

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
GARRETT GATEWAY PARTNERS, LLC
Applicant

Dean Packard
William Landfair
Steve Mulholland
Michael Lenhart
For the Application

Stephen J. Orens, Esquire
Attorney for the Applicant

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OZAH Case No. CU 16-11

Before: Martin L. Grossman, Hearing Examiner
Director, Office of Zoning and Administrative Hearings

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE AND DESCRIPTION OF PROCEEDINGS

On February 4, 2016, the Applicant, Garrett Gateway Partners, LLC, filed an application seeking approval of a conditional use for a Townhouse Living project consisting of 19 townhouse units, pursuant to Zoning Ordinance §59.3.3.1.D.2.b. The project has been dubbed “Cashell Estates.” The subject site is on a two-acre property in the RE-1 zone, located at 7009 Garrett Road, in Derwood, at the intersection of Garrett Road and Redland Road. It is described as Part of Lot 5, Block B in the Cashell Estates Subdivision and is subject to the 2004 Upper Rock Creek Master Plan. The property is owned by the Applicant and bears Tax Account No. 04-00118126 (Ex. 32).

The proposal is the first to utilize the so-called “Design for Life” conditional use standards adopted by the County Council on April 21, 2015, effective May 11, 2015, in Ordinance No. 18-02 (Zoning Text Amendment No. 15-02). ZTA 15-02 created a new conditional use allowing the establishment of “Design for Life” communities that include features to make access easier for visitors and residents. As noted in the Council’s Opinion accompanying ZTA 15-02, the new conditional use allows an increase the number of dwelling units per acre over a site’s base zoning, but requires “Level II accommodations,” which include features that allow easy access for the disabled.¹

By notice issued on March 14, 2016, the Office of Zoning and Administrative Hearings (OZAH) initially scheduled a public hearing to be held on May 27, 2016. Exhibit 28. At the request of the Applicant (Exhibit 30), the hearing was rescheduled to August 5, 2016 (Exhibit 31). On July 7, 2016, the Applicant requested that the OZAH hearing be postponed again, and on July 11, 2016, OZAH issued a notice rescheduling the hearing until October 14, 2016 (Exhibit 39).

¹ The Level II Accessibility Standards are referenced in Zoning Ordinance §59.3.3.1.D.2.b.i. as “established by Section 52-18T, and detailed in Section 52-18U.” Those sections do not appear to exist in the current codification of the Montgomery County Code, but the Council did enact Bill No. 5-13, as amended in Expedited Bill No. 24-14, both effective July 1, 2014, adding Sections 52-18T and 52-18U to the County Code. The accessibility standards are set forth in Code Section 52-107 and in COMCOR Sections 52.18.T.01 and 52.18U.01.

On September 22, 2016, the Applicant filed a motion to amend the application with revised plans and statements. Exhibits 40 through 47, and their subparts. A notice of the motion to amend was issued on September 28, 2016. Exhibit 48. Having received no opposition to the motion to amend for ten days, that motion was automatically granted on October 10, 2016.

On September 23, 2016, Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report recommending approval of the application, subject to six proposed conditions. Exhibit 49. The Montgomery County Planning Board (Planning Board) met on October 6, 2016, and in a letter dated October 7, 2016, unanimously recommended approval of the application, adopting the conditions recommended by Staff and adding two additional proposed conditions. The Planning Board also noted that the Applicant was requesting “an exception” to one of “the width requirements” for common open space. Exhibit 50. Finally, the Planning Board advised in its letter that it had also unanimously approved the Applicant’s Preliminary Forest Conservation Plan (PFCP CU2016-11) associated with this conditional use application.

The public hearing proceeded as scheduled on October 14, 2016, and the Applicant called four witnesses. There were no community witnesses, and the hearing was completed on October 14. The record was held open until October 24, 2016, to allow the Applicant time to file properly signed and sealed architectural plans (Tr. 116-117) and to allow Technical Staff an opportunity to opine on the compatibility of the project with the neighborhood to the north, assuming the landscaping and other screening as proposed by the Applicant. The Applicant requested and was granted 10 days thereafter, until November 3, 2016, in which time to reply to Staff’s comments. Tr. 148. It was therefore agreed that the record would close on November 3, 2016. Tr. 149.

The Hearing Examiner posed the compatibility question to Technical Staff in an email dated October 14, 2016, and sought a reply no later than October 24, 2016. Exhibit 60. On October 24, 2016, Richard Weaver of Technical Staff responded, explaining Staff’s version of the

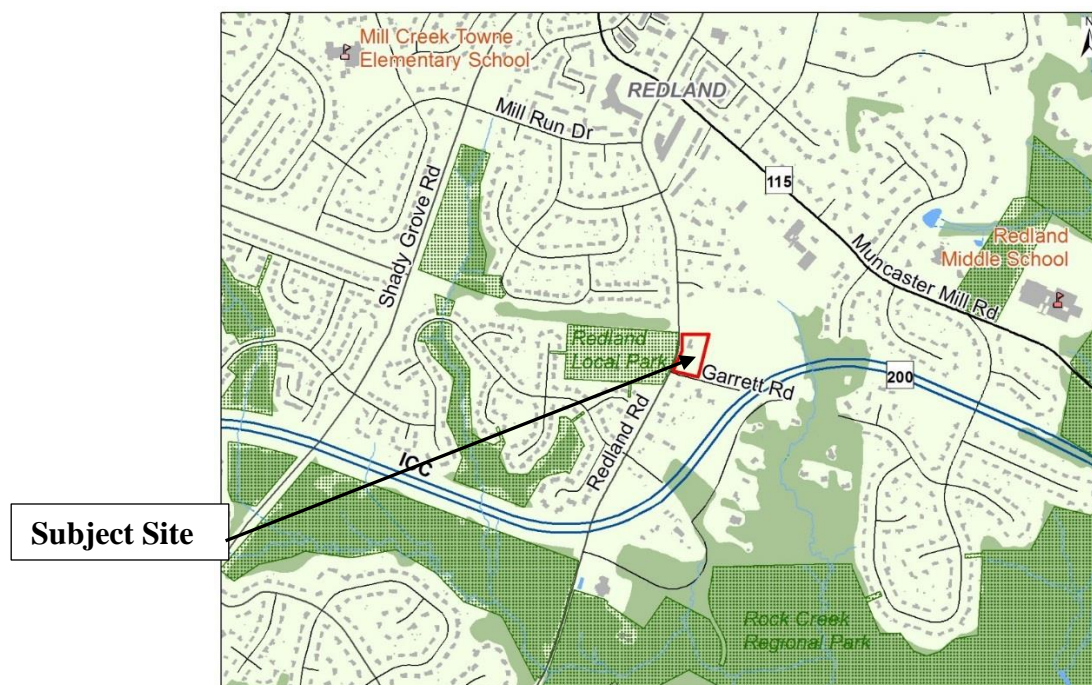
issue with landscaping and concluding that the proposed landscaping would be adequate and compatible. Exhibit 61. The Applicant replied on October 31, 2016. Exhibit 62. There were no further significant filings, and the record closed on November 3, 2016, as scheduled.

There have been no letters of opposition to this application. The Hearing Examiner finds that the proposed use, as represented in the final Conditional Use Plan (Exhibits 41(a), (b) and (c)) and the other revised plans filed in support thereof, will meet all the criteria specified in the Zoning Ordinance. More specifically, it will be compatible with the neighborhood; it will be consistent with the goals of the applicable Master Plan; it will not have undue adverse effects on the neighbors; it will comply with applicable development standards; and it will not harm the environment. Therefore, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. The Subject Property

The location of the subject site is depicted in a vicinity map supplied by Technical Staff (Exhibit 49, p. 4) and reproduced below:



The subject site is well described in the Technical Staff report and shown in an aerial photo of the site (Exhibit 49, pp. 3-4):

The subject property is identified as Part of Lot 5 on Tax Map GT 341, and is located at 7009 Garrett Road, at the intersection of Garrett Road and Redland Road, approximately 2,300 feet south of the intersection of Redland Road and Muncaster Mill Road (“Subject Property” or “Property”) in the 2004 Upper Rock Creek Master Plan area. The Subject Property is located north of the Intercounty Connector (ICC/MD 200), in the northeast quadrant of the intersection of Redland Road and Garrett Road and is zoned RE-1. The Property is 2.00 acres in size and has approximately 340 feet of frontage on Redland Road and 240 feet of frontage on Garrett Road.

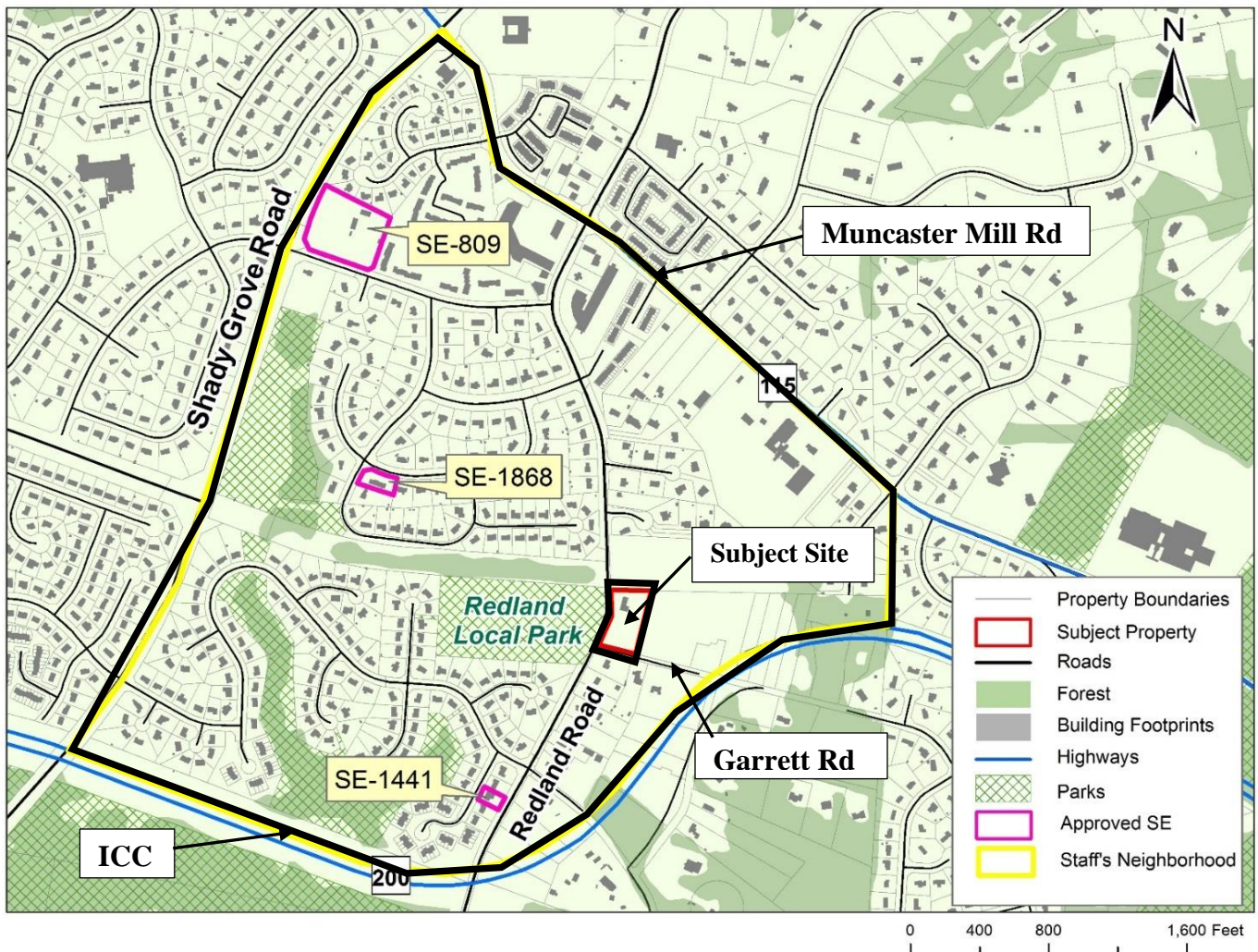
The northern half of the Property is improved with a single-family detached house which is accessible from Garrett Road via a gravel driveway that parallels Redland Road. The remainder of the Property is kept in open grass field with some large individual trees present. There is also a dilapidated shed associated with the Subject Property that is located on the northwest corner of the Maryland State Highway Administration (MDSHA) property to the east. There is a 6.7 percent slope from the northern Property line (480 ft.) to the southern Property line (458 ft.). There are no steep slopes, highly erodible soils, or 100-year floodplains on the Property. The Property does contain three specimen trees (≥ 30 inches Diameter at Breast Height (DBH)) that requires a tree variance to impact or remove. The variance request is being reviewed as part of the associated Preliminary Forest Conservation Plan.

As noted by Applicant’s land planner, Bill Landfair, the subject site is not in a special protection area. Tr. 15. It is depicted below in an aerial photo provided by Technical Staff (Exhibit 49, p. 5):



B. The Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Technical Staff defined the boundaries of the surrounding area as “the Inter-County Connector to the south, Shady Grove Road to the west, Muncaster Mill Road to the north and northeast, and the rear of the properties on the east side of Applewood Lane to the east.” Exhibit 49, p. 5. The Applicant had suggested a more narrowly defined neighborhood (Exhibit 13), but agreed at the hearing to accept Staff’s suggested definition, as does the Hearing Examiner. Tr. 15. The Staff-defined neighborhood is shown below (Exhibit 49, p. 7):



Staff described the neighborhood as follows (Exhibit 49, pp. 6-7):

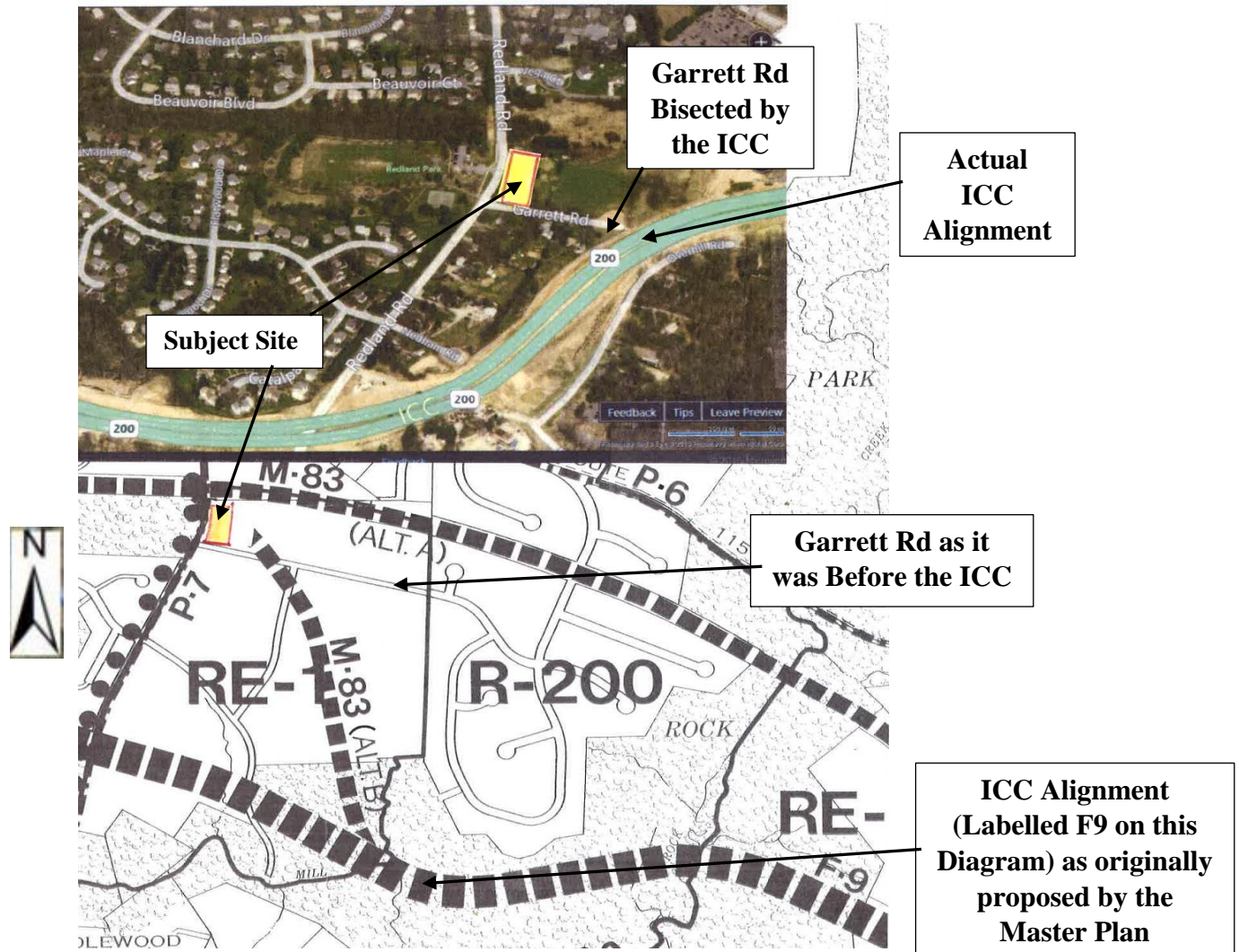
The Neighborhood is predominantly comprised of one-family detached residential dwellings located in subdivisions on either side of Redland Road. Immediately to the north and east of the Subject Property is approximately 7.4 acres of land owned by the MDSHA that is reserved for the potential future extension of Mid-County Highway east to intersect with the Inter-County Connector. Immediately north of there are one-family detached dwelling units. The neighboring properties to the north and west are zoned R-200 and the properties to the east and south are zoned RE-1. Confronting the Property on Redland Road is the Redland Local Park. There are three single-family detached homes south of the Property, on the opposite side of Garrett Road. Also within the Neighborhood are three distinct areas with existing townhouse developments, two located north of the Subject Property and one located to the southwest. At the northern portion of the Neighborhood is the commercial crossroads of Redland, located around the intersection of Muncaster Mill Road and Redland Road. This area has small auto-dominated shopping centers with services such as convenience stores and restaurants.

There are three approved special exceptions (conditional uses) within the defined Neighborhood; S-809 approved in 1981 to expand an existing swim center, S-1441 approved in 1987 for a child day care, and S-1868 approved in 1991 for an accessory apartment. Only S-1441 is also located along Redland Road, the other two are within separate subdivisions and not abutting or adjacent to the Subject Property.

The Applicant's land planner, Bill Landfair, testified that the construction of the Intercounty Connector (the "ICC") in a manner different from that originally suggested in the Master Plan has had a significant effect on the neighborhood. Essentially, the present site is cut off by the current ICC and no longer has an interaction with the area to the east of the ICC. Tr. 36-39. Mr. Landfair summarized this effect on the neighborhood in his Land Use Report (Exhibit 40(c), p. 4):

The recent construction and opening of the ICC significantly altered the character of Cashell Estates, isolating the Subject Property and other properties fronting on Redland Road from the rest of Cashell Estates. Garrett Road, now terminating in a cul de sac previously served as a connector road between Redland Road and the Cashell Estates neighborhood. As a result of the opening of the ICC, Cashell Estates was functionally divided into two separate neighborhoods. The neighborhood east of the ICC remains as it was, a developed RE-1 residential community while the neighborhood west of the ICC, containing vacant land in public ownership, scattered RE-1 housing, a local park and previously developed R-200 zoned communities is no longer characteristically an RE-1 neighborhood.

The change in the ICC alignment was graphically demonstrated by Mr. Landfair at the hearing by the introduction of Exhibit 55, which compares the Master Plan suggested alignment with the actual ICC alignment today, as shown below:



The net effect of this change in the ICC alignment bears on the issue of compatibility of the current neighborhood with the proposed townhouse development since, as Mr. Landfair suggests in the above quote, “the neighborhood west of the ICC . . . is no longer characteristically an RE-1 neighborhood.” Exhibit 40(c), p. 4. Thus, the proposed townhouse development would be more compatible with the area than if it had been a typical RE-1 neighborhood with all single-family detached dwellings on one-acre lots.

C. Proposed Use

The Applicant seeks a conditional use, pursuant to Section 59.3.3.1.D.2.b. of the Zoning Ordinance, to establish a “Townhouse Living” project consisting of 19 townhouse units designed in accordance with the applicable “Design for Life” accessibility standards (*i.e.*, Level II Accessibility standards) referenced in the Council’s Opinion accompanying the zoning text amendment which established the conditional use (ZTA 15-02). Level II Accessibility standards include features that allow easy access for the disabled, and they are referenced in Zoning Ordinance §59.3.3.1.D.2.b.i. as “established by Section 52-18T, and detailed in Section 52-18U.” Those sections do not appear to exist in the current codification of the Montgomery County Code, but the Council did enact Bill No. 5-13, as amended in Expedited Bill No. 24-14, both effective July 1, 2014, adding Sections 52-18T and 52-18U to the County Code. The accessibility standards are also set forth in County Code Section 52-107 and in COMCOR Sections 52.18.T.01 and 52.18U.01.

The Design for Life Program is described and illustrated at some length in a publication distributed by the County’s Department of Permitting Services, and it was introduced by the Applicant as Exhibit 57 in this case. Technical Staff also outlined the “Design for Life” program (Exhibit 49, p. 3):

. . . Introduction of the townhouse living conditional use was one of the ways the Montgomery County Council sought to implement the objectives of the “Design for Life Montgomery” legislation. The intent of the Design for Life program is to increase the number and variety of dwelling units in Montgomery County that are integrated into existing communities and fully accessible to all, including those with mobility or physical disability.

The tax credit portion of the Design for Life program is intended to incentivize the renovation of existing structures with accessible features. The second way to increase the accessible housing stock is through new construction. As part of the Design for Life program new construction of accessible units was incentivized by the adoption of ZTA 15-02 which allows for an increase in the number of dwelling units per acre on the qualifying properties over the base zoning density if the Application meets the conditional use standards in Section 3.3.1.D.

As described in Code Section 52-18T (enacted in Bill 5-13 and quoted in Code Section 52-107),

Accessibility Feature means a permanent addition to a single family residence that is a requirement under a Level I or Level II Accessibility Standard.

Level I Accessibility Standard means a permanent addition to a single family residence that include at least one no-step entrance located at any entry door to the house that is connected to an accessible route to a place to visit on the entry level, a usable powder room or bathroom, and a 32-inch nominal clear width interior door as further defined and described in Executive Regulations adopted under Method 2.

Level II Accessibility Standard means permanent additions to a single family residence that provide all of the Level I Accessibility Standards plus an accessible circulation path that connects the accessible entrance to an accessible kitchen, a full bath, and at least one accessible bedroom, as further defined and described in Executive Regulations adopted under Method 2.

Applicant's architect, Steve Mulholland, described the design of the proposed units and testified that the proposed development would meet the prescribed Level II Accessibility Standards, including no-step, wide entries, elevators and turn-around areas for wheel chairs. Tr. 122-129.

The proposed development was well described in the Technical Staff report (Exhibit 49, pp. 8-14):

The existing house and shed will be demolished and the driveway access to Garrett Road will be abandoned. The proposed development includes a 20-foot-wide private road which terminates in a T configuration and will provide access to Redland Road. The proposed development will include five sticks of three townhouses and one stick of four townhouses. Two sticks will face Redland Road, two will face Garrett Road and the remaining two sticks will be interior and parallel the eastern Property line. The proposed private street will be wide enough to provide adequate maneuvering space for cars, trash trucks and emergency vehicles. A total of 60 parking spaces will be provided on site.

* * *

Each individual townhouse unit will accommodate parking for three to four vehicles. Each unit will include a driveway for two cars and a two car garage capable of accommodating either two standard vehicles or one handicap accessible van. An additional three parking spaces will be provided as visitor parking one head-in space adjacent to Lot 26 and two head-in spaces at the westernmost terminus of the T-shaped road.

* * *

All units facing Redland Road and Garrett Road will have a front entrance and steps that lead to a new sidewalk to be constructed by the Applicant. Each unit will have a rear loaded garage, and the interior units will have a no-lip entrance next to the garage door to provide handicap accessible access other than through the garage. Similarly, the end units will have a lead walk from the driveway that leads to a no-lip side door. Both configurations will provide guest parking in the driveway and have direct access to a no-step entry, again, a handicap accessibility consideration. The two sticks of homes interior to the project, on Lots 26-32, will have front loaded garages and patios in the rear yard. The hinged doors are located in the same manner as the other units on the Property, and provide required fire and rescue accessibility.

Ground level porches are to be located on all of the units facing Redland and Garrett Roads. The exterior units will have smaller porches, 6 feet deep by 9 feet wide, to vary the roofline and architectural styles. The interior units (Lot 15, 18, 21, and 24) will have front porches between 6 feet in depth and a width of 18 feet. The Conditional Use plan shows an optional (determined by individual purchaser) deck partially extending over the driveway of the units on Lot 14-25 and over the rear patio of the units on Lot 26-32.



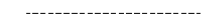











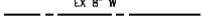

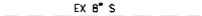
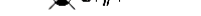
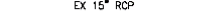
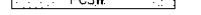




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The remainder of Technical Staff’s description of the proposed development addresses facades, open space, internal sidewalks and various amenities which will be discussed in other sections of this Report and Decision.

1. Conditional Use Plan, Floor Plans and Elevations

The final approved Conditional Use Plan (Exhibits 41(a) (b) and (c)), is set forth below and on the following pages.

LEGEND

	PROPERTY LINE		EXISTING UNDERGROUND GAS LINES
	EXISTING CONTOUR		EXISTING UNDERGROUND ELECTRICAL LINES
	PROPOSED CONTOUR		EXISTING UNDERGROUND TELEPHONE / CABLE LINES
	LIMIT OF DISTURBANCE		EXISTING WOOD FENCE
	ROOF TOP DISCONNECT FLOW PATH		EXISTING WIRE FENCE
	TREE LINE		EXISTING RAIL FENCE
	EXISTING OVERHEAD LINES		PROPOSED SPOT GRADES
	EXISTING WATER LINES		SOIL TEST
	EXISTING SEWER LINES		PERVIOUS CONCRETE SIDEWALK
	EXISTING STORM DRAIN		COLONIAL POST LED LIGHT/POLE
	DRIVEWAY CENTERLINE		LED BOLLARD LIGHT
	HINGED (ENTRANCE) DOOR		

GENERAL NOTES

1. SITE ADDRESS IS 7009 GARRETT ROAD, DERWOOD, MD 20855
2. TAX I.D. NUMBER: 04-00118126
3. PLAT REFERENCE: PLAT 2038
4. DEED REFERENCE: LIBER 49677 FOLIO 284.
5. SITE IS LOCATED ON TAX MAP GT-341.
6. SITE IS LOCATED ON WSSC 200 SHEET No. 223-NW-07.
7. EXISTING WATER AND SEWER CATEGORY IS W-3 & S-3.
8. SITE HAS EXISTING WATER AND SEWER AVAILABLE.
9. EXISTING ZONING IS RE-1
10. EXISTING SOILS ARE 2B, GLENELG SILT LOAM, 3-8% SLOPES.
11. BOUNDARY SHOWN FROM SURVEY PREPARED BY PG ASSOCIATES, INC DATED APRIL, 2015.
12. TOPOGRAPHY BY FIELD SURVEY BY P.G. ASSOCIATES, INC. JUNE 2014.
13. WATERSHED: UPPER ROCK CREEK, CLASS IV
14. UTILITY COMPANIES:

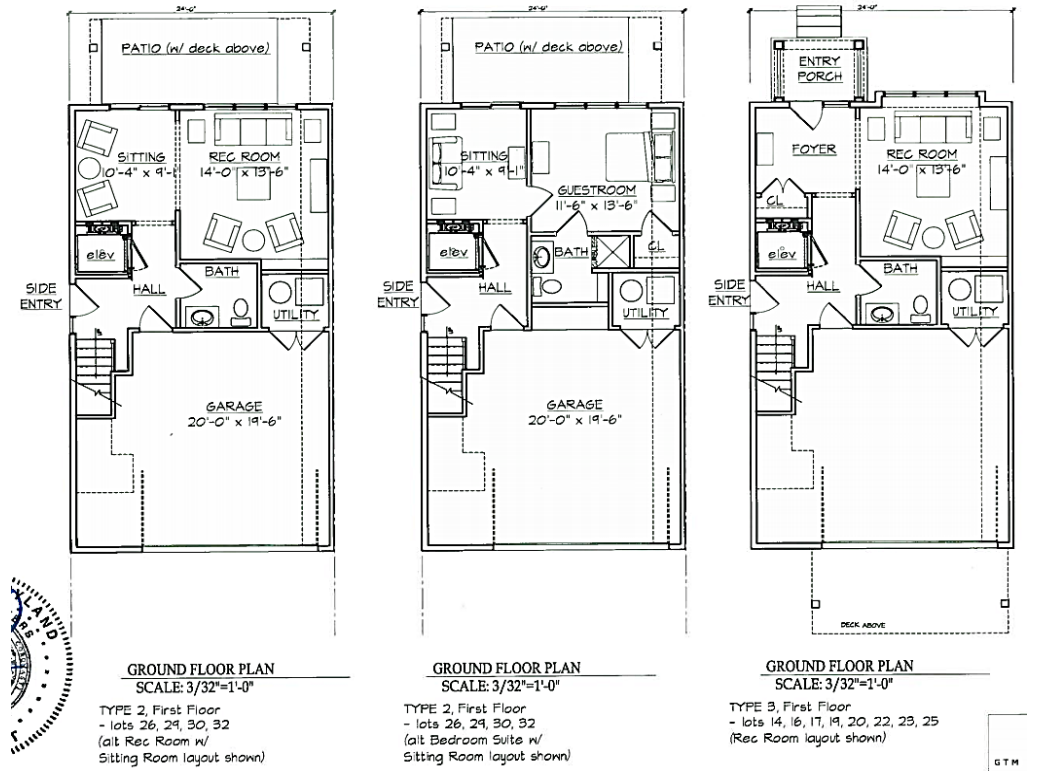
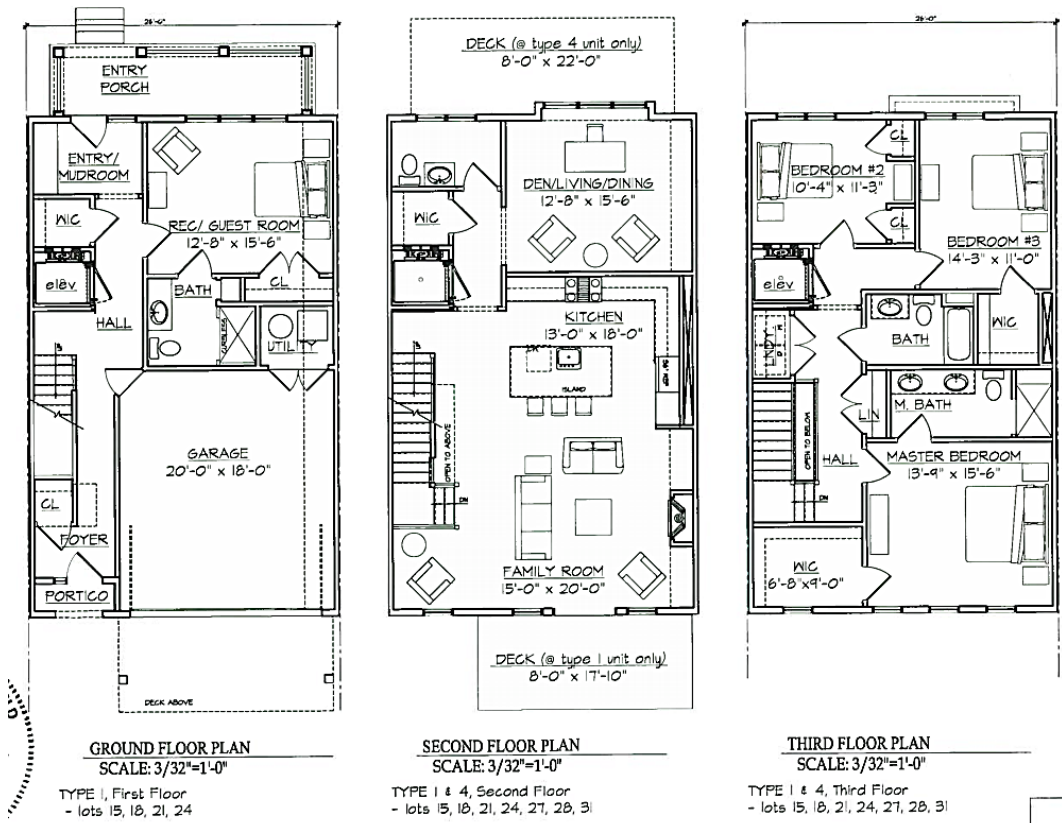
ELECTRIC:	PEPCO
WATER & SEWER:	WSSC
TELEPHONE:	VERIZON
CATV:	COMCAST
15. OWNER
GARRETT GATEWAY PARTNERS, LLC
16220 FREDERICK ROAD, SUITE 300
GAITHERSBURG, MD. 20877
PHONE: 301-208-0250
16. TOTAL DISTURBED AREA: 106,000 S.F.

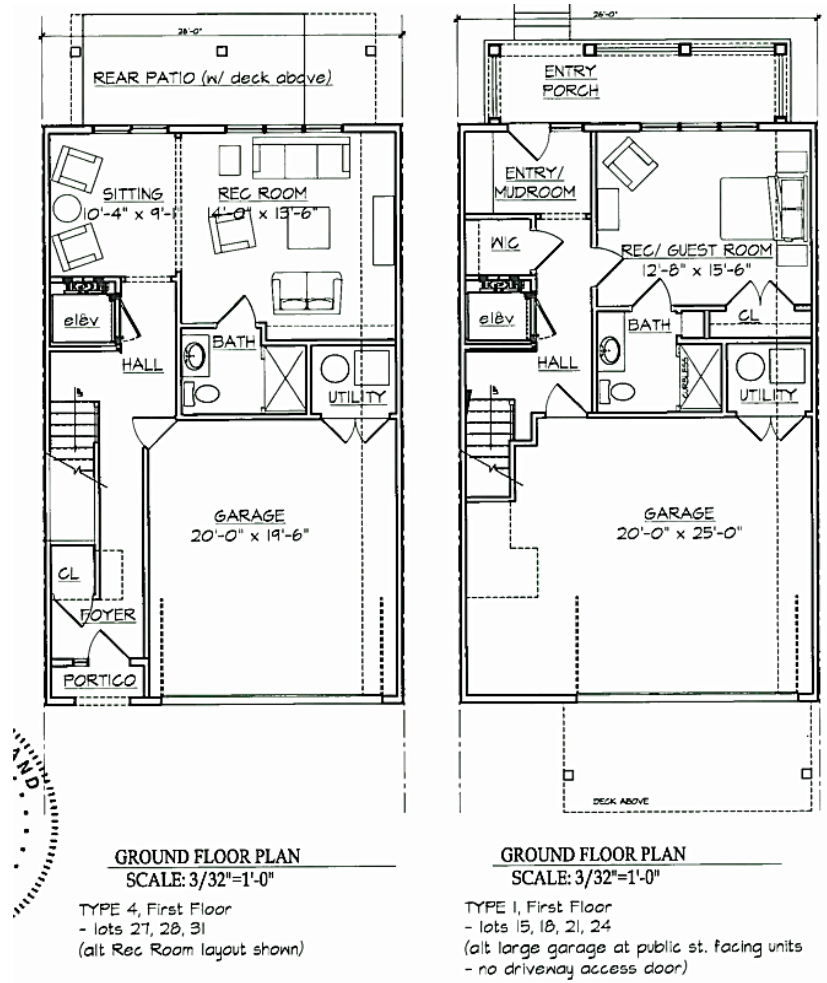
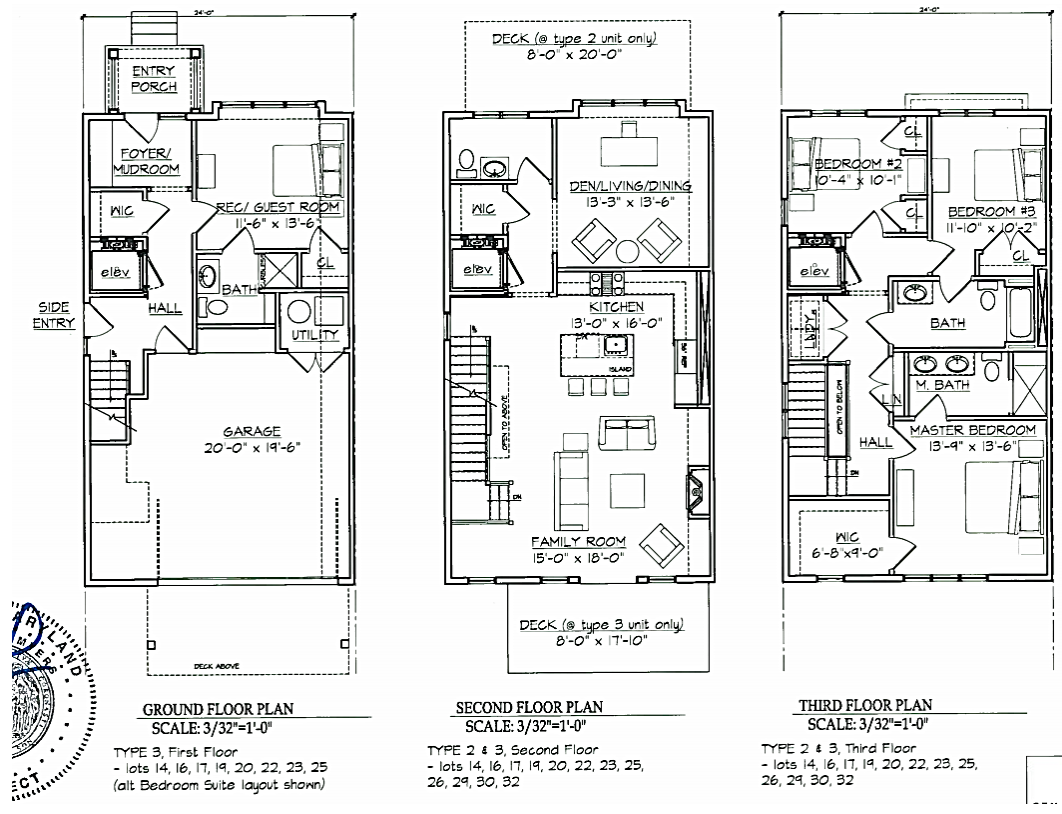
DEVELOPMENT DATA

1. TOTAL TRACT AREA = 87,203 S.F. or 2.00191 ACRES
2. DEDICATION TO PUBLIC USE = 11,331 S.F. OR 0.26011 ACRES
3. NET TRACT AREA = 75,872 S.F. OR 1.74180 ACRES
4. THIS PROJECT SHALL BE DEVELOPED UNDER THE DESIGN FOR LIFE PROVISIONS OF ORDINANCE 18-02 AND AS MODIFIED BY ZTA-15-09. THIS CONDITIONAL USE PLAN SHALL BE DESIGNED PER SECTION 4.4.12.C TOWNHOUSE MEDIUM DENISTY ZONE (TMD), OPTIONAL METHOD DEVELOPMENT STANDARDS.

DATA TABLE/DEVELOPMENT STANDARDS		
ELEMENTS	REQUIRED /ALLOWED	PROPOSED
SITE		
DIMENSIONS (MIN) USABLE AREA	20,000 S.F.	75,872 S.F.
LOTS PARCEL A DENSITY (MAX) UNITS / AREA OF USABLE AREA	15.25/1.74= 26 UNITS	40,765 S.F. 35,107 S.F. 19 UNITS
COMMON OPEN SPACE (MIN) % OF USABLE AREA	20%	23,537 S.F. 31.02%
SITE COVERAGE (MAX)	40%	19,740 S.F. 26.02%
LOTS		
LOT AREA (MIN)	800 S.F.	1,872 S.F.
LOT COVERAGE(MAX)	N/A	54%
PLACEMENT		
PRINCIPLE BUILDING SETBACKS (MIN) FRONT SETBACK FROM PUBLIC STREET FRONT SETBACK FROM PRIVATE STREET OR OPEN SPACE SIDE STREET SETBACK REAR SETBACK ALLY HEIGHT (PRINCIPAL STRUCTURE) (ACCESSORY STRUCTURE) SIDEYARD SETBACK, ABUTTING PROPERTY NOT IN APPLICATION REAR SETBACK ABUTTING PROPERTY NOT IN APPLICATION	10' 4' 5' 4' 40' 25' 17' 35'	12' MIN 22' MIN 10' MIN N/A 39' MAX. N/A 17' 35'
PARKING		
HANDICAP ACCESSIBLE SPACE PER LOT TOTAL PARKING PER LOT ON LOT GUEST PARKING TOTAL PARKING (SITE)	1 SPACE PER LOT 2 SPACES 38 SPACES	1 SPACE PER LOT 3 SPACES 57 SPACES 3 SPACES 60 SPACES

The Floor Plans for the four types of townhome units proposed by the Applicant (Exhibits 40(g)(i) – 40(g)(iv)) are reproduced below:





Technical Staff described the facades of the proposed buildings (Exhibit 49, p. 11):

The façade of the units will incorporate lap siding which will vary in color from unit to unit, along with masonry or stone elements. The units will have pitched roofs which vary in height and breakup the building massing. Along the road frontages, where the development will be most visible, each stick of townhomes will only be three units wide. Limiting the number of units breaks up the building massing and creates compatibility with the surrounding single-family detached homes. Dividing the sticks of townhouses which front on Garrett Road and Redland Road also allows more light in to the interior of the development and provides a visually appealing and functional pedestrian corridor which connects the development to the surrounding area.

The Applicant’s architect also provided conceptual elevations to illustrate the intended design of the individual units as they would appear from different angles (Exhibits 40(h)(i) – 40(h)(iv)):



Applicant’s architect, Steve Mulholland, testified that the proposed units would be compatible with the neighborhood. He proposed “designs that use indigenous materials from the neighborhood, they have brick first floors throughout; and lat siding second floors; the buildings are three stories tall; they are simple gable roof, very common in the neighborhood.” Tr. 119-120.

Mr. Mulholland noted that the units along Garrett Road and Redland Road would have front porches and a traditional sidewalk streetscape. Two-car garages for the units would load from the interior of the development. Tr. 120-122.

2. Landscaping, Sidewalks, Open Spaces and Amenities

Landscaping, sidewalks and open spaces proposed for the site are shown on Applicant’s “Landscaping and Lighting Plan” (Exhibits 41(d), (e) and (f)). Portions of this plan are reproduced below and on the following pages (omitting some details). Issues regarding the width of a central, open space, common area and regarding the adequacy of screening on the northern edge of the site will be addressed in Part III. of this Report and Decision:

LANDSCAPE SCHEDULE					
SYMBOL	QTY	COMMON NAME	SCIENTIFIC NAME	SIZE	REMARKS
SM	17	SUGAR MAPLE	ACER SACCHARUM	3" CAL	B&B
SO	17	SCARLET OAK	QUERCUS COCCINEA	2" CAL	B&B
WD	10	WHITE DOGWOOD	CORNUS FLORIDA	1-1/2" CAL	B&B
CM	8	TONTO CRAPE MYRTLE	LAGERSTROEMIA (INDICA X FAURIEI) 'TONTO'	1-1/2" CAL	B&B
MA	3	SWEETBAY MAGNOLIA	MAGNOLIA VIRGINIANA	1-1/2" CAL	B&B
KC	4	KWANZAN CHERRY	PRUNUS SERRULATA "KWANZAN"	1-1/2" CAL	B&B
RB	4	EASTERN REDBUD	CERCIS CANADENSIS	1-1/2" CAL	B&B
AV	15	EMERALD GREEN ARBORVITAE	THUJA OCCIDENTALIS "EMERALD GREEN"	8'-10' HT.	CONT.
LC	13	LEYLAND CYPRUS	CUPRESSUS LEYLANDII	8'-10' HT.	CONT.
SJ	39	SKYROCKET JUNIPER	JUNIPERUS SCOPULORUM	5'-6' HT.	CONT.
Y	77	DENSIFORMIS YEW	TAXUS X MEDIA DENSIFORMIS	3 GAL	CONT.
NH	28	NELLIE STEVENS HOLLY	ILEX "NELLIE R STEVENS"	3 GAL	CONT.
VB	56	ARROWWOOD VIBURNUM	VIBURNUM DENTATUM	5 GAL	CONT.
AZ	19	AZALEA	AZALEA	3 GAL	CONT.

VARIANCE TREE MITIGATION

TO COMPENSATE FOR THE REMOVAL OF THREE ONSITE VARIANCE TREES (131"), WE PROPOSE TO PLANT A TOTAL OF 33", OR 11 - 3" SUGAR MAPLE TREES

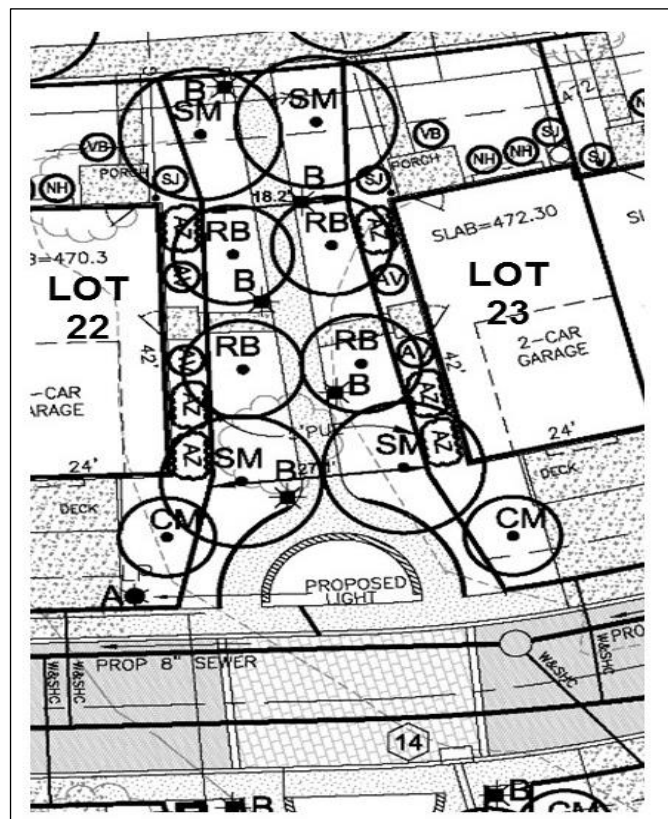
LEGEND

	PROPERTY LINE		EXISTING UNDERGROUND GAS LINES
	EXISTING CONTOUR		EXISTING UNDERGROUND ELECTRICAL LINES
	PROPOSED CONTOUR		EXISTING UNDERGROUND TELEPHONE / CABLE LINES
	LIMIT OF DISTURBANCE		EXISTING WOOD FENCE
	ROOF TOP DISCONNECT FLOW PATH		EXISTING WIRE FENCE
	TREE LINE		EXISTING RAIL FENCE
	EXISTING OVERHEAD LINES		PROPOSED SPOT GRADES
	EXISTING WATER LINES		PROPOSED LIGHT POLES
	EXISTING SEWER LINES		PROPOSED TREE/SHRUB 20 YR GROWTH DIAMETER
	EXISTING STORM DRAIN		PERMOUS CONCRETE SIDEWALK
			LED BOLLARD
			PLAYGROUND EQUIPMENT

Open Space and Amenity Areas

Technical Staff described the sidewalks and the open space and amenity areas proposed by the Applicant (Exhibit 49, pp. 12-13):

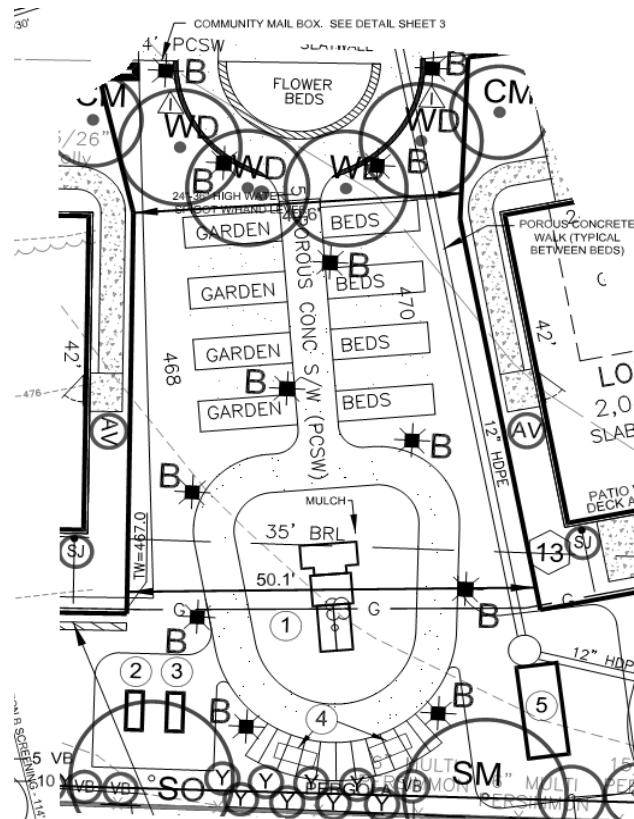
The Application includes a number of community amenities, including a sidewalk network and a central community gathering and recreation area. The community area (open space) begins as a linear corridor that stems from the shared use path on Redland Road and continues east between Lot 22 and Lot 23. The section of roadway that connects the east and west community areas will be constructed of brick pavers instead of asphalt which will clearly identify the pedestrian corridor and connect the community area. In addition to the paver walkway, each side of the private street will feature a larger flower bed and a radial two tier seat wall which will be clad in brick veneer and framed by the sidewalk.



Technical Staff also described the proposed play and garden areas (Exhibit 49, pp. 13-14). The illustration below the description is from Exhibit 41(d):

The primary common open space is oriented east to west on the Subject Property. Sidewalks will connect the sidewalk on Redland Road to a play area and community gathering area between Lot 29 and 30 via an internal sidewalk constructed of porous concrete. The gathering area will include a pergola, six raised

planted beds, and three log benches. The pergola will [be] approximately nine feet tall, 21 feet wide, seven feet deep and constructed of cedar and cellular PVC. The play area will be lined with mulch and includes an array of multi-generational recreation equipment including climbing boulders, log balance beam, log crawl tunnel, power lifter, and a saddle spinner (final location, number, make/model, and manufacturer subject to staff approval).



PLAY AREA DETAIL

SCALE: 1" = 10'

PLAY EQUIPMENT SCHEDULE

1	911-221	MINNIE MODULAR PLAY STRUCTURE	△
2	361-503	ZEBRA ALUMINUM SPRING RIDER	△
3	361-501	MUSTANG ALUMINUM SPRING RIDER	△
4	601-203	ALUMINUM PERMANENT PARK BENCH	△
5	DX-ROA 178B	SENTINEL PEAK ROCK	*
△ SPORTS PLAY EQUIPMENT WWW.SPORTSPLAY.COM			
* DYNAMO PLAYGROUNDS HTTP://WWW.DYNPLAY.COM			

The internal sidewalk system is further described in the Technical Staff report (Exhibit 49, p. 14):

The Applicant will construct a four-foot-wide continuous internal sidewalk network that outlines the private street. A five-foot-wide concrete sidewalk will be constructed along the frontage of both Garrett and Redland Roads. The Applicant will also be expanding the shoulder of Redland Road by five feet along the frontage to accommodate a five-foot-wide, on-road, bike lane recommended in the 2005 Bicycle Functional Master Plan. The Applicant will dedicate approximately 11,331 square feet (0.26011 acres) along the Property’s frontage as part of the subsequent preliminary plan, which will achieve the full right-of-way for Redland Road and associated Master Planned right-of-way improvements.

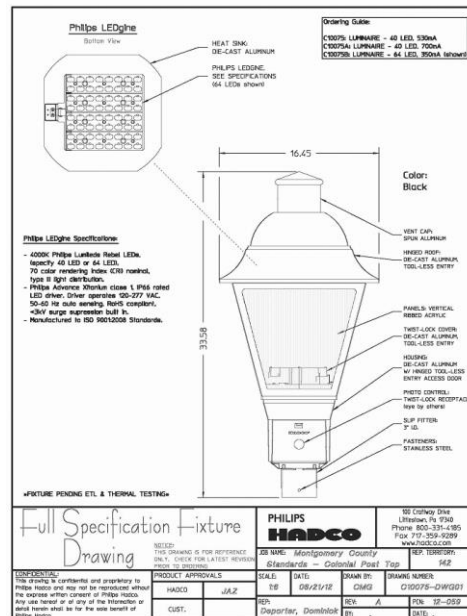
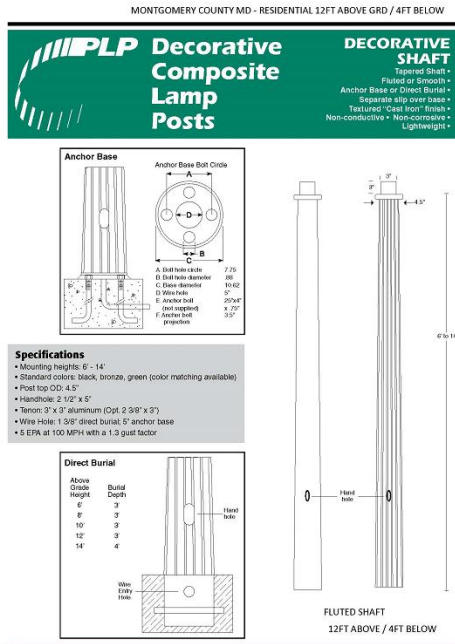
The internal sidewalk network will provide a defined pedestrian connection between the development and surrounding properties. The internal sidewalk will connect to the proposed five-foot-wide shared use path down to the intersection of Garrett Road and Redland Road which leads to Redland Par

The Applicant also provided a rendered landscape plan at the hearing (Exhibit 52), which shows the common open space in green. It is reproduced below:



Luminaire Schedule									
Symbol	Qty	Label	Arrangement	Lumens	Lum. Watts	LLF	Description		
	8	C1007S-48-350	SINGLE	3843	83.3	0.850	Post-Top, 48 LED's @ 350mA, Type III, Ribbed Panels, 12ft Pole		

Calculation Summary									
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min	Description	
Garrett Road	Illuminance	Fc	0.72	2.74	0.02	38.00	137.00	10ft Grid	
Garrett Road Sidewalk	Illuminance	Fc	0.82	1.43	0.02	28.00	71.50	10ft Spacing	
Proposed Drive	Illuminance	Fc	0.82	2.74	0.01	62.00	274.00	10ft Grid	



Technical Staff described the proposed lighting (Exhibit 49, p. 21):

The Applicant proposes seven pole mounted lighting fixtures to illuminate the Subject Property which will be Residential Colonial post-top, LED optics with Type III light distribution. The Applicant also proposes 17 bollard style lights specifically for pedestrian illumination along the walking path in the mews area. Each of the 17 pole mounted light fixtures will be installed at a height of 12-feet above ground and each of the 17 bollards will be 30-inches in height.

All of the pole mounted lights are LED fixtures with full cut-off to eliminate horizontal light cast. The photometric plan predicts that no light above 0.01 foot-candles will spill across any Property boundary which satisfies the requirements of Section 6.4.4.E. The lighting will be adequate, providing visibility to the areas for vehicular and pedestrian circulation during nighttime hours. The lighting will not have a negative impact to neighboring property owners with either direct light or light glare. The bollard lights are LED fixtures fitted with angled louvers to reduce horizontal light spread and concentrate the light in the immediate area around the bollard. The lighting output of the bollards do not appreciably increase the total lumens of the overall lighting plan and as a result their calculations were not include in the photometric plan.

Dean Packard, Applicant's civil engineer (and a principal in the Applicant LLC, Tr. 4) testified that the actual lighting from the site itself will not exceed the 0.1 foot candle level, although street lighting in the area, which is not subject to the 0.1 footcandle restriction, results in some readings above that figure on the photometric study. Tr. 112. Technical Staff noted that "The lighting proposed for the Property will provide safe and adequate illumination for vehicular and pedestrian circulation." Exhibit 49, p. 20.

The signage proposed for the site was depicted on one sheet of the Conditional Use Plan (Exhibit 41(c)), and it is reproduced below:



60" x 30" x 4" PAINTED MONUMENTAL SIGN

The sign will be located in the southwest corner of the site (the corner where Redland Road intersects with Garrett Road). Technical Staff describes the proposed sign and its relationship to the neighborhood as follows (Exhibit 49, pp. 21-22):

The Application proposes a painted monument style sign (5'w x 2 ½'h) at the southwest corner of the Property which will be anchored between two five-foot-tall faux stone pillars. The ground level monument sign will be at a scale and location that is consistent with the existing signage for similar residential subdivisions in the Neighborhood. The sign will be low to the ground, and constructed of masonry/stone veneer and wood. The sign will also be setback on the Property so as not to obstruct drivers views the intersection of Garrett Road and Redland Road. The dimensions of the proposed signage area [are] acceptable under Section 6.7.8. There are similar monumental signs in the Neighborhood. One to the north of the Subject Property, on the west side of Redland Road at its intersection with Roselyn Ave. The second is on the east side of Redland Road at its intersection with Roslyn Ave, which is constructed of wood. The proposed sign will be compatible with the existing character of the residential properties in the Neighborhood.

4. Operations

There is no operational component to the Design for Life – Townhouse Living conditional use because the statutory specifications of the use do not prescribe post-development operations, such as hours of operation or number of employees on site. Rather, the statutory provisions require that the design of the development make it accessible for persons of all ages and most physical conditions, and that it be located and designed with amenities that will also make it attractive and livable. As described by Applicant’s counsel during the hearing (Tr. 11):

The idea being that this is an integrated community where individuals and families with persons with mobility disabilities are not isolated in discreet communities, but live side by side in the mainstream, where everybody can live and visit in everybody else's . . . home.

The only specification in the Code provisions governing the Townhouse Living conditional use that does not go to design and location of the facilities is the last one (Zoning Ordinance §59.3.3.1.D.2.b.x.), which requires a condition of approval indicating that “. . . any property owner of the conditional use project must be prohibited from seeking a tax credit under Section 52-18U or Section 52-93(e). This prohibition does not apply to additional accessibility features that are installed post-occupancy and for which a property tax credit is requested.” Such a condition has been imposed in Part IV of this Report and Decision.

D. Public Facilities

Technical Staff reports that a Preliminary Plan of Subdivision will be required in this case. Exhibit 49, p. 26. Therefore, under Zoning Ordinance §59.7.3.1.E.1.f., it is the Planning Board, and not the Hearing Examiner, that must make a finding with regard to the adequacy of public services and facilities to sustain this development. Nevertheless, Technical Staff’s “preliminary assessment of the proposed development indicated that the Property will be served by adequate public facilities.” Exhibit 49, p. 26.

This conclusion is buttressed by a “Traffic Statement” (Exhibit 5) and a “Supplemental Traffic Statement” (Exhibit 40(e)), both prepared by Applicant’s transportation planner, Michael Lenhart. Mr. Lenhart provides the following information and opinion, in his Traffic Statement (Exhibit 5, pp. 2-3):

* * *

. . . The [Local Area Transportation Review] LATR Guidelines and the trip generation total shows that the proposed development will generate 9 AM peak hour trips (2 in & 7 out) and 16 PM peak hour trips (11 in & 5 out). Because the proposed Conditional Use development will generate fewer than 30 peak hour trips an LATR study is not required.

For these reasons and based on the analysis contained herein, it is my professional opinion that the minimal amount of site generated traffic will have no discernable impact on the critical lane volume at any of the nearby Redland Road intersections.

* * *

. . . In our professional opinion, internal circulation and access to Redland Road are appropriate for the proposed development and will provide safe and adequate vehicular circulation and emergency vehicle access for the proposed nineteen unit development.

In our professional opinion there will be sufficient on-site parking to accommodate the proposed Conditional use. Each townhouse will have a two-car garage and a driveway of sufficient size to accommodate a van or two automobiles. Additional parking is provided at various on-site locations and it is not anticipated that any off-site parking will be required.

* * *

Accordingly, it is our professional opinion, based on our analysis and consideration of applicable plans [and] guidelines that:

- The proposed Conditional Use will not cause undue harm to the neighborhood or result in any non-inherent adverse effects because of traffic, or a lack of parking.
- The proposed Conditional Use, Design for Life townhouse living development requires a mitigation fee equal to 25% of the transportation impact to mitigate the TPAR inadequacy in the Derwood Policy Area.
- The proposed Conditional Use, Design for Life townhouse living development will generate fewer than 30 peak hour trips, and is therefore exempt from the requirements of a LATR Study.

- There is adequate capacity on the surrounding road network to accommodate the site generated traffic.
- The internal circulation system is safe, adequate and efficient.

In his “Supplemental Traffic Statement” (Exhibit 40(e)), Mr. Lenhart opined that the turning movements generated by the proposed development and the Redland Local Park across Redland Road from the site would not result in any significant traffic issues due to low traffic volumes and the separation of about 120 feet between the development’s access drive on Redland Road and the park’s access. Mr. Lenhart reiterated these findings at the hearing. Tr. 135-141. Mr. Lenhart also testified that the Applicant is proposing to construct a five-foot bike path along the east side of Redland Road on the site’s frontage. Tr. 146-147.

Technical Staff agreed with Mr. Lenhart’s conclusion that the project is exempt from the LATR and noted that “The Application takes into consideration the necessary dedication and right-of-way improvements recommended in the master plans. At the time of preliminary plan, the Applicant will dedicate approximately 11,331 square feet along the Property’s frontage on Redland Road to accommodate the construction of a new sidewalk and BL-29.” Exhibit 49, p. 18.

Staff also indicated that public water and sewer are available and adequate to serve the development. Exhibit 49, p. 14. The site is in sewer category S-3 and water category W-3.

E. Environmental Issues

There do not appear to be any environmental issues in this case. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD No. 420152150) was approved for the subject property on June 23, 2015. Exhibit 19. As described by Technical Staff (Exhibit 49 p. 22),

The Property is within the Upper Rock Creek watershed, which is classified by the State of Maryland as Use IV watershed, and does not contain any steep slopes, streams, wetlands, floodplains, or Environmental Buffers. There are three specimen trees on the Property. The Property is not within Special Protection Area of Primary Management Area.

Forest Conservation:

The Applicant submitted a Revised Preliminary Forest Conservation Plan (PFCP) in Exhibits 42(a) and (b), and Technical Staff recommended its approval (Exhibit 49, p. 1), noting that the PFCP “conforms with the *Environmental Guidelines*.” Exhibit 49, p. 22. A tree variance was required in order to remove or impact three specimen trees on the site (Exhibit 49, p. 4), and the tree variance request was approved by the Planning Board as part of its approval of the associated Preliminary Forest Conservation Plan (PFCP). Tr. 14-15. The Board noted its approval of the PFCP in its letter to the Hearing Examiner dated October 7, 2016. Exhibit 50.

Stormwater Management:

The Applicant submitted Stormwater Management Concept Plan No. 280375 (Exhibits 43(a)-(d)) to the Montgomery County Department of Permitting Services – Water Resources Section for review. As described by Technical Staff (Exhibit 49, p. 14):

Three environmental site design stormwater management facilities will be installed to manage stormwater runoff; one micro-bioretenion facility and two landscaping infiltration facilities. A precast concrete retaining wall will be constructed in the rear of Lots 30-32 in order to achieve the necessary drainage to the proposed stormwater management facilities. Where the wall exceeds 30” a 42” high, a metal railing will be installed to eliminate potential for injury.

Applicant’s civil engineer, Dean Packard, opined in his Revised Engineering Report (Exhibit 40(d), p. 4):

In conclusion, from an engineering standpoint the merger of green site design and accessible building design coupled with ESD to the MEP stormwater management will result in a community that will serve the public interest of the citizens of Montgomery County. The environmental site design stormwater management will replace, restore and improve existing drainage conditions and reduce both the quantity of water runoff and the quality of water entering the streams.

Of course, an approved stormwater concept will be required as part of the preliminary plan review. Exhibit 49, p. 22. Based on this record, the Hearing Examiner finds that there are no environmental issues warranting rejection of this application.

F. Community Response

There have been no letters filed by the community with OZAH either in support or in opposition to this application. Technical Staff also reports no community correspondence regarding this application. Exhibit 29, p. 22. Moreover, no witnesses from the community appeared at the OZAH hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific to a particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a Townhouse Living-“Design for Life” conditional use, under Zoning Ordinance §59.3.3.1.D.2.b.

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

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner’s findings for each standard, are set forth below:² The major topics of discussion are further divided under the following headings:

1. Substantial Conformance with the Master Plan;

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

2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

E. Necessary Findings

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

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

Conclusion: Technical Staff advises that “There are no previous approvals on the Subject Property.” Exhibit 49, p. 23. Therefore, this subsection is inapplicable.

- 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;***³

Conclusion: This subsection requires an analysis of the standards of the Townhouse Medium Density (TMD) Zone (under the optional method)⁴ contained in Article 59-4; the use standards for a Townhouse Living-“Design for Life” conditional use contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 49, p. 1), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

1. Substantial Conformance with the Master Plan

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

³ The underlined language was added by the Council when the 2014 Zoning Ordinance was amended effective December 25, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

⁴ Although the subject site is located in the RE-1 zone, Zoning Ordinance Section 59.3.3.1.2.b., the provision which permits townhouse living as a conditional use, requires that “the density limitations and development standards of the TMD zone under optional method (59.4.4.12.C) apply [to this type of development] in spite of any other limitations in this Chapter.”

The subject site is located within the area covered by the 2004 Upper Rock Creek Area Master Plan. Applicant's land planner, Bill Landfair, testified that the Master Plan contains no site specific recommendations for the subject property, other than its zoning category. Tr. 40. He noted that the Master Plan (at p. 35) stresses the need for the provision of affordable housing and assistance to those with diverse housing needs, such as the elderly, the physically disabled, and those with mental illness. Tr. 41. The plan also emphasizes preserving environmental resources, preserving the fabric of the existing communities, and enabling environmentally sensitive new development. In Mr. Landfair's expert opinion, "this project is consistent with those goals." Tr. 42. He observed that the construction of the ICC had a profound effect on the character of the immediate neighborhood to the east and to the south of the property. It is no longer a cohesive RE-1 residential wedge, but instead is now two separate areas with distinctly different characteristics. Mr. Landfair concluded that the proposed Design for Life use will comply with the purposes and intent of the Master Plan, specifically the land use and housing goals, with an emphasis on accessibility for a broad range of residents. Tr. 42.

Technical Staff also opined that the proposed development would be consistent with the goals of the 2004 Upper Rock Creek Area Master Plan (Exhibit 49, pp. 16-17):

The Master Plan focused on preserving environmental resources in the sensitive Upper Rock Creek watershed, maintaining the fabric of existing communities and enabling environmentally sensitive new development. To achieve a balance among these objectives, the Master Plan recommended low density cluster development in the area north of Muncaster Mill Road, allowing public sewer service to large developing properties and creating a Special Protection Area to help preserve natural resources. An environmental overlay zone, with an eight percent limit on impervious surfaces, helped to implement these recommendations. The Upper Rock Creek Master Plan did not include in the Special Protection Area the portion of the watershed south of Muncaster Mill Road, which is largely developed and includes the Subject Property. [Emphasis added.]

The Master Plan also endorsed the County's Housing Policy, which "*stresses the provision of affordable housing, or assistance to those with diverse housing needs, such as the elderly, the physically disabled and those with mental illness, and of equal opportunity in seeking housing.*" (MP, p. 35) The Master Plan recognized that

preservation of natural resources and low density residential character limited the universe of housing options. . . .

The Master Plan notes that “*land along Needwood and Redland Roads was reclassified to half-acre zones—in part because trunk sewer lines had already reached the area—and residential subdivisions were approved at this density.*” (MP, p 3) . . . The RE-1 Zone placed on the Property and other land along Redland Road is consistent with a longstanding planning vision for this part of the Upper Rock Creek watershed. The Master Plan does not forbid conditional uses in this area, nor did it foresee the introduction of new uses that could further accomplish the housing goals recommended in the Master Plan.

The project falls under the category of Townhouse Living, and is a limited or conditional use in the RE-1 Zone. In general, conditional uses are considered appropriate when subject to an additional layer of regulatory scrutiny. In this case, the focus is on accessibility for broad ranges of residents. With conformance to the conditional use standards and recommended conditions of approval, this use can be consistent with the Master Plan’s land use and housing goals. It will enable the integration of additional housing in Upper Rock Creek suitable for people with special needs, an important objective of the Master Plan.

Technical Staff concluded that “the proposed Conditional Use substantially conforms to the recommendations of the Master Plan.” Exhibit 49, p. 25. The Planning Board adopted Technical Staff’s analysis on this point, stating that “the use is consistent with the goals and recommendations of the 2004 Upper Rock Creek Area Master Plan.” Exhibit 50, p. 2. There is no contrary evidence in this case, and the Hearing Examiner agrees with the analysis of Mr. Landfair, Technical Staff and the Planning Board. Based on this record, the Hearing Examiner finds that the proposed use substantially conforms with the recommendations of the 2004 Upper Rock Creek Area Master Plan.

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

Conclusion: This provision is a mix of Master Plan analysis and compatibility considerations. The Master Plan issues have been discussed in connection with the previous provision, and the Hearing Examiner concluded that the proposed use substantially conforms to the Master Plan’s recommendations. Compatibility is a question that crosses a number of topics, including the

nature of the surrounding uses; any potential adverse impacts; the design of the buildings housing the use, including height, density and architecture; traffic generation; and other issues to be discussed in other sections below.

Applicant's land planning expert, Bill Landfair, addressed the harmony issue in his testimony (Tr. 43-45):

Yes, we believe it will be harmonious with the character of the surrounding neighborhood, and nor will it be inconsistent with the Master Plan. . . . [A] total of 19 townhouses are proposed, this in a neighborhood that is, not exclusively, but primarily single-family detached homes. Through the numerous reiterations of the plan we now have a community with buildings that have massing and orientation towards the adjacent roads with the residential building fronts, and the rear-loaded parking, all of which will contribute to being in harmony with the surrounding area. This including the rear-loaded parking will ensure that the majority of the parked vehicles will be hidden from the surrounding properties, adjacent properties; a sidewalk network will be established with street trees along the rights-of-way, this will enhance pedestrian mobility, which will be a benefit to the larger community, as well. As [Applicant's architect] Mr. Mulholland will testify, the building massing with generally three-unit sticks, units per row, creates multiple breaks in the building facades, which allows for greater opportunities for landscaping and hardscape and pedestrian connections. And as Mr. Lenhart, the Transportation Planner, will note, only nine new peak hour trips will be generated by this use during the morning peak period, and 16 new trips in the evening peak period. . . . So, in conclusion, I do find that this project will be in harmony with the surrounding neighborhoods . . . [and] we don't believe it will alter the character of the surrounding neighborhood.

Mr. Landfair also noted that the proposed development “will be compatible with the surrounding neighborhood.” Tr. 50. His opinion is buttressed by the testimony of the Applicant's architect, Steve Mulholland, who stated that (Tr. 119-120),

to illustrate compatibility with the neighborhood as part of the conditional use we proposed designs that use indigenous materials from the neighborhood, they have brick first floors throughout; and lat siding second floors; the buildings are three stories tall; they are simple gable roof, very common in the neighborhood.

Mr. Mulholland used conceptual elevations to illustrate the exterior design of the proposed units (Exhibits 40(h)(i) – 40(h)(iv)), and those elevations are reproduced on page 18 of this Report &

Decision. He concluded that, in his opinion, the design of the exteriors will be compatible with the neighborhood. Tr. 129.

Technical Staff also found that the proposed development would be compatible with the neighborhood (Exhibit 49, p. 25):

The Application is harmonious with and will not alter the character of the surrounding Neighborhood in a manner inconsistent with the Master Plan. The Application includes a total of 19 townhouses, in a Neighborhood that is predominantly but not exclusively one-family detached dwellings. The orientation of the townhouses and the proposed building massing will activate the two public roads with residential building fronts and the rear loaded parking on the units fronting on both roads will conceal the majority of parked vehicles which is consistent with the expectations of a residential area. The Applicant will also establish a sidewalk network and install street trees within the right-of-way of Redland Road and Garrett Road for the length of the Property frontage. This will enhance pedestrian mobility and provides additional tree canopy.

The proposed massing of the buildings with only three units per row creates multiple breaks in the building façade that provide visual relief and provide opportunities for landscaping and to provide pedestrian connections between the site's interior and the public sidewalks along Redland Road and Garrett Road. The ends of the units will have multiple windows and will have a side access door in addition to the front door, which will provide visual interest to the sides of the buildings. Compatibility with the immediate surrounding land uses is harmonious with the existing character and uses. The Property has unimproved state owned right-of-way to the north and to the east and the Applicant is providing landscaped screening consistent with the requirements of Section 59.6.5.3 for townhouses adjacent to unimproved land in a residential zone. On the opposite side of Redland Road is the Redland Road Local Park which has tennis courts and parking located closest to the road. The only residential dwellings in the immediate vicinity of the site are three one-family detached homes on the south side of Garrett Road. One of these dwellings has its side facing Garrett and fronts on Redland Road, the other two dwellings front on Garrett, but have their front doors and driveways just east of where the subject property stops, and are actually directly opposite the state owned right-of-way located east of the Application.

The Application itself only generates nine new peak-hour trips during the morning peak and 16 new peak-hour trips during the evening peak, which is expected to have minimal impacts to the existing road network.

The existing neighborhood contains existing townhomes on the west side of Redland Road just north of the Inter-County Connector, and townhomes on the east side of Redland Road prior to Muncaster Mill Road. These dwellings however are the only townhomes currently proposed in the Neighborhood that are being

constructed to meet or exceed the Level II Accessibility Standards established by Section 52-18T and detailed in Section 52-18U. From the exterior most of the accessibility features will be nearly undetectable as most of the design requirements apply to the interior of the dwellings.

Conclusion:

Based on the undisputed evidence, the Hearing Examiner finds that the proposed use will be harmonious and compatible with the neighborhood and will not “alter the character of the surrounding neighborhood,” which is the question posed by this provision. There is one other compatibility issue which arose in this case regarding screening along the northern border of the site. That issue will be discussed in Part III.D. of this Report and Decision in connection with the screening requirements of Article 59.6 of the Zoning Ordinance. As noted there, the Applicant and Staff agree that although the screening to be provided along the northern property line is not as deep as called for in the Zoning Ordinance, the proposed screening will be adequate and compatible with the area. Exhibits 61 and 62.

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;

Conclusion: In response to this subsection, Technical Staff reports (Exhibit 49, p. 26):

. . . There are three approved conditional uses within the defined Neighborhood; S-809 approved in 1981 to expand an existing swim center, S-1441 approved in 1987 for a child day care, and S-1868 approved in 1991 for an accessory apartment. Only S-1441 is also located along Redland Road, the other two are within separate subdivisions. The nature of the existing special exceptions in the Neighborhood are residential in character as a home operating child care facility and an accessory apartment, and are not located in immediate proximity to the subject property.

Because the proposed conditional use is also residential in character, Staff concluded (Exhibit 49, p. 26), “Approving the Application will not increase the number, intensity or scope of conditional

uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.” The Hearing Examiner agrees with Staff’s finding that the proposed conditional use, when evaluated in conjunction with existing and approved conditional uses, will not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely.

Moreover, as specified in the last clause of the provision, “a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area.”

2. Adequate Public Services and Facilities

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

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

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

Conclusion: According to the statutory provisions quoted above, the Hearing Examiner is not required to make a finding regarding the adequacy of public services and facilities (APFO) in this case because a preliminary plan of subdivision will be required. It is thus the Planning Board that

is charged with the responsibility of making the appropriate APFO findings. Technical Staff agreed and so noted in their report (Exhibit 49, p. 26):

If the Conditional Use is approved, a Preliminary Plan will be required in order to record the proposed lots on a record plat. The Planning Board will review the preliminary plan to determine that the development will be search by adequacy of public facilities, including schools, police, fire protection, water, sanitary sewer, public roads and storm drains. The Hearing Examiner is not required to make a finding on the adequacy of public facilities as part of this Application. . . .

Nevertheless, we have discussed some public facility issues in Parts II.D. and E. of this Report and Decision because traffic and storm drainage issues can have impacts on compatibility with the neighborhood. In any event, Staff's preliminary assessment of the proposed development indicated that "the Property will be served by adequate public facilities" (Exhibit 49, p. 26), and there is no contrary evidence in this record.

3. No Undue Harm from Non-Inherent Adverse Effects

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Inherent adverse effects are "adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations." *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "adverse effects created by physical or

operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the harm caused by the adverse effects would be “undue.”

The Hearing Examiner must assess whether any of the potential harms listed in this provision will actually occur, and if so, whether they will result, at least in part, from non-inherent adverse effects. If both of these questions are answered in the affirmative, the Hearing Examiner must then determine whether any of these purported harms are “undue” within the meaning of the Zoning Ordinance.

Technical Staff listed the following physical and operational characteristics that are necessarily associated with (*i.e.*, inherent in) a Design for Life Townhouse Community conditional use (Exhibit 49, p. 27):

1. Increase in traffic;
2. Increase in impervious surface;
3. Increase in population density; and
4. Increase in light glare.

To this list, the Hearing Examiner would add the following inherent characteristics of this type of use:

5. Townhouse buildings meeting Level II Accessibility Standards;
6. Additional parking; and
6. Increase in local activity and noise consistent with a residential community.

The Hearing Examiner agrees with Staff’s finding that the adverse effects that are inherent in this proposed use are similar to the adverse impacts associated with any increase in residential density, in that “[t]here is nothing unique about the road access, environment, or physical geography of the property that would create a non-inherent effect for constructing townhouse dwelling units.”

Exhibit 49, p. 27. Technical Staff also observed the following (Exhibit 49, p. 27):

. . . The surrounding properties to the north and east in State ownership, and to the west in County ownership serve to minimize impacts to the existing residential dwellings in the Neighborhood. The proposed Conditional use will not create a situation that will disrupt the use, peaceful enjoyment, or negatively affect the economic value or development potential of abutting and confronting properties or in the neighborhood. Building massing with only three to four units per townhouse row, architecture including building elements traditionally used on detached dwellings, and landscaping all help minimize any adverse changes in views for motorists driving on Redland Road. There are no aspects of the proposed development that will affect the health, safety or welfare of the neighboring residents, as the proposed development is a residential use.

Based on these findings, Staff concluded that “The Application will not cause undue harm to the Neighborhood as a result of a non-inherent adverse effects alone or in combination of inherent and non-inherent adverse effects.” Exhibit 49, p. 27.

The Applicant’s land planner, Bill Landfair, agreed that there would be no non-inherent adverse effects from the proposed use (Tr. 48-49):

There are seven commonly held characteristics to consider when analyzing the inherent and non-inherent effects of a conditional use, these are size, scale, scope, light, noise, traffic, and the environment. And as applied to this Design for Life community we believe the inherent physical and operational characteristics include, one, an increase in the residential density and the resulting massing of buildings necessary to accommodate that density; two, an increase in the impervious area necessary for parking and driveways; three, an increase in lighting to ensure safety and security for walkways and parking areas; and four, an increase in traffic resulting from residents and visitors. We believe the physical and operational characteristics of this community will be typical of similarly sized residential projects. . . .

There's nothing unique about the road access, the environmental conditions, or the physical geography of the property that would create a non-inherent affect as a result of this proposed project. Adjoining properties to the north and east are in State ownership; across Redland Road to the west it's in County ownership, it's a local park; all this will help serve to minimize the impacts on nearby residential buildings in the neighborhood. With respect to the project itself, the building massing, the architecture with its traditional design elements, and the landscaping will all help to mitigate the view of the project along Redland Road. As such, we believe there are no aspects of this development that will affect the health or the safety or the welfare of neighboring residents. [Emphasis added.]

The Hearing Examiner agrees with Technical Staff and Mr. Landfair. The proposed development should have no physical or operational characteristics that are different from a townhouse residential community of comparable size, except that it will include an accessibility component which is an inherent characteristic of this type of conditional use (in fact, it is its *raison d'être*). Such an inherent characteristic should be a benefit to the surrounding neighborhood, not an adverse effect. There is no evidence that the proposed use will produce any non-inherent adverse effects in any of the areas listed in this provision of the Zoning Ordinance. The Hearing Examiner therefore concludes that the proposed use “*will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the . . . categories* [listed in §59.7.3.1.E.1.g].

4. Compatibility with the Neighborhood

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.

Conclusion: Zoning Ordinance §59.7.3.1.E.2. requires that any structure “to be constructed, reconstructed, or altered” in a Residential Detached Zone “be compatible with the character of the residential neighborhood” in which it is located. The question posed by this provision is similar to the one raised by Zoning Ordinance §59.7.3.1.E.1.d., above, which asked whether the proposed use will be harmonious with the neighborhood or would alter its character. In response to that question, the Hearing Examiner found that the proposed use would not alter the residential character of the neighborhood and that it would be compatible with the residential neighborhood. The Hearing Examiner therefore also now finds that the proposed use will be compliant with Zoning Ordinance §59.7.3.1.E.2.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the

use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, meets the standards required for approval and will be compatible with nearby properties.⁵

B. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the applicable zone, as specified in Article 59.4 of the Zoning Ordinance. In this case, the applicable zone is the Townhouse Medium Density (TMD) Zone (under the optional method).⁶

Conclusion: Staff included a table comparing the minimum development standards of the TMD Zone (under the optional method) to what is provided in the conditional use plan. Exhibit 49, p. 15. It is reproduced below, excluding the Parking Standards and the Open-Space Width Standards, which are addressed in Part III.D. of this Report and Decision, since they are established in Article 59.6, not Article 59.4:

Development Standards for the R-90 Zone TMD Zone Option Method of Development

Development Standards	Required/Allowed	Proposed/Provided
Dimensions		
Tract Area	2 acres*	2 acres
• Usable Area (Min.)	20,000 S.F.	75,872 S.F.
Density (Max units/usable area)	26 units	19 units
Common Open Space (Min.)		
• Percent of Usable Area	20% (15,174 S.F.)	31.02% (23,631 S.F.)**
Minimum Lot Area	800 S.F.	1,872 S.F.
Lot width at front building line	24 ft.***	24 ft.
Lot width at front lot line	14 ft.	24 ft.

⁵ As previously noted, §59.7.3.1.E. contains six subsections (E.1. though E.6.), but only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application.

⁶ Although the subject site is located in the RE-1 zone, Zoning Ordinance Section 59.3.3.1.2.b., the provision which permits townhouse living as a conditional use, requires that “the density limitations and development standards of the TMD zone under optional method (59.4.4.12.C) apply [to this type of development] in spite of any other limitations in this Chapter.”

Frontage on street or open space	Required	Provided
Coverage		
<ul style="list-style-type: none"> Maximum Site Coverage 	40%	26.02% (19,740 S.F.)
Minimum Building Setback		
<ul style="list-style-type: none"> Front (from public street) Front (from private street or open space) Side street setback Rear setback ally Side yard setback, abutting property not in application (MDSHA to the north) Rear setback, abutting property not in application (MDSHA to the east) 	10 ft. 4 ft. 5 ft. 4 ft. 17 ft. 35 ft.	12 ft. 22 ft. NA NA 17 ft. 35 ft.
Maximum Building Height	40 ft.	39 ft. max.

[* The minimum tract area is established in Zoning Ordinance Section 59.3.3.1.2.b.vi.] . . .

** [Technical Staff’s note regarding the width of the open space is discussed in Part III.D. of this Report and Decision because it addresses the General Development Standards of Article 59.6, not the Zone Standards of Article 59.4.]

***Minimum lot width at front building line was established as part of the Conditional Use because Site Plan is not required.

As can be seen from the above Table, the application comports with the current development standards of the TMD Zone (under the optional method), and the Hearing Examiner therefore finds that the application is in compliance with Article 59.4 of the Zoning Ordinance.

C. Use Standards for Townhouse Living, §59.3.3.1.D.2.b.

The specific use standards for approval of a residential care facility are set out in Section 59.3.3.1.D.2.b. of the Zoning Ordinance.

D. Townhouse Living

1. Defined

Townhouse Living means 3 or more dwelling units in a townhouse building type.

2. Use Standards

a. Where Townhouse Living is allowed as a limited use, it must satisfy the following standards:

* * *

b. Where Townhouse Living 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. All buildings and structures must meet or exceed the Level II Accessibility Standards established by Section 52-18T and detailed in Section 52-18U.

Conclusion: The design of the proposed development is discussed at some length in Part II.C. of this Report and Decision. Applicant's architect, Steve Mulholland, described the design of the proposed units and testified that the proposed development would meet the prescribed Level II Accessibility Standards, including no-step, wide entries, elevators and turn-around areas for wheel chairs. Tr. 122-129.

Moreover, a condition is imposed in Part IV of this Report and Decision requiring the Applicant to satisfy this provision by providing Level II Accessibility Standards throughout the development. Technical Staff notes that the Applicant will be required to satisfy the Department of Permitting Services that the development meets or exceeds these standards prior to the issuance of a building permit. Exhibit 49, p. 23.

Based on this record, the Hearing Examiner finds that this provision will be satisfied.

ii. Public bus service must be available on a road abutting the site.

Conclusion: Technical Staff reports (Exhibit 49, p. 23):

Public bus service is provided along Redland Road including two Montgomery County Ride-On routes. Ride-On Route 53 provides weekday rush-hour service between the Shady Grove and Glenmont Metro Stations by way of Olney, and Ride-On Route 57 provides 7 days a week service between Shady Grove Metro and Lake Forest Mall in Gaithersburg, by way of Redland, Montgomery Village and Old Town Gaithersburg.

Since Redland Road is a street abutting the site, the Hearing Examiner finds that public bus service will be available on a road abutting the site, and therefore this provision has been satisfied.

iii. A Metro Station must be within 2 miles of the site.

Conclusion: Technical Staff reports that “The Subject Property is located 1.7 miles from the Shady Grove metro station and is accessible by both Ride-On bus and by private vehicle.” Exhibit 49, p. 23. Since a Metro station is located 1.7 miles from the site, the Hearing Examiner finds that this provision has been satisfied.

iv. Public recreation or park facilities must be within 1,000 feet of the site.

Conclusion: As discussed in Part II. B. of this Report and Decision, the Redland Local Park is directly across Redland Road from the subject site. Technical Staff notes that the park “includes a walking trail, tennis courts, a pavilion, a playground and a rectangular ball field.” Exhibit 49, p. 24. Based on this undisputed evidence, the Hearing Examiner finds that public recreation and park facilities are located within 1,000 feet of the site and that this provision has been satisfied.

v. A grading plan must demonstrate that the post construction site will have a slope less than 5%.

Conclusion: Technical Staff indicates that the Applicant submitted a grading plan which “verifies that the maximum slope will be at or less than 5% post construction on the Subject Property.” Exhibit 49, p. 24. Land Planner Bill Landfair testified that “the grading for this project will have a slope of less than five percent.” Tr. 23. Applicant’s civil engineer, Dean Packard, testified that in order to meet this grading requirement, the Applicant had to locate the access driveway to the site three feet below the level of the abutting property to the north and utilize a retaining wall adjacent to the northern property line. Tr. 93-94. Based on this undisputed evidence, the Hearing Examiner finds that the Applicant has provided Technical Staff with a grading plan demonstrating that the post construction site will have a slope less than 5%, and that this provision has been satisfied.

vi. The minimum tract size is 2 acres.

Conclusion: Applicant's Conditional Use Plan (Exhibit 41(a)), sealed and certified by a licensed civil engineer, Dean Packard, indicates that the total tract area of the site is 87,203 square feet, which is 2.00191 acres. Based on this undisputed evidence, the Hearing Examiner finds, as did Technical Staff (Exhibit 49, p. 24), that the subject site meets the 2-acre minimum prescribed by this provision.

vii. The density limitations and development standards of the TMD zone under optional method (Section 4.4.12.C) apply in spite of any other limitation in this Chapter.

Conclusion: As verified by Technical Staff (Exhibit 49, p. 24) and discussed in Part III. B. of this Report and Decision, the proposed development meets the density limitations and development standards of the TMD zone under optional method (Section 4.4.12.C). Based on this undisputed evidence, the Hearing Examiner finds that the requirements of this provision have been satisfied.

viii. Reducing the number of required parking spaces through a parking waiver under Section 6.2.10 is prohibited.

Conclusion: As indicated by Technical Staff, "The Applicant is not requesting a parking waiver and is providing more than the minimum parking for a townhouse dwelling." Exhibit 49, p. 24. The number of parking spaces to be provided will be further discussed in Part III.D.1. of this Report and Decision. Based on the undisputed evidence, the Hearing Examiner finds that the Applicant will provide more than the minimum number of parking spaces required for this use and that this provision has been satisfied.

ix. A minimum of one parking space for each dwelling unit must satisfy the dimensional standards for handicapped-accessible vehicle parking and a minimum 8 foot wide access aisle required by the State.

Conclusion: Applicant's land planner, Bill Landfair, testified that "Each townhouse will be provided with one handicap accessible parking space, which will include an eight-foot side access

aisle as required.” Tr. 33. Technical Staff confirms this assertion, reporting that “Each dwelling is providing for one handicapped-accessible parking space, including an 8-foot-wide access aisle in each unit’s integrated garage.” Exhibit 49, p. 24. Based on this undisputed evidence, the Hearing Examiner finds that the proposed development will include one handicapped-accessible parking space and the required access aisle, as called for by this provision, and that this provision has thus been satisfied.

x. As a condition of approval, any property owner of the conditional use project must be prohibited from seeking a tax credit under Section 52-18U or Section 52-93(e). This prohibition does not apply to additional accessibility features that are installed post-occupancy and for which a property tax credit is requested.

Conclusion: To satisfy this provision, the Hearing Examiner has imposed the following condition in Part IV of this Report and Decision:

No property owner of the conditional use project may seek a tax credit under Montgomery County Code Section 52-18U or 52-93(e), except for tax credits for additional accessibility features installed post occupancy, as described in Montgomery County Code, Section 59.3.3.1.D.2.b.

Based on this condition, the Hearing Examiner finds that the terms of this provision have been satisfied.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, open space, screening, landscaping, lighting, and signs. Under the amendments to Section 59.7.3.1.E.1.b. of the Zoning Ordinance, effective December 21, 2015, the requirements of these sections need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.”⁷ The applicable requirements, and whether the use meets these requirements, are discussed below. The following

⁷ The 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), was amended effective December 25, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

Divisions must be addressed in this case: Division 6.2 Parking, Queuing and Loading; Division 6.3 Open Space and Recreation; Division 6.4 General Landscaping and Outdoor Lighting; Division 6.5 Screening Requirements; and Division 6.7 Signs. The proposed use and Zone do not require the review of Division 6.1 for Site Access or Division 6.6 Outdoor Storage.⁸

1. Parking, Queuing and Loading

Conclusion: Parking, queuing and loading standards are governed by Division 6.2 of the Zoning Ordinance. Per Section 59.6.2.4.B, the required number of parking spaces for the proposed use is 2 per townhouse lot, one of them being a handicapped accessible space, per Section 59.3.3.1.D.2.b.ix. Since there will be 19 townhouse lots on the subject site, a minimum of 38 parking spaces is called for. The Applicant proposes to provide 3 spaces per townhouse lot, one of them being a handicapped accessible space as required, for a total of 57 parking spaces on individual lots. An additional 3 parking spaces for visitors are located on the common internal roadway of the development. These figures are reflected in the following table (a clarified version of the final portion of Technical Staff’s Table on page 15 of Exhibit 49):

Parking Requirements (59.6.2.4)	Required	To be Provided
<ul style="list-style-type: none"> • Handicap accessible spaces per lot 	1 space	1 space per lot
<ul style="list-style-type: none"> • Total spaces per lot (including handicapped) 	2 spaces	3 spaces X 19 lots
<ul style="list-style-type: none"> • Extra Guest parking (whole development) 	0	3 spaces
Total Parking Spaces	38 spaces	60 spaces

Technical Staff found that the Applicant’s plans satisfy the parking space standards and that other standards set forth in Division 6.2 are inapplicable (Exhibit 49, p. 18):

⁸ Division 6.1 (Site Access) need not be addressed because Zoning Ordinance §59.6.1.2 provides that it only applies to “development in the Residential Multi-Unit, Commercial/ Residential, Employment, Industrial, and Floating zones . . .” The subject site is not in any of the listed zones. Division 6.6 (Outdoor Storage) does not apply because no outdoor storage is proposed in this case.

The Applicant is providing parking consistent with the number and design requirements of Section 59.6.2. The Applicant is required to provide two parking spaces per townhouse because the Subject Property is not in a designated parking lot district. The Application provides for a total of three spaces per unit, with one handicap accessible space located in an integrated garage and room for two additional vehicles in each unit's driveway. There are another three unassigned visitor spaces in two different locations within the community. The driveways will be a minimum of 18 feet deep and 17 feet as specified in the table in Section 59.6.2.5.E.1, and the garage is adequately sized to allow for a standard size vehicle with a handicap ramp to park and operate.

The landscape and lighting requirements described in Section 59.6.2.9 do not apply to this Application because no parking lot facility is proposed. The proposed use does not have any queuing design standards and does not require off-street loading spaces per Section 59.6.2.7 and 59.6.2.8

Based on this record, the Hearing Examiner finds that the Applicant's plans meet all the applicable parking requirements specified in the Zoning Ordinance. There are no applicable queuing and loading standards, nor are bicycle spaces required for townhouse units per Section 59.6.2.4.C.

2. Open Space and Recreation

Conclusion: Open Space and Recreation standards are governed by Division 6.3 of the Zoning Ordinance. Per Section 59.6.3.5, Common Open Space is required for any optional method development in a Residential zone. As discussed in Part III.B. of this Report and Decision, the Applicant's proposal for the amount of Common Open Space (31.02% -- 23,631 square feet) more than meets the minimum requirements of the applicable TMD Zone, optional development standards (20% -- 15,174 square feet).

However, Section 59.6.3.5.B. also provides locational and dimensional standards:

B. Design Requirements

- 1. Common open space must be located in a central position or central positions in the neighborhood bordered by streets or building lots. It may be public or private. Common open space may also be placed in a location taking advantage of an important adjacent natural feature or open space.*

2. *The minimum width for any required common open space is 50 feet unless the deciding body grants an exception for items such as a trail easement, a mid-block crossing, or a linear park, by finding that its purpose meets the intent of Division 6.3.*
3. *A minimum of 50% of the required common open space must be in one contiguous area or only separated by a residential street. Any other areas must be a minimum of 2,000 square feet each and connected by sidewalks, paths, or trails.*

It is undisputed that the proposed open space meets all requirements of this provision except for the 50-foot width requirement of Section 59.6.3.5.B.2, which it does not meet, as can be seen in the diagrams reproduced on pages 21-23 of this Report and Decision. The width in these central common open space areas ranges from about 20 feet to 50 feet. Section 59.6.3.5.B.2, does permit the deciding body to grant an exception if it finds that “its purpose meets the intent of Division 6.3,” which is to “provide adequate light, air, circulation, and recreation and encourage preservation and enhancement of natural resources. . . .” Moreover, under Zoning Ordinance Section 59.7.3.1.E.1.b. as amended, the requirements of these sections need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.”

The Applicant’s land planner, Bill Landfair, testified that in his expert opinion, the proposed development would be compatible regardless of whether or not it complies with the width requirements for open space. Tr. 35-36. Moreover, Technical Staff opined that the proposed common open space arrangement meets the intent of Division 6.3 regardless of the fact that it is not 50 feet wide throughout. As stated by Technical Staff in the first note to the Development Standards Table of its report (Exhibit 49, p. 15):

**The proposed common open space does not entirely meet the 50-foot minimum width requirement of Section 6.3.5.B.2 and requires an exception be granted by the deciding body. The width ranges from 18 feet at the west to 50 feet at the west (widest point). Although the space does not meet the width requirement, Staff believes that an exception is warranted because the open space meets the intent of Division 6.3. As described on page 13 of this report, the proposed common space meets the intent because it is centrally located within the development, provides a break between the individual rows of townhouses, [and] provides passive and active*

recreation including seating, a pergola, accessible garden beds and specialty play equipment designed for those with disabilities. The space is well connected with sidewalks and will be a welcoming space for visitors and residents.

The Hearing Examiner agrees with both Technical Staff and Mr. Landfair, and he finds that the proposed arrangement of common open space both meets the intent of Division 6.3 and would be compatible with the neighborhood. As the “deciding body,” the Hearing Examiner hereby grants an exception to the width requirement of Section 59.6.3.5.B.2, and finds that compliance with the width standard is not necessary to ensure compatibility.

3. Site Landscaping and Screening

Division 6.4 of the Zoning Ordinance sets minimum standards for site landscaping, which are intended to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” §59.6.4.1. Section 59.6.5.3.A.1. provides that “*Screening is required along a lot line shared with an abutting property that is vacant or improved with an agricultural or residential use.*”

The proposed landscaping and screening for the subject site are shown in the Landscape and Lighting Plan (Exhibits 41(d), (e) and (f) and Exhibit 52), reproduced on pages 19-23 of this Report and Decision. There is no issue with regard to most of the landscaping and screening, but along about half of the northern property line, the difference in the grade between the abutting property and the subject site’s driveway required the use of a retaining wall, which narrowed the available space for screening. Therefore, in that one area, the width of the screening does not quite meet the screening width standards for townhouses set forth in Zoning Ordinance §59.6.5.3.C.4 or the screening width standards for conditional uses set forth in §59.6.5.3.C.7.⁹ As explained by Technical Staff in its initial report (Exhibit 49, pp. 19-20):

⁹ The Applicant argues that the width provision is not applicable in this case because this type of conditional use applies the optional method standards of the TMD Zone, which the Applicant contends do not require an 8-foot wide

The Applicant has submitted a Landscaping Plan as part of their Application. The landscaping on the Subject Property serves primarily to screen the Property from the surrounding uses. The proposed landscaping meets the requirements under Section 6.4.3 in regards to the size and height of canopy trees, understory trees and shrubs.

Screening is required along the north and eastern property lines. Staff has determined that the landscape screening requirements along the northern Property line from the entry off of Redland Road to approximately 145-feet along the Property line meet the requirements under Section 6.8.1, Alternative Method of Compliance.

* * *

The width of the screening area along the northern Property line is narrower than either of the standard panels in Section 6.5.3.C.4 due to the unique nature of the Conditional Use and the restrictive grading required to meet ADA and vehicle access. The screening area is three feet wide¹⁰ and approximately two to three feet below the grade of the adjoining MDSHA property.

The Property is required to be graded to five percent or less and provide at least one no-lip entrance to each townhouse in order to meet the townhouse living conditional use requirements. In order to meet those requirements, the Applicant will install a 30-inch high precast concrete retaining wall which will take up some of the existing grade along the northern Property line. This leaves a three-foot-wide planting space to install the landscape screening materials required under Section 6.5.3. The Applicant proposes to install a continuous row of short evergreen shrubs and three canopy trees within this area. Staff has determined that due to the unique site characteristics and development constraints that the screening requirements under Section 6.5.3 cannot be met and that the alternative design satisfies the intent of Section 6.5. which is to ensure appropriate screening between different building types and uses. [Emphasis added.]

The screening requirements for the remainder of the Property perimeter are identified in Section 6.5.3.A and 6.5.3.C.4 which establish the need to screen the Subject Property from the adjoining lots to the east and the northeast. There are two options for establishing adequate buffer under Section 6.5.3.4, Option A and Option

screening area, as called for in §59.6.5.3.C.7. Tr. 56-57. In its Supplemental Staff Report (Exhibit 61, p. 2), Technical Staff noted that it had analyzed the screening under §59.6.5.3.C.4 in its initial Staff report (Exhibit 49), “but prior to the Planning Board presentation, it was brought to Staff’s attention that as a conditional use in a residential detached zone, the Application is subject to screening requirements of Section 59-6.5.3.C.7 instead of the townhouse requirements of Section 59-6.5.3.C.4.” Staff argues that the proposed screening does not comply with the width requirements of either section, and therefore alternative compliance is called for.

¹⁰ The Applicant’s civil engineer, Dean Packard, testified that the width of the northern screening area is actually 5 feet, not the 3 feet reported by Technical Staff. Tr. 90. Technical Staff replied to Mr. Packard’s testimony in a Supplemental Staff Report (Exhibit 61, p. 2), stating, “. . . according to the Applicant’s CAD files, the width between the rear of the retaining wall and the Property line (the area where landscaping could be planted) is 3.37 feet, not 3 feet as indicated in the Staff Report.”

B. The Application meets the requirements of Option B for plant quantity which requires a minimum planting depth of 10 feet, with two canopy trees, two evergreen or understory trees, eight large and eight small shrubs per every 100 feet. The Applicant meets the requirements by providing a 10-foot wide planting area along the entire perimeter of the Property. The Applicant meets the planting density by installing a minimum of two canopy trees, two understory trees, eight large shrubs and eight small shrubs per every 100-feet of perimeter. In addition, both adjoin lot areas owned by MDSA and are currently unimproved.

The Applicant's land planner, Bill Landfair, testified that, in his opinion, the northern screening area "is adequate in width, but we believe that there are opportunities for adding additional landscaping, and doing everything we can within the allotted space as shown on the conditional use plan to improve it." Tr. 54. Technical Staff seems to agree that the alternative landscaping proposed by the Applicant along the northern property line (which includes 26 shrubs that will be 4 feet tall at planting and will grow to 10 feet tall)¹¹ is an adequate substitute for what it interprets to be the requirements of the Zoning Ordinance. As stated by Staff (Exhibit 49, pp. 19-20),

. . . Staff has determined that due to the unique site characteristics and development constraints that the screening requirements under Section 6.5.3 cannot be met and that the alternative design satisfies the intent of Section 6.5. which is to ensure appropriate screening between different building types and uses. . .

Nevertheless, the issue was complicated by a suggestion in the Planning Board's letter to the Hearing Examiner (Exhibit 50), which recommended the addition of the following condition for approval of the conditional use:

Prior to Preliminary Plan, the Applicant must provide a Landscape and Lighting Plan that complies with the screening requirements for a Conditional Use in a residential zone (Section 59-6.5.3.C.7).

Conclusion: Fortunately, it is not necessary for the Hearing Examiner to decide whether this type of conditional use is exempted from the screening width requirements of §59.6.5.3.C.7 or to include a condition that requires the Applicant to submit a modified Landscape and Lighting Plan,

¹¹ Testimony of Dean Packard. Tr. 90-92.

for the simple reason that both Technical Staff and the Applicant actually agree that the landscaping already proposed along the northern property line will be adequate (*See* above discussion) and that the development, as it will be landscaped and screened under the current plans, will be compatible with the neighborhood. As to compatibility, Applicant's land planner, Bill Landfair, testified (Tr. 35),

With regard to compatibility, the application we believe does meet the applicable general requirements under the Article 59-6. The application we believe is compatible, the use, the proposed use is residential, and in character with the surrounding residential neighborhood.

When asked by the Hearing Examiner "And is it compatible regardless of whether or not it complies with the width requirements for screening . . . ?," Mr. Landfair replied in the affirmative. Tr. 35-36. The Hearing Examiner posed the same question to Technical Staff (Exhibit 60), and received Staff's Supplemental Report containing the following statement (Exhibit 61, p. 2):

Since the Hearing Examiner does not require the Applicant to submit an alternative compliance plan, Staff has provided the following justification as to why the proposed screening is adequate and meets the general requirements of Division 6.5 and is therefore, compatible.

Staff believes that this Conditional Use is uniquely different from the other conditional uses in the Montgomery County Zoning Ordinance, in that the townhouse structure(s) themselves are the conditional use. The other conditional uses in the Ordinance are uses; uses that will take place inside a structure and which have the potential to be incompatible, create noise, odor, dust, glare or adversely impact the abutting properties. [Emphasis added.]

As previously mentioned, under Zoning Ordinance Section 59.7.3.1.E.1.b. as amended, the Hearing Examiner need only determine that the requirements of Article 59-6 are satisfied "to the extent the Hearing Examiner finds necessary to ensure compatibility." All of the evidence in this case supports the finding that the narrowing of the screening area along the northern property line will not render this development incompatible with the neighborhood. This conclusion is buttressed by the fact that the neighbor immediately to the north of the subject site is not a residential development, but 7.4 acres of land owned by the Maryland State Highway

Administration that is reserved for the potential future extension of Mid-County Highway east to intersect with the Inter-County Connector. Exhibit 49, p. 6. Based on this fact and the undisputed opinions of the experts, including both Mr. Landfair and the Technical Staff, the Hearing Examiner finds that the landscaping and screening as proposed by the Applicant in its Landscape and Lighting Plan (Exhibits 41(d), (e) and (f)) will be compatible with the neighborhood and thus compliant with the Zoning Ordinance.

4. Outdoor Lighting

The outdoor lighting proposed for the conditional use was discussed in Part II.C.3. of this Report and Decision. Permissible lighting levels for a conditional use are specified in Zoning Ordinance §59.6.4.4.E., which provides,

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

The proposed fixtures must also meet the design requirements and fixture height limits specified in Zoning Ordinance §59.6.4.4.B.

The Photometric Study submitted as Exhibit 41(g) is reproduced on pages 24-25 of this Report and Decision. Dean Packard, Applicant's civil engineer, testified that the actual lighting from the site itself will not exceed the 0.1 foot candle level, although street lighting in the area, which is not subject to the 0.1 footcandle restriction, results in some readings above that figure on the photometric study. Tr. 112. Technical Staff noted that "The lighting proposed for the Property will provide safe and adequate illumination for vehicular and pedestrian circulation." Exhibit 49, p. 20. Staff also reported (Exhibit 49, p. 21):

All of the pole mounted lights are LED fixtures with full cut-off to eliminate horizontal light cast. The photometric plan predicts that no light above 0.01 foot-candles will spill across any Property boundary which satisfies the requirements of Section 6.4.4.E. The lighting will be adequate, providing visibility to the areas for

vehicular and pedestrian circulation during nighttime hours. The lighting will not have a negative impact to neighboring property owners with either direct light or light glare. The bollard lights are LED fixtures fitted with angled louvers to reduce horizontal light spread and concentrate the light in the immediate area around the bollard. The lighting output of the bollards do not appreciably increase the total lumens of the overall lighting plan and as a result their calculations were not include in the photometric plan.

Conclusion: There is no evidence in this record to refute Applicant's photometric study and Technical Staff's findings. Therefore, the Hearing Examiner finds that the proposed lighting for the conditional use will meet the Zoning Ordinance standards and will not cause undue harm to neighboring properties due to illumination.

5. Signage

Permitted signage is prescribed in Zoning Ordinance §59.6.7.8.B. for Subdivisions in residential zones. That section provides:

B. Additional Sign Area

1. Subdivision and Multi-Unit Development Location Sign

Additional sign area is allowed for a permanent location sign erected at any entrance to a subdivision or Multi-Unit development if the sign is a ground sign or wall sign located at an entrance to the subdivision or building.

a. 2 signs are allowed for each entrance.

b. The maximum sign area is 40 square feet per sign.

c. If the driveway entrance to the subdivision or development is located in the right-of-way, a revocable permit issued jointly by the Sign Review Board and the appropriate transportation jurisdiction must be obtained to erect the sign.

d. The maximum height of a sign is 26 feet.

e. The sign may be illuminated (see Section 6.7.6.E).

The signage proposed by the Applicant was depicted in the Conditional Use Plan (Exhibit 41(c)), and it is reproduced on page 26, in Part II.C. 3 of this Report and Decision. The sign will be located in the southwest corner of the site (the corner where Redland Road intersects with Garrett Road. Technical Staff describes the proposed sign and its relationship to the neighborhood as follows (Exhibit 49, pp. 21-22):

The Application proposes a painted monument style sign (5'w x 2 ½'h) at the southwest corner of the Property which will be anchored between two five-foot-tall

faux stone pillars. The ground level monument sign will be at a scale and location that is consistent with the existing signage for similar residential subdivisions in the Neighborhood. The sign will be low to the ground, and constructed of masonry/stone veneer and wood. The sign will also be setback on the Property so as not to obstruct drivers views the intersection of Garrett Road and Redland Road. The dimensions of the proposed signage area [are] acceptable under Section 6.7.8. There are similar monumental signs in the Neighborhood. . . . The proposed sign will be compatible with the existing character of the residential properties in the Neighborhood. [Emphasis supplied.]

Conclusion: the Hearing Examiner finds that the proposed sign appears to be consistent with the requirements of §59.6.7.8.B. , as indicated by Technical Staff, and compatible with the neighborhood. To ensure that the permit requirements of §59.6.7.8.B.1.c. are carried out, the following condition is imposed in Part IV of this Report and Decision.

The Applicant must obtain a sign permit issued jointly by the Sign Review Board and the appropriate transportation jurisdiction for any proposed sign, and must file a copy of any such sign permit with OZAH. The final design of the proposed sign must be in compliance with the Zoning Ordinance restrictions for signs displayed in a residential zone, or the Applicant must first obtain a sign variance from the Sign Review Board.

IV. Conclusion and Decision

As set forth above, the application meets all the applicable standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.


Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Garrett Gateway Partners, LLC (CU 16-11) for a conditional use under Section 59.3.3.1.D.2.b. of the Zoning Ordinance to construct a “Design for Life” Townhouse Living Community, at 7009 Garrett Road, in Derwood, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The Applicant shall be bound by the testimony of its witnesses and the representations of its counsel identified in this Report and Decision.
2. This conditional use is limited to a maximum of 19 townhouse living units.
3. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code. At the time of Preliminary Plan, the Applicant must

address the comments provided by the M-NCPPC Department of Parks in its email dated August 26, 2016, and directed to the Applicant and Planning Staff (Exhibit 56).

4. No property owner of the conditional use project may seek a tax credit under Montgomery County Code Section 52-18U or 52-93(e), except for tax credits for additional accessibility features installed post occupancy, as described in Montgomery County Code, Section 59.3.3.1.D.2.b.
5. As prescribed in Zoning Ordinance §59.3.3.1.D.2.b.i., all buildings and structures must be designed and constructed to meet or exceed the “Level II Accessibility Standards” established by Section 52-18T and detailed in Section 52-18U.¹²
6. The post-construction site must have a slope of less than 5%, and no fence constructed on the lots with frontage on Redland Road and Garrett Road may exceed four feet in height.
7. The common open space area must include a pergola, six raised planted beds, and 3 log benches as shown on the Conditional Use Plan (Exhibits 41(a) (b) and (c)).
8. The amount of parking provided must be consistent with that described in the Conditional Use Plan (Exhibits 41(a) (b) and (c)).
9. The Applicant must obtain a sign permit issued jointly by the Sign Review Board and the appropriate transportation jurisdiction for any proposed sign, and must file a copy of any such sign permit with OZAH. The final design of the proposed sign must be in compliance with the Zoning Ordinance restrictions for signs displayed in a residential zone, or the Applicant must first obtain a sign variance from the Sign Review Board.
10. The Applicant 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 conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Issued this 2nd day of December, 2016.



Martin L. Grossman
Hearing Examiner

¹² Those sections do not appear to exist in the current codification of the Montgomery County Code, but the Council did enact Bill No. 5-13, as amended in Expedited Bill No. 24-14, both effective July 1, 2014, adding Sections 52-18T and 52-18U to the County Code. The accessibility standards are also set forth in County Code Section 52-107 and in COMCOR Sections 52.18.T.01 and 52.18U.01.

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record or aggrieved party may file a written request to present oral argument before the Board of Appeals, in writing, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

NOTICE TO:

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Dean Packard
William Landfair
Steve Mulholland
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