

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
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<https://www.montgomerycountymd.gov/ozah/>

**IN THE MATTER OF:**  
**WORLDSHINE HOMES, LLC**  
 Applicant

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 In Opposition to the Application  
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OZAH Case No. CU 23-11

Before: Andrea LeWinter, Hearing Examiner

**HEARING EXAMINER’S REPORT AND DECISION**

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## I. STATEMENT OF THE CASE

On January 9, 2023, Worldshine Homes, LLC (hereinafter Applicant or Worldshine) filed an application seeking a conditional use to establish a Residential Care Facility (over 16 persons) under Section 59.3.3.2.E.2.c of the *2014 Zoning Ordinance*. The property is located at 12450 West Old Baltimore Road and 21908 Ruby Drive, Clarksburg, Maryland 20841 and is an assemblage of four pieces of land identified as Lot 3, Lot 2, and Lot 1 (Lot 1 is comprised of two parts of lots) in the Neelsville subdivision that is recorded in the Montgomery County land records as Record Plat 7681. Exhibit 1 and 28.

On March 1, June 29, and December 6, 2023, the Applicant submitted requests to OZAH for extensions of the time by which a hearing must be held, all of which were granted. Exhibits 23-25. On December 13, 2024, a notice of public hearing was issued for February 2, 2024, Exhibit 26, and a hearing on the merits proceeded as scheduled. 2/2/24 T. 1. The hearing could not be concluded within the time allotted. 2/2/24 T. 303. On February 14, 2024, a notice of continuation of public hearing was issued for March 7, 2024, Exhibit 33, and the hearing proceeded and concluded on that date. 3/7/24 T. 1 and 197.

The Applicant presented five witnesses: Ms. Xibe Becky Ja, Vice President of Worldshine Group, 2/2/24 T. 22; Mr. Joshua Sloan, qualified as an expert in landscape architecture and land planning, Exhibit 27, 2/2/24 T. 63; Mr. Kevin Huang, qualified as an expert in civil engineering, Exhibit 27, 2/2/24 T. 211; Ms. Jun Jennifer Xu, qualified as an expert in architecture, Exhibit 27, 2/2/24, T. 248; and Ms. Anne Nancy Randall, qualified as an expert in transportation planning, Exhibit 27, 2/2/24, T. 289.

Eight individuals testified in opposition to the application and an additional organization, the Seneca Creek Watershed Partners, submitted written testimony because a representative was

unable to attend the hearing on the continuation date. Exhibit 41. Those in opposition also submitted 18 letters of opposition. Exhibit 22.

The record remained open for ten days following the close of the hearing to allow the preparation of the transcript. 3/7/24 T. 196. The record closed on March 17, 2024.

Planning Board Staff (hereinafter Staff) recommended approval with conditions, Exhibit 28, p. 3, and on January 29, 2024, the Montgomery County Planning Board unanimously concurred. Exhibit 29.

After a careful review of the entire record, the Hearing Examiner finds that the application meets the standards of the Zoning Ordinance.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

The property is located on the northwest quadrant of the intersection of West Old Baltimore Road and Ruby Drive. Exhibit 28, p. 5. Collectively, the property consists of approximately 202,898 square feet or 4.66 acres and is improved with two single-family detached homes and associated accessory structures. Exhibit 28, p. 7. One home is located on part of Lot 1 directly adjacent to West Old Baltimore Road and is accessed via an existing driveway. *Id.* The second home is located on Lot 2 and is accessed via Ruby Drive. The Staff Report contains an aerial photograph showing the subject property delineated in red with the existing improvements, excerpted on the following page. Exhibit 28, p. 8.



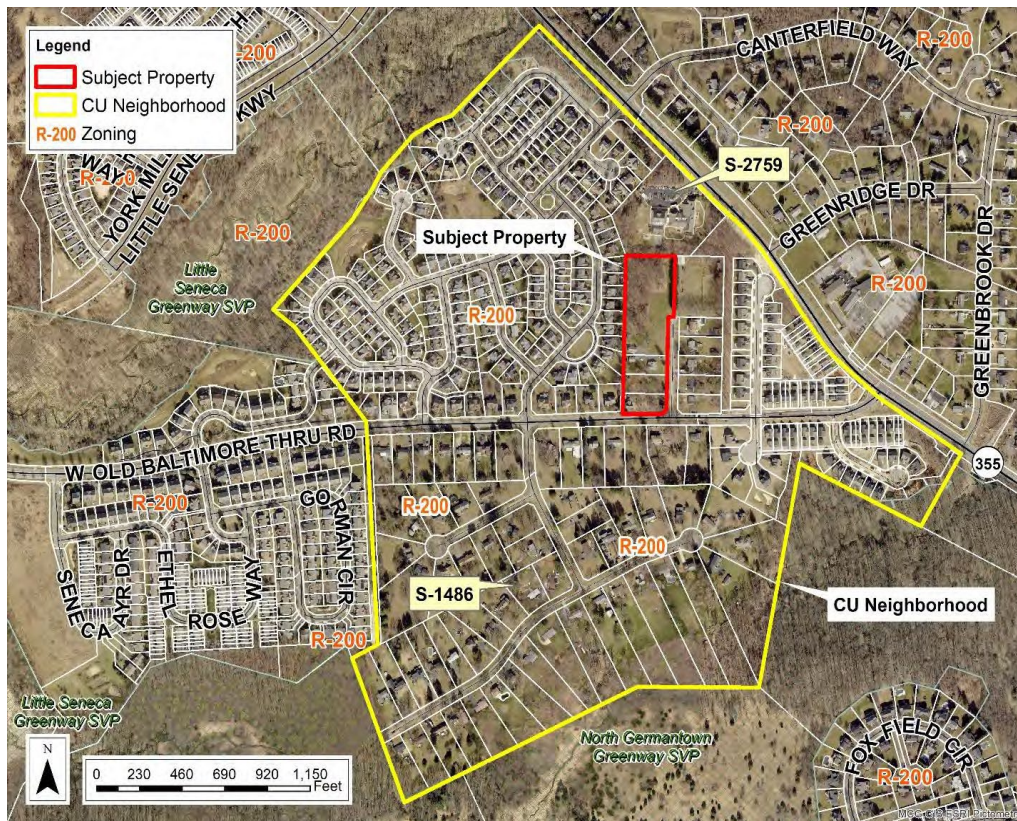
*Aerial photograph of property outlined in red showing existing improvements.*

The property contains one forest stand of 1.36 acres as well as a scattering of trees that are 24-inches in Diameter at Breast Height (DBH) and greater. *Id.* The property does not contain any streams or stream buffers, wetlands or wetland buffers, 100-year floodplains, hydraulically adjusted steep slopes, or known occurrences of Rare, Threatened, and Endangered species. *Id.* The property drains to the Little Seneca Creek watershed; Little Seneca Creek is a State Use Class IV-P stream. *Id.* The property is within the Clarksburg Special Protection Area (SPA) and is located in the *1994 Clarksburg Master Plan & Hyattstown Special Study Area. Id.*

### **B. Surrounding Neighborhood**

To determine whether the proposed use meets the compatibility standards of the Zoning Ordinance, it is necessary to delineate and characterize the “surrounding neighborhood” (i.e., the area that will be most directly impacted by the proposed use). The neighborhood boundaries delineated by Staff are shown in the aerial photograph on the following page, also excerpted from

the Staff Report, and are situated within the larger neighborhood bounded by Frederick Road to the north and east, the single-family detached homes south of West Old Baltimore Road and north of the stream valley, and the Clarksburg Heights residential subdivision to the west, which is south of Little Seneca Creek. Exhibit 28, p. 6. The subject property is zoned R-200 and the properties in the surrounding neighborhood are classified as either R-200 or R-200/TDR 4.0. *Id.* The neighborhood is generally residential in character. *Id.*



*Subject property outlined in red; Staff-defined neighborhood outlined in yellow.*

The vicinity is comprised of residential communities. Directly to the west of the property is the single-family development known as Clarksburg Heights, containing approximately 130 homes. This development was approved under the MPDU Optional Method of Development (e.g. at higher than standard density, with smaller than typical lots). It is in the R-200/TDR overlay. The TDR overlay stretches from the boundary of the subject property to Little Seneca

Parkway. To the north of the subject property is a child daycare facility operated by the Goddard School. Confronting the property across Ruby Drive are several single-family homes. Farther to the east and across West Old Baltimore Road to the south is a new residential subdivision containing 57 detached homes and 10 semi-detached units, also approved with higher than standard R-200 density pursuant to the MPDU Optional Method of Development.

Staff identified two existing, approved conditional uses/special exceptions in the surrounding neighborhood, S-1486, an accessory apartment located at 12505 Deoudes Road and S-2759, the Goddard School Private Education Facility located at 22010 Frederick Road. Exhibit 28, p. 7.

The Applicant recommended to Staff which area should be included in the neighborhood delineation and Staff agreed. 2/2/24 T. 68. No one appearing in opposition contested the Staff's delineation or characterization of the surrounding area. Upon review, the Hearing Examiner adopts the neighborhood boundaries determined by Staff, as they are logically bounded by Frederick Road along the northeast, include both sides of West Old Baltimore Road, and are otherwise bounded by breaks between housing subdivisions. The Hearing Examiner agrees with Staff that the neighborhood character is primarily residential within the R-200 Zone.

### **C. Proposed Use**

#### **1. The Proposed Development**

Worldshine seeks to redevelop the property into a Residential Care Facility (Over 16 persons) under Section 59-3.3.2.E.2.c. for senior residents aged 62 and older, providing assisted living residences as well as programs and services. Exhibit 28, p. 9-10; 2/2/24 T. 31. As Ms. Ja testified, the proposal is to construct eight buildings, Exhibit 28, p. 9-10; 2/2/24 T. 32, seven of which will be devoted to residential use and contain 15 assisted living beds. *Id.* The eighth building

will also house 15 beds (for a total of 120 beds in the facility) but will function as a community center and house a central kitchen for staff to prepare meals and will provide communal amenities and facilities, from therapy and fitness rooms to a beauty salon to a private dining room for special celebrations. *Id.* The eight buildings are oriented around a central amenity courtyard to promote opportunities for walking and socializing. Exhibit 28, p. 10; 2/2/24 T. 38. The entire development will be screened and visually buffered from neighboring homes by landscaping around the perimeter. 2/2/24 T. 76 and 108.

A rendition of the proposed layout, submitted by Worldshine, is shown below. Exhibit 32.



Staff found the site layout and building architecture design to be compatible with the surrounding neighborhood. Exhibit 28, p. 10. Worldshine's expert in land planning, Mr. Sloan, and its expert in architecture, Ms. Xu, testified that the architectural features and building layout were explicitly designed to blend with the neighborhood and were a low-intensity use. 2/2/24 T. 117, 132-34, 143, and 260. Those in opposition asserted that the scale of the buildings, with a 5,000 square foot footprint and approximately 8700 total square feet, was not compatible with the surrounding area. 3/7/24 T. 16, 52-56, 77, 107-110. In rebuttal, Mr. Sloan testified that the proposed buildings conformed with the allowable dimensions of the R-200 zone, but, regardless,



compatibility was more nuanced than simply size and included design features, which the Applicant had endeavored to match with the surrounding neighborhood. 3/7/24 T. 136-138.

Mr. Sloan testified as to the storm water impacts of the proposed development and drafted the Land Use Report submitted by the Applicant. 2/2/24 T. 66; Exhibit 10. He stated that approximately one-third of the property drains to the south and two-thirds to the north, with the water reaching two different streams. *Id.* However, there are no streams or tributaries within 200 feet of the site. 2/2/24 T. 66-67, Exhibit 10. He opined that the development will lightly impact the storm water runoff, but as it will be an internally-focused enclave and the proposed stormwater management will be landscaped, run-off will be effectively treated. 2/2/24 T. 74-75, 82, 91. He noted that the development will result in 34.7% of the property being covered with impervious surface and testified that this in conformance with the Master Plan, as current land planning focuses not on falling below a specific percentage of impervious surface but on using environmentally appropriate site design measures to mitigate impacts. 2/2/24 T. 94-96. He opined that the extensive mitigation measures proposed by Worldshine could not be contemplated when the Master Plan was drafted in 1994 and that these measures would achieve the Master Plan goals. *Id.* He testified that the water leaving the property will be cleaner and freer of silt than it would have been without the proposed development. 2/2/24 T. 98-99. Mr. Sloan also stated that the site's location within the SPA requires an elevated level of stormwater management review and opined that the proposed plan will be deemed sufficient as it can accommodate up to eight (8) inches of rainwater through green bioswales and micro-bioretenion areas. 2/2/24 T. 100-101. Those in opposition expressed concern that stormwater from the development would impact well water for Ruby Drive and negatively impact nearby streams. 3/7/24 T. 25-28, 75-77, 79, 90, 105-106, 117-118. In rebuttal,

Mr. Sloan testified that there will be a sufficient setback between the site and Ruby Drive so that there would be no impact on well water. 2/2/24 T. 102-4.

Mr. Sloan also testified that the development qualifies as "infill" development because it will be the provision of a new use on a previously developed property in an area in which lower density uses have been replaced with higher density ones. 2/2/24 T. 144.

Mr. Sloan concurred with Staff's delineation of inherent effects, including size of the buildings, parking, lighting, outdoor activity, and noise, and with Staff's finding that there would be no non-inherent effects. 2/2/24 T. 116-123; Exhibit 28, p. 27-29.

Mr. Sloan testified that the Forest Conservation Plan had been submitted and that the Applicant would mitigate negative impacts on the treescape and compensate for the loss of specimen trees. 2/2/24 T. 85-87; Exhibit 16.

Mr. Huang testified that vehicular access and circulation, including for emergency vehicles, would be safe and adequate and that the Applicant would construct sidewalk improvements. 2/2/24 T. 223-226. He stated that loading and deliveries will be accommodated solely within the Site and there will be an internal, enclosed dumpster. 2/2/24 T. 226. He opined that the development should comply with noise ordinances and will have access to generators should power be compromised to ensure the safety of residents, although there should be adequate power. 2/2/24 T. 227. He stated that the property is approved for public water and sewer and that it is the intention of Worldshine to access such services. *Id.* He concurred that the amount of impervious surface on the site will be 34.7% and testified that the water quality plan has been approved. 2/2/24 T. 230-31; Exhibit 28.

Ms. Xu testified that in designing the Site's proposed buildings, she studied architectural features common in the surrounding subdivisions to create buildings harmonious with the

surrounding community. 2/2/24 T. 260. She detailed the layout of the buildings in terms of bedrooms (15), bathrooms (9), and common areas (varying depending on the specific building). 2/2/24 T. 262-265. She opined as to the difficulty of matching the buildings to older homes in the surrounding neighborhood and stated that the goal of compatibility is not to exactly copy surrounding buildings but to be sufficiently similar as to blend. 2/2/24 T. 270-272. She testified that the proposed buildings will be three levels, including finished basements, of approximately 2,900 square feet per level, for a total of 8,700 square feet. 2/2/24 T. 284-286.

Ms. Randall testified that access to the property will be from West Old Baltimore Road, there will be improvements to allow for a continuous sidewalk, and access to bus routes. 2/2/24 T. 301-310, 316. She stated that peak parking demand will be 46 spaces (out of 52 available) and there will also be a shuttle service for off-site staff parking on high traffic days. 2/2/24 T. 313-315. She testified that her analysis showed a low trip generating use, limited impact on road capacity, that queuing will remain within County limits, and that the use is not expected to impact the number of car crashes in the vicinity. 2/2/24 T. 316-320.

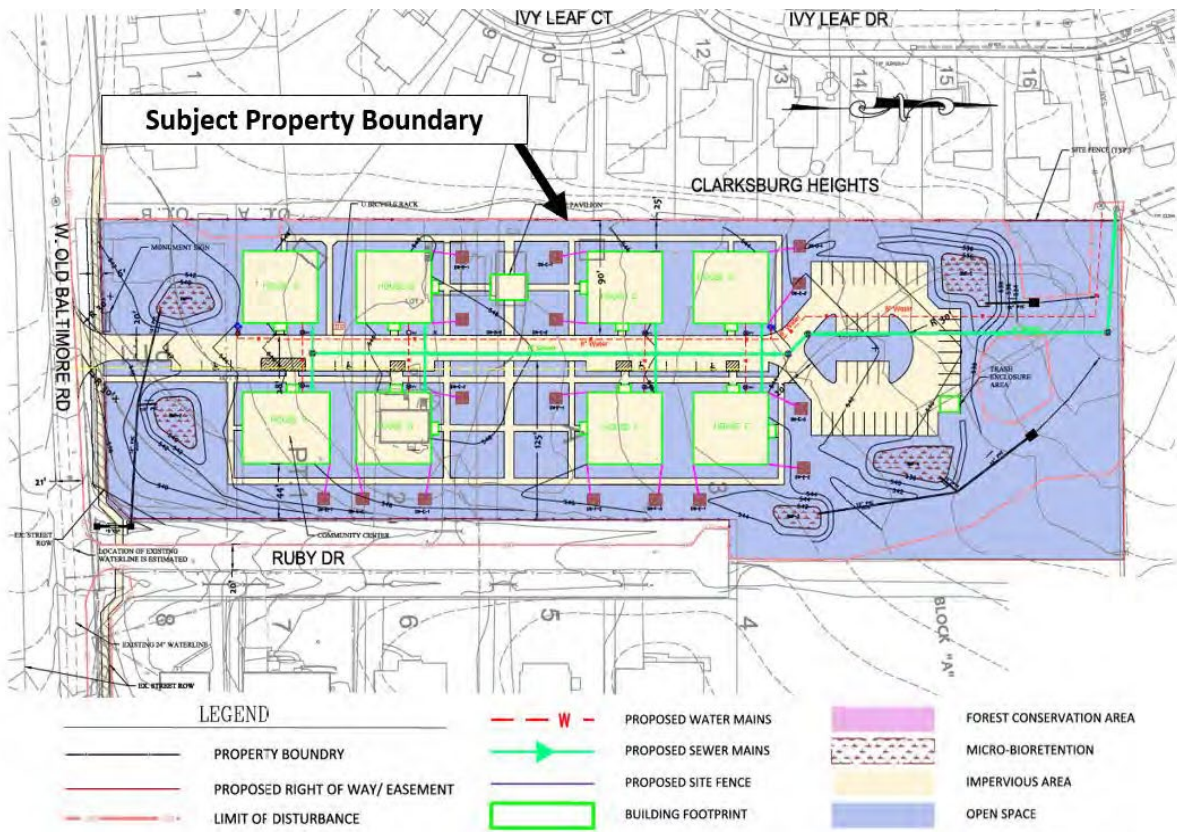
#### **a. Conditional Use Plan, Perspectives and Floor Plans**

The site layout has eight buildings symmetrically oriented around an internal north-south private drive with a central, linear courtyard in the approximate center of the property. Exhibit 28, p. 10. The parking spaces are as far as possible to the west, past the buildings, so that parked cars are not visible from West Old Baltimore Road. Exhibit 28, p. 9-10. The proposed layout, excerpted from the Staff Report, is shown on the following page. Exhibit 28, p. 9; Exhibit 5b.

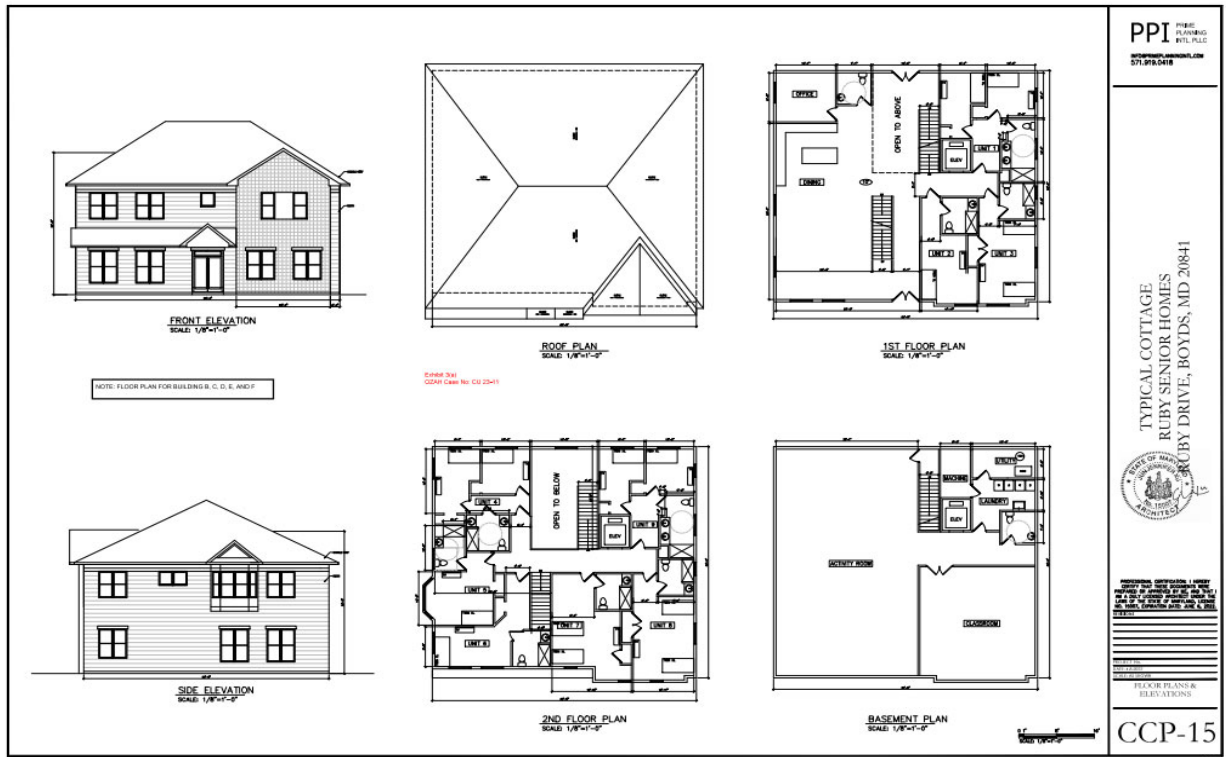
The eight buildings will each be two-stories with a maximum height of 40 feet, which is less than the height permissible in the R-200 zone. Exhibit 28, p. 10. According to Staff, and as testified to by Ms. Xu, the buildings incorporate traditional residential architectural elements and

details and feature a neutral color pallet with stone and wood accents. Exhibit 28, p. 11; 2/2/24

T.254-55. Elevations and floor plans submitted by the Applicant are on the next page. Exhibit 3.



*Proposed layout*



*Proposed elevations and floor plans*

### **b. Site Landscaping, Lighting and Signage**

In response to requests from Staff and the Hearing Examiner to ensure compatibility and sufficient screening, the landscape plan was revised twice, with the final plan submitted during the hearing, and the plan now exceeds the screening requirements under Section 59.6.5.3.C.7. Exhibit 28, p. 15; Exhibit 36; 3/7/24 T. 140-142. Still, additional concerns were raised during the hearing about screening. Mr. Sloan acknowledged in his cross-examination testimony that the site is approximately eight (8) feet higher in elevation than the properties on Ivy Court due east (Ivy Court appears in the top half of the Applicant's rendition of the proposed construction, shown on page 9) inherently limiting the effectiveness of screening. 2/2/24 T. 146. Mr. Jerome Pajot testified that the Applicant's rendition exaggerates the height of Ivy Court homes, thus inaccurately implying a higher level of screening between Ivy Court and the proposed facility than will exist.

3/7/24 T. 108-109. The final landscape plan shows a 12-foot minimum width with two canopy trees, four understory or evergreen trees, eight large shrubs, and 12 medium shrubs along abutting property lines with an increase in the number of evergreen trees along the western border, including 10-foot evergreen trees. Exhibit 36; 3/7/24 T. 140-142, 156.

According to Staff, only minimal building lighting is proposed and the lighting for the parking and amenity areas will be limited to the amount necessary to ensure safety. Exhibit 28, p. 11. Exterior lighting is designed to eliminate light exposure on adjacent properties; all outdoor lighting will be directed, shielded, or screened. *Id.* Full cut-off fixtures will be used in the parking lot to focus the light on the parking areas only. *Id.* The Photometric Plan shows careful design so that light will not spill into adjacent properties. *Id.*; Exhibit 17. Mr. Sloan testified that the lighting would not produce light pollution. 2/2/24 T. 106-110.

The Applicant proposes to install one residential scale monument sign at the site entrance on West Old Baltimore Road and one building-mounted sign on the community center building within the site as well as necessary internal wayfinding and directional signage. Exhibit 28, p. 22.

### **c. Operations**

The proposal is for a Level 2-3 Assisted Living Facility with the relatively novel design of eight separate buildings for residents' living and community activities. Exhibit 28, p. 9-10, 2/2/24 T. 31-32. Seven of the buildings will be devoted to residential use and each will contain 15 assisted living beds. *Id.* The eighth building will also house 15 beds (for a total of 120 beds in the facility) but will function as a community center with a central kitchen for staff to prepare meals and for the provision of communal amenities and facilities, from therapy and fitness rooms to a beauty salon to a private dining room for special celebrations. *Id.* There will be central amenity courtyard to promote walking and socializing. Exhibit 28, p. 10; 2/2/24 T. 38.

The facility will also provide a 14-passenger van to transport residents to appointments and excursions within a 15-mile radius; these rides will be limited to daytime hours. 2/2/24 T. 40.

Medical services will be provided onsite, but considering the health status of the residents, ambulance service is anticipated to be required on site approximately four times per month. 2/2/24 T. 122.

Of necessity, the facility will operate 24 hours a day, although the main business hours for administrative functions will be on a traditional 9:00 a.m.-5:00 p.m. weekday schedule. Exhibit 28, p. 10.

#### **i. Staffing**

Staff reported and Appellant witness Ms. Ja affirmed that 75 individuals will be employed on site with a maximum of 44 staff on the premises at any given time (the maximum will occur during shift changes) and the Appellant also submitted a staffing Statement of Operations. 2/2/24 T. 35; Exhibit 20; Exhibit 28, p. 11. Healthcare staff will work in three eight-hour shifts, with overlapping 15-minute shift changes, beginning at 2:00 p.m., 10:15 p.m., and 5:45 a.m., with a maximum of 13 staff at any time. *Id.* Meal service staff will work two eight-hour shifts, beginning at 6:00 a.m. and 2:15 p.m., with a maximum of 10 staff members at any time. *Id.* Housekeeping and maintenance staff will also work two eight-hour shifts, beginning at 6:00 a.m. and 2:00 p.m., with a maximum of four per shift. *Id.* The remaining employees – social workers, management, and transportation – will work a standard 9:00 a.m.- 5:00 p.m. shift with a maximum of 17 employees on site at any time. *Id.*

#### **ii. Site Access, Parking, Deliveries and Trash Pick-up**

According to Staff and Ms. Ja, deliveries for food will typically be made twice weekly during business hours by 20- to 30-foot box truck, and other necessities and items will be delivered

on standard USPS, UPS, and FedEx routes. Exhibit 28, p. 10; 2/2/24 T. 41. Laundry will be performed in house and will not require an outside vendor. Exhibit 28, p. 10. Waste collection and recycling will occur at an enclosed dumpster at the northeast corner of the property, as far away from the abutting residential homes as possible, which will be emptied twice weekly by a standard garbage truck. Exhibit 28, p. 10; 2/2/24 T. 40-41.

Ms. Randall testified that the parking needs for a Residential Care Facility of 120 beds are expected to be 46 spaces (52 are provided, Exhibit 28, p. 12), the majority of which will be used by staff, and that Worldshine will provide employees off-site parking on high traffic days, like holidays, when there may be many visitors. On high traffic days, visitor attendance will be staggered. 2/2/24 T. 313-315.

## **2. Environmental Constraints and Mitigation**

Mr. Sloan testified that a Natural Resource Inventory for the property was approved in November 2022 and re-approved in October 2023. 2/24/24 T. 65; Exhibit 15. He stated that approximately one-third of the stormwater run-off from the property drains to the south and two-thirds to the north, with the water reaching two different streams within the Little Seneca Creek watershed, both more than 200 feet from the site. 2/2/24 T. 66-67; Exhibit 10. He testified that the development will lightly impact stormwater runoff, but that the development's design of an internally-focused enclave with landscaped stormwater management will more effectively treat runoff than outmoded large drainage ponds. 2/2/24 T. 74-75, 82. 91. He noted that there is no applicable impervious surface cap for the property and opined that the application is in conformance impervious surface recommendations, which look to the property's transitional location between R-200 and R-200/TRD zones. 2/2/24 T. 94-96. He stated that impervious surface should be in the middle of the average for adjacent zones, and stressed that the current land



planning practice focuses on using environmentally appropriate site design measures to mitigate the impacts of development, not simply percentage of impervious surface, and that modern mitigation measures could not be contemplated when the Master Plan was drafted in 1994. *Id.* He testified that the site's location within the SPA requires a high level of stormwater management review and that the proposed plan should be sufficient. 2/2/24 T. 100-101. Those in opposition expressed concern that the impervious surface level was high and that, considering the extent of the usage, would create stormwater issues that would negatively impact the SPA and the Little Seneca Creek watershed as well as the well water of Ruby Drive. 3/7/24 T. 25-27, 76-77, 79, 90, 105-106; Exhibit 41. Some expressed concern that there was insufficient data to determine safety. 3/7/24 T. 25-27, 76-79. Mr. Sloan testified that there was sufficient setback between the site and Ruby Drive such that there would be no impact on well water. 2/2/24 T. 102-4.

#### **D. Community Response**

This application is opposed by members of the surrounding communities as well as the Seneca Creek Watershed Partners, Montgomery Countryside Alliance, and the Friends of Ten Mile Creek and Little Seneca Reservoir. Ten individuals in opposition attended the hearing as well as a representatives from Seneca Creek Watershed Partners and Montgomery Countryside Alliance. Six of the ten individuals also submitted Letters of Opposition and an additional nine letters from other individuals in opposition were received as well as a letter from the Friends of Ten Mile Creek and Little Seneca Reservoir. Exhibit 22a-l. Opposition raised environmental concerns related to the impact of stormwater and impervious surface on the Little Seneca Creek watershed, the importance of protecting the SPA, impact on well and septic quality for the homes on Ruby Drive, and the loss of open space development of the property will entail. 3/7/24 T. 25-28, 75-77, 79, 90, 105-106, 117-118. Opposition also stated concerns about compatibility of the design with the

surrounding neighborhood, as the planned buildings are significantly larger than homes in the immediate surrounding community and do not share design features with some of the older homes. 3/7/24 T. 16, 52-53, 77, 107-110, 133. Many also testified that they anticipated light and noise pollution/nuisance, 3/7/24 T.16, 77, 108, and traffic and safety problems due to queuing and congestion, 3/7/24 T. 16, 27-29, 104, and 133.

### **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 Residential Care Facility. Section 59.3.3.2.E.2.c.

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, will satisfy all 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 below.<sup>1</sup> The criteria for approval fall generally into four categories, discussed in that order:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and

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<sup>1</sup> 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.

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;***

As Staff identify, this provision is not applicable as there are no previous approvals for this property. Exhibit 28, p. 17.

Conclusion: The Hearing Examiner finds this criterion is met as there are no previous approvals on this property.

***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;***<sup>2</sup>

Conclusion: This subsection requires an analysis of the standards of the R-200 Zone contained in Article 59-4; the use standards for a Residential Care Facility (Senior Care Facility) 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).

**1. Substantial Conformance with the Master Plan**

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

The property lies within the geographic area covered by the *1994 Clarksburg Master Plan & Hyattstown Special Study Area* ("Master Plan") and the property specifically falls within the "Brink Road Transition Area." The Master Plan contains no site-specific recommendations for the

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<sup>2</sup> 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).

property but does recommend compatible, low-density residential uses and continuation of the residential character of MD 355 within the Brink Road Transition Area. *1994 Clarksburg Master Plan & Hyattstown Special Study Area*, p. 75-77. The Master Plan also specifically recognizes the need to encourage and maintain a wide variety of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities, aligned with appropriate densities and locations. *Id.* at p. 9. In terms of environmental goals, the Master Plan calls for a compromise between competing policy concerns with a focus on mitigation of environmental impacts. *Id.* at 138-139. As Mr. Sloan testified, the plan is 30 years old and so does not contemplate or address the mitigation capabilities of current-day land planning. 2/2/24 T. 94-96.

Staff found that the application met the goals of the Master Plan because it is residential in use and character, offers ample green space, and provides compatible, low-density infill development that has little impact on the surrounding neighborhood while providing housing opportunities to the senior community that allow aging in place. Exhibit 28, p. 22. Staff also noted that the chosen architectural elements will ensure a transition between the development and the surrounding single-family residential communities. Exhibit 28, p. 23. Staff concluded that the screening provided, minimal impact on traffic, and residential appearance will result in the project having no material effect on the area's residential character and align with the Master Plan goals. Exhibit 28, p. 22. Further, Staff found that the on-site stormwater management, environmental site design, and micro-bioretenion facilities will mitigate the development impacts. Exhibit 28, p. 22-23. Staff summarized that the proposed use will accord with five of the ten key policies guiding development in the Master Plan area including:

- development in keeping with the small town feel of Clarksburg while promoting housing necessary to promote a diverse and equitable range of options;
- protection of the natural environment through construction of stormwater management facilities on-site, where there currently are none;

- preservation of the rural character along West Old Baltimore Road and the residential character of Ruby Drive;
- improvements to pedestrian orientation with the construction of a new sidewalk that will increase safety and connectivity, integration of a diversity of uses and housing types, and street-oriented buildings that maintain the character of the neighborhood;
- relieves pressure on undeveloped areas, farmland, and environmentally-sensitive areas by integrating senior living within an existing residential neighborhood. Exhibit 28, p. 23.

Applicant provided evidence of the compatibility of the architectural design with the surrounding neighborhood homes and residential character, including the internal, street-orientation of the proposed buildings through the testimony of Ms. Xu and Mr. Sloan. 2/2/24 T. 132-34, 260. Ms. Randall testified to the sidewalk safety improvements. 2/2/24 T. 310. Mr. Sloan and Mr. Huang testified to the environmental mitigation integrated into the site design that will minimize impact on the surrounding watershed, 2/2/24 T. 91, 95-96, 231-233, and Mr. Sloan described why the property constitutes infill development, which will relieve pressure on development of more sensitive and/or critical areas by focusing development on areas already in use. 2/2/24 T. 144.

Those in opposition disputed the design compatibility and maintenance of the character of the neighborhood and expressed concern about the efficacy of the environmental mitigation efforts. 3/7/24, T. 16, 25-28, 52-53, 75-77, 79, 90, 105-110, 117-118, 133.

Conclusion: The Hearing Examiner finds that the application substantially conforms to the Master Plan. From a design perspective, considering the age of the homes on Ruby Drive and the variety of features of residential developments in the surrounding neighborhood, what is critical is compatibility with the small town and rural feel of Clarksburg. The eight proposed buildings mirror many of the surrounding neighborhood's design elements and foster a sense of community with their internal, street-facing structure and, thus, are in harmony with the area. As only eight buildings, even of a relatively large size compared with Ruby Drive, and set off from West Old

Baltimore Road, they will not overwhelm neighboring residential developments. The stormwater management is thoughtfully designed to protect the surrounding watershed in a manner that enhances the attractiveness of the development. The addition of the sidewalk should improve and encourage pedestrian access. The location is logical, providing a needed housing type in the form of infill development that reduces the strain to access more critical or environmentally sensitive areas to diversify the housing stock.

## **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*

Staff set out that the proposal will require submission of Preliminary Plan application, which will be reviewed by the Planning Board to determine adequate public facilities. Exhibit 28, p. 24.

### **a. Local Area Transportation Review**

The application was reviewed under the 2020-2024 Growth and Infrastructure Policy (GIP). Because the proposed development will generate less than 50 weekday peak-hour person trips, it was exempt from analysis under the 2022 Local Area Transportation Review (LATR) Guidelines, which test the adequacy of four modes of transportation: motor vehicles, pedestrians, bicycles, and transit. The Applicant was required to complete a Transportation Exemption

Statement (TES), which was submitted on October 3, 2023 and is excerpted below. Exhibit 28, p. 25; 2/2/24 T. 292-294; Exhibit 12.

Trip Generation for the Proposed Use

LATR Trip Generation							
	Units	AM Peak Hour			PM Peak Hour		
Total Vehicle Trips Per ITE 11 <sup>th</sup> Edition		In	Out	Total	In	Out	Total
ITE Generation Code – 254 (Assisted Living)	120 Beds	13	9	22	11	18	29
Policy Area Adjustment Factor (Clarksburg Policy Area – 100%)		13	9	22	11	18	29
Auto Driver		22			29		
Auto Passenger		9			12		
Transit		1			1		
Non-Motorized (Bike)		1			3		
Pedestrian (Transit + Bike)		0			0		
<b>Total Person Trips</b>		<b>34</b>			<b>45</b>		

\*Trip generation rates are based on the ITE Trip Generation Manual, 11th Edition and adjusted as detailed in the 2022 LATR guidelines. Figures are rounded to nearest whole number. Source: Wells + Associates Traffic Consulting Local Area Transportation Review – October 3<sup>rd</sup>, 2023

Several in opposition expressed concern about traffic congestion and roadway -- specifically school bus -- safety, citing already increased traffic and queuing times. However, no data was provided to support these assertions. 3/7/24 T. 16, 27-29, 104, and 133.

**b. Other Public Facilities**

The development is for seniors and so will not access schools and no undue burden on police or fire protection was raised as a concern by Staff or those in opposition. Exhibit 28, p. 26.

Staff stated that the property is located partially within water and sewer categories W-1 and S-1 (Lot 3) and partially within water and sewer categories W-5 and S-5 (Lots 2 and Part of 1) and is not currently served by public water or sewer. Exhibit 28, p. 26. Under a previous category change request, Lot 2 and Part of 1 are recommended for a change in category through the

subdivision approval process. *Id.* The development will then extend public water and sewer to the property via an existing easement connection to the abutting property to the north. *Id.* Staff found that this infrastructure investment will provide a substantial benefit to the confronting residential homes along Ruby Drive, who will now have the ability to connect to public water/sewer systems if they desire. *Id.* Following completion of these extensions, water and sewer needs are expected to be met by the Washington Suburban Sanitary Commission ("WSSC") through connections to the existing water and sewer lines. *Id.*

Staff state that electric, gas, and telecommunications services will also be available on the Site. *Id.* According to Staff, other public facilities and services – including police stations, firehouses, and health care facilities – are currently operating in accordance with the Annual Growth Policy and will continue to be sufficient following construction of the Project. *Id.*

Conclusion: Because this property will have to go through preliminary plan approval, the final determination of the adequacy of public facilities will be made by the Planning Board. While there were anecdotal concerns from neighbors about increased traffic, the more objective evidence (*i.e.*, the Traffic Impact Study) supports a finding that traffic from the neighborhood will not exceed County standards for volume and safety, which will be addressed at the time of preliminary plan. There is no countervailing objective evidence that standards will be exceeded. Additionally, the burden the development will place on other public facilities is negligible. Based on this record, the Hearing Examiner finds that the application meets County standards for adequacy of public facilities, subject to the final determination by the Planning Board.

### **3. Compatibility with the Neighborhood**

**Section 7.3.1.E.1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:**

\* \* \*



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

\* \* \*

**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.**

\* \* \*

**Section 59.7.3.1.E.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.**

**a. Compliance with Sections 59.7.3.1.E.1.d and 59.7.3.1.E.2**

Staff determined that the site design meets the criteria of Section 59.7.3.1.E.1.d because the buildings are symmetrically oriented around the internal north-south private drive with a central, linear courtyard in the approximate center of the property and because no parking is provided between the buildings and the street, which mimics the traditional residential development pattern along both West Old Baltimore Road and Ruby Drive. Exhibit 28, p. 23. Staff found the buildings to be appropriately sized to blend with the surrounding neighborhood and comparable to the footprints of the newly constructed residential homes to the west of the Property. *Id.* The buildings will be two stories, with a maximum height of approximately 40 feet, which is less than the 50 feet allowed in the R-200 Zone (for lots over 40,000 square feet), and, thus, similar in terms of height and massing to nearby two-story residential homes. Exhibit 28, p. 23-24.

Additionally, Staff found that the exterior architecture of the buildings is designed to be residential in nature and incorporates many traditional residential architectural elements that complement the residential character of the surrounding neighborhood, including peaked roofs, covered porches, bay windows, as well as the intended neutral color palette with horizontal siding and natural stone and wood accents. Exhibit 28, p. 29.

Uniformly, those in opposition disagreed with Staff and Applicant's categorization of compatibility, primarily due to the total square footage – upwards of 8,700 square feet including the basement – of the proposed buildings. 3/7/24 T. 52-54, 77, 107-110. Many in opposition also highlighted the design differences with the older and most proximate homes on Ruby Drive. 3/7/24 T. 54, 77, 87, 107-108.

**b. Inherent v. Non-Inherent Adverse Impacts (59.7.3.1.E.1.g)**

This finding requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Section 1.4.2 of the Zoning Ordinance defines inherent adverse effects as “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.” Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Non-inherent adverse effects are defined as “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.” Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effects cause “undue” harm to the surrounding neighborhood. When analyzing whether impacts are

inherent or non-inherent, Staff examine the size, scale, scope, light, noise, traffic, and environmental effects of the proposed use.

**i. Physical and Operational Characteristics**

Staff identified the following physical and operational characteristics necessarily associated with (i.e. inherent to) a Residential Care Facility: (1) building(s) large enough to house the proposed number of residents; (2) on-site parking sufficient to meet the requirements of the use and of the Zoning Ordinance; (3) outdoor lighting consistent with residential standards and adequate for safe vehicular and pedestrian access at night; (4) vehicular trips to and from the site by employees, visitors, residents, delivery, and trash pick-up; (5) a modest level of outdoor activities associated with use of passive recreation areas; and (6) noise from ambulances in emergency situations. Staff did not identify any non-inherent characteristics of the proposed use. Exhibit 28, p. 28-29.

In terms of the inherent characteristics:

1. A building(s) large enough to house the proposed number of residents.

Staff determined that the proposed buildings are large enough to house the proposed number of residents. Exhibit 28, p. 27. The Applicant noted that instead of one large building housing 120 residents, a common design for this type of use, the project divides residency into eight buildings modelled after single-family residences, which allows a large number of residents to be housed in a design more compatible with the surrounding neighborhood. 2/2/24 T. 32.

2. On-site parking facilities.

Staff found and the Applicant's Conditional Use Plan illustrates that nearly all the proposed off-street parking is provided at the rear of the property. Exhibit 28, p. 28; Exhibit 5. Staff concluded that because of the rear location, the proposed buildings and existing/proposed

landscaping will largely screen the parking from view from West Old Baltimore Road and Ruby Drive. *Id.* Staff cited the provision of more than ample parking on-site, which was also attested to by Ms. Randall, as insurance that no vehicles will need to park in the surrounding residential neighborhoods while accessing the senior living facility. Exhibit 28, p. 28; 2/2/24 T. 313-314.

3. Outdoor lighting of parking and amenity spaces.

Staff concluded that the lighting for the parking areas will be limited to the amount necessary to ensure safety, citing the Photometric Plan submitted by the Applicant that shows that, in conformance with the requirements of Section 6.4.4 of the Zoning Ordinance, lighting for the Project will fall to zero (0.0) footcandles well before approaching property lines abutting the surrounding residential uses. Exhibit 28, p. 28; Exhibit 17. Mr. Sloan opined as to the minimization of light pollution. 2/2/24 T. 108-110.

Light nuisance was a significant concern for many in opposition, particularly those on Ivy Court who will be at a lower elevation. 3/7/24 T. 16, 77, 108. Mr. Pajot testified that the Applicant's renderings do not accurately portray the viewshed and nuisance that Ivy Court will experience because the renderings do not reflect that Ivy Court is of lower elevation than the proposed development and that the houses on Ivy Court are proportionally smaller than the gray boxes used to represent houses in the rendering 3/7/24 T. 108.

4. Vehicular trips.

Staff concurred with the Applicant's Traffic Exemption Statement that the development is anticipated to result in a fewer than 50 net new person trips in either the morning or evening peak hours, specifically generate 34 AM peak hour and 45 PM peak hour person trips, and is thus exempt from further LATR analysis and mitigation requirements. Exhibit 28, p. 28; Exhibit 12.

Ms. Randall also provided queuing analysis and discussed the positive impact of the major intersection realignment at MD355 and West Old Baltimore Road. 2/2/24 T. 298-306. She opined that both intersections proximate to the subject property are within capacity standards and there is not excessive queue overflow or blockage. 2/2/24 T. 305. She also examined crash data over the last four years since the intersection realignment and concluded that the proposal would not have a significant impact. 2/2/24 T. 306-308. She agreed with Staff's assessment that there will be more than sufficient sight distance at MD 355 and West Old Baltimore. 2/2/24 T. 301-310.

Those in opposition expressed concerns about existing traffic levels and the impact of any traffic increase on the surrounding neighborhood. 3/7/24 T. 16, 27-29, 104, and 133.

5. Outdoor amenity space for use by residents and visitors.

Staff described the site layout as featuring a linear, central green amenity area that contains a series of walking paths connected to pathways around the property with seating and shaded areas provided as places for residents and visitors to enjoy the greenspace. Exhibit 28, p. 28. Staff determined the walking paths to be buffered from the surrounding neighborhood by the landscaping proposed along the western property boundary and street trees along Ruby Drive. *Id.* Staff also concluded that senior residents of this facility will be quiet and peaceful by nature and thus not contribute to noise nuisance. *Id.*

Those in opposition did not express concern about the views of the outdoor amenity space as opposed to the buildings themselves, or about the noise generated by the residents. Opposition did raise concerns about noise from staff and delivery vehicles entering and exiting the premises. 3/7/24 T. 17-18, 66-67, 117-118.

6. Noise from ambulances in emergency situations.

Staff accepted Applicant's assertion of approximately one to four an unplanned emergency ambulance visits each month, noting that the facility intends to provide on-site 24-hour nursing and care services and resident access to regular doctor visits, which should minimize the necessity for emergency visits. Exhibit 28, p. 29.

Opposition did not raise specific concerns about the noise of regular ambulance visits. 3/7/24 T. 17-18, 66-67, 117-118.

## **ii. Undue Economic Harm**

Staff did not identify any undue economic harm and neither party raised issues related to economic impact.

## **c. Conclusion**

### **i. Compatibility with Neighborhood (Sections 59.7.3.1.E.1.d and 59.7.3.1.E.2)**

Zoning Ordinance §59.7.3.1.E.2. requires an examination of the compatibility of the use with the character of the residential neighborhood in which it is located. This question is like the one raised by Zoning Ordinance §59.7.3.1. E.1.d., above, which asks whether the proposed use will be harmonious with the neighborhood as envisioned by the applicable master plan.

To determine compatibility, the Hearing Examiner must assess whether the appearance, size, and configuration of the proposed buildings, to the extent they diverge from the surrounding residential neighborhoods, are compatible.

The Hearing Examiner is persuaded that the proposed development is compatible with the surrounding area under Sections 59.7.3.1.E.1.d and 59.7.3.1.E.2 of the Zoning Ordinance for several reasons. She agrees with the Applicant's expert testimony that compatible does not mean identical. 2/2/24 T. Rather, compatible indicates that two uses can co-exist with apparent harmony, not jarring or odd in their proximate appearance. Were compatibility to require identical

relationships, development would be impossible in any area bordering homes built at different times considering the evolution of design features over time. In the instant case, it is not possible to perfectly match both the viewshed of the older homes along Ruby Drive and the newer homes on Ivy Court, West Old Baltimore Road, and Gorman Circle. See Exhibit 32 and 37. Presumably as well, the evolution of design features over time reflects preferences and environmental efficiencies such that copying older design is not *per se* preferable or beneficial. As architect Ms. Xu explained, many of the design features, like height, footprint, and window pattern, mirror those of the surrounding area, 2/2/24 T. 254-55, and the Hearing Examiner finds these elements more than sufficient to achieve the compatibility required by the Zoning Ordinance.

Opposition's biggest concern was the building size, as each will house 15 residents and total approximately 8,700 square feet, 2/2/24 T. 286, which may be up to one-third larger than even the largest homes nearby (and the largest cited are beyond the identified surrounding neighborhood), 3/7/24 T. 53-55. However, Ms. Xu and Mr. Sloan explained that the actual 5,000 square foot footprint and height of the buildings are within the ranges of existing home and in compliance with the Zoning Ordinance. 2/2/24 T. 153, 258. Mr. Sloan opined that an arrangement of residential style homes is far more compatible than one large building. 2/2/24 T. 70. The Hearing Examiner agrees. The issue is one of balance: if the County and Master Plan want to allow for a diversity of housing and assisted living residents need a certain level of services, assisted living residences cannot look exactly like single family homes; they must be larger to accommodate resident needs. The Applicant has provided a suitable compromise, designing the type of larger facility needed to serve the assisted living community in a manner that looks like a modestly amplified version of the surrounding single-family homes.

Similarly, positioning the eight proposed buildings in an enclave, street-oriented manner obscures direct views from West Old Baltimore Road while preserving a neighborhood-like feel, in a manner comparable to surrounding subdivisions. The Applicant balances the residents' need for proximal services and quiet recreation in a manner comparable to a single-family detached residential community and to a maximal extent obscures from view the differences between the site and the surrounding neighborhood.

Additionally, the Hearing Examiner finds that the impacts of the parking lot and lighting, commercial elements that inherently differ from those found in a single-family detached neighborhood, are significantly mitigated. The site plan places the parking lot at the rear of the site, blocked from West Old Baltimore Road. Staff and expert witnesses conclude that the lighting will not have an impact beyond the property boundary. The landscaping plan exceeded county requirements and was expanded to create even further screening to those on Ivy Court. No mitigation plan is perfect and Ivy Court residents will likely still be able to see the development from upper story windows, but the Hearing Examiner concludes that the Applicant has designed the development to prevent as much negative impact as possible.

While concerns about traffic and queuing on West Old Baltimore Road were raised by neighbors, no specific issues were cited and expert testimony established that there is sufficient capacity to accommodate the modest development and that car crashes in the area have been minimal, with none since the intersection realignment.

**ii. Conclusion: Inherent and Non-Inherent Adverse Impacts (Section 59.7.3.1.E.1.G)**

This standard requires consideration of the impact of the inherent and non-inherent adverse operational and physical effects of the proposed use on nearby properties and the general neighborhood. As stated, 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.”

Staff identified a series of characteristics of the use that have an “effect” on the surrounding area. The Hearing Examiner agrees with Staff’s identification of inherent characteristics. In an application for a continuing care facility, BOA Case No. S-856-B, Petition of Friend’s House, Inc., the Hearing Examiner adopted Staff’s description of the broad characteristics to consider in determining the inherent and non-inherent characteristics of the use: size, scale, scope, light, noise, traffic, and the environment. *Hearing Examiner’s Report and Recommendation*, BOA Case No. S-856-B, pp. 41-42. Characteristics analyzed by Staff in this and other cases involving age-restricted or senior living facilities show these factors determine the “effects” on the surrounding area. *See, e.g.*, Hearing Examiner’s Report and Recommendations in CU 16-01, Brandywine Senior Living, pp. 62-63 (March 21, 2016); CU 20-05, Spectrum Retirement Communities, p. 29 (March 9, 2021).

Staff did not identify any non-inherent characteristics of the proposed use. Exhibit 28, p. 29. While opposition did not frame concerns in terms of non-inherent characteristics, *de facto* many in opposition were arguing that the placement of the use in a SPA was a physical characteristic of the use not necessarily associated with the use that resulted in an adverse impact. However, opposition failed to present anything beyond conjecture that the level of impervious

surface and intensity of use at the site would be problematic. The Applicant provided a detailed stormwater management plan sufficient to mitigate any impacts and established that the site was sufficiently distant from nearby streams so as not to require additional protections.

Thus, the Hearing Examiner finds that the thoughtful design of project sufficiently mitigates any adverse effects. Most importantly, the Hearing Examiner agrees that there are no non-inherent effects. The opposition provided no evidence that location within an SPA, alone, is a non-inherent characteristic of residential care facilities. Regardless, the Applicant effectively showed that the extensive stormwater management design will not adversely impact the watershed. Opposition desired further study because of the importance of the area but did not identify any deficiencies in Applicant’s plan or any specific risks the proposal presented. Thus, as no non-inherent or combined inherent and non-inherent effects exist, this standard is met and cannot be a justification to deny the Application.

**B. Development Standards of the Zone (Article 59.4)**

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-200 Zone, contained in Article 59.4 of the Zoning Ordinance. Staff concluded that the application met the development standards as set out in Table 1 from that Report below. Exhibit 28, p. 19-20.

*Table 1: Development and Parking Standards (R-200)*

<b>Development Standard</b>	<b>Permitted/ Required</b>	<b>Existing/Proposed</b>
<b>Section 4.4.7 R-200 Zone</b>		
Minimum Lot Area	20,000 SF	202990 SF
Minimum Lot Width at Front Building Line	100 Feet	234 feet
Minimum Lot Width at Front Lot Line	25 feet	217 feet
Maximum Density	1,200 SF per Bed	>1,600 SF per Bed

<b>Development Standard</b>	<b>Permitted/ Required</b>	<b>Existing/Proposed</b>
<b>Section 4.4.7 R-200 Zone</b>		
Maximum Lot Coverage	25%	14%
Minimum Front Setback	20 Feet	120 Feet
Minimum Side Setback	20 Feet	40 Feet
Minimum Rear Setback	20 Feet	25 Feet
Maximum Height	50 Feet	40 Feet
<b>Vehicle Parking Requirement (Section 59.6.2.4.B)</b>		
<i>Residential Care Facility – Vehicle Parking Spaces</i>	40 spaces: Base parking requirement of 0.25 spaces/bed, plus 0.50 spaces per employee.	52 Spaces
<i>Residential Care Facility – Bicycle Parking Spaces</i>	Base requirement of 0.1 space(s) per employee (44 x 0.1= 4.4)	Minimum of five (5) bicycle spaces

Conclusion: No party contests Staff’s finding that the application meets the required development standards in the R-200 Zone. The Hearing Examiner finds from the uncontroverted evidence that the proposed development meets these standards.

**C. Use Standards for a Residential Care Facility (Section 59.3.3.2.E)**

The specific use standards for approval of a Residential Care Facility are set out in Section 59.3.3.2.E. of the Zoning Ordinance.

**1. Defined, In General**

**Residential Care Facility means a group care or similar arrangement for the care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living, or for the protection of the individual, in which:**

- a. the facility must meet all applicable Federal, State, and County certificate, licensure, and regulatory requirements;**
- b. resident staff necessary for operation of the facility are allowed to live on-site; and**
- c. the number of residents includes members of the staff who reside at the facility, but does not include infants younger than 2 months old.**

Conclusion: No party contests that the application meets the required development standards, thus the Hearing Examiner finds that the proposed development meets these standards.

*Section 3.3.2.E.2.c.ii. Where a Residential Care Facility (Over 16 Persons) 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:<sup>3</sup>*

*(a) The facility may provide ancillary services such as transportation, common dining room and kitchen, meeting or activity rooms, convenience commercial area or other services or facilities for the enjoyment, service or care of the residents. Any such service may be restricted by the Hearing Examiner.*

Staff and Ms. Ja described the services that Worldshine will provide, including communal dining and living spaces, a community center, activity rooms, medical and personal care facilities, outdoor amenities, and transportation services. There was no concern raised about the level of services provided or about the adverse impact of any of the services.

Conclusion: The Hearing Examiner agrees with Staff and relies upon the detailed description of services provided by the Applicant to find that this requirement is met.

**(c) Where residential dwelling units are provided**

- (1) the maximum residential density per lot area is 15 units per acre or the maximum density allowed in the zone, whichever is greater; and**
- (2) the minimum green area is 50%.**

Staff explained that the assisted living accommodations provided do not have cooking

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<sup>3</sup> The Hearing Examiner does not include the standard in Section 59.3.3.2.E.2.c.2(b) because it relates to residential care facilities for children.

facilities and so do not qualify as dwelling units under the Zoning Ordinance, but, regardless, the site plan provides for more than 50% green space. *Zoning Ordinance*, §59.1.4.1(definition of "dwelling unit).

Conclusion: This standard is not applicable but, if it were, the Application would comply.

*(d) Where facility size is based on the number of beds, not dwelling units, the following lot area is required:*

\* \* \*

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

\* \* \*

*(A) in RE-2, RE-2C, RE-1, and R-200 zone: 1,200 square feet per bed;*

Staff concluded that proposed development meets this density standard as the development will be located on a net lot area of 202,898 square feet and provide up to 120 assisted living beds, which calculates to approximately 1,690 square foot per bed, exceeding the Zoning requirement. Exhibit 28, p. 18.

Conclusion: As the proposed density is below the maximum density permitted, the Hearing Examiner agrees with Staff that this standard is met.

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

Staff concluded that the proposal satisfies the setback requirements of the R-30 Zone. *Id.*

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds that that setbacks are sufficient and the standard is met.

**f) The minimum side setback is 20 feet to abutting lots not included in the application.**

Staff found that the minimum side setback will be 40 feet. *Id.*

Conclusion: The Hearing Examiner agrees with Staff that that setbacks standard is met.

**(g) Independent dwelling units must satisfy the MPDU provisions of Chapter 25 (Section 25.A-5).**

Staff advises that this requirement is not applicable because Worldshine is not providing dwelling units. *Id.*

Conclusion: The Hearing Examiner agrees with Staff that this standard is not applicable.

**(h) In a Continuing Care Retirement Community and a Senior Care Community, occupancy of any independent dwelling unit is restricted to persons 62 years of age or older, with the following exceptions:**

- (1) the spouse of a resident, regardless of age;**
  - (2) another relative of a resident, 50 years of age and older;**
  - (3) the resident widow, widower, or other surviving relative of a resident who dies while residing at the Continuing Care Retirement Community or the Senior Care Community is allowed to remain, even though the resident widow, widower, or other surviving relative has not reached the age of 62.**
- A minimum of 80% of the dwelling units must be occupied by at least one person per unit who is 55 years of age or older.**

Staff advises that this requirement is not applicable because the proposal is for an assisted living facility, not a continuing care retirement community and so does not provide any independent living units. Exhibit 28, p. 19.

Conclusion: The Hearing Examiner agrees with Staff that this standard is not applicable.

**(i) Height, density, coverage, and parking standards must be compatible with surrounding uses; the Hearing Examiner may modify any standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.**

Staff concluded that the proposal is compatible with the surrounding residential neighborhoods as the two-story buildings are comparable in size and scale with the surrounding residential homes and the layout allows vehicular access to be accommodated off West Old Baltimore Road, thereby minimizing the impact on Ruby Drive. *Id.* Adequate parking is provided on-site to eliminate any impacts to the surrounding communities and the parking lot is located to the rear of the site so as to be predominately screened from view from the streets and surrounding

neighborhoods. *Id.* Similarly, the trash enclosure is located to the northeast corner of the Property, as far away from the abutting single-family homes as possible. *Id.*

As Ms. Xu testified, the height and footprint of the buildings is similar to the more modern proximal residential developments and the design incorporates many elements common in the area so that the development should blend well with the neighborhood. The landscape plan and position of the buildings minimizes the impact any non-residential elements may have on the residential feel of the surrounding area.

Conclusion: This has already been discussed in Part III.A.3 of this Report. The Hearing Examiner finds that this standard is met.

#### **D. General Development Standards (Article 59.6)**

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Under the amendments to Section 59.7.3.1.E.1.b. of the 2014 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.”<sup>4</sup> The applicable requirements, and whether the use meets these requirements, are discussed below. Staff’s report discusses the requirements of the following Divisions of Article 59.6:<sup>5</sup> Division 6.1 Access; Division 6.2 Parking, Queuing and Loading; Division 6.3 Open Space and Recreation; Division 6.4 Outdoor Lighting; and Division 6.7 Signs. Exhibit 28, pp. 20-22. Screening under Division 6.5 was not explicitly discussed by Staff; Staff concluded that all technical screening requirements were met but recommended that the Applicant should increase the evergreen planting above Zoning Ordinance requirements to help with compatibility and ensure effective blocking. Exhibit

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<sup>4</sup> 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).

<sup>5</sup> Division 6.6 Outdoor Display and Storage is not applicable.

28, p. 15. Screening was also discussed in response to community concerns. The Applicant submitted an updated landscape plan prior to the start of the hearing with additional evergreen screening and then increased the screening further before the close of the hearing at the behest of the Hearing Examiner. Exhibits 17 and 36.

### **1. Access (Division 59.6.2)**

According to Staff, the site access provided is adequate for the intended use of the property. Access is provided from West Old Baltimore Road via an internal private driveway that terminates in a full-movement loop, also internal to the site. The development will also contain internal pedestrian pathways that will provide connections to proposed pedestrian facilities along West Old Baltimore Road.

Conclusion: The Hearing Examiner agrees with Staff that the proposed access is sufficient to meet requirements as it will be a private road dedicated solely to the facility's use.

### **2. Parking, Queuing and Loading (Division 59.6.2)**

Under 59-6.2.5.K. *Facilities for Conditional Uses in Residential Detached Zones*, any off-street parking facility for a conditional use that is located in a Residential Detached zone where 3 or more parking spaces are provided must satisfy the following standards:

1. Location: each parking facility must be located to maintain a residential character and a pedestrian-friendly street.
2. Setbacks
  - a. The minimum rear parking setback equals the minimum rear setback required for the detached house.
  - b. The minimum side parking setback equals 2 times the minimum side setback required for the detached house.
  - c. In addition to the required setbacks for each parking facility:
    - i. the required side and rear parking setbacks must be increased by 5 feet for a parking facility with 150 to 199 parking spaces; and
    - ii. the required side and rear parking setbacks must be increased by 10 feet for a parking facility with more than 199 parking spaces.



Staff concluded the application complies with the required location and setbacks because the parking for 52 vehicles (making §59.6.2.5.K.2.c inapplicable) is located at the rear of the property and will largely be screened from view by the eight buildings, and the existing and proposed landscaping is in compliance with parking screening requirements under 6.2.9.C.3.b., and will maintain residential character and a pedestrian-friendly street.

Conclusion: The Hearing Examiner agrees with Staff that the location of the parking minimizes its impact, preserving the residential character of the surrounding area, and that the location meets setback requirements.

### **3. Open Space and Recreation (Division 6.3)**

Staff notes that recreation facilities are not required for the proposed use, but that the development will provide opportunities for residents to recreate throughout the site by using the central green amenity area that contains a series of walking paths connected to a larger series of pathways around the property and seating and shaded areas from which the greenspace may be enjoyed. Staff concluded that this use is in harmony with neighboring residential properties.

Conclusion: The Hearing Examiner finds that while open space and recreation facilities may not be required, they add significantly to the attractiveness of the proposed use and thus the feasibility of offering a Residential Care Facility in this area.

### **4. Outdoor Lighting (Division 6.4)**

Staff concluded that, as required by Section 59-6.4.4.E, the photometric plans for the development indicate that illumination will not exceed 0.1 footcandles at any lot line that abuts a lot with a detached house, which is consistent with the testimony of Applicant's expert, Mr. Sloan, and the Lighting Plan provided in Exhibit 17.

Of note, the proposed fixtures cited on Exhibit 17 must also meet the design requirements and fixture height limits specified in Zoning Ordinance §59.6.4.4.B.

Conclusion: Worldshine's photometric study demonstrates that illumination levels are at 0.0 footcandles within the interior of the property along all property boundaries. No party contested that the fixtures proposed do not meet the applicable standards. Therefore, the Hearing Examiner concludes that his requirement has been met.

### **5. Screening (Division 6.5)**

As stated, Staff found that the Applicant complied with the requirements of this section but recommended additional screening would be necessary to provide effective mitigation and Applicant responded by amended the landscaping plan twice.

Conclusion: The Hearing Examiner finds that this standard has been met as, in response to community concerns and Staff and Hearing Examiner recommendations, the Applicant's plan intentionally exceeds requirements for the provision of effective screening.

### **6. Signage (Division 6.7)**

The Applicant reported to Staff and during the hearing that it is proposing to provide a residential scale monument sign at the Property entrance on West Old Baltimore Road, as well as one building-mounted sign on the community center building, and necessary internal wayfinding and directional signage. The Applicant expressed understanding that any new signage intended for placement on the Property must be reviewed by the Montgomery County Department of Permitting Services ("MCDPS") and designed and installed in accordance with the applicable Zoning Ordinance requirements and procedures for Division 6.7.

Conclusion: The Hearing Examiner finds that the proposed signage should be compatible with the surrounding area but imposes as a condition of approval that the Applicant comply with the

procedures of MCDPS and that all signage comply with Zoning Ordinance requirements. If necessary, the Applicant must obtain a variance from the Sign Review Board and file a copy of the variance in the record of this case.

#### **IV. Conclusion and Decision**

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Worldshine Homes, LLC (CU 23-11) for a conditional use under Section 59.3.3.2.E.c. of the Zoning Ordinance to build and operate a Residential Care Facility (Over 16 Persons) at 12450 West Old Baltimore Road and 21908 Ruby Drive is hereby **GRANTED**, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Applicant's Conditional Use site plan, Lighting Plan and Landscape Plan (Exhibits 5, 17c and 36).
2. The maximum number of residential care units is limited to eight (8) buildings with 120 beds.
3. The height of any structure will be limited to forty (40) feet.
4. The maximum number of employees on-site at any one time must not exceed 44.
5. Food supply deliveries to the facility shall be limited to twice per week.
6. The collection of solid waste refuse and recyclable materials must occur on weekdays only, between 8:00 a.m. and 9:00 p.m., consistent with Solid Waste Regulations. No collection shall occur on Saturdays or Sundays.
7. The Applicant must maintain 52 parking spaces as shown on the Conditional Use Plan and may not expand or reduce the parking facility without explicit permission from the Hearing Examiner through modification of this Conditional Use.
8. The Applicant must provide a minimum of five (5) bicycle parking spots.
9. Before issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use site plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH.
10. Before approval of the Preliminary Plan of Subdivision, the Applicant must obtain approval of the Final Water Quality Plan from the Montgomery County Department of Permitting Services (MCDPS).

11. The Applicant must obtain a permit for the proposed monument sign from the Department of Permitting Services, or if required, the Sign Review Board, and a copy of the permit for the approved sign must be submitted to the Hearing Examiner before the sign is constructed.
12. The Applicant must obtain and satisfy the requirements of all licenses including a use and occupancy permit.
13. The Applicant and any successors in interest must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code.
14. The Applicant must obtain approval of a Final Forest Conservation Plan.
15. The facility must be operated in accordance with all applicable County noise regulations.
16. Transfers to successor conditional use holders must follow the procedures in Rule 27.0 of OZAH's Amended Land Use Rules of Procedure.
17. The conditional use must be operated in a manner to provide the facilities and services to residents outlined in Applicant's Statement of Operations (Exhibit 6). Use of the on-site facilities and services must be restricted to residents of the conditional use site, their guests and employees, and personnel providing services to the residents.
18. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, 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 and any successors in interest 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 16th day of April, 2024.



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Andrea LeWinter  
Hearing Examiner

RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boa/>

Please contact the Board of Appeals by calling 240-777-6600 or visit its website (<http://www.montgomerycountymd.gov/boa/>) with any questions or to obtain updated procedures for filing an appeal.

The Board of Appeals will *consider* your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will *consider* your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the *evidence* of record before the Hearing Examiner, no new or additional *evidence* or witnesses will be *considered*. If your request for oral argument is denied, your case will likely be *decided* by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with *individual* Board members because such *ex parte* communications are prohibited by law.

NOTICES TO:

Elizabeth Rogers, Esquire  
Steven Robins, Esquire  
Barbara Jay, Executive Director  
Montgomery County Board of Appeals  
Patrick Butler, Planning Department  
Cliff Royalty, Esq., Office of the County Attorney  
Greg Nichols, Department of Permitting Services  
Michael Coveyou, Director of Finance  
Parties of Record to CU 23-11

## 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

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