

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
**Stella B. Werner Council Office Building**  
**100 Maryland Avenue, Suite 200**  
**Rockville, Maryland 20850**  
**(240) 777-6660**

**IN THE MATTER OF:**  
**COMMUNITY HOUSING INITIATIVE, INC.**

Applicant

Robert Byrne

Josh Slone

Mark Morelock

Nick Driban

For the Application

Scott Wallace, Esquire

Devyn King, Esquire

Attorneys for the Applicant

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Before: Kathleen Byrne, Hearing Examiner

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**OZAH CASE NO. CU 23-10**

**HEARING EXAMINER'S REPORT AND DECISION**

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## I. STATEMENT OF THE CASE

Filed on December 14, 2022, Community Housing Initiative, Inc. (hereinafter “Applicant”) applied for a conditional use for an Independent Living Facility for Seniors under Section 59.3.3.2.D of the Zoning Ordinance. The subject property is identified as 13741 and 13751 Travilah Road, Rockville, Maryland 20850 also know as Parcels P709and P805, Harbins Lot and Parcel B (N765), Plat 9926, Tax Account Nos. 06-00399300, 06-00389265, 06-00405195. Exhibit 1. The property is zoned RE-2. *Id.* Because the Applicant was required to go through a sewer category change, which took several months, the original hearing date was postponed and on July 8, 2025, OZAH issued a Notice of Hearing scheduling the public hearing for Thursday, August 7, 2024. Exhibit 27.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued a report recommending approval of the conditional use application dated July 7, 2024, subject to the following conditions of approval (Exhibit 29, pp. 3-4):

1. The use is limited to an Independent Living Facility townhouse community for up to sixty (60) lots.
2. All previous Special Exceptions must be abandoned prior to the issuance of the first building permit.
3. Before the issuance of any building permit or sediment control permit, whichever comes first, the Applicant must enter into a Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond or other form of surety, with the following provisions:
  - a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
  - b) The cost estimate must include but not be limited to private roads, alleys, landscaping, sidewalks, paths, seating and benches, pergolas, fencing, and other similar items.
  - c) Completion of all improvements covered by the surety will be followed by an inspection and, if necessary, a potential reduction of the surety.
  - d) The bond or surety for each item shall be clearly described within the Surety & Maintenance Agreement, including all relevant conditions.

4. <sup>1</sup>The Applicant must schedule a preconstruction meeting (pre-con), preferably on-site, with staff from the Department of Permitting Services (DPS) responsible for Conditional Use Plan conformance and compliance. The pre-con must occur before any site development work commences and before any work that is covered by the surety and maintenance agreement. The Applicant, along with their representatives, must attend the pre-con with DPS Staff. A copy of the approved Conditional Use Plan along with any subsequent amendments is required to be on-site at all times.
5. Before approval to release any portion of the performance bond, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the fire access improvements have been constructed and installed per the recommendations from the Fire Department Access and Water Supply Section, and as shown in the approved MCDPS fire access plan, or as amended.
6. Prior to the release of building permits, the Preliminary Plan must be certified.
7. The Record Plat must be recorded prior to the release of any building permits.

During its regular meeting on July 17, 2025, the Planning Board unanimously recommended approval of the application with the conditions recommended by Staff. Exhibit 30. The Board also granted approval of a Preliminary Forest Conservation Plan (PFCP) for the project. Exhibit 34.

The public hearing proceeded in person as scheduled on August 7, 2025. The Applicant presented four witnesses: Robert Byrne, Josh Sloan, Mark Morelock, and Nick Driban. T. 3. Mr. Slone, Mr. Morelock and Mr. Driban were qualified as experts in their respective fields. T. 14, 18, 67, and 82. The record was left open for 10 additional business days to allow for a transcript of the proceedings to be generated and submittal of the Exhibits 13C (revised) and 34. T. 87-89. On August 18, 2025, the Hearing Examiner received the transcript and closed the record.

## **II. FACTUAL BACKGROUND**

### **A. Subject Property**

The subject property is zoned RE-2 and consists of 468,223 square feet, approximately 10.75 acres including Parcels P709 and P804 Harbins Lot and Parcel B (N765) on Plat 9926 Exhibit 5,

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<sup>1</sup> The Staff Report contained a numbering typo in the proposed conditions which has been corrected in this Report.

p. 5. The property is also known as 13741 and 13751 Travilah Road, Rockville, Maryland 20850 consisting of three parcels. Exhibit 29, p. 10. The property is improved with a landscape company and associated surface parking and two single family homes. *Id.* The property is situated on the south side of Travilah Road approximately 2.5 miles south of the intersection where Travilah Village intersects with Shady Grove Road. *Id.* The property slopes from front to back and has an existing driveway to Travilah Road. *Id.* See image on the following page.



Exhibit 29 – Figure 2 Subject Property, p. 13

## **B. Surrounding Area**

The “surrounding area” of a proposed conditional use is the area that will experience the direct impacts of the use. It is delineated and characterized in a conditional use case to determine

whether the proposed use will be compatible with the properties that will be impacted. Once delineated, the Hearing Examiner must assess the character of the area to determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff describe the area surrounding the property as being residential in nature consisting of single-family detached houses to the north and west, a private club, a service establishment (Moose Lodge) to the east and a landscape contractor to the south. Exhibit 29, p. 10. Properties to the north are Zoned R-200/TDR: 3.0 and properties to the east, south and west are all zoned RE-2. Staff also note the property is located in close proximity to the Traville Village Center and several other commercial uses. *Id.*



Exhibit 29, Staff Defined Neighborhood, p. 11



Additionally, Staff identified two existing, approved conditional use/special exceptions within the defined neighborhood:

1. 13755 Travilah Road (CBA2172A, CBA3049, S461)- Private Club, Service Establishment
2. 13761 Travilah Road (Sl 704)- Horticultural Nursery/Landscape Contractor.

*Id.*

### **C. Proposed Use**

The Applicant proposes to construct a new independent living facility for seniors using a townhouse building type. *Id.*, p. 14. The new independent living facility will contain 60 age-restricted residential townhouses on individual fee simple lots. *Id.* The site development will consist of private roads and alleys along with sidewalks and walking paths for residents along with open green spaces, bench seating throughout the community, a pergola and other site amenities. *Id.* The project will have a new access point entrance at Travilah Road in proximity to the current access point. *Id.* No residential care or assisted living units are proposed and the community will employ contractors for the maintenance of the community including, landscape, snow removal, common area maintenance. Exhibit 11.

The community will have a Homeowner's Association (HOA) that will manage the common areas, govern/enforce the bylaws and the community will select a 3<sup>rd</sup> party HOA management company. *Id.* See image on following page. The community will function as any other townhouse community with normal USPS, FEDEX and UPS deliveries as part of their normal routes. *Id.* Waste collection and recycling will be collected once a week and each house will place their waste containers at the end of the driveway on dedicated collections days, hidden from view non-collection days. *Id.*





Exhibit 13(a)  
Landscape Plan

Mr. Robert Byrne, Vice-President of Development for Community Housing, testified that his company has 30 years of experience in senior housing. T. 14. Mr. Byrne further testified that this type of development is very important to the County and the development is in keeping with the goals of Thrive 2050. T. 17. This development satisfies those goals by allowing seniors to age within their community, sell their larger single-family homes and move into a townhome, creating a cycle of opening housing up for families. T 17-18.

## 1. Site Plan and Building Type

Mr. Slone testified that the entrances on Travilah Road have been consolidated to one location, has dedicated the right-of-way area necessary for the project, a planting panel for trees, a six-foot sidewalk and other frontage improvements are also planned. T. 28-30. Additionally, the bus stop will be moved making it easier for residents and neighbors to access. T. 28. The project has 2 types of units; front loaded with full driveways, little front yards and larger back yards and rear loaded which will back onto an alley with a full driveway in the rear accessing the alley space with small front yards. T. 30. Each unit will have the ability to park up to four cars in the garage and on the driveway. T. 31.

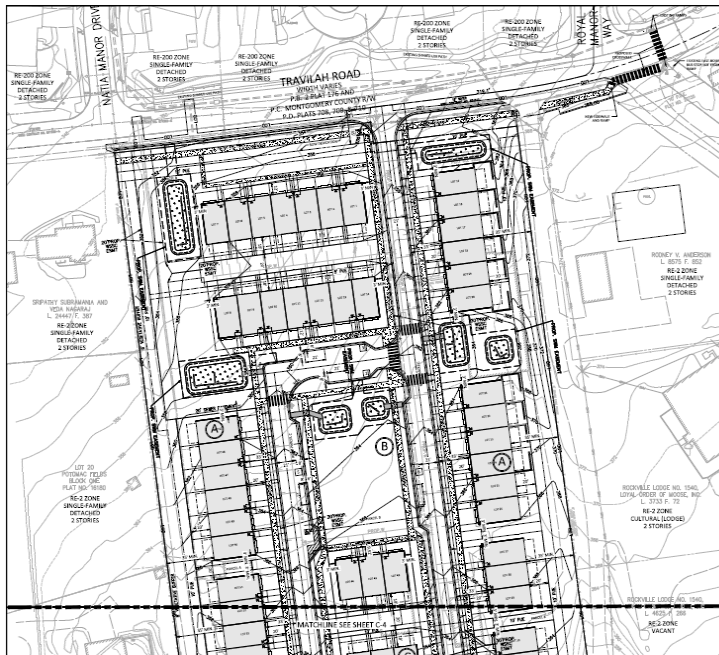


Exhibit 12(c) Detailed  
Site Plan – Part 1



Exhibit 12(d) Detailed  
Site Plan - Part 2

Mr. Slone described the site plan pointing out the streets, slopes, ingress, egress, wetland area, open space, sidewalks and lighting. T. 30-33. Mr. Slone stated the buildings are townhouses and opined that architectural compatibility can be achieved through the unit types themselves. T. 50. Each will have gabled roofs, residential windows, front doors, porticos, driveways, and front lawns and nothing about the construction will have a commercial appearance. T. 50. See image on the following page.



Exhibit 29, Figure 5 – Proposed  
Townhouse Elevations, p. 28.

## 2. Landscaping, Lighting, Parking and Signage

### *a. Landscaping & Lighting*

Mr. Slone testified that the project meets all the landscape and lighting standards. T. 30.

Regarding specific landscape elements, Mr. Slone referring to Exhibits 13(a), (b) and (c) described the specific requirements for screening of a townhouse conditional use abutting residential detached homes and that in addition to the required planting material, there will be a 6-foot fence and generous set back to the actual lots. T. 34. He further opined that while the west side does not require screening because of the non-residential use, the Applicant is still providing significant plantings and fencing along that area. T. 35 All the streetscapes will have shade trees, lighting, and sidewalks parallel to parking. T. 36. Mr. Slone further

opined that the foot candle measurement at the property line is zero and that the lighting was designed carefully to minimum light spillover. T. 45.

*b. Parking*

Mr. Slone opined that as this is a true townhouse development there is no need to minimize the appearance of any commercial parking areas and there is no parking lot. T. 49-50. Mr. Morelock, referred to Mr. Slone's testimony, also referenced above, nothing that each townhouse structure has 4 parking spaces on site – two in the garage and two in the driveway. T. 79. Further Mr. Morelock described the visitor parking on site, providing approximately 19 spaces throughout the site. T. 79.

*c. Signage*

No plan or architectural drawing identified signage. The Applicant confirmed for the Hearing Examiner that no sign is anticipated. T. 63-54. As stated in the Staff Report, should the Applicant intend to install signage it must be reviewed and approved by the Department of Permitting Services and comply with the sign section of the Zoning Ordinance. Exhibit 29, p. 23.

#### **D. Environmental Issues**

By resolution dated August 5, 2025, the Planning Board approved Forest Conservation Plan No. F20250360 subject to certain conditions. Exhibit 33. Staff report that the development places most of the Property's forest and the entire Stream Valley Buffer (SVB) under a Category I Forest Conservation Easement. Exhibit 29, p. 16. Further Staff note afforestation of the currently unforested SVB will improve water quality and meet all the requirements under Montgomery County's Forest Conservation Law (Chapter 22A), and increased forest cover will increase climate resiliency by increasing carbon storage and supporting an ecologically sustainable landscape. *Id.*

Mr. Morelock, the Applicant’s civil engineer expert, opined that stormwater management plan meets the current County requirements. T. 69. Mr. Morelock explained that the proposed development will maintain the existing drainage patterns in the area as much as possible and that all grading will stay outside of the SVB. T. 70-71. Further Mr. Morelock opined that the proposed development will provide significant improvements to the treatment of storm water management on site. T. 71.

### **E. Community Response**

The Applicant properly posted the property and held a pre-submission meeting with the public on March 4, 2025. Exhibit 29, p. 16. Staff received no letters of correspondence regarding the Application. *Id.* OZAH received no correspondence either in support or in opposition to the Application. No one other than the witnesses for the Applicant appeared in either support or opposition of the Application at the public hearing.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set standards are both specific (to a particular use) and general (applicable to all conditional uses). The specific standards applied for an Independent Living Facility for Seniors are in Section 59.3.3.2.D.2.c of the Zoning Ordinance. The general standards (termed “Necessary Findings” in the Zoning Ordinance) for all conditional uses are found in Section 59.7.3.1.E. An applicant must prove that the use proposed meets all specific and general standards by a preponderance of the evidence. The Hearing Examiner concludes that Applicant has done so in this case, with the conditions of approval included in Part IV of this Report.

### **A. Necessary Findings (General Standards, Section 59.7.3.1.E)**

The relevant standards and the Hearing Examiner’s findings for each standard are

discussed below.<sup>2</sup> For discussion purposes, the general standards may be grouped into four main areas:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

***E. Necessary Findings***

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

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

Conclusion: The property does have two prior special exceptions. The first (S-409) located at 13741 Travilah Road permitted the construction of a private educational institution for over 40 children. The second (S791) at 13751 Travilah Road permitted horticultural nursery and commercial greenhouse. The granting of the proposed conditional use will supersede all existing special exceptions and abandonment of the existing special exceptions will be a required condition for approval of the pending Application.

- b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;***

Conclusion: This subsection requires review of the development standards of the RE-2 Zone contained in Article 59.4; the use standards for an Independent Living Facility for Seniors contained in Article 59.3; and the applicable development standards contained in Article 59.6. Each of these Articles is discussed below in Parts III.B, C, and D, of this Report, respectively. For

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<sup>2</sup> Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.



the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

### **1. Substantial Conformance with the Master Plan**

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

Staff identified that the Property is within the boundary of the 2002<sup>3</sup> Potomac Subregion Master Plan (Plan). The Plan identifies the portion of the Johnson property, 13751 Travilah Road, as being used for business purposes and is subject to several special exceptions. *Plan* p. 85-86. For this parcel the plan specifically states that “residential land use would be more compatible with the surrounding area than the current uses”. *Id.* Additionally, the Plan states the area falls short on senior living within its boundaries and the “Subregion” would need to accommodate close to 750 units to accommodate the growth within its older population. Exhibit 29, p. 23. Staff determined that adding the proposed 60 dwelling units would help close the gap in senior housing need. *Id.*

The Applicant's expert Mr. Slone testified the subject property is located in a master plan that refers to the old general plan with the corridors and wedges and that this area was part of a “green wedge.” T. 48-49. He further testified that the Applicant worked quite hard to make this a “green development” not only visually but also make it environmentally sustainable. T. 49. Mr. Slone also opined that even 23 years ago there was a need for senior housing as identified in the Plan. T. 49. Further he opined that the project satisfies the three guidelines for any “special exception” in the Potomac Subregion in that it is architecturally compatible, minimizes any commercial appearance of property and has enhanced screening and buffering. T 49-51.

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<sup>3</sup> Staff identified the Master Plan as having a “2004” adoption date, but it was actually adopted in 2002. This Report corrects that typo.

Mr. Slone also opined that the proposed development is in keeping with Thrive 2050 (Thrive). T. 17. Specifically citing Thrive's call for need of more housing units in the County and the call for additional age-restricted independent living that allows seniors to age within their development. T. 17

Conclusion: Based on this record, the Hearing Examiner finds that the independent living facility for seniors will substantially conform to the recommendations of the Plan. The Hearing Examiner agrees with the Applicant's experts that the proposed use conforms with the Plan, in that it provides much needed senior housing as identified by the Plan and proposes development in a way that it satisfies goals of the Plan. Additionally, the Plan identifies that a residential use is more compatible with the area than the existing commercial uses. The Hearing Examiner finds that termination of the existing special exceptions and creation of senior housing consisting of 60 townhouse residences to be in keeping with the Plan's goals and the goals of Thrive to provide housing for more people.

***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 an existing Special Exception at this location for a Horticultural Nursery/Landscape Contractor. Exhibit 29, p. 24. Staff note that the proposed use is more in character with the neighborhood due to its residential nature, as opposed to the more industrial type of use that was previously on the property. Further Staff only recognized two other special exceptions in the neighborhood and determined that adding this use will not alter the character of the residential neighborhood. *Id.*

Conclusion: The Hearing Examiner agrees the proposed conditional use will not increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely. She has already found that the project conforms to the Plan. For reasons stated in Part III.A.4 of this Report below, she agrees with Staff that the project will be compatible with the surrounding area.

## **2. Adequate Public Services and Facilities**

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

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

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

Conclusion: The Hearing Examiner is not required to make a finding regarding the adequacy of public services and facilities in this case because submittal of a preliminary plan to the Planning Board is required for approval. Exhibit 29, p. 24-25. The Hearing Examiner notes that the conditional use application and preliminary plan for this project were reviewed concurrently by Staff, representing the first application received by OZAH where the concurrent review has been completed. *Id.* The Hearing Examiner also notes that Staff recommended approval of the associated Preliminary Plan and Forest Conservation Plan.

### 3. No Undue Harm from Non-Inherent Adverse Effects

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

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

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on the surrounding area. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, do not justify the denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects may be a basis to deny a conditional use, alone or in combination with inherent effects, if they cause “undue” harm to properties in the surrounding area.

Staff identified the following physical and operational characteristics associated with an Independent Living Facility Townhouse community for seniors specifically determining those to be as follows:

- Trash and recycling pickup,
- Deliveries,
- Parking; and
- Lighting.

Exhibit 29, p. 27.

Staff determined that because the project is a townhouse design it will have deliveries and trash pickup similar to other traditional residential developments. *Id.* Staff also note that each unit has garage and driveway parking and visitor parking and that the townhouse units themselves will be screened and the lighting will not impact the adjacent properties. *Id.* Further Staff did not identify any non-inherent adverse effects that would be detrimental to the neighborhood. *Id.*

The Applicant's expert, Mr. Slone agreed with Staff's list of non-inherent impacts and opined there are no non-inherent impacts that adversely impact this site. T. 55. The Hearing Examiner agrees with Staff and the Applicant's expert that there are no non-inherent adverse effects from the proposed development and concludes that use and proposed development will not cause undue harm to the neighborhood from either non-inherent adverse effects or a combination of inherent or non-inherent adverse effects.

#### **4. Compatibility with the Neighborhood**

Several sections of the Zoning Ordinance require a proposed conditional use be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.1 includes the standards of approval below:

***d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.***

Section 59.7.3.2.E.2 contains an additional requirement for conditional uses in single-family detached zones:

***2. 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.***

Staff concluded that the project met the standard of 59.7.3.1.E.1.d because (Exhibit 29, p. 23-24):

As described above, the Conditional Use design promotes compatibility with the surrounding neighborhood. Additionally, the proposed independent living townhouses for seniors will be operated in a manner typical of a suburban residential community ensuring compatibility and preservation of the residential character of the surrounding neighborhood. The proposed setbacks, perimeter landscaping and fencing will provide an appropriate buffer from the adjacent single-family residential uses. Furthermore, the landscaping proposed along Travilah Road will substantially screen the townhouses from the street. The Project will result in the redevelopment of the existing commercial use with a more compatible, residential use.

Staff found that the project was compatible with the neighborhood (Section 59.7.3.1.E.1.2) because (*Id.* at 27) because:

The Applicant is proposing residential townhouses designed with a residential appearance (Figure 5)<sup>4</sup>. The design features residential style materials, and the units will include garages, decks, and individual driveways.

The Applicant's expert, Mr. Slone, testified that the project will be compatible with the surrounding neighborhood. T. 49-52. He testified that the townhouse design is quite compatible architecturally with the established neighborhood it "looks and functions just like a residential neighborhood." T. 50. Further he opined that it has no commercial appearance, no parking lot, no commercial building and no ancillary facilities like you would see in a typical senior living building. T. 50. Mr. Slone opined that the specific design is compatible and harmonious with the neighborhood. T. 55.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant's expert and for those reasons identified above, the Hearing Examiner finds that the use is compatible with the

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<sup>4</sup> See Figure 5 as depicted above in this Report.

surrounding neighborhood in a manner consistent with the Plan and will not adversely affect the character of the surrounding area.

***Section 59.7.3.1.E.3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.***

Conclusion: The application satisfies all specific requirements for the conditional use, and with the conditions imposed, meets the standards required for approval.

#### **B. Development Standards of the Zone (Article 59.4)**

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the RE-2 Zone, contained in Article 59.4 of the Zoning Ordinance. Staff included a table (Exhibit 29, p. 20, shown on the next page) in its report comparing the minimum development standards of the RE-2 Zone to what is proposed in this application. Mr. Slone testified that the project meets all the development standards noting that the lot width is much greater than required from the front building line at the lot line. T. 41. He explained that project is in RE-2 but is developed under the standard method of development for R-30 because it is a townhouse development and that the project meets or exceeds those standards. T. 41-43.

Conclusion: Nothing contradicts Staff's assessment of compliance with the development standards of the Zone. The Hearing Examiner finds that the proposed development complies with the standards of the RE-2 Zone.



*Table 1: Development and Parking Standards (RE-2 & R-30 Zone for Principal Building Setbacks)*

| <b>Development Standard<br/>RE-2 (Section 59.4.4.4.B)</b>    | <b>Permitted/<br/>Required- RE-2</b> | <b>Proposed</b>   |
|--|--------------------------------------|---|
| Minimum Lot Area   | 1,000 sq. ft.                        | >1,000 sq. ft.  |
| Minimum Lot Width at Front Building Line                     | n/a                                  | n/a   |
| Minimum Lot Width at Front Lot Line                          | n/a                                  | n/a   |
| Maximum Density  | 14.5 dwelling units/acre             | 5.58 dwelling units/acre  |
| Maximum Lot Coverage   | n/a                                  | 20% of total site   |
| Green Space  | 50%                                  | 60%   |
| <b>Development Standard<br/>R-30 (per 59.3.3.2.D.2.c.ix)</b> | R-30 Minimum                         | Proposed  |
| Minimum Front Setback  | 4 ft.                                | 10 ft.  |
| Minimum Side Setback   | n/a                                  | 3 ft. (end units)   |
| Minimum Sum of Side Setbacks                                 | n/a                                  | n/a   |
| Minimum Rear Setback   | 20 ft.                               | 20 ft.  |
| Maximum Height   | 35 ft.                               | 50 ft.  |
| <b>Vehicle Parking Requirement<br/>(Section 59.6.2.4.B)</b>  | 2 spaces/unit                        | 2 spaces/unit= 120 spaces<br>Visitor= 34 space<br>Total= 154 spaces |

Staff Report - Exhibit 29, p. 20, Table 1

### **C. Use Standards for an Independent Living Facility for Seniors (Section 59.3.3.2.D.2.b.)**

The specific use standards for approval of an Independent Living Facility for Seniors or Persons with Disabilities are set out in Section 59.3.3.2.D.2.b. of the Zoning Ordinance.

#### **Zoning Ordinance §59.3.3.2.D.**

#### ***D. Independent Living Facility for Seniors or Persons with Disabilities***

##### ***1. Defined***

*Independent Living Facility for Seniors or Persons with Disabilities means a building containing dwelling units and related services for senior adults or persons with disabilities. Independent Living Facility for Seniors or Persons with Disabilities includes meal preparation and service, day care, personal care, nursing or therapy, or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations.*

The Zoning Ordinance defines a “senior adult” as “A person who is 62 years of age or older.”

*Zoning Ordinance, §59.1.4.2.*

Conclusion: The Staff Report states that it meets this definition. Exhibit 29, p. 14. Mr. Byrne testified that the facility will be used to provide housing for seniors aged 62 and older. T. 15. A condition of approval will require that occupants meet the age ranges specified by the Zoning Ordinance for this use. As conditioned, the use meets this definition.

## **2. Use Standards**

***b. 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:***

*i. 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.*

Staff reviewing this standard determined that:

The Property is approximately two miles from the Traville Village Center at the intersection of Travilah Road and Darnestown Road. Traville Village Center features a variety of retail and restaurant businesses. Travilah Square, located at Darnestown Road and Travilah Road is another commercial development in proximity to the proposed development. The Property is also approximately three miles from the Shady Grove Life Science Center, which contains numerous medical facilities for seniors. The Applicant will not transportation; however, the closest RideOn bus stop is approximately 170 feet from the Property on the south side of Travilah Road. The Nancy H. Dacek North Potomac Community Recreation Center is less than a half mile from the subject Property.

Exhibit 29, p. 16.

Mr. Slone testified to surrounding neighborhood plan describing the area around the proposed development. T. 24. He described the location of several public parks nearby and shopping centers and medical office buildings all within a 5-minute car ride or within a 15-minute bus ride. T. 25. Further he opined that because of the closeness of nearby recreational facilities that offer pickleball, basketball, etc. many of the residents will take advantage those nearby centers

and parks. T. 25. Further the Applicant explained in its statement of justification that the design of the project is more “park-oriented” with paths, lawns, plantings and shaded seating for the enjoyment of the residents. Exhibit 5, p. 12.

Conclusion: Public transportation is available 170 feet from the project via the RideOn Bus. Staff and Mr. Slone described a number of amenities, shopping and medical offices available within a short distance of the development. From the evidence in this record, the Hearing Examiner finds that this criterion for approval has been met.

*ii. 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.*

Conclusion: The Applicant does not propose ancillary or retail services.

*iii. 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. 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.*

The income levels are defined as follows (*Zoning Ordinance*, §5.1.4.1):

1. Very Low Income: Income at or below 50% of the area median income (as determined annually by the U.S. Department of Housing and Urban Development) adjusted for household size.
2. Low Income: At or below 60% of the area median income (as determined annually by the U.S. Department of Housing and Urban Development), adjusted for household size.
3. Moderately Priced Dwelling Unit (MPDU): Any dwelling unit that meets the requirements for a moderately priced dwelling unit in Chapter 25A.

Conclusion: Per Staff, the Applicant, “[p]er Chapter 25A, Section 25A-5(I), the affordable housing requirements will be met through an automatic alternative payment to the Housing Initiative Fund for for-sale, age-restricted units by agreement with the Department of Housing and Community Affairs (DHCA). The Hearing Examiner finds this section to be satisfied.

*iv. 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.D.2.c.vi through Section 3.3.2.D.2.c.ix, without regard to any other limitation in this Chapter.*

Conclusion: As previously explained, the maximum building height proposed for the townhouses is 50 feet or less in height. This standard is met.

*v. 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.*

Staff concluded that the application met this standard because (Exhibit 29, p. 17):

The maximum height in the RE-2 zone is 50 feet and the Applicant is proposing to build townhouses up to 50 feet or less in height. The maximum lot coverage in the RE-2 zone is 25% and the Applicant is proposing a maximum of 20% lot coverage throughout the site. Most of the surrounding neighborhoods is on well and septic systems have a density between three to five dwelling units per acre. The Applicant is proposing approximately 5.5 dwelling units per acre with this application. The parking for the units will be within the garages and driveways for each unit along with some onsite parking for visitors. The onsite parking will be located in the center of the project and therefore will be screened from the surrounding community by the townhouses and perimeter landscaping.

Conclusion: The Hearing Examiner has already found that the building is compatible with the surrounding area. For the same reasons stated earlier in Section III of this Report, she finds that this standard has been met.

*vi. 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 a green area.*

Conclusion: Staff determined that there are no dwellings units with frontage on Travilah Road and that the units along Travilah Road front an HOA Parcel which will be landscaped and screened from Travilah to maintain a green area between the units and the road. Exhibit 29, p. 18. The Hearing Examiner finds from the record that the section is satisfied.

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

Conclusion: The Applicant proposes a minimum setback of 35 feet from the abutting properties not included as part of this application. The Hearing Examiner finds this section is satisfied.

*viii. The minimum green area is 50%.*

Conclusion: The Applicant proposes to implement 60% green area or 277,725 square feet which exceeds the 50% minimum. Based on this uncontroverted evidence, the Hearing Examiner finds that the application meets this requirement.

#### **D. General Development Standards (Article 59.6)**

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. The applicable requirements, and whether the use meets these requirements, are discussed below. The proposed use and Zone do not require the review of Division 6.1 for Site Access, Division 6.3 for Open Space and Recreation, or Division 6.6 for Outdoor Storage.

##### **1. Parking and Loading**

Parking and loading standards are governed by Division 6.2 of the Zoning Ordinance.<sup>5</sup> For an Independent Living Facility for Seniors, the required number of vehicle parking spaces is based

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<sup>5</sup> Queuing requirements apply only to uses with a drive-thru, and therefore do not apply to this use. *Zoning Ordinance*, §59.6.2.7.A.

on the number of dwelling units and the maximum number of employees on a shift. Zoning Ordinance §59.6.2.4.B. calls for 1 parking space for each dwelling unit plus 0.5 spaces for each employee. The Ordinance permits a reduction for senior housing. *Zoning Ordinance*, §59.6.2.3.I.2.b. No employees are planned for this townhouse community. Thus, the minimum required spaces for the dwelling units proposed would be 60 spaces. The Applicant proposes a total of 4 spaces per unit but only identified 2 spaces per unit in case owners do not wish to park in their garages. T. 44. As noted above, in addition to the per unit space which is double the Code requirement, there are approximately 19 on-street visitor parking including a handicap space in the “public realm”. T. 44, Exhibit 29, p. 21. Mr. Slone the Applicant's expert opined that the project not only meets but exceeds the parking requirements. T. 44.

Conclusion: Based on the record, the Hearing Examiner finds that the parking as proposed exceeds the code requirements and no waivers are required. Any loading requirements are inapplicable.

## **2. Site Landscaping and Screening**

Conclusion: Section 59-6.5.2.B.A.2 requires the independent living facility to provide screening to properties it abuts in a residentially detached zone. The Applicant intends to provide landscaping and screening as required by Code and also along areas abutting commercial properties to the west. Exhibits 13a, 13c, and 36-L, t. 34-35. Specifically, the Applicant's expert testified to the required screening with plantings and the six-foot fence along with a generous setback. T. 34. Staff identified that the eastern and western boundaries will consist of landscape buffers with a mix of deciduous trees, understory trees, and shrubs. Staff believes the landscape buffer along the eastern and western property lines will be adequate screening for the project. Exhibit 29, p. 23.

The Hearing Examiner accepts Staff's conclusion and the undisputed statements of the Applicant's experts and finds that the Landscape and Lighting Plans submitted meet the technical

requirements of Division 6.4 and 6.5. The Hearing Examiner has already concluded that the landscaping shown is compatible with the surrounding uses; compliance with the technical requirements is necessary only to the extent needed to ensure compatibility.

### **3. Outdoor Lighting**

Conclusion: The outdoor lighting proposed for the conditional use was discussed in Part II.C.2. of this Report and Decision. As indicated there, permissible lighting levels for a conditional use are specified in Zoning Ordinance §59.6.4.4.E., which provides,

*Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.*

The Applicant submitted a Photometric Plan that showed illumination levels of the lighting on the subject property. Exhibit 13h. Mr. Slone testified that the along the property boundaries the footcandle measurement is zero, well before the property line that abuts the residential neighbors. T. 32. He also opined that the lighting plan exceeds the technical requirements of the Zoning Ordinance. T. 32.

Conclusion: Based on the undisputed evidence described above, the Hearing Examiner finds that the outdoor lighting proposed conforms to the requirements of the Zoning Ordinance.

## **IV. CONCLUSION AND DECISION**

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Community Housing Initiative, Inc. (CU23-10) for a conditional use under Section 59.3.3.2.D.2.b. of the Zoning Ordinance to build and operate an Independent Living



Townhouse Facility for Seniors on property described as 13741 and 13751 Travilah Road, Rockville Maryland 20850, (Tax Account Nos. 00399300, 00389265, 00405195), is hereby **GRANTED**, subject to the following conditions:

1. The use is limited to an Independent Living Facility townhouse community for up to sixty (60) lots.
2. All previous Special Exceptions must be abandoned prior to the issuance of the first building permit.
3. Before the issuance of any building permit or sediment control permit, whichever comes first, the Applicant must enter into a Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond or other form of surety, with the following provisions:
  - a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
  - b) The cost estimate must include but not be limited to private roads, alleys, landscaping, sidewalks, paths, seating and benches, pergolas, fencing, and other similar items.
  - c) Completion of all improvements covered by the surety will be followed by an inspection and, if necessary, a potential reduction of the surety.
  - d) The bond or surety for each item shall be clearly described within the Surety & Maintenance Agreement, including all relevant conditions.
4. The Applicant must schedule a preconstruction meeting (pre-con), preferably on-site, with staff from the Department of Permitting Services (DPS) responsible for Conditional Use Plan conformance and compliance. The pre-con must occur before any site development work commences and before any work that is covered by the surety and maintenance agreement. The Applicant, along with their representatives, must attend the pre-con with DPS Staff. A copy of the approved Conditional Use Plan along with any subsequent amendments is required to be on-site at all times.
5. Before approval to release any portion of the performance bond, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the fire access improvements have been constructed and installed per the recommendations from the Fire Department Access and Water Supply Section, and as shown in the approved MCDPS fire access plan, or as amended.
6. Prior to the release of building permits, the Preliminary Plan must be certified.
7. The Record Plat must be recorded prior to the release of any building permits.

Issued this 17<sup>th</sup> day of September, 2025.



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Kathleen E. Byrne  
Hearing Examiner

### NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boa/>

### **PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS:**

**The Board of Appeals website sets forth these procedures for filing documents:**

**Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to [BOA@montgomerycountymd.gov](mailto:BOA@montgomerycountymd.gov), and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request and will contact you regarding scheduling.**

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>

#### NOTIFICATION OF DECISION TO BE SENT TO:

Scott C. Wallace, Esquire

Attorney for the Applicant

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Robert Kronenberg, Deputy Director, Planning Department

Mark Beall, Planner IV, Planning Department

Nkosi Yearwood, Supervisor, Planning Department

Patrick Butler, Chief, Planning Department

Greg Nichols, Manager, Department of Permitting Services

Victor Salazar, Department of Permitting Services

Michael Coveyou, Director, Finance Department