

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF: *
OLNEY ASSISTED LIVING PARTNERS, LLC *

Petitioner *
Donald Feltman *
Patrick La Vay *
Victoria Bryant *
Dan Dokken *
Michael Lenhart *

Board of Appeals Case No. S-2819
OZAH Case No. 12-04

For the Petition *

Erin E. Girard, Esquire *

C. Robert Dalrymple, Esquire *

Attorneys for Petitioner *

Walter Teague *

Eda Teague *

Community Participants *

in Opposition *

Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-2819, filed on July 5, 2011, seeks a special exception pursuant to §59-G-2.27 of the Zoning Ordinance, to build and operate an assisted living facility (labeled a “domiciliary care home” in the Zoning Ordinance) with up to 64 beds on Parcel P707, in the 17000 Block of Georgia Avenue, Olney, Maryland. The 3.59 acre property is owned by the Church of Christ at Olney, which itself is located on the adjoining property to the north. The site is in the R-200 Zone (Tax account No. 08-00707426). The facility will be dedicated to individuals suffering from Alzheimer’s, dementia and other forms of memory loss. Exhibit 3, pp. 1-2.

On August 4, 2011, the Board of Appeals issued a notice scheduling the hearing for December 2, 2011, at 9:30 a.m. before the Office of Zoning and Administrative Hearings (Exhibit 14). The petition was amended twice by Petitioner (Exhibits 15 and 17), and notice of the amendments were issued as required (Exhibit 18). There was no opposition to the amendments.

Technical Staff, in a memorandum dated November 4, 2011, recommended approval of the petition, subject to specified conditions (Exhibit 16).¹ On November 17, 2011, the Planning Board voted unanimously to recommend approval of the special exception, with modified conditions. Transmittal letter, dated November 22, 2011 (Exhibit 19). The Planning Board also approved the Preliminary Forest Conservation Plan (PFCP) at its November 17 meeting. Exhibit 19, p. 2.

The proposed special exception is supported by the Greater Olney Civic Association (GOCA), whose president appeared before the Planning Board to so state. Exhibit 19. A single opposition letter was filed by Walter and Eda Teague, a couple who used to live in the general neighborhood (Exhibit 22). The Teagues’ letter raised concerns about the project’s potential effect on health and safety and about the loss of trees that would be occasioned thereby.

¹ Corrections and changes were made to the Technical Staff report at the Planning Board meeting, as reflected in Exhibit 20. The Hearing Examiner interlineated the changes into the official file copy of the Staff Report.

A public hearing was convened, as scheduled, on December 2, 2011. Five witnesses were called by Petitioner. There was no opposition at the hearing other than the Teagues, who no longer live in the area, but still attend the church next door.

The record was held open until December 19, 2011, for comments by Technical Staff and the public because the noise analysis required by Technical Staff was not filed until the day before the hearing. Exhibit 24(a). The Hearing Examiner also asked Petitioner to file a copy of the purchase contract for the site and information on whether the proposed sign is compliant with the Zoning Ordinance.

On December 8, 2011, Technical Staff supplemented its report with an e-mail (Exhibit 34) stating Staff's opinion that the proposed sign would be compliant with the requirements for a sign at the entrance to a subdivision pursuant to Zoning Ordinance §59-F-4.2(a)(3). On December 16, 2011, Technical Staff further supplemented its report by filing a review of the noise analysis previously submitted by Petitioner. Exhibit 35. Petitioner filed a copy of its purchase contract for the site (Exhibit 36(e)) on December 16, 2011, along with other documentation. On December 19, 2011, Petitioner filed a letter indicating that Department of Permitting Services (DPS) will require a sign variance for the proposed sign. Exhibit 37. The record closed, as scheduled on December 19, 2011.

The concerns raised by Mr. and Mrs. Teague are discussed in Part II. F. of this report. As will appear more fully below, in spite of their concerns, the record amply supports the granting of this petition.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property consists of 3.59 acres of unimproved land located on the west side of Georgia Avenue (MD 97), approximately 640 feet south of its intersection with Old Baltimore Road, in Olney, Maryland. The site is described as Parcel P707, and is zoned R-200.

The property is shown below in an aerial photograph from the Technical Staff report (Exhibit 16, p. 5):

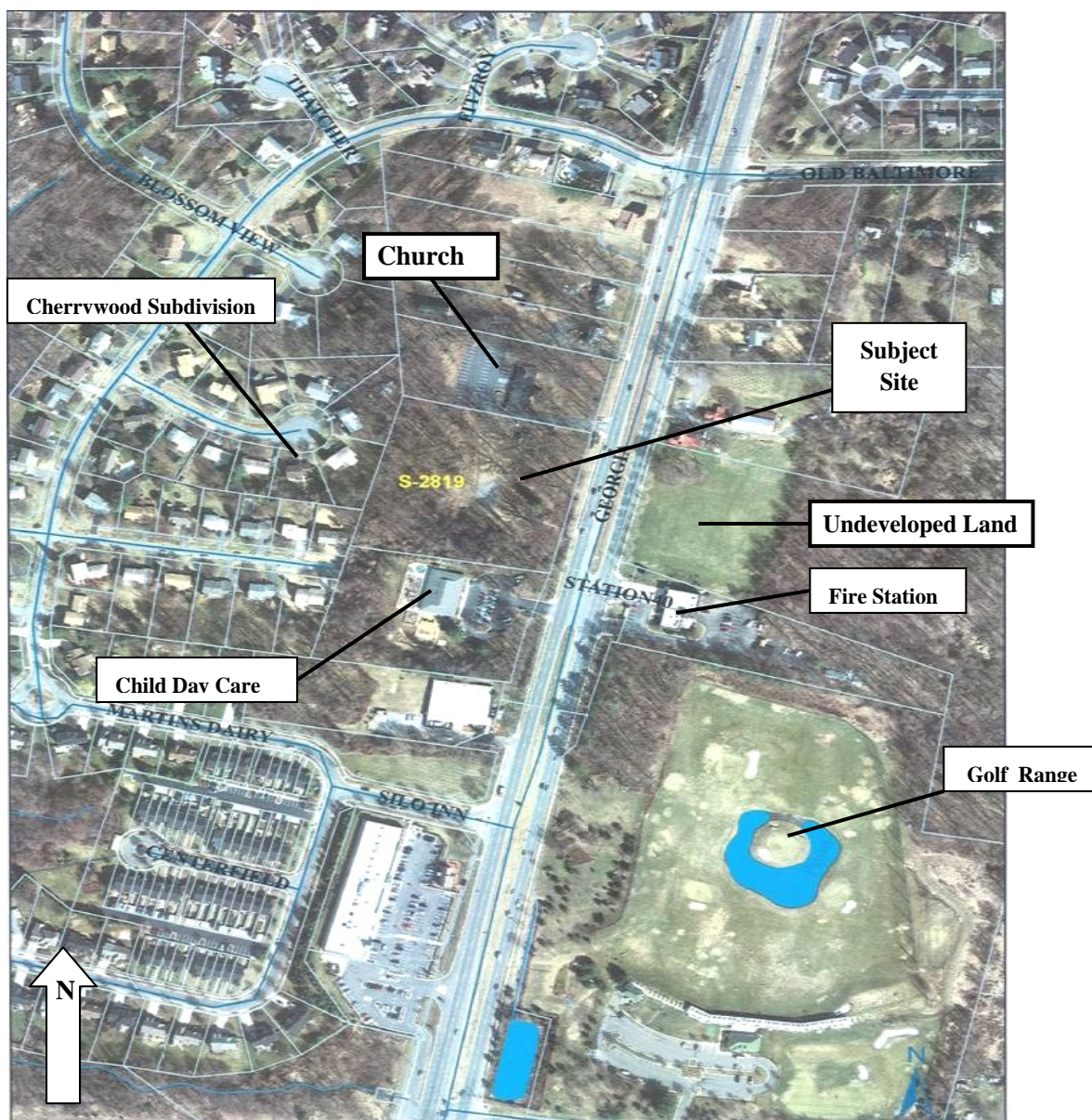


The applicant is a contract purchaser of the property, which is currently owned by the Church of Christ at Olney. Exhibit 36(e). The Church is located on Parcel N600, adjoining the site to the north. The site, which has about 355 feet of frontage on Georgia Avenue, would be accessed by an existing shared driveway, which is located on the church property to the north. A permanent easement agreement for the use of the driveway will be recorded when Petitioner completes its purchase of the subject property from the Church, following approval of the Special Exception and Preliminary Plan of Subdivision applications. According to Technical Staff, a one-story detached structure (a trailer) and a small shed are located on the northeastern portion of the subject site. Except for a small clearing in the center, the property is covered by forest. Exhibit 16, pp. 5-6.

Staff further reports that the site is located within the Upper Rock Creek Watershed, and that the topography on the property is gently sloping to the west. “There are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or steep slopes located on the property. This property is not located within a Special Protection Area (SPA) or the Patuxent River Primary Management Area (PMA).” Exhibit 16, pp. 10-11.

B. The Neighborhood and its Character

The general location of the subject site is readily seen in a map from the Technical Staff report (Exhibit 16, p. 4):



Technical Staff defined the general neighborhood as bordered on the north by Old Baltimore Road; on the east by Norebrook Drive; on the west by Old Baltimore Road and Gooseneck Terrace; and on the south by Emory Lane and Emory Church Road, as shown in a map from their report (p.6):



Technical Staff's definition of the surrounding area is somewhat larger than that of the Applicant because Staff's version includes signalized intersections incorporated into the traffic statement. Petitioner's land planner, Victoria Bryant, did not object to Staff's neighborhood definition (Tr. 98-99), and the Hearing Examiner accepts it as fairly defining the area most likely to be affected by the proposed special exception. Staff describes the neighborhood as follows (Exhibit 16, pp. 6-7):

The portion of the neighborhood that is west of Georgia Avenue is predominantly developed with single-family detached dwellings in the R-200 Zone, with the exception of a small neighborhood shopping center on commercially zoned (C-1) property located adjacent to Georgia Avenue. Other nonresidential uses in this portion of the neighborhood include a church and a day care center (adjoining the site to the north and south), both in the R-200 Zone. The eastern portion of the neighborhood, across Georgia Avenue, consists of RE-2 Zoned large-lot residential properties, undeveloped large expanses of land in the RNC Zone, and a Fire Station and a golf range, both in the RE-2 Zone.

Adjoining properties and uses surrounding the proposed facility include a church to the north, a day care facility to the south and three single family detached dwellings to the west (rear). To the east and across Georgia Avenue, a residential property designated by the Master Plan for Historic Preservation (RE-2), a 37.7 acre undeveloped wooded property (RNC), the Sandy Spring Volunteer Fire Department Station 40, and the Golden Bear Golf Range (RE-2) are located.

Petitioner's land planner gave a similar description of uses in the area, and noted (Tr. 101-102):

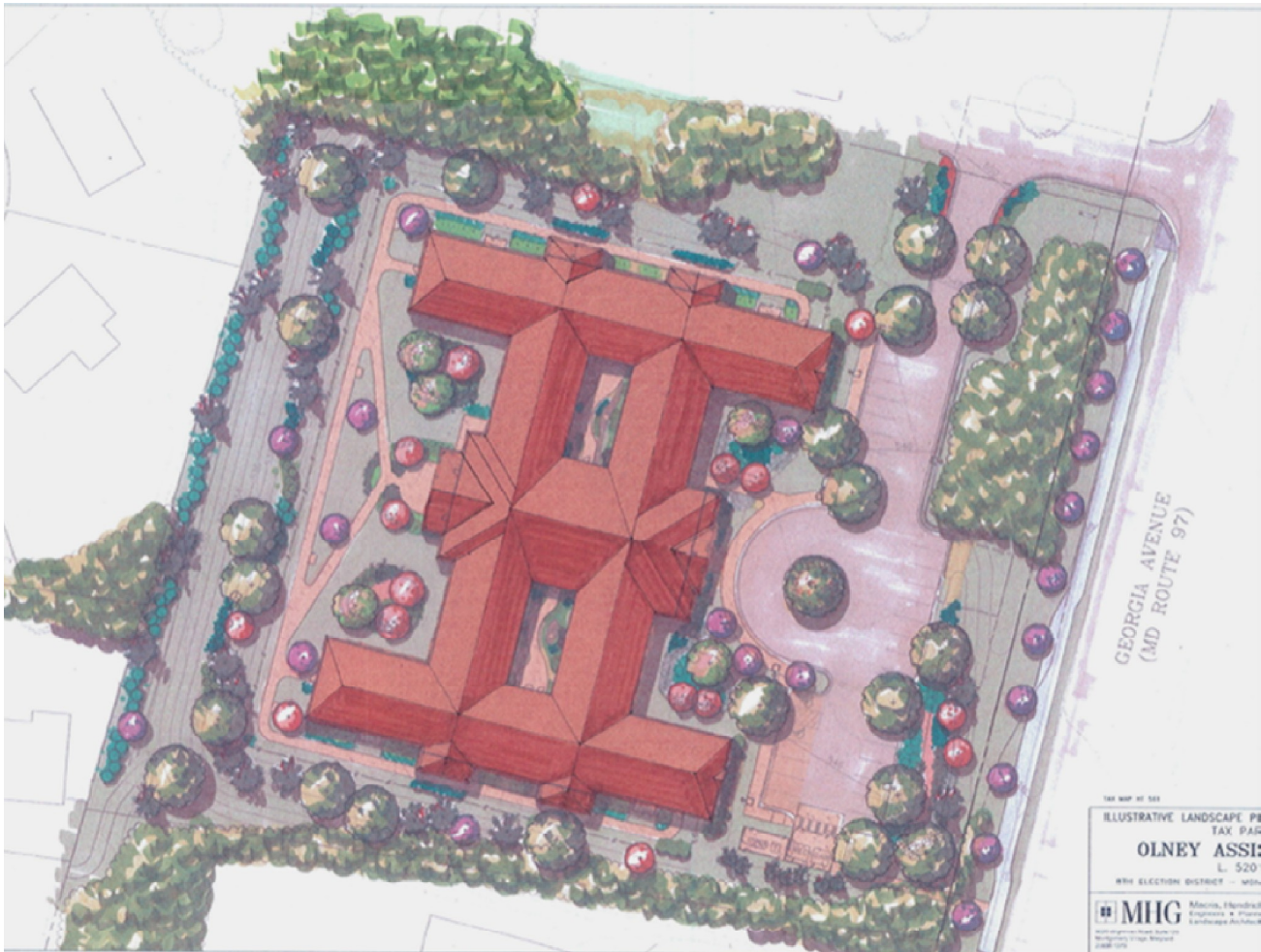
The character of most of the buildings in this area are one or two story structures, predominantly brick or siding with shingled roofs, residential scale buildings. The difference would be that the architecture for . . . the nonresidential uses, the church is very modern. It's a brick facade, but it's a more modern structure. The Children in the Shoe [*i.e.*, the child care facility to the south of the site] is a residential, vinyl siding one story structure, to look more residential in character. . . .

C. Proposed Use

1. Petitioner's Concept:

Petitioner proposes to construct and operate a 64-bed, one-story domiciliary care facility. The proposed facility will have a gross floor area of 30,458 square feet and will be dedicated to individuals suffering from Alzheimer's, dementia, and other forms of memory loss. It would be surrounded on three

sides by fenced-in grounds to which the residents would have ready access. Tr. 48. The concept for the project is shown in an illustrative landscape plan (Exhibit 29), reproduced below.



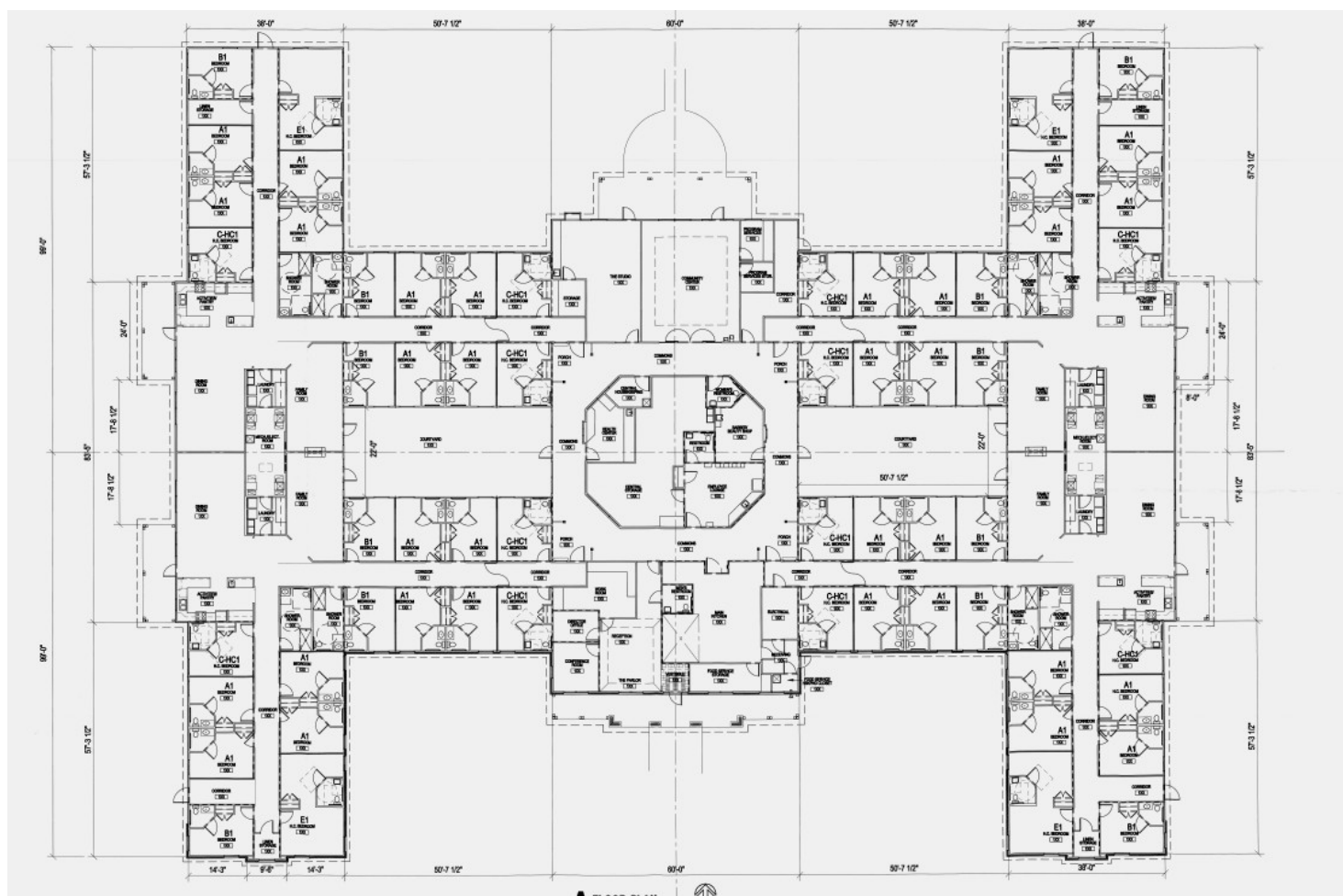
Petitioner's architect, Dan Dokken, described the rationale for the design of both the interior and exterior of the proposed facility in his architectural report (Exhibit 11):

Olney Assisted Living is a 60 unit, 64 Bed residence that provides care for residents that require assistance due to memory loss issues. Every aspect of this residence is designed for those with memory loss. Several of the design features include smaller scale spaces, residential finishes, use of interior design themes for way finding and location recognition. The building was created and refined by 18 years of operational experience dealing with those who suffer from memory loss. The building is designed to enhance cognition and the quality of life of each resident by creating a place that feels like home. The residence is comprised of four neighborhoods and a

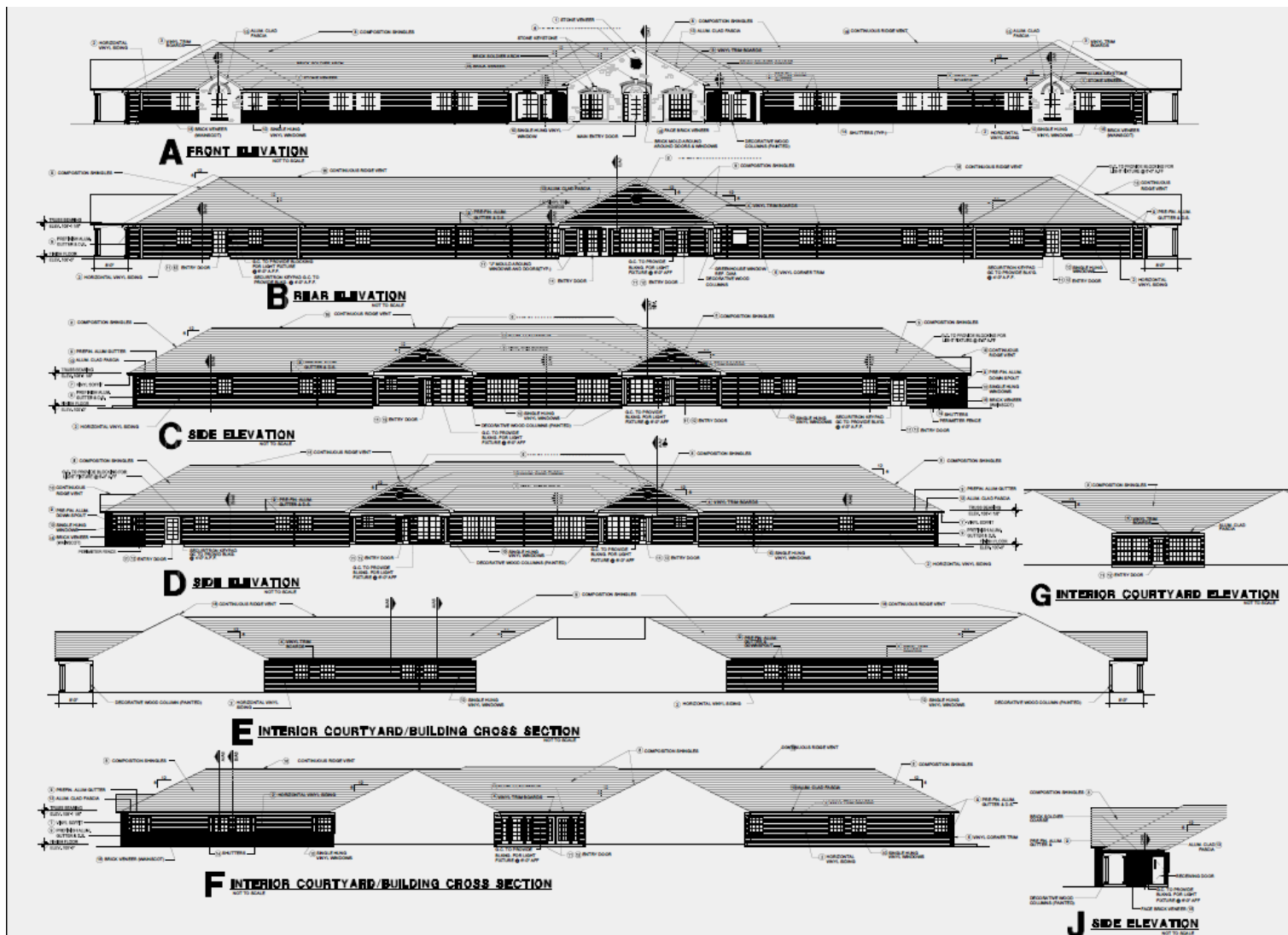
Town Center. The neighborhood spaces provide an intimate, nurturing place, providing for resident needs while also providing therapeutic activities. Each of the “neighborhoods” contains living areas that have their own unique identities that contain visual cues [*sic*] and décor to assist residents in wayfinding, and ease their anxieties through familiar surroundings. A “Town Center” connects to the four “neighborhoods” and features an apothecary (health center), a community center, studio and a beauty/barber shop. The Town Center provides opportunities for larger gatherings and activities such as exercise, religious services, and entertainment. In addition secure outdoor courtyards are also provided that allow freedom of movement for residents, with walking paths, gardens, comfortable seating areas, and raised garden planters.

The exterior of the residence is very residential in appearance. It is a single story wood framed building with pitched roof. The walls have lap siding with stone and brick accents and composition shingle roofing. This further reinforces the homelike atmosphere of the residence, enhancing it's compatibility with residential neighborhoods.

The interior design is reflected in the floor plan, reproduced below (Exhibit 4(j)):



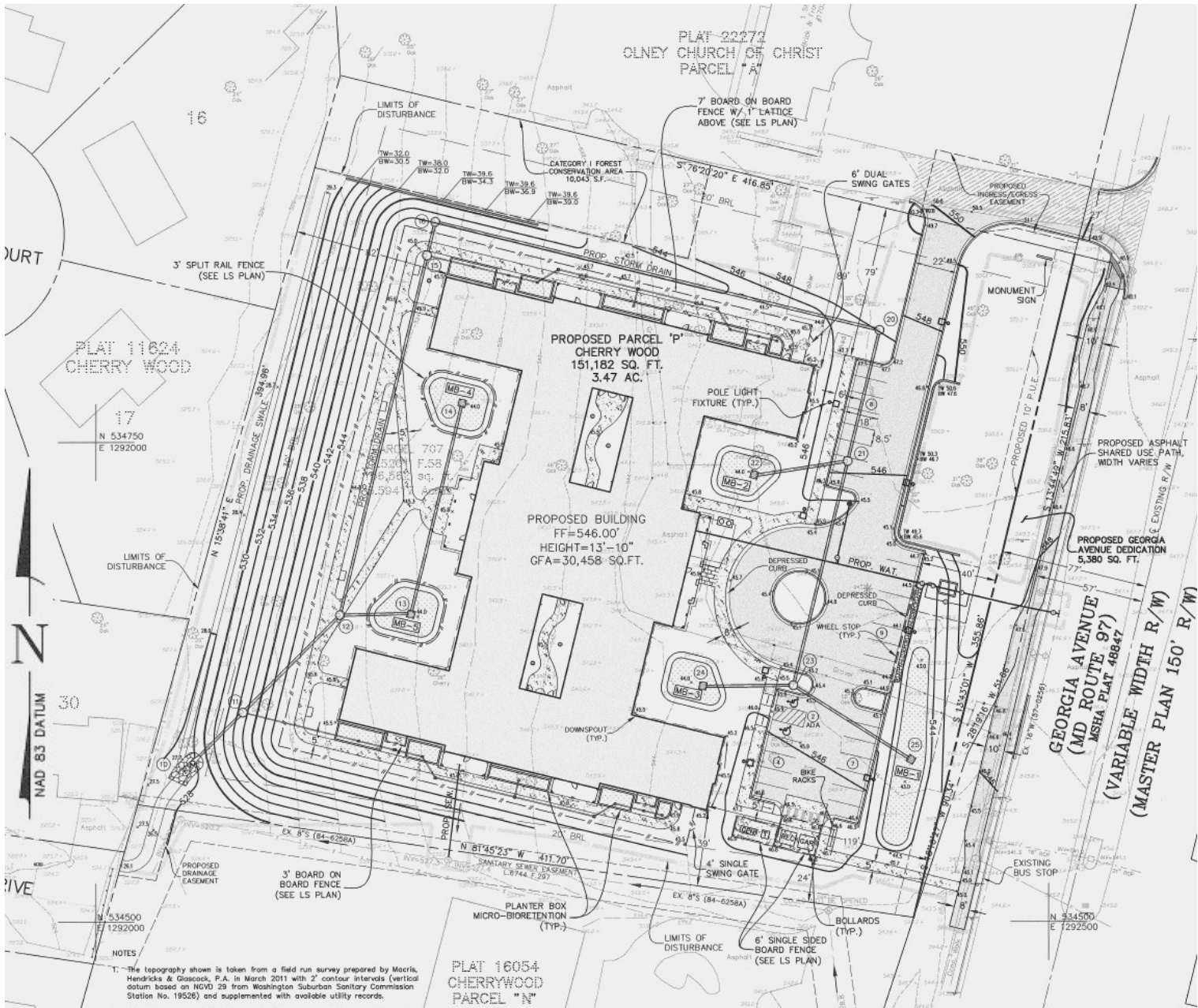
The following elevations (Exhibit 4(e)) demonstrate Petitioner’s effort to construct a building which will be compatible with the neighborhood, while maintaining the single-story architecture that is important to ensure easy access to the outdoors for those residents with memory loss issues:



Donald Feltman, Petitioner’s “managing member” testified that the whole idea is to treat residents with dignity and respect. Petitioner will try to replicate a home, but with a safer atmosphere. Thus, the programming and the facility’s layout have been designed to facilitate “secured freedom”—freedom of movement, freedom of activities and creating a home-like atmosphere in this setting. Tr. 46-51.

2. The Site Plan:

The revised Site Plan (Exhibit 17(a)) is reproduced below:



As noted by Technical Staff (Exhibit 16, p. 5), the building will include a community room, arts and crafts room, assembly area, a large central kitchen, offices, four dining areas, covered porches, and two interior court yards. The plan provides for 30 parking spaces (five more than required).

R-200 Zone/Special Exception Development Standards

	<u>Permitted/Required</u>	<u>Provided Per This Plan</u>
Minimum Tract Area: 59-C-1.321(a)	Not Specified	156,562 S.F.
Maximum Density of Development: 59-C-1.321(b)	Not Specified	N/A
Minimum Net Lot Area: 59-G-2.37(c)(2)	87,120 S.F.	151,182 S.F.
Minimum Lot Width: 59-C-1.322(b)	100 Feet	355 Feet
Minimum Setback From Street: 59-C-1.323(a)	40 Feet	119 Feet
Minimum Side Yard: 59-G-2.37(c)(3)	20 Feet	39 Feet
Sum of Both Sides: 59-G-2.37(c)(3)	40 Feet	128 Feet
Minimum Rear Yard: 59-C-1.323(b)(2)	30 Feet	82 Feet
Maximum Building Height: 59-C-1.327	45 Feet	13 Ft.-10 In.
Maximum Lot Coverage: 59-C-1.328	25% or 33,432 S.F.	23.5% or 31,548 S.F.
Parking:		
Minimum Setback From Street: 59-E-2.83(b)	40 Feet	40 Feet
Minimum Side Yard 59-E-2.83(b)	24 Feet	24 Feet
Minimum Rear Yard 59-E-2.83(b)	30 Feet	300 Feet
Shading of Paved Areas 59-E-2.83(d)	30% or 4,185 sq.ft.	31.4% or 4,800 sq.f
Landscape Strip (Adjacent to ROW) 59-E2.71	10 Feet	40 Feet
Landscape Strip (Perimeter) 59-E2.72	4 Feet	12 Feet
Internal Landscaping 59-E2.73	5.0% or 844 sq.ft.	7.2% or 1,223 sq.ft.
Number of Spaces 59-G-2.37(d)	25 Spaces (See Breakdown Below)	30 Spaces
Accessible Parking: COMAR 05.02.02	2 Spaces	2 Spaces
Parking Distribution:		
Required Per 59-G-2.37(d):	1 Space Per 4 Beds @ 64 Beds = 16 Spaces 1 Space Per 2 Employees @ 17 Employees = 9 Spaces Total Required = 25 Spaces	
Provided Per Plan:		
Standard (8.5' x 18')		28 Spaces
ADA Van Accessible (8' x 18' min. with 8' Access Aisle)		2 Spaces
ADA (Non-Van) Accessible Spaces (8' x 18' min. with 5' Access Aisle)		0 Spaces
Automobile Total		30 Spaces

NOTES /

1. The topography shown is taken from a field run survey prepared by Macris, Hendricks & Glascock, P.A. in March 2011 with 2' contour intervals (vertical datum based on NGVD 29 from Washington Suburban Sanitary Commission Station No. 19526) and supplemented with available utility records.
2. Boundary information is based on a Boundary Survey prepared by Macris, Hendricks & Glascock, P.A. supplemented with recorded deeds & plats.
3. Water and sewer categories are W-1 and S-1, respectively.
4. The property is zoned R-200. The proposed land use is Domiciliary Care Home.
5. Number of lots proposed by this plan: 1 Lot
6. A Natural Resources Inventory Map/Forest Stand Delineation Plan (#420111740) was approved for this property June 21, 2011.
7. A Stormwater Management Concept (SM File #240591) for this property was submitted to MCDPS on June 29, 2011.
8. This site is within the Olney Master Plan Area.
9. The site is tributary to the Rock Creek watershed. The State of Maryland has designated this portion of the watershed as Class III.
10. This plan is not for construction purposes.
11. Property lines and areas are subject to adjustment at final plat computations.
12. Refer to the zoning data table for development standards such as, setbacks, building restriction lines and lot coverage.
13. Servicing utility companies include:

Water & Sewer:	WSSC
Natural Gas:	Washington Gas
Electric:	Pepco
Telephone:	Verizon

Property Information

Subject Property:	Parcel 707 – Charles & Benjamin Georgia Avenue Olney, MD 20832 L.5201 F.58
Property Owner:	Church of Christ at Olney
Contract Purchaser:	Olney Assisted Living Partners, LLC
Existing Parcel Area:	156,562 S.F. or 3.59417 acres
Proposed Right of Way Dedication:	5,380 S.F. or 0.123507 acres
Proposed Parcel Area:	151,182 S.F. or 3.4707 acres
Zoning Classification:	R-200 – Residential, One-Family
Tax ID Number:	08-00707426
Existing Use:	Vacant
Proposed Use:	Domiciliary Care Home

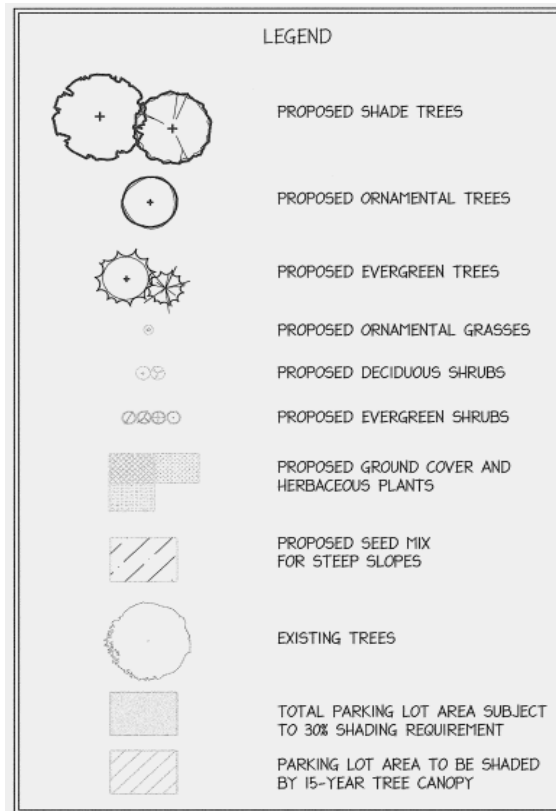
Technical Staff reports that “[t]he exterior of the proposed one-story facility is compatible with the architectural elements and features of existing buildings that surround the site. The building design is sensitive to the unique needs of the intended residents. Similarly, the interior of the building is designed to promote and enhance navigation, cognition and overall quality of life of the residents by creating a homelike environment.” Exhibit 16, p. 3.

3. Landscaping and Lighting:

The Landscaping Plan (Exhibit 17(b), p. 1) is reproduced below:



Donald Feltman, Petitioner's managing member, testified that this will be the most extensive landscaping that Petitioner has ever done. Tr. 54. It will include 110 new trees, over 300 new shrubs, including a number of major ones, 195 perennials, and over 1200 specialty plants. Tr. 71.



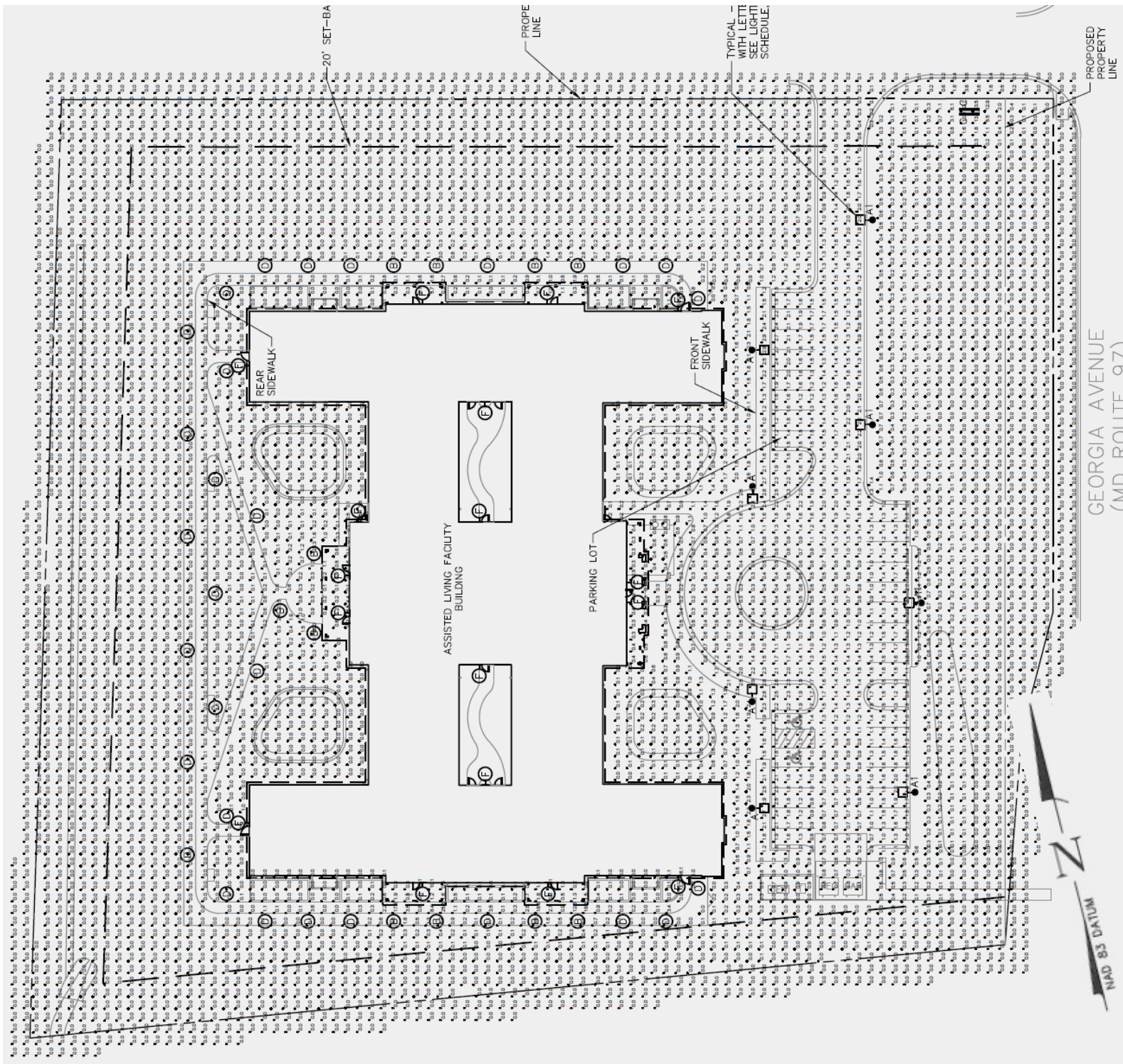
LANDSCAPE PLANT LIST
TREES & REAR SCREENING SHRUBS

KEY	QTY	BOTANICAL NAME	COMMON NAME	CAL	HGT	SPD	ROOT	SPACING
SHADE TREES								
AR	12	<i>Acer rubrum</i> "October Glory"	October Glory Red Maple	2½ -3"			B&B	
AS	4	<i>Acer saccharum</i> "Green Mountain"	Green Mountain Sugar Maple	2½ -3"			B&B	
BN	5	<i>Betula nigra</i> "Hentage"	Hentage River Birch	2½ -3"			B&B	
NS	2	<i>Nyssa sylvatica</i>	Black Gum	2½ -3"			B&B	
QR	5	<i>Quercus rubra</i>	Red Oak	2½ -3"			B&B	
EVERGREEN & DECIDUOUS CONIFER TREES								
CA	1	<i>Cedrus atlantica</i>	Atlas Cedar		7-8'		B&B	
IO	3	<i>Ilex opaca</i>	American Holly		7-8'		B&B	
PF	8	<i>Pinus flexilis</i> "Vanderwolf Pyramid"	Vanderwolf Pyramid Limber Pine		7-8'		B&B	
PN	12	<i>Pinus nigra</i>	Austrian Pine		7-8'		B&B	
PO	5	<i>Picea orientalis</i>	Oriental Spruce		7-8'		B&B	
TD	2	<i>Taxodium distichum</i>	Common Baldcypress		7-8'		B&B	
TO	7	<i>Thuja occidentalis</i> "Nigra"	Dark American Arborvitae		5-6'		Cont.	
ORNAMENTAL TREES								
AG	9	<i>Amelanchier x grandiflora</i> "Autumn Brilliance"	Autumn Brilliance Serviceberry		7-8'		B&B	
CC	6	<i>Cercis canadensis</i>	Eastern Redbud		7-8'		B&B	
CXC	2	<i>Cornus x "Celestial"</i> ("Rutdan")	Celestial Dogwood		7-8'		B&B	
CXP	2	<i>Cornus x "Stellar Pink"</i> ("Rutgan")	Stellar Pink Dogwood		7-8'		B&B	
HT	4	<i>Halesia tetraptera</i> v. <i>rosea</i>	Pink Carolina Silverbell		7-8'		Cont.	
PX	4	<i>Prunus x incana</i> "Okame"	Okame Cherry		7-8'		B&B	
SR	14	<i>Syringa reticulata</i> "Ivory Silk"	Ivory Silk Tree Lilac		7-8'		B&B	
VL	2	<i>Viburnum lentago</i>	Nannyberry		5-6'		B&B	
SHRUBS								
CS	11	<i>Cornus sericea</i> "Bailey"	Red Twig Dogwood		30-36"		Cont.	4' o.c.
JG	14	<i>Juniperus chinensis</i> "Pfitzeriana Aurea"	Pfitzeriana Aurea Juniper			30-36"	Cont.	5' o.c.
PLS	58	<i>Prunus laurocerasus</i> "Schipkaensis"	Schipkae Laurel		36-42"		Cont.	6' o.c.

LANDSCAPE PLANT LIST								
SHRUBS, PERENNIALS AND GROUNDCOVERS								
KEY	QTY	BOTANICAL NAME	COMMON NAME	CAL	HGT	SPD	ROOT	SPACING
DECIDUOUS SHRUBS								
AE	39	Abelia x "Edward Goucher"	Edward Goucher Abelia		24-30"		Cont.	36" o.c.
CX	6	Caryopteris x clandonensis "Dark Knight"	Dark Knight Blue Mist Shrub				#2 Cont.	30" o.c.
FG	14	Fothergilla gardenii	Dwarf Fothergilla		18-24"		Cont.	36" o.c.
FV	1	Forsythia virens "Kumson"	Kumson Forsythia		3-4'		Cont.	--
HS	9	Hydrangea macrophylla "Blue Satin"	Blue Satin Althea		3-4'		Cont.	60" o.c.
IV	9	Itea virginica "Sarah's Eve"	Sarah's Eve Sweetspine		18-24"		Cont.	36" o.c.
LC	3	Lagerstroemia "Cherry Dazzle"	Cherry Dazzle Crape Myrtle		30-36"		Cont.	36" o.c.
SB	3	Spiraea x bumalda "Coccinea"	Dwarf Red Bumald Spirea		18-24"		Cont.	24" o.c.
SN	27	Spiraea nipponica "Snowmound"	Snowmound Spirea		24-30"		Cont.	36" o.c.
SP	2	Syringa patula "Miss Kim"	Miss Kim Lilac		3-4'		Cont.	60" o.c.
VC	16	Viburnum carlesii	Koreanspice Viburnum		30-36"		Cont.	60" o.c.
EVERGREEN SHRUBS								
ICH	24	Ilex crenata "Hellen"	Hellen Japanese Holly			18-24"	Cont.	36" o.c.
ICS	1	Ilex crenata "Steele"	Steele Japanese Holly		30-36"		Cont.	--
IG	16	Ilex glabra "Nigra"	Nigra Inkberry		24-30"		Cont.	48" o.c.
IM	1	Ilex x meserveae "China Boy"	China Boy Holly		30-36"		Cont.	72" o.c.
	1	Ilex x meserveae "China Girl"	China Girl Holly					
JC	21	Juniperus conferta "Blue Pacific"	Blue Pacific Shore Juniper		18-24"		Cont.	36" o.c.
JS	15	Juniperus chinensis "Sargentii"	Sargent Juniper			18-24"	Cont.	36" o.c.
JV	20	Juniperus virginiana "Grey Owl"	Grey Owl Juniper			18-24"		48" o.c.
MA	5	Mahonia aquifolium	Oregon Grapeholly		24-30"		Cont.	36" o.c.
PC	3	Potentilla fruticosa "Abbottswood"	Abbottswood Cinquefoil		18-24"		Cont.	36" o.c.
ORNAMENTAL GRASSES & GROUNDCOVERS								
CF	11	Calamagrostis x acutiflora "Karl Foerster"	Feather Reed Grass				#2 Cont.	30" o.c.
CM	150	Carex morrowii "Ice Dance"	Ice Dance Japanese Sedge				#1 Cont.	12" o.c.
HC	122	Hypericum calycinum	St. John's Wort				#2 Cont.	24" o.c.
LMB	365	Liriodendron muscari "Big Blue"	Big Blue Lilyturf				4" Pots	12" o.c.
LMW	32	Liriodendron muscari "Monroe White"	Monroe White Lilyturf				4" Pots	12" o.c.
ND	9	Nandina domestica "Firepower"	Firepower Nandina				#3 Cont.	24" o.c.
PA	15	Pennisetum alopecuroides "Hamel"	Dwarf Fountain Grass				#1 Cont.	24" o.c.
PV	17	Panicum virgatum "Heavy Metal"	Heavy Metal Switchgrass				#2 Cont.	30" o.c.
HERBACEOUS PERENNIALS								
AN	12	Aster novi-belgii "Winston Churchill"	Winston Churchill Aster				#1 Cont.	18" o.c.
AO	10	Aster oblongifolius "October Skies"	October Skies Aster				#1 Cont.	18" o.c.
CP	30	Cerastium plumbaginoides	Leadwort				#1 cont.	12" o.c.
GM	22	Geranium macrorrhizum "Ingwersen's Variety"	Ingwersen's Variety Geranium				#1 Cont.	18" o.c.
GS	10	Geranium sanguineum "Glenluce"	Glenluce Bloody Cranesbill				#1 Cont.	18" o.c.
LA	20	Lavandula angustifolia "Hidcote"	Hidcote Lavender				#1 Cont.	18" o.c.
LS	11	Linum catharticum "Flonston Weiss"	White Gayfeather				#1 Cont.	18" o.c.

Technical Staff found that the substantial landscaping, in addition to the setbacks, fencing of the outdoor play areas, building orientation, forest retention and existing topographical features will provide adequate screening and buffering of the facility from adjoining properties and road, while at the same time providing a safe and secure environment for the residents. Exhibit 16, p. 3.

The Lighting Plan and Photometric Study (Exhibit 17(g)) is reproduced below:

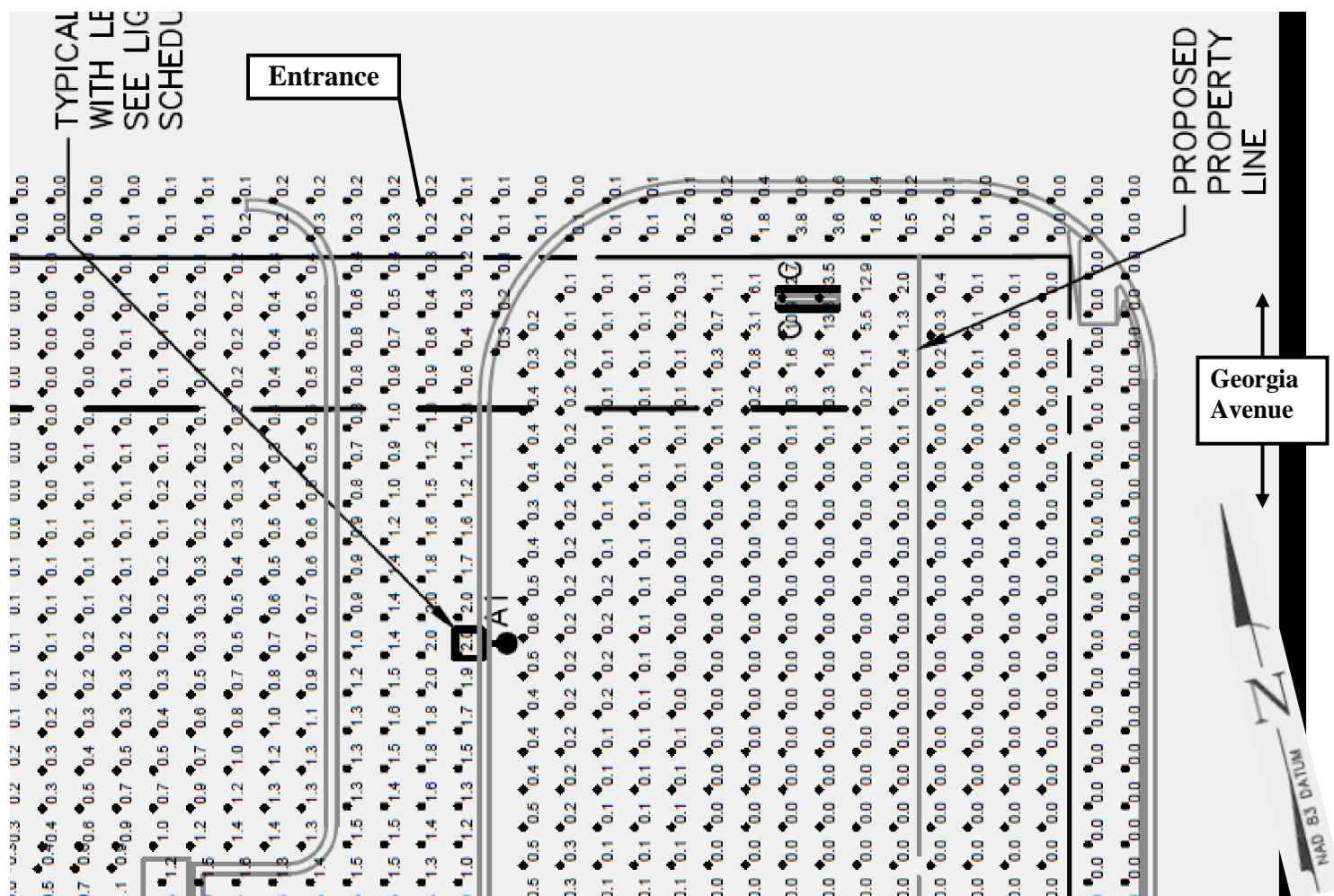


STATISTICS					
DESCRIPTION	AVERAGE	MAXIMUM	MINIMUM	MAX/MIN	AVG/MIN
PARKING LOT	1.2 FC	2.7 FC	0.1 FC	27.0:1	12.0:1
PROPERTY LINE	0.0 FC	3.8 FC	0.0 FC	N/A	N/A
FRONT SIDEWALK	1.6 FC	15.9 FC	0.1 FC	159.0:1	16.0:1
REAR SIDEWALK	0.9 FC	25.5 FC	0.0 FC	N/A	N/A

FIXTURE TYPE(S)						
SYMBOL	MFR	CATALOG NUMBER	LAMP	LUMENS	LLF	MTG HEIGHT
A	KIM	1SA/SET3/150PMH208/DB	M150/PMH	12600	.69	20'-0" POLE
A1	KIM	1SA/SET3/150PMH208/DB/HS	M150/PMH	12600	.69	20'-0" POLE
B	KIM	CB24/50MH/DB-P	M50/U/C	4800	.69	2'-0" AFF
C	NULITE	41-132-8EB8	2-F32T8	5000	.69	5'-0" AFF
D	BRONZELITE	AL1513	13W FLUORESCENT PLC13	825	.69	5" AFF
F	PROGRESS	P5605-89	100W INCANDESCENT	1440	.69	6'-0" AFF

The two-page Lighting Plan (Exhibit 17(g)) also contains diagrams of the specific lighting fixtures and cut sheets describing their features, which are not reproduced here. Zoning Ordinance §59-G-1.23(h)(2) provides that *“Lighting levels along the side and rear lot lines [in a residential zone] must not exceed 0.1 foot candles.”* However, the section also provides that these *“lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety.”* [Emphasis added.]

Although Technical Staff stated in its report that the proposed lighting will not exceed the 0.1 foot-candle standard at the side and rear property lines, in fact the photometric study shows that there will be small exceedances at the northeast corner of the property adjacent to the shared vehicular access point. There are no other exceedances shown in the photometric study, and Petitioner’s engineer and its architect testified that the additional lighting is provided at the entrance to enhance safety. Tr. 89; 130-132. These exceedances can be seen on the following blowup of the northeast corner of the photometric study (Exhibit 17(g)):



Upon reviewing an earlier version of the lighting plan, Technical Staff specified that “The lighting levels near the building access points should be increased; and/or wall mounted fixtures should be incorporated into photometrics of the Lighting Plan to ensure safety.” Exhibit 16, p. 11. Staff found that the lighting concept, as depicted on the lighting plan would be appropriate for the proposed use at this location, after adding some lighting at the building entrances for safety. Exhibit 16, p. 3. Petitioner did so and revised its lighting plan accordingly. As a result, the Planning Board’s letter (Exhibit 19, p. 2) recommends eliminating a condition that had been suggested by Staff regarding lighting.

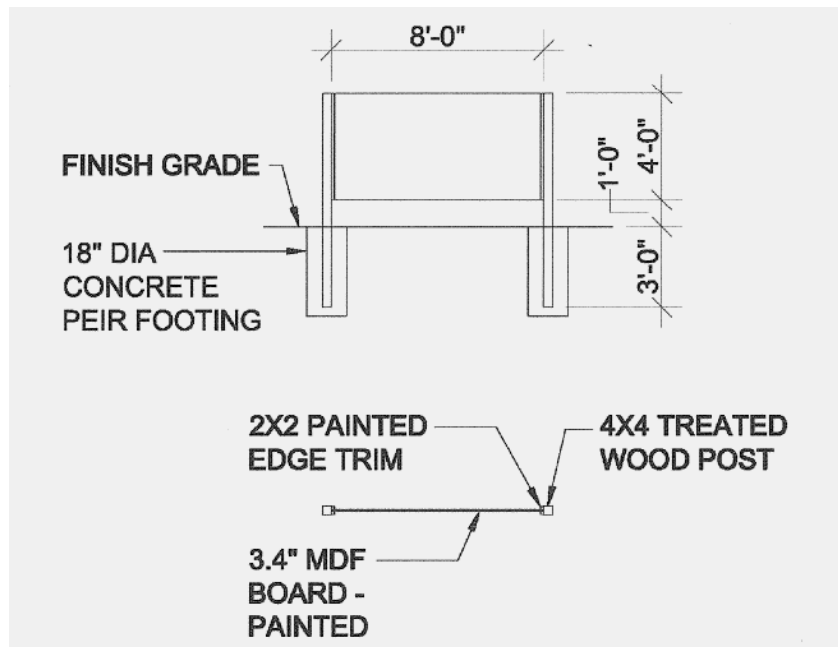
Thus, the only question is whether the Board of Appeals should allow the exceedances in the northeast corner of the property to enhance safety at that vehicular entry point. Technical Staff found that

“The proposed lighting will not cause glare on adjoining properties.” Exhibit 16, p. 8. At page 17 of their report, Staff stated, *inter alia*, “The lighting plan adequately and efficiently provides a safe vehicular and pedestrian environment. . . .”

Given Staff’s finding that the proposed lighting will not cause glare on adjoining properties; the fact that the abutting property is occupied by the church and not a residence; and especially the expert testimony that the additional lighting is needed for safety, the Hearing Examiner recommends that the Board of Appeals approve the lighting exceedances shown in the northeast corner of the property, as it is authorized to do by Zoning Ordinance §59-G-1.23(h) “*to improve public safety.*”

4. Signage:

Petitioner proposes a 32 square-foot monument sign to be located near the entrance at the northeast corner of the property. The particulars of the proposed sign are shown on page 3 of the Landscape Plan (Exhibit 17(b)), and reproduced below:



The size of the sign obviously exceeds the two square feet ordinarily allowed in a residential area pursuant to Zoning Ordinance §59-F-4.2(a)(1); however, since it will be at the entrance to a new

subdivision or multi-family development, the Hearing Examiner inquired of Petitioner and Technical Staff as to whether it would comply with Zoning Ordinance §59-F-4.2(a)(3).

Technical Staff responded that the sign would meet the size requirements of §59-F-4.2(a)(3) and the illumination requirements of §59-F-4.1(e). Exhibit 34. On the other hand, when Petitioner's counsel asked the Department of Permitting Services the same question, they responded that a sign variance would be required. Exhibit 37.

Whether or not a sign variance is required in order for Petitioner to obtain a sign permit, the Board of Appeals must first decide whether the proposed sign would be of an appropriate size to give timely notice to drivers looking for the facility and whether it would be compatible with the area. The only evidence on these points indicates that it would satisfy both criteria.

Mr. Dokken indicated that the proposed sign will be bigger than what is allowed in the Code just to identify where the entrance is so people will not drive past it. "Petitioner wanted to have a good enough sign to not be overlooked." Tr. 132. Although the sign's compatibility was not specifically addressed by Petitioner's witnesses, there is ample testimony from both Petitioner's land planner and its architect that the entire project will be compatible with the neighborhood. Tr. 115, 121-122, 133-135.

Based on this evidence and the fact that Technical Staff found the sign to be of an appropriate size, the Hearing Examiner finds that the proposed sign would be of an appropriate size to give timely notice to drivers looking for the facility and that it would be compatible with the area. The following condition is recommended in Part V of this report:

A sign permit must be obtained for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

5: Operations:

The building will be in operation 24 hours a day, 7 days a week, because this is the home for the residents. Visitors are welcome at any time - whenever the family wants. There will be three work shifts -- 6:00 in the morning until 2:00 in the afternoon; 2:00 in the afternoon until 10:00 p.m.; and then 10:00 p.m. to 6:00 a.m. From 10:00 p.m. to 6:00 a.m., there will be five care givers, one of whom will be a licensed nurse. The largest number of employees on site at any one time will be 17. Trash deliveries would be one to two times a week, after 8:00 a.m. during the week, and after 9:00 a.m. on the weekends, but never after 9:00 p.m.. In terms of deliveries, generally food and other supplies are delivered twice a week, when the facility is fully occupied. Tr. 60- 62.

Deliveries will be made on the front side of the facility, away from the neighboring residential uses to the rear. United Parcel Service or Fed Ex deliveries are expected to occur occasionally between the hours of 10 a.m. and 3 p.m. Statement in Support of the Petition, Exhibit 3, pp. 5-6.

As discussed in Part II.C.1. of this report, the residents will have freedom of movement throughout the whole building, and many of them will walk to the town center, which has a beauty/barber shop, a health center, apothecary, a large community center and an arts and crafts studio. If there is inclement weather, residents will still be able to walk that route and walk down into the neighborhoods. Tr. 58-59. Three-fourths of the outside of the building is fenced, the sides and the rear, creating a very large area for the residents to enjoy without staff. Residents are always accompanied by staff or family if they go out the front door, but not if they go out the back or the sides. There are outdoor porches and multiple points for getting out to enjoy the outside. Tr. 46-51.

As stated by Technical Staff, the facility will provide aging residents with a measure of independence, while making necessary services, including medical care, available to them on-site. Exhibit 16, p. 8.

6. Public Facilities and Parking:**a. Public Facilities:**

In this case, subdivision will be required. Exhibit 16, p. 2. Therefore, under Zoning Ordinance §59-G-1.21(a)(9)(A), it is the Planning Board and not the Board of Appeals which must ultimately determine the adequacy of public facilities. However, this section also requires that “approval of a preliminary plan of subdivision must be a condition of granting the special exception.” Such a condition is recommended in Part V of this report.

Nevertheless, the evidence introduced in this case supports the conclusion that the impact on public facilities will be compatible with the neighborhood and that Petitioner will be able to establish the adequacy of public facilities at subdivision. Petitioner’s expert in transportation planning, Michael Lenhart, testified that from a transportation engineering standpoint, the proposed development will be consistent with the general plan and Olney Master Plan, and will be in harmony with the general character of the surrounding neighborhood, considering intensity and character of activity and traffic conditions. “This is an extremely low traffic volume use. It will have very little impact on, or negligible impact on peak hours,” and it will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood. It will be suitable for the site and compatible with the surrounding neighborhood. Tr. 145-146.

Mr. Lenhart filed a traffic statement dated May 5, 2011, that is in the record as Exhibit 9. Mr. Lenhart testified that the site would generate two trips in the morning peak hour and four trips in the evening peak hour, based on Park and Planning trip generation rates. The Local Area Transportation Review (LATR) guidelines state that if a site generates fewer than 30 peak-hour trips, it is exempt from LATR. The Policy Area Mobility Review (PAMR) guidelines provide that a site that generates three or fewer peak-hour trips is exempt from PAMR. This site generates four peak-hour trips. Therefore, it is

exempt from LATR, but it is subject to PAMR. At the time the traffic statement was prepared in May, the mitigation requirement for PAMR in the Olney Policy Area was 10 percent. That has been reduced to 5 percent, as reflected in the Technical Staff report (Exhibit 16, p. 9), but whether it is 5 percent or 10 percent mitigation, Staff requires the figure to be rounded up to one, so Petitioner must make a mitigation payment of \$11,700. Tr. 139-141. The Staff report echoes these findings. Exhibit 16, p. 9.

Mr. Lenhart further testified that the proposal would be safe for vehicular and pedestrian traffic, and that the proposed shared-use, vehicular access from Georgia Avenue will be adequate and safe. Both uses are very low traffic generators. Tr. 143-144. Transportation Staff agreed with his findings in this regard. Per the recommendation of the Planning Board, a condition is recommended in Part V of this report requiring Petitioner to obtain and record a permanent easement for the shared-use driveway, after it completes the purchase of the property following approval of the Preliminary Plan of Subdivision.

Moreover, the proposed shared use path (for pedestrians and bicycles) along the frontage, ranging from eight to ten feet in width, satisfies that requirement in the Master Plan. There is also a bus stop, number 52 on the Rockville line, right in front of the site. Tr. 143-144.

Finally, the evidence is that other public facilities will be available to this project. Petitioner's land planner, Victoria Bryant testified that public facilities would be adequate. Because of the nature of the use, there will be no school children associated with it, and it will have no impact on the school system. The facility will be adjacent to the Sandy Spring Volunteer Fire Department, and the Montgomery County Police Department satellite facility is located about a mile away from the site on the eastern side of Georgia Avenue. Water and sewer are in W-1 and S-1 categories. Tr. 114-115. Petitioner's civil engineer, Patrick La Vay elaborated on the availability of public water and sewer service nearby. A preliminary review by WSSC has indicated that both those lines are available for service connections. Tr. 91-93.

b. Adequacy of Parking Provided:

The amount of parking required on site is established by Zoning Ordinance §59-G-2.37(d):

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

Since there will be a maximum of 64 beds and 17 employees on site during the largest shift, the number of required parking spaces is 25 (64 beds / 4 = 16 spaces, and 17 employees / 2 = 8.5 spaces; 16 + 8.5 rounds up to 25 required spaces). Petitioner is proposing 30 parking spaces, two of which will be ADA Van accessible. Donald Feltman, Petitioner's managing member, testified that Petitioner is providing the extra spaces based on operational experience in his other facilities, and it will provide a little extra space for events. Tr. 66.

Technical Staff found that the proposed parking spaces are sufficient to accommodate the parking needs of 17 employees (full and part-time) as well as visitors. Exhibit 16, p. 15. Mr. La Vay testified that the parking and building both meet or exceed the setbacks required in the zoning ordinance. The project also meets or exceeds the requirements for shading of paved areas, as outlined in the zoning ordinance, which is derived from the canopy of trees Petitioner will be planting adjacent to parking areas. Tr. 93-94. Technical Staff confirmed that substantial landscaping will provide screening of the parking area from Georgia Avenue. Exhibit 16, p. 8.

In sum, the undisputed evidence is that Petitioner will be providing an adequate number of parking spaces, set back, shaded and screened, as required by statute.

D. Master Plan

The subject property lies within the "Southern Olney" area as designated by the 2005 Olney Master Plan. The Plan does not specifically address this site, but it does contain general provisions regarding special exceptions (Plan p. 42):

Special Exceptions

Special exceptions are specific uses defined in the Zoning Ordinance and may be allowed if they meet the requirements for such uses as set forth in the Zoning Ordinance. Special exception projects should be compatible with the development pattern of the adjoining uses in terms of height, size, scale, traffic and visual impact of the structures and parking lots. In addition, special exception uses of a commercial nature that do not need large properties and can be located in the Town Center should be discouraged in residential areas, especially along major streets. The section of Georgia Avenue between Norbeck Road and the Town Center especially should be kept free of any large uses that would change its low-density residential character and create pressure to allow other such developments along this stretch. Sites with existing special exception uses may be considered for redevelopment and alternative special exception uses, provided that they are consistent with the Master Plan.

Recommendations:

1. Discourage special exception uses along Georgia Avenue between Norbeck Road and the Town Center to preserve its low-density residential character.
2. Minimize the negative impacts of special exception uses such as non-residential character, visibility of parking lots, excessive size, height and scale of buildings, and intrusive lighting.
3. Discourage special exception uses with excessive imperviousness levels.

The Master Plan also contains recommendations encouraging a wide range of housing choices (p. 15), and specifically housing for the elderly (p. 62). The application of these recommendations to the present proposal was discussed by Petitioner's expert witnesses and by Technical Staff.

Petitioner's land planner, Victoria Bryant, testified that the Master Plan, in general, allows for special exception uses, provided they do not create a commercial appearance along major roads and residential neighborhoods, and do not create a negative impact on surrounding residential neighborhoods. According to Ms. Bryant, the Master Plan is in overall support of elderly housing projects of appropriate density and locations. It specifically recommends that special exception uses go into vacant sites in the planning area. It also recommends that any special exceptions along Georgia Avenue have an open, semi-rural appearance, to mark the transition between the more dense southern part of the Olney region to the lower suburban character of Olney to the north. Tr. 103-104.

To this end, Petitioner pushed the building back 119 feet, and proposes very intense landscaping along the Georgia Avenue, including the retention of a portion of the existing forest and some of the larger trees along the northeast portion of the frontage. The Master Plan allows for special exceptions in this area provided they're sufficiently landscaped, and that lighting does not create a halo or a night glow effect. Ms. Bryant testified that Petitioner will meet those requirements. Tr. 104-105.

The Master Plan also discourages more special exceptions that would alter the low density character of the area. Ms. Bryant opined that the low nature of the building and the articulation of the building means it will have a low density residential feel to it. Ms. Bryant concluded that this special exception is consistent with the recommendations in the Master Plan. It will serve as an appropriate transition between the more urbanized south and the more suburban north areas. In addition, the proposed facility will fit in with the types of uses that exist already along this block of Georgia Avenue – the shopping center, the fire department, the church and the daycare facility. Tr. 104-105.

The Master Plan also puts an emphasis on public transportation and alternative methods of mobility for the area. The Georgia Avenue “busway” is proposed for Georgia Avenue, including a dedication of Petitioner’s right-of-way along the frontage. Petitioner will also be providing an 8 to 10-foot shared use bike path along the front. Tr. 105. In that regard, Petitioner’s traffic engineer, Michael Lenhart, testified that the proposed shared use path (for pedestrians and bicycles) along the frontage, ranging from eight to ten feet in width, satisfies that requirement in the Master Plan. Tr. 143-144.

Technical Staff agreed that the proposed use is consistent with the recommendations of the Olney Master Plan (Exhibit 16, pp. 7-8):

The proposed assisted living facility is consistent with the recommendations of the 2005 Olney Master Plan. The proposal meets the Master Plan goal of providing housing choices for the elderly at a density and scale generally harmonious with the largely residential character of this part of Olney.

The 2005 Olney Master Plan has as a primary goal the provision of “a wide choice of housing types and neighborhoods for people of all income levels and ages and appropriate

locations and densities”(p 15). The Housing Plan also makes recommendations for the ongoing provision of housing for the elderly. The Plan (p 62) supports elderly housing projects of appropriate densities at appropriate locations. However, the Plan discourages Special Exception uses along the portion of Georgia Avenue between Norbeck Road and the Town Center in order to preserve the area’s generally low-density residential character (p 42). It further recommends that “the negative impacts of Special Exception uses such as non-residential character, visibility of parking lots, excessive size, height and scale of buildings, and intrusive lighting” be minimized, and that uses with excessive imperviousness be discouraged.

The proposed one-story facility has been designed to blend with the adjoining residential communities. The proposed building incorporates architectural features and materials that match the character of the surrounding structures. Substantial landscaping provides screening of the parking area from Georgia Avenue. The proposed lighting will not cause glare on adjoining properties.

The facility will provide aging residents with a measure of independence while making necessary services, including medical care, available to them on-site. The proposal meets the Master Plan goal of providing housing choices for the elderly at a density and scale generally harmonious with the largely residential character of this part of Olney. The proposed facility is appropriate amongst the existing mix of institutional, residential and light commercial uses in the area.

The Hearing Examiner finds that although the proposed use does not discourage special exception uses along Georgia Avenue between Norbeck Road and the Town Center, as specified in Master Plan Recommendation Number 1, above, it does satisfy the second part of that sentence which notes that its rationale is “to preserve its low-density residential character.” Moreover, as noted by Petitioner and Technical Staff, the low height of the proposed building, its architectural features, the large setbacks and the heavy landscaping will minimize the impacts on Georgia Avenue and the neighborhood.

In addition, the Master Plan effectively acknowledges the need for such a facility in this area due to the aging population. Plan pp. 60-62. The Master Plan mentions that the inventory of elderly housing in the Olney area could be expanded by special exceptions on some of the vacant and re-developable sites in and around the planning area. Page 62.

Finally, the Hearing Examiner notes that the Master Plan does not recommend a change in the current R-200 Zone, and the use sought here is permitted by special exception in that zone. Given this record, it is fair to say that the proposed use is consistent with the goals of the Master Plan.

E. Environment

Petitioner submitted a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) which was approved by Technical Staff on June 21, 2011. Exhibits 7(a) and (b). Staff reports that the site is located within the Upper Rock Creek Watershed, but it is not located within a Special Protection Area (SPA) or the Patuxent River Primary Management Area (PMA). There are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or steep slopes located on the property. Exhibit 16, pp. 9-10.

There are four environmental issues in this case—stormwater management, tree removal, noise concerns and the traffic smog concerns raised by Mr. Teague.

1. Stormwater Management:

The Greater Olney Civic Association (GOCA) and other members of the community suggested that special attention be given to the stormwater drainage from the property, especially on the western property line. These concerns were directly addressed by Petitioner's civil engineer, Patrick La Vay.

According to Mr. La Vay, under existing conditions, the vast majority of the property drains from east to west, and runoff is deposited on the three residential lots to the west. A very small portion of the property drains in the front to the Georgia Avenue right-of-way. That drainage pattern was a concern of some of the adjacent residences. Mr. La Vay testified that with Petitioner's proposal, the development area will drain into stormwater management facilities. During the average annual rainfall event, these facilities will capture, treat and slowly release runoff into an on-site storm drain system. In larger storm events, the runoff will still be directed in the same manner; however, there are overflow inlets within each facility that will allow excess flows to be deposited into that storm drain system which will collect the runoff from the site and will outfall at grade to the southwest property corner. From that point there will be a private easement across the adjacent parcel for approximately 30 feet to allow runoff

to reach the Old Baltimore Road, Old Baltimore Drive public right-of-way. He also designed a drainage swale at west property line, such that any runoff generated along the landscaped hill on the west side of the development will be directed to the at-grade outfall, with the result that there will be no runoff from this property onto the adjacent lots. Tr. 82-83. As noted by Petitioner's land planner, the stormwater management plan for the site will improve the existing drainage problems of the adjacent property owners. Tr. 121.

According to Mr. La Vay, this project proposes stormwater management in the manner of environmental site design to the maximum extent practicable, which is in accordance with the 2009 Maryland standards for stormwater management, as well as current Montgomery County Department of Permitting Services requirements. The approach to stormwater management here is a combination of at-grade and planter box micro bio-retention facilities, the difference being the at-grade structures are just in grass areas, and the planter box facilities are actually small concrete boxes that are adjacent to the building. One of those at-grade facilities actually includes enhanced filtration, which means that it will allow for ground water recharge at the bottom of the facility. Tr. 83-84.

Petitioner has submitted an amended Stormwater Management Concept Plan (Exhibit 17(e)), which is under review by the Montgomery County Department of Permitting Services (DPS). Tr. 92. It will have to be approved prior to subdivision approval by the Planning Board.

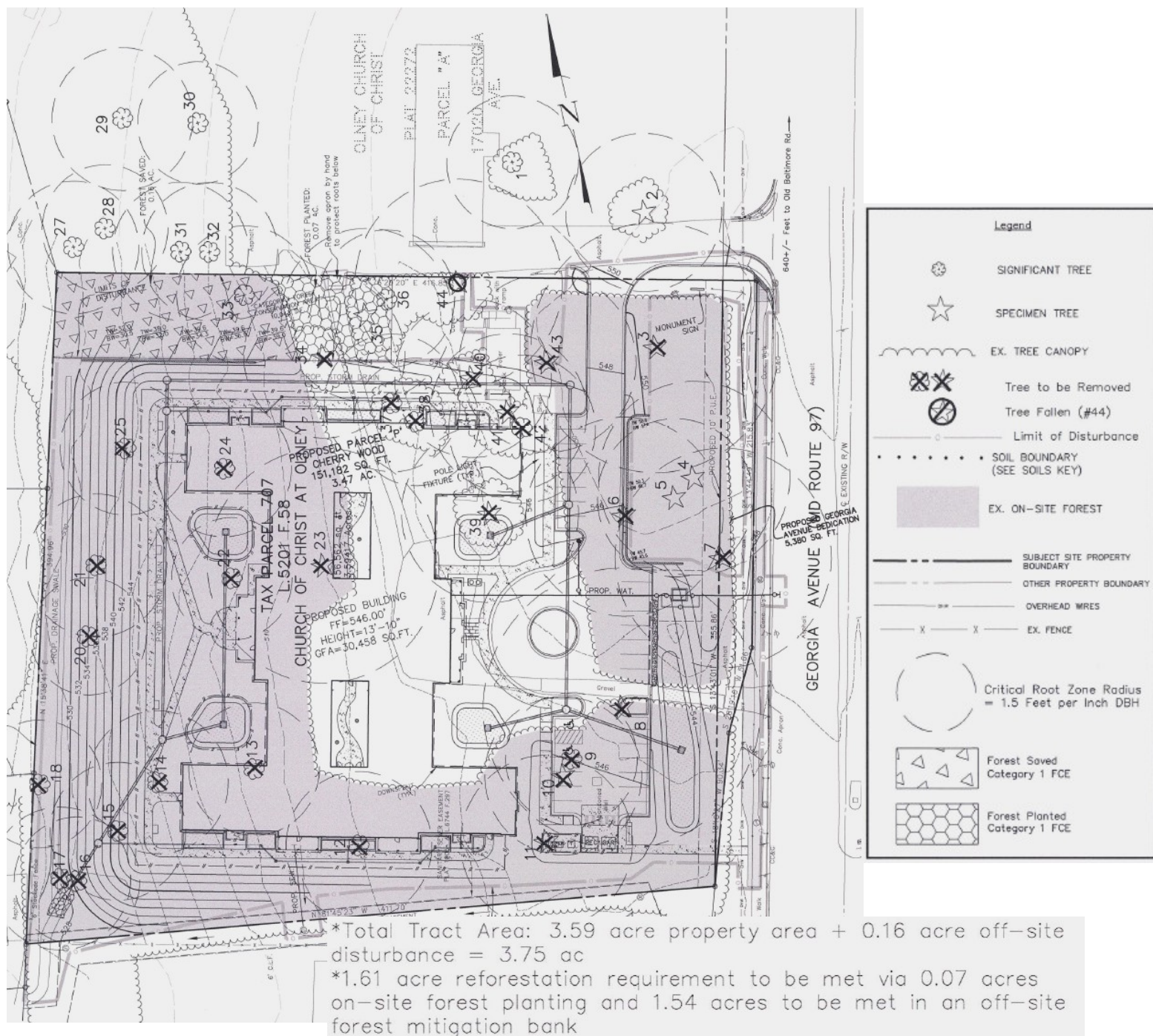
2. Trees:

The property is subject to the Montgomery County Forest Conservation Law. Petitioner submitted an amended Preliminary Forest Conservation Plan (PFCP), which is in the record as Exhibit 17(c). That PFCP proposes to clear 2.31 acres of forest, resulting in a forest planting requirement of 1.61 acres. As stated by Technical Staff (Exhibit 16, p. 10),

The Applicant proposes to retain 0.16 acres of forest and plant an additional 0.07 acres of forest adjacent to the existing forest. . . . This combined 0.23 acres of forest will be

protected in a Category I conservation easement. The easement will be located along the northern property line, contiguous with forest on the adjacent property. The easement will protect the on-site forest as well as the critical root zones of healthy specimen trees located on the adjacent property to the north. The proposed development will include a fence around the perimeter of the building and outdoor areas for the safety of the residents. The fence will also offer additional protection to the forest in the proposed conservation easement. The remaining 1.54 acres of forest planting requirement will be satisfied in an approved off-site forest mitigation bank.

The diagram portion of amended PFCP is reproduced below:



Petitioner's amended PFCP was unanimously approved by the Planning Board, as indicated in the Board's letter of November 22, 2011. Exhibit 19. Ms. Bryant, Petitioner's land planner, testified that, at the same time, the Planning Board approved Petitioner's tree variance request for the removal of a number of specimen trees and impacts to the critical root zones of other specimen trees. Tr. 112-113.

Ms. Bryant also addressed the concerns raised by Mr. Teague about loss of trees, especially the six he identified in Exhibit 28 with red dots. Tr. 106-110. Her testimony in that regard will be discussed in the next part of this report, which addresses community concerns. Suffice it to say at this point that all of the concerns about tree preservation have been reviewed by the Planning Board, the agency specifically entrusted with approval of forest conservation plans, and Petitioner's PFCP has been approved.

3. Noise Issues:

One of the conditions proposed by Technical Staff in its report was that prior to the public hearing, the applicant must provide a noise mitigation analysis prepared by a professional engineer to address requirements for mitigation of projected exterior traffic noise levels to an interior level no greater than 45 dBA Ldn. Petitioner did so on the day before the hearing in Exhibit 24(a), a report dated November 30, 2011, from "Phoenix Noise & Vibration," entitled "Olney Assisted Living Phase I Noise Analysis." The report concludes (Exhibit 24(a), p. 1):

Results indicate that, while the portion of the site closest to Georgia Avenue will be exposed to future roadway noise levels above 65 dBA Ldn, no outdoor activity areas are planned for this area of the site. Furthermore, the Olney Assisted Living building itself will not be exposed to future roadway noise levels above 65 dBA Ldn. According to Montgomery County's residential noise standards, further analysis for the site is therefore not required as neither outdoor activity areas nor indoor living spaces will be exposed to noise levels above 65 dBA Ldn. Mitigation for the site is not required to reduce roadway noise in outdoor or indoor spaces, and standard building construction will be capable of maintaining acceptable interior noise levels.

Technical Staff reviewed this report and reached a somewhat different conclusion (Exhibit 35):

1. The Noise Analysis notes that the Olney Assisted Living property is governed by the 65 dBA Ldn guideline value for maximum levels for exterior noise and building line. The report references this guideline value was determined from the "Staff Guidelines for the

Consideration of Transportation Noise Impacts in Land Use Planning and Development”, June 1983. The referenced 1983 Staff Guidelines includes a map to use for identifying the guideline value for maximum levels for exterior noise and building line. This map indicates that the guideline value for this property is actually 60 dBA Ldn, rather than 65 dBA Ldn as referenced in the provided Noise Analysis. The Noise Analysis indicates that the noise level measurements taken for the property at the proposed building line were 64.0 and 63.7 Ldn (dBA), which is greater than the recommended maximum guideline value. However, given that the proposed outdoor activity areas for the property are located in interior courtyards and sheltered areas behind the proposed building, the outdoor noise levels do not appear to be of concern and staff does not recommend further study or mitigation requirements for the projected exterior noise levels.

2. The Noise Analysis indicates that measured exterior noise levels at the proposed building line are greater than the guideline value of 60 dBA Ldn for this property. At time of preliminary plan, staff will include the following conditions of approval, as appropriate:
 - a. Certification from an acoustical engineer that the building shell for residential dwelling units where projected levels \geq 60 dBA Ldn are designed to attenuate projected interior levels to or below 45 dBA Ldn. The analysis and certification shall be provided to M-NCPPC Planning Department staff prior to approval of a Site Plan (if Site Plan approval is required), or alternatively, prior to issuance of building permits.
 - b. The builder shall provide a signed notarized commitment to construct the impacted units in accord with the acoustical design specifications contained in the building shell analysis. Any changes to the building shell construction that may negatively affect acoustical performance shall be approved in writing by the acoustical engineer, with copy to M-NCPPC Planning Department staff, prior to their implementation.

Given that one of the conditions recommended in Part V of this report provides that “approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board,” the protections against excessive noise proposed by Technical Staff in paragraph numbered 2 above (*i.e.*, conditions at subdivision) should adequately protect the residents in this regard.

4. Traffic Smog:

Mr. Walter Teague, a former resident of the neighborhood, testified at the hearing concerning the potential dangers to the health of future residents on this site from smog produced by traffic on nearby Georgia Avenue. This issue will be discussed in the next part of this report.

Based on the entire record, the Hearing Examiner finds no environmental concerns warranting denial of this petition.

F. Community Response

Petitioner's proposal to build and operate an assisted living facility is supported by the Greater Olney Civic Association. (GOCA), as reported by the Planning Board in its letter of November 22, 2011 (Exhibit 19, p. 1):

. . . Following presentation to the Planning Board by staff and by the applicant, the president of the Greater Olney Civic Association (GOCA) spoke in favor of the application. The GOCA president, who has visited a similar facility operated by the applicant in Reston, Virginia, testified that the proposed facility is an appropriate design and building for the Olney Community, it would provide a much needed service for the community, and that it would be in keeping with the Master Plan's recommendations. . . .

Petitioner met with the Cherrywood Homeowners Association and other neighbors (including those abutting the rear of this property, to the west side) who raised a series of concerns according to Technical Staff – stormwater drainage, loss of trees, building height, layout, floor plan, access, parking, fencing, landscaping and the post development view of the project from their properties. Exhibit 16, pp. 8-9. Apparently Petitioner was able to satisfy their concerns because there has been no opposition (or even continuing concerns) from any current resident of the neighborhood.

The only opposition came from Mr. Walter Teague and his wife, Eda. The Teagues used to live nearby, but now live about 15 miles away, in Kensington; however, they still attend the church which owns the property and is located on the adjacent lot. Tr. 43. Mr. Teague is a retired colonel with the Army Medical Service Corps and Mrs. Teague served many years as a registered nurse.

Mr. Teague testified that he opposed the project because of its potential effect on the safety and health of the facility's future residents and because of the loss of trees that would be occasioned by the construction. Tr. 24-41; 43-44. He presented three exhibits to support his arguments (Exhibits 26, 27 and 28).

Mr. Teague expressed concern for the safety of the elderly residents who will occupy the proposed facility. He fears that with all of the people coming and going, some resident may wander off into Georgia Avenue and be injured or killed. His concern is based in part on his understanding that the facility will be set back only 30 feet from the roadway, a setback he considered to be out of character with the existing neighborhood. Mr. Teague introduced a diagram (Exhibit 26) purporting to show the 30-foot setback he referenced. According to Mr. Teague, the State Highway Administration indicated that 41,000 cars travel on Georgia Avenue every day. Tr. 24-26.

The Hearing Examiner finds that Mr. Teague was proceeding under an incorrect premise as to the actual size of the planned setbacks from Georgia Avenue traffic, as indicated in the site plan (Exhibit 17(a)). The building will actually be set back 119 feet from the front property line (*i.e.*, the Georgia Avenue right-of-way). The entrance to the building will be about 150 feet from the front property line. The parking lot will be set back 40 feet from that property line. Tr. 27-29. Except for the secured front door, the other exits lead out only to fenced-in yard areas. Petitioner's civil engineer, Patrick Mr. La Vay, testified that the parking and building both meet or exceed the setbacks required in the Zoning Ordinance. There are also some barriers between the parking area and the Georgia Avenue right-of-way that would inhibit movement of pedestrians in those directions. Tr. 93-94.

Petitioner's traffic engineer, Michael Lenhart, also addressed the safety concerns raised by Mr. Teague. He noted that although the parking lot will be 40 feet from the right-of-way and the building will be 119 feet from the right-of-way, the right-of-way line itself is about 30 feet from the southbound lanes of Georgia Avenue. Thus, the parking lot will be at least 70 feet from the travel lanes, and the building will be about 150 feet from the travel lanes. Georgia Avenue is a straight road in that area, and in Mr. Lenhart's opinion, the chance of "run off the road accidents" are minimal. He does not see any safety issue with regard to the parking or the building. Tr. 141-142.

Technical Staff also found that “The proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic.” Exhibit 16, p. 26.

Mr. Teague’s second concern is for the health of the residents which he believes will be adversely impacted by particulate matter and contaminants thrown aloft about 200 feet by the heavy traffic on Georgia Avenue, especially in the months of July, August and September. Mr. Teague testified that regardless of the setback, this material would fall in a kind of smog on the proposed facility and on its grounds in the summer months, creating a potential health hazard for the residents. He introduced another diagram (Exhibit 27) purporting to show this effect. Tr. 30-35.

Eda Teague testified that she worked in nursing homes for 10 years, so she is on the side of the patient. It seems to her that the outside areas that Petitioner plans to have the patients walk around in during the summer would be a hazard to them. She noted that these elderly people can understand what’s going on even if they are unable to respond. Tr. 41-42.

As to health concerns, there was no expert medical evidence presented that the residents of the proposed facility will suffer any greater harm than residents of other nearby facilities and members of the general public from this traffic smog along Georgia Avenue. While no one will argue that the fallout from traffic is healthy to breathe, it is a fact of life in any well-traveled area, and is not a basis for denying a special exception absent a showing that the proposed facility will suffer an unusually high level of such fallout compared to its neighbors. In fact, the proposed facility will be set back much further (119 feet) from the source of the pollution (*i.e.*, Georgia Avenue) than required in the zone (40 feet).

When asked by the Hearing Examiner about the health issues raised by Mr. Teague, Mr. La Vay noted that he is not a professional in air quality, but it would appear that if smog is a concern at this location, it's a concern anywhere along Georgia Avenue. The project does meet or exceed the requirements for shading of paved areas, as outlined in the Zoning Ordinance. Tr. 93-94.

Perhaps Mr. Teague's principal concern is the loss of old trees that would result from this project. He highlighted, with red dots on Exhibit 28, six major oak trees that would be lost if this facility is constructed. Mr. Teague feels strongly that these trees, which have witnessed the country's history, should be preserved. Tr. 35-41.

Ms. Bryant addressed the concerns raised by Mr. Teague about loss of trees, especially the six he identified in Exhibit 28 with red dots. Tr. 106-110. She noted that Petitioner had an arborist, Keith Pitchford, examine the health and quality of some of the trees. A County arborist also weighed in when Petitioner asked for the variance to remove some large trees. Ms. Bryant then discussed each tree specified by Mr. Teague. Of the six trees that Mr. Teague highlighted, only one, which he labeled No. 282, is in healthy or fair condition. It will be removed because it is located in the center of where the building is to be located. Tr. 109-110.

Everyone regrets the loss of trees, but providing good facilities for the elderly is also an important goal. The Planning Board has approved tree variances and a PFCP approving the removal of the trees in question, as discussed in Part II. E. of this report. The PFCP (Exhibit 17(c)) will require Petitioner to plant additional trees both on and off site and to create a Category 1 Forest Conservation Easement to protect the on-site trees in the northern area of the property.

Although Mr. and Mrs. Teague raised some legitimate concerns and made an effective presentation, the Hearing Examiner finds that the preponderance of the evidence does not warrant denial of the special exception based on their concerns. The potentially adverse consequences to the residents are being met by appropriate setbacks and security arrangements. The concerns about tree preservation have been addressed through the PFCP approved by the Planning Board after a thorough review. Thus, their concerns have all been satisfactorily addressed by Petitioner and by a proposed condition which will require the Petitioner to comply with the PFCP.

III. SUMMARY OF THE HEARING

Petitioner called five witnesses, Donald Feltman, Petitioner's managing member; Patrick La Vay, civil engineer; Victoria Bryant, land planner and landscape architect; Dan Dokken, architect; and Michael Lenhart, transportation planner. Two members of the community testified in opposition, Mr. and Mrs. Walter Teague. With the consent of Petitioner, the Teagues testified first.

The record was held open for 15 days at the end of the hearing because a new report was filed a day before the hearing. Petitioner was called upon to file a copy of the purchase contract for the site, information regarding the proposed sign for the site and some other materials before the record closed.

A. Petitioner's Case

1. Donald Feltman (Tr. 42-74):

Donald Feltman testified that he is Petitioner's "managing member." He has over 30 years experience in developing senior care communities, anything from skilled nursing to retirement communities, to general assisted living, memory care assisted living. He has done extensive study and analysis of individuals with Alzheimer's disease and related dementia. This is a memory care assisted living community, not a general assisted living community. Tr. 42-45.

There will be a "town center" within the building, and then four residential neighborhoods off the town center, each having a residential porch. The residents have freedom of movement throughout the whole building, and many of them will walk to the town center, which has a beauty/barber shop, a health center, apothecary, a large community center, an arts and crafts studio. If there is inclement weather, they'll walk that route and walk down into the neighborhoods. Tr. 58-59.

The whole idea is to treat residents with dignity and respect. Petitioner will try to replicate a home, but with a safer atmosphere. Thus, the programming and the facility's layout have been designed to facilitate "secured freedom"—freedom of movement, freedom of activities and creating a home-like

atmosphere in this setting. Three-fourths of the outside of the building is fenced, the sides and the rear, creating a very large area for the residents to enjoy without staff. Residents are always accompanied by staff or family if they go out the front door, but not if they go out the back or the sides. There are outdoor porches and multiple points of getting out to enjoy the outside. Tr. 46-51.

The plan is to build a mirror image of the community Petitioner opened a year ago in Fairfax County, in the Reston, Herndon, and Great Falls area. This will be the most extensive landscaping that Petitioner has ever done. Tr. 54. It will include 110 new trees, over 300 new shrubs, including a number of major ones, 195 perennials, and over 1200 specialty plants. Tr. 71.

Mr. Feltman also described his extensive outreach to GOCA and others in the neighborhood. Tr. 55-57. GOCA's main concerns were trees and drainage. Petitioner worked extensively with them, and met with the Cherrywood Homeowners Association and the Victoria Springs Homeowners Association, and also with the neighbors, the church, the child daycare center and three residential neighbors that abut to the rear. Tr. 64-65.

The community will be open 24/7 because this is the home for the residents. Visiting hours are whenever the family wants. There will be three work shifts -- 6:00 in the morning until 2:00 in the afternoon; 2:00 in the afternoon until 10:00 p.m.; and then 10:00 p.m. to 6:00 a.m. 10:00 p.m. to 6:00 is five care givers, one of whom will be a licensed nurse. The largest work shift, the largest number of employees on site at any one time, will be 17. Trash deliveries would be one to two times a week, after 8:00 a.m. during the week, and after 9:00 a.m. on the weekends. In terms of deliveries, generally food and other supplies are delivered twice a week, when fully occupied. Tr. 60- 62.

An environmental study indicated the site was clean. There are a number of the trees that are dead, dying, diseased, and some of the underbrush, which is a buffer during the summer months, but not during the winter months. Petitioner will replace them with substantial landscaping, which includes

some deciduous trees, but a lot of large shrubs and trees that will create a year round buffer. Tr. 65-66.

Petitioner is proposing 30 parking spaces, even though the Code required 25, because based on its operational experience, it is better to put in 30, giving a little extra for events. Tr. 66.

Mr. Feltman further testified that Petitioner is willing to accept the Planning Board's conditions of approval. The noise mitigation analysis called for by Technical Staff has been performed. Exhibit 24(a). The County requires that any building be outside of the 65 decibel sound level. The closest points on the front of this building, based on the study and actual measurements and projections, will be at a 64 and a 63 decibel level. Thus, the building itself is outside that 65 decibel level threshold. Petitioner's contract with the church provides that when they close on the property, there will be an access easement granted. Tr. 67-68.

In response to questions on cross-examination, Mr. Feltman stated that the whole D.C. Metropolitan area would be affected during smog alerts, not just this facility, and that Manor Care Nursing Home in Wheaton has an entrance much closer to the street than that planned here. The proposed facility will be secure and will be much safer than most other facilities. Tr. 72-74.

2. Patrick La Vay (Tr. 75-94):

Patrick La Vay testified as an expert in civil engineering. He has visited the site on several occasions, overseen the preparation of the civil engineering drawings for this application, and is also personally familiar with the area, having grown up in Olney. Tr. 80-81.

Mr. La Vay briefly described the site and the surrounding area. According to Mr. La Vay, under existing conditions, the vast majority of the property drains from east to west, and runoff is deposited on the three residential lots to the west. A very small portion of the property drains in the front to the Georgia Avenue right-of-way. That drainage pattern was a concern of some of the adjacent residences. Mr. La Vay testified that with Petitioner's proposal, the development area will drain into stormwater

management facilities. During the average annual rainfall event, these facilities will capture, treat and slowly release runoff into an on site storm drain system. In larger storm events, the runoff will still be directed in the same manner, however, there are overflow inlets within each facility that will allow excess flows to be deposited into that storm drain system which will collect the runoff from the site and will outfall at grade to the southwest property corner. From that point there will be a private easement across the adjacent parcel for approximately 30 feet to allow runoff to reach the Old Baltimore Road, Old Baltimore Drive public right-of-way. He also designed a drainage swale at the west property line, such that any runoff generated along the landscaped hill on the west side of the development will meet the at grade outfall, and the result being there will be no runoff from this property onto the adjacent lots. Tr. 82-83.

According to Mr. La Vay, this project proposes stormwater management in the manner of environmental site design to the maximum extent practicable, which is in accordance with the 2009 Maryland standards for stormwater management, as well as current Montgomery County Department of Permitting Services requirements. The approach to stormwater management here is a combination of at-grade and planter box micro bio-retention facilities, a difference being the at-grade structures are just in the grass areas, and the planter box facilities are actually small concrete boxes that are adjacent to the building. One of those at-grade facilities actually includes enhanced filtration, which means that it will allow for ground water recharge at the bottom of the facility. Tr. 83-84.

Under existing conditions, the site slopes from east to west approximately 7 percent. Petitioner will fill in the gap that's created at the rear. The floor elevation has been set such that in the event of an extremely large storm event, there is a positive outlet to prevent water from getting into the building. A retaining wall will be added at the north, northwest portion of the site to minimizes the limits of disturbance, and allow for a forest retention area. An additional retaining wall will be included at the

east end of the drive isle, again, for tree preservation purposes. Tr. 85-85.

Petitioner has submitted a preliminary plan of subdivision under which Petitioner will be dedicating 5,380 square feet to the Georgia Avenue right-of-way. The proposed property line will match up with the property lines of the two adjacent parcels to the north and south. As far as right-of-way improvements, Petitioner is proposing to slightly widen the existing driveway access to parcel A at the north and reconstruct the sidewalk ramp that ties into that entrance. There is also an eight to ten-foot wide shared use asphalt path that was recommended by the Olney Master Plan, and it does have some variations as far as its width and distance from the existing curb, following meetings with Park and Planning, as well as Montgomery County Department of Transportation and the DOT arborist. The path was designed to preserve three Pepco poles and some trees. The result is that most of the asphalt path is ten feet wide and five feet back from the existing curb, but in some areas it's eight feet wide and three feet back. This was found to be acceptable to DOT. Tr. 86-88.

Mr. La Vay's engineering report is Exhibit 12 in the record (amended in Exhibit 15(h)). In Mr. La Vay's opinion, there will not be any adverse impacts being a result of this application, from an engineering standpoint. No portions of the facility or site will generate excess noise, dust, debris or odors. As far as illumination, there is a photometric and lighting study included with the application which indicates 0.1 foot candles at the side and rear property lines, with the exception of the shared access, which will have some illumination for safety reasons. From an engineering perspective, the proposed special exception will be in harmony with the general character of the surrounding neighborhood and will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties, or the general neighborhood. Tr. 88-91.

Mr. La Vay further testified that the proposed special exception will be served by adequate public services and facilities, including police and fire protection, water, sanitary sewer, and storm drainage.

While the site is not currently provided water and sewer service from the Washington Suburban Sanitary Commission, there are existing facilities adjacent to the property. It is rated S-1 and W-1. There is a 16-inch water line that runs in the Georgia Avenue right-of-way which is available for a service connection. Just to the south of the property, which is on the adjacent parcel, there is an eight-inch public sewer main that is also available for a service connection. A preliminary review by WSSC has indicated that both those lines are available for service connections. The project's stormwater management concept plan is pending approval by the Montgomery County Department of Permitting Services. This would have to be approved prior to subdivision being approved. Mr. La Vay has also met with the Montgomery County Department of Fire and Rescue, and a circulation plan is pending approval as well for emergency access to the site. Tr. 91-93.

In Mr. La Vay's professional opinion and based on his knowledge of the use and the site design itself, there are no health concerns or harmful areas. The site has been designed with safety in mind. There are no excessively steep areas. ADA accessible routes are provided, and he does not see any areas that will be of a concern to the residents, their visitors, or any of the workers at the site. Tr. 93.

When asked by the Hearing Examiner about the two health and safety issues raised by Mr. Teague, the safety in terms of proximity to the street, and the health in terms of smog created by particulate matter wafting off the nearby roadway, Mr. La Vay testified that the parking and building both meet or exceed the setbacks required in the zoning ordinance. There are some barriers between the parking and the Georgia Avenue right-of-way that would also inhibit movement in those directions. As far as the smog goes, that would be a concern anywhere in the County. He noted that he is not a professional in air quality, but it would appear that if smog is a concern, it's a concern anywhere. The project does meet or exceed the requirements for shading of paved areas, as outlined in the zoning

ordinance, which is derived from the 20 year canopy of trees Petitioner will be planting adjacent to parking areas. Tr. 93-94.

3. Victoria Bryant (Tr. 96-123):

Victoria Bryant testified as an expert in land planning and landscape architecture. Ms. Bryant's amended land planning report is Exhibit 15(i). She described the area surrounding the site, noting that Technical Staff's definition of the surrounding area is somewhat larger than that of the Applicant because Staff's version includes signalized intersections incorporated into the traffic statement. Ms. Bryant, did not object to Staff's neighborhood definition. Tr. 98-99.

Ms. Bryant described the area as being dominated by single-family dwelling units that are on the north and west side of Georgia Avenue, which is predominantly R-200 zoned. And on the east side is an RE-2 Zone and an RNC Zone, which are larger lot single-family housing. There is a small portion of townhouses at the Martins Dairy Circle. The RNC zoned area is vacant. The RE-2 Zone has the golf course or driving range on the east side of Georgia Avenue, the Sandy Spring Voluntary Fire Department and the RE-2 nursery, which is a single-family house. Ms. Bryant described the character of most of the buildings in this area as one or two-story structures, predominantly brick or siding with shingled roofs, residential scale buildings. The architecture for the church is very modern. It's a brick facade, but it's a more modern structure. The Children in the Shoe [*i.e.*, the child care facility to the south of the site] is a residential, vinyl siding one-story structure, to look more residential in character. The present plan for the structure for this site is going to be similar to the Children in the Shoe child care center architecture, but with more detail, and some finer materials. In addition to the vinyl siding, Petitioner will have some brick, some keystone arches. Tr. 101-102.

Ms. Bryant further testified that the site is located in the 2005 Olney Master Plan's southern area. The Master Plan, in general, allows for special exception uses, provided they do not create a

commercial appearance along major roads and residential neighborhoods, and do not create a negative impact on surrounding residential neighborhoods.

According to Ms. Bryant, the Master Plan is overall in support of elderly housing projects of appropriate density and locations. It specifically recommends the special exception uses go into vacant sites in the planning area. It also recommends that any special exceptions along Georgia Avenue have an open, semi-rural appearance, to mark the transition between the more dense southern part of the Olney region to the lower suburban character of Olney to the north.

To this end, Petitioner pushed the building back 119 feet, and proposes a very intense landscaping along the Georgia Avenue, and retaining a portion of the existing forest and some of the larger trees along the northeast portion of the frontage. The Master Plan allows for special exceptions in this area provided they're sufficiently landscaped, and that lighting does not create a halo or a night glow effect. Ms. Bryant testified that Petitioner will meet those requirements.

The Master Plan also discourages more special exceptions that would alter the low density character of the area. Ms. Bryant opined that the low nature of the building and the articulation of the building means it will have a low density residential feel to it.

Ms. Bryant concluded that this special exception is consistent with the recommendations in the Master Plan. It will serve as an appropriate transition between the more urbanized south and the more suburban north areas. In addition, the proposed facility will fit in with the types of uses that exist already along this block of Georgia Avenue – the shopping center, the fire department, the church and the daycare facility.

The Master Plan also puts an emphasis on public transportation and alternative methods of mobility for the area. The Georgia Avenue “busway” is proposed for Georgia Avenue, including a dedication of Petitioner’s right-of-way along the frontage. Petitioner will also be providing an eight to

ten-foot shared use bike path along the front. Tr. 103-105.

Ms. Bryant also addressed the concerns raised by Mr. Teague about loss of trees, especially the six he identified in Exhibit 28 with red dots. Tr. 106-110. She noted that Petitioner did an NRI/FSD for Park and Planning as part of the submission, and it was approved by Technical Staff. Subsequent to that, Petitioner had an arborist, Keith Pitchford, examine the health and quality of some of the trees. A County arborist also weighed in when Petitioner asked for the variance to remove the large trees.

Ms. Bryant discussed each tree specified by Mr. Teague. Using Mr. Teague's numbers, Tree 252, which is the one tree that is off site, is a 41-inch oak. It is not on Petitioner's plan because it had been taken down prior to Petitioner filing its NRI/FSD.

The tree labeled 237, which is identified as a 38-inch oak, is listed on Petitioner's Forest Conservation Plan as tree number 40. It is a white oak that is 31 inches, and it was in fair condition; however, a nearby tree fell down during the recent hurricane and split it. It is therefore recommended for removal.

Tree number 294 on Exhibit 28 is labeled as a 48-inch oak. Ms. Bryant believes that is the tree Petitioner has numbered 3, which is a black oak of 49 inches. It was rated as poor, and the arborist recommended removing it just based on the health of the tree.

The tree identified on Exhibit 28 as 264, a 43-inch oak, is Petitioner's number 8, which is a white oak of 55- inches. It was rated as poor and a hazard, and was recommended for removal for safety issues.

Tree number 336 on Exhibit 28, was a 54-inch oak. That is tree number 10 on Petitioner's plan, which is a white ash, 31-inch. It was in poor condition, with a large cavity, so it was another tree recommended for removal because of the health of the tree.

Finally, the tree in the center of the property, number 282 on Exhibit 28, which was a 46-inch oak, is labeled tree number 23 on Petitioner's plan. That tree was in good or fair health; however, it would be in the middle of the proposed building

So of the six trees that Mr. Teague highlighted, only one, which he labeled 282, is in healthy or fair condition. Tr. 109-110.

Ms. Bryant further testified under Petitioner's Forest Conservation Plan (Exhibit 17(c)), Petitioner will be saving a number of trees that are in good health. Along the northern property line shared with the Olney Church of Christ, Petitioner will be saving approximately 10,000 square foot forested area and adding some additional foresting. The Planning Board approved the Preliminary Forest Conservation Plan (Exhibit 17(c)) at its November 20 meeting, and they also approved the variance to remove the trees Petitioner is proposing. Tr. 110-113.

Ms. Bryant testified that public facilities would be adequate. Because of the nature of the use, there will be no school children associated with it, and it will have no impact on the school system. The facility will be adjacent to the Sandy Spring Volunteer Fire Department, and the Montgomery County Police Department satellite facility is located about a mile away from the site on the eastern side of Georgia Avenue. Fire and Rescue are generally deemed to be adequate for the site. Water and sewer are in W-1 and S-1 categories. Petitioner will be dedicating the appropriate amount of right-of-way. In addition to that, Petitioner will be abandoning the current driveway entrance, and consolidating it into one, which is also going to make for a safer environment. LATR requirements are met because the facility will generate under 30 trips, and Petitioner will make a lump sum payment to satisfy PAMR mitigation. Tr. 114-115.

Ms. Bryant opined that from a land planning perspective, the proposed special exception will not have any adverse impacts or cause a nuisance because of traffic, noise, type of physical activity,

or any other element incompatible with the environment and character of the surrounding neighborhood. Tr. 115. Given the low height of the building and intensive landscaping, it will be compatible with the area. Tr. 116.

Ms. Bryant further testified that in her opinion, the proposed special exception will comply with the standards and requirements of the R-200 zone, Section 59-G-2.37 governing domiciliary care special exception uses and Section 59-G-1.2 governing special exception uses in general. Tr. 117. Moreover, the proposed special exception will not cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity, and it will be in harmony with the general character of the surrounding neighborhood considering population, density, design, scale and bulk of the proposed improvements, intensity and character of activity, traffic, parking conditions, and a number of similar uses. Tr. 118-120.

Ms. Bryant further opined that the proposed special exception will not be detrimental to the use, peaceful enjoyment, economic value or development of the surrounding properties or the general neighborhood of the subject site, and it is suitable for the site and compatible with the surrounding neighborhood. It also will have no adverse effect on the health, safety, security, morals or general welfare of the residents, visitors, or workers in the area. Ms. Bryant testified that the project will be a benefit to the community. It is a use that has been shown to be needed in the area. In addition to the use, the development of the site with the stormwater management is going to improve some of the drainage issues with the adjacent property owners. So it will make them have better use of their own property. They won't have wet back yards during and after a rain. Tr. 121-122.

4. Dan Dokken (Tr. 124-137):

Dan Dokken testified as an expert in architecture. He indicated that his goal in designing these facilities is to provide for the needs of the residents by reducing frustrating barriers providing a lot of

freedom to navigate through the facility, not only indoors but outdoors when it's nice out and safe. The building will also provide visual cues to try and keep them from having those frustrating experiences of not really knowing where they are and what they are doing. He tries to create a real home like environment so they feel comfortable there, instead of like in nursing homes.

Mr. Dokken stated that he tries to make the outside of the building fit into the neighborhood. The main reason for the single-story construction is to provide the residents access to the exterior. He also tries to make it look residential. When the residents are out in the courtyards, he still wants it to feel like it's a home environment. Tr. 127-130.

The lighting exceeds .1 foot candles in the northeast entry point of the property because Technical Staff wanted to make sure there was adequate lighting at entrance and at the parking lots and the sidewalks into the front door. There will be adequate lighting for safety. Tr. 130-132.

Mr. Dokken indicated that the proposed sign will be bigger than what's allowed in the Code, so Petitioner anticipates having to apply for a variance. The sign is just to identify where the entrance is so people won't drive past it. Petitioner wanted to have a good enough sign to not be overlooked. [The Hearing Examiner asked whether the exception in the statute allowing a larger sign at the entry to a subdivision in a residential zone applies to this kind of a subdivision. Petitioner's counsel indicated that they would consult with DPS and file something addressing the point.] Tr. 132-133.

Mr. Dokken opined that from an architectural standpoint, the proposed special exception will be architecturally compatible with and in harmony with the general character of the surrounding neighborhood, considering design, scale, and bulk of the proposed improvements. Also, the proposed buildings will not have an adverse impact or cause a nuisance to the surrounding neighborhood. Tr. 133-135. He noted that the emergency generator is tested once a month, but it's on the street side of the

property and the noise level won't be any different than traffic noise. It is also screened and will be in a sound attenuating cabinet. Tr. 135-137.

Petitioner's counsel indicated that there would not be any resident staff members in this facility, so §59-G-2.37(a)(4) is inapplicable. Tr. 137.

5. Michael Lenhart (Tr. 138-146):

Michael Lenhart testified as an expert in transportation planning. He filed a traffic statement dated May 5, 2011, that is in the record as Exhibit 9. Mr. Lenhart testified that the site would generate two trips in the morning peak hour and four trips in the evening peak hour, based on Park and Planning trip generation rates. The LATR guidelines and PAMR guidelines state that if a site generates fewer than 30 trips, it's exempt from LATR. If it generates three or fewer trips it's exempt from PAMR. This site generates four trips, therefore, it is exempt from LATR, but it is subject to PAMR. At the time the traffic statement was prepared in May, the mitigation requirements for PAMR in the Olney Policy Area, was 10 percent. That has been reduced to 5 percent, as reflected in the staff report, but whether it is 5 percent or 10 percent mitigation, Staff requires you to round up to one, so Petitioner must make a mitigation payment of \$11,700. Tr. 139-141.

Mr. Lenhart addressed the safety concerns raised by Mr. Teague. The parking lot will be 40 feet from the right-of-way and the building will be 119 feet from the right-of-way. The right-of-way line is about 30 feet or so from the travel way of southbound Georgia Avenue. Thus, the parking lot is at least 70 feet from the travel lanes. The building is about 150 feet from the travel lanes. Georgia Avenue is a straight road in that area, and in his opinion, the chance of "run off the road accidents" are minimal. He does not see any safety issue with regard to the parking or the building. Tr. 141-142.

Mr. Lenhart further testified that the proposal would be safe for vehicular and pedestrian traffic. Tr. 143. Moreover, the proposed shared use path (for pedestrians and bicycles) along the frontage,

ranging from eight to ten feet in width, satisfies that requirement in the Master Plan. There are also stops on Georgia Avenue, and bus stop number 52, the Rockville line is right in front of the site. Tr. 143-144.

Mr. Lenhart also opined that the shared-use access from Georgia Avenue will be adequate. The uses are very low traffic generators, the church itself is an off peak type of generator, with very low volume during peak. It will be adequate and safe. Tr. 144. Transportation staff at the Maryland National Capital Park and Planning Commission agreed with his findings. He concluded that from a transportation engineering standpoint, the proposed development will be consistent with the general plan and Olney Master Plan, and will be in harmony with the general character of the surrounding neighborhood, considering intensity and character of activity and traffic conditions. "This is an extremely low traffic volume use. It will have very little impact on, or negligible impact on peak hours," and it will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties for the general neighborhood. It will be suitable for the site and compatible with the surrounding neighborhood. Tr. 145-146.

B. Community Participants

1. Walter Teague (Tr. 24-41; 43-44):

Walter Teague testified that he used to live near the site, but he now lives in Kensington about 15 miles away. He and his wife still attend the church which owns the property and is located on the adjacent lot. Tr. 43-44.

Mr. Teague expressed concern for the safety of the elderly residents who will occupy the proposed facility. He fears that with all of the people coming and going, some resident may wander off into Georgia Avenue and be injured or killed. His concern is based in part on his understanding that the facility will be set back only 30 feet from the roadway, a setback he considered to be out of character with the existing neighborhood. Mr. Teague introduced a diagram (Exhibit 26) purporting to show the

30-foot setback he referenced. According to Mr. Teague, the State Highway Administration indicated that 41,000 cars travel on Georgia Avenue every day. Tr. 24-26.

[The Hearing Examiner pointed out that the building's setback, as indicated in the site plan (Exhibit 17(a)), is actually 119 feet from the front (*i.e.*, Georgia Avenue) property line. Therefore, Mr. Teague may be proceeding under an incorrect premise as to what the setback is. Petitioner's attorney correctly noted that the entrance to the building is about 150 feet from the front property line. The parking lot is set back 40 feet from that property line. Tr. 27-29.]

Mr. Teague's second concern was for the health of the residents which he believes will be adversely impacted by particulate matter and contaminants thrown aloft about 200 feet by the heavy traffic on Georgia Avenue, especially in the months of July, August and September. Mr. Teague testified that regardless of the setback, this material would fall in a kind of smog on the proposed facility and on its grounds in the summer months, creating a potential health hazard for the residents. He introduced another diagram (Exhibit 27) purporting to show this effect. Tr. 30-35.

Perhaps Mr. Teague's principal concern was the loss of trees that would result from this project. He highlighted, with red dots on Exhibit 28, six major oak trees that would be lost if this facility is constructed. Mr. Teague feels strongly that these trees, which have witnessed the country's history, should be preserved. Tr. 35-41.

2. Eda Teague (Tr. 41-42):

Eda Teague testified that she worked in nursing homes for 10 years, so she is on the side of the patient. It seems to her that the outside areas that Petitioner plans to have the patients walk around in during the summer would be a hazard to them. She noted that these elderly people can understand what's going on even if they are unable to respond. Tr. 41-42.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of

inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a domiciliary care home (*i.e.*, an assisted living facility). Characteristics of the proposed domiciliary care home that are consistent with the “necessarily associated” characteristics of domiciliary care homes will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with domiciliary care homes, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff described the physical and operational characteristics necessarily associated with a domiciliary care home as follows (Exhibit 16, p. 17):

The inherent, generic physical and operational characteristics associated with a nursing home or domiciliary care home are:

- (1) buildings and related outdoor recreational areas or facilities;
- (2) parking areas;
- (3) lighting;
- (4) vehicular trips to and from the site by employees, visitors, residents, delivery, and trash pick-up.

To this description, the Hearing Examiner would add that one would expect a domiciliary care home to produce some noise generated by equipment for the facility and by occasional outdoor activities of residents and their families. The Hearing Examiner believes that these factors are inherent in all domiciliary care homes, by their nature, although their impact will vary significantly according to the nature of the domiciliary care home, its size and its location.

In the subject case, because the residents will be elderly and unlikely to drive, a relatively small amount of additional traffic will be generated, mostly by staff and visitors. Technical Staff analyzed the inherent and non-inherent impacts of the proposed facility as follows (Exhibit 16, pp. 17-18):

Many of the characteristics of the Special Exception are inherent. The proposed scale of the building, the internal vehicular circulation system, and the on-site parking areas shown on the site plan are operational characteristics typically associated with a nursing home or domiciliary care home. The proposed one-story 30,500 Square-foot building is designed in a manner that complements the surrounding residential characteristics of the surrounding development in terms of size, scale, scope, massing, architectural features, building materials and orientation.

The shared access driveway is a non-inherent characteristic but one that represents a positive influence on the circulation pattern near and on the subject property by minimizing access points on Georgia Avenue as well as by reducing the amount of impervious surface area on the property. Based on the traffic analysis by staff, the non-inherent vehicular and pedestrian movement surrounding the site and on Georgia Avenue would be safe, adequate, and efficient, and not sufficient basis to deny the application.

Excessive amount of noise is a non-inherent effect. Staff finds nothing in the operation of the proposed use that would cause objectionable noise so long as County regulations regarding noise (Chapter 31B) and trash/dumpster pickup (Chapter 48-21) are followed. Noise generating concerns include an emergency generator, which is proposed to be located in the front of the property, next to the trash and recycling receptacles, approximately 300 feet from the residential homes located adjacent to the rear property line.

The proposed assisted living facility is consistent with all applicable standards of the R-200 Zone and satisfies all applicable requirements for a nursing home or domiciliary care home Special Exception. The lighting concept, with the recommended condition, is appropriate for the proposed use at the subject location.

With the recommended conditions of approval, the inherent and non-inherent impacts associated with the proposed use do not rise to a level sufficient to warrant a denial of the application.

The Hearing Examiner recognizes that the size and mass of a particular domiciliary care home could be so excessive, or its setbacks so inadequate, given the nature of the site, as to be considered non-inherent characteristics, but that is not the case here. As discussed in Part II of this report, the proposed domiciliary care home will have substantial setbacks and will be mostly screened by surrounding forest and landscaping. The Hearing Examiner agrees with Technical Staff that the shared driveway is unusual and perhaps a non-inherent site characteristic, but one that confers benefits (*i.e.*, reduced impervious

surface and fewer access points from Georgia Avenue), rather than adverse consequences. The safety and health concerns raised by Mr. Teague are not non-inherent site conditions because they are common to every site along Georgia Avenue, and the setbacks from Georgia Avenue are much larger than Mr. Teague thought, thus mitigating any adverse effects. The Hearing Examiner does find that the need to remove a significant amount of forested area is a non-inherent site condition; however, its impacts on the environment have been reviewed by the Planning Board, and a preliminary forest conservation plan has been approved by that body to minimize impacts and to ensure that compensating afforestation is undertaken.

Accordingly, the Hearing Examiner finds no non-inherent characteristics of the proposed domiciliary care home warranting denial of the petition, and agrees with Technical Staff's conclusion that the proposed use is compatible with adjacent development.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the testimony and exhibits of the Petitioner provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: A domiciliary care home is a permissible special exception in the R-200 Zone, pursuant to Code §59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special

exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.37 for a domiciliary care home, as outlined in Part IV. C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject site lies within the area analyzed by the 2005 Olney Master Plan, which was discussed at length in Part II. D. of this report. For the reasons set forth in that section, the Hearing Examiner finds that the proposed use is consistent with the Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Technical Staff addressed the issue of “harmony with the general character of the neighborhood” as follows (Exhibit 16, p. 20):

The proposed use will be in harmony with the general character of the neighborhood and satisfies this requirement.

Considerable effort has been made to integrate the 30,458 square-foot, one-story building into the area in a manner that is compatible with existing residential and nonresidential developments in terms of scale, bulk, height materials, texture and architectural features. The building's physical presence will be offset by a combination of setbacks, a residential building façade (combination of brick, stone and siding), extensive landscaping, and forest retention. Adequate off-street parking spaces are provided to satisfy the needs

of the proposed domiciliary care home facility. This use will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk, traffic and parking conditions and number of similar uses. The site is being developed with minimal impact on the natural environment [and] . . . is compatible with the residential densities of the neighborhood.

For these reasons and those set forth in Part II of this report, the Hearing Examiner finds that the proposed use will be in harmony with the general character of the neighborhood.

The building will have sizable setbacks and abundant screening. The facility is designed to have a residential appearance and architectural features which will avoid a monolithic visage. Traffic production will be minimal, and parking will be set back in accordance with the Code and well screened.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: As discussed in Part II. of this report and in response to General Standard 4, above, the evidence supports the conclusion that this project will be compatible with its neighbors, and there is no competent evidence that it will reduce the economic value of surrounding properties. In fact, the evidence is that it will improve stormwater drainage in the area while providing a valuable service for the neighborhood. The Hearing Examiner agrees with Technical Staff's conclusion that "[t]he proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood, provided that the applicant complies with the recommended conditions of approval of this application at the subject site." Exhibit 16, p. 21.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff addressed these issues as follows (Exhibit 16, pp. 21-23):

The proposed use is not expected to cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the site. Sources generating noise outside the structure including HVAC equipment, an emergency generator and other noise generating activities (loading/unloading, delivery/refrigeration trucks) do not appear to be unusual for the type of use proposed. As depicted on the site plan, the generator will be located in the front yard closer to the road, substantially distanced from the nearest residential development, and will be screened and buffered by a board fence, extensive landscaping, and the building itself.

According to information provided by the applicant's engineer, the generator is tested once a week, usually on Mondays, between 8-9 am. The tests last approximately 15 minutes. Aside from these tests, the generator would be used only in emergency circumstances. The generator produces 68dBA at a distance of 23 feet from the exhaust pipe, which does not account for the 6 foot fence that will surround the generator and will significantly reduce this level. The exhaust pipe is 32 feet from the closest property line (south). The applicant contends that this distance, plus the 6-foot-high fence, make it clear that the noise levels produced by the generator in the infrequent circumstance of its use will be well below the noise level thresholds at the property lines.

In terms of air conditioning, the applicant stated that the HVAC systems will produce no more noise than typical residential units. The applicant's engineer has indicated that the rooftop units will be located in roof wells and will be located a substantial distance away from property lines, ensuring their noise levels will be well below the thresholds.

Although the building is proposed to be located approximately 150 feet from the road, staff recommends that the applicant provide a noise analysis from a professional engineer to determine whether the projected exterior noise levels will require mitigation for affected residential units. Outdoor uses on the property, including a courtyard for residents, will be located in the rear of the property, behind the building, and should not be affected by traffic related noise from Georgia Avenue.

* * *

Trash will be picked up once or twice a week during non-peak hours between 8:00 a.m. and 9:00 a.m. The trash dumpster and a recycling bin will be located in the front yard at the southern end of the parking lot, enclosed by 6-foot-high wooden fence. The landscaping plan shows that the dumpster and recycling bin enclosure will be screened with evergreen trees.

The use will be adequately screened and buffered from the views of neighboring properties, with minimal lighting and glare, and no significant traffic impact.

As discussed in Part II. E. of this report, a noise analysis was done. As a result of Technical Staff's review of that analysis, conditions will be imposed at preliminary plan review, and compliance with that preliminary plan is a recommended condition in Part V of this report. Additional conditions relating to noise recommended by Staff have been incorporated into part V of this report.

Based on the nature of the proposed use, the special exception would cause no objectionable vibrations, fumes, odors, dust, or physical activity at the subject site. As discussed above, noise will not exceed County limits and will be controlled by conditions recommended in Part V of this report. Petitioner's revised lighting plan and photometric study (Exhibit 17(g)), discussed in Part II. C. of this report, satisfies the Hearing Examiner that the illumination and glare will be kept within prescribed limits, as modified by the Board of Appeals for safety reasons, in accordance with Zoning Ordinance §59-G-1.23(h).

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Technical Staff lists four existing special exceptions in the area, although Staff indicated, while the golf park is active, the others may be inactive:

- BAS-134: a Horticultural nursery and Commercial green house use at 16901 Georgia Avenue, granted in 1972. The site later became a golf park with the approval of Special Exception S-2187 in 1995.
- S- 1717: a major home occupation use at 17045 Old Baltimore Road, granted in 1989
- BAS-735: a public utility building for Verizon at 16900 Georgia Avenue, granted in 1980
- S-2187: The Olney Golf Park located at 3414 Emory Church Road granted in 1995

Staff noted that the neighborhood features a variety of institutional and other nonresidential uses housed in low-rise buildings along both sides of Georgia Avenue, with low-density residential developments concentrated behind the nonresidential uses.

Staff concluded (Exhibit 16, p. 23):

The proposed Special Exception will not increase the number, intensity, and scope of approved Special Exceptions in the area enough to affect the area adversely or alter its residential nature. The proposed use would provide a valuable service to the community by offering the elderly and, in particular, those in need of the facility's specialized services, an opportunity to remain in their community.

The Hearing Examiner agrees because the proposed special exception is consistent with the recommendations of the applicable Master Plan and will not change the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. On the contrary, it will provide a residential facility for the elderly that is needed in the area.

- (9) *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.*

Conclusion: The special exception sought in this case would require approval of a preliminary plan of subdivision. Therefore, the adequacy of public facilities will be determined by the

Planning Board at subdivision, and approval of the preliminary plan of subdivision is a recommended condition in Part V of this report, as required by this section of the Zoning Ordinance. Nevertheless, the evidence, which is discussed in Part II. C. 6. of this report, supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: As discussed above, the adequacy of public facilities will be determined by the Planning Board at the time of subdivision review.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found that “[t]he proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic.” Exhibit 16, p. 26. This finding is supported by the testimony of Petitioner’s traffic engineer, Mike Lenhart, as discussed in Part II. C. 6. of this report. Tr. 143-144. There being no competent evidence to the contrary, the Hearing Examiner so finds.

C. Specific Standards

The testimony and the exhibits of record (including the Technical Staff Report, Exhibit 16) provide sufficient evidence that the specific standards required by Section 59-G-2.37 are satisfied in this case, as described below.

Sec. 59-G-2.37. Nursing home or domiciliary care home.

(a) A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see "Domiciliary care home") may be allowed if the board can find as prerequisites that:

(1) the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents;

Conclusion: This specific standard is essentially a summary of the general standards 4, 5 and 6, above.

For the reasons discussed therein, the Hearing Examiner finds that the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents.

(2) the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood; and

Conclusion: As pointed out by Technical Staff (Exhibit 16, p. 27),

The exterior of the proposed building appears residential and incorporates several features of the single-family detached homes in the area including a residential type entrance, windows, and low roofing. Building materials including stone, brick veneer, and horizontal siding will be used to maintain consistency with the residential character of the surrounding area. The proposed design of the building will be appropriate and relates well with the characteristics of existing residential uses as well as nonresidential developments in the area.

Staff's analysis is based on the Petitioner's land planning report (Exhibit 15(i)), and it is supported by the testimony of the architect, Dan Dokken (Tr. 127-130) and Petitioner's land planner, Victoria Bryant (Tr. 101-102). There is no contrary evidence in the record,

and the Hearing Examiner finds that the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood.

(3) *the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.*

Conclusion: As discussed in Part IV. B. of this report, Technical Staff states that “Sources generating noise outside the structure including HVAC equipment, an emergency generator and other noise generating activities (loading/unloading, delivery/refrigeration trucks) do not appear to be unusual for the type of use proposed.” Exhibit 16, p. 21. Mitigation of noise generated by traffic on Georgia Avenue will be subject to conditions imposed at subdivision. Concerns about air pollution and traffic safety have been discussed at length in Part II. F. of this report. Based on the entire record, the Hearing Examiner finds that the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.

(4) *The Board of Appeals may approve separate living quarters, including a dwelling unit, for a resident staff member within a nursing home or domiciliary care home.*

Conclusion: Not applicable. Petitioner is not proposing separate living quarters for staff.

(b) *The following requirements must apply to a nursing home housing 5 patients or less:*

* * *

Conclusion: Not applicable. The proposed facility will house more than 5 patients.

(c) *The following requirements apply to all new nursing homes, additions to existing nursing homes where the total number of residents is 6 or more, and to all domiciliary care homes for more than 16 residents.*

(1) *The minimum lot area in the rural zone must be 5 acres or 2,000 square feet per bed, whichever is greater.*

Conclusion: Not applicable. Subsection (1) applies only to rural zones.

(2) *In all other zones, the minimum lot area must be 2 acres or the following, whichever is greater:*

a. *In the RE-2, RE-2C, RE-1 and R-200 zones, 1,200 square feet for each bed.*

b. *In the R-150, R-90, R-60 and R-40 zones, 800 square feet for each bed.*

c. *In the R-T, R-30 and R-20 zones, 600 square feet for each bed.*

d. *In the R-10, R-H, C-O, C-T and C-2 zones, 300 square feet for each bed.*

e. *In the town sector and planned neighborhood zones, 800 square feet per bed.*

Conclusion: This site is classified in the R-200 Zone and therefore subsection “a.” applies. Petitioner proposes a maximum of 64 beds. At 1200 square feet per bed, Petitioner must have a minimum lot of 76,800 square feet or 2 acres (87,120 square feet), whichever is greater. Since 87,120 square feet is obviously greater, that is the minimum lot size permitted. The subject site has a net lot area of 151,182 square feet ((Exhibit 17(a))), which is well above this minimum standard.

(3) *Minimum side yards are those specified in the zone, but in no case less than 20 feet.*

Conclusion: The minimum side yard setback for a main building in the R-200 Zone is 12 feet, so the 20-foot minimum in this section controls. The proposed facility will be set back from the northern and southern property lines 89 feet and 39 feet respectively which far exceeds the minimum requirements.

(4) Maximum coverage, minimum lot frontage, minimum green area, minimum front and rear yards and maximum height, are as specified in the applicable zone.

Conclusion: According to Technical Staff, the proposed facility will meet all applicable standards for the R-200 Zone. Exhibit 16, p. 29. This fact is displayed on the next page in a Table from page 15 of the Technical Staff report.

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

Conclusion: Based on this section, a minimum of 25 parking spaces would be required (64 beds / 4 = 16 spaces, and 17 employees / 2 = 8.5 spaces; 16 + 8.5 rounds up to 25 required spaces).
Petitioner will provide 30 spaces, including two handicapped van-accessible spaces. As stated by Technical Staff (Exhibit 16, p. 29), "The proposed parking spaces are sufficient to accommodate the parking needs of 17 employees (full and part-time) as well as visitors."
Staff also notes that the site plan provides for a bike rack to accommodate 11 bicycles.

(e) An application must be accompanied by a site plan, drawn to scale, showing the location of the building or buildings, parking areas, landscaping, screening, access roads, height of buildings, topography, and the location of sewers, water lines, and other utility lines. The site plan must also show property lines, streets, and existing buildings within 100 feet of the property, and indicate the proposed routes of ingress and egress for automobiles and service vehicles. A vicinity map showing major thoroughfares and current zone boundaries within one mile of the proposed home, must be included.

Conclusion: Petitioner has provided a Site Plan meeting these requirements, the final version of which is Exhibit 17(a).

(f) An application for a special exception for this use must include an expansion plan showing the location and form of any expansions expected to be made in the future on the same site.

Conclusion: Not applicable. Petitioner is not proposing any expansions in the future. Exhibit 16, p. 29.

(g) Any nursing home, or domiciliary care home for more than 16 residents lawfully established prior to November 22, 1977, is not a nonconforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.

Conclusion: Not applicable.

(h) Any application for nursing home and/or care home which is pending at the Board of Appeals as of February 24, 1997 at the request of the applicant, may be processed under the applicable provisions of the Zoning Ordinance in effect at the time the application was filed.

Conclusion: Not applicable.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: The following Table from the Staff report (Exhibit 16, p. 15) demonstrates compliance with all applicable development standards.

Development Standard: R-200	Required		Proposed
	§59-C.132	§59-G-2.37 (S-2819)	
Minimum net Lot Area	20,000 sf	2 ac (87,120 sf)	3.49 ac (151,944 sf)
Minimum Lot width			
• @ Front building line	100 ft		365 ft
• @ Street line	25 ft		355 ft
Minimum Building Setback			
Front	40 ft (EBL)		120
Side			
▪ One side	12 ft	>20 ft	39 ft
▪ Sum of both sides	25 ft		128 ft
▪ Rear	30 ft		82
Maximum Building Height -	50 ft		13 ft 10 in
Maximum Building Coverage	25%		20.1% (30,548 sf)

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: As discussed above, the applicable parking standards for the number of parking spaces have been met or exceeded. Requirements for setbacks, shading and landscaping of parking facilities provided for in Article 59-E have also been met, as shown in the listing of development standards on the Site Plan (Exhibit 17(a)) reproduced on page 12 of this report.

*(c) Minimum frontage * * **

Conclusion: Not applicable, since none of the listed uses are involved and no waiver is being sought.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: The proposed special exception must comply with the preliminary forest conservation plan (Exhibit 17(c)), approved by the Planning Board. Since this case must go through subdivision, the Planning Board will review the final forest conservation plan at that time.

The following condition has been recommended in Part V of this report:

The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan (Exhibit 17(c)), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Since the subject site is not in an SPA, this provision is inapplicable to this case.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: Petitioner plans to have a monument sign at the entrance, and its location is shown on the site and landscaping plans. A diagram of the proposed sign is reproduced on page 20 of this report. Since the proposed sign would have an area of 32 square feet, it may require a sign variance as discussed in Part II. C. 4 (pp. 20-21) of this report. The Hearing Examiner recommends the following condition in Part V of this report:

A sign permit must be obtained for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As mentioned above, Technical Staff and the Hearing Examiner concluded that the residential character of the subject site will be maintained, given the architectural design of the planned structure, and its setting, setbacks and landscaping. It will thus be compatible with the neighborhood.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: As discussed elsewhere in this report, the lighting will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard along most of the side and rear property lines; however, there will be small exceedances for safety reasons in the northeast corner of the site, adjacent to the vehicular access driveway. As discussed in Part II. C. 3 of this report, the Hearing Examiner recommends that the Board exercise its authority under this section and allow the exceedances for safety reasons. A condition to this effect is recommended in Part V of this report.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the planned structure will have a residential appearance and will be appropriately landscaped and screened. It will also have suitable pedestrian circulation.

Based on the record in this case, the Hearing Examiner concludes that Petitioner has satisfied the general and specific requirements for the special exception it seeks. In sum, the domiciliary care home use proposed by Petitioner should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2819, seeking a special exception to permit establishment and use of a domiciliary care home on Parcel P707, in the 17000 Block of Georgia Avenue, Olney, Maryland, be GRANTED, with the following conditions:


1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in this report.
2. The assisted living facility must be limited to a maximum of 64 beds. The facility will operate 24 hours a day, 7 days a week, but the total number of employees on the site shall not exceed 17 at any one time.
3. Petitioner must make any payments required at subdivision to satisfy the mitigation requirements of Policy Area Mobility Review (PAMR).
4. The lighting for the site is permitted at the levels specified in the amended lighting plan (Exhibit 17(g)), and the Board specifically permits the exceedances indicated in the photometric study in the northeast corner of the site for safety reasons, in accordance with Zoning Ordinance §59-G-1.23(h).
5. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9)(A), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Board of Appeals.
6. Petitioner must ensure that noise from its generators, air-conditioning and other equipment does not exceed County standards. Petitioner must comply with all applicable sections of the County Noise Ordinance (Chapter 31B of the County Code).

7. Garbage dumpster pick-ups must comply with time of day restrictions specified in Chapter 48-solid waste regulations - which specify that no pick-ups may occur between 9:00 PM and 8:00 AM on any weekday, or between 9:00 PM and 9:00 AM on Sundays and federal holidays.
8. The Petitioner must possess, not later than the issuance date of the use and occupancy certificate, valid State of Maryland and County licenses, certificates, and/or registrations that may be required for a domiciliary care home which provides assisted living to the elderly.
9. The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan (Exhibit 17(c)), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.
10. Petitioner must maintain 30 parking spaces called for in its Site Plan (Exhibit 17(a)), and may not expand or reduce the parking facility without express permission from the Board through modification of this special exception.
11. A sign permit must be obtained for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.
12. Petitioner must obtain a permanent easement agreement for the use of the shared driveway currently located on the adjoining church property, and the easement agreement must be recorded when Petitioner completes its purchase of the subject property from the church, following approval of the Preliminary Plan of Subdivision. A copy of the easement agreement must be filed with the Board of Appeals.
13. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception

premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception 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.

Dated: December 28, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin L. Grossman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Martin L. Grossman
Hearing Examiner