



MCPB

Item No.

Date: 7.01.21

5225 Pooks Hill Road, Conditional Use No. CU202108

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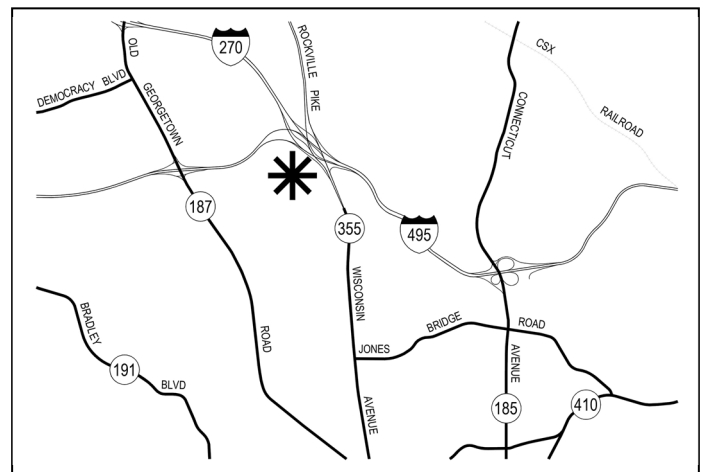
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Completed 6.21.2021

Description

- Request for approval of a conditional use for a Retail/Service Establishment (massage therapy) within the Arcade Level of the existing multi-family building, Promenade Towers
- Location: 5225 Pooks Hill Road
- Zone: R-H
- Master Plan: 2000 *Bethesda-Chevy Chase Master Plan*
- Property Size: 24.7 acres
- Application Accepted: March 30, 2021
- Applicant: Donna Mack
- Review Basis: Chapter 59
- Hearing Examiner Public Hearing: July 23, 2021



Summary

- Staff recommends approval with conditions and transmittal of comments to the Hearing Examiner.
- Per Section 59.7.1.2 and 59.7.3.1.D.2.a, the Planning Board may consider conditional use staff reports and recommendations as a consent item.
- The Promenade Towers is an existing multifamily residential development located off Pooks Hill Road. These towers were constructed in 1973 with an arcade level that includes amenity spaces such as recreational and fitness rooms as well as several commercial units for tenants. These units operate under individual special exceptions, however there is no record of an existing approval for this unit.
- The Applicant was issued a Notice of Violation (NOV) from the Department of Permitting Services (DPS) for operating a business without an approved conditional use. The Applicant seeks approval to validate the existing use of the unit.
- No opposition from the community has been received; the Applicant provided 23 letters of support from clients.
- All reviewing agencies have approved the project.

SECTION 1: STAFF RECOMMENDATION

Staff recommends approval of Conditional Use No. CU202108 subject to the following condition:

1. The Retail/Service Establishment use is limited to one employee and a maximum of one client on-site at any one time, by appointment only.

SECTION 2: SITE DESCRIPTION

Site and Neighborhood Description

Site Description

The Subject Property ("Property" or "Site") is located at 5225 Pooks Hill Road in Bethesda, otherwise known as Parcel J of the Pooks Hill Subdivision. The Site is improved with a multifamily residential building, surface parking, pool and tennis courts. The Site is subject to the 1990 *Bethesda-Chevy Chase Master Plan*.



Figure 1 – Aerial photo of the Subject Site (outlined in red)

The 24-acre lot is located on Pooks Hill Road, west of MD-355 and just south of the Interstate 495 Beltway. The complex has one gated driveway entrance from Pooks Hill Road and includes a series of parking areas, including surface and structured parking, and walking paths, pool, and tennis courts.

The Subject Property is within the Lower Rock Creek watershed which is a Use I watershed¹. In addition to the watershed, there are small areas of forest adjacent to the site; these areas are not proposed to be impacted with this Application. Aside from the watershed and forest, the Site is not associated with any additional environmentally sensitive features such as stream buffers, wetlands, 100-year floodplains, or steep slopes. As this Application does not propose any construction activities, which would trigger applicability to Forest Conservation Law and sediment control, additional environmental analysis of the site at large was not required.

¹ WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE. Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; and industrial water supply.

Neighborhood Description

The Staff-defined Neighborhood (outlined in orange in Figure 2) is generally bounded by the 495 and 270 Interstates to the north; the townhouse developments to the south; MD-355 – Wisconsin Avenue to the east; and Whitely Park Condominiums to the west.



Figure 2 – Staff-Defined Neighborhood

The Neighborhood is composed of mid- and high-density residential townhouses and condominium buildings, as well as the Bethesda Marriot Hotel in the R-H, R-30, and CR zones. Staff identified 17 approved conditional uses/special exceptions within the defined neighborhood:

5225 Pooks Hill Road, Promenade Towers

- S-2559: banking services for residents
- S-449: gift shop
- S-407: flower shop
- S-2598: medical office
- S-623: jewelry store
- S-384: medical office
- S-1057: framing/vanity store
- S-325/S-438: dental office
- S-507: travel office
- S-651: beauty shop
- S-322/S-503: (a) restaurant/deli, (b) beauty salon, (c) dry cleaners, (d) grocery store
- S-326: nonresident dentist
- S-1838: nonresident medical office
- S-2686: boutique
- S-293: private club
- S-333: nonresident medical office

5400 Pooks Hill Road, Whitley Park Condominiums

- S-319: Private Tennis Club

SECTION 3: PROJECT DESCRIPTION

Previous Approvals on the Site

In 1972, the Planning Board approved Site Plan 819810050 to allow the construction of a residential high-rise building for up to 1,071 units. In 1981, an amendment was approved to allow an accessory structure for an antenna. There are no further records in the Development Activity Information Center (DAIC) for this Property.

The building was constructed with an 'Arcade Level' which is located on the ground floor of the building. The Arcade Level was designed to accommodate several commercial units for neighborhood serving tenants as well as other building amenities such as a gym and indoor pool. Currently, these commercial spaces are occupied by a travel agency, hair salon, deli, dry cleaning service, restaurant, and other approved uses. According to DAIC records, these units have been historically permitted under Special Exceptions, for which there are approximately 20 records of special exceptions for the Arcade Level.



Figure 3 – Interior photo of Arcade Level within Promenade Towers

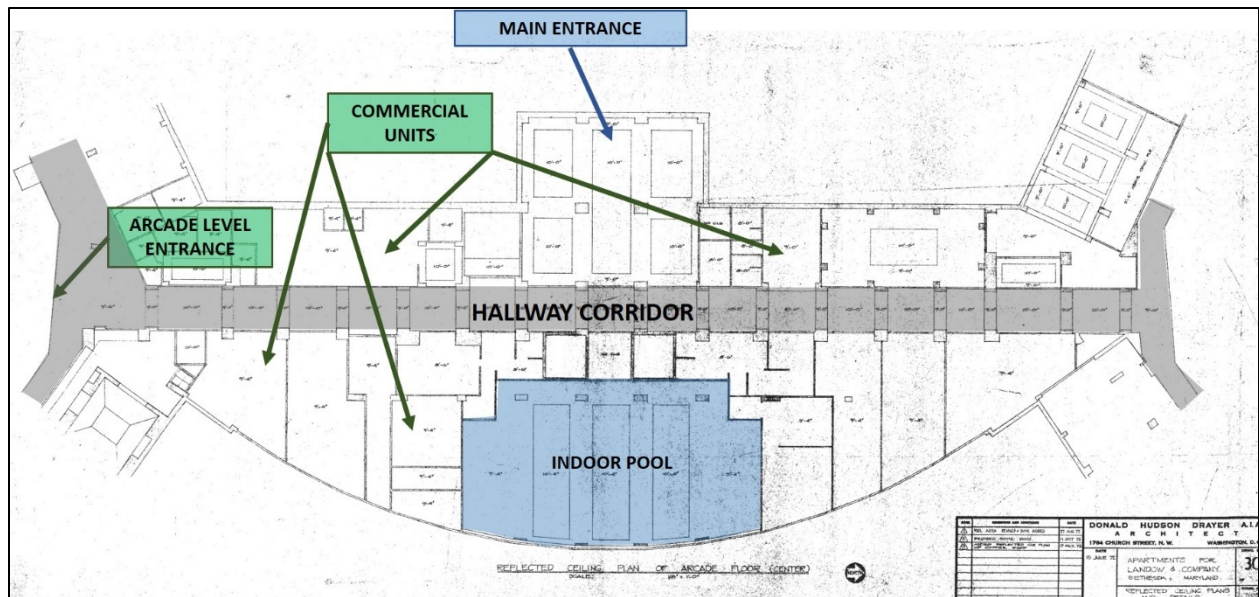


Figure 4 – Arcade Level Floor Plan

The Promenade contains surface and structured parking. Structured parking, which totals 1,068 spaces, is dedicated to the residents and there are an additional 4 surface parking lots onsite totaling 421 spaces for guests of the residents, staff, contractors, and visitors to the Arcade Level tenants. The security gate at the Site entrance is guarded 24/7, and visitors to the Arcade Level receive a parking pass upon entrance and directions to the commercial parking area, this is directly adjacent to the Arcade Level Entrance.



Figure 5 – On-site Parking Configuration

Project Description

The Applicant is seeking conditional use approval for a Retail Services Establishment (Massage Therapy)² use within the existing building to remain. The Applicant has leased a unit approximately 187 square feet in size in the Arcade Level of Promenade Towers since 2008. In fall of 2020, the Department of Permitting Services Zoning Enforcement issued a Notice of Violation (NOV) for the Applicant's business, stating the unit has been operating without an approved special exception/conditional use for this specific unit. The proposal does not require any improvements to the existing unit.

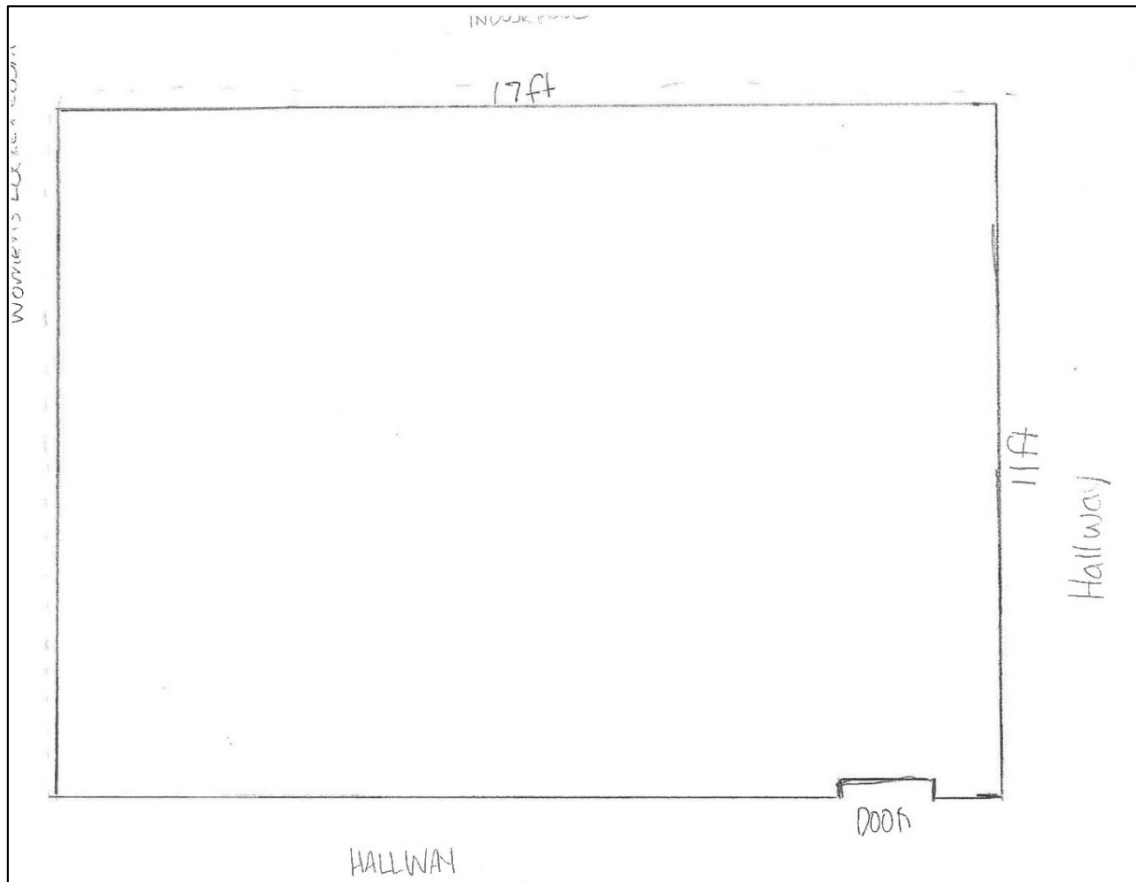


Figure 6 – Proposed Massage Therapy Unit Floorplan

Business hours for the practice vary, however all appointments are booked in advance with a maximum of five (5) appointments per day, which last approximately one hour. The business owner does not employ staff and the owner resides offsite. Per the Statement of Justification, a majority of clients are residents of the Promenade and have assigned parking, however there are some clients that visit from offsite.

¹ Allowed Retail Service Establishments listed in the Zoning Ordinance under Section 59.8.2.3.B.(footnote 7). The Department of Permitting Services provided an interpretation in an email dated December 9, 2020 that included massage therapy as a similar use in this category (Attachment B).

SECTION 4: ANALYSIS AND FINDINGS

Master Plan

The Site is located within the 1990 *Bethesda-Chevy Chase Master Plan* (Master Plan) area. Although the Master Plan does not specifically discuss this Property, it did reconfirm the zoning of the Pooks Hill area, which is defined as the neighborhood between Old Georgetown Road to the west and Wisconsin Avenue to the east, Interstate 495 to the north and the R-60 neighborhood to the south.

The Master Plan generally recommends against a concentration of special exception uses in residential areas and along highway corridors, however states that special exception uses may be compatible if they meet the standards and requirements, as well as the general conditions set forth in the Zoning Ordinance.

The Promenade Towers was constructed in 1971, prior to the approval of the Master Plan, which reconfirmed the R-H zoning for the Property. The Promenade Towers does not front on a highway corridor and is adjacent to other medium and high-density residential developments, not within a single family detached neighborhood. From Pooks Hill Road, the Promenade Towers maintains a residential character, with one monument sign for the residents and no additional signage indicating there are commercial tenants on the Property. The Subject Application, which is similar in scale and operations to the previously approved special exceptions within the Arcade Level of the Promenade Towers, will not change the character of the building or neighborhood. The use has existed onsite for over a decade prior to being issued a Notice of Violation. There are no changes proposed to the interior or exterior of the unit. Therefore, the proposal is in substantial conformance with the R-H zone and with the Master Plan.

Transportation

Transit Service

RideOn Route 30, providing service between the NIH Medical Center and the Bethesda Metro Station has a stop located adjacent to the Site entrance on Pooks Hill Road. The route operates Monday through Friday, between 5:40 AM and 10 PM with 75-minute headways. A capital Bikeshare station with 15 bays is located immediately across the street.

Master-Planned Roadways and Bikeway

No designated bicycle facilities are master planned within the vicinity of the site per the 2018 *Bicycle Master Plan*.

Pedestrian Facilities

A 4-foot-wide sidewalk with a 6-foot grass buffer is present along both sides of Pooks Hill Road, connecting to a well-connected sidewalk network on-site.

On-site Parking

The Promenade contains surface and structured parking. Structured parking, which totals 1,068 spaces, is dedicated to the residents and there are an additional 4 surface parking lots onsite totaling 421 for guests of the residents, staff, and visitors to the commercial and medical office tenants. The security gate at the Site entrance is guarded at all times, and visitors are required to check in and receive a parking pass and directions.

Per Section 59-6.2.4.A., the minimum required off-street parking spaces is 1. Given the ample shared visitor parking available on-site, this requirement can easily be met.

Local Area Transportation Review

The nature of the Applicant's business is such that all services require appointments, and walk-ins are not permitted. Therefore, the Applicant is able to control the number of visitors at any time as well as the number of trips in and out of the Site. As conditioned, the Conditional Use is confined to one staff person and one patient at a time. Therefore, the maximum number of peak hour person trips in either the morning or evening peak hour is two. Per the 2017 *Local Area Transportation Guidelines* (LATR), Applications estimated to generate fewer than 50 peak hour person trips are exempt from further transportation impact analysis. As conditioned, the Applicant has demonstrated that no additional evaluation is necessary to determine that there is adequacy capacity on the adjacent transportation network to support the Subject Application.

Environment

On February 1, 2021, Staff confirmed this application is not subject to Chapter 22A, the Forest Conservation Law, because the Project does not propose any clearing or grading activities (see Attachment A), therefore the Project is in conformance with the *Environmental Guidelines*.

Community Correspondence

As of the date of this Staff Report, Staff has not received any comments from the community in opposition to the application, however the Application package included 23 letters of support (Attachment A). These letters were written by longstanding clients that reside within the Promenade Towers and local community.

Conditions for Granting a Conditional Use- Section 59.7.3.1.E. Necessary Findings

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

a. *satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended.*

The application is in conformance with Site Plan 819810580 which allowed the construction of a residential high-rise building for up to 1,071 units, and subsequent amendment which allowed an accessory structure for an antenna.

b. *satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;*

Use Standards for Retail/ Service Establishment – Section 59.8.2.3.B

7. *A Retail/ Service Establishment may be permitted in the R-H Zone by the Hearing Examiner under Section 59.7.3.1, Conditional Use if:*

a. *The Restaurant or Retail/ Service Establishment:*

- i. *Primarily serves the residents of the building or complex in which it is located and does not deliver to non-residents;*
- ii. *Is located on the ground-level, except that a restaurant may locate on the top floor or penthouse; and*

- iii. *Is located and constructed to protect tenancies of the building from noise, traffic, odors, and interference with privacy; and*

The Massage Therapy use will primarily serve the residents of the building. While the Applicant states that other clients may drive from nearby, a predominant number of clients reside within the building. There are no deliveries to non-residents. The Arcade Level is located on the ground level of the Promenade Towers, there are no residential units on this floor of the building to protect tenants from any potential noise, traffic, odors and/or interference with privacy.

- b. *There are no entrances to the Restaurant and/or Retail/ Service Establishment directly from the exterior.*

There are no entrances from the proposed unit location directly from the exterior. The unit will be accessed from a hallway within the Arcade Level, interior to the building. The Arcade Level is accessed from the main lobby entrance or from a dedicated Arcade Level entrance by the commercial and delivery parking lot.

- c. *A Retail/ Service Establishment must be:*
 - i. *Bank or savings and loan office;*
 - ii. *Barber and beauty shop;*
 - iii. *Book store;*
 - iv. *Drug store;*
 - v. *Dry cleaning and laundry pick up station;*
 - vi. *Florist;*
 - vii. *Food and beverage store;*
 - viii. *Gift shop;*
 - ix. *Jewelry store;*
 - x. *Laundromat;*
 - xi. *Newsstand;*
 - xii. *Office;*
 - xiii. *Variety and dry goods store.*

Per email dated December 9, 2020 from the Montgomery County Department of Permitting Services, a Massage Therapy use is interpreted as similar to the uses listed.

Table 1: R-H Zone Development Standards- Section 59.8.5.2.B.2

Development Standard	Required/ Permitted	Proposed
Minimum Lot Area	40,000 SF	1,075,932 SF
Minimum Lot Width at Front Building Line	200 ft	225 ft
Maximum Density	1 unit per 1,400 sf	1,071 units
Maximum Lot Coverage	12%	12%
Minimum Front Setback	25 ft	460 ft
Minimum Side Setback ¹	20 ft	196 ft
Minimum Sum of Side Setbacks ¹	30 ft	528 ft
Minimum Rear Setback ¹	30 ft	188 ft

¹ For buildings over 30' in height, all of the setbacks shown in Section 59.8.2.5.B.2 must be increased by 1' for each foot of height over 30.

Table 2: Parking Requirements- Division 59.6.2.4

Section	Parking	Required Spaces	Proposed
59.6.2.4.A 59.6.2.4.B	Vehicle Parking Requirement	170 square feet of Retail Services Total: 1	12 Shared Commercial Visitor Parking Spaces Total: 12
59.6.2.4.C	Bicycle Parking Requirement	1 short term 1 long-term	25 short term available in garage 190 available across two bike storages rooms on-site

Lighting

No additional lighting is proposed with this application.

Signage

The Applicant proposes one sign to be affixed to the door of the unit, which is an oval shape 10 inches by 13 inches, "Therapeutic Massage Associates." The proposed sign will be interior to the building and in character with the surrounding Arcade Level tenants.

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

As discussed in the Analysis section above, the Site is located within the boundaries of the 1990 *Bethesda-Chevy Chase Master Plan*, and the proposal is in substantial conformance with the Master Plan.

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

The proposal is harmonious with, and will not alter the character of the surrounding neighborhood. No physical changes to the buildings or structures are proposed on the Property. Therefore, the proposed conditional use will not alter the character of the neighborhood.

- e. *will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

Staff identified 17 approved special exception/conditional uses within the Staff-defined neighborhood, 16 of which are located within Promenade Towers, and one additional conditional use is located on the neighboring property to the west for a Tennis Club. Although approval of this Application will increase the number of conditional uses in the Staff-defined Neighborhood, the Promenade Towers was constructed in a way to provide the Arcade Level as a dedicated interior ground floor of the building with neighborhood serving uses for their residents. The addition of this conditional use will

not alter the character of the building or the high-density nature of the Promenade Towers.

- f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*
 - i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, or*
 - ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, and*

There are adequate public services and facilities to serve the proposed use and a Preliminary Plan of Subdivision is not required.

- g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*
 - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood.*
 - ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
 - iii. the health, safety, or welfare of neighboring residents, residents, visitors, or employees*

An analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environment. Every conditional use has some or all of these effects in varying degrees, and inherent effects associated with the use have to be determined. In addition, non-inherent effects have to be determined as these effects may, by themselves, or in conjunction with inherent effects, form a sufficient basis to deny a conditional use. It must be determined during the course of review whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Staff has identified the following inherent impacts of the proposal: (1) vehicular trips to and from the Site, (2) parking for the proposed use, (3) impact to residents. The nature of the Applicant's business is such that all services require appointments, and walk-ins are not permitted. Therefore, the Applicant is able to control the number of visitors at any time as well as the number of trips in and out of the Site. As conditioned, the Conditional Use is confined to one staff person and one patient at a time. Therefore, the maximum number of peak hour person trips in either the morning or evening peak

hour is two. Per the 2017 *Local Area Transportation Guidelines* (LATR), Applications estimated to generate fewer than 50 peak hour person trips are exempt from further transportation impact analysis.

There is an abundant amount of parking available on-site, and further, the on-site security manages the commercial visitor parking lot through signage, specifying where to park and limiting time for each visitor. The existing parking facility can accommodate the minimum 2 spaces required for the commercial space without impacting the residential parking area.

The building has been designed to accommodate a limited number of commercial tenants and has operated in such fashion over several years. The addition of this particular tenant, who has already been located here for over 10 years, will not reduce the high-density residential nature of the Promenade Towers, and will not impact residents. The proposed use will be located within the Arcade Level of the building, separate from the residents. There are no changes proposed to the exterior of the existing structure on the site. The existing residential building, parking areas, and grounds are to remain as they are today. Signage related to the unit will be limited to the interior and will not be discernable from the outside. Staff has determined that the proposal will not have any non-inherent effects at this location.

2. *Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.*

The proposed conditional use is located in the R-H zone, not a residential detached zone.

3. *The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and is not sufficient to require conditional use approval.*

The proposed use will be compatible with the existing commercial uses located on the Arcade Level of the Promenade Towers, as well as the high-density residential use of the Property and the medium density residential located adjacent to the Site.

SECTION 5: CONCLUSION

CONCLUSION

The proposed conditional use complies with the general conditions and standards of a Retail/ Service Establishment (Massage Therapy) use, subject to the recommended conditions of approval. The proposed use meets the required findings set for in Section 59.7.3.1.E. of the Zoning Ordinance, is consistent with the goals and recommendations of the 1990 *Bethesda-Chevy Chase Master Plan*, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval with conditions.

Attachments:

A – Application (Site Plan, Statement of Justification, FC form, Letters of Support)

B – MCDPS email dated December 9, 2020