

Montgomery Planning

1910 UNIVERSITY BOULEVARD WEST
CONDITIONAL USE CU202204
PRELIMINARY FOREST CONSERVATION PLAN CU202204



Description

Request for conditional use approval of an affordable, 90-unit Independent Living Facility for Seniors and the associated Preliminary Forest Conservation Plan.

No. CU202204

Completed: 8-29-2022

MCPB

Item No.
9-8-2022

Montgomery County
Planning Board
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Wheaton, MD 20902

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LOCATION/ADDRESS

1910 University Boulevard, West

MASTER PLAN

2012 Wheaton CBD and Vicinity Sector Plan

ZONE

R-60

PROPERTY SIZE

3.56-acre tract area

APPLICANT

1910 University, LLC

ACCEPTANCE DATE

9/7/21

REVIEW BASIS

Chapters 22A, 59



Summary:

- Staff recommends approval with conditions of the Conditional Use Application and transmittal of the recommendation to the Hearing Examiner for a September 30, 2022 hearing.
- Staff recommends approval with conditions of the Preliminary Forest Conservation Application.
- Staff recommends approval of a Joint Use Agreement to allow parking spaces for the Independent Living Facility for Seniors to be provided off-site on the Synagogue property, a waiver of the side parking setback requirement along the southeastern side of the parking lot, and alternative compliance to allow additional illumination along the pedestrian connection.
- The proposed use will provide additional housing choices in Wheaton. At least 90% of the units will be income restricted, with a minimum 30% MPDUs.
- The site design provides a pedestrian through-block connection between University Boulevard and Reedie Drive along the west side of the proposed building.
- Staff has received no correspondence about the Subject Applications as of the date of this Staff report.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

CONDITIONAL USE CU 202204

Staff recommends approval of conditional use application CU202204 with the following conditions:

1. The conditional use is limited to a 90-unit Independent Living Facility for Seniors.
2. Thirty percent of the dwelling units must be reserved for households of Moderately Priced Dwelling Unit (MPDU) income.
3. Ninety percent of the dwelling units must be income restricted.
4. A maximum of three employees may be onsite at any one time.
5. The Independent Living Facility is subject to a Joint Use Parking agreement. Prior to Certification of the Preliminary Plan of Subdivision, the parties to the Joint Use Parking Agreement must execute that document, record it among the Land Records of Montgomery County and provide a copy of the executed and recorded agreement to the Planning Department and to the Office of Zoning and Administrative Hearings.

PRELIMINARY FOREST CONSERVATION PLAN CU202204

Staff recommends approval with conditions of the Preliminary Forest Conservation Plan. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions:

1. The Final Forest Conservation Plan must be consistent with the Preliminary Forest Conservation Plan.
2. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the required mitigation trees credited toward meeting the requirements of the FCP.
3. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must execute 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 variance tree mitigation plantings.
4. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 84 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.

SECTION 2: SITE DESCRIPTION

VICINITY/NEIGHBORHOOD

The vicinity surrounding the Property is primarily residential, consisting of detached homes in the R-60 zone and townhomes in the PD zone. Wheaton Forest Park is located a few blocks south of the Property along University Boulevard. The WTOP building and radio towers are located northwest of the Property, across University Boulevard.

Staff accepts the Applicant's delineation of the Neighborhood for purposes of assessing compatibility (Figure 1). The Neighborhood is generally bound by Dayton Street to the south, Dodson Lane to the west, the rear lot lines of houses along Blueridge Avenue to the north, and Westchester Drive to the east. With the exception of the Subject Property, the Neighborhood is all residential, consisting of detached houses and townhouses. There is a Special Exception approval for a non-resident medical practitioner, CBA2994, in the detached house located at 11128 Norlee Drive.



Figure 1: Vicinity/Staff-Defined Neighborhood

PROPERTY DESCRIPTION

The Subject Property consists of a 1.31-acre unplatted parcel, and the 1.91-acre platted Parcel B shown on Plat 15759, both in the R-60 Zone. Parcel B contains the Har Tzeon-Agudath Achim Synagogue (“HTTA” or “Synagogue”) and an associated surface parking lot. The unplatted parcel is improved with a former residence, currently being used as a food pantry by HTTA, a playground, and an additional surface parking lot. Wooden fencing separates the Property from the adjacent detached houses.

There are no wetlands, intermittent or perennial streams on the Property. No known rare, threatened, or endangered species exist on the property and there are no designated historic sites on or near the property. In addition, there is no forest and there are no champion trees on the site. The Property generally slopes down from north to south.

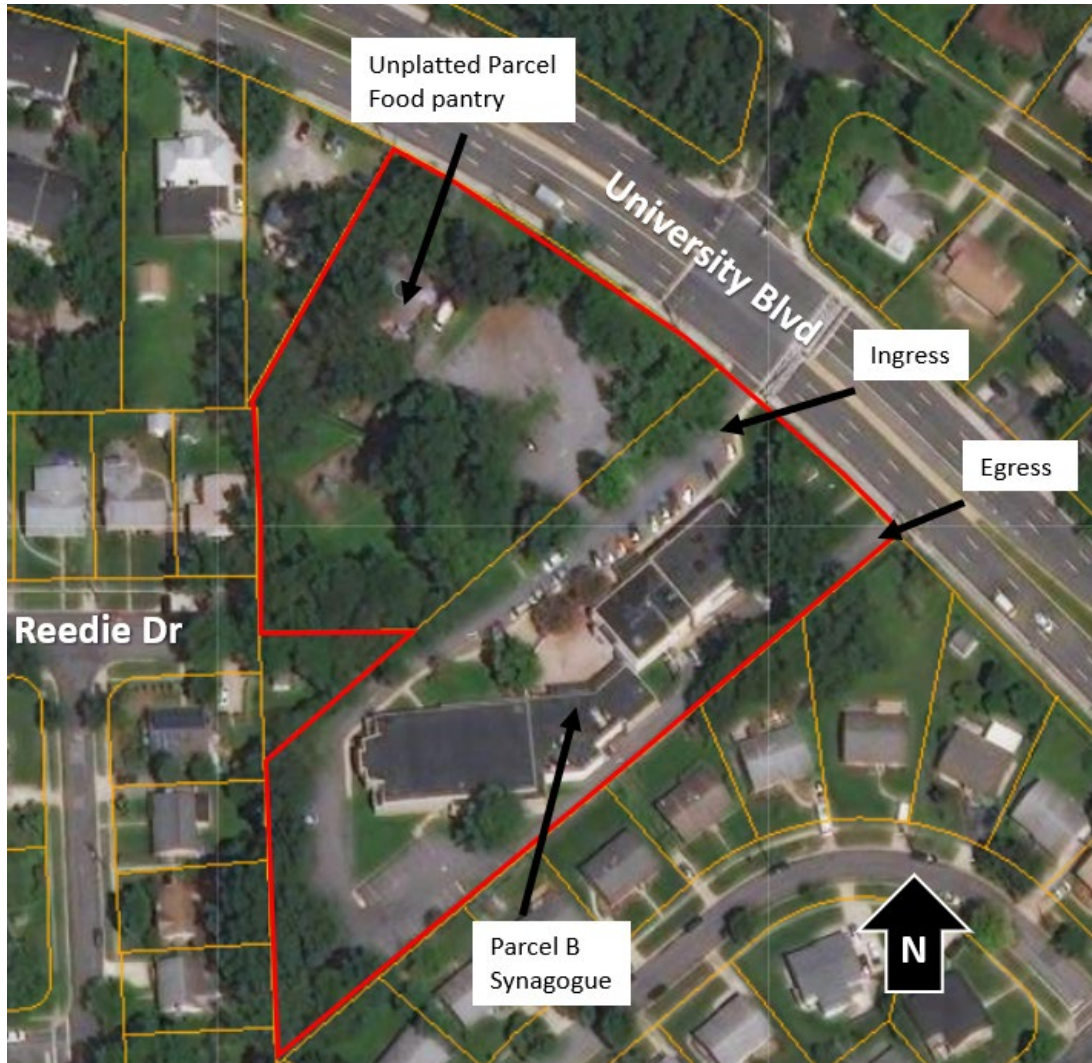


Figure 2: Subject Property (Outlined in Red)

SECTION 3: PROJECT DESCRIPTION

PROPOSAL

The Applicant, 1910 University, LLC, proposes to subdivide the Property into two lots and redevelop the northern lot with a 90-unit independent living facility for seniors (“Senior Building”) that is the subject of the conditional use application. The proposed Senior Building is 98,000 square feet and contains one- and two-bedroom units. All of the units will be for individuals 62 years of age or older (at least one individual in a household must be 62 or older) and 90% of the units will be income restricted. Thirty percent of the proposed units will be permanently reserved as MPDUs.

The Synagogue on the proposed southern lot will be retained. The Synagogue will be reduced to 22,000 square feet, with a seating capacity of 200, after demolition of a portion of the building.

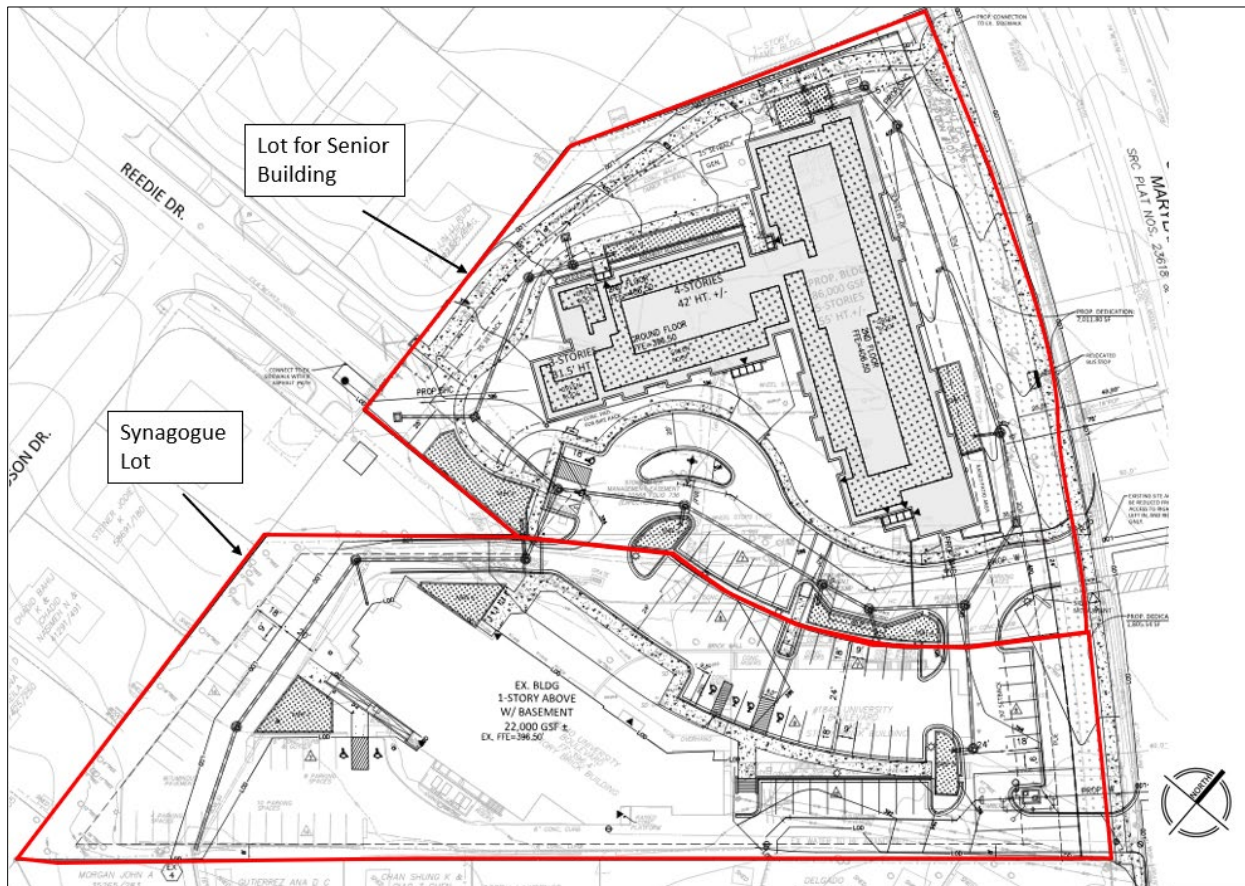


Figure 3: Proposed Subdivision

The proposed Senior Building is T-shaped, with the top of the “T” fronting on University Boulevard and the bottom of the “T” facing the adjacent residential neighborhood along Reedie Drive. The University Boulevard façade (the top of the “T”) is the tallest portion of the Senior Building at five stories (a maximum of 50 feet). However, due to the Property’s topography, the bottom floor of the building will be mostly buried along the University Boulevard façade and the building will appear as

four stories from University Boulevard. From the neighborhood along Reedie Drive, all five stories are visible, but the building steps down to four stories, and then to three stories closer to the adjacent neighborhood along Reedie Drive.

Building materials include dark red and buff colored brick and gray siding. Screened mechanical units are located on the roof of the building. New fencing will be installed along the western side of the building, where the Senior Building lot abuts lots that contain existing detached houses. Landscaping is proposed on all sides of the buildings, with new board-on-board wood fencing proposed between the Senior Building and the adjacent detached houses.

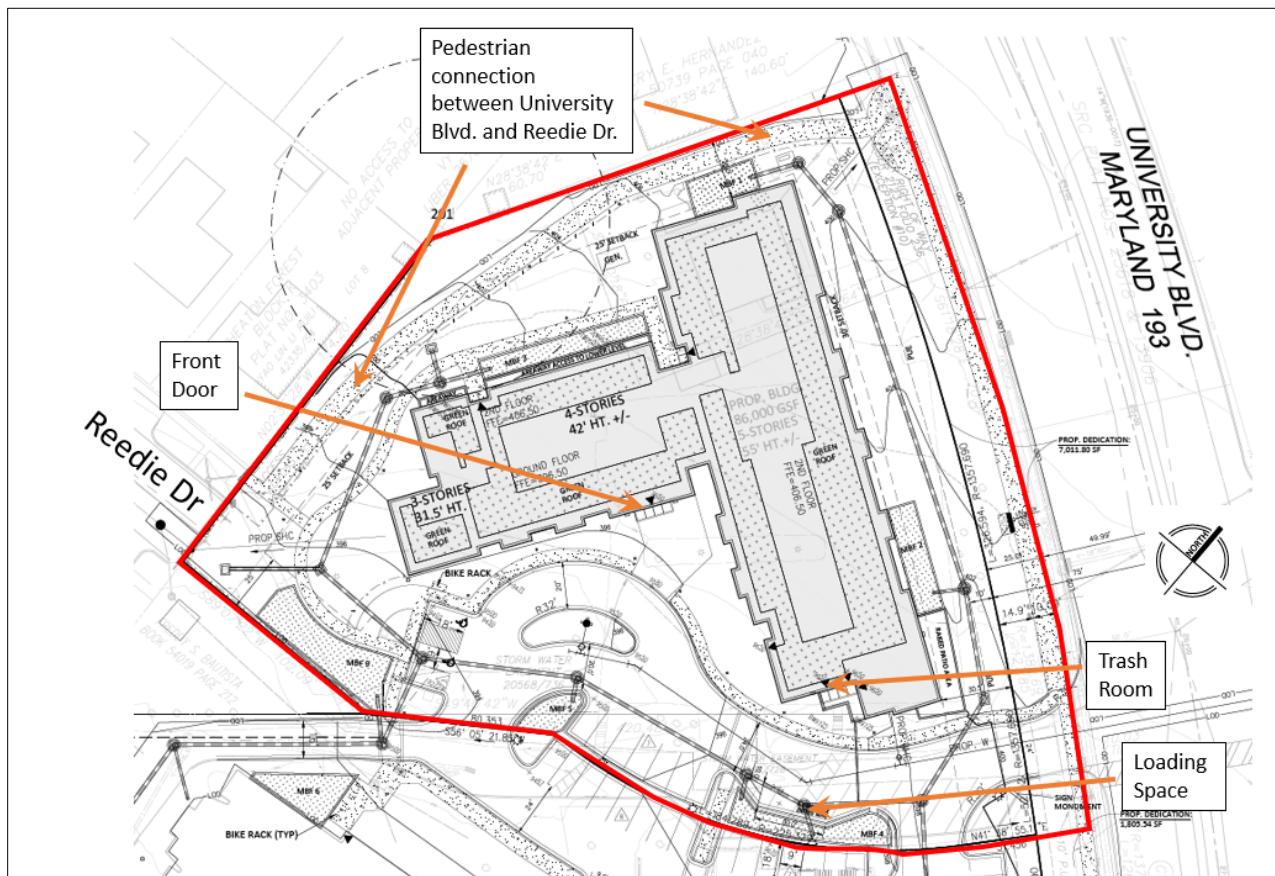


Figure 4: Conditional Use Site Plan

The Senior Building will be staffed with three employees on weekdays between 8:30 a.m. and 5:00 p.m. On-site staff include a property manager, a maintenance technician and a porter. As conditioned, the Senior Building will be limited to three (3) staff persons on-site at any time. An emergency call system will be implemented during the hours that staff is not on-site.

A proposed four-foot-high and ten-foot-wide ground mounted monument sign, with the name of the Senior Building, is located at the entrance driveway. The proposed lot with the Senior Building includes over 50% green area, with sidewalks and landscaping around all sides of the building.



Figure 5: Proposed signage



Figure 6: Exterior Elevations



Figure 7: Green Area

Circulation and Access

The Applicant plans to retain the two existing driveways on the Overall Property (Figure 8). One driveway, located on the proposed lot for the Senior Building, sits at the signalized terminus of Reddie Drive and University Boulevard. The driveway provides vehicular ingress and egress for both the proposed Senior Building and the Synagogue. Due to the unusual geometry of this intersection, egress from this driveway is limited to right-turns only. Two proposed internal driveways connect the surface parking lots for the Senior Building and the Synagogue and allow circulation around both properties. A second existing driveway, located on the proposed HTTA lot, allows exit only right-turns (ingress is not allowed) in the existing condition and will be retained without modification.

The Applicant proposes to replace the existing, unbuffered sidewalk along the Property's University Boulevard frontage with a 10-foot-wide sidewalk buffered with trees planted in a lawn panel. A five-foot-wide walkway will connect the Senior Building main entrance with the University Boulevard sidewalk.

A pedestrian through-block connection along the west side of the building is proposed between University Boulevard and the terminus of Reedie Drive. The pedestrian connection includes landscaping and lighting, with a wide planting area where the walkway connects with the University Boulevard sidewalk. Chain-link fencing and landscaping will provide physical separation between the pedestrian walkway and the Senior Building to address the Applicant's security concerns while allowing visibility between the Senior Building and the walkway.

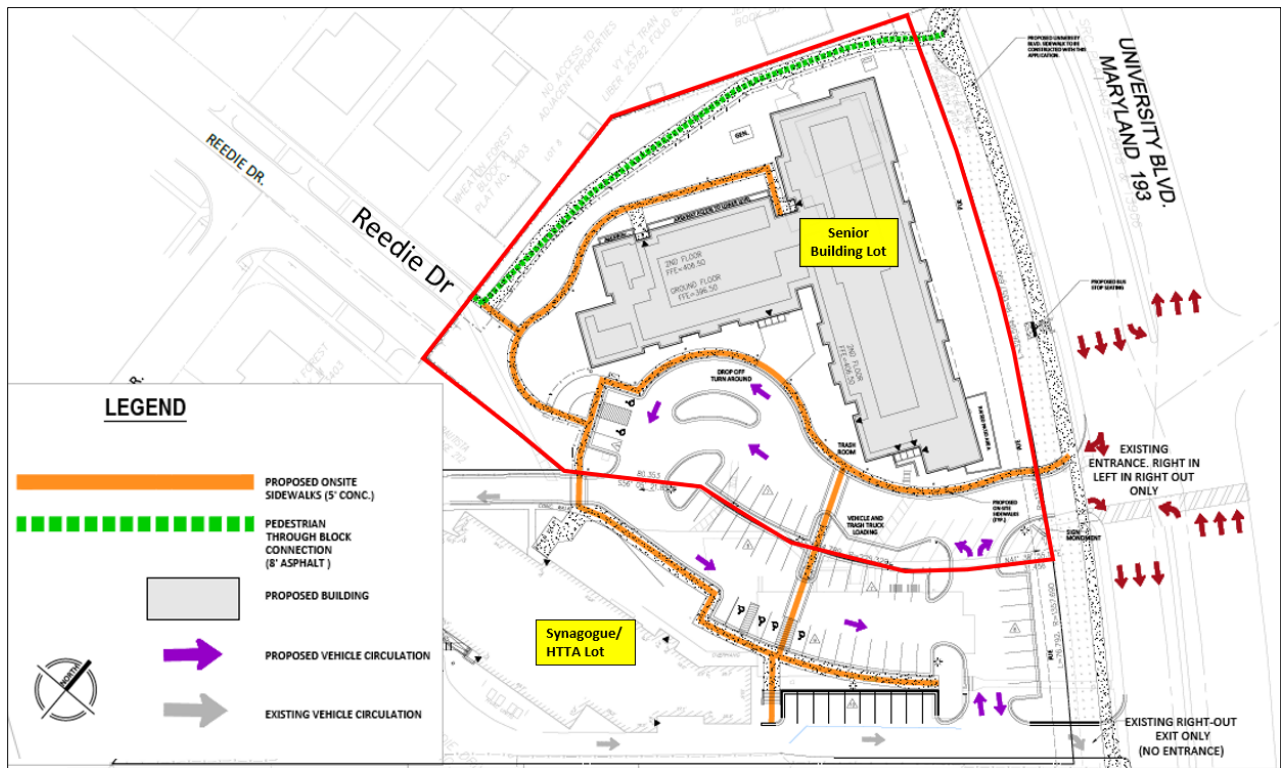


Figure 8: Circulation Plan (Senior Building Lot outlined in red)

Trash pick-up will be accommodated through the vehicular access located off the drive aisle, where trash will be wheeled out of the building for pick-up, with an expected frequency of twice per week. A loading area is located off of the proposed internal driveway loop, southeast of the proposed Senior Building.

Parking

The proposed lot with the Senior Building contains ten vehicle parking spaces. The Applicant plans to formalize a joint use agreement to provide the remainder of the required vehicle parking spaces on the Synagogue parking lot. Subsequent to demolition of a portion of the existing Synagogue, additional parking spaces will be added to the HTTA lot, for a total of 93 vehicle parking spaces between both lots. The Applicant proposes a 24-foot-wide drive aisle to allow for two-way circulation, which is adequate for standard passenger vehicles.

A bicycle room located on the ground floor of the Senior Building is proposed to provide long-term bicycle parking spaces. The proposed short-term bicycle parking space is located adjacent to the main entrance.

SECTION 4: CONDITIONAL USE CU 202204 FINDINGS AND ANALYSIS

LIMITED USE STANDARDS

Section 59-3.3.2.C.2.a

Where an Independent Living Facility for Seniors is allowed as a limited use, it must satisfy the following standards:

- 1. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.**

The Applicant acknowledges this requirement.

- 2. Resident staff necessary for the operation of the facility are allowed to live on-site.**

The proposed Independent Living Facility will not have resident staff that live on-site.

- 3. Occupancy of a dwelling unit is restricted to the following:**
 - a) a senior adult, as defined in Section 1.4.2, Defined Terms;**
 - b) other members of the household of a senior adult, regardless of age; a resident care-giver, if needed to assist a senior resident; or**
 - c) a person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist seniors as defined in that program.**
 - d) If imposing age restrictions that would limit occupancy otherwise allowed by this Subsection, the facility must only impose age restrictions that satisfy at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, as amended, or the state Fair Housing Act, Subtitle 7 of Title 20 of the Annotated Code of Maryland, State Government Article, as amended.**

Dwelling units will be required to have at least one individual in a household who is 62 or older.

CONDITIONAL USE STANDARDS

Section 59-3.3.2.C.2.c

Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1, Conditional Use, and the following standards:

- 1. The site or the proposed facility has adequate accessibility to or provides on-site public transportation, medical service, shopping areas, recreation and other community services frequently desired by senior adults or persons with disabilities. The application must include a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.**

The Property is served by Ride On and WMATA, with an existing bus stop located along the Property's University Boulevard frontage. The Property is also within a 1/3 mile of the Wheaton Metrorail Station, located to the west along Reddie Drive. The nearest public transit routes are as follows:

- Ride On route 7 operates along Reddie Drive and University Boulevard, providing service between the Wheaton CBD, Inwood Avenue, and the Wheaton and Forest Glen Metrorail stations.
- Ride On route 8 operates along University Boulevard, providing service to the Wheaton CBD, Holy Cross Hospital, the Silver Spring CBD, and the Wheaton, Forest Glen, and Silver Spring Metrorail stations.
- Metrobus route C2 operates along University Boulevard, providing service to the Wheaton CBD, Four Corners, Langley Park, the US 29 Flash Route, the University of Maryland, and the Wheaton and Greenbelt Metrorail stations.
- Metrobus route C4 operates along University Boulevard, providing service to the Wheaton CBD, Four Corners, Langley Park, the US 29 Flash Route, and the Wheaton and Prince George's Plaza Metrorail stations.

Additionally, the future University Boulevard Transitway is planned along this segment of University Boulevard. A bus rapid transit (BRT) station is planned at the University Boulevard-Amherst Avenue intersection, less than a 1/4 mile west of the Subject Property.

Westfield Wheaton Mall and the shops and businesses of downtown Wheaton are less than one mile away. A Giant Food grocery store is located at the Westfield Wheaton complex and the Property is 1/2 mile from a Safeway on Georgia Avenue.

Wheaton Veteran's Urban Park and Wheaton Local Forest Park are within 1/2 mile from the Property and Sligo Creek Park is approximately 3 miles away on foot. The Wheaton Library and Recreation Center is less than a mile away.

In terms of medical services, the Property is located 2.5 miles away from Holy Cross Hospital. Holy Cross includes the region's only Seniors Emergency Center, which caters to the needs of seniors with specialized surgical and inpatient services in addition to healthy-aging programs. Other medical services in the area include University Medical Care, Mary's Center and Righttime Medical Care, all of which are within 2.5 miles of the Property.

The Conditional Use Application includes a vicinity map showing required services and facilities within a one-mile radius of the Property.

- 2. The Hearing Examiner may restrict the availability of ancillary services to nonresidents and specify the manner in which this is publicized. Retail facilities may be included for the exclusive use of the residents of the building.***

There are no ancillary services or retail facilities proposed with this application.

- 3. A minimum of 15% of the dwelling units is permanently reserved for households of very low income, or 20% for households of low income, or 30% for households of MPDU income, and otherwise satisfies Chapter 25A. 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 under Executive regulations. Income levels are defined in Section 1.4.2, Defined Terms.**

Thirty percent (30%) of the dwelling units will be permanently reserved for households of MPDU income.

- 4. The maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is the height of the applied-for building type in the underlying zone under the standard method of development, except for the apartment building type which may be up to 60 feet. If a particular building type is not allowed under the standard method of development, the maximum height is the height of a Conditional Use in the underlying zone. The maximum density is determined by the Hearing Examiner under the development standards of Section 3.3.2.C.2.c.vi through Section 3.3.2.C.2.c.ix, without regard to any other limitation in this Chapter.**

The height of the proposed Senior Building is 50 feet, which is below the 60-foot maximum for apartment building type. The height and density are appropriate for this location given the Property's location on a major transportation corridor and the proximity to transit, commercial and medical services.

- 5. Height, density, coverage, and parking must be compatible with surrounding uses and the Hearing Examiner may modify height, density, coverage, and parking to maximize the compatibility of buildings with the residential character of the surrounding neighborhood.**

The proposed building and associated parking are compatible with the residential character of the surrounding neighborhood. The maximum height of the building is 50 feet (five stories), with the tallest portion of the building along University Boulevard. Due to the topography of the site, the first story of the building is mostly hidden from view along University Boulevard and the front of the building appears to be four stories. The rear (Reedie Avenue) side of the building steps down from five stories to three stories abutting the residential neighborhood to the west.

The majority of parking for the Senior Building is provided on HTTA's property, with only ten parking spaces proposed on the same lot as the Senior Building. Given the location of the Senior Building, fronting on University Boulevard, the density and coverage is appropriate, with compatible transitions to the surrounding residential uses.

- 6. The minimum front setback to the street for a lot abutting a property not included in the application is equal to the front setback for a detached house in the underlying zone under**

the standard method of development. Except for an access driveway, this front setback area must be maintained as green area.

The minimum required front setback for a detached house in the R-60 Zone under the standard method of development is 25 feet. The proposed building is set back 30 feet from University Boulevard and the front setback area is proposed as green area.

7. The minimum side and rear setback is 25 feet to abutting lots not included in the application.

The proposed side and rear setbacks are 25 feet.

8. The minimum green area is 50%.

The proposed green area is 52.8% of the Property.

9. 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).

Table 1: Principal Building Setbacks for R-30 Zone, Section 59-4.4.14.B.3

Principal Building Setback (min)	R-30 Zone, Apartment Building	Proposed Building
Front setback, public street	30 ft	30 ft
Side and rear setback, abutting Residential Detached Zones	Section 4.1.8.A ¹	25 ² ft
¹ Section 4.1.8.A does not apply because the Conditional Use Property is in a Residential Detached Zone. ² As required by Section 59-3.3.2.C.2.b.9.		

CONDITIONAL USE FINDINGS

Section 59-7.3.1.E¹

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;

There are no applicable previous approvals on the Site.

¹ The findings in Section 59-7.3.1.E.4 through Section 59-7.3.1.E.6 are not applicable to this application and are not included in this report.

b) satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

i. Use Standards

The limited and conditional use standards for an Independent Living Facility for Seniors are addressed on page 14 of this report.

ii. Development Standards

The proposed development satisfies the development standards for an Independent Living Facility for Seniors as demonstrated in Table 2.

Table 2: Development Standards for Independent Living Facility for Seniors in the R-60 Zone

Development Standard	Required/Allowed	Proposed
Lot area (min)	6,000 sf (59-4.4.9.B)	72,840 sf/1.67 acres
Lot width at front building line (min)	60 ft (59-4.4.9.B)	321 ft
Lot width at front lot line (min)	25 ft (59-4.4.9.B)	325 ft
Frontage on street or open space	Required (59-4.4.9.B)	Fronts on street
Density (max)	Determined by Hearing Examiner (59-3.3.2.C.2.c.v)	90 units (98,000 sf)
MPDUs (min)	30% (59-3.3.2.C.2.c.iii)	30%
Lot Coverage (max)	35% (59-4.4.9.B)	31%
Front setback (min)	30 ft (As required for R-30 Zone under 59-3.3.2.C.2.c.ix)	30 ft
Side setback, north (min)	25 ft (59-3.3.2.C.2.c.vii)	25 ft
Side setback, south (min)	25 ft (59-3.3.2.C.2.c.vii)	55 ft
Rear setback (min)	25 ft (59-3.3.2.C.2.c.vii)	36 ft
Height (max)	60 ft (59-3.3.2.C.2.c.iv)	50 feet
Green Area (min)	50% (59-3.3.2.C.2.c.viii)	52.8% (38,492 sf)

iii. **Applicable General Requirements**

(1) Parking

As demonstrated in Table 3, the Application satisfies the parking requirements for the proposed use.

Table 3: Parking Requirements

	Minimum Required	Provided
Vehicle Parking	0.5 space/unit 0.5 space/employee (47 total spaces)	47 spaces ¹
Rear Parking Setback	20 ft	92 ft
Side Parking Setback, north	16 ft	155 ft
Side Parking Setback, south	16 ft	4 ft ²
Bicycle Parking	0.25 spaces/unit (95% long term)	23 spaces (22 long term, 1 short term)
Loading	1 space	1 space
<p>¹ Ten parking spaces will be located on the Conditional Use Property. The remainder of the spaces will be provided on the adjacent HTTA property with a joint use parking agreement, as further described below.</p> <p>² Staff recommends a waiver, pursuant to Section 59-6.2.10, to allow a 4-foot side parking setback along the southern property line instead of the 16-foot parking setback requirement. The waiver is discussed in further detail below.</p>		

In accordance with Section 59-6.2.3.G, the Applicant will enter into a joint use agreement with HTTA to satisfy the vehicle parking requirement for the Senior Building by making up to 38 parking spaces available off-site on the Synagogue property (Attachment B). Between the two properties, there will be 93 vehicle parking spaces available, satisfying the parking requirements of both uses (Table 4).

Table 4: Parking for Synagogue and Senior Building

Use	Min Spaces Required	Spaces Provided
Religious Assembly	0.125/fixed seat x 200 seats =25 (25 total) ¹	46
Independent Living for Seniors	0.5/dwelling unit ² 0.5/employee (47 total)	47 ³
TOTAL	72	93
<p>¹ See further discussion of Synagogue parking below.</p> <p>² Includes a 0.5 reduction for senior housing pursuant to Section 59-6.2.3.1.2.b.</p> <p>³ 10 spaces provided on the lot for the Senior Building, 37 spaces for the Senior Building provided on Synagogue lot with a joint use parking agreement pursuant to Section 59-6.2.3.G.</p>		

Pursuant to Section 59.6.2.3.1.2.c, the deciding body may reduce the required number of parking spaces to 0.125 per fixed seat if used by a congregation whose religious beliefs prohibit the use of motor vehicles in traveling to or from religious services conducted on their Sabbath and principal holidays. As a traditional Conservative synagogue, HTTA and its members tend to adhere to more orthodox traditions which include prohibition of certain activities on the Sabbath including driving a motor vehicle. Currently, more than 60% of the regular Sabbath attendees walk to Synagogue. Staff recommends using the reduced parking rate for religious assembly under Section 59.6.2.3.1.2.c. to calculate the required parking for the Synagogue.

To maintain a residential character and a pedestrian-friendly street, the off-street parking spaces located on the lot for the Senior Building are subject to setback requirements under Section 59-6.2.5.K. Staff recommends approval of a waiver under Section 6.2.10 for the side parking setback requirement. Since the proposed parking spaces for the Senior Building will abut the Synagogue parking lot, a parking setback between the two is not necessary. The waiver of the side parking setback and the proposed parking configuration will allow adequate parking in a safe and efficient manner and will not be detrimental to the residential character of the area.

(2) Lighting

The photometric shows that the illumination is 0.1 footcandles along the majority of the lot lines that abut lots with a detached house building type. Along the northwestern lot line, the illumination is higher than 0.1 footcandles. Staff recommends approval of an alternative method of compliance under Section 59-6.8.1 to allow illumination up to 1.8 footcandles along the northwestern lot line to provide a safe, well-lit pedestrian connection between University Boulevard and Reddie Drive. To approve alternative compliance, the deciding body must find that there is a unique site, a use characteristic, or a development constraint that precludes safe or efficient development under the requirements of the applicable Division. In this case, Planning Staff are requiring the Applicant to provide a pedestrian connection and due to the security concerns of the Senior Housing developer and HTTA, the location of the proposed pedestrian connection is limited to the northwestern portion of the Property. If the 0.1 footcandle limit were strictly imposed along this lot line, the illumination would not be adequate to provide a safe nighttime pedestrian connection.

To approve alternative compliance, the deciding body must also determine the alternative lighting design will:

- a) *satisfy the intent of the applicable Division;*

The proposed lighting design satisfies the intent of Division 59-6.4 to preserve property values, preserve and strengthen the character of communities and improve water and air quality. An appropriately lit pedestrian connection will encourage pedestrian activity and provide a community connection from the neighborhood along Reddie Drive to the mass transit opportunities along University Boulevard.

- b) *modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;*

The bollard lighting in close proximity to the northwestern lot line is the minimum necessary to provide safe lighting for the pedestrian path. The illumination at the lot line will be no greater than 0.4 footcandles.

- c) *provide necessary mitigation alleviating any adverse impacts; and*

The proposed board-on-board fence along the northwest lot line will alleviate any adverse impacts from the additional illumination.

- d) *be in the public interest.*

A safe, well-lit pedestrian pathway in this location will increase connectivity in the neighborhood and provide needed access between the adjacent residential neighborhood and the bus lines (and future BRT) along University Boulevard.

(3) Screening

Under Section 59-6.5.2.B.A.2, the Senior Building must provide screening along the western property lines where the Subject Property abuts lots in the R-60 zone with a residential use. The proposed landscape design complies with Section 59-6.5.2.C.7, Option A by providing an eight-foot-wide planting bed with trees and shrubs, and a six-foot-tall board-on-board fence (Figure 9).

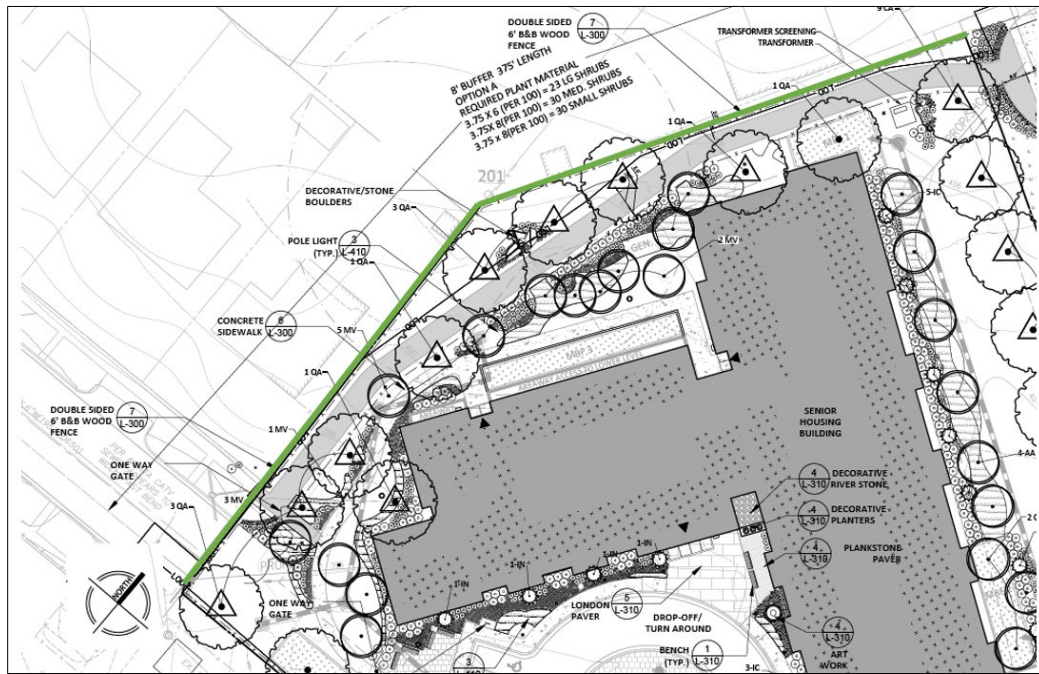


Figure 9: Screening between proposed Senior Building and existing residential properties (along green line)

(4) Signage

The proposed signage is four feet high and ten feet wide and meets the requirements of Section 59.6.7.8.B, which allows up to two signs per entrance of a multi-unit development in a Residential Zone with a maximum sign area of 40 square feet and a maximum height of 26 feet.

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

The Property is within the boundary of the 2012 *Wheaton CBD and Vicinity Sector Plan* (Sector Plan). Overall, the Application is in conformance with the Sector Plan. The Sector Plan does not specifically address the Property, but general recommendations related to housing, connectivity, and transportation are relevant to this Application.

Housing

The following objectives and recommendations are related to housing:

- The Plan describes Wheaton’s roles in the County as an area with “broad housing choices” (page 9) and envisions the Wheaton of the future to continue providing, “housing opportunities for the eastern part of the County.” (page 11).
- The Plan also recommends that “Existing single-family residential neighborhoods should be preserved and protected from the adverse impacts of nearby non-residential development.” (Page 58).

The proposed independent living facility for seniors will provide additional housing choices in Wheaton. The Senior Building is proposed on a Property that is currently developed with a non-residential use. The building is context-sensitive in massing and orientation and provides an appropriate transition to the single-family neighborhood located along Reddie Drive to the west.

Connectivity

- The Sector Plan recommends that through-block pedestrian connections should be provided where feasible, particularly for large blocks (Page 64).

At the request of Staff, the Applicant has proposed a pedestrian/bicycle connection along the northwest side of the Senior Building. This location provides pedestrian access between Reddie Drive and University Boulevard while maintaining the secure environment the Applicant requires for the Synagogue and proposed Senior Building.

Master-Planned Roadways and Bikeways

The segment of University Boulevard along the Property frontage is classified as M-19, a major highway with planned Bus Rapid Transit (BRT), within the *Master Plan of Highways and Transitways*. The existing section has six (6) lanes, as well as an existing vegetated median. The Applicant proposes to dedicate approximately 25-feet of right-of-way as a means to meet the 75-foot public planned right-of-way, from centerline, to accommodate the six travel lanes, a central median, and the future University Boulevard transitway identified in the *Countywide Transit Corridors Functional Master Plan*.

A BRT station is planned at the University Boulevard-Amherst Avenue intersection, less than a 1/4 mile west of the Subject Property.

Currently along the University Boulevard property frontage, an existing six-foot sidewalk, without a street buffer, is located directly from the back of curb. The University Boulevard Property frontage will be enhanced with a six-foot sidewalk and eight-foot street buffer with street trees, in accordance with the Boulevard streetscape requirements in the *Complete Streets Design Guide*. Furthermore, the Applicant proposes to construct a new ADA-compliant curb ramp connecting directly with the existing crosswalk across University Boulevard. The driveway access at the University Boulevard-Reedie Drive approach will be raised to sidewalk-level to foster safe travel for people walking north-to-south, consistent with standard detail MC-302.01.

Per the *Bicycle Master Plan*, there is no bicycle facility planned along the Property's frontage on University Boulevard. A bidirectional off-street sidepath is planned along the opposite frontage of University Boulevard and this Project does not preclude implementation of the future bikeway.

The Applicant has agreed to provide an eight-foot-wide asphalt pathway north of the proposed Senior Building that will provide a public pedestrian and bicycle connection between Reedie Drive and University Boulevard. As illustrated in Figure 10, the proposed pathway provides clear indication of public access using decorative tree plantings and natural features.

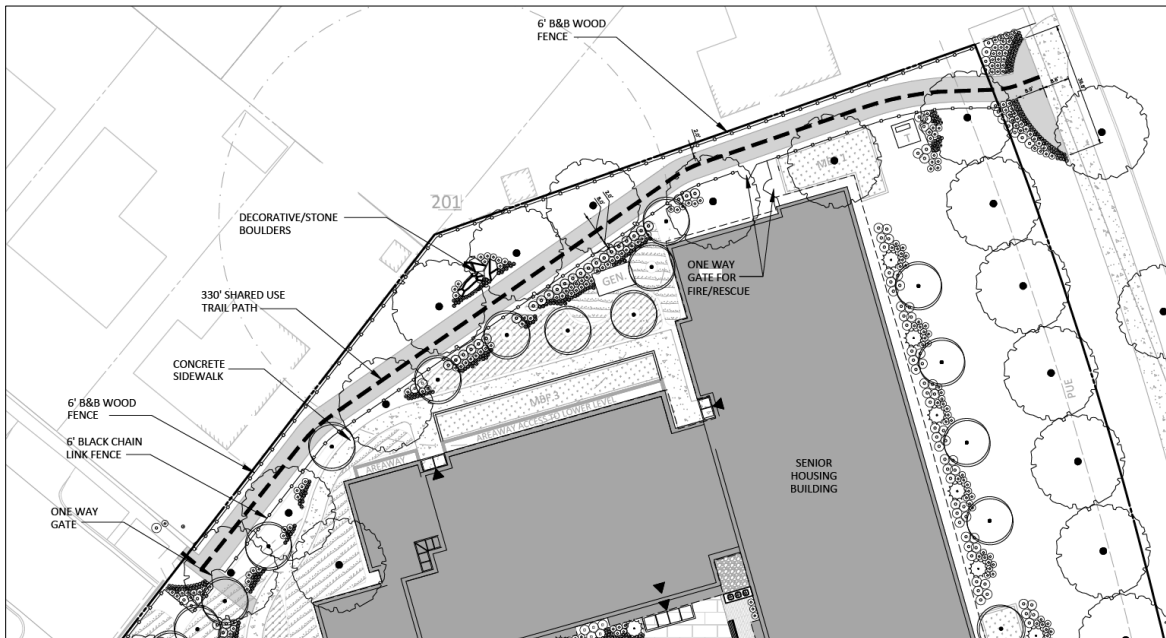


Figure 10: Trail Connection Landscaping

d) is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

The proposed Senior Building is harmonious with the character of the surrounding neighborhood and consistent with the recommendations of the Sector Plan. The use is residential, consistent with the surrounding neighborhoods, and the design of the building provides appropriate transitions from five stories along University Boulevard to three stories adjacent to the single-family neighborhood (as viewed from the west, along Reddie Drive). The proposed landscaping, fencing, and setbacks will provide appropriate buffers between the Senior Building and the adjacent neighborhoods.

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

Staff identified one approved Special Exception within the Neighborhood, although it is unclear if the Special Exception is still operational. If approved, the Senior Building will increase the number of conditional uses/special exceptions in the Neighborhood, but it will not adversely impact the area or alter the predominantly residential nature of the Neighborhood. The use is residential and it substantially conforms with the recommendations of the Sector Plan.

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

A Preliminary Subdivision Plan was filed concurrently with the Conditional Use Application and will be reviewed by the Planning Board subsequent to the Hearing Examiner's decision about the Conditional Use.

- 2. ***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:***

- a) ***the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***

- b) traffic, noise, odors, dust, illumination, or a lack of parking; or**
- c) the health, safety, or welfare of neighboring residents, visitors, or employees.**

Inherent adverse effects are created by the physical or operational characteristics necessarily associated with the conditional use, regardless of the physical size or scale of operations. Staff identified the following inherent characteristics as necessarily associated with an independent living facility: (1) buildings and related outdoor recreational areas or facilities; (2) parking facilities; (3) lighting; (4) vehicular trips to and from the site by employees, visitors, residents, delivery vehicles and waste removal; (5) noise generated by equipment for the facility, waste pick-up, deliveries, and occasional outdoor activities of residents and their visitors; and (6) driveway impacts.

The proposed independent living facility will not disturb the use, peaceful enjoyment, economic value, or development potential of abutting and confronting properties or the general neighborhood. The proposed building and site have been designed to be compatible with the surrounding residential neighborhood. The residential architecture, ample setbacks, and screening will ensure that the proposed facility will not disturb the use or peaceful enjoyment of neighbors, nor will it decrease the economic value or development potential of abutting and confronting properties or the general neighborhood.

The proposed facility will not cause undue harm to the neighborhood as a result of traffic, noise, odors, dust, illumination, or a lack of parking. The transportation statement submitted with the Application stated that the Project would generate an increase of 28 morning and 39 evening person trips, featuring an increase of 15 morning and 22 evening peak hour vehicle trips. As such, under the 2020-2024 Growth and Infrastructure Policy, a traffic study is not required to satisfy the LATR test, because the number of morning and evening person trips is fewer than the standard of 50 or more trips within the weekday peak hours.

Any noise, odors, or dust associated with the facility will be comparable to those generated by similar facilities. Noises associated with the proposed facility will be minimized by the site design. The trash room will be located towards the front of the building facing the Synagogue, away from the neighboring residential properties. This interior location will also conceal the waste from the front entrance of the building and shield it from the view from University Boulevard. The outdoor recreation areas for residents and visitors are unlikely to generate noises objectionable to the neighbors. Illumination at the lot line shared with detached houses is minimized to prevent glare, and lighting associated with the facility will not create a nuisance to neighbors.

The facility will provide sufficient parking considering the number of units available to moderate- and low-income residents. Further, a bus stop is located along University Boulevard, in close proximity to the Senior Building.

There will be no undue harm to the health, safety, or welfare of neighboring residents, visitors, or employees because the proposed Conditional Use meets all applicable development standards, and has adequate and safe circulation in and around the site.

Non-inherent adverse effects may result from a situation unique to the physical location, operation, or size of a proposed use. Staff has not identified any non-inherent adverse impacts from the proposed use. There is no expected undue harm to the neighborhood because of any non-inherent adverse effect, or a combination of inherent or non-inherent adverse effects.

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

The proposed Senior Building is designed to be compatible with the character of the adjacent residential neighborhood. The tallest part of the building is located along University Boulevard, and it steps down adjacent to the residential neighborhood along Reddie Drive. Articulation and the choice of building materials will help moderate the scale of the building and integrate it into the existing neighborhood.

4. 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.

The proposed use satisfies all specific requirements and is compatible with nearby properties. Staff recommends approval of the conditional use application.

SECTION 5: PRELIMINARY FOREST CONSERVATION PLAN CU202204 FINDINGS AND ANALYSIS

REVIEW FOR CONFORMANCE TO THE FOREST CONSERVATION LAW

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(a) as a project by “a person required by law to obtain approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan.” However, since a Conditional Use and Preliminary Plan are being reviewed and approved concurrently, the Preliminary Forest Conservation Plan will be reviewed with the Conditional Use Plan and the Final Forest Conservation Plan will be reviewed and approved as part of Preliminary Plan No. 120210230. Under Section 22A-11(c) “The Board of Appeals must consider the preliminary forest conservation plan when approving the special exception or conditional use application and must not approve a special exception or conditional use application that conflicts with the preliminary forest conservation plan.”

ENVIRONMENTAL GUIDELINES

Natural Resources Inventory and Forest Stand Delineation (NRI/FSD) Plan No. 420211860 was approved by Planning staff on June 2, 2021. The Site is within the Sligo Creek watershed, a Use I designation. The Site contains no forest, no Stream Valley Buffer (SVB), and no 100-year Floodplain. The Site is not located within a Special Protection Area or the Patuxent Management Area.

FOREST CONSERVATION

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law (“FCL”). As required by Chapter 22A, a Preliminary Forest Conservation Plan (“PFCP”) was submitted with this Conditional Use application. The total net tract area for forest conservation purposes is 3.55 acres. The Property is zoned R-60 and is classified as High Density Residential (“HDR”) as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The Site does not contain any forest. However, there is a 0.53-acre afforestation requirement as calculated in the Forest Conservation Worksheet, as determined by the property size and 15 % afforestation threshold. The afforestation requirement will be met off-site in a forest bank or by payment of fee-in-lieu.

FOREST CONSERVATION VARIANCE

Section 22A-12(b)(3) of the FCL provides criteria that identify certain individual trees and other vegetation as high priority for retention and protection. The law requires that there be no impact to: trees that measure 30 inches or greater diameter breast height (“DBH”); are part of an historic site or designated with an historic structure; are designated as 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. Any impact to high priority vegetation, including disturbance to the critical root zone (“CRZ”) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the FCL. Staff determined that development of the Site requires impact to trees identified as high priority for retention and protection (“Protected Trees”). The Applicant has submitted a variance request for these impacts.

Variance Request

The Applicant submitted a variance request in a letter dated June 16, 2021 and a revised variance request dated January 14, 2022 (Attachment D) for the removal of nine (9) trees and impact to one (1) tree. Details of the Protected Trees to be impacted and removed are provided in Table 5.

Table 5: Protected Trees

Tree #	Species	DBH (inches)	Condition	Disposition	CRZ impact	Mitigation	Comments
100	Pin Oak	47”	Good	Remove		11.75”	
102	Tulip Polar	32”	Poor	Remove		8”	
103	Red Maple	37”	Fair	Remove		9.25”	
104	American Elm	38”	Fair	Remove		9.5”	
105	Red Maple	30”	Poor	Remove		7.5”	
109	Tulip Poplar	33”	Good	Remove		8.25”	
110	White Oak	30”	Good	Remove		7.5”	
112	White Oak	37”	Good	Remove		9.25”	
201	White Oak	48”	Good	Remove	31%	12”	Off-site – Applicant will try to save
204	White Mulberry	33”	Poor	Save	36%	No	

Unwarranted Hardship Basis

Pursuant to Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the Protected Trees in an undisturbed state would result in an unwarranted hardship, denying an applicant reasonable and significant use of the Subject Property. The Applicant contends that an unwarranted hardship would be created due to the locations of the Protected Trees around the existing building and parking lots that are proposed for demolition. The existing development cannot be demolished without removing eight (8) of the trees shown as being removed. The Site contains ten (10) trees subject to the variance provision which will be impacted by this Application. If the Applicant is not allowed to impact the trees, the Applicant will not be able to redevelop a portion of the Property.

Variance Findings - Based on the review of the variance request and the proposed Preliminary/Final Forest Conservation Plan, Staff recommends that the Planning Board approve the variance based on the following 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 disturbance to the Protected Trees is due to the demolition of existing structures and parking areas. Granting a variance to allow for demolition of existing facilities is not unique to this Applicant.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on existing site conditions, including the location of the Protected Trees in proximity to the existing development proposed for demolition and removal.

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

The surrounding land uses and buildings do not have conditions that have created or contributed to this need for a variance.

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 Protected Trees being impacted are not located within a stream buffer, wetland, or a special protection area. Additional trees will be planted on the Subject Property as part of the forest conservation requirements.

In addition, the Montgomery County Department of Permitting Services (MCDPS) is reviewing a stormwater management concept for the proposed project. The stormwater management concept incorporates Environmental Site Design standards.

Mitigation for Protected Trees

The Applicant is proposing to remove nine (9) Protected Trees and will mitigate for the removal of these trees at a rate of ¼-inch planted for every 1-inch DBH of Protected Tree removed, using a minimum 3 caliper inch tree. The Applicant is proposing to remove 332 inches DBH of Protected Trees and will plant a minimum of 83 caliper inches. The Applicant is showing 28 native canopy trees at a minimum size of 3 caliper inches as mitigation for the Protected Tree removals.

Variance Recommendation

Staff has reviewed the variance request and recommends Approval of the requested tree variance.

FOREST CONSERVATION LAW ANALYSIS AND FINDINGS

The Application meets all applicable requirements of Chapter 22A of the Montgomery County Forest Conservation Law.

SECTION 6: COMMUNITY OUTREACH

The Applicant held a pre-submittal public meeting on May 3, 2021 related to the Application. The meeting was conducted virtually due to the COVID-19 Guidelines and the Applicant has complied with all other submittal and noticing requirements.

As of date of this Staff Report, no correspondence has been received about the Preliminary Forest Conservation Plan or Conditional Use Applications.

SECTION 7: CONCLUSION

Conditional Use and Preliminary Forest Conservation Plan No. CU202204 satisfy all the applicable findings under the Zoning Code, meet all applicable requirements of the Forest Conservation Law and substantially conform to the recommendations of the Wheaton CBD and Vicinity Sector Plan. Therefore, Staff recommends approval of Conditional Use No. CU202204 and Preliminary Forest Conservation Plan No. CU202204 with the conditions included at the beginning of this Staff Report.

ATTACHMENTS

Attachment A: Conditional Use Plan

Attachment B: Draft Joint Parking Agreement

Attachment C: Forest Conservation Plan

Attachment D: Variance Request

ATTACHMENT B



200-B MONROE STREET, ROCKVILLE, MARYLAND 20850 P: 301.762.5212 F: 301.762.6044

JODY S. KLINE
JSKline@mmcanby.com

February 18, 2022

Ms. Emily Tettelbaum
Planning Coordinator
M-NCPPC
2425 Reedie Drive, 14th Floor
Wheaton, MD 20902

Re: Conditional Use Application No. 22-04,
Application of 1910 University LLC;
Submission of Draft Joint Parking Agreement

Dear Emily:

Following up on our recent phone conversations, I am pleased to enclose a draft Joint Parking Agreement that is the product of discussions between representatives of Mission First Housing and Har Tzeon Synagogue.

There are certainly many terms still to be negotiated between the parties, but the attached document presents a format that, we believe, addresses the relevant requirements of the Montgomery County Zoning Ordinance when proposing satisfaction of the required number of vehicle parking spaces through off-site parking subject to a joint use agreement.

Please let us know if you and your legal office find the enclosed document to be adequate at this point and time with the understanding that a more detailed version of the agreement will be prepared at a later point in time.

Sincerely yours,

MILLER, MILLER & CANBY



Jody S. Kline

JSK:sda

Enclosure

cc: Elizabeth Everhart
Mike Goodman
Joseph Lynott, III, Esq.

JOINT PARKING AGREEMENT

THIS JOINT PARKING AGREEMENT (the "Agreement") is entered into this _____ day of _____ (the "Effective Date") by and between **CONGREGATION HAR TZEON-AGUDATH ACHIM**, a Maryland non-stock corporation ("**HTAA**") and **1910 UNIVERSITY LLC**, a Maryland limited liability company ("**1910**").

WHEREAS, HTAA is presently the owner in fee simple of certain properties located in Montgomery County, Maryland, one being known as "Parcel B, Har Tzeon Property" (84,625 square feet of land area) recorded among the Land Records of Montgomery County, Maryland in Plat Book 15759, and the other being known as Parcel P360, Map JQ11 (70,131 square feet) being the land described in a conveyance to HTAA in a deed recorded among the Land Records of Montgomery County in Book 6840 at Page 410 (hereinafter referred to as "the Properties); and

WHEREAS, 1910 desires to purchase all of the Parcel P360 land and part of the "Parcel B, Har Tzeon Property" land for purposes of development, construction and operation of a ninety (90) unit independent seniors living facility; and

WHEREAS, it is the intention of the parties hereto to subdivide the Properties into two separate parcels of land; one parcel of land will be purchased by 1910 on which will be located 1910's independent seniors living facility; and on the other parcel of land, retained by HTAA, will be HTAA's synagogue and related facilities; and

WHEREAS, a preliminary plan of subdivision (Application No. 1-20210230) ('Preliminary Plan') has been filed with Maryland-National Capital Park and Planning Commission ("M-NCPPC") depicting the two respective lots to be created by the subdivision process described previously herein; and

WHEREAS, the Montgomery County Zoning Ordinance requires that a certain number of parking spaces be provided on-site, or in close proximity to a developed property, to serve the use contemplated for a parcel of land; and

WHEREAS, it has been determined that the parking required to support 1910's independent seniors living facility is forty-seven (47) spaces and the parking required to support HTAA's planned facilities is twenty-five (25) spaces; and

WHEREAS, studies have shown that only three (3) parking spaces can be located on 1910's "Lot ____" as designated on said Preliminary Plan attached as Exhibit A and that ninety (90) parking spaces can be located on HTAA's "Lot ____" as designated on Exhibit A attached; and

WHEREAS, a portion of the surplus of parking spaces located on HTAA's Lot ____ property can be utilized to satisfy the parking requirement for 1910's Lot ____ provided that the parties hereto enter into a joint parking agreement as required by Montgomery County law; and

WHEREAS, HTAA desires to make a certain number of parking spaces located on HTAA's Lot ____ available for use by the residents, guests, visitors and employees of 1910's independent senior living facility; and 1910 is amenable to entering into this Joint Parking Agreement to authorize and govern such use.

NOW, THEREFORE, in consideration of the premises stated herein, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, HTAA and 1910 do hereby covenant and agree, individually and jointly, and for themselves and for all of their successors and assigns as follows:

1. HTAA will allow up to forty-four (44) parking spaces to be located on HTAA's Lot ____, the location of said parking spaces to be determined by the parties hereto, to be

available for use by the residents, guests, visitors and employees of 1910's independent senior living facility for the benefit of said personages and the residential community to be established on 1910's Lot _____.

2. HTAA and 1910 covenant and agree that as a condition subsequent to this Agreement, prior to approval of the Preliminary Plan, they will execute a companion agreement addressing additional material terms and conditions including but not limited to maintenance and repair of the subject parking spaces, insurance and indemnification, mortgage lending requirements and other material terms that cannot be negotiated and agreed upon in the limited time available before this interim Joint Parking Agreement must be provided as evidence of its existence. Prior to approval of the Preliminary Plan, (but in no event later than _____ days following execution of this Agreement, the parties hereto will provide evidence of a fully executed Joint Parking Agreement suitable for recordation among the Land Records of Montgomery County, Maryland. Upon execution, the fully executed Joint Parking Agreement shall supersede this interim Joint Parking Agreement, which agreement shall automatically terminate and be extinguished.

3. The initial term of this Agreement shall be five (5) years from the Effective Date, with automatic five (5) renewal terms for so long as 1910's Lot _____ is used for its intended purpose as an independent senior living facility. Upon the cessation of use of 1910's Lot _____ as an independent senior living facility, this fully executed Joint Parking Agreement shall automatically terminate and be extinguished.

4. The parties acknowledge that they are required to notify the Montgomery County Department of Permitting Services ("MCDPS") of any changes to the Joint Use Agreement after execution and, further, that MCDPS will be given at least thirty (30) days' notice prior to termination of the Agreement.

5. The terms of this Agreement shall be deemed to run with and bind the Properties and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals as of the day, month and year first above written.

WITNESS

CONGREGATION HAR TZEON-
AGUDATH ACHIM

By: _____
Name:

Title:

WITNESS

1910 UNIVERSITY LLC

By: _____
Name:

Title:

[NOTARY BLOCKS TO FOLLOW]

STATE OF MARYLAND :
 : ss:
COUNTY OF _____ :

On this _____ day of _____, 2022, before me, the undersigned individual, personally appeared _____, who acknowledged to be the _____, of Congregation Har Tzeon-Agudath Achim, and that as such being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SEAL

Signature of Notary Public
My Commission Expires: _____

STATE OF MARYLAND :
 : ss:
COUNTY OF _____ :

On this _____ day of _____, 2022, before me, the undersigned individual, personally appeared _____, who acknowledged to be the _____, of 1910 University LLC, and that as such being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SEAL

Signature of Notary Public
My Commission Expires: _____

ATTACHMENT C

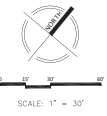


VIA MARYLAND, LLC
20251 Century Park, Suite 400
Germantown, MD 20874
301.516.4100 | via.com
Our Site Set on the Future.

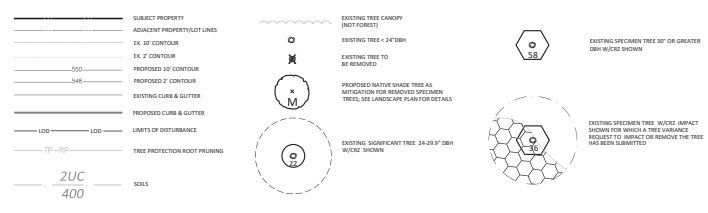
PREPARED FOR:
1910 UNIVERSITY LLC
C/O MISSION FIRST HOUSING
1310 UNIVERSITY BLDG.
WASHINGTON, DC 20036
202.223.8400
ELIZABETH ASKEW EVERHART
EVERHART@MISSIONFIRSTHOUSING.ORG

ARCHITECT:
WIENCKE + ASSOCIATES
ARCHITECTS + PLANNERS
1100 KENYON AVE. NW,
8TH FLOOR
WASHINGTON, DC 20005
202.349.4742
SCOTT S. MATTHEIS
SMATTHEIS@WIENCKE-ASSOCIATES.COM

DESIGN CONSULTANTS
PLANNER, CIVIL ENGINEER
VIA MARYLAND, LLC
SUITE 2007 BOWLING GREEN
GERMANTOWN, MD, 20874
301.516.4100
CONTACT: DOUGLAS KOSER, P.E., ISA



LEGEND



REVISIONS	DATE
RESPONSE TO COMMENTS	11/19/21

1910 UNIVERSITY SENIOR HOUSING
13 TH ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND
WSSC GRID: 214W02
TAX MAP: JQ11
#820210230

FINAL FOREST CONSERVATION PLAN

PROFESSIONAL SEAL

DEVELOPER'S CERTIFICATE
The undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 820210230, including, but not limited to, forest planting, maintenance, and all other applicable agreements.
Developer's Name: 1910 UNIVERSITY LLC C/O MISSION FIRST HOUSING
Contact Person or Owner: [Redacted]
Address: 1310 UNIVERSITY BLDG. AVE. SUITE 116 WASHINGTON, DC 20036
Phone and Email: 202.223.8400; SECONSTANT@MISSIONFIRSTHOUSING.ORG
Signature: _____

DATE ISSUED: 09/28/2021
PROJECT: VM1894D
DRAWING NO.: FFCP 200
SHEET NO.:

FOR LOCATION OF UTILITIES CALL 811 or 1-800-257-7777 OR LOG ON TO www.811.com or http://www.maryland11.com or 800.828.1111 IN ADVANCE OF ANY WORK IN THIS VICINITY.
A utility is defined as any underground or above-ground line, pipe, or cable, whether public or private, used for the transmission or distribution of electricity, gas, steam, heat, or other energy, or for the transmission or distribution of data, or for the transmission or distribution of any other substance or material, or for the transmission or distribution of any other service, or for the transmission or distribution of any other purpose.

DATE: 11/19/21, 11:00 AM EST

ATTACHMENT D

VIKA Maryland, LLC
20251 Century Blvd.
Suite 400
Germantown, MD 20874
301.916.4100
vika.com

1.14.22

M-NCPPC

Amy Lindsey
Planner Coordinator
Montgomery County Planning Department
2425 Reedie Drive, 14th Floor
Wheaton, MD 20902

**Re: Preliminary Conservation Tree Variance Request
120210230
1910 University Senior Housing Project
Preliminary Forest Conservation Plan
VIKA # VM1894D**

Dear Ms. Lindsey:

On behalf of our client, 1910 University LLC c/o Mission First HDC (the "Applicant"), we are submitting this Tree Variance Request for the above-referenced property (the "Property") to comply with Natural Resources, Title 5, Section 5-1607 of the Maryland Code that requires the Applicant to file for a variance to remove or impact any tree greater than 30" in diameter-at-breast-height (dbh); any tree with a dbh equal to or greater than 75% of the current state champion; trees that are part of a historic site or associated with a historic structure; any tree designated as the county champion tree; and any tree, shrub, or plant identified on the rare, threatened or endangered list of the U.S. Fish and Wildlife Service of the Maryland Department of Natural Resources, if a project did not receive Preliminary Forest Conservation Plan Approval prior to October 1, 2009. This Tree Variance Request is accompanying the submission of the Preliminary Forest Conservation Plan 120210230.

The 3.56-acre Property is located in Silver Spring, Montgomery County, Maryland. It is currently developed with a synagogue and secondary structure along with associated surface parking. It is generally located on the south side of University Boulevard. It is directly across University Boulevard from the northern portion of Reedie Drive and abuts the southwest portion of Reedie Drive at the rear of the lot. The subject property along with the adjacent lot at 1840 University Boulevard West is owned by the synagogue Har Tzeon-Agudath Achim and is zoned R-60.

This request proposes allowing impacts to eight (8) specimen trees on-site and two (2) specimen trees off-site.

Table 1 on the following page lists the 10 specimen trees as identified on the Forest Conservation Plan for which the Applicant seeks a variance to remove or impact the CRZ.



Table 1

TREE NO.	BOTANICAL NAME	COMMON NAME	D.B.H. (in.)*	CONDITION	CRZ IMPACT %	DISPOSITION
100	<i>Quercus palustris</i>	Pin oak	47	Good	100	REMOVE
102	<i>Liriodendron tulipifera</i>	Tulip poplar	32	Poor	100	REMOVE
103	<i>Acer rubrum</i>	Red maple	37	Fair	100	REMOVE
104	<i>Ulmus americana</i>	American elm	38	Fair	100	REMOVE
105	<i>Acer rubrum</i>	Red maple	30	Poor	100	REMOVE
109	<i>Liriodendron tulipifera</i>	Tulip poplar	33	Good	100	REMOVE
110	<i>Quercus alba</i>	White oak	30	Good	100	REMOVE
112	<i>Quercus alba</i>	White oak	37	Good	100	REMOVE
OFF-SITE TREES						
201	<i>Quercus alba</i>	White oak	48	Good	31	CONSIDERED REMOVED
204	<i>Morus alba</i>	White mulberry	33	Poor	36	SAVE

Tree assessment was performed by Douglas Koeser, RLA, ISA during a site visit in October of 2020. A visual at-grade-level inspection with no invasive, below grade, or aerial inspections was performed for each tree. Decay or weakness may be hidden out of sight for large trees. An update to species information for tree 204 was made during a site visit on November 28, 2021. All other tree species information shown in the table above is based on the approved NRI/FSD.

Justification of Variance

Section 22A-21 of the County Ordinance authorizes the County to approve variances to the Forest Conservation Law allowing disturbances to certain trees, including specimen trees. An applicant seeking a variance must present a request in writing and the applicable approving authority must make certain findings and descriptions prior to approval. Applicant’s variance request satisfies the required findings as follows:

- (1) *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

The developable area of the property is bound by University Boulevard to the east and surrounding existing development, and the Project has been intentionally designed to minimize tree impacts to the extent feasible and limit redevelopment to the previously improved areas. All eight (8) of the onsite specimen trees are proposed for removal due to property size constraints for the proposed development. All eight trees are located either within existing parking areas or adjacently to building proposed for demolition, or existing utilities that must be removed or newly installed. One of the offsite trees to the north, Tree 201, is proposed as removed due to CRZ impacts associated with the installation of an adjacent pathway required for this plan. The impact to the CRZ is far from the tree, so we are not going to physically remove



it.

Specimen tree 204 to the south of the Property is proposed to be saved. Although a 36% CRZ impact is shown on the plan, the roots are not likely to have expanded the full radius of the CRZ on the northern side of the tree where construction is proposed due to constriction from an existing driveway, underground utilities, and an adjacent building. Therefore, a CRZ substantially less than 36% is anticipated. The tree will be saved if possible under the direction of a licensed tree expert or certified arborist and in consultation with the County arborist. Moving the LOD further away from the tree is not feasible because removal of the existing asphalt driveway and grading is required in the adjacent area. However, the existing waterline is proposed to be abandoned in place with a new waterline to be installed to the north of the existing waterline abandonment in order to avoid deeper tree root impacts. Denial of the variance would cause unwarranted hardship by significantly reducing the area of the Property that could be redeveloped. This would preclude implementation of the Project, considerably undermine the economic viability of any redevelopment of the Property, and prevent achievement of the County's adopted planning goals.

The Project will require removal of nine (9) specimen trees and CRZ impacts to one (1) specimen tree. Impacts minimization and avoidance to the specimen trees are described as follows:

- **Trees 100, 102, 103, 104, 105, 109, 100, and 112 Proposed CRZ Impact: Severe at 100%**
Tree Conditions: Variable from Poor, Fair, to Good conditions
Waiver Request: Approve for removal
These trees are proposed for removal due to their locations well inside the proposed Limits of Disturbance (L.O.D.). These trees are located in landscaped areas around existing parking areas and buildings. An effort to save these trees would require a significant reduction in usable building space to clear the CRZs and would not be reasonably feasible within the scope of Project's design.
- **Tree 201**
Proposed CRZ Impact: Severe at 31%
Tree Conditions: Good
Waiver request: Approve for removal
Tree 201 is located offsite to the north of the Property and is proposed for removal because of moderate impacts to its CRZ and relative proximity to the proposed LOD. The LOD is located for the installation of a required pathway alignment in this area in coordination with M-NCPPC review.
- **Tree 204**
Proposed CRZ Impacts: Severe at 36%; however, roots do not likely extend to the full extent of the estimated CRZ.
Tree Condition: Poor
Waiver request: Approve for CRZ Impact/Save



Specimen tree 204 located offsite to the south of the Property is proposed to be saved. Although a 36% CRZ impact is shown on the plan, the roots are not likely to have expanded the full radius of the CRZ on the northern side of the tree where construction is proposed due to an existing driveway, underground utilities, and an adjacent building on the northern side. Therefore, a CRZ impact of substantially less than 36% is anticipated. This tree was rated to be in poor condition due to poor crown structure, but this species may have an extended life with proper pruning and root treatment. The tree will be saved if possible under the direction of a licensed tree expert or certified arborist and in consultation with the County arborist. Moving the LOD further away from the tree is not feasible because removal of the existing asphalt driveway and grading is required in the adjacent area. However, the existing waterline is proposed to be abandoned in place with a new waterline to be installed to the north of the existing waterline abandonment in order to avoid deeper tree root impacts

- (2) *Describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;*

Denial of the variance would also deprive Applicant of rights commonly enjoyed by others in similar areas. Despite the constraints the existing features create for redevelopment of the property, this project establishes compatible relationships between new development and existing neighborhoods through limits on density and uses; the Project includes multi-family homes in a five-story building along University Boulevard and Reddie Drive, ensuring compatibility with the adjacent single family residential neighborhood surrounding the site. In order to effectuate the project and its compatible relationships with the surrounding area, development was focused on the areas of the property currently improved, which contain many of the trees subject to the variance. Avoiding any impacts to the trees would significantly inhibit any compatible redevelopment. Therefore, strict enforcement of the County Code would unfairly prevent the redevelopment of the Property to the same extent as similarly situated properties along Strathmore Avenue that do not have the same degree of environmental constraints.

Approval of the variance will allow Applicant to create a multi-generational community that is consistent with the existing land uses in this Silver Spring neighborhood. Approval will also allow for the creation of a pathway connecting the project to the adjacent surrounding community for intangible yet significant community connectivity. All of these goals are consistent with the rights enjoyed by nearby property owners.

- (3) *Verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of the granting of the variance;*

The granting of Applicant's variance request will not result in a violation of State water quality standards, nor will a measurable degradation in water quality occur as a result. On the contrary, the Project will implement measures to improve water quality. 28 native shade trees



are proposed to be planted onsite as specimen tree mitigation trees in addition to other landscaped trees and shrubs. While onsite space is not of sufficient size for forest plantings, a priority of the Forest Conservation Plan is to purchase mitigation bank credits or payment of a fee-in-lieu to be applied towards forest conservation within the same watershed if possible, and at minimum within the county. These forest planting requirements contribute significantly towards water quality protection within the county. The Project also integrates current state-of-the-art stormwater management practices, which will improve upon the Property's previous stormwater management system and enhance water quality.

(4) *Provide any other information appropriate to support the request.*

Approving Applicant's variance request is justified for other reasons as well. The proposed project will advance the County's Master Plan vision for the Property through the development of an attractive residential community that contains a senior living component, allowing area residents to age in place. The project also includes attractive landscaped spaces and pathway amenities connecting to the surrounding community and public transportation.

The significant number of shade trees, ornamental trees, and planting beds will all serve to improve ecological quality in an urban/suburban environment. Focusing redevelopment on existing developed land, landscape plantings, implementation of forest planting within the county, and greatly improved stormwater management design all combine to significantly improve water quality protection, wildlife value, carbon sequestration, and reduction in urban heat island effects.

Furthermore, the variance does not arise from a condition related to land or building use, either permitted or nonconforming, on a neighboring property.

Thank you for your consideration of Applicant's tree variance request. The supporting information provided in this letter establishes that denial of the variance would result in unnecessary hardship or practical difficulty, as well as demonstrates Applicant's extensive efforts to minimize impacts. Please contact me with any questions, or if you require additional information.

Sincerely,

VIKA Maryland, LLC

Marion E. Bundens

Marion E. Bundens, Maryland DNR Qualified Professional
Senior Environmental Planner



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