



Land Use Petition: SLUP-19-0010
Date of Staff Recommendation Preparation: November 13, 2019
Community Council: September 11, 2019
Planning Commission: November 21, 2019
Mayor and City Council, 1st Read: December 9, 2019
Mayor and City Council, 2nd Read: January 14, 2020

PROJECT LOCATION: 2722 Regal Way

DISTRICT//LANDLOT(S): Land District 18, Land Lot 250

ACREAGE: ±0.47 acre

EXISTING ZONING R-100 (Residential Medium Lot -100)

EXISTING LAND USE Residential

FUTURE LAND USE MAP DESIGNATION: Suburban

OVERLAY DISTRICT: NA

APPLICANT: Josh Norris, Agent

PROPERTY OWNER: Lisa Reisman, Owner

PROPOSED DEVELOPMENT: Applicant requests approval of a Special Land Use Permit for a Personal Care Home, Group (4 - 6)

STAFF RECOMMENDATION: **Approval of SLUP-19-0010 (PCH) with conditions**

PROJECT DATA

The applicant has submitted an application for a Special Land Use Permit (SLUP-19-0010) to allow a Personal Care Home (4- 6) in the R-100 (Residential Medium Lot -100) zoning district. The ±0.47-acre subject site is developed with an existing ±2,876 square-foot single-family home built in 1968, according to the DeKalb County Property Assessor's office. The subject site is accessed directly off Regal Way, a local road. The driveway runs the front length of the property with a side parking area for five vehicles with room for two additional vehicles to park in the two-car garage. The applicant intends no exterior change to the footprint of the existing structure on the site.

Personal Care Homes, group (4 – 6 residents) are only allowed in single-family residential zoning districts (RE, R-100, R-85, R-75, R-60) with the approval of a Special Land Use Permit to ensure the operation of the facility will not be a detriment to the character of the residential neighborhood. The proposed Personal Care Home will be located in an existing single-family house and must maintain the exterior appearance as a residential structure. Pursuant to Section 46-1185, supplemental regulations for Personal Care Homes, the proposed business shall comply with all applicable state Personal Care Home requirements including obtaining all licenses and permits required by the State of Georgia and displaying its state-issued licenses and permits in plain view, visible from the front doorway of the facility. Each group personal care home must provide at least four parking spaces within a driveway, garage or carport. No group personal care home located in the R-100 zoning district may be operated within 1,000 feet of any other group personal care home.



Figure 1: 2722 Regal Way

The City of Tucker defines a Personal care home as:

“a building in which housing, meals, personal assistance services, and 24-hour continuous watchful oversight for adults are provided and which facility is licensed or permitted as a personal care home by the state. The term "personal care home" shall not include the term "childcare institution," "transitional housing," "rehabilitation housing facility," "rooming house" or "boardinghouse." The term "personal care home" includes the term "community living arrangement," which is an establishment licensed by the state and providing a residence for adults receiving care for mental health, development disabilities, and/or addictive diseases.”

The application states the intent is to allow the owners of the property to operate a Personal Care Home (PCH) licensed by the State of Georgia, Department of Community Health (DCH) as a Community Living Arrangement (CLA) that provides or “arranges for the provision of daily services, supports, care, or treatment exclusively for two or more adults who are not related to the owner or administrator by blood or marriage and whose residential services are financially supported, in whole or in part, by funds designated through the Department of Behavioral Health and Developmental Disabilities (DBHDD)”. The application further states that the intent is to provide a living arrangement for 4 unrelated people with an intellectual and developmental delay such as Down Syndrome or Autism to live together in the home under a rental agreement.

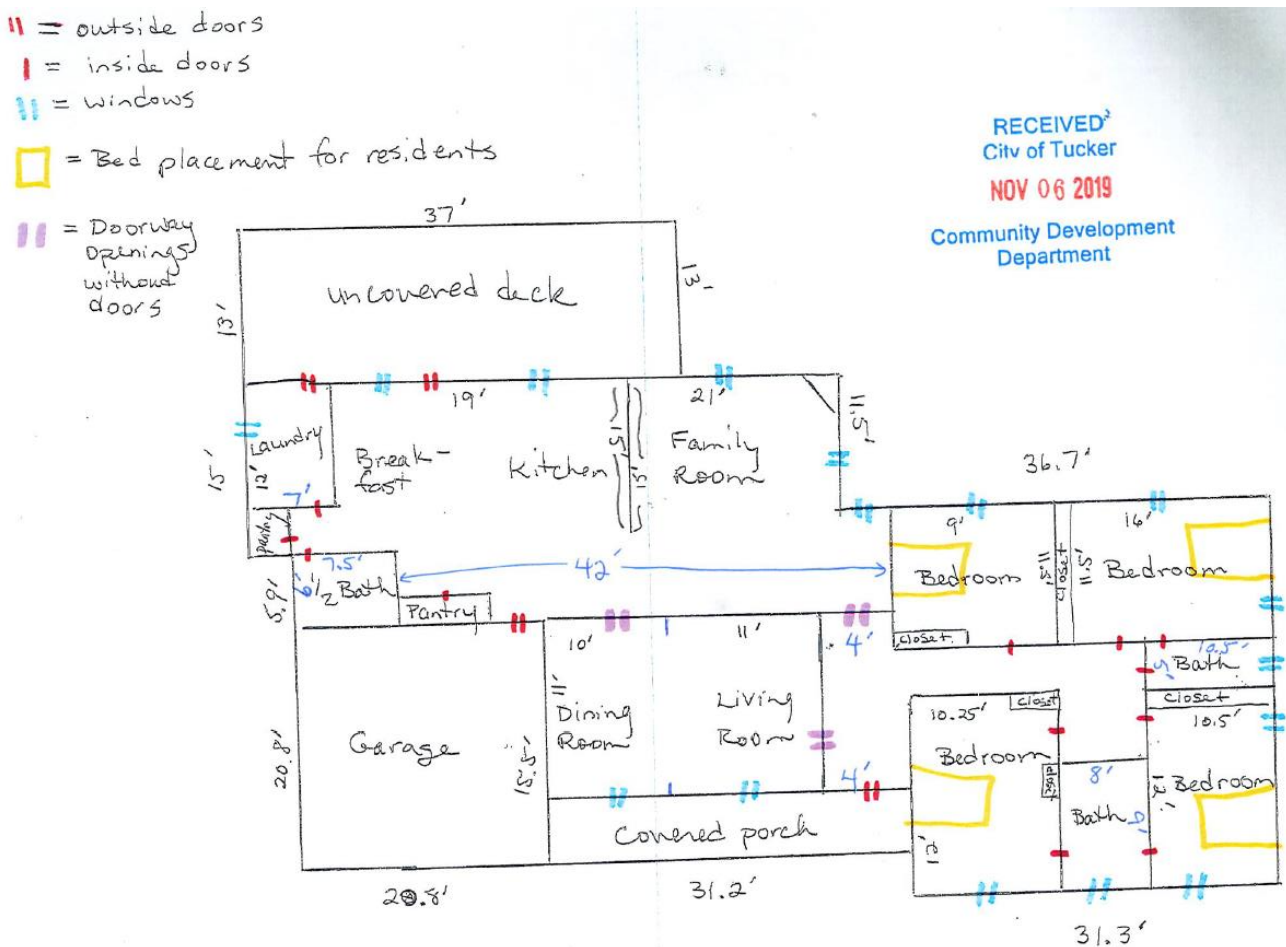


Figure 2: Floor Plan

Per the interior layout submitted by the applicant on November 6, 2019, the floor plan shows 4 bedrooms and 2 ½ bathrooms, a family room, a kitchen with breakfast area, a living room, and a separate dining room. The Department of Behavioral Health and Developmental Disabilities (DBHDD) allows a maximum of 4 people for any Community Living Arrangements (CLA). DBHDD only allows one resident per bedroom for Community Living Arrangements. The lower level basement has an office and a full bathroom with toilet, sink and shower stall. The applicant has stated that the lower level will be used for storage purposes and that the basement door shall remain closed.

Recently a number of permits have been issued for interior renovations including building permit PB-19-0227 (finalized on July 1, 2019) which included a bathroom remodel, converting the master closet back into a bedroom, widening 3 doors, installation of new hardwood floors/luxury vinyl plank, and refinishing existing floors. [Additional permits were issued for rough electrical, mechanical, plumbing and were all approved on May 7, 2019. Final inspection for electrical (PM-19-0121), mechanical (PM-19-0066), and plumbing (PM-19-0054) were all inspected and approved on July 1, 2019.] Both full-bathrooms next to the bedrooms are handicap accessible with grab bars and other innovative measures (such as a walk-in bath tub) for residents with mobility limitations.



Figure 3: Formal Dining Room & Living Room



Figure 4: Family Room with hanging flat screen TV

The applicant is not proposing any exterior renovations or modifications to the site (2722 Regal Way). The existing building is a ±2,876 square-foot single-family home with a two-car garage built in 1968, according to the DeKalb County Property Assessor's office. The survey with parking sketch depicts room in the driveway and garage for a total of seven vehicles; whereas, the supplemental regulations for Personal Care Homes (4 – 6) only requires space for four vehicles.



Figure 5: Eat-in Kitchen

OVERVIEW OF JUSTICE DEPARTMENT AGREEMENT WITH STATE OF GEORGIA

On May 18, 2016, the United States Justice Department (“DOJ”) announced an extension agreement with the state of Georgia to improve the quality and availability of services for people with developmental disabilities living in the community. According to the DOJ, *“the extension agreement builds upon a 2010 settlement agreement resolving a lawsuit brought by the department under the Americans with Disabilities Act and the Supreme Court’s ‘Olmstead’ decision. The case involves Georgia’s provision of community services for individuals with mental illness and developmental disabilities.”* Under the agreement, Georgia will help people with developmental disabilities move from its state hospitals to integrated settings and will monitor services and track outcomes for people after their discharge. This includes monthly visits by the state of Georgia to each Community Living Arrangement.

USE ANALYSIS AND DEVELOPMENT PERMISSIONS

The subject property is located in the R-100 zoning district. The purpose and intent section of the R-100 zoning district (Sec. 46-197) indicates in part that the R-100 district is established to “assure that the uses and structures authorized in the R-100 (Residential Medium Lot–100) District are those uses and structures designed to serve the housing, recreational, educational, religious, and social needs of the neighborhood”. The R-100 zoning district allows for “Personal Care Homes” only as a special use (Table 4-1 zoning ordinance). The intent of the City of Tucker Zoning Ordinance is that the proposed uses be determined on a case-by-case basis to ensure compatibility with the surrounding area including maintaining the residential character of the immediate area. In the City of Tucker all Personal Care Homes, group (4 -6) require a SLUP and must meet supplemental use regulations in Article 4.

CHARACTER AREA

The subject property is designated Suburban on the Future Land Use Map. The proposal is consistent with the intent of the Suburban Character Area strategy to be compatible with the existing housing stock. The Personal Care Home will be required to maintain an exterior appearance of a single-family home. There will be no signs located on the subject property advertising the Personal Care Home. The applicant is not proposing any exterior renovations of the house and will remain compatible with the existing housing stock in terms of building height, footprint and massing, particularly as viewed from the street.

The proposed use is not entirely consistent with the intent of the Suburban Character Area by introducing a use that could institutionalize an established neighborhood. Care must be taken to preserve existing neighborhoods from institutionalization. The introduction of a Personal Care Home does not align with preservation of existing neighborhoods because it creates a use that could institutionalize the area. However, the zoning ordinance defines institutionalization as two (2) Personal Care Homes within 1,000 feet of each other. However, with proposed conditions to preserve the suburban character of the residential neighborhood the proposal may be consistent.

COMMUNITY COUNCIL REVIEW

The Community Council reviewed the proposed application on September 11, 2019. Community Council discussion included that only state-approved applicants would be allowed to live at the PCH and individuals would have their own bedrooms. Additional discussion included that the home is already handicapped accessible. The applicant stated that typically there would be one nurse and one Certified Nursing Assistant (CNA). The owner is not allowed to live on site. Community Living Arrangements (CLA) are a type of Personal Care Home. Community Living Arrangements are required to be monitored monthly by the state for safety and to see that the residents have a choice to stay or leave.

Concerns from the neighbors included maintaining the feel of a residential neighborhood and any possible impacts the neighborhood. The applicant stated that the PCH would be allowed to have a maximum of 4 residents because it is classified as a Community Living Arrangement (a type of Personal Care Home) that is stringently regulated by the Georgia Department of Community Health with monthly site visit requirements. There will be no office in the residence. The office will be located in Dunwoody.

As is standard, the Community Council did not make a recommendation of approval or denial.

NEARBY/SURROUNDING LAND ANALYSIS

Adjacent & Surrounding Properties	Zoning (Petition Number)	Existing Land Use
Adjacent: North	R-100 (Residential Medium Lot -100)	Single-family homes
Adjacent: East	R-100 (Residential Medium Lot -100)	Single-family homes
Adjacent: South	R-100 (Residential Medium Lot -100)	Single-family homes
Adjacent: West	R-60 (Residential Small Lot)	Single-family homes

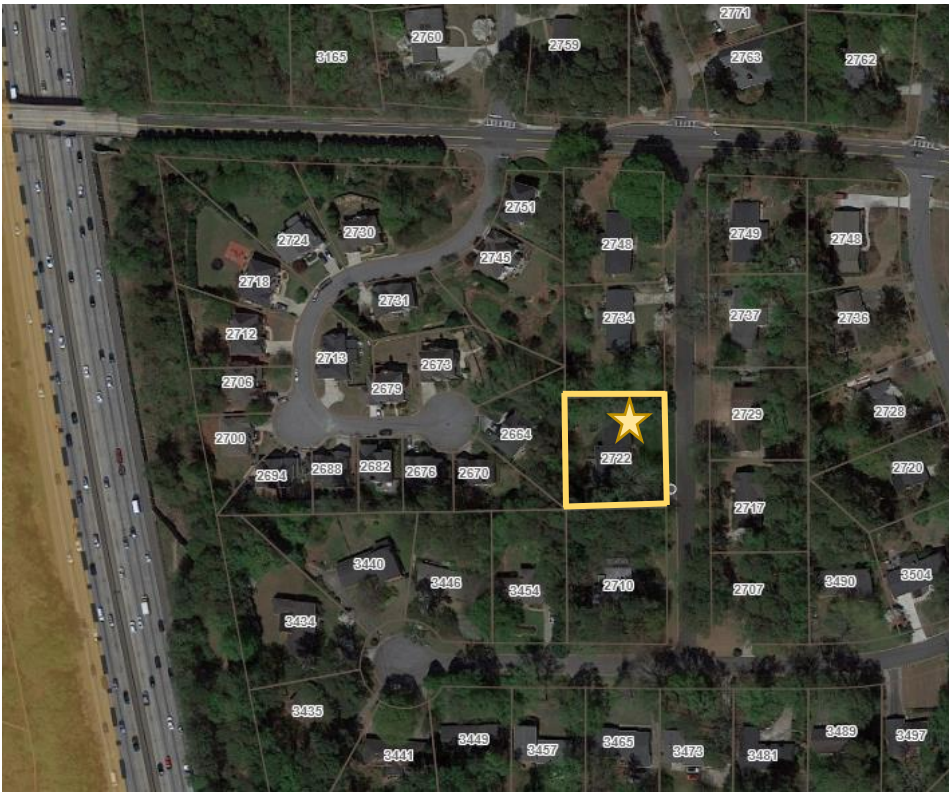


Figure 6:
Aerial Exhibit showing
surrounding land uses.

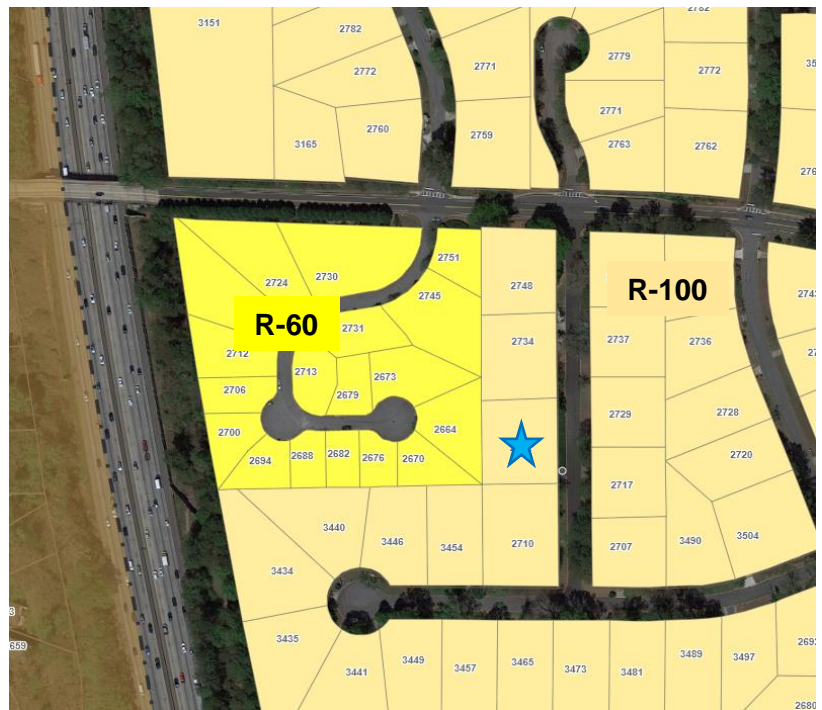


Figure 7:
Zoning Exhibit showing
surrounding zoning.

SLUP-19-0010 PERSONAL CARE HOME, GROUP (4-6)

CRITERIA TO BE APPLIED – SPECIAL LAND USE PERMIT

Criteria (standards and factors) for special land use decisions are provided in Section 46-1594 of the City of Tucker Zoning Ordinance. The applicant is required to address these criteria (see application); below are staff's findings which are independent of the applicant's responses to these criteria.

A. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

The total site is ±0.47 acres. The applicant is not proposing to expand the existing structure's footprint. The site meets the required dimensional standards for lot coverage, adequate off-street parking and other applicable requirements of the zoning district. The home has a two-car garage and space for 5 additional vehicles in the paved concrete driveway. The tenants will not have cars. The backyard is fenced.

B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

Staff notes that the proposed Personal Care Home is in a traditional suburban neighborhood surrounded by single-family homes on all sides. The proposed Personal Care Home is located on a local street in a quiet residential setting in the Regal Forest subdivision. Care should be taken to protect the established neighborhood from impacts of institutionalization such as future Personal Care Homes, daycares, and home-based businesses with customer contact. It should also be noted that a Personal Care Home has a greater impact on an established traditional residential subdivision compared to a non-traditional neighborhood such as a residential home located on a minor arterial street.

C. Adequacy of public services, public facilities, and utilities to serve the proposed use.

Schools. There will be no impact on public school facilities.

Stormwater management. N.A.

Water and sewer. N.A.

D. Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

Traffic impacts will be minimal. The applicant has stated that the Personal Care Home residents will not be drivers. There will be staff, but it should be no more vehicle miles added to the local roads than a family living in the house. Proposed number of staff is two: one nurse and one CNA (Certified Nurse Assistant). Staff will work on two shifts to provide 24 hours care. Shifts are expected to be from 7am to 7pm and 7pm to 7am.

E. Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use.

Existing land uses would not be adversely affected in terms of the character of the vehicles or the volume of traffic by the proposed Personal Care Home because the residents will not be drivers. There would be a slight impact that should be minimal compared to other single-family homes.

F. Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency.

The applicant proposes no modifications to the exterior. The application states that there is adequate access for emergency services vehicles and the DeKalb Fire Department expressed no concerns regarding adequate access for emergency service vehicles. If approved, the applicant shall be required to submit a life safety plan to the DeKalb County Fire Department including location of fire alarms/smoke detectors, ramps, location of kitchen stove, inside/outside stairs, and location of furnace and hot water.

G. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use.

The proposed development will not generate excessive noise, nor will it emit smoke, odor, dust or vibration.

H. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use.

The property is surrounded on three sides by R-100 (Residential Medium Lot -100) zoned properties with single-family homes. According to the applicant, their staffing needs are the same for three (3) residents and four (4) residents. The "caretakers" will have similar hours as single-family residences, with staff arriving at 7am and 7pm for shift changes.

I. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.

The hours of operation will be two 12-hour shifts coinciding with work hours similar to residential neighborhoods. The occupants will not be drivers, so there will be minimal traffic impacts compared to a single-family home. The residence shall appear as a single-family home with no signage for the PCH. If developed in accordance with the staff recommended conditions, nearby land uses will not be adversely affected by the manner or operation of the PCH.

It should be noted that Article 9, Definitions, Section 46-1775 defines "Family." The definition of Family "allows up to three persons not so related who live together in a dwelling unit as a single housekeeping unit under a common housekeeping management plan, based on an intentionally structured relationship providing organization and stability". The applicant could proceed under

this definition with a Personal Care Home for three (3) residents. The applicant has stated that their staffing needs are the same for three (3) residents and four (4) residents. Although the City of Tucker code limits the definition of family to three (3) unrelated persons, it appears that four (4) unrelated persons would be allowable under the Americans with Disabilities Act (ADA) as a reasonable accommodation.

While the closest PCH is located approximately 4,000 feet away from the subject property, the approval of the SLUP would begin to institutionalize the area and another PCH would not be allowed within a 1,000 radius of the property. This locational regulation ensures that residents are integrated into a residential community.

J. Whether or not the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.

If approved by SLUP, the proposed Personal Care Home will comply with the R-100 zoning district. The proposed PCH will be located in an existing single-family house and must maintain the exterior appearance as a residential structure.

K. Whether or not the proposed use is consistent with the policies of the comprehensive plan.

The subject property is designated Suburban on the Future Land Use Map. While the proposed use is consistent with the intent of the adopted comprehensive plan, care must be taken to preserve existing neighborhoods from institutionalization. The introduction of a Personal Care Home does not align with preservation of existing neighborhoods because it could institutionalize the area. However, the zoning ordinance defines institutionalization as two (2) Personal Care Homes within 1,000 feet of each other.

L. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

No transitional buffer zones are required.

M. Whether or not there is adequate provision of refuse and service areas.

The proposed use should not generate much refuse. The applicant has stated that they will be serviced by DeKalb County collections.

N. Whether the length of time for which the special land use permit is granted should be limited in duration.

No limits on the length of time on the special land use permit are recommended, if granted.

O. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

The applicant proposes no changes to the existing building size, mass, and scale.

P. Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.

There are no known historic buildings, sites, districts or archaeological resources on the subject properties. Therefore, no adverse effects are anticipated.

Q. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.

The proposed Personal Care Home **is in compliance with the supplemental regulations for Personal Care Homes (4-6) [Sec. 46-1185. - Personal care homes].**

Sec. 46-1185. - Personal care homes

(a) Personal care homes, general requirements.

- (1) Each personal care home must obtain all licenses and/or permits required by the state in order to operate. Each personal care home licensed and/or permitted by the state must display its state-issued licenses and/or permits in plain view, visible from the front doorway of the facility.**

The applicant's letter of intent states that they will comply with all required state and county requirements for Personal Care Homes.

- (2) No personal care home may display any exterior signage that violates the sign ordinance in chapter 34 or the sign provisions in the zoning regulations for the underlying zoning district where the personal care home is located.**

The applicant has stated they will be in compliance and are not proposing to post any signs.

- (3) Personal care homes may apply for an FHA Accommodation Variance as provided for in section 46-1639.**

The applicant has stated that the proposed use complies with all supplemental regulations. The applicant has stated that they will not be seeking an FHA accommodation variance.

(b) Personal care home, group (four to six persons).

- (1) Two copies of complete architectural plans for the subject group personal care home, signed or sealed by a registered architect, shall be submitted to the community development director prior to issuance of a building permit or business license.**

If approved, staff proposes a condition to ensure compliance. The applicant has also stated that they will submit 2 copies of architectural plans signed and sealed by a registered architect to the community development director prior to issuance of a building permit or business license.

- (2) Each group personal care home must provide at least four parking spaces within a driveway, garage or carport and must comply with any applicable requirements in article VI of this chapter.**

The site plan provides a total of seven parking spaces, and a turn-around area. There is an area for five cars in the driveway and two spaces in the two-car garage to park.

- (3) In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the "...R-100..." zoning district may be operated within 1,000 feet of any other group personal care home. The 1,000-foot distance requirement is measured by a straight line which is the shortest distance (i.e., "as the crow flies") between the property lines of the two tracts of land on which the group personal care homes are located.

The State of Georgia Department of Community Health lists another Personal Care Home located approximately 4,000 feet north of the subject property in unincorporated DeKalb County (Autumn House PCH, licensed for 6 residents), and another located approximately 5,280 feet (one mile) southwest also in unincorporated DeKalb County (Albert's House, licensed for 3 residents). The closest PCH in the City of Tucker is Sibor Manor (licensed for 6 residents) located just south of Lavista Road at 2123 Lavista Circle (±7,400 feet from the subject property).

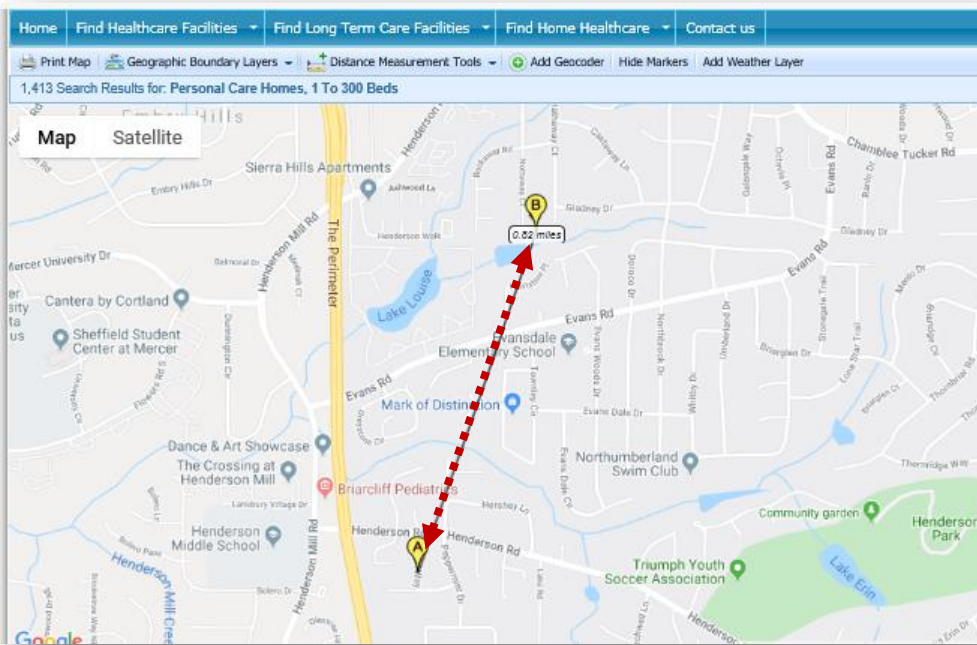


Figure 8: State of Georgia Department of Community Health, GAMap2Care

R. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

The proposed use will not produce an adverse shadow effect. No changes are being proposed to the existing structure.

S. Whether the proposed use would result in a disproportionate proliferation of that or similar uses in the subject character area.

The supplemental regulations pertaining to Personal Care Homes (4-6) requires that PCHs shall be located at a minimum of 1,000 feet from another PCH. There are no other PCHs located within 1,000 feet of the proposed location. However, there is another Personal Care Home, registered with the State of Georgia Health Department, approximately 4,000 feet from the proposed (2722 Regal Way) location. This proposed use would not result in a disproportionate proliferation of uses if approved, as explicitly stated in the supplemental regulations (Section 46-1185).

T. Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

Suburban Character Area. The proposal is consistent with the intent with the Suburban Character Area strategy to be compatible with the existing housing stock. The applicant is not proposing any exterior renovations of the house and will remain compatible with the existing housing stock in terms of building height, footprint and massing, particularly as viewed from the street. The proposed use is not entirely consistent with the intent of the Suburban Character Area by introducing an institutional-like use in an established residential neighborhood; however, with proposed conditions to preserve the suburban character of the residential neighborhood the proposal may be consistent.

CONCLUSION

Staff recommends approval of SLUP-19-0010, with conditions. The proposed use complies with the Criteria (standards and factors) for special land use decisions provided in Section 46-1594 of the City of Tucker Zoning Ordinance. The proposed use also complies with Supplemental Regulations, Section 46-1185 (Personal Care Homes).

STAFF RECOMMENDATION

Based upon the findings and conclusions herein, Staff recommends **APPROVAL** of Land Use Petition **SLUP-19-0010**. Should the governing bodies choose to approve the requests, Staff recommends that the request be approved subject to the following conditions:

1. The proposed use shall be limited to a group personal care home, with 4 residents based on the application submitted on August 19, 2019, to the Planning & Zoning Department, as amended.
2. The Personal Care Home shall comply with all applicable state Personal Care Home requirements including obtaining all licenses and permits required by the State of Georgia and displaying its state-issued licenses and permits in plain view, visible from the front doorway of the facility.
3. At all times, applicant shall be in compliance with the State of Georgia, Rules and Regulations for Community Living Arrangements, Chapter 290-9-37, as amended.
4. The Personal Care Home shall maintain an exterior appearance of a single-family home.
5. Applicant shall submit a Life Safety Plan to the DeKalb County Fire Rescue Department, within 30 days of approval.
6. Interior renovations shall be contingent upon approval of a Building Permit.
7. Copies of an architectural plan for the Personal Care Home shall be submitted to the Director of Planning & Zoning prior to issuance of a business license or building permit.
8. There shall be no signs located on the subject property advertising the Personal Care Home.
9. The Special Land Use Permit shall not be transferred to another business.

DEPARTMENT COMMENTS

ARBORIST

No new development occurring on the site.

DEKALB COUNTY DEPARTMENT OF WATERSHED MANAGEMENT

A sewer capacity request evaluation is required for this SLUP application due to the change in use.

DEKALB COUNTY FIRE MARSHAL OFFICE

Must submit life safety plan to DeKalb County Fire Rescue Department.

DEKALB COUNTY SCHOOL SYSTEM

Not applicable; no comments.

LAND DEVELOPMENT

No comments.