

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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IN THE MATTER OF:
1910 UNIVERSITY, LLC
Applicant

Elizabeth Everhart
Michael Goodman
Scott Matties
Nicole White
Jon Bleiweis

For the Application

Jody Kline, Esquire
Attorney for the Applicant

OZAH Case No. CU 22-04

Before: Kathleen Byrne, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on September 7, 2021, 1910 University, LLC (hereinafter “Applicant”) applied for a conditional use for an Independent Living Facility for Seniors with up to 90 dwelling units under Section 59.3.3.2.C of the Zoning Ordinance. The subject property is identified as 1910 University Blvd., Parcel 306, Map JQ11 (Tax Account No. 964683), which is located in Silver Spring, Maryland 20902. Exhibits 1, 32. The property is zoned R-60. *Id.*

On August 16, 2022, OZAH issued a Notice of Hearing scheduling the public hearing for September 30, 2022. Exhibit 30. Shortly thereafter, the Applicant amended its application. Exhibits 33, 34. OZAH issued a Notice of Motion to Amend on September 19, 2022. Exhibit 46.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued a report recommending approval of the conditional use application on September 8, 2022, and a follow-up letter on September 19, 2022, subject to the following conditions of approval (Exhibit 32, pp. 3 and Exhibit 42, pp. 1):

1. The conditional use is limited to a 90-unit Independent Living Facility for Seniors.
2. Thirty percent of the dwelling units must be reserved for households of Moderately Priced Dwelling Unit (MPDU) income.
3. Ninety percent of the dwelling units must be income restricted.
4. A maximum of three employees may be onsite at any one time.
5. The Independent Living Facility is subject to a Joint Use Parking agreement. Prior to Certification of the Preliminary Plan of Subdivision, the parties to the Joint Use Parking Agreement must execute that document, record it among the Land Records of Montgomery County and provide a copy of the executed and recorded agreement to the Planning Department and to the Office of Zoning and Administrative Hearings.
6. The Applicant must install signage prohibiting left turns onto University Boulevard.

At its meeting on September 8, 2022, the Planning Board recommended approval of the application with the conditions recommended by Staff. Exhibit 45. The Board also granted approval of a Preliminary Forest Conservation Plan (PFCP) for the project and granted a variance to allow for the removal of 9 protected trees. Exhibit 45.

The public hearing proceeded as scheduled on September 30, 2022.¹ The Applicant presented four witnesses: Elizabeth Everhart, Michael Goodman, Scot Matties, and Nicole White. T. 7. Mr. Goodman, Mr. Matties and Ms. White were qualified as experts in their respective fields. T. 28, 57, and 79. The record was left open to October 10, 2022 to allow for a transcript of the proceedings to be generated. T. 95.

II. FACTUAL BACKGROUND

A. Subject Property

The Subject Property consists of a 1.31-acre unplatted parcel and a 1.91- acre platted Parcel B shown on Plat 15759, both in the R-60 Zone. Parcel B contains the Har Tzeon-Agudath Achim Synagogue (“HTTA” or “Synagogue”) and an associated surface parking lot. The unplatted parcel is improved with a former residence, currently being used as a food pantry by HTTA, a playground, and an additional surface parking lot. Wooden fencing separates the Property from the adjacent detached houses. Exhibit 32, pg. 6. Staff determined that there are no wetlands, intermittent or perennial streams on the Property. No known rare, threatened, or endangered species exist on the property and there are no designated historic sites on or near the property. In addition, there is no forest and there are no champion trees on the site and the Property generally

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

slopes down from north to south. *Id.* Mr. Goodman testified that the site is bounded by University Boulevard to the north and at the rear Reddie Drive terminates at the end of the property. T. 29. Current ingress and egress to both parcels is from University Boulevard. T. 30. An aerial photograph from the Staff report on the following page identifies the existing conditions of the subject property. Exhibit 32, pg. 6.



Staff Report – Existing Conditions
Exhibit 32 – pg. 6

B. Surrounding Area

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

The vicinity surrounding the Property is primarily residential, consisting of detached homes in the R-60 zone and townhomes in the PD zone. Exhibit 32, pg. 5, T. 29. Wheaton Forest Park is located a few blocks south of the Property along University Boulevard. The WTOP building and radio towers are located northwest of the Property, across University Boulevard. Exhibit 32, pg. 5.

Staff and Applicant agree on the delineation of the Neighborhood for purposes of assessing compatibility. A figure from the Staff Report that both Staff and the Applicant identify as the Neighborhood, is identified on the following page. *Id.*



Vicinity/Staff Defined Area
Exhibit 32 – Pg. 5

Per the Staff Report, the Neighborhood is generally bound by Dayton Street to the south, Dodson Lane to the west, the rear lot lines of houses along Blueridge Avenue to the north, and Westchester Drive to the east. With the exception of the Subject Property, the Neighborhood is all residential, consisting of detached houses and townhouses. There is a Special Exception approval for a non-resident medical practitioner, CBA2994, in the detached house located at 11128 Norlee Drive. Exhibit 32, pg. 5.

C. Proposed Use

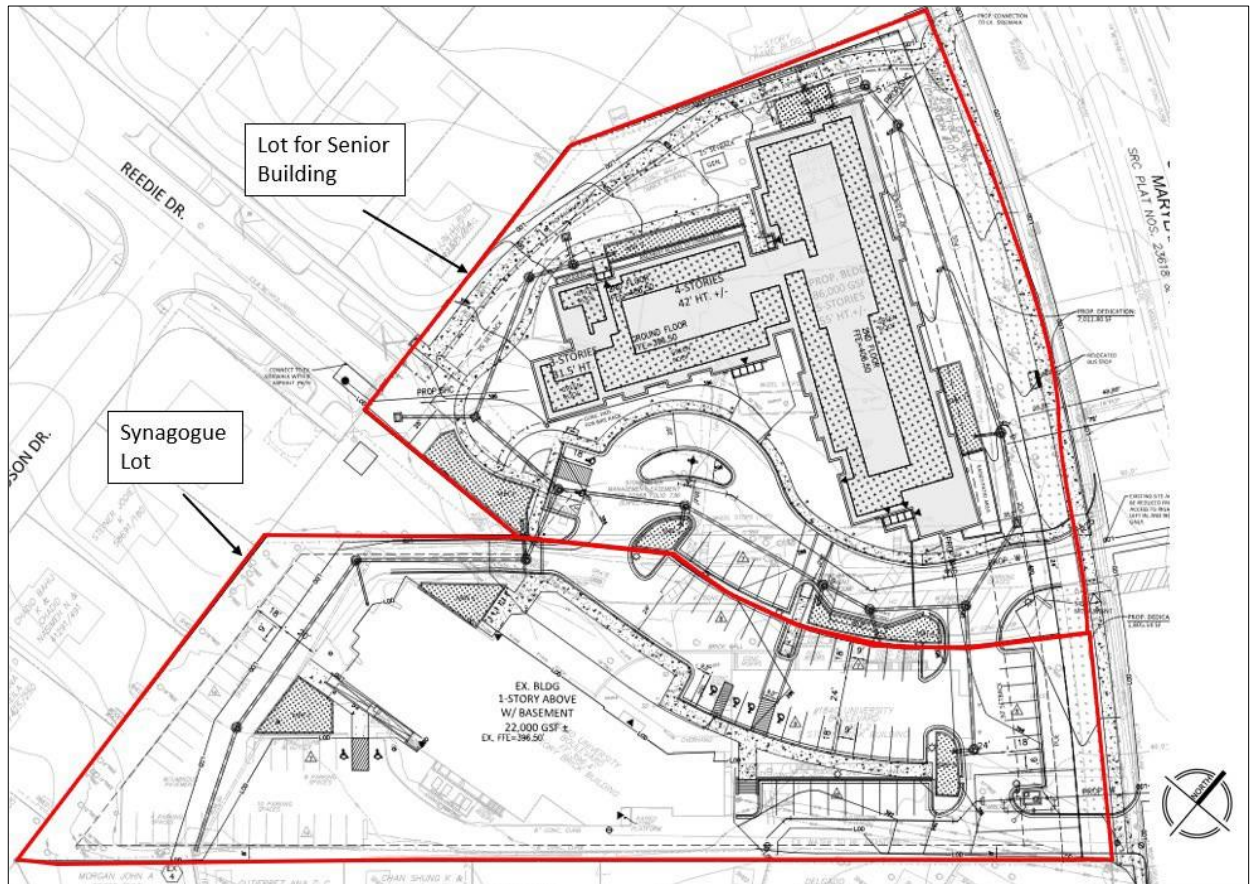
The Applicant proposes to subdivide the Property into two lots and develop the lot that currently contains the single-family home into a 90-unit independent living facility for seniors with a mix of primarily one-bedroom and some two-bedroom units, while the other lot will continue to serve the existing Synagogue use. Exhibit 32, pg. 7, T. 21. The new independent living facility will house approximately 100 to 120 residents 62 years of age and older within the 90 units. T. 21. Approximately 90% of the units will be income restricted and 32% of the proposed units will be permanently reserved as MPDUs. Exhibit 32, pg. 7. The units are individual apartments for those capable of independent living. T. 18. Amenities include a fitness room, bike storage, community room, raised patio, and roof terrace. T. 19. An onsite management office will be staffed Monday through Friday from 8:30 am to 5:00 pm. T. 19-20.

Ms. Everhart testified to Mission First's experience with developing and operating affordable housing partnering with faith-based organizations. T. 16-17. The development will be financed through the Low-Income Housing Tax Credit program. T. 21. On average at least 60 percent of the area median income will be the average income across the entire building, meeting more than the MPDU requirement. T. 21.

1. Site Plan and Floor Plan

Mr. Goodman, the Applicant's engineer, described the conditional use site plan. He explained that the that the existing parcel will be re-subdivided placing the independent living facility on the northern parcel and the Synagogue on the south parcel. T. 32. A portion of the existing Synagogue building will be demolished to allow for additional parking. T. 33. Mission

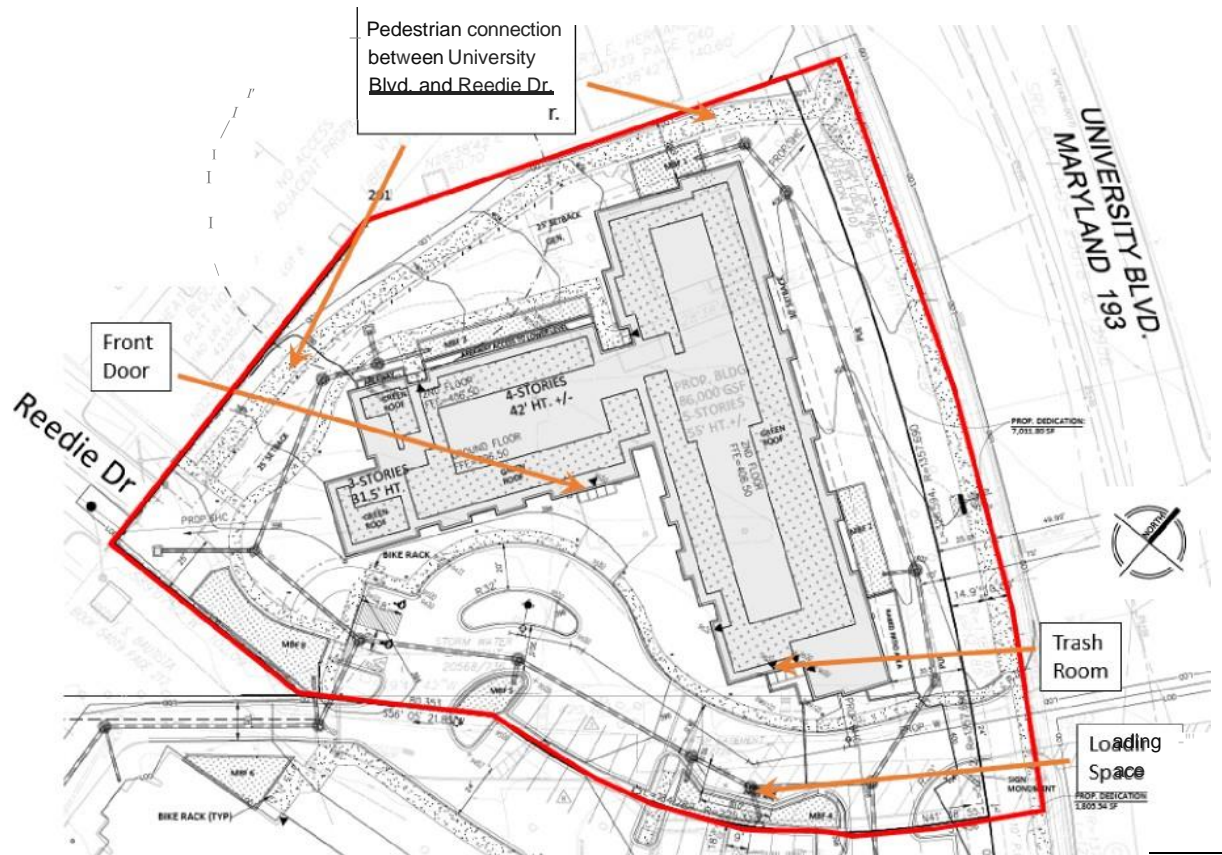
First is under contract to purchase the northern lot. T. 32. Once subdivided there will be shared accessed and parking. T. 32.



Staff Report – Subdivision, Ex. 32, pg. 8.

The independent living facility was designed in a T or L shape configuration to run parallel to the north and west property line in order to accommodate the existing properties configuration. T. 34. The design and placement of the structure met all setback requirements, with a 30-foot setback to University Boulevard and a 25 foot or greater setback to other property lines. T. 34. The main entry to the building occurs as the “elbow” of the building and ingress to

the site will be from University Boulevard. T. 34-35. Egress onto University Boulevard would be a right out only. T. 35. A pedestrian path will run along the northwest side of the northern lot with some landscaping, light bollards, a privacy fence along the residential lot side and a more open fencing on the facility side. T. 36-38. The trash will be located and picked-up at the end of the "T" closest to the University Boulevard entrance. T.49.



Staff Report Ex. 32, pg. 9

2. Landscaping, Lighting, Parking and Signage

a. Landscaping

The Applicant received a variance to remove certain trees and that impact will be mitigated with additional plantings on site. T. 38. Street trees will be placed along

University Boulevard, landscaping in the front of the building in the 30 foot set back zone, and street trees and ground cover in the front of the building and along the pedestrian path as well as a green panel between the curb and the sidewalk. T. 39-40.



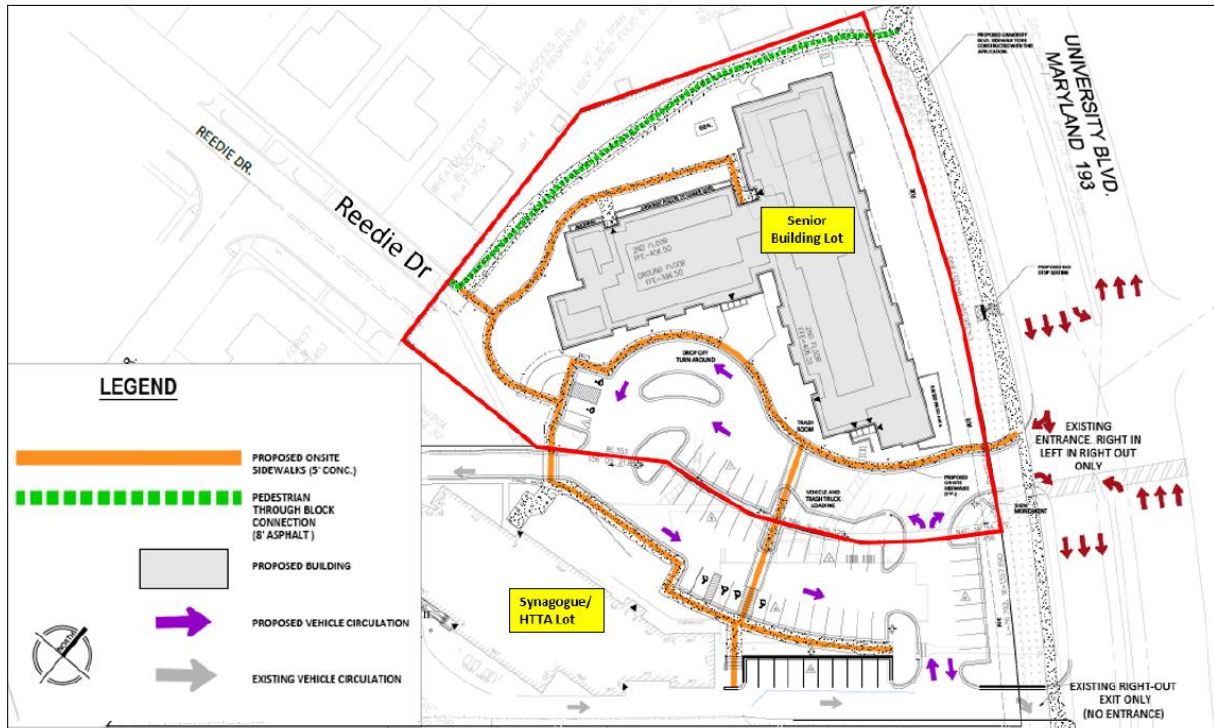
Landscape Plan – Exhibit 37(b)

b. Lighting

Mr. Goodman testified that per the photometric plan no foot-candle reading at the permitter of the property would ever exceed 0.1 foot-candles. T. 41. Exhibits 37(f), 37(g) and 37(h) identify exterior lighting locations and provide sufficient details of the lighting type and wattage to be used on site in addition to the testimony.

c. Parking

After the subdivision, the parcel containing the independent living facility will contain only 10 parking spaces while the parcel containing the Synagogue will hold 83 spaces for a total of 93 spaces serving both parcels. Exhibit 32, pg. 12. The independent living facility needs a total of 47 parking spaces and the synagogue needs a total of 25 spaces to meet minimum requirements under the Zoning Code. T. 43-44. The 93 spaces created on both lots exceed the required number of spaces needed for both uses. T. 45. A shared parking agreement between the two entities will be executed so that each use will respect each other's peak demand periods and one adequate to address the parking requirements for both uses. T 46-47. A circulation plan identifying the location of the parking spaces is shown on the next page.



Staff Report – Ex. 32 Pg. 13
Circulation Plan

d. Signage

A 4-foot high and ten-foot-wide ground mounted monument sign containing the name of the building will be located at the entrance driveway on University Boulevard. Exhibit 32, pg. 9, T. 67. Sign image shown on the next page.



Staff Report – Signage - Ex. 32, pg. 9

3. Operations

a. Staffing

There will be an on-site management office staffed Monday to Friday from 8:30 am to 5:00 pm. T.19. A total of three staff people will staff this site, including a community manger, a maintenance tech and a porter. T. 20. An after-hours emergency call system will be implemented as well as a high-tech security system with key fob access and cameras through the building recorded remotely and viewed by management, development staff and residents at any

time. T. 20. Columbus Property Management will work with residents to determine the needs and services required. T. 20.

b. Trash Disposal

The trash room is located internally at the end of the "T" closest to the University Boulevard entrance. T. 70. The trash trucks will wait at this location, go inside pull out the dumpster, unload it and roll it back. *Id.* The trash room location was chosen to be the farthest way from neighboring residents and neighborhood as possible and to also provide easy access in and out from University Boulevard. *Id.*

D. Environmental Issues

Staff advises that there are no environmentally sensitive features to this site. Exhibit 32, pg. 6. By resolution dated September 23, 2022, the Planning Board granted a variance to remove 9 trees and approved the Forest Conservation subject to the following conditions:

1. The Final Forest Conservation Plan must be consistent with the Preliminary Forest Conservation Plan.
2. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the required mitigation trees credited toward meeting the requirements of the FCP.
3. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must execute a five-year Maintenance and Management Agreement ("MMA") in a form approved by the MNCPPC Office of General Counsel. The MMA is required for all variance tree mitigation plantings.
4. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 84 caliper inches as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
5. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the

Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FCP.

Exhibit 45.

E. Community Response

The Applicant hosted a community meeting in 2021 and provided notices to all the surrounding neighbors and received positive feedback. T. 23. No community members appeared at the hearing either in support or opposition of the application. Mr. Bleiweis testified that that “HTAA has already had inquires from members of this community on how they can apply for an apartment.” T. 85.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

The relevant standards and the Hearing Examiner’s findings for each standard are

discussed below.² For discussion purposes, the general standards may be grouped into four main areas:

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

E. Necessary Findings

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

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

Conclusion: There is no dispute that there are no previous approvals on the subject site (Exhibit 32, p. 17). This provision is inapplicable.

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

Conclusion: This subsection requires review of the development standards of the R-60 Zone contained in Article 59.4; the use standards for an Independent Living Facility for Seniors contained in Article 59.3; and the applicable development standards contained in Article 59.6. Each of these Articles is discussed below in Parts III.B, C, and D, of this Report, respectively. For the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

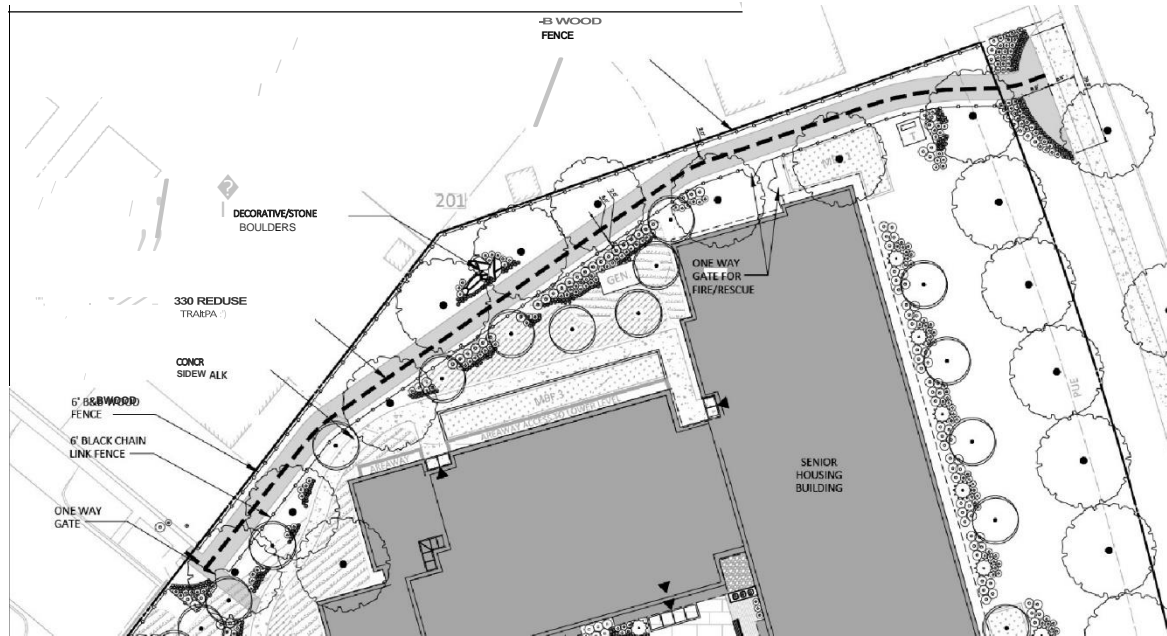
1. Substantial Conformance with the Master Plan

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

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

The Property is within the boundary of the 2012 Wheaton CBD and Vicinity Sector Plan (Sector Plan) and overall, the Application is in conformance with the Sector Plan. Exhibit 32, pg. 23. Per Staff the Sector Plan does not specifically address the Property, but general recommendations related to housing, connectivity, and transportation are relevant to this Application. Exhibit 32, pg. 23. The Plan describes Wheaton's role in the County as an area with "broad housing choices" and in the future to continue "providing housing opportunities for the eastern part of the county." *Plan*, pgs. 9 and 11. The Plan also calls for "preservation and protection of existing residential neighborhoods from adverse impacts of nearby non-residential development." *Id.* at 58.

Staff concluded that the proposed use will provide additional housing choices for seniors in Wheaton. The Sector Plan also recommends that through-block pedestrian connections be provided. *Plan* pg. 64. The Applicant proposed a pedestrian/bicycle connection along the northwest side of the senior building providing pedestrian access between Reddie Drive and University Boulevard creating "connectivity" recommended by the Plan. Exhibit 32, pg. 22. Per Mr. Goodman's testimony, the Applicant worked with Staff on this pedestrian connection in furtherance of the goals of the master plan to site the connection to be in the best location to connect Reddie Drive and University Boulevard without disrupting the senior housing use or the Synagogue use. T. 35-36. See pedestrian/bicycle connection in image on following page below.



Staff Report – Exhibit 32 pg. 23
Trail Connection Landscaping

Conclusion: Based on this record, the Hearing Examiner agrees that the independent living facility for seniors will substantially conform to the recommendations of the Sector Plan. The project increases the affordable housing stock in the area. The project accomplishes the Plan's goal of providing a variety of housing choices within the Sector Plan area. The Hearing Examiner agrees with Mr. Goodman that the location of the pedestrian path is situated appropriately and furthers vision of the Sector Plan.

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 identified only one approved Special Exception within the Neighborhood, but it is unclear whether the Special Exception is still operational. Exhibit 32 pg. 24. Staff concluded if approved the facility will increase the number of conditional uses/special exceptions in the Neighborhood, but that it “will not adversely impact the area or alter the predominately residential nature of the Neighborhood” and that the senior housing use as it is residential substantially conforms with the recommendations of the Sector Plan. *Id.*

Conclusion: The Hearing Examiner agrees the proposed conditional use will not increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely. She has already found that the project conforms to the Sector Plan. It is unclear if the only other special exception found within the Neighborhood is still in use. The building design, setbacks and landscaping create a seamless transition from the senior residential project to the adjacent single family residential uses. For reasons stated in Part III.A.4 of this Report below, she agrees with Staff that the project will be compatible with the surrounding area.

2. Adequate Public Services and Facilities

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

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

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the

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

Conclusion: The Hearing Examiner is not required to make a finding regarding the adequacy of public services and facilities in this case because a preliminary plan of subdivision was filed concurrent with the Conditional Use Application and will be reviewed by the Planning Board. Exhibit 32, p. 24. With that said, the Applicant presented expert testimony and evidence that the project will generate fewer than 50 person trips and is therefore exempt from testing under the Guidelines. T. 80. In addition, the Department of Transportation also recommended preliminary approval pending certain conditions. Exhibit 44.

Mr. Goodman, the Applicant's expert in civil engineering, testified that both water and sewer have adequacy and the storm drain analysis shows the existing facilities are adequate for the development. T. 52. The record also supports a finding that stormwater management facilities will be adequate to serve the use. Exhibit 36 (a) and (b).

3. No Undue Harm from Non-Inherent Adverse Effects

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

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

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on the surrounding area. Inherent adverse effects are “adverse effects created

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

Staff concluded that the following physical and operational characteristics are inherent to an independent living facility (Exhibit 32, p. 25):

- Buildings and related outdoor recreational activities or facilities;
- Parking facilities;
- Lighting;
- Vehicular trips to and from the site by employees, visitors, residents, delivery vehicles and waste removal;
- Noise generated by equipment for the facility, waste pick-up, deliveries and occasional outdoor activities of residents and their visitors; and
- Driveway impacts.

The Hearing Examiner agrees with Staff's list of inherent adverse characteristic of this use.

Ms. Everhart testified that the site would generate no adverse impacts to the surrounding neighborhood. T. 24. Mr. Goodman opined that the use would not have an adverse impact on the peaceful enjoyment, or development potential of adjoining or abutting properties or on the health, safety, or welfare of residents, visitors, or people attending the Synagogue. T. 50. Staff found the proposed building and site designed to be compatible with the surrounding residential neighborhood, provides ample setbacks and screening will ensure that the proposed facility such that it will not disturb the use or peaceful enjoyment of neighbors, nor decrease the economic value or development potential of abutting and confronting properties or the general neighborhood.

(Exhibit 32, p. 25). In addition, staff also found that the proposed facility will not cause undue harm to the neighborhood as a result of traffic, noise, odors, dust, illumination, or a lack of parking and that any noise, odors or dust associated with the facility will be comparable to those generated by similar facilities and any noises associated with the facility will be minimized by the site design. *Id.* Staff in its report and Ms. White during her testimony identified that no traffic report was required for the project due to the low maximum number of trips generated by the use. Exhibit 32, pg. 25 and T. 82. Ms. White also opined that the circulation plan would not cause an adverse impact on the surrounding neighborhood. T. 83. The Hearing Examiner agrees with Staff and the expert testimony presented by the witnesses that the project does not result in undue adverse effects requiring denial of this application.

As stated above non-inherent adverse effects may result from the “physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site”. Staff did not identify any non-inherent adverse impacts from the proposed use or site. The Hearing Officer agrees with Staff that there are no non-inherent adverse effects from the proposed development and concludes that use and proposed development will not cause undue harm to the neighborhood from either non-inherent adverse effects or a combination of inherent or non-inherent adverse effects.

4. Compatibility with the Neighborhood

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

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

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

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

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

Staff concluded that the project met the standard of 59.7.3.1.E.1.d because (Exhibit 32, p. 24):

The proposed Senior Building is harmonious with the character of the surrounding neighborhood and consistent with the recommendations of the Sector Plan. The use is residential, consistent with the surrounding neighborhoods, and the design of the building provides appropriate transitions from five stories along University Boulevard to three stories adjacent to the single-family neighborhood (as viewed from the west, along Reddie Drive). The proposed landscaping, fencing, and setbacks will provide appropriate buffers between the Senior Building and the adjacent neighborhoods.

Staff found that the project was compatible with the neighborhood (Section 59.7.3.1.E.1.2) because (*Id.* at 26) because:

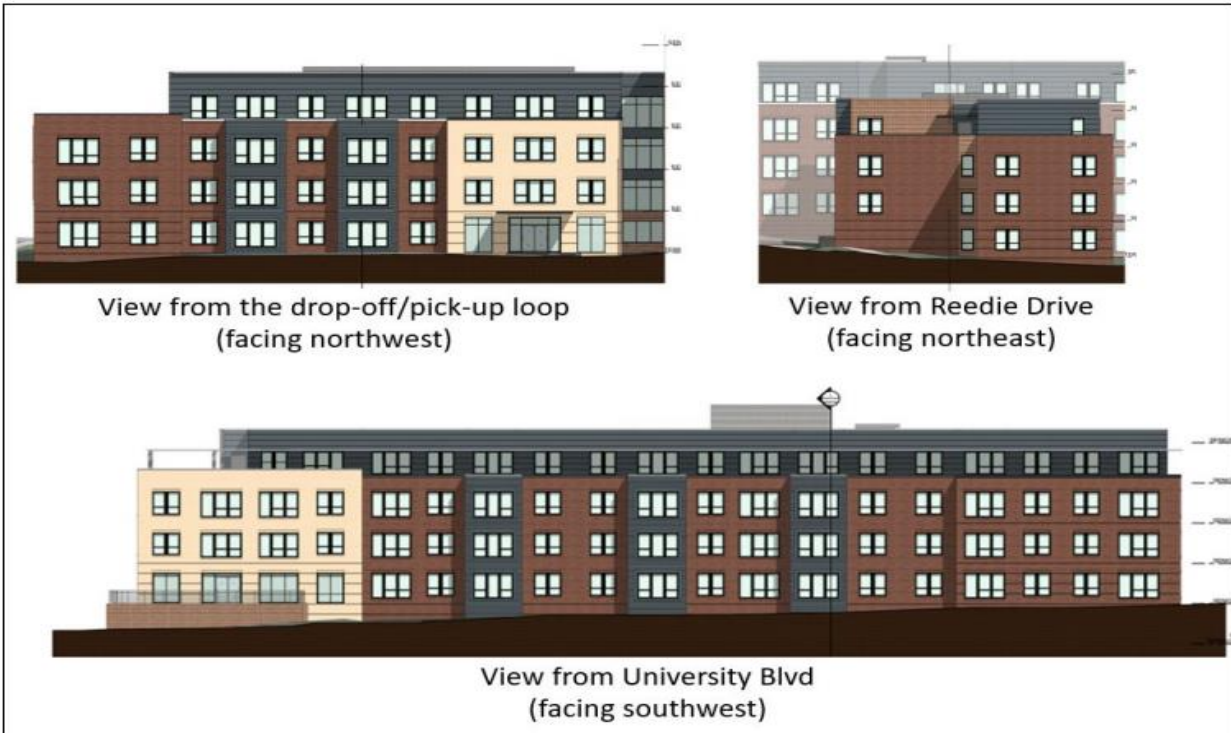
The proposed Senior Building is designed to be compatible with the character of the adjacent residential neighborhood. The tallest part of the building is located along University Boulevard, and it steps down adjacent to the residential neighborhood along Reddie Drive. Articulation and the choice of building materials will help moderate the scale of the building and integrate it into the existing neighborhood.

The Applicant's architect, Mr. Matties, testified at length of the steps taken to buffer the use from surrounding residences and to make it blend with its current location. Because the site is higher at the northwest University Boulevard corner and slopes down toward Reddie Drive, that grade change that actually helps in terms of relating the structure to the neighborhood. T. 59-60. The building is a T shape with north wing a bit taller and oriented parallel to University Boulevard to create a more "urban street wall" along the street frontage and the south wing heads down toward Reddie Drive dropping a story as it continues to approach Reddie Drive creating a three-story

portion directly adjacent to the single family homes that feels like two and half stories reducing the scale of the building to the neighbors. T. 59-63. The highest point of the building will be 50 feet high substantially below the height maximum, using the formula for calculating height prescribed by the Zoning Ordinance.³ Exhibit 32, pg. 18, Exhibit 35(a).

Mr. Matties discussed the material palette as being residential in nature with a combination of brick veneer, painted siding and fiber cement siding. He took from the surrounding neighborhood which has a lot of red brick, incorporating and following a primarily red brick palette. T. 65-66. Mr. Goodman testified to the use of fencing and landscaping to buffer and blend in with the surroundings, specifically the a series of trees along University Boulevard and a creation of a green panel between the curb and the sidewalk. T. 39-40. Along the pedestrian path between Reedie and University there will be a series of trees and low groundcover to complement the sidewalk and provide color during the seasons. T. 40-41. Mr. Goodman testified to the location of the trash area as being designed to be away from single family homes and closest to University Boulevard and at the end of the residential units within the building to lessen any impact on the residents and the neighbors. T. 49. Staff Report exterior elevations shown on following page.

³ Mr. Matties testified the building height to be 46 and ½ feet. T. 64. The Amended Statement of Justification identified the building height as being 48 feet. Exhibit 34, pg. 25. The Site Plan and Staff Report both reference a 50-foot maximum building height. All 3 measurements are below the 60-foot maximum. The 50-foot measurement is being used as the height for this report and decision.



Staff Report – Exterior Elevations
Exhibit 32, pg. 10.

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

The Hearing Examiner has adopted Staff's characterization of the existing neighborhood as being primarily residential with Wheaton Forest Park located a few blocks to the south on University Boulevard. She already found that the use fulfills the goals of the Sector Plan; she further finds that it does so in a manner that is compatible with the surrounding area. Key to this finding are a number of factors, including (1) the use of existing topography to step down the structure from its maximum height facing University Boulevard to lowering the stories as the grade

slopes down toward Reddie Drive, (2) the height of the building (lower than the maximum permitted), (3) the landscaping and fencing designed to screen the building from the nearest single family dwellings, create green blocks along University Boulevard and enhance the pedestrian path, (4) the residential materials and overall design on the facade, and (5) the building's setback from adjacent residential properties. The building generally is 10 feet below the maximum height permitted for this use in an R-60 Zone.⁴ Setting the building into the grade in a T shape, as testified by Mr. Matties, causes the building to slope down from the maximum height facing University Boulevard. Landscaping and fencing building also break up its mass. In addition, the materials chosen for the façade match those of the existing residential structures in the neighborhood. The location of the entrance as to be in the elbow of the T away from residences will lessen any impact on the immediately adjacent properties. The location of the trash nearest to the entrance of the facility along University Boulevard lessens any impact to the surrounding properties.

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

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

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

B. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-60 Zone, contained in Article 59.4 of the Zoning

⁴ See *Zoning Ordinance*, §59.3.3.2.C.2.c.iv.

Ordinance. Staff included a table (Exhibit 32, p.18, shown below) in its report comparing the minimum development standards of the R-60 Zone to what is proposed in this application.

Conclusion: Nothing contradicts Staff's assessment of compliance with the development standards of the Zone. The Hearing Examiner finds that the proposed facility complies with the standards of the R-60 Zone.

Development Standard	Required/Allowed	Proposed
Lot area (min)	6,000 sf (59-4.4.9.B)	72,840 sf/1.67 acres
Lot width at front building line (min)	60 ft (59-4.4.9.B)	321 ft
Lot width at front lot line (min)	25 ft (59-4.4.9.B)	325 ft
Frontage on street or open space	Required (59-4.4.9.B)	Fronts on street
Density (max)	Determined by Hearing Examiner (59-3.3.2.C.2.c.v)	90 units (98,000 sf)
MPDUs (min)	30% (59-3.3.2.C.2.c.iii)	30%
Lot Coverage (max)	35% (59-4.4.9.B)	31%
Front setback (min)	30 ft (As required for R-30 Zone under 59-3.3.2.C.2.c.ix)	30 ft
Side setback, north (min)	25 ft (59-3.3.2.C.2.c.vii)	25 ft
Side setback, south (min)	25 ft (59-3.3.2.C.2.c.vii)	55 ft
Rear setback (min)	25 ft (59-3.3.2.C.2.c.vii)	36 ft
Height (max)	60 ft (59-3.3.2.C.2.c.iv)	50 feet
Green Area (min)	50% (59-3.3.2.C.2.c.viii)	52.8% (38,492 sf)

**Staff Report – Development Standards Table 2
Exhibit 32**

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

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

Zoning Ordinance §59.3.3.2.C.

C. Independent Living Facility for Seniors or Persons with Disabilities

1. Defined

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

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

Zoning Ordinance, §59.1.4.2.

Conclusion: The Applicant's Amended Statement of Justification states that it meets this definition as does the Staff Report. Exhibits 34, 32. Ms. Everhart testified that the facility will be used to provide housing for seniors. T. 18. A condition of approval will require that occupants meet the age ranges specified by the Zoning Ordinance for this use. As conditioned, the use meets this definition.

2. Use Standards

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

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

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

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

Conclusion: While the Zoning Ordinance does not prohibit Staff from living on-site, the Applicant stated management staff will be on-site only Monday through Friday from 8:30 am to 5:00 pm,

i.e. no staff will live on-site. T. 20. In addition, the Staff Report also indicates no staff will live on-site.

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

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

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

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

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

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

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

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

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

Ms. Everhart testified at length regarding the transportation opportunities and amenities located near the site. T. 22. The Staff Report indicates the Property is served by Ride On and WMATA, with an existing bus stop located along the Property's University Boulevard frontage and it is also within a 1/3 mile of the Wheaton Metrorail Station, located to the west along Reedie Drive. Exhibit 32, pg. 16. The Staff Report goes on to state as follows:

Westfield Wheaton Mall and the shops and businesses of downtown Wheaton are less than one mile away. A Giant Food grocery store is located at the Westfield Wheaton complex and the Property is ½ mile from a Safeway on Georgia Avenue.

Wheaton Veteran's Urban Park and Wheaton Local Forest Park are within ½ mile from the Property and Sligo Creek Park is approximately 3 miles away on foot. The Wheaton Library and Recreation Center is less than a mile away.

In terms of medical services, the Property is located 2.5 miles away from Holy Cross Hospital. Holy Cross includes the region's only Seniors Emergency Center, which caters to the needs of seniors with specialized surgical and inpatient services in addition to healthy-aging programs. Other medical services in the area include University Medical Care, Mary's Center and Righttime Medical Care, all of which are within 2.5 miles of the Property.

Id.

Conclusion: The Applicant provided the map required by this section. Exhibit 11. From the evidence in this record, the Hearing Examiner finds that this criterion for approval has been met, with the condition proposed.

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

Conclusion: The Applicant does not propose ancillary or retail services to non-residents. Exhibits 32, p. 15; Exhibit 34. This will be made a condition of approval of the use.

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

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

1. Very Low Income: Income at or below 50% of the area median income (as determined annually by the U.S. Department of Housing and Urban Development) adjusted for household size.

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

Conclusion: Ms. Everhart testified that the occupancy of the units will meet these income requirements. The Applicant intends to use low-income tax credits to finance the project, which requires at least 60% of the area median income to be the average income across the entire building.

T. 21. All of the units (90) at this facility will be affordable to people with an income of less than 70% of AMI with a majority of the units affordable to those with an income of less than 50% of AMI (\$52,920 for one person \$60,490 for two people.). Exhibit 34, pg. 24-25.

This housing mix currently proposed clearly meets the required standards but may be further refined with the Housing Commission. A condition of approval will require compliance with this provision of the Zoning Ordinance. Given Ms. Everhart's uncontroverted testimony and with the condition of approval, the use as proposed and conditioned will meet this criterion of approval. T. 21.

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

Conclusion: As already explained, the building height proposed is 50 feet. This standard is met.

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

Staff concluded that the application met this standard because (Exhibit 32, p. 16):

The proposed building and associated parking are compatible with the residential character of the surrounding neighborhood. The maximum height of the building is 50 feet (five stories), with the tallest portion of the building along University

Boulevard. Due to the topography of the site, the first story of the building is mostly hidden from view along University Boulevard and the front of the building appears to be four stories. The rear (Reedie Avenue) side of the building steps down from five stories to three stories abutting the residential neighborhood to the west.

The majority of parking for the Senior Building is provided on HTTA's property, with only ten parking spaces proposed on the same lot as the Senior Building. Given the location of the Senior Building, fronting on University Boulevard, the density and coverage is appropriate, with compatible transitions to the surrounding residential uses.

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

vi. The minimum front setback to the street for a lot abutting a property not included in the application is equal to the front setback for a detached house in the underlying zone under the standard method of development. Except for an access driveway, this front setback area must be maintained as a green area.

Conclusion: The minimum required front setback for a detached house in the R-60 Zone under the standard method of development is 25 feet. Exhibit 32, pg. 16-17. The Conditional Use Site plan demonstrates that proposed building site is set back 30 feet from University Boulevard and the front setback area is proposed as a green area. Exhibit 36(a). The Hearing Examiner finds from the record that the minimum front setback is met.

vii. The minimum side and rear setback is 25 feet to lots not included in the application.

Conclusion: The R-60 Zone establishes for an independent living facility that a minimum side yard and rear yard building setback of 25 feet for a principal structure. *Zoning Ordinance*, §59.3.3.2.C.2.C.vii. The conditional use site plan (Exhibit 36) shows that the side setback from

the north property line is 25 feet, the side setback from the south property line is 55 feet, and the rear setback is 36 feet. The application meets or exceeds this standard.

viii. The minimum green area is:

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

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

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

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

Conclusion: Staff and the Applicant agree that the amount of green area meets the 50% requirement for projects in the R-60 Zone. Based on this uncontroverted evidence, the Hearing Examiner finds that the application meets this requirement.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. The applicable requirements, and whether the use meets these requirements, are discussed below. The proposed use and Zone do not require the review of Division 6.1 for Site Access, Division 6.3 for Open Space and Recreation, or Division 6.6 for Outdoor Storage.

1. Parking and Loading

Parking and loading standards are governed by Division 6.2 of the Zoning Ordinance.⁵ For an Independent Living Facility for Seniors, the required number of vehicle parking spaces is based on the number of dwelling units and the maximum number of employees on a shift. Zoning

⁵ Queuing requirements apply only to uses with a drive-thru, and therefore do not apply to this use. *Zoning Ordinance*, §59.6.2.7.A.

Ordinance §59.6.2.4.B. calls for 1 parking space for each dwelling unit plus 0.5 spaces for each employee. The Ordinance permits a reduction of 50% reduction from this for senior housing. *Zoning Ordinance*, §59.6.2.3.I.2.b. Thus, the minimum required spaces for the dwelling units would be 47 spaces.⁶

For the synagogue site, Zoning Ordinance 59.6.2.3.I.2.c allows the deciding body to reduce the number of required parking spaces for religious assembly to 0.125 per fixed seat if “used by a congregation whose religious beliefs prohibit the use of motor vehicles in traveling to or from religious services conducted on their Sabbath and principal holidays.” Per the Staff Report, 60% of the regular Sabbath attendees walk to Synagogue and as such Staff recommends using the reduced parking rate to calculate the required parking for the synagogue. In addition, Mr. Bleiweis testified HTTA is a conservative synagogue and estimated a 1/3 to 1/2 of the members walk to services. T. 89. The congregation consists of approximately 150 members and HTTA continues to conduct Zoom services further reducing the number of members who attend services in person. T. 90. Calculating the parking required for a 200-seat religious assembly use at a 0.125 rate requires 25 spaces to serve the Synagogue. The total number of spaces required for both uses is 72 and the total number of spaces provided across both parcels is 93. Exhibit 32, pg. 19.

The Applicant proposes a total of 10 spaces on the senior housing site, less than that required by Code. The Applicant will enter into a joint use agreement with HTTA to satisfy the vehicle parking requirement for the senior building by making up to 38 spaces available on the synagogue property. Exhibit 32, pg. 19. The proposed total of 93 vehicle parking spaces across both parcels satisfies the parking requirement of both uses.

⁶ The calculation is: (90 dwelling units, x 0.5 (senior housing reduction) = 45 x 1 (dwelling unit) = 45 + .05 x 3 spaces (per employee) = 46.5. Fractional spaces are rounded up to the nearest whole number for a total number of spaces required for the senior housing to be 47. *Zoning Ordinance*, §59.6.2.3.A.1.

The off-street parking spaces for the independent living facility are subject to setback requirements per Section 59.6.2.5.K of the Zoning Ordinance. Per Section 6.2.10 the Hearing Officer as the deciding body may waive any parking requirement so long as the parking requirement “ensure[s] that adequate parking is provided in a safe and efficient manner.” Staff recommends approval of a waiver to the side parking setback to allow adequate parking in a safe and efficient manner especially in light of the fact that the setback between the senior building and the Synagogue is not necessary. Exhibit 32, pg. 20.

In addition to vehicle parking spaces, the Zoning Ordinance requires short-term and long-term bicycle parking spaces. *Zoning Ordinance*, §59.6.2.4.B. The minimum required for the proposed use is .25 per dwelling unit, or 23 spaces.⁷ *Id.* Ninety-five percent of these (or 22 spaces) must be long-term. Mr. Matties testified the bike storage room would be on the first floor with direct access to the outside and will provide room for all 23 spaces. T. 69. The Hearing Examiner will include a condition of approval requiring the long-term bicycle parking spaces inside the facility.

Staff indicates the total square footage for the independent living facility as being 98,000 square feet. Exhibit 32, pg. 7. The Zoning Ordinance provides that group living with gross floor area between 25,000 and 250,000 square feet have 1 loading space. *Zoning Ordinance*, §59.6.2.8.B.2. Both Staff and the Applicant confirm that the loading space will be provided on-site, which is shown on the Conditional Use Site Plan. Exhibits 36(c), T. 49.

Conclusion: Based on the record summarized above, the Hearing Examiner finds that as a condition of approval, a joint parking agreement be entered into to satisfy the proposed independent living facility parking requirements and that the agreement specifically identify the

⁷ 90 (dwelling units) x .25 (bicycle spaces) = 22.5, i.e. 23.

required a minimum number of spaces on the Synagogue site to be used by the independent living facility in order to meet the Zoning Ordinance parking minimums. The Hearing Officer agrees with Staff and grants a waiver to the parking setback requirement in order to maintain a safe parking configuration that works for both parcels. The loading requirements are satisfied per the Zoning Ordinance.

2. Site Landscaping and Screening

Conclusion: Section 59-6.5.2.B.A.2 requires the independent living facility to provide screening along the western property lines where the Subject Property abuts lots in the R-60 zone with a residential use. The proposed landscape design complies with Section 59-6.5.2.C.7 by providing an eight-foot-wide planting bed with trees and shrubs, and a six-foot-tall board-on-board fence.

The Hearing Examiner accepts Staff's conclusion (Exhibit 32, pg. 21) and the undisputed statements of the Applicant's experts and finds that the Landscape and Lighting Plan (Exhibit 37) meets the technical requirements of Division 6.4 and 6.5. The Hearing Examiner has already concluded that the landscaping shown is compatible with the surrounding uses; compliance with the technical requirements is necessary only to the extent needed to ensure compatibility.

3. Outdoor Lighting

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

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

The Applicant submitted a Photometric Plan that showed illumination levels of the lighting on the subject property. Exhibit 37(f). Mr. Goodman testified that the maximum illumination at

the property line will never exceed 0.1 footcandles. T. 41. He also opined that the lighting plan met the technical requirements of the Zoning Ordinance. T. 41.

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

IV. CONCLUSION AND DECISION

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

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of 1910 University, LLC (CU 22-04) for a conditional use under Section 59.3.3.2.C.2.b. of the Zoning Ordinance to build and operate an Independent Living Facility for Seniors on property described as 1910 University Blvd., Parcel 306, Map JQ11 (Tax Account No. 964683), in Silver Spring, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. Physical improvements to the subject property are limited to those shown on the Applicant's Conditional Use Site Plan (Exhibit 35), Landscaping Plan (Exhibit 37). The Applicant must file copies with OZAH of any plans modified after subdivision of the property.
2. The locations and types of light fixtures shall be consistent with the Applicant's Photometric Plan (Exhibit 37(f)).
3. The conditional use is limited to a 90-unit Independent Living Facility for Seniors.
4. A maximum of three employees may be onsite at any one time.
5. The Independent Living Facility is subject to a Joint Use Parking agreement identifying the location of and amount of parking spaces required for both uses on both parcels. Prior to Certification of the Preliminary Plan of Subdivision, the parties to the Joint Use Parking Agreement must execute that document, record it among the Land Records of Montgomery County and provide a copy of the executed and recorded agreement to the Planning Department and to the Office of Zoning and Administrative Hearings.
6. The Applicant must install signage prohibiting left turns onto University Boulevard.

7. The facility must be operated to meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.
8. No ancillary or retail services to non-residents are permitted on-site.
9. The Applicant must implement the waste disposal method as described in Exhibit 34. The use of an exterior dumpster is prohibited.
10. Occupancy of the dwelling units shall be in accordance with the provisions of the Zoning Ordinance Sections 59.3.3.2.C.2.a.iii (age of occupants) and 59.3.3.2.C.2.c.iii (income levels of the occupants), and any amendment thereto.
11. The Applicant must supply bike storage room within the building large enough to accommodate 22 long-term bicycle spaces.
12. Prior to issuance of any building permit for the subject conditional use, the Applicant or any successor in interest must obtain approval of a Preliminary Plan of Subdivision and Record Plat under Chapter 50 of the Montgomery County Code. The Applicant and any successors in interest must report to OZAH any proposed changes to the conditional use plans as a result of subdivision proceedings and must file a copy of the proposed amended plans with OZAH.
13. Prior to any land disturbing activities, the Applicant must receive approval of a Final Forest Conservation Plan by the Montgomery County Planning Board.
14. The facility must be operated in accordance with all applicable County noise regulations.
15. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services

Issued this 9th day of November 2022.



Kathleen E. Byrne
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

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

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

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

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

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

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

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

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

will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

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

NOTIFICATION OF DECISION TO BE SENT TO:

Jody S. Kline, Esquire

Attorney for the Applicant

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Robert Kronenberg, Deputy Director, Planning Department

Emily Tettlebaum, Planning Department

Greg Nichols, Manager, Department of Permitting Services

Victor Salazar, Department of Permitting Services

Michael Coveyou, Director, Finance Department

Clifford Royalty, Esquire, Associate County Attorney