

**BEFORE THE OFFICE OF ZONING
AND ADMINISTRATIVE HEARINGS**

IN THE MATTER OF THE APPLICATION *
OF EDMONDSON & GALLAGHER * **Application No. CU 19- ____**
PROPERTY SERVICES, LLC (“E&G”) *
CONDITIONAL USE APPROVAL FOR AN *
INDEPENDENT LIVING FACILITY FOR SENIORS *
OR PERSONS WITH DISABILITIES *

APPLICANT’S STATEMENT OF JUSTIFICATION

The Applicant, Edmondson & Gallagher Property Services, LLC (hereinafter sometimes referred to as “E&G” or “E&G Property Services”) hereby submits this application for an independent living facility variously called “Milestone Senior Germantown” or “Frederick Road Senior Housing” for seniors or persons with disabilities, a conditional use allowed pursuant to Montgomery County Zoning Ordinance Section 59-3.3.2.C and Section 59.3.1.6.

The subject property is Parcel P507 and is located on the east side of Frederick Road (MD Rt. 355), approximately .2 miles north of the intersection of Wheatfield Drive and Frederick Road in Germantown. The property proposed for the conditional use is a currently undeveloped 2.6-acre parcel of land owned by Frederick Road LLC and is zoned in the R-90 zoning classification.

The Applicant hereby submits the following information in support of its Conditional Use Application to demonstrate compliance with all of the various requirements for the granting of the requested conditional use.

I. **APPLICANT**

This petition for a conditional use for independent seniors housing is proposed by Edmondson & Gallagher Property Services, LLC.

Edmondson & Gallagher Property Services, LLC is a local company with more than 30 years in the residential development business. E&G is an experienced developer of affordable and sustainable communities for seniors. In its thirty seven (37) year history, E&G Property Services has built over 3,900 units of affordable and mixed-income in the DC area, much of it for seniors.

II. SUBJECT PROPERTY

A. Present Conditions

The property is an unaddressed parcel of land sitting on Frederick Road. It is a 2.6-acre parcel of land zoned in the R-90 zone located in the Fox Chapel district area of Germantown. The property is presently wooded and unimproved.

B. Proposed Area for Conditional Use

The Applicant's proposal is to use the entire property for the proposed seniors housing building, driveway, parking, outdoor areas and amenities, etc.

III. SURROUNDING NEIGHBORHOOD

A. Description

Land uses to the north, east, and west of the subject property are primarily single-family detached residences. However, immediately north of the property is a long established commercial seafood restaurant and due south/southeast there are two residential developed parcels, followed by a Montgomery County government parcel of 4.3 acres, which leads to a significant part of the County's expansive Great Seneca Stream Valley Park.

The subject property is located approximately one mile north of a Weiss food market and a mile and one-third from the Lake Forrest Mall and the surrounding services in that area of Gaithersburg. In addition, the site is just over a mile south of the Montgomery College

Germantown campus, Germantown Public Library, BlackRock Center for the Arts and two-thirds of a mile to the Middlebrook shopping area on and along Frederick Road.

There are public bus stop locations (Route 55) on Frederick Road both north and south of the subject property approximately 1/7 and 1/4 of mile away. Frederick Road has existing sidewalks in the area for pedestrians and bicyclists.

B. Medical Services

Holy Cross Germantown Hospital (<http://www.holycrosshealth.org/hcgh>) is located 1 mile north of the Milestone Senior Housing Community in Germantown and offers a full service hospital including emergency care, surgeries, imaging, dialysis and rehabilitation services. The Holy Cross Hospital system offers a full range of in-patient, out-patient and community-based health care services, with specialized expertise in senior services, surgery, neuroscience and cancer.

Other medical facilities are located in the Germantown and Gaithersburg area as well. Such options include the Gaithersburg Medical Center, Righttime Medical Center and the Maryland Dental Center.

IV. ZONING HISTORY OF SURROUNDING NEIGHBORHOOD

A. Other Zoning Activity in the Surrounding Area

There have been no previous special exceptions or conditional uses applied for on the subject property. Two prior special exception approvals existed in the neighborhood across Frederick Road.

Initially in 1961, via CBA-1173-A the Board of Appeals granted a Special Exception to permit the operation of a care home for not more than five patients. In 1996, the Board also granted approval in S-2170 to allow a group residential facility for 9-14 elderly persons. Later in 2002, the Board revoked both CBA-1173-A and S-2170.

North of the subject property is an automobile filling station for which approvals were granted originally to Exxon Corporation (S-1553) in 1988 and was subsequently transferred to Mobil Oil Company. The site today remains in operation as a Mobil Oil filling station.

B. Definition of “Surrounding Area”

For purposes of analyzing E&G’s proposal, the Applicant submits that the area outlined in red on Figure 1 below represents a logical neighborhood for purposes of analyzing the influence of the proposed use on surrounding uses. This proffered “neighborhood” contains all abutting and confronting properties. The outer boundaries of the “surrounding area” are defined by significant natural (open parkland) or man-made (streets and roads) features; in particular Plummer Drive to the north, to the first tier of lots facing Rt. 355 on the west, to Wheatfield Drive to the south and including the first line of abutting properties on Wheatfield Drive to the east.



FIGURE 1

V. APPLICANT'S PROPOSAL

A. Physical Improvements

E&G proposes to construct the proposed seniors' residential building in the central area of the property. The building will be a four-story multi-family seniors housing building with a maximum height of sixty (60) feet. The building will include a cellar level and will also have roof level amenities. The structure will total 104,551 square footage in size and will contain one hundred eleven (111) units including a mix of one bedroom and two bedroom units (97 and 14, respectively). Parking for the seniors housing community will include sixty (60) spots (57 standard and 3 handicapped) that will encircle the entire building complex.

B. Access and Circulation

Access to the seniors housing building will be via the proposed driveway connected to Frederick Road that will accommodate two-way traffic.

Circulation on the site will allow direct and quick access to the main entryway to the building for drop off and pick-up as well as allow for parking around the building close to individual resident units or outdoor amenity areas. The drive lane providing access to the seniors building will allow drivers to enter and exit to the right or left and circle the building due to the two-way traffic design.

C. Site Features

1. Trash Enclosure

The trash enclosure will be located at the rear of building's northeast parking area and concealed behind gated wood fencing.

2. Proposed Lighting

Yard lighting will be designed to be unobtrusive and consistent with the location of this facility in a residential zone and in a residential area. There will be shielding

provided on the light fixtures so that the lighting levels at the property line will be nearly zero and will comply with Zoning Ordinance requirements. Security lighting will be provided around the building, but it will be downward directed lighting that will be mounted several feet above ground level on the face of the building. The intent of the proposed security lighting is to illuminate the ground around the base of the building but to shield the light source to prevent any glare or spillage of light onto surrounding properties.

3. Proposed Signage

A ground mounted site sign will be located at the entrance driveway. As this is a residential zone, only a two (2) square foot sign is permitted. Frederick Road is a very high-traffic corridor. In order to catch the attention and to notify passing travelers of the location of the facility, a larger freestanding sign will be necessary than what is permitted in residential zones. Once a design and dimensions are determined, a sign variance will be applied for with the Montgomery County Sign Review Board, and details of the sign will be submitted as a supplement to this application.

VI. PROPOSED OPERATIONS

A. Hours of Operation

To use a phrase contained in a recent Hearing Examiner's Report and Recommendation for another seniors living facility elsewhere in the County, this proposed seniors' community will be operated "24 hours per day, seven days per week, 365 days per year." This phraseology accurately describes the activity level that E&G anticipates for its proposed independent elderly facility that can accommodate residents as young as 62 years of age.

B. Number of Dwelling Units

In its planning, E&G has elected to construct one hundred eleven (111) units, which it assumes will generate approximately one hundred twenty five (125) residents although it wishes

to bind itself only to the number of units, not the number of residents, to allow some flexibility in the mix of units and the occupancy of units.

C. Income Eligibility

The majority of the proposed units are intended for individuals with incomes below 60% of the “Average Median Income” (AMI) for Montgomery County. By the time of the public hearing, the Petitioner will be able to advise the Hearing Examiner of the manner in which the application will satisfy the requirements of Section 59-3.3.2.C.2.ii regarding the percentage of units reserved for families of varying incomes.

D. Staff

Staff will typically be present on weekdays typically between the hours of approximately 9 a.m. and 6 p.m. and in the evenings and on weekends if special events are planned or emergencies necessitate. The maximum weekday staff on-site at any one time is projected to be up to six (6), including a property manager, an assistant property manager, a leasing manager, a maintenance supervisor and two maintenance technicians. The maximum weekend staff at any one time is projected to be half of the weekday staff (three persons) and include staff members on call for any situations requiring staff involvement.

Specialists or persons with areas of expertise of interest for seniors may visit the facility to conduct programs for the benefit of the residents, such as bridge lessons, educational or travel presentations or wellness classes for seniors. Additionally, the Petitioner hopes to involve the residents of the seniors building in the activities offered in the neighboring Gaithersburg and Germantown areas.

Community areas within the proposed building that are available to all residents will include a lobby, lounge, indoor fitness room, library/computer room, internet café, outdoor courtyards (east and west side), picnic/seating areas (east and west courtyard areas), patio/seating area at front entrance and rooftop amenity space.

The proximity of the City of Gaithersburg and the unincorporated town of Germantown means that residents of the facility will have adequate access to medical services, shopping, recreation, cultural and other community services desired or needed by senior adults. Management of the facility will help residents arrange to visit locations where such services are available. This will include assistance with car riding services (e.g. Lyft and Uber) as well as a community bus shuttle with regular days and times with service to and from key desired local visiting areas (e.g. grocery store, malls, etc.).

V. CONFORMANCE WITH NECESSARY FINDINGS

A. General Conditional Use Findings Required Under Section 59-7.3.1.E

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

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

This section is not applicable. There are not any active, existing prior approvals for the subject site.

b. *Satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;*

The proposed use, an Independent Living Facility for Seniors or Persons with Disabilities is permitted by conditional use approval in the R-90 zone in which the property is located. (Section 59.3.1.6 generally and 59.3.32.C specifically) The following development standards are met per the requirements of Section 4.4.8.B. for standard development in the R-90 zone and 59.3.3.2.C.2 (Independent Living Facility for Seniors or Person with Disabilities).

R-90 Development Standard and/or Independent Living Facility for Seniors or Person with Disabilities	Required	Provided
Lot Area	9,000 SF	114,981 SF/2.6396 Acre
Lot Width at Front Building Line	75 feet	381 feet
Lot Width at Front Lot Line	25 feet	407 feet
Maximum Lot Coverage 59.3.3.2.C.2.c.v		20.75%
Principal Building Front Setback 59.3.3.2.C.2.c.	50 feet	50 feet
Principal Building Side Setback 59.3.3.2.C.2.c	25 feet	49 feet
Rear Setback 59.3.3.2.C.2.c	25 feet	73 feet
Height – Lot is >40,000 SF	60 feet 3.3.2.C.2.c.iv.	60 feet

Based on the information contained in the Table above, the proposed improvements meet all of the dimensional requirements of the R-90 zone, minus building height, which however, is met per 3.3.2.C.2.c.iv. for an Independent Living Facility for Seniors or Persons with Disabilities.

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

The Subject Property is located within the planning area for the *Germantown Employment Area Master Plan* (“Master Plan”), which was approved and adopted in 2009. The Plan is silent with regard to recommendations for the subject property. However, this proposal substantially conforms to the general recommendations of the Germantown Plan and is not inconsistent with the Plan’s purposes. The site is located in the Fox Chapel District (along the east side of Frederick

Road between High Point Drive and Plummer Drive) which recommends R-90 zoning. (Master Plan, p. 17).

A housing goal for the Germantown Plan is that, “New housing should be suitable for both young and old, and for those with all ranges and physical ability. Units will be served by elevators and have at-grade entrances, wide hallways to accommodate wheelchairs, and other features. Seniors should be provided with options to either age in place or move to retirement communities, and planning should facilitate both options.” (Master Plan, p. 29). The addition of this housing for the elderly would allow long-term residents to age in place. This E&G project proposed on the subject property would provide up to 111 units thereby helping to fulfill a clear need in the area. Further, in discussing Fox Chapel, the Master Plan notes on page 75 to “Orient multi-family units towards MD 355, and the site’s interior to achieve a compatible transition to R-200 residential property to the east” a design recommendation incorporated into the applicant’s plans.

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

The proposed conditional use will be in harmony with the general character of the neighborhood and will not constitute a nuisance because of traffic, noise or physical activity in view of the size and scope of the proposed use, its hours of operation and its location.

Surrounding development is primarily single-family residential development to the immediate east and west (after crossing Frederick Road) of the site. However, due north of the property is established commercial development in the NR zone and south/southeast is part of the County’s Great Seneca Stream Valley Park.

For all of these reasons, the use is harmonious with its surroundings.

- e. *Will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

The proposed use would be one of only two conditional use or special exceptions uses currently located in the surrounding neighborhood. Therefore, neither alone nor in conjunction with other conditional use will the predominantly residential character of the surrounding residential neighborhood be altered.

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

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

protection, water, sanitary sewer, public roads, and storm drainage; or

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

As set forth in the traffic report included with this application, the local transportation network is adequate to accommodate traffic to and from the proposed independent living facility.

Other public facilities exist in the area and the subject property will be served appropriately by these public facilities as will be explained in detail by the Applicant's development team at the time of the public hearing.

- g. Will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*
 - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood.*

The subject property contains no features that would cause a non-inherent adverse effect. The 2.64-acre seniors housing community will front Frederick Road on its west side and have buffering as shown on the plans around the rest of the property. While the senior residents are encouraged to use the outside amenities, they are not expected to create material exterior noise and the traffic onsite is projected to be low and be minimal during night hours. Therefore, there should be no adverse effects from the proposed use.

ii. traffic, noise, odors, dust, illumination, or a lack of parking; or

The Applicant's traffic study confirms that traffic will not cause an adverse effect on the surrounding transportation network. Because of the benign nature of seniors housing, and the distances between the proposed new building and the surrounding residences, there should be no noise, odors, dust, glare, or inadequate parking that will cause an adverse effect.

iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

The facility will be integrated nicely and into a quality seniors housing community integrated fabric of the surrounding neighborhood. The applicant has directed its professional team to design, and eventually to operate, an elderly housing facility that is not only protective of its senior residents but will also ensure the health, safety and welfare of the staff and surrounding residents. In fact, it will have a positive impact on the area versus a negative one.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

While the architectural motif chosen for the proposed seniors building may not be in the style of much of the architecture found in this part of Germantown it is of top quality design and consistent with the design of a seniors building in the metropolitan area. The architecture does

embody design features and materials typically found in residential development surrounding the greater area of the site.

- B. Use Standards for Independent Living Facility for Seniors or Persons with Disabilities Required under 3.3.2.C.

The proposed independent living facility for seniors or persons with disabilities conditional use complies with the use standards found in Section 59-3.3.2.C. as follows:

- 1. *3.3.2.C.1. Defined – Independent Living Facility for Seniors or Persons with Disabilities means a building containing dwelling units and related services for senior adults or persons with disabilities. Independent Living Facility for Seniors or Persons with Disabilities includes meal preparation and service, day care, personal care, nursing or therapy, or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations.*

The Applicant's proposal meets the definition of Independent Living Facility for Seniors or Persons with Disabilities. The request is for shelter and care for the residents of 111 dwelling units, the residents of which will enjoy a variety of services both onsite and offsite.

- 2. *Use Standards (59.3.3.2.C.2.c)*
 - a. *Where an Independent Living Facility for persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:*
 - i. *The site or the proposed facilities has adequate accessibility to or provides on-site public*

transportation, medical service, shopping areas, recreation and other community services frequently desired by senior adults or persons with disabilities. The application must include a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.

The applicant will coordinate and assist residents with transportation to surrounding venues where seniors, including regular established bus shuttles to and from these key areas for the residents, typically require services (grocery shopping, cultural entertainment, doctor's visits).

- ii. The Hearing Examiner may restrict the availability of ancillary services to nonresidents and specify the manner in which this is publicized. Retail facilities may be included for the exclusive use of the residents of the building.*

No retail services for the public or residents are proposed to be located in the seniors' facility.

- iii. A minimum of 15% of the dwelling units is permanently reserved for households of very low income, or 20% for households of low income, or 30% for households of MPDU income. If units are reserved for households of more than one of the*

specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs under Executive regulations.

The Applicant is still developing its marketing program and the mix of units, and the income categories that they will serve, have not yet been determined. However, the Applicant knows that a majority of its units will be offered for rental at below market rates and in accordance with the requirements of this section.

- iv. The maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is 60 feet and the maximum density is determined by the Hearing Examiner under the development standards of Section 3.3.2.C.b.vi through Section 3.3.2.C.2.b.ix, without regard to any other limitation in this Chapter.*

The maximum proposed building height is 60 feet, below the maximum allowed by the Zoning Ordinance.

- v. Height, density, coverage, and parking must be compatible with surrounding uses and the Hearing Examiner may modify height, density, coverage, and parking to maximize the compatibility of buildings with the residential character of the surrounding neighborhood.*

While the footprint, mass and building height of the proposed structure exceeds what is typically found in the surrounding neighborhood, the unique site selected for the facility, due to its location on Frederick Road, proposed use and proposed screening, ensures that the building is not incompatible with surrounding development.

- vi. *The minimum front setback is 50 feet. Except for an access driveway, this setback area must be maintained as green area; however, if development does not exceed the height limit of the applicable Residential zone, the minimum setback specified by the zones applies.*

No structure is located within 50 feet of the front property line.

- vii. *The minimum side and rear setback is 25 feet or as specified by the relevant zone, whichever is greater.*

This requirement is met with and both side and rear yard setbacks are achieved.

- viii. *The minimum green area is 50% in the R-90 zone.*

Green area is calculated to be 50 % of the conditional tract use area.

- ix. *The Hearing Examiner may reduce the green area requirement by up to 15% if it is necessary to accommodate a lower building height for compatibility reasons.*

Not applicable.

C. Conformance with the General Development Requirements of Article 59-6

- 1. *Division 6.1. Site Access.*

The application complies with the site access requirements in Division 6.1. Access to the site is from an adjacent public street that will provide safe and convenient bicycle and pedestrian circulation.

2. *Division 6.2. Parking, Queuing, and Loading.*

As shown on the Conditional Use Plan, the Subject Property complies with all applicable requirements of Division 6.2.

A total of 60 off-street parking spaces are required by Section 59.6.2.4. of the Zoning Ordinance for a 111 unit independent living facility with up to six employees. The development will provide 60 spaces of which 3 will be handicapped.

Applicant is requesting a waiver of the bicycle parking requirements in 6.2.4., pursuant to the parking waiver section of 6.2.10. Applicant is requesting a waiver to zero short-term spots and zero long-term parking spots. The request is due to this is an Independent Living Facility for Seniors or Persons with Disabilities who tend to not use bicycles. Additionally, this position is supported by Applicants experience with other similar uses they have been involved with in the area. Lastly, due to site spacing challenges and Applicant's desire to provide other on site amenities that are projected to be of more use and benefit to the residents and their visitors, this waiver is appropriate.

3. *Division 6.4. General Landscaping and Outdoor Lighting*

Landscaping and lighting are shown on respective plans that demonstrate how each feature complies with the requirements of the Zoning Ordinance.

4. *Division 6.5. Screening Requirements*

The attached Landscaping Plan demonstrates how the screening requirements of the Zoning Ordinance are satisfied.

5. *Division 6.7. Signs*

The Application contains signage information. The proposed sign will require a sign variance but will be appropriate for the use and the setting.

IV. CONCLUSION

In summary, the proposed Independent Living Facility for Seniors or Persons with Disabilities meets the definition for the use, the standards for the use and satisfies all of the findings required for the granting of the use.

Respectfully submitted,

MILLER, MILLER & CANBY



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Exhibit No. 31
OZAH Case No: CU 20-02