MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item No.
Date: 01-29-2015

Liberty Assisted Living: Special Exception S-2879

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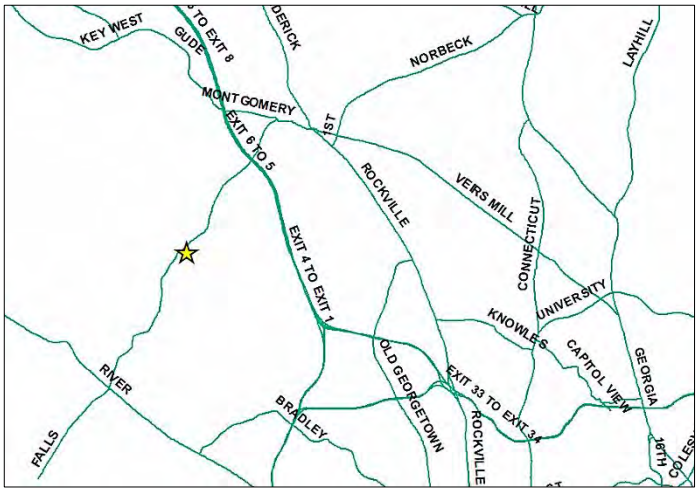
Completed: 01-14-2015

Description
Liberty Assisted Living: Special Exception S-2879
Request for a Special Exception to operate a large group home/assisted living facility with 10 beds and 9 staff members, 8919 Liberty Lane, 300 feet east of its intersection with Falls Road, lot 16, Block B, Beverly Farm subdivision, Tax account No. 04-02409354, .38 acres, R-90 Zone, Potomac Master Plan.

Staff Recommendation: Approval with conditions

Application Filed: September 29, 2014
Public Hearing: February 16, 2015

Applicant: Johnathan Edenbaum



Summary

The Application proposes to increase the existing number of beds from the current eight (group home small, by right) to the proposed 10 (group home – large-special exception). No expansion or addition to the existing house is being proposed. The Applicant has been operating the existing small group home on the Property since 2000.

- With the recommended conditions, the subject uses conform to all applicable requirements and regulations for approval of a "group home, large" Special Exception (Section 59-G-2.26 of Montgomery County Zoning Ordinance that was effective on October 29, 2014) and the Development Standards under the R-90 Zone.
- The subject use is consistent with the recommendations of the Potomac Master Plan and is compatible with the residential character of the surrounding area.
- Approval of the Special Exception will not substantially change the nature, character, scope or intensity of the current use that has been operated on the Property for the past 14 years by the Applicant.
- There are no notable traffic, circulation, noise or environmental issues associated with the Application provided that the recommended conditions are satisfied.
- Adequate parking is provided to accommodate the parking needs of employees and visitors of the subject group home.

TABLE OF CONTENTS

I. RECOMMENDATION

Staff recommends APPROVAL of Special Exception S-2879 with the following conditions:

1. The large group home must be limited to the elderly, with a maximum of 10 residents and 8 employees on site at one time.

2. Deliveries of goods to the site must be limited to no more than four per month.

3. The petitioners must obtain and satisfy the requirements of all licenses including a use and occupancy permit.

4. An identification sign must not be placed on the Property.

II. STATEMENT OF THE CASE

The Special Exception applicant, Johnathan Edenbaum ("Applicant", The Applicant) requests a special exception for a large group home within an existing residential structure that currently houses a small group home (Home) with eight beds. The Applicant proposes to increase the number of residents in the existing group home from eight, which is permitted by right in the R-90 Zone as "group home, small" to 10, a "group home, large" (Home) that requires a Special Exception approval. The Property is currently improved with a one-story, 4,852 square-foot, detached, single-family dwelling with a basement.

The existing structure has 10 bedrooms, 10.5 bathrooms, a living room, dining room/great room combination, a kitchen and a large deck in the back of the house. A storage area is located in the finished basement. The Applicant statement indicates that the house is equipped with a fire system, sprinkler, system, emergency lights and a full house natural gas generator. No external alteration or modification is proposed.

The Subject Property

The Home has a parking area to accommodate a minimum of nine vehicles. In addition, street parking is allowed along the Property's frontage on Liberty Lane.

The Home will have seven full-time and two part-time employees working on various shifts around the clock. There will be three staff members on the floor during the day and one "awake overnight" staff at night. The Applicant's statement indicates that with the proposed increase in the number of beds, the Home will maintain a 1:3 staff-to-resident ratio, which far exceeds the State's minimum requirement of 1:8.

APPLICATION

A. The Subject Property

The Subject Property is located on the north side of Liberty Lane, 300 feet east of its intersection with Falls Road, at 8919 Liberty Lane, Potomac, Maryland. The Property is identified as Lot 16, Block B, Beverly Farm Subdivision, Tax Account No. 04-02409354. The Property is rectangular shaped and consists of 0.38 acres (16,704 SF) of land. The topography slopes to the west. It is improved with a one-story 4,852 Square-foot, single-family home with a basement. The front yard is lightly landscaped with grass, shrub and a few ornamental and shade trees and the entrance to the house is decorated with potted plants.

The Subject Property

The Property is accessed from Liberty Lane through two driveway entrances located at the opposite ends. The entrances are connected to both ends of the driveway that curves to a semi-circle in the front yard. The semi-circular driveway accommodates six parking spaces in two areas. Two of the parking spaces are parallel spaces located on the eastern portion of the driveway and four in the front yard where the drive way curves into semi-circle shape. Additional three spaces are provided on a parking pad easement in the west side yard, adjacent to a stem lot. The three spaces are accessed from the stem lot access adjacent to the western property line. The easement is an appurtenance to the Subject Property. It was conveyed to the applicant by reference in 1999 deed to the recorded plat (see attached court document).

The Property is zoned R-90. The front yard is lightly landscaped with grass, shrub and a few ornamental and shade trees

A site inspection by staff reveals that the notification for the pending application is posted in the front yard.

B. Neighborhood and Its Character

The Property is surrounded to the north, east, and west by single-family dwellings in the R-90 Zone. To the south, the properties confronting the Subject Property across Liberty Lane are also developed with single-family dwellings in the R-90 Zone.

The neighborhood is characterized by single-family residential homes in the R-90 Zone, with most of the properties consisting of lots with sizes slightly larger than the typical (9,000 SF) R-90 Zone property.

Neighborhood Boundaries

For the purposes of this application, the neighborhood is defined by the following boundaries:

North: Victoria Lane
West: Falls Road
East: Harmony Lane
South: The properties located along Falls Road and Harmony Lane that are directly accessed from Liberty Lane

C. Planning and Zoning History

The 1958 County–Wide Comprehensive Zoning zoned the Subject Property is located in t R-90. The 2002 Potomac Master Plan and the subsequent Sectional Map Amendment (G-800) confirmed the R-90 zoning of the Property.

III. ANALYSIS AND FINDINGS

A. Consistency with the Master Plan

The proposed adult group home is consistent with *the 2002 Potomac Master Plan*. The Master Plan does not provide specific guidance regarding this site or adult group homes. However, the Land Use and Zoning Plan section of the Master Plan makes general references to Special Exception uses and (p. 35) and Housing for the Elderly (p. 36). With regard to special exception the Master Plan recommends the following policy goals:

- **Limit the impacts of existing special exceptions in established neighborhoods. Increase the scrutiny in reviewing special exception applications for highly visible sites and properties adjacent to the Chesapeake & Ohio Canal Historical Park.**
- **Avoid an excessive concentration of special exceptions along major transportation corridors.**

The proposed application is a new special exception but a low or no impact use. The Property is not near the Chesapeake & Ohio Canal Historical Park, nor is it located along a major transportation corridor. There are no other special exception uses in the immediate vicinity of the Subject Property.

The Master Plan notes that the unmet need of senior housing in the region will increase significantly from 450 units deficit in 2002 to 750 units by 2020 and. The Master Plan recommends that the sub-region should meet its own senior needs.

B. Environment

There are no environmental issues or concerns associated with the subject proposal. The Property is not subject to the Forest Conservation Law as defined in Chapter 22A of the Montgomery County Code. The application does not propose any clearing or grading activities on or near the special exception site. Moreover, the Property consists of less than 40,000 square feet of area.

V. SPECIAL EXCEPTION FINDINGS

A. Standard for Evaluation (59-G-1.2.1)

Section 59-G-1.2.1 of the Zoning Ordinance specifies that a special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual

characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

Seven criteria are used to identify the physical and operational characteristics of a use. Those criteria are size, scale, scope, lighting, noise, traffic, and the environment. What must be determined is whether these effects are acceptable or would create adverse impacts sufficient to result in denial. The inherent, generic physical and operational characteristics associated with a large group home include (1) a building 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 area, and (6) noise from ambulances in emergency situations.

Many of the characteristics of the proposed Special Exception are inherent. The scale of the building, and the on-site parking areas shown on the site plan are operational characteristics typically associated with a large group home and would not be unusual in any respect.

There will be no external alteration or modification to the existing house to accommodate the proposed increase of two beds. The existing dwelling is currently being used as a group home with eight beds. The proposed increase to 10 beds will not adversely affect the preservation of the existing residential character of the immediate neighborhood. Adequate off-street parking is provided to serve the proposed large group home. As noted, there is on-site parking for at least nine cars and ample off-site parking is available along the Property's frontage on Liberty Lane.

Staff finds that the size, scale and scope of the proposed large group home will not adversely affect the residential character of the neighborhood or result in any unacceptable noise, traffic disruption, or environmental impact. Staff considers the parking easement (for the three spaces) that is accessed from the driveway access to the adjacent stem lot a non-inherent character but there is no evidence of potential impact to the neighborhood or the residence of the group home. Thus, there are no inherent or non-inherent adverse effects associated with this Application sufficient to warrant a denial of the subject special exception.

B. General Development Standards (59-G-1.23)

a. <u>Development Standards-59-G-1.23 (a)</u>: Special Exceptions are subject to the development standards of the applicable zone where the Special Exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

The following table summarizes the relevant R-90 Zone development standards:

Current Development Standard	Required	Proposed
Minimum Lot Area	9,000 SF	11,160 SF existing
Minimum Lot width: • @ Front building line • @ Street line	 75 ft 25 ft.	 <u>+</u> 125 ft <u>+</u>125 ft
Minimum Building Setback: Front Yards Side Yards ▪ One side ▪ Sum of both sides ▪ Rear	 30 8 ft 25 ft 25 ft	 <u>+</u>60 ft 8 ft 25 ft 25 ft
Maximum Building Height	2 ½ stories or 35 ft	1 story+ basement (<30 ft)
Maximum Building Coverage Including accessory building	30%	<30%

b. *Parking Requirements—59-G-1.23 (b)*: Special exceptions are subject to all relevant requirements of Article 59-E.

One parking space for every two residents and one space for every two employees are required for the proposed Group Home. A total of nine parking spaces are required.

Sufficient off street parking is provided to serve the proposed group home. The existing circular driveway will accommodate up to six cars and there is an existing parking pad with three spaces located on an easement attached to the Property's western side yard. In addition, unrestricted on street parking is available on the Property's 125-foot wide frontage on Liberty Lane.

c. *Forest Conservation-59-G-23 (d)*: If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

A Forest Conservation Plan is not required as part of the requested special exception. The Subject Property is less than 40,000 square feet. No external modification or expansion is proposed. No forest or individual trees will be disturbed.

d ***Signs—59-G-23 (f):*** **The display of a sign must comply with Article 59-F.**

Currently, there is no identification sign placed on the Property. The name of the Home is written on the mail box by the side walk. No identification sign is proposed as part of the special exception application.

e. ***Building compatibility in residential zones —59-G-23(g):*** **Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its sitting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.**

No change is proposed to the exterior of the existing dwelling, which was constructed in 1955 and is generally consistent with the prevailing character of the neighborhood in terms of design and building materials.

f. ***Lighting in residential zones—59-G-23(h):*** **All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:**

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.
(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Existing lighting on the Property is adequate and consistent with the residential character of the neighborhood and meets the objectives of the standard. There are 12 wall-mounted lights spread out around the front, rear, and two side yards:

4 flood lights, 65 watts, on the front (2 on southeast side and 2 on southwest side) walls;
3 flood lights on the west side of the house (one on the upper level and two on the lower level walls);
1, 60-wattslight on east side wall of the house; and
4, 60-watt lights, on the rear (north) wall of the house (2 on northeast portion, 1 in the middle portion, above the deck and 1 on the northwest side of the house)
The lights are on timers and controlled by staff. They are turned on at dusk and off at daybreak. These lights have been there for 10 years and there has been no complaints of lights filtering to adjoining properties. There are evergreen trees between adjoining properties

In addition, two approximately 5-foot high switch activated light posts are located in the front yard on opposite sides of the parking area.

No new lighting will be added.

C. General Conditions (59-G-1.21)

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

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

The Subject Property is located in the R-90 Zone that permits the proposed special exception.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The proposal is in compliance with the specific special exception requirements of Section 59-G-2.26 for group home, large.

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

There are no major master plan concerns that are associated with this application. The proposed Group Home use is consistent with the land use objectives of the 2002 Potomac Master Plan. The proposed project is compatible with the existing development pattern of the adjoining uses as well as the immediate neighborhood, in terms of height, size, scale, traffic and visual impacts of the structure and parking.

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

The proposed use will be in harmony with the character of the residential neighborhood. The proposed use will be operated in such a manner that it will not interfere with the orderly use, development, and improvement of surrounding properties. The Home is located on the first floor of the residential structure, which is being modified to accommodate the increased number of beds and to meet the licensing agency requirements. The interior modification will not require the construction of an addition.

As noted, a small group home with eight beds already exists on the Property as a use by-right. The current application represents an increase by two beds. Given the availability of sufficient off-street parking with ample on street parking and the minimal size of the increase in the number of beds, the proposed Special Exception will not result in any notable negative impact on the residential neighborhood, in terms of increased traffic and noise.

In view of the fact that the proposed use generates much less than 30 peak-hour trips during the weekday morning and evening peak periods, and given the fact that there is no other special exception use in the area, it is unlikely that the proposed use would create a level of traffic or noise that would cause concern about congestion in the neighborhood.

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

There is no indication that the proposed use would be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood.

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

Due to its residential nature and with the recommended conditions, it is unlikely that the use would cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. The group home has a regular household kitchen. Staff prepares three meals and snack for the residents daily on premises.

Deliveries to the Property include a once every two month delivery of food products and a once a month delivery of incontinence products. Trash is picked up twice a week by Potomac Disposal, a company that picks-up the regular trash in the neighborhood. Residential type trash receptacles and recycling bins are located on the west side of the house, by the basement entrance and not visible from the street.

Staff recommends that there will be no more than four deliveries to the Property per month.

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

The proposed use will not exacerbate the concentration of special exception uses in the area. Currently, there are no special exception uses in the immediate neighborhood. The proposed use will have no adverse impact on the residential nature of the Property and the immediate neighborhood.

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

The proposed use will not adversely affect the health, safety, security, morals or welfare of residents, visitors or workers in the area. The existing group home (small) use has operated on the Property for nearly 15 years. The proposed increase in the current application although changes the use's classification from a by-right–use to a special-exception use; there will be very little or no change in the established operational characteristics of the Home.

(9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.

The subject Special Exception is not subject to approval of a Preliminary Plan of Subdivision because no building permits are required for this Application or requested by the Applicant.

(B) If the Special Exception:

(i) does not require approval of a new Preliminary Plan of Subdivision; and
(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the Special Exception's impact; Then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the Special Exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

As noted, the Special Exception does not require approval of a Preliminary Plan of Subdivision. The Application does not propose any new structures. Existing public facilities—public roads, storm drainage, fire and police protection are adequate to serve the proposed use. The Application is exempt from the Local Area Transportation Review because it generates less than 30 peak hour trips. As an application in the Potomac Policy Area, it is not subject to Transportation Policy Area Mobility Review (TPAR) according to current Subdivision Staging Polices.

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

The proposed use will be adequately served by existing public roads. The Local Area Transportation Review (LATR) Guidelines require that a traffic study be performed if the use generates 30 or more peak hour trips. The proposed group home will not generate more than 30 peak hour trips; therefore, a traffic study is not needed to satisfy LATR requirements. Since there is no increase in the size of the building, TPAR does not apply and the proposed group will not have to pay the transit impact tax associated with the Potomac Policy Area. The proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic.

(b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department, which approves or licenses the project.

The applicant is aware of these requirements.

(c) The applicants for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

The applicant has met the burden of proof under the requirements of Section 59-G-2.26 (Group Home), Section 59-G-2.13.1 (General Development Standards) and Sections 59-G-1.21 (General Conditions) of the Zoning Ordinance.

D. Standards and Requirements (59-G-2)

(**a) When allowed. In addition to the general conditions required in division 59-G-1, a group home may be allowed upon a finding by the Board of Appeals:**

(1) That any property to be used for a group home is of sufficient size to accommodate the proposed number of residents and staff.

The Property is of sufficient size to accommodate the proposed number of residents. The Property is currently being used as a small group home with eight beds. With the proposed special exception, the number beds increase to 10, with a net increase of two beds. The two-bed increase will be accommodated by alteration to the interior of the existing structure, modifying an existing double occupancy room and an office into two single occupancy bed rooms and a shared bathroom. The proposed increase of two beds can be accommodated within the existing structure and would not require an exterior expansion or addition to the existing residential structure.

(2) That the site to be used as a group home for children provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children to be cared for.

The group home provides services to adults only, specifically, for the elderly.

(3) That off-street parking must be provided in the amount of one parking space for every 2 residents and one space for every 2 employees on the largest work shift. The Board may decrease the off-street parking where the method of operation or clientele indicates the decrease is warranted.

With the approval of the requested Special Exception the facility will have a total of 10 beds and a total of eight full-time equivalent (seven fulltime two part time) staff. As noted, the residents of the group home are elderly, advanced in age and with various types of medical challenges and therefore, do not operate automobiles.

A total of nine on-site parking spaces are provided for the facility. In addition, ample on street parking is available on the properties frontage on Liberty Road. Sufficient parking is provided to serve the residents, employee, and visitors to the facility.

(b) Decision to be expedited. In order to expedite a decision regarding a proposed group residential facility, the Board must give priority consideration in scheduling a public hearing and in deciding petitions for such a facility.

Not applicable.

VI. COMMUNITY OUTREACH

In response to staff's inquiry about community outreach, the applicant indicated that a letter dated November 27, 2014, and addressed to "Liberty Lane neighborhood and friends", (See Attachment) had been sent out to nearby and adjoining property owners. At the time of this writing, no communication has been received from the community either in support or in opposition of the proposed Special Exception. As noted, a group home has been operating at the same location since 2000 as a use by right with two less beds than being requested by the subject special *exception. There is no record of community compliant regarding the operation of the existing use on the Property.*

VII CONCLUSION

The proposed Special Exceptions satisfies all applicable requirements for approval of a Special Exception as specified in the Montgomery County Zoning Ordinance (prior to October 30, 2014). Moreover, the proposed development is consistent with the recommendations of the 2002 Potomac Master Plan. There is no unacceptable traffic, circulation, noise or environmental impacts associated with the Application provided that the recommended conditions are satisfied.

ATTACHMENTS:

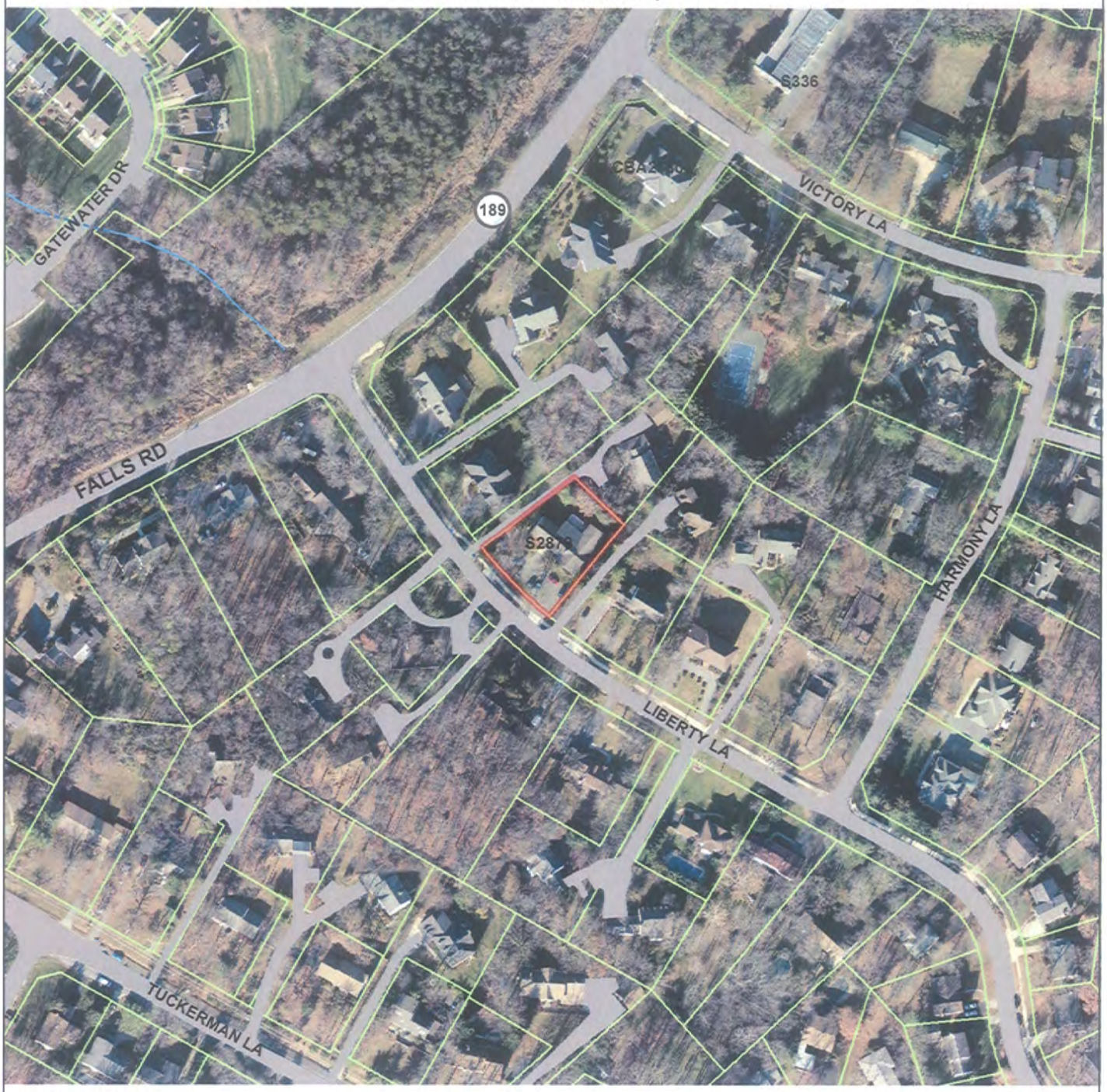
A. Plans and drawings
B. Supplemental information

PLANS AND DRAWINGS

Attachment-A

Case No.: S-2879

General Location Map



LEGEND

- Subject Site
- Parcel
- Building
- Paved Area
- Lake and Pond
- Stream and River

1 inch = 200 feet
Address:8919 Liberty lane, Potomac, MD 20854

Key Map
NTS

NOTICE:

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended.

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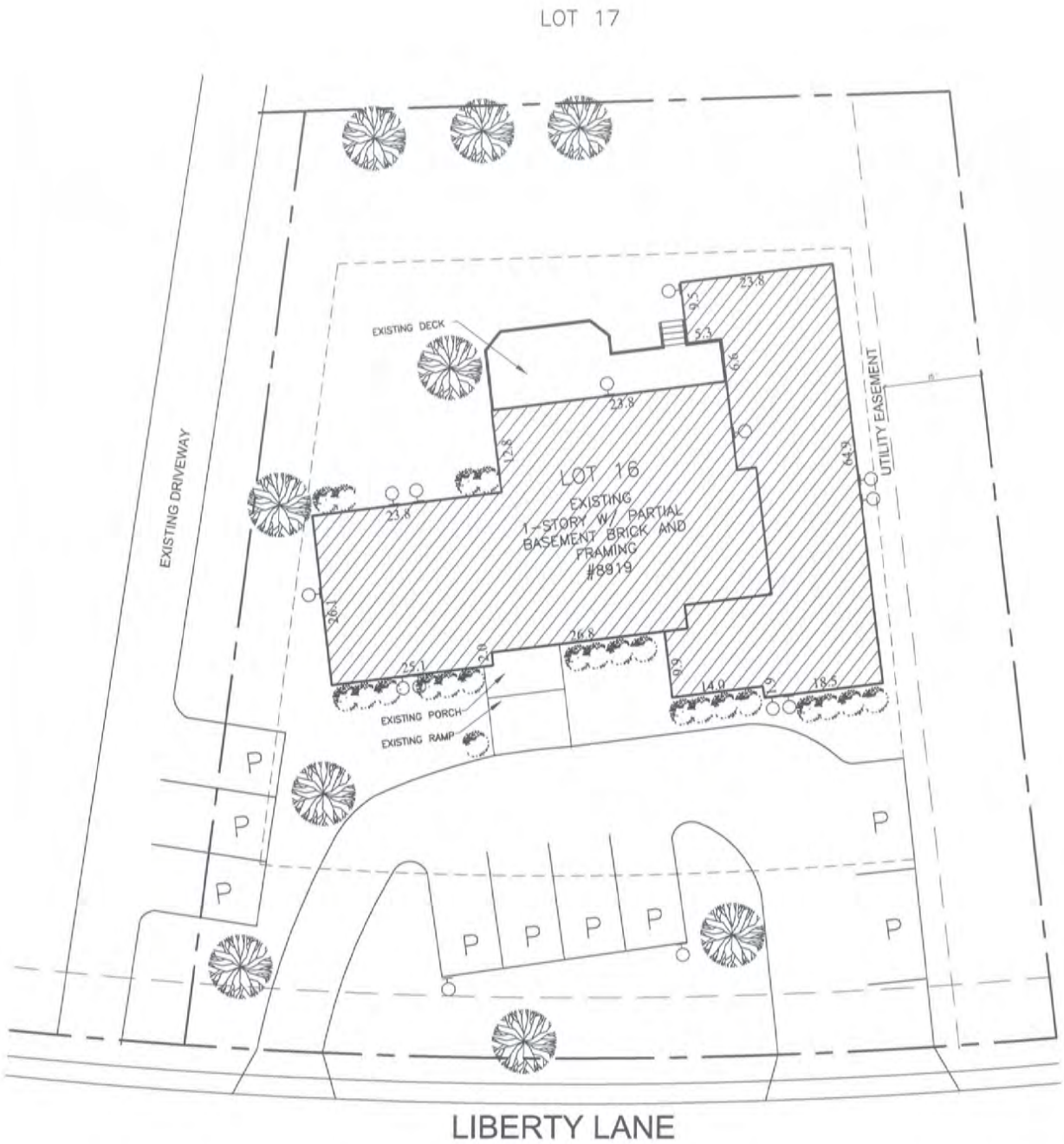


LEGEND

- TREE
- BUSHES
- LIGHT FIXTURE

SITEPLAN

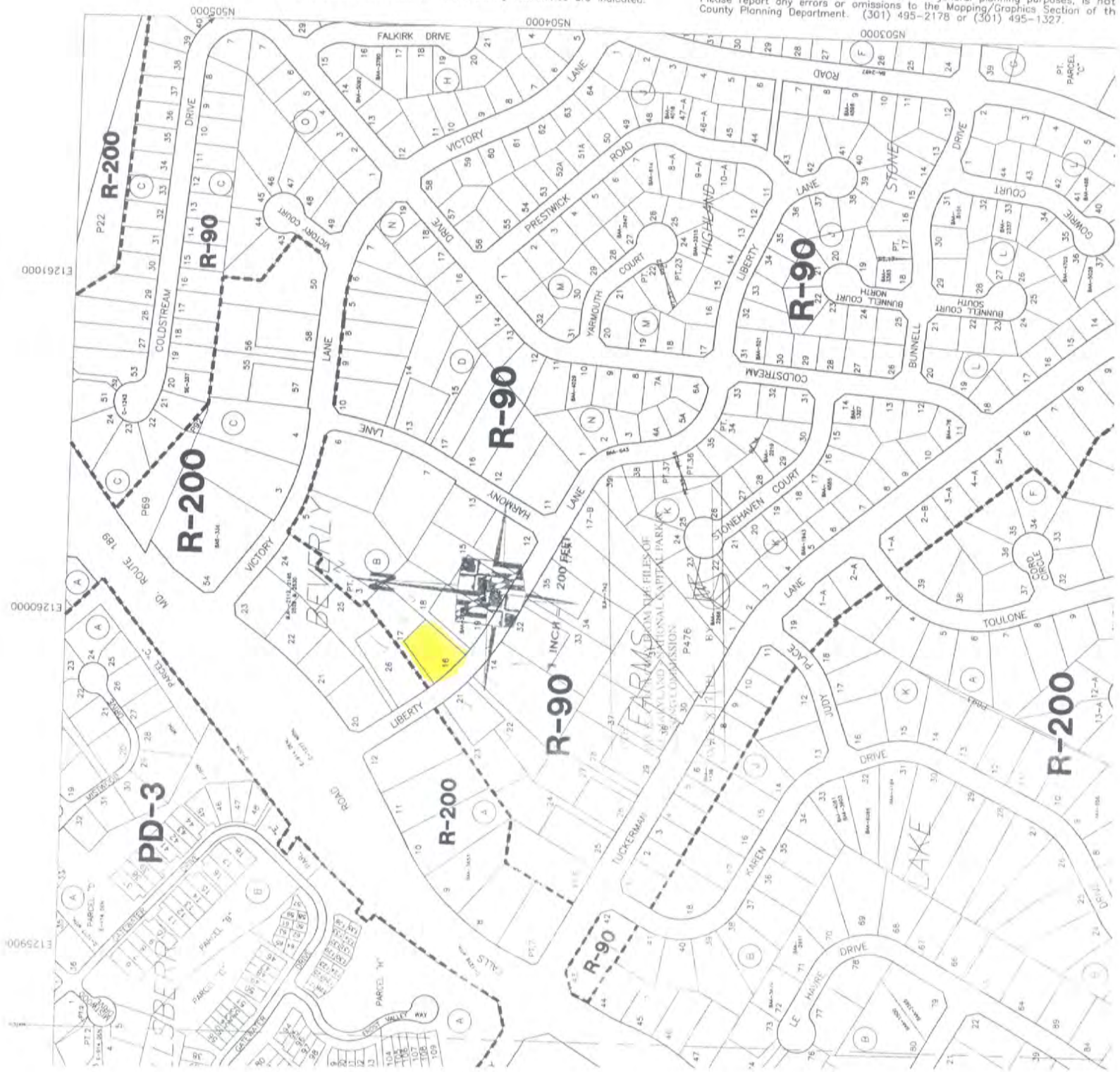
SCALE: 1/16" = 1'-0"

8919 LIBERTY LANE POTOMAC, MD 20854

Eden Homes Group
P.O. Box 59664 Potomac, MD 20859
tel: 301-299-2637 fax: 301-299-2633 cell: 301-520-1511

NOTES CONCERNING ZONING IN RIGHTS-OF-WAY
Unless indicated otherwise, rights-of-way are intended to depict zoning line boundaries. Generally, rights-of-way are zoned in accordance with adjacent zoning. Where zoning differs on each side of a right-of-way, all of the right-of-way is in the more restrictive zone. Where there is no dedicated right-of-way, but a prescriptive easment exists, zoning boundaries are indicated.

NOTE: this map was compiled by digitizing Tax Maps prepared by the State Department of Assessments and Taxation. Property lines are compiled from descriptions and subdivision plats, and should not be interpreted as actual fi The record plat or survey should be reviewed if more property specific inforr required. Use of this map, other than for general planning purposes, is not Please report any errors or omissions to the Mapping/Graphics Section of th County Planning Department. (301) 495-2178 or (301) 495-1327.



FRONT OF HOUSE

FRONT OF HOUSE

DECK

DECK

FRONT OF HOUSE

FRONT OF HOUSE

SUPPLEMENTAL INFORMATION

Attachment-B

Liberty Assisted Living

8919 Liberty Lane • Potomac, MD 20854
301.340.7800 (p) • 301.340.7846 (f)

November 27, 2014

Dear Liberty Lane neighbors and friends,

Liberty Assisted Living is your neighbor at 8919 Liberty Lane. I am sure you are all wondering what the big sign in front of our home means asking for a special exception for a "Large Group Home".

Currently we are licensed for eight senior residents to reside at our small assisted living home. We are seeking to get permission from the county to allow ten residents to reside at the home. There will be no construction or any work done to the outside of the house. We will be using existing space. The plan is to return the main floor office back into a bedroom (which was its original use) and to make one of the larger bedrooms available for two people.

These changes will not increase the amount of traffic we currently have nor will it cause any disruption to the neighborhood.

An open house for the neighbors will be scheduled in January 2015. We sincerely hope our neighbors and friends will come and see us (a flyer will be sent to you in the next week or so with dates and times). If anyone would like to speak with me directly or schedule a private tour, please don't hesitate to contact me at (301) 520-1511.

Thank you and have a happy holiday season!

Sincerely,

Jonathan E. Edenbaum, MHA
Owner
Liberty Assisted Living

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 716

September Term, 2001

NORMAN HAINES, et ux.

v.

LIBERTY ASSISTED LIVING, INC.

Kenny,
Adkins,
Bloom, Theodore G.,
(Retired, specially assigned)

JJ.

Opinion by Bloom, J.

Filed: April 16, 2002

#217837

Norman and Ellen Haines appeal from the entry of partial summary judgment in the Circuit Court for Montgomery County (Honorable Martha G. Kavanaugh, presiding). Appellants had filed a complaint seeking declaratory and injunctive relief with respect to an easement across their property in favor of adjoining property owned by appellee, Liberty Assisted Living, Incorporated ("Liberty"). The circuit court's ruling constitutes a declaration that the easement in favor of Liberty's property was not created by necessity and, therefore, has not been extinguished by the creation of additional access to that property, and that Liberty is entitled to the continued enjoyment thereof. We are asked to decide whether the circuit court erred in ruling that the access easement was express, and not implied. We have jurisdiction pursuant to Md. Code (1974 and 1998 Repl. Vol.), §§ 12-301, 12-308 of the Courts and Judicial Proceedings Article, and we now affirm.[1]

BACKGROUND

I.

Appellants have been the owners of property located at 8921 Liberty Lane in the Beverly Farms subdivision in Potomac, Maryland since 14 June 1984. Their parcel is identified and described as "Lot 17" in the subdivision. An adjoining parcel, "Lot 16," has

[1] The court denied appellants' cross-motion for summary judgment, as well as that part of Liberty's motion with respect to a separate utilities easement. The circuit court certified its judgment as a final order. *See* Md. Rule 2-602(b). In its response brief, Liberty represents that appellants have dismissed "Count I" of their complaint, but it appears that "Count II," pertaining to the use of the utilities easement, is no longer at issue here.

belonged to appellee, Liberty, an assisted living corporation based in Silver Spring, Maryland since 17 June 1999.

Both lots were once owned as a single parcel (the "Common Property") by Helen S. and Harvey H. Haines ("Common Owners"), who had acquired the land on 9 February 1955. The Common Owners eventually decided to "resubdivide"[2] the Common Property into two lots: Lots 16 and 17. The preliminary plan of subdivision was presented by appellant Norman Haines to a "Subdivision Review Committee" meeting on 1 November 1982. As a mandatory condition of subdivision approval, the Common Owners were required to establish an easement of way over Lot 17 for the benefit of Lot 16. On 21 March 1983, a plat of the subdivision, showing the required easement, was certified on that date by a registered land surveyor. The plat, which shows a strip of land that is part of Lot 17 marked "ingress and egress easement for Lot 16," is accompanied by the following "Owners Dedication":[3]

> We Harvey H. Haines and Helen S. Haines, his wife, owners of the property shown and described hereon hereby adopt this plan of resubdivision, establish the minimum building restriction lines, establish the 10 foot public utility easement (P.U.E.), establish

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[2] The land surveyor who certified the Common Owners' plat characterized this as a "resubdivision" because that property had been part of the original "subdivision entitled Beverly Farms." We shall refer to the division of the Common Property as a subdivision, however.

[3] Strictly speaking, a "dedication" entails a conveyance to the public. *See City of Annapolis v. Waterman*, 357 Md. 484, 506 (2000). We note that neither party addresses, and we will thus not reach, the question of whether the requirement for the easement, apparently imposed as a condition for "resubdivision" approval, continues to be in effect.

> the 15 foot utility easement on Lot 16 for the benefit of Lot 17 and establish the ingress and egress easement on Lot 17 for the benefit of Lot 16 as shown hereon.

The subdivision was approved by the Maryland National Capital Park and Planning Commission – Montgomery County Planning Board on 27 October 1983, and by the Montgomery County Department of Transportation on 29 May 1984.

The plat, which was recorded on 12 June 1984 as Plat No. 14794, Plat Book 127, delineates the two lots. Lot 16 abuts Liberty Lane, a public street, and Lot 17, behind Lot 16, includes an extension of land, which can best be described as a "panhandle" or "flagstaff," that reaches Liberty Lane along the northwest side of Lot 16. On that "panhandle" strip there is a driveway that provides vehicular access for Lot 16 as well as for Lot 17, which access was required as a condition for approval of the subdivision.[4] The plat also shows the existence of two easements: a 15 foot wide utility easement, for the benefit of Lot 17, which runs along the southeast face of Lot 16 between Lot 17 and Liberty Lane, and an "ingress and egress easement for Lot 16" that extends over the "panhandle" portion of Lot 17. That access easement is the subject of this appeal.

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[4] The Common Property had been formed roughly in the shape of a trapezoid, with its base bounding Liberty Lane. With the "resubdivision," Lot 16 occupies the lower part of the original parcel and binds Liberty Lane, while Lot 17 inhabits the upper portion of the original parcel, with the addition of the panhandle which reaches towards Liberty Lane. The easement in question is within that panhandle.

By deed executed 14 June 1984, the Common Owners conveyed Lot 17 to the appellants. The deed describes the property as "Lot Numbered SEVENTEEN (17) . . . as per plat thereof recorded among the Plat Records of Montgomery County, Maryland, in Plat Book 127 at Plat 14794."

On 17 June 1999, Harvey H. Haines, as surviving tenant by the entirety, sold Lot 16 to Liberty, "[s]ubject to covenants, easements, restrictions and rights of way of record, if any." The granting clause refers to the description of the Lot in "Plat Book 127 at plat 14794," the plat that depicts both the utilities easement and the above-referenced ingress and egress easement. The habendum clause includes "said lands and premises . . . together with all . . . the rights, roads, ways . . . privileges, easements and advantages thereto belonging or appertaining."

II.

Trouble between the adjoining landowners began to develop shortly after Liberty's purchase of Lot 16. On 24 April 2000, appellants' attorney wrote to Liberty to express his clients' concerns about the use of the driveway by Liberty and its residents and support vehicles in a manner that interfered with appellants' access and also damaged the roadway and adjoining lawn areas. The letter stated that the

> driveway that provides access to your property is on an easement area that is limited to[]

> ingress and egress only. All of the other activities including parking and construction activities are not permitted under the limited easement. Past and current activities within the easement area are inappropriate, and future activities may be even more detrimental to the condition of the Haines property and are a cause for concern.

Appellants' Counsel added:

> The transformation of the single-family residence on Lot 16 into a group home use is a significant change in the nature of the use of the property. The easement established on the Record Plat was strictly for ingress and egress to a private residence not for a commercial type use.

Appellants' lawyer recommended that Liberty agree with his clients to "eliminate the ingress and egress easement for the common usage of the driveway[,]" suggesting that the Haineses could then be persuaded "not to file a law suit to enjoin the continuation of the inappropriate use of the easement area and trespass on the surrounding, private property and to collect damages to personal property." That letter was followed on 12 July 2000 by a second letter from appellants' attorney, which stated that the continued "intrusion of the activities at your property on Mr. & Mrs. Haines' right of quiet enjoyment is unacceptable." Counsel reiterated that the "easement over the Haines' driveway is limited to ingress and egress only." The letter points out that

> the common driveway and access easement were created by plat during the subdivision process in order to provide ingress and egress to Lot 16 from Liberty Lane . . . to facilitate the intent of the subdivision, that both lots be

> served by one driveway. The creation of the easement was essential to providing Lot 16 with access to Liberty Lane.
>
> Since that time, a separate circular driveway which provides parking and two methods of ingress and egress to Lot 16 from Liberty Lane, has been constructed [obviating] the need for the easement and common driveway as it was never the intent that Lot 16 be served by two driveways.

Counsel warned that the Haineses would proceed, "unilaterally" if necessary, to "extinguish the common driveway easement."

No satisfactory accord was reached, and on 17 January 2001 the Haineses filed suit in the Circuit Court for Montgomery County for declaratory and injunctive relief, seeking, *inter alia*, a declaration that the access easement was created by a necessity that no longer exists, and an injunction directed at ending Liberty's "filling or excavating within the utility easement without the consent of [appellants]." On 8 March 2001, Liberty answered the complaint, responding that the easement had not been created by necessity, and denying that it had violated the utilities easement. Liberty simultaneously moved for summary judgment, asserting that it owned an express easement over appellants' driveway, not one of necessity. Liberty further asserted that circumstances that in part had fueled the dispute in the first instance, that is, the improper use of the easement by a Susan Smith, former majority owner of Liberty, as well as her strained relationship with the Haineses with respect to that

easement, were no longer a consideration because the purchase of Smith's ownership of Liberty by a more accommodating owner, Jonathan Edenbaum, rendered that controversy moot.

As to the complaint for injunctive relief with respect to the utilities easement, Liberty maintained that the Haineses had failed to demonstrate entitlement to such relief, and it denied that its construction of a driveway that crossed a portion of the utilities easement irreparably harmed the Haineses. Liberty pointed out that the property burdened by the utilities easement belonged to it, and asserted that it would bear all costs of any excavation needed to gain access to the services covered by the utilities easement.

After convening a hearing on the motions for summary judgment, the circuit court granted Liberty's motion with respect to the "ingress-egress" easement, denied appellants' cross motion, and denied as well Liberty's motion with respect to the utility easement. The court found that the "Montgomery County Planning Board required the creation of the ingress-egress easement which was recorded in the plat," and it concluded that the ingress-egress easement was express "because it was incorporated by reference in the deed . . . and so therefore still exists." The court filed its order on 1 June 2001, and certified it as a final judgment. This appeal followed.

DISCUSSION

I.

A.

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Md. Rule 2-501(a). Our review of the circuit court's entry of summary judgment is plenary. *See Lippert v. Jung*, 366 Md. 221, 227, 783 A.2d 206, 209 (2001)(standard whether trial court legally correct).

In general, the construction of a deed is a question of law for the court and is subject to de novo review. *See Chevy Chase Land Company v. United States*, 355 Md. 110, 123, 733 A.2d 1055, 1062 (1999). Our review prompts the application of principles of contract interpretation. *Id.* Pursuant to general rules of construction, the court should consider the language employed, the subject matter, and the surrounding circumstances, *see County Commissioners of Charles County v. St. Charles Assoc. Ltd. Partnership*, 366 Md. 426, 463 (2001), mindful of the requirement to ascertain the intent of the parties. *Id.*

B.

This case turns on the nature of the easement of access held by Liberty. No party disputes that Liberty had acquired an

easement over the "panhandle" containing appellants' driveway.[5] They differ as to the manner of its conveyance, urging that this distinction is the operative factor in deciding the nature of its duration. The Haineses contest the circuit court's ruling that Liberty was granted an express easement, urging that, because Liberty has held an "implied easement," predicated on necessity, that easement terminated when Liberty constructed its alternative access road. Liberty maintains that it has been granted an express easement, one not subject to termination with the cessation of any conditions of necessity.

As will be explained below, the resolution of this appeal will not be found in characterizing the easement arising from the 1999 sale of Lot 16 to Liberty as either "express" or "implied." The crucial transaction for our purposes occurred not in 1999, but rather in 1984 when the Common Owners granted Lot 17 to appellants and reserved the ingress-egress easement for the benefit of Lot 16 over the driveway to Lot 17.

At this juncture, however, we must initially determine whether we will entertain this issue. In reviewing an entry of summary judgment on appeal, "Maryland appellate courts, as a general rule, will consider only the grounds upon which the [circuit] court

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[5] At the hearing, counsel for the Haineses stated that "a reservation of easement . . . an implied easement, was established in favor of . . . Liberty[.]" He added that "[t]he ingress-egress easement is an implied easement." In their appeal brief, the Haineses aver that "the reference to the subdivision plan can lead to no other conclusion but that the easement is implied."

relied in granting summary judgment." *PaineWebber v. East*, 363 Md. 408, 422 (2001). Judge Rodowsky explained that the appellate court "'will not speculate that summary judgment might have been granted on other grounds not reached by the trial court.'" *Id.* (quoting *Gresser v. Anne Arundel County*, 349 Md. 542, 552 (1998)). He continued that

> "[o]n an appeal from the grant of a summary judgment which is reversible because of error in the grounds relied upon by the trial court the appellate court will not ordinarily undertake to sustain the judgment by ruling on another ground, not ruled upon by the trial court, if the alternative ground is one as to which the trial court had a discretion to deny summary judgment . . . ."

Id. (quoting *Geisz v. Greater Baltimore Med. Ctr.*, 313 Md. 301, 314 n.5 (1988)).

In this case, the circuit court primarily ruled that Liberty is the holder of an *express* easement by virtue of the reference to the plat in its deed. The court also clearly rejected the argument that the easement arose by necessity, declaring that the easement "was incorporated by reference in the deed and so therefore it still exists." Although we disagree with the court's terminology that the easement was conveyed by express grant, implicit in the circuit court's ruling is that it is not an easement that arose by necessity. For the reasons that follow, we agree with that aspect of the circuit court's ruling.

II.

A.

"An easement is broadly defined as a nonpossessory interest in the real property of another[.]" *Boucher v. Boyer*, 301 Md. 679, 688 (1984)(citation omitted). While it is not a possessory property right, *see Baltimore Gas & Elec. Co. v. Flippo*, 112 Md. App. 75, 83 (1996), *aff'd.* 348 Md. 680 (1998), "[a]n easement ordinarily exists for the benefit of the owner of some particular land, it belonging to him as an incident of his ownership of the land." 3 HERBERT THORNDIKE TIFFANY, THE LAW OF REAL PROPERTY § 758 at 203 (3d ed. 1939). An easement may be created by express or implied grant or by prescription; or it may be reserved in certain circumstances by the grantor. *See generally Boucher*, 301 Md. at 688.

B.

Appellants dispute the circuit court's ruling that Liberty holds an express easement. They aver that the Common Owners held a quasi-easement during the unity of title, and then reserved an implied easement by necessity when the Common Owners sold Lot 17 to them in 1984. They contend that, because the easement arose by necessity, it terminated when that necessity ceased to exist with the construction of Liberty's alternate access driveway.

While we concur that Liberty does not hold an express easement, and we likewise agree that we must look to the 1984 conveyance to determine the nature and extent of the easement created, we are not persuaded that the easement that was reserved by the Common Owners amounts to "an implied reservation of easement based on necessity."

c.

An easement by necessity is implied by operation of law. In *Condry v. Laurie*, 184 Md. 317 (1945), Judge Delaplaine set forth the principles regarding the creation of such an easement:

> It is universally accepted that where a person conveys to another a parcel of land surrounded by other land, and there is no access to the land thus conveyed except over the grantor's land, the grantor gives to the grantee by implication a right of way over his own land to the land conveyed by him.

Id. at 321. This easement is only provisional, "'and continues to exist only so long as there may be a necessity for its use.'" *Id.* (quoting *Oliver v. Hook*, 47 Md. 301, 309 (1877)); *see, generally, Beck v. Mangels*, 100 Md. App. 144, 161-62 (1994). Lot 16 has never been landlocked. It binds on Liberty Lane. As the Court of Appeals observed in *Condry*, a "court will not recognize a way of necessity if another road to the public highway can be made without unreasonable expense, even though the other road may be much less convenient." 184 Md. at 322. Although the parcel did not have an

alternate driveway when the subdivision was approved in 1982-83, the fact that Lot 16 binds on Liberty Lane defeats appellants' assertion of an easement that arose by necessity.

Accordingly, the access easement has never been a way of necessity; therefore, the easement established for the benefit of Lot 16 over Lot 17 was not extinguished by virtue of its construction of alternative driveway access to Lot 16. *See also Mullins v. Ray*, 232 Md. 596, 600 (1963)(lot abutted public road); *Duvall v. Rideout*, 124 Md. 193, 194 (1914)(same).

III.

A.

Having concluded that an easement by necessity was not created in 1984, we deem it appropriate to determine the nature of the easement that was reserved by the Common Owners, because those grantors "could convey [to Liberty], of course, no greater interest in land than [they themselves] possessed." *Atlantic Construction Corp. v. Shadburn*, 216 Md. 44, 51 (1958). Judge Cole, writing for the Court of Appeals in *Boucher*, outlined the various types of implied easements as differentiated by the methods of their creation: implied easements by prescription, necessity, the filing of plats, by estoppel, and by "implied grant or reservation where a quasi-easement has existed while the two tracts are one." 301 Md. at 688; *see generally* JON W. BRICE AND JAMES W. ELY, JR., THE LAW OF

EASEMENTS AND LICENSES IN LAND §§ 4:1-4:4 (2001); 4 RICHARD R. POWELL, POWELL ON REAL PROPERTY, §§ 34.08[1]-[3] (2001).

B.

We turn to appellants' contentions with respect to the quasi-easement. We agree that before the severance of the original parcel, the driveway in question constituted a quasi-easement. A quasi-easement is not a true easement, because "[a]n owner cannot have an easement in his own land[.]"[6] *Mitchell v. Seipel*, 53 Md. 251, 263 (1880). It is

> a legal fiction developed to overcome the premise in law that one cannot have an easement over one's own land. When one utilizes a part of his land for benefit of another part and the land is separated without reservation or grant, a quasi-easement is implied. The phrase is no more than a convenient expression for an owner's utilization of one part of the land for the benefit of the other.

Johnson v. Robinson, 26 Md. App. 568, 577 (1975). Upon division of the estate, "an actual [implied] easement is to be regarded as existing, which corresponds to the use which was previously made of

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[6]As explained by the Illinois Supreme Court:

> No easement exists so long as there is a unity of ownership, because the owner of the whole may, at any time, rearrange the qualities of the several parts, but the moment a severance occurs by the sale of a part, the right of the owner to re-distribute the properties of the respective portions ceases and easements or servitudes are created corresponding to the benefits and burdens mutually existing at the time of the sale.

Bihss v. Sabolis, 322 Ill. 350, 351-52, 153 N.E. 684, 685 (1926).

the land by the owner of both parts." 3 TIFFANY, § 781 at 255. Thus,

> [w]hen the owner of property has used one part for the benefit of another in such manner that there would arise a presumption that an easement existed if the two parts had been held by different owners, then, upon conveyance of the part so used, there is a *quasi*-easement which will be granted by implication . . . provided the use has been such that the easement would be classed as continuous and apparent, and necessary to the reasonable enjoyment of the property conveyed.

Dalton v. Real Estate & Improvement Co., 201 Md. 34, 46 (1952); *see Slear v. Jankiewicz*, 189 Md. 18, 23 (1947), *cert. denied*, 333 U.S. 827 (1948); *see, generally,* RESTATEMENT OF PROPERTY § 476 (1944).

The Common Owners reserved the easement for the benefit of their own property. As to reservation, the Court of Appeals has stated that "if a grantor intends to reserve any rights . . . he must reserve them expressly, and the only exception is of easements . . . of actual, strict necessity," *Dalton*, 201 Md. at 47, and "[i]t is only in cases of the strictest necessity, and where it would not be reasonable to suppose that the parties intended the contrary . . . that the principle of implied reservation can be invoked." *Slear*, 189 Md. at 23-24 (emphasis and internal quotations omitted); see also *Shallow Run Limited Partnership v. State Highway Administration*, 113 Md. App. 156 (1996).

The reason for the stringent test for whether an easement has been reserved is that "a grantor cannot derogate from his grant" at

the expense of the grantee. *See Dalton*, 201 Md. at 47. "[T]he rules regarding implied grants and implied reservations are both rules of construction."[7] *Slear*, 189 Md. at 24.

c.

In this instance, we need not engage in the rigorous analysis outlined above to determine whether the Common Owners reserved the access easement in 1984. While such an extended discussion is usually called for where the existence of a reservation is disputed and the factors listed above must be utilized to divine the intention of the parties to the severance of a unified parcel, an application of "rules of construction" are not necessary where, as here, appellants characterize the easement as originally a quasi-easement and acknowledge the reservation by implication over their property by the Common Owners.

The intent of the parties to the 1984 severance is clear that an easement would be reserved over the Lot 17 driveway in favor of Lot 16. Indeed, it was appellant Norman Haines who, according to his affidavit, "submitted the preliminary plan of subdivision . .

[7] According to the Court of Appeals, "[a]n implied easement is based on the presumed intention of the parties at the time of the grant or reservation as disclosed from the surrounding circumstances rather than on the language of the deed." *Boucher v. Boyer*, 301 Md. 679, 688 (1984). "In either case [of implied easements], easements created by implication arise as an inference of the intention of the parties to a conveyance of land. The courts attempt to ascribe an intention to parties who, for some reason, failed to set forth their intention at the time of conveyance [and] courts look to particular facts suggestive of that intent." *Canali v. Satre* , 293 Ill. App. 3d 407, 410, 277 Ill. Dec. 870, 688 N.E.2d 351, 353 (1997), *appeal denied* 178 Ill. 2d 574, 232 Ill. Dec. 845, 699 N.E.2d 1030 (1998) (citation omitted).

. [because the easement] was made a mandatory condition of subdivision approval."[8] Under these circumstances, the reference to the plat in the 1984 deed, which shows the easement, is further evidence of that intent.[9]

D.

Commentators on the law of easements posit that a distinction exists between "easements of necessity" and "easements implied from quasi-easements":

> Common-law implied easements traditionally fall into two categories: easements of necessity and easements implied from quasi-easements. Easements of necessity . . . are typically implied to provide access to a landlocked parcel. Easements implied from quasi-easements . . . are based on a landowner's prior use of part of the landowner's property . . . for the benefit of another portion of the property . . . . Such use does not amount to a true easement because one cannot obtain an easement in one's own land. Instead, it constitutes a quasi-easement once either the quasi-servient tenement or the quasi-dominant tenement is transferred to a third party.

JON W. BRUCE AND JAMES W. ELY, JR., THE LAW OF EASEMENTS AND LICENSES IN LAND § 4:2 at 4-3 to 4-4 (2001) (footnotes and citations omitted).

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[8] Again, no party argues that the requirement by planning authorities that an easement be reserved as a condition precedent for subdivision approval constituted a "necessity." We need not speculate whether such a requirement would satisfy the "strict necessity" standard for implied reservations.

[9] As noted by then Chief Judge Cardozo, "[a] reference to a street or avenue may in one set of circumstances amount to the creation of an easement, and in another may have no other object than description or location." *Matter of City of New York*, 258 N.Y. 136, 147-48, 179 N.E. 321, 323 (1932).

According to these authors, the "fundamental distinction is that easements implied from quasi-easement are based on prior usage." *Id.* As noted by the Supreme Court of Vermont:

> It is apparent from the cases cited and arguments propounded by defendants . . . that they have confused the law regarding a way of necessity with the wholly distinct doctrine of easements by implication. . . . [T]he two are distinguishable by the circumstances which give rise to them, the policy bases which support them and the legal consequences which flow from them.

Traders, Inc. v. Bartholomew, 142 Vt. 486, 491, 459 A.2d 974, 978 (1983) (citations omitted); *but see* RESTATEMENT OF PROPERTY §§ 474-76 (1944) (no clear distinction).

The crucial distinction for our purposes, however, is that an easement implied from a quasi-easement, unlike an easement by necessity, is of permanent duration. As noted by the Oklahoma Supreme Court:

> An implied easement is a creature of common law. It is based on the theory that whenever one conveys property he includes or intends to include in the conveyance whatever is necessary for its beneficial use and enjoyment and to retain whatever is necessary for the use and enjoyment of the land retained. An easement by implication is a true easement having permanence of duration and should be distinguished from a "way of necessity" which lasts only as long as the necessity continues.

Story v. Hefner, 1975 OK 115, ¶ 14, 540 P.2d 562, 566 (1975); *see also United States v. Srnsky*, 271 F.3d 595, 599 (4th Cir. 2001); *Davis v. Peacock*, 133 Idaho 637, 643, 991 P.2d 362, 368 (1999);

Norken Corp. v. McGahan, 823 P.2d 622, 631 (Alaska 1991); *Thompson v. Schuh*, 286 Ore. 201, 214, 593 P.2d 1138, 1145 (1979). *See generally*, 7 THOMPSON ON REAL PROPERTY, THOMAS EDITION § 60.03(b)(4) at 425-26 (David A. Thomas ed., 1994 and Supp. 2001); *see also* Bruce & Ely, § 4:22 at 4-74.

Thus, in this case, Liberty's easement, even if it arose by implication from a quasi-easement, is likewise permanent and not subject to extinguishment.

IV.

We now turn to the conveyance to Liberty. This issue need not detain us long, for we conclude that Liberty acquired the easement by implication on the basis of the plat reference.

As pointed out in *Boucher*, an implied easement is based on the presumed intent of the parties at the time of the grant or reservation as disclosed from the surrounding circumstances rather than on the language of the deed. 301 Md. at 688. The 1984 deed to appellants contained no express language of reservation, but the access easement for the benefit of Lot 16 was unquestionably reserved by implication by reference to the plat containing the easement language.

In this case, the real issue is one of permanency of the implied easement that was reserved in 1984 for the benefit of Lot 16 and conveyed to Liberty in 1999, and with respect to the

permanent nature of that easement, we see no distinction between an easement implied by a conveyance by reference to a recorded plat and one created by an express grant or reservation.

V.

To summarize, we conclude that, upon the severance of title of the Common Property, the Common Owners reserved an easement by implication. That fact is acknowledged by appellants. We conclude that this implied easement is permanent in duration; it was never an easement of necessity. Mr. Harvey Haines, as surviving tenant by the entirety, conveyed this easement to Liberty by reference in the 1999 deed to the recorded plat. The easement continues to exist as an appurtenance to Lot 16, notwithstanding the construction of an alternate driveway on that lot.

We hasten to note, however, that while Liberty holds an ingress-egress easement over a portion of the access driveway for Lot 17, its use of that easement is not unrestrained, but must at all times be reasonable. And reasonableness of use must take into consideration that the driveway appears to be the sole means of vehicular access to Lot 17. Should Liberty abuse its use of the easement by using it in a manner that exceeds reasonable use, our decision today will not preclude the owners of Lot 17 from seeking appropriate remedies at law or in equity.