

I. STATEMENT OF THE CASE

Petition No. S-2881, filed on October 21, 2014, by Columbia/Wegman Acquisitions, LLC, seeks a special exception pursuant to §59-G-2.37 of the Zoning Ordinance, to build and operate an assisted living and memory care facility (a “domiciliary care home” in the Zoning Ordinance) with 113 units and 136 beds on a 5.977 acre parcel (P305), located at 13908 New Hampshire Avenue in Silver Spring, Maryland.¹ The owner is United Christian Church (Tax Account Number – 05-00258778). Petitioner is the contract purchaser, and Petitioner’s agent is Lenity Architecture. The facility will be called Colesville Senior Living, and it is located in the R-200 Zone.

At the request of the Petitioner (Exhibit 25), the hearing was postponed indefinitely on February 6, 2015, to give Petitioner time to obtain the necessary stormwater management approvals (Exhibit 26). On March 17, 2015, Petitioner filed amended plans and asked that the matter be set for a hearing (Exhibits 27 and 28). On March 27, 2015, the Office of Zoning and Administrative Hearings issued a notice scheduling the hearing for July 10, 2015, before the Office of Zoning and Administrative Hearings (Exhibit 30). That document also gave notice of Petitioner’s proposed amendments to its plans. There was no opposition to the amendments.

Technical Staff, in a memorandum dated June 12, 2015, recommended approval of the petition, subject to specified conditions (Exhibit 31).² On June 25, 2015, the Planning Board voted unanimously to recommend approval of the special exception, with modified conditions, as indicated in its transmittal letter, dated June 26, 2015 (Exhibit 37). The Planning Board also approved the Preliminary Forest Conservation Plan (PFCP) at its June 25 meeting, which was formalized in Resolution No.15-69, dated July 15, 2015. Exhibit 51(a).

¹ Because this case involves a special exception application that was filed prior to the effective date of the new Zoning Ordinance (October 30, 2014), it will be governed by the terms of the old Zoning Ordinance in effect on October 29, 2014, pursuant to §59-7.7.1.B. of the new Zoning Ordinance.

² The Staff Report is frequently quoted and paraphrased herein.

The proposed special exception is supported by the Greater Colesville Citizens Association (GCCA), which submitted a letter so stating to Technical Staff. Exhibit 31, Attachment 1 and Exhibit 39(a). Staff also received a letter from an adjacent neighbor who supports the application because the Petitioner addressed the neighbor's concerns about stormwater drainage across their property. (Exhibit 31, Attachment 2). No letters of opposition were received.

A public hearing was convened, as scheduled, on July 10, 2015. Three witnesses were called by Petitioner. The only community witness was GCCA President Daniel Wilhelm, who testified in support of the Petition. Tr. 149-152. Petitioner submitted a revised special exception site plan (Exhibit 43), as well as minor revisions to other plans at the hearing. There was no opposition testimony.

The record was held open until July 27, 2015, pursuant to Board of Appeals Rule 7.2.6.a., for comments from Technical Staff and the public regarding updated submissions filed by Petitioner at the hearing. Technical Staff supplemented its report with e-mails of July 10, 2015 (Exhibit 45) and July 15, 2015 (Exhibit 50), stating Staff's opinion that the proposed changes would be compliant with the requirements for the special exception. On July 27, 2015, at the request of the Petitioner (Exhibit 52), the record was held open until August 5, 2015 (Exhibit 53). On August 12, 2015, Petitioner filed a letter (Exhibit 54) requesting that the record be reopened to receive a slightly modified special exception site plan (Exhibit 54(a)) and any Technical Staff comments thereon. On the same day, Technical Staff emailed the Hearing Examiner indicating approval of the revised site plan (Exhibit 55). Since GCCA is a party of record, the Hearing Examiner emailed GCCA's president, Daniel Wilhelm, to ask whether GCCA had any comments. Mr. Wilhelm responded that GCCA had no objections to the new plan. Exhibit 56. On August 14, 2013, the Hearing Examiner issued an Order reopening the record to receive the revised site plan and comments thereon, and closing the record on the same date. Exhibit 57.

As will appear more fully below, the record amply supports the granting of this petition.

II. FACTUAL BACKGROUND

A. The Subject Property and the General Neighborhood

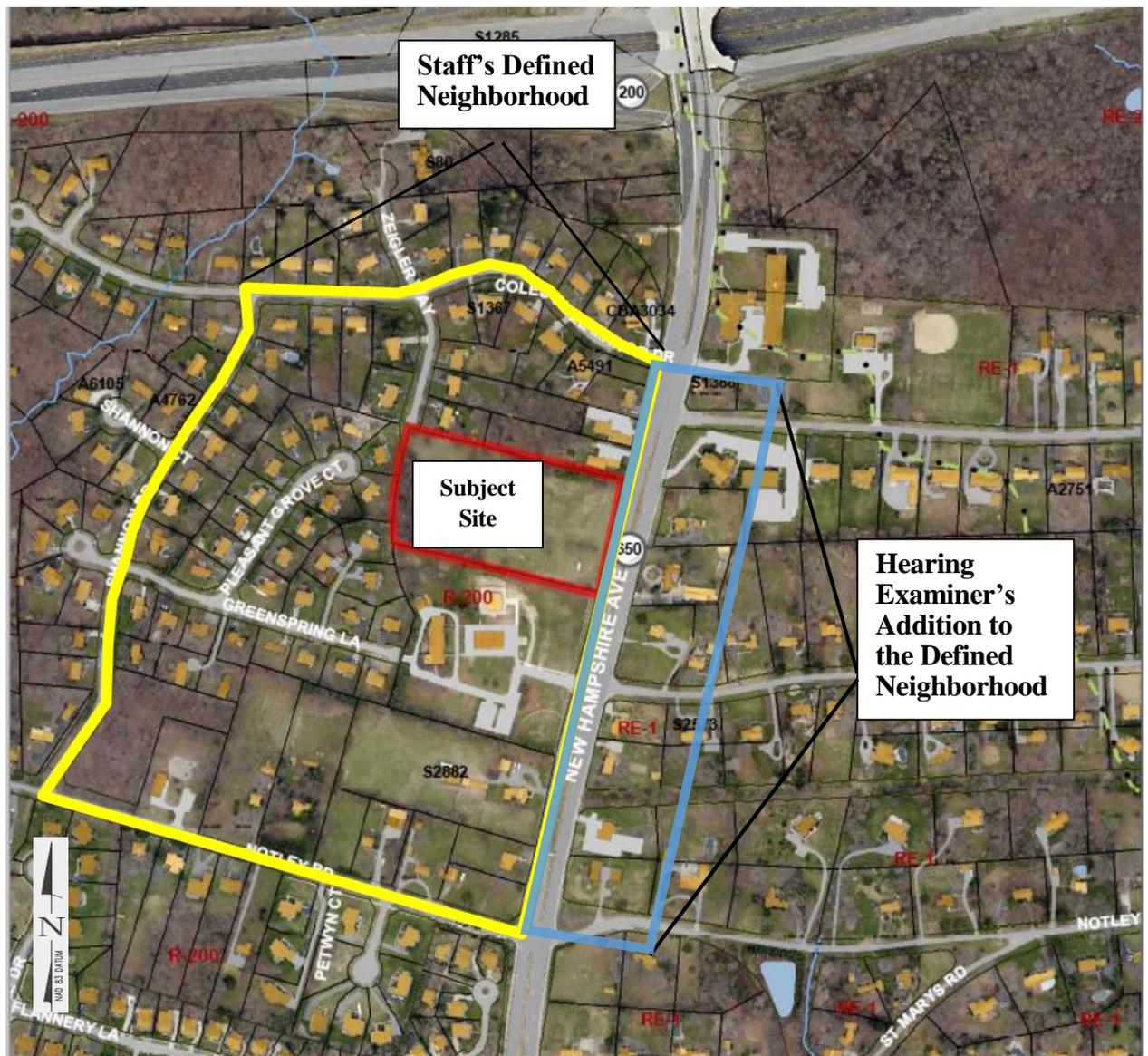
The subject site is located on a 5.977 acre (260,376 square foot) parcel (P305), at 13908 New Hampshire Avenue (MD 650) in the Bealles Manor Subdivision of Silver Spring. It is about 1,500 south of the Inter-County Connector (the ICC, MD 200), and is on the west side of New Hampshire Avenue, about 400 feet south of Colesville Manor Drive and about 1,000 feet north of Notley Road, as can be seen on the tax map (Exhibit 22(c)) below:



Technical Staff describes the site as follows (Exhibit 31, p. 3):

The property is zoned R-200 and is vacant. The existing curb cut and gate serving the vacant lot at the southern end of the site will be removed. The Property is approximately 366 feet wide by approximately 673 feet deep. Future site access is proposed via a right-in/right-out driveway at the northern end of the site. . . . The Property is a partially wooded vacant site that lies in both the Paint Branch watershed and Northwest Branch watershed, but outside any Special Protection Areas. There are no streams, wetlands, floodplains, or environmental buffers on the site. The Property is approved as W-1 for its water category and has received approval for S-1 sewer category.

The property and the general neighborhood are shown below in an aerial photograph from the Technical Staff report (Exhibit 31, p. 5):



Technical Staff defined the neighborhood where the site is located as generally bounded by Colesville Manor Drive to the north, New Hampshire Avenue (MD 650) to the east, Notley Road to the south, and Shannon Drive to the west. Staff described the neighborhood as follows (Exhibit 31, p. 4):

The community located immediately south of the Property consists of a church (Cambodian Temple). Single-family detached homes located in the R-200 Zone are adjacent to the Property to the north and west. Across New Hampshire Avenue are a church and several single-family detached dwellings. To the south is a commercial center that provides shopping areas, various smaller retail facilities, medical services and other community services that are convenient and accessible.

The Hearing Examiner finds that the neighborhood should be defined to extend further to the east than Technical Staff suggested, at least including properties confronting the subject site across New Hampshire Avenue, since the proposed use will be within direct sight of the confronting properties. They will also experience some increase in traffic as a result of the new facility, although traffic issues are typically not significant in this type of case due to the fact that residents of assisted living facilities produce little peak-hour traffic. The extended neighborhood is depicted on the above aerial photograph with a blue rectangle. The Applicant agreed at the hearing that the extended neighborhood definition was appropriate (Tr. 91-92), and Applicant's expert in design and operation of assisted living facilities, Greg Elmore, testified that the proposed facility would not have adverse effects on that defined neighborhood. Tr. 94-110.

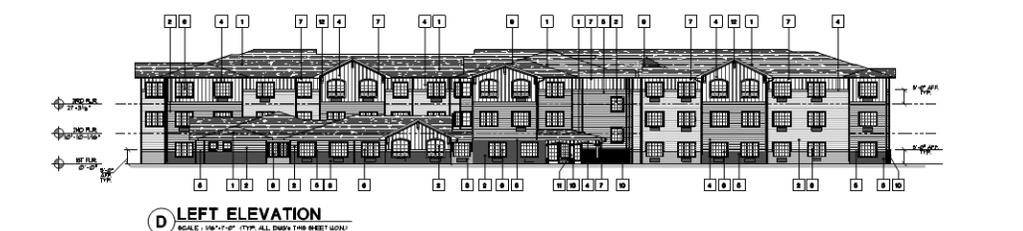
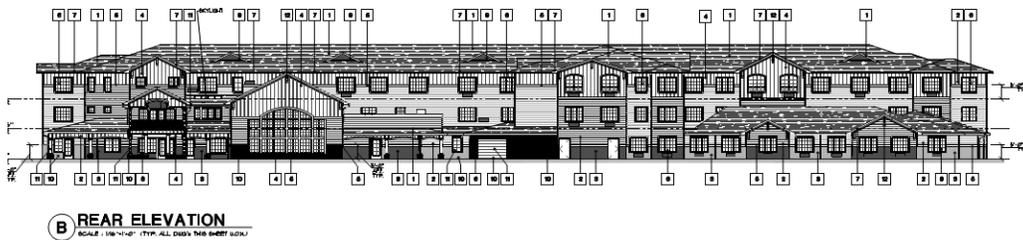
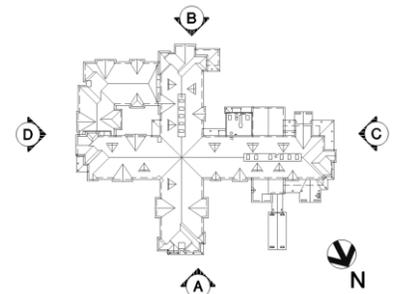
B. Proposed Use

1. Petitioner's Concept:

As stated by Technical Staff (Exhibit 31, p. 1), Petitioner proposes to construct and operate a 113-unit (136-bed) Domiciliary Care Home for assisted living and memory care residents. "The proposed use will occupy a new three (3) story building with 88 units of assisted living for elderly residents in need of assistance with the routines of their daily life, and 25 units of memory care for residents suffering from Alzheimer's disease or other forms of memory loss and dementia. The units in

the memory care wing will have both private and semi-private suites to better serve the needs of the residents.”

Petitioner’s vision for the project is demonstrated by the following architectural rendering (Exhibit 9(c) and elevations (Exhibit 9(a)):



KEY NOTES/COLORS	
1	= ARCH. COMP. 25 YR. MFG: TBD COLOR: TBD
2	= CEMENT BOARD SIDING (HORIZ - 8") MFG: JAMES HARDIE COLOR: TBD (SEE NOTE BELOW)
3	= CEMENT BOARD SIDING (HORIZ - 4") MFG: JAMES HARDIE COLOR: TBD (SEE NOTE BELOW)
4	= CEMENT BOARD SIDING (B & B). BATTS @ 16" O.C. MFG: JAMES HARDIE COLOR: TBD (SEE NOTE BELOW)
5	= TRIM BOARD MFG: JAMES HARDIE COLOR: TBD (SEE NOTE BELOW)
6	= VINYL FRAMED INSULATED WINDOWS W/TRIM COLOR: TBD
7	= FASCIA W/CONT. GUTTER MFG: JAMES HARDIE COLOR: TBD (SEE NOTE BELOW)
8	= PRE-MANUFACTURED ALUMINUM RAILING COLOR: TBD
9	= DORMER GABLE VENTS/ROOF FEATURE COLOR: TBD
10	= BRICK VENEER MFG: COLOR: TBD
11	= 12" SQUARE FIBERGLASS COLUMN MFG: COLOR: TBD
12	= POLYURETHANE BRACKET MFG: SEE SPECIFICATIONS MANUAL COLOR: TBD

Colesville Senior Living
Assisted Living and Memory Care
Colesville, MD

Technical Staff provides more details of the proposal on pages 5-6 of the Staff Report (Exhibit 31):

The proposed Colesville Senior Living facility, a 113-suite, three-story facility for seniors will be approximately 99,485 square feet, have 71 parking spaces with required drive aisles, loading/delivery areas and a refuse enclosure. All services and parking are located away from the frontage along New Hampshire Avenue. The main entrance will face the adjacent residential property to the north while keeping the services to the building (deliveries, refuse pick-up, and site mechanical equipment) at the southwest portion of the site where there are substantial setbacks and buffering to the west and the church to the south. The proposed project is designed to minimize the impact on the surrounding neighbors, as well as reduce impervious surfaces in order to lower storm sewer demands and provide larger green/environmental spaces. . . .

The elevations for this proposed 3-story Senior Residence are designed to be compatible with the surrounding neighborhood uses. The proposed building will have a maximum height of 41 feet. The use of lower roof areas helps break the mass of the building and provide a pedestrian scale as one travels around the building. The Memory Care wing of the building is a single-story element that has been placed along the frontage of the property. This gives the view from New Hampshire Avenue more vertical appeal and provides a transition in height from the ground to the three (3) floors of elevation. According to the Applicant, the exterior finish materials proposed are a combination of painted lapsiding, painted board-and-batten siding, and brick accents around all elevations. The roof will be an Architectural Composition Roof in natural color of browns and grays.

Petitioner's expert on the design of similar facilities, Greg Elmore, described the rationale for the design of both the interior and exterior of the proposed facility in his concept design report (Exhibit 19), and in his testimony summarized below. The first portion addresses the interior design (Tr. 43-58):

The building will be organized internally into two buildings. The T shape at the front, and the donut shape to the southeast, which is the single-story memory care area. The central courtyard is the hole in the donut. This memory care donut is set up to have activity and resident rooms that are on both sides of an internal corridor. That internal corridor gives these residents a pathway. There are a handful of units that look into the courtyard, but around this entire interior space, there are common areas or stimulating focal points that help the resident either jog a memory or to interact and stimulate the mind. The dining room, the activity spaces and the living room are all lined on this interior courtyard. It also gives the staff the ability to walk around and interact with the residents that live there. There are 25 units in the dementia care section, with 48 licensed beds in that memory care unit. A handful of them that are

private units. The semi-private units have two beds separated by a wall, but they share a bathroom between them. It's more like a studio apartment with a bathroom. This bathroom passes through so residents can get to this one bathroom from either side. A third type of room, called "shared," would have two beds in one room, but this facility will not have an shared rooms. There is security to prevent the memory care patients from wandering. The rest of the facility is for assisted living, and all of the residents in the assisted living must be ambulatory. There will be 113 suites altogether, with 136 licensed beds, 88 of which are assisted living. The remainder will be the memory care.

Mr. Elmore also described Petitioner's efforts to design the exterior of the building so that it would be compatible with the general neighborhood, in the portion of his testimony summarized below:

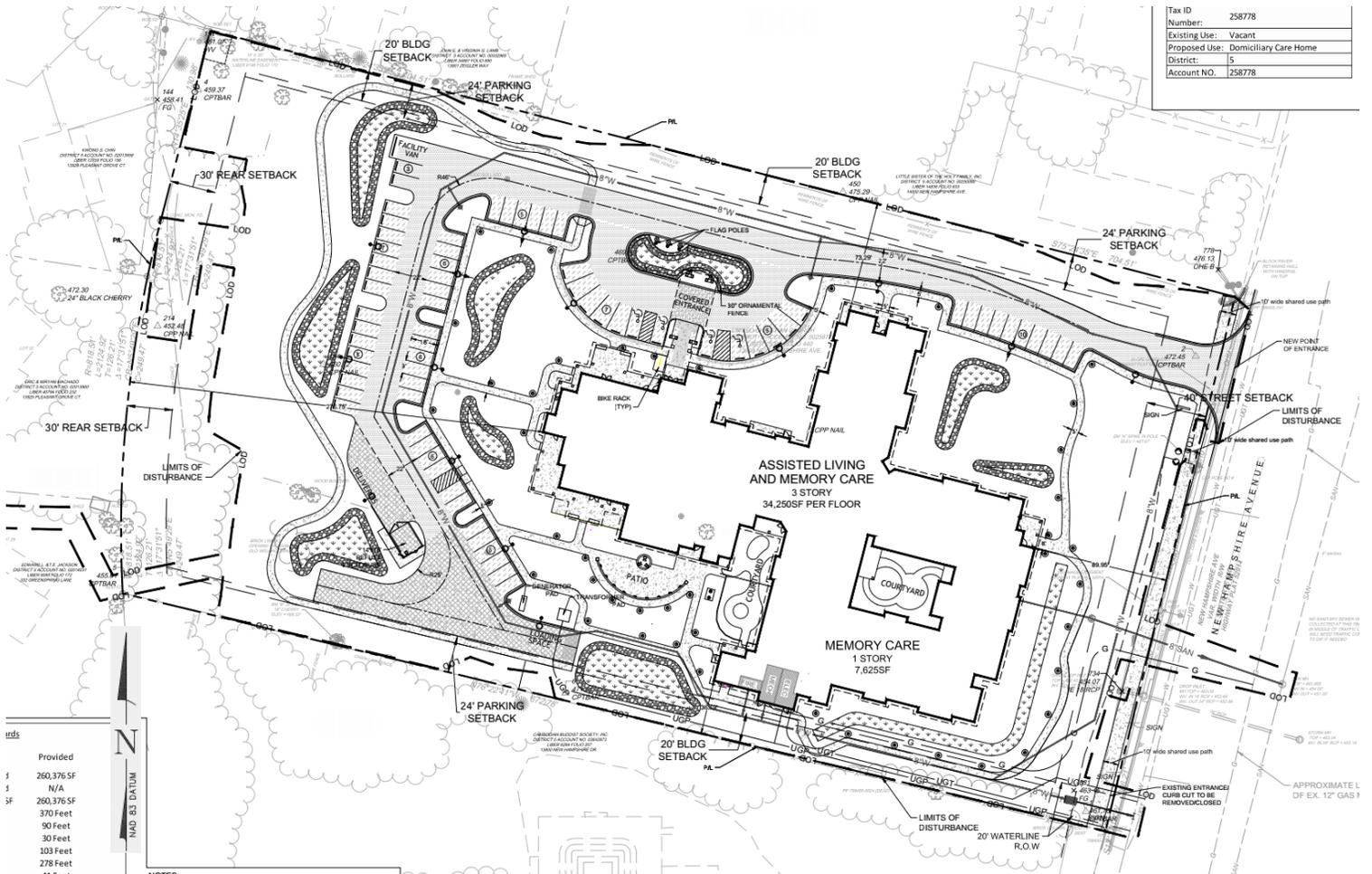
On the east elevation, there are two story elements brought down to single story elements around the entryway, and the entry and exits all have a kind of one-story eyebrow just to bring that down to a residential scale. There's one section right in the middle that's the three-story section, and this three-story section has single and two-story elements that will bring that residential scale down as well. In front of that is quite a bit of landscaping and buffer. Materials included a similar brick to that used in the neighborhood and cementitious lap siding which lasts longer than wood does. It holds paint for quite a bit longer, and the colors generally blend with the neighborhood. Exhibit 9(c) is a rendered view of the building, and Exhibit No. 9(d) contains rendered elevations. Exhibit 9(e) is an updated rendering of the building. The building is a maximum of 41 feet to the peak. Architectural elements at all the gable locations, the lap siding and the color break up the vertical and give a little bit more of a horizontal sense to bring that scale down and make sure it has a good residential feel to it. The brick at the entryways and all common areas have a little bit more of that residential feel. Tr. 66-76.

Mr. Elmore further testified that the building will be compatible with the neighborhood. The single story and two-story elements around the entire building make a successful blend between the larger commercial uses and the abutting neighbors. The landscaping and the buffers will be large enough that the neighbors will be hard pressed to even see the building. Trash is going to be picked up. An emergency generator will be tested once a month, but that testing is during the day. All of the mechanical equipment will be in mechanical wells up on top of the roof. Noise produced will not exceed the County limits at any point. In Mr. Elmore's opinion, the use would not adversely affect the health or safety or the welfare of the residents, visitors or the residents in the surrounding neighborhood. Tr. 106-110.

The landscaping, lighting, signage, parking, operations and the potential impact of the proposed facility upon the neighborhood and public facilities will be discussed in other sections below. We now turn to the final revised special exception site plan (Exhibit 54(a)).

2. The Site Plan:

The final revised Special Exception Site Plan (Exhibit 54(a)) is reproduced below:



Provided

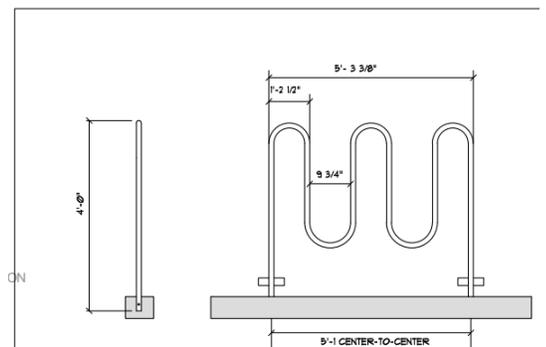
1	260,376 SF
1	N/A
1	260,376 SF
1	370 Feet
1	90 Feet
1	30 Feet
1	103 Feet
1	278 Feet

NAD 83 DATUM

HATCH LEGEND:

	HEAVY DUTY ASPHALT
	LIGHT DUTY ASPHALT
	HEAVY DUTY CONCRETE
	CONCRETE SIDEWALK
	POROUS ASPHALT

Property Information	
Subject	Parcel 305
Property:	13908 New Hampshire Avenue Silver Spring MD 20904 L.15001 F.440
Property Owner:	United Christian Church
Contract	Columbia/ Wegman
Purchaser:	Acquisitions, LLC
Existing Parcel Area	5.977 Ac or 260,376SF
Zoning Classification:	R-200 - Residential, one family
Tax ID Number:	258778
Existing Use:	Vacant
Proposed Use:	Domiciliary Care Home
District:	5
Account NO.:	258778



MOUNTING OPTIONS:
STANDARD IN-GROUND (AS SHOWN) AND SURFACE MOUNT WITH ROUND FLANGE

NOTES:
1. DRAWING NOT TO SCALE. DO NOT SCALE DRAWINGS.

NOT TO SCALE

BIKE RACK
(CYCLE SENTRY SERIES BRCS-105)

R-200 Zone - Special Exception Development Standards

NOTES:

1. THE TOPOGRAPHY SHOWN IS TAKEN FROM A GROUND SURVEY PREPARED BY TIMMONS GROUP IN APRIL 2014. HORIZONTAL DATUM NAD 83. VERTICAL DATUM NAVD 88.
2. BOUNDARY INFORMATION IS BASED ON A BOUNDARY SURVEY PREPARED BY TIMMONS GROUP.
3. WATER AND SEWER CATEGORIES ARE W-1 AND S-1
4. THE PROPERTY IS ZONED R-200. THE PROPOSED LAND USE IS DOMICILIARY CARE HOME.
5. NUMBER OF LOTS ON THIS PLAN: 1 LOT.
6. A NATURAL RESOURCES INVENTORY MAP/ FOREST STAND DELINEATION PLAN (#420150350) WAS SUBMITTED FOR THIS PROPERTY AUGUST 19, 2014.
7. THIS SITE IS WITHIN THE WHITE OAK MASTER PLAN AREA.
8. THIS SITE IS A TRIBUTARY TO THE PAINT BRANCH AND NORTHWEST BRANCH WATERSHEDS.
9. THIS PLAN IS NOT FOR CONSTRUCTION PURPOSES.
10. PROPERTY LINES AND AREAS ARE SUBJECT TO ADJUSTMENT AT FINAL PLAT COMPUTATIONS.
11. REFER TO THE ZONING DATA TABLE FOR DEVELOPMENT STANDARDS SUCH AS SETBACKS, BUILDING RESTRICTION LINES, AND LOT COVERAGE.
12. SERVICING UTILITY COMPANIES INCLUDE:
 WATER & SEWER: WSSC
 NATURAL GAS: WASHINGTON GAS
 ELECTRIC: PEPSCO
 TELEPHONE: VERIZON

	Permitted / Required	Provided
Minimum Tract Area - 59-C-1.321(a):	Not Specified	260,376 SF
Maximum Density of Development - 59-C-1.321(b):	Not Specified	N/A
Minimum Net Lot Area - 59-C-2.37(c)(2):	2Ac or 87,120 SF	260,376 SF
Minimum Lot Width - 59-C-1.322(b):	100 Feet	370 Feet
Minimum Setback from Street - 59-C-1.323(a):	40 Feet	90 Feet
Minimum Side Yard - 59-G-2.37(c)(3):	20 Feet	30 Feet
Sum of Both Sides - 59-G-2.37(c)(3):	40 Feet	103 Feet
Minimum Rear Yard - 59-C-1.323(b)(2):	30 Feet	278 Feet
Maximum Building Height - 59-C-1.327:	50 Feet	41 Feet
Maximum Lot Coverage - 59-C-1.328:	20% or 52,075SF	18% or 46,771 SF
Parking:		
Minimum Setback from Street - 59-E-2.83(b):	40 Feet	88 Feet
Minimum Side Yard - 59-E-2.83(b):	24 Feet	25 Feet
Minimum Rear Yard - 59-E-2.83(b):	30 Feet	134 Feet
Shading of Paved Areas - 59-E-2.83(d):	30 % or 13,660 SF	13680 SF
Landscape Strip (Adjacent to ROW) - 59-E-2.71:	10 Feet	N/A
Landscape Strip (Perimeter) - 59-E-2.72:	24 Feet	24 Feet
Internal Landscaping - 59-E-2.73:	5% or 2,530 SF	4210 SF
Number of spaces - 59-G-2.37(d):	46 Spaces	71 Spaces
Accessible Parking: COMAR 05.02.02	3 Spaces	4 Spaces
Loading Space		1 Space

Parking Distribution:

Required Per 59-G-2.37(d): 1 Space Per 4 Beds

Number of Beds: 136

1 Space Per 2 Employees

Number of Employees (Max Shift): 24

Total Spaces Required = 46

Provided Per Plan:

Standard (9' x 18'): 67

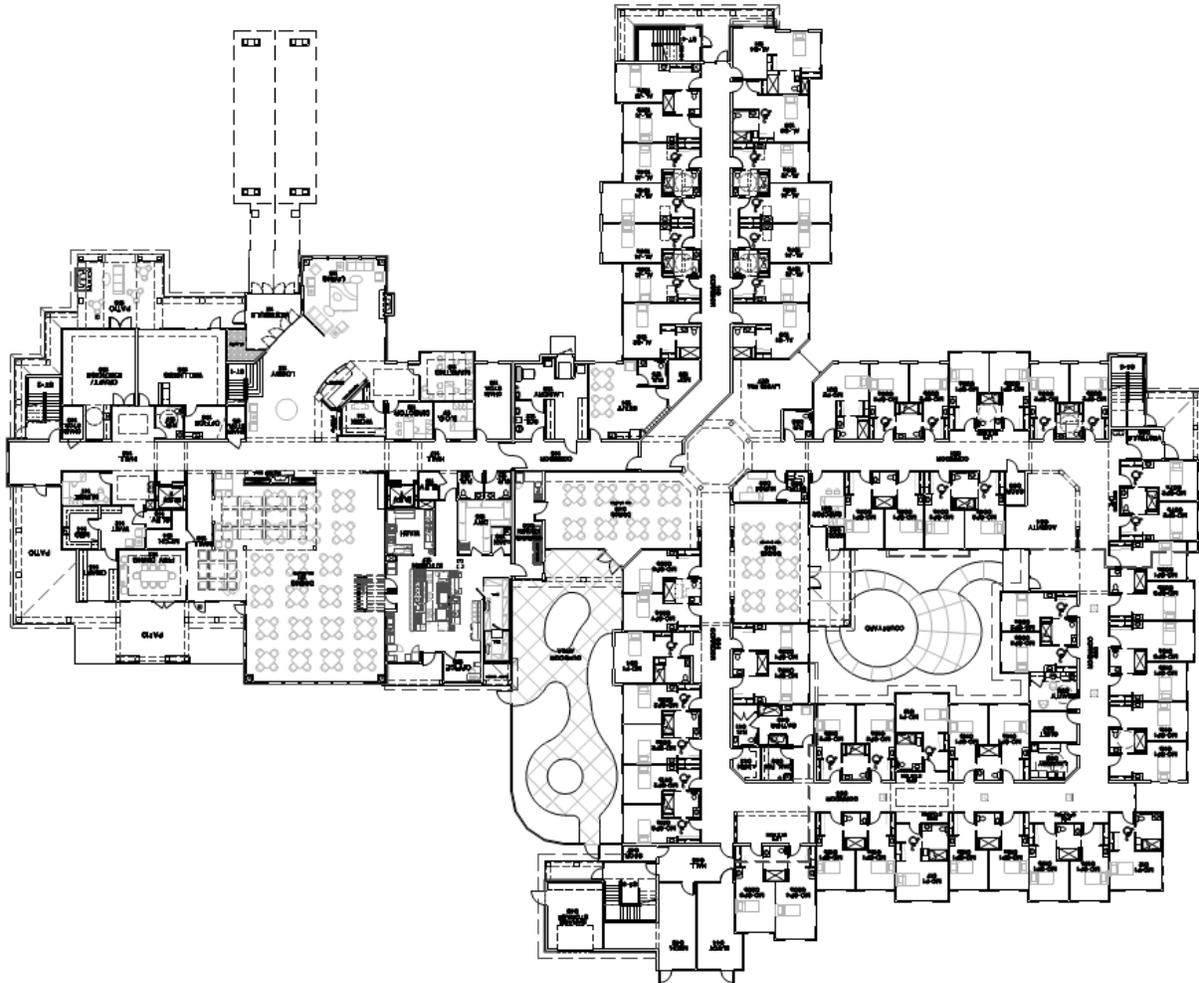
ADA Van Accessible (9' x 18' with 8' Access Aisle) 4

Total 71

Access to the Senior Residence will be from New Hampshire Avenue. According to Petitioner’s Statement in Support of the Petition (Exhibit 3, p. 3), the existing curb cut at the southeast corner of the property will be abandoned for a more desirable location at the northeast corner of the site that will provide an access that meets the required setbacks set forth in the Montgomery County design criteria. The main entrance to the Residence will face north, which will present a more residential façade to the single family neighbors along the northern property line, while keeping the services to the building (deliveries, refuse pick-up, and site mechanical equipment) at the southwest portion of the site where there are substantial setbacks and buffering (to the west) and the church (to the south).

Seniors who are more independent and require limited assistance will be housed in the Assisted Living Suites, where a full range of care options can be provided. The Memory Care wing is set up very similar to the Assisted Living wing. There will be a private courtyard and fenced outdoor area, to make sure the residents of the Memory Care wing have a safe, welcoming setting designed to meet the needs of anyone living with Alzheimer's or other dementia related issues. Exhibit 3, p. 2.

The First Floor Plan for the proposed use is set forth below (Exhibit 12(a)):



The proposed use of each floor is described below in Petitioner's Statement (Exhibit 3, pp. 4-5):

FIRST FLOOR – Common Area - Upon arrival under the welcoming covered drop-off to the main entrance of the Senior Residence; one will enter into a spacious,

vaulted Lobby and be greeted by the friendly Reception Area. Adjacent to the Lobby is a Grand Living Room, which is well furnished and comfortable for residents and guests. The Craft/Activity Room and the Exercise Therapy Room are located at the front of the building with a covered, outdoor space for additional sitting areas and activities. Additionally, this First Floor main Common Area has Administrative Offices, a Conference Room, and support services such as the Nurses Offices, Med Room, and Consultation Room. To finish, the First Floor Common Area is home to the Main Dining Area. Located at the back of the building and overlooking an outdoor patio and landscaping, this dining space offers various eating locations and different ambiance settings. Adjacent to the Dining Room, at the back of the building, is the Commercial Kitchen. This location gives easy access to the Dining Room to better serve the Residents, but also allows the Kitchen deliveries to enter the building away from the Main Entrance of the Senior Residence. Just off the main dining, is a Private Dining Area for Residents to use for Parties, Family Events, or Meetings.

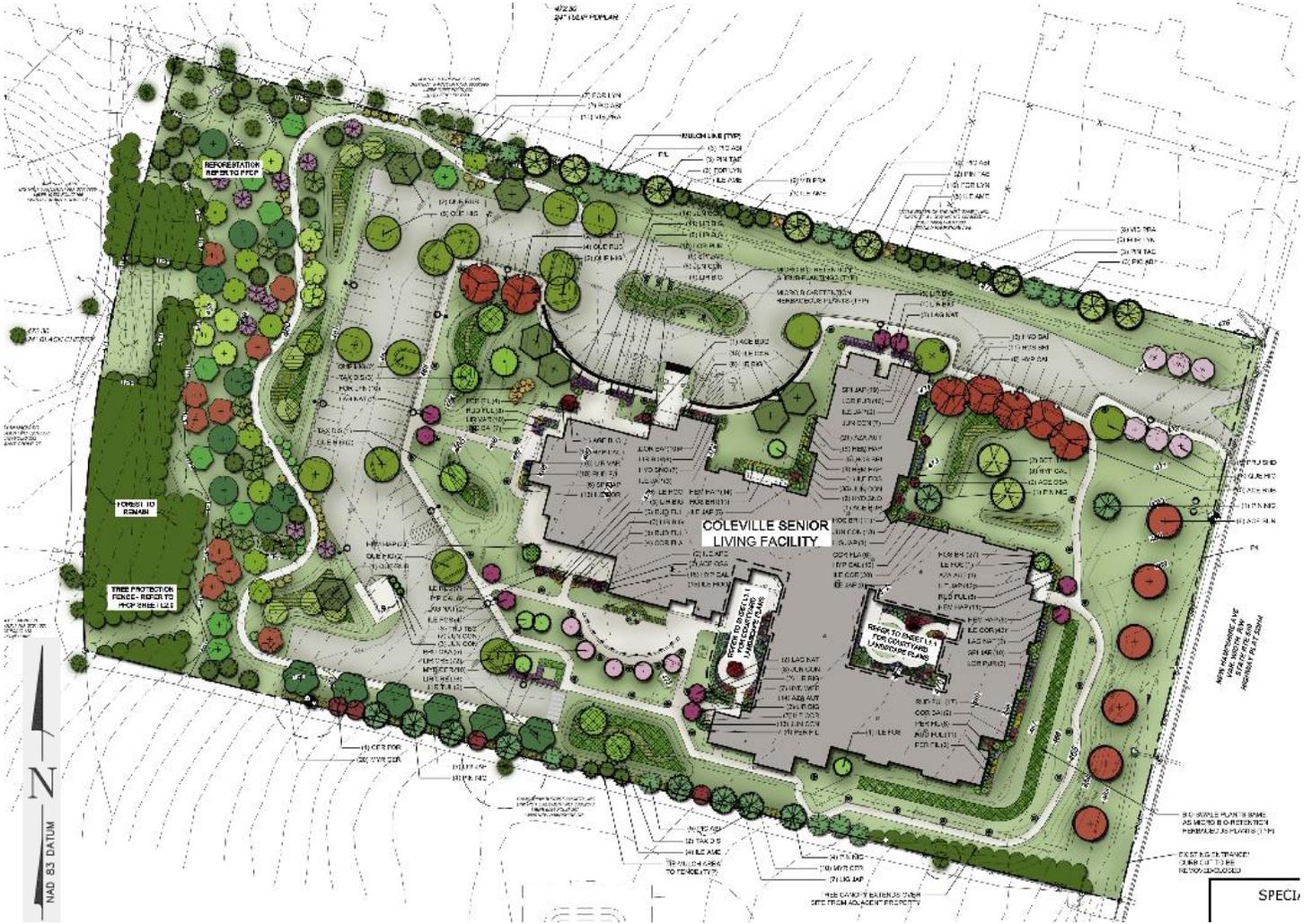
FIRST FLOOR – Memory Care Wing - The remainder of the First Floor is dedicated to the Memory Care Wing of this Senior Residence. Smaller, quainter dining areas are strategically located to be easily served from the main Commercial Kitchen. Staff Break rooms and other Service areas are located to be convenient to the care of the Residents, but as not to be disruptive to daily life. Common spaces like Living Rooms, Libraries and Activity Stations, exclusively designed and furnished for the Memory Care Resident, are located throughout the space. Resident Suites are either Private Studios with an Entry Door, private Bathroom, and private Living/Sleeping Space, or Semi-Private Suites with an Entry Door, shared Bathroom, and private Living/Sleeping Space. These Suite design options are a proven model for the lifestyle of Memory Care Residents, while still providing private, personal space for each resident. All of the Memory Care spaces are designed around a private Courtyard accessed only by the Memory Care Residents. This Courtyard provides a safe outdoor area for Resident Activities.

SECOND FLOOR – Common Area – The Second Floor Common Area is designed to provide Activities for the Assisted Living Residents. At the top of the Monumental Stairs, from the Lobby below, are a welcoming Café and Activity Kitchen. Other spaces for the Residents include a Card Room, Lounge, Computer Stations, Library, and a Theatre for showing movies, hosting parties, or participating in a game of Wii Bowling.

SECOND and THIRD FLOOR – Assisted Living Wings – The remainder of the Second Floor and all of the Third Floor are dedicated to Assisted Living Resident Suites. Resident Suites for the Assisted Living residents are all private, and consist of Studio, One-Bedroom, and Two-Bedroom Suites. Every Suite has a private Entry, private Bathroom, Living Area, Sleeping Area (or Bedroom) and a small Kitchenette that includes a refrigerator, sink, and microwave. Licensing of these facilities does not allow major cooking appliances, so all meals are taken in the main Dining Room on the First Floor. Designed into the Corridors are a few small Common Spaces and Sitting Areas. Service areas, like resident Laundry, are also located on each floor.

3. Landscaping and Lighting:

The Rendered Landscaping Plan (Exhibit 44) is reproduced below:



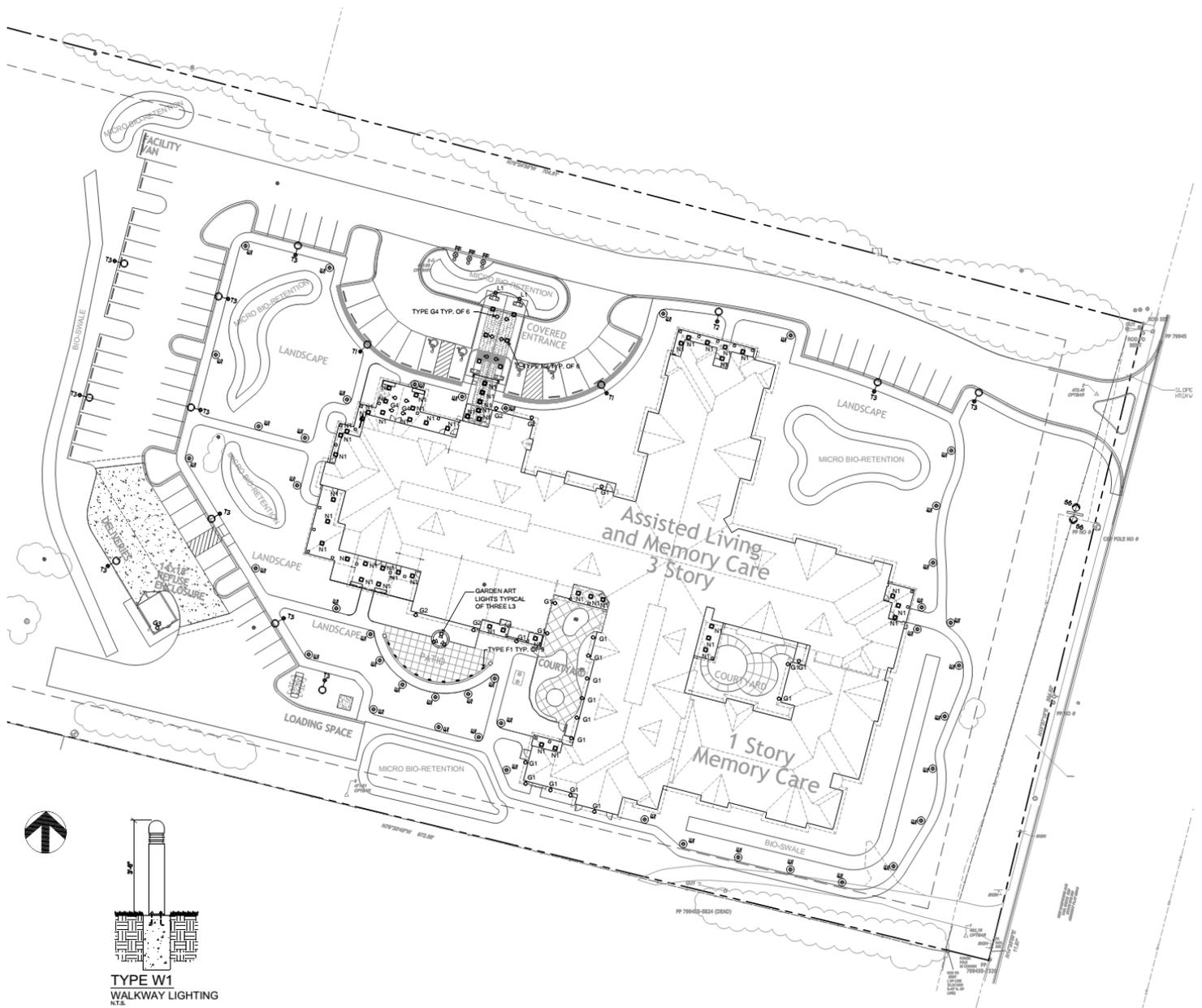
PLANT SCHEDULE - KEY

DECIDUOUS TREES	BOTANICAL NAME	COMMON NAME
ACE RUB	Acer rubrum 'October Glory'™	October Glory Maple
ACE SUN	Acer rubrum 'Red Sunset'	Red Sunset Maple
BET HER	Betula nigra 'Heritage'	Heritage River Birch
LIR TUL	Liriodendron tulipifera	Tulip Tree
QUE HIG	Quercus phellos 'Hightower'	Willow Oak
QUE RUB	Quercus rubra	Red Oak
TAX DIS	Taxodium distichum	Bald Cypress
EVERGREEN TREES	BOTANICAL NAME	COMMON NAME
ILE AME	Ilex opaca	American Holly
ILE FOS	Ilex x fosteri	Foster's Holly
PIC ABI	Picea abies	Norway Spruce
PIN NIG	Pinus nigra	Austrian Black Pine
PIN TAE	Pinus taeda	Loblolly Pine
THU TEC	Thuja occidentalis 'Techny'	Techny Arborvitae
FLOWERING TREES	BOTANICAL NAME	COMMON NAME
ACE BLO	Acer palmatum 'Bloodgood'	Bloodgood Japanese Maple
ACE BUG	Acer palmatum 'Burgundy Lace'	Burgundy Lace Japanese Maple
ACE OSA	Acer palmatum 'Osakazuki'	Osakazuki Japanese Maple
CER FOR	Cercis canadensis 'Forest Pansy'™	Forest Pansy Redbud
LAG NAT	Lagerstroemia indica 'Natchez'	Crape Myrtle
PRU OKA	Prunus x okame	Okame Cherry
PRU SHD	Prunus x yedoensis 'Shidare Yoshino'	Yoshino Cherry

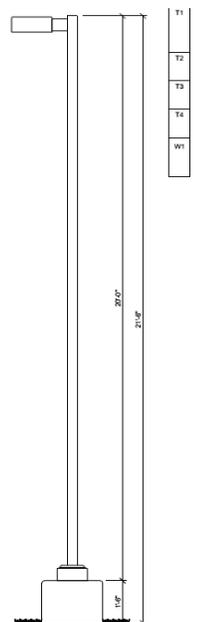
SHRUBS	BOTANICAL NAME	COMMON NAME
ACE BUR	Acer palmatum 'Burgundy Lace'	Burgundy Lace Japanese Maple
AZA AUT	Azalea x 'Autumn Angel'	Autumn Angel Azalea
COR BAI	Cornus sericea 'Bailey's Redtwig'	Redt Twig Dogwood
COR FLA	Cornus sericea 'Flaviramea'	Yellow Twig Dogwood
FOR LYN	Forsythia x intermedia 'Lynwood Gold'	Lynwood Gold Forsythia
HYD BAI	Hydrangea macrophylla 'Endless Summer'™	Balmer Hydrangea
HYD WEE	Hydrangea quercifolia 'Pee Wee'	Oakleaf Hydrangea
HYD SNO	Hydrangea quercifolia 'Snowflake'™	Snowflake Oakleaf Hydrangea
ILE COR	Ilex cornuta 'Carissa'	Carissa Holly
ILE HOO	Ilex crenata 'Hoogendoorn'	Hoogendoorn Japanese Holly
ILE JAP	Ilex crenata 'Steeds'	Steeds Japanese Holly
ILE APO	Ilex verticillata 'Apollo'	Winterberry
ILE RES	Ilex verticillata 'Red Sprite'	Red Sprite Winterberry
LIG JAP	Ligustrum japonicum	Japanese Privet
LOR PUR	Loropetalum chinense 'Purple Diamond'	Fringe Flower
MYR CER	Myrica cerifera	Wax Myrtle
SPI JAP	Spiraea japonica 'Goldmound'	Spiraea
VIB PRA	Viburnum x pragnense	Prague Viburnum
GROUNDCOVERS / PERENNIALS	BOTANICAL NAME	COMMON NAME
HEM HAP	Hemerocallis x 'Happy Returns'	Happy Returns Daylily
HOS BRI	Hosta x 'Bright Lights'	Plantain Lily
HYP CAL	Hypericum calycinum	Creeping St. John's Wort
JUN CON	Juniperus conferta 'Blue Pacific'	Blue Pacific Juniper
LIR BIG	Liriope muscari 'Big Blue'	Big Blue Lilyturf
LIR VAR	Liriope muscari 'Variegata'	Variegated Lily Turf
LIR CRE	Liriope spicata	Creeping Lily Turf
PER FIL	Perovskia atriplicifolia 'Filigran'	Russian Sage
RUD FUL	Rudbeckia fulgida sultiviana 'Goldsturm'	Black-eyed Susan

Technical Staff found that “[t]he property will be well screened with trees and shrubs. There are also on-site landscaping considerations provided for the use of the grounds by the residents and their families. Usable outdoor spaces including manicured lawns, courtyards and walkways are integrated into the landscape design for the enjoyment of the residents and provide a safe, home-like feel to the entire project.” Exhibit 31, p. 7. All of the western property line is going to be in a forestation area, and there will be a trail network that meanders through the forestation area, as shown on the rendered landscape plan (Exhibit 44). Tr. 140-141.

The revised Lighting Plan (Exhibit 40(a)) is reproduced below and on the next page:



16500 - EXTERIOR LIGHT FIXTURE SCHEDULE			
TYPE	DESCRIPTION	MANUFACTURER	LAMPS
F1	FLUORESCENT STEP LIGHT. 10-1/4" W x 5" H. BLACK LOUVERD FACEPLATE STEEL HOUSING. ELECTRONIC BALLAST 120V.	LITHONIA WSL1F-13DTT-FPLBL	(1) 13W CFL CFQ13W/G24Q-1
FF	METAL HALIDE FLAG LIGHT. DARK BRONZE FINISH WITH FULL VISOR.	LITHONIA TFM-70M-RG-FV	(1) 70W MH ED17
G1	FLUORESCENT EXTERIOR WALL MOUNT. FULL CUTOFF MINI WALL PACK. 12-1/2" W x 5-3/4" H x 7-1/2" DEEP. ALUMINUM DIE CAST HOUSING. DARK BRONZE FINISH. TEMPERED GLASS LENS. 120 VOLT.	LITHONIA WSTM-42TRT-MD-120	(1) 42W CFL CFTR42W/GX24Q-4
G2	FLUORESCENT EXTERIOR WALL MOUNT UP/DOWN LIGHT. 7"H x 14"W x 7"D. ALUMINUM HOUSING. BRONZE FINISH. UL LISTED WET LOCATION. 120 VOLT.	EVERGREEN LIGHTING CRESCENT II WP34-F52EL	(2) 26W CFL CFTR26W/GX24Q-3
G3	FLUORESCENT EXTERIOR WALL MOUNT. 11"H x 6.5"W x 5.25"D. ALUMINUM HOUSING. BRONZE FINISH. UL LISTED WET LOCATION. WITH PHOTOCCELL. 120 VOLT.	LITHONIA TWS-26TRT-120-PE	(1) 26W CFL CFTR26W/GX24Q-3
G4	FLUORESCENT EXTERIOR WALL MOUNT UP LIGHT. 7"H x 12"W x 8"D. ALUMINUM HOUSING. BRONZE FINISH. 120 VOLT.	WINONA WINDIRECT SS7-CFQ26-120V-P5-MBP	(1) 26W CFL CFQ26W/24Q
G5	FLUORESCENT EXTERIOR WALL MOUNT. FULL CUTOFF WALL PACK. 16-1/4" W x 7-1/4" H x 9-1/8" DEEP. ALUMINUM DIE CAST HOUSING. DARK BRONZE FINISH. TEMPERED GLASS LENS. 120 VOLT.	LITHONIA WST-2/42TRT-MD-120-UT5	(2) 42W CFL CFTR42W/GX24Q-4
L1	LED LANDSCAPE LIGHT. BRONZE FINISH. UL LISTED WET LOCATION. FLOOD DISTRIBUTION. 1600 LUMENS, 4,000K CCT, 80 CRI. 120 VOLT.	E-CONOLIGHT E-CF2L21N2Z	21 WATT LED 1,600 LUMENS
L2	LED LANDSCAPE LIGHT. BLACK FINISH. UL LISTED WET LOCATION. FLOOD DISTRIBUTION. 600 LUMENS, 4,100K CCT, 80 CRI. 120 VOLT.	E-CONOLIGHT E-GL3L01N2K	7 WATT LED 600 LUMENS
N1	8" 2-LAMP HORIZONTAL FLUORESCENT EXTERIOR DOWNLIGHT. WHITE BAFFLE, FRESNEL LENS. STEEL MOUNTING FRAME WITH MECHANICAL TRIM RETENTION CLIPS. 120 VOLT.	LITHONIA 8HF-2/26TRT-F8LT4-MVOLT	(2) 26W CFL CFTR26W/GX24Q-3
N2	8" METAL HALIDE EXTERIOR DOWNLIGHT. WHITE BAFFLE, FRESNEL LENS. STEEL MOUNTING FRAME WITH MECHANICAL TRIM RETENTION CLIPS. 120 VOLT.	LITHONIA 8VH-150M-8L4-120	(1) 150W MH ED17
SS	FLUORESCENT SIGN FLOODLIGHT. WITH BARN DOOR VISOR.	LITHONIA ASF1-2/26TRT-WDF-120-DBLB-ASF1BD	(2) 26W CFL CFTR26W/GX24Q-3
T1	20' METAL HALIDE FULL CUTOFF SQUARE CONTOUR SERIES SITE POLE LIGHT. POWDER COAT DARK BRONZE FINISH. WITH 20' HIGH, SQUARE STRAIGHT STEEL POLE. FLAT GLASS LENS. TYPE SR4C LIGHT DISTRIBUTION. 120 VOLT.	LITHONIA KAD-150M-SR4SC-TB-SPD04 POLE: SSS-20-4C-DM19-DDB	(1) 150W MH ED17
T2	SAME AS T1 EXCEPT WITH TYPE SR3 DISTRIBUTION AND HOUSE SIDE SHIELD.	LITHONIA KAD-150M-SR3-TB-SPD04-HS POLE: SSS-20-4C-DM19-DDB	(1) 150W MH ED17
T3	SAME AS T1 EXCEPT WITH TYPE SR3 DISTRIBUTION.	LITHONIA KAD-150M-SR3-TB-SPD04 POLE: SSS-20-4C-DM19-DDB	(1) 150W MH ED17
T4	SAME AS T1 EXCEPT WITH TYPE 5.	LITHONIA KAD-150M-R5S-TB-SPD04 POLE: SSS-20-4C-DM19-DDB	(1) 150W MH ED17
W1	WALKWAY - 6" BOLLARD LIGHT, DARK BRONZE POLYESTER POWDER COATED FINISH OVER DIE CAST ALUMINUM, CAST ALUMINUM LOUVER (SEE SITE PLAN FOR LOCATION) (SEE DETAIL #7/E2.2)	US ARCHITECTURAL LIGHTING BDA6-CL-26-PL-120-RAL-8019-T	(1) 26W CFL CFTR26W/GX24Q-3



TYPE T1/T2/T3
PARKING LOT LIGHTING
150 WATT METAL HALIDE
· T1 - TYPE 4 DISTRIBUTION
· T2 - TYPE 3 DISTRIBUTION
· WITH HOUSE SIDE SHIELD
· T3 - TYPE 3 DISTRIBUTION

A revised photometric study (Exhibit 40(b)) shows that lighting at the side and rear lot lines is 0.1 footcandles or less. Technical Staff addressed the proposed lighting in its report (Exhibit 31, p. 18):

The proposed yard lighting has been designed to be unobtrusive and consistent with the residential use of the property. There will be shielding provided to the light fixtures so that the lighting levels at the property line will be nearly zero. Security lighting will remain on all night around the building, but it will be downward directed lighting that will be mounted 10 feet above ground level on the face of the building. Lighting levels along the side and rear lot lines will not exceed 0.1 foot candles.

Zoning Ordinance §59-G-1.23(h)(2) provides that “*Lighting levels along the side and rear lot lines [in a residential zone] must not exceed 0.1 foot candles.*” However, the section also provides that these “*lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety.*”

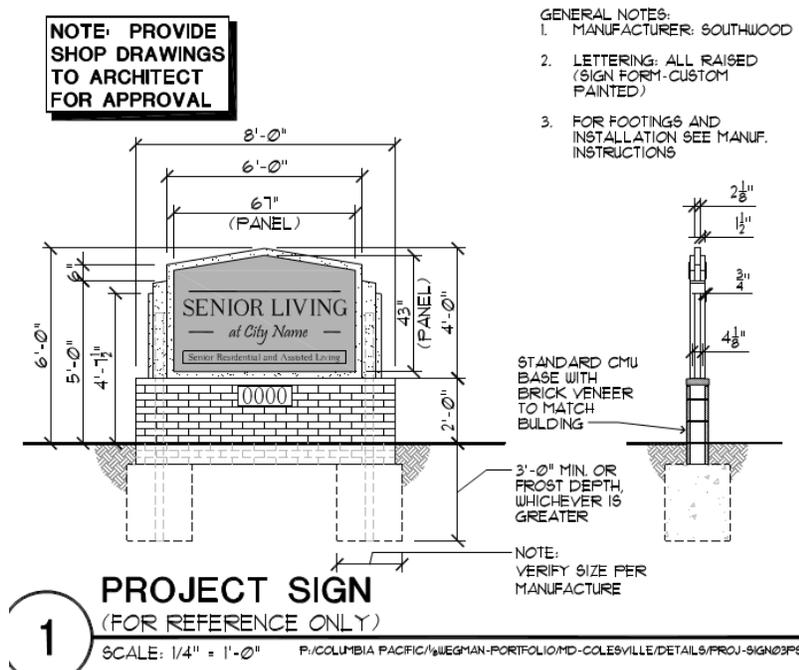
Although Technical Staff stated in its report that the proposed lighting will not exceed the 0.1 foot-candle standard at the side and rear property lines, the original photometric study (Exhibit 8(b)) showed that there would be small exceedances at the northeast corner of the property and a tiny exceedance along the southern lot line. By removing one lighting fixture and reconfiguring the shielding on others (Tr. 86), Petitioner has eliminated all the exceedances, as demonstrated in the new photometric study (Exhibit 40(b)). On July 10, 2015, Technical Staff approved the new lighting plan. Exhibit 45.

Technical Staff found that “The proposed lighting will not cause glare on adjoining properties.” Exhibit 16, p. 8. At page 17 of their report, Staff stated, *inter alia*, “The lighting plan adequately and efficiently provides a safe vehicular and pedestrian environment. . . .”

Given the fact that adequate lighting is needed for safety around an institutional use open 24 hours a day and Staff’s finding that the proposed lighting will be “unobtrusive and consistent with the residential use of the property,” the Hearing Examiner finds that Petitioner has complied with Zoning Ordinance §59-G-1.23(h).

4. Signage:

Petitioner proposes a monument sign measuring approximately 45 square feet, to be located just south of the entrance at the northeast corner of the property.³ The particulars of the proposed sign are shown on Exhibit 46, and reproduced below:



The size of the sign obviously exceeds the two square feet ordinarily allowed in a residential area pursuant to Zoning Ordinance §59-F-4.2(a)(1); however, since it will be at the entrance to a new subdivision, the Hearing Examiner notes that the more relaxed provisions of Zoning Ordinance §59-F-4.2(a)(3) may apply. That provision allows a sign area of up to 40 square feet. Technical Staff opined that the sign will require a sign variance (Exhibit 31, p. 17). Whether or not a sign variance is required in order for Petitioner to obtain a sign permit from the Department of Permitting Services, the Board of Appeals must first decide whether the proposed sign would be of an appropriate size to give timely notice

³ The sign was originally to be placed further south of the entrance. At the hearing, Petitioner proposed to change the location to an island (or "pork chop") in the middle of the entrance (Exhibit 43). When Technical Staff questioned the effect of that placement on the shared use path in that area (Exhibit 55), Petitioner eliminated the traffic island and moved the proposed sign location to an area just south of the access to New Hampshire Avenue, as shown on the final Site Plan (Exhibit 54(a)).

to drivers looking for the facility and whether it would be compatible with the area. The only evidence on these points indicates that it would satisfy both criteria.

Mr. Greg Elmore, Petitioner's expert on design and operation of assisted living facilities, testified that the proposed sign is typical for this type of facility. It will be the same brick that is being used on the building. The colors on the sign will also match the siding. Overall dimensions of the sign are about eight foot by six foot. The signage panel itself is about six foot by 43 inches. In his opinion, it would be compatible with other signs that are on nearby churches and the like, and it can't be too much smaller because it must be visible off of New Hampshire Avenue to make sure that residents and guests can find the facility. It will not block the sight lines of drivers arriving and leaving. Tr. 97-106, 111.

GCCA President Daniel Wilhelm, testifying on behalf of the Greater Coleville Citizens Association, opined that the proposed sign is a reasonable size and makes sense. It is compatible with church signs and other institutional signs in the neighborhood. Tr. 150.

Based on this evidence and the fact that Technical Staff did not find the sign to be of an inappropriate size, the Hearing Examiner finds that the proposed sign would be of an appropriate size to give timely notice to drivers looking for the facility and that it would be compatible with the area. The following condition is recommended in Part V of this report:

A sign permit must be obtained for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

5. Operations:

As stated by Technical Staff (Exhibit 31, p. 5):

The facility will be open 24 hours a day, 7 days a week. There will be regular business hours for visitors or residents, and any business deliveries or services will be restricted to mid-day operations to avoid peak travel times. The facility will be staffed with a

maximum of 50 full and part-time staff. The maximum shift will be approximately 24 employees at mid-day.

Caregivers for the entire Senior Residence receive specialized training for all stages of Senior care. Managers and providers are licensed by the State of Maryland. Anyone providing services in the Memory Care wing will be specifically trained to assist residents living with dementia and/or Alzheimer's. Exhibit 3, p. 2.

Petitioner describes proposed operations in its Statement (Exhibit 3, p. 5):

The Senior Residence will be open 24 hours a day, 365 days a year for the Residents and their families. Families are encouraged to visit whenever possible, and will not be restricted by hours of operation. There will be regular business hours for any guests or potential residents, and any business deliveries or services will be restricted to mid-day operations to avoid peak travel times and service heavy times for staff and caregivers. Refuse removal will be coordinated with the service provider and usually happens 1-2 times per week. Operations prefers refuse removal to take place in the late morning or early afternoon to avoid the noise in the morning and/or evening hours. Food deliveries happen about twice a week and are not allowed before breakfast service or after dinner service.

Since this Senior Residence will be staffed 24 hours a day, major shift changes are as listed: 5:00 am, 2:00 pm, and 9:00 pm. Additional staff arrive around 10:30 am for the lunch service and dinner preparations. The Senior Residence will staff 50+ full- and part-time employees, and the maximum shift will be around 24 employees at mid-day. The shift changes are set up to better serve the residents. This approach also limits the number of staff peak hour trips to the site to almost none.

C. Public Facilities, Traffic Safety and Parking

1. Public Facilities, Including Traffic Safety:

In this case, subdivision will be required. Exhibit 31, p. 1. Therefore, under Zoning Ordinance §59-G-1.21(a)(9)(A), it is the Planning Board and not the Board of Appeals which must ultimately determine the adequacy of public facilities. This section also requires that "approval of a preliminary plan of subdivision must be a condition of granting the special exception." Such a condition is recommended in Part V of this report.

Even though the adequacy of public facilities will be determined by the Planning Board, the Board of Appeals (and therefore the Hearing Examiner) must still determine the effects of added traffic on compatibility (Zoning Ordinance §59-G-2.37(a)(1)) and safety of vehicular and pedestrian traffic (Zoning Ordinance §59-G-1.21(a)(9)(C)).

Petitioner discusses traffic impacts in its Traffic Statement (Exhibit 13):

. . . 95% (or more) of our Assisted Living Residents do not drive vehicles, and none of the residents in the Memory Care Suites will drive vehicles. This, along with Studies provided by the Institute of Transportation Engineers (ITE), Trip Generation Manual, 9th Edition, conclude that the proposed Domiciliary Care Home will have limited daily impact to traffic along New Hampshire Avenue, and Peak Hour travel will have limited, to no impact from this development. The National average shows about two trips per day, per suite for visitor and staff purposes. This is in line with what the Columbia/Wegman model tends to experience (at less than two trips/day).

- A vast majority of any trips to the site will be outside peak hour trip generation.
- 8-hour Staff changes occur at off peak times (5am, 1pm, and 9pm) to eliminate any peak-hour trips from staff.
 - o Additional Staff for mid-day arrive at 10am – leave at 3pm
 - o Max. Staff approx. 24 at full resident capacity.
- Guests and Family will visit at all hours, but usual traffic occurs at lunch and after work or dinner times.

Technical Staff agrees with this analysis, finding (Exhibit 31, p. 11):

It is anticipated that virtually none of the residents would drive a vehicle on a daily basis and a large share of the staff/visitor-generated traffic would occur in the off peak hours based on typical operations for such facility.

Trip Generation for Colesville Senior Housing Facility S-2881

Land Use	Size	AM Peak Hour **			PM Peak Hour **			Daily *
		Enter	Exit	Total	Enter	Exit	Total	
Assisted Living / Memory Care	113 Units (136 Beds)	14	8	22	10	12	22	183

Notes: * Daily traffic volumes determined by using a trip generation rate of 1.62 trips per unit which was observed on the busiest day of the week (Friday) at a similar facility in Rochester, NY (99 units).
 ** Peak hour volumes were determined based on observed visitors and staff arrivals/departures at a similar facility in Rochester, NY and then scaled from 99 units to 113 units to account for the proposed larger facility. The enter/exit split was assumed as 65%/35% for the weekday AM peak hour and 44%/56% for the PM peak hour, based on data published in the ITE *Trip Generation Manual, 9th Edition* for the Assisted Living (#254) land use category.

As shown in the table above, the proposed 136-bed facility is projected to generate 22 trips during the weekday AM peak hour and 22 trips during the PM peak hour. Therefore, the LATR traffic study threshold of 30 peak hour trips is not met and a traffic study is not required to satisfy the LATR test.

Thus, the evidence introduced in this case supports the conclusion that the impact on public facilities will be compatible with the neighborhood and that Petitioner will be able to establish the adequacy of public facilities at subdivision.

There is an issue, however, regarding access to the site, as identified by Technical Staff based on concerns raised by several citizens (Exhibit 31, p. 3):

. . . Since there is no median opening along the site frontage, drivers attempting to access the site from the south will have to travel northbound on New Hampshire Avenue past the site and make a U-turn at the Hobbs Drive median opening. Conversely, drivers seeking to exit the site in order to travel north must first travel southbound on New Hampshire Avenue and make a U-turn at the Orchard Way/Cambodian Temple Driveway median opening.

Technical Staff elaborated on this issue later in their report (Exhibit 31, pp. 11 and 16)⁴, but revised their conclusion and language in a PowerPoint presentation before the Planning Board (Exhibit 36(a)). The new language relating to this point is:

Staff believes that traffic generated by this project, as well as S-2882 (if approved) will exacerbate the problems drivers experience trying to find acceptable gaps in traffic at the intersection of Orchard Way/Cambodian Temple Driveway with New Hampshire Avenue in order to make left and U turns. However, this is more of an operational issue rather than a safety issue. The existing left-turn lane storage lengths at median breaks along New Hampshire Avenue are long enough to accommodate existing and site-generated left- and U-turning vehicles waiting for a gap in traffic, so staff does not see this as a safety issue. Staff has had conversations regarding safety and operational issues along New Hampshire Avenue with the State Highway Administration (SHA) staff, who confirmed that there are no known safety or operational issues regarding the left-turn bays on this stretch of New Hampshire Avenue. Therefore, consideration of a traffic signal or other measures to reduce U-turn and left-turn delays should be revisited in greater detail at Preliminary Plan or Site Plan.

⁴ Technical Staff refers to the relevant pages in their report (Exhibit 31) as pages 12 and 17, but the language of concern is located at pages 11 and 16 in copies of Exhibit 31 in the record.

Technical Staff had previously recommended a condition (#5) which would have required Petitioner to work with Planning Department and SHA staff to determine the higher priority intersection for signalization and then conduct and submit a traffic signal warrant analysis at Preliminary Plan review. Based on its reevaluation of the traffic safety situation cited above, Technical Staff withdrew its recommendation for Condition #5.

Staff's conclusion that the U-turn issue does not amount to a safety concern was supported by Petitioner's transportation planner at the hearing. Shahriar Etemadi testified as an expert in traffic engineering and transportation planning (Tr. 112-126). Mr. Etemadi testified that all of the nearby intersections will operate at a critical lane volume (CLV) well below the standard of 1,475 for the area. Moreover, based on accident data, this segment of the road is not unsafe, on the average, compared to any similar major roadway in Maryland. In fact, in the last two years, 2012 and 2013, there were fewer traffic accidents and lower severity of accidents as compared to the 2011.

As to U-turns, according to the Planning Staff, there will be at the most probably six or seven cars making U-turns during the peak hour, but Mr. Etemadi feels that was an overestimate because the number of trips that will be generated using LATR standards is actually lower than Staff's projection, which was based on a similar facility in New York or somewhere else. In Mr. Etemadi's opinion, only three or four cars will be making a U-turn during a peak hour. He also pointed out that there have been no accidents involving a U-turn for thousands of cars going through this area. Although he cannot say 100 percent that there will never be an accident, when you compare the history of accidents and the number of cars generated to this site, then the chance of having an accident resulted from a U-turn by a vehicle that is generated to this site is very, very low. His conclusion is that this proposed setup, including the necessity for U-turns, is a safe arrangement for both vehicular and pedestrian traffic. Tr. 117-122.

This view was shared by GCCA President Daniel Wilhelm, testifying on behalf of the Greater Coleville Citizens Association. Mr. Wilhelm stated that he drives that road three or four times a week, and he rarely sees anybody making U-turns in this stretch of New Hampshire Avenue. “So I think adding three or four cars would not have any additional impact on any of the traffic. And there's traffic lights, as it was testified, both north and south which will give you breaks in traffic.” Tr. 150-151.

Mr. Etemadi also testified that there is the sufficient stopping sight distance provided at all the side streets coming to New Hampshire Avenue, including the site access. He concluded that the internal site circulation is safe, adequate and efficient for the proposed use. Also, the sidewalks on both sides of New Hampshire Avenue are adequate, and there are bike lanes on each side of the road. Tr. 123-125.

Based on this unrefuted testimony and the evidence from Technical Staff, the Hearing Examiner finds that the proposed development will not reduce traffic safety for the community.

2. Adequacy of Parking Provided:

The amount of parking required on site is established by Zoning Ordinance §59-G-2.37(d):

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift,⁵ except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

Since there will be a maximum of 136 beds and 24 employees on site during the largest shift, the number of required parking spaces is 46 (136 beds / 4 = 34 spaces, and 24 employees / 2 = 12 spaces; 34 + 12 adds up to 46 required spaces). Petitioner is proposing 71 parking spaces, five of which will be ADA accessible.

Technical Staff found that the proposed parking spaces are in compliance with the Zoning Ordinance requirements. Exhibit 31, p. 17. Petitioner's civil engineer, William Vest, testified that the

⁵ This requirement is echoed in Zoning Ordinance §59-E-3.7.

parking facilities will be in compliance with all setback, shading and buffer requirements of the Zoning Ordinance. Tr. 143-144.

In sum, the undisputed evidence is that Petitioner will be providing an adequate number of parking spaces, set back, shaded and screened, as required by statute.

D. Master Plan

The subject site is in the northern portion of the White Oak Master Plan area. The Plan was approved by the District Council and adopted by the Maryland-National Capital Park and Planning Commission in 1997. The Plan does not specifically address this site, but it does contain goals that should be observed and general provisions regarding special exceptions (Plan pp. 16, 18, 24 and 66).

As stated by Technical Staff (Exhibit 31, pp. 8-9):

The 1997 Master Plan envisioned the area outside of the identified commercial centers to remain residential in nature and recommended that infill developments follow the established residential pattern. In keeping with this vision, the Master Plan further recommended that “the land use and zoning goal in the White Oak Master Plan area is to ensure livable communities for the future by protecting and strengthening their positive attributes and encouraging development that will enhance the communities’ functions, sense of place and identity.” (p. 16)

The White Oak Master Plan addresses housing for the elderly directly in at least two places (pages 18 and 66). On page 18, the Plan announces that its Housing Objective is to “Maintain housing for people of varying incomes, ages, and lifestyles, and continue to provide a variety of housing types that will permit households with changing needs to find suitable accommodations within the White Oak Master Plan area.” The Plan specifically recommends “Encourag[ing] housing for the elderly and handicapped at locations served by public transportation, shopping, and community facilities.” Plan, page 18.

The White Oak Master Plan returns to this topic on page 66, with a section entitled “ELDERLY HOUSING AND SERVICES.” In that Section, the Plan mentions that “a significant increase of persons

over the age of 70” is projected for the area, and there are limited housing opportunities available for the elderly. “This Plan encourages opportunities to provide facilities and services to this growing segment of the population.” This Plan section makes three bullet point recommendations:

- Support the provision of adult daycare facilities.
- Encourage the location of elderly housing and elderly support services along bus routes, and near shopping and public facilities.
- Support the provision of affordable elderly housing and care facilities through the special exception process.

As observed by Technical Staff (Exhibit 31, p. 9), the subject site “is situated near several shopping facilities and is served by Metrobus routes and can therefore be considered a good location for elderly housing . . .” The Hearing Examiner finds that the subject petition seeks to establish exactly the type of use the Master Plan is calling for in the third bullet point quoted above – “affordable elderly housing and care facilities through the special exception process.”

The White Oak Master Plan also provides guidelines for special exception uses (Plan page 24):

Excessive concentration of special exception uses and non-residential uses along major transportation corridors should be avoided . . . This is especially a concern along New Hampshire Avenue, Randolph Road, and Powder Mill Road.

The Master Plan then recommends the following steps to reduce the impact of special exception uses on the character and nature of the residential neighborhoods in which they are proposed (Plan page 24):

- Require new requests for special exception uses along major transportation corridors and in residential communities to be compatible with their surroundings. Front yard setback should be maintained.
- Avoid front yard parking because of its commercial appearance. Side and rear parking should be screened from view of surrounding neighborhoods.
- Require new buildings or any modification or additions to existing buildings to be compatible with the character and scale of the adjoining neighborhood.
- Avoid placing large impervious areas in the Paint Branch watershed due to its environmental sensitivity.

Petitioner’s Statement (Exhibit 3, pp. 5-7) argues that the proposed use will comply with the Master Plan’s objectives, and Technical Staff agrees. As stated by Staff (Exhibit 31, p. 9):

With regards to the location and design considerations, the four recommendations of the Master Plan are applicable to this Property. The proposed building will be pulled to the front of the site, fronting on New Hampshire Avenue with parking, and outdoor gathering areas to the back of the building. Similarly, the architecture is consistent in scale and design with many multi-family and townhouse developments in and around the White Oak Master Plan area.

The Property is not within an SPA, and therefore, no maximum impervious area limits exist. The development proposal shows the minimum amount of pavement necessary to adequately and safely circulate vehicles, residents and pedestrians, while the building footprint is compact and multi-level to minimize the on-site imperviousness.

Although the proposed use does not avoid a special exception use along a major transportation corridor (New Hampshire Avenue), the Hearing Examiner finds that the proposed use does meet the goals of the Master Plan by designing the facility in compliance with the bullet points quoted above and by accomplishing one of the primary goals stressed by the Master Plan – the provision of an elderly housing and care facility. As noted above, the Master Plan expressly acknowledges the need for such a facility in this area due to the aging population. Finally, the Hearing Examiner notes that the Master Plan does not recommend a change in the current R-200 Zone, and the use sought here is permitted by special exception in that zone. Given this record, it is fair to say that the proposed use is consistent with the goals of the White Oak Master Plan.

E. Environment

Petitioner submitted a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) which was approved by Technical Staff on October 14, 2014. Exhibits 7(a). Staff reports that the site is located in both the Paint Branch watershed and Northwest Branch watershed, but outside any Special Protection Areas. There are no streams, wetlands, floodplains, or environmental buffers on the site. Technical Staff concludes, “The proposed project is in compliance with the Environmental Guidelines.” Exhibit 31, p. 12.

1. Stormwater Management:

Although stormwater management will be addressed at subdivision, it should be noted that

Petitioner has submitted a Stormwater Management Concept Plan (Exhibit 48) to the Department of Permitting Services (DPS), and that agency has found it to be acceptable (Exhibit 31, Attachment 3). Both the Greater Colesville Citizens Association (GCCA) and an adjacent neighbor (Ed and Thelma Jackson) had concerns about stormwater runoff, which appear to have been sufficiently addressed by Petitioner's plans to avoid any opposition in this case. *See* Exhibit 31, Attachments 1 and 2. In fact, Daniel Wilhelm, GCCA's president, thanked Petitioner's civil engineer, William Vest for working with him and Mr. Jackson to figure out the best solution to address the storm water management problems that exist. He agrees with Mr. Vest that this proposal will actually help reduce the neighbor's stormwater problem. Tr. 152.

2. Trees:

The property is subject to the Montgomery County Forest Conservation Law. Petitioner submitted a Preliminary Forest Conservation Plan (PFCP), which is in the record as Exhibit 7(c). That PFCP proposes to remove 0.38 acres of forest, retain 0.22 acres of forest and plant 0.65 acres of forest on site. Petitioner will meet the remaining planting requirements off site and will remove one tree that requires a tree variance. The PFCP was approved by the Planning Board on June 25, 2015, the same date that it recommended approval of the proposed special exception, as indicated in the Board's Resolution of July 15, 2015. Exhibit 51.

A condition is recommended in Part V of this report that:

The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan (Exhibit 7(c)), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

3. Noise Issues:

Because the subject site is located on the west side of MD 650 (New Hampshire Avenue), Technical Staff observed that it will be exposed to traffic noise from both trucks and passenger cars.

Exhibit 31, p. 12. Staff therefore concluded that a noise analysis is necessary to determine the projected interior noise levels requiring mitigation for residential units. The Montgomery County “Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development” stipulate a 60 dBA Ldn maximum noise level for outdoor recreation areas and 45 dBA Ldn for indoor areas. Staff recommended the following condition, which the Hearing Examiner has adopted:

Prior to issuance of Use and Occupancy Certificates for affected units, the Applicant must provide the following to Staff: Certification from the builder that noise-impacted lots are constructed in accordance with recommendations of an engineer who specializes in acoustical treatment;

Given that one of the conditions recommended in Part V of this report provides that “approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board,” the protections against excessive noise proposed by Technical Staff should adequately protect the residents in this regard.

Based on the entire record, the Hearing Examiner finds no environmental concerns warranting denial of this petition.

F. Community Response

There have been no filings or testimony in opposition to Petitioner’s proposal to build and operate an assisted living facility. As mentioned by Technical Staff (Exhibit 31, p. 12), the Greater Colesville Citizens Association (GCCA) submitted a letter in support of the petition (Exhibits 39 and 39(a)), and the adjacent neighbors (Ed and Thelma Jackson) wrote a letter thanking the Petitioner’s agents for addressing his stormwater management concerns and indicating that he would grant an easement on his property to aid in stormwater management (Exhibit 31, Attachment 2).

The only community testimony at the hearing was provided by GCCA President Daniel Wilhelm, who testified in support of the Petition. GCCA, which represents 3,500 houses in this area, believes that the proposed facility will fit well within the neighborhood and that traffic from the proposed

use would not pose a safety hazard to the area. Tr. 149-151. As previously mentioned, Mr. Wilhelm also thanked Petitioner's civil engineer for his efforts to reduce stormwater issues in the area. Tr. 152.

Although traffic safety issues were apparently raised with Technical Staff by some neighbors (Exhibit 31, p. 11), both Staff and Petitioner's traffic expert, Shahriar Etemadi, concluded that the proposed use would not create a traffic safety hazard. Exhibit 36(a) and Tr. 112-126. While traffic safety is always a legitimate concern, the Hearing Examiner finds that the preponderance of the evidence does not support the conclusion that the proposed use would create a traffic hazard, and certainly does not warrant denial of the special exception based on traffic safety issues.

III. SUMMARY OF THE HEARING

A public hearing was convened, as scheduled, on July 10, 2015. Petitioner called three witnesses, Greg Elmore, an expert in design and operation of assisted living facilities with memory and dementia care elements; Shahriar Etemadi, and expert in transportation planning and traffic engineering; and William Vest, a licensed civil engineer. The only community witness was GCCA President Daniel Wilhelm, who testified in support of the Petition on behalf of the Greater Coleville Citizens Association. There was no opposition testimony at the hearing.

At the beginning of the hearing, Applicant's counsel stated that Applicant accepts the conditions recommended by Technical Staff as amended during the Planning Board hearing (*i.e.*, removing Staff's recommended Condition #5 and making a language change in Condition #6); however, Applicant also asked that Staff's Condition #6 be modified to provide further flexibility about leaving the sidewalk that is already in place, rather than replacing it, if the Planning Board agrees at Preliminary Plan review. Tr. 9-17. The Hearing Examiner stated that he would recommend some flexibility.

The record was held open, pursuant to Board of Appeals Rule 7.2.6.a., for 15 days at the end of the hearing (*i.e.*, until July 27, 2015) because an amended site plan was filed on the day of the hearing.

A. Petitioner's Case

1. Greg Elmore (Tr. 18-111):

Greg Elmore testified as an expert in design and operation of assisted living facilities with memory and dementia care elements. Lenity Architecture is a full-service firm, specializing mostly in senior housing. Columbia/Wegman Acquisitions is a developer with over 30 years of experience in senior housing across the country and globally. They've done several hundred assisted living and or senior housing facilities, from skilled nursing all the way up through independent living. Tr. 18-21.

Columbia/Wegman agrees to be bound by any terms and conditions of a Special Exception. The conditions in the Staff report are acceptable to the petitioner, although it would like flexibility on Condition No. 6. Tr. 22.

Lenity Architecture provides architectural, mechanical, electrical, plumbing, engineering, landscape architecture, management, interior design, civil engineering, planners, structural coordination and graphic design. Lenity has prototype buildings and has several projects currently under construction across the country. More than a dozen of them are in the approval process stage. Tr. 25-27.

Mr. Elmore graduated from Texas A&M University, where he studied architecture and planning, but is not a licensed architect. He has been working in this field for 23 years, and has testified as an expert in planning, site design and operations of assisted living facilities. His main focus has been senior housing. He has designed and planned about 80 other assisted living facilities similar to the one proposed here. Based on his years of experience in the field and prior expert testimony, the Hearing Examiner accepted him as an expert in the design and operations of assisted living facilities, with a memory care and dementia care dimension. Tr. 28-36.

[Petitioner introduced a revised Special Exception site plan as Exhibit 43. As described by Mr. Kline, the only two changes on it were the addition of a bike rack and the changed location of the sign to

the little triangular pork chop at the entrance to the site off New Hampshire Avenue. He also introduced a rendered landscape plan, Exhibit 44. Tr. 38-40.]

Mr. Elmore described the site as rectangular in shape. The high point is right along New Hampshire Avenue and gradually heads to the west. North and west the site abuts a single-family residential property, and the southern portion abuts a church. There is a mix of uses across the street -- churches, some institutional and a couple of single family houses. There are some existing trees, with a heavily forested area across the western property line and a little bit across the north. Only a handful of trees must come down. The building will be three-stories, which is closer to the church use. There will be an extensive setback and landscape buffer to the west, where the neighbors are the closest. There is also a larger setback of the building from the neighbors along the north side of the property. Tr. 40-42.

The building will be organized internally into two buildings. The T shape at the front, and the donut shape to the southeast, which is the single-story memory care area. The central courtyard is the hole in the donut. This memory care donut is set up to have activity and resident rooms that are on both sides of an internal corridor. That internal corridor gives these residents a pathway. There are a handful of units that look into the courtyard, but around this entire interior space, there are common areas or stimulating focal points that help the resident either jog a memory or to interact and stimulate the mind. The dining room, the activity spaces, the living room are all lined on this interior courtyard. It also gives the staff the ability to walk around and interact with the residents that live there. There are 25 units in the dementia care section, with 48 licensed beds in that memory care. A handful of them are private units. The semi-private units have two beds separated by a wall, but they share a bathroom between them. It's more like a studio apartment with a bathroom. This bathroom passes through so residents can get to this one bathroom from either side. A third type of room, called "shared," would have two beds in one room,

but this facility will not have an shared rooms. There is security to prevent the memory care patients from wandering. Tr. 43-54.

The rest of the facility is for assisted living, and all of the residents in the assisted living must be ambulatory. There will be 113 suites altogether, with 136 licensed beds, 88 of which are assisted living. The remainder will be the memory care. Hours of operation are 24 hours a day, seven days a week. The largest number of staff members onsite at any given time will be 24. There will be three major shift changes, a morning, afternoon and an evening shift change. Petitioner will employ 50 plus staff, full- and part-time, but the largest staff is 24 when fully occupied. The shift changes happen across the entire day, but about 5:00 to 6:00 a.m. a handful come in to relieve the night shift and to prep for breakfast service. A handful come in around the 10:30 to prep for the lunch service and to take care of activities of daily need. Another shift change that happens at around 9:00 p.m. after the dinner service, when the night shift comes on. The night shift usually has five people, sometimes six. Tr. 54-58.

In Mr. Elmore's opinion, ITE over-estimates the demand on the road system for the facility. None of the memory care residents drive, and of the 88 units of assisted living, less than five percent of them might have a car. The front doors are open from 7:00 a.m. to 7:00 p.m., but the assisted living residents are not on a lockdown. If they want to go out and walk around the facility at 9:00 p.m., they go out and walk around the facility at 9:00 p.m. And the front doors of the vestibule are always unlocked. The secondary doors have a call system. Visitors can come in at any time. Deliveries are very strictly scheduled. They happen after breakfast and before lunch because staff is busy at breakfast and they are busy during lunch hours. Tr. 59-62.

The front of the lot is the New Hampshire Avenue frontage on the east, but the main drop-off is on the north end of that building. [Mr. Kline noted that the front is defined as that part of the lot that fronts on the public street and there's only one public street.] The circular area just on the north side and

right outside the main entrance to the building has parking stalls reserved for any short-time guests and any elderly guests that come in. Handicapped parking stalls are right next to the main entrance. The western and the northern parking spaces are for the rest of the visitors, and staff park along the back. Tr. 63-65.

On the east elevation, there are two story elements brought down to single story elements around the entryway, and the entry and exits all have a kind of one-story eyebrow just to bring that down to a residential scale. There's one section right in the middle that's the three-story section, and this three-story section has single and two-story elements that will bring that residential scale down as well. In front of that is quite a bit of landscaping and buffer. Materials included a similar brick to that used in the neighborhood and cementitious lap siding which last longer than wood does. It holds paint for quite a bit longer, and the colors generally blend with the neighborhood. Exhibit 9(c) is a rendered view of the building, and Exhibit No. 9(d) is rendered elevations. Exhibit 9(e) is an updated rendering of the building. The building is a maximum of 41 feet to the peak. Mr. Elmore explained his efforts to make the building compatible with the neighborhood. Architectural elements at all the gable locations, the lap siding and the color break up the vertical and give a little bit more of a horizontal sense to kind of bring that scale down and make sure it's got a good residential feel to it. The brick at the entryways and all common areas have a little bit more of that residential feel. Tr. 66-76.

The site will meet all required setbacks. An acoustic engineer will verify that the building will more than meet County noise standards. Tr. 77-78. The Code says the required parking is one space per four beds plus one for every two staff, which is lower than Petitioner likes to provide. Typically Petitioner provides about half a space for every bed. So at 136 beds, half a space would be about 68 beds. For this facility, Petitioner provides 71 spaces. Staff was comfortable with that. [The Hearing Examiner noted that Technical Staffer Don Zeigler approved the new photometric lighting plan, Exhibit

45.] Petitioner had reconfigured the shielding on the lights and one of the lights was actually pulled out and changed to meet those criteria and now he believes the readings are at zero footcandles at all the property lines. Petitioner typically sets light poles up so they're shining directly down on to the drive paths and the parking for safety and security reasons and without glare. On sidewalks, closer to the building, Bollard lighting is used to handle all of the evacuation type lighting to get to the right-of-ways. Tr. 84-87.

Mr. Elmore noted that the 1997 White Oak Master Plan has no recommendations currently for the site, but there were several paragraphs that mentioned at some point the aging population was going to need to have this type of facility. He opined that the proposal is in, consistent with the intent and the principles of the Master Plan. He also considered impacts across New Hampshire Avenue, and he concluded that the project would have such a low impact to traffic and would be so well buffering on all four sides of this that it would not adversely affect adjacent lots or those lots directly across New Hampshire Avenue. Tr. 88-90. [Mr. Kline indicated that Petitioner had initially defined the neighborhood to include confronting properties across New Hampshire Avenue from the subject site, and the Hearing Examiner indicated that he would use that version as the defined neighborhood. Tr. 91-92.] Mr. Elmore opined that the three-story design is an appropriate design for this location. Tr. 93-94.

The sign plan was introduced as Exhibit 46. Mr. Elmore described it as a typical sign for this type of facility. It includes the same brick as is being used on the building, and the colors on the sign will also match the siding. Overall dimensions of the sign are about eight foot by six foot. The signage panel itself is about six foot by 43 inches. It will be located in the middle of the "pork chop" at the entrance to the facility. Tr. 96-97. [Mr. Kline and the Hearing Examiner discussed whether the proposed sign would require a sign variance, and Petitioner will discuss that with DPS. Tr. 97-104.] Mr. Elmore testified that it is a typical design Petitioner has used in several locations. He selected this design

based on the signage that he saw along New Hampshire Avenue, and it is compatible with other signs, such as church type signs and the more commercial type signs. Petitioner has taken elements from the neighborhood and made the sign as compatible as possible with the neighborhood. Petitioner can't make it too much smaller because it needs to be visible from New Hampshire Road just to make sure that residents and guests can find it. Tr. 104-106.

Mr. Elmore further testified that the building will be compatible with the neighborhood. The single story and two-story elements around the entire building make a successful blend between the larger commercial uses and the abutting neighbors. The landscaping and the buffers will be large enough that the neighbors will be hard pressed to even see the building. The trash is going to be picked up. An emergency generator will be tested once a month, but that testing is during the day. All of the mechanical equipment will be in mechanical wells up on top of the roof. Noise produced will not exceed the County limits at any point. In Mr. Elmore's opinion, the use would not adversely affect the health or safety or the welfare of the residents, visitors or the residents in the surrounding neighborhood. Tr. 106-110. [Mr. Kline indicated that Petitioner accepts the Technical Staff report findings as part of its evidence in this case. Tr. 110.]

In response to a cross-examination question from Mr. Wilhelm, Mr. Elmore testified that as the driver moves up into a position to enter onto New Hampshire Avenue from the subject site, sight lines are clear. Tr. 111.

2. Shahriar Etemadi (Tr. 112-126):

Shahriar Etemadi testified as an expert in transportation planning and traffic engineering. Tr. 112-114. He noted that only applicants generating more than 30 peak hour trips are required to analyze intersections and do a traffic study under Local Area Transportation Review (LATR). According to Technical Staff, this proposed development is expected to generate 22 a.m. and 22 p.m. peak hour trips,

which is below the threshold for any kind of Local Area Transportation Review test. Moreover, Mr. Etemadi observed that, under the LATR guideline trip generation rates, this proposed development would generate a lot less than 22 peak hour trips that is in the Technical Staff report. The critical lane volume (CLV) for the nearest signalized intersection to the south, New Hampshire Avenue and Midland Road, is 991 in the morning and 1,061 in the afternoon. That CLV is well below the congestion standard for this policy area, which is 1,475. Therefore, it is his assessment that these intersections and signalized ramps will operate within the congestion standards. Tr. 214-217.

As to U-turns, according to the Planning Staff, there will be at the most probably six or seven cars making U-turns during the peak hour, but Mr. Etemadi feels that was an overestimate because the number of trips that will be generated using LATR standards is actually lower than Staff's projection, which was based on a similar facility in New York or somewhere else. In Mr. Etemadi's opinion, only three or four cars will be making a U-turn during a peak hour. He also pointed out that there have been no accidents involving a U-turn for thousands of cars going through this area. Although he cannot say 100 percent that there will never be an accident, when you compare the history of accidents and the number of cars generated to this site, then the chance of having an accident resulted from a U-turn by a vehicle that is generated to this site is very, very low. His conclusion is that this proposed setup, including the necessity for U-turns, is a safe arrangement for both vehicular and pedestrian traffic. Tr. 117-122.

Mr. Etemadi also testified that there is sufficient stopping sight distance provided at all the side streets coming to New Hampshire Avenue, including the site access. He concluded that the internal site circulation is safe, adequate and efficient for the proposed use. Also, the sidewalks on both sides of New Hampshire Avenue are adequate, and there are bike lanes on each side of the road. Tr. 123-125.

3. William Vest (Tr. 127-144):

William Vest testified as an expert in civil engineering. He is licensed as such in Maryland. Tr. 127-131. He introduced a Concept Stormwater Management Plan (Exhibit 48). Tr. 132-133. Mr. Vest described the drainage on the property and his plans for stormwater management on the site. He took the neighbor's (*i.e.*, the Jacksons') drainage issue into consideration in designing the drainage for the project. About half of his backyard receives drainage from the subject site, and the other half of his backyard actually receives drainage from the Buddhist Temple property and residential properties to the south of him. To help alleviate the ponding and flooding issues in his backyard, the concept plan calls for installing a pipe with two inlet structures to pick up the drainage in his backyard and pipe it across his rear yard to an existing drainage system underground that heads further west down to the interceptor to the west. According to Mr. Vest, the project will achieve complete compliance with environment site design requirements. It will also drastically improve the ponding and flooding issues that Mr. Jackson has in his back yard. Tr. 134-139, 145.

The property will be served by public sanitary sewer and public water. All the western property line is going to be in a forestation area, and he added in a trail network that meanders through the forestation area as an enhancement to the design, as shown on the rendered landscape plan (Exhibit 44). Park and Planning has approved the preliminary forest concept plan (PFCP). Tr. 139-142. The proposed landscape plan not only buffers the site from the north, certainly the south, and there are some street trees along New Hampshire that are proposed. The parking lot will be shaded by landscaping that's been added into the islands separating the parking spaces and along the outside rim of the, of the parking spaces, which will meet all the Code standards for shading parking lots. The setbacks will also meet Code standards. Additionally, there will be extensive landscaping around the entire perimeter of the building that adds to the overall feel of the final product. Tr. 142-144.

In Mr. Vest's opinion, this use is an excellent fit for this piece of property. It will actually enhance the neighborhood and reduce traffic that could have actually been there with the single-family homes. There will not be any adverse effect to any surrounding property owners or to the residents and employees on the site. Tr. 144.

[According to Mr. Kline, the only other special exceptions in the area are a daycare facility (BAS 1388) slightly northeast of the property at the corner of New Hampshire Avenue and Hobbs, and some accessory apartments. Tr. 145-148.]

B. Community Participant

GCCA President Daniel Wilhelm, testifying on behalf of GCCA (Tr. 149-152):

GCCA President Daniel Wilhelm testified in support of the Petition on behalf of the Greater Coleville Citizens Association, which represents 3,500 houses in this area. GCCA thinks the proposed facility will fit well within the neighborhood. The proposed site is well buffered from the existing neighbors on all sides. Mr. Wilhelm stated that a reasonable size sign makes sense, and a two square foot sign would be too small. "You need to be able to see it." The type of sign proposed by Petitioner is acceptable. Mr. Wilhelm stated that he lives about two miles from this site, and he drives on New Hampshire Avenue three or four times a week. He rarely sees anybody making U-turns in this stretch of New Hampshire Avenue, "So I think adding three or four cars would not have any additional impact on any of the traffic. And there's traffic lights, as it was testified, both north and south which will give you breaks in traffic." Tr. 149-151.

Finally, Mr. Wilhelm thanked Petitioner's civil engineer, William Vest, for working with him and Mr. Jackson to figure out the best solution to address the storm water management problems that exist. He agrees with Mr. Vest that this proposal will actually help reduce the neighbor's stormwater problem. Tr. 152.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning ordinance establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. As mentioned in footnote 1 on page 2 of this report, this case involves a special exception application that was filed prior to the effective date of the new Zoning Ordinance (October 30, 2014). Therefore, it will be governed by the terms of the old Zoning Ordinance in effect on October 29, 2014, pursuant to the “grandfathering” provisions of §59-7.7.1.B. in the new Zoning Ordinance.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Zoning Ordinance §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the

site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a domiciliary care home (*i.e.*, an assisted living facility). Characteristics of the proposed domiciliary care home that are consistent with the “necessarily associated” characteristics of domiciliary care homes will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with domiciliary care homes, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff described the physical and operational characteristics necessarily associated with a domiciliary care home as follows (Exhibit 31, p. 13):

- (1) buildings and structures, as well as outdoor passive areas for the residents and visitors;
- (2) lighting;
- (3) traffic to and from the site by staff, visitors and residents;
- (4) deliveries of supplies and trash pick-up;
- (5) parking areas; [and]
- (6) noise associated with garbage pick-up and normal deliveries to individual residents.

To this description, the Hearing Examiner would add that one would expect a domiciliary care home to produce some noise generated by equipment for the facility and by occasional outdoor activities of residents and their families. The Hearing Examiner believes that these factors are inherent in all domiciliary care homes, by their nature, although their impact will vary significantly according to the nature of the domiciliary care home, its size, its location and its operational characteristics.

In the subject case, because the residents will be elderly and unlikely to drive, a relatively small amount of additional traffic will be generated, mostly by staff and visitors. Technical Staff analyzed the inherent and non-inherent impacts of the proposed facility as follows (Exhibit 31, p. 13):

In reviewing the application, staff finds that the inherent characteristics of size, scale and scope associated with the proposed application are minimal and not likely to result in any unacceptable noise, traffic, or environmental impacts at the proposed location. Staff finds that the physical and operational characteristics of the proposed use are no different than what is normally associated with housing for the elderly facilities. The Property is located along New Hampshire Avenue with good access to major transportation routes as well as adequate accessibility to public transportation, medical services, shopping areas, recreational and other community services. Adequate parking will be available to visitors and employees of the residence. The Property will be extensively landscaped with screening from the surrounding uses. Trash removal will occur 1-2 times per week during business hours between 7:00 a.m. and 7:00 p.m. and food deliveries will take place in the afternoon. The impacts of this special exception are inherent to a Domiciliary Care Home use (building, parking, lighting, deliveries, visitors, etc.). Additionally, the residence is designed to be compatible with the surrounding area and a good transitional use between New Hampshire Avenue and the single-family houses to the north and west, with minimal impacts to all surrounding uses.

Given the submitted plans, and the Applicant's statement of operations and other submitted documentation, Staff does not find any non-inherent adverse effects associated with the application.

The Hearing Examiner recognizes that the size and mass of a particular domiciliary care home could be so excessive, or its setbacks so inadequate, given the nature of the site, as to be considered non-inherent characteristics, but that is not the case here. As discussed in Part II.B. of this report, the proposed domiciliary care home will have substantial setbacks and will be mostly screened by surrounding forest and landscaping.

Technical Staff found no non-inherent adverse effects associated with the proposed use. The Hearing Examiner mostly agrees with Technical Staff; however, he finds that access issues relating to New Hampshire Avenue, as discussed in Part II. C. of this report, are non-inherent characteristics brought about by the site's location. On the other hand, the Hearing Examiner also finds, based on the

evidence from Technical Staff and the Petitioner's transportation planner, that these concerns will not create a safety hazard and can be addressed at subdivision. Conditions are recommended in Part V of this report that would require Petitioner to pursue any necessary steps required by the Planning Board at subdivision.

Accordingly, the Hearing Examiner finds no non-inherent characteristics of the proposed domiciliary care home warranting denial of the petition, and agrees with Technical Staff's conclusion that the proposed use is compatible with adjacent development.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the testimony and exhibits of the Petitioner provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: A domiciliary care home is a permissible special exception in the R-200 Zone, pursuant to Code §59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.37 for a domiciliary care home, as outlined in Part IV. C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject site lies within the area analyzed by the 1997 White Oak Master Plan, which was discussed at length in Part II. D. of this report. For the reasons set forth in that section, the Hearing Examiner finds that the proposed use is consistent with the Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Technical Staff addressed the issue of “harmony with the general character of the neighborhood” as follows (Exhibit 31, p. 14):

The proposed facility will be in harmony with the general character of the surrounding neighborhood considering population density, design, scale and bulk of the proposed new structure. Traffic impacts will be minimal. There are no similar uses in the immediate area. Adequate parking will be provided for residents and visitors.

For these reasons and those set forth in Part II of this report, the Hearing Examiner finds that the proposed use will be in harmony with the general character of the neighborhood.

The building will have sizable setbacks and abundant screening. The facility is designed

to have a residential appearance and architectural features which will avoid a monolithic visage. Traffic production will be minimal, and parking will be set back in accordance with the Code and well screened.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: As discussed in Part II. of this report and in response to General Standard 4, above, the evidence supports the conclusion that this project will be compatible with its neighbors, and there is no competent evidence that it will reduce the economic value of surrounding properties. In fact, the evidence is that it will improve stormwater drainage in the area while providing a valuable service for the neighborhood. The Hearing Examiner agrees with Technical Staff's analysis on this point (Exhibit 31, p. 15):

The proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood. The proposed facility is designed in a manner that is compatible with the one-family residential neighborhood. Staff finds that the physical and operational characteristics of the proposed use are no different than what is normally associated with housing for the elderly facilities. Outdoor activities by residents will be limited. The grounds will be well landscaped; parking areas will be screened from neighboring properties by the use of evergreen vegetation along the perimeter and the use of foundation plantings to soften the building/ground connection.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff addressed these issues as follows (Exhibit 31, p. 15):

The proposed use will not cause any objectionable adverse effects. All exterior lighting will be installed and maintained in a manner not to cause glare or reflection into abutting properties. There will be limited outdoor

activity and there will be no use of the property that will generate noise in an obtrusive manner.

The Hearing Examiner has recommended conditions in Part V of this report that require the Petitioner to follow all applicable noise regulations and garbage dumpster pick-ups restrictions specified in the solid waste regulations. Based on the nature of the proposed use, the Hearing Examiner finds that the special exception would cause no objectionable vibrations, fumes, odors, dust, or physical activity at the subject site. Petitioner's lighting plan and photometric study (Exhibits 40(a) and (b)), discussed in Part II. B. of this report, satisfy the Hearing Examiner that the illumination and glare will be kept within prescribed limits, in accordance with Zoning Ordinance §59-G-1.23(h).

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff reported that there are no similar uses in the immediate area (Exhibit 31, p. 14). The Hearing Examiner therefore agrees with Staff's conclusion that "The proposed use will not increase the number, intensity, or scope of special exception uses sufficiently to adversely affect or alter the predominantly residential nature of the area." Exhibit 31, p. 15). Moreover, the proposed special exception is consistent with the recommendations of the applicable Master Plan and thus, by definition, will not change the nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. On the contrary, it will provide a residential facility for the elderly that is needed in the area.

- (9) *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.*

Conclusion: The special exception sought in this case would require approval of a preliminary plan of subdivision. Exhibit 31, p. 15. Therefore, the adequacy of public facilities will be determined by the Planning Board at subdivision, and approval of the preliminary plan of subdivision is a recommended condition in Part V of this report, as required by this section of the Zoning Ordinance. Nevertheless, the evidence, which is discussed in Part II. C. of this report, supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) *does not require approval of a new preliminary plan of subdivision; and*
 - (ii) *the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Conclusion: As discussed above, the adequacy of public facilities will be determined by the Planning Board at the time of subdivision review.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff addressed the safety issue with the following statement (Exhibit 36(a):

Staff believes that traffic generated by this project, as well as S-2882 (if approved) will exacerbate the problems drivers experience trying to find acceptable gaps in traffic at the intersection of Orchard Way/Cambodian Temple Driveway with New Hampshire Avenue in order to make left and U turns. However, this is more of an operational issue rather than a safety issue. The existing left-turn lane storage lengths at median breaks along New Hampshire Avenue are long enough to accommodate existing and site-generated left- and U-turning vehicles waiting for a gap in traffic, so staff does not see this as a safety issue. Staff has had conversations regarding safety and operational issues along New Hampshire Avenue with the State Highway Administration (SHA) staff, who confirmed that there are no known safety or operational issues regarding the left-turn bays on this stretch of New Hampshire Avenue. Therefore, consideration of a traffic signal or other measures to reduce U-turn and left-turn delays should be revisited in greater detail at Preliminary Plan or Site Plan.

As previously discussed, Petitioner's transportation planner, Mr. Etemadi, addressed this issue during the hearing as well. His conclusion is that this proposed setup, including the necessity for U-turns, is a safe arrangement. Tr. 117-122. Based on this unrefuted testimony and the evidence from Technical Staff, the Hearing Examiner finds that the proposed development will not reduce traffic safety for the community.

C. Specific Standards

The testimony and the exhibits of record (including the Technical Staff Report, Exhibit 31) provide sufficient evidence that the specific standards required by Section 59-G-2.37 are satisfied in this case, as described below.

Sec. 59-G-2.37. Nursing home or domiciliary care home.

(a) A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see “Domiciliary care home”) may be allowed if the board can find as prerequisites that:

(1) the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents;

Conclusion: This specific standard is essentially a summary of the general standards 4, 5 and 6, above.

For the reasons discussed therein, the Hearing Examiner finds that the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents.

(2) the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood; and

Conclusion: As pointed out by Technical Staff (Exhibit 31, p. 19),

The proposed domiciliary care home is designed to be architecturally compatible with other residential uses in both style and appearance. . . . The project is further designed to blend with the natural environment as much as possible.

Staff’s analysis is supported by the testimony of Petitioner’s expert on the design of similar facilities, Greg Elmore (Tr. 66-76, 106-110), as discussed at page 9 of this report.

There is no contrary evidence in the record, and the Hearing Examiner finds that the use will be housed in a building architecturally compatible with other buildings in the surrounding neighborhood.

(3) the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.

Conclusion: As discussed in Part II. E. 3. of this report, the subject site will be exposed to traffic noise from both trucks and passenger cars travelling on MD 650 (New Hampshire Avenue).

Exhibit 31, p. 12. Technical Staff therefore concluded that a noise analysis is necessary to determine the projected interior noise levels requiring mitigation for residential units.

Staff recommended the following condition, which the Hearing Examiner has adopted:

Prior to issuance of Use and Occupancy Certificates for affected units, the Applicant must provide the following to Staff: Certification from the builder that noise-impacted lots are constructed in accordance with recommendations of an engineer who specializes in acoustical treatment.

Given that one of the conditions recommended in Part V of this report provides that “approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board,” the protections against excessive noise proposed by Technical Staff should adequately protect the residents in this regard.

(4) *The Board of Appeals may approve separate living quarters, including a dwelling unit, for a resident staff member within a nursing home or domiciliary care home.*

Conclusion: Not applicable. Petitioner is not proposing separate living quarters for staff, and no staff members will be residents of the facility. Exhibit 31, p. 19.

(b) *The following requirements must apply to a nursing home housing 5 patients or less:*

* * *

Conclusion: Not applicable. The proposed facility will house more than 5 patients.

(c) *The following requirements apply to all new nursing homes, additions to existing nursing homes where the total number of residents is 6 or more, and to all domiciliary care homes for more than 16 residents.*

(1) *The minimum lot area in the rural zone must be 5 acres or 2,000 square feet per bed, whichever is greater.*

Conclusion: Not applicable. Subsection (1) applies only to rural zones. The site is in the R-200 Zone.

(2) *In all other zones, the minimum lot area must be 2 acres or the following, whichever is greater:*

- a. *In the RE-2, RE-2C, RE-1 and R-200 zones, 1,200 square feet for each bed.*
- b. *In the R-150, R-90, R-60 and R-40 zones, 800 square feet for each bed.*
- c. *In the R-T, R-30, and R-20 zones, 600 square feet.*
- d. *In the R-10, R-H, C-O, C-T and C-2, 300 square feet for each bed.*
- e. *In the town sector and planned neighborhood zones, 800 square feet per bed.*

Conclusion: This site is classified in the R-200 Zone, and therefore subsection “a.” applies. Petitioner proposes a maximum of 136 beds. At 1200 square feet per bed, Petitioner must have a minimum lot of 163,200 square feet or 2 acres (87,120 square feet), whichever is greater. Since 163,200 square feet is obviously greater, that is the minimum lot size permitted. The subject site has a lot area of approximately 260,376 square feet or 5.977 acres ((Exhibit 54(a)), which is well above this minimum standard.

(3) *Minimum side yards are those specified in the zone, but in no case less than 20 feet.*

Conclusion: The minimum side yard setback for a main building in the R-200 Zone is 12 feet, so the 20-foot minimum in this section controls. The proposed facility will be set back from the eastern (front) and western (rear) property lines 90 feet and 278 feet respectively, and from the northern and southern property lines, 30 feet, respectively (Exhibit 31, p. 17). All those setbacks far exceed the minimum requirements.

(4) *Maximum coverage, minimum lot frontage, minimum green area, minimum front and rear yards and maximum height, are as specified in the applicable zone.*

Conclusion: According to Technical Staff, the proposed facility will meet all applicable standards for the R-200 Zone. Exhibit 31, p. 16. This fact is displayed on page 53 of this report, in a Table from page 17 of the Technical Staff report.

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

Conclusion: Since there will be a maximum of 136 beds and 24 employees on site during the largest shift, the number of required parking spaces is 46 (136 beds / 4 = 34 spaces, and 24 employees / 2 = 12 spaces; 34 + 12 adds up to 46 required spaces). Petitioner is proposing 71 parking spaces, five of which will be ADA accessible. Exhibit 31, p. 17. Staff also notes that the site plan must provide for a bike rack to accommodate 4 bicycles (Exhibit 31, p. 10), and Petitioner has amended its plans to do so.

(e) An application must be accompanied by a site plan, drawn to scale, showing the location of the building or buildings, parking areas, landscaping, screening, access roads, height of buildings, topography, and the location of sewers, water lines, and other utility lines. The site plan must also show property lines, streets, and existing buildings within 100 feet of the property, and indicate the proposed routes of ingress and egress for automobiles and service vehicles. A vicinity map showing major thoroughfares and current zone boundaries within one mile of the proposed home, must be included.

Conclusion: Petitioner has provided a Site Plan meeting these requirements, the final version of which is Exhibit 54(a).

(f) An application for a special exception for this use must include an expansion plan showing the location and form of any expansions expected to be made in the future on the same site.

Conclusion: Not applicable. Petitioner is not proposing any expansions in the future. Exhibit 31, p. 20.

(g) Any nursing home, or domiciliary care home for more than 16 residents lawfully established prior to November 22, 1977, is not a nonconforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.

Conclusion: Not applicable.

(h) Any application for nursing home and/or care home which is pending at the Board of Appeals as of February 24, 1997 at the request of the applicant, may be processed under the applicable provisions of the Zoning Ordinance in effect at the time the application was filed.

Conclusion: Not applicable.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following Table from the Staff report (Exhibit 31, p. 17) demonstrates compliance with all applicable development standards.

Development Standards Table

	<u>Required</u>	<u>Proposed</u>
Minimum Lot Area	20,000 sq. ft.	5.97 acres
Minimum Lot Width		
--at front building line	75 ft.	303 ft.
--at street line	25 ft.	366 ft.
Minimum Setback from Street	40 ft.	90 ft.
Minimum Setback from Adjoining Lot		
--side lot lines	12 ft.	30 ft.
--sum of both sides	25 ft.	103 ft.
--rear lot line	30 ft.	278 ft.
Maximum building height	50 ft.	3 stories at 41 ft. (max.)
Maximum Building Coverage	25%	18%

(b) *Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As discussed above, the applicable parking standards for the number of parking spaces have been exceeded. Petitioner civil engineer, William Vest, testified that the project fully complies with the requirements for setbacks, shading and landscaping of parking facilities provided for in Article 59-E. Tr. 142-144. Technical Staff does not directly address requirements for setbacks, shading and landscaping of parking facilities, but does state (Exhibit 31, p. 15): “The grounds will be well landscaped; parking areas will be screened from neighboring properties by the use of evergreen vegetation along the

perimeter and the use of foundation plantings to soften the building/ground connection.”

The Hearing Examiner takes that to mean that Staff finds the shading and setbacks in the parking facility to be adequate.

(c) *Minimum frontage* * * *

Conclusion: Not applicable, since none of the listed uses are involved and no waiver is being sought.

(d) *Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: The proposed special exception must comply with the preliminary forest conservation plan (Exhibit 7(c)), approved by the Planning Board. Since this case must go through subdivision, the Planning Board will review the final forest conservation plan at that time.

The following condition has been recommended in Part V of this report:

The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan (Exhibit 7(c)), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

(e) *Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Since the subject site is not in an SPA, this provision is

inapplicable to this case; however, as previously mentioned, a stormwater management concept plan has been approved by DPS. Exhibit 31, Attachment 3.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: Petitioner proposes a monument sign measuring approximately 45 square feet to be located near the entrance at the northeast corner of the property. The particulars of the proposed sign are shown on Exhibit 46 and have been reproduced in Part II.B.4. of this report. The size of the sign obviously exceeds the two square feet ordinarily allowed in a residential area pursuant to Zoning Ordinance §59-F-4.2(a)(1); however, since it will be at the entrance to a new subdivision, the Hearing Examiner notes that the more relaxed provisions of Zoning Ordinance §59-F-4.2(a)(3) may apply. That provision allows a sign area of up to 40 square feet. Technical Staff opined that the sign will require a sign variance (Exhibit 31, p. 17). Whether or not a sign variance is required in order for Petitioner to obtain a sign permit from the Department of Permitting Services, the Board of Appeals must first decide whether the proposed sign would be of an appropriate size to give timely notice to drivers looking for the facility and whether it would be compatible with the area. The only evidence on these points indicates that it would satisfy both criteria.

The Hearing Examiner recommends the following condition in Part V of this report:

A sign permit must be obtained for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: Technical Staff found the proposed building to be compatible (Exhibit 31, p. 18):

The proposed use is in a residential zone. The proposed 3-story building has been designed to be residential in appearance. The proposed building's scale, bulk and height is compatible with the character of the neighborhood. The use of lower roof areas helps break the mass of the building and provides a pedestrian scale as one travels around the building.

Based on the evidence, the Hearing Examiner also concludes that the residential character of the subject site will be maintained, given the architectural design of the planned structure, and its setting, setbacks and landscaping. It will thus be compatible with the neighborhood.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

- (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: As discussed elsewhere in this report, the lighting will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard the side and rear property lines, as discussed in Part II. B. 3 of this report.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must

have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the planned structure will have a residential appearance and will be appropriately landscaped and screened. It will also have suitable pedestrian circulation.

Based on the record in this case, the Hearing Examiner concludes that Petitioner has satisfied the general and specific requirements for the special exception it seeks. In sum, the domiciliary care home use proposed by Petitioner should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2881, seeking a special exception to permit establishment and use of a domiciliary care home on Parcel P305, located at 13908 New Hampshire Avenue, Silver Spring, Maryland, be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in this report.
2. The maximum allowable number of beds must not exceed one-hundred thirty-six (136).
3. Hours of operation are 24 hours per day, 7 days per week, 365 days a year, and the maximum number of employees on-site at any one time must not exceed twenty-four (24), except in emergencies.
4. The Petitioner must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9)(A), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in

this case are required at subdivision, Petitioner must comply with those changes and file a copy of the revised site and related plans with the Board of Appeals.

5. The Petitioner must comply with the recommendations of the Intercounty Connector Limited Functional Master Plan Amendment by reconstructing the existing sidewalk along the New Hampshire Avenue frontage to be a 10-foot wide shared-use path with a green panel and street trees, unless the Planning Board approves an alternative sidewalk configuration at subdivision review.

6. The Petitioner must provide 4 bicycle parking spaces (*i.e.*, 2 inverted-U bike racks or the equivalent approved by Staff that conforms to American Pedestrian and Bicycle Professionals Guidelines). The Petitioner must install the bike racks in a weather protected area ideally in front of the main entrance.

7. The Petitioner must submit a traffic statement at Preliminary Plan review to satisfy Local Area Transportation Review (LATR) and any payments required by Transportation Policy Area Review (TPAR).

8. Prior to issuance of Use and Occupancy Certificates for affected units, the Petitioner must provide certification from the builder that noise-impacted lots are constructed in accordance with recommendations of an engineer who specializes in acoustical treatment.

9. Petitioner must ensure that noise from its generators, air-conditioning and other equipment does not exceed County standards. Petitioner must comply with all applicable sections of the County Noise Ordinance (Chapter 31B of the County Code).

10. Garbage dumpster pick-ups must comply with time of day restrictions specified in Chapter 48-solid waste regulations - which specify that no pick-ups may occur between 9:00 PM and 8:00 AM on any weekday, or between 9:00 PM and 9:00 AM on Sundays and federal holidays.

11. A sign permit must be obtained for the proposed entrance sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the

Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

12. The Petitioner must possess, not later than the issuance date of the use and occupancy certificate, valid State of Maryland and County licenses, certificates, and/or registrations that may be required for a domiciliary care home which provides assisted living to the elderly.

13. The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan (Exhibit 7(c)), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

14. Petitioner must maintain 71 parking spaces called for in its Special Exception Site Plan (Exhibit 43), and may not expand or reduce the parking facility without express permission from the Board through modification of this special exception.

15. Petitioner 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 special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception 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.

Dated: August 28, 2015

Respectfully submitted,



Martin L. Grossman
Hearing Examiner