



Land Use Petition: SLUP-19-0011 & CV-19-0007

Date of Staff Recommendation Preparation: October 16, 2019

Community Council: September 11, 2019

Planning Commission: October 24, 2019

Mayor and City Council, 1st Read: November 25, 2019

Mayor and City Council, 2nd Read: December 9, 2019

PROJECT LOCATION:	5002 Chamblee Tucker Road
DISTRICT//LANDLOT(S):	Land District 18, Land Lot 226
ACREAGE:	±0.6 acre
EXISTING ZONING	R-85 (Residential Medium Lot -85)
EXISTING LAND USE	Residential
FUTURE LAND USE MAP DESIGNATION:	Suburban
OVERLAY DISTRICT:	NA
APPLICANT:	Fielding Alderman / Sonia Moretti, Agents
PROPERTY OWNER:	Joan McCook / Ann Marie Thyme, Owners/Operators
PROPOSED DEVELOPMENT:	Applicant requests approval of a Special Land Use Permit for a Personal Care Home, Group (4 - 6)
STAFF RECOMMENDATION:	Denial of SLUP-19-0011 (PCH) Denial of CV-19-0007 (PCH Locational Requirements)

PROJECT DATA

The applicant has submitted an application for a Special Land Use Permit (SLUP-19-0011) to allow a Personal Care Home (4- 6) in the R-85 (Residential Medium Lot -85) zoning district. The ±0.6-acre subject site is developed with two structures consisting of an existing ±3,580 square-foot single-family home and a ±818 square-foot detached shed. The subject site is accessed directly off Chamblee Tucker Road, a minor arterial road. The driveway runs the length of the property with a rear parking area for four vehicles. The applicant intends no exterior change to the footprint of the existing structures on the site.

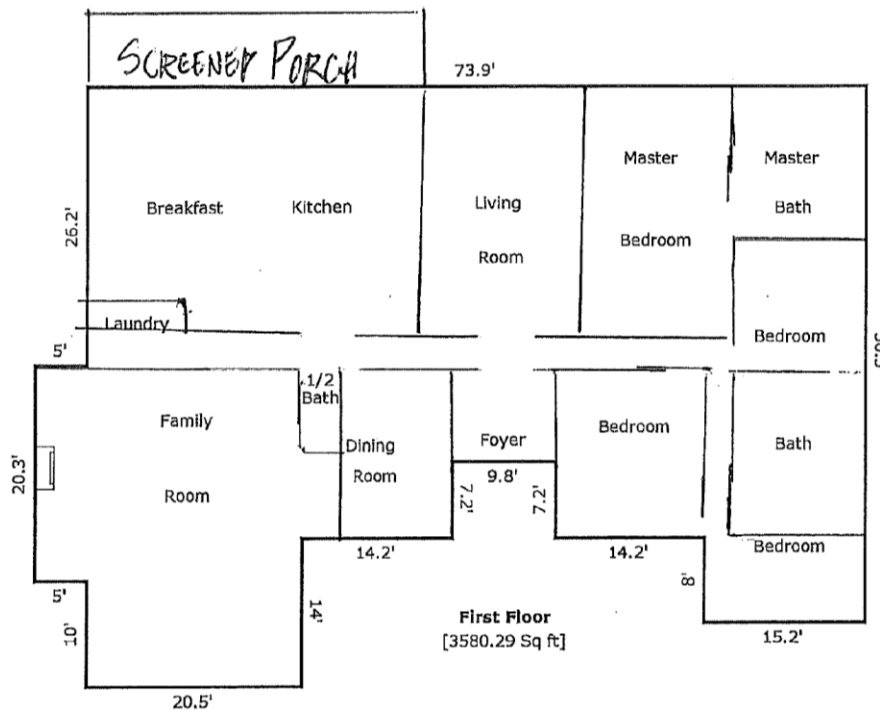
Personal Care Homes, group (4 – 6 residents) are only allowed in single-family residential zoning districts (RE, R-100, R-85, R-75, R-60) with the approval of a Special Land Use Permit to ensure the operation of the facility will not be a detriment to the character of the residential neighborhood. The 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-85 zoning district may be operated within 1,000 feet of any other group personal care home.



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," "roominghouse" 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) that provides room, board, personal assistance, medical care and transportation for medical visits and community outings. The application further states that the intent is to provide and maintain a peaceful abode for elderly residents who are no longer able to care for themselves in their own homes.

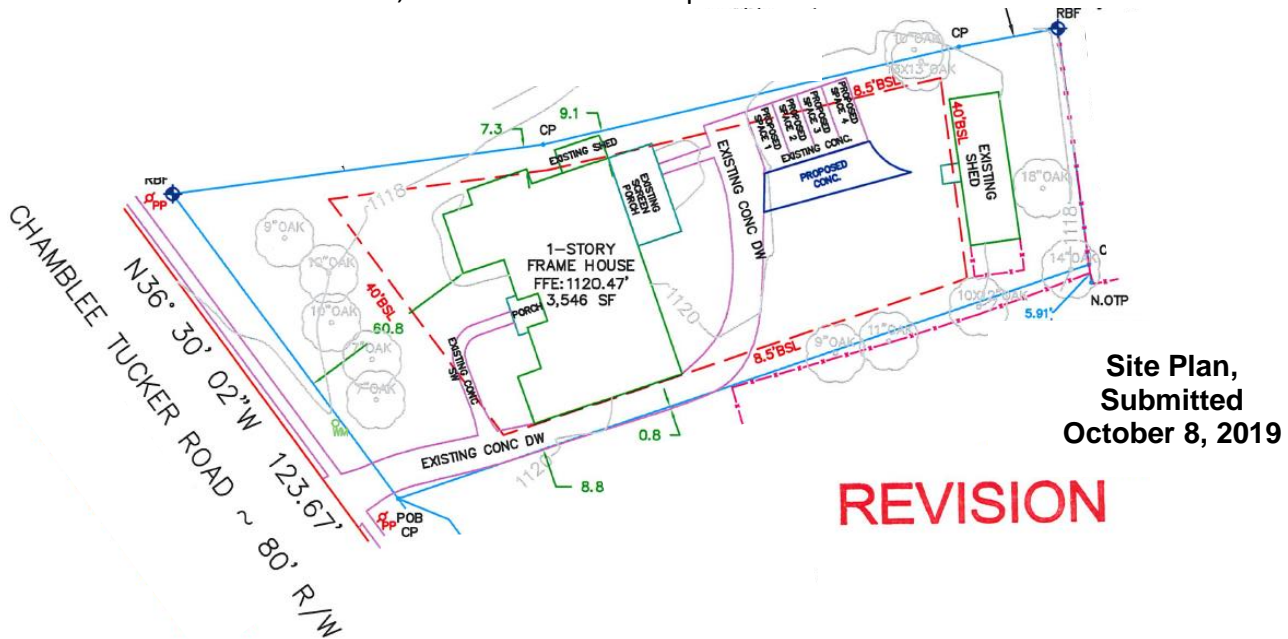


Per the interior layout submitted by the applicant, the floor plan shows 4 bedrooms and 2 and a ½ bathrooms, a family room, a kitchen with breakfast area, a living room, and a separate dining room. The applicant proposes an additional ±514 square-foot concrete parking area for easier turn-around of parked vehicles at the rear of the ±0.6-acre site. The R-85 (Residential Medium Lot -85) zoning district dimensional standards allow a maximum of 35% lot coverage. The applicant has stated that they would like to have up six (6) residents with some rooms being shared by two people in the 4-bedroom house. The applicant has also stated that they do not intend to put more than one adult per room unless it is a couple. Staff has requested a more detailed floor plan to determine which rooms would be eligible to accommodate two adults based on the state requirement of 80-square feet per person.

The applicant would be required to submit a building permit for interior renovations including replacement or relocation of interior walls; however, the applicant has stated that they are not currently intending on any interior renovations other than minor cosmetic upgrades such as painting the walls.

The applicant would also be required to submit a trade permit if they replace the water heater, electrical service upgrade or change out, replacing relocating panel box, installation of a new irrigation system, electrical re-wire, addition of circuits, or adding switches or receptacles, replacement of light fixtures requiring electrical work, replacement of main breaker or air conditioner change out.

With the proposed ±514 square-foot rear driveway pad expansion the lot coverage meets the dimensional standard of a maximum 35% lot coverage. The existing building is a legally non-conforming structure with an attached “shed” and small portion of the house encroaching into the required 8 ½ foot side setback on the north side, as shown on the site plan below.



USE ANALYSIS AND DEVELOPMENT PERMISSIONS

The subject property is located in the R-85 zoning district. The purpose and intent section of the R-85 zoning district (Sec. 46-197) indicates in part that the R-85 district is established to “assure that the uses and structures authorized in the R-85 (Residential Medium Lot–85) District are those uses and structures designed to serve the housing, recreational, educational, religious, and social needs of the neighborhood”. The R-85 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 require a SLUP and must meet supplemental use regulations in article 4.

The application states that the proposal will meet most supplemental standards for Personal Care Homes found in Section 46-1185 of the Zoning Ordinance. However, a concurrent variance is being requested for locational requirements. Section 46-1185(b)3 states, In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the R-85 zoning district may be operated within 1,000 feet of any other group personal care home. It further defines the unit of measurement as “*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*”.

CHARACTER AREA

The proposed use does not meet the intent of the Suburban Character Area by the institutionalization of existing neighborhoods by locating a Personal Care Home less than 1,000 feet from an existing Personal Care Home. The Tucker Tomorrow Comprehensive Plan states that one of its primary goals is to “preserve and improve neighborhoods.” However, 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 subject property is located approximately 350 feet north of the Tucker High School Track and Field, which is located in an Institutional Character Area designation and zoned DT-1 (Neighborhood Zone). Approximately 1,300 feet south of the subject property is the intersection of Chamblee Tucker Road and Lavista Road.

COMMUNITY COUNCIL REVIEW

The Community Council reviewed the proposed application on September 11, 2019. Community Council discussion included the Personal Care Home that is within 1,000 feet. Applicant's agent responded that the other PCH within 1,000 ft. is located on Ball Park Drive and is actually further than 1,000 feet away if you walk around the block from their proposed PCH to the other facility. Additional discussion involved the floor plan and how many residents will be allowed. The applicant stated 6 residents would be allowed and that the rooms are large enough to put two people in a room per State of Georgia requirements. The state of Georgia prefers that when there are two persons to a room that they be husband/wife; however, the applicant’s agents stated this is not a requirement of the state.

Additional discussion included, what type of state licenses do the applicants have and/or what additional licenses will they be applying for. Regarding State Licensing, the agents stated State and County licenses are required. Further questions included whether the PCH was already up and running and if they would accept residents with memory care needs and whether they had special licensing requirements. The agents stated that they would not be having residents with memory care needs.

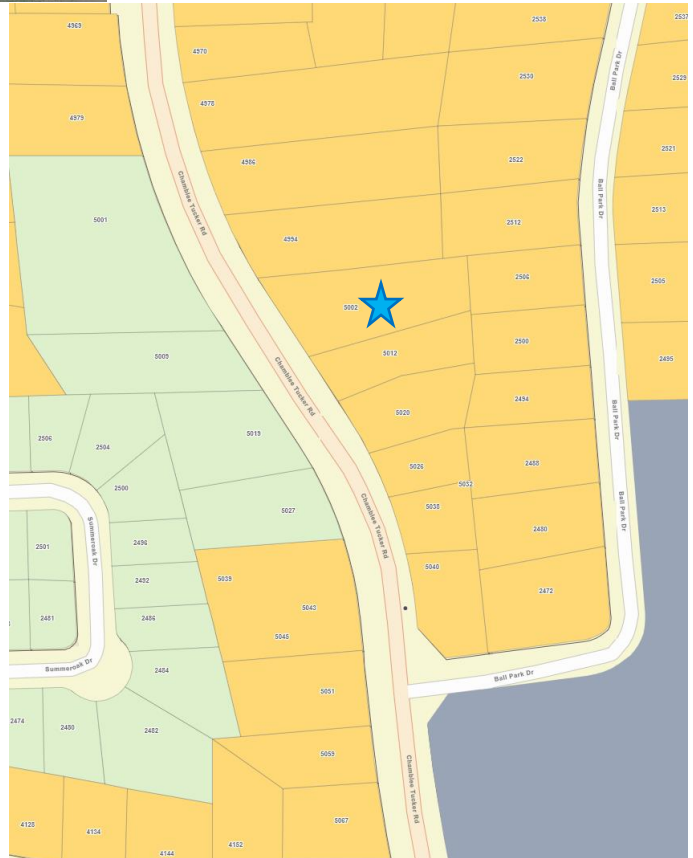
As is standard, the Community Council did not make a recommendation of approval or denial.

NEARBY/SURROUNDING LAND ANALYSIS

Adjacent & Surrounding Properties	Zoning (Petition Number)	Existing Land Use
Adjacent: North	R-85 (Residential Medium Lot -85)	Single-family home
Adjacent: East	R-85 (Residential Medium Lot -85)	Single-family home
Adjacent: South	R-85 (Residential Medium Lot -85)	Single-family home
Adjacent: West (across Chamblee Tucker Rd.)	RSM (Residential Small Lot Mix)	Single-family home (RSM development approved – CZ-10-16676), not yet constructed.



Aerial Exhibit showing surrounding land uses.



Zoning Exhibit showing surrounding land uses.

SLUP-19-0011 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 ±0.6 acres. The applicant is not proposing to expand the existing structure's footprint. The submitted survey shows that the existing single-family house is a legally non-conforming structure with an attached "shed" and small portion of the house encroaching into the required 8 ½ foot side setback on the north side, as shown on the site plan. The site meets the required dimensional standards for lot coverage, adequate off-street parking and other applicable requirements of the zoning district.

The applicant is proposing to add a ±514 square-foot rear driveway pad expansion to allow for easier turn-around of vehicles. With the expansion, the lot coverage meets the dimensional standard of a maximum 35% lot coverage. The request relates to the proposed use only.

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

The proposed Personal Care Home is not compatible with the land uses and development of adjacent properties as another Personal Care Home is located ±200 feet from the proposed Personal Care Home. In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the "...R-85..." zoning district may be operated within 1,000 feet of any other group personal care home. The property is surrounded on three sides by R-85 (Residential Medium Lot -85) zoned properties.

Staff will note that this property is not part of a traditional neighborhood. It fronts Chamblee Tucker, which is classified as a minor arterial.

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 application states that the Personal Care Home residents will not be drivers. There will be staff, but it should be no more vehicle miles added to Chamblee Tucker Road than a family living in the house. Proposed number of staff is two nurses. Nurses 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. A sidewalk exists along Chamblee Tucker Road. The application states that there is adequate access for emergency services vehicles and the DeKalb Fire Department expressed no concerns regarding the proposed use.

The applicant would be required to submit a building permit for interior renovations including replacement or relocation of interior walls; however, the applicant has stated that they are not currently intending on any interior renovations other than minor cosmetic upgrades such as a painting the walls.

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.

In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the "...R-85..." zoning district may be operated within 1,000 feet of any other group personal care home. The property is surrounded on three sides by R-85 (Residential Medium Lot -85) zoned properties with single-family homes. There may be unforeseen adverse impacts if six (6) residents are located in the Personal Care Home, as it could create the need for increased staffing requirements.

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.

In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the "...R-85..." zoning district may be operated within 1,000 feet of any other group personal care home. Another Personal Care Home is located ± 200 feet from the proposed Personal Care Home.

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-85 zoning district. The proposed Personal Care Home 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. The proposed development is not consistent with the intent of the adopted comprehensive plan to preserve existing neighborhoods as it introduces a second Personal Care Home within close proximity and in non-compliance with preservation of existing neighborhoods because it creates an institutionalization per the City of Tucker supplemental regulations for Personal Care Home locational requirements. However, a personal care home on a minor arterial could have less impact than a personal care home in an established traditional residential subdivision.

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 not in compliance with the supplemental regulations for Personal Care Homes (4-6)** [Sec. 46-1185. - Personal care homes]. The applicant has submitted a concurrent variance application requesting to be located less than 1,000 feet from an existing Personal Care Home.

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 "N/A" in the application packet.

(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.**

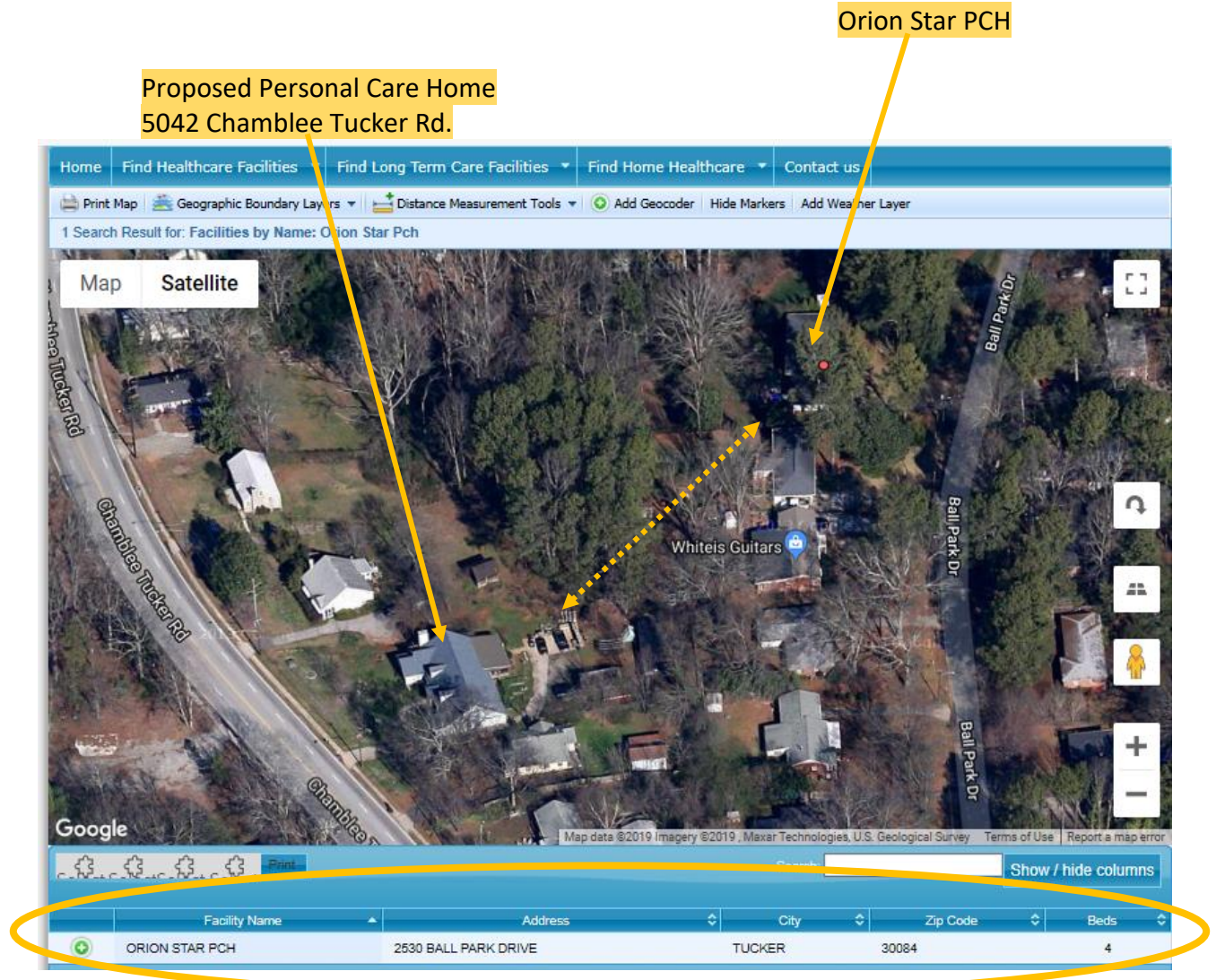
If approved, staff proposes a condition to ensure compliance.

- (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 four parking spaces, a proposed turn-around area, and additional area in the driveway to park.

- (3) In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the "...R-85..." 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.

There is another Personal Care Home (Orion Star PCH) located approximately 200 ft. behind the proposed PCH on Chamblee Tucker Road. The application states that the other Personal Care Home is a Personal Care Home for less than 3 residents. The City of Tucker Business Tax License (Lic. #: 2019-0750) does not state the number of residents. However, the State of Georgia Department of Community Health lists Orion Star PCH, located at 2530 Ball Park Drive in Tucker, Georgia, as having 4 beds (as shown below from the Department of Community Health).



Source: 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 is another Personal Care Home, registered with the State of Georgia Health Department, and the City of Tucker approximately 200 feet from the proposed location of a new PCH. This proposed use would 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 proposed use does not meet the intent of the Suburban Character Area by the institutionalization of existing neighborhoods by locating a Personal Care Home less than 1,000 feet from an existing Personal Care Home. However, 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.

CONCLUSION

The proposed use does not comply with all the Criteria (standards and factors) for special land use decisions provided in Section 46-1594 of the City of Tucker Zoning Ordinance. Furthermore, Supplemental Regulations, Section 46-1185(b)3 states, In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the R-85 zoning district may be operated within 1,000 feet of any other group personal care home. The proposed request is considered a disproportionate proliferation of uses according to the City of Tucker Zoning Ordinance because an existing Personal Care Home is located approximately 200 feet away from the proposed Personal Care Home.

CONCURRENT VARIANCE (CV-19-0007) –LOCATIONAL REQUIREMENTS

The City of Tucker Zoning Ordinance includes Supplemental Regulations. Section 46-1185(b)3 states, In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the R-85 zoning district may be operated within 1,000 feet of any other group personal care home. The proposed request is considered a disproportionate proliferation of uses. **A concurrent variance has been requested to allow a Personal Care Home within 1,000 feet of an existing Personal Care Home.**

Criteria for variance approval are provided in Section 46-1633 of the City of Tucker Zoning Ordinance.

CRITERIA TO BE APPLIED – CONCURRENT VARIANCE

1. **By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slopes), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.**

The subject site is not unusual in shape, size, narrowness or shallowness.

2. **The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.**

The requested variance does go beyond the minimum necessary to afford relief by allowing another Personal Care Home within closer proximity than otherwise would be allowed. Granting the request would create a proliferation of PCHs within the area. Section 46-1185(b)3 states, In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the R-85 zoning district may be operated within 1,000 feet of any other group personal care home.

3. **The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.**

The granting of the variance may be detrimental to the public welfare, per Section 46-1185(b)3 which states, In order to prevent institutionalizing residential neighborhoods, no group personal care home located in the R-85 zoning district may be operated within 1,000 feet of any other group personal care home.

4. **The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.**

The literal interpretation and strict application of the applicable provisions or requirements of this chapter would not cause undue and unnecessary hardship as one single-family home is allowed. Additionally, home-based businesses with no customer contact is allowed by right.

5. The requested variance would be consistent with the spirit and purpose of this chapter and the Comprehensive Plan text.

While the spirit and purpose of the proposal may be consistent with much of the comprehensive plan text, the supplemental regulation regarding locational requirements is to prevent institutionalizing residential neighborhoods. The comprehensive plan intent for the Suburban Character Area is also to preserve and improve the suburban neighborhoods that make Tucker so desirable.

Conclusion: Staff recommends **denial of CV-19-0007.**

STAFF RECOMMENDATION

Based upon the findings and conclusions herein, Staff recommends **DENIAL** of Land Use Petition **SLUP-19-0011 and DENIAL of CV-19-0007**. 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 __ residents based on the floor plan submitted on _____, to the Community Development Department.
2. Double occupancy rooms shall be at least 240-square feet, so that 120-square feet is provided per person.
3. Exterior improvements shall be limited to the site plan submitted on October 8, 2019, to the Community Development Department, with revisions to meet these conditions.
4. 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.
5. The Personal Care Home shall maintain an exterior appearance of a single-family home.
6. Interior renovations shall be contingent upon approval of a Building Permit. Copies of an architectural plan and proposed driveway expansion for the Personal Care Home must be submitted to the Community Development Director prior to issuance of a business license or building permit.
7. There shall be no signs located on the subject property advertising the Personal Care Home.
8. 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

No comments.

DEKALB COUNTY FIRE MARSHAL OFFICE

No comments.

DEKALB COUNTY SCHOOL SYSTEM

Not applicable; no comments.

LAND DEVELOPMENT

No comments.