

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY, MARYLAND**

|   |   |                   |
|---|---|-------------------|
| In the Matter of the Petition of        | : |                   |
| Community Housing Initiative, Inc.      | : | Case No. CU 23-10 |
| for a Conditional Use to operate an     | : |                   |
| Independent Living Facility for Seniors | : |                   |

**Exhibit 31**  
**OZAH Case No: CU 23-10**

**PETITIONER’S STATEMENT IN SUPPORT OF  
APPLICATION AND STATEMENT OF OPERATIONS**

Petitioner, Community Housing Initiative, Inc. (“Petitioner”), hereby submits this Statement in Support of Application and Statement of Operations in connection with the Petition for a Conditional Use to develop an Independent Living Facility for Seniors (the “Petition”), at 13741 & 13751 Travilah Road, Rockville, Maryland (the “Subject Property”).

**I. Subject Property/Existing Conditions**

The Subject Property is comprised of two unrecorded parcels, P709 and P804, and Parcel B (N765), depicted on Record Plat No. 9926 recorded among the Land Records of Montgomery County (“Land Records”) on June 28, 1971. It is classified in the RE-2 zone within the Travilah Planning Area and the Sandy Branch/Watts Branch watershed. (See, Certified Zoning Map.) The Subject Property is within the boundaries of the Potomac Subregion Master Plan, Approved and Adopted in April 2002. (See, Master Plan p. 4.)

The Subject Property is improved with commercial buildings and structures, operated as a contractor's yard for a hydro-seeding company. The existing improvements are mainly situated in the eastern and central portions of the Subject Property. (See, Existing Conditions Plan.) The site is mostly sparse tree canopy, with a gravel lot on the eastern side and a wetland and stream in the rear. *Id.*

The Subject Property is approximately 468,223 square feet, or 10.75 acres in size, which includes land proposed to be dedicated to public use for Travilah Road. (See, Conditional Use Site Plan.) The Subject Property is trapezoidal in shape with a rear lot line approximately 530 feet long and is approximately 967 feet deep on the eastern boundary and 1,265 feet deep on the western boundary. *Id.*

The Subject Property slopes from northeast to southwest with approximately forty (40) feet of elevation change. There are no 100-year floodplains or historic features on or adjacent to the Subject Property. (See, Conditional Use Site Plan.)

The Subject Property has access, via two driveway aprons, to and from Travilah Road. (See, Existing Conditions Plan.) Travilah Road is an “area connector” with a 70-foot-wide right-of-way. (See, Master Plan of Highways and Transitways.)

## **II. Surrounding Properties and Adjacent Development**

The surrounding area, identified for purposes of evaluating compatibility of the project, is defined by the boundaries of the institutional and commercial uses and then residential uses to the east along Pine View Lane and Grey Colt Drive, the Royal Manor Way residential development to the north and along Saddlevue Drive, Potomac Riding Lane residential development to the west, and a commercial property and the Serpentine Barrens Conservation Park to the south (the “Neighborhood”). The surrounding uses are largely residential in character, made up of single-family detached homes and townhouses in the R-200 and RE-2 zones, mainly to the north, northeast, and west of the property. (See, Certified Zoning Map.) The nearby townhomes are similar in size to the proposed homes, except they are not age restricted. The subdivision to the north of Travilah Road was approved under various optional method development site plans using TDRs to allow increased density, smaller lots, and townhouses. *Id.* Additionally, there are some commercial and institutional uses within the Neighborhood, including Allentuck Landscaping Company to the west and the Rockville Moose Lodge to the East. Other commercial, institutional, and industrial uses lie just outside the bounds of the Neighborhood, including Travilah Elementary School to the west and the Gurdwara Sikh Spiritual Center and other community churches, Nancy H. Dacek North Potomac Community Recreation Center, Big Pines Local Park, Aggregate Industries Quarry, and medical office and restaurant uses to the east along Travilah Road. These facilities are easily accessible by car, bicycle or RideOn bus routes 67 and 301 with stops adjacent to the Subject Property—one of which is proposed to be relocated along the Subject Property frontage.

### **III. Proposed Development**

#### **A. Proposed Use/Building Design**

The Petitioner proposes to redevelop the Subject Property under the standard method of development for the RE-2 Zone to accommodate four-story age-restricted, independent living townhomes for seniors per § 59-3.3.2.D.2.c with a total of 60 units. (the “Project”). The Project will also include residential outdoor amenities, generous common areas to be shared by residents, landscaping, associated parking, and other site improvements.

The site layout and building architecture have been designed to be compatible with and complementary to the surrounding residential neighborhoods. The Project proposes a moderate number of units within a single row, with ample open space between to maintain the medium-density residential character of the Neighborhood. The exterior architectural design is a mix of traditional materials in a contemporary arrangement that evokes an inviting residential quality of “home.” The buildings will have a maximum height of approximately 42 feet to the midpoint of the pitched roof, which is several feet lower than the 50-foot maximum permitted in the RE-2 Zone and compatible with the heights of surrounding residential homes. The buildings will also exceed the minimum setback requirements for this use in the RE-2 Zone, which will allow additional front yard tree planting areas, while still providing ample parking space.

The Project will increase the existing landscape buffers to provide additional screening of the Project from the adjacent residential homes and institutional and commercial uses. Proposed open space significantly exceeds the minimum 50% required, focusing primarily on landscaped buffers along the eastern and western property lines, a greenway and bioretention facilities along the Travilah road frontage, a central green space within a network of sidewalks, and rear common space with an overlook of the conservation area. Additionally, a conservation easement will protect the stream buffer and wetlands on the rear of the Subject Property.

The development will be serviced by public water and sewer. The Subject Property is in sewer category S-1. Two of the tree parcels are in water category W-1, and one parcel is in water category W-6.

The existing buildings will be demolished for construction of the Project. One of the existing access driveways will be eliminated, and the other one will be modified to provide better sight distance.

#### **B. Site Access and Parking**

Site access will be provided by a new private street system accessed off Travilah Road through a single well-defined access point. The private street into the site will be a right-of-way 21 feet in width and will be constructed to the applicable MCDOT standards for a private residential street.

A minimum of two parking spaces is required for each townhome, for a total of 120 spaces. Two parking spaces will be provided for each unit on individual lots and along the street.

The Project will include a 6-foot-wide sidewalk along the Subject Property's Travilah Road frontage, separated from the street by a 9-foot-wide landscape panel. Because the abutting lots to the east and west have not dedicated any required right-of-way, there is no ability to tie into an existing sidewalk. Thus, a bus stop will be relocated to this frontage for safe access to transit.

#### **C. Open Space and Recreation**

The Project includes open space that significantly exceeds the minimum 50% required. Spread throughout the community, the open space focuses on four primary areas: (i) Landscaped buffers along the eastern and western property lines, (ii) a greenway along the Travilah road frontage, (iii) A central green space within a network of sidewalks, and (iv) the rear common space and overlook of the conservation area.

The landscape buffers along the eastern and western property are at least 8 feet wide and will be planted with various types of primarily native trees and shrubs. The greenway along the Travilah Road frontage builds off the proposed street tree and sidewalk design within the right-of-way with sweeping lawns and lush pollinator gardens that serve as biorention facilities.

A central green is framed by sidewalks and buildings, providing significant usable space and serving as a more functional green space alternative to the existing naturalized area in the southern portion of the Subject Property.

However, as previously mentioned, the Petitioner proposes to retain and enhance the existing tree stand along the southern portion of the Subject Property. While most of this area will be set aside within a conservation easement to protect the stream buffer and wetlands, a secondary outdoor amenity space is situated to take advantage of the view. This space also includes outdoor patio areas with seating, shade, and a walking trail. In keeping with the serene atmosphere created by the forest and wetlands, little formal programming is proposed; rather, the space will be kept open and flexible for the community to adapt over time.

#### **D. Operational Features**

The proposed Project will provide townhouses for independent seniors; no residential care or assisted living facilities are proposed. Thus, the Project will function much like a traditional residential neighborhood, although with less traffic and noise and no school impacts. Detailed operational information is provided in the Statement of Operations, submitted concurrently with this statement. Deliveries and pick-ups at the Subject Property will include weekly trash pick-up and FedEx and UPS deliveries similar to those received at similarly sized townhouse communities.

#### **E. Landscape, Lighting and Forest Conservation**

The Project will significantly increase the landscape buffers that surround the Subject Property along the western, eastern, and southern property boundaries to provide additional screening of the Project from the adjacent residential, institutional and commercial uses. Accordingly, the building setbacks and perimeter landscaping will ensure compatibility of the Project within the Neighborhood for adjacent owners and future residents. Screening along the western property line, in particular, is designed to comply with § 59-6.5 with significant plant material and a privacy fence. Any shared trees on or near the western property line that are removed will be replaced and more trees will be planted, resulting in more trees than currently exist to buffer the western side. The adjacent properties to the east and south are not vacant nor improved with an agricultural or residential use and therefore, § 59-6.5 does not apply.

Only minimal building lighting is proposed, and the lighting for the parking and amenity areas will be limited to the amount necessary to ensure safety. Exterior lighting has been designed to eliminate

light exposure on adjacent properties—all outdoor lighting for the Project will be directed, shielded, or screened using full-cut-off fixtures focused on internal sidewalks, streets, and parking. The photometric plan, submitted in connection with this Application, illustrates that lighting will not bleed into adjacent properties.

The Project will provide stream valley buffers will be placed into forest conservation easements, and does not propose any development or stormwater management within these buffers. These buffer areas will become distinctive features of the landscape design, featuring plant materials specially selected to serve as habitat for butterflies, bees, and birds between new and enhanced forest stands. In fact, all the forest conservation requirements will be met on site through the creation of forest stands along the stream and its associated wetlands. Therefore, landscaping and lighting will be provided in a manner compatible with the Neighborhood, as shown on the Landscape Plan and Lighting Plan included with this Petition.

#### **F. Stormwater Management**

Stormwater Management (SWM) is being met via micro bio-retention and landscape infiltration facilities throughout the site. Large storm events will bypass into the storm drain system via a riser located within the footprint of the facility. These facilities will be located, shaped, and planted as garden features within the landscape to provide a park-like feel around the homes.

#### **IV. Summary of Proof**

As detailed below, this Petition satisfies all of the requisite findings necessary for the Hearing Examiner to grant the proposed Independent Living Facility for Seniors conditional use:

- 1. Satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended. § 59-7.3.1.E.1.a, Zoning Ordinance.***

The above-referenced finding is not applicable. The proposed Conditional Use will supersede the existing Special Exceptions (Case Nos. S256, S791, 5409, and CBA2927).<sup>1</sup> There are no other previous approvals for the Subject Property.

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<sup>1</sup> Per MCATLAS: Case S256 for a private club; Case S791 to permit a horticultural nursery and commercial greenhouse (in conjunction with Case No. A-827; Case 5409 to permit the construction and operation of a private educational institution for over 40 children; Case CBA2927 for a private club.

2. *Satisfies the requirements of the zone [Article 59-4.4.4], uses 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. § 59.7.3.1.E.1.b, Zoning Ordinance.*

The proposed Independent Living Facility for Seniors development is permitted as a conditional use in the RE-2 zone. (See, § 59-3.1.6, Zoning Ordinance.) The Petition satisfies the development standards for the Independent Living for Seniors as a Conditional Use set forth in § 59-3.3.2.D.2.c. of the Zoning Ordinance, as well as the Standard Method Development standards set forth in § 59-4.4.4.B, as demonstrated below.

Section 59.3.3.1.D.2.b Independent Living for Seniors as a Conditional Use

Where Independent Living for Seniors is allowed as a conditional use, the Hearing Examiner may permit it by under § 59-7.3.1, 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.*

The site has adequate accessibility to public transportation, medical services, shopping areas, recreation, and other community services, as described in the Statement of Justification and in the Land Use Report. As stated above, the Project is easily accessible by car, bicycle or RideOn bus with stops adjacent to the Subject Property, and one proposed for relocation to the Subject Property frontage. Additionally, there are medical offices, recreation facilities, commercial centers, and other community services only a short distance from the Subject Property.

- 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.*

No ancillary or retail facilities are proposed and, therefore, this standard is inapplicable to the proposed Project.

- 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, and otherwise satisfies Chapter 25A. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs under Executive regulations. Income levels are defined in Section 1.4.2, Defined Terms.*

The affordable housing requirement will be met through an automatic alternative payment to the Housing Initiative Fund by agreement with the Department of Housing and Community Affairs, as authorized by Chapter 25A, § 25A-5A of the Montgomery County Code.

- 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.*

The proposed maximum building height is 50 feet, which complies with the standards for the underlying zone. The Hearing Examiner establishes the maximum density. Sixty townhouses are proposed, for a density of 5.5814 units per acre.

- 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.*

Height density, coverage, and parking are compatible with surrounding uses as described above and as shown on the below table.

- 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 green area.*

There are no units that face the existing street and require a front setback. Therefore, this standard is inapplicable to the proposed Project.

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

The minimum side and rear setbacks are 25 feet from abutting lots not included in this application. However, in actuality, there are no abutting lots because of an approximately 15-foot Homeowner's Association parcel between the proposed and abutting lots. In addition to this 15-foot HOA parcel, principal buildings are setback on internal lots by 20 feet.

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

6.38 acres of green area is proposed, which amounts to 50% of the site area. Therefore, the Project exceeds the 50% green space requirement.

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



Principal building setbacks meet the minimum required for the subject building type in the R-30 zone, as shown on the chart below.

**Section 4.4.4.B. RE-2 Zone, Standard Method Development Standards**

Additionally, the Petition satisfies the development standards for the RE-2 Zone set forth in § 59-4.4.4.B, as modified by § 59-3.3.2.D.2.c:

**DEVELOPMENT STANDARDS: RE-2 ZONE (AS MODIFIED BY § 59-3.3.2.D.2.c)**

| STANDARD  | REQUIRED/ALLOWED  | PROPOSED                                 |
|---|---|--|
| Lot Area (min)<br>(§ 59-4.4.4.B.1)  | 2.00 AC   | 10.63 AC                                 |
| Tract (Gross Tract) Area  |   | 468,223 SF 10.75 AC                      |
| Dedication Area on Travilah Road  |   | 5,348 SF 0.12 AC                         |
| Site (Net Lot) Area   |   | 462,875 SF 10.63 AC                      |
| Lot Width at Front Building Line (min)<br>(§ 59-4.4.4.B.1)                                      | 150 feet  | 417 feet                                 |
| Lot width at front lot line (min)<br>(§ 59-4.4.4.B.1)   | 25 feet   | 417 feet                                 |
| Density (§ 59-3.3.2.D.2.c.iv/v)<br>Max Units  | n/a units   | 60 Townhouses                            |
| Lot Coverage (max)<br>(§ 59-4.4.4.B.1)  | 25%<br>115,719 SF 2.66 AC   | 20%<br>92,575 SF 2.66 AC                 |
| Principal Building Setbacks (min) <sup>2</sup><br>(§ 59-3.3.2.D.2.c.vi/vii)<br>(§ 59-4.4.4.B.1) | Front Private<br>Street 4 feet<br>Side Street 5 feet<br>Side (End<br>Unit) 3 feet<br>Side B/W Lot<br>& Site | 10 feet <sup>3</sup><br>5 feet<br>3 feet |

<sup>2</sup> Accessory structures are permitted within setbacks, as defined in the Zoning Ordinance.

<sup>3</sup> 18' minimum provided to garage door.

|                                      |                     |                    |         |
|--------------------------------------|---------------------|--------------------|---------|
|                                      | Boundary            | 5 feet             | 5 feet  |
|                                      | Rear                | 20 feet            | 20 feet |
|                                      | Rear B/W Lot & Site |                    | 10 feet |
|                                      |                     |                    |         |
| Height (max) (§ 59-3.3.2.D.2.c.iv/v) | 50 feet             | 50 feet            |         |
|                                      |                     |                    |         |
| Green Area (min)                     | 50%                 | 60%                |         |
| (§ 59-3.3.2.D.2.c.viii)              | 231,438 SF 5.31 AC  | 277,725 SF 6.38 AC |         |

## GENERAL REQUIREMENTS

| STANDARD                              | REQUIRED/ALLOWED | PROPOSED |
|---------------------------------------|------------------|----------|
|                                       |                  |          |
| 59-6.2.4. Parking (min)               |                  |          |
| On Street/Visitor                     | 0                | 19       |
| Per Townhouse                         | 2.00 120         | 120      |
| Total                                 | 120              | 139      |
| HC Spaces (Including Van)             | 0                | 1        |
| Standard Spaces                       | 120              | 138      |
|                                       |                  |          |
| 59-6.4.3.C. Fences and Walls          |                  |          |
| 3.c.i. Fence Height (max)             | 6.5 feet         | 6.5 feet |
|                                       |                  |          |
| 59-6.4.4.E. Conditional Use Lighting  |                  |          |
| Footcandles at Site Boundary (max)    | 0.1 FC           | 0 FC     |
|                                       |                  |          |
| 59-6.5.3.C.7. Screening <sup>4</sup>  | Option A         | Option A |
| Depth (min)                           | 8 feet           | 10 feet  |
| Canopy Trees (min/100')               | 2                | 2 trees  |
| Understory/Evergreen Trees (min/100') | 2                | 2 trees  |
| Large Shrubs (min/100')               | 6                | 6 shrubs |
| Medium Shrubs (min/100')              | 8                | 8 shrubs |
| Small Shrubs (min/100')               | 8                | 8 shrubs |
| Fence Height (min)                    | 4 feet           | 6 feet   |

<sup>4</sup> Applicable to western boundary abutting detached residential uses; not applicable to eastern or rear boundaries developed with institutional and commercial uses.

**3. *Substantially conforms with the recommendations of the applicable master plan. § 59-7.3.1.E.1.C***

As stated above, the Subject Property falls within the boundaries of the Potomac Subregion Master Plan, Approved and Adopted in April 2002. Master plans generally look ahead 20 years from the date of adoption, although they are intended to be updated every 10 years. However, the Master Plan has not been updated for over 20 years. Even so, the Master Plan specifically recognizes that “circumstances will change following adoption of a plan and that the specifics of a master plan may become less relevant over time.” (See Master Plan, p. vii).

Nonetheless, many of the overarching objectives of the Master Plan remain relevant today and the proposed Project substantially conforms with these objectives. The Master Plan confirms the RE-2 zoning for the Subject Property, but does not contain any site-specific recommendations. However, the Project conforms with the Master Plan’s general recommendation to maintain the low-density “green wedge,” as recommended by the County’s “Wedges and Corridors” planning policy (see Master Plan, p. 33). The Project, which provides over 6 acres of open space and has a maximum lot coverage of 20 percent, furthers this goal by providing compatible, low-density development. At approximately 5.6 senior living units per acre, this low-impact use is in line with surrounding land-use patterns and will have negligible impact on traffic and no impact on schools. The Project will remove significant commercial storage and dumping areas, provide ample screening and buffering, and overall enhance the existing landscaping around the site.

Of particular significance, the Master Plan specifically recognizes that “Senior housing is appropriate throughout the Subregion wherever zoning permits this use, either by right or as a special exception use.” (See Master Plan, p. 38). Although the Master Plan identifies five properties as suitable locations for senior housing, the Master Plan clearly intended to allow for senior housing in other locations throughout the subregion and did not intend to limit senior housing to these five sites. The

Hearing Examiner reached the same conclusion in Conditional Use Case No. CU-16-01 and, more recently, in Conditional Use Case No. CU-20-05.

The Master Plan recognizes that the Potomac Subregion does not, but should, fully meet the Master Plan area's senior housing needs within its boundaries (See Master Plan, p. 36). At the time of plan adoption, it was projected that the Subregion would need to accommodate approximately 750 dwelling units by 2022 to meet the needs of the Subregion's aging population. If anything, changing demographics show an increased demand for senior housing throughout the County. The Project will further this goal by providing additional senior housing within the Master Plan boundaries, near goods and services desired by senior residents.

Further, the Master Plan's Special Exception Policy is designed to ensure the protection of the residential areas while simultaneously promoting important policy goals, such as senior housing. The Policy seeks to "avoid an excessive concentration of special exceptions along major transportation corridors" (See Master Plan, p. 35). The intent of this recommendation is, in part, to guard against traffic impacts, by minimizing uses that might create too many access points and conflicting turn movements. Currently, access to the Subject Property is from two drives that need significant safety improvements. The Project will control access to the Subject Property through a single entry point better located to maximize intersection spacing and provide optimal site distance. Furthermore, there is not an overconcentration of Special Exceptions in the Neighborhood and, importantly, the proposed Project will replace an existing Special Exception for a landscape contractor's yard with a residential use. Thus, there will be no net increase in special exceptions or conditional uses in the area. Though the Special Exception Policy also recommends "increase[d]... scrutiny in reviewing special exception applications for highly visible sites," to guard against over concentration, the Project remains consistent with the Master Plan's intentions as it provides a significant, landscaped setback from Travilah Road.

In line with the Master Plan guidelines for Special Exceptions, the Project will ensure architectural compatibility with the Neighborhood through its architectural design, which features contemporary residential elements typical of many townhouses in the community, such as varied siding

materials, prominent front doors, significant windows, gabled roofs, and varying colors. Backyards will be fenced and landscaped in a traditional residential design language. The Project will minimizing the commercial appearance of parking since most parking is provided in garages and driveways and no parking lots are proposed. Additionally, the Project will enhance screening and buffering between the proposed new development and adjacent residential areas with fencing and landscaping that exceeds the requirements for screening between conditional uses and residential lots.

Thus, the Conditional Use substantially conforms with the recommendations of the Master Plan and specifically addresses the objective to provide additional senior housing within the Potomac Subregion.

***4. Is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan. §59.7.3.1.E.1.d, Montgomery County Zoning Ordinance***

As previously mentioned, the design of the community promotes compatibility with the Neighborhood. Additionally, as described in the Petitioner's Statement of Operations, submitted concurrently with this Petition, the proposed independent living townhouses for seniors will be operated in a manner typical of a suburban residential community that ensures compatibility and preservation of the residential character of the Neighborhood. In fact, the Project will result in the redevelopment of the existing commercial use with a more compatible, residential use.

The proposed setbacks and 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 buildings are residential townhouses indistinguishable from typical residential structures utilizing various materials, colors, recesses and projections to minimize any perceived bulk and massing of the buildings.

- 5. 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; §59.7.3.1.E.1.e, Montgomery County Zoning Ordinance**

The proposed Conditional Use will replace several Special Exceptions that have existed on the Subject Property for many years (Case Nos. S256, S791, S409, and CBA2927).<sup>5</sup> Therefore, approving the Petition will not increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. The Conditional Use is residential and designed to maximize compatibility with the surrounding properties, as discussed in detail above.

- 6. 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 adequate public facilities test is required and . . . 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... §59.3.1.E.1.f, Montgomery County Zoning Ordinance**

A Preliminary Plan of Subdivision will be filed concurrently with Conditional Use approval to create the necessary record lots and parcels. As such, the Montgomery County Planning Board (“Planning Board”) will be responsible for determining whether Adequate Public Facilities (“APF”) exist to support the proposed development of the Subject Property.

As demonstrated by the Traffic Statement, the public facilities are more than adequate to support and service the Conditional Use. The proposed independent living townhouses for seniors will generate 19 AM peak hour and 23 PM peak hour person trips. Notably, although the Project provides increased residential density, the proposed senior living use will not generate any new students. Thus, the Project will have no impact on public school capacity. Other public facilities and services—including police stations, firehouses and health care facilities—are currently operating in accordance with the Subdivision Staging Policy and will continue to be sufficient following construction of the Project. The nearest police

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<sup>5</sup> Per MCATLAS: Case S256 for a private club; Case S791 to permit a horticultural nursery and commercial greenhouse (in conjunction with Case No. A-827; Case 5409 to permit the construction and operation of a private educational institution for over 40 children; Case CBA2927 for a private club.

station serving the Subject Property is the 1st District Police Station, located at 100 Edison Park Drive in Gaithersburg, Maryland. The nearest firehouse is Montgomery County Fires Station 32 located at 9615 Darnestown Road, Rockville, Maryland. The Petitioner's civil engineers have confirmed that the Project will be served by public water and sewer systems, as shown on the Conditional Use Site Plan, and a Hydraulic Planning Analysis will be submitted to the Washington Sanitary Sewer Commission in conjunction with this application. Electric, gas and telecommunications services are also available.

**7. *Will not cause undue harm to the neighborhood as a result of the 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. §59.7.3.1.e.1.g, Montgomery County Zoning Ordinance.***

The Montgomery County Zoning Ordinance defines inherent adverse effects as adverse effects created by the physical or operational characteristics necessarily associated with the particular conditional use, irrespective of its physical size or the scale of its operations. The Zoning Ordinance is clear that inherent adverse effects alone do not constitute a sufficient basis for denial of a Conditional Use, and must be evaluated in combination with non-inherent adverse effects. Non-inherent adverse effects are defined as adverse effects that arise from physical and operational characteristics that are not necessarily associated with the particular conditional use, or adverse effects that are created by unusual characteristics of the site.

Typical senior living facilities have large buildings, parking, and dedicated service and loading areas. The proposed independent living use, however, will be completely residential in nature comprising several rows of townhouses along a private residential street with significant open space, landscaping, and sidewalks. As such, those inherent effects usually discussed with a conditional use, such as large building size, parking facilities, and traffic to the site by staff are not applicable. The remaining inherent effects are 1) outdoor amenity space, 2) street lighting, 3) traffic from residents, and 4) trash and delivery trucks.

This analysis finds each of these inherent effects of the Conditional Use will be acceptable and appropriate for the proposed location:

- Outdoor amenity space for use by residents and visitors. The design of the outdoor spaces is typical in nature, but provides much more communal space than a standard residential neighborhood. Because there are nearby recreational facilities, such as the Nancy H. Dacek North Potomac Community Recreation Center across Travilah Road offering a gym, pickleball, table tennis, and other activities, the outdoor amenity space for the community is generally passive in nature. Taking advantage of the existing wetland and stream valley, the Project is what might be termed park-oriented development with paths, lawns, plantings, and shaded seating for flexible, open-ended enjoyment by residents and their guests. These spaces are located within the community in the central block, at the entrance along Travilah Road, and at the southern end of the property where they will have the least impact on neighbors.
- Street lighting. As shown on the Photometric Plan, in conformance with the requirements of § 59-6.4.4 of the Zoning Ordinance, lighting for the Project will fall to zero (0.0) footcandles well before approaching Subject Property lines abutting the residential uses. Special fixtures have been selected that eliminate glare to surrounding properties.
- Traffic to and from the site by residents. The Petitioner's Traffic Statement confirms that the Project is anticipated to result in 19 AM peak hour and 23 PM peak hour person trips – a minimal amount of traffic.
- Trash and delivery trucks. As stated above, only typical trash and recycling pick up and deliveries to households, such as FedEx and UPS trucks, will typically be on site. There are no communal or commercial-like facilities proposed requiring large, regular deliveries. Thus, the proposed use will be similar in nature to a typical residential community.



There are no additional inherent effects associated with the Independent Living Facility for Seniors. As such, as illustrated above, the proposed Conditional Use will not result in adverse effects over and above the above-described inherent impacts.

In addition, there are no non-inherent adverse effects associated with the Conditional Use at the proposed location. This analysis, therefore, finds that the Conditional Use will not cause undue harm to the Neighborhood. There is no evidence that the Conditional Use will interfere with the use or enjoyment of the surrounding properties; result in undue traffic, noise, odors, dust, illumination, or a lack of parking; or interfere in any way with the health, safety, or welfare of neighboring residents, visitors, or employees. Rather, as discussed in detail above, the Conditional Use will be compatible with the Neighborhood. The proposed Project, which is residential in nature, will complement the surrounding uses and improve Travilah Road to current standards along its frontage.

#### **V. Development Schedule**

The proposed facility will be constructed in a single phase. Below is the development phasing and construction sequence:

- Pre-construction meeting
- Installation of sediment control devices
- Demolition of existing improvements
- Clearing and grading
- Construction of retaining walls, structured parking and building
- Construct surface parking, stormwater management facilities, install landscaping and stabilize site
- Final inspections

#### **VI. Written Reports**

A traffic statement prepared by Lenhart Traffic Consulting, Inc. has been submitted with this Petition, along with a Land Use & Planning Report prepared by VIKA Maryland, LLC.

#### **VII. Initial List of Witnesses**

The Petitioner intends to call the following witnesses at the public hearing but reserves the right to call additional witnesses as necessary.

1. Mr. Patrick Byrne, with Community Housing Initiative, Inc., will testify as to the proposed use and operations, as well as some planning and design aspects of the project.
2. Mr. Joshua C. Sloan, ASLA, PLA, AICP, with VIK A Maryland, LLC, will testify as an expert in land planning and landscape architecture on the Project's compliance with the requirements for forest conservation and environmental guidelines, the intent and requirements of the Zoning Ordinance, the proposed landscape design, compatibility of the proposed development with the Neighborhood, and the Project's substantial compliance with the Master Plan.
3. Mr. Mark G. Morelock, PE, with VIK A Maryland, LLC, will testify as to the civil engineering requirements for stormwater management and utilities serving the site.
4. Mr. Mike Lenhart, with Lenhart Traffic Consulting, Inc., will testify as to traffic and transportation planning issues in accordance with the transportation statement prepared for the Conditional Use Application.

Date: July 2, 2025

Respectfully submitted,

MILES & STOCKBRIDGE P.C.

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