

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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IN THE MATTER OF:
S.W. Bloyd Properties, LLC
Applicant

For the Application
Jody S. Kline, Esquire

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OZAH Case No. CU 24-19

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Before: Andrea LeWinter, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On August 12, 2024, S.W. Bloyd Properties, LLC (hereinafter Applicant or Bloyd) filed an application seeking a conditional use to establish a Residential Care Facility, 9-16 persons, under Sections 59-3.1.6 and 59-3.3.2.E.b of the *2014 Montgomery County Zoning Ordinance*. The property is located at 5501 Southwick Street, Bethesda, MD 20817, recorded in the Montgomery County Land Records as Lot 8, Block 2 of the Huntington Terrace subdivision, Plat 131, dated August 1910, and identified by tax account number 07-00514346. Exhibit 1 and Exhibit 15, p. 4.

On October 29, 2024, a notice of public hearing was issued for December 10, 2024, and a hearing on the merits proceeded as scheduled. Exhibit 11; 12/10/24 T. 1-2.

The Applicant presented three witnesses: Ms. Meg DeSchrive, Director of Operations for Auxiliary House (the operating name of the property referenced in the application); Mr. Andrew M. Bradshaw, civil engineer; and Mr. Steven W. Bloyd, owner and Applicant. Mr. Bradshaw was qualified as an expert in civil engineering.

The record initially was held open through January 3, 2024 to receive the Applicant's landscape and lighting information. 12/10/24, T. 84. This was extended to January 15, 2025 at the request of the Applicant and with the approval of the Hearing Examiner due to difficulties encountered by the Applicant scheduling property access. The information was ultimately submitted as Exhibit 20. There was also discussion and issuance of notification regarding the Applicant's late application for a bicycle parking waiver, Id., although the Hearing Examiner later concluded that such notification was unnecessary.

The Planning Board Staff (hereinafter Staff) recommended approval with conditions. Exhibit 15, p. 3.

After a careful review of the entire record, the Hearing Examiner finds that the application meets the standards of the Zoning Ordinance.

II. FACTUAL BACKGROUND

A. The Subject Property

The Subject Property of the application (Property or Subject Property) is located on the north side of Southwick Street, at the intersection of Southwick Street and Old Georgetown Road (Maryland State Highway MD 187), Exhibit 15, p. 5; T. 48, as detailed in the excerpted drawing from the Staff Report below (Figure 1). The Property has an area of 21,586 square feet (0.50 acres) and is developed with a single, two-story brick structure, residential in character, of approximately 8,100 square feet of floor area, pictured on the following page (Figure 2). Exhibit 15, p. 4-5; T. 48. The Property features an on-site half-circle driveway with queuing and drop-off space as well as a parking area facing Old Georgetown Road, accessed from Southwick Street. Exhibit 15, p. 4. Since 1995, the Property has operated as a residential care facility for up to eight (8) residents. Id. and Exhibit 3.

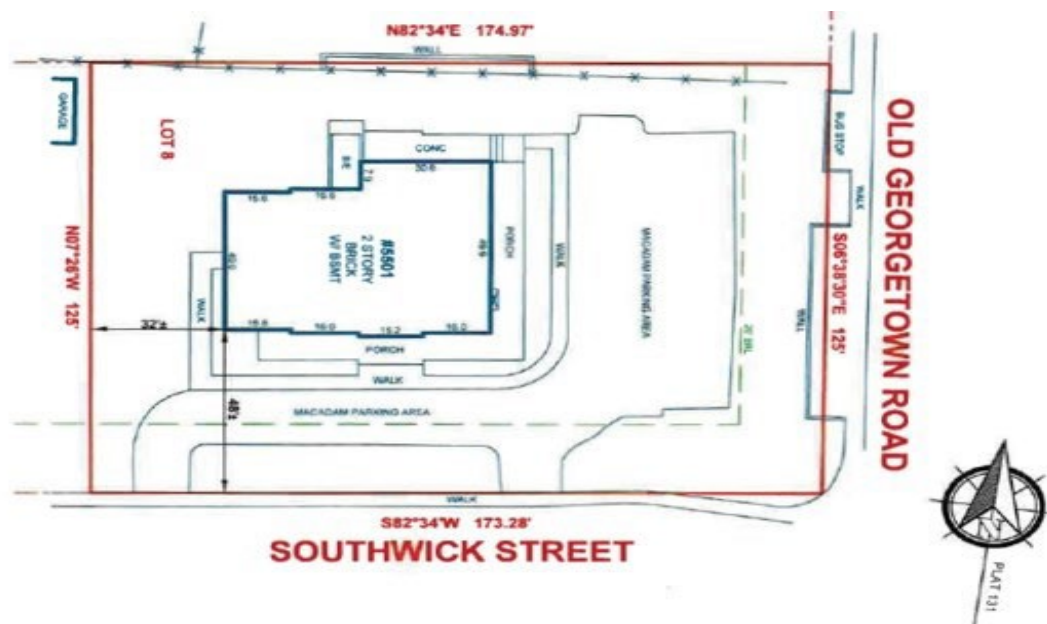


Figure 1: Location of Subject Property/Condition Use Plan/Existing Conditions Plan



Figure 2: Subject Property viewed from Southwick Street

This application is not subject to Chapter 22A (Forest Conservation) because it involves a property of less than 40,000 square feet; the Property is not subject to a previously approved Forest Conservation Plan; and the Conditional Use proposal will not impact any champion trees as defined by the Montgomery County Forestry Board. Exhibit 15, p. 8-9.

Additionally, the Property does not contain any streams or stream buffers, wetlands or wetland buffers, 100-year floodplains, hydraulically adjacent steep slopes, or known occurrences of Rare, Threatened, or Endangered species. Exhibit 15, p. 4; T. 48. The Property drains to the Cabin John Creek watershed, a State Use Class I-P stream. Id. The Property is not within a Special Protection Area. Id.

B. Surrounding Neighborhood

To determine whether the proposed use meets the compatibility standards of the Zoning Ordinance, it is necessary to delineate and characterize the “surrounding neighborhood” (i.e., the area that will be most directly impacted by the proposed use). The neighborhood boundaries delineated by Staff are shown on the following page in the vicinity map excerpted from the Staff Report and are generally bound by Sonoma Road/Center Drive to the north, Old Georgetown Road

to the east, McKinley Street/Suburban Hospital to the south, and Garfield Street/Oneida Lane to the west. Exhibit 15, p. 5. This area is primarily developed with single-family detached residential dwellings to the north and west of the Property but is complimented by the institutional uses of Suburban Hospital and the National Institutes of Health to the south and west. Id. The staff-defined neighborhood, pictured below, is entirely within the R-60 zone and the 1990 *Bethesda-Chevy Chase Master Plan* area. Exhibit 15, p. 7.

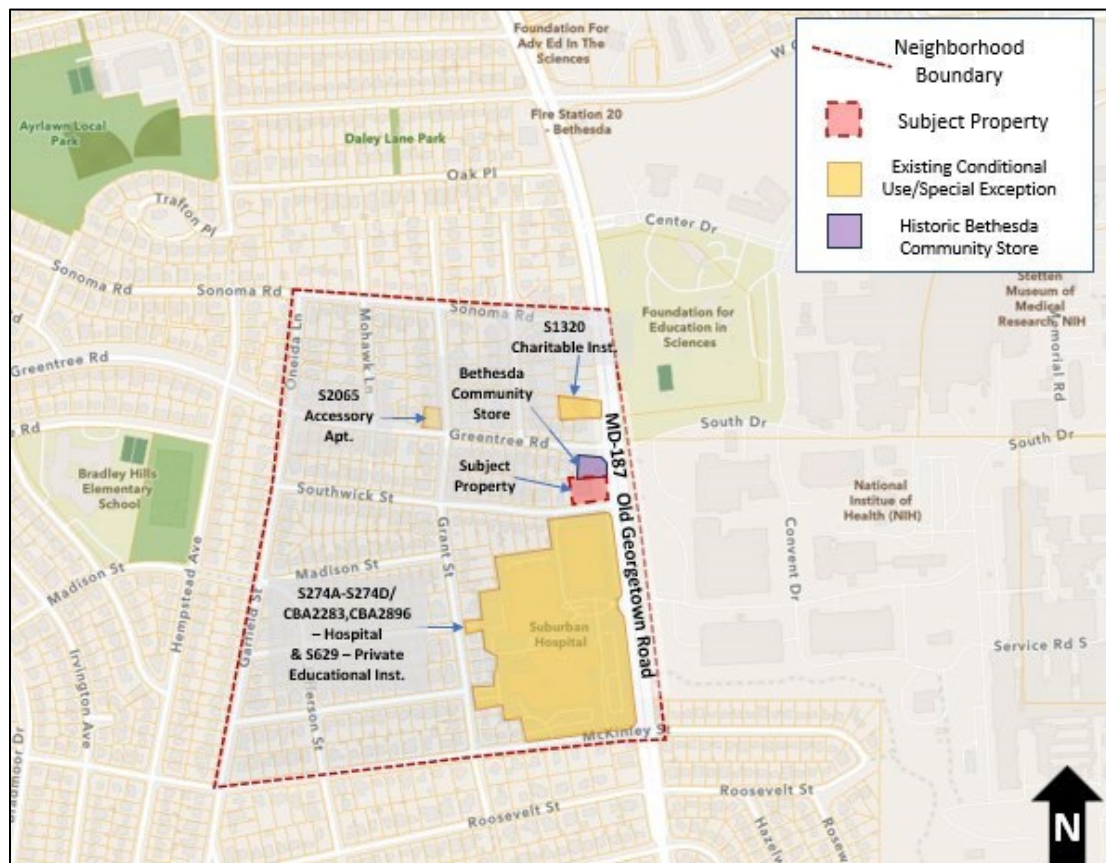


Figure 2: Vicinity Map with Staff-defined neighborhood delineated by red-dash line; Subject Property colored red and existing special exceptions identified.

Staff identified four existing, approved conditional uses/special exceptions within the defined neighborhood, also identified in the map above:

1. Special Exception S2065 – for an accessory apartment
2. Special Exception S1320– for a charitable/philanthropic institution

3. Special Exceptions S274, S274A, S274B, S274C, S274D, CBA2283, CBA2896 – for the operation of a Hospital (Suburban Hospital) and construction/maintenance of its associated facilities
4. Special Exception and S639 – for a private educational institution located at Suburban Hospital. Id.

Staff also note that the Property is located immediately south of the historic Bethesda Community Store Master Plan Site. Exhibit 15, p. 6. Although closed since 2016 and now siting a temporary structure housing a local deli franchise, the Community Store is designated on the Master Plan for Historic Preservation for its significance as one of the few remaining structures from rural Bethesda's pre-development period and as a well-established local landmark along Old Georgetown Rd. Id.

Upon review, the Hearing Examiner adopts the neighborhood boundaries determined by Staff, as they are logically bounded by Old Georgetown Road along the east and by major roads north, south, and west, and include Suburban Hospital and a segment of the surrounding residential R-60 neighborhoods. The Hearing Examiner agrees with Staff that the neighborhood character is primarily residential and institutional and within the R-60 Zone.

C. Proposed Use

1. The Proposed Development

Bloyd seeks to re-develop the Property under Section 59-3.3.2.E.b from a Residential Care Facility for up to 8 persons, senior residents aged 62 and older, into a Residential Care Facility for 9-16 persons, senior residents aged 62 and older, providing assisted senior living residence as well as programs and services. Exhibit 3, p. 1, 4-5; Exhibit 15, p. 8; T. 21-22, 31-33. As Ms. DeSchraver testified, the Property currently serves as a Residential Care Facility for up to 8 residents, T. 21, as is permitted by right in the R-60 zone, Section 59-3.1.6, and the proposed redevelopment will reconfigure the use of two rooms already existing within the structure to accommodate two

additional residents so that 10 residents can occupy the facility, T. 21-23. See also Exhibit 15, p. 8. One of the rooms to be repurposed presently serves as a model room to show prospective residents and the other serves as an office, T. 22, so this expansion requires no exterior alteration of the facility, and there will be minimal internal disturbance. T. 49. According to Ms. DeSchiver, the facility will be able to offer the same support services and amenities for 10 residents as it does for eight (8), including assistance with bathing and dressing, three meals a day, administration of medications, housekeeping, activities, socialization, and 24-hour supervision. T. 20-21.

As Mr. Bradshaw testified, the area is dominated by Suburban Hospital and associated institutional health uses (National Institutes of Health), such that the proposed Residential Care use conforms with the character of the surrounding properties. T. 50-51. Mr. Bradshaw also testified, referencing the site plan, Exhibit 5d, that the existing use conforms with all zoning requirements, including lot size, density, and height, and, as no exterior changes are proposed, will remain compliant. T. 51; Exhibit 5d. The existing features, elevation pictures, and landscaping information establish that the facility is currently screened and visually buffered from neighboring homes, T. 66-67; Exhibits 5a, 6a-d, and 20. As Mr. Bradshaw testified, the Property appears as “a single-family home and not some sort of institutional appearance” and so is also consistent with the residential neighborhood surroundings. T. 55.

Staff also found the site layout and building to be compatible with the surrounding neighborhood, highlighting that a Residential Facility Use has operated on the property for over 20 years and that this application proposes no exterior alterations. Exhibit 15, p. 12.

Mr. Bradshaw testified that no storm water issues exist on site and no storm water improvements are proposed. T. 49, 69.

Mr. Bradshaw testified that vehicular access and circulation on site are sufficient with two one-way driveways off Southwick Street. T. 51. Both he and Ms. DeSchiver stated that this sufficiency will remain even with two additional residents because residents do not bring personal vehicles when they enter the facility, most staff commute by public transportation, and the number of visitors is minimal. T. 36-37, 44-45, 48, and 54. Regardless, to avoid even the specter of concern, Mr. Bradshaw and Mr. Bloyd testified that the Applicant would paint arrows on the driveway to emphasize safe circulation. T. 59-60, 72-75. Mr. Bradshaw testified that access and circulation should pose no challenges for fire and/or rescue vehicles. T. 69-70.

Both Ms. DeSchiver and Mr. Bradshaw concurred with Staff's conclusion that the proposed development would impose no adverse effects on the surrounding community. T. 37-42, 69-70. Staff delineated inherent adverse effects of the use, including size of the building, parking, lighting, outdoor activity, and noise, and found that there would be no adverse non-inherent effects. Exhibit 15, pp. 14-16.

a. Conditional Use Plan, Perspectives and Floor Plans

The site layout has one two-story structure located in the north-western two-thirds of the lot with a large parking lot fronting Old Georgetown Road and ingress and egress onto Southwick Street. See Conditional Use Plan, page 4 of this Report and Decision; Exhibit 5a; Exhibits 6a-d (showing elevations and perspectives of the facility from north, south, east, and west); and Exhibit 19a. Ms. DeSchiver testified as to the internal layout, which includes resident rooms and baths on both the first and second floors and living areas and a half-bath available to all on the first floor. T. 28-30. The two rooms that are to be converted into additional resident rooms are located on the first floor. T. 22. A first-floor wrap-around porch allows residents to be outside but still on the Property when weather allows and is often utilized for afternoon snacks. T. 30.

b. Site Landscaping, Lighting and Signage

No new lighting is proposed and additional shrubbery will be planted during the next planting season. T. 62, 66; Exhibit 20. Currently, existing older trees and foliage form a canopy and understory ranging in diameter from 6-28 inches. Exhibit 20. There is also an approximately six-foot board-on-board fence around the northern property line and parking area. T. 62; Exhibit 20. According the letter submitted by the Applicant January 14, 2025, the screening complies with R-60 zoning requirements to the north, but the western boundary shrubbery is insufficient to meet zoning requirements, so the Applicant commits to planting 25 evenly-spaced shrubs, 10 large and 15 medium, along this property line. Id.

According to testimony, the existing four post lights located near Old Georgetown Road and a heavily-traffic bus stop near Suburban Hospital are greatly appreciated by facility staff and the community as many people cut through the Subject Property to access the bus stop and/or the nearby deli. T. 41-42; 61-62. According to Applicant's January 14, 2024 letter, this lighting does not exceed 0.1 footcandles at the property boundaries and thus complies with R-60 requirements. Exhibit 20.

There is a "Do Not Enter" sign posted to ensure there is no vehicular ingress through the egress, but the Property currently has no signage identifying the facility itself and no new signage is proposed. Exhibit 19f.

c. Operations

According to Staff, the Applicant proposes to expand its current provision of personalized, licensed memory care services catered to residents in the early and moderate stages of Alzheimer's or other forms of dementia, including assistance with daily living activities, medication management, holistic memory care activities, housekeeping and laundry, and supportive

technology. Exhibit 15, p. 8. Ms. DeSchrive testified that the facility is tailored to those with higher-functioning dementia, individuals able to hold a conversation and perform self-care with assistance, but, for example, no longer able to safely drive or self-administer medications. T. 17-19. She stated that the property fulfills a specific “niche” and is much in demand – there is often a waitlist for space in the facility and it typically takes less than a month to fill a room. T. 17, T. 21-22. She testified that if a resident’s needs increase, the Auxiliary House team works with the resident’s family and the resident to facilitate transfer to a higher-needs facility. T.18.

As Planning Staff detail and Ms. DeSchrive testified, the facility is a secure environment: residents can only leave the building if accompanied by a staff member or a family member. Exhibit 15, p. 8; T. 21, 32. Residents do not have their own vehicles on-site, and must be transported outside the facility by family, friends, or staff. Exhibit 15, p. 8; T. 19, 32.

Because of the compromised functioning of the residents, external activities are not provided as they pose safety risks. T. 31. If a resident needs to attend an outside medical appointment, they are typically transported by family; similarly, family may take a resident to activities or events. T. 32. If an emergency room visit or specialized appointment is required, or if a resident wants to take a walk outside of the property, a staff member will accompany the resident and appropriate transportation will be arranged if needed. T. 31-32.

i. Staffing

Planning Staff reported and Ms. DeSchiver testified that the facility currently and, if the application is granted, will continue to provide 24-hour staff support to residents in three shifts -- 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. -- with managers on-site seven days a week and external health specialists, such as doctors, mobile dentists, and therapists, scheduled to provide on-site care as needed.. Exhibit 15, p. 8, T. 26, 33. Ms. DeSchiver

specified that total staffing is eight-to-ten direct caregivers, which includes two-to-four caregivers in the morning, two in the afternoon, and one overnight who remains awake the entire shift as well as a second employee who may sleep at the facility; an administrative staff coordinator, who is there intermittently because she oversees Auxiliary House and another facility; and specialists who come on an *ad hoc* basis to lead activities. T. 24-25. Ms. DeSchiver stated that the application requests approval for up to five staff members to be present on site at any one time to cover all potentialities, like a staff meeting, and to ensure sufficient care of 10 residents, although licensing only requires a 1:4 ratio. T. 25-26.

ii. Site Access, Parking, Deliveries and Trash Pick-up

Site access is from Southwick Street, with a separate entrance and exit. Exhibit 15, p. 4. There is ample parking for staff vehicles, especially as it is only administrative staff that typically drive, and for visitors, as there are rarely more than a few at a time, and the residents do not have cars. Id.; T. 36-37.

According to Ms. DeSchiver, there is a weekly Giant Supermarket food delivery with a requested delivery window after 10:00 a.m. T. 34. Trash and recycling are collected on Fridays, also after breakfast. T. 35. Most other supplies are brought in by staff on an as needed basis and are not large enough to warrant specialized deliveries; any other deliveries are rare and can usually just be dropped at the facility entrance. T. 35-36.

2. Environmental Constraints and Mitigation

As stated, the Property is not subject to Chapter 22A (Forest Conservation), is not within a Special Protection Area, and does not contain any protected environmental features, including streams or stream buffers, wetlands or wetland buffers, 100-year floodplains, hydraulically adjacent steep slopes, or known occurrences of Rare, Threatened, or Endangered species. Exhibit

15, p. 4, 8-9. The Property drains to the Cabin John Creek watershed, a State Use Class I-P stream. Exhibit 15, p. 4. As no exterior modifications are proposed, no measurable increase in environmental impact is anticipated, thus no additional mediation is required. Exhibit 15, p. 8.

D. Community Response

Planning Staff received no letters or communication from community members regarding this application and no one appeared at the hearing in opposition. Ms. DeSchiver testified that no one responded to the posted notification regarding the proposed expansion. T. 40-41. She stated that, over the years, many neighbors have commented to her that because of the Auxiliary House's residential appearance, they did not recognize the facility as an institutional use and expressed gratitude for the services it offered the community. T. 38, 40.

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 legislative standards are both specific to a particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a Residential Care Facility, 9-16 persons. Section 59.3.3.2.E.b.

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part V of this Report and Decision (Conclusion), will satisfy all the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing

Examiner's findings for each standard, are below.¹ The criteria for approval fall generally into four categories, discussed in that order:

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;***

As Staff identify, this provision is not applicable as there are no previous approvals for this property. Exhibit 15, p. 9.

Conclusion: The Hearing Examiner finds this criterion is met as there are no previous approvals on this Property.

- 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;***²

Conclusion: This subsection requires an analysis of the standards of the R-60 Zone contained in Article 59-4; the use standards for a Residential Care Facility (Senior Care Facility) contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III. B, C, and D, respectively).

1. Substantial Conformance with the Master Plan

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

² The underlined language was added by the Council when the 2014 Zoning Ordinance was amended effective December 25, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

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

The Property is located within the 1990 Bethesda-Chevy Chase Master Plan area; this Master Plan does not include recommendations specific to the Subject Property. However, Staff concluded that the application substantially conforms to the Master Plan's general recommendations for the Old Georgetown Road area as it requests permission to provide group elderly care, which, while the Plan discourages "further special exceptions not only along the [Old Georgetown] Road ... [the Plan endorses granting] for community-serving uses (pg. 59)," which includes "elderly care and housing [and] group homes," and. Exhibit 15, p. 12.

Conclusion: The Hearing Examiner finds that the application substantially conforms to the Master Plan as it provides a use specifically identified as desirable and encouraged in the 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

Staff report that a Preliminary Plan of Subdivision is not required because the Property is already a recorded lot. Exhibit 15, p. 13.

a. Local Area Transportation Review

The Application was reviewed under the 2020-2024 Growth and Infrastructure Policy (GIP) and associated 2022 Local Area Transportation Review (LATR) Guidelines. Staff report

and Mr. Bradshaw testified that the project will generate less than 50 weekday peak-hour person trips, and thus a transportation impact study is not required, Exhibit 15, p. 14; T. 70, and the Applicant submitted a letter to this effect, Exhibit 14.

b. Other Public Facilities

Staff conclude that there are adequate public services and facilities because there will be no or minimal impact on public services and facilities by the *de minimis* addition of two residents. Exhibit 15, pp. 13-14. Notably, there is no impact on school capacity because the proposed residential care facility only serves an adult population; and, according to Staff, water and sewer, categories W-1 and S-1 for the Property, are sufficiently serviced by existing capacity, while the additional residents will not cause police stations, firehouses, and all other relevant public utilities to exceed the standards set by the Growth and Infrastructure Policy in effect at the time that the application was submitted. Exhibit 15, p. 14.

In terms of transportation access, Staff detail that the Property has sufficient frontage on both Old Georgetown Road and Southwick Street, with Old Georgetown Road classified as a “Boulevard” in the Master Plan of Highways and Transitways. *Id.* Parking is sufficient as nine (9) spaces are provided on site, and the existing half-circle driveway provides space for queuing and drop-off with no changes to this configuration proposed. *Id.* The 2018 *Bicycle Master Plan* and 2024 *Complete Streets Design Guide* envisions a side path on Old Georgetown Road, but since the Applicant is only seeking to accommodate two additional residents at this site with no exterior changes to the building proposed, Staff conclude that the existing conditions are satisfactory. *Id.* Further, Staff explained as there is an existing buffered sidewalk on Southwick Street and an unbuffered sidewalk on Old Georgetown Road, no additional pedestrian facilities should be recommended. *Id.*

Conclusion: Consider the proposal for only the minor addition of two residents and no exterior alterations to the site, the Hearing Examiner finds that the application meets County standards for adequacy of public facilities.

3. Compatibility with the Neighborhood

Section 7.3.1.E.1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

* * *

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

* * *

- 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;**

* * *

- 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.**

* * *

a. Compliance with Section 59.7.3.1.E.1.d

Staff determined that the proposed use is harmonious with and will not alter the character of the surrounding neighborhood. Exhibit 15, p. 12. Staff rely on a history of harmonious use: the proposed use involving only a modest two-resident increase at a facility that has continually served up to eight (8) residents during its eight (8) years in the community with no complaints filed, which followed at least 12 years of residential care facility operation at the Subject

Property; and rely on the minimal impact of the proposed change: the facility contains the capacity for this increase without the need for exterior modification, and the Applicant does not expect a noticeable increase in intensity of operation to meet the expanded use. *Id.* Ms. DeSchrive testified that she believed that there had been no community response to the application because the change is too minimal to impact or alter the community. T. 40. Further compliance is noted by Staff in the Subject Property's proximity to comparable institutional uses, including Suburban Hospital, and in the endorsement of the use in the applicable Master Plan. Exhibit 15, p. 5 and 12.

Conclusion: Given that this use has operated successfully in the community for over 20 years, has a residential appearance and an institutional purpose compatible with the neighborhood aesthetic and surrounding commercial properties, and provides elderly care, which the Master Plan cites as a key community need, the Hearing Examiner finds that this application is harmonious with and will not alter the character of the neighborhood.

b. Effect on Residential Nature of Area pursuant to 59.7.3.1.E.1.e

Staff determined that the application will not sufficiently increase the number, intensity, or scope of conditional uses in the area to result in an adverse effect. Exhibit 15, p. 13. Staff acknowledge that the relevant Master Plan recommends limiting new conditional uses, but points to the Master Plan's specific exemption for conditional uses that directly serve the community and to the existence in the neighborhood of significant health-related institutional uses, which align with the proposed use, although the area is foremost residential in nature. *Id.* Staff recognized that the total number of conditional uses in the area will increase by one if the application is granted, but conclude that the neighborhood would remain functionally unchanged as the facility already

operates as a permitted use in the neighborhood with minimal impact, and has done so for more than 20 years, and only a minimal change is proposed. Exhibit 15, pp. 12-13.

Conclusion: The Hearing Examiner agrees with Staff that, because the change proposed is so minimal and the existing and proposed use is compatible with the neighborhood, granting this conditional use will not have an adverse impact on the residential nature of the area.

c. Inherent v. Non-Inherent Adverse Impacts pursuant to 59.7.3.1.E.1.g

This finding requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Section 1.4.2 of the Zoning Ordinance defines inherent adverse effects as “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.” Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Non-inherent adverse effects are defined as “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.” Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, Staff examine the size, scale, scope, light, noise, traffic, and environmental effects of the proposed use.

Staff identified the following physical and operational characteristics inherent to a residential care facility: 1) buildings and structures; 2) vehicular trips to and from the Property; 3) outdoor lighting; 4) parking; and 5) deliveries and trash collection. Exhibit 15, p. 15. Staff concluded that these inherent physical and operational characteristics are consistent with effects

typically associated with elderly housing facilities. Exhibit 15, p. 16. Staff minimized the effect of the building and structures, as the facility, grounds, and parking are residential in character and will not be altered. Id. The impact on traffic was so minimal as to not require a transportation impact study and the vehicular circulation from Southwick Street provides sufficient access. Exhibit 14; Exhibit 15, p. 14 and 16; T. 70. The letter submitted by the Applicant detailing the existing lighting confirms that it does not exceed 0.1 footcandles at the property line. Exhibit 20. Staff described the available parking as more than sufficient to serve visitors and employees, a condition reiterated by Ms. DeSchraver in her testimony, Exhibit 15, p. 16; T. 36-37, and she qualified the noise from trash collection and deliveries as not excessive. Exhibit 15, p. 16.

Staff did not identify any non-inherent adverse effects associated with the application. Id. This accorded with the testimony presented. T. 39-40, 70.

Conclusion: The Hearing Examiner agrees with Staff and the testimony that the adverse inherent effects are typical for the use and notes that they are minimal considering the location of the Property. The Hearing Examiner also agrees that the proposed use would not create any adverse non-inherent effects as the changes are unlikely to have any impact on the surrounding community and no exterior renovations will occur. Therefore, the application meets this standard.

4. Compatibility with Neighborhood pursuant to Sections 59.7.3.1.E.2

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.

Zoning Ordinance §59.7.3.1.E.2. requires an examination of the compatibility of the use with the character of the residential neighborhood in which it is located. This question is like the one raised by Zoning Ordinance §59.7.3.1. E.1.d., above, which asks whether the proposed use will be harmonious with the neighborhood as envisioned by the applicable master plan.

Conclusion: The Hearing Examiner is persuaded by Staff conclusions and witness testimony that the proposed development is compatible with the surrounding area under Section 59.7.3.1.E.2 of the Zoning Ordinance because the current structure, residential in appearance and institutional in nature, is consistent and, therefore, compatible with the surrounding neighborhood, and as no changes to this facility are proposed and the occupancy expansion will have no discernable impact on traffic, parking, or deliveries, the evidence supports that this compatibility will continue if the conditional use is approved. Exhibit 15, p. 16; T. 37-38,

5. No Presumption of Compatibility pursuant to Sections 59.7.3.1.E.2

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.

Staff found that because the proposed use is long-established at the Property and the minor increase in intensity does not involve any material physical changes to or expansion of the Property, the proposed use's harmony with the neighborhood is clear regardless of its satisfaction of all applicable regulations. Exhibit 15, p. 16.

Conclusion: The Hearing Examiner agrees with Staff and finds that the proposed use is compatible due to the current residential appearance of the facility and minimal community impact, which will not change if the application is granted. The Hearing Examiner also finds that the proposed use will be beneficial to the community, which supports granting the application.

B. Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must also find that the application meets the development standards of the Property's assigned zone, in the instant case R-60 contained in Article 59.4 of the Zoning Ordinance. Staff determined that the application meets the development standards with the exception of bicycle parking spaces, as set out in the table,

excerpted from that Staff Report, below. Exhibit 15, p. 10.

Table: Development and Parking Standards (R-200)

Development Standard Section 4.4.9 R-60 Zone	Permitted/ Required	Existing/Proposed
Minimum Lot Area	6,000 SF	21,000 SF
Minimum Lot Width at Front Building Line	60 Feet	74 ft
Minimum Lot Width at Front Lot Line	25 feet	74 ft
Maximum Density	7.26 units/acre	<7.26 units/acre
Maximum Lot Coverage	35%	<35%
Minimum Front Setback	25 ft	15 ft
Minimum Side Setback	8 ft	8 ft
Minimum Sum of Side Setbacks	18 ft	18Ft
Minimum Rear Setback	20 ft	20 ft
Maximum Height	35 ft	35 ft
Vehicle Parking Requirement (Section 59.6.2.4.B) (0.25 spaces per bed x 10 residents plus 0.5 spaces per employee x 4 employees)	6 spaces	9 spaces
Bicycle Parking Spaces	1 long-term and 1 short-term space*	0

* No external changes are proposed in the application.

**Applicant has submitted a waiver for bicycle parking spaces.

Conclusion: The Hearing Examiner endorses Staff's assessment that the application meets the required development standards in the R-60 Zone, with the exception of bicycle parking spaces.

C. Use Standards for a Residential Care Facility (Section 59.3.3.2.E)

The specific use standards for approval of a Residential Care Facility are set out in Section 59.3.3.2.E. of the Zoning Ordinance.

2. Use Standards

b. Where a Residential Care Facility (9 - 16 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards (59-3.3.2.E.2.b):

- i) **A group home for children must provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children to be cared for.**
- ii) **Height, density, coverage, and parking standards must be compatible with surrounding uses and the Hearing Examiner may modify any standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood**

Staff concluded that height, density, coverage, and parking adhere to the standards of the R-60 zone and the two-floor building, due to its residential character, is compatible with surrounding neighborhood. Exhibit 15, p. 9-10.

Conclusion: Subpart (i) is not applicable because the proposed facility is not a group home for children. The Hearing Examiner agrees with Staff that the application meets the use standard for height, density, coverage, and parking and that the compatibility of the building is already maximized due to its residential character.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Under the amendments to Section 59.7.3.1.E.1.b. of the 2014 Zoning Ordinance, effective December 21, 2015, the requirements of these sections need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.”³ The applicable requirements, and whether the use meets these requirements, are discussed below. Staff’s report discusses the requirements of the following Divisions of Article 59.6: Division 6.1 Access; Division 6.2 Parking, Queuing and Loading; Division 6.3 Open Space and Recreation; Division 6.4 Landscaping and Outdoor Lighting; Division 6.5 Screening; Division 6.6 Outdoor Display and Storage; and Division 6.7 Signs. Exhibit 15, pp. 10-12. Staff concluded that Divisions 6.3, 6.6, and

³ The 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), was amended effective December 25, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

6.7 are not applicable to the subject property, 6.3 because it does not apply in the R60 zone and 6.6 and 6.7 because they are not proposed in the application. Exhibit 15, pp. 11-12.

1. Access (Division 59.6.2)

According to Staff, the existing vehicular access provided by one driveway curb cut onto Southwick Street is safe and efficient and adequate for the current use and proposed expansion of the property, which was also testified to by Mr. Bradshaw. Exhibit 15, p. 10; T. 51, 54. Additionally, the Applicant committed to painting directional arrows to ensure vehicles comply with the one-way ingress and egress access. T. 72-75.

Conclusion: The Hearing Examiner agrees with Staff that the proposed access is sufficient to meet requirements as access is from major roads with curb cuts and on-way ingress and egress. The Hearing Examiner endorses the Applicant's commitment to providing additional directional information that does not compromise the residential character of the Property.

2. Parking, Queuing and Loading (Division 59.6.2)

Under 59-6.2.5.K. *Facilities for Conditional Uses in Residential Detached Zones*, any off-street parking facility for a conditional use that is located in a Residential Detached zone where 3 or more parking spaces are provided must satisfy the following standards:

1. Location: each parking facility must be located to maintain a residential character and a pedestrian-friendly street.
2. Setbacks
 - a. The minimum rear parking setback equals the minimum rear setback required for the detached house.
 - b. The minimum side parking setback equals 2 times the minimum side setback required for the detached house.
 - c. In addition to the required setbacks for each parking facility:
 - i. the required side and rear parking setbacks must be increased by 5 feet for a parking facility with 150 to 199 parking spaces; and
 - ii. the required side and rear parking setbacks must be increased by 10 feet for a parking facility with more than 199 parking spaces.

Staff found that the existing nine (9) spaces are sufficient parking to serve the proposed residential care facility as only six (6) spaces are required and that the existing setbacks are sufficiently compliant. Exhibit 15, pp. 10-11. Subsection(c) is not applicable to a Property this small. The Applicant submitted a bicycle waiver and Staff support the waiver. Exhibit 15, p. 11. Ms. DeSchiver testified that parking is always available and there are no issues with queuing and loading. T. 33-37. Testimony also supported that the parking does not detract from the residential character of the facility or the pedestrian-friendly street. T. 38-39, 54.

Conclusion: The Hearing Examiner agrees with Staff that the amount of parking is sufficient and meets setback requirements and the location of the parking preserves the residential character of the surrounding area.

3. Open Space and Recreation (Division 6.3)

Conclusion: This standard is not applicable to this Property.

4. Landscaping and Outdoor Lighting (Division 6.4)

The Applicant submitted a letter detailing the existing landscaping and lighting. Exhibit 20. The letter affirms that the lighting does not exceed 0.1 footcandles at the property line and testimony specified that the existing lighting consists of only four post lights that are valued by the community, particularly those traveling between the bus stop and Suburban Hospital. Id; T. 40. In the letter, the Applicant committed to planting 25 shrubs – 10 large and 15 medium – to comply with screening requirements. Exhibit 20.

Conclusion: The Hearing Examiner concludes that this requirement has been met with respect to lighting and that the Applicant will be able to meet this requirement with the additional plantings.

5. Screening (Division 6.5)

With respect to Division 6.5 Screening, Staff report an existing six-foot-high privacy fence between the parking area and the neighboring property to the north; this is also described in the Applicant's January 14, 2025 letter, which also includes information about additional landscaping to be planted to ensure compliance with zoning requirements. Exhibit 15, p. 11; Exhibit 20.

Conclusion: The Hearing Examiner finds that this standard will be met with the Applicant's commitment to additional plantings.

6. Outdoor Display and Storage

Conclusion: This standard is not applicable as no merchandise, material, or equipment is or will be displayed or stored outside of the building on the Subject Property.

7. Signage (Division 6.7)

Conclusion: This standard is not applicable as there is no existing signage and none is proposed in the application.

IV. Bicycle Parking Waiver

The General Development Standards under 59.6.2.4(C) sets forth a requirement for bicycle parking on the Property. The specific number of spots mandated for a condition use in the R60 Zone are listed in the table on page 22 and include one long term and one short term space.

Under Section 6.2.10, the deciding body is authorized to waive any General Development parking requirement as long as the alternative parking provided still complies with the intent of the Section, which is to "ensure that adequate parking is provided in a safe and efficient manner." Zoning Ordinance Article 59.6.2.1.

Ms. DeSchiver testified extensively that facility residents do not bring bicycles to the facility and that no staff or visitors have ever expressed an interest in traveling to the Property by

bicycle. T.20. She also testified that if an interest in bicycle transportation was ever expressed, bicycle parking, in the form of a bicycle rack, could easily and would be installed. T.57-58.

Staff recommended approval of a bicycle parking waiver since the current lack of parking has not been problematic and the number of employees and thus the demand for bicycle parking is not expected to change. Exhibit 15, p. 9.

Conclusion: The Hearing Examiner finds that historically there has been and currently is no demand for bicycle parking amongst residents, visitors, or staff accessing the Property and there is adequate public transportation access to the Property. It is unreasonable, therefore, to require the Applicant to pay to install bicycle parking that will be unused. The Hearing Examiner grants the bicycle parking waiver but sets as a condition that the Applicant will install bicycle parking should any employee or visitor ever request it.

V. Conclusion and Decision

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of S.W. Bloyd Properties, LLC (CU 24-19) for a conditional use under Section 59.3.3.2.E.b. of the Zoning Ordinance to build and operate a Residential Care Facility (9-16 Persons) at 5501 Southwick Street, Bethesda, MD 20817 is hereby **GRANTED**, with a **WAIVER** of the bicycle parking requirement, subject to the following conditions:

1. The use is limited to a residential care facility for up to ten (10) residents.
2. The maximum number of employees allowed onsite at any one time is five (5) for the day and evening shift and three (3) for the overnight shift.
3. The Applicant must obtain all necessary licensing/permits for operation of the residential care facility.
4. During the next planting season, the Applicant will plant 25 additional shrubs, 10 which will be large and 15 which will be medium, spaced equally along the property line in order to be in compliance with R-60 zoning screening requirements.
5. Food supply deliveries to the facility shall be limited to twice per week.

6. The collection of solid waste refuse and recyclable materials must occur on weekdays only, between 8:00 a.m. and 9:00 p.m., consistent with Solid Waste Regulations. No collection shall occur on Saturdays or Sundays.
7. The Applicant must maintain 9 parking spaces as shown on the Conditional Use Plan and may not expand or reduce the parking facility without explicit permission from the Hearing Examiner through modification of this Conditional Use.
8. Should any employee or resident request the provision of bicycle parking on site, the Applicant will install such parking at the earliest possible opportunity.
9. The facility must be operated in accordance with all applicable County noise regulations.
10. Transfers to successor conditional use holders must follow the procedures in Rule 27.0 of OZAH's Amended Land Use Rules of Procedure.
11. The conditional use must be operated in a manner to provide the facilities and services to residents outlined in Applicant's Statement of Justification (Exhibit 3). Use of the on-site facilities and services must be restricted to residents of the conditional use site, their guests and employees, and personnel providing services to the residents.
12. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 14th day of February, 2025.



Andrea LeWinter
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.

The Board of Appeals will consider your request for oral argument at a Worksession. Agendas for the Board's Worksessions can be found on the Board's website and in the Board's office. You can also call or email 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 Worksession.

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, emailing BOA@montgomerycountymd.gov, or visiting the Board's website: <http://www.montgomerycountymd.gov/boa/>.

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/>
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