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I. STATEMENT OF THE CASE

On November 24, 2020, E & M Investment, LLC (hereinafter “Applicant” or “E&M”) filed an application seeking a conditional use to establish a Home Health Practitioner (Major Impact) use under §59-3.3.3.G of the Zoning Ordinance.¹ Exhibit 1. The application proposes to use the first floor of the premises to operate a health care business while continuing to use the remaining portion of the building as a single-family detached dwelling. The subject site is located at 9221 Colesville Road in Silver Spring, otherwise known as Lot 20, Block A of the Seven Oaks Subdivision, and consists of 0.72 acres. The property is zoned R-60 (moderate density residential) and is subject to the 2000 North and West Silver Spring Master Plan.

On January 26, 2021, the Applicant filed a request to amend the application by updating the previously submitted conditional use site plan, traffic report, DPS Fire Access and Water Plan memo, and further clarifying remarks. Exhibit 25. OZAH issued a Notice of Motion to Amend on February 16, 2020, and no objections were received. Exhibit 28. On February 25, 2021, Staff of the Montgomery County Planning Department (“Staff”) issued its report (Exhibit 30) recommending approval of the application subject to nine (9) conditions:

1. The Home Health Practitioner (Major Impact) use must be limited to up to two (2) resident health practitioners and up to six (6) non-resident support persons in any 24-hour period.
2. The Home Health Practitioner use is limited to serving a maximum of two (2) patients on-site at any one time.
3. The specified hours of operation are limited to Monday through Friday, 8:00 AM to 5:30 PM.
4. Appointments are required for visits, but emergency patients may visit outside the specified hours or without appointment.
5. The maximum amount of floor area used for the Home Health Practitioner use will be 1,195 square feet, 22% of the existing 5,507 square foot single family detached residential dwelling unit.
6. Truck deliveries are prohibited, except for parcels delivered by public or private parcel services that customarily make residential deliveries.
7. An indoor waiting room must be provided.

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, as amended.

8. The Applicant must widen the existing four (4)-foot sidewalk along Colesville Road to five (5)-feet, preserving the existing one (1)-foot grass buffer along the Site's Colesville Road frontage.
9. The Applicant must provide ten (10) off-street parking spaces on-site.

On March 1, 2021, the Planning Board accepted Staff's recommendation and recommended approval of the application with conditions. Exhibit 31.

On March 15, 2021, the public hearing on this conditional use application was conducted by Hearing Examiner Derek J. Baumgardner. The following witnesses testified on behalf or in support of the application: John Sekerak (land planning/landscape architecture); Sergio Rodriguez (civil engineering); Shahriar Etemadi (traffic engineering/transportation planning); Mohamed Matope, RN (principle of E&M Investment, LLC, as Applicant). The record also contains two letters of support from community members and one letter of concern. Exhibits 11(a), 11(b), and 29, respectively.

The Hearing Examiner held the record open for 10 business days after the conclusion of the hearing, or until March 25, 2021, for inclusion of the transcribed record in this case. No further documents or evidence was submitted.

For the reasons that follow, the Hearing Examiner finds that the application meets all Zoning Ordinance requirements for approval of a conditional use for a Home Health Practitioner (Major Impact), subject to the conditions of approval listed in Part IV of this Report, but excludes requested condition #8 recommended by Planning Staff.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located on Colesville Road between Dale Drive and Sligo Creek Parkway just north of downtown Silver Spring (Routes 29 and 97). Exhibit 7, p. 3. The property is currently improved by a one-story, single-family detached dwelling situated on a 0.72-acre lot, with a history of prior use as doctor's offices. Exhibit 30, p. 4-5. The property has a paved driveway that is approximately 18 feet wide and 105 feet long and an existing three (3) bay carport and shed at the rear of the property. Exhibit 25(d), p. 3-4. Figure 1 from the Staff Report (Exhibit 30, p. 3) shows the property's general location below:



Figure 1: Aerial photo of the Subject Site (outlined in red)

The proposed residential Home Health Care operation will consist of 1,195 square feet of the 2,743 square foot first-level of the home. The requested conditional use will be located entirely on

the main floor of the residence with the remaining portion of the building continuing as residential including the existing cellar area of 2,764 sq. feet. Exhibit 25(d), p. 4; See 20(b).

B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff describes the neighborhood as follows (Exhibit 30, p. 4):

The Staff-defined Neighborhood (outlined in yellow in Figure 2) [below] is generally bounded by Sligo Creek Parkway/Sligo Creek Park to the north; Dale Drive to the south; Ellsworth Drive and Bennington Road to the east; and by Harvey Road to the west. The Neighborhood is composed of detached houses in the R-60 Zone...

The “surrounding neighborhood” as proposed by Staff is shown on the aerial photograph below marked as Figure 2. Exhibit 30, p. 4. Staff further notes that the neighborhood is composed predominantly of detached single-family houses in the R-60 Zone (moderate density) and identified three (3) approved conditional uses/special exceptions within the defined neighborhood: (1) S-1673: Accessory Apartment, located at 9207 Watson Road; (2) S-2122: Non-resident medical practitioner's office at 9225 Colesville Road; and (3) S-2086: Accessory Apartment, located at 615 Bennington Drive. *Id.*



Figure 2: Staff Defined Neighborhood

The Applicant proposes a slightly different surrounding neighborhood, as shown below, from Exhibit 7, p. 5:



Conclusion: While functionally the same for purposes of conditional use review, Staff's proposed surrounding neighborhood extends deeper into the northwest quadrant of residential homes accessible via Harvey Road. The Applicant's surrounding neighborhood does not include these residential homes but does include Sligo Creek Park in the north, northeast, and eastern quadrants as part of the surrounding neighborhood. The only meaningful distinction between both reasonable delineations is that under Staff's delineation two additional special exceptions would be included

in this area (S-2086 & S-1673) whereas the Applicant's delineation would exclude these two special exceptions as outside the capture area.

Based on this record, the Hearing Examiner accepts Staff's delineation as the surrounding neighborhood for the purposes of evaluating this proposed conditional use. While Sligo Creek Park is an important topographical feature in this community, both S-2086 & S-1673 do have direct access to ancillary roadways (Dale Drive and Sligo Creek Parkway) which lead to Colesville Road and are therefore suitable to include in the capture area for delineating the surrounding neighborhood. The Hearing Examiner further finds that the surrounding neighborhood is moderate density (R-60) small lot single-family detached residential in character.

C. Proposed Use

The Applicant seeks approval to use the premises as a conditional use for a Home Health Practitioner (Major Impact). Exhibit 1. The operators, Mr. Matope and his wife, Elizabeth Luanda, plan to reside in the single-family dwelling along with their family and use a portion of the premises as the office for their home health care practice. Exhibit 7, p.1. As such, healthcare services are principally provided in patients' homes and only secondarily on site, but the business will employ both Mr. Matope and Mrs. Luanda as well as six (6) non-resident employees. *Id.* at 2. A photograph of the subject property is reproduced in the Staff Report as Figure 3, shown below. Exhibit 30, p. 6.

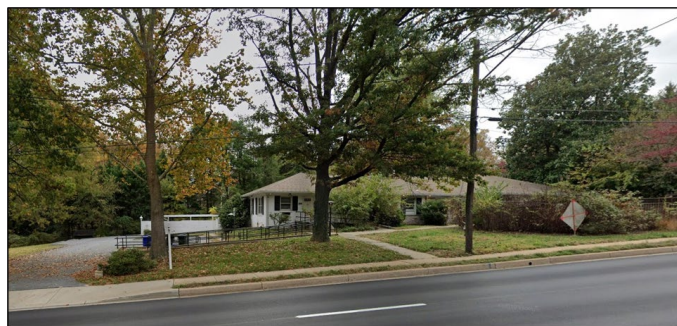


Figure 3: Front view of house from Colesville Road (looking southeast)

1. Conditional Use Site Plan

The revised conditional use site plan illustrates the lot, structure, access, and footprint of the existing single-family dwelling. *See* Exhibit 25(a) [Appendix A].

2. Site Landscaping, Screening, Lighting, and Signage

The Applicant proposes additional landscaping in the rear of the property to help further screen the parking area from view of neighboring properties. Exhibit 7, p. 9; Exhibit 18 [Appendix B]. No other exterior changes are proposed. T. 51.

Staff advises that the existing lighting is residential in nature and will not cause any unreasonable glare on neighboring properties. Exhibit 30, p. 16. The application does not propose additional lighting or modifications to the existing lighting. The property includes three lampposts, approximately six feet in height, located in the front yard and in the parking area along the side of the home. Exhibit 30, p. 9. Staff advises that the lampposts are residential in character and are typical of those commonly found in single-family communities. *Id.* The house also includes motion-activated security lights mounted under the eaves along the perimeter of the home but when illuminated the illumination does not exceed 0.5 foot-candles along Colesville Road or any property line. *Id.* at 9.

The Applicant proposes one double-sided standalone sign along the Colesville Road frontage of the home. T. 44, 53. Mr. Sekerak testified that the proposed sign will be a maximum of five (5) feet in height, set back five (5)-feet from the public right-of-way, and a maximum of five (5) square feet in area. *Id.*; *Also see* Exhibit 30, p. 16. Review and approval of the proposed must be obtained from the Sign Review Board.

3. Operations

The proposed conditional use of a Home Health Practitioner (Major Impact) comprises a home health care services business that provides health care services in the homes of patients, with most health care appointments located off-site. Exhibit 30, p. 6. Both owners will spend half the workday on-site and the other half of the day conducting in-home healthcare visits. Exhibit 7, p. 2. Of the six (6) staff assigned to the Home Health Practitioner Site, two (2) will work full time (eight (8) hours a day) at the residence. *Id.* The other four (4) staff members will be primarily off-site at patients' homes for most of the day. *Id.* at 7. Off-property duties include treating patients at patients' homes, interacting with health care staff and operators at hospitals, health care facilities, performing sales duties, and conducting meetings. *Id.*

The proposed Home Health Practitioner use will occupy approximately 1,195 square feet of the 5,507 square foot existing single family detached residential dwelling and will be located entirely on the first-floor. Exhibit 7, p. 4. The interior space will consist of a reception and waiting area, staff offices, staff locker room/bathroom, meeting room, and a visitor bathroom. Exhibit 30, p. 6. The Applicant is not proposing any expansion or change to the building itself or any other structural improvements to the property, other than interior renovations. Figure 4 below, reproduced in Staff Report's p. 7, shows the proposed floor plan (first floor). Exhibit 30, p. 7.

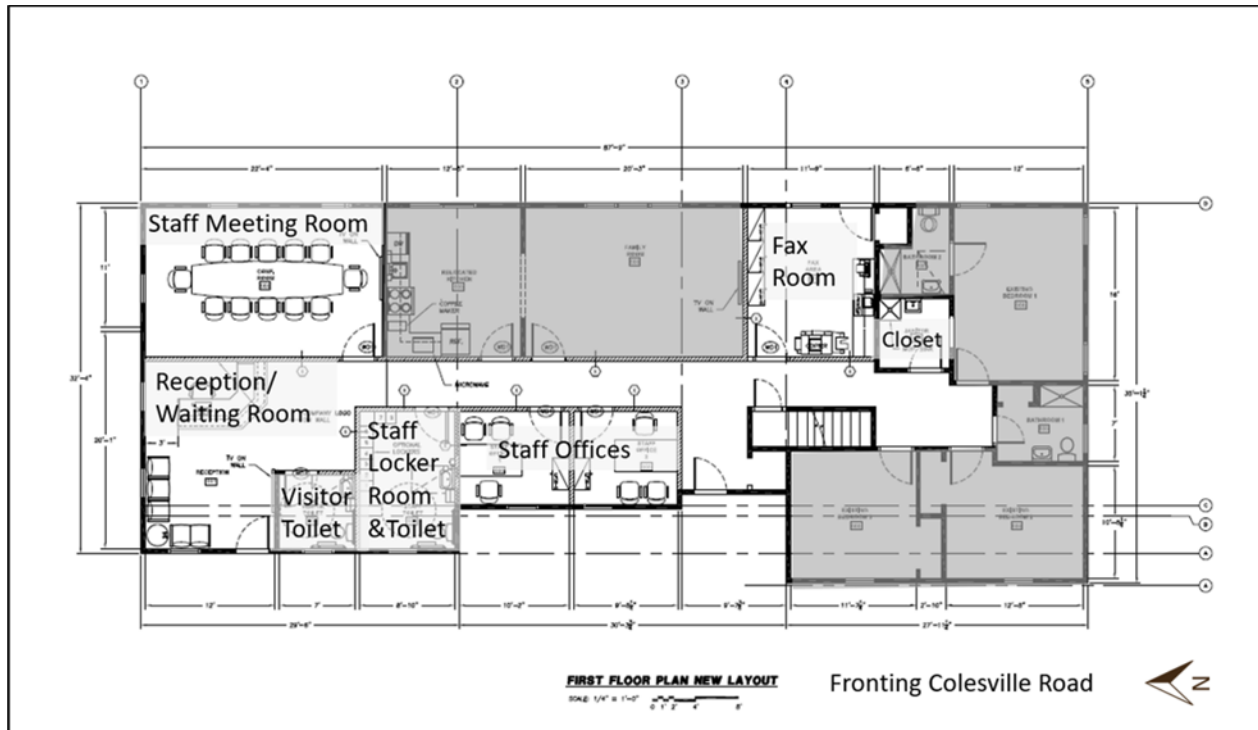


Figure 4: First Floor Schematic Floorplan

Staffing

The Applicant states that staff business hours will be 8am until 5:30pm, Monday through Friday, excluding any emergencies. Exhibit 7, p. 8. In addition to Mr. Matope and Ms. Luanda, of the six (6) staff members employed by the Applicant, two will be based at the residence full time, while the other 4 staff members will spend the majority of their work hours offsite visiting and caring for patients in patients' homes and other operational tasks. *Id.*

Parking

The property currently supports 10 off-street parking spaces for both the residential and proposed conditional use. Exhibit 17. This configuration had supported the previously authorized conditional use (S-1640) as medical offices before that use was abandoned in 2012. Exhibit 30, p. 6-7. Six (6) tandem parking spaces are provided: three (3) spaces within the existing carport and three (3) spaces immediately behind the carport. Four (4) spaces, including one (1) ADA

accessible space, are available along the access aisle within the existing driveway. All spaces are available for either employees or patients. *Id.* Figure 6 below, reproduced from Staff's Report, p.8, shows the existing and proposed on-site parking spaces.

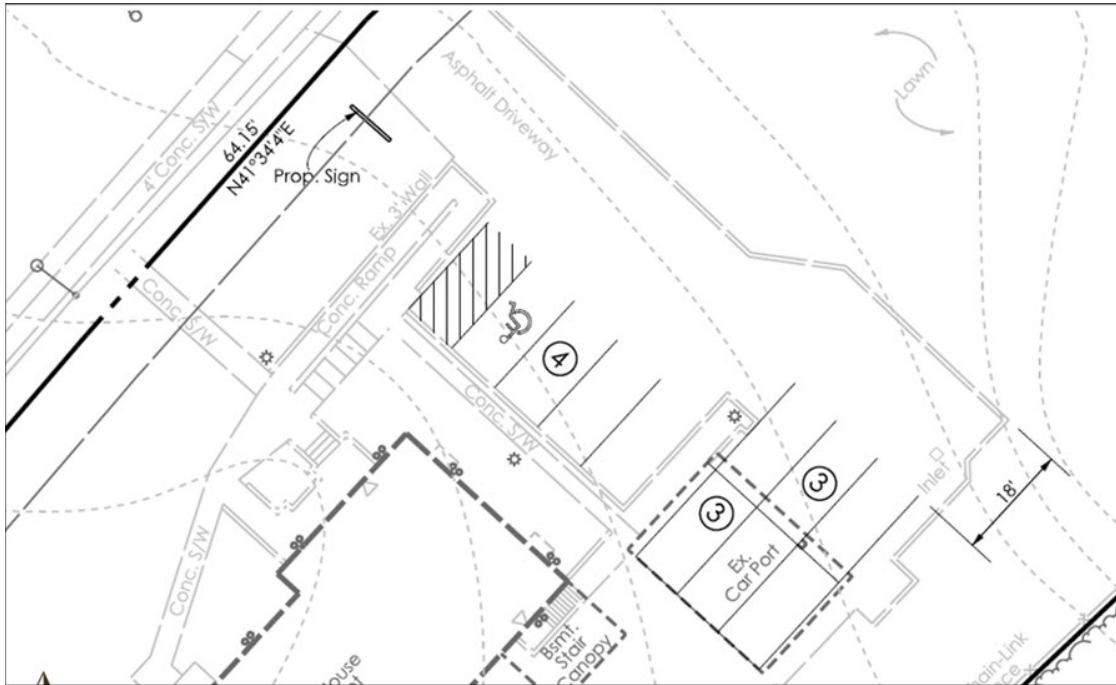


Figure 6: On-Site Parking Configuration

Staff advises that the property is within proximity to public bus routes and stops along Colesville Road and is approximately one mile from the Silver Spring metro rail station making the business accessible by public transportation for both employees and patients. Exhibit 30, p. 3. Ingress and egress from the residence and home health care practitioner office will continue to be via the existing approved driveway connected to Colesville Road. Exhibit 7, p. 9. The Applicant states that existing parking was sufficient for the prior medical office and Applicant's projected needs per the Zoning Ordinance for their business operation mirror those of the prior use. Exhibit 7, p. 9.

Ten (10) parking spaces are required for this conditional use. Exhibit 30, p. 15. Table 3, below, reproduced from Staff's Report, p.15, shows the existing and proposed on-site parking space requirements.

Section	Parking	Required Spaces	Proposed
59.6.2.4.B	Vehicle Parking Requirement	Home Health Care Practitioner 1 Per non-resident employee = 6 1 Per patient = 2 Dwelling: 2 Total: 10	Home Health Care Practitioner 1 Per non-resident employee = 6 1 Per patient = 2 Dwelling: 2 Total: 10
59.6.2.4.C	Bicycle Parking Requirement	None	None

Table 3: Parking Requirements- Division 59.6.2.4

Two waivers are required under Section 59.6.2.10 of the Zoning Ordinance: (a) while two tandem spaces are permitted for the residential use, a waiver is required for the additional two (2) sets of tandem spaces; and (b) a segment of the driveway width is narrower than the minimum permitted. Exhibit 30, p.10; T. 38-39.

Applicant states that two (2) additional tandem spaces are intended to be used by employees of the business who can move their vehicles if necessary. T. 38. Staff asserts that this configuration of the tandem spaces also makes the best use of the existing pavement and reduces the need to create more impervious surface. Exhibit 30, p. 15. Staff concludes that the proposed parking space configuration satisfies the intent of Section 59.6.2.1 to ensure efficient vehicular parking. *Id.*

The Applicant also requests a waiver for minimum driveway width. Exhibit 30, p. 10; T. 39. The existing driveway is 18-feet wide and while this meets the design requirements for a residential driveway it is below the 20-foot minimum width for a drive aisle that permits two-directional travel. *See* Section 59.6.2.5.G. The Applicant states that the expected volume on the

driveway is low with only six (6) non-residential employees and two (2) patients on-site at any one time. T. 39. Given the expected traffic volumes and speeds, the Applicant asserts that the drive aisle width satisfies the intent of Section 59.6.2.1 to ensure safe access within a parking facility. *Id.* Staff recommends approval of both waivers. Exhibit 30, p. 16.

Local Area Transportation Review (LATR)

Staff notes that the proposed schedule of staff and patient arrivals during the weekday morning peak period (6:30 a.m. to 9:30 a.m.) and evening peak period (4:00 p.m. to 7:00 p.m.) shows up to six (6) non-residential employees arriving on site during the morning hour (8:00 AM -9:00 AM) and four (4) leaving within that same hour, in addition to Mr. Matope and Mrs. Luanda. Exhibit 30, p. 11. Two (2) non-resident employees are expected to stay on-site throughout the day and two (2) patients may be arriving and leaving within that same morning peak hour. Exhibit 7, p. 2. During the evening peak hour (4:30 PM and 5:30 PM), the two (2) remaining staff on-site will leave, and one (1) patient may enter and leave the property within that same hour. Exhibit 30, p. 11. The Applicant requested to modify this slightly by adding a condition that requires no more than *one* patient being on-site at any given time, instead of the original application stating that up to *two* patients can be on-site at any given time, to comply with minimum parking requirements. T. 37-38. However, the Hearing Examiner notes that this does not impact Applicant's trip calculation as patients could potentially be simultaneously coming and going from the property at the same time.

Staff advises that a transportation impact study is not required because the proposed Home Health Practitioner use generates fewer than 50 person-trips during the weekday morning and evening peak hours. Exhibit 30, p. 11. Staff concludes that Local Area Transportation Review (LATR) is satisfied with the submitted transportation exemption statement. *Id.*; See Exhibit 25(c).

Applicant's traffic expert, Mr. Etemadi, concurred with Staff that the site will generate fewer than 50 weekday peak hour person trips and that this application does not require a traffic study. Exhibits 21 and 25(c). Mr. Etemadi also concluded that the traffic statement submitted satisfies the requirements of LATR including any adequate facilities test. Exhibit 25(c); *See also* T. 26.

Deliveries & Waste Management

The Applicant does not propose a dumpster onsite to help maintain the residential look of the property. Exhibit 7, p. 9. Instead, the Applicant will have multiple residential trash bins that will be stored behind the rear of the property. *Id.* They will be wheeled/placed outside and returned in appropriate time before and after the regular trash pick-up for Colesville Road. *Id.*

D. Environmental Issues

Staff advises that this site contains no streams, wetlands or their buffers, or known habitats of rare, threatened, or endangered species. Exhibit 30, p. 11. Staff further states that this Application is not subject to Chapter 22A of the Forest Conservation Law because it is a conditional use application for a tract of land that is smaller than 40,000 square feet and the project does not propose any land disturbing activity that would directly threaten the viability of a champion tree. *Id.* at 12.

E. Community Response

The file contains two letters from community members in support of the proposed conditional use and one letter of concern. Exhibits 11(a) and 11(b). There was no further testimony from community members offered at the public hearing.

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 particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth 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 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, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve a conditional use 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.² The major topics of discussion are further divided under the following headings:

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

² 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. apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

4. Compatibility with the Neighborhood

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;

Previously authorized special exception S-1640 (e.g. conditional use) to use the premises as medical offices was abandoned in 2012. Exhibit 30, p. 6-7. There are no other applicable previous approval for the subject site.

Conclusion: The Hearing Examiner concludes that the previous conditional use (e.g. special exception) was formally abandoned and no previous approvals need to be amended.

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 requires an analysis of the development standards of the R-60 Zone contained in Article 59-4; the use standards for Home Health Practitioner contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively).

Conclusion: Based on the analysis contained in those discussions below, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

1. Substantial Conformance with the Master Plan

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

The subject property is located within the 2000 North and West Silver Spring Master Plan ("Master Plan") area. Exhibit 30, pp. 9,12. The Master Plan recommends retention of R-60 zoning

for the majority of the Plan area, while recognizing that the Zone allows certain uses in addition to single-family residential that may be non-residential but are considered compatible. Master Plan, p. 43. Although the Master Plan does not specifically discuss this property, one of the generalized planning goals is to “preserve the existing character and to reinforce the many desirable features of the North and West Silver Spring neighborhoods.” *Id.* at 15. Staff advises that “a home-based medical practice was previously permitted on the Site between 1989 and 2012 (and as a by-right use from 1959 to 1989).” Exhibit 30, p. 9. Staff advises that the proposed use is similar in scale and operations to the previously approved special exception, and, therefore, concludes that the proposed use will not change the character of the neighborhood. *Id.* Staff further states that the proposed location is an appropriate location for a Home Health Practitioner use because of its proximity to Colesville Road, a major highway with Planned Bus Rapid Transit (BRT). *Id.* Staff concludes generally that the proposal is in substantial conformance with the R-60 zone and with the Master Plan. *Id.* Mr. Sekerak testified that the proposed use conforms to the Master Plan and does not result in an overconcentration of conditional uses within this neighborhood. T. 41-43.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the proposed use substantially conforms to the Master Plan. The primary use of the existing structure will remain a single family detached residential dwelling and the primary residence of the Applicant, and only secondarily the Home Health Practitioner use. The exterior of the home and other structures on the site are residential in nature and are not proposed to change. The Hearing Examiner further agrees that the facility is compatible with surrounding residential uses, as set forth in detail in Part III.A.4 of this Report.

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

Conformity to the Master Plan is discussed above. This neighborhood is moderate density (R-60) small lot single-family detached residential in character. While the proposed conditional use is a business, the predominant use of the property will remain single-family residential in conformity with the character of the surrounding neighborhood. Further, the Applicant does not propose any changes to the exterior of the building that might impact the character of the neighborhood.

Conclusion: Based on this record, the Hearing Examiner finds that the proposed conditional use will not alter the character of the neighborhood in a manner inconsistent with the Master Plan. The specific operation of this conditional use will not interfere with the orderly use, development, and improvement of surrounding properties and will remain harmonious to this moderate density (R-60) small lot single-family detached residential 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 advises that the neighborhood, as delineated above in Section II.B, contains three existing and operating conditional uses: (1) S-1673: Accessory Apartment, located at 9207 Watson Road; (2) S-2122: Non-resident medical practitioner's office at 9225 Colesville Road; and (3) S-2086: Accessory Apartment, located at 615 Bennington Drive. Exhibit 30, p. 4. Mr. Sekerak testified that, if approved, the proposed conditional use will not impact the area adversely and that the neighborhood will remain predominantly residential as "...a medical use ancillary to

the home has been a contributing element to the character of the neighborhood for decades.” T. 34.

Conclusion: Based on the evidence in this record, the proposed use of the premises for a Home Health Practitioner (Major Impact) will not adversely affect the area or alter the predominantly residential nature of the area. The existing single-family home, parking, lighting, and landscaping remain compatible with the surrounding residences, as detailed in Part III.A.4 of this Report. While the addition of this conditional use will add to the total number of four conditional uses in the surrounding neighborhood, this does not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; the area will remain residential and, moreover, conforms to the recommendations of the Master Plan.

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

Preliminary Plan of Subdivision and Record Plat is not required for approval of the requested conditional use. Exhibit 30, p. 16. Staff advises that public services and facilities exist on this site to adequately serve the proposed conditional use. *Id.* The Applicant presented evidence on adequacy of public facilities to demonstrate that it will not have an adverse impact on the surrounding area. A brief summary of the evidence adduced at the hearing is provided below.

Local Area Transportation Review (LATR) and Transportation Policy Area Review

Staff advises that a transportation impact study is not required because the proposed Home Health Practitioner use generates fewer than 50 person-trips during the weekday morning and evening peak hours. Exhibit 30, p. 11. Staff concluded that Local Area Transportation Review (LATR) is satisfied with the submitted transportation exemption statement. *Id.*; *See* Exhibit 25(c). Applicant's traffic expert, Mr. Etemadi, concurred with Staff that this application is exempt from submitting a traffic study. T. 27; *See also* Exhibits 21 and 25(c). Mr. Etemadi also concluded that the traffic statement submitted satisfies the requirements of LATR including any adequate facilities test. Exhibit 25(c); T. 26.

The Applicant states that "The Subject Property is and has been adequately served by Public Facilities for many years." Exhibit 7, p. 15. The Applicant states that "School capacity is not a material consideration in this case, as the residential component of the use will remain as one, single-family home" and the proposed conditional use does not "generate schoolchildren." *Id.* at 16. Fire service is provided from Silver Spring Fire Station # 1 located at 8110 Georgia Avenue (1.2 miles) and Station #16 located at 1111 University Blvd (1.5 miles) and Applicant's fire and water access plan was approved by the Department of Permitting Services (DPS) on January 14, 2021. *Id.*; *See* Exhibit 25(b). The property is currently served by public water and

sewer and the Applicant asserts that the proposed use will not generate any increased demand on those services. Exhibit 7, p. 16.

Conclusion: Based on this record, the Hearing Examiner finds that public facilities and services are adequate to support the proposed Home Health Practitioner (Major Impact). Transportation, schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage are adequately addressed, present no impact, or are not triggered by the proposed conditional use. As presented by the Applicant, the traffic generated will be minimal, staff and patients have sufficient and safe access to the site from Colesville Road, fire and police services are within proximity, the use will not generate increased demand on public water and sewer, and as no exterior construction, grading, or land disturbance is requested under this application, stormwater drainage will not be impacted by 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.*

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. 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 a sufficient basis for 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 are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood.

Staff identified the following physical and operational characteristics necessarily associated with (*i.e.*, inherent to) a Home Health Practitioner (Major Impact): (1) vehicular trips to and from the Site; (2) parking for the residential and proposed use; and (3) physical changes to the site out of character with the surrounding neighborhood. Exhibit 30, p. 18.

The estimated trip generation of 14 person trips during the morning peak hour and 5 trips during the evening peak hour led staff to conclude that the impact of vehicular traffic would be minimal. Exhibit 30, p. 18. As the property fronts on Colesville Road, a master-planned Major Highway with Bus Rapid Transit (BRT), and is within proximity to other public transportation, Staff advises that “the location of this property along a major roadway is ideal for a home-based business and it ensures that traffic to and from the medical practice will be primarily on the major roads and away from the residential streets in the surrounding neighborhood...”. *Id.* Staff further advises that with approval of the requested parking waivers, adequate parking is available on-site that meets parking requirements. *Id.* Lastly, Staff notes that there are no changes proposed to the exterior of the existing structures on the site which are already residential in character, and therefore there are no physical changes proposed that would be out of character with the surrounding neighborhood. *Id.* Staff concludes that the proposal will not have any non-inherent effects at this location. Exhibit 30, p. 18. Mr. Sekerak agreed with Staff's conclusions with respect

to the inherent adverse effects of the proposed use and the lack of any non-inherent adverse effects, as discussed above. T. 51. Mr. Sekerak further testified that the inherent adverse effects of traffic, parking, and physical changes to the existing structure are minimal or have no impact under this application as the traffic intensity is very low, the parking proposed satisfies the parking requirements under the Ordinance, and there are no exterior changes to the existing single-family dwelling proposed under this application. *Id.*

Conclusion: Based on this record, the Hearing Examiner finds that there are no inherent or non-inherent adverse effects associated with this application sufficient to warrant a denial of the proposed Conditional Use.

4. Compatibility with the Neighborhood

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.

Conclusion: Based on this record, the Hearing Examiner finds that no structures are being constructed, reconstructed, or altered and therefore this provision does not apply to the underlying application.

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: Based on this record, the Hearing Examiner finds that the application satisfies all specific requirements for the conditional use, and with the conditions imposed to mitigate adverse impacts, meets the standards required for approval.

B. Development Standards of the R-60 Zone

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-60 Zone, contained in Article 59-4 of the Zoning Ordinance. Referencing Table 2 on page 15 of its report (See Appendix C), Staff concluded that the application meets the development standards of the R-60 Zone. Exhibit 30, p. 15. Mr. Sekerak concurred with Staff's conclusions that the application meets the development standards of the R-60 zone. T. 36.

Conclusion: Based on this evidence, and having no evidence to the contrary, the Hearing Examiner concludes that the use as proposed meets all development standards of the R-60 Zone.

C. Use Standards for Home Health Practitioner (Major Impact)

The specific use standards for approval of a Home Health Practitioner are set out in Section 59.3.3.3.G (Home Health Practitioner) of the Zoning Ordinance:

1. Defined, In General

Home Health Practitioner means the office of a health practitioner who is licensed or certified by a Board under the Maryland Department of Health and Mental Hygiene, has an advanced degree in the field from an accredited educational institution, and who resides in the dwelling unit in which the office is located. Home Health Practitioner includes a registered nurse or physician's assistant if that person has an advanced degree in the field and practices independently. Home Health Practitioner does not include an electrologist, mortician, nursing home administrator, pharmacist, or veterinarian.

The Applicant is a registered nurse (RN) licensed by the State of Maryland (License No. R167881) with advanced educational degrees in nursing. Exhibit 8. The Applicant proposes to reside in the home with his wife and family upon receipt of proper approvals and permits for the requested conditional use. T. 17.

2. Use Standards for All Home Health Practitioners

- a. A Home Health Practitioner is prohibited in an apartment, multi use, and general building type.*
- b. Screening under Division 6.5 is not required.*
- c. To maintain the residential character of the dwelling:*
 - i. The use must be conducted by an individual or individuals residing in the dwelling unit.*
 - ii. The use must be conducted within the dwelling unit or any accessory building and not in any open yard area. The use must be subordinate to the use of the dwelling for residential purposes and any external modifications must be consistent with the residential appearance of the dwelling unit.*
 - iii. Exterior storage of goods or equipment is prohibited.*
 - iv. The maximum amount of floor area used for the Home Health Practitioner is 33% of the eligible floor area of the dwelling unit plus any existing accessory building on the same lot, or 1,500 square feet, whichever is less.*
 - v. An existing accessory building may be used for the home health practice, but external evidence of such use is prohibited. Only one accessory building may be used and it must be an eligible area.*
 - vi. Equipment or facilities are limited to:*
 - (a) office equipment; or*
 - (b) medical equipment.*
 - vii. Any equipment or process that creates a nuisance or violates any law is prohibited in connection with the operation of a home health practice.*
 - viii. Disposal of medical waste must be regulated by State laws and regulations.*
 - ix. Truck deliveries are prohibited, except for parcels delivered by public or private parcel services that customarily make residential deliveries.*
 - x. Appointments are required for visits, but emergency patients may visit outside the specified hours or without appointment.*
 - xi. Clients, patients, or other visitors must be informed of the correct address and parking location.*
 - xii. In a Residential zone, any additional parking must be located behind the front building line.*
- d. The applicant must provide valid proof of home address as established by Executive regulations under Method 2 of Chapter 2 (Section 2A-15).*
- e. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

The Applicant, Mr. Matope, testified that he and his family plan to primarily reside in the home and operate the Home Health Practitioner business as an ancillary use from a small portion of the first floor. T. 17. Mr. Matope confirmed that all business operations will take place inside

the home and no business operations or storage will take place outside of the home. *Id.* Mr. Matope also confirmed that only medical and office equipment is permitted on site to support the proposed use, strict compliance is required for disposal of all medical waste, there are no planned truck deliveries, and patient visits will be by appointment only (excluding emergencies). T. 18.

Conclusion: Based upon this record, the Hearing Examiner finds that these standards have been met in full. The primary use of the property and the existing building remain a single-family dwelling with no proposed alterations to the exterior of the building to alter its residential character. Applicant will reside in the home with his family and he acknowledged on the record that all operations and storage will take place inside the home. The Home Health Practitioner use is subordinate to the principle use of the property as a single-family home as evidenced by the limited square footage used for the Home Health Practitioner business as compared with the remainder of the building remaining for use as a single-family dwelling, significantly below the 33% threshold as outlined above. Applicant confirmed through his testimony that patient visits must be by appointment only and that medical waste will be disposed of under state law.

Under 59.3.3.3.G.4, Home Health Practitioner (Major Impact), the following standards apply:

a. Defined

Home Health Practitioner (Major Impact) means a Home Health Practitioner limited to 2 resident health practitioners and 2 or more non- resident support persons in any 24-hour period.

b. Use Standards

Where a Home Health Practitioner (Major Impact) 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:

- i. The hours of operation and number of clients, customers, patients or other visitors allowed during that time are determined by the Hearing Examiner.***

The Applicant proposes operating hours of 8:00am to 5:30pm, Monday through Friday, by appointment only. The Hearing Examiner finds these hours of operation reasonable and there is nothing in the record to justify modifying the hours proposed. Emergency visits are permitted outside of these hours when necessary. Staff originally recommended a condition that no more than two patients be allowed on-site at any given time, but the Applicant requested at the hearing to reduce that number to only one (1) patient allowed on-site at any given time to comply with parking regulations. The Hearing Examiner finds that this condition is reasonable and finds nothing in the record to justify modifying this condition, except to clarify that a patient may be accompanied by a caregiver or other individual if that other individual is necessary for transportation, to ensure care, or other related purpose.

- ii. The maximum number of deliveries is determined by the Hearing Examiner.***

The Applicant states that all deliveries are limited to those of a residential nature including standard mail and package deliveries. Exhibit 7, p. 21. Regular and large-scale commercial deliveries are not contemplated under this application and would not be permitted. The Hearing Examiner finds that the application and proposed operation is compliant with this regulation.

- iii. On-site sale of goods is determined by the Hearing Examiner.***

The Hearing Examiner finds that the sale of goods is not requested under this application.

- iv. The Hearing Examiner may grant a conditional use for a Home Health Practitioner (Major Impact) on the same site as a Home Health Practitioner (Low Impact), a Home Occupation (Low Impact), or a Home Occupation (No Impact) if it finds that both together can be***

operated in a manner that satisfies Section 3.3.3.G.4 and Section 7.3.1, Conditional Use.

The Hearing Examiner finds that no uses listed in this section are requested under this application.

- v. The Hearing Examiner must not grant a conditional use for a Home Health Practitioner (Major Impact) where the site is already approved for any other conditional use under Section 7.3.1, Conditional Use.***

The Hearing Examiner finds that no other conditional uses are approved on this property.

- vi. An indoor waiting room must be provided.***

An indoor waiting room is illustrated on Exhibit 20(b) and marked as “reception.” The Hearing Examiner finds that this constitutes the required waiting room in satisfaction of this regulation.

- vii. Screening under Division 6.5 is not required.***

- b. Where a Home Health Practitioner (Major Impact) is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards and Section 7.3.1, Conditional Use.***

The Hearing Examiner finds that this standard is not applicable to the subject application.

D. General Development Standards (Article 59.6)

Article 59-6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Under the amendments to Section 59-7.3.1.E.1.b. of the new Zoning Ordinance, effective December 21, 2015, the requirements of these sections need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” The Hearing Examiner will review the following aspects pertinent to this conditional use review: parking, lighting, and signage.

1. Parking & Parking Waivers

The proposed parking area remains unchanged from its current configuration but requires two waivers under Section 59.6.2.10 of the Zoning Ordinance: first, while two (2) tandem spaces are permitted for the residential use, a waiver is required for the additional two (2) sets of tandem spaces; second, a segment of the driveway width is narrower than the minimum permitted. A detailed description of the requested waivers is provided above in Section II.C.3 (Operations).

Conclusion: The Hearing Examiner concurs with Staff and the Applicant that the proposed parking configuration of tandem spaces makes the best use of the existing pavement and reduces the need to create more impervious surface. The Hearing Examiner further concurs with Staff and the Applicant that the proposed parking space configuration satisfies the intent of Section 59.6.2.1 to ensure efficient vehicular parking. The Hearing Examiner also concurs with Staff and the Applicant that the drive aisle width satisfies the intent of Section 59.6.2.1 to ensure safe access within a parking facility. For these reasons, the Hearing Examiner concludes that good cause exists to grant waivers for tandem parking and drive aisle width as requested under this application.

2. Outdoor Lighting

Under §59-6.4.4.E, outdoor lighting for Conditional Uses must be directed, shielded or screened to ensure that the illumination is 0.1 foot-candles 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. Mr. Sekerak testified that the current single-family dwelling has exterior lighting common to residential homes and that no changes to that lighting is proposed under this application. T. 44. Staff advises that the existing lighting is residential in nature and will not cause any unreasonable glare on neighboring properties. Exhibit 30, p. 16.

Conclusion: The Hearing Examiner finds that the proposed lighting complies with this standard and does not adversely impact the surrounding neighborhood. There is no evidence in this record to suggest that the lighting will have a negative impact on neighboring properties as the property currently maintains standard residential lighting and there is no evidence to suggest that direct light or light glare emanates onto neighboring properties.

3. Signage

The Applicant proposes one double-sided sign to be placed on the property frontage along Colesville Road. T. 44, 53-54. The proposed sign is subject to review by the Montgomery County Department of Permitting Services and must meet the applicable requirements of Division 6.7 of the Zoning Ordinance. For further analysis of the proposed sign see Section II.C.2 above.

Conclusion: Given the size and type of sign described and the longstanding prior use of this property as doctor's offices, the Hearing Examiner finds the proposed sign to be compatible with the use, building, and surrounding neighborhood, but defers to the jurisdiction of the Sign Review Board on this matter.

E. Condition #8

Staff recommended the following condition of approval:

8. The Applicant must widen the existing four (4)-foot sidewalk along Colesville Road to five (5)-feet, preserving the existing one (1)-foot grass buffer along the Site's Colesville Road frontage. Exhibit 30, p. 2.

This condition was affirmed by the Planning Board (MCPB) in its transmittal letter dated March 1, 2021, with MCPB stating that:

The Applicant requested relief from Condition of Approval No. 8 which recommends the Applicant widen the existing four-foot sidewalk along the site's frontage on Colesville Road to five feet to meet the minimum standard sidewalk width along a highway, as required by the Maryland State Department of Transportation (MDOT SHA). Mr. Kwesi Woodroffe from MDOT SHA was present at the meeting and confirmed support of the condition of approval as written. The Planning Board directed staff not to amend the conditions of approval or any other components of the staff report. Exhibit 31, p. 2.

Counsel for the Applicant contends that this condition is unduly burdensome and would result in an expense to the Applicant greater than the public benefit gained from the expansion of the sidewalk. Mr. Rodriguez, Applicant's civil engineer, confirmed that the process of "replacing" the sidewalk would be a "multi-month to a year process of significant cost." T. 62. When taking into consideration the cost of the paving itself as well as the larger cost of moving public utilities located on the site, that cost was estimated to be in the range of \$200,000. *Id.* The Hearing Examiner declines to impose this condition for the reasons discussed below.

First, counsel for the Applicant contends that the proposed sidewalk expansion is being requested by Planning pursuant to State Highway Administration (SHA) guidelines, which are discretionary and not mandatory, and can be waived. The Applicant references the Accessibility Policy and Guidelines for Pedestrian Facilities Along the State Highway ("SHA Guidelines"), submitted into the record as a government document. *See* Exhibit 44. Counsel for the Applicant argues that "under the State Highway guideline, a lot of the focus is on ADA requirements. And the ADA law is a minimum sidewalk of 36 inches. Right now this is [at] 48 inches and they are asking for 60." T. 55.

Mr. Rodriguez testified that the requested expansion of the sidewalk to 5 feet requires the reconstruction of the sidewalk in its entirety. T. 59. In further describing the steps necessary to comply with the proposed condition, he further stated that:

"[to] reconstruct the sidewalk since as you mentioned before just adding a foot of concrete to the existing sidewalk is not feasible. Structurally it would not work. And in this case, SHA, which is the agency who owns this, will not allow that. So in order to go through this process, we had to go through a couple of steps. We had to go through survey process. We had to establish our boundary. So we had to get that topographic survey and boundary survey. We had to do additional research for underground utilities every time we are going to dig. So we have to get that information. Then we have to get through SHA, through their approval of the sidewalk we want to put in. And once the sidewalk and plan preparation is established, we have to go through -- this will include the entrance. The apron entrance will need to be redo also once we remove the sidewalk we have to come up with new standards. Then assuming we would have to go to some waivers request with SHA. We have to go through the 1 foot grass strip waiver which is particular -- it's a 3 foot grass strip which is required. Then a second waiver, we have to request a 48 inch sidewalk at the place where the pole is located, the existing pole is located. Another part of the process, we have to go through DPS. DPS is Department of Permitting Services in Montgomery County. They are the actual ones who actually provide the permits. We have to run permits through (indiscernible) control. We have run permits through traffic control plans. We have to do some -public improvement easement at the property since the sidewalk is slightly encroaching into the property. So we have to go through a public improvement easement for this property. There's got to be a restoration bond that needs to be provided. So there is a lot of steps and agencies that are required to be involved in this process." T. 59-60.

Mr. Rodriguez estimated the cost to the Applicant for the reconstruction to be in the range of \$200,000. T. 61. Mr. Sekerak testified that "in order to expand [the sidewalk], we would need to do a public improvement easement so that the future -- so the walking public could walk across the private property and the State Highway Administration could maintain the sidewalk in the future. That public improvement easement would be also encroaching on the public utility easement..." T. 64. Mr. Sekerak also testified that the ADA requirement for sidewalk width is 3 feet which the existing sidewalk exceeds by 1 foot. T. 65. Mr. Matope responded that the existing sidewalk and driveway apron were in good repair and were not presently damaged or in need of replacement. T. 23. Exhibit 42 provides photographs illustrating the current condition of the sidewalk. Mr. Sekerak further testified that we was unaware of any federal, state, or local laws including the Master Plan that would require the sidewalk be expanded to 5 feet. T. 65. Mr

Sekerak also testified that the sidewalks along this corridor of Colesville Road were consistently 4 feet in width. T. 65-66; *See* also Exhibit 42.

Second, counsel for the Applicant contends that the particular SHA Guidelines for sidewalk width do not apply in this particular instance. Counsel contends that the SHA Guidelines are only triggered when “alteration” occurs that would “initiate the need to provide ADA compliance.” Exhibit 44, p. 6. Counsel contends that as there is no disturbance, encroachment, or alteration of the site, sidewalk, roadway, or driveway apron under this application, the SHA Guidelines for ADA compliance are not triggered. Mr. Sekerak testified that under his interpretation of the SHA Guidelines, the subject application does not trigger the ADA compliance provisions of the SHA Guidelines for the same reason: there is no disturbance to land, a roadway, the sidewalk, a right of way, etc., under the application. T. 73. The Hearing Examiner agrees.

The Hearing Examiner finds that the cost to “replace” the existing 4-foot wide sidewalk with a 5-foot wide sidewalk outweigh the public benefit. The basis upon which this condition was requested is unclear, as the Staff Report and Planning Board transmittal letter merely reference the “minimum standard sidewalk width along a highway”. Exhibit 30, p. 11; Exhibit 31, p. 1. This is refuted by Mr. Sekerak’s testimony that all surrounding sidewalks along this section of Colesville Road are only 4-feet wide, matching the portion along the subject property. T. 66. Based on this record, imposing such a condition is not required under Montgomery County Code, the Montgomery County Zoning Ordinance, State law, SHA regulations, or the Master Plan, and the cost would be unduly burdensome to the Applicant. Moreover, the Hearing Examiner finds that the SHA Guidelines do not apply in this instance as there is no “alteration” of the site, road, sidewalk, or any other land or roadway disturbance that would trigger ADA compliance requirements as they pertain to the sidewalk. For these reasons, the proposed condition #8

requiring the expansion of the sidewalk will not be included as a condition of approval under this application.

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 application of E&M Investment, LLC for a conditional use under Section 59.3.3.3.G.4 of the Zoning Ordinance to operate a Home Health Practitioner on the premises located at 9221 Colesville Road, Silver Spring, Maryland, 20910, is hereby **GRANTED**, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Conditional Use Site Plan, Landscape Plan, and Lighting Plan submitted in support of this application;
2. The Home Health Practitioner (Major Impact) use must be limited to up to two (2) resident health practitioners and up to six (6) non-resident support persons in any 24-hour period;
3. The Home Health Practitioner use is limited to serving a maximum of one (1) patient on-site at any one time;
4. The specified hours of operation are limited to Monday through Friday, 8:00 AM to 5:30 PM.;
5. Appointments are required for visits, but emergency patients may visit outside the specified hours or without appointment;
6. The maximum amount of floor area used for the Home Health Practitioner use will be 1,195 square feet, or 22% of the existing 5,507 square foot single family detached residential dwelling unit;
7. Truck deliveries are prohibited, except for parcels delivered by public or private parcel services that customarily make residential deliveries;
8. An indoor waiting room must be provided and maintained;
9. The Applicant must provide and maintain ten (10) off-street parking spaces on-site.
10. The Applicant must obtain a sign permit issued by the Department of Permitting Services or the Sign Review Board, as appropriate, and must file a copy of any such sign permit with OZAH. The final design of the proposed sign must be in compliance with the Zoning Ordinance restrictions for signs displayed in a residential zone, or the Applicant must first obtain a sign variance from the Sign Review Board; and
11. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, 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 and any successors in interest 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 9th day of April, 2021.



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.

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:

Adjoining property owners

V. APPENDIX

Appendix A

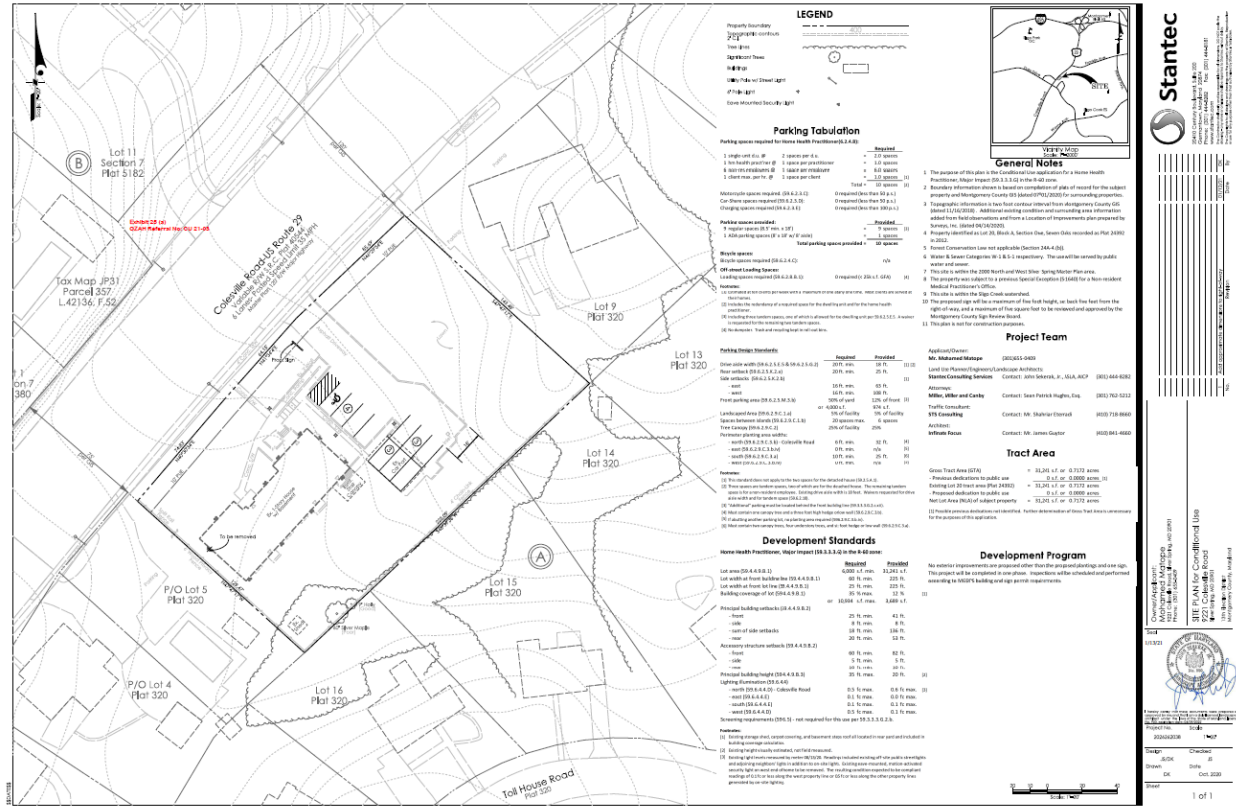


Exhibit 25(a) – Conditional Use Plan

Appendix B

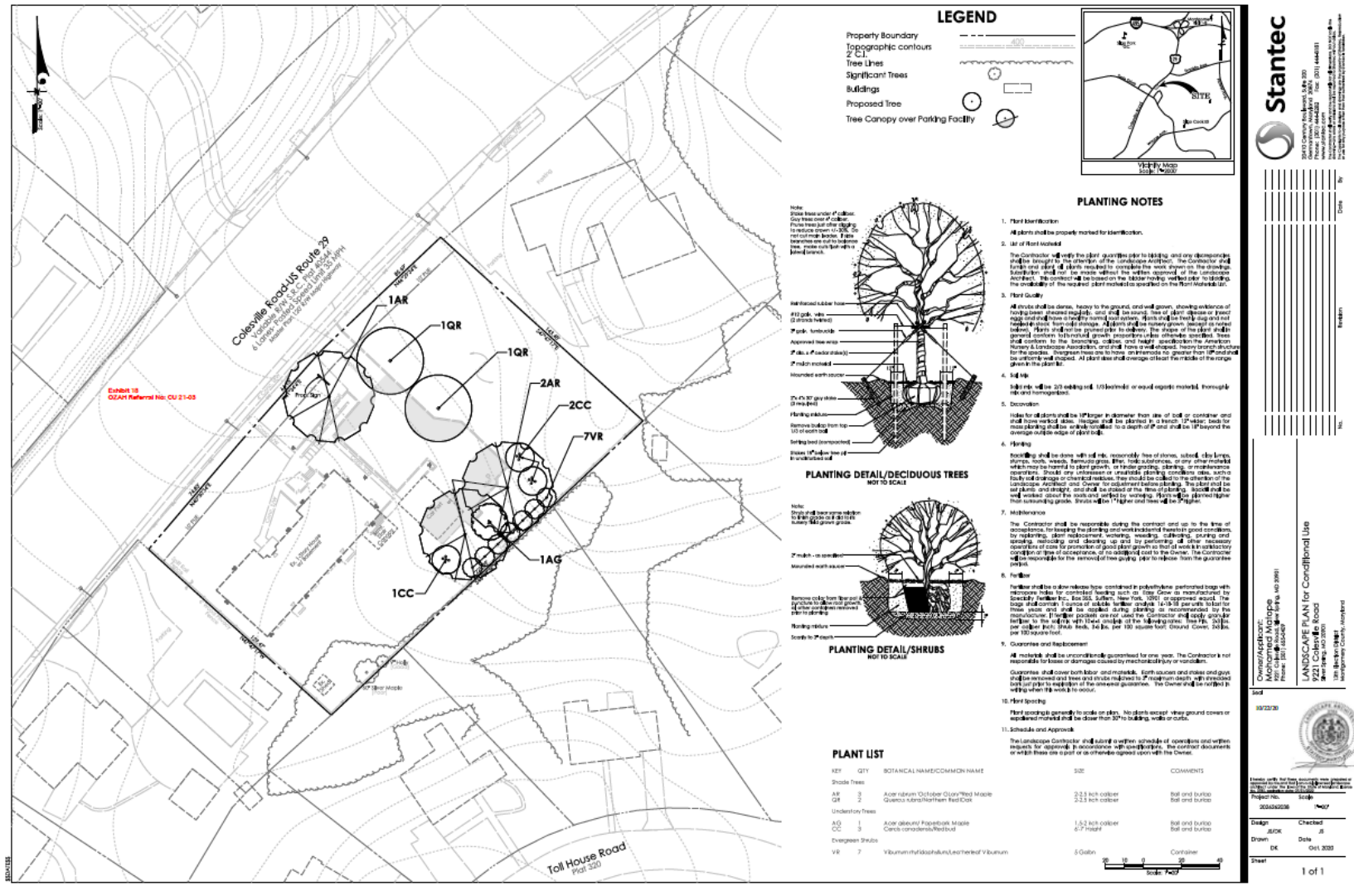


Exhibit 18 – Landscape Plan

Appendix C

Section	Development Standard	Required/ Permitted	Proposed
59.4.4.9.B.1	Minimum Lot Area	6,000 SF	31,241 SF
59.4.4.9.B.1	Minimum Lot Width at Front Building Line	60 ft	225 ft
59.4.4.9.B.1	Minimum Lot Width at Front Lot Line	25 ft	225 ft
59.4.4.9.B.1	Maximum Density	1 unit (7.26 dwelling units/acre)	1 unit
59.4.4.9.B.1	Maximum Lot Coverage	35%	12%
59.4.4.9.B.2	Minimum Front Setback	25 ft	41 ft
59.4.4.9.B.2	Minimum Side Setback	8 ft	8 ft
59.4.4.9.B.2	Minimum Sum of Side Setbacks	18 ft	136 ft
59.4.4.9.B.2	Minimum Rear Setback	20 ft	53 ft
59.4.4.9.B.3	Maximum Height	30 ft	20 ft

Table 5: Development Standards