

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

b. The minimum side parking setback equals 2 times the

minimum side setback required for the detached house.

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

- i. the required side and rear parking setbacks must be increased by 5 feet for a parking facility with 150 to 199 parking spaces; and*
- ii. the required side and rear parking setbacks must be increased by 10 feet for a parking facility with more than 199 parking spaces.*

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

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

2. Site Perimeter Landscaping and Screening

Division 6.4 and 6.5 of the Zoning Ordinance set minimum standards for site landscaping, which are intended to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” §59.6.4.1. Section 6.5.2. excludes single-family detached homes from the technical screening requirements of the Zoning Ordinance, provided that the use is compatible with the neighborhood:

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

Section 59.6.5.3.A.1 states that:

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

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

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

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

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

3. Outdoor Lighting

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

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

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

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

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

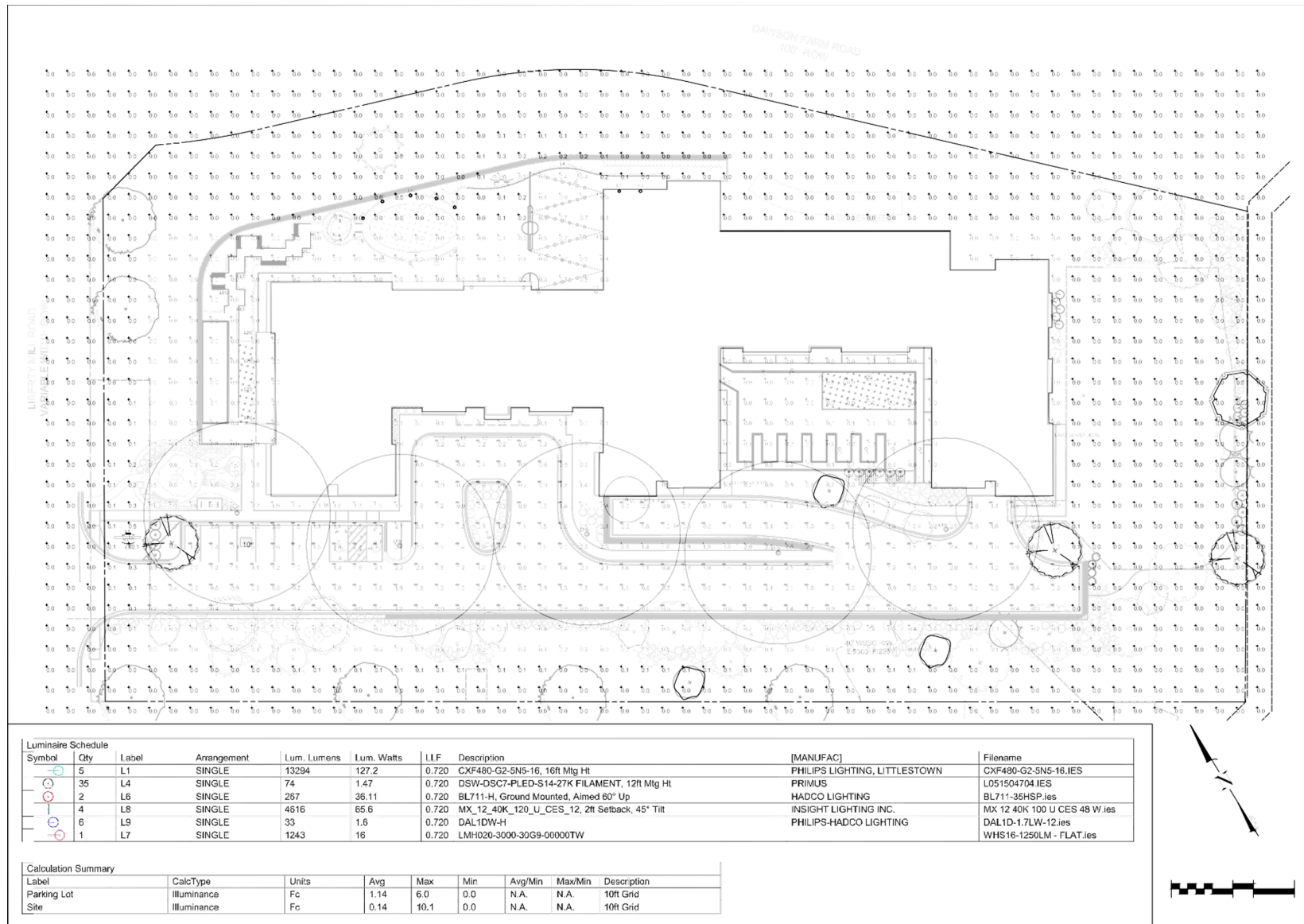


Exhibit 30(a) - Lighting Plan

IV. Conclusion and Decision

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance. Based on the foregoing findings and conclusions, the Hearing Examiner hereby **GRANTS** the Applicant's request for a conditional use under Section 59.3.3.2.E.2.c. of the Zoning Ordinance to operate a residential care facility for more than sixteen (16) persons at 19115 Liberty Mill Road in Germantown, Maryland, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Applicant's conditional use site plan, landscaping plan, and lighting plan that are part of the submitted Application.
2. The maximum number of residential care units is limited to 125 beds in accordance with Montgomery County Zoning Ordinance Section 59.3.3.2.E (Residential Care Facility).
3. The maximum number of employees is limited to 35 persons on-duty at one-time.
4. Prior to the issuance of any building permit for the subject conditional use, the Applicant must amend or obtain approval of a Preliminary Plan of Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.
5. The Applicant must comply with or amend the Final Forest Conservation Plan No. 120170210 in accordance with the approval or amendment of a Preliminary Plan of Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.
6. At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with the 2018 *Bicycle Master Plan* recommendations for a minimum 10-foot-wide shared-use side- path along the west side of Liberty Mill Road, or an alternative method of compliance as acceptable by Planning Department staff.
7. At the time of Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with requirements to provide a minimum 5-ft. wide sidewalk along the frontage of the Subject Property with Liberty Mill Rd.
8. The testing of any on-site generator or similar equipment shall be conducted during weekday afternoon hours as to mitigate any disturbance to community members and residents alike.

Issued this 21st day of December 2020.



Derek J. Baumgardner
Hearing Examiner

RIGHT TO APPEAL

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

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

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

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

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

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

Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request, and will contact you regarding scheduling.

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

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

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

Notification of Decision sent to:

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