

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
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IN THE MATTER OF:
WHITE OAK STORAGE OWNER, LLC
Applicant

Anthony Piscitelli
Steve Cratin
Patrick La Vay
Rebekah Brown
Brian Donnelly

For the Applicant

Elizabeth Rogers, Esquire
Attorney for the Applicant

Before: Kathleen Byrne, Hearing Examiner

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OZAH Case No. CU 23-02

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

White Oak Self Storage (Applicant or White Oak) filed two applications on September 15, 2022. The first, LMA Application No. H-147, seeks to rezone approximately 2.62 acres of property from the CR-2.5, C-1.5, R-1.5, H-200 (Commercial Residential) to CRTF 2.25, C-2.25, R-1.5, H-200' (Commercial Residential Town Floating). Exhibit 1. The second, CU23-02 seeks conditional use approval to operate a self-storage facility. *Id.* The Hearing Examiner issued a separate Report and Recommendation recommending approval of the rezoning application. *See LMA H-147 Hearing Examiner Report and Recommendation dated February 23, 2023.* The subject property is located at 11105 New Hampshire Avenue, Silver Spring, MD 20904 as part of Lot E in the "White Oak" subdivision recorded as Plat No. 8280 (Tax Account No. 05-00276584). *Id.*

Notice of the public hearing was mailed and posted on OZAH's website on December 13, 2022. Exhibit 24. The notice established a hearing date of January 13, 2023. The Applicant submitted an amended application on December 5, 2022 and revised plans on November 1, 2022. Exhibits 18-23.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued a report recommending approval of the conditional use application on December 2, 2022, subject to the following conditions of approval (Exhibit 31, pg. 6):

1. Applicant must receive approval for their Local Map Amendment H-147 from County Council prior to approval of the conditional use for a self-storage facility on the property.
2. This self-storage facility is limited to a total of 234,800 square feet of self-storage development, contained in one self-storage building of 118,800 square feet at the west of the Site and one self-storage building of 116,000 square feet at the east of the Site.

3. The Applicant must pay a fee-in-lieu for the construction of the bicycle facilities along the Property's New Hampshire Avenue frontage, which may be a part of the Project's payment into the White Oak Local Area Transportation Improvement Program (LATIP).
4. At time of sketch and site plan, the Applicant must provide a cross section of the proposed bicycle and pedestrian facilities along New Hampshire Avenue.
5. Applicant must provide a minimum of 12 parking spaces and 5 loading spaces on site.

At its meeting on January 5, 2023, the Planning Board agreed with Staff's recommendations, but expressed concerns regarding the compatibility of the new structure at the rear of the property with the apartments to the east of the subject property. Exhibit 31. Because of those concerns, the Planning Board amended the Staff's recommended conditions as follows:

1. Applicant must receive approval for their Local Map Amendment H-147 from County Council prior to approval of the conditional use for a self-storage facility on the property.
2. This self-storage facility is limited to a total of 234,800 square feet of self-storage development, contained in one self-storage building of 118,800 square feet at the west of the Site and one self-storage building of 116,000 square feet at the east of the Site.
3. The Applicant must pay a fee-in-lieu for the construction of the bicycle facilities along the Property's New Hampshire Avenue frontage, which may be a part of the Project's payment into the White Oak Local Area Transportation Improvement Program (LATIP).
4. At time of sketch and site plan, the Applicant must provide a cross section of the proposed bicycle and pedestrian facilities along New Hampshire Avenue.
 - a. Cross section of the proposed bicycle and pedestrian facilities along New Hampshire Ave.
 - b. Cross section of the master-planned trail connection and landscaping along the eastern (rear) edge of the Subject Property.
5. Applicant must provide a minimum of 12 parking spaces and 5 loading spaces on site.
6. The maximum building height on the Subject Property is limited to 55 feet (as measured per Section 4.1.7.C).

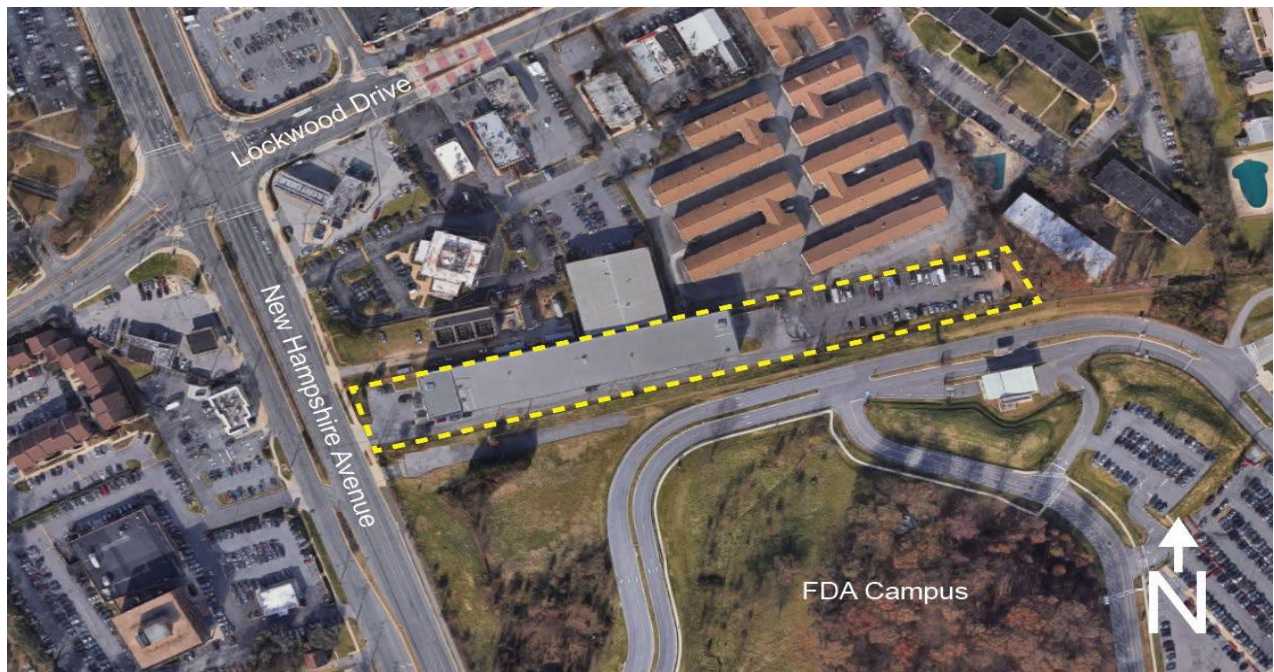
Exhibit 31. The Planning Board unanimously voted to approve CU23-02.

The public hearing proceeded as scheduled on January 13, 2023. The Applicant presented three witnesses, one representing a principal of the Applicant and two expert witnesses. No additional witnesses appeared in either support or opposition of the Application. The Hearing Examiner held the record open for ten days only to receive the transcript of the proceedings. Upon receipt of the transcript, the record the record closed on January 24, 2023.

II. FACTUAL BACKGROUND

A. Subject Property

The subject property contains approximately 114,234 square feet of land and is bounded by New Hampshire Avenue to the west, existing commercial and self-storage uses to the north, the FDA campus to the south, and garden apartments to the east. The Property is long and narrow. Exhibit 31, pgs. 7-8 An aerial photograph of the property is shown below. *Id.* at 8



Staff Report – Exhibit 31. Figure 3

Today, the lot is developed with a 115,200 square foot self-storage building with associated surface parking. Exhibit 31, pg. 10. A driveway from New Hampshire provides access to the site and access to an additional vehicle storage parking area in the rear of the lot.

White Oak's expert in civil engineering, Mr. Patrick La Vay, testified that the property is approximately 400 feet south of Lockwood Drive fronting New Hampshire Avenue and measures 1,000 feet from east to west and 100 feet from north to south. There are no natural resources of significance. T. 26-27. Staff confirmed the lot is narrow and contains no forest, wetlands, streams or floodplains. Exhibit 31, pgs. 10-11.



Staff Report - Exhibit 31; Figure 7
Existing Condition – Front



Staff Report – Exhibit 31; Figure 5
Existing Conditions - Rear

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.

Staff defined the neighborhood boundaries as follows, “Columbia Pike to the north and Oak Leaf Drive to the west [and] [t]o the south, the neighborhood terminates where the commercial uses on either side of New Hampshire Avenue terminate, and to the east the

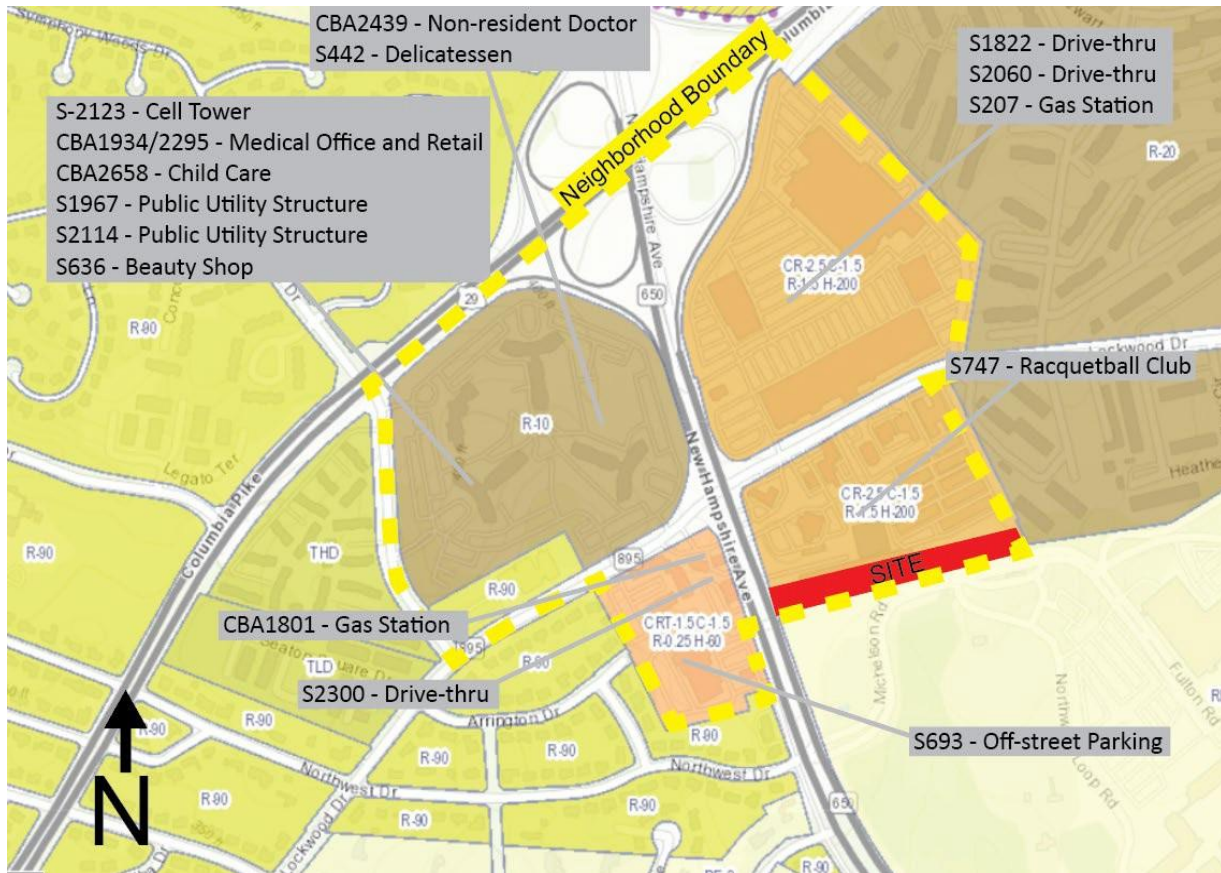
neighborhood terminates east of the White Oak Shopping Center and where the commercial uses south of Lockwood Drive transition to multi-family residential.” *Id.* at 8.

A figure from the Staff Report identifying the “Neighborhood”, is shown below. *Id.* at 7.



Staff Report – Exhibit 31, Figure 1

Staff described the status of the area as a “commercial node” *Id.* The defined neighborhood contains several existing approved conditional uses, some in residential properties including medical practices, childcare, telecommunications towers on an apartment building, and others in commercial properties such as drive-thru restaurants. *Id.* at 7-8. The property abuts commercial and self-storage uses to the north, FDA campus to the south and garden apartments to the west. *Id.* at 9. A map showing existing neighborhood conditional uses and special exceptions is shown on the following page.



Staff Report – Exhibit 31, Figure 2

Based on the record, the Hearing Examiner agrees with Staff that the neighborhood is a “commercial node” located near a bustling intersection. It is undisputed that Property’s current and proposed use are the same. In addition, the Property abuts existing commercial uses of similar type and intensity.

C. Proposed Use

The Applicant plans to continue the current self-storage use. The Applicant proposes substantial façade improvements to the existing building with a third-floor cantilevered building addition that will bring the building up to the street and visually conceal the parking. Exhibit

18(b), pg. 4. This building will be re-skinned to have a more modern aesthetic that will improve the building's presence as viewed from the street. *Id.* In addition, the Applicant proposes to construct a new five-story building plus a partial cellar at the rear of the Property, where the large surface parking lot exists today. *Id.*

Mr. Steve Craitin testified on behalf of the owner, Arcland. T. 12. Based in Washington, DC, Arcland develops, acquires and manages self-storage facilities in the Metro area. T. 13. Arcland acquired this property in 2021 as part of an 8-store acquisition in a joint venture with ASB, a large investment management firm. *Id.* Since 2018, prior to purchase, Arcland served as the property manager. *Id.* Since 2009, Arcland specialized in self-storage facilities in the Metro area, owns 40 facilities and is the 3rd party management for an additional 25 facilities. *Id.* Mr. Craitin testified that during the COVID pandemic the industry in general saw a surge in demand. T. 14. Based on Arcland's research, he believes there is a shortage of self-storage supply in this area. T. 14.

1. Site Plan & Floor Plans

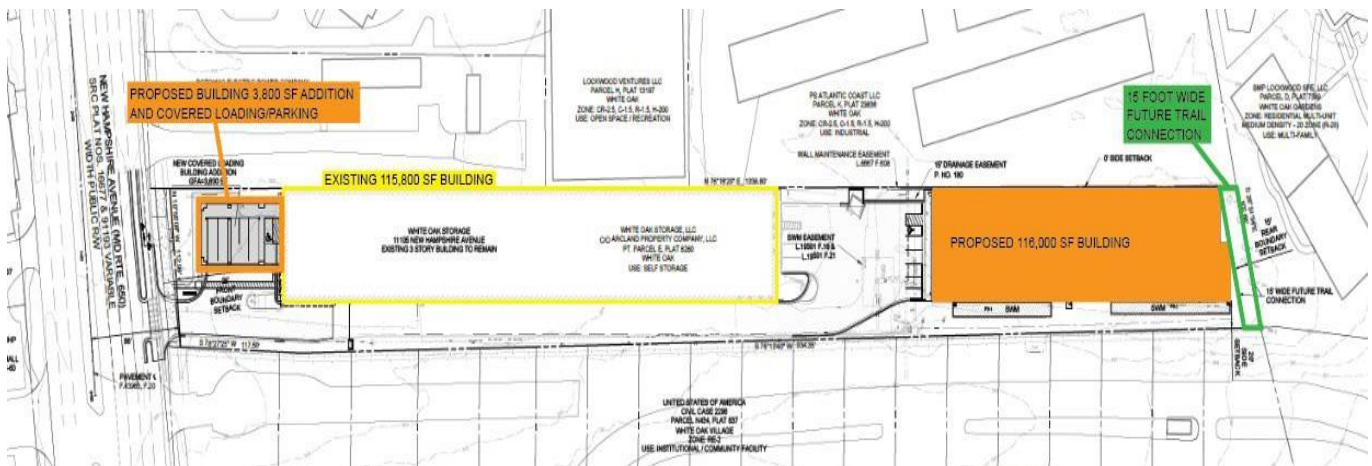
Mr. La Vay, the Applicant's engineer, presented the conditional use site plan. He explained the project in two parts – the existing building and the new building construction. The renovations to the existing building facing New Hampshire Avenue include streetscape enhancements, with new landscaping, and substantial façade improvements including a 3rd floor cantilevered addition above a parking and loading area. T. 33-34. The construction of a new 5 story self-storage building, with a partial cellar will sit on land that is recessed down at the rear of the property that currently is used for vehicle storage. T. 34-35. Mr. La Vay opined that the development standards under the CRFT are very flexible. T. 45. Access to the site will remain on New Hampshire Avenue and the proposed access point meets Maryland State Highway

Administration standards. T. 35-36. The Planning Board approved the forest conservation plan.

T. 36. The Department of Permitting services approved the stormwater management concept plans, and there are no open space requirements because the tract is less than 3 acres. T. 36, 46.

Exhibit 15(a) through 15(r) provide detailed floor plans and elevations describing locations of individual storage units and access in both buildings.

Staff determined the project provides a significant opportunity to refresh and modernize the existing self-storage building. Exhibit 31, pg. 19. In addition, Staff found the revised building architecture utilizes “unique geometry to add interest and depth to the existing façade” and updates to the ground floor doors and windows will create a more urban and “inviting expression with ample ground floor transparency.” *Id.* at 21. The new construction at the rear of the lot will not be readily visible from the street but “has been designed to blend seamlessly with the refreshed overall building architecture” and these design elements along with landscaping will “provide a compatible transition to the surrounding properties.” *Id.* at 23.



Staff Report – Exhibit 31; Figure 6:
Site Plan

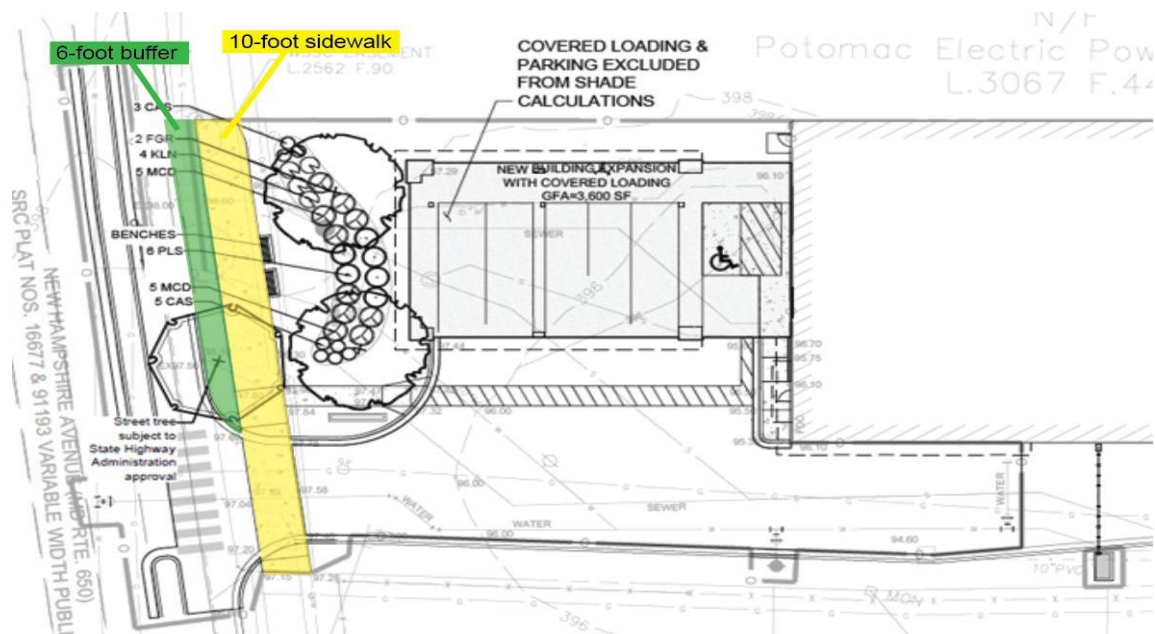


Staff Report – Exhibit 31; Figure 8
Proposed Renovation – Front, East

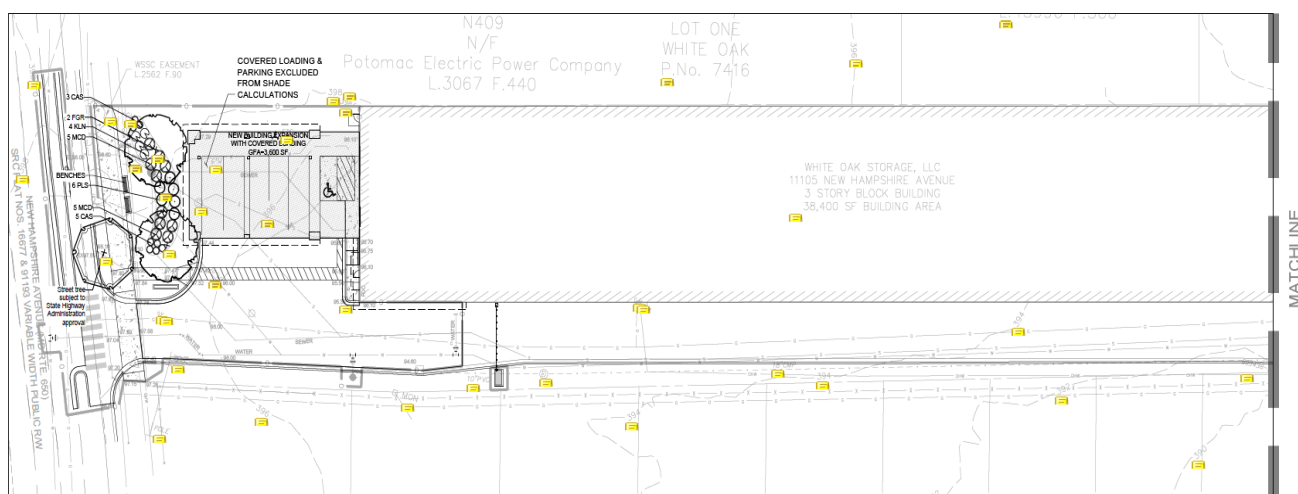
2. Landscaping, Lighting, Parking and Signage

a. Landscaping

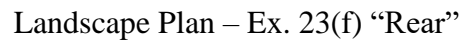
Mr. La Vay testified to Exhibit 23(f), the Applicant's landscape plan. Mr. La Vay found the 5% requirement for internal islands and the 25% shading of the parking lot are both met by the landscape plan. T. 53. Additional changes to the streetscape include benches and landscaping elements. Exhibit 31, pg. 22. The Applicant is providing a ten-foot wide sidewalk with a 6-foot landscape buffer between the New Hampshire Avenue curb and sidewalk. *Id.* at 24. *See* streetscape landscape plan from the Staff Report and the Applicant's landscape plan on the following pages.



Staff Report – Exhibit 31; Figure 16
Streetscape Landscape Plan



Landscape Plan – Ex. 23 (f) “Front”

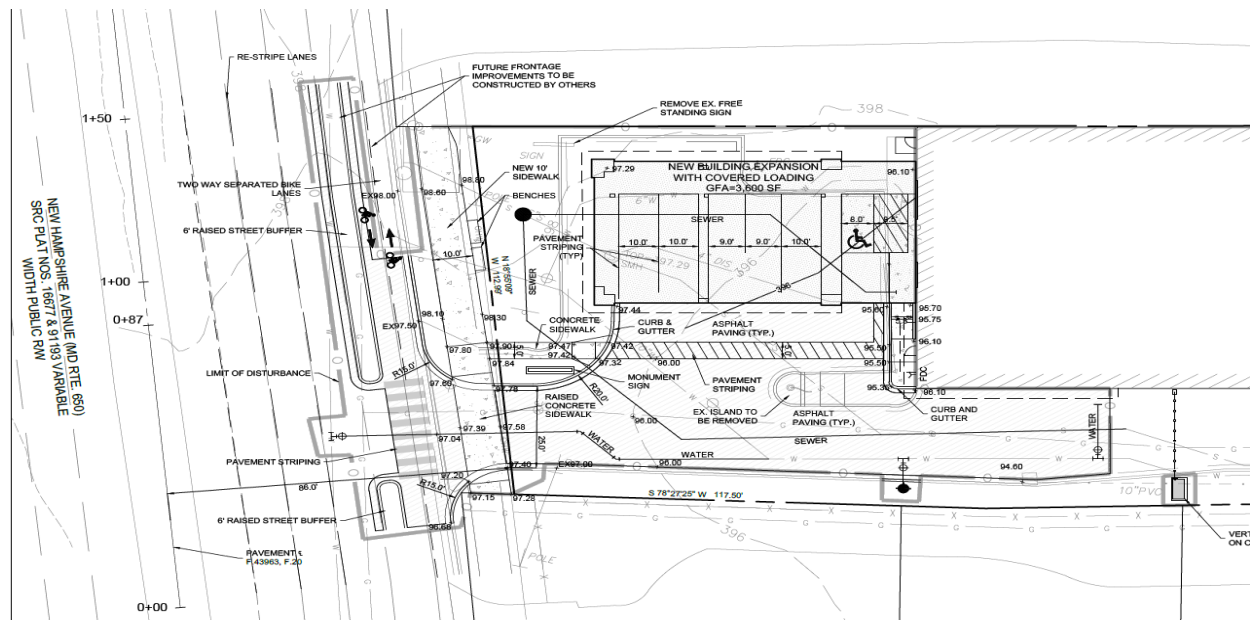


Ms. Brown, the Applicant's architectural expert, testified that the site would be lit primarily from building mounted wall packs with new full cutoff wall packs incorporated into the new building and updated on the existing building. T. 77. Ms. Brown opined that the proposed lighting is in line with today's standards for mitigation of light trespass and dark sky compliance and the surrounding neighborhood will not suffer any adverse effects from the lighting. T. 78.

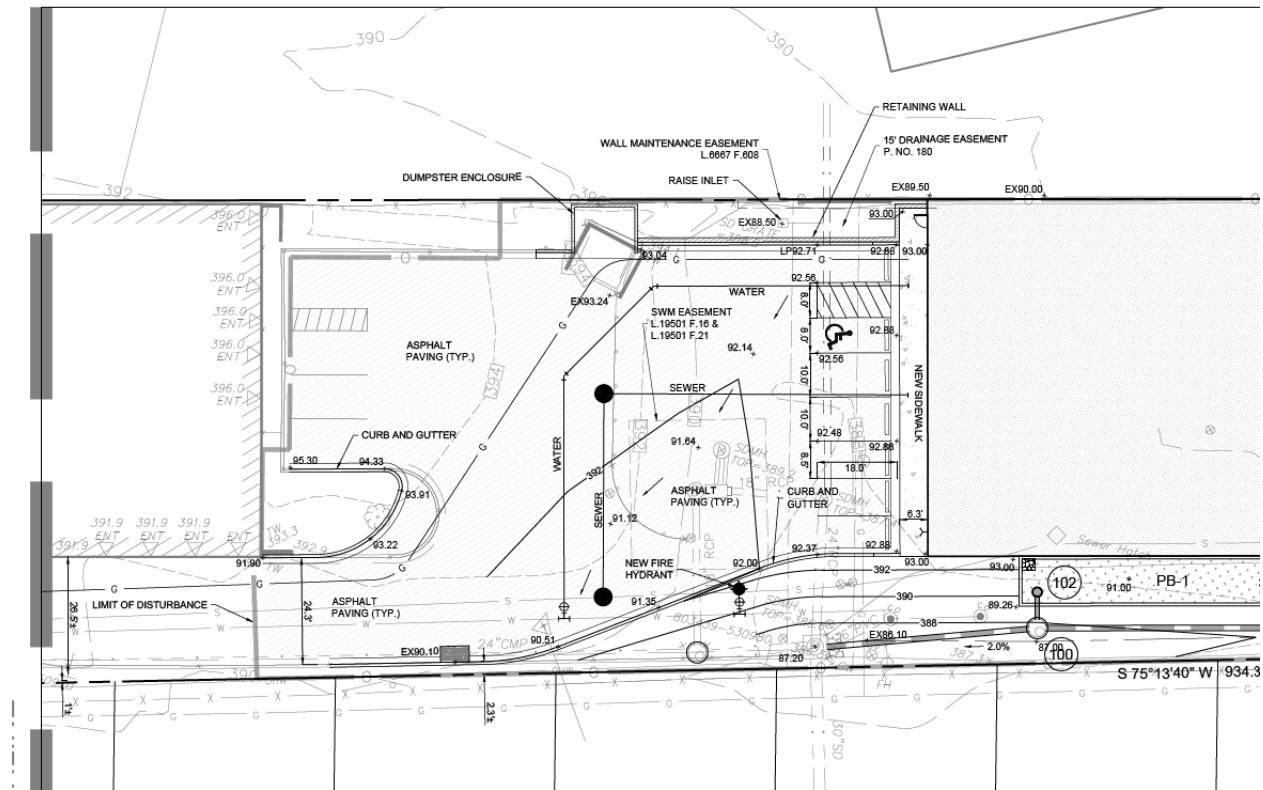
The Applicant seeks a parking waiver for 13 spaces pursuant to Section 59.6.2.1. of the Zoning Code. T. 46-47. The Zoning Ordinance requires 22 parking spaces and 3 loading spaces for a total of 25 spaces. T. 48. The Applicant is proposing 12 parking and 5 loading spaces and asserts that a total of 17 spaces meets the intent of the ordinance and provides enough parking and loading for operations because in the self-storage business “parking and loading” are viewed as one in the same. *Id.* The Applicant also points out that there are roll-up doors along the south

side of the existing facility where customers pull up to load and unload items in an area not specifically identified for parking or loading. T. 49. Montgomery County law allows persons to park in a fire lane so long as the driver stays with the vehicle. *Id.* The Applicant's expert based on operational experience opined that 17 total spaces is enough to meet demand on site. T. 50.

The 12 parking spaces are spread between two parking areas with 6 spaces located in an open area parking area at the front of the property and an additional 6 spaces between the existing self-storage building and the new building to the rear of the property. Exhibit 31, pg. 24. The Staff Report states that the anticipated "dual-use" of the spaces means that almost all of the spaces have been sized to meet loading design standards. *Id.* at 32. As a result, of this loading sizing based on anticipated use, Staff found fewer spaces can be provided based on-site constraints. *Id.* See portions of revised site plan identifying parking below and on next page.



Site Plan - Exhibit 23(e), pg. 2; Portion of plan fronting New Hampshire Ave.

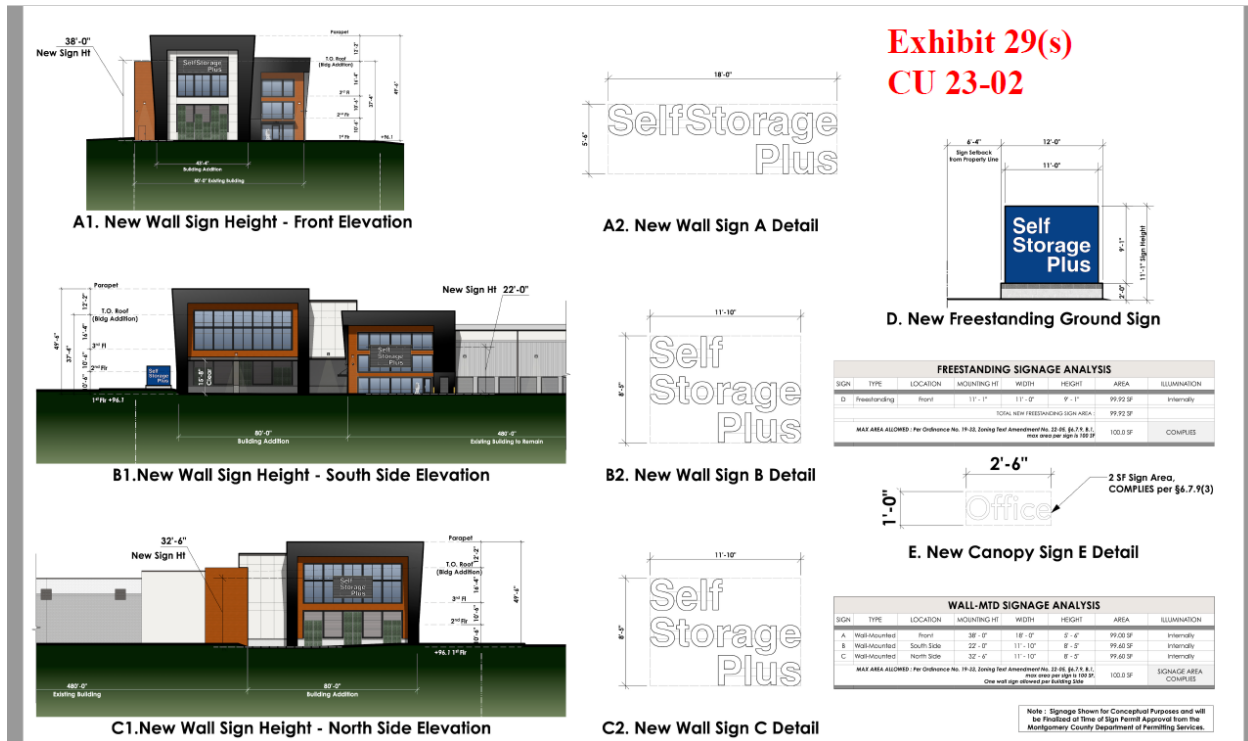


Site Plan - Exhibit 23(e), pg. 2; Portion of plan between existing and proposed structures

d. Signage

The existing property has a 25-foot-tall pole mounted sign and a building mounted signs on the west and north sides. T. 78. Ms. Brown testified that the pole mounted sign will be replaced with an internally lit monument sign. She opined the new signs will be more “pleasing” and “appropriated sized” providing identification for both vehicles or pedestrian users immediately accessing and turning into the property. *Id.* The new wall mounted signs will also be internally lit and located on the north and south facades to provide vehicular wayfinding. *Id.*

Ms. Brown opined that the proposed signage is compatible with the surrounding neighborhood and necessary for wayfinding. *Id.*



Signage - Exhibit 29(s)

3. Operations

a. Staffing & Operations

The Applicant’s affiliated management company, Self-Storage Plus currently manages the existing storage facility. Exhibit 18(b), pg. 9. Upon completion of the proposed project, the existing contractual relationship between the Applicant and affiliated management company will be extended to cover the expanded property. *Id.* The facility will be staffed with professionals to oversee operations. The anticipated business office hours will be Monday through Friday 9:30 am to 6:30 pm, Saturday 9:00 am to 5:00 pm and Sunday 10 am to 4 pm. *Id.* The facility will

have a maximum of four (4) employees on site at any one time with one office employee and one resident manager for each of the two buildings. Exhibit 31, pg. 17. Controlled access to the building via keypad protected automatic doors and security gates provide access to existing customers 365 days per year between the hours of 6 am and 10 pm. In addition to the keypad entry, the site will have additional security in the form of perimeter fencing and security cameras. Exhibit 18(b) pg. 9.

b. Trash Disposal

Mr. La Vay testified that the dumpster on site is not allowed to be used by customers and the use itself produces very little trash. T. 52. The location of the dumpster will remain the same, halfway between the existing building and the new rear building upon completion and backs to an existing self-storage facility on the adjacent property and will be surrounded by an enclosure.

Id.

D. Environmental Issues

Staff found that the site is currently developed with a storage facility and associated asphalt surface parking lots with no forest, streams or large specimen trees on site. Exhibit 31, pg. 37. Staff also found that while there is no forest on the property, the applicant must meet the forest conservation requirements through an off-site mitigation bank or fee-in-lieu payment if no banks are available. In addition, Staff determined the forest conservation plan as submitted complies with Chapter 22A. *Id.*

E. Community Response

No community members appeared at the hearing either in support or opposition of the application. Staff determined the Applicant met signate and notice requirements for the

submitted Application. Staff received no correspondence about the subject Application. Exhibit 31, pg. 37.

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 a Self-Storage Facility are in Section 59.3.6.8.D.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.¹ 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;

¹ 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.

Conclusion: The property is not subject to any previous approvals and will comply with the requirements of the Floating Zone Plan submitted simultaneous with the Conditional Use Application (Exhibit 31, pg. 31). 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 CRTF Zone contained in Article 59.5; the use standards for a Self-Storage Facility 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.

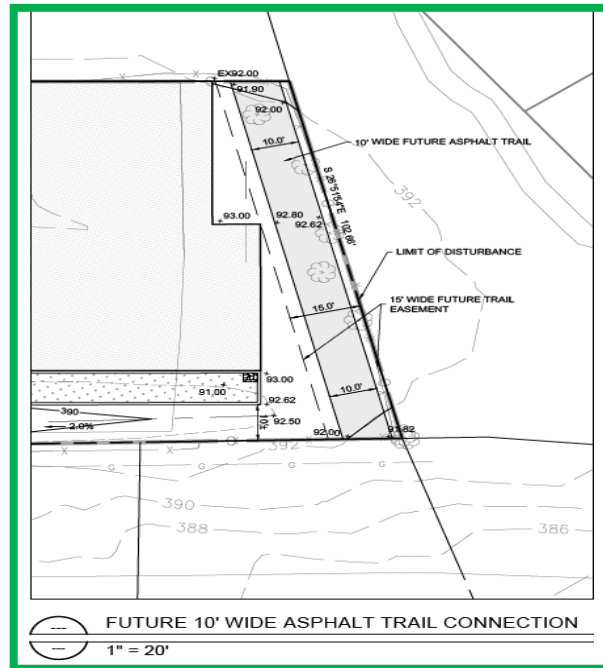
1. Substantial Conformance with the Master Plan

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

The Property is located within the boundary of the 2014 White Oak Science Gateway Master Plan and overall, the Application is in conformance with the Plan. Exhibit 31, pg. 31. The Master Plan calls for “reimagining existing centers – and provided a framework for reinvestment.” *Id.* at 17, *citing*, Master Plan pg. 11. The Plan also envisioned the major centers in White Oak evolving into vibrant, mixed-use, transit-served nodes, and redevelopment that was carefully integrated with existing residential neighborhoods. *Id.*

Staff found the project promotes the Plan’s “desired” reinvestment in the Property through physical appearance and streetscape improvements. Exhibit 31, pg. 31. Staff concluded that streetscape improvements will enhance the pedestrian network and the proposed path at the rear of the property will be part of the through-connection envisioned in the Master Plan. Staff

also determined that the Project promotes the Plan's environmental objectives through the creation of a rain garden along New Hampshire Avenue, onsite stormwater management and the installation of solar panels and cool roofs. *Id.* See rear trail in image below.



Staff Report – Exhibit 31 pg. 16
Fig. 11 - Future Trail Connection

Conclusion: Based on this record, the Hearing Examiner agrees that the self-storage facility will substantially conform to the recommendations of the Master Plan. The project provides reinvestment in the physical structures and streetscape. It also puts in place a path as a “through-connection” envisioned by the Plan. The project accomplishes the Plan’s environmental goals. The Hearing Examiner agrees with Mr. La Vay that the redevelopment will create a more urban front along the street in furtherance of the Master Plan’s goals. T. 39.

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;

The property is located within the commercial center of White Oak. Exhibit 31, pg. 34. The property does abut a RE-2 zoned multi-family residential use, but also adjacent in that RE-2 zone is the U.S. Food and Drug Administration, an institutional use. *Id.* Staff determined that continuation of the self-storage use will not affect the surrounding area adversely or alter the existing nature of the surrounding area which is commercial. *Id.* The large number of existing conditional uses and special exceptions within the vicinity of the Property all fit within the commercial nature of the neighborhood and the continuation of the existing use will not change the Property's relationship with the neighborhood. *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. It is undisputed that no new use is being proposed at this location and that the existing use self-storage use will continue. She has already found that the project conforms to the Master Plan. The buildings design, setbacks and landscaping at the front and dedication of land to the rear meet the Plan's goals of creating a more urban streetscape. Reinvestment in the Property improves the site's relationship to the adjacent uses. For reasons stated in Part III.A.4 of this Report below, she agrees with Staff that the site's relationship with the neighborhood will not change, and the project will remain 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

Staff determined the conditional use will be served by adequate public facilities including police and fire protection, water, sanitary sewer, public roads and storm drain. Exhibit 31, pg. 35. Fire and rescue reviewed the application and determined the Property contains appropriate access for fire and rescue vehicles. *Id.* Police and health care facilities will be sufficient to serve the Property after completion of construction. Montgomery County DPS, Water Resources approved the stormwater management concept. *Id.* Staff also found the property is not subject to a water quality plan or floodplain requirements and that Chapter 19 for stormwater management are satisfied. *Id.*

Mr. La Vay opined that the project is exempt from the LATR because it will result in less than 50 peak hour person trips to the site. T. 64. In additional support, the Applicant provided information that the number of trips generated during peak hours would be less than 50 and also pointed out that the property is located in the White Oak Policy area to assert that the project is exempt from the LATR. Exhibit 36. Mr. La Vay also determined that there is adequate water, sewer, electric, gas and that there are no “noted deficiencies in police, fire, accidents, healthcare

facilities to serve the property as well.” T.64. Mr. La Vay further opined that since this is not a residential project it will not have an impact on schools. T. 60.

Conclusion: The Hearing Examiner agrees with the findings in the Staff Report and finds the evidence provided and testimony of Applicant’s expert persuasive regarding adequate public facilities. Based on the information in the record, adequate public facilities do exist for the project, including police, fire, schools, healthcare, stormwater, sewer, water, and public roads.

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 a self-storage facility (Exhibit 31, p.37):

- Physical buildings and structures;
- Parking and loading facilities; and
- Traffic to and from the site by staff and patrons.

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

Staff determined that the proposed conditional use will not result in adverse effects over and above the Report's identified inherent impacts. *Id.* Mr. La Vay determined that the impacts of physical buildings and structures both existing and new are mitigated by the following factors:

1) significant enhancement to the existing building 2) overall the design of the new building to minimized visibility from the street, 3) new design is compatible with the surrounding neighborhood and 4) the new construction is well setback from the property line. T. 55.

Regarding the parking and loading facilities, Mr. La Vay further found that the impacts were mitigated by the cantilever addition design to the existing building which will hide parking visibility from the street and the additional parking in the rear of the property is blocked from view by either the new building itself or the extensive landscaping along the side. T. 56. Mr. La Vay referred to the statements made in Exhibit 36 and affirmed that the project will result in less than 15 peak hour person trips a day and will have a "negligible impact on the surrounding infrastructure." T. 56. 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 surrounding 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.²

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

The Project will continue to operate as a self-storage facility and the expanded use and accompanying exterior modifications will remain compatible with the neighborhood’s surrounding commercial uses. The proposed modifications to the Property are designed to enhance and modernize the building’s design and expand the self-storage opportunities available to the White Oak community. The rear of the property, which abuts garden apartments in the R-20 zone, will be screened with an existing six-foot wood fence along the eastern property line. The eastern façade of the building will be further screened with landscaping, and the area between the new building’s eastern façade and eastern property line will be improved with a 15-foot-wide trail easement and a 10-foot-wide trail. This trail connection is envisioned in the Master Plan and will be fully realized when surrounding properties redevelop.

The Applicant’s architect expert, Ms. Brown, found that the surrounding neighborhood is largely commercial and industrial and the expansion of the existing self-storage use serves the community. T. 79. Ms. Brown opined the expansion of the use creates reinvestment in the

² Section 59.7.3.2.E.2 requires that “any structure to be constructed ... under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.” This conditional use is in a CRT zone, not a residential detached zone making this provision not applicable.

property elevating the aesthetics of the existing building and the new building in the rear will be more compatible to the residential use because the current vehicular storage will be eliminated.

T. 79. In addition, Ms. Brown determined that the project complies with height and setback requirements of the CRTF zone. T. 76.

Conclusion: Section 59.7.3.1.E.2.d examines whether the Master Plan goals are achieved in a manner compatible with the area. The Hearing Examiner has adopted Staff's characterization of the existing neighborhood as being commercial in nature and that the property itself is located within the Commercial Center of White Oak. She already found that the use fulfills the goals of the Master Plan and 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 itself will remain the same, meaning the relationship with the surrounding neighborhood will also remain the same (2) the reinvestment and addition to the existing building creates an "urban street front", (3) termination of the existing vehicular storage at the rear of the property, (4) the overall design and materials chosen on the facade, (5) the building's setback from the rear of the property from the garden apartments, and (6) the dedication of trail space at the rear of the property.

The fact that the underlying use will not change weighs heavily in favor of compatibility. The opportunity for reinvestment in the existing building and exchanging outdoor vehicle storage for indoor storage also lessens the existing use's impact on the neighborhood. The overall design and trail dedication improves the property's relationship with 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 Master 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 59.6)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the Floating Zone Plan, submitted simultaneously with this Conditional Use application. Staff included a table (Exhibit 31, p.32, shown below) in its report comparing the permitted development standards with those proposed in this application.

Development Standards Table - White Oak Self-Storage	Permitted	Proposed
Maximum Total Density (FAR)	2.5	2.06
Maximum Commercial Density (FAR)	2.25	2.06
Maximum Residential Density (FAR)	1.5	0
Maximum Height	200 ft	60 ft
Minimum Setback - Front Site Boundary	TBD at Site Plan	25 ft
Minimum Setback - Rear Site Boundary	TBD at Site Plan	15 ft
Minimum Setback - Side Site Boundary	TBD at Site Plan	0 ft
Minimum Lot Size	n/a	2.62 acres
Minimum Open Space	0%	n/a
Minimum Public Benefits (to be finalized at sketch plan)	50 points (3 categories)	52 points (3 categories)
Parking Lot Landscaping - Landscaped Area	5% (549 sf)	569 sf
Parking Lot Landscaping - Tree Canopy	25% (2,747 sf)	2,858 sf
Parking Lot Landscaping - Perimeter Planting Width	6 ft	8 ft 6 in
Parking Lot Landscaping - Perimeter Planting Height	3 ft	>3 ft

Staff Report – Exhibit 31, Pg. 32
Development Standards

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 CRTF Zone

**C. Use Standards for a Self-Storage Facility
(Section 59.3.6.8.D)**

The specific use standards for approval of a Self-Storage Facility are set out in Section 59.3.3.2.C.2.b. of the Zoning Ordinance.

Zoning Ordinance §59.3.6.8.D.

C. Self-Storage

1. Defined

A structure providing separate storage areas for personal or business use designed to allow private access by the tenant.

Conclusion: The term self-storage is somewhat self-explanatory. Mr. Craitin testified he has worked in the self-storage business for more than 15 years and that most self-storage customers place goods in self-storage units for extended periods of time, while a smaller number of customers come and go from the facility for small trips to drop off or pick up items from the facility. T. 16-17. The use proposed meets this definition.

2. Use Standards

b. Where a Self-Storage is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional use.

Conclusion: The only criteria specified for a self-storage facility in the Zoning Ordinance §59.3.6.8.D.2.b. is that it may be permitted by the Hearing Examiner under the general conditional use provisions Zoning Ordinance §59.7.3.1. As discussed in Part III.A. of this Report and Decision, the Hearing Examiner finds that the application meets the findings required by the Zoning Ordinance §59.7.3.1 as conditioned below.

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.³

A Self-Storage Facility requires the number of vehicle parking spaces based on a minimum of 1 space per 10,000 sq. ft. of GFA plus 1 space per employee and a maximum of 3 spaces per 10,000 sq. ft. of GFA, plus 1 per employee. *Zoning Ordinance* §59.6.2.4.B. The minimum required parking spaces for this self-storage use would be 22.⁴ A minimum of 3 loading spaces must be provided for a self-storage facility with 200,001 to 350,000 sq. ft. of GFA.⁵

The Applicant proposes providing 9 parking spaces, 2 of which will be ADA accessible and 8 loading spaces for a total of 17 spaces. Exhibit 37, pg. 1; T. 48. Because 17 spaces proposed is less than the Code requirement, the Applicant seeks a parking waiver as provided in §59.6.2.10 of the Zoning Code. The Hearing Examiner may waive the requested 13 space vehicle parking requirement under §59.6.2.4 if the alternative design satisfies §59.6.2.1, "Intent". The Hearing Examiner must "ensure[s] that adequate parking is provided in a safe and efficient manner." Mr. La Vay opined that given the nature of a self-storage operation parking and loading can be considered "one in the same" and in viewing the two types of spaces together, the Applicant is providing 17 of the 25 required total spaces. T. 48. Mr. La Vay also determined that the "roll-up doors" along the southside of the property that front the fire lane provide additional parking. While parking is not permitted in a fire lane, Mr. La Vay asserts those customers

³ 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.

⁴ See *Zoning Ordinance*, §59.6.2.3.A.1 and §59.6.2.3.I.7.a.

⁵ See *Zoning Ordinance*, §59.6.2.8.B.3

accessing the roll-up door units can stop in that area and load and unload, which provides an additional location for customers to place their vehicles other than the designed parking/loading spots. T. 49.

The Staff Report found that almost all the spaces have been sized to meet loading design standards, which while important for the self-storage operations reduces the overall number of spaces that can fit on the long narrow site. Exhibit 31, pg. 32. Staff also found that the proposal removes parking spaces from the portion of the site along New Hampshire Avenue and that this “de-prioritization of auto-oriented spaces” is in line with the goals and objects of the County and its Vision Zero initiative. *Id.*

Conclusion: Based on the record summarized above, the Hearing Examiner finds that the alternative design creating combined total of 17 parking and loading spaces proposed by the Applicant meets the intent §59.6.2.1. The spaces provided satisfy the functional operation of self-storage and are designed in such a way as to provide adequate parking in a safe and efficient manner. The Hearing Officer grants a waiver of 13 parking spaces.

2. Site Landscaping and Screening

Conclusion: Section 59-6.2.9.C sets forth landscape requirements for conditional use parking lots with 10 or more spaces. The Hearing Examiner accepts Staff's conclusion regarding compliance with the CRTF zone requirements (Exhibit 31, pg. 21) and the undisputed statements of the Applicant's experts and finds that the Landscape Plan (Exhibits 23 and 23(f)) meets the technical requirements of Article 59-6. Also see discussion above in Section II.B.1.a. 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.

Section 59.6.5.2.B.A.2 requires only standard method development projects to provide screening, and this project being developed under the “optional method of development.” As this is not a standard development project, screening is not required under this Code section. In addition, per §59.5.3.5.D, §59.4.5.4.B.1 and related tables, no open space is required.

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.

It is undisputed that the subject property does not abut a lot with a detached house building type. With that said, Mr. Brown testified that the wall pack lights will be incorporated into the new building and updated on the existing building and that the standards for mitigation of light trespass and dark sky compliance will be satisfied. T. 77. She also opined that there would be no adverse effects from either exterior or interior lighting. T. 77.

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, 59.5, 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 White Oak Storage Owner, LLC (CU 23-02) for a conditional use under Section

59.3.6.8.D. of the Zoning Ordinance to renovate, build and operate a Self-Storage Facility on property described as 11105 New Hampshire Avenue, as part of Lot E in the "White Oak" subdivision recorded as Plat No. 8280 (Tax Account No. 05-00276584), in Silver Spring, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. Applicant must receive approval for their Local Map Amendment H-147 from County Council prior to approval of the conditional use for a self-storage facility on the property.
2. This self-storage facility is limited to a total of 234,800 square feet of self-storage development, contained in one self-storage building of 118,800 square feet at the west of the Site and one self-storage building of 116,000 square feet at the east of the Site.
3. The Applicant must pay a fee-in-lieu for the construction of the bicycle facilities along the Property's New Hampshire Avenue frontage, which may be a part of the Project's payment into the White Oak Local Area Transportation Improvement Program (LATIP).
4. At time of sketch and site plan, the Applicant must provide a cross section of the proposed bicycle and pedestrian facilities along New Hampshire Avenue.
 - a. Cross section of the proposed bicycle and pedestrian facilities along New Hampshire Ave.
 - b. Cross section of the master-planned trail connection and landscaping along the eastern (rear) edge of the Subject Property.
5. Applicant must provide a minimum of 12 parking spaces and 5 loading spaces on site.
6. The maximum building height on the Subject Property is limited to 55 feet (as measured per Section 4.1.7.C).

Issued this 23 day of February 2023.



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:

Elizabeth Rogers, Esquire

Attorney for the Applicant

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Robert Kronenberg, Deputy Director, Planning Department

Parker Smith, Planning Department

Greg Nichols, Manager, Department of Permitting Services

Victor Salazar, Department of Permitting Services

Michael Coveyou, Director, Finance Department

Charles Frederick, Esquire, Associate County Attorney