




**MCPB**  
Item No. 8  
Date: 7-22-2021

**9545 River Road, Preliminary Plan No. 120210190**

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**Completed: 7-9-2021**

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**Description**

Request to create one lot for a two-story Senior Residential Care Facility for up to 100 units and up to 130 beds.

**Location:** Located on River Road (MD-190), 1,200 feet southeast of Persimmon Tree Road

**Master Plan:** 2002 *Approved and Adopted Potomac Subregion Master Plan*

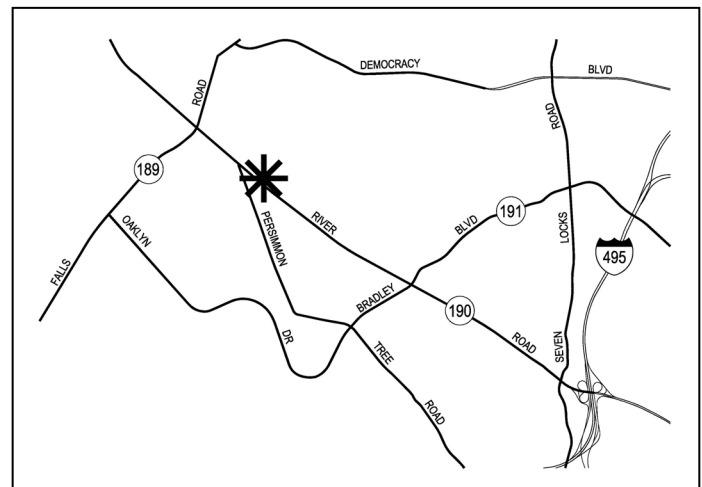
**Zone:** RE-2

**Property Size:** 5.93 acres

**Applicant:** Spectrum Retirement Communities, LLC

**Acceptance date:** March 19, 2021

**Review Basis:** Chapters 22A and 50



**Summary**

- Staff recommends Approval of the Preliminary Plan, with conditions.
- The Application conforms with Conditional Use Permit CU 20-05, which approved redevelopment of the Subject Property with a Residential Care Facility for seniors or persons with disabilities with up to 100 units and up to 130 beds, including Assisted Living and Memory Care.
- The Application does not provide any MPDUs as the Assisted Living and Memory Care units do not have cooking facilities and are not classified as apartments or dwelling units.
- The Application substantially conforms to the 2002 *Approved and Adopted Potomac Subregion Master Plan* by providing senior housing.
- The Applicant will construct a 10-foot wide shared-use side-path across the property frontage on River Road, MD Route 190, consistent with the 2018 *Bicycle Master Plan*.
- No community correspondence has been received as of the date of this Staff Report.

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## **SECTION 1 - RECOMMENDATIONS AND CONDITIONS**

**Preliminary Plan No. 120210190:** Staff recommends approval with conditions of the Preliminary Plan to create one lot for a two-story Senior Residential Care Facility with up to 100 Assisted Living and Memory Care suites, or up to 130 beds. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions:

### **General Approval**

1. This Preliminary Plan is limited to one lot for a Residential Care Facility for up to 100 units and up to 130 beds.

### **Adequate Public Facilities**

2. The Adequate Public Facilities (“APF”) review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.

### **Plan Validity Period**

3. The Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

### **Outside Agencies**

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated June 17, 2021, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated May 24, 2021, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
6. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated January 22, 2021, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

## Other Approvals

7. The Applicant must comply with conditions from the Hearing Examiner's Report and Decision, dated March 9, 2021, from the Office of Zoning and Administrative Hearings (OZAH) approving Conditional Use No. 20-05.

## Environment

### Forest Conservation and Environment

8. The Applicant must plant the stream buffer encroachment mitigation areas according to the approved Conditional Use Landscape and Lighting Plan.
9. The Applicant must comply with the following conditions of approval of Final Forest Conservation Plan 120210190, approved as part of this Preliminary Plan.
  - a) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
  - b) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
  - c) Prior to recordation of the plat and the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record the Category I and Category II Conservation Easements over all areas of forest retention as specified on the approved Preliminary/Final Forest Conservation Plan. The Conservation Easements must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
  - d) Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety for forest and variance tree plantings, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department.
  - e) Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance, in a form approved by M-NCPPC Office of General Counsel, in an M-NCPPC approved off-site forest bank within the same watershed as the Subject Property or any watershed within Montgomery County, upon approval, if there are no available credits within the same watershed as the Subject Property to satisfy the reforestation requirement for a total of 0.17 acres of mitigation credit. The off-site requirement may be met by making a fee-in-lieu payment if mitigation credits are not available at any bank.
  - f) Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures.
  - g) Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement signage and

fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.

- h) The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling nine caliper inches as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
- i) The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

## **Transportation**

### Existing Frontage Improvements

- 10. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
  - a) All land necessary to accommodate seventy-five feet from the existing pavement centerline along the Subject Property frontage for River Road, such that the full right-of-way of 150 feet is accommodated.
- 11. Prior to the issuance of the first above-ground building permit, the Applicant must satisfy all necessary requirements of MDSHA to ensure construction of a 10-foot wide shared-use path along the Property frontage on River Road. The shared-use path must be constructed prior to issuance of the Use and Occupancy Certificate.

## **Record Plats**

- 12. Except for demolition of existing building(s) and structure(s), there shall be no clearing or grading of the Site prior to recordation of plat(s).

### Easements

- 13. The record plat must show necessary easements.

## **Certified Preliminary Plan**

- 14. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
- 15. The certified Preliminary Plan must contain the following note:

*Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

## SECTION 2 - SITE LOCATION AND DESCRIPTION

### Site Location

The property is identified as Parcel P786 on Tax Map FP 342, and is located on the north side of River Road (MD-190), approximately 1,200 feet southeast of the intersection of River Road and Persimmon Tree Road within the 2002 *Approved and Adopted Potomac Subregion Master Plan* area ("Subject Property" or "Property").



Figure 1 – Aerial View of the Subject Property

### Site Vicinity

Surrounding properties are predominantly residential in all directions. The areas to the east of the Subject Property consist of RE-2 zoned large-lot residential properties improved with large, single-family dwellings as well as some unimproved properties on both the north and south sides of River Road. Victory Terrace Senior Housing is located to the east of the Subject Property. The areas to the west are predominantly developed with single-family detached dwellings in the R-200 Zone. The Subject Property is surrounded by RE-zoned properties to the south (across River Road), north, and east. The Property abuts R-200 Zoned residential properties found to the west.



Figure 2 – Tilted Aerial View of the Subject Property

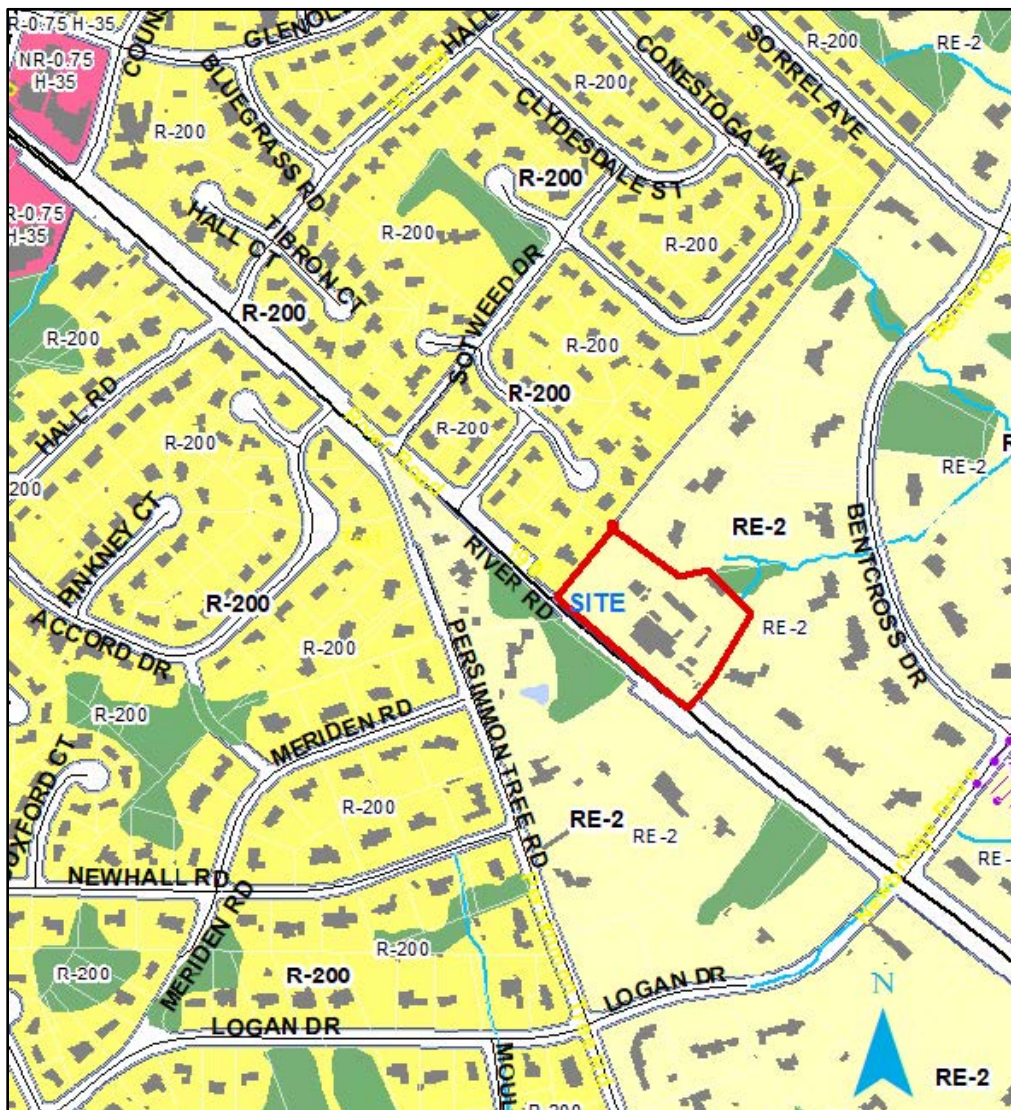


Figure 3 – Zoning Map

## Site Description

The Property is a 5.93-acre parcel (219,757 sq. ft.) previously used as a nursery/garden center/florist shop and includes a structure containing the previous uses as well as surface parking lots, sheds, outdoor storage, and planting areas. The Property has 645 feet of frontage on River Road from which it is accessed. With the proposed development, the Subject Property would consist of approximately 5.04 acres (219,757 sq. ft.) of land. The remaining acreage is allocated for dedication along River Road. The Subject Property drains to Cabin John Creek, a State of Maryland designated Use Class I-P stream. The Property is not located within a Special Protection Area (SPA) or Primary Management Area (PMA). The FCP plan indicates that no wetlands, streams, or 100-year floodplain were found onsite during field investigations. The Subject Property sits in a valley along River Road and the Site falls approximately 30 feet from the western corner on River Road to the eastern corner at the rear Property line. A partially piped stream runs across the residential properties to the north/northeast. The Property, in its current state, remains as mostly impervious surface (79%) including pavement, principle, and accessory buildings, with essentially no stormwater management. No known rare, threatened, or endangered species or habitats exist on the Subject Property. There are no designated historic sites on or near the Property.

## SECTION 3 - APPLICATION AND PROPOSAL

### Previous Approvals

#### Conditional Use 20-05

Conditional Use 20-05 was approved on March 9, 2021 for the construction and operation of a Senior Residential Care Facility (Over 16 Persons) in a new 152,655 square-foot, two-story building. The Residential Care Facility is comprised of up to 100 Assisted Living and Memory Care units, or up to 130 beds, and a maximum building height of 40 feet. The maximum number of employees working on any shift is limited to 42 staff persons, with no more than 52 employees on-site at any given time to accommodate shift changes, and the minimum number is limited to 24 employees during the weekdays and nine during the weekend. The Conditional Use provides for a total of 85 parking spaces, comprised of 69 underground structured parking spaces, 16 surface parking spaces, with eight handicapped accessible spaces (four of which are van accessible spaces), and designated loading and drop-off areas. The frontage along River Road (MD-190) includes a 10-foot-wide shared-use side-path.

### Current Application

#### Preliminary Plan 120210190

This plan, designated as Preliminary Plan No. 120210190, 9545 River Road ("Preliminary Plan" or "Application"), proposes to create one (1) platted lot from one unplatted parcel for a Senior Residential Care Facility (Over 16 Persons) as defined by Section 59.3.3.2.E of the Zoning Ordinance. This lot will contain a single building for the facility and includes parking for residents, visitors, business vehicles, employees, and bicyclists. The facility will have up to 100 Assisted Living and Memory Care units, or up to 130 beds, and is focused on providing two levels of care, support, and special assistance to residents 62 years of age and older. The Application does not require MPDUs as the Assisted Living and Memory Care units do not have cooking facilities and are not classified as apartments or dwelling units.

The Application proposes frontage improvements along River Road (MD-190) which, based on guidance from the 2018 *Bicycle Master Plan*, include the construction of a 10-foot wide shared-use side-path across the frontage of the Property.

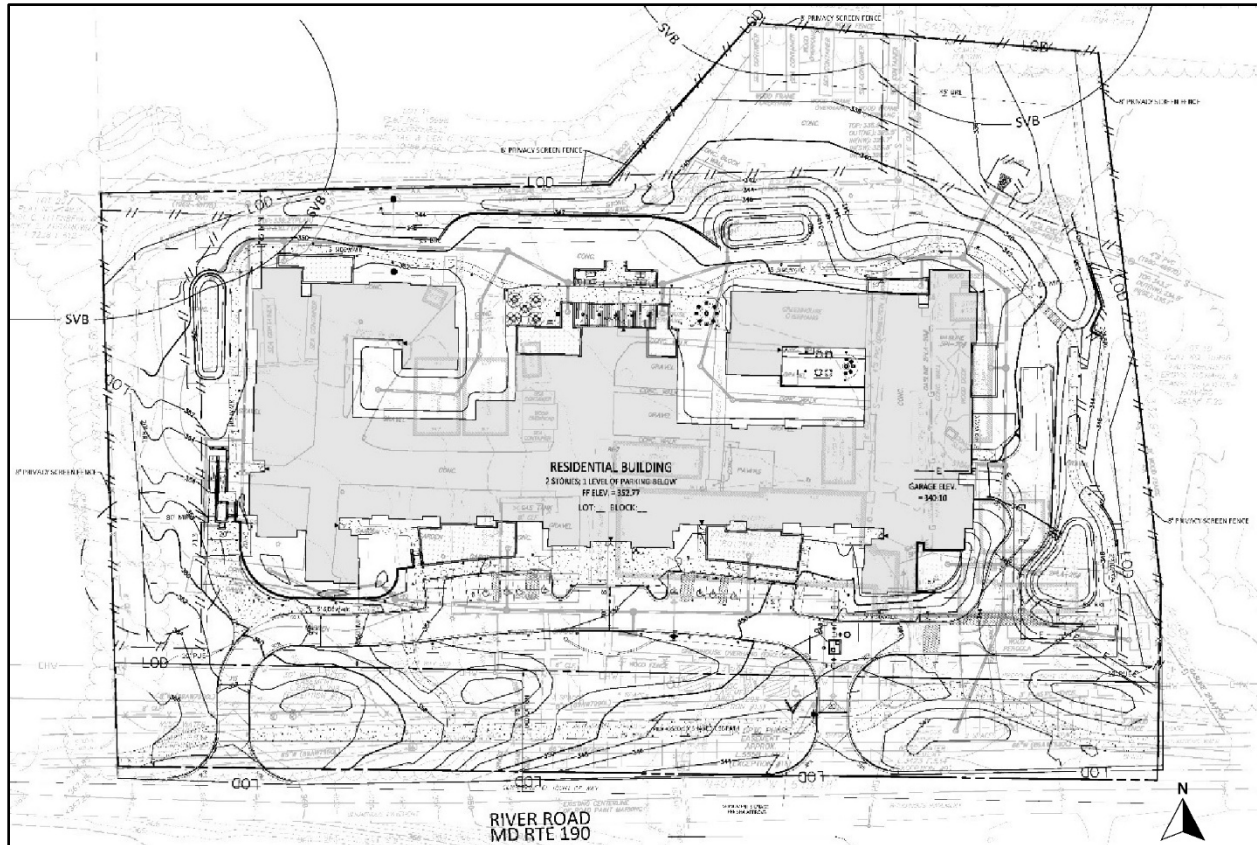


Figure 4 – Proposed Preliminary Plan

#### SECTION 4 - ANALYSIS AND FINDINGS, 50.4.2.D

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59*

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape, and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, for the building use (Senior Residential Care Facility) type contemplated for the Subject Property.

The lot was reviewed for compliance with the dimensional requirements for the RE-2 Zone as specified in the Zoning Ordinance. The lot meets all the dimensional requirements for area and frontage and can accommodate the Senior Residential Care use, which can reasonably meet the width and setback requirements in that zone. A summary of this review is included in Table 1. The Preliminary Plan has been reviewed by other applicable County agencies, all of whom have recommended approval.

**Table 1 – Development Standards in the RE-2 Zone (Section 59-4.4.4.B)**

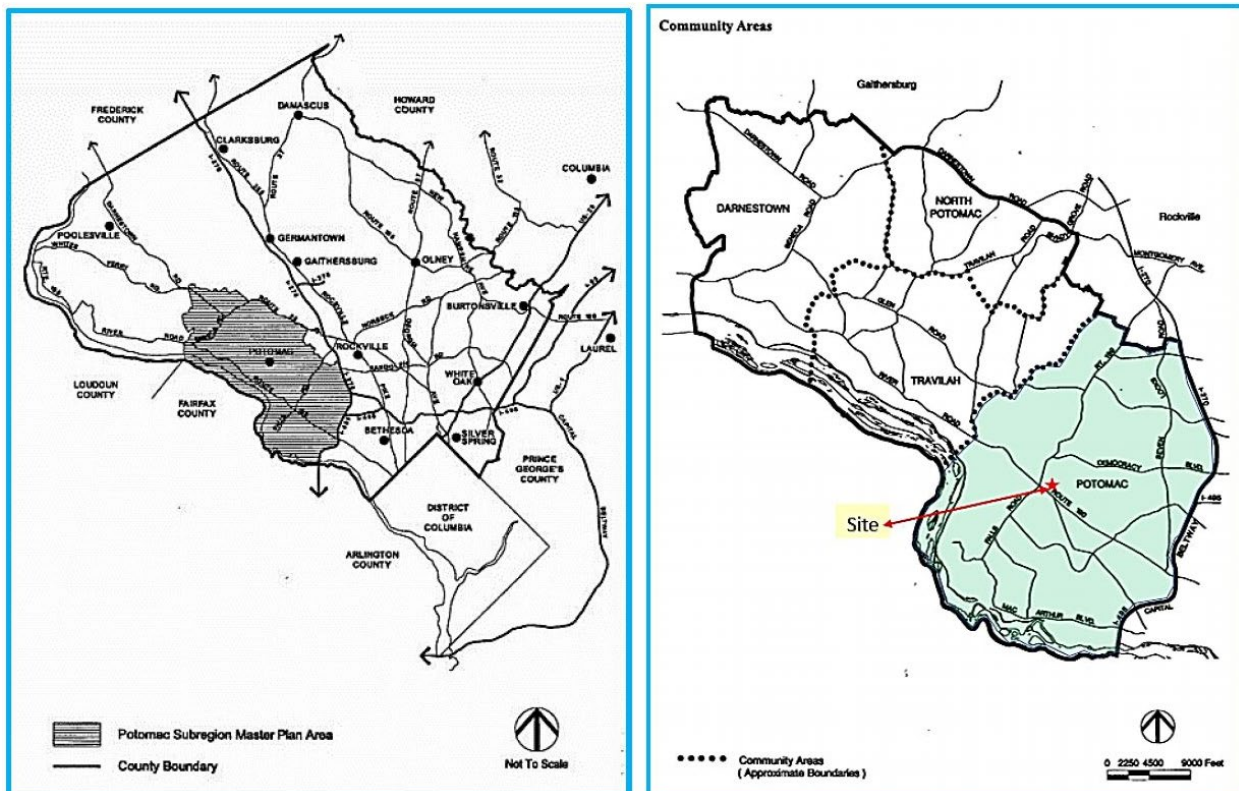
<b>Development Standards</b>	<b>Zoning Ordinance</b>	<b>Approved CU 20-05</b>	<b>Proposed</b>
<b>Minimum Lot Area:</b>  <ul style="list-style-type: none"> <li>- Gross Tract Area</li> <li>- Dedication Area (River Road)</li> <li>- Net Lot Area</li> </ul>	2.00 acres (87,120 sq. ft.)	5.04 acres (219,757 sq. ft.)  5.93 acres (258,226 sq. ft.) 0.88 acres (38,469 sq. ft.) 5.04 acres (+/-) (219,757 sq. ft.)	5.04 acres (219,757 sq. ft.)  5.93 acres (258,226 sq. ft.) 0.88 acres (38,469 sq. ft.) 5.04 acres (+/-) (219,757 sq. ft.)
<b>Density:</b> <ul style="list-style-type: none"> <li>- Maximum number of beds (for 219,757 sq. ft. lot)</li> <li>- Minimum sq. ft. / bed</li> <li>- Minimum total sq. ft. (130 beds x 1,200 sq. ft./bed)</li> </ul>	183 beds  1,200 sq. ft. 156,00 sq. ft.	130 beds/100 units  1,690 sq. ft. 219,757 sq. ft.	130 beds/100 units  1,690 sq. ft. 219,757 sq. ft.
<b>Minimum Lot Width:</b> <ul style="list-style-type: none"> <li>- At front building line</li> <li>- At front lot line</li> </ul>	150 ft. 25 ft.	650 ft. 645 ft.	650 ft. 645 ft.
<b>Maximum Lot Coverage</b>	25 percent	25 percent	25 percent
<b>Minimum Building Setback</b> <b>Principal Building:</b> <ul style="list-style-type: none"> <li>- Front</li> <li>- Side <ul style="list-style-type: none"> <li>- One side</li> <li>- Sum of both sides</li> </ul> </li> <li>- Rear yard</li> </ul>	50 ft.  17 ft. 35 ft. 35 ft.	50 ft.  80 ft. / 88 ft. 168 ft. 45 ft.	50 ft.  80 ft. / 88 ft. 168 ft. 45 ft.
<b>Maximum Building Height</b>	50 ft.	40 ft.	40 ft.
<b>Parking: 59-6.2.4.B and C</b>			
<b>Minimum Vehicle Parking Spaces</b> 0.25 sp / bed (130 beds) 0.50 sp / employee (42 max.) TOTAL Standard (Garage) Standard (Surface)  Handicap Accessible Regular (H.C. Access.) Van (H.C. Access.)	33 spaces 21 spaces 54 spaces - -  3 spaces - -	- - 85 spaces 69 spaces 16 spaces (8 Std. + 8 H.C. Access.) 8 spaces 4 spaces 4 spaces	- - 85 spaces 69 spaces 16 spaces (8 Std. + 8 H.C. Access.) 8 spaces 4 spaces 4 spaces
Motorcycle Parking	2 spaces	2 spaces	2 spaces
Bicycle Parking	-	6 spaces	6 spaces
MPDUs Required	No	No	No

2. *The Preliminary Plan substantially conforms to the Master Plan or Urban Renewal Plan*

The Preliminary Plan substantially conforms to the recommendations within the 2002 *Approved and Adopted Potomac Subregion Master Plan*.

Land Use

The Subject Property is within the 2002 *Approved and Adopted Potomac Subregion Master Plan* and is specifically located in the “Potomac” area of the Master Plan. The “Potomac” area is one of four community areas found within the boundaries of the Master Plan, the others being Travilah, North Potomac, and Darnestown. The Potomac planning area consists of 28.1 square miles. The Master Plan describes the Potomac area as having a large area of older, well-established residential communities with access to major employment centers. While there are no specific recommendations for the Subject Property, the Master Plan makes recommendations for the need for additional housing for the elderly (pages 36-38). The Master Plan emphasizes that senior housing is appropriate wherever zoning permits the use, either by right or as a Conditional Use. The Master Plan provides specific recommendations for Conditional Uses with the aim to “provide guidelines that will protect residential areas while also attempting to meet important policy goals” (page 35) and recommends that reviews focus on architectural compatibility of proposed uses with existing residential design and on techniques for screening uses and their associated parking from nearby residential areas and from the roadways. The Application substantially conforms with the recommendations from the Master Plan and is consistent with the Master Plan’s general land use and elderly housing goals.



Figures 5 and 6 – Potomac Subregion Area and Potomac Community Area with Subject Property

Specifically, the Application is compatible with the following policies contained within the Master Plan for Environmental and Design Principles (pages 33-34):

- Maintain and reaffirm a low-density residential “green wedge.”
- Encourage an ecologically sensitive and energy-efficient development pattern, with an emphasis on respecting the environment and on conservation.
- Preserve open space, protect significant environmental features, and provide recreation and transportation alternatives.
- Create environmentally sustainable development.
- Provide facilities that promote transit use, walking and biking.
- Incorporate open space and community facilities into new development.

#### Environment

The Application addresses several of the environmental recommendations contained within the Master Plan. The Application will provide stream valley buffers on-site as appropriate. The expanded building footprint results in a minor encroachment into the stream valley buffer within the northern corner of the Subject Property in order to provide a walkway that encircles the building. It also makes room for an existing undergrounded stream that traverses the property. The Applicant will provide mitigation for the buffer encroachment with on-site special landscape design, featuring plant materials specially selected to serve as habitat for pollinator species, such as butterflies, bees, and birds. The remaining stream valley buffers will be protected with Category I Conservation Easements, except where existing sewer easements and adjacency to stormwater management facilities preclude it. These measures and approaches support the above-mentioned Master Plan policies for Environmental Principles for the Application.

#### Transportation

The Application meets all transportation recommendations of the 2002 *Approved and Adopted Potomac Subregion Master Plan* as well as county-wide functional plans (discussed in more detail below).

### *3. Public Facilities will be adequate to support and service the area of the subdivision*

Public facilities are adequate to serve the proposed development by this Preliminary Plan. The Applicant is not required to submit a traffic study to satisfy the LATR test because the proposed land use generates fewer than 50 peak-hour net new person trips within the weekday morning and evening peak periods. Road access, access to water, waste disposal, and utilities will be dealt with at building permit.

#### Roads and Other Transportation Facilities

Transportation access is adequate to serve the proposed development by this Preliminary Plan.

#### *Existing Facilities*

The Property is located along River Road (MD 190), identified by the 2018 *Master Plan of Highways and Transitways* as a 2-lane Major Highway with a 150 ft. right-of-way, which is accommodated in the proposal. There is an existing 8-ft. wide asphalt shared-use path along MD 190 to the north and south of the Subject Property, but as existing, no bike or pedestrian improvements across the frontage of the Subject Property.

#### *Proposed public transportation infrastructure*

The 2018 Bicycle Master Plan recommends a 10-ft. wide, asphalt shared-use side-path along the east side of MD 190, along the frontage of the Subject Property. As conditioned, the Applicant will construct this facility across the frontage, filling in the gap between existing paths to the north and south.

The 2018 *Master Plan of Highways and Transitways* recommends River Road as a Major Highway with a 150 ft. ROW. As conditioned, this Application will provide seventy-five feet of ROW as measured from the existing pavement centerline to accommodate the Applicant's share of ROW for the north side of River Road. Dedication will be adequate to support the Master Plan vision for the road.

#### *Proposed private transportation infrastructure*

Vehicular access to the Property will be from River Road (MD 190). As proposed, a loop access drive will be provided to the site with one 20-ft. entrance and one 20-ft. exit. The loop access will provide direct access to the building lobby. A 5-ft. wide sidewalk is proposed to run from the proposed shared-use path directly to the main building entrance, then continuing in a loop connecting to all building entrances and facility amenities providing efficient pedestrian circulation. Limited visitor and ADA parking is provided in front of the building lobby. The majority of parking for residents is provided below-grade in a garage. The circulation pattern, as proposed, is safe and adequate for the use proposed. The Applicant will provide a shuttle service for residents operating 7 days a week between 8:00 AM and 4:00 PM for trips within a 10-mile radius.

#### Local Area Transportation Review (LATR)

The Applicant submitted a transportation statement within the Statement of Justification (Attachment 1) for the Preliminary Plan application for a 100 unit (130 beds) senior living facility which will replace an existing commercial nursery on site. According to the Institute of Transportation Engineer's (ITE) 10th Edition Trip Generation Manual and adjusted for the Potomac Policy Area, this Application will result in a net reduction of 17 AM and 87 PM vehicular trips and 21 AM and 115 PM peak-hour person trips, a significant reduction due to the replacement of the existing higher trip generating nursery use with a residential use. The Applicant is not required to submit a traffic study to satisfy the LATR test because the proposed land use generates fewer than 50 peak-hour net new person trips within the weekday morning and evening peak periods.

**Table 2 – Trip Generation**

Use	Development	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
<b>Existing (Credit)</b> Nursey (ITE-817*)	17,489 sq. ft.	21	21	42	60	61	121
<b>Proposed:</b> Assisted Living (ITE-254*)	130 Beds	16	9	25	13	21	34
<b>Net New Vehicle Trips (reduction)</b>		<b>(5)</b>	<b>(12)</b>	<b>(17)</b>	<b>(47)</b>	<b>(40)</b>	<b>(87)</b>
<b>Total Peak Hour Person Trips (reduction)</b>				<b>(21)</b>			<b>(115)</b>

*\*Institute of Transportation Engineer's (ITE) 10th Edition Trip Generation Manual. Numbers are vehicle trips except for person trips in final row. Person trips are adjusted according to 2017 LATR guidelines.*

#### Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lot. The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on January 22, 2021 (Attachment 7). The Fire Department Access Plan provides a fire compliant entrance and drive to adequately access the proposed building. The entrance and drive meet all required turning radii, widths, and turnaround requirements for fire trucks serving the Subject Property. Other utilities, public facilities, and services, such as electric, telecommunications, police stations, firehouses, and health services are currently operating within the standards set by the Subdivision Staging Policy in effect at the time that the Application was submitted. Because this is a senior housing facility, it does not have an impact on schools.

#### *4. All Forest Conservation Law, Chapter 22A requirements are satisfied*

##### Environmental Guidelines

Natural Resource Inventory and Forest Stand Delineation (NRI/FSD) #420200520 was approved on March 5, 2020. This unforested Property is within the Cabin John Creek Watershed and includes a State of Maryland designated Use Class I stream. There are offsite streams to the northeast and northwest of the Property. The buffers of these streams partially extend onto the Property. Five large trees were identified on the Property or adjacent to the Property, including two specimen trees. There are no onsite steep slopes or highly erodible soils.

A minor section of stream valley buffer will not be placed into a conservation easement because of its proximity to the building and the need to maintain a walkable path for residents, emergency personnel, and access to stormwater management facilities. As compensatory mitigation, the Applicant is providing landscaped areas of native plantings throughout the Property along building foundations and garden spaces which are shown on the approved Conditional Use Landscape and Lighting Plan. The Final Forest Conservation Plan is in substantial conformance with the approved Preliminary Forest Conservation Plan and consistent with the Preliminary Forest Conservation Plan and Landscape Plan shown in the Hearing Examiners report.

##### Forest Conservation Plan

A Preliminary Forest Conservation Plan (PFCP) was approved as part of Conditional Use Application No. CU 2020-05. The Final Forest Conservation Plan (FFCP) was submitted with this Application. The FFCP is in substantial conformance with the PFCP and it meets all applicable requirements of the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). It includes no forest removal and a 1.2-acre mitigation requirement. There will be 1.03 acres of forest planted onsite that will be protected in Category I and II Conservation Easements. The remaining 0.17 acres will be met offsite. The variance approved as part of this Preliminary Forest Conservation Plan, with the Conditional Use application, requires the planting of three 3-inch caliper trees onsite for the removal a variance tree. These mitigation trees are included on the Final FCP.

#### *5. All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

The Preliminary Plan Application received a stormwater management plan approval from the Montgomery County Department of Permitting Services, Water Resources Section on April 26, 2021 (Attachment 6). The Application will meet stormwater management goals through the use of multiple micro-bioretenion facilities for ESD.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.*

There is no evidence, actual notice, or constructive notice of a burial site on the Subject Property. The Subject Property is not included in the Montgomery County Inventory.

7. *Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.*

The Application is in conformance with the conditions of Conditional Use 20-05.

## **SECTION 5 - COMMUNITY CORRESPONDENCE**

The Applicant has met all proper signage and noticing requirements for the Preliminary Plan Application. As of the date of this Staff Report, Staff has not received any correspondence from the community regarding this Application.

## **SECTION 6 - CONCLUSION**

The proposed lot meets all requirements established in the Subdivision Regulations in Chapter 50, Forest Conservation Law in Chapter 22A, and the proposed use substantially conforms to the recommendations of the 2002 *Approved and Adopted Potomac Subregion Master Plan*. The Application is in conformance with the approved Conditional Use 20-05. Access to the lot is adequate and all public facilities and utilities have been deemed adequate to serve this Application. The Application was reviewed by other applicable County agencies, all of whom have recommended approval of the Application. Therefore, Staff recommends approval of the Application, with the conditions as enumerated in the staff report.

## **ATTACHMENTS**

Attachment 1 - Statement of Justification

Attachment 2 - Preliminary Plan Composite

Attachment 3 - Final Forest Conservation Plan Composite

Attachment 4 - Conditional Use 20-05 Hearing Examiner's Report and Decision, March 9, 2021

Attachment 5 - MCDOT Approval Letter, June 17, 2021

Attachment 6 - MCDPS Stormwater Management Approval Letter, May 24, 2021

Attachment 7 - MCDPS Fire Department Access Approval Letter, January 22, 2021

**Spectrum Retirement Communities**  
**9545 River Road, Potomac, MD**  
**Preliminary Plan No. 120210190**  
**Statement of Justification and Narrative Description**

Spectrum Acquisition Potomac, LLC (the "Applicant" or "Spectrum") is submitting this application for Preliminary Plan approval (the "Application") for consideration by the Montgomery County Planning Board for the property located at 9545 River Road in Potomac, MD (the "Property"). The Applicant is proposing to consolidate the Property into one lot to facilitate the redevelopment of the aging, commercial garden center with a Residential Care Facility (over 16 persons) (the "Project"). The Residential Care Facility will include up to 100 assisted living and memory care suites (or up to 130 beds) that provide two levels of care, support and special assistance to residents 62 years of age and older.

There is a significant need for more senior housing in the County, as a whole. The *2002 Approved and Adopted Potomac Subregion Master Plan* (the "Master Plan") also makes special note of the need for more senior housing in the Potomac Subregion. As such, the Project provides an important opportunity to develop much needed senior housing, at varying levels of care (both assisted and memory care), which will serve County residents and allow Potomac residents to stay in their community, close to family and friends, as they age. The proposed facility will provide a quality lifestyle and the necessary services to allow senior residents to remain vital members of their community.

The Project is compatible with the surrounding neighborhood, will satisfy all applicable standards of the Zoning Ordinance and Chapter 50 of the Montgomery County Code (the "Subdivision Regulations"), and substantially conforms to the Master Plan. The Project was thoroughly reviewed by Technical Staff as part of the Conditional Use process. The Planning Board also recommended approval of the Conditional Use.

## **I. BACKGROUND**

### **A. Spectrum**

Spectrum is a developer, owner and operator of senior housing facilities across the United States. Spectrum is exclusively in the senior housing business and develops properties solely for its own long-term ownership and operation. Spectrum currently operates 48 properties, containing 6,286 units in 10 states. Spectrum currently has another four properties, containing 561 units, under construction.

Spectrum has extensive knowledge and experience in the requirements surrounding the management and operation of senior living facilities. Of Spectrum's nearly 4,000 employees, 97%

are directly involved in the operation of these facilities. Spectrum is regularly recognized for the expertise of its staff and has won numerous awards and accolades for excellence in service.

Because Spectrum is a long-term owner and operator, Spectrum is committed to ensuring that every project fulfills the needs of its residents, and also is compatible with the surrounding community. As discussed below, Spectrum has invested considerable time and resources to work collaboratively with the immediately surrounding property owners to ensure the Project's compatibility with the surrounding neighborhood.

## **B. Community Outreach**

The Applicant has undertaken significant outreach efforts in connection with the Project. When the Applicant was first beginning its due diligence on this Property in the fall of 2019, they sought input on the proposed project from Park and Planning Staff, various agencies, and the community through a Concept Plan submission and various community meetings. As discussed in detail below, the Applicant also engaged in discussions with the immediately surrounding neighbors and the West Montgomery County Citizens Association ("WMCCA") that resulted in substantial revisions to the Project and an agreement wherein the neighbors and WMCCA withdrew their opposition to the Project.

Recently, the Applicant held the required pre-submission community meeting on February 3, 2021 virtually through GoTo Meeting, as permitted by the Planning Department's COVID-19 procedures.

## **II. PENDING APPROVALS**

The Applicant has submitted for Conditional Use approval (No. CU 20-05) from the Montgomery County Hearing Examiner for the redevelopment of the Property with a Residential Care Facility (Over 16 persons), containing up to 100 assisted living and memory care suites (or up to 130 beds). The Conditional Use hearing was held remotely on January 15, 2021 and its pending approval will occur prior to the Planning Board's review and approval of this Preliminary Plan.

## **III. PROPERTY & SURROUNDINGS**

### **A. Property Location, Characteristics, and Existing Conditions**

The Property is located along River Road, just south of its intersection with Persimmon Tree Road. The Property is an unrecorded parcel, P786, with a lot area of approximately 5.04 acres and, including land proposed to be dedicated to public use for River Road, a tract area of approximately 5.93 acres. Following dedication of additional right-of-way for River Road, the Property will have a lot area of approximately 219,757 square feet (or  $\pm 5.04$  acres).

The Property currently is improved with aging commercial buildings and structures, operated as a nursery/garden center.<sup>1</sup> The existing buildings have a tired and worn appearance that is inconsistent with the quality of the surrounding community. Existing landscaping is sparse and in poor condition. Perimeter fencing is decaying and falling down in several locations along neighboring properties. There is no known stormwater management on-site. Vehicular access to the Property is not well defined and unsafe, with two very wide access points directly into parking off River Road that permit vehicles to circulate in unpredictable and haphazard fashion. As such, the proposed Project provides an opportunity to significantly improve every aspect of the existing conditions on the Property.

### **B. Zoning and Permitted Uses**

The Property currently is zoned RE-2 ("Residential Estate-2"). Pursuant to Section 3.1.6 of the Zoning Ordinance, a Residential Care Facility (over 16 persons) is an allowed Conditional Use within the RE-2 Zone, subject to Section 3.3.2.E of the Zoning Ordinance. As discussed above, the Applicant has submitted a Conditional Use application to OZAH, which has been heard by the Hearing Examiner and its pending approval will occur prior to the Planning Board's approval of this Preliminary Plan.

### **C. Surrounding Zoning and Land Uses**

The Property is located approximately 0.5 miles outside of the Potomac Village Center and is surrounded by single-family residential neighborhoods located in the R-200 and RE-2 zones. The surrounding homes generally are large (ranging from approximately 4,500 to 11,000 square feet) and are situated on large lots, the majority of which are over two acres in size. There is a natural vegetative buffer that exists around the perimeter of the site that largely screens the Property from view of the neighboring homes. The Project will enhance this natural buffer with carefully selected landscaping material designed to enhance the screening, and will result in the redevelopment of the existing commercial use with a more compatible, residential use.

## **IV. PROJECT DESCRIPTION**

The Applicant proposes to redevelop the Property under the standard method of development for the RE-2 Zone with a Residential Care Facility (Over 16 Persons) (*see* Section 59-3.3.2.E). Specifically, the Project includes a two-story senior living facility containing up to 100 suites (or up to 130 beds) that will provide two levels of care, support and special assistance to residents 62 years of age and older. The Project also will provide residential amenities, generous common areas to be shared by residents, significant landscaping, associated parking, and other site improvements. The design of this facility is residential in nature.

Through the Conditional Use process, the Applicant made significant changes to the project design to address comments and concerns raised by the surrounding community and WMCCA.

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<sup>1</sup> Behnke's Nursery, which originally opened a store on the Property in 1998, closed their Potomac location in July 2014. Potomac Petals currently operates a smaller scale flower and garden center on the Property.

Notably, the Applicant eliminated the third-story component of the building. To make up for some of the lost floor area, the building footprint was somewhat expanded – the Applicant worked closely with the neighbors on how best to accommodate the expanded building area on-site. The Applicant also substantially enhanced the perimeter landscaping, both through an increased number and more mature plantings. The Applicant worked closely with the surrounding neighbors regarding the placement and specification of the plantings to ensure maximum screening. The grading and landscaping along River Road were also refined to provide additional screening of the building (*e.g.* introduction of berms, and additional, more mature plantings), as viewed from the street, while maintaining safe and adequate vehicular site access. Lastly, the Applicant also slightly modified the building architecture (in addition to the significant architectural revisions the Applicant made at the beginning of the Conditional Use process) to provide a more tonal design that responds to specific comments from the community. The result is a Project that is compatible with the surrounding community, complies with the requirements of the Zoning Ordinance and Subdivision Regulations, and is in substantial conformance with the goals and objectives of the Master Plan.

#### **A. Proposed Development**

The Residential Care Facility will include up to 100 Assisted Living and Memory Care suites (or up to 130 beds). Reflective of the fact that residents have different needs, the residence has been designed to provide separate areas within the building for each type of senior housing use, so that each level of care can function independently.

The Assisted Living component of the Project will include both private and shared suites that will be a mix of studio, one- and two-bedrooms. The Assisted Living suites do not have cooking facilities and are not classified as apartments or dwelling units. Thus, no MPDUs are required.

The Memory Care suites will be located in the eastern wing. For the safety and security of the Memory Care residents, the Memory Care wing will be secured. The Memory Care wing will have its own eating and common facilities to serve its residents. These suites also do not have cooking facilities and are not classified as apartments or dwelling units. Thus, no MPDUs are required.

The facility will serve seniors who are 62 years of age or older and will provide programs and coordination of various services for residents, including the following: transportation services for off-site excursions; wellness programs and services (including strength and balance, yoga/meditation, and dance classes); organized community service and volunteering events; holiday celebrations; and other planned social events (*e.g.* socials and dances, game show nights and intergenerational connections). The Project also will incorporate various indoor and outdoor amenity spaces. The Memory Care wing currently is proposed to include a dining room, living room, activity spaces, and outdoor courtyard for the exclusive use of Memory Care residents. Common facilities are provided for Assisted Living residents on the ground floor. There currently is proposed to be a commercial kitchen that serves three chef-prepared meals daily in a central

dining room. The Project also includes a variety of other common amenity spaces to create opportunities for residents to socialize and host visitors, such as a cybercafé, bistro, fitness center, theater, salon, and multiple lounges. The Project will provide significant landscaping and outdoor amenities for use by the residents, including outdoor walking paths, courtyards, and activity areas.

## **B. Site Layout**

The Project has been designed to maximize building setbacks and to provide dense landscape buffers on all four sides to promote compatibility with the surrounding residential neighborhood. To the rear, the building is setback a minimum of approximately 45 feet (as compared to the required 35 foot minimum setback), for an approximately 25 foot segment of the building – the remaining portion of the building is setback at least 87 feet from the rear property boundary, with a maximum setback of approximately 140 feet. The required 25-foot minimum side-yard setback is significantly exceeded with setbacks of at least 80 feet to the north and 88 feet to the south. The front of the building is setback approximately 50 feet from the Property boundary and 120 feet from the existing curb (as compared to the minimum 50 foot setback). These setbacks will be heavily landscaped and largely encumbered by Category I and II Forest Conservation Easements to provide ample screening from the adjacent properties. The Applicant has worked closely with the neighbors to identify strategic locations for enhanced, more mature plantings that will provide additional screening for key view corridors. Additionally, the Applicant has incorporated retaining walls and is proposing additional tree save measures in an effort to maximize preservation of the existing tree stands located along the perimeter of the Property.

The landscaping and site design along the Property's River Road frontage has also been carefully designed to provide limited, strategic view corridors of the building, so as to read as a series of much smaller structures. The Project incorporates significant plantings along River Road, and the Applicant has worked closely with the surrounding neighbors to increase the size of the plantings and incorporate berms to further enhance the River Road screening. As a result of these grade changes, significant front setbacks, and substantial plantings in the right-of-way, the building will be largely obscured from view of the street.

In addition to the substantial landscape screening, the Applicant also is proposing to replace the existing 8' tall fence with a new 8' privacy fence around the perimeter of the Property. The taller, 8' high fence was specifically requested by the immediately surrounding neighbors through the collaborative working discussions. The Department of Permitting Services has confirmed that the replacement 8' tall privacy fences is grandfathered under Section 7.7.1.A of the Zoning Ordinance and therefore, does not require any additional relief. The fence will provide additional screening for the neighbors, whose properties generally sit lower than the Property and, as such, will further promote compatibility. Collectively, the building setbacks, perimeter landscaping and fence will provide extensive screening from the surrounding residential uses and ensure compatibility of the Project with the surrounding neighborhood.

Only minimal building lighting is proposed and the lighting for the parking and amenity areas will be limited to the amount necessary to ensure safety. Exterior lighting has been designed

to eliminate light exposure on adjacent properties – all outdoor lighting for the Project will be directed, shielded, or screened. Full cut-off fixtures will be used in the parking lot to focus the light on the parking areas only. The Photometrics Plan, submitted in connection with this Application, illustrates that lighting has been carefully designed so that it will not spill into adjacent properties.

### **C. Architectural Design**

The exterior of the building has been designed to be residential in nature and to read as a series of attached, single-family homes with varying massing, material, and details that effectively reduce the apparent scale of the overall building. The Applicant has made significant changes to the building architecture to address comments received from M-NCPPC Staff and the community. Notably, in direct response to community wishes, the Applicant eliminated the third-story component of the building.

The resulting exterior design features many human-scale design elements that make the building feel approachable and establish an inviting sense of place. This is achieved by incorporating a variety of materials, colors, projections and recesses to break down the perceived mass of the building. Biophilic design principals are utilized to connect the building with nature through the use of trellises, plantings, and earthy materials such as brick and stone masonry, heavy timber, and wrought-iron. Color tones, textures, and materiality are all selected to activate feelings of calm, beauty, and rest in the human psychology. The design uses traditional styling of peaked and gable roofs, with architectural composition shingle that cue residential feelings. The façades also incorporate traditional residential elements such as shutters, brick soldier courses at window and door heads, large windows, traditional trim and details that tap into the rich architectural history of the area. The building's main entry is highlighted by a covered trellis that softens the transition between indoors and outdoors. Residents and visitors are protected by a safe weather protected entry for drop off and pick up. Generous porches flanking the entrance provide shaded seating and upper trellised balconies provide elevated overlook vantage points where residents can view the landscape from a place of safety. These features will not only provide a pleasing aesthetic, they are designed to harmonize and reinforce human psychology. These timeless design principles blend beautifully with the surrounding community. The overall effect is that the design not only maintains, but enhances the residential character of the area, and promotes compatibility with the surrounding neighborhood.

### **D. Parking and Loading**

With respect to parking, the Project will satisfy applicable Zoning Ordinance requirements on-site. Section 6.2.4 of the Zoning Ordinance requires a minimum of 0.25 parking spaces per bed, plus 0.50 vehicular parking spaces per employee. The Project will have a total of up to 100 suites (or up to 130 beds) and a maximum of forty-two (42) people working in any shift (with no more than 52 employees on site at any one time to accommodate for shift change). As such, taking advantage of the parking reductions in Section 6.2.3.I, the Project is required to provide a total of 59 parking spaces on-site. The Applicant is proposing to provide a minimum of 85 parking spaces

on-site. A limited amount of handicap and visitor parking, approximately 16 spaces, will be provided in front of the building – a landscape buffer and berms are proposed along River Road to help screen the parking from view. This layout is similar to many of the adjacent houses' forecourts and formal entrances. The remainder of the parking will be provided within a below-grade parking structure, hidden from view from the street. The grade-change on-site allows for the garage to be constructed below the first-floor elevation, while providing access from a gradually sloped ramp on the southern end of the building.

Additionally, although not required<sup>2</sup>, to accommodate non-automobile users of the Property, a minimum of six (6) bicycle parking spaces will be provided to meet the needs of the community, including parking for residents, employees and visitors. The bicycle parking will be located either near the main building entrance and/or in the parking garage.

As discussed in Section V below, the facility also will provide transportation for residents through a variety of services, which will further reduce the demand for vehicular parking.

Loading and servicing will be accommodated on-site to the southeast of the building. The Project will comply with the Montgomery County Department of Permitting Services ("DPS") Loading Space Guidelines and will comply with the design standards in the Zoning Ordinance, for one 10' x 30' single-unit truck.

#### **E. Pedestrian and Vehicular Access and Circulation**

The Project will greatly improve the configuration and safety of vehicular access to the Property. Currently, vehicular access to the Property is largely unfettered with two wide access points directly into the parking off River Road. The Project will significantly improve the existing conditions by controlling vehicular access through two defined access points. The access points have been strategically located to maximum intersection spacing and to ensure adequate sight and stopping distance. The Applicant worked with the State Highway Administration ("SHA"), in connection with the Conditional Use, to confirm that the site access, as designed, met all SHA standards and was approvable.

The Applicant also proposes to install a 10-foot wide shared-use path along the Property's River Road frontage, separated from the street by a 25-foot +/- average width landscape panel. The proposed path, which is a significant improvement, will tie into the existing asphalt path/sidewalk to provide a connection between the Project and the commercial goods and services in the Potomac Village.

### **V. PROPOSED OPERATIONS**

The proposed facility will have up to 100 assisted living and memory care suites (or up to 130 beds) and provides several indoor and outdoor amenity spaces for use by residents. The Memory Care wing is proposed to include a dining room, living room, activity spaces, and outdoor

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<sup>2</sup> Bicycle parking is not required for the Project because the Assisted Living and Memory Care uses do not constitute dwelling units.

courtyard for the exclusive use of Memory Care residents. Separate common amenities are provided for assisted living residents on the ground floor, including: commercial kitchen that serves three chef-prepared meals daily in a central restaurant, a bistro, cyber café, fitness center, multi-purpose community center, theater, salon, and multiple lounges. These amenity spaces are intended for use by all residents (both by individual residents and their families), and by the greater Potomac community at organized events. The primary outdoor amenity space for residents will be located at the rear of the Property and will include an outdoor patio area with seating and a walking sidewalk (around the entire site) with benches for use by the residents.

The community will also offer a variety of activities and wellness programs and services. These are designed to promote lifestyle and wellness, engagement, and socialization among the residents. Spectrum's "*BE Healthy*" program includes strength and balance training classes, Yoga and meditation classes, Tai Chi, and dance classes. It also includes learning opportunities such as literary and writing clubs, language learning, cooking classes and competitions, technology courses, and guest speakers. Spectrum's "*BE Involved*" program includes opportunities for its residents to give back to the greater community, including veterans' events and programs, intergenerational mentoring, organized community volunteering, and fundraising events. It also includes numerous activities to engage residents in their community, including sporting events, birthday and holiday celebrations, socials and dances, game show nights, and intergenerational connections. Spectrum's "*BE Inspired*" program provides activities for its residents to engage their creativity, such as attending live musical performances, art shows, acting clubs, craft groups, and numerous excursions. It also includes bucket list adventures, such as airplane and helicopter rides, celebrity meet and greets, and virtual reality experiences.

Access to goods and services is a key consideration for Spectrum when selecting a location for a future community. As mentioned above, the Potomac Village center is located less than one half mile northwest of the Property and includes various medical services, several drug stores, a grocery store, restaurants, public library, financial institutions, and retail stores. This proximity was an important component of Spectrum's decision to select this site, as it will provide future residents with easy access to various goods and services. Furthermore, Spectrum is proposing to provide a wide shared-use path along the Property's River Road frontage that will tie into the existing sidewalk and improve the connection between the Property and the Village Center.

Spectrum will provide a private 16-passenger luxury minibus for the transportation of their residents for off-site excursions, including shopping, medical appointments, and social events. The exact operation of the shuttle service varies by facility, but the following provides a representative schedule:

- The shuttle service will run seven days per week. Additional trips may be scheduled for social events. Additional outings can be scheduled, depending on requests.
- The shuttle provides access to facilities within a ten-mile radius.
- Trips typically are scheduled between 8:00 AM and 4:00 PM.

- The shuttle can accommodate up to 16 residents per trip.

The shuttle service is privately funded by Spectrum and the cost of the services is covered by the monthly rent.

Spectrum provides personal services to all of its residents, including utilities, anytime dining, housekeeping, full maintenance, scheduled transportation, fitness and exercise classes along with other innovative activity and wellness programs, resident concierge services, theater, educational and cultural programs, and 24-hour staffing and 24-hour emergency call system. Spectrum will also provide assistance with activities of daily living, including dressing, bathing, toileting, medication reminders, and dining.

To facilitate all of these supportive services, amenities and programs, the community will employ a total of approximately 68 team members. Employee schedules fall into three categories. Care staff work on three eight-hour shifts, with shift changes occurring at 7:00 AM, 3:00 PM, and 11:00 PM. Food & Beverage staff work on three shifts: 6:00 AM – 2:00 PM, 10:00 AM – 2:00 PM, and 2:00 PM – 8:00 PM. All other employees, including administrative, housekeeping and maintenance teams, work from 8:00 AM to 5:00 PM. As set forth in the Conditional Use application, the maximum number of employees working in any shift will be 42 (which will be from 10:00 AM – 2:00 PM), with no more than 52 employees on-site at any given time (to accommodate for shift change). The minimum number of employees on site at one time will be nine, from 11:00 PM – 7:00 AM. The typical number of employees on site from 7:00 AM – 11:00 PM on Saturday and Sunday will be approximately 24.

Generally, deliveries are arranged during regular business hours, in consideration of both the on-site residents and the surrounding community. Food deliveries are typically made twice per week by a 20' to 30' box truck – as conditioned by the Conditional Use, there will be no more than 10 food deliveries per month. All other deliveries are made by USPS, FedEx, and UPS on their standard routes. All laundry, linens, etc. is performed in house and require no outside vendors or deliveries.

An enclosed dumpster will be located to the southeast of the building, near the underground parking garage entrance. The dumpster will be emptied approximately twice per week by a standard garbage truck.

## **VI. CONFORMANCE WITH MASTER PLAN RECOMMENDATIONS**

The Property falls within the boundaries of the *2002 Approved and Adopted Potomac Subregion Master Plan*. The Master Plan is 17 years old. The Master Plan notes that master plans are intended to generally look ahead 20 years from the date of adoption, although they are intended to be updated every 10 years. The Master Plan specifically recognizes that “circumstances will change following adoption of a plan and that the specifics of a master plan may become less relevant over time.” (See page vii). Nonetheless, many of the overarching objectives of the Master

Plan remain relevant today and the proposed Project substantially conforms to many of these objectives.

The Master Plan confirms the RE-2 zoning for the Property. The Master Plan does not contain any site-specific recommendations. However, the Project conforms to the general recommendations contained in the Master Plan.

The Master Plan seeks to maintain the low-density “green wedge”, as recommended by the County’s “Wedges and Corridors” planning policy (*see* Page 33). The Project, which provides approximately 142,399 square feet of green space and has a maximum lot coverage of 25 percent, furthers this goal by providing compatible, low-density development. The Project will maintain and enhance the existing landscaping around the periphery of the site, to provide ample screening and buffering from the surrounding residential uses. Furthermore, the overall impervious area on-site will decrease significantly, as compared to the existing garden/nursery center use – the Project will result in an approximately 40% reduction in imperviousness.

Of significance, the Master Plan specifically recognizes that “Senior housing is appropriate throughout the Subregion wherever zoning permits this use, either by right or as a special exception use.” (*Emphasis added*) (*See* page 38).<sup>3</sup> The Master Plan recognizes that the Potomac Subregion does not, but *should* fully meet the Master Plan area’s senior housing needs within its boundaries (*see* Page 36). At the time of its adoption (*i.e.* 2002), it was projected that the Subregion would need to accommodate approximately 750 units by 2022 to meet the needs of the Subregion’s aging population. The Project will further this goal by providing additional, desired senior housing within the Master Plan boundaries and in close proximity to goods and services desired by senior residents.

The Master Plan includes a Special Exception Policy that is designed to ensure the protection of the residential areas while simultaneously promoting important policy goals (such as senior housing). The Master Plan’s Special Exception Policy seeks to “avoid an excessive concentration of special exceptions along major transportation corridors” (*see* Page 35). The intent of this recommendation is, in part, to guard against traffic impacts, by minimizing uses that might create too many access points and conflicting turn movements. As discussed above, the Project will improve vehicular access to the Property. Currently, access to the Property is largely unfettered with no clearly defined access points. The Project will control access to the Property through two defined access points, which have been strategically located to maximize intersection spacing and provide for optimal sight distance. The Project also reduces the number of trips compared to those presently entering and exiting the Project.

The Special Exception Policy also recommends “increase[d]... scrutiny in reviewing special exception applications for highly visible sites,” in an effort to guard against over

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<sup>3</sup> Although the Master Plan identifies five properties as suitable locations for senior housing, the plain language of the Master Plan clearly intended to allow for senior housing in other locations throughout the subregion, and did not limit senior housing to these five sites. The Hearing Examiner reached the same very conclusion in approving Conditional Use Case No. CU-16-01.

concentration. The Project is setback approximately 120 feet from River Road and includes a significant amount of landscaping and berms along the streetscape which greatly reduces the visibility of the building. There is not an over concentration of Special Exceptions in the surrounding neighborhood and the Project will not result in additional Special Exception approvals within the Subregion – rather, the proposed Project (which will be approved as a Conditional Use) will replace a previously approved Special Exception use that has existed on the Property for many years. Thus, there will be no net increase in special exception or conditional uses in the area.

In reviewing Special Exceptions, the Master Plan dictates that the following guidelines also shall be given consideration (in addition to the Zoning Ordinance requirements):

*1. Architectural compatibility with surrounding neighborhood;*

In keeping with the surrounding neighborhoods, the Applicant and the community both focused on the architectural design features to ensure these features convey human-scale design elements that provide residential visual cues, making the building feel inviting and home-like. The architect achieved this effect by incorporating a variety of materials, colors/tones, projections and recesses to break down the perceived mass of the building. The proposed design reflects comments received both from M-NCPPC Staff and the community. As discussed in detail above, the result is a design that complements and enhances the residential character of the area, and establishes a successful compatibility with the surrounding neighborhood.

Landscaping is not an afterthought but an integral part of the design and further promotes compatibility. To respond to comments received from the community, dense landscaping has been placed at the building corners, to visually reduce the perceived length of the building. Additionally, a rich variety of plantings have been specially placed in the right-of-way to create limited and special views of the building so that it presents on River Road as a series of much smaller structures. Both the plant species and locations have been carefully crafted to emphasize the residential character of the building.

*2. Minimizing the commercial appearance of parking through location and landscaping. Front yard parking should only be allowed if it can be adequately landscaped and screened; and*

The Applicant is proposing to locate the majority of on-site parking in a concealed parking structure underneath the building. Only a limited amount of handicap and visitor parking will be located in the front of the building. To compensate for this, a carefully designed landscape buffer is proposed along the Property frontage, which will largely screen this minimal amount of surface parking from view.

*3. Enhancing screening and buffering between proposed new development and adjacent residential areas and right-of-way.*

As discussed above, the Project proposes to significantly increase the landscape buffers that run along the perimeter of the Property, to provide additional buffering and visual screening

of the proposed use from the surrounding homes. This has been a primary concern for the Applicant in designing the Project from the very beginning. Furthermore, the Applicant has worked closely with the immediately adjacent neighbors on the perimeter plantings to determine the exact location, size and species of trees. As a result, the Landscape Plan includes additional, taller plantings, on top of the already substantial plantings initially proposed. The Applicant also is proposing to replace the existing 8' tall fence with a new 8' tall privacy fence around the perimeter of the Property, as specifically requested by the surrounding neighbors. The fence will provide additional screening for the neighbors, whose homes generally sit lower than the Property. The end result is a Project that includes significant landscaping and buffers along all property boundaries, which substantially screen the building from view. The proposed buffers are far greater than required by the Zoning Ordinance.

The Project addresses several of the environmental recommendations contained in the Master Plan. There is an existing “ephemeral”/“intermittent” stream located to southeast of the Property. There also is a perineal stream located to the east of the Property – only a small portion of the stream daylights to the northeast and southeast of the Property, the drainage channel has been piped along the majority of the Property’s eastern frontage. The Project will provide stream valley buffers, as appropriate, on-site. The expanded footprint needed to accommodate the community’s desire for a lower, two-story building results in a slight encroachment into the stream valley buffer in the northern corner of the site to accommodate the sidewalk that surrounds the entire building and some unground pipes. The Applicant will mitigate this encroachment with on-site mitigation planning at a 2:1 ratio. In general, the stream valley buffers (which are undisturbed with the exception of the slight encroachment previously mentioned) will become special features of the landscape design featuring plant materials specially selected to serve as habitat for butterflies, bees, and birds. Except where existing sewer easements and adjacency to stormwater facilities preclude it, stream valley buffers will be placed into forest conservation easements (that do not presently exist).

## **VII. COMPLIANCE WITH ZONING ORDINANCE REQUIREMENTS**

### **A. Compliance with Standards in Article 59-3**

As demonstrated below and as found by the Hearing Examiner in approving the Conditional Use application (which approval will be obtained before the Planning Board takes action on the Preliminary Plan), the Project complies with the standards for a Residential Care Facility (over 16 persons) contained in Section 59-3.3.2.E.2.b.ii of the Zoning Ordinance:

- 1. The facility may provide ancillary services such as transportation, common dining room and kitchen, meeting or activity rooms, convenience commercial area or other services*

*or facilities for the enjoyment, service or care of the residents.  
Any such service may be restricted by the Hearing Examiner.*

The Project is served by adequate transportation and commercial services within one mile of the proposed residence. The Property is located within approximately 0.5 miles of the Potomac Village, which contains a variety of commercial services. The Project also is served by public transportation – the Project is served by Ride-On Bus Route T2, the stop for which is located approximately 500 feet from the Property. The facility also will provide transportation services and other on-site amenities for its residents.

- 2. Where residential dwelling units are provided, the maximum density per lot area is 15 units per acre and the minimum green area is 50%.*

This provision is not applicable. The Assisted Living and Memory Care uses do not constitute dwelling units. Regardless, the Project provides a substantial amount of green area on-site (approximately 65%).

- 3. Where facility size is based on the number of beds, not dwelling units, in the RE-2 Zone, the minimum lot area is 1,200 square feet per bed.*

As demonstrated in the Development Data Table, the Project will provide a minimum of 1,200 square feet per bed. As currently proposed, the Project will provide 130 Assisted Living and Memory Care beds.

- 4. The minimum side setback is 20 feet.*

The Project greatly exceeds this requirement and provides a minimum setback of approximately 80 feet.

- 5. Independent dwelling units must satisfy the MPDU provisions of Chapter 25 (Section 25.A-5).*

The Assisted Living and Memory Care uses do not constitute dwelling units. Therefore, no MPDUs are required.

- 6. In a continuing care retirement community, occupancy of any independent dwelling unit is restricted to persons 62 years of age or older, subject to certain exceptions.*

This provision is not applicable.

- 7. Height, density, coverage, and parking standards must be compatible with surrounding uses; the Hearing Examiner may modify any standards to maximize the compatibility of the*

*building with the residential character of the surrounding neighborhood.*

As discussed in detail above, the Project has been designed, in consultation with M-NCPPC Staff and the community, to promote compatibility with the surrounding residential neighborhoods. The proposed two-story building is comparable to the height of the surrounding single-family homes. The Project minimizes the amount of surface parking (greatly reduced, as compared to the existing commercial use) and locates a majority of the required parking in a concealed below-grade structure. The Project also will provide significant landscape buffers on all four sides, to screen the building from the surrounding uses. Furthermore, the building architecture has been designed to be residential in appearance and uses various colors, materials, projections and recesses to break down the perceived mass.

#### **B. Compliance with Standards in Article 59-4**

As demonstrated below, the Project complies with the development standards for the RE-2 Zone, as provided in Section 59-4.4.4 of the Zoning Ordinance:

<b>TABLE 1 – ZONING ORDINANCE COMPLIANCE</b>			
<b>Article 59-4. Development Standards for Euclidean Zones</b>		<b>Permitted/ Required</b>	<b>Proposed</b>
<b>Division 4.4. Residential Zones</b>	<b>Section 4.4.4. Residential Estate - 2 Zone (RE-2)</b>		
	<b>B. RE-2 Zone, Standard Method Development Standards<sup>4</sup></b>		
	<b>1. Lot and Density</b>		
	• Lot (min.)		
	Lot area	2 acres	5.04 acres
	Lot width at front building line	150'	650'
	Lot width at front lot line	25'	645'

<sup>4</sup> Applicable RE-2 Development Standards for "Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone" building type.

Frontage on Street or Open Space	Required, except as exempt under Chapter 50	Frontage on River Road provided.
• Density (max)		
Density (units/acre)	1,200 square feet per bed	1,690 square feet per bed (min)
• Coverage (max)		
Lot	25%	25%
<b>2. Placement<sup>5</sup></b>		
<b>Principal Building Setbacks (min)</b>		
• Front setback	50'	50'
• Side setback <sup>6</sup>	25'	80'
• Sum of side setbacks	35'	168'
• Rear setback	35'	45'
<b>3. Height</b>		
<b>Height (max)</b>		
• Principal building	50'	40'
<b>4. Form</b>		
<b>Allowed Building Elements</b>		

<sup>5</sup> The 8' tall fence will require Board of Appeals approval to allow for it to be located on the Property boundary. A 6-6" tall fence complies with the Zoning Ordinance.

<sup>6</sup> Side Setback established by Section 59-3.3.2.C.2.b, which provides that the minimum side setback is 25 feet or as specified by the relevant zone, whichever is greater.

	<ul style="list-style-type: none"> <li>• Porch/Stoop</li> </ul>	Yes	N/A
	<ul style="list-style-type: none"> <li>• Balcony</li> </ul>	Yes	N/A

## **VIII. REQUIRED FINDINGS FOR PRELIMINARY PLAN APPROVAL**

The purpose of this portion of the Statement is to provide justification that the Preliminary Plan satisfies the applicable provisions of the Subdivision Regulations.

### **A. Subdivision Regulation Compliance**

The Preliminary Plan indicates that the size, width, shape and orientation of the proposed lot will be appropriate for the location of the proposed subdivision and standards of the RE-2 Zone. The Preliminary Plan proposes to create one lot to allow for the re-development of the Property.

### **B. Master Plan Conformance**

As discussed in detail in Section VI above, the Project substantially conforms to the goals and recommendations of the Master Plan. The proposed development will provide needed, additional senior housing in the Potomac Subregion. The senior living facility has been designed to promote compatibility with the uses in the surrounding neighborhood, through the residential architecture and substantial landscape buffering and screening. Additionally, the Project will provide substantial environmental benefits – the Project significantly decreases imperviousness on-site (as compared to the existing use), provides for forest conservation (the majority of which is provided on-site, with a small amount of off-site forest banking), and introduces stormwater management where none currently exists.

### **C. Adequate Public Facilities**

There are adequate public facilities to support the proposed development. As demonstrated by the Traffic Statement prepared by the Applicant's transportation consultant, Wells + Associates, the public facilities are more than adequate to support and service the Residential Care Facility. A garden center/nursery use has existed on the Property since before the existing Special Exception was approved in December 1990. Per the Local Area Transportation Review Guidelines, "if the proposed use will be replacing an existing land use and that land use was occupied for more than 12 years, the applicant may take credit for the existing site trips based on the current LATR trip generation methodology." (Page 24). The existing use currently generated 59 AM peak hour and 168 PM peak hour person trips, while the proposed senior living use will generate 38 AM peak hour and 53 PM peak hour person trips. Accordingly, the proposed use will reduce traffic on River Road by generating 21 fewer AM peak hour and 115 fewer PM peak hour person trips than the existing garden center. The Traffic Statement is being submitted concurrently with this Statement.

Notably, although the Project provides new residential density, the proposed senior living facility use will not generate any new students. Thus, the Project will have no impact on public school capacity.

Other public facilities and services – including police stations, firehouses and health care facilities – are currently operating in accordance with the Subdivision Staging Policy and will continue to be sufficient following construction of the Project. The nearest police station serving the Property is the 2nd District Police Station, located at 4823 Rugby Avenue in Bethesda, Maryland. The nearest firehouse is Cabin John Volunteer Fire Department located at 9404 Falls Road in Potomac, Maryland.

The Property is already served by existing water and sewer. The Property is located within water and sewer categories W-1 and S-1. Water and sewer needs are expected to be met by the Washington Suburban Sanitary Commission ("WSSC") through connections to the existing water and sewer lines.

Therefore, the public facilities will be more than adequate to support and service the area of the proposed subdivision.

#### **D. Forest Conservation**

The Property is subject to the requirements of Chapter 22A of the Montgomery County Code (the "Forest Conservation Law"). A Natural Resources Inventory/ Forest Stand Delineation No. 420200520 ("NRI/FSD") was prepared for the Property and approved by M-NCPPC on March 5, 2020.

As discussed above, there is an existing “ephemeral”/“intermittent” stream located to southeast of the Property. There also is a perineal stream located to the east of the Property – only a small portion of the stream daylights to the northeast and southeast of the Property, the drainage channel has been piped along the majority of the Property’s eastern frontage. The Project will provide stream valley buffers, as appropriate, on-site. The expanded footprint needed to accommodate the community’s desire for a lower, two-story building results in a slight encroachment into the stream valley buffer in the northern corner of the site to accommodate the sidewalk that surrounds the entire building and some unground pipes. The Applicant will mitigate this encroachment with on-site mitigation planning at a 2:1 ratio. Except where existing sewer easements and adjacency to stormwater facilities preclude it, stream valley buffers will be placed into forest conservation easements (that do not presently exist).

The Preliminary Forest Conservation Plan was approved in connection with the Conditional Use. A Final Forest Conservation Plan is being submitted concurrently with this Statement. The Project meets the forest conservation requirements, in part, through the creation of forest stands along the side and rear Property lines. The Applicant is providing 1.05 acres of afforestation requirements on-site (out of the 1.20 acres required) through Category I and Category II Forest Conservation Easements and 0.15 acres off-site through forest banking.

#### **E. Stormwater Management**

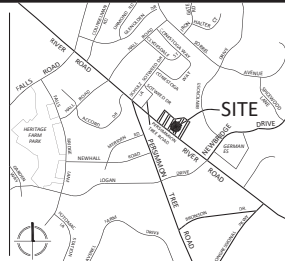
The Property presently is not served by any stormwater management. As such, the Project proposes significant improvements to the treatment of stormwater management on-site. The

Department of Permitting Services approved a revised Stormwater Management Concept Plan for the Project on December 31, 2020. As conditioned by the Stormwater Management Concept approval, the Applicant is submitting an updated Stormwater Management Concept Plan concurrently with this Preliminary Plan application to revise a few of the calculations per DPS comments. As the updated Stormwater Management Concept Plan demonstrates, the Project proposed to use environmental site design (ESD) techniques to treat rainwater with micro bio-retention facilities. Micro-bioretenion facilities retain and treat stormwater runoff by filtering the runoff through a sand, soil, and organic matter media, before releasing it into the adjacent storm drain system via a perforated underdrain pipe. Per Chapter 5 of the MDE Stormwater Design Manual, each facility shall not have more than 20,000 square feet of drainage and must treat the first inch of runoff at a minimum. Furthermore, the system is designed so that rain from large storm events will bypass into the storm drain system via a riser located within the footprint of the facility. After the initial rainwater is captured and treated, any overflow will be released at an outfall approximately 80 feet from the drainage channel at the edge of the property allowing it to slow down, cool, release sediments, and disperse before entering the stream system. This will result in significant improvements to the treatment of stormwater, which currently is uncontrolled and runs directly off the Property without any treatment.

## **IX. CONCLUSION**

As demonstrated by this Statement, the Project complies with all applicable requirements of the Subdivision Regulations and Zoning Ordinance, which govern standard method of development in the RE-2 Zone. The Applicant, the community and WMCCA have worked collaboratively and effectively to ensure that the project is compatible with the surrounding neighborhood. Furthermore, the Project is in substantial conformance with the recommendations of the Master Plan, as discussed above. Importantly, the Project will provide desirable additional senior housing within the Potomac Subregion of the County. For all of the reasons discussed in this Statement, we respectfully request approval of this Preliminary Plan.

## Attachment 2

VICINITY MAP  
SCALE: 1" = 2000'

VIKA MARYLAND, LLC  
20251 Century Blvd., Suite 400  
Germantown, MD 20874  
301.916.4100 | vika.com  
Our Site Set on the Future.

PREPARED FOR:  
SPECTRUM ACQUISITION  
POTOMAC, LLC  
4600 S. SYRACUSE STREET  
11TH FLOOR  
DENVER, CO, 80237  
303.360.8812  
MIKE LONGFELLOW

## DESIGN CONSULTANTS

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VESSEL ARCHITECTURE &  
DESIGN

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314.521.0123  
BRIAN L. VAN WINKLE, AIA, NCARB

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PLANNER, CIVIL, LA  
VIKA MARYLAND, LLC  
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SUITE 400  
GERMANTOWN MD, 20874  
301.916.4100  
LOGAN ALONAR

## REVISIONS

## DATE

9545 RIVER  
ROAD  
PRELIMINARY  
PLAN

10TH ELECTION DISTRICT  
MONTGOMERY COUNTY,  
MARYLAND  
WSSC GRID: 212NW10  
TAX MAP: FP42

PRELIMINARY  
PLAN  
120210190

## PROFESSIONAL SEAL



I HEREBY CERTIFY THAT THESE DOCUMENTS WERE  
PREPARED OR APPROVED BY ME, AND THAT I AM A FULLY  
LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF  
THE STATE OF MARYLAND.  
ENGINEER'S NAME: LOGAN B. KELLY, P.E.  
LICENSE NO.: 51971  
EXPIRATION DATE: DECEMBER 31, 2023

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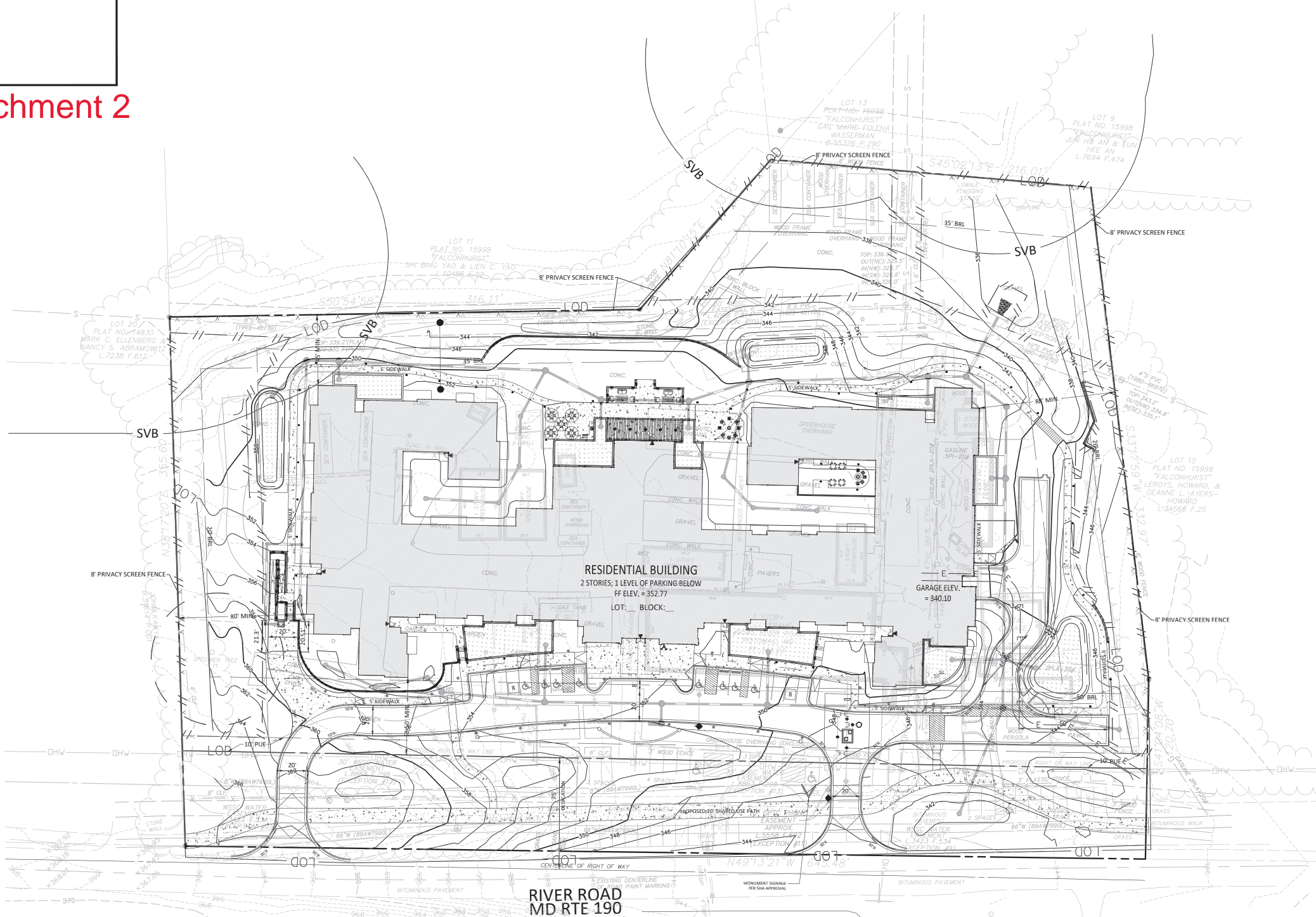
DESIGNED BY: JG/JP

DATE ISSUED: 2/5/2023

VIKA PROJECT 50363

DRAWING NO. PP-2

SHEET NO.



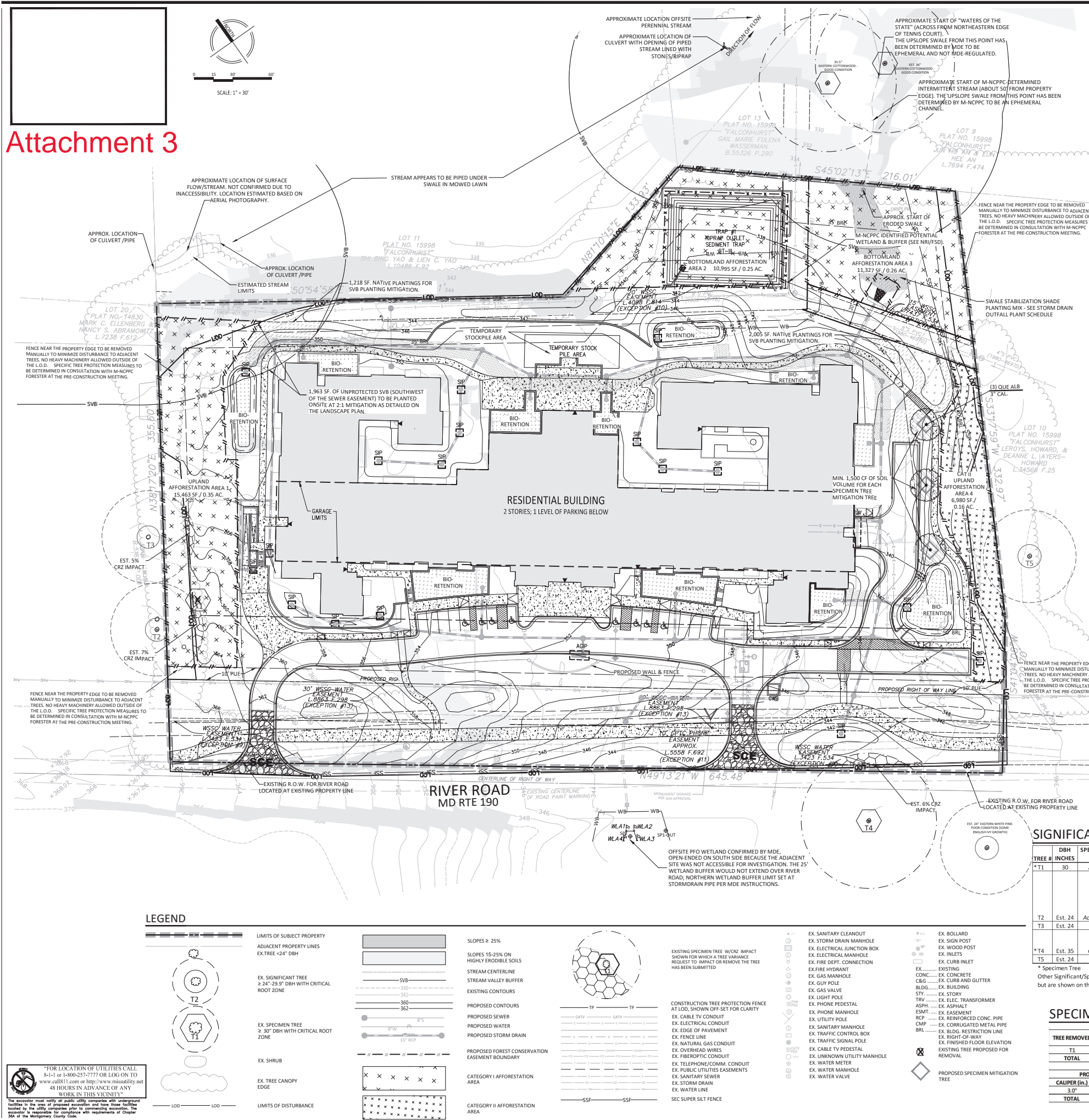
## PLAN LEGEND

<p>  CITY   E   X   T   S   W   D   520   524   2'   // </p>	<p>  PROPERTY LINES   EXISTING CABLE TELEVISION CONDUIT   EXISTING ELECTRICAL CONDUIT   EXISTING EDGE OF PAVEMENT   EXISTING FENCE LINE   EXISTING NATURAL GAS CONDUIT   EXISTING OVERHEAD WIRES   EXISTING TELEPHONE CONDUIT   EXISTING PUBLIC UTILITIES EASEMENTS   EXISTING SANITARY SEWER CONDUIT   EXISTING STORM DRAIN CONDUIT   STREAM VALLEY BUFFER   EXISTING ZONE LIMITS   PROPOSED 2' CONTOUR   PROPOSED FOREST CONSERVATION EASEMENT </p>	<p>  PROPOSED WATER LINE   PROPOSED SANITARY SEWER WITH STRUCTURE   PROPOSED STORM DRAIN   PROPOSED LIMITS OF DISTURBANCE   PROPOSED STORM WATER EASEMENT   EXISTING PARKING LABEL   EXISTING STORM DRAIN MANHOLE   EXISTING ELECTRICAL JUNCTION BOX   EXISTING UNKNOWN UTILITY MANHOLE   EXISTING FIRE DEPARTMENT CONNECTION   EXISTING FIRE HYDRANT   EXISTING GAS MANHOLE </p>	<p>  EXISTING GUY POLE   EXISTING GAS VALVE   EXISTING LIGHT POLE   EXISTING PHONE PEDESTAL   EXISTING PHONE MANHOLE   EXISTING UTILITY POLE   EXISTING SANITARY MANHOLE   EXISTING TRAFFIC CONTROL BOX   EXISTING TRAFFIC SIGNAL POLE   EXISTING TREE   EXISTING CABLE TELEVISION PEDESTAL   EXISTING UNKNOWN UTILITY MANHOLE   EXISTING WATER METER   EXISTING WATER MANHOLE   EXISTING WATER VALVE </p>	<p>  EXISTING BOLLARD   EXISTING SIGN POST   EXISTING WOOD POST   EXISTING INLETS   EXISTING CURB INLET   EXISTING CONCRETE   EXISTING CURB AND GUTTER   EXISTING BUILDING   EXISTING STORY   EXISTING ELECTRICAL TRANSFORMER   EXISTING ASPHALT   EXISTING EASEMENT   EXISTING REINFORCED CONCRETE PIPE   EXISTING CORRUGATED METAL PIPE   EXISTING BUILDING RESTRICTION LINE   EXISTING RIGHT-OF-WAY </p>	<p>  BUILDING HEIGHT MEASURING POINT   PROPOSED LIGHTS   PROPOSED PEDESTRIAN LIGHTS   PROPOSED PARKING LABELS   PROPOSED HARDSCAPE   PROPOSED FIRE HYDRANT   DOOR LOCATION   PROPOSED SWM FACILITY   PROPOSED SWM FACILITY WITH CHEEK WALL AND CURB CUT </p>
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"FOR LOCATION OF UTILITIES CALL  
8-1-1 or 1-800-257-7777 OR LOG ON TO  
www.call811.com or http://www.missutility.net  
48 HOURS IN ADVANCE OF ANY  
WORK IN THIS VICINITY"

The excavator must notify all public utility companies with underground  
facilities in the area of proposed excavation and have those facilities  
located by the utility companies prior to commencing excavation. The  
excavator is responsible for compliance with requirements of Chapter  
35A of the Montgomery County Code.

## Attachment 3



NOTE:  
REFER TO LANDSCAPE PLAN FOR PLANTING DETAILS.

## AFFORESTATION CALCULATIONS

<b>CATEGORY I AFFORESTATION AREAS</b>	<b>SF</b>	<b>AC</b>
AREA 1 (UPLAND)	15,463	0.35
AREA 2 (UPLAND)	10,995	0.25
AREA 3 (BOTTOMLAND)	11,327	0.26
<b>CATEGORY II AFFORESTATION AREA</b>		
AREA 4 (UPLAND)	6,980	0.16
<b>TOTAL AFFORESTATION</b>	<b>44,765</b>	<b>1.03</b>

Planting Calculation Notes:  
 Afforestation trees are calculated at a rate of 200/ac.  
 Afforestation small trees/shrubs are calculated at a rate of 33/ac.  
 See Landscape Plan for planting details.  
 The total Afforestation calculation shown above is based on cumulative square footage converted to acreage; the acreage tabulation in the far right column may exhibit a rounding error.

## FOREST PLANTING SCHEDULE

QUANTITY	KEY	BOTANICAL NAME	COMMON NAME	SIZE: SM TREE / SHRUB	SIZE: LG SHADE	CONTAINER	SIZE: MIN. CAL/WT	COMMENTS
<b>AREA 1 AFFORRESTATION TREE SPECIES (UPLAND MIX) 0.35 AC.</b>								
11	CG	<i>Corya palmata</i>	Modernern Hickory	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
12	CT	<i>Corya tomentosa</i>	Pignus Hickory	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
13	FG	<i>Liquidambar styraciflua</i>	American Beech	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
12	NS	<i>Nyssa sylvatica</i>	Black Gum	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
12	QA	<i>Quercus alba</i>	White Oak	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
12	QR	<i>Quercus rubra</i>	Red Oak	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
<b>AREA 1 TOTAL QUANTITY OF CANOPY AFFORRESTATION TREES</b>								
<b>AREA 1 FOREST EDGE AND UNDERSTORY TREE AND SHRUB SPECIES (BOTTOMLAND) 0.35 AC.</b>								
2	CC	<i>Cercis canadensis</i>	Redbud	SM TREE / SHRUB	5-7 Gallons	2" x 24"		SINGLE STEM
11	IO	<i>Ilex opaca</i> [10'-12' when planted]	American Helly	SM TREE / SHRUB	thd	2" x 24"		SINGLE STEM
11	JV	<i>Juniperus virginiana</i> [10'-12' when planted]	Eastern Red Cedar	SM TREE / SHRUB	thd	2" x 24"		SINGLE STEM
6	TG	<i>Thuja occidentalis 'Green Giant'</i> [14'-16' planted]	Arborvitae	SM TREE / SHRUB	thd	2" x 24"		SINGLE STEM
7	TA	<i>Taxus canadensis 'Green Giant'</i> [14'-16' planted]	Arborvitae	SM TREE / SHRUB	thd	2" x 24"		SINGLE STEM
2	SA	<i>Sassafras albidum</i>	Sassafras	SM TREE / SHRUB	5-7 Gallons	2" x 24"		SINGLE STEM
<b>AREA 1 TOTAL QUANTITY OF UNDERSTORY TREES AND SHRUBS</b>								
<b>AREA 2 AFFORRESTATION TREE SPECIES (BOTTOMLAND MIX) 0.25 AC. + 0.26 AC. = 0.51 AC.</b>								
12	AS	<i>Acer saccharinum</i>	Silver Maple	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
20	CC	<i>Corya carolinensis</i>	Bitternut Hickory	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
18	FG	<i>Liquidambar styraciflua</i>	American Beech	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
21	NS	<i>Nyssa sylvatica</i>	Black Gum	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
12	PO	<i>Platanus occidentalis</i>	American Sycamore	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
17	QP	<i>Quercus palustris</i>	Pin Oak	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
3	MG	<i>Magnolia grandifolia</i> [12'-14' planted]	Southern Magnolia	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
<b>AREA 2 TOTAL QUANTITY OF CANOPY AFFORRESTATION TREES</b>								
<b>AREA 2 FOREST EDGE AND UNDERSTORY TREE AND SHRUB SPECIES (BOTTOMLAND) 0.25 AC. + 0.26 AC. = 0.51 AC.</b>								
13	IO	<i>Ilex opaca</i> [10'-12' when planted]	American Helly	SM TREE / SHRUB	5-7 Gallons	2" x 24"		SINGLE STEM
15	JV	<i>Juniperus virginiana</i> [10'-12' when planted]	Eastern Red Cedar	SM TREE / SHRUB	thd	2" x 24"		SINGLE STEM
<b>AREA 2 TOTAL QUANTITY OF UNDERSTORY TREES AND SHRUBS</b>								
<b>AREA 4 AFFORRESTATION TREE SPECIES (CATEGORY II UPLAND MIX) 0.16 AC.</b>								
8	CT	<i>Corya tomentosa</i>	Pignus Hickory	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
2	MG	<i>Magnolia grandifolia</i> [12'-14' planted]	Southern Magnolia	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
6	NS	<i>Nyssa sylvatica</i>	Black Gum	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
8	QA	<i>Quercus alba</i>	White Oak	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
8	QR	<i>Quercus rubra</i>	Red Oak	LG SHADE	5-7 Gallons	2" x 24"		SINGLE STEM
<b>AREA 4 TOTAL QUANTITY OF CANOPY AFFORRESTATION TREES</b>								
<b>AREA 4 FOREST EDGE AND UNDERSTORY TREE AND SHRUB SPECIES (CATEGORY II UPLAND) 0.16 AC.</b>								
2	CC	<i>Cercis canadensis</i>	Redbud	SM TREE / SHRUB	5-7 Gallons	2" x 24"		SINGLE STEM
11	IO	<i>Ilex opaca</i> [10'-12' when planted]	American Helly	SM TREE / SHRUB	thd	2" x 24"		SINGLE STEM
5	JV	<i>Juniperus virginiana</i> [10'-12' when planted]	Eastern Red Cedar	SM TREE / SHRUB	thd	2" x 24"		SINGLE STEM
17	TD	<i>Thuja occidentalis 'Green Giant'</i> [14'-16' planted]	Arborvitae	SM TREE / SHRUB	thd	2" x 24"		SINGLE STEM
10	HG	<i>Hydrangea quercifolia</i>	Oakleaf Hydrangea	SHRUB	thd	n/a		plant along sidewalk edge
10	IV	<i>Ipomoea</i>	Virginia sweetpotato	SHRUB	thd	n/a		plant along sidewalk edge
3	CF	<i>Coryphantha floricola</i>	Carolina allspice	SHRUB	thd	n/a		plant along sidewalk edge

## STORM DRAIN OUTFALL PLANT SCHEDULE

STREAM VALLEY BUFFER OUTFALL STABILIZATION PLANTING AREA, 2,334.5' - BOTTOMLAND SLASH TYPE			
	CONTAINER	PLANTING	
PLANT SPECIES	QTY.	SIZE	SPECIFICATION
<i>Carex amphibia</i> / Creek Sedge	607	1 GAL	25% @ 12" oc
<i>Eupatorium celestinum</i> / Blue Mistflower	364	1 GAL	15% @ 12" oc
<i>Gaylussacia baccata</i> / Black Huckleberry	22	1 GAL	8% @ 36" oc
<i>Ilex glabra</i> 'Shamrock' / Inkberry	23	1 GAL	15% @ 48" oc
<i>Osmunda cloydeniana</i> / Interrupted Fern	146	1 GAL	6% @ 12" oc
<i>Polystichum acrostichoides</i> / Christmas Fern	146	1 GAL	6% @ 12" oc
<i>Psychanthemum muticum</i> / Clustered Mountainmint	270	1 GAL	25% @ 18" oc
<b>TOTAL QUANTITY</b>	<b>1578</b>		

## SIGNIFICANT & SPECIMEN TREE TABLE

Tree #	DBH INCHES	SPECIES (SCIENTIFIC NAME)	SPECIES (COMMON NAME)	CONDITION	VARIANCE TREE	CRZ % IMPACT	RECOMMENDATION	COMMENTS
*T1	30	<i>Acer negundo</i>	Boxelder	Poor	✓	100	REMOVE	Not tagged. Covered with English ivy.
T2	Est. 24	<i>Acer saccharinum</i>	Silver Maple	Poor		7	SAVE	Offsite tree, not tagged. Covered with vines. Although removal is recommended due to extent of CRZ impact proposed and poor tree condition, ultimate treatment must be coordinated between the applicant and adjacent property owner.
T3	Est. 24	<i>Pinus strobus</i>	Eastern White Pine	Good		5	SAVE	Offsite tree, not tagged.
*T4	Est. 35	<i>Quercus rubra</i>	Red Oak	Poor	✓	6	SAVE	6% CRZ impact to this offsite tree within existing pavement warrants the tree to be saved.
T5	Est. 24	<i>Pinus strobus</i>	Eastern White Pine	Good		0	SAVE	Offsite tree, not tagged.

Other Significant/Specimen Trees within the 100-foot NRI/FSD study area with no Critical Root Zone impacts expected are not listed in this tree table but are shown on the plan.

## SPECIMEN TREE MITIGATION TABLE

TREE REMOVED	DBH (INCHES)	MITIGATION REQUIRED @ 1" / 4" REMOVED	# OF 3" CALIPER REPLACEMENT TREES
T1	30	7.5	2.50
<b>TOTAL</b>	<b>30.0</b>		<b>3.0</b>

PROPOSED REPLACEMENT TREES		
CALIPER (in.)	NUMBER	MITIGATION (in.)
3.0"	3.0	9
<b>TOTAL</b>	<b>3</b>	<b>9.0"</b>

**DEVELOPER'S CERTIFICATE**

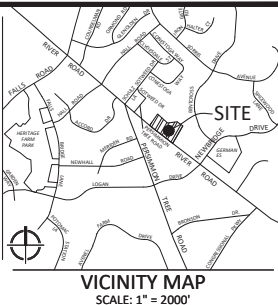
The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 120210190 including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: Spectrum Retirement Communities, LLC.  
Printed Company Name

Contact Person or Owner: Mike Longfellow  
Printed Name

Address: 200 Spruce Street, Suite 200, Denver, CO 80230

Phone and Email: 303.360.8812



Before: Derek J. Baumgardner, Co-Hearing Examiner  
Lynn A. Robeson, Co-Hearing Examiner

## **HEARING EXAMINER'S REPORT AND DECISION**

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## I. STATEMENT OF THE CASE

On March 19, 2020, Spectrum Retirement Communities, LLC (hereinafter “Applicant” or “Spectrum”) filed an application seeking a conditional use to establish a Residential Care Facility for over 16 persons under §59-3.3.2.E.2.c of the Zoning Ordinance.<sup>1</sup> The original application proposed a two- to three-story, 100-unit residential care facility with 120 beds including 40 independent living units, 42 assisted living units, and an 18-unit memory care section. The subject site consists of 5.93 acres, identified as Parcel 786, Tax Account No. 10-00855533, with an address of 9545 River Road, Potomac, Maryland, 20854. It is zoned RE-2 (Residential-Estate).

On July 18, 2020, Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued its report<sup>2</sup> recommending approval of the application subject to 14 conditions:

- 1) Residential care units are limited to 100 units with 130 beds;
- 2) Maximum number of employees on site may not exceed 42;
- 3) No more than eight food supply deliveries to the site per month;
- 4) Collection of solid waste and recyclable materials must occur on weekdays only (no Saturday/Sunday pickup), between the hours of 8:00 a.m. and 9:00 p.m., consistent with Solid Waste regulations;
- 5) Landscaping must be in accordance with the revised Landscape Plan (revision date May 18, 2020);
- 6) Existing Conditional Use, Special Exception BAS-1782, must be vacated upon approval of the proposed Conditional Use (CU 20-05);<sup>3</sup>
- 7) 85 parking spaces must be maintained as shown on the Conditional Use plan and may not expand or be reduced without express permission from the Hearing Examiner through modification of this Conditional Use;
- 8) Prior to the issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use Site Plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH;
- 9) As part of the Preliminary Plan, Applicant shall provide additional operational information concerning the resident shuttle service for review and incorporation into LATR/APF;

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<sup>1</sup> All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, as amended.

<sup>2</sup> Exhibit 66.

<sup>3</sup> The existing approval is a special exception under the 2004 Zoning Ordinance. Under the 2014 Zoning Ordinance, special exceptions were renamed as “conditional uses.” *2014 Zoning Ordinance*, §1.4.2 (definition of “conditional use”).

- 10) Prior to the approval of the Preliminary Plan of Subdivision application, Applicant must obtain approval of the Stormwater Management Concept Plan from the Montgomery County Department of Permitting Services (MCDPS);
- 11) Applicant must obtain a permit for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Hearing Examiner before the sign is constructed;
- 12) A directional sign for the garage parking shall also include information on the location of the bicycle and motorcycle spaces;
- 13) Applicant must obtain and satisfy the requirements of all licenses including a use and occupancy permit; and
- 14) The proposed development must comply with the Preliminary Forest Conservation Plan and all conditions of the approval, and the Applicant must obtain approval of the Final Forest Conservation Plan by the Planning Board, after which time the Applicant must comply with the terms of the Final Forest Conservation Plan.

On September 23, 2020, the Planning Board accepted Staff's recommendation and recommended approval of the application with conditions.<sup>4</sup> The Planning Board amended the second condition in the Staff Report to permit 52 employees on-site at one time to accommodate shift changes. At the recommendation of Staff, the Planning Board also increased the number of food service deliveries permitted from eight to ten per month to accommodate for those months that have five weeks. *Id.*

On November 24, 2020, the Applicant filed a request to amend the application by removing the third-story component of the proposed building, increasing the building's footprint, removing the independent living units as originally proposed, and adding perimeter landscaping, grading, and fencing to screen the building from neighboring lots. OZAH issued a Notice of Motion to Amend on December 15, 2020, and no objections were received.<sup>5</sup>

On January 11, 2021, OZAH received comments from Staff stating that the proposed amendments to the application do not impact the Planning's Boards findings and recommendations issued on September 3, 2020. Exhibit 119.

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<sup>4</sup> Exhibit 73.

<sup>5</sup> This application has been amended several times to address issues raised by Staff and the surrounding community. *See*, Exhibits 64, 83. OZAH issued notices of these amendments and received no objections. Exhibits 65, 116.

On January 15, 2021, the public hearing on this conditional use application was conducted by Hearing Examiners Derek J. Baumgardner and Lynn Robeson Hannan. The following witnesses testified on behalf or in support of the application: Michael Longfellow (Spectrum); Joshua Sloan (VIKA); Logan Kelso (VIKA); Brian Van Winkle (Vessel Architecture); and Anne (Nancy) Randall (Wells & Associates). Three members of the community also testified in support of the revised and modified application: Mr. Erik Gaull, Mr. Joel Albert, and Mr. Matt Gordon on behalf of the Bethesda Chamber of Commerce.

At the conclusion of the hearing, the Hearing Examiner held the record open for 10 business days, or until January 29, 2021, for the purpose of supplementing the record with revised plans to reflect the minor modifications and clarifications testified to on the record in this case. T. 176. Those supplemental documents were received, are included in this record, and will be referenced herein as necessary. *See Exhibit 125(b).*

For the reasons that follow, the Hearing Examiner finds that the application meets all Zoning Ordinance requirements for approval of a conditional use for a residential care facility for over 16 persons, subject to the conditions of approval listed in Part IV of this Report.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

The subject property is located on the north side of River Road, approximately 0.5 miles east of the intersection of River Road and Falls Road. Figure 1 from the Staff Report, Exhibit 66, p. 3, shows the property's general location below:



**Figure 1: The Subject Site**

The property is a 5.93-acre lot (219,757 sq. ft.) currently used as a nursery/garden center/florist shop and improved by a structure containing the existing uses as well as a surface parking lots, sheds, outdoor storage, and planting areas. The property has 645 feet of frontage on River Road from which it is accessed. If approved, the Petitioner will seek approval of a Preliminary Plan of Subdivision to create a record lot. Exhibit 98, p. 3. Following subdivision, the property will consist of approximately 219,757 square feet of land (or  $\pm 5.04$  acres). *Id.* The subject property drains to Cabin John Creek, a Maryland state use I-P stream. The property is not located within a Special Protection Area (SPA) or Primary Management Area (PMA). The Preliminary FCP plan indicates that no wetlands, streams, or 100-year floodplain were found onsite during field investigations. Exhibit 66, p. 20. The property sits in a valley along River Road and the site falls approximately 30 feet from the western corner on River Road to the eastern corner at the rear property line. Exhibit 69 (b), p. 2. A partially piped stream runs across the residential properties to the north/northeast. *Id.* Applicant states that there is no forest and no rare, threatened, or endangered species or habitats on site. With its current use, the property remains mostly impervious surface (79%) including pavement, principle, and accessory buildings, with essentially no water stormwater management. Exhibit 69, p. 2; T. 67.

## **B. Surrounding Neighborhood**

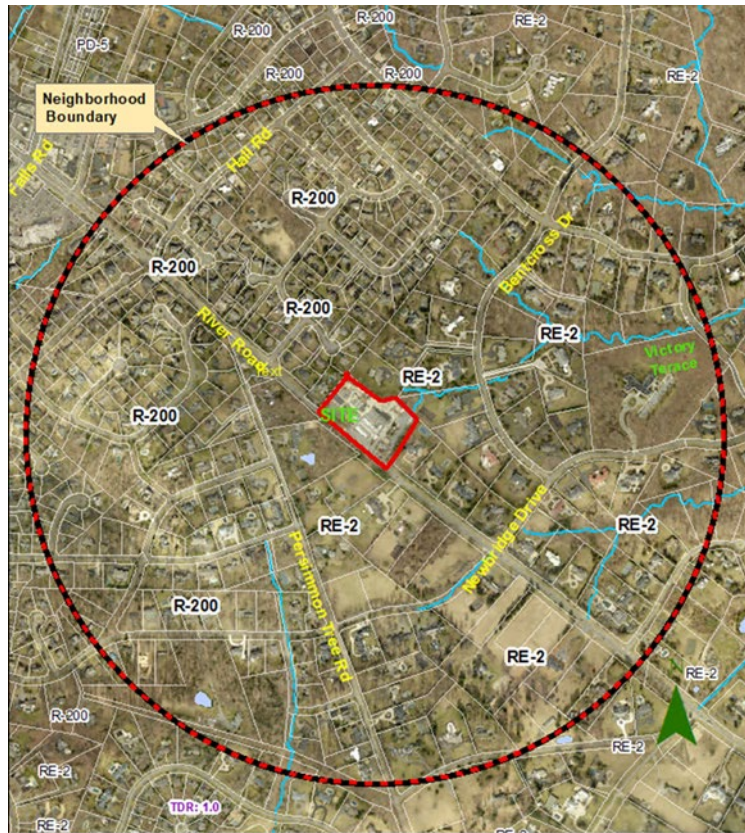
For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff describes the neighborhood as follows (Exhibit 66, p.3):

For purposes of this application, Staff defines the surrounding neighborhood boundaries (red and black circle—Figure 2) as the area within 0.5 miles (approximately 2,640 feet) of radius of the subject property.

The eastern portion of the neighborhood consists of RE-2 zoned large-lot residential properties improved with large, single-family dwellings as well as some unimproved properties, on both the north and south sides of River Road. The east portion of the defined neighborhood also includes Victory Terrace Senior Housing located at the east-central edge of the boundary. The western portion of the neighborhood is predominantly developed with single-family detached dwellings in the R-200 Zone.

The subject property is located in the central portion of the defined neighborhood on the north side of River Road in the RE-2 Zone. The property is surrounded by RE-Zoned properties to the south (across River Road), north and east. The property abuts R-200 Zoned residential properties to the west.

The Hearing Examiner accepts this delineation as the surrounding neighborhood for the purposes of evaluating this proposed conditional use. This “surrounding area,” is shown on the aerial photograph below, Figure 2. Exhibit 66, p. 4.



**Figure 2: Neighborhood Boundaries**

The surrounding area can be fairly characterized as large lot RE-2 properties on the east transitioning to smaller lot single-family detached homes in the R-200 Zone. *See* Figure 2 above; *See also* Exhibit 98, p. 4.

**Conclusion:** Based on this record, the Hearing Examiner finds that the subject property is large to medium-sized lot single-family detached residential in character.

### **C. Proposed Use**

The Applicant seeks a conditional use for a Residential Care Facility with over 16 persons with 100 units including up to 130 beds with 18 separate memory care units. Originally proposed as a new three-story structure facing River Road stepping down to two- and one-stories where it faces adjoining neighboring lots, the application was amended to remove the third-story component. Exhibits 69 and 106. The building will total 152,655 sq. ft. of floor area with an

underground parking garage containing 69 parking spaces and surface parking lot containing 16 parking spaces including 8 handicap spaces. The Applicant states that these facilities are needed in Montgomery County, as the aging population will increase more quickly than facilities can be available. Exhibit 98, p. 1.

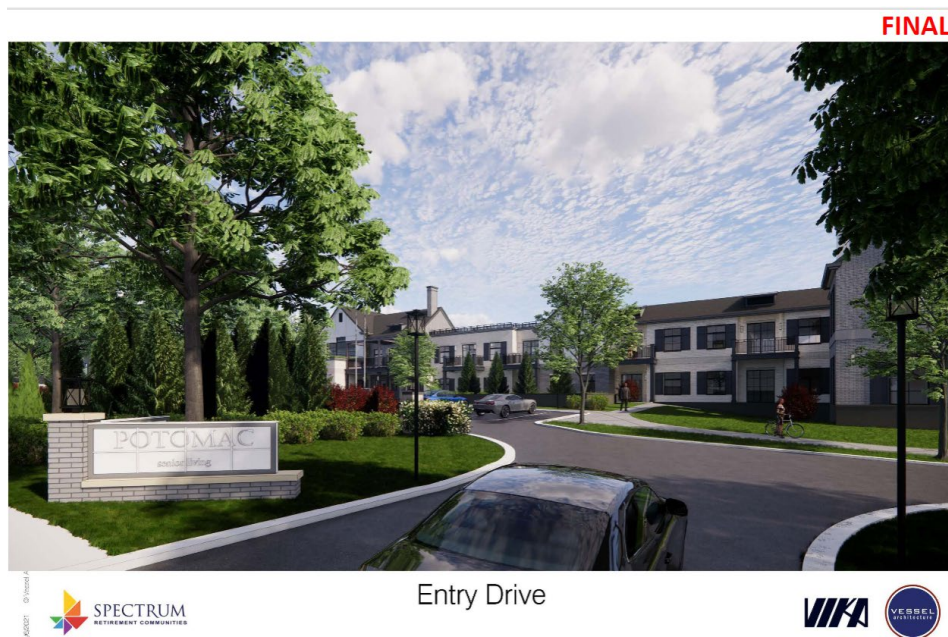
The Applicant asserts that the site layout and building architecture have been designed to be compatible with and complementary to the surrounding residential neighborhoods which are zoned RE-2 and R-200. The Applicant further asserts that exterior architectural features including shutters, trellises, balconies, gables, detailed masonry, and a variety of other features “evoke an inviting residential quality of [home]” that “complements the residential character of the surrounding area.” Exhibit 98, p. 6.

The proposed building will have a maximum height of 40 feet and is designed to minimize surface parking by locating most of the required parking for the facility underneath the building; only 16 handicapped and visitor spaces by the front entry will remain as surface parking and will be screened from River Road by a landscape buffer. Exhibit 98, p. 5.

The proposed structure exceeds the minimum setback requirements for such uses in the RE-2 Zone: the rear setback is approximately 45 feet (required 35-foot minimum setback), for an approximately 25 foot segment of the building, while the remaining portion of the building is setback at least 87 feet from the rear property boundary, with a maximum setback of approximately 140 feet; the required 25-foot minimum side-yard setback is exceeded with setbacks of at least 80 feet to the north and 88 feet to the south; the front of the building is setback approximately 50 feet from the property boundary and 120 feet from the existing curb (required minimum 50-foot setback). Exhibit 98, p. 5.

The exterior of the building has been designed to be residential in nature and to “read as a series of attached, single-family homes with varying massing, material, and details that effectively reduce the apparent scale of the overall building.” Exhibit 98, p. 6. The Applicant has submitted revised architectural plans that incorporate a variety of building materials and use more tonal colors to break down the perceived building mass and promote compatibility with the surrounding architecture. *Id.* The Applicant states that “biophilic design principals are utilized to connect the building with nature through the use of trellises, plantings, and earthy materials such as brick and stone masonry, heavy timber, and wrought-iron” and the building style includes peaked and gabled roofs, with architectural composition shingle and façades with shutters, brick soldier courses at window and door heads, large windows, traditional trim and details that tap into the rich architectural history of the area.” *Id.*

A rendering of the completed “Potomac Senior Living” is shown below. Exhibit 121, p. 35.



Rendering of Potomac Senior Living – Exhibit 121, p. 35

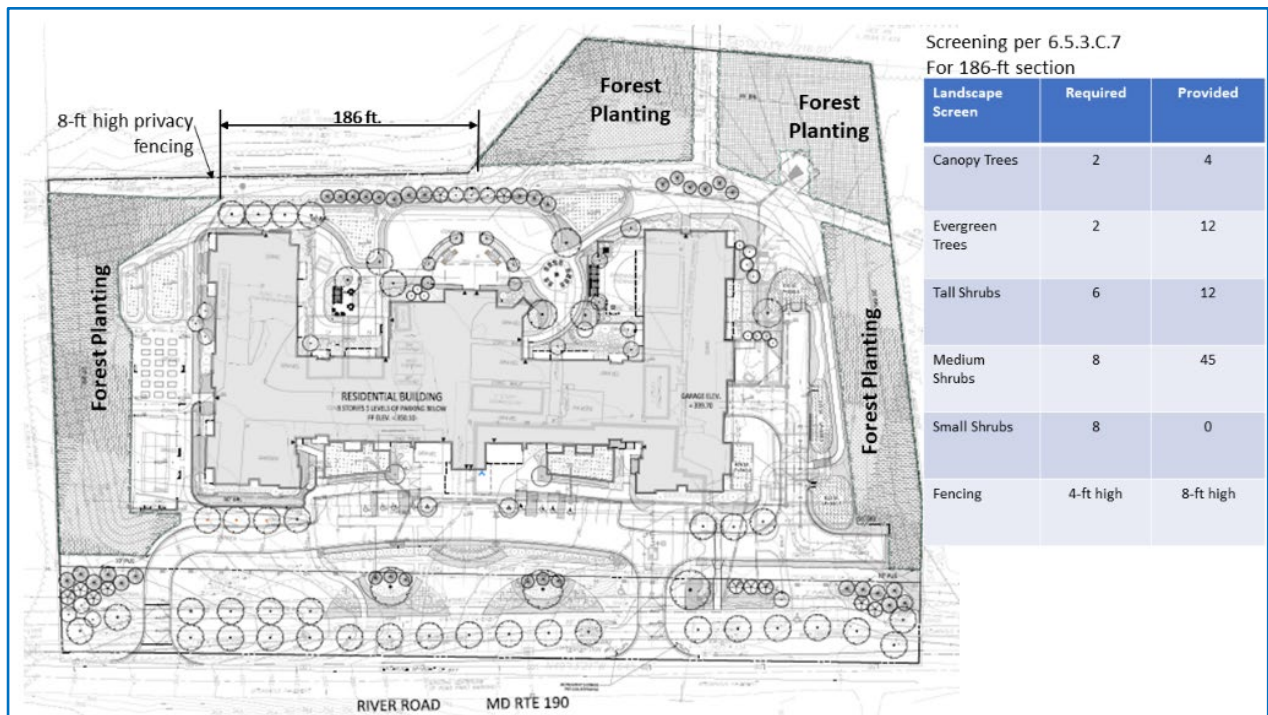
## **1. Conditional Use Site Plan**

The revised conditional use site plan illustrates the lot, structure, contours and topography, access, and general design of the proposed building. Exhibit 125(b); *See* Appendix A.

## **2. Site Landscaping, Screening, Lighting, and Signage**

Landscape buffers are proposed that surround the property along the northern, eastern and southern property boundaries in order to provide additional screening from the surrounding residential homes. Exhibit 125(b); Appendix B. Spectrum asserts that they have worked closely with neighbors to identify strategic locations for enhanced, more mature plantings. The Applicant also proposes an 8' tall perimeter privacy fence, as requested by neighboring property owners. The Applicant asserts that "the building setbacks, perimeter landscaping and fence will provide extensive screening from the surrounding residential uses and ensure compatibility of the Project with the Surrounding Neighborhood." Exhibit 98, p. 6. Further, dense landscape plantings are proposed to help obscure the ends of the buildings, so as to visually reduce the perceived length of the front building façade. Additionally, the landscaping and site design along the property's River Road frontage has been designed to provide limited, strategic view corridors of the building, leading the design to read as a series of much smaller structures. Joshua Sloan, Spectrum's designated expert in land planning and landscape architecture, testified that "we not only have the buffering of the landscape, we have a grading condition that we took advantage of to get parking and services about 8 to 10 feet below our neighbor to the southeast and River Road" further obscuring the view from River Road and neighboring properties. T. 77. Spectrum asserts that given the grade change on-site, significant setbacks, and substantial plantings in the right-of-way, the building will be largely obscured from view of the street. Exhibit 106. Staff concludes that

the proposed landscaping meets or exceeds the requirements under Section 59.6.5.3.C.7. The property is within the RE-2 Zone and abuts other properties on three sides within the same zone that are improved with residential uses. Since there are abutting properties improved with residential uses to the northeast, north, and the southeast of the property, the Applicant must ensure adequate screening in these directions under Section 59.6.5.3.C.7. Exhibit 66. Spectrum proposes screening in three directions utilizing afforestation plantings along the northeast, east and west property lines. Gaps in current screening will be filled with adequate canopy trees, evergreen trees, tall shrubs and medium shrubs. In addition, there is an 8-foot high composite wood privacy fence surrounding the property within a minimum 10-foot wide planting area. *See Appendix A, Exhibit 111(a).* The Staff Report shows Spectrum's original landscape plan as Figure 10, shown below:



**Figure 10 – Proposed Landscape Plan**

Staff notes the plantings provided on the original and amended landscape plans generally meet or exceed the minimum requirements of Section 6.5.3.C.7. Exhibit 66, pp.16-18; *See also*

Exhibit 119. The proposal uses the Forest Conservation plantings along the northeastern, eastern, and western property lines to satisfy 6.5.3.C.7 Option A including: 2 canopy trees, 2 understory evergreen trees, 6 large shrubs, 8 medium shrubs, 8 small shrubs and a minimum of 4-foot high fence per 100-feet of a property line. *See* Figure 10 above. Joshua Sloan, Spectrum's expert landscape architect and land planner, testified that the revised landscape plans offer more coverage and screening of the conditional use from River Road and neighboring properties. T. 82-84; *See* Exhibit 125(b), Appendix B.

Staff concludes that the Lighting Plan is adequate and safe for vehicular and employee movement. Exhibit 66, p. 18. The proposed lighting illuminates the site entrance, provides visibility lighting in the employee parking areas and area lighting near the structures. A photometric study submitted with the application shows measured lighting intensity across the entire property in foot-candles, the locations of lighting fixtures and the manufacturer's specifications on the proposed lighting fixtures. Exhibit 109(a). The Photometric Plan shows that the lighting will not cause glare on adjoining properties, nor will it exceed the 0.1 foot-candle standard at the side and rear property lines. *See* Appendix C, Exhibit 109(a). The revised landscape and lighting plans show the same. Exhibit 125(b). Staff finds that the proposed lighting will not have a negative impact on neighboring properties as no direct light or light glare escapes the property.

The Applicant proposes three signs as illustrated on Exhibit 79(a): one monument sign, one site wall sign, and one building mounted sign. The proposed signage is subject to review by the Montgomery County Department of Permitting Services and must meet the applicable requirements of Division 6.7 of the Zoning Ordinance. Exhibit 66, p. 19. *Also see* T. 84.

### **3. Operations**

The Applicant states that the facility will serve seniors who are 62 years of age or older and will provide programs and coordination of various services for residents, including the following: transportation services for off-site excursions; wellness programs and services (including strength and balance, yoga/meditation, and dance classes); organized community service and volunteering events; holiday celebrations; and other planned social events (e.g. socials and dances, game show nights and intergenerational connections). The Project also will incorporate various indoor and outdoor amenity spaces. The Memory Care wing currently is proposed to include a dining room, living room, activity spaces, and outdoor courtyard for the exclusive use of Memory Care residents. Common facilities are provided for Assisted Living residents on the ground floor. The Applicant proposes a commercial kitchen that serves three chef-prepared meals daily in a central dining room. The Project also includes a variety of other common amenity spaces to create opportunities for residents to socialize and host visitors, such as a cybercafé, bistro, fitness center, theater, salon, and multiple lounges. The Project will provide significant landscaping and outdoor amenities for use by the residents, including outdoor walking paths, courtyards, and activity areas. Exhibit 98, p. 4-5. Michael Longfellow, senior Vice President of Spectrum, testified that Spectrum has multiple sites throughout the country and is owner-operator of all its residential care facilities. T. 38-40.

#### Staffing

With regards to staffing, the Applicant states that the community will employ a total of approximately 68 team members. Employee schedules fall into three categories. Care staff work on three eight-hour shifts, with shift changes occurring at 7:00 AM, 3:00 PM, and 11:00 PM. Food & Beverage staff work on three shifts: 6:00 AM – 2:00 PM, 10:00 AM – 2:00 PM, and 2:00 PM – 8:00 PM. All other employees, including administrative, housekeeping and maintenance teams,

work from 8:00 AM to 5:00 PM. The maximum number of employees working in any shift will be 42 individuals, with no more than 52 employees on-site at any given time. The minimum number of employees on site at one time will be nine, from 11:00 PM – 7:00 AM. The typical number of employees on site from 7:00 AM – 11:00 PM on Saturday and Sunday will be approximately 24. Exhibit 91, p. 1; T. 48-49.

### Parking

The Conditional Use site plan provides a total of 85 spaces including eight handicap-accessible spaces (four van accessible). Exhibit 66, p. 13. Eleven of the regular spaces and the eight handicap spaces are surface spaces while the remaining spaces are located underground within the building. The proposed parking spaces exceed the required number of spaces and are sufficient to accommodate the parking needs of 42 employees (full and part-time) as well as visitors to the facility. See Table 7 shown below for parking calculations. Exhibit 66, p. 13:

**Table 7 – Required Parking**

Section 6.2.4	Assisted Living beds	Memory Care Units	Employee	Total Required
0.25 sp Per Bed	112X 0.25=28 sp	18X.25=4.5=5 sp		34 sp
0.50 sp/ employee			42X.50=21 sp	20 sp
<b>Total Spaces</b>	28 sp	5 sp	21 sp	54 sp
<b>Total Spaces Provided</b>	<b>85 spaces:</b> <u>Surface:</u> 8 regular spaces and 8 handicapped spaces 4 of which are van accessible <u>Garage:</u> 69 regular spaces			

### Deliveries & Waste Management

Spectrum states that deliveries are arranged during regular business hours, in consideration of both the on-site residents and the surrounding community. Food deliveries are typically made twice per week by a 20' to 30' box truck. All other deliveries are made by USPS, FedEx, and UPS on their standard routes. All laundry, linens, etc. is performed in house and requires no outside

vendors or deliveries. Exhibit 91, p. 2. An enclosed dumpster will be located to the southeast of the building, near the underground parking garage entrance. The dumpster will be emptied approximately twice per week by a standard garbage truck. Exhibit 91, p. 3. Spectrum's land planning expert, Joshua Sloan, testified that "any loading and service vehicles will come into the site on our southeast entry point. They will turn around the southeastern part of the building which goes down in grade several feet to either the contained trash and recycling receptacle corral, or to a loading space that's at the bottom of this hill." T. 96.

#### **D. Environmental Issues**

Staff concludes that the application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. Exhibit 66, p. 19. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 420200520 was approved for the 5.93-acre property on March 5, 2020. Exhibits 84(a) and (b). The site does not contain a forest but a forest on an adjacent property abuts the site's northeastern property boundary. Staff notes that the revised Forest Conservation Plan (FCP) shows tree lines along much of the property's perimeter. Exhibit 66, p. 20; *See* Exhibits 112(a) and (b). Spectrum submitted the approved and signed Forest Conservation Plan (FCP) into the record following the hearing. *See* FCP, Exhibit 125(b).

Staff notes that the original Conditional Use Plan shows that one specimen tree, (30" DBH Boxelder) is in poor condition. Exhibit 66, p. 20. The tree is proposed for removal and is included in the tree variance request. The application proposes to plant three specimen trees as replacements for the tree that is proposed for removal. No other significant or specimen trees are found on the

property and no champion trees or trees 75% of the state champion for their species were found on the subject property. Enhanced plantings were added at the request of community members and are reflected in the revised Conditional Use plan and Landscape and Lighting plans. *See* Exhibit 125(b).

The subject property drains to Cabin John Creek, a Maryland state use Class I-P stream. The property is not located within a Special Protection Area (SPA) or Primary Management Area (PMA). The Preliminary FCP plan indicates that no wetlands, streams, or 100-year floodplain were found onsite during field investigations. Exhibit 66, 19-30.

### **E. Community Response**

As originally filed, Staff summarized community concerns as follows (Exhibit 66, pp. 20-21):

Staff has received two letters from area residents in opposition to the application expressing concerns regarding density, concentration of Residential Care Facilities Conditional Uses in the area, and Storm drain and flooding (Attachment C). Seven other community residents and The Greater Bethesda Chamber of Commerce have also submitted letters in support of the application, indicating that there is a need for such a facility in the area and that the project is compatible with the community.

The Applicant has submitted supplemental information (via e-mail, May 12, 2020) to show community outreach efforts concerning the proposed Residential Care Facility. The Applicant's document provides the following information on efforts in community outreach (Attachment D):

- July 22, 2019 – WMCCA Leadership Meeting  
Members of the Spectrum development team met informally with West Montgomery County Citizens Association's (WMCCA) President, Ginny Barnes and incoming President, Susanne Lee to brief them on Spectrum's vision and learn of any comments or concerns.
- October 2, 2019 – Adjacent/Abutting Neighbor Meeting

The Spectrum team organized an informal dinner meeting for close-in neighbors to acquaint them with the proposal and discuss concerns specific to adjacent neighbors. We held phone conversations with interested neighbors that were not able to attend the dinner.

- October 9, 2019 – WMCCA Membership Meeting

Spectrum presented its plans at WMCCA's general membership meeting, where members provided feedback and asked questions. The Applicant has indicated plans for continuing dialogue with the community and neighbors.

Subsequent to filing and leading up to the hearing, discussions between the parties were beneficial such that counsel for the opposition withdrew the opposition as initially indicated in their pre-hearing statement. Exhibit 102; T. 17. The record also includes numerous letters of support. Exhibits 33(a)-(j). In addition, community members Erik Gaull and Joel Albert testified in support of the proposed residential care facility under the revised and amended plans, as well as Matt Gordon representing the Bethesda Chamber of Commerce. It seems good faith negotiation works.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific to a particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a residential care facility for more than 16 persons. *Montgomery County Zoning Ordinance*, §59.3.3.2.E.2.c. "The appropriate standard to be used in determining whether a requested [conditional use] would have an adverse effect and, therefore, should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a [conditional use]." *Montgomery County v. Butler*, 417 Md. 271, 275 (2010).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

#### **A. Necessary Findings (Section 59.7.3.1.E)**

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's findings for each standard, are set forth below.<sup>6</sup> The major topics of discussion are further divided under the following headings:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

***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 property enjoys one existing Conditional Use which was approved in 1990 by Special Exception BAS-1782, for a horticultural nursery that currently operates as a nursery and florist. The Applicant must submit an application to the Board of Appeals to abandon the existing special exception upon approval of the subject Conditional Use application.

Conclusion: The Hearing Examiner concludes that with this condition the application satisfies this standard.

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<sup>6</sup> Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

***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;***

This subsection requires an analysis of the development standards of the R-200 Zone contained in Article 59-4; the use standards for a residential care facility for more than 16 persons contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively).

Conclusion: Based on the analysis contained in those discussions, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

### **1. Substantial Conformance with the Master Plan**

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

The subject property is within the Potomac Subregion Master Plan of 2002 and is located in the "Potomac" Area of the Master Plan. Exhibit 66, pp. 8-9. The Potomac planning area consists of 28.1 square miles of area. The Master Plan describes the Potomac area as having a large area of older and well-established residential communities with access to major employment centers. At the time of adoption, the Master Plan estimated that the development of the 28-square mile area had reached 93 percent of its capacity with an anticipated slow growth rate of future developments. *Id.* There are no specific recommendations for the subject property in the Master Plan but it does make specific recommendations on the need for additional housing for the elderly, accurately predicting the unmet need for such housing. Potomac Subregion Master Plan, pp. 36-38.

The Master Plan does provide guidelines for the design and review of Conditional Uses:

- a. *Adhere to Zoning Ordinance requirements to examine compatibility with the architecture of the adjoining neighborhood. The Council is considering amendments to strengthen this section of the Zoning Ordinance.*
- b. *Parking should be located and landscaped to minimize commercial appearance. In situations where side or rear yard parking is not available, front yard parking should be allowed only if it can be adequately landscaped and screened.*
- c. *Efforts should be made to enhance or augment screening and buffering as viewed from abutting residential areas and major roadways.*

*Potomac Subregion Master Plan, pp. 5-6*

Staff concludes that the application substantially conforms to these guidelines and conforms to the recommendations of the 2002 Potomac Subregion Master Plan and is compatible with the character of the surrounding area. Exhibit 66, p. 8. Staff concludes that there are no major Master Plan concerns associated with this application and the proposed Residential Care facility is consistent with the land use objectives of the Potomac Subregion Master Plan. *Id.* Joshua Sloan, Spectrum's land planning expert, and Brian Van Winkle, the project's architect, both concurred with Planning's conclusion that the Project substantially conforms to the recommendation of the Master Plan. T. 85; T. 148. Staff notes that the Master Plan emphasizes that senior housing is appropriate throughout the Subregion wherever zoning permits the use either by right or as a [conditional use]. *Id.* Joel Albert, a community member testifying in support of the application, stated that he supported the project as:

"The plain and simple fact in my mind is that we need more senior living communities in Montgomery County as we look to our future. Communities as the one Spectrum is proposing affords seniors an opportunity to stay in the area near friends and family, and services they've come to know and trust. Why should someone be forced to move far away simply because the current residence no longer suits their needs as well as a senior living community might?" T. 22.

The evidence shows and the Hearing Examiner finds the proposed project is compatible with the existing development pattern of the adjoining uses (e.g. residential) as well as the immediate neighborhood (e.g. residential), in terms of height, size, scale, traffic and visual impacts

when reduced to two-stories and with architectural designs and features as detailed by Mr. Van Winkle to match with local architectural styles. T. 141-146.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the proposed use substantially conforms to the Master Plan. It fulfills a need for elderly housing identified in the plan and is quite similar to similar nearby uses which serve the same purpose. The Hearing Examiner further agrees that the facility is compatible with surrounding residential uses, as set forth in detail in Part III.A.4 of this Report.

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

Conformity to the Master Plan is discussed above. Staff concludes that the proposed use will be in harmony with the general character of the neighborhood with recommended conditions. Exhibit 66, p. 28.

Spectrum's Statement of Operations details the functioning of the proposed residential care facility including hours, services, staffing, and general operations. Exhibit 91. Mr. Longfellow reiterated in detail the scope of Spectrum's operations both at the proposed site and other sites throughout the country. T. 45-50. The Conditional Use Plan provides for sufficient off-street parking with 80 percent of the parking accommodated in an underground parking facility substantially minimizing parking and onsite traffic congestion. The proposed facility replaces another Conditional Use that was operating on the site for several decades. The proposed conditional use is not likely to result in any notable negative impact on the residential neighborhood, in terms of increased traffic and noise as evidenced by Spectrum's Traffic Statement and corroborating testimony from Ms. Randall. Exhibit 88; T. 155-157. The character of the surrounding area is primarily residential, consisting of single-family attached and detached

homes. T. 70. As a residential use, the proposed residential care facility will not disrupt the surrounding residential setting and its construction limited to two-stories will not overwhelm surrounding residential homes.

Trash will be picked up two to three times a week during weekdays only. The Conditional Use Plan and Landscape Plan show an enclosed dumpster located southeast of the building near the entrance to the underground parking. Exhibit 125(b). The dumpster is enclosed by a masonry wall of at least 6'-6" matching the building. The dumpster enclosures are not visible from the road or any of the adjoining properties. The Plans also show a loading area on the southeast corner of the property near River Road. The compatibility of the proposed development is discussed in Part III.A.4 of this Report.

Conclusion: Based on this record, the Hearing Examiner finds that the proposed development will not alter the character of the neighborhood in a manner inconsistent with the Master Plan and the specific operation of this conditional use will not interfere with the orderly use, development, and improvement of surrounding properties.

*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 advises that the neighborhood contains several older special exceptions with many of the uses no longer active or smaller uses such as accessory apartments and riding stables. Exhibit 66. Staff found that the most current and notable in terms of size, intensity and similarity to the proposed use is special exception S-2462 Victory Terrace, a-72-unit independent living senior housing that was approved in 2001, located approximately 1,300 feet northeast of the subject

property. *Id.* at 4. As an Assisted Living Facility, Staff notes that the proposed facility will complement Victory Terrace senior housing given the growing need for the type of services the proposed use will provide including, memory care units, on-site indoor and outdoor amenities. *Id.* at 28.

Conclusion: Based on the evidence of record, the proposed residential care facility will not affect the area adversely or alter the predominantly residential nature of the area. The site design, architecture, and landscaping have been used to make it compatible with the surrounding residences, as detailed in Part III.A.4 of this Report.

## 2. Adequate Public Services and Facilities

*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*

The Conditional Use will require approval of a Preliminary Plan of Subdivision and Record Plat prior to construction. The adequacy of public facilities will be addressed by the Planning Board at that time. However, the Applicant presented evidence on adequacy of public facilities to

demonstrate that it will not have an adverse impact on the surrounding area. A brief summary of the evidence adduced at the hearing with regard to adequacy of public facilities is provided below.

Local Area Transportation Review and Transportation Policy Area Review

A preliminary traffic review was conducted by Spectrum and a Traffic Statement was submitted into the record. Exhibit 88. The review concluded that based on the trip generation analysis contained in Table 1 of the Traffic Statement, the existing use is estimated to generate 59 AM peak hour and 168 PM peak hour person trips, while the proposed use will generate 38 AM peak hour and 53 PM peak hour person trips. Therefore, the proposed use will reduce traffic on River Road by generating 20 fewer AM peak hour and 115 fewer PM peak hour person trips. Exhibit 88. Nancy Randall, Spectrum's transportation planner and the author of the Traffic Statement, testified that "Based on the results of the trip generation comparison using ITE and then the adjustment factors as required by LATR, this site actually reduces the potential for person trips as well as vehicle trips [from its current authorized use as a garden center/nursery]. And therefore, met the criteria for providing just a traffic statement." T. 155. Staff concurred with Spectrum's assessment that a full LATR study was not required as the proposed land use generates fewer than 50 peak-hour net new person trips within the weekday morning and evening peak periods. Exhibit 66, p. 12. The Hearing Examiner concurs with this finding and concludes that the Traffic Statement is sufficient for conditional use review.

Ms. Randall testified that, "In this particular site and redevelopment of the existing garden center is going to reduce the impacts to the neighborhood from that of the garden center special exception. And will also greatly improve the access to the property." T. 161. Through her analysis with respect to queueing, Ms. Randall concluded that:

...about 25 percent of the traffic that will occur during peak hours is going to come from the north and about 75 percent from the south. But we tested it both with the 25 percent as

well as assuming a worst case, if 100 percent of the traffic was heading in the eastbound direction or southbound to make the left into the property. In both instances, there were less than a vehicle length queue occurring. T. 159.

Conclusion: The Hearing Examiner concludes from this record that both traffic generation and queuing do not present aggravating factors that would adversely impact the surrounding neighborhood or public safety on River Road or other local roadways.

#### Other Public Facilities

The adequacy of other public facilities, including schools, police and fire protection, water, sanitary sewer and storm drainage to serve the proposed facility, will also be evaluated in detail at the time of preliminary plan but may reviewed on a preliminary basis here. Evaluation of public facilities is controlled by Subdivision Staging Policy approved by the County Council. The 2012-2016 Subdivision Staging Policy provides, at p. 21, that we “. . . must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.” Exhibit 66. Mr. Kelso testified that:

plan “there is adequate gas, electric, power, water and sewer. The property is located in the Washington Suburban Sanitary Commission or the WSSC in a water and sewer category one meaning that there is water availability to the site. WSSC will evaluate the water and sewer capacity through a hydraulic planning analysis at the time of the preliminary plan. And the gas, electric, telephone, and cable utilities are all available to the site through connections of the existing services. As previously testified, given that the preliminary plan is subsequently required, the Planning Board will make a detailed finding regarding the adequacy of the public facilities in proving the preliminary plan.” T. 130-131.

Currently, the site lacks any stormwater management. T. 67. An approved stormwater management concept plan has been approved by DPS with conditions. Exhibit 115. The Project will substantially reduce the amount of impervious area on-site by approximately 41% (i.e. 98,049

sf or 38% impervious area proposed as compared to approximately 195,865 square feet or 79% impervious area today). Exhibit 69, p. 2; *See also* T. 131-135.

Staff notes that Spectrum submitted a Fire Access Plan to the MCDPS Fire Department Office of the Fire Marshall which approved the proposed fire access concept plan on June 12, 2020. Exhibit 66, p 30. Per comments, fire access was modified to permit easier access per revised plans reflected in the revised Conditional Use Plan. *See* Exhibit 125(b). Mr. Sloan testified that FCP and stormwater plans will not be impacted by the minor changes, and explained that the revision “pushes our vehicular access 18 feet which just pushes our stair about 18 feet, which creates a little bit different situation with the ramp. Instead of one long ramp we're now going to have a switchback ramp that goes north for a little bit and then turns around and then lands where the stairs do. So, it's not a significant change to the design.” T. 98.

Staff further notes that there are adequate police and fire services to serve the use. Exhibit 66. The Cabin John Park Fire Station 30 is located at 9404 falls Road in Potomac MD, 1.6 miles northwest of the property. The Montgomery County Police Department 2nd District is located at 4823 Rugby Avenue in Bethesda, Maryland, 6.5. miles southeast of the property. Exhibit 66, p. 30. Staff concludes that these facilities are deemed adequate to serve the facility. *Id.*

Conclusion: Based on this record, for purposes of conditional use review subject to preliminary plan of subdivision, the Hearing Examiner finds that public facilities are adequate to support the proposed residential care facility.

### **3. No Undue Harm from Non-Inherent Adverse Effects**

*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, visitors, or employees.*

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood.

Technical Staff listed the following physical and operational characteristics that are necessarily associated with (*i.e.*, inherent in) a residential care facility for over 16 persons (Exhibit 66, pp. 30-31):

The inherent, generic physical and operational characteristics associated with a Residential Care Facility 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 areas, and;

6. Noise from ambulances in emergency situations.

Staff concluded that the “proposed scale of the building, the internal vehicular circulation system, and the on-site parking areas shown on the Conditional Use site plan are operational characteristics typically associated with Assisted Living Facilities.” Id. at 31. Ms. Randall, Spectrum’s transportation planner, agreed with Staff’s summary of inherent characteristics for the use and could not identify any noninherent characteristics unique to this site that would be of concern. T. 164

Conclusion: The evidence shows that the proposed facility is consistent with all applicable standards of the RE-2 Zone and satisfies all applicable requirements for a Residential Care Facility Conditional Use. The lighting concept, as proposed, is appropriate for the proposed use at the subject location. Further, the size, scale, and scope of the proposed Residential Care Facility will not adversely affect the residential character of the neighborhood or result in any unacceptable noise, traffic disruption, or environmental impact. Based on this record, the Hearing Examiner finds that there are no inherent or non-inherent adverse effects associated with this application sufficient to warrant a denial of the proposed Conditional Use.

#### **4. Compatibility with the Neighborhood**

***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.***

According to the Applicant’s expert in architecture, Mr. Van Winkle, the proposed architecture for the building is mostly residential in character. The architect worked closely with staff and the community to address the overall building massing and articulation, site design, colors, and building materials to mitigate potential impact to the neighborhood. Mr. Van Winkle testified that:

...collaboration [with the community] led us to a much more compatible design that harmonizes the architectural fabric of the community. A much richer, warmer, natural materials you can see are introduced into this version of the design. We used the material and the color to break down the mass of the building into smaller, more residential scale masses, and we introduced more human scale design elements like operable shutters, cornices, chimneys, and residential style windows and trim elements. And then we dramatically increase the landscape around the building, the buffering, but also up against the building. T. 145.

The building footprint is centralized on the site, maximizing usable open space. The coverage allows for open space to be used by residents and visitors. Staff notes that "The decision to centralize the building also helps to minimize the potential impacts to the surrounding neighborhood properties." Exhibit 66, p. 32. Mr. Van Winkle further testified that "the Contemporary Georgian design style that I mentioned earlier reflects that predominant style in the surrounding neighborhoods. Second, residential design principles that create a home for our elders, and just by nature of creating a home that looks like a home, feels like a home, and is a home, it will be a nice fit in the neighborhood." T. 150.

Conclusion: Based on this record, the Hearing Examiner finds that the structure to be constructed is compatible with the character of this residentially zoned RE-2 neighborhood.

***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, in itself, is not sufficient to require conditional use approval.***

Conclusion: Based on this record, the Hearing Examiner finds that the application satisfies all specific requirements for the conditional use, and with the conditions imposed to mitigate adverse impacts, meets the standards required for approval.

## **B. Development Standards of the RE-2 Zone**

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the RE-2 Zone, contained in Article 59-4 of the Zoning

Ordinance. Staff concluded that the application meets the development standards of the RE-2 Zone. See Appendix D; Exhibit 66, p. 11. Spectrum's expert land planner, Joshua Sloan, also testified that the development meets all of the standards of the underlying zone. T. 92; Exhibit 92(b).

Conclusion: Based on this evidence, and having no evidence to the contrary, the Hearing Examiner concludes that the use as proposed meets all standards of the RE-2 Zone.

**C. Use Standards for Residential Care Facility (Section 59-3.3.2.E.2.c.)**

The specific use standards for approval of a residential care facility are set out in Section 59-3.3.2.E.2.c.ii of the Zoning Ordinance.

*ii. Where a Residential Care Facility (Over 16 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:<sup>7</sup>*

*(a) The facility may provide ancillary services such as transportation, common dining room and kitchen, meeting or activity rooms, convenience commercial area or other services or facilities for the enjoyment, service or care of the residents. Any such service may be restricted by the Hearing Examiner.*

*(2) In all other zones, the minimum lot area is 2 acres or the following, whichever is greater:*

*\* \* \**

*(i) In RE-2, RE-2C, RE-1, and R-200 Zone: 1,200 square feet per bed;*

*(e) The minimum side setback is 20 feet.*

*(i) Height, density, coverage, and parking standards must be compatible with surrounding uses; the Hearing Examiner may modify any standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.*

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<sup>7</sup> The only relevant subsections are Sections 59.3.3.2.E.2.c.ii.(a), (d), (e) and (i). Subsections (b), (c), (f), (g), (h), and (j) are not applicable to the proposed use.

The application describes in detail the proposed residential care facility for more than 16 persons housing seniors ages 62 and above, including a number of ancillary services within the facility, as well as outdoor amenity spaces for use by the residents and visitors. Spectrum's Statement of Operations states:

“[The facility will] provide[s] personal services to all of its residents, including utilities, anytime dining, housekeeping, full maintenance, scheduled transportation, fitness and exercise classes along with other innovative activity and wellness programs, resident concierge services, theater, educational and cultural programs, and 24-hour staffing and 24-hour emergency call system. Spectrum will also provide assistance with activities of daily living, including dressing, bathing, toileting, medication reminders, and dining.” Exhibit 91. P. 3.

Michael Longfellow, senior Vice President of Spectrum, testified as to the general operation of the facility as an assisted living facility with necessary services for residents. T. 45-46. The proposed residential care facility will house seniors but does not provide individual residential dwelling units as contemplated under §59-3.3.2.E.2.c.ii.c above. The project proposes a shared commercial kitchen (“bistro”) to serve the assisted living residents on the ground floor. The kitchen will serve “three chef-prepared” meals daily in a central dining room. Other internal amenities include a cyber-café, bistro, fitness center, theater, beauty salon, multi-purpose community center and lounges. The statement of operation further indicates that these amenities are intended to be used by the residents and their families as well as the community at organized events. Exhibit 91. Mr. Van Winkle testified that the facility will be “rich with amenities that are all designed to support wellness and health and lifestyles. We have a pub, a cafe, tech and media center, various social spaces, a rooftop terrace and a nature trail for the residents to be able to enjoy the surrounding landscape.” T. 143.

The facility also proposes to provide a privately funded shuttle service for up to 16 residents per trip. The service will run seven days a week between the hours of 8:00 a.m. and 4:00 p.m.

providing access to facilities within 10 miles radius of the subject property. Staff does not recommend restrictions of any of the services identified above.

Conclusion: Staff advises that the proposed facility encompasses many ancillary services without any identified adverse impacts. For this reason, the Hearing Examiner sees no need to restrict any of these services, provided that the shuttle system passes the test for Local Area Transportation Review at the time of preliminary plan.

The proposed facility also meets the minimum required site area. After subdivision, the property will consist of 219,757 square feet. As Spectrum proposes a maximum of 130 beds and has eliminated independent dwelling units, the ratio of beds to site area is 1,690 square feet, well above the minimum of 1,200 square feet per bed required.<sup>8</sup>

The conditional use site plan (Exhibit 125(b)) also reflects that the proposed residential care facility more than meets the minimum required setback of 20 feet and the Hearing Examiner has already concluded that the application is compatible with the surrounding area. The proposed building will have a maximum height of 40' from grade to the highest portion of the roof. The building has an average roof height which falls within the established neighborhood character and massing of the surrounding residential properties, as most of the adjacent homes are multi-story, single-family residences. Based on this record, the Hearing Examiner finds that the proposed development is compatible with surrounding residential uses.

#### **D. General Development Standards (Article 59.6)**

Article 59-6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Under the amendments to Section 59-7.3.1.E.1.b. of the new Zoning Ordinance, effective December 21, 2015, the requirements of these sections need be satisfied only

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<sup>8</sup> 219,757/1,200=1,690.

“to the extent the Hearing Examiner finds necessary to ensure compatibility.”

Staff notes the following areas in which §59-6 General Development Standards are considered under this application: transportation, parking, screening, walkways, conditional uses in detached residential zones, landscaping, tree canopy, lighting, and signage.

Conclusion: After review of the standards contained herein, the Hearing Examiner finds that these standards have been satisfied to the extent they are compatible with the proposed use, the zone, and the Master Plan. This Report analyzes the elements pertinent to this conditional use review in more detail below.

### **1. Parking and Walkways**

The Conditional Use site plan provides a total of 85 spaces including eight handicap-accessible spaces (four van accessible). Exhibit 125(b). Eleven of the regular spaces and the eight handicap spaces are surface spaces while the remaining spaces are located underground within the building. Staff concludes that the proposed parking spaces exceed the required number of spaces and are sufficient to accommodate the parking needs of 42 employees (full and part-time) as well as visitors to the facility. The proposal also provides for two motorcycle spaces in the garage as required by §6.2.3.C. The application also proposes a bike rack in the parking garage with 4 spaces for use by employees and visitors. Staff suggests at least one bicycle space be provided above ground as an added amenity. Exhibit 66, p. 13.

Under §59.6.2.5.b (Vehicle Parking Design Standards), each required parking space must be within ¼ mile of an entrance to the establishment served by such facilities. This application meets this requirement as all proposed parking spaces are within 150 feet of the entrance to the facility.

Under §59.6.2.5.C (Access), each parking space must have access to a street or alley open

to use by the public. All proposed parking spaces will be directly accessed from River Road, a public street, via the two driveway aprons located at the southeastern and southwestern corners of the property.

Under §59.6.2.5.D (Marking), any off-street parking area must be arranged and marked to provide for orderly and safe loading, unloading, parking, and storage of vehicles; each individual parking space must be clearly marked, and directional arrows and traffic signs must be provided as necessary for traffic control; and each space or area for compact parking must be clearly marked to indicate the intended use. Staff notes that the drive lanes serving the parking spaces will be arranged and marked to allow for safe, adequate and efficient circulation within the parking areas. A total of 16 surface parking spaces are provided as well as 69 regular spaces located in a below-grade parking garage. Exhibit 66, p. 14. Having no evidence to the contrary, the Hearing Examiner finds the off-street parking area meets these standards.

Under §59.6.2.5.H (Parking Separation), each parking space must be separated from any road, street, alley, or sidewalk by curbing or wheel stops; and any road, street, alley, sidewalk, or other public right-of-way must be protected from vehicular overhang by wheel stops, curbs, spacing between the right-of-way line and the parking area, or other method approved by DPS. The 16 surface parking spaces that are located adjacent to River Road are separated from the road by setback, utility easement, and landscaped islands. All of the 16 spaces are located near the building and farther from the edge of the property line and the right-of-way of River Road. *Id.* Staff concluded that the parking met the requirements of §59.6.2.5.H. Having no evidence to the contrary, the Hearing Examiner finds that the proposed parking separation meets these standards.

Under §59.6.2.5.I (Walkways), an off-street parking facility must have pedestrian walkways or sidewalks as needed for pedestrian safety. A pedestrian walkway or sidewalk must

be distinguished by stripes, wheel stops, curbs, or other methods approved by the applicable deciding body. Staff advises that the Conditional Use plan shows a 10-foot shared use path within the 75-foot dedication along the property's street frontage. The Plan also provides for lead-in walkways from the 10-foot path through the landscaped island and crossing the driveway leading to the front entrance of the facility then continuing in a loop connecting to all building entrances and outdoor amenities providing efficient pedestrian circulation safe and adequate pedestrian access for residents. Having no evidence to the contrary, the Hearing Examiner finds that the proposed walkways meet these standards.

Under §59.6.2.5.K (Facilities for Conditional Uses in Residential Detached Zones), any off-street parking facility for a conditional use that is located in a Residential Detached Zone where 3 or more parking spaces are provided must satisfy the following standards:

1. *Location: Each parking facility must be located to maintain a residential character and a pedestrian-friendly street.*
2. *Setbacks*
  - a. *The minimum rear parking setback equals the minimum rear setback required for the detached house.*
  - b. *The minimum side parking setback equals 2 times the minimum side setback required for the detached house.*
  - c. *In addition to the required setbacks for each parking facility:*
    - i. *the required side and rear parking setbacks must be increased by 5 feet for a parking facility with 150 to 199 parking spaces.*
    - ii. *the required side and rear parking setbacks must be increased by 10 feet for a parking facility with more than 199 parking spaces.*

The surface parking areas are located in a manner where direct views of the parking spaces from the road are restricted by landscaped islands including a row of trees, setbacks, new grading, and the placement of the existing building on the property. Having no evidence to the contrary, the Hearing Examiner finds that the proposed plan satisfies all applicable setback requirements under section §59.6.2.5.K

## **2. Site Landscaping & Screening**

Under §59.6.2.9.C (Parking Lot Requirements for 10 or More Spaces), certain landscaping requirements apply to parking areas. Under §6.2.9.C.1, a surface parking lot must have landscaped islands that are a minimum of 100 contiguous square feet each comprising a minimum of 5 percent of the total area of the surface parking lot. Where possible, any existing tree must be protected and incorporated into the design of the parking lot. A maximum of 20 parking spaces may be located between islands; and a landscaped area may be used for a stormwater management ESD facility. Further, §59.6.2.9.C.2 (Tree Canopy), requires each parking lot to maintain a minimum tree canopy of 25 percent coverage at 20 years of growth, as defined by the Planning Board's Trees Technical Manual, as amended. Under §59.6.2.9.C.3 (Perimeter Planting), the perimeter planting area for a property that abuts an Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use must: i.) be a minimum of 10 feet wide; ii.) contain a hedge, fence, or wall a minimum of 6 feet high; iii.) have a canopy tree planted every 30 feet on center; and iv.) have a minimum of 2 understory trees planted for every canopy tree.

The Applicant is proposing surface parking of 16 spaces and below grade garage parking of 69 spaces. Staff notes that the surface parking is located at the front of the residential building in close proximity to the main entry and is comprised of eight handicap-accessible and eight standard parking spaces located on either side of the main entrance walkway. Exhibit 66, p. 17. Each pod of 8 stalls has one tree on each side of the parking row, but the canopies are small and there is no canopy coverage. *Id.* The remainder of resident and visitor parking is beneath the main building in a below-grade parking garage. Both surface and garage parking are accessed via a loop drive from River Road. Staff concludes that the current parking design satisfies Section 59.6.2.1 and the parking is safe and efficient but recommends alternative compliance as allowed for under

section 6.8 regarding the canopy requirement since the provided plans: A) still satisfy the intent of the parking landscaping division, B) only modify the requirement for canopy coverage in a small area of the total site, and since most parking is under ground, C) still provides some landscaping including all other perimeter plantings, and D) the safety and circulation afforded by not meeting the full code intent is better than had the requirements been met. Exhibit 66, p. 17.

Conclusion: The Hearing Examiner finds that the revised Landscape Plan satisfies the requirements of Section 6.2.9.C.1 through 3: Parking Lot Requirements for 10 or more Spaces. See Exhibit 125(b). Tree canopy and perimeter planting requirements are met through a combination of afforestation areas as well as a combination of canopy trees, evergreen trees, large and medium size shrubs and an 8-foot high, composite wood privacy fence with a minimum of at least a 10-foot-wide planting area along the entire perimeter of the Conditional Use site.

Under §59.6.5.2.B, in the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

The property is within the RE-2 Zone and abuts other properties on three sides within the same zone that are improved with residential uses. Since there are abutting properties improved with residential uses to the northeast, north, and the southeast of the property, the Applicant must ensure adequate screening in these directions under Section 6.5.3.C.7. Spectrum proposes screening in three directions comprised of afforestation plantings along the northeast, east and west

property lines. There is a small gap in the afforestation along the north (rear) property line. This gap is screened with adequate canopy trees, evergreen trees, tall shrubs and medium shrubs. In addition, there is an 8-foot high composite wood privacy fence surrounding the property within a minimum 10-foot wide planting area.

Conclusion: The Hearing Examiner finds that the landscaping proposed under the revised Landscape Plan meets or exceeds these requirements. The proposal uses the Forest Conservation plantings along the northeastern, eastern, and western property lines to satisfy 6.5.3.C.7 Option A. Staff advises that the proposed landscape screening satisfies the requirements in Sections 59.6.4.3 and 59.6.5.3 of the Zoning Ordinance. Spectrum's land planner, Mr. Sloan, testified extensively with regards to screening, afforestation, and landscaping in this regard. T. 73-90. The Hearing Examiner concurs with the conclusion of Staff and Spectrum and finds that these standards have been met.

### **3. Outdoor Lighting**

Under §59-6.4.4.E, outdoor lighting for Conditional Uses must be directed, shielded or screened to ensure that the illumination is 0.1 foot-candles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or employment zone.

Staff concluded that the Lighting Plan is adequate and safe for vehicular and employee movement and the Hearing Examiner agrees with this assessment. Exhibit 66; See Exhibit 125(b). The proposed lighting illuminates the site entrance, provides visibility lighting in the employee parking areas, and area lighting near structures. *Id.* The Photometric Plan indicates that the lighting will not cause glare on adjoining properties, nor will it exceed the 0.1 foot-candle standard at the side and rear property lines. Exhibit 109(a); Appendix C. Mr. Sloan testified that minor

changes to the lighting scheme will be required because of the revisions to the Fire Access Plan, but that these changes do not increase the scope or intensity of light and will have no impact on neighboring properties. T. 101-102. These changes are reflected in the revised Conditional Use plan submitted as Exhibit 125(b).

Conclusion: The Hearing Examiner finds that the proposed lighting complies with this standard and does not adversely impact the surrounding neighborhood. The lighting will have no negative impact on neighboring properties as no direct light or light glare emanates onto neighboring properties as the Photometric Plan shows that emanating light will not exceed the 0.1 foot-candle standard.

#### **4. Signage**

The Applicant proposes three signs as illustrated on Exhibit 79(a): one monument sign, one site wall sign, and one building mounted sign. The proposed signage is subject to review by the Montgomery County Department of Permitting Services and must meet the applicable requirements of Division 6.7 of the Zoning Ordinance. Also see T. 84.

Conclusion: The Hearing Examiner finds that the proposed signs are generally compliant with the requirements of Division 6.7 subject to any variances under Division 7.4 necessary for approval. The Hearing Examiner further finds that the proposed signs are consistent with this proposed use in this RE-2 zone, are compatible with the surrounding area, and will not adversely impact the surrounding neighborhood.

#### **IV. CONCLUSION AND DECISION**

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance. Based on the foregoing findings and conclusions, the application of Spectrum Retirement Communities LLC for a conditional use under Section 59-3.3.2.E.2.c. of the Zoning Ordinance to build and operate a residential care facility for more than 16 persons at 9545 River Road, Potomac, Maryland, 20854, is hereby **GRANTED**, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Conditional Use Site Plan, Landscape Plan, and Lighting Plan submitted in support of this application (Exhibit 125(b));
2. Residential care units are limited to 100 units with 130 beds;
3. The maximum number of employees working on any shift shall be 42, with no more than 52 employees on site at any one time to accommodate for shift changes;
4. No more than ten (10) food supply deliveries to the site per month are permitted;
5. Collection of solid waste and recyclable materials must occur on weekdays only (no Saturday/Sunday pickup), between the hours of 8:00 a.m. and 9:00 p.m., consistent with Solid Waste regulations;
6. Prior to the issuance of a use and occupancy certification, the existing special exception, Special Exception BAS-1782, must be abandoned;
7. 85 parking spaces must be maintained as shown on the Conditional Use plan and may not expand or be reduced without express permission from the Hearing Examiner through modification of this Conditional Use;
8. Prior to the issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use Site Plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH;
9. As part of the Preliminary Plan, Applicant shall provide additional operational information concerning the resident shuttle service for review and incorporation into LATR/APF to the Planning Department;
10. Prior to the approval of the Preliminary Plan of Subdivision application, Applicant must obtain approval of the Stormwater Management Concept Plan from the Montgomery County Department of Permitting Services (MCDPS);
11. A directional sign for the garage parking shall also include information on the location of the bicycle and motorcycle spaces;
12. The proposed development must comply with the Preliminary Forest Conservation Plan and all conditions of the approval, and the Applicant must obtain approval of the Final Forest Conservation Plan by the Planning Board, after which time the Applicant must comply with the terms of the Final Forest Conservation Plan;

13. The Applicant must obtain a sign permit issued by the Department of Permitting Services or the Sign Review Board, as appropriate, and must file a copy of any such sign permit with OZAH. The final design of the proposed sign must be in compliance with the Zoning Ordinance restrictions for signs displayed in a residential zone, or the Applicant must first obtain a sign variance from the Sign Review Board; and
14. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to: building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Corrected and issued this 9<sup>th</sup> day of March, 2021.



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Derek J. Baumgardner  
Hearing Examiner

#### RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boa/>

**PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:**

**The Board of Appeals website sets forth these procedures for filing documents with the Board:**

**Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to [BOA@montgomerycountymd.gov](mailto:BOA@montgomerycountymd.gov), and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request, and will contact you regarding scheduling.**

.  
If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

Notification of Decision sent to:

Adjoining property owners

## **V. APPENDIX**

### **Appendix A**



9545 RIVER ROAD  
LANDSCAPE AND LIGHTING PLAN



## Appendix C

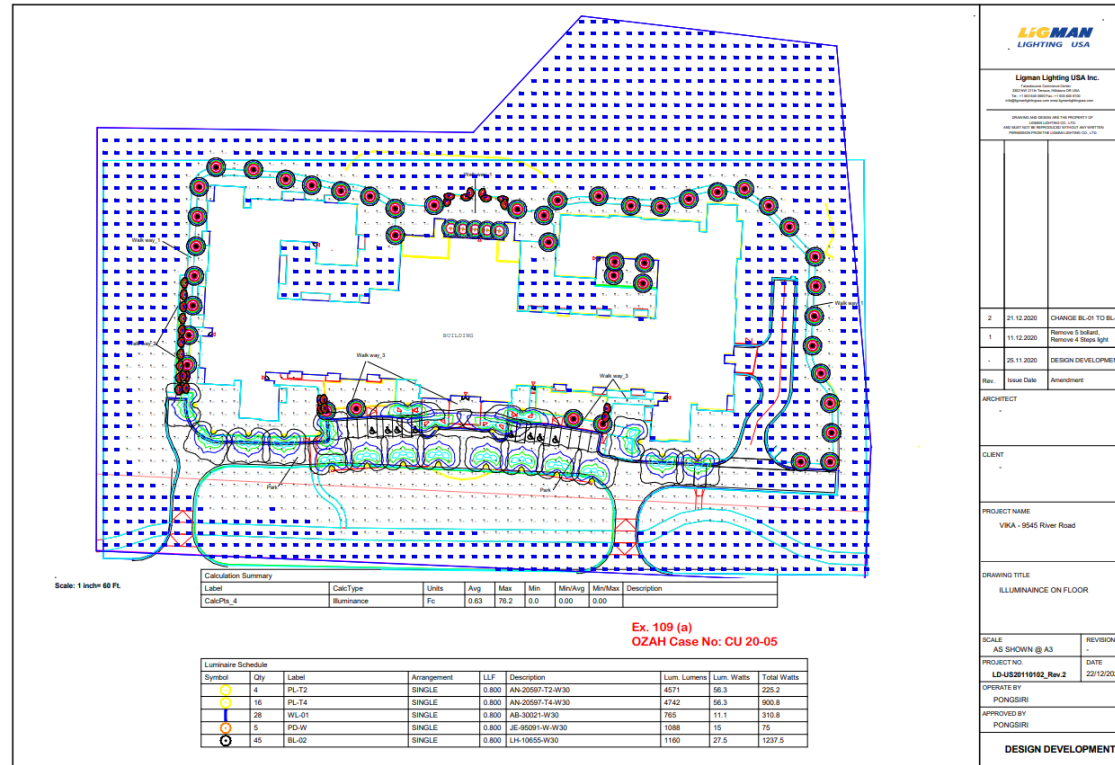


Exhibit 109(a) – Photometric Plan

**Appendix D**

RE-2 Zone Development Standards	Zoning Ordinance 59-4.4.7.B	Proposed
<b>Minimum Lot Area</b>	2.0 ac	5.93 ac Tract area 0.88 ac Road dedication 5.04 ac± Net lot area
<b>Minimum Lot width:</b> <ul style="list-style-type: none"> <li>at front building line</li> <li>at front lot line</li> </ul>	150 ft 25 ft	650 ft 645 ft
<b>Maximum lot Coverage</b>	25 percent	25 percent
<b>Minimum Building Setback</b> <b>Principal Building:</b> <ul style="list-style-type: none"> <li>front</li> <li>Side <ul style="list-style-type: none"> <li>One side</li> <li>Sum of both sides</li> </ul> </li> <li>rear yard</li> </ul>	50 ft 17 ft 35 ft 35 ft	50 ft 105 ft 215 ft 35 ft.
<b>Maximum Building Height</b>	50 ft	50 ft
<b>Green Area</b>	50 percent (2.52 ac)	65 Percent (3.28 ac)
<b>Parking: 59-6.2.4.B and C</b>		
<b>Min. Vehicle Parking spaces</b> 0.25 sp/Per Bed 0.50/Per employee (See Table 8 below under: D Parking)	30 sp*  21 sp Total=51 spaces	<u>Surface:</u> 8 regular Sp and 8 HC/van  <u>Garage:</u> 69 regular sp  Total: 85 spaces
Motorcycle Spaces: 59-6.2.3.C 2% of the no. of vehicle spaces	85x.02=1.7=2 sp	2 sp (garage)

**Table 5: Development Standards**



## DEPARTMENT OF TRANSPORTATION

Marc Elrich  
*County Executive*

Christopher R. Conklin  
*Director*

June 17, 2021

Mr. Jeffrey Server, Planner Coordinator  
UpCounty Planning Division  
The Maryland-National Capital  
Park & Planning Commission  
2425 Reedie Drive  
Wheaton, MD 20902

RE: Preliminary Plan No. 120210190  
9545 River Road

Dear Mr. Server:

This letter replaces MCDOT's Preliminary Plan Letter dated June 9, 2021

We have completed our review of the preliminary uploaded to eplans on April 29, 2021. A previous version of the plans was reviewed by the Development Review Committee at its April 13, 2021 meeting. We recommend approval of the plans subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Department of Permitting Services (DPS) in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

**General Plan Review Comments**

Two proposed entrances are planned as the vehicular access along River Road (MD 190) for this development. Since River Road (MD 190) is maintained by Maryland State Highway Administration (MDSHA), MCDOT does not have any jurisdiction other than the maintenance and operation of traffic signal on state-maintained roadways. Per Montgomery County Code Chapter 50 Section 4.2, MCDOT shall provide recommendation about the subject property for the attention of the concerned agencies.

**Office of the Director**

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101 Monroe Street 10<sup>th</sup> Floor · Rockville Maryland 20850 · 240-777-7170 · 240-777-7178 FAX

[www.montgomerycountymd.gov](http://www.montgomerycountymd.gov)

*Located one block west of the Rockville Metro Station*

### **Significant Plan Review Comments**

1. River Road (MD 190) is classified as a Major Highway (M-2). Per the Master Plan of Highways and Transitways the minimum required right-of-way (ROW) is 150-foot. We recommend the applicant dedicate to conform with the master plan. We defer to MDSHA for any improvements along River Road (MD 190).
2. We recommend that the applicant construct the 10-foot shared path along the site's frontage to comply with the master plan.
3. We defer to MDSHA for sight distance evaluation along River Road (MD 190).
4. **Storm Drain Study:** The storm drain analysis was reviewed and is acceptable to MCDOT. No improvements are needed to the downstream public storm drain system for this plan.
  - a. The proposed development decreases the amount of impervious area on the project resulting in a decrease in peak discharge to the storm drain outfall at the northeast corner of the site. In addition, the closest culvert found at Bentcross Drive is 640-foot from the property's boundary. Therefore, the applicant is not responsible for any existing downstream storm drain improvements maintained by Montgomery County.
  - b. We defer to MDSHA for runoff from the site draining to a storm drain maintained by MDSHA.

### **Standard Comments**

1. We defer to MDSHA for any improvements along River Road (MD 190).
2. Access points should be at-grade with the sidepath, dropping down to street level between the sidepath and roadway.
3. Ensure curve radii are as small as practicable to accommodate target design vehicles without intrusion into bicycle or pedestrian travelways.
4. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
5. Ensure 10-foot Public Utility Easement along the frontage.
6. Forest Conservation Easements are NOT ALLOWED to overlap any easement.

Mr. Jeffrey Server  
Preliminary Plan No. 120210190  
June 17, 2021  
Page 3

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact myself for this project at [brenda.pardo@montgomerycountymd.gov](mailto:brenda.pardo@montgomerycountymd.gov) or at (240) 777-7170.

Sincerely,

Brenda M. Pardo, Engineer III  
Development Review Team  
Office to Transportation Policy

[SharePoint\teams\DOT\Director's Office\Development Review\Brenda\Preliminary Plan\PP120210190 9545 River Road\Letters\120210190-9445 River Road-DOT Preliminary Plan Letter\\_6.17.21](#)

cc: Correspondence folder FY 2021

cc-e:	Logan Kelso	Vika Maryland, LLC
	Mark Terry	MCDOT DTEO
	Atiq Panjshiri	MCDPS RWPR
	Sam Farhadi	MCDPS RWPR
	Rebecca Torma	MCDOT OTP
	Kwesi Woodroffe	MDSHA



## DEPARTMENT OF PERMITTING SERVICES

Marc Elrich  
County Executive

Mitra Pedoeem  
Director

May 24, 2021

Mr. Logan Kelso, P.E.  
VIKA Maryland, LLC  
20251 Century Boulevard, Suite 400  
Germantown, MD 20874

Re: **SITE DEVELOPMENT STORMWATER  
MANAGEMENT PLAN** Request for 9545 River  
Road  
Preliminary Plan #: 120210190  
SM File #: 285503  
Tract Size/Zone: 5.93 Ac. / RE-2  
Total Concept Area: 4.62 Ac.  
Parcel(s): P786  
Watershed: Cabin John Creek

Dear Mr. Kelso:

Based on a review by the Department of Permitting Services Review Staff, the Site Development Stormwater Management Plan for the above-mentioned site is **acceptable**. The plan proposes to meet required stormwater management goals via ESD. ESD is provided by multiple micro-bioretenion facilities. This approval does not include the work in the Right of Way. Maryland State Highway Administration has deferred the technical review to the design plan stage.

The following **items** will need to be addressed **during/prior to** the final stormwater management design plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
4. Landscaping in areas located within the stormwater management easement which are shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.
5. Prior to approval of the erosion and sediment control plan you must submit a copy of the approved plan from Maryland State Highway Administration. Once they have determined the stormwater management for the Right of Way it will be shown on MCDPS erosion and sediment control plans.



2425 Reedie Drive, 7th Floor, Wheaton, Maryland 20902 | 240-777-0311  
[www.montgomerycountymd.gov/permittingservices](http://www.montgomerycountymd.gov/permittingservices)

6. You must show and provide safe conveyance of the 10-year storm through the property and onto the downstream property.
7. This Site Development Stormwater Management Plan approval supersedes the previous approval letter dated December 31, 2020.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required for the subject property since full stormwater management compliance for that has been demonstrated, but may be required for the 0.98 acres of disturbance with the SHA right of way if that agency issues a waiver.**

This letter must appear on the final stormwater management design plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact David Kuykendall at 240-777-6332.

Sincerely,



Mark C. Etheridge, Manager  
Water Resources Section  
Division of Land Development Services

MCE: SDP285503 9545 River Road.DWK

cc: N. Braunstein  
SM File # 285503

ESD: Required/Provided 13,649 cf / 14378 cf  
PE: Target/Achieved: 1.76"/1.85"  
STRUCTURAL: 0.0 cf  
WAIVED: 0.0 ac.  
SHA ROW: 0.98 ac.



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**Department of Permitting Services**  
**Fire Department Access and Water Supply Comments**

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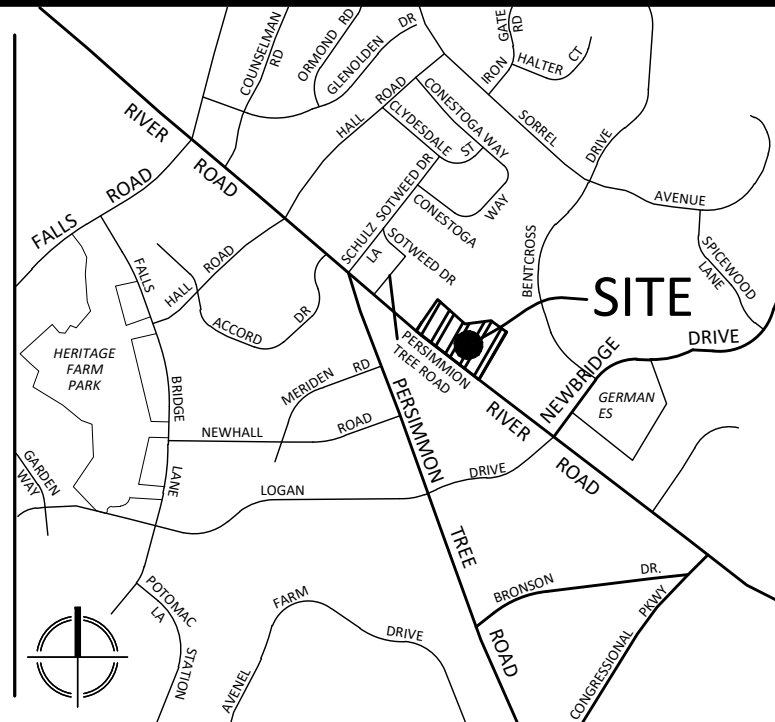
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**DATE:** 22-Jan-21  
**TO:** Logan Alomar  
VIKA, Inc  
**FROM:** Marie LaBaw  
**RE:** 9545 River Road  
120210190

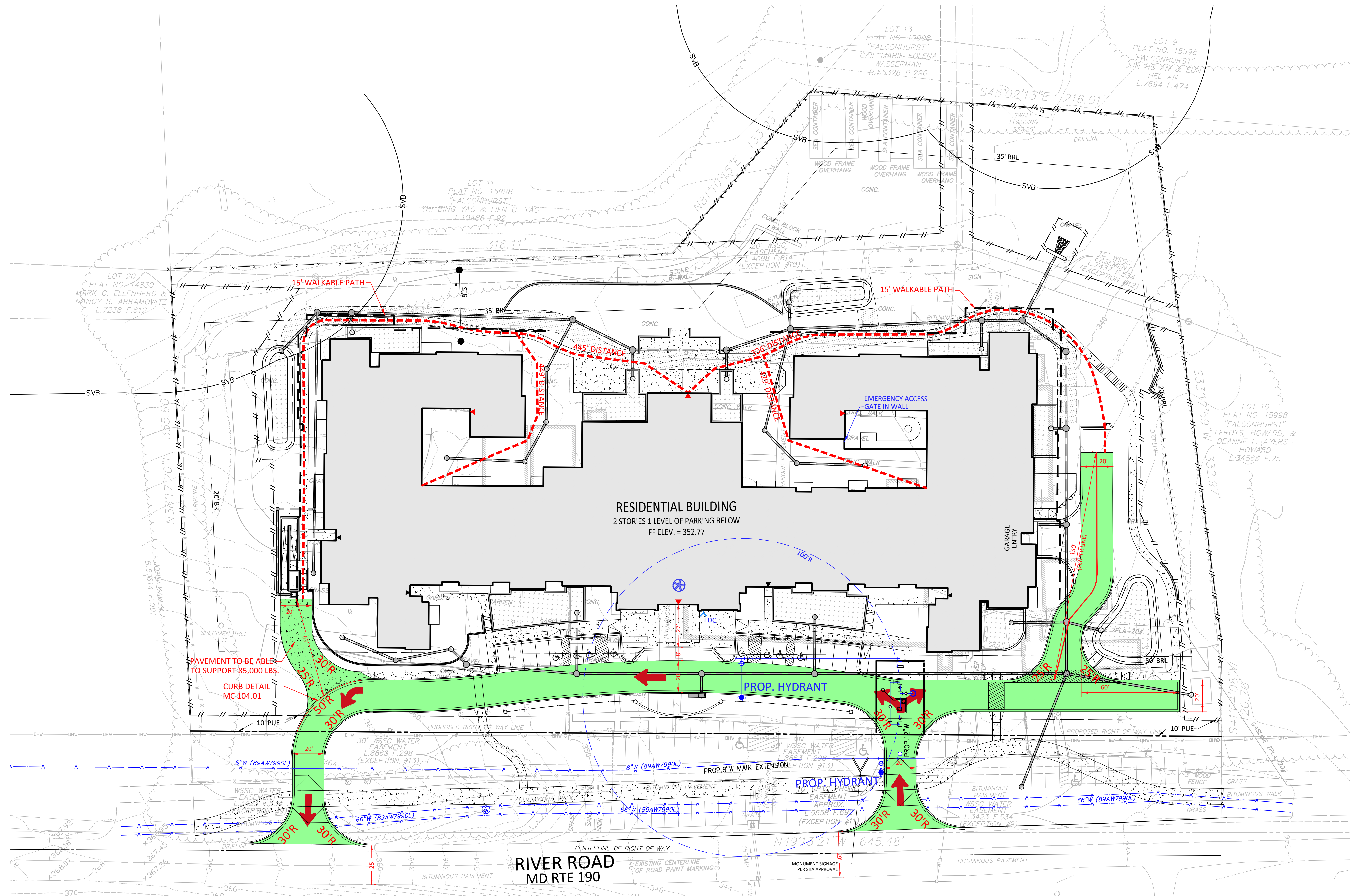
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**PLAN APPROVED**

1. Review based only upon information contained on the plan submitted **19-May-21**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

VICINITY MAP  
SCALE: 1" = 2000'ENGINEERS PLANNERS  
LANDSCAPE ARCHITECTS SURVEYORS  
VIKA MARYLAND, LLC  
20251 CENTURY BOULEVARD SUITE 400  
GERMANTOWN, MARYLAND 20874  
PHONE: (301) 916-4100  
FAX: (301) 916-2262  
GERMANTOWN, MD. TYSONS, VA.PREPARED FOR:  
SPECTRUM RETIREMENT  
COMMUNITIES, LLC  
4600 S. SYRACUSE STREET  
11TH FLOOR  
DENVER, CO, 80237  
303.360.8812  
MIKE LONGFELLOW

## DESIGN CONSULTANTS

ARCHITECT  
VESSEL ARCHITECTURE &  
DESIGN  
600 EMERSON ROAD  
SUITE 400  
ST. LOUIS, MO, 63141  
314.521.0123  
BRIAN L. VAN WINKLE, AIA, NCARBATTORNEY  
LERCH, EARLY & BREWER,  
CHTD  
7800 WISCONSIN AVENUE  
SUITE 700  
BETHESDA, MD, 20814  
301.585.1300  
STEVEN A. ROBINSPLANNER, CIVIL, LA  
VIKA MARYLAND, LLC  
20251 CENTURY BOULEVARD  
SUITE 400  
GERMANTOWN MD, 20874  
301.916.4100  
LOGAN ALDAMAR

## FIRE CODE ENFORCEMENT

## Fire Department Access Review

Review based only upon information contained on  
this plan. Does not cover unsatisfactory layout  
resulting from omissions, errors or failure to  
clearly indicate conditions on this plan. Correction  
of such unsatisfactory layout to afford required  
access will be required if found upon inspection  
after installation.BY: *S.M.C.* PM: 43 DATE: 5/19/2021

## LEGEND

10" W

10" W

10" W

10" W

10" W

10" W

10" W

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WATER LINE AND FITTING

FIRE DEPARTMENT CONNECTION

FIRE HYDRANT

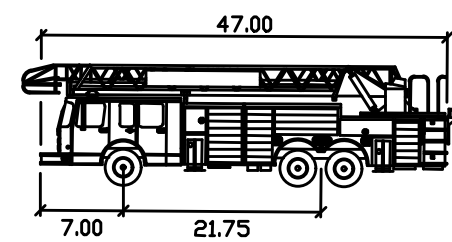
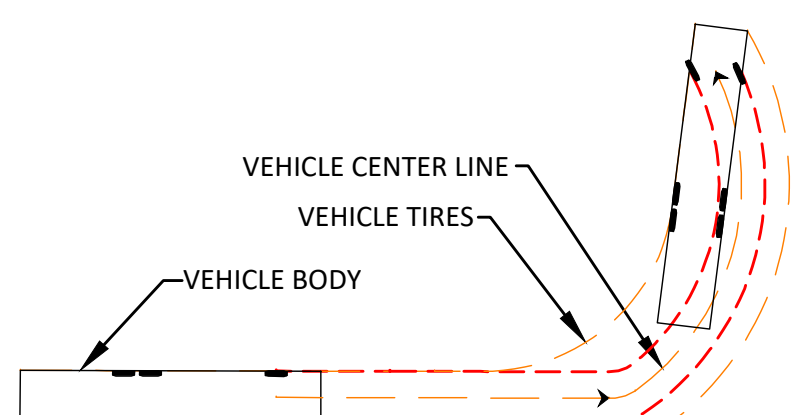
BUILDING ENTRY

FIRE TRUCK MOVEMENT (AT 72' TRUCK)

FIRE ACCESS PATH

FIRE ACCESS FOOT PATH

15' WALKABLE PATH

AT29  
Width 8.25'  
Truck 8.25'  
Lock to Lock Time 6.00'  
Steering Angle 33.20'

SCALE: 1"=30'

## REVISIONS

DATE