Description
Request for conditional use approval of an affordable, 90-unit Independent Living Facility for Seniors and the associated Preliminary Forest Conservation Plan.

No. CU202204
Completed: 8-29-2022

MCPB
Item No. 9-8-2022

Montgomery County Planning Board
2425 Reedie Drive, Floor 14
Wheaton, MD 20902

Montgomeryplanning.org
Exhibit 32
OZAH Case No: CU 22-04
Summary:

- Staff recommends approval with conditions of the Conditional Use Application and transmittal of the recommendation to the Hearing Examiner for a September 30, 2022 hearing.

- Staff recommends approval with conditions of the Preliminary Forest Conservation Application.

- Staff recommends approval of a Joint Use Agreement to allow parking spaces for the Independent Living Facility for Seniors to be provided off-site on the Synagogue property, a waiver of the side parking setback requirement along the southeastern side of the parking lot, and alternative compliance to allow additional illumination along the pedestrian connection.

- The proposed use will provide additional housing choices in Wheaton. At least 90% of the units will be income restricted, with a minimum 30% MPDUs.

- The site design provides a pedestrian through-block connection between University Boulevard and Reedie Drive along the west side of the proposed building.

- Staff has received no correspondence about the Subject Applications as of the date of this Staff report.
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SECTION 1: RECOMMENDATIONS AND CONDITIONS

CONDITIONAL USE CU 202204

Staff recommends approval of conditional use application CU202204 with the following conditions:

1. The conditional use is limited to a 90-unit Independent Living Facility for Seniors.
2. Thirty percent of the dwelling units must be reserved for households of Moderately Priced Dwelling Unit (MPDU) income.
3. Ninety percent of the dwelling units must be income restricted.
4. A maximum of three employees may be onsite at any one time.
5. The Independent Living Facility is subject to a Joint Use Parking agreement. Prior to Certification of the Preliminary Plan of Subdivision, the parties to the Joint Use Parking Agreement must execute that document, record it among the Land Records of Montgomery County and provide a copy of the executed and recorded agreement to the Planning Department and to the Office of Zoning and Administrative Hearings.
Staff recommends approval with conditions of the Preliminary Forest Conservation Plan. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions:

1. The Final Forest Conservation Plan must be consistent with the Preliminary Forest Conservation Plan.

2. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the required mitigation trees credited toward meeting the requirements of the FCP.

3. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all variance tree mitigation plantings.

4. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 84 caliper inches as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

5. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FCP.
SECTION 2: SITE DESCRIPTION

VICINITY/NEIGHBORHOOD

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

Staff accepts the Applicant’s delineation of the Neighborhood for purposes of assessing compatibility (Figure 1). The Neighborhood is generally bound by Dayton Street to the south, Dodson Lane to the west, the rear lot lines of houses along Blueridge Avenue to the north, and Westchester Drive to the east. With the exception of the Subject Property, the Neighborhood is all residential, consisting of detached houses and townhouses. There is a Special Exception approval for a non-resident medical practitioner, CBA2994, in the detached house located at 11128 Norlee Drive.

![Figure 1: Vicinity/Staff-Defined Neighborhood](image-url)
**PROPERTY DESCRIPTION**

The Subject Property consists of a 1.31-acre unplatted parcel, and the 1.91-acre platted Parcel B shown on Plat 15759, both in the R-60 Zone. Parcel B contains the Har Tzeon-Agudath Achim Synagogue (“HTTA” or “Synagogue”) and an associated surface parking lot. The unplatted parcel is improved with a former residence, currently being used as a food pantry by HTTA, a playground, and an additional surface parking lot. Wooden fencing separates the Property from the adjacent detached houses.

There are no wetlands, intermittent or perennial streams on the Property. No known rare, threatened, or endangered species exist on the property and there are no designated historic sites on or near the property. In addition, there is no forest and there are no champion trees on the site. The Property generally slopes down from north to south.

*Figure 2: Subject Property (Outlined in Red)*
SECTION 3: PROJECT DESCRIPTION

PROPOSAL

The Applicant, 1910 University, LLC, proposes to subdivide the Property into two lots and redevelop the northern lot with a 90-unit independent living facility for seniors (“Senior Building”) that is the subject of the conditional use application. The proposed Senior Building is 98,000 square feet and contains one- and two-bedroom units. All of the units will be for individuals 62 years of age or older (at least one individual in a household must be 62 or older) and 90% of the units will be income restricted. Thirty percent of the proposed units will be permanently reserved as MPDUs.

The Synagogue on the proposed southern lot will be retained. The Synagogue will be reduced to 22,000 square feet, with a seating capacity of 200, after demolition of a portion of the building.

The proposed Senior Building is T-shaped, with the top of the “T” fronting on University Boulevard and the bottom of the “T” facing the adjacent residential neighborhood along Reedie Drive. The University Boulevard façade (the top of the “T”) is the tallest portion of the Senior Building at five stories (a maximum of 50 feet). However, due to the Property’s topography, the bottom floor of the building will be mostly buried along the University Boulevard façade and the building will appear as

Figure 3: Proposed Subdivision
four stories from University Boulevard. From the neighborhood along Reedie Drive, all five stories are visible, but the building steps down to four stories, and then to three stories closer to the adjacent neighborhood along Reedie Drive.

Building materials include dark red and buff colored brick and gray siding. Screened mechanical units are located on the roof of the building. New fencing will be installed along the western side of the building, where the Senior Building lot abuts lots that contain existing detached houses. Landscaping is proposed on all sides of the buildings, with new board-on-board wood fencing proposed between the Senior Building and the adjacent detached houses.

Figure 4: Conditional Use Site Plan
The Senior Building will be staffed with three employees on weekdays between 8:30 a.m. and 5:00 p.m. On-site staff include a property manager, a maintenance technician and a porter. As conditioned, the Senior Building will be limited to three (3) staff persons on-site at any time. An emergency call system will be implemented during the hours that staff is not on-site.

A proposed four-foot-high and ten-foot-wide ground mounted monument sign, with the name of the Senior Building, is located at the entrance driveway. The proposed lot with the Senior Building includes over 50% green area, with sidewalks and landscaping around all sides of the building.
Figure 6: Exterior Elevations

View from the drop-off/pick-up loop (facing northwest)

View from Reedie Drive (facing northeast)

View from University Blvd (facing southwest)
Figure 7: Green Area

Circulation and Access

The Applicant plans to retain the two existing driveways on the Overall Property (Figure 8). One driveway, located on the proposed lot for the Senior Building, sits at the signalized terminus of Reedie Drive and University Boulevard. The driveway provides vehicular ingress and egress for both the proposed Senior Building and the Synagogue. Due to the unusual geometry of this intersection, egress from this driveway is limited to right-turns only. Two proposed internal driveways connect the surface parking lots for the Senior Building and the Synagogue and allow circulation around both properties. A second existing driveway, located on the proposed HTTA lot, allows exit only right-turns (ingress is not allowed) in the existing condition and will be retained without modification.

The Applicant proposes to replace the existing, unbuffered sidewalk along the Property’s University Boulevard frontage with a 10-foot-wide sidewalk buffered with trees planted in a lawn panel. A five-foot-wide walkway will connect the Senior Building main entrance with the University Boulevard sidewalk.
A pedestrian through-block connection along the west side of the building is proposed between University Boulevard and the terminus of Reedie Drive. The pedestrian connection includes landscaping and lighting, with a wide planting area where the walkway connects with the University Boulevard sidewalk. Chain-link fencing and landscaping will provide physical separation between the pedestrian walkway and the Senior Building to address the Applicant’s security concerns while allowing visibility between the Senior Building and the walkway.

Figure 8: Circulation Plan (Senior Building Lot outlined in red)

Trash pick-up will be accommodated through the vehicular access located off the drive aisle, where trash will be wheeled out of the building for pick-up, with an expected frequency of twice per week. A loading area is located off of the proposed internal driveway loop, southeast of the proposed Senior Building.

Parking

The proposed lot with the Senior Building contains ten vehicle parking spaces. The Applicant plans to formalize a joint use agreement to provide the remainder of the required vehicle parking spaces on the Synagogue parking lot. Subsequent to demolition of a portion of the existing Synagogue, additional parking spaces will be added to the HTTA lot, for a total of 93 vehicle parking spaces between both lots. The Applicant proposes a 24-foot-wide drive aisle to allow for two-way circulation, which is adequate for standard passenger vehicles.
A bicycle room located on the ground floor of the Senior Building is proposed to provide long-term bicycle parking spaces. The proposed short-term bicycle parking space is located adjacent to the main entrance.
SECTION 4: CONDITIONAL USE CU 202204 FINDINGS AND ANALYSIS

LIMITED USE STANDARDS

Section 59-3.3.2.C.2.a

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

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

   The Applicant acknowledges this requirement.

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

   The proposed Independent Living Facility will not have resident staff that live on-site.

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

   a) a senior adult, as defined in Section 1.4.2, Defined Terms;
   b) other members of the household of a senior adult, regardless of age;
      a resident care-giver, if needed to assist a senior resident; or
   c) a person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist seniors as defined in that program.
   d) If imposing age restrictions that would limit occupancy otherwise allowed by this Subsection, the facility must only impose age restrictions that satisfy at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, as amended, or the state Fair Housing Act, Subtitle 7 of Title 20 of the Annotated Code of Maryland, State Government Article, as amended.

Dwelling units will be required to have at least one individual in a household who is 62 or older.

CONDITIONAL USE STANDARDS

Section 59-3.3.2.C.2.c

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

1. The site or the proposed facility has adequate accessibility to or provides on-site public transportation, medical service, shopping areas, recreation and other community services frequently desired by senior adults or persons with disabilities. The application must include a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.
The Property is served by Ride On and WMATA, with an existing bus stop located along the Property's University Boulevard frontage. The Property is also within a 1/3 mile of the Wheaton Metrorail Station, located to the west along Reedie Drive. The nearest public transit routes are as follows:

- Ride On route 7 operates along Reedie Drive and University Boulevard, providing service between the Wheaton CBD, Inwood Avenue, and the Wheaton and Forest Glen Metrorail stations.
- Ride On route 8 operates along University Boulevard, providing service to the Wheaton CBD, Holy Cross Hospital, the Silver Spring CBD, and the Wheaton, Forest Glen, and Silver Spring Metrorail stations.
- Metrobus route C2 operates along University Boulevard, providing service to the Wheaton CBD, Four Corners, Langley Park, the US 29 Flash Route, the University of Maryland, and the Wheaton and Greenbelt Metrorail stations.
- Metrobus route C4 operates along University Boulevard, providing service to the Wheaton CBD, Four Corners, Langley Park, the US 29 Flash Route, and the Wheaton and Prince George's Plaza Metrorail stations.

Additionally, the future University Boulevard Transitway is planned along this segment of University Boulevard. A bus rapid transit (BRT) station is planned at the University Boulevard-Amherst Avenue intersection, less than a 1/4 mile west of the Subject Property.

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

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

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

The Conditional Use Application includes a vicinity map showing required services and facilities within a one-mile radius of the Property.

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

There are no ancillary services or retail facilities proposed with this application.
3. **A minimum of 15% of the dwelling units is permanently reserved for households of very low income, or 20% for households of low income, or 30% for households of MPDU income, and otherwise satisfies Chapter 25A. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs under Executive regulations. Income levels are defined in Section 1.4.2, Defined Terms.**

Thirty percent (30%) of the dwelling units will be permanently reserved for households of MPDU income.

4. **The maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is the height of the applied-for building type in the underlying zone under the standard method of development, except for the apartment building type which may be up to 60 feet. If a particular building type is not allowed under the standard method of development, the maximum height is the height of a Conditional Use in the underlying zone. The maximum density is determined by the Hearing Examiner under the development standards of Section 3.3.2.C.2.c.vi through Section 3.3.2.C.2.c.ix, without regard to any other limitation in this Chapter.**

The height of the proposed Senior Building is 50 feet, which is below the 60-foot maximum for apartment building type. The height and density are appropriate for this location given the Property’s location on a major transportation corridor and the proximity to transit, commercial and medical services.

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

The proposed building and associated parking are compatible with the residential character of the surrounding neighborhood. The maximum height of the building is 50 feet (five stories), with the tallest portion of the building along University Boulevard. Due to the topography of the site, the first story of the building is mostly hidden from view along University Boulevard and the front of the building appears to be four stories. The rear (Reedie Avenue) side of the building steps down from five stories to three stories abutting the residential neighborhood to the west.

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

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

The minimum required front setback for a detached house in the R-60 Zone under the standard method of development is 25 feet. The proposed building is set back 30 feet from University Boulevard and the front setback area is proposed as green area.

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

The proposed side and rear setbacks are 25 feet.

8. The minimum green area is 50%.

The proposed green area is 52.8% of the Property.

9. Principal building setbacks for all building types must meet the minimum setbacks required under the standard method of development for the subject building type in the R-30 zone (see Section 4.4.14.B.3, Placement).

<table>
<thead>
<tr>
<th>Principal Building Setback (min)</th>
<th>R-30 Zone, Apartment Building</th>
<th>Proposed Building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front setback, public street</td>
<td>30 ft</td>
<td>30 ft</td>
</tr>
<tr>
<td>Side and rear setback,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>abutting Residential</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Detached Zones</td>
<td>Section 4.1.8.A</td>
<td>25 ft</td>
</tr>
</tbody>
</table>

1 Section 4.1.8.A does not apply because the Conditional Use Property is in a Residential Detached Zone.

2 As required by Section 59-3.3.2.C.2.b.9.

CONDITIONAL USE FINDINGS

Section 59-7.3.1.E

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

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

There are no applicable previous approvals on the Site.

1 The findings in Section 59-7.3.1.E.4 through Section 59-7.3.1.E.6 are not applicable to this application and are not included in this report.
b) satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

i. **Use Standards**

The limited and conditional use standards for an Independent Living Facility for Seniors are addressed on page 14 of this report.

ii. **Development Standards**

The proposed development satisfies the development standards for an Independent Living Facility for Seniors as demonstrated in Table 2.

*Table 2: Development Standards for Independent Living Facility for Seniors in the R-60 Zone*

<table>
<thead>
<tr>
<th>Development Standard</th>
<th>Required/Allowed</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot area (min)</td>
<td>6,000 sf (59-4.4.9.B)</td>
<td>72,840 sf/1.67 acres</td>
</tr>
<tr>
<td>Lot width at front building line (min)</td>
<td>60 ft (59-4.4.9.B)</td>
<td>321 ft</td>
</tr>
<tr>
<td>Lot width at front lot line (min)</td>
<td>25 ft (59-4.4.9.B)</td>
<td>325 ft</td>
</tr>
<tr>
<td>Frontage on street or open space</td>
<td>Required (59-4.4.9.B)</td>
<td>Fronts on street</td>
</tr>
<tr>
<td>Density (max)</td>
<td>Determined by Hearing Examiner (59-3.3.2.C.2.c.v)</td>
<td>90 units (98,000 sf)</td>
</tr>
<tr>
<td>MPDUs (min)</td>
<td>30% (59.3.3.2.C.2.c.iii)</td>
<td>30%</td>
</tr>
<tr>
<td>Lot Coverage (max)</td>
<td>35% (59-4.4.9.B)</td>
<td>31%</td>
</tr>
<tr>
<td>Front setback (min)</td>
<td>30 ft (As required for R-30 Zone under 59-3.3.2.C.2.c.ix)</td>
<td>30 ft</td>
</tr>
<tr>
<td>Side setback, north (min)</td>
<td>25 ft (59-3.3.2.C.2.c.vii)</td>
<td>25 ft</td>
</tr>
<tr>
<td>Side setback, south (min)</td>
<td>25 ft (59-3.3.2.C.2.c.vii)</td>
<td>55 ft</td>
</tr>
<tr>
<td>Rear setback (min)</td>
<td>25 ft (59-3.3.2.C.2.c.vii)</td>
<td>36 ft</td>
</tr>
<tr>
<td>Height (max)</td>
<td>60 ft (59-3.3.2.C.2.c.iv)</td>
<td>50 feet</td>
</tr>
<tr>
<td>Green Area (min)</td>
<td>50% (59-3.3.2.C.2.c.viii)</td>
<td>52.8% (38,492 sf)</td>
</tr>
</tbody>
</table>
iii. Applicable General Requirements

(1) Parking

As demonstrated in Table 3, the Application satisfies the parking requirements for the proposed use.

Table 3: Parking Requirements

<table>
<thead>
<tr>
<th></th>
<th>Minimum Required</th>
<th>Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vehicle Parking</td>
<td>0.5 space/unit</td>
<td>47 spaces¹</td>
</tr>
<tr>
<td></td>
<td>0.5 space/employee</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(47 total spaces)</td>
<td></td>
</tr>
<tr>
<td>Rear Parking Setback</td>
<td>20 ft</td>
<td>92 ft</td>
</tr>
<tr>
<td>Side Parking Setback, north</td>
<td>16 ft</td>
<td>155 ft</td>
</tr>
<tr>
<td>Side Parking Setback, south</td>
<td>16 ft</td>
<td>4 ft²</td>
</tr>
<tr>
<td>Bicycle Parking</td>
<td>0.25 spaces/unit</td>
<td>23 spaces</td>
</tr>
<tr>
<td></td>
<td>(95% long term)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(22 long term, 1 short term)</td>
<td></td>
</tr>
<tr>
<td>Loading</td>
<td>1 space</td>
<td>1 space</td>
</tr>
</tbody>
</table>

¹ Ten parking spaces will be located on the Conditional Use Property. The remainder of the spaces will be provided on the adjacent HTTA property with a joint use parking agreement, as further described below.
² Staff recommends a waiver, pursuant to Section 59-6.2.10, to allow a 4-foot side parking setback along the southern property line instead of the 16-foot parking setback requirement. The waiver is discussed in further detail below.

In accordance with Section 59-6.2.3.G, the Applicant will enter into a joint use agreement with HTTA to satisfy the vehicle parking requirement for the Senior Building by making up to 38 parking spaces available off-site on the Synagogue property (Attachment B). Between the two properties, there will be 93 vehicle parking spaces available, satisfying the parking requirements of both uses (Table 4).

Table 4: Parking for Synagogue and Senior Building

<table>
<thead>
<tr>
<th>Use</th>
<th>Min Spaces Required</th>
<th>Spaces Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Religious Assembly</td>
<td>0.125/fixed seat x 200 seats =25 (25 total)¹</td>
<td>46</td>
</tr>
<tr>
<td>Independent Living for Seniors</td>
<td>0.5/dwelling unit²</td>
<td>47²</td>
</tr>
<tr>
<td></td>
<td>0.5/employee (47 total)</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>72</td>
<td>93</td>
</tr>
</tbody>
</table>

¹ See further discussion of Synagogue parking below.
² Includes a 0.5 reduction for senior housing pursuant to Section 59-6.2.3.1.2.b.
³ 10 spaces provided on the lot for the Senior Building, 37 spaces for the Senior Building provided on Synagogue lot with a joint use parking agreement pursuant to Section 59-6.2.3.G.
Pursuant to Section 59.6.2.3.I.2.c, the deciding body may reduce the required number of parking spaces to 0.125 per fixed seat if used by a congregation whose religious beliefs prohibit the use of motor vehicles in traveling to or from religious services conducted on their Sabbath and principal holidays. As a traditional Conservative synagogue, HTTA and its members tend to adhere to more orthodox traditions which include prohibition of certain activities on the Sabbath including driving a motor vehicle. Currently, more than 60% of the regular Sabbath attendees walk to Synagogue. Staff recommends using the reduced parking rate for religious assembly under Section 59.6.2.3.I.2.c. to calculate the required parking for the Synagogue.

To maintain a residential character and a pedestrian-friendly street, the off-street parking spaces located on the lot for the Senior Building are subject to setback requirements under Section 59-6.2.5.K. Staff recommends approval of a waiver under Section 6.2.10 for the side parking setback requirement. Since the proposed parking spaces for the Senior Building will abut the Synagogue parking lot, a parking setback between the two is not necessary. The waiver of the side parking setback and the proposed parking configuration will allow adequate parking in a safe and efficient manner and will not be detrimental to the residential character of the area.

(2) Lighting

The photometric shows that the illumination is 0.1 footcandles along the majority of the lot lines that abut lots with a detached house building type. Along the northwestern lot line, the illumination is higher than 0.1 footcandles. Staff recommends approval of an alternative method of compliance under Section 59-6.8.1 to allow illumination up to 1.8 footcandles along the northwestern lot line to provide a safe, well-lit pedestrian connection between University Boulevard and Reedie Drive. To approve alternative compliance, the deciding body must find that there is a unique site, a use characteristic, or a development constraint that precludes safe of efficient development under the requirements of the applicable Division. In this case, Planning Staff are requiring the Applicant to provide a pedestrian connection and due to the security concerns of the Senior Housing developer and HTTA, the location of the proposed pedestrian connection is limited to the northwestern portion of the Property. If the 0.1 footcandle limit were strictly imposed along this lot line, the illumination would not be adequate to provide a safe nighttime pedestrian connection.

To approve alternative compliance, the deciding body must also determine the alternative lighting design will:

a) satisfy the intent of the applicable Division;

The proposed lighting design satisfies the intent of Division 59-6.4 to preserve property values, preserve and strengthen the character of communities and improve water and air quality. An appropriately lit pedestrian connection will encourage pedestrian activity and provide a community connection from the neighborhood along Reedie Drive to the mass transit opportunities along University Boulevard.
b) modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;

The bollard lighting in close proximity to the northwestern lot line is the minimum necessary to provide safe lighting for the pedestrian path. The illumination at the lot line will be no greater than 0.4 footcandles.

c) provide necessary mitigation alleviating any adverse impacts; and

The proposed board-on-board fence along the northwest lot line will alleviate any adverse impacts from the additional illumination.

d) be in the public interest.

A safe, well-lit pedestrian pathway in this location will increase connectivity in the neighborhood and provide needed access between the adjacent residential neighborhood and the bus lines (and future BRT) along University Boulevard.

(3) Screening

Under Section 59-6.5.2.B.A.2, the Senior Building must provide screening along the western property lines where the Subject Property abuts lots in the R-60 zone with a residential use. The proposed landscape design complies with Section 59-6.5.2.C.7, Option A by providing an eight-foot-wide planting bed with trees and shrubs, and a six-foot-tall board-on-board fence (Figure 9).

Figure 9: Screening between proposed Senior Building and existing residential properties (along green line)
(4) **Signage**

The proposed signage is four feet high and ten feet wide and meets the requirements of Section 59.6.7.8.B, which allows up to two signs per entrance of a multi-unit development in a Residential Zone with a maximum sign area of 40 square feet and a maximum height of 26 feet.

c) **substantially conforms with the recommendations of the applicable master plan;**

The Property is within the boundary of the 2012 *Wheaton CBD and Vicinity Sector Plan* (Sector Plan). Overall, the Application is in conformance with the Sector Plan. The Sector Plan does not specifically address the Property, but general recommendations related to housing, connectivity, and transportation are relevant to this Application.

**Housing**

The following objectives and recommendations are related to housing:

- The Plan describes Wheaton’s roles in the County as an area with “broad housing choices” (page 9) and envisions the Wheaton of the future to continue providing, “housing opportunities for the eastern part of the County.” (page 11).
- The Plan also recommends that “Existing single-family residential neighborhoods should be preserved and protected from the adverse impacts of nearby non-residential development.” (Page 58).

The proposed independent living facility for seniors will provide additional housing choices in Wheaton. The Senior Building is proposed on a Property that is currently developed with a non-residential use. The building is context-sensitive in massing and orientation and provides an appropriate transition to the single-family neighborhood located along Reedie Drive to the west.

**Connectivity**

- The Sector Plan recommends that through-block pedestrian connections should be provided where feasible, particularly for large blocks (Page 64).

At the request of Staff, the Applicant has proposed a pedestrian/bicycle connection along the northwest side of the Senior Building. This location provides pedestrian access between Reedie Drive and University Boulevard while maintaining the secure environment the Applicant requires for the Synagogue and proposed Senior Building.

**Master-Planned Roadways and Bikeways**

The segment of University Boulevard along the Property frontage is classified as M-19, a major highway with planned Bus Rapid Transit (BRT), within the *Master Plan of Highways and Transitways*. The existing section has six (6) lanes, as well as an existing vegetated median. The Applicant proposes to dedicate approximately 25-feet of right-of-way as a means to meet the 75-foot public planned right-of-way, from centerline, to accommodate the six travel lanes, a central median, and the future University Boulevard transitway identified in the *Countywide Transit Corridors Functional Master Plan*. 
A BRT station is planned at the University Boulevard-Amherst Avenue intersection, less than a 1/4 mile west of the Subject Property.

Currently along the University Boulevard property frontage, an existing six-foot sidewalk, without a street buffer, is located directly from the back of curb. The University Boulevard Property frontage will be enhanced with a six-foot sidewalk and eight-foot street buffer with street trees, in accordance with the Boulevard streetscape requirements in the *Complete Streets Design Guide*. Furthermore, the Applicant proposes to construct a new ADA-compliant curb ramp connecting directly with the existing crosswalk across University Boulevard. The driveway access at the University Boulevard-Reedie Drive approach will be raised to sidewalk-level to foster safe travel for people walking north-to-south, consistent with standard detail MC-302.01.

Per the *Bicycle Master Plan*, there is no bicycle facility planned along the Property’s frontage on University Boulevard. A bidirectional off-street sidepath is planned along the opposite frontage of University Boulevard and this Project does not preclude implementation of the future bikeway.

The Applicant has agreed to provide an eight-foot-wide asphalt pathway north of the proposed Senior Building that will provide a public pedestrian and bicycle connection between Reedie Drive and University Boulevard. As illustrated in Figure 10, the proposed pathway provides clear indication of public access using decorative tree plantings and natural features.

![Figure 10: Trail Connection Landscaping](image)

*d) is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;*
The proposed Senior Building is harmonious with the character of the surrounding neighborhood and consistent with the recommendations of the Sector Plan. The use is residential, consistent with the surrounding neighborhoods, and the design of the building provides appropriate transitions from five stories along University Boulevard to three stories adjacent to the single-family neighborhood (as viewed from the west, along Reedie Drive). The proposed landscaping, fencing, and setbacks will provide appropriate buffers between the Senior Building and the adjacent neighborhoods.

e) will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Staff identified one approved Special Exception within the Neighborhood, although it is unclear if the Special Exception is still operational. If approved, the Senior Building will increase the number of conditional uses/special exceptions in the Neighborhood, but it will not adversely impact the area or alter the predominantly residential nature of the Neighborhood. The use is residential and it substantially conforms with the recommendations of the Sector Plan.

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

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

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

A Preliminary Subdivision Plan was filed concurrently with the Conditional Use Application and will be reviewed by the Planning Board subsequent to the Hearing Examiner’s decision about the Conditional Use.

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

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

Inherent adverse effects are created by the physical or operational characteristics necessarily associated with the conditional use, regardless of the physical size or scale of operations. Staff identified the following inherent characteristics as necessarily associated with an independent living facility: (1) buildings and related outdoor recreational areas or facilities; (2) parking facilities; (3) lighting; (4) vehicular trips to and from the site by employees, visitors, residents, delivery vehicles and waste removal; (5) noise generated by equipment for the facility, waste pick-up, deliveries, and occasional outdoor activities of residents and their visitors; and (6) driveway impacts.

The proposed independent living facility will not disturb the use, peaceful enjoyment, economic value, or development potential of abutting and confronting properties or the general neighborhood. The proposed building and site have been designed to be compatible with the surrounding residential neighborhood. The residential architecture, ample setbacks, and screening will ensure that the proposed facility will not disturb the use or peaceful enjoyment of neighbors, nor will it decrease the economic value or development potential of abutting and confronting properties or the general neighborhood.

The proposed facility will not cause undue harm to the neighborhood as a result of traffic, noise, odors, dust, illumination, or a lack of parking. The transportation statement submitted with the Application stated that the Project would generate an increase of 28 morning and 39 evening person trips, featuring an increase of 15 morning and 22 evening peak hour vehicle trips. As such, under the 2020-2024 Growth and Infrastructure Policy, a traffic study is not required to satisfy the LATR test, because the number of morning and evening person trips is fewer than the standard of 50 or more trips within the weekday peak hours.

Any noise, odors, or dust associated with the facility will be comparable to those generated by similar facilities. Noises associated with the proposed facility will be minimized by the site design. The trash room will be located towards the front of the building facing the Synagogue, away from the neighboring residential properties. This interior location will also conceal the waste from the front entrance of the building and shield it from the view from University Boulevard. The outdoor recreation areas for residents and visitors are unlikely to generate noises objectionable to the neighbors. Illumination at the lot line shared with detached houses is minimized to prevent glare, and lighting associated with the facility will not create a nuisance to neighbors.

The facility will provide sufficient parking considering the number of units available to moderate- and low-income residents. Further, a bus stop is located along University Boulevard, in close proximity to the Senior Building.
There will be no undue harm to the health, safety, or welfare of neighboring residents, visitors, or employees because the proposed Conditional Use meets all applicable development standards, and has adequate and safe circulation in and around the site.

Non-inherent adverse effects may result from a situation unique to the physical location, operation, or size of a proposed use. Staff has not identified any non-inherent adverse impacts from the proposed use. There is no expected undue harm to the neighborhood because of any non-inherent adverse effect, or a combination of inherent or non-inherent adverse effects.

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

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

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

The proposed use satisfies all specific requirements and is compatible with nearby properties. Staff recommends approval of the conditional use application.
SECTION 5: PRELIMINARY FOREST CONSERVATION PLAN CU202204 FINDINGS AND ANALYSIS

REVIEW FOR CONFORMANCE TO THE FOREST CONSERVATION LAW

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(a) as a project by “a person required by law to obtain approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan.” However, since a Conditional Use and Preliminary Plan are being reviewed and approved concurrently, the Preliminary Forest Conservation Plan will be reviewed with the Conditional Use Plan and the Final Forest Conservation Plan will be reviewed and approved as part of Preliminary Plan No. 120210230. Under Section 22A-11(c) “The Board of Appeals must consider the preliminary forest conservation plan when approving the special exception or conditional use application and must not approve a special exception or conditional use application that conflicts with the preliminary forest conservation plan.”

ENVIRONMENTAL GUIDELINES

Natural Resources Inventory and Forest Stand Delineation (NRI/FSD) Plan No. 420211860 was approved by Planning staff on June 2, 2021. The Site is within the Sligo Creek watershed, a Use I designation. The Site contains no forest, no Stream Valley Buffer (SVB), and no 100-year Floodplain. The Site is not located within a Special Protection Area or the Patuxent Management Area.

FOREST CONSERVATION

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law (“FCL”). As required by Chapter 22A, a Preliminary Forest Conservation Plan (“PFCP”) was submitted with this Conditional Use application. The total net tract area for forest conservation purposes is 3.55 acres. The Property is zoned R-60 and is classified as High Density Residential (“HDR”) as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The Site does not contain any forest. However, there is a 0.53-acre afforestation requirement as calculated in the Forest Conservation Worksheet, as determined by the property size and 15% afforestation threshold. The afforestation requirement will be met off-site in a forest bank or by payment of fee-in-lieu.

FOREST CONSERVATION VARIANCE

Section 22A-12(b)(3) of the FCL provides criteria that identify certain individual trees and other vegetation as high priority for retention and protection. The law requires that there be no impact to: trees that measure 30 inches or greater diameter breast height (“DBH”); are part of an historic site or designated with an historic structure; are designated as national, State, or County champion trees; are
at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to high priority vegetation, including disturbance to the critical root zone (“CRZ”) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the FCL. Staff determined that development of the Site requires impact to trees identified as high priority for retention and protection (“Protected Trees”). The Applicant has submitted a variance request for these impacts.

Variance Request

The Applicant submitted a variance request in a letter dated June 16, 2021 and a revised variance request dated January 14, 2022 (Attachment D) for the removal of nine (9) trees and impact to one (1) tree. Details of the Protected Trees to be impacted and removed are provided in Table 5.

Table 5: Protected Trees

<table>
<thead>
<tr>
<th>Tree #</th>
<th>Species</th>
<th>DBH (inches)</th>
<th>Condition</th>
<th>Disposition</th>
<th>CRZ impact</th>
<th>Mitigation</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Pin Oak</td>
<td>47”</td>
<td>Good</td>
<td>Remove</td>
<td>11.75”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>102</td>
<td>Tulip Polar</td>
<td>32”</td>
<td>Poor</td>
<td>Remove</td>
<td>8”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>103</td>
<td>Red Maple</td>
<td>37”</td>
<td>Fair</td>
<td>Remove</td>
<td>9.25”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>104</td>
<td>American Elm</td>
<td>38”</td>
<td>Fair</td>
<td>Remove</td>
<td>9.5”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>105</td>
<td>Red Maple</td>
<td>30”</td>
<td>Poor</td>
<td>Remove</td>
<td>7.5”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>109</td>
<td>Tulip Poplar</td>
<td>33”</td>
<td>Good</td>
<td>Remove</td>
<td>8.25”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>110</td>
<td>White Oak</td>
<td>30”</td>
<td>Good</td>
<td>Remove</td>
<td>7.5”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>112</td>
<td>White Oak</td>
<td>37”</td>
<td>Good</td>
<td>Remove</td>
<td>9.25”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>201</td>
<td>White Oak</td>
<td>48”</td>
<td>Good</td>
<td>Remove</td>
<td>31%</td>
<td>12”</td>
<td>Off-site – Applicant will try to save</td>
</tr>
<tr>
<td>204</td>
<td>White Mulberry</td>
<td>33”</td>
<td>Poor</td>
<td>Save</td>
<td>36%</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

Unwarranted Hardship Basis

Pursuant to Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the Protected Trees in an undisturbed state would result in an unwarranted hardship, denying an applicant reasonable and significant use of the Subject Property. The Applicant contends that an unwarranted hardship would be created due to the locations of the Protected Trees around the existing building and parking lots that are proposed for demolition. The existing development cannot be demolished without removing eight (8) of the trees shown as being removed. The Site contains ten (10) trees subject to the variance provision which will be impacted by this Application. If the Applicant is not allowed to impact the trees, the Applicant will not be able to redevelop a portion of the Property.

Variance Findings - Based on the review of the variance request and the proposed Preliminary/Final Forest Conservation Plan, Staff recommends that the Planning Board approve the variance based on the following findings:
1. **Will not confer on the applicant a special privilege that would be denied to other applicants.**

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the demolition of existing structures and parking areas. Granting a variance to allow for demolition of existing facilities is not unique to this Applicant.

2. **Is not based on conditions or circumstances which are the result of the actions by the applicant.**

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on existing site conditions, including the location of the Protected Trees in proximity to the existing development proposed for demolition and removal.

3. **Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.**

The surrounding land uses and buildings do not have conditions that have created or contributed to this need for a variance.

4. **Will not violate State water quality standards or cause measurable degradation in water quality.**

The Variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted are not located within a stream buffer, wetland, or a special protection area. Additional trees will be planted on the Subject Property as part of the forest conservation requirements.

In addition, the Montgomery County Department of Permitting Services (MCDPS) is reviewing a stormwater management concept for the proposed project. The stormwater management concept incorporates Environmental Site Design standards.

**Mitigation for Protected Trees**

The Applicant is proposing to remove nine (9) Protected Trees and will mitigate for the removal of these trees at a rate of ¼-inch planted for every 1-inch DBH of Protected Tree removed, using a minimum 3 caliper inch tree. The Applicant is proposing to remove 332 inches DBH of Protected Trees and will plant a minimum of 83 caliper inches. The Applicant is showing 28 native canopy trees at a minimum size of 3 caliper inches as mitigation for the Protected Tree removals.

**Variance Recommendation**

Staff has reviewed the variance request and recommends Approval of the requested tree variance.
FOREST CONSERVATION LAW ANALYSIS AND FINDINGS

The Application meets all applicable requirements of Chapter 22A of the Montgomery County Forest Conservation Law.
SECTION 6: COMMUNITY OUTREACH

The Applicant held a pre-submittal public meeting on May 3, 2021 related to the Application. The meeting was conducted virtually due to the COVID-19 Guidelines and the Applicant has complied with all other submittal and noticing requirements.

As of date of this Staff Report, no correspondence has been received about the Preliminary Forest Conservation Plan or Conditional Use Applications.

SECTION 7: CONCLUSION

Conditional Use and Preliminary Forest Conservation Plan No. CU202204 satisfy all the applicable findings under the Zoning Code, meet all applicable requirements of the Forest Conservation Law and substantially conform to the recommendations of the Wheaton CBD and Vicinity Sector Plan. Therefore, Staff recommends approval of Conditional Use No. CU202204 and Preliminary Forest Conservation Plan No. CU202204 with the conditions included at the beginning of this Staff Report.

ATTACHMENTS

Attachment A: Conditional Use Plan
Attachment B: Draft Joint Parking Agreement
Attachment C: Forest Conservation Plan
Attachment D: Variance Request