

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**

**Stella B. Werner Council Office Building**

**Rockville, Maryland 20850**

**(240) 777-6660**

**<https://www.montgomerycountymd.gov/ozah>**

**IN THE MATTER OF:**

**FREDERICK ROAD SENIOR 4%**

**OWNER LLC**

Applicant

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OZAH Case No. CU 20-02

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Before: Lynn Robeson Hannan, Hearing Examiner

**ORDER APPROVING A MINOR AMENDMENT**

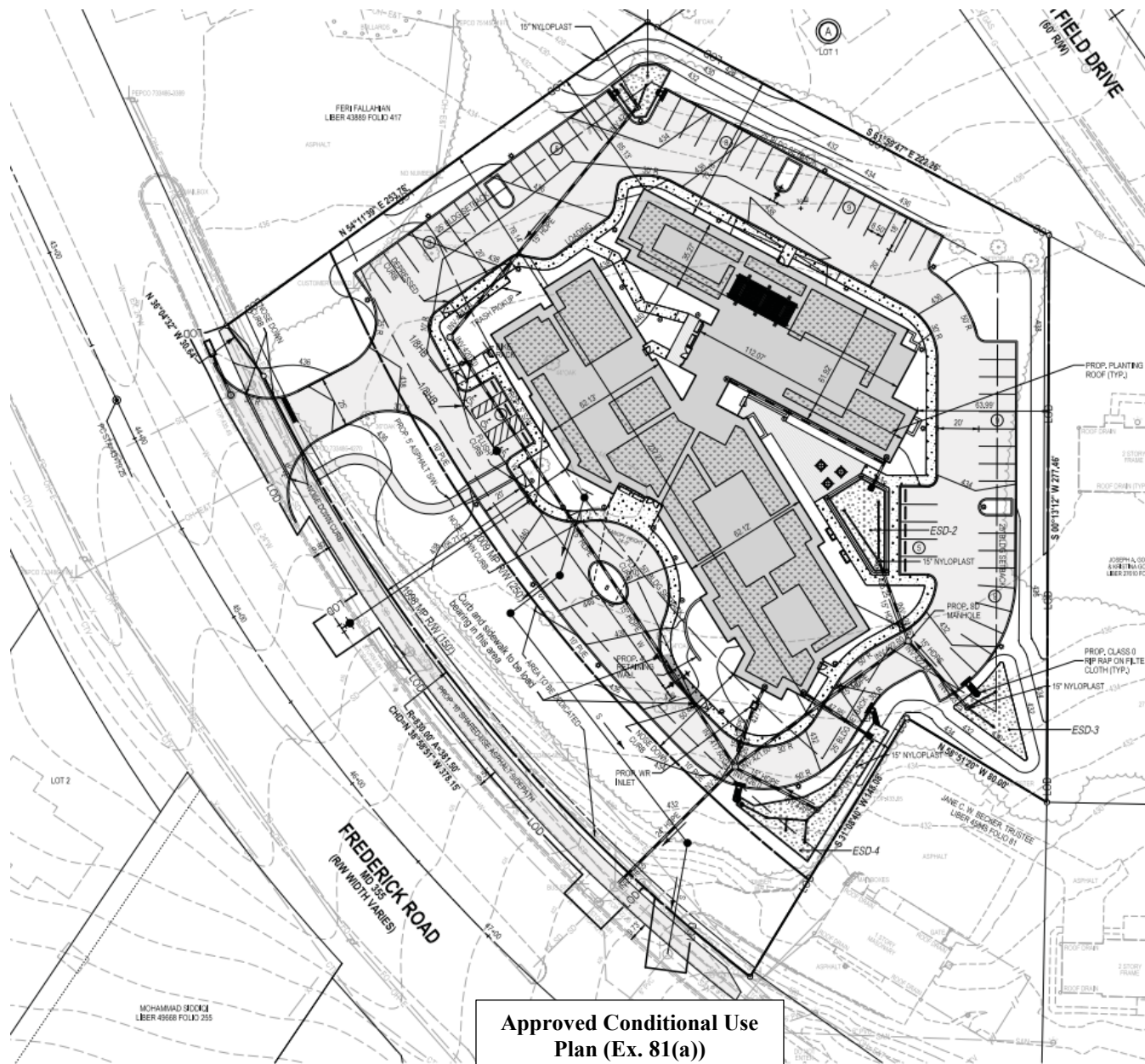
**I. BACKGROUND**

On July 1, 2020, the Hearing Examiner approved a conditional use filed by Edmonson and Gallagher Property Services, to operate an Independent Living Facility for Seniors with up to 111 dwelling units under Section 59.3.3.2.C of the Zoning Ordinance. *Hearing Examiner's Report and Decision*, CU 20-02, issued July 1, 2020 (HE Report). The Hearing Examiner confirmed the transfer of the conditional use to "Frederick Road 4% Owner, LLC" (Applicant or Frederick Road) on September 14, 2022. Condition No. 11 of the original approval required the Applicant to obtain approval of a preliminary plan of subdivision and to "report to OZAH" any changes required. *Id.*, p. 47.

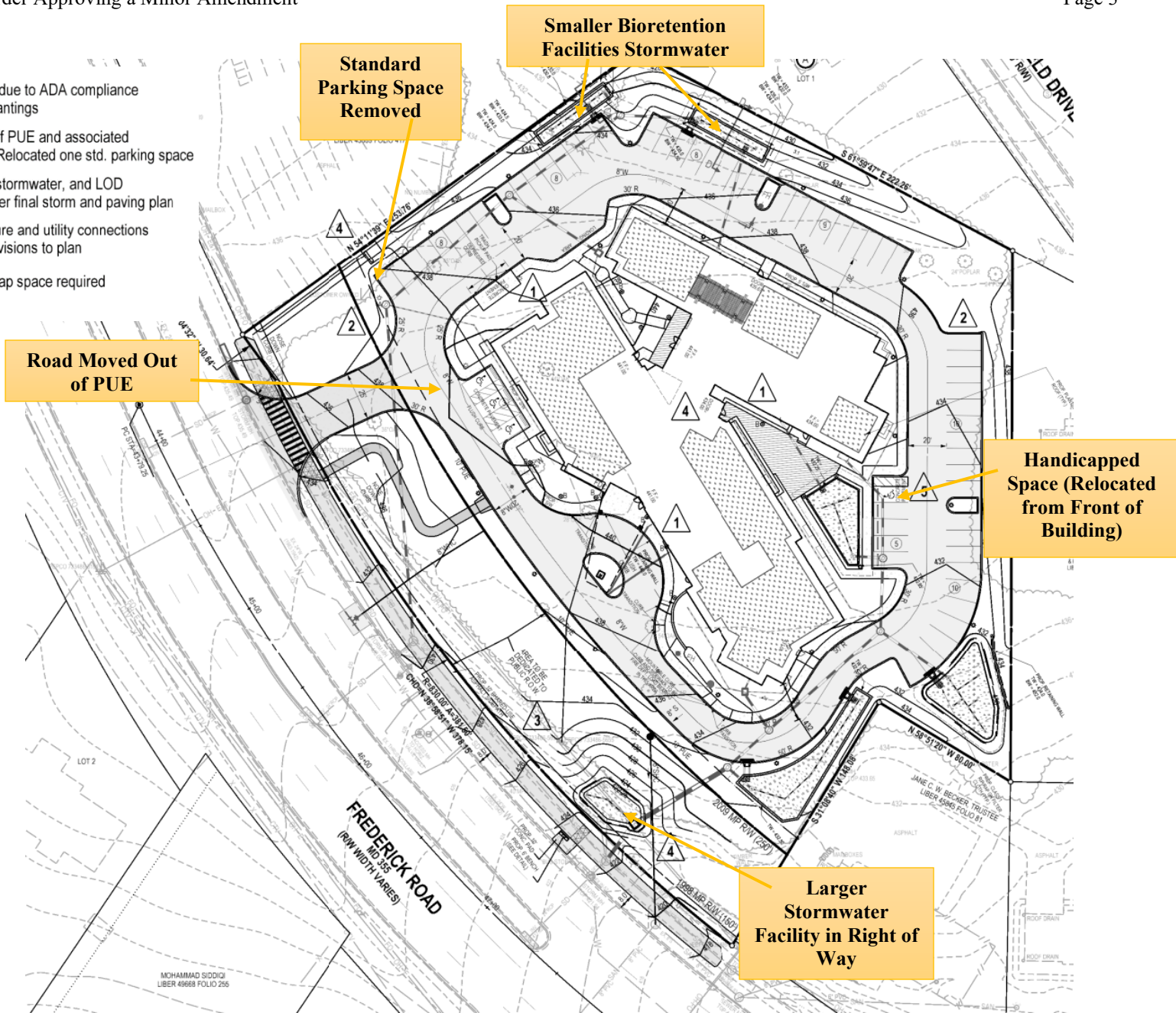
**A. Request for Minor Amendment**

On July 11, 2023, the Office of Zoning and Administrative Hearings (OZAH) received a request for a minor amendment to the approved conditional use plan. According to the Applicant, the changes were necessitated by the approval of the preliminary plan. Exhibit 86. Excerpts of the original and revised conditional use site plans are shown on the following pages (Exhibits 81(a), 89(a)). The amendments are explained in the Applicant's request and are summarized below (Exhibit 86).

1. Changes Required by Adding a Public Utility Easement (PUE). Several changes are caused by a preliminary plan requirement to create a 10-foot wide PUE running parallel to Frederick Road. This required the Applicant to:
  - a. Relocate the front driveway so it did not encroach into the PUE, which required...
  - b. Relocation of the sidewalk running along the front of the building.



- 1 Revised sidewalk due to ADA compliance and associated plantings
- 2 Road shifted out of PUE and associated revisions to plan. Relocated one std. parking space
- 3 Revised grading, stormwater, and LOD within EX. ROW per final storm and paving plan
- 4 Revised architecture and utility connections and associated revisions to plan
- 5 Additional handi-cap space required through permitting

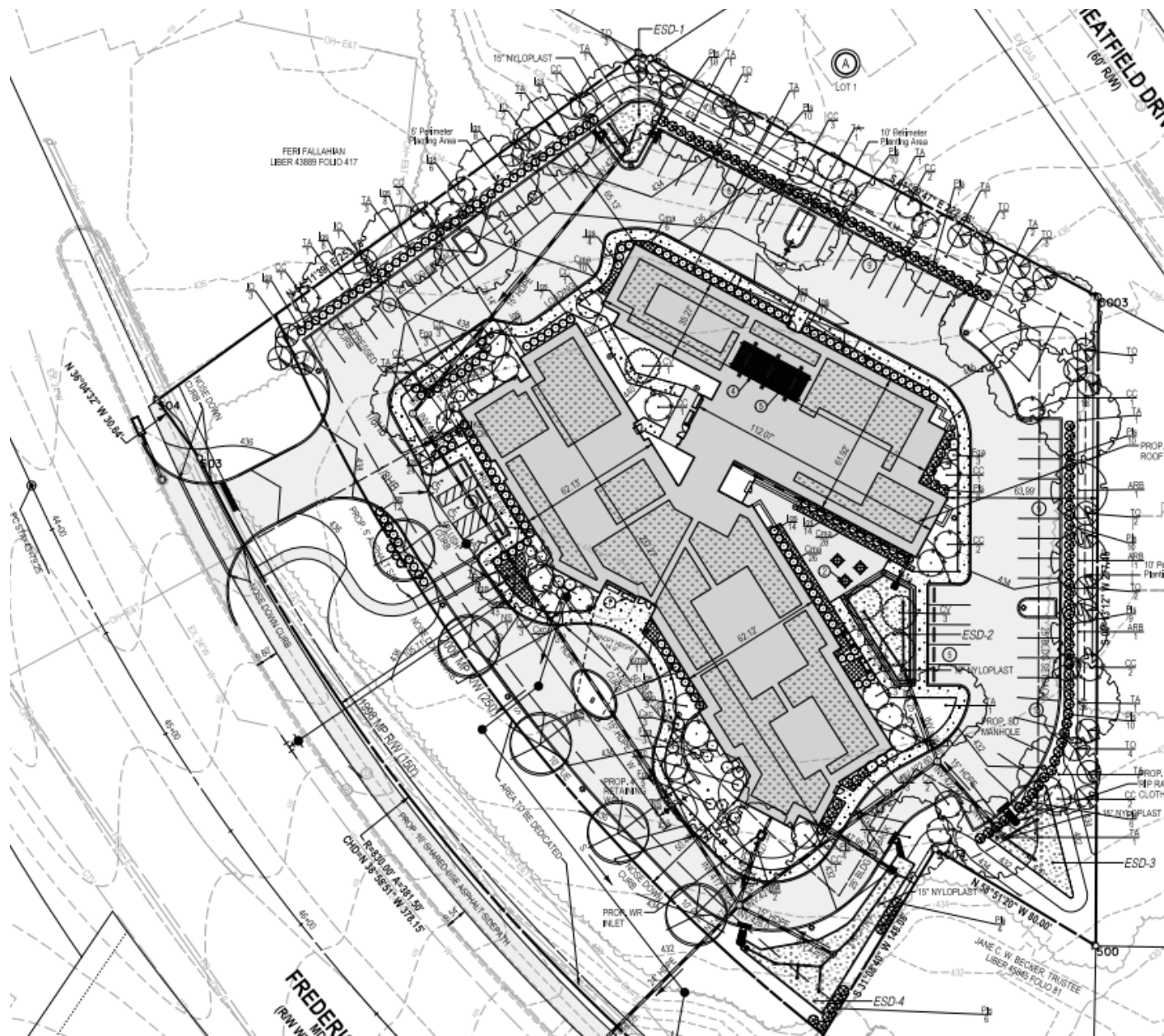


- c. Because the relocated sidewalk will be adjacent to the face of the building in some locations, foundation landscaping was removed in those areas and relocated or supplemented elsewhere. Excerpts from the approved (Exhibit 81(a)) and revised landscape plans (Exhibit 89(b)) are shown on the next two pages.

According to the Applicant, the “resulting landscape plan perpetuates the volume and quality of landscaping that is visible along the front of the seniors’ residential community building.” *Id.*, p. 2.

2. Replacement of One Handicapped Parking Space. The Applicant states the changes to the front of the building (stemming from the requirement move the road out of the PUE) also require relocation of one handicapped parking space from the front to a “convenient” location on the east side of the building (shown on page 3 of this Order).
3. Modifications to Stormwater Management. The approved conditional use plan showed a large stormwater management facility at the northernmost peak of the subject property. During review of the preliminary plan, the Board determined that a preferred method would be to install “two planter boxes, situated between the curb lines for the parking field and the northwestern and northeastern property lines...” Exhibit 86, p. 3. In addition, a bioretention facility will be added off-site within the master planned right of way. On-site changes to stormwater management are shown on page 3 of this Order.
4. Architectural Modifications:
  - a. Green Roof Planting Beds. The preliminary plan also required drainage from the rooftop planting beds to be separate from drainage from the rest of the roof. To accomplish this, the beds “had to be reorganized...” The Applicant states that “relocation of the planting boxes is detectible only from an aerial view...” and has “no effect on the appearance of the building from adjacent or nearby residences.” Exhibit 86, p. 3.
  - b. Trellis Relocation. The original conditional use plan showed a trellis or canopy on the northern wing of the rooftop. Relocation of the rooftop planting beds forced the canopy to be moved approximately four (4) feet to the south, depicted on Exhibit 86, attachment F. The Applicant submitted a revised perspective to “show that the trellis is now less visible from the north.” *Id.* The Applicant notes that the same drawing reflects that the entry ramp on the north side of the building was removed because ADA access had been met. *Id.*, p. 4.
  - c. Extension of Window Well on Courtyard Façade. According to the Applicant, “...to increase natural light into interior spaces in both the





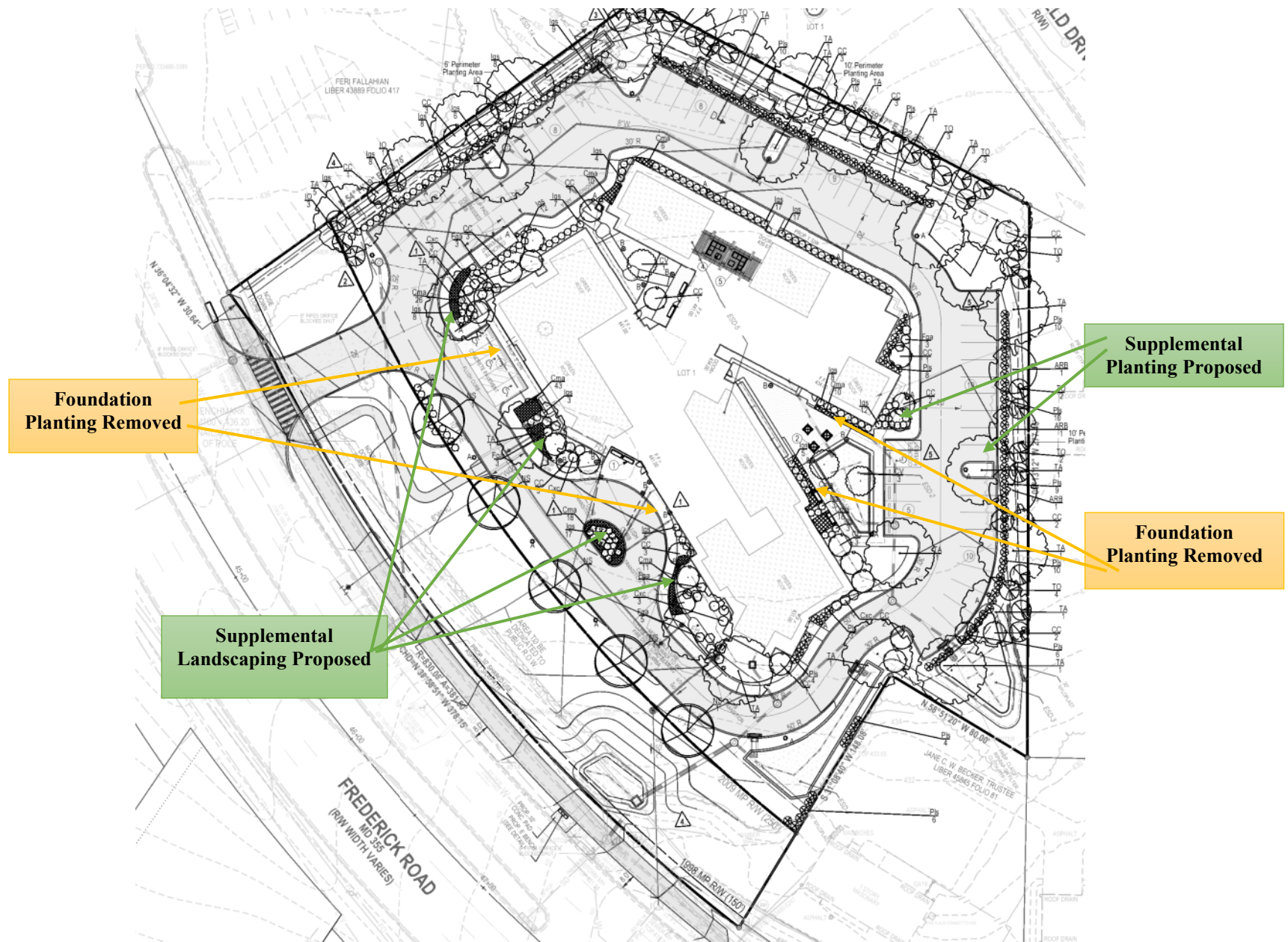
**Landscape Plan as Originally Approved  
Exhibit 81(b)**

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

**Plan Legend for Originally  
Approved Landscape Plan  
Exhibit 81(b)**

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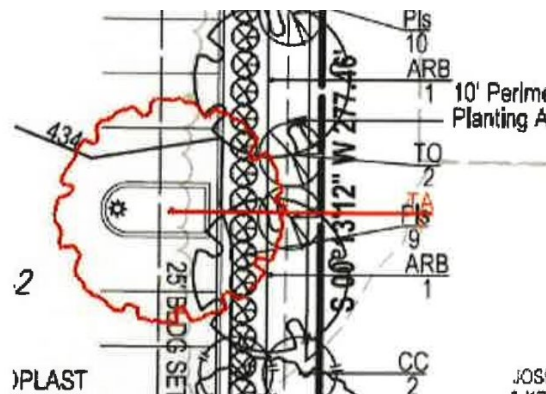
Amended Landscape Plan  
Exhibit 89(c)

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

**Legend for Amended Landscape Plan  
Exhibit 89(b)**

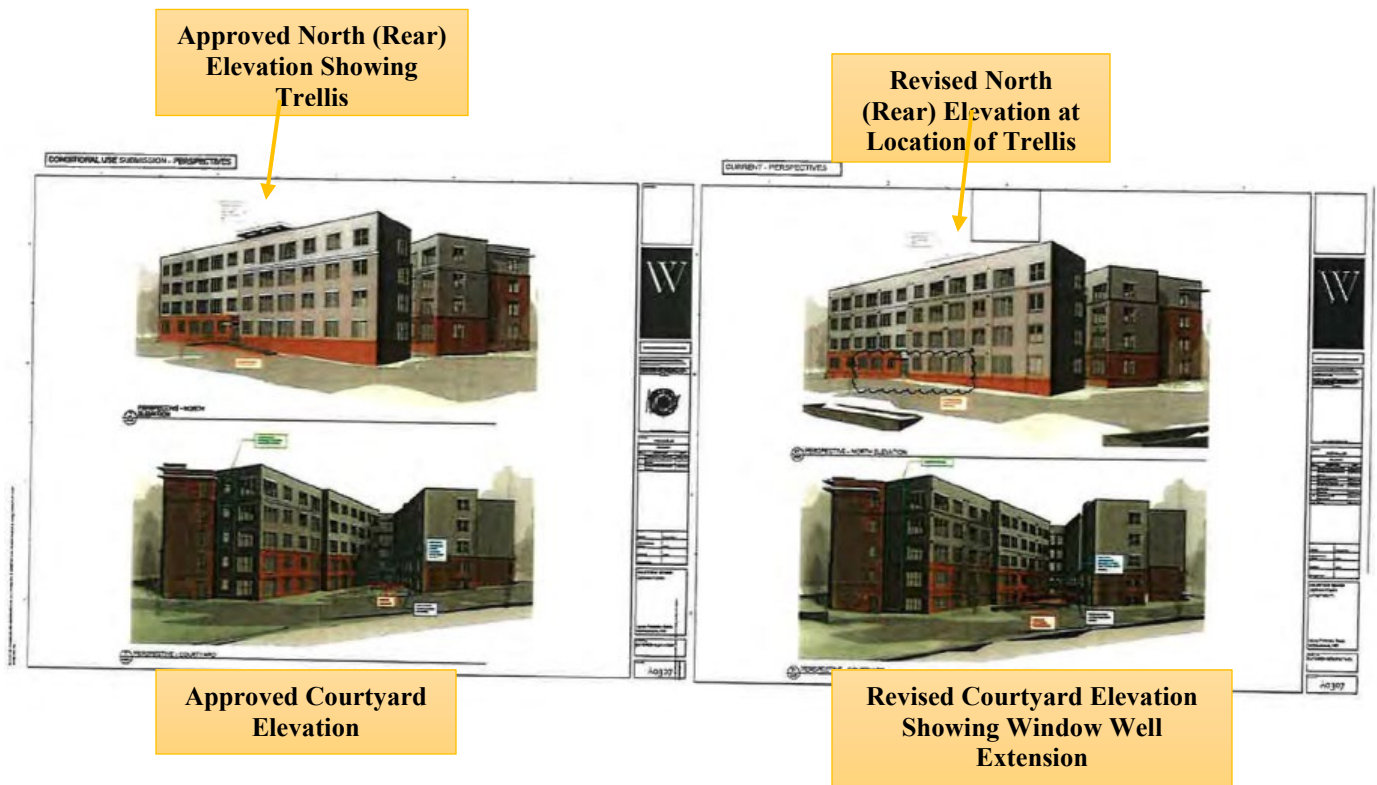
northern and southern wings of the seniors housing building, the architects extended walls on the north face of the southern wing.” *Id.*

At the original hearing, the abutting property owner to the east expressed concern that branches from trees on the subject property would overhang his property. In response to this concern, the Applicant removed some American Linden trees from the eastern property line and substituted Bowhall Red Maples. *HE Report*, p. 16. The amended landscape plan (Exhibit 89(b)) shows an American Linden tree on an interior parking island west of the eastern property line. Out of an abundance of caution, the Hearing Examiner asked the Applicant to verify whether it would overhang the property line the eastern property line. The Applicant confirmed that limbs of the American Linden would not overhang the property line and submitted the following excerpt from the revised Landscape Plan to demonstrate that (Exhibit 91, below):





The architectural modifications necessitated by the preliminary plan are shown below. The Applicant submitted a comparison of the original and modified facades (Exhibit 86, Attachment F):



The Hearing Examiner referred the above amendments to Staff of the Planning Department for their review and recommendation on whether the proposed changes were a “major” or “minor” amendment to the conditional use plan. Staff confirmed that changes fell within the definition of “minor” amendment and had no further comments.

### **B. Request for Correction of Name of Conditional Use Holder**

In addition to the request for the above revisions, the Applicant also requested that the name of the conditional use holder be corrected. It states (Exhibit 86, emphasis in original):

On September 14, 2022, OZAH issued an order transferring Conditional Use CU 20-02 from Edmondson and Gallagher Property Services, LLC to Frederick Road 4% Owner, LLC...In the preparation of this request...it has come to the attention of the undersigned that we provided to OZAH incorrect information about the name of the current owner of the subject property and holder of the grant of the conditional use. As is shown in the attached deed ... dated June 17, 2022, the property name of the owner/holder should be Frederick Road **Senior** 4% Owner, LLC, not Frederick Road 4% Owner, LLC.

## **II. OPINION AND ANALYSIS**

### **A. Governing Law**

Amendments to previously approved conditional uses are governed by Section 59.7.3.1.K of the Zoning Ordinance. 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*, Section 59.7.3.1.K.2.a. 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.” *Id.*, Section 59.7.3.1.K.1.a.

### **B. Opinion**

Based on this record, the Hearing Examiner finds that the changes requested are a minor amendment to the conditional use plan originally approved. Many of the changes were driven by the location of the PUE easement in front of the property. This resulted in slightly shifting the sidewalk closer to the building, eliminating some foundation planting so that the sidewalk could be ADA compliant. Significant landscaping has been added to other areas along the frontage that better screen the building from important viewpoints, including additional plantings within the middle of the circular drive and at the building’s front corners. Similarly, removal of some foundation plantings in the courtyard (for ADA compliance) have been mitigated by additional landscaping along the outer edge of the building that better screens views of the interior courtyard from adjacent properties. The Applicant has confirmed that the American Linden on the interior of the parking lot will not impact the adjoining neighbor’s property.

Nor does the Hearing Examiner find that modifications to the stormwater management facilities create new adverse impacts. The two smaller bio-retention facilities to the north only reduce any impact from the previous larger facility; the new facility in the right-of-way better manages stormwater in accordance with current regulations.

The Hearing Examiner finds that changes to the rooftop (relocation of the trellis and the green roof areas) have very little impact on surrounding properties, as they can barely (if at all) be seen. The extension of the window well near the courtyard, again, is minor in nature and will be screened by supplemental landscaping in that area.

As the proposed amendment does not change the intensity in operations approved in 2021 and will have no additional impact on views and screening of the use, the Hearing Examiner finds that the amendment is minor and may be approved administratively.

As for correction of the name of the conditional use holder, the Applicant has submitted the current deed confirming that the name of the conditional use holder should be Frederick Road Senior 4% Owner, LLC. Exhibit 86, Attachment H.

### III. ORDER

Based on the foregoing, it is this 14<sup>th</sup> day of August, 2023, hereby

ORDERED, that the name of the conditional use holder is corrected to Frederick Road Senior 4% Owner, LLC, and it is further

ORDERED, the amendments proposed to CU 20-02, Application of Frederick Road Senior 4% Owner, LLC, by and hereby are, APPROVED, and it is further

ORDERED, that all development on the property shall be in conformance with the revised conditional use plan (Exhibit 89(a)) and Landscape Plan (Exhibit (c)), and it is further

ORDERED, that all remaining conditions of approval set forth in the Hearing Examiner's Report dated July 1, 2020, remain in full force and effect.



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Lynn Robeson Hannan  
Hearing Examiner

### NOTICE

Under §59.7.3.1.K.2.b of the Zoning Ordinance, any party may object by requesting 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 her administrative approval and conduct a public hearing to consider whether the amendment is a major amendment or a minor amendment under the Zoning Ordinance. A minor amendment is one that does not "substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood." A major amendment is one that does substantially change the nature, character, or intensity of the conditional use on the immediate neighborhood. If the Hearing Examiner determines, after an objection, that the impact will be major, then the application must be treated as a major amendment. A decision of the Hearing Examiner may be appealed based on the Hearing Examiner's record to the Board of Appeals.

#### COPIES TO:

Jody S. Kline, Esq.  
Attorney for the Applicant  
Victor Salazar, Dept. of Permitting Services  
Patrick Butler, Planning Department  
Mark Beall, Planning Department



Michael Coveyou, Dir. Of Finance

Current abutting and confronting property owners

Parties to CU 20-02

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.