



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUL 29 2021

MCPB No. 21-080
Preliminary Plan No. 120210190
9545 River Road
Date of Hearing: July 22, 2021

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on March 21, 2021, Spectrum Retirement Communities, LLC (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 5.93 acres of land in the RE-2 zone, located on River Road, 1,200 feet southeast of Persimmon Tree Road (“Subject Property”), in the Potomac Policy Area and 2002 *Approved and Adopted Potomac Subregion Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120210190, 9545 River Road (“Preliminary Plan” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 9, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 22, 2021, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120210190 to create one lot on the Subject Property, subject to the

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Approved as to
Legal Sufficiency: /s/ Matthew T. Mills
M-NCPPC Legal Department

following conditions:¹

General Approval

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

¹ For the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

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 the 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.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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 approved 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.

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

Development Standards	Zoning Ordinance	Approved CU 20-05	Approved
Minimum Lot Area:	2.00 acres (87,120 SF)	5.04 acres (219,757 SF)	5.04 acres (219,757 SF)
- Gross Tract Area		5.93 acres (258,226 SF)	5.93 acres (258,226 SF)
- Dedication Area (River Road)		0.88 acres (38,469 SF)	0.88 acres (38,469 SF)
- Net Lot Area		5.04 acres (+/-) (219,757 SF)	5.04 acres (+/-) (219,757 SF)
Density:			
- Maximum number of beds (219,757 SF lot)	183 beds	130 beds / 100 units	130 beds / 100 units
- Minimum SF / bed	1,200 SF	1,690 SF	1,690 SF
- Minimum total SF (130 beds x 1,200 SF)	156,00 SF	219,757 SF	219,757 SF
Minimum Lot Width:			
- At front building line	150 ft.	650 ft.	650 ft.
- At front lot line	25 ft.	645 ft.	645 ft.
Maximum Lot Coverage	25 percent	25 percent	25 percent
Minimum Building Setback Principal Building:			
- Front	50 ft.	50 ft.	50 ft.
- Side			
- One side	17 ft.	80 ft. / 88 ft.	80 ft. / 88 ft.
- Sum of both sides	35 ft.	168 ft.	168 ft.
- Rear yard	35 ft.	45 ft.	45 ft.
Maximum Building Height	50 ft.	40 ft.	40 ft.
Parking: 59-6.2.4.B and C			
Minimum Vehicle Parking Spaces			
0.25 sp / bed (130 beds)	33 spaces	-	-
0.50 sp / employee (42 max.)	21 spaces	-	-
TOTAL	54 spaces	85 spaces	85 spaces
Standard (Garage)	-	69 spaces	69 spaces
Standard (Surface)	-	16 spaces (8 Std. + 8 H.C. Access.)	16 spaces (8 Std. + 8 H.C. Access.)

Handicap Accessible Regular (H.C. Access.)	3 spaces	8 spaces	8 spaces
Van (H.C. Access.)	-	4 spaces	4 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.*

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 the 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.

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 with respect to 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 approved development by this Preliminary Plan. The Applicant is not required to submit a traffic study to satisfy the LATR test because the approved 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 approved 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. 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.

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.

Private Transportation infrastructure

Vehicular access to the Property will be from River Road (MD 190). As approved, 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 will run from the shared-use path directly to the main building entrance, then continue 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 approved, is safe and adequate for the use approved. 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 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 approved 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
Existing (Credit) Nurse-y (ITE-817*)	17,489 SF	21	21	42	60	61	121
Approved: Assisted Living (ITE-254*)	130 Beds	16	9	25	13	21	34
Net New Vehicle Trips (reduction)		(5)	(12)	(17)	(47)	(40)	(87)
Total Peak Hour Person Trips (reduction)				(21)			(115)

**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 approved 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 approved 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.

- The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

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 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, along 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 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.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration 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 must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 29 2021 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, July 22, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board