

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF:
FRIENDS HOUSE INC.**

Petitioners

Kevin Harrington
John Sekerak, Jr.
Joyce Lenhardt
Kathy Ebner
David Stembel
Cherian Eapen
Fernando Benitez
Devin Kennedy

For the Petitioner

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Scott Whipple
Staff to the Montgomery County Historic
Preservation Commission
Montgomery County Planning Dept.

Neither in Support or Opposition

Thomas Schneider

Opposing the Petition

Before: Lynn A. Robeson, Hearing Examiner

Board of Appeals No. S-856-B/
S-452-D

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Filed on January 16, 2016, the Petitioner, Friends House, Inc., seeks to modify two previously approved special exceptions. Beginning in 1965, the Board of Appeals approved a church-sponsored care home for the elderly on the property. Exhibit 60, p. 3; Board of Appeals (BOA) Case CBA-1885. In 1969, the Friends House constructed a 40-bed nursing home. *Id.*; BOA Case No. S-2673.¹ Both have been modified many times over the years until the current comprehensive amendment for the entire campus, which is anticipated to be completed in four phases.² At present, Friends House provides a full spectrum residential care for seniors and persons with disabilities, including independent senior living, assisted living, and skilled nursing care. As explained in Part II.D.1 of this Report, the modification calls for demolition of some units, modification and expansion of others, and construction of new buildings. At the end of development under the modification, the Friends House campus will have a total of 446 residential units on the site, consisting of 316 independent living units, 82 skilled nursing units, and 48 assisted living units. *Id.* at 4.

On February 4, 2016, the Board of Appeals issued notice of a public hearing set for May 9, 2016. Exhibit 14. Shortly thereafter, the Board of Appeals consolidated both applications (i.e., S-856-B (for senior housing) and S-452-D for the nursing home) for hearing. Exhibit 15. On February 19, 2016, Friends House requested a continuance of the public hearing to address issues raised by Planning Staff. Exhibit 16. The Office of Zoning and Administrative Hearings (OZAH), on April 11, 2016, requested Friends House to provide a list of any amendments as well as a date

¹ The Board of Appeals approved BOA Case No. S-856-A, apparently the first iteration of S-856-B, in 1997. It permitted Friends House to construct an assisted living facility, addition to the nursing home, and rooms for dementia patients. The Board first granted S-452 in 1979, which approved an apartment building for seniors.

² The Staff Report contains a full list of all past amendments to the plan. Exhibit 60, p. 3. As this Report focuses only on the comprehensive modification, the Hearing Examiner does not repeat the list here.

to reschedule the public hearing. Exhibit 17. On April 26, 2016, Friends House requested an indefinite postponement of the public hearing. Exhibit 18.

In June of 2016, Friends House filed a Motion to Amend its application, and during the next few months, filed several revisions. Exhibits 20, 23, 24, 26. In July, Friends House requested a new hearing date of November 21, 2016. Exhibit 30. On August 9, 2016, Friends House filed another Motion to Amend the application to revise its lighting plan. On October 12, 2016, Staff of the Planning Department indicated that it would not be able to complete its review in time for the public hearing, as Staff had not received additional information needed to complete its review. Exhibit 34.5(j). On November 14, 2016, OZAH issued a notice rescheduling the hearing to December 19, 2016.

Staff issued its report recommending approval of the modification on November 23, 2016, subject to the following 10 conditions (Exhibit 60, p. 2):³

1. The Special Exception uses must be limited to a total of 316 independent living units, and a total of 130 assisted-living units/nursing beds, and the existing adult day care program.
2. The Special Exception Modification Site Plan must show the rights-of-way from the centerlines of Norwood Road along the property southern and northwestern frontages of the subject property.
3. Prior to the issuance of the initial building permits, the Petitioner must coordinate with the Montgomery County Department of Transportation (MCDOT) to provide the necessary additional traffic control markings and signs to assure safe crossing of Norwood Road to access the Metrobus stops (for the Z2 route) on the opposite side of the road along Norwood Road.
4. The Petitioner must provide internal sidewalk connections and crossings of driveways/curb cuts that are ADA compliant.

³ At the time Staff issued its report, ZTA 16-14 was pending before the County Council. The ZTA was intended to clarify whether the 2004 or the 2014 Zoning Ordinance applied to this modification. In order to avoid additional delay in the case, the Hearing Examiner requested that Staff and the Petitioner provide an analysis of modification under both Zoning Ordinances. Both did so, and Staff did a supplemental report, for which the Hearing Examiner is grateful. Exhibits 34.5(h), 60. Ultimately, the Council adopted ZTA 16-14 on January 24, 2017 (the day after the public hearing in this case), clarifying that the 2004 Zoning Ordinance applied to this modification. All citations are to the 2004 Zoning Ordinance unless otherwise specifically indicated.

5. At the time of building permit, the Petitioner must demonstrate compliance with Section 4.1.2(5)(d)(ii) of the Maryland Accessibility Code.
6. The Petitioner must submit, at the time of the Hearing Examiner public hearing on these applications, written proof that the age restrictions applied to the subject development qualify for at least one type of exemption from familial status requirements of the Federal Fair Housing Act.
7. A note indicating that a minimum of 20 percent of the dwelling units must be permanently reserved for households of low income (at or below 60 percent of area median income) must be included on the Special Exception Site Plan.
8. Prior to the approval of the Special Exception Application, the Petitioner must record covenants on the property that permanently reserve a minimum of 20 percent of the dwelling units for households of low income (at or below 60 percent of area median income).
9. No future applications for modification of the Approved Special Exception shall be filled [sic] separately for S-452-D or S-856-B. Any proposed modification on the property must amend both cases as approved in the subject Major Modification of the Approved Special Exception Site Plan.
10. Prior to the closing of the record by the Hearing Examiner, the Landscape Plan must be revised to provide a dense evergreen screen composed of American Holly (*Ilex opaca*) placed adjacent to the historic property at the curve in the access road to facilitate the screening of automobile headlights shining onto the historic property from the access road.

The Petitioner filed additional amendments to the application on December 1, 2016, and OZAH issued a Notice of Motion to Amend on December 6, 2016. The Planning Board held its public meeting on December 8, 2016. The Planning Board generally approved of the special exception, but felt strongly that Friends House should provide a pedestrian pathway between development located in the northeast corner of the site (in Phase IV) and the main campus. It stated (Exhibit 61):

The issue of access and connectivity between the main campus and the proposed three, lodge-apartments in the northwestern corner of the property, was the subject of considerable discussion during the Planning Board hearing. The proposed Special Exception Modification Plan shows that the three, lodge-apartments are separated by a forest conservation area and stream buffer with no direct, vehicular or pedestrian connection. Consequently, the Board recommended to add the following condition:

Condition #11

The Applicant must construct a natural surface pathway and stream crossing, subject to appropriate agency permits, to facilitate connectivity between the larger portion of the Campus and the proposed Phase IV development of three residential lodge-apartment buildings located in the northwestern corner of the property. The Forest Conservation Plan will determine the appropriate alignment of the trail and be revised to reflect the addition of the natural surface pathway, and the land area that will be removed from the proposed Category I Forest Conservation easement area.

As a result, the Board did not approve the FFCP because it did not show the desired pedestrian connection. To allow time to amend its FFCP, Friends House requested a postponement of OZAH's public hearing. Because there was insufficient time under OZAH's Rules to mail written notice of the postponement, the Hearing Examiner convened the public hearing on December 19, 2016, solely to postpone the case to January 23, 2017. 12/19/16 T. 5. Mr. Thomas Schneider, owner of an adjacent property, appeared at the December 19th hearing and had no objection to the postponement. 12/19/16 T. 4. The Planning Board approved the FFCP on January 19, 2017.

Friends House filed additional amendments to the special exception site plan and FFCP to show a pedestrian trail connecting development in the northeast corner to the main campus. Exhibit 64. OZAH issued a Notice of Motion to Amend on January 10, 2017. Exhibit 66.

The January 23, 2017, hearing proceeded as rescheduled. Friends House presented eight witnesses: Mr. Kevin Harrington, Executive Director of Friends House, John Sekerak, Jr., an expert in land planning and landscape architecture, Joyce Lenhardt, an expert in architecture, Ms. Kathy Ebner, President and CEO of Homes for America, David Stembel, an expert in architecture, Cherian Eapen, an expert in transportation planning and traffic engineering, Fernando Benitez, an expert in civil engineering, and Devin Kennedy, an expert in landscape architecture. Mr. Thomas

Schneider, the owner of an adjacent historic property, testified regarding the development's impact on his property. Their testimony is included here where relevant.

At the public hearing, the Hearing Examiner requested that Friends House add additional landscaping to screen the cottages in the southwestern portion of the site from the Norwood historic property. In addition, Staff requested that the pedestrian path be shown on the Applicant's landscape plan as well as the site plan. The Hearing Examiner left the record open until February 21, 2017, to receive the revised landscape plan showing the additional landscaping as well as comments from Staff. Staff submitted its comments on February 22, 2017, due to an unintended delay. Exhibit 84. With this Report, the Hearing Examiner issues an Order *Nunc Pro Tunc* re-opening the record on March 21, 2017, solely to receive Staff's comments and the Order. Exhibit 90. The record closed again on March 21, 2017.

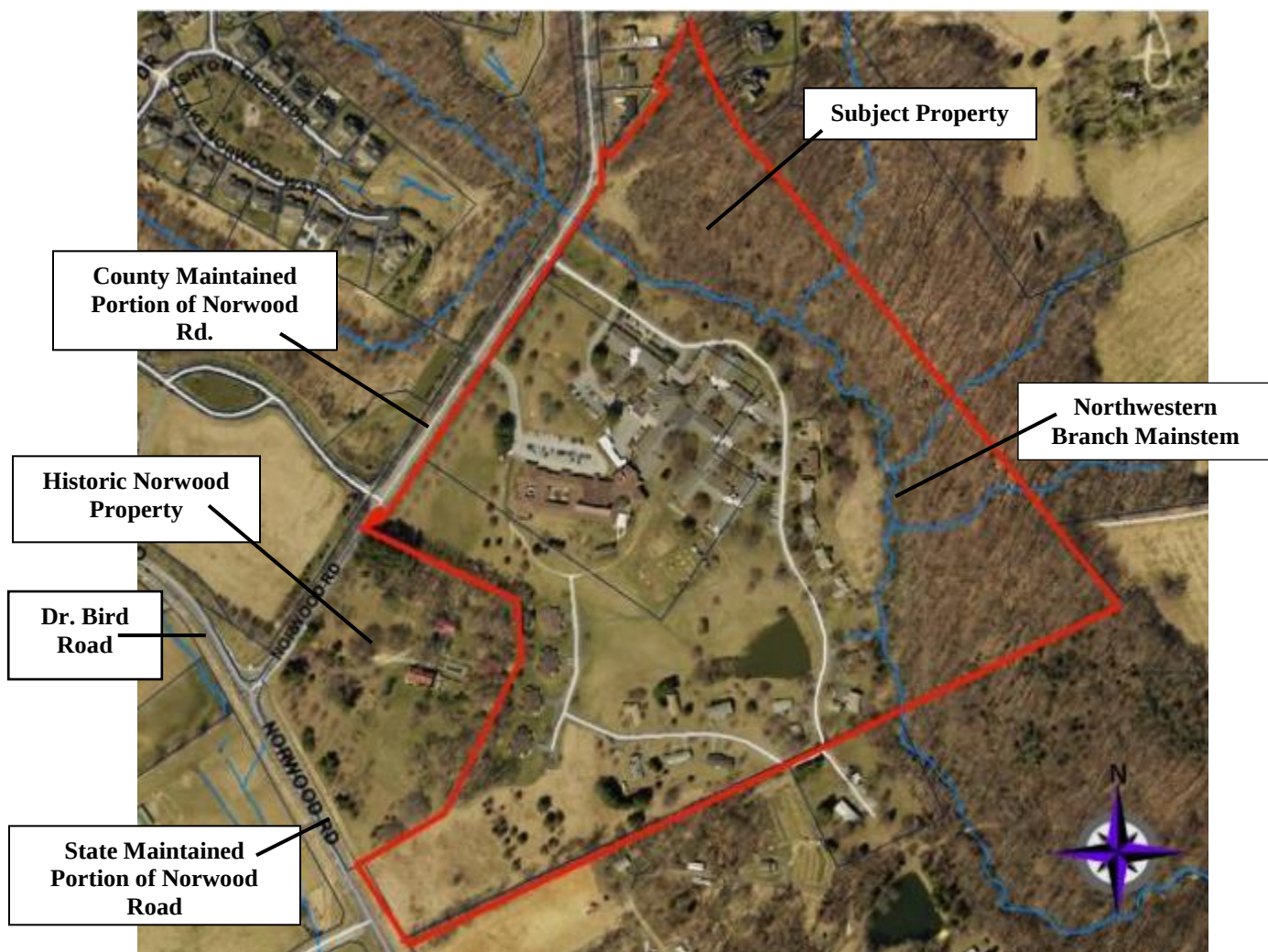
II. FACTUAL BACKGROUND

A. The Subject Property

Located at 17340 Quaker Drive in Sandy Spring, Maryland, the subject property is approximately 2,000 feet south of Olney-Sandy Spring Road, as shown in the vicinity map from the Staff Report (Exhibit 60, below):



The property lies within the RE-2 Zone and has interrupted frontage on Norwood Road. Norwood Road runs generally from the southeast to the northwest abutting the southwestern portion of the site. Just north of the site, Norwood Road doglegs to the northeast and the northwest/southeast roadway becomes Dr. Bird Road. The portion of Norwood Road abutting the southern portion of the subject property is maintained by the State. The portion abutting the northern property line is maintained by the County. The main entrance to the Friends House campus is located on the County-maintained leg of Norwood Road. An historic property, “Norwood,” interrupts the frontage along Norwood Road. An aerial photograph of the property, from the Technical Staff Report, is shown below (Exhibit 60, p. 5):



The property currently serves as the campus for the Friends House Retirement Community, originally established in 1965. The community includes independent living units, assisted living units, Alzheimer's care and a nursing home. The nursing home and living units were originally established by special exception in the 1960's and have been modified many times since.

The property has several environmental constraints, summarized in the Staff Report (Exhibit 60, p. 5):

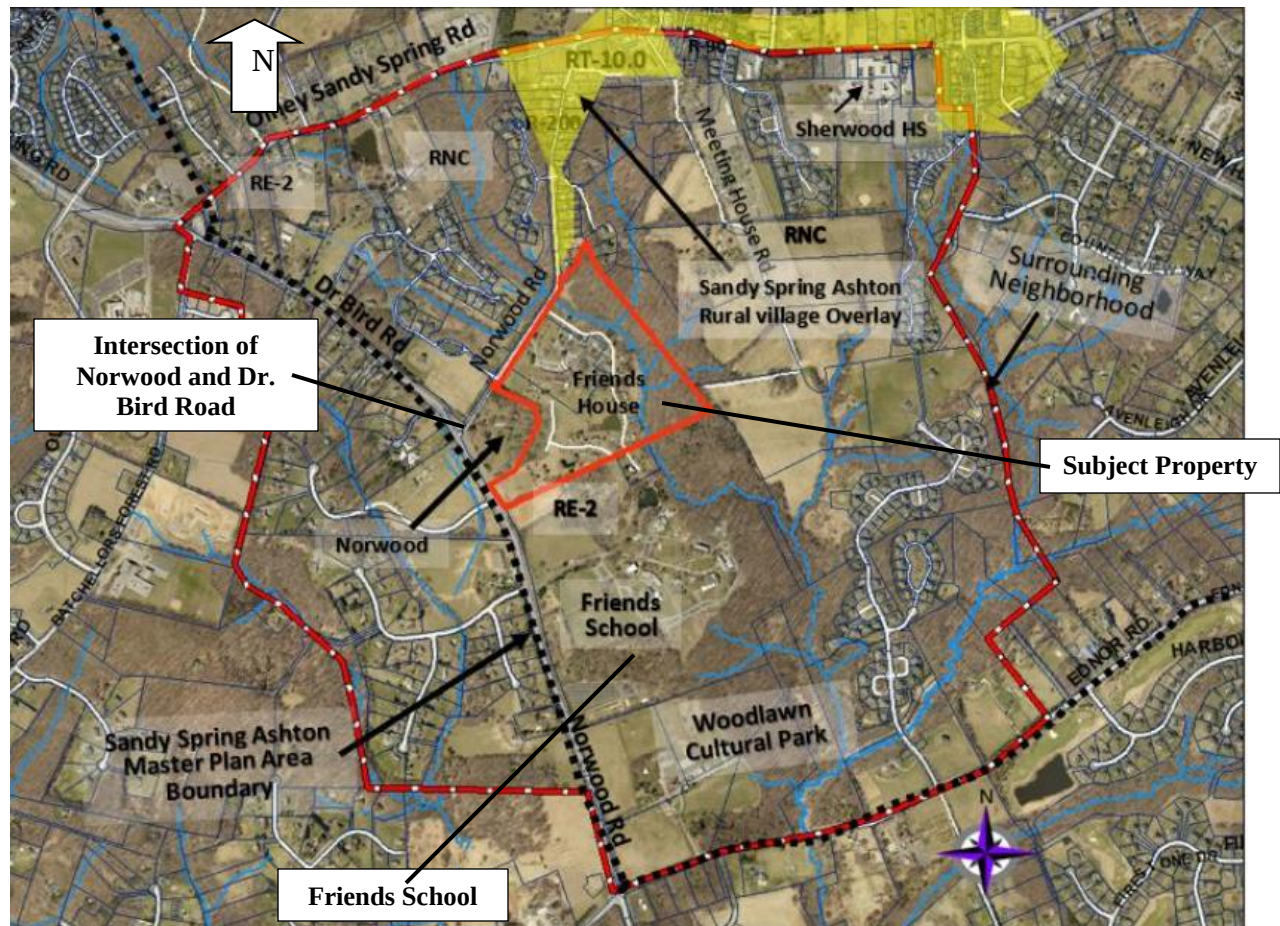
The Northwest Branch mainstem crosses the property from northwest to southeast. The north side of the stream is undeveloped and mostly forested. There are smaller tributary streams within the forest. A pond and tributary to Northwest Branch exist on the developed side of the stream. There is a 100-year floodplain associated with the Northwest Branch.

B. Surrounding Area

The surrounding area in a special exception case includes the area that will be most directly impacted by the proposed development. It is identified and characterized in order to assess whether the new development will be compatible with the properties that will be most impacted by the proposed development.

Staff defined the surrounding area as bounded by Olney-Sandy Spring Road to the north, the eastern boundary of the RNC zoned area to the east, Ednor Road to the south, and properties located on the west side of Dr. Bird Road and Norwood Road. An aerial photograph of the neighborhood as defined by Staff, is shown on the following page (Exhibit 60, p. 6).

The historic property adjacent to the subject property is home to "Norwood," a historic house built circa 1751 that is listed in the Master Plan for Historic Preservation (#28/13). Exhibit



60, p. 5. Immediately to the west of Norwood Road are a single-family dwelling on a large property, two unimproved large parcels and single-family homes in the RNC Zone. The Friends School abuts the subject property to the south. T. 180. Staff characterized the surrounding area as being (*Id.* at 6):

...developed with single family dwellings in a village type development with rural character in an area defined by a variety of environmental features including streams, steep and gentle slopes and park lands. The area for the most part is in the RE-2 and RNC zones. The exceptions being small areas at the northern edge of the defined neighborhood boundaries along Olney-Sandy Spring Road and within the Sandy Spring Village center that are zoned R-200, RT-10.0 and R-90.

Mr. Sekerak, the Petitioner's land planner, agreed with Staff's general characterization of the neighborhood. He disagreed slightly with the boundaries. He opined that he wouldn't have

taken the boundaries east of the greenway, but testified that the general character remained the same as described by Staff. T. 179-180.

Based on this evidence, the Hearing Examiner agrees with Mr. Sekerak that the neighborhood's eastern boundary should be properties on the west side of the greenway, but finds that Staff's characterization of the area is supported by the evidence in this case.

C. The Master Plan

The property lies within the geographic area covered by the *1998 Sandy Spring Ashton Master Plan* (Master Plan or Plan). The Plan's major objective is to maintain and preserve the aesthetic and rural character of Sandy Spring/Ashton. According to the Master Plan, the area's "rural character" is defined by the following elements: Rural Open Space, Rural Traditions, New Rural Neighborhoods, Rural Roads and Rural Villages. *Plan*, p. xii. The Plan implements its goal to preserve rural open space by identifying key properties where "75-80 percent of the land should remain open and rural in character." It designates other properties where 70-75 percent of the land should be preserved in open space, leaving the rest as cropland, pastures, meadows or woodland. *Plan*, p. 9. The Plan recommends preserving the settings of historic resources, particularly along the "Rural Legacy Trail," as another means of preserving the rural character of the area.

The Master Plan includes the subject property in an area designated as the "Rural Legacy Area." The major objective for the Area is to "accommodate new residential growth while maintaining a rural setting for the many historic and special features." *Id.* at 16. The Plan describes the rural setting it envisions as "one typical of Sandy Spring/Ashton—pasture, cropland, and meadow with associated wooded areas." *Id.* The Plan's recommendations specifically apply to the subject property (*Id.*):

- **Continue the rural setting of the Sandy Spring Friends School and Friends House Retirement Community.** Expansion of these institutions

should include at least 60% open space overall and the open space should be located so as to maintain the rural setting.

- **Continue the rural landscape around important historic buildings, farmsteads and cultural features (see Table 1).** The rural landscape is a major part of this community's origins and sense of identity. The proposed rural open space pattern should continue the setting around the Sandy Spring, the homesteads, and other features associated with the Meeting House Roads area.

Staff concluded that the petition conformed to the Master Plan because the special exception plan shows "open space equivalent to more than 75% of the property's area." Exhibit 60, p. 10. Mr. Sekerak opined that substantial setbacks and open views of the property from Norwood Road maintain the rural character of the area.

Mr. Tom Schneider, who owns the historic "Norwood" house, testified that portions of the development immediately south of his property would affect the existing historic character Norwood. His comments are summarized in Part II.E. of this Report.

The transportation chapter of the Master Plan also contains goals that affect the property. The primary objective is to, "[P]rovide a transportation network that balances regional transportation needs with the rural character envisioned for the study area." *Plan*, p. 47. It specifically mentions the State-maintained portion of Norwood Road that passes the subject property:

This Plan recommends that this stretch be retained as an open-section two-lane road in order to retain the rural character of the area, except where shoulders or other improvements are needed to ensure safe travel conditions...Design guidelines that apply to Norwood/Dr. Bird Road are discussed in the section on Roadway Character.

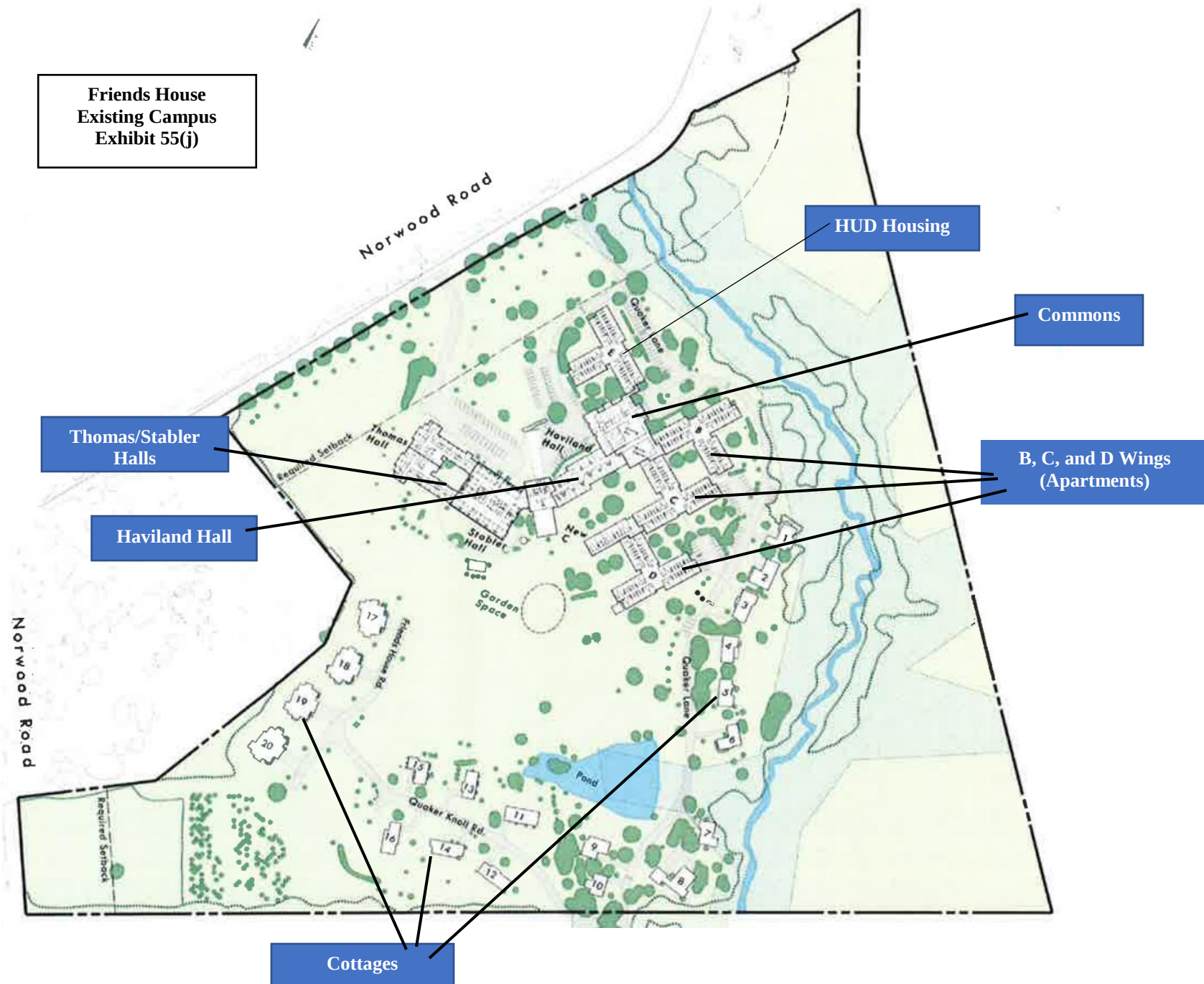
The Plan contains several Roadway Character and Design Guidelines. *Id.* at 52. Those pertinent to this case include (*Plan*, p. 52):

- Encourage design of intersection improvements that retain the rural character.

- Give special attention to the landscaping along the edges of the road and within the right-of way while ensuring adequate public safety and traffic operations.
- Protect existing hedgerows and forested areas along rural roads in general to maintain the rural character at the roadside.
- Create areas of woodland along roads to re-create rural character along portions of existing roadways and to provide an alternative to regularly placed street trees.

D. Proposed Use

Mr. Kevin Harrington, Executive Director of Friends House, testified that it brought in outside consultants to assess the physical plant and, from there, to assist with strategic planning for the future. T. 13-14. Currently, the property houses approximately 246 units, which include units for skilled nursing care, assisted living, and independent living. Exhibit 55(a), p. 2. Friends House has added new units in each decade since the 1960's. The oldest buildings are located at the north end of the property along Quaker Lane. Four apartment buildings, each with 24 units, were built in the late 1960s. Cottages that were built in the early 1970s are to the south along Quaker Lane. In the 1980's and 1990's, Friends House constructed cottages along Quaker Knoll and Friends House Road, respectively. In addition to living units, the community includes a "Commons" or building for resident services. The Commons contains a communal dining room, activity rooms, and other services. Existing buildings close to the Commons include Haviland Hall, built in the 1960's as a skilled nursing facility. It currently has 21 assisted living units. Stabler Hall was built in the 1970's and Thomas Hall was built in 2005. Currently, Friends House has 82 skilled nursing beds located in both halls. The campus includes sixty studio apartments and forty one-bedroom apartments in a building financed through the Department of Housing and Community Development (HUD). The HUD building is at the end of its useful life, prompting this proposal for a new low-income multi-unit building. T. 95. An overview of the current campus (Exhibit 55) is shown on the following page.



1. Phasing

Development of the modified Campus Plan will occur in four phases, as set forth below. An architectural rendering of central portion of the development is shown on the next page. Staff provided a tabular summary of the all of the phases in its Staff Report (Exhibit 60, p. 4):

Table-2 Proposed Phases of Development/Modifications

	Existing Units to Remain	Phase 1	Phase 2	Phase 3	Phase 4	Total
New Independent living		80		30	16	126
Lodge Apt Units		33			125	158
Duplex Cottage Dwelling Units	8	24				32
Assisted Living			48			48
Skilled Nursing beds	82					82
Total	90	137	48	30	141	446

Table-2.1 Proposed Phases of Development/modifications

Phase I	Phase II	Phase III	Phase IV
- Removal of 25 HUD units to allow for construction for the new low income housing tax credit (LIHTS) building - Construction of multi-family building 72 new LIHTS units and 8 market rate units (New Independent living) - Construction of 3 lodge apartments (33 d.u.) - Construction of 12 cottages with 24 units.	Addition of 48 units to the Assisted Living and memory care facility	- Expand Commons Building with 6 additional independent unit apartments (Haviland Hall) - Construction of new 24-unit independent living apartment building (C/D wing).	Construction of the remaining 11 Lodge Apartments (with total of 125 units including 16 new independent living apartment units (all market rate) in a new B-wing.
New Staff: 3 full time and 2 full time equivalent (5 to 6 part time employees) Total = 8 employees	New Staff: 20 Full time additional staff Total=20 staff	New Staff: 4 full time, 1.5 full time equivalent (4 par-time) Total = 8 employees	New Staff: 21 Full time additional staff Total=21 staff

a. Phase I

Phase I will remove 25 units of existing HUD housing. These will be replaced by an 80-unit apartment building developed with Low-Income Housing Tax Credits (LIHTC). Exhibit

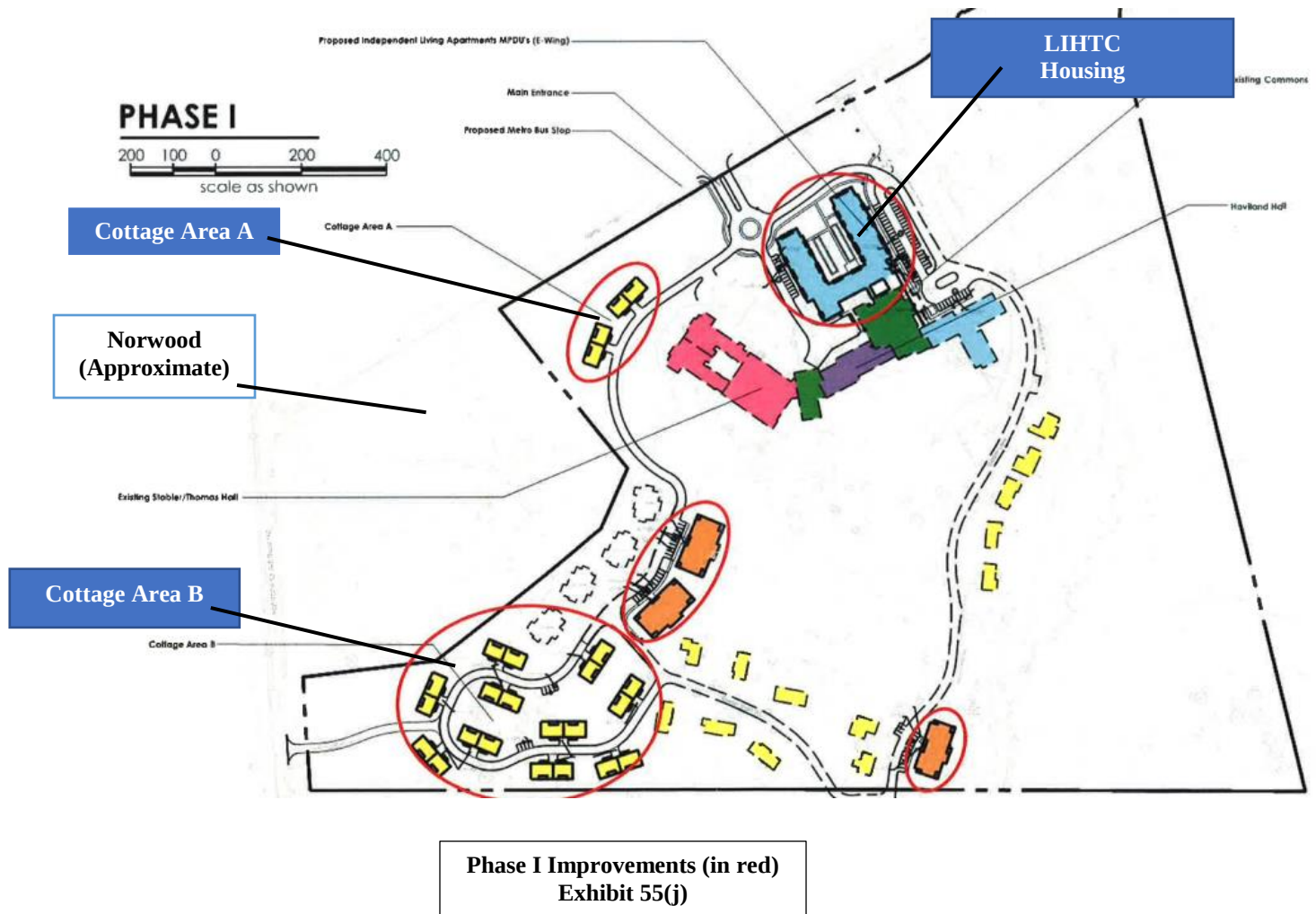


**Site View of Main Campus at Full
Build-Out
Exhibit 5(o)**

55(a), p. 5; Exhibit 60, p. 7. Friends House has contracted with Homes for America, an organization that specializes in developing low-income housing funded by tax credit investors. 1/23/17 T. 126. Ms. Kathy Ebner, Chief Executive Officer of Homes for America, testified that her organization will be responsible for the entire development of the building, including financing, architecture and engineering, and construction. Upon completion, Homes for America will hire a property management company to run the building and provide oversight of resident services and programs. T. 126-127.

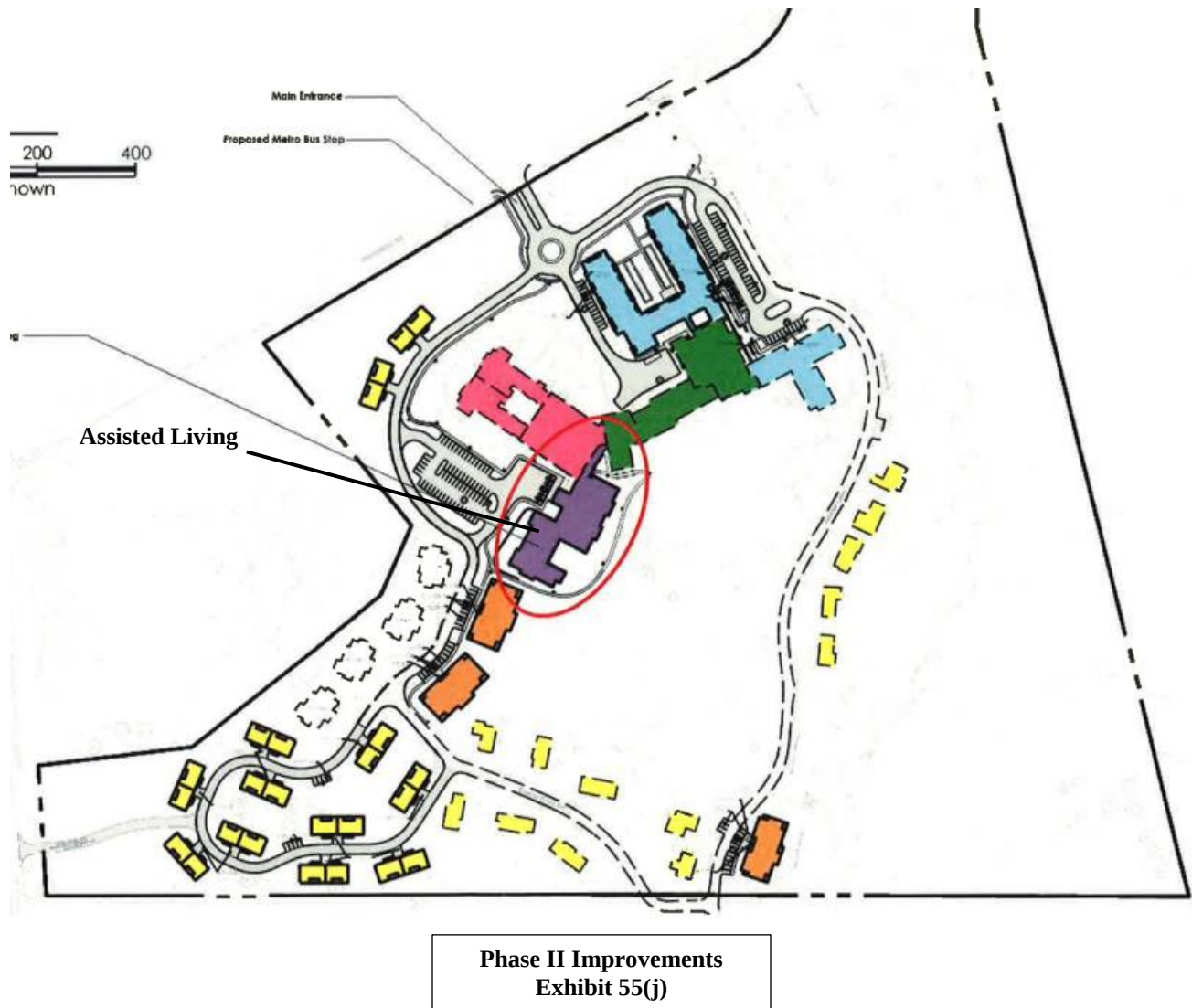
Ms. Ebner testified that, to qualify for the tax credit program, income restrictions are placed on residents. The income levels required for the tax credits exceed the affordable housing requirements of the County Code. She anticipates that between 72 and 80 of the units will be affordable. The tax credit program requires that at least 40% of the units be rented at 60% of the Average Median Income. T. 128.

In addition to replacement of the existing HUD units, Phase I will include construction of three “Lodge” apartment complexes, with a total of 33 units, and six new duplex cottages, with a total of 24 units. These will be in the northwest and southwest corners of the site, adjacent to the historic Norwood property. Mr. Harrington testified that Friends House could not reduce the number of new market-rate duplexes or cottages (as suggested by Norwood’s owner) because they provide the income stream necessary to finance the new development. T. 95-96. A diagram showing the new construction planned for Phase I (new construction outlined in red) is shown on the following page (Exhibit 80, 55(j)).



b. Phase II

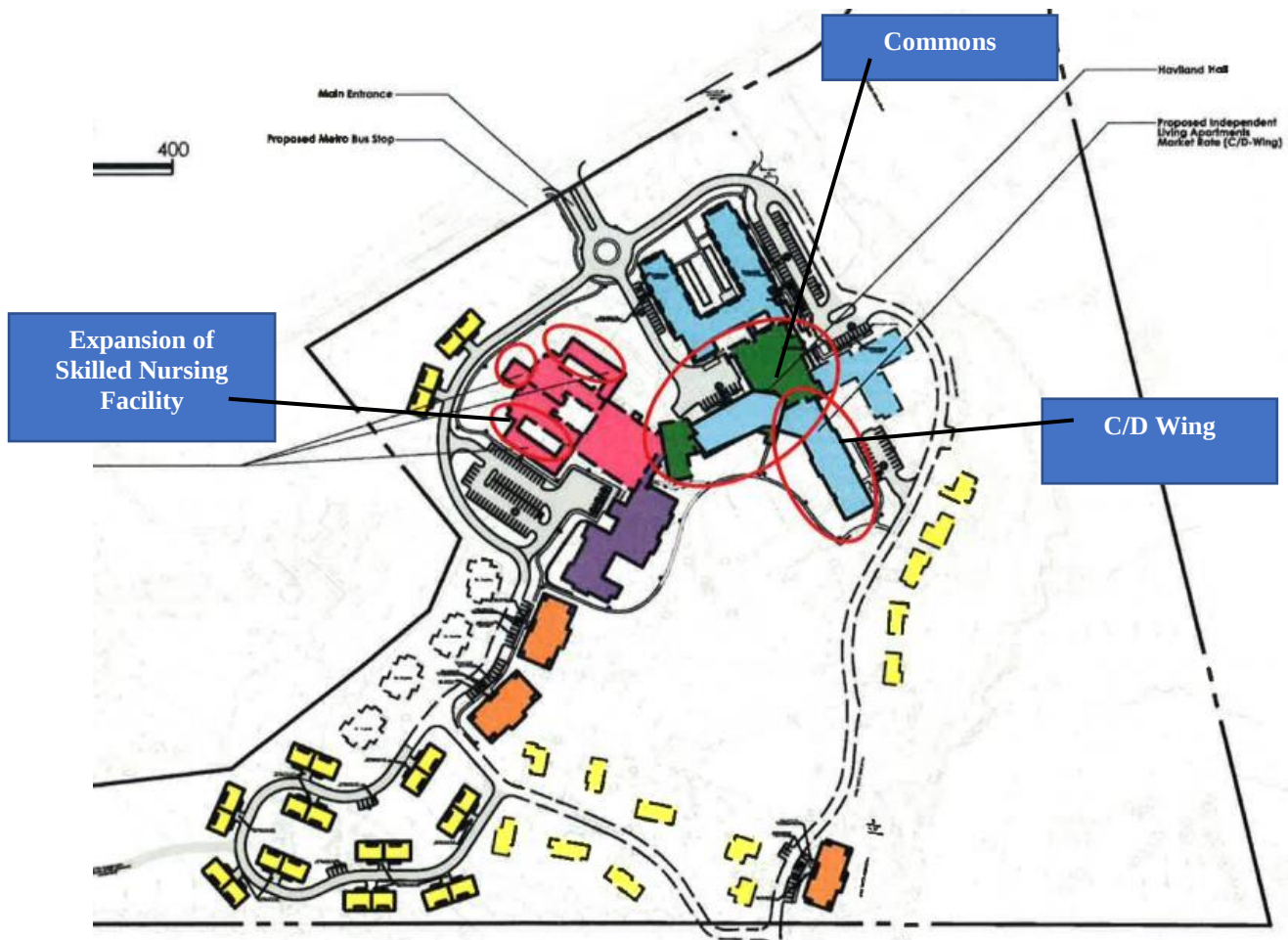
Phase II will include the construction of a new assisted living wing adjacent to the south of Stabler Hall. The timing of construction is not definite at this time, although Mr. Harrington estimated that it would probably not commence until 2019 or 2020. Once the assisted living is constructed, they will move individuals from the existing assisted living facility, Haviland Hall, and then would begin Phase III. T. 106-107. The Petitioner's phasing diagram shows the location of the new assisted living wing (Exhibits 80, 55(j), on the following page.)



c. Phase III

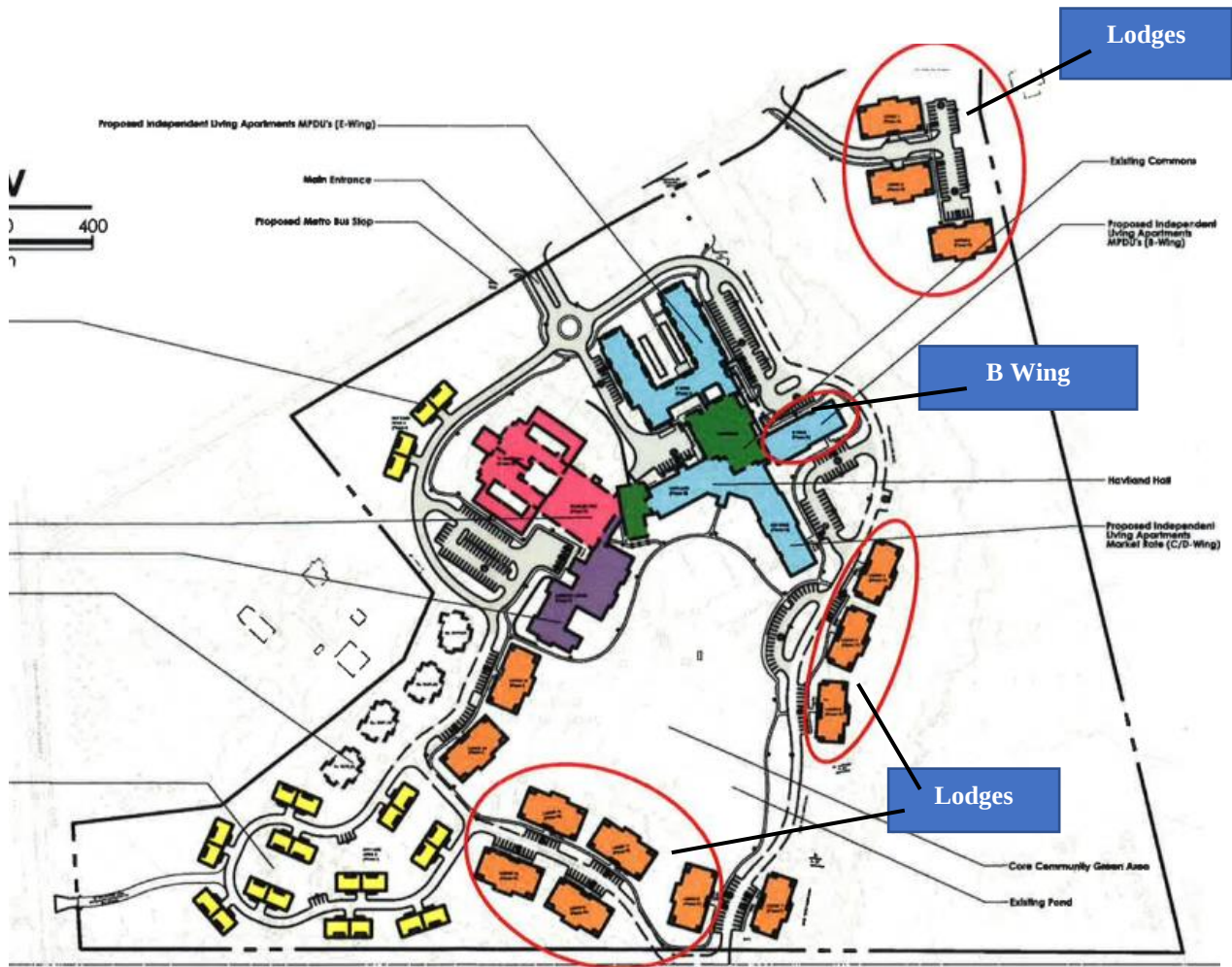
Phase III will include reconstruction and additions to Haviland Hall. The existing Hall currently connects the Commons to the nursing facility and now houses 21 assisted living units. The reconstruction will expand the Commons to include new resident amenities and 6 new residential units. An entirely new 24-unit apartment building (the C/D Wing) will be constructed to the south and will connect to the Commons. Phase III will also include an expansion of Stabler and Thomas Hall (currently an 80-unit skilled nursing facility) to permit conversion of semi-private rooms to private

rooms. No additional units will be added to Stabler and Thomas Halls. Exhibit 55(a). The Petitioner's phasing diagram shows the location of the Phase III improvements (Exhibits 80, 55(j)):



d. Phase IV

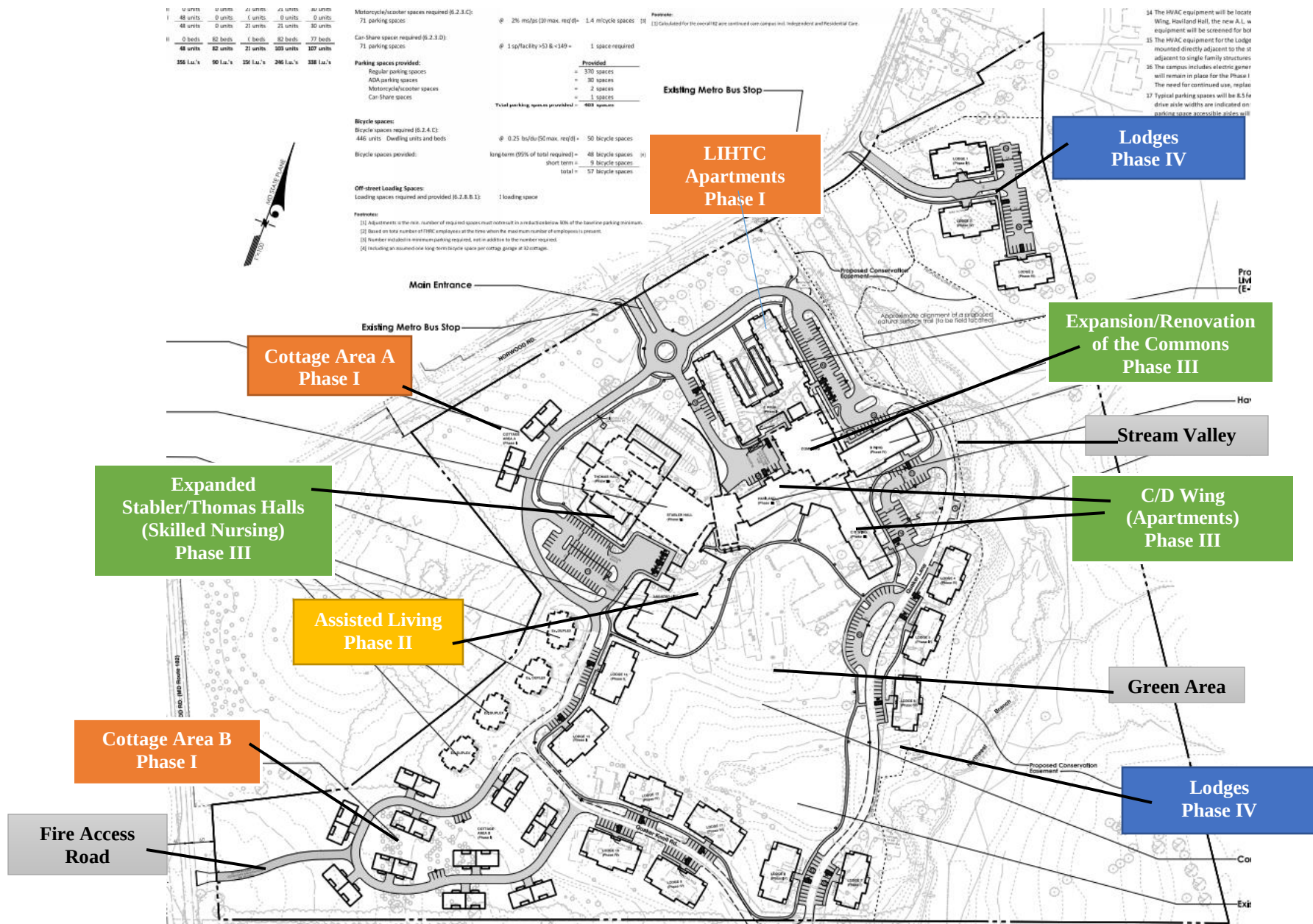
The final phase, (i.e., Phase IV) includes lodges located in the northeast and central parts of the property. Friends House plans 11 “Lodge” apartment buildings ranging from 8-15 units each as well as 16 independent MPDU apartments in a new “B” wing adjacent to the Commons. The number of units in the Phase IV lodges will depend on market demand. Exhibit 55(a), p. 6. The Petitioner's phasing diagram shows the location of the units in Phase IV (Exhibit 80, 55(j), shown on the following page 22.)



2. Site Plan

Mr. Sekerak, the Applicant's expert in land planning, described the overall design for the campus. The Campus Master Plan (Campus Plan) concentrates the higher densities on the interior of the site, near the Commons area that currently houses dining and other communal spaces. Radiating out from the higher density buildings are lodges. Cottages are located nearer the perimeter of the property. The cottages closest to the perimeter are exclusively duplex cottages. Four of the existing cottages will remain. T. 27-28. A copy of the special exception site plan (Exhibit 79) is shown on the following page.

The major site constraint is the Northwest Branch stream valley that prevents any development within the stream valley or buffer. T. 28. Friends House sought to maintain existing setbacks from



both legs of Norwood Road to preserve the existing rural setting. Another unifying element, according to Mr. Sekerak, is an internal green area where there is a large pond and community garden. T. 29.

Mr. Sekerak testified that the roadway leading from Cottage Area B to Norwood Road is for fire access only. It will consist of a grass creek pavement material and will not be seen from a distance. Shade trees are located between the State-maintained portion of Norwood Road and the cottages. The trees will be at a lower elevation than the cottages to soften the views from Norwood Road. Evergreen screening has been added to the Cottage A area to buffer the historic property from those cottages and activity along the internal roadway. Mr. Sekerak opined that views from the historic property to the Cottage B area will be “extremely diffused” due to the distance between the two structures, the woodlands on the historic property, and the additional evergreen buffering. T. 39-40.

Ms. Joyce Lenhardt, the Applicant’s expert in architecture, assisted with the design of the Campus Master Plan. One priority was to phase development without displacing residents. Another design priority in a continuing care retirement community (a community with independent, assisted, and nursing home units) is the distance residents need to walk between units to communal facilities. Those in skilled nursing care and assisted living need to be closer to facilities, while those in independent living may be further. T. 59.

Ms. Lenhardt explained that the area on the Campus Master Plan labelled “The Commons” is the location of the communal amenities. These include the fitness center, a library, computers, and an auditorium. The location of the Commons will not change. Currently, apartment buildings extend from the Commons, but these will be removed. The existing skilled nursing home and assisted living facility are connected to the Commons as well. T. 60-61.

According to Ms. Lenhardt, Friends House looked at various campus locations for the LIHTC building. There are three groups of cottages that currently exist on the property, each built in a different decade between 1970 and 1990. She testified these cottages are close to the Commons and the communal facilities in the Commons. The location shown for the LIHTC building was the only place they could realistically locate the building and have it connect to the Commons.

Ms. Lenhardt explained that Cottage Area A was an ideal location to construct new cottages that would allow residents to continue to live in the community while the balance of construction occurred. These are located further from the Commons and will be geared for more independent residents. T. 61-62.

The new buildings will use exterior materials that relate to what will remain on the site. Exterior materials will include brick to create a cohesive look to the community. Many of the new buildings will use the residential massing and design features in the locality. All buildings will be environmentally sustainable. T. 204.

Mr. David Stembel also qualified as an expert in architecture. His responsibilities include the design of the LIHTC building. Mr. Stembel testified that the planned tax-credit building is “U”-shaped. The U-shape is designed to avoid placing the bulk of the building close to Norwood Road. In addition, the facades closest to Norwood Road are two-stories, stepping back to three stories towards the rear of the building. He opined that this design respects the rural character of the community and Norwood in that area by reducing the building’s visual impact on the area. T. 131-132. The wings are also of unequal length. The wing closest to the front entry is 24 feet further back to give more space near the front door. This creates the feeling of more open spaces and renders the courtyard a physical and visual amenity.

Exterior materials include architectural grade asphalt shingles, cementitious siding, and brick veneer. Each apartment has either a patio or a balcony. These are features, as well as the simple straightforward architecture, reflect the community's existing residential character. He opined that the architecture will be compatible with the rural nature of the surrounding area. T. 133-134.

3. Operations

Mr. Harrington testified that Friends House currently employs 198 individuals. Most are employed in the assisted living and skilled nursing area because that must be staffed 24 hours a day/7 days a week. No new management staff will be added for any of the new development. For the independent living, they have fifteen employees that work on health care, housing keeping, and other items. T. 108. There are 15 management employees in addition to those working on shifts. The management staff work Monday through Friday from 9:00 a.m. to 5:00 p.m. Exhibit 60, p. 7.

Friends House anticipates that a total of 57 new employees will be needed at the completion of all four phases of the project. The largest increases are in Phase II (i.e., 20 employees) and Phase IV (i.e., 21 employees). Many of the Phase II employees are required due to the expansion of the assisted living facility. T. 110. The increases in employees, along with the allocation between shifts, is summarized in a chart from the Staff Report (Exhibit 60, p. 7, below):

Table 3: Proposed New Employees

Existing Shift	Phases/New employees	Shift/ proposed growth%
#1 (7am-3pm): 25 employees	Phase I: 8 positions	#1 (7am-3pm): 40%
#2 (3pm-11pm): 20 employees	Phase II: 20 positions	#2 (3pm-11pm): 40%
#3 (11pm-7am): 15 employees	Phase III: 8 positions	#3 (11pm-7am): 20%
	Phase IV: 21 positions	
	Total=57 New employees	

Mr. Harrington testified that generators will be at approximately the same locations (i.e., behind Buildings A and B) as they are today. T. 119. Friends House Second Amended Statement of Operations (Exhibit 55(a)) states that two of the generators will remain in place for Phase I, although one will require a minor relocation. With the commencement of the Phases II through IV, Friends House will assess the need for replacement or relocation of the generators. The LIHTC building does not require an independent power source. Friends House plans to maximize sustainable technology to keep energy demands low. Exhibit 55(a), p. 8.

The HVAC equipment will be located on the roofs of six buildings (E Wing, B Wing, C/D Wing, Haviland Hall and new assisted living facility, and Stabler/Thomas Hall. According to the Applicant's Statement of Operations (*Id.*):

The rooftop equipment will be screened for both visibility and noise attenuation purposes. HVAC service for the lodges and cottages will be handled in the same manner as a typical single family detached structure. That is, they will be ground mounted and directly adjacent to the structure that the equipment serves. Because sustainability is an important element of the Friends House redevelopment program, and since the units will all be LEED qualified, the equipment to be selected will be small, ultra-efficient and quiet.

Trash pick-up usually occurs around lunchtime, six days a week. T. 119. The Second Amended Statement of Operations states that the location of the dumpsters remains "generally the same" as the existing locations, although they will be moved slightly due to construction of the LIHTC building. Exhibit 55(a), p. 7. According to Friends House, the location has a "'back of the house' quality since it is adjacent to the functional areas of the 'Commons' and to the rear of the new low income housing tax credit building that has been designed to minimize views from that building of the dumpster/storage activity area." *Id.* An enclosure that is 6.5-feet in height will be constructed around the new dumpsters. *Id.* at 8. Friends House states, "[T]here have been no problems with this system of trash removal in terms of nuisance for residents and, under the revised

campus plan, it is anticipated there will be no problems in the future due to a more insulated design of the dumpster storage area.” *Id.*

Mr. Harrington described the amenities and services that will be provided to residents. These include a common dining area for three meals a day, housekeeping services, and laundry services. They have a two buses that are used for group activities, which are usually scheduled by their residents’ association. They provide Ride-On and Metro access to residents. They have a country store operated by the residents. Residents shop for groceries either via Ride-On or they use Peapod. T. 112. There are four supermarkets within 1½ miles. T. 114. The residents run a second-hand shop that raises approximately \$1,000 to \$2,000 a month. These are used to fund various committees of the residents’ association, such as the Garden Committee. T. 113. Friends House also runs an “Aging Well With Friends” program that interacts with groups outside the community for various activities. T. 114. Medical care is available at the Med-Star Montgomery Hospital, which is within one mile from the site. They also have a doctor that visits once a week to see patients on site. T. 114-115. Friends House provides opportunities for residents to attend cultural programs. They often invite people in and provide opportunities to view cultural events outside of the campus. Residents frequently organize their own presentations or bring family members in to speak about trips or careers. T. 115.

4. Landscaping, Screening, and Lighting

Mr. Devin Kennedy, the Petitioner’s expert in landscape architecture, described the landscape plan. Generally, the plan is intended to buffer and shade the different community components. At the request of the Planning Department, they have added an evergreen buffer in the northwest quadrant to protect the historic house from car lights and other activities along the internal road. The landscaping screen consists of American Hollies and Southern Magnolia to

avoid appearing like a hedge. On the road frontages and parking areas, they are proposing plants to provide a filtered, naturalized screen using deciduous shade trees. They also have used trees to shade the southern exposure of the stormwater management pond. T. 167-168.

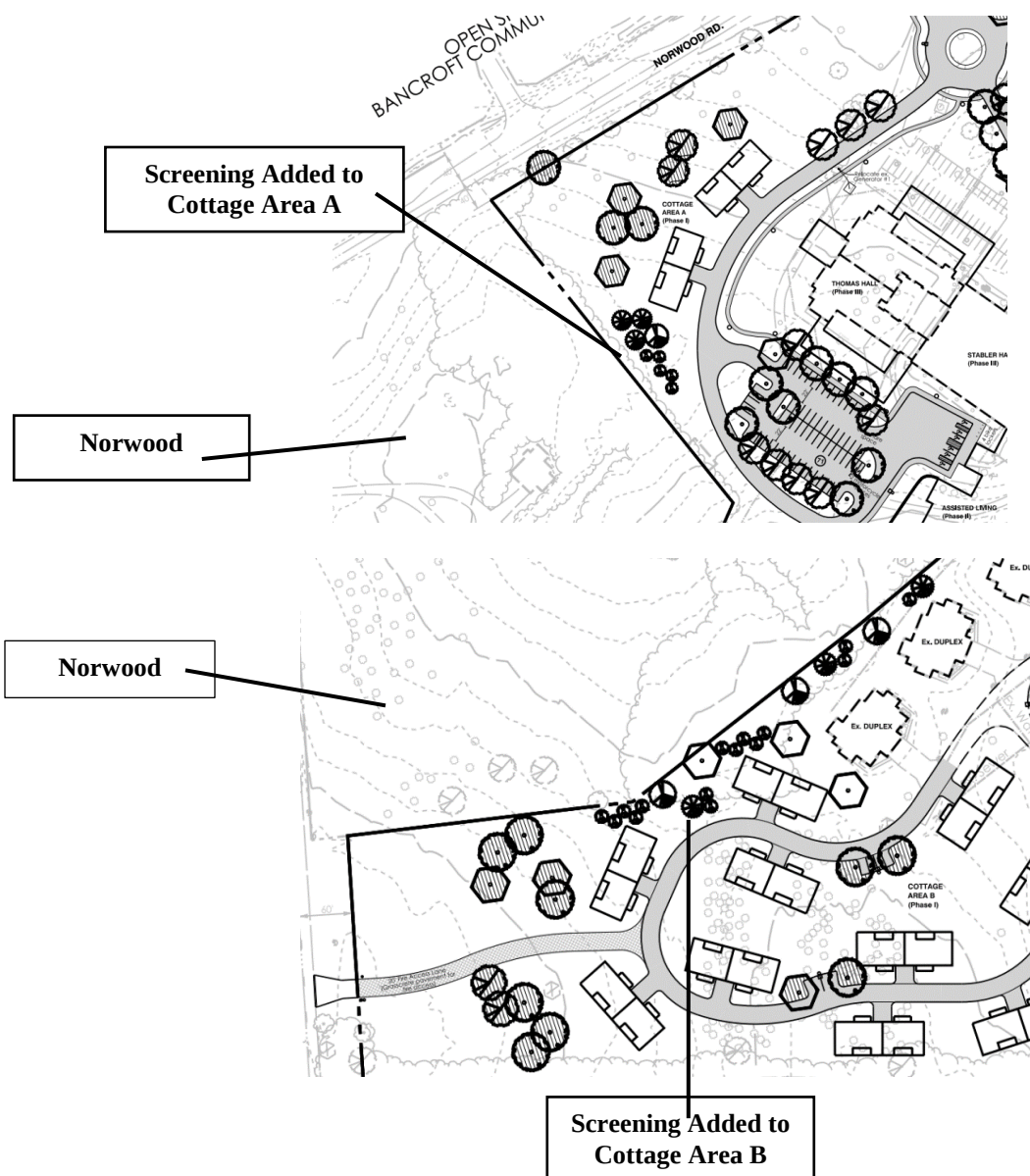
The existing trees along the county-maintained portion of Norwood Road will remain. They are thirty-inches and more in diameter, and a prominent feature of the site. They proposed to replace the trees here that are dying. Friends House has also attempted to replicate that cadence along the interior of the site, which adds to the filtered buffer along Norwood Road. T. 169. Staff concluded that (Exhibit 60, p. 15):

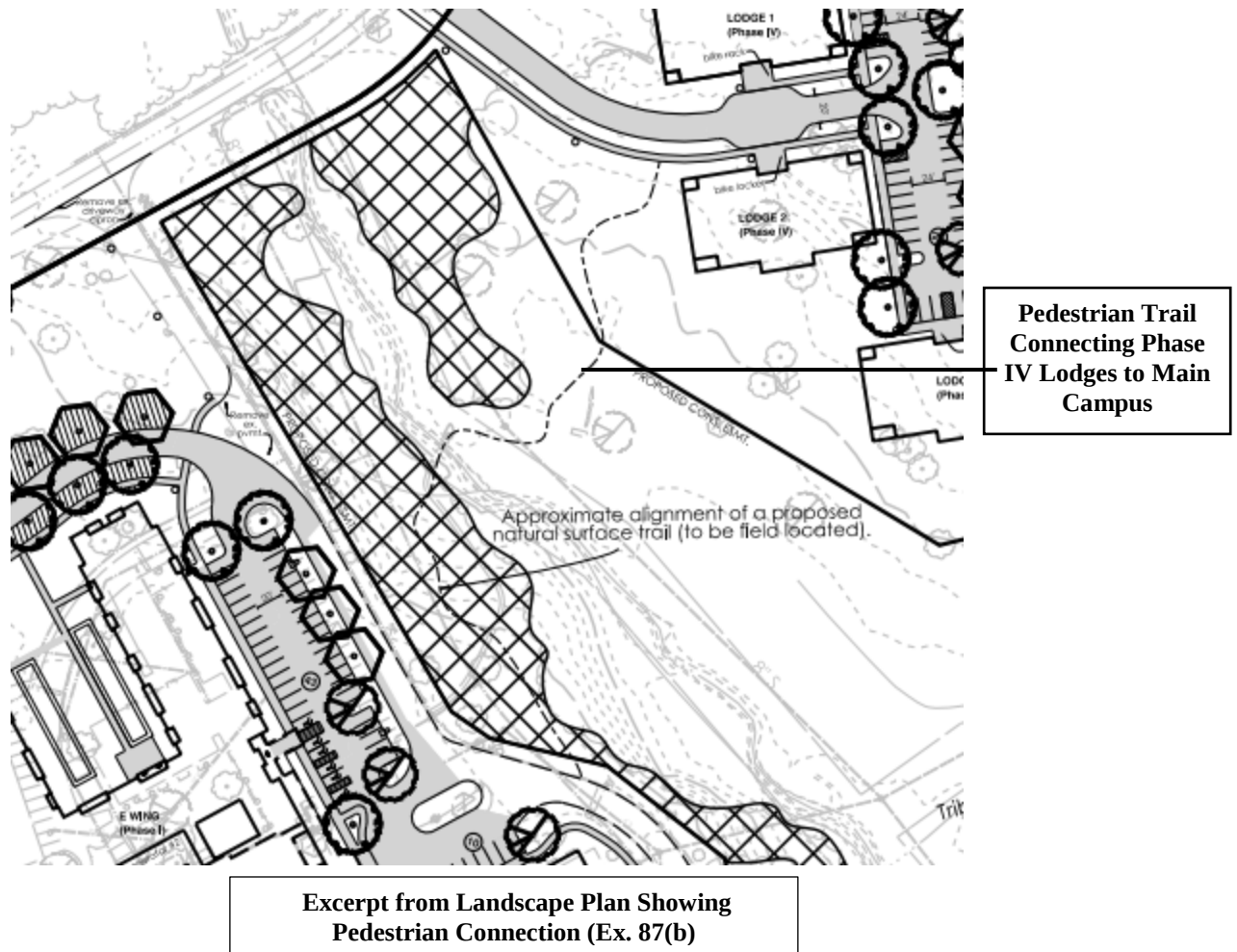
The Landscape Plan provides landscaping for parking facilities to improve the attractiveness of the facilities, provide relief from unshaded areas, and to minimize noise, glare and light trespass. In addition, the planting plan improves pedestrian safety, optimizes traffic circulation patterns and provides a better definition of entrances and exists through the use of interior islands.

Staff advises that the conditional use site plan includes a total of fourteen parking facilities with six or more parking stalls. The number of parking spaces in each facility ranges between 8 and 48 spaces. Staff reports that Friends House has met the parking shading requirements for conditional uses (*see*, §§59-E-2.73, 59-E-2.83 of the 2004 Zoning Ordinance) by providing a mix of “over story” shade trees, including Sycamore, Northern Red Oak and Red Maple. The landscape plan also meets the requirement (in Section 59-E-2.72) to provide at least one shade tree for every 40 feet of parking perimeter. Staff determined that the parking requirements of Section 59-E-2.83(c) are not applicable because the distance between a parking facility and the nearest residential lot is more than 530 feet. Exhibit 60, p. 17.

Staff conditioned its recommendation of approval on additional landscaping to protect Norwood from lights and activities on the internal road traversing Cottage Area A. As noted, Friends House complied with this request. The Planning Board requested that the Petitioner

provide a connection between the lodges located in the northeastern corner of the subject property to the main campus. The Petitioner revised the landscape plan to show a pedestrian pathway crossing the stream to connect near the main campus. Based on Mr. Schneider's testimony at the public hearing (see Section II.E. of this Report), the Hearing Examiner requested additional screening of the new cottages along the Norwood property's southern property line. Excerpts from the Landscape Plan (Exhibit 87(b), below and on the following page) show the screening added to protect the historic property and the addition of the pedestrian pathway:





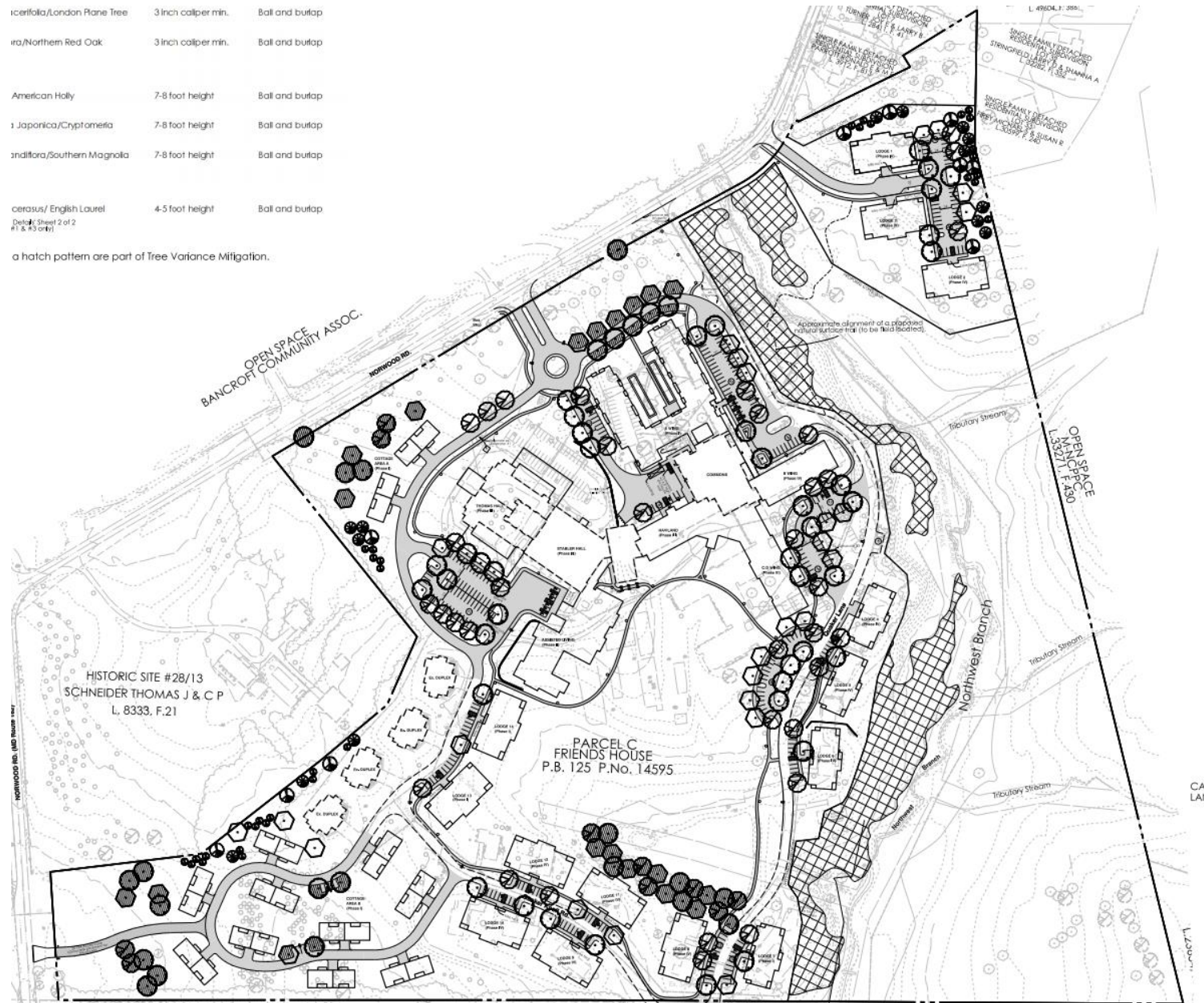
The full landscape plan (Exhibit 87(b)) is reproduced on the following pages. Mr. Kennedy testified that the proposed lighting is uses low-level lighting to keep the natural dark sky because of the rural nature of the area. Friends House is proposing lights where necessary for way-finding, safety and security. There are pole lights for pedestrian ways and bollards for internal pedestrian circulation. Illumination levels along all property boundaries are 0.0 footcandles. T. 177-178.

Staff advises that the Petitioner proposes a total of 20 pole-mounted lights and thirty-five bollard mounted light fixtures. These will illuminate the entrance from Norwood Road, the parking facilities, internal pathways, and portions of the internal access road. All lighting fixtures will have a full cut-off device to reduce glare. Exhibits 60, p. 17; 55(e).

acerifolia/London Plane Tree	3 inch caliper min.	Ball and buttap
ra/Northern Red Oak	3 inch caliper min.	Ball and buttap
American Holly	7-8 foot height	Ball and buttap
1 Japonica/Cryptomeria	7-8 foot height	Ball and buttap
2ndiflora/Southern Magnolia	7-8 foot height	Ball and buttap
cerasus/ English Laurel	4-5 foot height	Ball and buttap

Detail Sheet 2 of 2
#1 & #3 only

a hatch pattern are part of Tree Variance Mitigation.



Landscape Plan
Exhibit 87(d)

PLANT LIST					
KEY	QTY	BOTANICAL NAME/COMMON NAME	SIZE	COMMENTS	
Shade Trees					
	AR	44	Acer rubrum/Red Maple	3 inch caliper min.	Ball and burlap
	PO	66	Platanus x acerifolia/London Plane Tree	3 inch caliper min.	Ball and burlap
	QR	45	Quercus rubra/Northern Red Oak	3 inch caliper min.	Ball and burlap
Evergreen Trees					
	IO	32	Ilex opaca/American Holly	7-8 foot height	Ball and burlap
	CJ	14	Cryptomeria Japonica/Cryptomeria	7-8 foot height	Ball and burlap
	MG	10	Magnolia grandiflora/Southern Magnolia	7-8 foot height	Ball and burlap
Evergreen Shrubs					
PL	26	Prunus laurocerasus/ English Laurel	4-5 foot height	Ball and burlap	
-See Sheet "Campus Landscape Notes & Details" Sheet 2 of 2 for generator screen detail. (Generator #1 & #3 only)					
 Notes: Trees identified with a hatch pattern are part of Tree Variance Mitigation.					

Landscape Plan (Key)
Exhibit 87(b)

E. Historic Preservation

The most contested issue in this case is the development's impact on the historic Norwood property, which contains a circa 1751 house listed in the Master Plan for Historic Preservation. In response to Staff's concerns about the impact of the new development, Friends House agreed to reduce the number of units located adjacent to the property. Exhibit 60, pp. 17-18.

Friends House originally proposed cottages closer to the State-maintained portion of Norwood Road (Cottage B Area) and four buildings in Cottage A Area . Historic Preservation staff expressed concerns about the original number and location of dwelling units in both areas. Exhibit 60, p. 18. At the suggestion of Staff, the Applicant revised the plans to increase the setback of the cottages in Cottage Area B from Norwood Road and reduced the number of cottages in Cottage Area A. Historic Preservation Staff made the following comments on the revised design (*Id.*):

The revised plans responded to comments about the impact to the adjacent historic site by reducing from four to two new structures (Cottage Area A) to be constructed in a location near the northeastern boundary with the historic site, and by orienting these structures such that they are roughly aligned one behind the other, thereby reducing the visual impact on the historic site. This, coupled with the planting of shade trees and the placement of the buildings, satisfactorily addresses previously raised historic preservation concerns.

Staff had previously raised concerns over cumulative effect on the historic site created by the number of additional dwelling units proposed for “Cottage Area B” [on the southern boundary of the historic property]. Staff is satisfied that the design of the duplexes, their orientation, and the introduction of new buffering trees will mitigate any adverse visual impact on the historic site.

Mr. Sekerak described the physical relationship between Norwood and the proposed development, including the view sheds from the historic house. According to him, a significant stand of woodland on the Norwood property screens the views of the campus from that property.

T. 29. Mr. Sekerak opined that they maintained a significant setback in the Cottage B area from Norwood Road to preserve the historic view shed into the historic property. The cottages in Area B are setback from Norwood Road by 300 feet. Friends House reduced the development in that area by making the cottages duplexes rather than single-family detached dwellings. T. 30. This allowed them to increase the setback from Norwood to maintain the view shed of the historic property. T. 31-32. There are other elements within the historic property’s view shed that impact it, such as a solar array established by the Sandy Spring Friends School. T. 32. A 20-foot high hill was constructed to support the solar array. He opined that views of the subject property from the historic house will be 150-200 feet because of the existing woodland on the historic site.

Friends House called Mr. Scott Whipple, Staff to the Montgomery County Historic Preservation Commission, to testify regarding his findings on the special exception site plan. Mr. Whipple testified that, when he initially reviewed this project, larger buildings were proposed in the northwest corner of the site. He raised concerns that these would negatively impact the historic

property. He also raised concerns regarding the arrangement and orientation of the cottages proposed in the southwestern portion of the site. He was concerned that the original layout of the cottages would impact the view into the historic resource from Norwood Road. T. 69. He recommended realigning the buildings in the northwest corner of the property closer to the County-maintained portion of Norwood Road with additional landscaping separating the two properties. He felt that the buildings as originally proposed were larger and more spread out, creating a more significant adverse impact on the historic resource. T. 70. The Petitioners reduced the number of these from four to two and aligned them so that only the furthest west could be seen from the historic property. T. 73. In the southwest portion of the site, he recommended consolidating the cottages and increasing their setback from Norwood Road. T. 70. He testified that he believes that the revised site plan is now respectful of the existing historic site. T. 71.

Mr. Whipple explained that he uses the term “adverse impact” to mean that the use as proposed would have changed the visual character of the historic resource in a significant way. T. 74. The visual impact is reviewed from both the outside of the historic property and the view from the historic property to the street. T. 74. He acknowledged that he had never been on the historic property and wasn’t familiar with the view from the Norwood house. T. 74. In his opinion, a solid row of trees surrounding the historic property would adversely impact the visual characteristics of the resource. Staff worked with Friends House to avoid placing a solid row of trees along Norwood Road. T. 76.

Mr. Thomas Schneider owns the adjacent historic property, Norwood, located to the west and north of the subject property. He testified that, when he and his wife bought the historic house in 1988, it was in receivership. They fell in love with the setting and the Sandy Spring area, which has a very rural context. They then began a process to restore the home with a commitment to

remove as much of the 20th century, other than infrastructure, to appreciate its historic significance. They worked with a very well-known historic architect. While restoring the house, they discovered that their role differed from what they originally envisioned. They now consider themselves trustees of a very important historic property that they would pass on to the future. T. 79. When restoring the house, they chose improvements that would preserve the house's historic character, even though these items were more costly. T. 79.

It is from this perspective Mr. Schneider expressed concerns over the Friends House expansion. He believes that there is a clash of missions and values. While he believes strongly in the mission of Friends House, including their commitment to affordable housing, he and his wife have a mission to preserve the past and carry it into the future. T. 80. He stated that that they were not aware of the planning process for Friends House until 2016 and they did not have the ability to sit down with them and find common ground. T. 80.

In his opinion, one of the striking characteristics about the Norwood Road from Ednor Layhill Road to Woodlawn Manor, past the Bancroft Estate, is the large expanses of open property with houses and buildings set far back from the Road. He believes that development proposed in the southwest corner of the subject property (i.e., Cottage Area B) is inconsistent with that mile long stretch of Norwood and Dr. Bird Roads and changes its character. Even though Friends House has changed the cottages from single-family homes to duplexes, they still are essentially a suburban development that will be very visible from the road. He believes that the cottages will stand out in a very dramatic way, particularly because it's located next to one of the most important historic buildings in Montgomery County. T. 81.

Mr. Schneider testified that the "view shed" analysis done by the Petitioner and by Staff accounted only for the view into the historic property. One of the characteristics looking outward

from Norwood is a panoramic view of wide open rural spaces. That view will be changed dramatically with the Friends House proposal. The summer view may be screened, but the winter view will be unfiltered. He stated that there is also a big difference from the perspective outward during the day and night. He believes that the windows in the additional cottages will light up the neighborhood at night, again, creating a view of the “suburbs.” T. 81-82.

Mr. Schneider stated that the woods on his property, relied upon by the Petitioner as a buffer, are 25% - 35% Ash trees. They have fifteen Ash trees on the property that are not counted as part of that woods that have all been infected with disease. His tree specialists have told him that these trees will be dead by spring. As a result, the filter of the woods will be much thinner in the future. In addition, the Petitioner will be removing two-thirds of an acre of trees that currently exist on the subject property, including larger maples and walnuts. Therefore, the cottages will be more visible within the view shed from the historic house. He believes that this changes the entire historic character of the property. T. 83.

Mr. Schneider compared the layout of the Friends House development to that of the Bancroft Estate subdivision. The developer designed it so that there was one very large house located over two hundred feet back from the road on an 11-acre property, in keeping with the context of Norwood Road. He believes that the five buildings in the southwestern quadrant of the property—the two closest to his property and two on the southern portion of the fire access road—differ from this character. T. 86.

Mr. Schneider listed the uses along Md. Route 182 north and south of the property. Across from the solar array at the Friends School, is the Gray house that was originally a farm house. Woodlawn is a Park and Planning facility built by the same family that built Norwood. Then there is a ropes course and solar array. Next to that is a grey and white old farm house that is also on

the school property. North of that are the cottages of Friends House, Norwood, and the Bancroft Estate. On the west side of Md. Route 182 are a large open farm, a horse stable, and old house that is set back very far from the road. Then there is a development and some houses that move fairly close to the road, followed by a large lot directly opposite the southwest quadrant of Friends house that has a single house well back from the Norwood Road. T. 87.

Because of the historic nature of the site, Mr. Schneider questioned whether the five western most cottages in the southwestern quadrant could be moved to available land area closer to the center of the site. T. 122.

F. Public Facilities (Water, Sewer, Traffic and Parking)

According to Staff, all four phases of the development will generate the following peak-hour trips during the weekday morning and evening peak periods (Exhibit 60, p. 12, shown below):

Table 4: Local Area Transportation Review

Land Use	Number	Weekday Peak-Hour	
		Morning	Evening
Existing Land Uses			
Independent living Units	143	27	36
Assisted-Living Units/Nursing Beds	103	3	6
Subtotal	246	30	42
Additional Senior Living Units			
Independent living Units	178	36	44
Assisted-Living Units/Nursing Beds	27	1	2
Subtotal	205	37	46
Total	451	67	88

The property is located within the Patuxent Policy Area. The maximum CLV permitted within the area is 1,350. The Petitioner's expert in transportation planning and traffic engineering, Mr. Cherian Eapen, submitted a traffic study demonstrating that none of the intersections studied would exceed the maximum CLV for the Policy Area. His results are summarized in a table from the Staff report (Exhibit 60, p. 12) shown on the following page.

Studied Intersection	CLV Standard	Traffic Condition					
		Existing		Background		Total	
		AM	PM	AM	PM	AM	PM
Olney-Sandy Spring Rd. & Norwood Rd.	1,450	961	884	968	899	972	906
Dr. Bird Rd.-Norwood Rd. & Norwood Rd.	1,450	786	836	800	844	826	874
Norwood Rd & South Campus Dr.	1,350	146	153	147	158	183	223
Norwood Rd & Existing Campus Dr.	1,350	138	146	139	151	----	----
Norwood Rd. & New North Campus Dr.	1,350	----	----	----	----	136	135

Table 5: Local Area Transportation Review

Exhibit 60, p. 12

Mr. Fernando Benitez, the Petitioner's expert in civil engineering, testified that all other utilities were adequate to serve the use. He testified that the project would be adequately served by public water and sewer. The site is in Category W1 for water and S1 for Sewer, which means that a public system is available to serve the development. Friends House is presently served by public water and sewer. There are no known indicators that there are any problems with sewer service, but WSSC will require a hydraulic plan analysis to make the final determination. T. 150-151.

Mr. Benitez opined that the property will have adequate stormwater management, which will meet the State requirements. The State regulations require them to locate stormwater facilities according to existing drainage patterns. For this reason, they have divided the site into four sections: the northeast quadrant, the area along the County-maintained portion of Norwood Road, the core of the site, and the southwest quadrant. T. 153-154. There are a total of 67 stormwater facilities, slightly in excess of what is required. T. 154.

In his opinion, the stormwater management concept improves impacts to the sensitive environmental features of the site. Currently, there is only one stormwater management feature located along County-maintained Norwood Road in the northwest portion of the site. The new

facilities will treat much more of the stormwater coming from the site and will outflow into the street. T. 155.

G. Environmental Impacts

The Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) reveals several environmental constraints on the property. There are a total of 20.14 acres in forest, divided into four separate stands. Staff advises that there are multiple perennial streams, a farm pond, and several wetlands area. The property is located within the Northwest Branch watershed, classified as Use IV waters. It is not, however, located within a Special Protection Area or within the Patuxent River Primary Management Area.

The Planning Board originally approved a Preliminary Forest Conservation Plan (PFCP) for the entire 62 acres in 2003. At the same time it approved the PFCP, the Planning Board approved a Final Forest Conservation Plan (FFCP) for area west of the stream. A FFCP has never been approved for the property located to the east of the stream. With this application, Friends House has applied for a FFCP for the entire property, amending the old FFCP and finalizing the PFCP for the property to the east. Exhibit 60, p. 14.

The Planning Board recommended installing a pedestrian pathway connection between the Phase IV development in the northeastern corner of the campus to the main campus. This necessitated a revision of the then-pending FFCP application. The Planning Board approved a FFCP for the property on January 19, 2017.

H. Community Concerns

The only opposition to appear at the public hearing was Mr. Schneider, owner of Norwood. His testimony is summarized in Part II.E. of this Report.

III. 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 statute (i.e., the 2004 Zoning Ordinance) establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c)(4) of the Zoning Ordinance. In the typical special exception, the Board could therefore require, pursuant to Zoning Code §59-G-1.3(c)(4), that the underlying special exception be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26. However, special exceptions for senior housing have a grandfathering provision built into the Zoning Ordinance, Section 59-G-2.35 (h)(1). Under the terms of that section, only the proposed modifications must be in compliance with the current standards.

Nevertheless, this modification would remove, alter, expand, or reconstruct almost every existing building on the current campus (with the exception of four buildings on the northwest side of the property adjacent to Norwood.) The Staff appears to have reviewed the entire the special exception plan, landscape plan and lighting plan comprehensively and not in terms of trying to dissect what is different and what has changed. Neither Staff nor the Petitioner have indicated whether conditions of any of the prior special exceptions are still applicable to this one. Because of the extensive revisions to prior special exception approvals, the Hearing Examiner does *not*

incorporate into this recommendation any of the conditions that were the subject of old special exceptions and includes only conditions that govern the development approved herein.

Based on the testimony and evidence of record, the Hearing Examiner concludes that the use, as modified, will meet both the general requirements for special exceptions and the specific requirements spelled out in Zoning Ordinance §§59-G-2.35 and 59-G-2.37 for housing for senior adults and a domiciliary care facility, respectively, as long as Petitioners comply with the conditions set forth in Part IV, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Ordinance § 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. Exhibit 60, p. 23. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with housing for senior adults and a domiciliary care facility. Characteristics of the proposed modifications that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and

operational characteristics of the proposed modifications that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff listed the following inherent characteristics associated with Housing and Related Facilities for Senior Adults and Persons with Disabilities or a Domiciliary Care Home (Exhibit 60, p. 23):

- (1) Buildings and related outdoor recreational areas or facilities;
- (2) Parking areas;
- (3) Lighting
- (4) Vehicular trips to and from the site by employees, visitors, residents, delivery, and trash pick-up and
- (6) Noise generated by equipment's for the various uses including emergency generators.

Staff concluded that most of the physical and operational characteristics were inherent to the use with some exceptions. Staff found that the scale of buildings, internal vehicular circulation, and on-site parking areas are operational characteristics typically associated with a nursing or domiciliary home. *Id.*

Staff determined that there were several non-inherent characteristics of the property, although these did not warrant denial of the special exception. These include the property's large size relative to the building envelope, the various types of buildings, and the diverse range of facilities located on the property. Staff found these non-inherent characteristics were positive influences on the "design and use" of the facility. *Id.* at 24. In addition, Staff felt that the number of environmental constraints were non-inherent, but did not warrant denial because they provide a "special aesthetic qualify and serene natural environment" to residents of the community. *Id.*

The Hearing Examiner agrees with Staff's assessment with one exception. She finds that the property's location next to the historic Norwood site is a non-inherent site characteristic. She finds persuasive Mr. Schneider's testimony that views of more cottages will impact the character of the historic site. This does not warrant denial of the special exception because the additional landscaping along the east and south sides of the Norwood property adequately mitigates this impact.

B. General Standards

The general standards to approve a modification to a special exception are found in Zoning Code Section 59-G-1.21(a). Technical Staff applied these standards to both special exception modifications (i.e., for the domiciliary care facility and senior housing) without differentiation. Because the modification requests comprehensively plan new development for the entire community, the Hearing Examiner agrees with Staff's approach and does the same.

Sec. 59-G-1.21. General conditions:

- (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: Zoning Ordinance §59-C-1.31 permits housing for seniors or those with disabilities as a special exception in the RE-2 Zone under §59-G-2.35. The same section permits a domiciliary care facility in the RE-2 Zone as a special exception under §59-G-2.37.

- (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 modifications would comply with the standards and requirements for housing for seniors and a domiciliary care facility set forth in §§59-G-2.35 and 59-G-2.37 of the Zoning Ordinance, respectively. These standards are reviewed in in Part III.C of this Report.

- (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 an approved and adopted 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 pertinent provisions of the Sandy Spring/Ashton Master Plan are summarized in Part II.C above. Staff concluded that the Friends House Campus Plan met the Master Plan objectives because 75% of the land area is open space, exceeding the open space recommended for the property in the Master Plan. Exhibit 60, p. 10. Staff also noted that the proposed use provides independent living for senior while making necessary services, such as medical care, available on-site. *Id.* at 25. Mr. Sekerak opined that the use will maintain the rural character recommended by the Plan because of the significant setbacks from both legs of Norwood Road. The access from the State-maintained part of Norwood is for fire access only, and is not be visible from a distance. Mr. Kennedy testified that landscaping along the road frontages and parking areas are designed to provide a filtered, naturalized screen using deciduous shade trees. The existing trees along the County-maintained portion of Norwood Road will remain, reinforcing the property's existing character.

The Hearing Examiner agrees that the Campus Plan (Exhibit 79) meets the Master Plan goal to maintain the rural character of the area due to the setbacks and naturalized landscaping

along the property frontages. Her one concern was whether the development adequately protected the historic setting of the Norwood property, particularly as the wooded area in Norwood is subject to being depleted due to disease. The revisions to the Landscape Plan made after the public hearing adequately buffer historic setting of the Norwood property. For these reasons, the Hearing Examiner finds that the development as proposed substantially conforms to the Sandy Spring/Ashton 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 found that the proposed modifications would be in harmony with the general character of the neighborhood, considering population density, design, scale and bulk of the proposed new structures. Exhibit 60, p. 25. Staff found (*Id.*):

During the past 50 years, several modifications, additions and expansions had been made to the various housing types on the 62-acre campus. The modifications and expansions resulted in enhanced services and upgrading of facilities to provide modernized amenities and quality care to the residents. The modifications and additions were also found to address issues raised at the time (review of S-452-C, S-856-A in 1997) concerning compatibility with the 1980 Sandy Spring Master Plan. The current Special Exception Site Plan reflect[sic] sensitivity to issues raised in the past, and reflects site and buildings design consistence with the recommendations of the 1998 Sandy Spring/Ashton Master Plan recommendations.

New and modified improvements proposed in the subject application are compatible with existing residential developments on campus and in the surrounding area in terms of scale, bulk, height materials, texture and architectural features. The physical presence of the buildings is substantially diminished by the sheer size of the 62-acre property (of which only about 13 percent of it would be developed) and the overall site layout of the development. Adequate off-street parking spaces are provided to satisfy the needs of the various facilities.

The Hearing Examiner adopted Staff's characterization of the neighborhood as being "developed with single family dwellings in a village type development with rural character in an area defined by a variety of environmental features including streams, steep and gentle slopes and

park lands.” The campus layout remains consistent with this character by locating larger buildings near the interior of the site and smaller, independent living units closer to the exterior. The cottages in Cottage Area B have significant setbacks from the Norwood Road and the landscaping is designed to be reminiscent of a natural landscape. The large set back protects views of Norwood from the road. The additional landscaping on the northeast and southeast edges of Norwood screen the new development from Norwood and protects the view shed from the Norwood property. The low -income tax credit apartments have been designed that the bulk of the building is removed from Norwood Road. The frontages of the two wings are two stories, stepping back to three stories. The existing mature trees along Norwood Road will remain. For these reasons, the Hearing Examiner finds that the application will be harmonious with the surrounding area.

- (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: The evidence supports the conclusion that the requested modifications would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. Staff concluded that internal circulation will safe and adequate and the access points are adequate to accommodate site generated traffic. The modification also adds an emergency fire access on the southwest corner of the site. Exhibit 60, p. 28. Staff also found that parking is adequate to support both types of facilities (i.e., the independent living units and the domiciliary care home.) *Id.* Finally, Staff found that the facilities are designed to complement the prevailing low-density rural character of the surrounding area because of the large open areas, landscaped screens, and forest retention.

The Hearing Examiner agrees that the design, location and architecture of the proposed facilities are coordinated with other uses internal to the property and are compatible with the

surrounding area. The impacts to the Norwood property have been reduced by reducing the number and location of the units in Cottage Area A, consolidating the units in Cottage Area B, significant setbacks, and additional landscaping. The circulation is upgraded, as is the emergency access, stormwater, and forest conservation.

- (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: Staff concluded that the new and modified campus development will not cause any of the objectionable effects stated above (Exhibit 60, p. 29):

Sources generating noise outside the structures including the HVAC equipment, an emergency generator and other noise generating activities (loading/unloading, delivery/refrigeration trucks) do not appear to be unusual for the type of use proposed. As depicted on the Special Exception Site Plan, there are three existing electrical generators, two of which will remain in place for the Phase I development. The remaining one will be relocated to an area near its current location. All three will be screened and buffered and are located more than 500 feet from the nearest residential dwelling to the southwest. The Applicant indicated that the new affordable housing multi-family building (E-Wing) is not expected to require an independent or supplemental sources of its own.

Staff further based its conclusion on the fact that the HVAC units will be LEED certified, and therefore, very efficient and quiet. It also relied on the fact that trash dumpsters are located behind the E Wing building near the kitchen and will be enclosed. *Id.*

There is no evidence in this record to refute Staff's conclusion. The Hearing Examiner additionally notes that the Applicant's photometric plan (Exhibit 32(a) indicates that illumination along all property lines will be 0.0 footcandles. This standard has been met.

- (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: The Hearing Examiner finds that the proposed modifications, which are consistent with the Master Plan, will not increase the number, intensity, and scope of approved special exceptions in the area enough to affect the area adversely or alter its residential nature. The special exception use currently exists, although it is being expanded. Staff has identified only one other active special exception in the surrounding area: The adjacent Sandy Spring Friends School (S-1375). Staff concluded that the area will not be adversely impacted by the expansion of this special exception because the buildings have been designed to be residential in appearance and the use has a relatively low traffic impact. The Hearing Examiner has already found that the use will not affect the existing rural and residential character of the surrounding area. Both this special exception and the Friends School are in campus type settings with significant amounts of open space. There is no evidence that the proposed addition to the existing senior housing and domiciliary care facility would produce any adverse effects.

- (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 modifications would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. In fact, the proposed project will benefit the neighborhood by providing a needed service to the community.

- (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.*

(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 does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board 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 special exception application was submitted.

Conclusion: The modifications sought in this case will not require approval of a preliminary plan of subdivision. Therefore, the Board of Appeals must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”).⁴ As required by the Planning Board’s LATR Guidelines, the Applicant submitted a traffic study, which concluded that CLV volumes, including existing traffic, background traffic, and traffic to be generated by the development, would remain well below CLV maximums for the Policy Area. Having no evidence to the contrary, the Hearing Examiner finds that transportation facilities are adequate to serve the proposed use.

The second test (under the old SSP) would have been Transportation Policy Area Review or TPAR. TPAR tested overall capacity for both transit and roads within a particular policy area. If a policy area did not meet either test, the Applicant would be assessed a tax at the time of

⁴ Planning Department’s *LATR and TPAR Guidelines* (Council Resolution 17-601, adopted November 13, 2012). After this application was filed but before the Planning Board’s review, the Council adopted a new Subdivision Staging Policy (SSP). *Council Resolution 18-671*, adopted November 15, 2016. The new SSP applies to *preliminary plans* filed after January 1, 2017, but is silent on its application to special exceptions. Because the Planning Board reviewed this application under the old SSP (cited in this Section), it apparently took the position that the new SSP applies to special exceptions filed after January 1, 2017, as well. Giving weight to the Planning Board’s interpretation, as it is the primary agency responsible for promulgating the LATR Guidelines, the Hearing Examiner applies the SSP in effect prior to November 15, 2016. All citations are to that SSP (i.e., Council Resolution No. 17-601, adopted November 13, 2012).

building permit. This is no longer included in the current SSP and would not have been applicable to the Rural West Policy Area in any event. See, Council Resolution 18-671, adopted November 15, 2016.

Staff reports other public facilities are adequate to serve the use. The property has an existing water category of W-1 and sewer category of S-1. Because the use is age-restricted, it is not subject to a schools test. Mr. Benitez testified that the preliminary stormwater management plan is adequate to serve the proposed expansion and will upgrade the amount of stormwater management currently on the property. Staff found that the community is located approximately 2 minutes from the Sandy Spring Volunteer Fire Station and 8 minutes from the Montgomery County Police Department satellite facility at 17821 Georgia Avenue. Exhibit 60, p. 31.

Based on this evidence, the Hearing Examiner finds that public facilities are adequate to serve the proposed development.

(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: Transportation staff of the Planning Department and the Montgomery County Department of Transportation review the proposed access point to the County-maintained portion of Norwood Road. Both determined that the access and internal circulation were safe, although Staff recommended a number of conditions to assure that this occurs. Exhibit 60, p. 31. These are included in Part IV of this Report.

C. Specific Standards

1. Housing for Senior Adults (§59-G-2.35)

The specific standards for senior adult housing are found in Code § 59-G-2.35. The Technical Staff report and the Petitioners' exhibits and testimony provide sufficient evidence that the proposed modifications would be consistent with the applicable specific standards, as outlined below.

Sec. 59-G-2.35. Housing and related facilities for senior adults and persons with disabilities.

A special exception may be granted for housing and related facilities for senior adults or persons with disabilities, subject to the following provisions:

- (a) *Prerequisites for granting:*
 - (1) *A minimum of 15 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Income levels are defined as follows:*
 - (A) *"MPDU income" is the income limit determined by the Department of Housing and Community Affairs in the administration of the moderately priced dwelling unit (MPDU) program, as prescribed by Chapter 25A.*
 - (B) *"Low income" is income at or below 60 percent of the area median income adjusted for household size.*
 - (C) *"Very low income" is income at or below 50 percent of the area median income adjusted for household size.*
 - (D) *"Area median income" is as determined annually by the U.S. Department of Housing and Urban Development.*

Conclusion: The above-quoted provision may be satisfied by Petitioners complying with one of three alternative criteria – 15% of the dwelling units reserved for households with “very low income” (defined as “income at or below 50% of the “area median income” or AMI); or 20% of the dwelling units reserved for households with “low income” (defined as “income at or below 60% of the AMI); or 30% of the dwelling units reserved for households with “MPDU income.”

Friends House will provide housing for low income persons in partnership with Homes for America, who plans to construct an 80-unit apartment building. Financed by low-income tax credit investors, at least 72 of the units will be reserved for individuals with incomes at or below 60% of the AMI. The 72 units represent 22% of the total of 316 independent living units in Phases I through IV. The Hearing Examiner finds that this standard has been met.

Staff recommended two conditions of approval relating to this requirement (Exhibit 60, p. 2):

7. A note indicating that a minimum of 20 percent of the dwelling units must be permanently reserved for households of low income (at or below 60 percent of area median income) must be included on the Special Exception Site Plan.

8. Prior to the approval of the Special Exception Application, the Petitioner must record covenants on the property that permanently reserve a minimum of 20 percent of the dwelling units for households of low income (at or below 60 percent of area median income).

The Hearing Examiner cannot find the note recommended by Staff in Condition No. 7 on the revised special exception site plan (Exhibit 79.) The Hearing Examiner does not find it necessary as she will include the restriction as a condition of approval of this special exception modification. Staff's proposed Condition No. 8 required the recordation before approval of the special exception. At the public hearing, the Applicant requested that the Condition No. 8 be modified to require recordation within 10 days *after* approval, as the Applicant did not wish to restrict the property without knowing whether the special exception modification is approved. T.

15. The Hearing Examiner agrees with the Applicant and modifies the condition as requested.

(2) The site or the proposed facility has adequate accessibility to or provides on site public transportation, medical service, shopping areas, recreational and other community services frequently desired by senior adults or persons with disabilities.

Conclusion: The evidence supports the conclusion that the proposed use would have adequate access to these services. Mr. Harrington testified at length that the community provides shuttle services to grocery shopping, medical services and other recreational activities and community services. He also testified that cultural programs, medical care for seniors and independent living are provided on-site along with recreational opportunities such as the community garden and country store. Staff advises that Metrobus Route Z2 operates along Norwood Road between the Paul S. Sarbanes Transit Center in Silver Spring and the intersection of Georgia Avenue and MD 103 in Olney. The Hearing Examiner finds that the application meets this standard.

(3) *The site or the proposed facility is reasonably well protected from excessive noise, air pollution, and other harmful physical influences.*

Conclusion: Staff found this standard had been met because the character of the surrounding area was rural, and the surrounding uses were residential and institutional. Future relocation, modification or new installation of generators will be evaluated at the time they are made. HVAC equipment will be screened and will be small and efficient. New enclosures will be installed for the dumpsters. The record supports the conclusion that the proposed facility will be “reasonably well protected from excessive noise, air pollution, and other harmful physical influences.”

(b) *Occupancy of a dwelling unit is restricted to the following:*

- (1) *A senior adult or person with disabilities, as defined in Section 59-A-2.1;*
- (2) *The spouse of a senior or disabled resident, regardless of age or disability;*
- (3) *A resident care-giver, if needed to assist a senior or disabled resident; or*
- (4) *In a development designed primarily for persons with disabilities rather than senior adults, the parent, daughter, son, sister or brother of a handicapped resident, regardless of age or disability.*

Conclusion: Section 59-A-2.1 defines a senior adult as, “[A] person who is 62 years of age or older.” Mr. Harrington testified that Friends House is licensed by Maryland Department of Aging as a Continuing Care Retirement Community. The license covers the independent living units in the cottages, the assisted living units, and the nursing home. T. 95. This licensure requires that at least one occupant of a dwelling unit be 62 years of age or older, although they may accept a spouse who is less than 62 years of age. T. 117. The Hearing Examiner will impose a condition requiring the Petitioner to meet these occupancy requirements.

(5) Age restrictions must comply with at least one type of exemption for housing for older persons from the familial status requirements of the federal “Fair Housing Act,” Title VIII of the Civil Rights Act of 1968, and subsequent amendments thereto. (In that Act, “familial status” refers to discrimination against families with children.)

Conclusion: Title VIII of the Civil Rights Act, (also known as the “Fair Housing Act” or FHA) exempts housing designed for seniors from its protections against discrimination if it (1) is provided under any State or Federal program specifically designed and operated to assist elderly persons, or (2) intended for, and solely occupied by, persons 62 years of age or older, or (3) intended for occupancy by persons 55 years of age or old and at least 80% of the units are occupied by at least one person who is 55 years of age or old. 42 U.S.C.A. § 3607.

Mr. Harrington testified that Friends House is licensed by the Maryland Department of Aging as a continuing care retirement community. The licensure restricts occupancy to individuals that are 62 years of age or older, unless there is a spouse that is younger than 62 years old. T. 117. Petitioner’s Second Amended Statement of Operations and Statement of Justification indicates that Friends House relies on the third exemption stated above (Exhibit 55(a), p. 13):

Occupancy of the independent living portions of the Friends House campus will be primarily restricted to senior adult residents 62 years and older and is not designed primarily for persons with disabilities. However, persons with mobility

features/limitations are also eligible for occupancy. Independent living units occupied by (non-age-restricted) residents with mobility limitations are expected not to exceed 20% of the total units, therefore, the project would meet the Fair Housing Act's exemption from the law's familial status requirement that 80% of the occupied units must be occupied by at least one person who is 55 or older.

Staff recommended the following condition requiring the Petitioner to provide "proof" of compliance with the Fair Housing Act (Exhibit 60, p. 2):

8. The Petitioner must submit, at the time of the Hearing Examiner public hearing on these applications, written proof that the age restrictions applied to the subject development qualify for at least one type of exemption from familial status requirements of the Federal Fair Housing Act.

The Hearing Examiner finds from the testimony and evidence that Friends House currently meets the exemption for senior housing contained within the Fair Housing Act and will make compliance with the FHA a condition of approval. Therefore, the use as proposed meets this standard of the Zoning Ordinance.

(6) *Resident staff necessary for operation of the facility are also allowed to live on site.*

Conclusion: There will be no separate living facilities for staff on the site. Exhibit 60, p. 35.

(c) *Development standards, other than density, in residential zones where allowed by special exception:*

(1) *Minimum setbacks:*

(A) *From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified by the zone applies.*

(B) *From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater.*

(2) *Maximum building height: four stories or the height of the applicable zone, whichever is less. Additional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.*

- (3) *Maximum lot coverage: As specified by the relevant zone.*
- (4) *Minimum green area:*
 - (A) *R-60, R-90, and the RT Zones: 50 percent*
 - (B) *R-150 and R-200 Zones: 60 percent*
 - (C) *RE-1, RE-2, and RE-2C Zone: 70 percent, except where the minimum green area requirement is established in an approved and adopted master plan.*

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

Conclusion: Staff advises that the proposal meets or exceeds the minimum setback requirements for all yards. The maximum building height is 38 feet, under the 50-foot limit, and will conform to the character of the surrounding area and the retirement community. The lot coverage for the proposed development is 13%, under the maximum of 25%. The development exceeds the minimum green area requirement for the RE-2 Zone, because it has a green area of 78 percent. Exhibit 60, p. 35. These standards are summarized, along with the remaining standards applicable to development in the RE-2 Zone, in Part III.D. of this Report. The Hearing Examiner finds that this standard has been met.

(d) Development standards, other than density, in the R-30, R-20, R-10 and R-H Zones are as specified by the relevant zone in Section 59-C-2.41, except that the lot coverage and building setbacks may be modified as specified in Section 59-C-2.42 concerning standards for moderately priced dwelling units.

Conclusion: Not Applicable. The site is in the RE-2 Zone.

- (e) *Maximum density:*

In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-60, R-40, RT-6, RT-8, RT-10, and RT-12.5 Zones, the number of units is governed by the overall size of the building as determined in accordance with the development standards by Paragraph (c) of this section. Minimum unit size is governed by the minimum space and other relevant standards of Chapter 26, title "Housing Standards," of this Code, as amended.

Conclusion: Section 26-5(a) of the Montgomery County Code states:

(a) Floor area, dwelling unit. Every dwelling unit must contain at least 150 square feet of floor area for the first occupant and at least 100 additional square feet of floor area for every additional occupant. The floor area of that part of any room where the ceiling height is less than 5 feet or where the room width is less than 7 feet must not be considered in computing the habitable space of the room to decide its maximum permissible occupancy.

Staff found that (Exhibit 60, p. 36):

Based on supplemental documents submitted by the Applicant, all units in the proposed facility exceed the minimum 150 square feet of area. The sizes of the one-room units in the existing unfurnished apartments in the independent living building is 384 square feet for studio apartments and 576 square feet for a one-bedroom apartment... Studio and one bedroom apartments in the existing Cottage Apartments consists of 540 square feet and 720 square feet of areas respectively.

Based on this evidence, the Hearing Examiner finds that application meets the minimum unit size required by the Zoning Ordinance.

*(f) Parking and loading:
Parking must be provided in accordance with the provisions of Section 59-E-3.7 and Section E-2.83. The Board must require adequate scheduling and long-term continuation of any services for which parking credits are granted in accordance with Section 59-E-3.33(b) and may require additional parking for any facilities and services provided in accordance with Paragraph (g)(2) of this section, if they serve nonresident senior adults or persons with disabilities. When considering the need for additional parking, the Board may consider the availability of nearby public or private parking facilities.*

Conclusion: Parking on the subject site meets the parking requirements for both housing for seniors and a domiciliary care facility. This is described in more detail in Section III.D. of this Report.

(g) Additional provisions:

(1) One or more of the following ancillary facilities and services may be included to serve the residents and possibly nonresident senior adults or

persons with disabilities. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized.

- (A) Provision for on-site meal service;*
- (B) Medical or therapy facilities or space for mobile medical or therapy services;*
- (C) Nursing care;*
- (D) Personal care services;*
- (E) Day care for senior adults or persons with disabilities;*
- (F) On-site facilities for recreation, hobbies or similar activities; or*
- (G) Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services.*

Conclusion: This provision is not mandatory, in that it indicates that the listed services “may be included.” Mr. Harrington testified that the facility provides all of the services listed above. Recreation is provided both through walking trails, community gardens, and cultural events. Transportation to off-site facilities is accomplished by a shuttle service and a Ride-On bus stop is located on Norwood Road.

- (2) Retail facilities may be included to serve exclusively the residents of the building.*

Conclusion: Again, this provision is permissive rather than restrictive. There is a “country store” on site that sells limited groceries and sundries. T. 112. Residents run a second-hand store and proceeds go to fund the resident association. T. 113.

- (3) The application must contain a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.*

Conclusion: Such a vicinity map is in the record as Exhibit 55(k).

- (4) Construction is subject to all applicable Federal, State and County licenses or certificates.*

Conclusion: A condition so requiring has been recommended.

- (h) Provisions governing facilities approved prior to March 7, 1990:*

(1) A housing facility for senior adults or persons with disabilities existing before May 6, 2002, is a conforming use and structure, and may be continued in accordance with the terms and conditions of the special exception grant. Modifications may be approved that are in compliance with the special exception standards in effect at the time the modification is filed. If damaged, the facility may be rebuilt, repaired or reconstructed as it existed on May 6, 2002.

(2) A housing facility for senior adults or persons with disabilities existing on March 7, 1990, or for which a petition was approved prior to March 7, 1990, located on property containing at least 85 acres of land, may be extended, enlarged, or modified in accordance with the special exception standards in effect prior to March 7, 1990.

Conclusion: As discussed in Part I. B. of this report, this provision grandfathers the terms and conditions for the existing building, but applies all current regulations for the modifications. Based on the record, the Hearing Examiner finds that the modifications do comply with current standards.

2. Domiciliary Care Facility (§59-G-2.37)

(a) A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see "Group 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 standard is redundant of general standard in §59-G-1.21(a)(4), already discussed above. Staff concluded that the significant setbacks, amount of open space, and landscaping adequately buffered the use. Exhibit 60, p. 38. The Hearing Examiner adds that the additional landscaping designed to buffer the use from the Norwood historic site further supports a finding that this standard has been met.

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

Conclusion: The skilled nursing facilities will be located on the interior of the site roughly at the same locations as Thomas, Stabler, and Haviland Halls. Staff concluded that (Exhibit 60, pp. 38-39):

The exterior of the proposed buildings appears residential and incorporate several features of the single-family detached homes in the area including a residential type entrance, windows, and low roofing. The two-story buildings will have building façade complemented by accent panel of siding to maintain consistency with the residential character of the surrounding area. The proposed design of the buildings including the multi-unit assisted living facility as well as independent living apartment buildings, “Lodges” (small, 8 to 15-unit apartment buildings-Figure 10) and “Cottages” (duplex units- Figure 9) will be appropriate and relate well with the characteristics of existing residential uses as well as the low-rise nonresidential buildings in the area.

Ms. Lenhardt testified that the new buildings will use exterior materials that relate to what will remain on the site and exterior materials will match those that now exist in the community. The buildings will incorporate residential massing and design features commonly found in the area. The Hearing Examiner agrees with Staff’s analysis and finds that this standard has been met.

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

Conclusion: Staff concluded that the use will be adequately protected from the above impacts because it is designed with the primary goal of creating a safe environment. Exhibit 60, p. 39. The Hearing Examiner has already found that the internal vehicular and pedestrian circulation, and the access to the main entrance, are safe and efficient. As described earlier, noise from the on-site generators will be contained due to their locations and additional fencing. HVAC systems will be quieter and more energy efficient. A condition of approval requires that the Petitioner comply with all State licensure requirements for the domiciliary care facility. This standard has been met.

(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: No separate living quarters are proposed in this application.

(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: This property lies within the RE-2 Zone, which is not a rural 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.

Conclusion: At the conclusion of Phase III, the campus will have 48 assisted living units and 82 skilled nursing units, which would require a minimum of 3.58 acres. The 62-acre campus far exceeds the minimum lot area required.

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

Conclusion: Part III.D of this Report summarizes why the development proposed meets the bulk regulations of the underlying zone. As discussed there, this requirement has been met.

(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: As discussed in Part III.D of this Report, the Campus Plan (Exhibit 79) meets these requirements.

(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: The petition meets these standards as discussed in the next section of this Report.

(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: Friends House has submitted a site plan meeting these requirements. Exhibit 79.

(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: This application consists of a comprehensive plan for expansion of the Friends House community in four phases, including the proposed expansion of the assisted living (in Phase II) and skilled nursing facilities (in Phase III.) This requirement has been met.

(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: This application proposes a modification to uses approved prior to 1977, which have been modified extensively over the last 50 years. This expansion is governed by the 2004 Zoning Ordinance, as clarified recently in ZTA 16-14, adopted on January 24, 2017.

(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: This is not applicable to the present application.

D. Additional Applicable Standards

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 lot size, parking requirements and side setbacks for the domiciliary care facility and nursing home are included in §59-G-2.37. Minimum setbacks, height, and green area requirements for senior housing are specified in §59-G-2.35. A table from the Staff Report summarizes the development's compliance with the combined standards contained in Section 59-G-2 for a domiciliary care/nursing home and housing for seniors and persons with disabilities and the RE-2 Zone (§59-C-1.32), shown below (Exhibit 60, p. 19):

Table 6: Development Standard: RE-2 Zone

Development Standards 2004 Code	G-2.35: S-452 Housing and Related Facilities for Senior Adults and Persons with Disabilities		G-2.37: S-865-B Nursing Home or Domiciliary Home	
	Required	Proposed	Required	Proposed
Minimum Lot Area	87,120SF (2 AC)	62.2 acre	1,200 SF/ bed	
Minimum lot Frontage - at front building line - at street line	150 FT 25 FT	1,600 FT 1,518 FT	150 FT 25 FT	1,600 FT 1,518 FT
Minimum Building Setback - Front - Side - One side - Sum of both sides - Rear	50 FT ¹ 17 FT 35 FT 35	50 FT Min 17 FT Min 35 FT Min 35 FT Min	50 FT 17 FT 35 FT 35 FT	50 FT Min 17 FT Min 35 FT Min 35 FT Min
Building coverage	25 percent	13 percent	25 percent	13 percent
Maximum Building Height	50 SF	38 FT	50 FT	38 FT
Minimum Parking Setback (59-E-2.83 (b)) - Front - Side - Rear	50 FT 27 FT 45 FT	225 FT 27 FT 45 FT	50 FT 27 FT 45 FT	225 FT 27 FT 45 FT
Minimum Green area 59.-G-2.35	70 percent	78 percent	70 percent	78 percent

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

Conclusion: There are specific parking requirements for senior housing and nursing home/domiciliary care facilities. The 2004 Zoning Ordinance specifies that the number of spaces required for a domiciliary care facility equals one parking space for every 4 beds and one space for every 2 employees on largest work shift. *Zoning Ordinance*, §59-E-3.7. The total number of spaces required for housing for senior adults and persons with disabilities depends on where the property is located. The 2004 Zoning Ordinance divides the County into geographic “parking areas” that determine the number of required spaces. This property is located within the County’s “Northern” parking area. *Zoning Ordinance*, §59-E-3.7. The minimum number of parking spaces for facilities in the Northern parking area equals one space for every one-bedroom unit and 1.35 spaces for every 2-bedroom units. *Id.* Section 59-E-3.33 of the Ordinance permits “credits” against the amount of parking required for senior adults. The Petitioner intends to utilize the 10% credit for senior housing by providing shuttle service. Under §59-E-3.33(b)(2), this credit is contingent on providing this service for a period of at least 7 years:

Provision of private shuttle bus service for a minimum of 7 years, with a schedule assured by: 1) a special exception granted in accordance with Section [59-G-2.35](#) or [59-G-2.35.1](#); or 2) a condition of site plan approval. Continued shuttle bus service after that period is subject to the parking needs of the specific project, as determined by the Board of Appeals, Planning Board or Director.

Staff concluded that the application provides the required number of parking spaces for both senior housing and a domiciliary care facility, summarized in the table below (Exhibit 60, p. 21):

Table 7: Parking Tabulation

	S-452-D: 59-G-2.35: Housing and related facilities for senior adults or persons with disabilities	S-856-B: 59-G-2.37(D) Nursing Home or Domiciliary Care Home
Required	141 efficiency and 1Br@1 sp/d.u = 141 sp 175 two-br or more @1.35 sp/d.u=236 sp Subtotal 377 sp 10 percent credit for the provision of shuttle bus -38 sp Total 339 sp	82 skilled nursing bed @0.25 sp/bed 21 sp 20 care home employees (largest shift) @0.50 sp/employee <u>10sp</u> Subtotal 31 sp 48 one BR DU @0.25 sp/bed 12 Sp 20 care home employees (largest shift) @0.50 sp/employee <u>5 sp</u> Subtotal 17 sp Total 48 sp
Total Required for S-452-D and S-856-B: = 387		
Provided S-452 B and S-856A	Regular Parking spaces 371 sp ADA Parking Spaces 30 sp Total 401 sp (not including motorcycle or bicycle spaces)	
	Motorcycle Spaces 2 sp Bicycle Spaces 25 sp	

Staff concluded that the use as proposed meets the parking requirements, but recommended that, at the time of building permit, Friends House must demonstrate compliance with Section 4.1.2.(5)(d)(ii) of the Maryland Disability Code. Exhibit 60, p. 37. Compliance with the Maryland Accessibility Code will be a condition of approval of this special exception.

Friends House does *not* propose to terminate shuttle service after 7 years. Thus, the Hearing Examiner will include a recommended condition of approval requiring the Petitioner to provide shuttle service while the senior housing use is in operation.

For the skilled nursing facility, the minimum number of required parking spaces is based on 1 space for every 4 beds and one space for every 2 employees on the largest work shift. As indicated, the application meets these requirements.

The *2004 Zoning Ordinance* also contains minimum requirements for bicycle and motorcycle spaces. *2004 Zoning Ordinance*, §59-E-2.3. It requires one bicycle parking space for each 20 automobile spaces up to 20 bicycle spaces. According to Staff, the site plan shows approximately 25 bicycle parking spaces, with the potential for 57 parking spaces in the form of bike racks or spaces within parking garages. Exhibit 60, p. 20. The number of bicycle spaces

significantly exceeds the minimum requirements. The same section requires that bicycle parking areas be located where they are safe from motor vehicle traffic and secure from theft. Staff concluded that the locations of the bicycle spaces meet this requirements. *Id.* at 21. Having no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

Parking facilities containing more than 50 parking spaces must provide motorcycle stalls equaling 2% of the total number of spaces, capped at 10 stalls. Staff advises that two motorcycle stalls will be located on the property, and found that “give the nature of uses on the property, the proposed motorcycle stall adequately satisfy [sic] this requirement.” *Id.* Having no evidence to the contrary, the Hearing Examiner agrees and so finds.

(c) ***Minimum frontage.*** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
- (2) *Sand, gravel or clay pits, rock or stone quarries.*
- (3) *Sawmill.*
- (4) *Cemetery, animal.*
- (5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
- (6) *Riding stables.*
- (7) *Heliport and helistop.*

Conclusion: This section is not applicable.

(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: As stated in Part II.G. of this report, the property is subject to the Montgomery County Forest Conservation Law, and the Planning Board has approved the Final Forest Conservation Plan (FFCP) Exhibit 88. Compliance with the FFCP is a condition recommended in Part IV of this Report.

- (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: This section is not applicable because the subject site is not in a special protection area.

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

Conclusion: The application does not propose any new permanent signs. Staff notes that “[A]ny temporary construction signs must comply with all applicable requirements of Article 59-F” and that, “All signs placed on the property must meet the requirements of Section 59-F-4.2(a) in terms of number, location and area and Section 59-F-4.1(e) regarding illumination.” *Id.* This will be a condition of approval of this report.

- (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: Staff concluded that “Building elevations are compatible in scale and massing with the various types of housing types within the 62-acre campus and relate well with the rural-residential nature of the surrounding area in terms of its scale, bulk, height, and architectural features.” The Hearing Examiner has already discussed the compatibility of the buildings in Part III.A of this Report. For the reasons set forth there and by Staff, she finds that this standard has been met.

- (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: The revised landscape and lighting plan (Exhibit 55(e)) demonstrates that the proposed new lighting will not exceed 0.0 footcandles at the property line and will have no adverse impact on adjoining properties. Staff also notes that the landscaping shown on the landscape plan will help to eliminate the impact of lighting on the surrounding area.

Based on the testimony and evidence of record, I conclude that the modifications proposed by Petitioners meet the specific and general requirements for the two special exception modifications requested here, and that the petition should be granted, with the conditions recommended in the final section of this report.

IV. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that this petition to modify two special exceptions (i.e., S-856-B and S-452-D) to permit the additional domiciliary care and nursing facilities and housing and related facilities for senior adults and persons with disabilities at 17340 Quaker Drive in Sandy Spring, Maryland, be ***granted*** with the following conditions:

1. The Petitioner is bound by the testimony of its witnesses, exhibits of record, and attorney's representations that are identified in this Report.
2. The Special Exception uses must be limited to a total of 316 independent living units, and a total of 130 assisted-living units/nursing beds, and the existing adult day care program.

3. The Special Exception Site Plan (Exhibit 79) must show the rights-of-way from the centerlines of Norwood Road along the property southern and northwestern frontages of the subject property.
4. All physical improvements to the property are limited to those shown on the Special Exception Site Plan (Exhibit 79), Landscape Plan (Exhibit 87) and Lighting Plan (Exhibit 55(e)).
5. Prior to the issuance of the initial building permits, the Petitioner must coordinate with the Montgomery County Department of Transportation (MCDOT) to provide the necessary additional traffic control markings and signs to assure safe crossing of Norwood Road to access the Metrobus stops (for the Z2 route) on the opposite side of the road along Norwood Road.
6. The Petitioner must provide internal sidewalk connections and crossings of driveways/curb cuts that are ADA compliant.
7. All parking and loading facilities must comply with the requirements of the Maryland Accessibility Code.
8. The Petitioner must ensure that shuttle bus service continues while the special exception for housing for senior adults is in operation.
9. The Petitioner must at all times qualify for at least one type of exemption from familial status requirements of the Federal Fair Housing Act.
10. A minimum of 20 percent of the dwelling units must be permanently reserved for households of low income (at or below 60 percent of area median income)
11. Within 10 days after approval of the special exception, the Petitioner must record covenants on the property that permanently reserve a minimum of 20 percent of the dwelling units for households of low income (at or below 60 percent of area median income).
12. The Petitioner shall at all times comply with the approved Final Forest Conservation Plan.
13. No future applications for modification of the Approved Special Exception shall be filed separately for S-452-D or S-856-B. Any proposed modification on the property must amend both cases as approved in the subject Major Modification of the Approved Special Exception Site Plan.
14. Any temporary construction signs must comply with all applicable requirements of Article 59-F of the 2004 2004 Zoning Ordinance. All signs placed on the property must meet the requirements of Section 59-F-4.2(a) in terms of number, location and area and Section 59-F-4.1(e) regarding illumination. The Applicant must obtain any sign permits that may be required by the Department of Permitting Services or the Sign Review Board, as appropriate, and must file a copy of any such sign permit with OZAH. The final design of

the proposed sign must be in compliance with the Zoning Ordinance, or the Applicant must first obtain a sign variance from the Sign Review Board.

15. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Dated: March 21, 2017

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal stroke.

Lynn A. Robeson
Hearing Examiner

CORRECTED AND RE-ISSUED: March 21, 2017