

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR 	CITY of BALTIMORE  <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 <sup>TH</sup> FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #23-0370 / ZONING – USE REGULATION – RESIDENTIAL-CARE FACILITIES (AGE-RESTRICTED)		

**TO** The Honorable President and  
Members of the City Council  
City Hall, Room 400  
100 North Holliday Street

DATE: April 28, 2023

At its regular meeting of April 27, 2023, the Planning Commission considered City Council Bill #23-0370, for the purpose of permitting certain residential-care facilities in the EC-2 Zoning District as a conditional use requiring approval by Ordinance of the Mayor and City Council; and providing for a special effective date.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended adopting findings and approval of City Council Bill #23-0370 and adopted the following resolutions, with eight members being present (five in favor):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, adopts the findings and equity analysis outlined in the staff report, with consideration for testimony and facts presented in the meeting, and recommends that City Council Bill #23-0370 be **approved** by the City Council.

A dissenting opinion among the Commission is summarized in three themes as follows:

- That the proposed Conditional Use by Ordinance process is problematic, because the ability to have an application for that use is not guaranteed, and is subject solely to political will. That discretion to introduce, or not, deprives the owner of due process, and the opportunity to demonstrate how that use will meet the required findings for conditional uses.
- For that same reason, different standards may be applied in different Council districts, where application of zoning should be consistent.
- Finally, it was noted that all other conditional uses in the EC-2 District required only BMZA approval, and so this use alone is being singled out for different treatment.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt

attachment

cc: Ms. Nina Themelis, Mayor's Office  
Mr. Ethan Cohen, Mayor's Office  
The Honorable Eric Costello, Council Rep. to Planning Commission  
Mr. Colin Tarbert, BDC  
Ms. Rebecca Witt, BMZA  
Mr. Geoffrey Veale, Zoning Administration  
Ms. Stephanie Murdock, DHCD  
Ms. Elena DiPietro, Law Dept.  
Mr. Francis Burnszynski, PABC  
Mr. Liam Davis, DOT  
Ms. Natawna Austin, Council Services  
Ms. Caroline Hecker, Esq.



Brandon M. Scott  
Mayor

## PLANNING COMMISSION

*Sean D. Davis, Chair; Eric Stephenson, Vice Chair*

### STAFF REPORT



Chris Ryer  
Director

**April 27, 2023**

#### **REQUESTS:**

City Council Bill #23-0370/ Zoning - Use Regulation - Residential-Care Facilities (Age-Restricted):

For the purpose of permitting certain residential-care facilities in the EC-2 Zoning District as a conditional use requiring approval by Ordinance of the Mayor and City Council; and providing for a special effective date.

City Council Bill #23-0371/ Zoning - Conditional Use - Residential-Care Facility (Age-Restricted) - 201 Homeland Avenue and a Portion of Block 5027, Lot 003:

For the purpose of permitting, subject to certain conditions, the establishment, maintenance, and operation of a residential-care facility (age-restricted) with 171 units on the property known as 201 Homeland Avenue (Block 5027, Lot 005) and a portion of Block 5027, Lot 003, as outlined in red on the accompanying plat; providing for a certain contingency; providing for a special effective date.

#### **RECOMMENDATIONS:**

City Council Bill #23-0370: Adopt findings and Approve

City Council Bill #23-0371: Adopt findings, Amend and Approve, with the following amendment:

- That the specific development plans must be approved by the Planning Commission.

**STAFF:** Eric Tiso

**PETITIONER:** Brightview Senior Living Development, LLC, c/o Caroline L. Hecker, Esq.

**OWNER:** College of Notre Dame of Maryland University, Inc./ Notre Dame of Maryland University, Inc.

#### **SITE/GENERAL AREA**

Site Conditions: 201 Homeland Avenue is located on the south side of the street, approximately 1,425' east of the intersection with North Charles Street, which is the entire northern boundary of 4701 N Charles Street (the main university campus property), captioned in the bill only as Block 5027, Lot 003. 201 Homeland Avenue is currently improved with a two-story banquet hall. Both properties are zoned EC-2.

General Area: While the campus is considered to be a neighborhood of its own, these properties are located on the southern edge of the Homeland neighborhood, which is predominantly low-density residential in nature, comprised mainly of single-family detached dwellings. Institutional buildings are scattered along the periphery of the neighborhood along main corridors.

## **HISTORY**

- On March 16, 2023, the Planning Commission approved a Forest Conservation Easement Modification for the Notre Dame of Maryland University (NDMU).

## **ANALYSIS**

### Background:

Brightview Senior Living Development, LLC (Brightview) has been working with NDMU to create a development parcel within the campus. The Forest Conservation Easement Modification approved by the Planning Commission in its meeting of March 16, 2023 was needed to create that future development possible. Continuing the overall plan, CCB #23-0370 will add *Residential-Care Facilities (Age-Restricted)* as a land use to the EC-2 Educational Campus zoning district as a conditional use requiring an Ordinance (*i.e.* a global change affecting EC-2 districts everywhere). If that bill is approved, then the companion CCB #23-0371 would approve that newly added conditional use for this specific property.

Additionally, a future subdivision will need to be approved by the Planning Commission in a future meeting. As shown in the Plat Map attached to CCB #23-0371, the proposed development area will straddle an existing property boundary. The subdivision action will transfer a portion of the greater campus parcel (Block 5027, Lot 003) to be consolidated into 201 Homeland Avenue. Given the complexity of these actions, Brightview would like to have the surety that these bills will be favorably considered before specific site plans and building designs are created. Despite the practical need for this project to return to the Planning Commission by way of that subdivision, staff recommends that the bill be amended to include a requirement that the specific development plans return to the Planning Commission for approval.

## **STANDARDS AND REQUIRED FINDINGS**

### Legislative Authorizations:

Article 32 – *Zoning* §5-501 classifies both of these companion bills as legislative authorizations, since CCB #23-0370 would amend the text of this Code, and CCB #23-0371 would approve a conditional use.

### CCB #23-0370 – Text Amendment:

For text amendments, legislative authorizations must be evaluated by the Planning Commission and the City Council in accordance with the standards in §5-508(c):

#### **§ 5-508. Approval standards.**

...

(c) Text amendments.

Standards that must be considered for text amendments are:

- (1) the amendment's consistency with the City's Comprehensive Master Plan;
- (2) whether the amendment would promote the public health, safety, and welfare;
- (3) the amendment's consistency with the intent and general regulations of this Code;
- (4) whether the amendment would correct an error or omission, clarify existing requirements, or effect a change in policy; and
- (5) the extent to which the amendment would create nonconformities.

The purpose of the Educational Campus (EC) Districts are outlined in the Zoning Code as follows:

**§ 12-203. EC Educational Campus Districts.**

EC Educational Campus Zoning Districts are intended for the campuses of educational facilities to facilitate an orderly and efficient regulation process for these types of users. There are 2 Educational Campus Zoning Districts: a campus district for colleges and universities that allows for certain non-educational uses and dormitories for students and a second campus for primary and secondary educational facilities that is restricted to education-related uses. These Districts provide a set of base district regulations that offers a certain intensity of development by right. They also provide an allowance for a Campus Master Plan, which must be approved by ordinance, that allows for flexibility in the development and expansion of the campus above the base district regulations.

As shown, the EC-1 district are expected for primary and secondary school uses, and have fewer uses permitted in those districts, while the EC-2 district, which is the zone where the project site is located, allows for a broader mix of compatible uses that fit with the educational purpose. Those compatible uses include:

- Fraternity or Sorority House
- Rooming House (Ancillary to Educational Facility)
- Community Center (Ancillary to Educational Facility)
- Cultural Facility (Ancillary to Educational Facility)
- Broadcasting Station (TV or Radio)
- Carry-Out Food Shop
- Entertainment: Indoor
- Personal Services Establishment
- Restaurant
- Retail Goods Establishment (No Alcoholic Beverages Sales)
- Stadium (Ancillary to Educational Facility)
- Research and Development Facility

The addition of *Residential-Care Facility (Age-Restricted)* as a land use in the EC-2 district is compatible with the use mix allowed in the district, as a residential use as well as for the potential for educational connections, particularly with the School of Nursing, School of Pharmacy, and Occupational Therapy Doctorate programs.

CCB #23-0371 – Conditional Use:

Conditional uses are evaluated per §5-406(a) of Article 32 – Zoning:

**§ 5-406. Approval standards.**

(a) *Limited criteria for denying.*

Neither the Board of Municipal and Zoning Appeals nor the City Council, as the case may be, may approve a conditional use unless, after public notice and hearing and on consideration of the standards required by this subtitle, it finds that:

- (1) the establishment, location, construction, maintenance, or operation of the conditional use would not be detrimental to or endanger the public health, safety, or welfare;
- (2) the use would not be precluded by any other law, including an applicable Urban Renewal Plan;
- (3) the authorization would not be contrary to the public interest; and
- (4) the authorization would be in harmony with the purpose and intent of this Code.

Staff believes that the establishment, location, construction, maintenance, and operation of a *Residential-Care Facility (Age-Restricted)* on the portion of these properties would not be

detrimental to or endanger public health, safety, or welfare. Staff's proposed amendment, which would require approval of the development plans by the Planning Commission would further ensure that the public has a means of participation, and that the applicants can obtain the needed surety to invest resources in specific site designs. Provided that CCB #23-0370 is enacted first, the proposed use would not be precluded by any other law. These properties are not located within an Urban Renewal Plan area. Use of this property for a *Residential-Care Facility (Age-Restricted)* is not otherwise in any way contrary to the public interest, as extensive outreach and several public meetings in the community have been held regarding this overall development proposal. For all of these reasons, staff believes that this authorization would be in harmony with the purpose and intent of the Zoning Code.

Below is staff's review of §5-406(b) of Article 32 – *Zoning*:

(b) *Required considerations.*

As a further guide to its decision on the facts of each case, the Board of Municipal and Zoning Appeals must consider the following, where appropriate:

- (1) the nature of the proposed site, including its size and shape and the proposed size, shape, and arrangement of structures;
- (2) the resulting traffic patterns and adequacy of proposed off-street parking and loading;
- (3) the nature of the surrounding area and the extent to which the proposed use might impair its present and future development;
- (4) the proximity of dwellings, churches, schools, public structures, and other places of public gathering;
- (5) accessibility of the premises for emergency vehicles;
- (6) accessibility of light and air to the premises and to the property in the vicinity;
- (7) the type and location of adequate utilities, access roads, drainage, and other necessary facilities that have been or will be provided;
- (8) the preservation of cultural and historic landmarks and structures;
- (9) the character of the neighborhood;
- (10) the provisions of the City's Comprehensive Master Plan;
- (11) the provisions of any applicable Urban Renewal Plan;
- (12) all applicable standards and requirements of this Code;
- (13) the intent and purpose of this Code; and
- (14) any other matters considered to be in the interest of the general welfare.

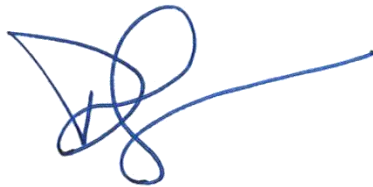
Staff finds that the site, including its size and shape, is appropriate for the proposed use. A separate subdivision action will return to the Planning Commission to formally establish the proposed lot. There would be no change to traffic patterns if this use would be authorized. The surrounding area is one in which the predominant residential type was single-family owner-occupied homes. For this reason, it is unlikely that the proposed use on the campus would in any way impair present or future development. There is reasonable proximity of other dwellings, churches and other places of worship, schools, public structures, and places of public gathering. There is adequate accessibility for emergency vehicles, and of light and air to the premises and to other properties in the vicinity. There are adequate utilities, roads, drainage, and other necessary facilities. The proposed use of the property will not affect preservation of cultural and historic landmarks and structures. Approval of the proposed use as a *Residential-Care Facility (Age-Restricted)* would not affect the existing character of the neighborhood, as noted above. The

proposal is consistent with provisions of the City's Comprehensive Master Plan, and is not affected by any Urban Renewal Plan. Future detailed development review would ensure that all applicable standards and requirements of the Zoning Code will be met, and would be consistent with the intent and purpose of the Zoning Code.

Equity:

- **Impact:** Staff does not believe that the proposed changes to the base EC-2 district will affect those surrounding communities in a negative way. The addition of a Residential-Care Facility to the campus will be a compatible use, and will not have any more impact on the surrounding community than the prior banquet hall. Staff doesn't believe that there's any impact to inequity in the surrounding neighborhood.
- **Engagement:** The community has been meaningfully engaged in discussing this proposal through public meetings hosted in the community, and ultimately obtained their support.
- **Internal Operations:** These actions will not have a negative impact on staff time or our resources in any unusual way.

Notification: The Homeland and Wyndhurst communities have been notified of this action.



**Chris Ryer**  
**Director**