

HERITAGE GARDENS

Description

Proposed Conditional Use to operate a Residential Care Facility (Over 16 Persons) at 10701 South Glen Rd Potomac, MD 20854.

NO. CU202201

COMPLETED: 1-3-2022

MCPB

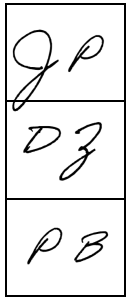
Item No. 5

January 13, 2022

2425 Reedie Drive

Floor 14

Wheaton, MD 20902



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Summary

- With the recommended conditions, the conditional use conforms to Sec. 59-4.4.4 (Residential – RE-2 Zone), Sec. 59-7.3.1 (Conditional Use) and Sec. 59-3.3.2.E (Residential Care Facility) of the Montgomery County Zoning Ordinance.
- The Property currently is improved with the structures from the former Fourth Presbyterian School and associated driveways and surface parking.
- The proposed use is consistent with the Potomac Subregion Master Plan.
- The Project complies with Montgomery County Environmental Guidelines and Forest Conservation Law, as conditioned.

LOCATION:

10701 South Glen Rd

Potomac, MD 20854

MASTER PLAN

Potomac Subregion Master Plan (2002)

PROPERTY SIZE

30.6 Acres

APPLICANT

Heritage Gardens Land, LLC

ACCEPTANCE DATE:

August 13, 2021

REVIEW BASIS:

Chapter 59 and Chapter 22A

SECTION I: STAFF RECOMMENDATIONS AND CONDITIONS OF APPROVAL

Staff recommends approval of Conditional Use No. 202201 for a Residential Care Facility (Greater Than 16 Persons), subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Applicant's Conditional Use site plan, landscaping plan, and lighting plan that are part of the submitted Application.
2. The maximum number of dwelling units is limited to 74 independent living units (45 of which will be located in cottage units and 29 in a multi-use building) and 87 assisted living and memory care units (containing 105 beds).
3. The total maximum number of anticipated Heritage Gardens' employees on-site will not exceed 30 employees. This does not include landscaping and snow removal staff.
4. The Applicant must provide reasonable transportation services to medical services, shopping areas, recreation and other community services desired by resident senior adults as required by Sec. 59-3.3.2.C.2.c.i.
5. The collection of solid waste refuse and recyclable materials must occur on a weekday and not on Saturday or Sunday.
6. Prior to the approval of the subject Conditional Use application, the Applicant must demonstrate compliance with Sec. 59-3.3.2.C.2.c.iii, requiring a minimum of 15 percent of the dwelling units are permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs.
7. Prior to the issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan Subdivision and Record Plat pursuant to Chapter 50 of the Montgomery County Code.

8. Prior to the approval of a Preliminary Plan Subdivision application, the Applicant must demonstrate an adequate pedestrian circulation plan that is appropriate for the subdivision given its location and type of development and use pursuant to Sec. 50-4.2.D.1.
9. Prior to the approval of the Preliminary Plan of Subdivision application, the Applicant must obtain an approved stormwater management plan from the County Department of Permitting Services.
10. As part of the approval of a Preliminary Plan of Subdivision application, the Applicant must obtain an approved final forest conservation plan.
11. Prior to the issuance of the 10th building permit, the Applicant must construct a 6-foot-wide sidewalk with a minimum 6-foot buffer from the street edge.
12. Prior to the issuance of the 10th building permit, the Applicant must construct a 6-foot-wide lead sidewalk on both sides of the proposed main access from South Glen Road, connecting to the internal sidewalk network approximately adjacent to residential building 1.
13. Prior to issuance of the right-of-way access permit, the Applicant must redesign the access point to reduce the paved width of the entrance to the minimum as found to be acceptable by Montgomery County Fire and Rescue Services and Montgomery County Department of Transportation.

Staff recommends approval of the Preliminary Forest Conservation Plan #CU202201, subject to the following conditions:

1. The Final Forest Conservation Plan must be consistent with the Preliminary Forest Conservation Plan.
2. Prior to recordation of the plat and the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement 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.

3. Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
4. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 235 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.
5. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FCP.
6. 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.
7. 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.

SECTION II: PROJECT DESCRIPTION

Background

The Property currently is improved with the structures from the former Fourth Presbyterian School (the "School") and an associated surface parking lot. The Property is located in the RE-2 zone (Project), located at 10701 South Glen Road, Potomac, Maryland (Subject Property or Property), and is comprised of Parcel B, Block B2, and Parcels 896 and 950 in the Glen Vista subdivision. Parcels 896 and 950 are undeveloped.

Vehicular access is currently provided by a driveway that is adjacent to the Congregation B'nai Tzedek entrance road and opposite Norton Road and offset from the South Glen Road/Norton Road intersection by approximately 25 feet. Prior to the School's closure in 2014, the School's Board of Trustees embarked on a master planning and capital campaign to renovate the Property so that it could accommodate up to 400 students. However, the School was unable to recover after the 2008 recession and the School closed with only 95 students enrolled. Since the School vacated in 2014, the Property has been actively marketed for sale with the expectation that it would not remain vacant for an extended period of time. Presently, the Property is unoccupied, except for the occasional sports team that may use the field on the Property or the gymnasium, or an organization may hold meetings in one of the buildings on site.

A conditional use application (CU201909) was accepted for filing on June 10, 2019 requesting, pursuant to Section 59-7.3.1, approval of a conditional use to allow the construction and operation of Independent Living Facility for Seniors or Persons with Disabilities. This Application was withdrawn on January 31, 2021.

This new application was accepted for filing on August 13, 2021 and pursuant to Section 59-7.3.1, the Applicant has requested approval of a conditional use to allow the construction and operation of a residential care facility (greater than 16 persons).



Figure 1: Aerial view of the subject Property

Site Description

The Property is located along the northeast side of South Glen Road and lies to the northwest of its intersection with Norton Road. The Property is generally bordered by the Glen Vista subdivision, which is accessed through Edison Road to the northwest, South Glen Road to the south, Norton Road to the southeast, the Congregation B'nai Tzedek facility and two single family residences accessed from South Glen Road, and Potomac Glen subdivision, accessed via Lockland Road to the southeast, and the Bedfordshire Subdivision and the Falls Road Golf Course to the northeast. An unnamed southeastern tributary of Kilgour Branch runs southeast to northwest through the northeastern portion of the Property. A modest to heavy tree canopy abuts the Property to the north and to the east. The Property has a net lot area of 30.60 acres (or 1,332,988 square feet).

The Property currently is improved with the structures from the former Fourth Presbyterian School and an associated surface parking lot. Parcels 896 and 950 are undeveloped. Vehicular access is currently provided by a driveway that is adjacent to the Congregation B'nai Tzedek entrance road and opposite Norton Road and offset from the South Glen Road/Norton Road intersection by approximately 25 feet.

There are 12.73 acres of existing forest cover as shown on the existing Natural Resource Inventory ("NRI")/Forest Stand Delineation ("FSD") that was approved on February 6, 2019 (M-NCPPC File No. 420182350). The forested areas are in the northwestern section of the Property, along the north property line, and the northeastern corner. Two stream channels bisect the northern portion of the Property.

There are no known rare or endangered species present, nor any historically significant structures or sites located on or near the Property.

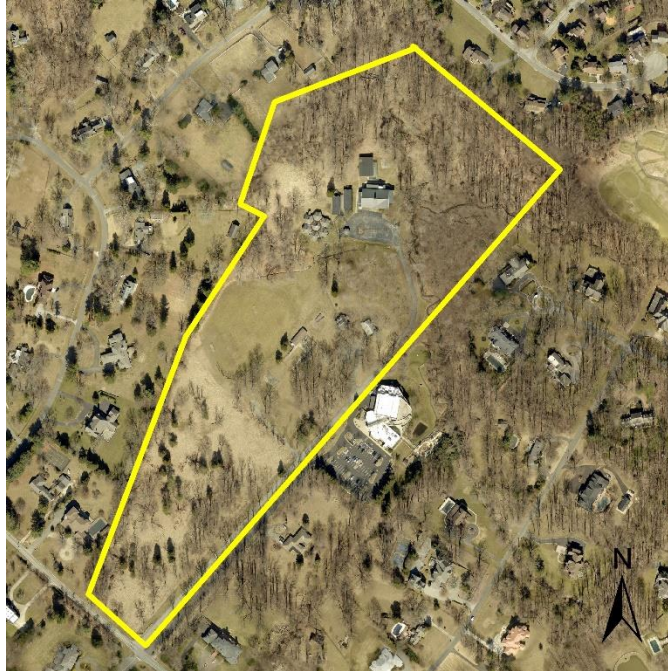


Figure 2: Existing conditions, buildings, and parking.

Neighborhood Description

The Property is located amidst low-density residential neighborhoods in the central area of the Potomac Subregion. Large single-family homes surround the Property, except for the

Congregation B'nai Tzedek facility located adjacent to the Property to the southeast. For purposes of evaluating the Conditional Use, the neighborhood is generally surrounded by the following boundaries: the southern property line of the single-family homes that front South Glen Road to the south and southwest; residential properties with access off of Edison Road and Dobbins Drive to the west and northwest; residential properties that front Broad Green Terrace to the north and northeast; the boundary line of the Falls Road Golf Course to the east; and single family homes that are on the east side of Lockland Road to the southeast (the "Surrounding Neighborhood").

The Surrounding Neighborhood is generally considered by M-NCPPC Staff and the Hearing Examiner as the area around the site that will be most directly impacted by the proposed use. More specifically, M-NCPPC Staff and the Hearing Examiner have indicated that the Surrounding Neighborhood should include properties that are most likely to be affected by the presence of the proposed Independent Living Community, including but not limited to possible impacts from noise, commotion, activity, stormwater runoff, parking, and traffic. As such, the Applicant has defined the Surrounding Neighborhood using these standards as a guide. The properties within the Surrounding Neighborhood are primarily residential, zoned RE-2, and range in size from XX to XX.

Uses within the Surrounding Neighborhood are almost exclusively residential (e.g., single-family dwelling units), with the exception of the Congregation B'nai Tzedek facility. There are no active

conditional uses within the Surrounding Neighborhood. The Applicant anticipates that residents of the Project will frequently travel to Potomac Village, the commercial focal point of the Potomac Subregion that is located within a 1-mile radius of the Property. Potomac Village includes neighborhood serving retail uses and services including three grocery stores (Giant Food, Safeway, and Potomac Grocer) and a number of destination retail uses and medical offices. The Potomac Library is also located just 0.85 miles from the Property at 10101 Glenolden Drive, Potomac.

Table 1 below displays the existing zoning and land uses within the defined neighborhood (Figure 3).

Table 1 - Neighborhood Description

Existing Zoning	
Subject:	RE-2 (Residential)
North:	RE-2
South:	RE-2
East:	RE-2
West:	RE-2
Existing Land Use	
Subject:	Private Educational Facility
North:	Detached dwellings
South:	Detached dwellings
East:	Detached dwellings, Religious Institution
West:	Detached dwelling



Figure 3: Defined Neighborhood Map



Figure 4: Zoning map and conditional uses located within the defined neighborhood.

The Montgomery County Interactive Zoning Map indicates as many as 15 prior special exception approvals within the Surrounding Neighborhood. The Applicant has exercised considerable due diligence to determine the history and current status of these approvals. However, given the age of the special exceptions, the Office of Zoning and Administrative Hearings staff has advised that obtaining copies of any opinions and/or records of these cases is practically infeasible.

[Zoning History](#)

The Montgomery County Interactive Zoning Map ("Zoning Map") shows that the Property is subject to six prior approvals. Research indicates that prior users of the Property had obtained and subsequently transferred Special Exception Nos. 1609 and 1610 to operate a private school, which was permitted as early as 1968. The transfer timeline of private school operators appears to be as follows: Potomac Montessori, Inc., to The Byrnes School Associates, to the Hellenic American Academy, Inc. (the Fourth Presbyterian School, as a religious institution, did not require a special exception). As a result of a school having been operated on the Property for approximately 50 years, the surrounding neighborhood is accustomed to a certain level of activity on the Property and associated effects.

Proposed Use

The Project consists of the construction and operation of independent senior living structures (11 three-unit structures and 6 duplexes) to provide a total of 74 Independent Living units. Each Independent Living building is two stories, or approximately 39 feet in height, which is below the 50-foot height limitation in the RE-2 zone. The building footprint of each unit is comparable to many of the large single-family homes within the Surrounding Neighborhood.

Additionally, there will be 29 Independent Living units located within a multi-use styled building referred to as “The Lodge”. The Lodge will also include 87 assisted living and memory care units (containing 105 beds).



12 TYPE 'D' - DUPLEX

NOT TO SCALE

Figure 5: Rendering of Duplex Unit Type



11 TYPE 'C' - TRIPLEX

NOT TO SCALE

Figure6: Rendering of Triplex Unit Type



6 LODGE ENTRY

NOT TO SCALE



8 LODGE

NOT TO SCALE

Figure 7: Rendering of The Lodge



Figure 8: Layout Massing Comparison

The existing gymnasium structure will be repurposed for a recreation amenity space/clubhouse that will function as the focal activity center for residents. The Project also creates two large outdoor spaces (Saxton Park and the Heritage Gardens Park), suitable for social gathering and outdoor recreation.

The project provides an on-site resident-case services manager (SageLife) to address the residents' health and wellness needs, and will also provide comprehensive project maintenance, including upkeep of the grounds, landscaping and lawn service.

Initial SageLife staff will include one director and one part time assistant, with offices at Heritage Gardens who will work Monday through Friday. The full-time director will work a 7.5 to 8-hour day and while the precise hours have not been determined, they will likely fall between 8:00 a.m. and 8:00 p.m., unless there is a special event that will require the director to arrive earlier or stay later. The part time assistant will work a flexible schedule up to 4 hours per day, with the hours to be determined. In the future, three potential part-time employees, including an assistant director, maintenance technician, and a home care coordinator may be added. In sum, the anticipated maximum number of SageLife staff will be one full time employee and four part-time employees.

Heritage Gardens will rely on contract employees to provide regular programming such as physical therapists and other wellness providers; educational instructors; personal trainers; fitness instructors; and interior maintenance, food service, and housekeeping personnel. These contract employees will

be on site for a limited time, usually up to two hours. It is anticipated that given the services these contract employees provide, they may work at Heritage Gardens both weekdays and weekends. In addition, it is anticipated that no more than three such employees will be at the community at any one time.

Heritage Gardens also will include contract employees to provide landscaping, snow removal and maintenance. The frequency of these contract employees will depend on the season and the weather.

The total maximum number of anticipated Heritage Gardens' employees on-site will not exceed 30 employees. Note that this number excludes landscaping and snow removal staff, whose visits are more periodic.

Vehicular ingress and egress are from South Glen Road via a Private Street. The shared parking for the Lodge is in the rear of the property near the community center/clubhouse and the surface lot in front of the assisted living building.

Each unit will provide for a two-car garage which is similar to the traditional residential units in the surrounding neighborhoods. Given the convenience and protection factor, it is anticipated that most people will park in their garages. Parking for care givers or guests would be in the driveway or area outside the garage. This will not be a constant occurrence and thus on any given day, many of the units will not have any cars visible



Figure 9: Proposed Site Layout

Site Design

The proposed Heritage Gardens site is located along South Glen Road, surrounded by low-density single-family homes with deep front setbacks. The development is split into two sections: an independent living section and an assisted living section. The independent living section is located toward the front portion of the property and consists of a total of 45 duplex and triplex buildings that

are massed in a manner compatible with surrounding residential development. One of the triplex units fronts along South Glen Road and offers a similar massing and setback of other adjacent units along the street. Thirteen buildings front the outer edge of the loop road, providing vehicular and pedestrian circulation through the independent living section. The remaining three buildings containing nine units in the independent living section are in the internal block created by the loop road. This internal block also contains the two gardens that serve as the primary open space for the entire retirement community. The setting of the buildings along the loop road presents the traditional residential experience while offering a design that caters to cottage style setting for independent living. The layout, size and scale of the development is similar to the development pattern of the surrounding neighborhood. The larger building to the east/rear of the Property, is sunk into the ground and takes advantage of the grade to minimize the presence to the surrounding properties, and to minimize impacts on the environmental features of the Property.

The second section of the proposed development is located toward the rear of the property and contains a multi-level assisted living facility designed in a U-shape footprint with a landscaped central space with parking in the middle. A narrow road off the northeast side of the loop road will run through a natural regeneration area and connect the assisted living section to the independent living section. This second section contains 51 units.

The massing of the buildings in the proposed Heritage Garden development are compatible with surrounding residential context. The independent living buildings, in duplex and triplex form, provide the appearance of the large single-family homes. The larger multi-level assisted living facility is located to the interior of the property away from the surrounding single-family residences. The triplex building closest to South Glen Road maintains the front setback established by the existing surrounding houses. A landscaped green space serves as a forecourt for this triplex building. The two central open spaces within the independent living section provide opportunities for passive and active recreation. The landscaped central green space in the assisted living facility area provides visual open space for residents and may serve as a passive seating area for guest visitations.

SECTION III: ANALYSIS AND FINDINGS

[Development Standards](#)

The following table displays the relevant RE-2 development standards for the Property. The Project complies with the following development standards:

Table 2 – Development Standards

Development Standard	Required	Provided		
Lot width at front building line (min.)	150'	310		
Lot width a front lot line (min.)	25'	260'		
Frontage on street or open space	Required, except as exempt under Chapter 50	Provided		
Density (59.3.3.2.E.2.c.ii(c)) TBD by Hearing Examiner				
Density (59.3.3.2.E.2.c.ii.(c)(1) Where residential dwelling units are provided	15 units/acre (max) = 459 units 50% Green Area	74 Independent Living Units Green Area: 75.62%		
Density (59.3.3.2.E.2.c.ii.(d)(2)(A) Where the facility size is based on the number of beds,not dwelling units, the following lot area is required	1,200 sf/bed (96 beds = 2.64 ac)	30.60 acres (96 Beds Assisted Living & Memory Care)		
Lot coverage (max) (RE-2)	25%	13.4%		
2. Placement				
Principal Building Setbacks (min) (59.3.3.2.E.2.c.ii(e)) Principal Building Setbacks for all building types must meet the minimum setbacks required under the standard method of development for the subject building type in the R-30 zone (see Section 4.4.14.B.3, Placement).				
R-30 (59.4.4.14.B.3) Placement	Duplex Reqd / Prov	Townhouse Reqd / Prov	Apartment Reqd / Prov	Provided
Front setback public street	20' / 256'	20' / 132'	30' / 1405'	Complies
Front setback , private street or open space	4' / 10'	4' / 10'	20' / 20'	Complies
Side setback, abutting Residential Detached Zone	6' / 36'	N/A	25.5' / 37' (4.1.8.A2.a)	Complies
Side setback, end unit	N/A	3' / 31'	N/A	Complies
Minimum Side Setback, abutting lots not included in the application (59.3.3.2.c.ii(f))	20' / 36'	20' / 31'	20' / 59'	Complies
Rear setback, abutting Residential Detached Zone	20' / 956'	20' / 818'	30' / 413'	Complies
3. Height (59.3.3.2.c.ii(i))				

Principal Building (59.3.3.2.c.ii(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.	Cottages: 40' * Lodge: 50'
4. Form		
Building Elements	Gallery/awning	N/A
	Porch/stoop	Yes
	Balcony	Yes
5. Parking (59.6.2.4)		
Vehicle Parking Residential Care Facility	1 sp/IL unit = 74 0.25/Bed = 24 + 0.5 sp/employee = 15 Total = 113 required	Cottages: 90 spaces Lodge: 75 spaces Total: 165 spaces
Bicycle Parking Residential Care Facility	0.25 space per IL unit (19 spaces)	45 spaces provided in Cottages. Waiver sought per Section 6.2.10* to extent needed for IL units in Lodge
Parking Facilities for Conditional Uses in Residential Detached Zones (59.6.2.5.K) (Applies to 10 space parking lot adjacent to gymnasium.)		
Location	Each parking facility must be located to maintain a residential character and a pedestrian-friendly street.	
Setbacks		
a. The minimum rear parking setback equals the minimum rear setback required for the detached house.	35'	532'
b. The minimum side parking setback equals 2 times the minimum side setback required for the detached house.	34'	70'
6. Loading (59.6.2.8)		
Office and Professional, Group Living, Hospital, Educational Institution (Private), and Hotel and Motel Uses	1 space for 25,001 to 250,000 sf GFA	1 space
*The average median height (per Section 4.1.7. of the Zoning Ordinance) will vary throughout the site based on grading, but shall not exceed 40 feet. The final height of each building will be determined at building permit.		

****Given the nature of the IL dwelling units, there will be sufficient space within each unit to store a resident's bicycle.**

[Master Plan](#)

This project proposes a residential care facility on an approximately 31-acre property on South Glen Road at its intersection with Norton Road in Potomac. The 2002 *Potomac Subregion Master Plan* includes this area as part of the Potomac planning area. In general, there are no specific recommendations for this property; however, the Plan recognizes that this part of Potomac is largely developed and therefore recommends “infill development of the remaining vacant properties with residential development essentially similar to what is now there....” (p 41)

The Subregion Plan also made recommendations for conditional uses (called Special Exceptions at the time the Plan was completed). The Plan recommends ways to limit the impact of these uses, by encouraging compatibility with surrounding architecture, designing parking facilities to minimize commercial appearance, and using landscaping to mask non-residential uses from adjoining residential properties. The Subregion Plan also encouraged additional senior housing in Potomac, reflecting a shortage of available housing for the elderly in the area. “Senior housing,” the Plan states, “is appropriate throughout the Subregion wherever zoning permits this use, either by right or as a special exception use.” (p 38)

The Property is in the Watts Branch watershed, which, the Plan notes, has the subregion's most extensive collection of unique environmental features, including the Glen, northwest of this property's location.

The 2002 *Potomac Subregion Master Plan* recommends the preservation of existing forest on properties containing forested areas identified on Foldout Map F to maintain stream valley buffers with the clustering of homes away from sensitive areas. The forest on the north side of the property, labelled as Stand F-A (9.17 ac.) is delineated on Map F and classified as a high priority for preservation. The Applicant has no planting requirement under the Forest Conservation Law (Chapter 22A) but has proposed to provide supplemental planting, above and beyond the requirements of the Chapter 22A, for master plan conformance.

The proposed residential community will be the subject of a conditional use and is consistent with the Subregion Plan's statement on the appropriateness of senior housing throughout Potomac. It has been designed as a series of two to three-unit structures that will have the residential appearance of single-family dwellings; the number of buildings will be similar to the number allowed in a residential community under the RE-2 Zone. It will look like a residential neighborhood that would be proposed for a property of this size in Potomac.

Transportation

The proposed transportation facilities are safe and adequate for the proposed use and meet all applicable master plan requirements.

Master Planned Roads

The Subject Property fronts South Glen Road, identified as a country road with a 70 foot right-of-way in the Master Plan of Highways and Transitways. There are no master planned bike facilities planned or proposed on this section of South Glen Road.

Local Area Transportation Review (LATR)

The proposed residential care facility is composed of 74 independent living units and a combined 96 bed assisted living facility. This proposal replaces a former 95-student school. As noted in the Transportation Exemption Statement (Attachment 5), the replacement of the school with the proposed residential and assisted living uses results in a net reduction of 34 person trips in the AM peak hour and an increase of 30 net new person trips in the PM peak hour. As this is lower than the 50 peak-hour person trip threshold determined by the 2021 LATR guidelines, the application is exempt from additional review.

Site Access, Circulation and Parking

Ingress and egress from the subject property will occur from a single access point to South Glen Road, and a security gate will be constructed near this access point. A condition of approval is included to improve the residential character of the entrance by reducing the paved width to the minimum required for fire access.

As conditioned, a 6-foot-wide sidewalk is to be constructed along the frontage of South Glen Road to meet the requirements of the Complete Streets Design Guide. Additionally, a lead in-sidewalk is to be constructed from the entrance to connect to the internal pedestrian network.

Internal to the site, vehicular access will be provided by a shared driveway system, with one large loop towards the western front of the Subject Property, and a smaller loop in the eastern rear of the property serving the assisted living facilities. Sidewalks will be provided along the side of driveways fronting residential units. Sidewalks will also be constructed through the recreation spaces contained within in the larger loop. An inter-parcel sidewalk connection will be constructed to the neighboring religious institutional use to the south to provide pedestrian connectivity. A natural surface trail will be provided for recreation use along the south-eastern portion of the Property.

Parking for the independent senior dwellings will be contained in first-level accessible garages. Parking for the assisted living facility will primarily be provided in a garage contained within the building. A limited amount of additional surface parking facilities are proposed within and around the

rear driveway loop immediately fronting the facility. Parking meets all applicable requirements for the proposed uses.

Landscaping

Section 6.2.9.B. Parking Lot Requirements for Conditional Uses Requiring 5 to 9 Spaces

There are a total of five (5) small parking lots proposed on this site spread throughout the development. Each of these surface parking lots contains 5 to 8 parking spaces and meets or exceeds the requirements under Section 6.2.9.B of the Zoning Ordinance.

Section 6.2.9.C. Parking Lot Requirements for 10 or More Spaces

There are two parking lots of 10 or more spaces. The Applicant is proposing both surface and structured parking associated with the Lodge Building of the Residential Care Facility. There are twenty-seven (27) parking stalls located in surface parking and forty-one (41) ground-level garage parking stalls beneath the main level of the Lodge building located between the two residential buildings of the Lodge Facility. In addition, the Applicant is proposing a surface parking lot of 10 spaces in front of the gymnasium building (Figure 10).

The surface parking is located at the front of the Lodge Building and is in close proximity to the two main entries into the East and West Wings of the building. The 27 parking stalls are separated into two pods of eight parking stalls each between the two main entries to the Lodge. A pod of five parking stalls is located adjacent to the west entry to the Lodge and there are two pods of 3 parking stalls each located on either side of the building parking area.

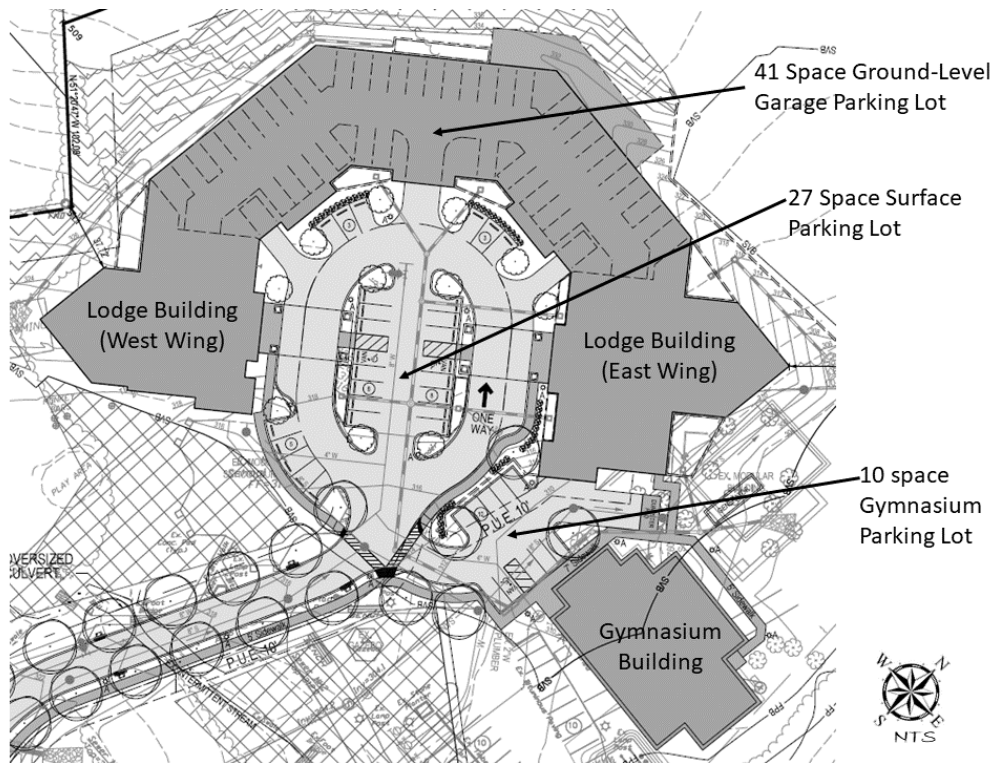


Figure 10: Parking

1. Landscaped Area

- a. 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.
- b. A maximum of 20 parking spaces may be located between islands.
- c. A landscaped area may be used for a stormwater management ESD facility.

The two surface parking lots associated with the Lodge Building and the gymnasium meet the requirements of Section 6.2.9.C.1 with having the necessary landscape islands of the appropriate size and location. The perimeter landscaping meets or exceeds the requirements under Section 6.2.9.C.

2. Tree Canopy

Each parking lot must 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.

The parking lot serving the existing gymnasium meets the requirements under Section 6.2.9.C.2. The parking lot serving the Lodge Building does not meet the requirements under Section 6.2.9.C.2. However, in this particular case a waiver from the tree canopy requirement under 6.2.10 would be appropriate.

Each pod of parking stalls has one understory tree on each end of the parking row, but the canopies are small and there is no canopy coverage within the parking area. Although the planting pits for this parking lot meet the size and location requirements under 6.2.9.C.1, these planting pits are small in size and may not have the soil volume to provide healthy support for an overstory canopy tree. A preferred soil volume for canopy trees in an urban setting is at least 1,000 cubic feet of soil volume to provide adequate space for the tree to reach a trunk diameter breast height of 16 inches. The current planting pits are measuring an average of about 150 square feet with an assumed maximum depth of 3 feet. This only provides a volume of approximately 450 cubic feet which is inadequate for large overstory trees. The suggested soil volume for a smaller understory tree is about 600 cubic feet and these planting pits could support the installation of understory trees.

Placing a larger species of tree in these planting pits and thereby increasing the canopy coverage would be problematic for the health of the tree in the long run. Altering the planting pits to increase volume creates some safety issues with older and/or handicapped individuals getting into and out of their vehicles and just generally moving around this area. So, the smaller planting pits with the planting of understory trees such as Dogwoods or Redbuds fits with this area. In addition, altering the size of the planting pits will impact the design and layout of the walkway around the parking closest to the main entry causing some pedestrian safety concerns.

Another Staff concern is the amount of potential sunlight that each planting pit will receive on a daily basis. Lodge Building is a 4-story structure with a 50-ft height creating a canyon environment which will reduce the amount of daily direct sunlight to the tree planting pits, so overstory trees may not receive adequate sunlight to maintain the health and vigor of the trees. Small understory trees are better suited for this area.

Based on these concerns, a waiver from Section 6.2.9.C.2 would be appropriate for these conditions.

3. Perimeter Planting

a. 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 parking lots serving both the main building and the gymnasium do not meet the perimeter planting requirements. However, in this particular case a waiver from the parking lot perimeter landscape planting requirement under Section 6.2.9.C.3 would be appropriate. The two surface parking lots are bordered by the Lodge Building and the existing gymnasium building from the southwest to the northeast and southeast directions (Figure 10). The south side of the parking lot is approximately 450-ft to the nearest property line to the south with existing vegetation, landscape

plantings and reforestation plantings between the parking lots and the neighboring residential lots. Furthermore, the main building is sunk into the ground and is positioned to minimize impacts to the environmental features on the Property. Additionally, the parking lots have been designed to minimize their footprint to the extent possible, while adequately serving the proposed uses and minimizing impacts to the environmental features on site.

Section 59-6.4.3: General Landscaping Requirements specifies and defines the types of plant materials, canopy trees, understory trees, and evergreen trees. In response to Staff's comments, the Applicant had submitted a Landscape Plan. The proposed landscaping satisfies the General Landscape Requirements as defined and specified under Section 59-6.4.3.

Lighting

Pursuant to Division 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.

The Lighting Plan is adequate and safe for vehicular, resident and employee movement and meets the requirements under Section 6.4.4.E. The proposed lighting serves multiple purposes, including illumination of the site entrance, visibility lighting along the internal roadways and parking areas. 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. 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. The lighting, with no direct light or light glare, will not have a negative impact on neighboring properties.

Screening

Section 6.5.2.B specifies, 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 landscaping meets or exceeds the requirements under Section 6.5.3.C.7 (Figure 11). The property is within a Residential Detached Zone, RE-2, 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 both the north, east and west of the property, the Applicant must ensure adequate screening in these directions under Section 6.5.3.C.7.

The Applicant proposes screening in these three directions comprised of afforestation plantings and existing forest along the northwest, north and northeast property lines, which is to be placed into a

Category I Conservation Easement. The Applicant proposes landscape buffer plantings along the west and east property lines. Along the west property line, the Applicant is using Option B of the landscape buffer and along the east property line the Applicant is using both Option A and Option B. The west and east landscape buffers meet or exceed the screening requirements under Section 6.5.3.C.7 of the zoning ordinance.

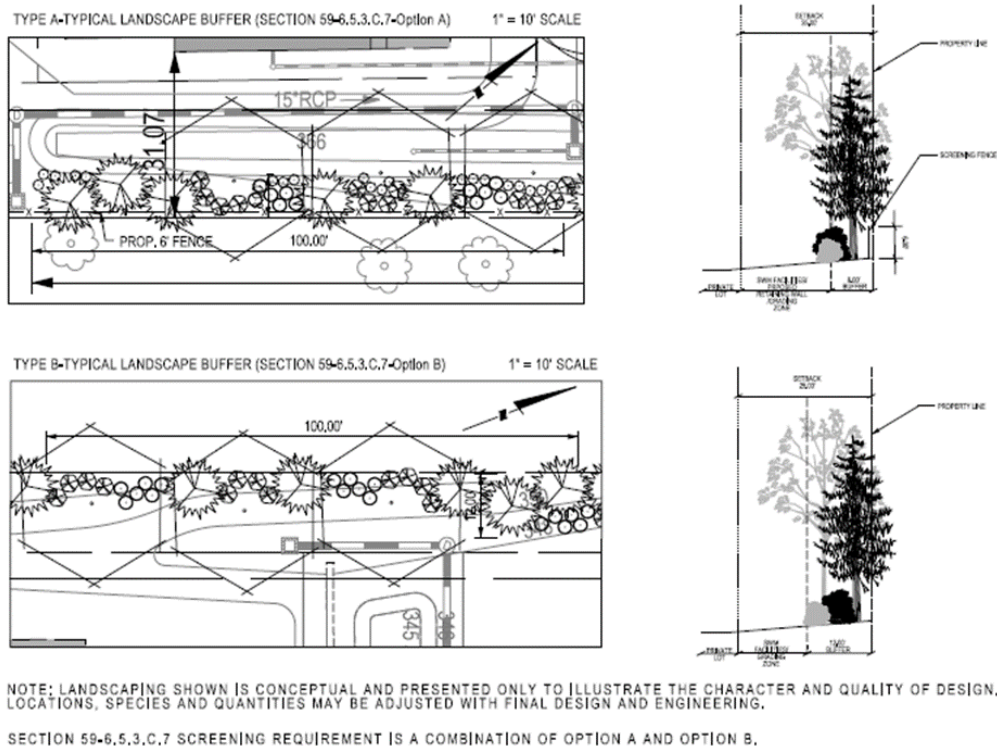


Figure 11: Screening

Signs

No signs are proposed at this time for the conditional use. As such, this standard is not applicable.

Environment and Forest Conservation

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(b) a person required by law to obtain approval of a special exception or a conditional use, or a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a).

Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) # 420182350 was approved for the Property on February 6, 2019. The Property is within the Watts Branch watershed, which is classified

by the State of Maryland as Use I-P watershed, and contains steep slopes, streams, wetlands, floodplains, and Environmental Buffers. There are large specimen trees distributed across the Property. The Property is not within Special Protection Area of Primary Management Area. The Preliminary Forest Conservation Plan (PFCP) submitted with this Application conforms with the Environmental Guidelines.

Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420202290 was approved for the Property on September 10, 2020. There is approximately 40.29 acres of existing forest on the property.

A Preliminary Forest Conservation Plan has been submitted for review. The project proposes to clear 2.81 acres existing forest. Based on the land use category and the forest conservation worksheet there is no planting requirement generated for the Application. The Applicant proposes to retain 8.78 acres of existing forest onsite. All forest saved as well as environmental buffers, except encroachments as shown on the FCP, will be protected in a Category I Conservation Easement.

The forest on the north side of the property, labelled as Stand F-A (9.17 ac.) is delineated on Map F and classified as a high priority for preservation. The Applicant has no planting requirement under the Forest Conservation Law (Chapter 22A) but has proposed to clear 0.20 acres of Stand F-A.

The FCP shows a total of 1.02 acres of SVB not being placed into Category I conservation easement that is necessary for driveway and sanitary line crossing, and the existing building and associated functional area.

The existing gymnasium building is within the SVB and is proposed to be retained and converted into a recreational amenity space for the community. The existing building and the ability to retain usage of the facility required that a portion of the SVB not be placed within a Category I conservation easement.

The Applicant has proposed to offset the SVB encroachment and clearing of part of Stand F-A by providing 2.29 acres of supplemental planting within the SVB. Retaining the building and converting it into a new use is a good example of adaptive reuse. This encroachment with the provided mitigation is acceptable.

Forest Conservation Variance

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone ("CRZ") requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition. An applicant for a variance must provide certain written

information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request

This Forest Conservation Plan variance request is for forty-two (42) on-site specimen trees to be removed, eleven (11) on-site to be impacted, and ten (10) off-site specimen trees being impacted by construction and demolition activities. The trees identified in this variance request for removal or CRZ impacts are shown on the Forest Conservation Plan. The trees to be removed are either located within the limits of disturbance or the LOD impacts to their critical root zone are too large to expect tree survival.

Table 3: Variance Trees to be Removed

Specimen Tree Removal								
Tree #	Forested Area	Common Name	Latin Name	DBH	CRZ	CRZ Impact	%CRZ Impact	Condition
127	x	Black Cherry	<i>Prunus serotina</i>	32	7235	2481	34%	Fair
128	x	Black Cherry	<i>Prunus serotina</i>	34	8167	8167	100%	Poor
129	x	Black Cherry	<i>Prunus serotina</i>	46	14950	8799	59%	Poor
136	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	39	10746	10683	99%	Good
137		Yellow Poplar	<i>Liriodendron tulipifera</i>	45	14307	14307	100%	Poor
138		Sycamore	<i>Platanus occidentalis</i>	39	10746	10746	100%	Poor
139	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	40	11304	11304	100%	Fair
140	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	38	10202	9325	91%	Excellent
141	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	32	7235	6017	83%	Good
146		Yellow Poplar	<i>Liriodendron tulipifera</i>	43	13063	13063	100%	Fair
147		Yellow Poplar	<i>Liriodendron tulipifera</i>	36	9156	9156	100%	Good
149		Elm	<i>Ulmus americana</i>	31	6789	5202	77%	Excellent
163		Black Locust	<i>Robinia pseudoacacia</i>	40	11304	11304	100%	Poor
166		Black Locust	<i>Robinia pseudoacacia</i>	33	7694	7694	100%	Poor
173	x	Box Elder	<i>Acer negundo</i>	33	7694	7694	100%	Poor
182	x	Box Elder	<i>Acer negundo</i>	30	6359	6359	100%	Fair
183	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	35	8655	8655	100%	Fair
184		Yellow Poplar	<i>Liriodendron tulipifera</i>	32	7235	7235	100%	Good
185		Yellow Poplar	<i>Liriodendron tulipifera</i>	34	8167	8167	100%	Good
186		Yellow Poplar	<i>Liriodendron tulipifera</i>	31	6789	6789	100%	Good
190		Yellow Poplar	<i>Liriodendron tulipifera</i>	38	10202	10202	100%	Fair
193		Yellow Poplar	<i>Liriodendron tulipifera</i>	32	7235	7235	100%	Excellent
197		Yellow Poplar	<i>Liriodendron tulipifera</i>	33	7694	7694	100%	Fair
198		Yellow Poplar	<i>Liriodendron tulipifera</i>	37	9672	9672	100%	Fair

201		Sycamore	<i>Platanus occidentalis</i>	42	12463	12463	100%	Fair
203		Yellow Poplar	<i>Liriodendron tulipifera</i>	38	10202	10202	100%	Poor
204		Yellow Poplar	<i>Liriodendron tulipifera</i>	34	8167	8167	100%	Good
208	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	32	7235	7235	100%	Poor
211	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	33	7694	7694	100%	Good
212	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	37	9672	9672	100%	Good
214	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	39	10746	10746	100%	Fair
215	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	37	9672	9672	100%	Fair
216	x	Yellow Poplar	<i>Liriodendron tulipifera</i>	34	8167	8167	100%	Poor
218		Red Maple	<i>Acer rubrum</i>	35	8655	8655	100%	Poor
223		Yellow Poplar	<i>Liriodendron tulipifera</i>	35	8655	8655	100%	Poor
224		Yellow Poplar	<i>Liriodendron tulipifera</i>	36	9156	9156	100%	Good
228		Red Maple	<i>Acer rubrum</i>	32	7235	7235	100%	Fair
229		Yellow Poplar	<i>Liriodendron tulipifera</i>	40	11304	11304	100%	Good
230	x	Sycamore	<i>Platanus occidentalis</i>	38	10202	4144	41%	Poor
245		White Oak	<i>Quercus alba</i>	65	29850	12294	41%	Fair
247		Yellow Poplar	<i>Liriodendron tulipifera</i>	38	10202	4510	44%	Poor
249		Red Maple	<i>Acer rubrum</i>	39	10746	4379	41%	Poor
Total Species Tree DBH To Be Removed:				938				

Table 4: Onsite Variance Trees Impacted (to be retained)

On-Site CRZ Impacts								
Tree #	Common Name	Latin Name	DBH	CRZ	CRZ Impact	%CRZ Impact	Condition	Save/Remove
108	Red Maple	<i>Acer rubrum</i>	32	7235	112	2%	Poor	Save
113	Yellow Poplar	<i>Liriodendron tulipifera</i>	33	7694	57	1%	Fair	Save
114	Yellow Poplar	<i>Liriodendron tulipifera</i>	50	17663	1991	11%	Good	Save
145	Sycamore	<i>Platanus occidentalis</i>	32	7235	1996	28%	Excellent	Save
151	Sycamore	<i>Platanus occidentalis</i>	66	30775	6916	22%	Good	Save
157	Sycamore	<i>Platanus occidentalis</i>	49	16963	4	0%	Good	Save
178	Black Cherry	<i>Prunus serotina</i>	30	6359	404	6%	Fair	Save
227	Yellow Poplar	<i>Liriodendron tulipifera</i>	32	7235	1801	25%	Poor	Save
232	Yellow Poplar	<i>Liriodendron tulipifera</i>	35	8655	2364	27%	Good	Save
244	Sycamore	<i>Platanus occidentalis</i>	43	13063	12	0%	Poor	Save
246	Black Walnut	<i>Juglans nigra</i>	30	6359	1372	22%	Good	Save

Table 5: Offsite Variance Trees Impacted (to be retained)

Off-Site CRZ Impacts								
Tree #	Common Name	Latin Name	DBH	CRZ	CRZ Impact	%CRZ Impact	Condition	Save/Remove
162	Sycamore	<i>Platanus occidentalis</i>	30	6359	894	14%	Fair	Save
167	Red Maple	<i>Acer rubrum</i>	38	10202	2729	27%	Fair	Save
168	Red Maple	<i>Acer rubrum</i>	37	9672	1065	11%	Fair	Save
171	Sycamore	<i>Platanus occidentalis</i>	36	9156	932	10%	Fair	Save
250	Northern Red Oak	<i>Quercus rubra</i>	38	10202	4667	46%	Fair	Save
252	Yellow Poplar	<i>Liriodendron tulipifera</i>	33	7694	3498	45%	Poor	Save
253	Elm	<i>Ulmus americana</i>	31	6789	2983	44%	Fair	Save
255	Northern Red Oak	<i>Quercus rubra</i>	50	17663	7131	40%	Poor	Save
256	Yellow Poplar	<i>Liriodendron tulipifera</i>	41	11876	4696	40%	Poor	Save
257	Yellow Poplar	<i>Liriodendron tulipifera</i>	30	6359	2320	36%	Fair	Save

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, there several special conditions peculiar to the Property which would cause unwarranted hardship, absent of a variance for removal of specimen trees.

Foremost, 12.73 acres of the 30.63-acre Property is covered by existing environmental features, accounting for 42% of the land area being forested. Additionally, the Property contains 10.25 acres of stream valley buffer, accounting for 33% of the land area; both forested and not forested. As such, existing specimen trees have grown throughout a large portion of the Property with little clustering. Without the removal of specimen trees, the proposed development would not be possible due to the scattered locations of these trees.

Furthermore, the rear of the Property contains Priority Forest (as identified by the Potomac Sub-region Master Plan), which limits clearing further limiting development and avoidance of specimen trees.

Also peculiar to this Property is the narrow boundary geometry toward the front of the site. To accommodate essential/required aspects of development - driveways, fire access, storm water management facilities and required utilities to serve the proposed development, it is necessary to remove the subject specimen trees.

Therefore, the Applicant has a sufficient unwarranted hardship to justify a variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, for a variance to be granted.

Variance Findings

1. Will not confer on the applicant a special privilege that would be denied to other applicants.

Granting the variance will not confer a special privilege on the Applicant as the removal and impacts of the trees is due to the location of the trees and necessary site design requirements unique to a cemetery use. The Applicant proposes removal of the three trees with mitigation. Therefore, granting of this variance is not a special privilege that would be denied to other applicants.

2. Is not based on conditions or circumstances which are the result of the actions by the applicant.

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this specific use.

3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. Will not violate State water quality standards or cause measurable degradation in water quality.

The variance will not violate State water quality standards or cause measurable degradation in water quality. The FCP proposes to provide mitigation for the removal of Protected Trees in the form of tree planting on the Property. These trees will replace any water quality functions that may be lost by the removed trees.

Mitigation for Trees Subject to the Variance Provision

Mitigation for Trees Subject to the Variance Provision – There are 53 trees impacted but treated as removed for purposes of mitigation in this variance request resulting in 938 inches of DBH removed. The Applicant proposes mitigation at a rate that approximates the form and function of the trees removed. These trees will be replaced at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 235 inches with the installation of 79 3-inch caliper trees. Although these trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replacing the

canopy lost by the removal of these trees. These mitigation trees must be overstory trees native to region. There is some disturbance within the critical root zones of 21 trees (11 onsite and 10 offsite); however, these trees will not be removed, it will receive adequate tree protection measures, the roots will regenerate, and the functions it currently provides will continue. Therefore, no mitigation is recommended for trees impacted but retained.

Variance Recommendation

Staff recommends the Planning Board approve the variance request.

CONCLUSION

The Preliminary Forest Conservation Plan meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this Staff Report.

Stormwater Management Concept

The Project will comply with the requirements of Chapter 19 of the Montgomery County Code. Applicable requirements under Chapter 19 are addressed in a Stormwater Management Concept Plan submitted to the Montgomery County Department of Permitting Services (DPS) for review. In connection with the proposed Project, on-site Environmental Site Design (ESD) facilities will be provided to effectively treat and reduce the stormwater runoff from the Property. A Stormwater Management Concept has been submitted for this Project. In accordance with 2010 MDE Stormwater Management Regulations, the Project will implement micro-scale ESD practices to the maximum extent practicable and will meet 100 percent of the ESD requirements (e.g., meet the target Pe treatment of 1.5 inches). An approved stormwater concept will be required as part of the preliminary plan review.

Community Concerns

Previous Comments on CU201909 Heritage Gardens

On November 8, 2018, the Applicant presented a preliminary version of the Project and its general composition and goals to five of the nine members of the executive committee of Congregation B'nai Tzedek. On November 8, 2018 and November 9, 2018, the Applicant held community meetings on-site in the School gymnasium. Additional meetings, phone calls, and emails were conducted on a neighbor-by-neighbor basis, as members of the community expressed an interest in gathering more information about Heritage Gardens and the subject Application. Upon completion of the neighborhood outreach phase, the Applicant contacted the West Montgomery County Citizens Association ("WMCCA"). On January 9, 2019, the Applicant presented the Project to WMCCA at its regularly scheduled meeting.

Staff, either directly or through the Hearing Examiner's Office, has received four letters of support for the Application. The general themes within these letters were:

- Senior Living is needed in Potomac.
- Senior Living and this design are better than other uses which may be allowed by right or other Conditional Uses.
- Potomac needs better options for residents to age in place.
- This application has significantly less impact than what the previously approved school would have had on the surrounding neighborhoods.

WMCCA and concerned neighbors requested a meeting with Staff to discuss their concerns on this Application. A meeting was held on August 27, 2019, the main issues raised during this meeting included:

- This Application does not comply with the Zoning Code (Chapter 59) does not meet definition of 3.3.2 Group Living.
- This Application uses a loophole in the Zoning Ordinance to create townhomes RE-2 zone.
- With restrictions on ownership to seniors or people with disabilities, and having 51 individual units, who is responsible for Conditional Use enforcement and how would it be enforced?
- Environmental concerns in regard to buildings and disturbance within environmental buffers and steep slopes.
- Removal of all existing structures from Environmental Buffers.
- Concern that while the Zoning Code requires 15 percent MPDUs and Department of Housing and Community Affairs required the Applicant to make an Alternate Payment instead of providing onsite units and that this payment does not guarantee any relief of affordable housing in the Potomac Subregion.

Due to the approximately four months between when Staff met with WMCCA and when the Planning Board public hearing was set, Staff reached out to WMCCA via email to ask if they would like to formalize their comments and submit something in writing for inclusion in the Staff Report. Ms. Susan Lee on behalf of WMCCA responded:

"Thanks so much for reaching out to us regarding possible additional comments from WMCCA. We provided extensive comments during our previous meeting with the staff. Many were consistent with the Development Review Committee notes and analysis. Our initial examination of the applicant's

revised application indicates that many of those same issues remain. Furthermore, we recently filed the attached Motion to Dismiss which, if granted by the Hearing Examiner, will be dispositive. As a result, we have no plans to submit additional comments at this time.”

The email chain and the CU2019-09 Motion to Dismiss can be located in Attachment 6.

As mentioned above, WMCCA on November 18, 2019 filed a Motion to Dismiss Application with the Office of Zoning and Administrative Hearings (OZAH). This request for dismissal claims the application does not meet the threshold test that constitutes a genuine “Independent Living Facility for Seniors”.

As of the posting date of this Staff Report the Hearing Examiner has not set a date for a hearing on this Motion. Any updates on the status of the motion and/or the Conditional Use will be presented to the Planning Board at the Planning Board Public Hearing. In reference to the environmental impacts associated with this Application, Staff has worked with the applicant to minimize new disturbances and remove most of the existing structures and impervious surfaces in the Environmental Buffers (EB). The existing multipurpose building which will be adapted into the new clubhouse is to remain. This structure spans the SVB line but does not impact the 100-year floodplain or the floodplain buffer. This structure was legally built and permitted, and the adaptive reuse of the building seemed reasonable with minimal new impact to the EB.

Additionally, there was some concern over the safety and stability of the steep slopes in the northwest portion of the Property. The Applicant has provided a geotechnical report from Hillis-Carnes and signed by a professional engineer dated September 19, 2019 (Attachment X) that concludes that is their professional opinion that the on-site soils are not classified as severe for erosion and the proposed development is considered feasible from geotechnical point of view. Staff has reviewed, accepted, and incorporated this report into the review and analysis of the project.

The MPDU requirement for this development is described in Section 3.3.2.C.2.c.iii of the Zoning Ordinance. Section 25A-5(l) of the County Code states: “The MPDU agreement must provide for any requirement of age-restricted MPDUs to be offered for sale to be satisfied by a payment to the Housing Initiative Fund under Section 25A-5A(b).” Because this is a for-sale age-restricted development, the applicant will be required to execute an Alternative Payment Agreement with DHCA in lieu of providing MPDUs on-site.

New Community Correspondence on CU202101 Heritage Potomac

As of the posting of the Staff Report Staff has not received new written comments on the application. However, based on phone calls with Civic Associations and Neighboring property owners the previous comments remain intact and new comments should be forthcoming prior to either the Planning Board Hearing or the Hearing Examiner’s Hearing.

SECTION IV: COMPLIANCE WITH NECESSARY FINDINGS

Section 59.7.3.1.E Conditional Use

E. Necessary Findings

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

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

Staff Response: This finding is satisfied. Applicable previous approvals include Special Exception Nos. 2502 (riding stable for up to 15 horses), 1609, and 1610. To the Applicant's knowledge, Special Exception Nos. 1609 and 1610 which permit the operation of a private educational institution – have not been revoked by the Board of Appeals. However, given that the Fourth Presbyterian School closed in 2014 and there has been no subsequent operation of a private educational institution on the Property since that time, this special exception use has been abandoned pursuant to Section 1.4.2 of the Zoning Ordinance and thus there is no conflict with any previous approval(s) on the subject site.

- b. *Satisfies the requirements of the zone, use standards under Article 59-3 (Uses and Use Standards), and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6 (General Development Requirements);*

Staff Response: This finding is satisfied. The Project satisfies applicable provisions under Article 59-3 (Uses and Use Standards) as shown in Section IV of this report. The Project satisfies applicable provisions under Article 59-6 (General Development Requirements) as shown in Section III of this report. Therefore, with the approved conditional use, this finding is satisfied.

- c. *Section 59.7.3.1.E.1.c: Substantially conforms with the recommendations of the applicable master plan.*

Staff Response: This finding is satisfied. As discussed in Section III.2 of this report, the Project substantially conforms with the recommendations of the *Potomac Subregion Master Plan*.

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

Staff Response: This finding is satisfied. This finding includes both Master Plan analysis and other compatibility considerations. The Master Plan issues have been discussed in the preceding section. The character of the surrounding area is residential, consisting of single-family attached and detached homes. The Project will not alter the character of the surrounding neighborhood in a manner inconsistent with the master plan because the use is residential in character and adequately buffered with landscaping, and sufficiently located away from any sensitive land uses or dwelling units. Staff concludes that the use will be harmonious with the surrounding uses.

- e. *Section 59.7.3.1.E.1.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 Response: This finding is satisfied. As discussed in Section III of this report, the Project substantially conforms to the policies and recommendations contained in the Master Plan. There are no residential areas that would be adversely affected or altered by the Project because the Project is a residential use and the site is sufficiently buffered and located away from existing residential neighborhoods. Furthermore, as discussed above in Section II, only one conditional use/special exceptions currently exist in the vicinity. As such, there would not be an overconcentration of conditional uses in the area.

- f. *Section 59.7.3.1.E.1.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 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 facilities, including schools, police and fire protection, water, sanitary sewer, public roads, or storm drainage; or*
- ii. *If a preliminary plan of subdivision 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.*

Staff Response: This finding is satisfied.

The Planning Board will be responsible for determining whether adequate public services and facilities ("APF") exist to support the proposed development of the Property and will be reviewed as part of a Preliminary Plan.

- g. *Section 59.7.3.1.E.1.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 lack of parking; or*
 - iii. *The health, safety or welfare of neighboring residents, visitors or employees.*

Staff Response: This finding is satisfied. The inherent physical and operational characteristics associated with an Residential Care Facility (greater than 16 persons) will not cause undue harm to the neighborhood.

The inherent characteristics include:

- Vehicle and pedestrian trips to and from the Property;
- Parking for residents and employees;
- Varied hours of operation;
- Noise or odors associated with vehicles;
- Noise or odors associated with trash collection and trucks;
- Emergency electrical generator; and
- Lighting.

These characteristics are inherent and typically associated with similar uses and do not exceed what is normally expected. Residential uses adjoining the Property to the north, west and south are well-buffered from the Project in distance, topography, and by the existing landscape.

There are no non-inherent adverse effects associated with the Conditional Use at the proposed location. The appropriate analysis, in this context, is whether there are facts and circumstances that indicate Heritage Gardens would have any adverse effects above and beyond those inherently associated with the use, irrespective of its location within the zone. In some situations, a use may create a non-inherent adverse effect because of situations unique to its physical location, operation or size of the proposal. However, with regard to this Conditional Use application, there are no such effects of the proposed Independent Living Community that would go above and beyond. The Project's building design, structural layout, and environmental protection measures were all carefully considered to minimize any impact to neighboring properties. As such, the Conditional Use will not cause undue harm to the Surrounding Neighborhood. There is no evidence that the Conditional Use will interfere with the use or enjoyment of the surrounding properties; result in undue traffic, noise, odors, dust, illumination, or a lack of parking; or interfere in any way with the health, safety, or welfare of neighboring residents, visitors, or employees.

With no non-inherent characteristics there would no effect with regard to inherent or non-inherent characteristics, or combination thereof, or in any of the following categories: the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood; traffic, noise, odors, dust, illumination or lack of parking; or the health, safety or welfare of neighboring residents, visitors or employees.

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.

Staff Response: This finding is satisfied. The structures will be constructed to ensure maximum compatibility with the Surrounding Neighborhood. The architectural features and layout of the duplex and triplex structures will blend in with the surrounding community. Aerial views demonstrate that the building footprints within the proposed Residential Care Facility are comparable in scale to that of the suburban neighborhoods within the surrounding community and most of the Potomac Subregion. Features such as attached garages with interior access to the unit, front yard landscaping, and pedestrian sidewalks will accentuate the residential character of the facility and distinguish Heritage Gardens from a traditional Residential Care Facility. The Property is the appropriate location for the proposed use; the Property's topography and existing tree coverage will provide for adequate buffering and screening from nearby properties. Ultimately, after it is fully constructed, Heritage Gardens will become part of the residential fabric of the Surrounding 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.*

Staff Response: Acknowledged by the Applicant.

4. *In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.*

Staff Response: This finding is not applicable. The Applicant does not propose an agricultural conditional use. The Project is a conditional use approval for an independent living facility for seniors or persons with disabilities.

5. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:*
 - i. *Filling Station;*
 - ii. *Light Vehicle Sales and Rental (Outdoor);*
 - iii. *Swimming Pool (Community); and*
 - iv. *the following Recreation and Entertainment Facility use: swimming pool, commercial.*

Staff Response: The finding is not applicable. The Project is a not a filling station, light vehicle sales and rental (outdoor), swimming pool (community); or a swimming pool, commercial. The Project is an independent living facility for seniors or persons with disabilities.

6. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:*
 - i. *Funeral Home; Undertaker;*
 - ii. *Hotel, Motel;*

- iii. *Shooting Range (Outdoor);*
- iv. *Drive-Thru*
- v. *Landfill, Incinerator, or Transfer Station; and*
- vi. *a Public Use Helipad, Heliport or a Public Use Helistop.*

Staff Response: This finding is not applicable. The Project is not a funeral home, undertaker, hotel, motel, shooting range (outdoor), drive-thru, landfill, incinerator, transfer station, public use helipad, heliport or a public use helistop. The Project is Residential Care Facility.

Section 59-3.3.2.E Conditions for Approval of a Residential Care Facility (over 16 persons)

2. Use Standards:¹

c. Residential Care Facility (Over 16 Persons)

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:

(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.

Heritage Potomac will provide three separate dining rooms (serviced by one shared kitchen) in the Lodge to accommodate the assisted living, memory care and independent living residents. Meeting and activity rooms will be located in the Lodge and the adjacent Heritage Fitness Center.

(b) A group home for children must provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children who will use the facility.

Not Applicable

(c) Where residential dwelling units are provided

(1) the maximum residential density per lot area is 15 units per acre or the maximum density allowed in the zone, whichever is greater; and

(2) the minimum green area is 50%.

Pursuant to this provision and based on the 30.6-acre Property, the maximum allowable number of residential dwelling units at Heritage Potomac is 459 units. Heritage Potomac, with a total of 74 independent dwelling units, does not approach this maximum allowance.

¹ Pursuant to Sec. 59-3.3.2.E, where a conditional use for an Residential Care Facility is allowed, findings for limited use standards and conditional use standards are required.

The green area proposed at Heritage Potomac is 75 percent, well in excess of the 50 percent minimum.

(d) Where facility size is based on the number of beds, not dwelling units, the following lot area is required:

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

(A) in RE-2, RE-2C, RE-1, and R-200 zone: 1,200 square feet per bed;

Heritage Potomac includes 73 Assisted Living and Memory Care units, containing a total of 96 beds. These units do not meet the definition of a dwelling unit and thus the density is appropriately evaluated under this provision. Based on the provision of 96 beds, 115,200 square feet of land area (2.64 acres) is required.¹⁴ The Property is 30.6 acres in size.

(e) Principal building setbacks for all building types must meet the minimum setbacks required under the standard method of development for the subject building type in the R-30 zone (see Section 4.4.14.B.3, Placement).

The Project is proposed as a campus setting on one record lot. Given that there are no internal lot lines, this provision is not applicable.

(f) The minimum side setback is 20 feet to abutting lots not included in the application.

The minimum side setback is 20 feet. In the proposed layout, all buildings are set back at least 30 feet from the side lot lines.

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

The Applicant will execute an Alternative MPDU Payment Agreement to satisfy its MPDU obligation. Pursuant to Section 25A-5A of the Montgomery County Code, the Applicant must satisfy its MPDU obligation as it relates to the Cottage Units by making payments to the Housing Initiative Fund ("HIF"). The Applicant's anticipated HIF contribution attributable to the Cottage Units will amount to approximately \$2,000,000 which reflects a substantial public benefit. The Applicant's MPDU obligation with respect to the remaining rental independent living units will comply with the MPDU requirements of County Code Chapter 25A. The Applicant will memorialize this HIF commitment through an MPDU agreement with DCHA, which will ultimately determine the best use of the Applicant's contribution.

(h) In a Continuing Care Retirement Community and a Senior Care Community, occupancy of any independent dwelling unit is restricted to persons 62 years of age or older, with the following exceptions:

(1) the spouse of a resident, regardless of age;

(2) another relative of a resident, 50 years of age and older;

(3) the resident widow, widower, or other surviving relative of a resident who dies while residing at the Continuing Care Retirement Community or the Senior Care Community is allowed to remain, even though the resident widow, widower, or other surviving relative has not reached the age of 62.

A minimum of 80% of the dwelling units must be occupied by at least one person per unit who is 55 years of age or older.

The Project will comply with these age restrictions.

(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.

The heights of the buildings that will comprise the Residential Care Facility are compatible with the residential character of the Surrounding Neighborhood. The Cottage Units will be approximately 40 feet in height; well below the 50 feet allowed for a single-family residence in the RE-2 zone. This lower height is atypical. The maximum height of the Lodge will be 50 feet. Critically however, the Lodge is strategically located in that area of the Property with the lowest elevation. As a result, the height of the Lodge will be lower than the height of the surrounding residential properties to the west. Moreover, the Lodge is nestled into the hill and thus its western elevation will read as having a height of only approximately 40 feet. The overall density of the Project is overwhelmingly lower than the maximum density allowed by the Conditional Use – 16 percent of the allowable independent living density (74 units versus 459 units) and 10 percent of the allowable bed density (96 versus 929). Most of the parking in the Project is concealed either in garages attached to each Cottage Unit or located under the Lodge. The surface parking located proximate to the Lodge is not visible to anyone off-site given the configuration of the Lodge. In this manner, the parking is compatible with the surrounding area.

(j) In the AR zone, this use may be prohibited under Section [3.1.5](#), Transferable Development Rights.

SECTION V: CONCLUSION

The proposed Residential Care Facility (greater than 16 persons), as recommended in Section I of this report, satisfies all applicable requirements for the approval of a conditional use as specified in the Montgomery County Zoning Ordinance and is consistent with the recommendations of the 2002 Potomac Subregion Master Plan. There are no known unacceptable land use impacts associated with the Project as submitted by the Applicant and as recommended by staff.

Attachments

1. Applicant's conditional use site plan
2. Applicant's landscape plan
3. Applicant's Land Use Report
4. Submitted Preliminary Forest Conservation Plan
5. Applicant's Transportation Impact Statement
6. Citizen Correspondence