

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

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OZAH Case No. CU 20-09
(Minor Modification)

Before: Derek J. Baumgardner, Hearing Examiner

ORDER ADMINISTRATIVELY APPROVING A MINOR AMENDMENT TO
CONDITIONAL USE CU 20-09

I. BACKGROUND

On December 21, 2020, the Hearing Examiner approved the above-referenced conditional use for a residential care facility for more than sixteen (16) persons (a 125-bed residential care facility with assisted living and memory care units) at 19115 Liberty Mill Road in Germantown, Maryland. The conditions of approval included the following:

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.

II. The Amendment Request

On July 13, 2021, OZAH received a request from the Applicant, Flournoy Development Group, LLC, to amend the approved conditional use to allow Flournoy to make certain changes to the site design, architecture, amenities and interior of the approved 125-bed residential care facility. Exhibit 50. Flournoy states: “construction costs continued to escalate and market demands continued to evolve due to the COVID-19 global pandemic, prompting the Petitioner to reevaluate the project’s economic viability, resident unit mix and design, and amenities, which culminated in the following proposed minor amendments (Exhibit 50):

- ☐ Exclusively providing surface parking in lieu of structured parking
- ☐ Reconfiguring the loading space, service entrance and dumpster locations
- ☐ Enhancing the landscaping and parking facility screening along the southern Property boundary
- ☐ Reallocating the 125-beds to 123 units instead of 119 units
- ☐ Changing the unit mix to add 2-bedroom units and more 1-bedroom units, instead of studios
- ☐ Adding private balconies to certain units
- ☐ Reserving the building third floor for memory care
- ☐ Adding a lower building level
- ☐ Revising the floor plans
- ☐ Relocating the generator to the north side of the lower level
- ☐ Enhancing resident amenities by adding a dog park, partitioned outdoor dining, memory care terrace on the 3rd floor, canopy covered main entrance
- ☐ Enhancing the exterior architectural features, decreasing building height and lot coverage, tweaking the footprint shape and reducing its size
- ☐ Updating the stormwater management plan to treat the additional surface parking, the utility plan, forest conservation plan and fire access plan to reflect the parking facility amendment.

These amendments are described in detail in the Applicant's request, attached hereto and incorporated herein as Appendix A.

On July 15, 2021, the Hearing Examiner referred the proposed minor amendments to Staff of the Planning Department for their review.

On July 30, 2021, OZAH received Staff's evaluation of the proposed minor amendments which found that "the proposed changes as shown would have a substantial adverse effect and would require a major amendment." Exhibit 54. Subsequent to this evaluation, and in consultation with Planning Staff, Flournoy modified its request per the recommendations of Planning Staff. Exhibit 55.

On August 9, 2021, Flournoy filed a revised request for minor amendment with the modifications proposed by Planning Staff with revised renderings, attached hereto and incorporated herein as Appendix B. Exhibit 56. Flournoy states:

Petitioner submitted to Technical Staff on August 5, 2021, a revised south front elevation with an enhanced fenestration that eliminates any blank walls and enriches the residential compatibility of the proposed building. The below direct comparison of the elevations (revised and initially proposed with the July 13, 2021 minor amendment request) depict the fenestration enhancements:



REVISED FRONT ELEVATION

As such, Technical Staff stated, in pertinent part in its August 5, 2021 e-mail, which is attached hereto and incorporated herein as Exhibit B, that: The planning team finds that the revisions are acceptable and consistent with the Planning Board's finding for CU 20-09 dated October 8, 2020. The revisions have successfully addressed our concerns regarding the blank walls and impact to the surrounding neighborhood. Accordingly, Technical Staff supports the administrative approval of the minor amendment request.

III. The Governing Law

Requests to amend a conditional use are governed by §59.7.3.1.K of the Zoning Ordinance, which distinguishes between “minor” and “major” amendments. A “minor” amendment is one that “does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.” *Zoning Ordinance*, §59.7.3.1.K.a.2. A “major” amendment is one that “changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected when considered in combination with the underlying conditional use.” Major amendments must follow the same procedures as the original conditional use while minor amendments may be approved administratively by the Hearing Examiner. *Id.*

IV. Opinion and Decision

The revised plans submitted by Flournoy show a wide variety of modifications to the original approval granted on December 21, 2021. *See* Appendix A. These modifications include, but are not limited to, building footprint, location of fixtures and amenities, landscaping, parking, and occupancy, among other modifications. While the requested changes are many in number, they are not substantial in scope and the amendment proposes a slightly reduced occupancy than previously approved. Given the nature of the proposed changes and, upon revision based on Planning Staff’s evaluation (*See* Appendix B), one would not reasonably expect substantial adverse effects on the surrounding neighborhood from the changes proposed.

Based on this record, the Hearing Examiner agrees with the Applicant and Planning Staff that the proposed amendments are “minor” as that term is defined under §59.7.3.1.K of the Zoning

Ordinance because they do not change the nature, character, or intensity of the conditional use. The Hearing Examiner further finds that the proposed minor amendments do not materially alter the proposed use or operation to such a degree that a major modification would be prudent or necessary.

ORDER

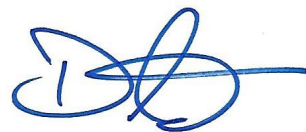
Based on the foregoing, it is, this 23rd day of August 2021:

ORDERED, that the request for a minor amendment to Conditional Use No. CU 20-09, allowing changes to the previously approved residential care facility and in conformance with the Applicant's representations contained as **APPENDIX** and **APPENDIX B** is hereby administratively **APPROVED**; and it is further

ORDERED, that physical improvements to the subject property are limited to those shown on the Applicant's Revised Conditional Use Site Plan (Exhibit 54(a) and (b)) and Landscape and Lighting Plan (Exhibits 54(d) through (f)). The Applicant must file copies with OZAH of any plans modified after subdivision of the property.

ORDERED, that this amendment and the continued use of the conditional use are subject to all terms and conditions imposed in connection with the initial approval, except as specifically amended by the Hearing Examiner in this Opinion and Order. The Conditional Use holder is directed to comply fully with all applicable county, state and federal regulations; and, it is further

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



Derek J. Baumgardner
Hearing Examiner

NOTICES TO:

Phillip Estes, Planning Department
Benjamin Berbert, Planning Department
Casey Cirner, Attorney for Applicant
Flournoy Development Group, LLC, Applicant
Barbara Jay, Executive Director
Montgomery County Board of Appeals

All parties entitled to notice at the time of the original filing:

Abutting and Confronting Property Owners (or a condominium's council of unit owners or renters, if applicable)
Civic, Renters' and Homeowners' Associations within a half mile of the site
Any Municipality within a half mile of the site