

IN THE MATTER OF THE PETITION

OF COMMUNITY HOUSING INITIATIVE, INC.

FOR A CONDITIONAL USE

Case No. CU-_____

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COMMUNITY HOUSING INITIATIVE, INC.
PETITION FOR APPROVAL OF
CONDITIONAL USE APPLICATION NO. #####

13741 & 13751 TRAVILAH ROAD
ROCKVILLE, MARYLAND

MONTGOMERY COUNTY
OFFICE OF ZONING & ADMINISTRATIVE HEARINGS

NOVEMBER 2, 2022

Exhibit 5
OZAH Case No: CU 23-10

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SUMMARY OF PROPOSAL

COMMUNITY HOUSING INITIATIVE, INC. (the “Petitioner”) is submitting this Conditional Use application for the proposed redevelopment of the property located at 13741 and 13751 Travilah Road Rockville, Maryland (the “Property”) with an Independent Living Facility for Seniors. The Property is classified in the Residential Estate-2 (“RE-2”) Zone and currently is improved with a landscape company’s yard and associated surface parking, as well as two single-family homes. The Applicant proposes to redevelop the Property with an independent senior living community containing sixty (60) townhouses and associated amenities and infrastructure (the “Conditional Use” or “Project”). The Project will significantly improve the visual appearance and environmental quality of the Property and provide an opportunity to implement stormwater management and forest conservation strategies where there currently are none. The Project will also expand housing options for seniors by providing age-restricted for-sale townhouses.

The Project will be constructed in one phase.

LIST OF EXHIBITS

EXHIBIT A – APPLICATION FORM
EXHIBIT B – OWNERS AUTHORIZATION LETTERS
EXHIBIT C – LAND USE REPORT
EXHIBIT D – ZONING MAP
EXHIBIT E – LIST OF ADJOINING AND CONFRONTING PROPERTY OWNERS AND LOCAL CITIZENS ASSOCIATIONS
EXHIBIT F – TRAFFIC STATEMENT
EXHIBIT G – NATURAL RESOURCE INVENTORY/FORREST STAND DELINEATION
EXHIBIT H – UTILITY PLAN
EXHIBIT I – STATEMENT OF OPERATIONS
EXHIBIT J – CONDITIONAL USE SITE PLAN
EXHIBIT K – LANDSCAPE PLAN
EXHIBIT L – PHOTOMETRIC PLAN
EXHIBIT M – PRELIMINARY FOREST CONSERVATION PLAN
EXHIBIT N - TREE VARIANCE JUSTIFICATION
EXHIBIT O – STORMWATER MANAGEMENT CONCEPT APPLICATION
EXHIBIT P – ARCHITECTURAL DRAWINGS
EXHIBIT Q – SITE DISTANCE STUDIES
EXHIBIT R – FIRE ACCESS PLAN
EXHIBIT S – RESUMES OF EXPERT WITNESSES

APPLICANT STATEMENT IN SUPPORT OF THE PETITION

Community Housing Initiative, Inc (the “Petitioner”) respectfully submits this request to the Montgomery County Office of Zoning & Administrative Hearings (“OZAH”) pursuant to Section 7.3.1 of the Montgomery County Zoning Ordinance (“Zoning Ordinance”). The Petitioner seeks approval for development of an Independent Living Facility for Seniors on the Property located at 13741 and 13751 Travilah Road, Rockville, Maryland. Prior to implementing the Conditional Use, the Petitioner will submit the necessary applications to the Montgomery County Planning Board for a Preliminary Plan of Subdivision and subsequent Record Plats to create multiple record lots and common area parcels on the Property and provide the necessary right-of-way dedication.

PROPERTY DESCRIPTION & PROPOSED CONDITIONAL USE

As stated in the Petitioner's Land Use Report (Exhibit C), the Property currently consists of approximately 468,223 square feet of land (± 10.75 acres), including Parcels P709 and P804 Harbins Lot and Parcel B (N765) on Plat 9926. The Property is located on the south side of Travilah Road, approximately 2.5 miles south of the Traville Village Center at the intersection with Shady Grove Road. The attached Zoning Map (Exhibit D) confirms that the applicable zoning classification is Residential Estate-2 (“RE-2”).

The Land Use Report describes the Property as being located at the center of a larger neighborhood generally bounded by the institutional and commercial uses and then residential uses to the east, Royal Manor Way residential development to the north, Potomac Riding Lane residential development to the west, and a commercial property and the Serpentine Barrens Conservation Park to the south (the “Surrounding Neighborhood”). The Land Use Report states that the Surrounding Neighborhood is

largely residential in character, made up of single-family detached homes and townhouses, mainly to the north, northeast, and west of the property. There are also various non-residential uses adjacent to the Property and just beyond the Surrounding Neighborhood boundary to the north in the Traville Village Center area. The Traville Village Center, as well as several other commercial uses, will serve the varying needs of the residents for goods and services and medical appointments.

CONDITIONAL USE STANDARDS FOR AN INDEPENDENT LIVING FACILITY

The project meets each of the applicable Conditional Use Standards for an Independent Living Facility under Sections 59.3.3.2.C.2.c.i through ix as summarized below.

Section 3.3.2.C.2.c. Independent Living for Seniors as a Conditional Use.

- i. The site has adequate accessibility to public transportation, medical services, shopping areas, recreation, and other community services, as shown on the attached vicinity map and described in the statement of justification.
- ii. No ancillary or retail facilities are proposed.
- iii. Per Chapter 25A, Section 25A-5A, the affordable housing requirement will be met through an alternative payment to the Housing Initiative Fund by agreement with the DHCA.¹
- iv. The maximum building height is met per the table below. The maximum density is established by the Hearing Examiner per the table below.
- v. Height density, coverage, and parking are compatible with surrounding uses as shown in the Conditional Use Plan application.
- vi. There are no units facing the existing street requiring a front setback.
- vii. The minimum side and rear setbacks are 25 feet to abutting lots not included in this application, although there are no abutting lots because of an approximate 15-foot HOA parcel between proposed lots and the abutting lots. In addition to this 15-foot HOA parcel, principal buildings are setback on the internal lots 20 feet.
- viii. A minimum green area of 50% is provided.
- ix. Principal building setbacks (not modified above) meet the minimum required for the subject building type in the R-30 zone, as detailed in the Conditional Use application.

¹ Because of difficulties finding qualified seniors for for-sale, age-restricted housing and to better support the purpose of the MPDU program to help first-time home buyers, any new age-restricted development that will be for sale is required to make a payment to the HIF in the amount of 3% of the sales price, due at closing, pursuant to 25A-5A of the County Code.

Necessary Findings of Approval

The Hearing Examiner must make the necessary findings of approval under Sections 59.7.3.1.E.1 through

6. Each of these findings is satisfied as summarized below.

- a. *Section 7.3.1.E.1.a. [The conditional use] satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;*

The above-referenced Section is not applicable. The Conditional Use will supersede the existing Special Exceptions (Case Nos. S256, S791, S409, and CBA2927)². There are no other previous approvals for the Property.

- b. *Section 7.3.1.E.1.b. [The conditional use] satisfies the requirements of the zone, use standards under Article 59-3, and applicable general requirements under Article 59-6;*

As discussed in the Land Use Report, the proposed use complies with the applicable requirements of the RE-2 Zone, including the conditional use standards for Independent Living for Seniors, and the general requirements of Article 59-6.

- c. *Section 7.3.1.E.1.c. [The conditional use] substantially conforms with the recommendations of the applicable master plan;*

² 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 S409 to permit the construction and operation of a private educational institution for over 40 children; Case CBA2927 for a private club.

The proposed use substantially conforms with the applicable recommendations of the Master Plan, as discussed in the Land Use Report. The Project has been designed to promote compatibility with the uses in the Surrounding Neighborhood. The townhouses are a residential use and have a residential appearance. As such, the Project will have no effect on the area's residential character. In fact, removal of the existing commercial use will greatly enhance the residential character of the neighborhood.

- d. *Section 7.3.1.E.1.d. [The conditional use] is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;*

As described in detail in the Land Use Report, the design of the community promotes compatibility with the Surrounding Neighborhood. 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. The Project will result in the redevelopment of the existing commercial use with a more compatible, residential use.

- e. *Section 7.3.1.E.1.e. [The conditional use] 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;

The Conditional Use will replace several Special Exceptions that have existed on the Property for many years (Case Nos. S256, S791, S409, and CBA2927). Therefore, the Conditional Use will not increase the number of conditional uses in the Surrounding Neighborhood. Furthermore, the Conditional Use will not affect the area adversely nor alter its residential character. The Conditional Use is residential and designed to maximize compatibility with the surrounding properties, as discussed in detail above.

The Conditional Use substantially conforms with the recommendations of the Master Plan as described above and in the Land Use Report and specifically addresses the Master Plan's objective to provide additional senior housing within the Potomac Subregion.

- f. Section 7.3.1.E.1.f. [The conditional use] will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and: (i) if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, or (ii) if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by*

adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage.

A Preliminary Plan of Subdivision will be filed subsequent to Conditional Use approval to create the necessary record lots and common area 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 Property. As demonstrated by the Traffic Statement, existing transportation facilities are more than adequate to support and service the Project. The Project will generate 19 AM peak hour and 23 PM peak hour person trips. Notably, although the Project provides new 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 operating in accordance with the Growth and Infrastructure Policy. The nearest police station serving the Project 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; 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.

- g. Section 7.3.1.E.1.g. [The conditional use] 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.

The 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 sticks 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 provides 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 Section 6.4.4 of the Zoning Ordinance, lighting for the Project will fall to zero (0.0) footcandles well before approaching 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 a minimal amount of traffic to and from the site: 19 AM peak hour and 23 PM peak hour person trips.
- Trash and delivery trucks. As indicated in the Statement of Operations, 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 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 Surrounding 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 Surrounding Neighborhood. The proposed Project, which is residential in nature, will complement the surrounding uses and improve Travilah Road to current standards along its frontage.

LIST OF INITIAL 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, President of Construction & Development, 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 Sloan, ASLA, AICP, with VIKA Maryland, 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 Surrounding Neighborhood, and the Project's substantial compliance with the Master Plan.

3. Mr. Jason Evans, P.E., with VIKA Maryland, will testify as to the civil engineering requirements for stormwater management and utilities serving the site.
4. Mr. Mike Lenhart, with Lenhart + Associates, will testify as to traffic and transportation planning issues in accordance with the Transportation Statement prepared for the Conditional Use Application.

ESTIMATED HEARING TIME

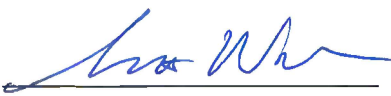
The Petitioner anticipates that, excluding questions, the presentation of its case-in-chief for the proposed conditional use will take approximately two hours.

FILING FEES

When confirmed by the respective agencies, checks in the amounts of \$4,196 payable to MNCPPC and \$9,830 payable to Montgomery County, MD and a \$200.00 sign fee to Montgomery County, MD as payment in full of all fees associated with this Petition for Conditional Use Petition will be submitted.

Respectfully submitted,

Miles & Stockbridge P.C.

By: 
Scott Wallace, Esq.
Attorney for Petitioner

Dated: November 2, 2022