

**COMMUNITY HOUSING INITIATIVE  
CONDITIONAL USE NO. CU202314 AND  
PRELIMINARY FOREST CONSERVATION PLAN NO. F20230100**



**Description**

Request for Conditional Use approval to construct and operate an Independent Living Facility for Seniors in the RE-1 zone.

No. CU202314

Completed: 6-9-2023

MCPB

Item No. 7

July 6, 2023

2425 Reddie Drive

Floor 14

Wheaton, MD 20902

## Planning Staff

MAB

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### LOCATION/ADDRESS

16998 Overhill Road, Derwood 20855

### MASTER PLAN

2004 Upper Rock Creek

### ZONE

RE-1

### PROPERTY SIZE

3.78 Acres

### APPLICANT

Community Housing Initiative, Inc.

### ACCEPTANCE DATE

April 7, 2023

### REVIEW BASIS

Chapter 22A & 59

### HEARING EXAMINER PUBLIC HEARING

August 4, 2023



### Summary:

- Staff recommends approval of the Conditional Use with conditions and requests permission to transmit comments to the Hearing Examiner.
- Staff recommends approval of the associated Preliminary Forest Conservation Plan with conditions.
- The Subject Site has an existing landscape contractor and storage yard. The Proposal would replace the existing use with an Independent Living Facility for Seniors
- Staff has a concern over future noise impacts on the use. The Submitted noise analysis did not address this issue.
- Staff has not received any public correspondence as of the date of this Staff Report.

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## SECTION 1: RECOMMENDATIONS AND CONDITIONS

### CONDITIONAL USE NO. CU202314

Staff recommends approval of Community Housing Initiative, Inc., Conditional Use No. CU202314, for an Independent Living Facility for Seniors, subject to the following conditions:

1. The use is limited to an Independent Living Facility for Seniors with 130 dwelling units.
2. The Applicant must abandon the existing Special Exceptions associated with The Property.
3. The Project will contain 100% MPDU's.
4. A Preliminary Plan of subdivision is required.
5. The applicant must complete a noise analysis and demonstrate no future negative noise impacts at the time of Preliminary Plan if the use is approved.

### PRELIMINARY FOREST CONSERVATION PLAN NO. F20230100

1. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
2. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 77.03 caliper inches. Planting locations to be shown on the Final Forest Conservation Plan ("FFCP").
3. The Applicant must submit a Final Forest Conservation Plan ("FFCP") for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.
4. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

## SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

### VICINITY/NEIGHBORHOOD

The Subject Property outlined in Figure 1 in the red dashed line is located at 16998 Overhill Road, Derwood 20855. The Property is located in the 2004 *Upper Rock Creek Master Plan* area.

As delineated in yellow in Figure 1 below, Staff defined a neighborhood for purposes of analyzing this Conditional Use and its possible impacts on the character of the surrounding area. Staff determined the neighborhood based on properties that would be most impacted by the Conditional Use. The neighborhood as defined is comprised of low-density residential development, religious assembly use and three Conditional Uses/Special Exceptions. The properties immediately to the east, south and west are all zoned RE-1 with low-density residential uses, a religious assembly, and a private club. The ICC (MD-200) is abutting the northern property line. Rock Creek Regional Park is to the southeast across Overhill Road from the Subject Property.



Figure 1: Vicinity Map with Staff-defined neighborhood highlighted in solid yellow

Staff identified three existing, approved conditional use/special exceptions within the defined neighborhood:

- 17001 Overhill Road: CBA-1458 for a Private Club, Service Organization
- 17001 Overhill Road: S-2145 for a Telecommunications Facility
- 17001 Overhill Road: S-888 for a Telecommunications Facility

## PROPERTY DESCRIPTION

The Subject Property (outlined in red, dashed line) is located at 16998 Overhill Road, Derwood, MD and consists of 3.77 acres identified as Part of Lot 6 on Plat 1581, on Tax map 04-00117554. The Property will have access via a new driveway entrance on Overhill Road.

The Property currently consists of a landscape contractor and associated storage yard under an approved Special Exception (CBA-2778) for Horticultural Nursery/Landscape Contractor with two points of access from Overhill Road. The Property contains multiple outbuildings, landscape materials stockpiles, and a single-family dwelling unit. In the southwest corner of the Property there is an area of Stream Valley Buffer (SVB) associated with an offsite stream.



Figure 2 – Subject Property

## SECTION 3: PROJECT DESCRIPTION

### PROPOSAL

The Applicant proposes to construct a new Independent Living Facility for Seniors per Section 59.3.3.2.C.2.c, which is a Conditional Use in the RE-1 zone. The Application includes a new multi-unit building, parking lot, lighting, and landscaping. The Property will have access via a new driveway entrance on Overhill Road. The building will contain a total of 130 dwellings units all of which will be Moderately Priced Dwelling Units (MPDUs). This Conditional Use would be conditioned on the abandonment of the existing Special Exception for a Horticultural Nursery/Landscape Contractor.



*Figure 3: Existing Site Conditions*

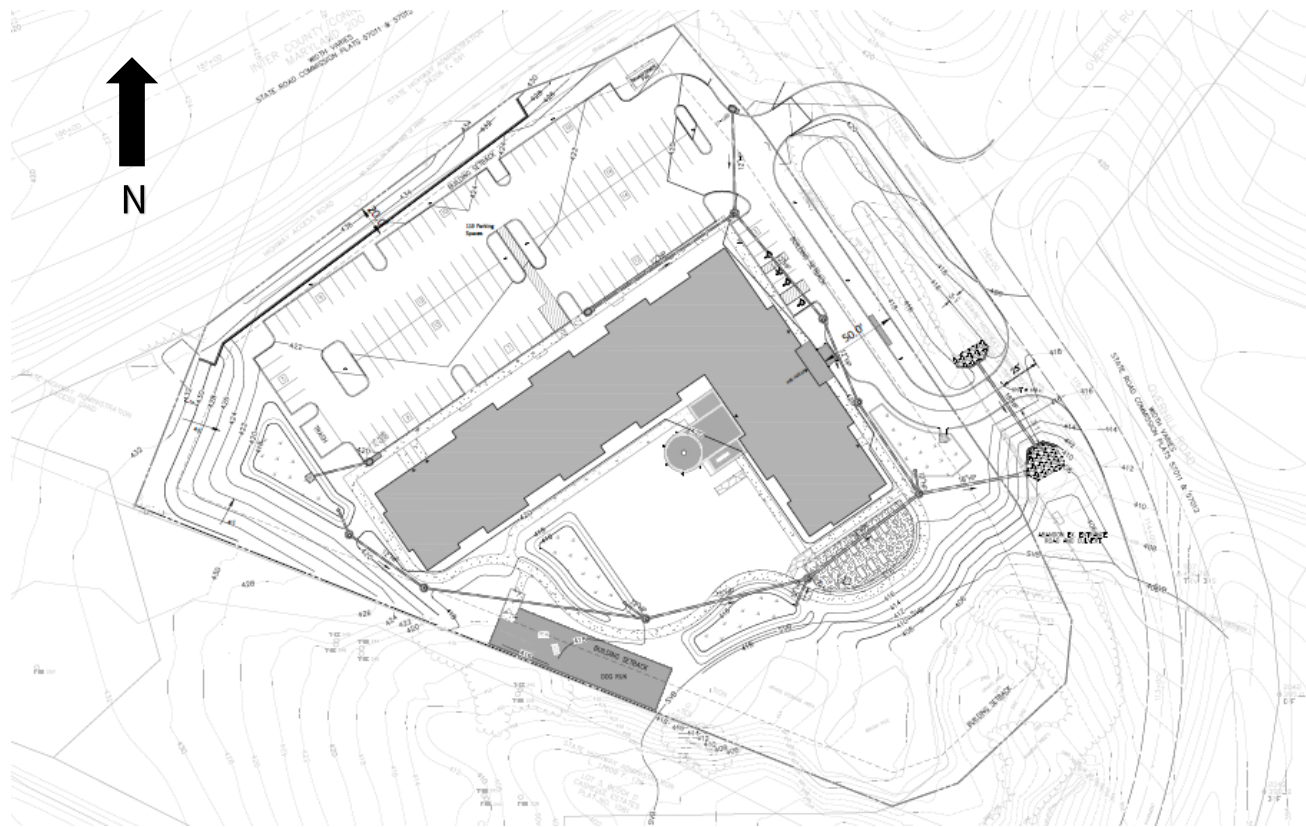


Figure 4: Proposed Site Plan



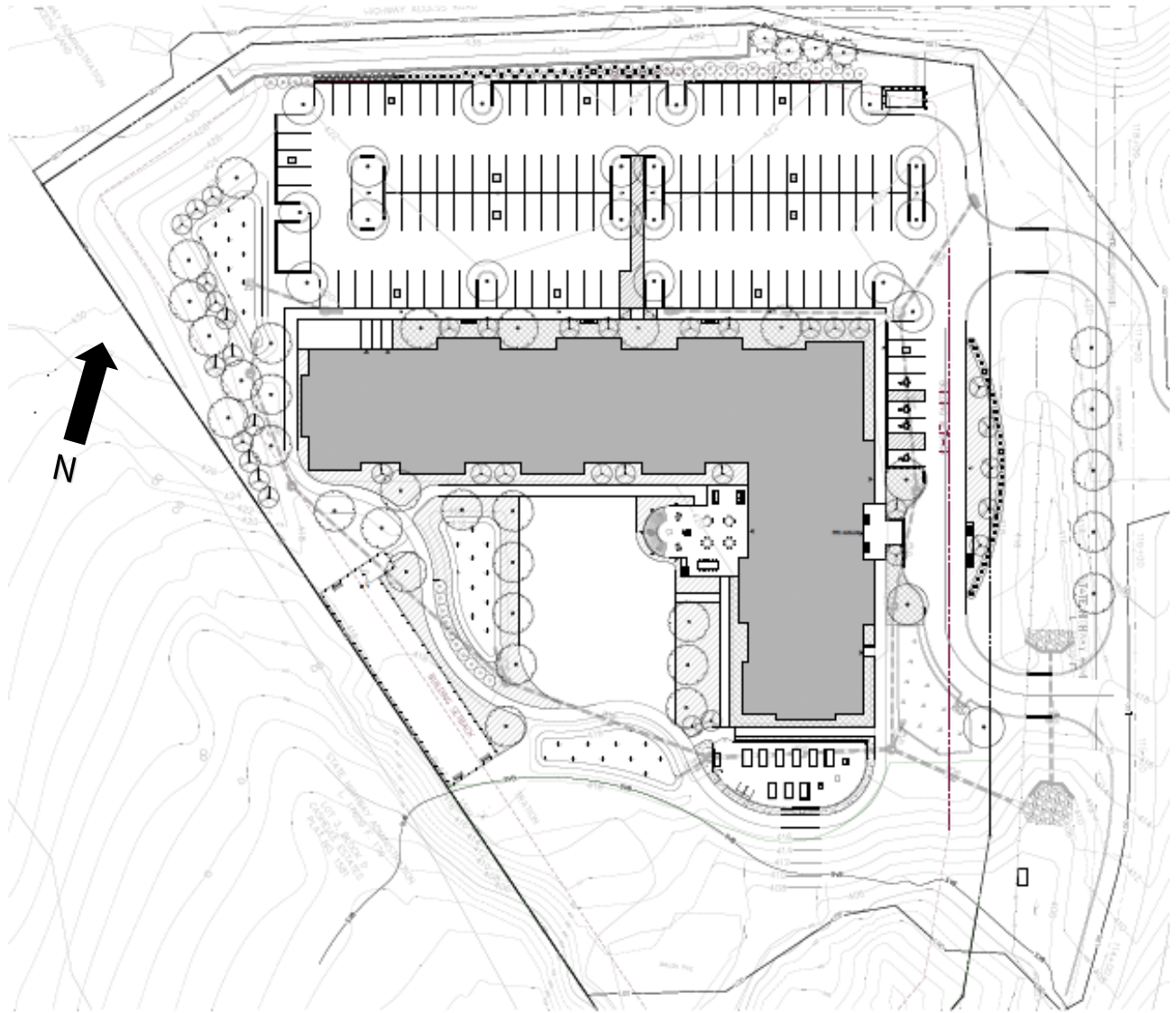


Figure 4: Proposed Landscape Plan

### Forest Conservation

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

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

variance request for the removal of eight (8) specimen trees and impact to two (2) others, which is discussed in the Analysis and Findings section of this report.

## SECTION 4: COMMUNITY CORRESPONDENCE

As of the date of this Staff Report, Staff has not received any letters of correspondence from the community.

## SECTION 5: ANALYSIS AND FINDINGS

### CONDITIONAL USE NO. CU202314

#### ***Specific Standards***

- 1. Per Section 59.3.3.2.C.2.c, where an Independent Living Facility for Senior is allowed as a Conditional Use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:***

- i. 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 located within five miles or less of multiple shopping centers as well as Shady Grove Metro Station. The shopping centers contain grocery stores, pharmacies, various medical services, restaurants, financial institutions, and retail stores. There is a bus stop near the intersection of Overhill Road and Redland Road which is 0.1 miles from the Subject Property. The closest stores and restaurants are 0.6 miles from the Subject Property. Shady Grove Metro Station is 1.25 miles from the Subject Property.

- ii. 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 or retail facilities being proposed with this application.

- iii. 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](#).**

The Conditional Use application for Independent Living Facilities for Seniors is proposing 100% of the units be designated as MPDU.

- iv. 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 proposed building is multi-unit living which is an apartment building type and therefore the maximum height of the proposed building is 60 feet.

- v. 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 height of the proposed building is not much taller than that allowed in the RE-1 zone which has a maximum height of 50'. The parking facility is along the northern property boundary abutting the ICC, MD-200 surrounded by landscaping to be more compatible with the residential character of the neighborhood.

- vi. 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 RE-1 requires a minimum front setback of 50 feet. This application proposes 50 feet or more.

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

The Property does not abut any other lots; therefore, this Section does not apply. The Property is surrounded by county and state rights of ways.

**viii. The minimum green area is 50%.**

The proposed Conditional Use will have a minimum of 50% (1.89 ac) green area.

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

The principal building is meeting the RE-1 development standards for setbacks which are more restrictive than the R-30 setbacks. Therefore, the principal building setbacks meet the minimum requirements for the subject apartment building type in the R-30 zone.

### **General Standards**

**1. Per Section 59.7.3.1.E., 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.**

As a condition of this Application, the prior approval of a Special Exception on the Property would be abandoned. The Property does not have any previous approvals therefore this Section does not apply.

**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 for an Independent Living Facility for Seniors- Section 59.3.3.2.C.2.c**

The proposed Independent Living Facility for Seniors satisfies the use standards in Section 59.3.3.2.C.2.c.

**ii. Development Standards**

The Property is in the RE-1 zone, which allows an Independent Living Facility for Seniors as a Conditional Use. The project complies with all the standard method

development standards of the RE-1 zone, as shown on the Development Standards Table below.

*Table 1: Development and Parking Standards (RE-1)*

<b>Development Standard Section 59.4.4.6.B.1</b>	<b>Permitted/ Required</b>	<b>Existing/Proposed</b>
Minimum Lot Area	40,000 sq. ft.	164,713 sq. ft. (3.78 ac)
Minimum Lot Width at Front Building Line	125 ft.	187 ft.
Minimum Lot Width at Front Lot Line	25 ft.	177 ft.
Maximum Density		
Total Units	n/a units	130 units
Affordable Units	30% MPDU's	100% MPDU's
Maximum Lot Coverage	15% (24,707 sq. ft.)	15% (24,707 sq. ft.)
Minimum Front Setback	50 ft.	50 ft.
Minimum Side Street Setback	20 ft.	20 ft.
Minimum Side Setback	25 ft.	n/a
Minimum Sum of Side Setbacks	35 ft.	n/a
Minimum Rear Setback	25 ft.	n/a
Maximum Height **	60 ft.	60 ft.
Green Area Minimum	50% (82,356 sq. ft.)	50% (82,356 sq. ft.)
<b>Vehicle Parking Requirement (Section 59.6.2.4.B) Spaces/Unit</b>	0.75 spaces/unit*= 98	122 spaces

\* Per Section 59.6.3.1.2.b: Adjustment factor for Age-Restricted Housing

\*\* Per Section 59.3.3.2.C.2.c.iv

iii. **General Requirements-**

**(1) Access**

The Subject Property derives vehicular access from a new entry point at a bend in Overhill Road. The Applicant is not proposing any additional entrance and exit points to serve vehicle traffic into the property. In addition to vehicular access, internal pedestrian access is provided via a system of paths around the building. Currently, there are no pedestrian connections to Redland Road from the Subject Property.

**(2) Division 6.2 Parking, Queuing, and Loading**

As summarized in Table 6, the Application satisfies the parking and loading requirements necessary to support the three retail buildings and the drive-thru restaurant.

<b>Parking Standards</b>	<b>Required/Allowed</b>	<b>Proposed</b>
<b>Vehicle Parking Spaces</b>		
<u>Age-Restricted Housing</u> <u>Minimum Required Spaces</u>	0.75/1,000 GFA (0.75/1,000 x 164,713 SF) 98 Spaces	123 spaces
<b>Parking Breakdown (spaces)</b>		
Standard Spaces	93	116
Accessible Spaces	3	4
Motorcycle/scooter	2	3
<b>Bicycle Parking</b>		

*Table 2: Parking Analysis*

**(3) Open Space and Recreation**

This Conditional Use application proposes outdoor amenity spaces for the residents of the building. This will include bocce, community garden space, walking paths, an outdoor kitchen and numerous seating and gathering spaces.

**(4) Lighting**

The Subject Property does not abut a property with a residential detached house however the photometric plans indicate that illumination will not exceed 0.1 footcandles at any lot line that abuts a lot with a detached house.

**(5) Screening**

Screening Requirements in Section 59.6.5.1 are not applicable because the Subject Property does not abut property in the Residential Detached zone that is vacant or improved with an agricultural or residential use. However, this Conditional Use application is providing landscaping and screening around the proposed building, parking facility and amenity spaces.

**(6) Signage**

The Applicant must comply with the Sign Section of the Zoning Ordinance which will be reviewed and approved by Department of Permitting Services Zoning.

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

The Site is located within the 2004 Upper Rock Creek Master Plan area. The proposed use substantially complies with the Master Plan, as discussed in the Land Use Report.

The proposed senior living facility has been set on the property and provided significant forest restoration to be compatible with the uses in the Surrounding Neighborhood. The Project replaces commercial uses with a residential use and restores a significant portion of the stream valley buffer with afforestation in line with the Upper Rock Creek Master Plan goals.

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

The parking facility will be located on the northwest side of the property between the proposed building and the ICC, MD-200. The Applicant is proposing landscaping around the building and the parking facility to make it compatible with the surrounding neighborhood. The proposed building will be sitting back from Overhill Road 50 feet or more. The residential use of an Independent Living Facility for Seniors is more harmonious with the surrounding neighborhood than the existing commercial landscape contractor use currently onsite.

- 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;***

There are three existing Special Exceptions (conditional uses) in the neighborhood as defined in the staff report. Two of the Special Exceptions are for Telecommunications Facilities (cell towers). This Conditional Use application will take the place of the one currently onsite so there will be no change or increase in the number of Conditional Uses in the neighborhood. The Conditional Use application conforms with the Master 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***

The Project will require submittal of a subsequent Preliminary Plan application and the Planning Board will determine the adequacy of the public facilities.

**(1) Transportation**

The Subject Property has frontage on Overhill Road, which carries no street designation in the 2018 *Master Plan of Highways and Transitways*. Similarly, the 2018 *Bicycle Master Plan* does not include recommendations for designated bike facilities on Overhill Road.

Pedestrian facilities extant on the Subject Property are entirely internal. Overhill Road contains no pedestrian or bicycle facilities. The site is surrounded by State Highway Association (“SHA”) property, which would require an access easement to gain admittance to Overhill Road’s westbound connection with Redland Road. Staff is currently working with the Applicant and SHA to establish an easement that would provide adequate pedestrian access to both Redland Road and nearby Ride-On bus stops. This will be confirmed at the time of Preliminary Plan.

Per the 2020-2024 *Growth and Infrastructure Policy* (“GIP”), a Bus Transit System Adequacy Analysis is required with sites that generate more than 50 peak hour person trips. A 500-foot study area was outlined from the Subject Property’s frontage. At present, there are no existing bus stops within the established 500-foot study area. Two Ride-On bus stops exist on Redland Road providing north-south service; both are well outside of the study scope area.

*Local Area Transportation Review*

The Application was reviewed under the 2020-2024 *Growth and Infrastructure Policy* and associated 2022 *Local Area Transportation Review* (LATR) Guidelines. Per the GIP, projects that generate more than 50 weekday peak-hour person trips are required to complete a Transportation Impact Study (“TIS”). The proposed Site will consist of 130 senior housing units. As demonstrated on the Applicant’s TIS, dated March 25, 2022, the proposed Conditional Use will generate 39 AM net-new person trips during the morning weekday peak hour, and 51 net new person trips during the evening weekday peak hour. These calculations are based on the ITE Trip Generation Manual, 11th Edition, adjusted for the Derwood policy area (Table 3). Lastly, the LATR Proportionality Guide and Cost Adjustment Factor established a maximum target of \$185,967.60 for off-site transportation improvements.

LATR Trip Generation						
	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total



ITE Generation Code – 252 (Senior Housing – Multifamily)	9	17	26	18	15	33
Total Vehicle Trips Per ITE 11 <sup>th</sup> Edition	9	17	26	18	15	23
Policy Area Adjustment Factor (Derwood – 94%)						
Total LATR Adjusted Vehicle Trips Per ITE 11 <sup>th</sup> Edition (Auto Driver at 61%)	8	16	24	17	14	31
<b>Adjusted Vehicle Rates</b>						
Adjusted Vehicle Rates	8	18	24	17	14	31
Auto Passenger	3	7	10	7	6	13
Transit	1	1	2	2	1	3
Non-Motorized (Bike)	1	2	3	2	2	4
Pedestrian (Transit + Bike)	2	3	5	4	3	7
<b>Total Person Trips</b>	<b>13</b>	<b>26</b>	<b>39</b>	<b>28</b>	<b>23</b>	<b>51</b>

Table 3: Trip Generation for the Proposed Use

\*Trip generation rates are based on the ITE Trip Generation Manual, 11th Edition and adjusted as detailed in the 2022 LATR guidelines. Figures are rounded to nearest whole number. Source: Lenhart Traffic Consulting Local Area Transportation Review – March 25<sup>th</sup>, 2022

**(2) Schools**

This application does not impact the schools since it is senior living. No school age children will occupy this use.

**(3) Other Public Facilities**

The Property is located within water and sewer categories W-1 and S-1 and is serviced by existing water and sewer. Water and sewer needs are expected to be met by the Washington Suburban Sanitary Commission (“WSSC”) through connection to the existing water and sewer lines. 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 Growth and Infrastructure Policy in effect at the time that the Application was submitted.

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

The Zoning Ordinance defines inherent adverse effects as “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Non-inherent adverse effects, on the other hand, are those associated with a conditional use “not necessarily associated with the particular use or created by an unusual characteristic of the site” (59.1.4.2). Inherent adverse effects alone are not a sufficient basis to deny a conditional use application. Non-inherent adverse effects, either alone or in combination with inherent effects, are sufficient to deny an application.

To determine the impact of adverse effects on the neighborhood in which a proposed conditional use is located, analysts have focused on seven characteristics: size, scale, scope, light, noise, traffic, and environment. In this case, those effects typically and necessarily associated with an Independent Living Facility for Seniors are considered inherent effects, and those not usually associated with the use or created by site characteristics are considered non-inherent effects. The physical and operational characteristics inherent with an Independent Living Facility for Seniors are:

- temporary Construction noise
- vehicle trips
- onsite lighting
- waste management trucks

The Independent Living Facility for Seniors will not be detrimental to surrounding properties and staff has not identified any non-inherent adverse effects. Therefore, the use will not be detrimental to the surrounding properties.

The Project includes new landscaping and screening to limit the visual impact of the proposed surface parking lot, and will not cause any objectionable noise, fumes or illumination or decrease the economic value of surrounding properties. Because of the proposed light shielding and screening, outdoor lighting will generate 0.0 footcandles at the lot lines except along the front at the public street.

The Proposed Use, provided all requirements and conditions of the use are satisfied, will have no adverse impacts on the health, safety, or welfare of neighboring residents, visitors, or employees.

**1. 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 building will be constructed to a similar height to the maximum allowed in the RE-1 zone and will be setback 50 feet from the front lot line. The parking facility will be located on the northwest side of the property between the proposed building and the ICC, MD-200. The Applicant is proposing landscaping

around the building and the parking facility to provide sufficient screening with the surrounding neighborhood.

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

The use is compatible with the nearby properties and the staff recommends approval with conditions. The surrounding properties contain similar conditional uses with similar characteristics to the proposed surface parking lot.

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

This Section is not applicable for this application.

- 4. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:***

- a) *Filling Station;***
- b) *Light Vehicle Sales and Rental (Outdoor);***
- c) *Swimming Pool (Community); and***
- d) *the following Recreation and Entertainment Facility use: swimming pool, commercial.***

This Section is not applicable for this application.

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

- a) *Funeral Home; Undertaker;***
- b) *Hotel, Motel;***
- c) *Shooting Range (Outdoor);***
- d) *Drive-Thru***
- e) *Landfill, Incinerator, or Transfer Station; and***
- f) *a Public Use Helipad, Heliport or a Public Use Helistop.***

This Section is not applicable for this application.

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## PRELIMINARY FOREST CONSERVATION PLAN

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

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

### *Environmental Guidelines*

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) # 420222360 was approved for the Property on June 10, 2022. The Property is within the Upper Rock Creek watershed, which is classified by the State of Maryland as Use IV watershed, and contains steep slopes, streams, wetlands, floodplains, and Environmental Buffers. There are large specimen trees distributed across the Property. The Property is within the Upper Rock Creek Special Protection. The Preliminary Forest Conservation Plan (PFCP) submitted with this Application conforms with the Environmental Guidelines.

### *Forest Conservation*

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

A Preliminary Forest Conservation Plan has been submitted for review. The project does not propose to clear any existing forest. Based on the land use category, IDA (Institutional Development Area) and the forest conservation worksheet there is a 0.86 planting requirement generated for the Application.

The applicant is proposing to plant 0.62 acres of forest onsite with the Stream Valley Buffer. The remaining .024 acres will be taken offsite.

### *Forest Conservation Variance*

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (“CRZ”) requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise, such resources must be left in an undisturbed condition. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State,

or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

*Variance Request*

This Forest Conservation Plan variance request is for eight (8) specimen trees to be removed and impacts to two (2) others. The trees identified in this variance request for removal or CRZ impacts are shown on the Forest Conservation Plan. The trees to be removed are either located within the limits of disturbance or the LOD impacts to their critical root zone are too large to expect tree survival.

*Table 4: Variance Trees to be Removed*

<b>TREE NO.</b>	<b>BOTANICAL NAME</b>	<b>COMMON NAME</b>	<b>D.B.H. (in.)*</b>	<b>CONDITION</b>	<b>RECOMMENDATION</b>
244	Acer saccharinum	Silver Maple	37	Poor	REMOVE: 100% CRZ IMPACT
245	Acer saccharinum	Silver Maple	45	Poor	REMOVE: 100% CRZ IMPACT
255	Acer saccharinum	Silver Maple	34	Poor	REMOVE: 100% CRZ IMPACT
256	Acer saccharinum	Silver Maple	34.5	Fair/Poor	REMOVE: 100% CRZ IMPACT
257	Acer saccharinum	Silver Maple	55.6	Fair/Poor	REMOVE: 100% CRZ IMPACT
258	Quercus rubra	Red Oak	32	Fair/Poor	REMOVE: 100% CRZ IMPACT
259	Acer saccharinum	Silver Maple	31	Fair	REMOVE: 100% CRZ IMPACT
261	Quercus sp.	Red Oak Sp.	39	Poor	REMOVE: 100% CRZ IMPACT

*Table 5: Variance Trees to be Impacted*

<b>TREE NO.</b>	<b>BOTANICAL NAME</b>	<b>COMMON NAME</b>	<b>D.B.H. (in.)*</b>	<b>CONDITION</b>	<b>RECOMMENDATION</b>
246	Acer saccharinum	Silver Maple	34.5	Poor	SAVE: 8% CRZ IMPACT
247	Acer saccharinum	Silver Maple	30.2	Poor	SAVE: 14% CRZ IMPACT

*Unwarranted Hardship Basis*

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

The proposed construction is for the purpose of redeveloping currently developed property and improving its condition. The specimen trees (8 trees) proposed for removal are located along the location of the new building and within landscaped areas of the Property. The remaining 2 specimen trees with proposed CRZ impacts are recommended to be saved. The Project has been intentionally designed to locate permanent features outside of the stream valley buffer so that the area can be reforested. To create a viable area of woodland planting and on-site landscaping, however, there are significant unsuitable soils (gravels, compacted soils, stockpiles, and contracting debris) throughout the site that must be removed. Without this M-NCPPC disturbance, plantings would not be viable in the short-term or healthy in the long-term. Further, to remediate soils and provide a healthier substrate for plant health – and the residents of the property – the Applicant is pursuing clean up through a brownfield reclamation process. This process, of course, entails significant removals and disturbance to rebuild a health soil profile and foundation for the anticipated construction. Design considerations impacting the trees were minimized to the extent practicable but grading the site, which has a significant slope from north to south, to current ADA standards to ensure that site elements and community facilities are accessible requires significant earthwork across the site, which impacts the 8 trees proposed for removal. Currently the site has an elevation change of 60 feet from corner to corner from the northern center to the lower corner. The Site could not be developed without Variance tree impacts.

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

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

### **Variance Findings**

The following determinations are based on the required findings for granting of the requested variance:

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

Granting the variance will not confer a special privilege on the Applicant as the removal and impacts of the trees is due to the location of the trees and necessary site design requirements unique to a residential care facility use. The Applicant proposes removal of the 42 trees with mitigation. Therefore, granting of this variance is not a special privilege that would be denied to other applicants.

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

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

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

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

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

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

### *Mitigation for Trees Subject to the Variance Provisions*

Mitigation for Trees Subject to the Variance Provision – There are 8 trees to be removed in this variance request resulting in 308 inches of DBH removed. The Applicant proposes mitigation at a rate

that approximates the form and function of the trees removed. These trees will be replaced at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 77 inches with the installation of 26 3-inch caliper trees. Although these trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of these trees. These mitigation trees must be overstory trees native to the region. There is some disturbance within the critical root zones of two other variance; however, these trees will not be removed, it will receive adequate tree protection measures, the roots will regenerate, and the functions it currently provides will continue. Therefore, no mitigation is recommended for trees impacted but retained.

#### *Recommendation on the Variance*

Staff recommends the Planning Board approve the variance request.

#### *Noise Analysis*

After the initial submission at the Development Review Committee (DRC) meeting, this application was discussed by the applicant and all agencies involved. Planning staff made a standard request for a noise analysis for the project be performed based on its proximity to the ICC (MD-200).

Consistent with any other project, a noise analysis is necessary to demonstrate conformance with the 1983 *Staff Guidelines For the Consideration of Transportation Noise Impacts in Land Use Planning and Development* (“Noise Guidelines”) by determining the projected interior and exterior noise levels and whether or not mitigation for the proposed use is required.

An ambient Noise Impact Analysis was prepared by Sullivan Environmental Consulting for the proposed Independent Living Facility use on the Property, and the results were provided in a report dated June 2, 2023 (Attachment B).

The Noise Guidelines stipulate a 60 dBA  $L_{dn}$  maximum noise level. The analysis provided daytime and nighttime readings at 3 sensors on the Property. The results of the analysis indicate that current unmitigated traffic noise levels related to the ICC were between 51.93-56.85 dBA during the day and 49.45-52.87 dBA during the nighttime.

A standard noise analysis typically includes both existing and projected noise levels on a subject property. The June 2, 2023, report only included the current noise levels as monitored on one specific 24-hour period. Staff requested the applicant provide the projected noise levels so that possible future roadway noise impacts on the residents of the proposed use could be analyzed.



The applicant declined to provide any future forecasting for the project and requested the project move forward without the additionally requested information.

Staff cannot guarantee that any use onsite after the date of the initial analysis will be in compliance or need future modifications to meet the noise standards of the guidelines.

A complete noise analysis will be required at the time of Preliminary Plan, if the Use is approved.

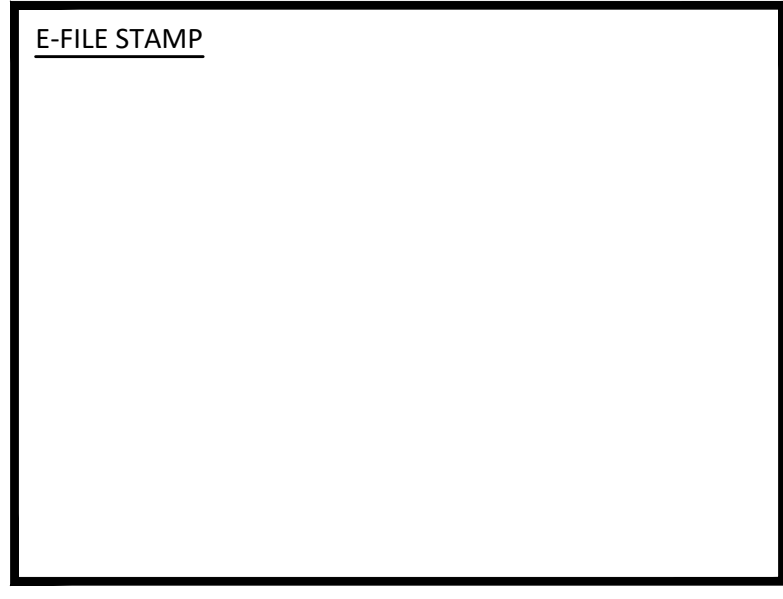
## SECTION 6: CONCLUSION

The proposed conditional use complies with the findings required for approval of an Independent Living Facility for Seniors, subject to the recommended conditions of approval. The proposed use is consistent with the goals and recommendations of the 2004 *Upper Rock Creek Master Plan*, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner and approval of the associated Preliminary Forest Conservation Plan.

### ATTACHMENTS

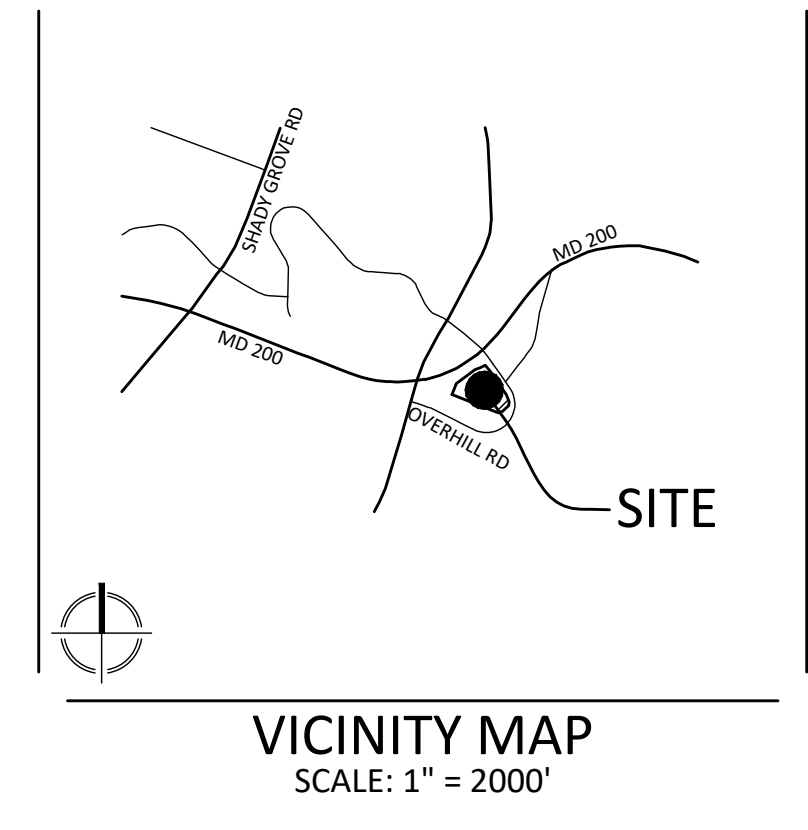
Attachment A: Preliminary Forest Conservation Plan

Attachment B: Noise Impact Analysis



Attachment A

OVERHILL ROAD FOREST CONSERVATION PLAN #F20230100



VKA MARYLAND, LLC 20251 Century Blvd., Suite 400 Germantown, MD 20874 301.916.4100 | vika.com Our Site Set on the Future. PREPARED FOR: COMMUNITY HOUSING INITIATIVE, INC. 1123 ORMOND COURT MCLEAN, VA 22101 CONTACT: PATRICK BYRNE (703) 556-9569 pbyrne@chdc.org PLANNER/ENGINEER/LANDSCAPE ARCHITECT: VKA MARYLAND, LLC. 20251 CENTURY BLVD., SUITE 400 GERMANTOWN, MD 20874 CONTACT: JOSH SLOAN (301) 916-4100 sloan@vika.com ARCHITECT: STUDIO K 7806 JAKI TERRACE GLEN BURNE, MD 21060 CONTACT: CHIP KEENER (301) 938-5195 ckeener@studiokarch.net TRAFFIC ENGINEER: LENHART TRAFFIC CONSULTING, INC. 645 BALTIMORE ANNAPOLIS BLVD. SUITE 214 SEVERNA PARK, MD 21146 CONTACT: NICK DRIBAN (410) 216-3333 mlenhart@lenharttraffic.com ATTORNEY: MILES & STOCKBRIDGE 11 NORTH WASHINGTON STREET SUITE 700 ROCKVILLE, MD 20850 CONTACT: SCOTT WALLACE (301) 762-1500 swallace@milesstockbridge.com

GENERAL NOTES

- 1. THE SUBJECT PROPERTY LISTED BELOW COMPRISE APPROXIMATELY 3.78 ACRES IN GROSS TRACT AREA. LOT: 6 BLOCK: D TAX ACCOUNT REFERENCE: 04-00117554 OWNER: MARK A. JOHNSON 13751 TRAVILAH RD. ROCKVILLE, MD 20850
2. THE NET FCP TRACT AREA IS 4.28 ACRES.
3. THE SUBJECT PROPERTY IS ZONED RE-1.
4. THE HORIZONTAL DATA IS BASED ON NAD 83 MARYLAND COORDINATE SYSTEM. THE VERTICAL DATUM IS BASED ON NGVD29 DATUM.
5. THE ONSITE TOPOGRAPHIC INFORMATION IS FROM VIK A MARYLAND, LLC SURVEY DATA OBTAINED IN MARCH OF 2022. THE OFFSITE TOPOGRAPHIC INFORMATION WAS OBTAINED FROM MONTGOMERY COUNTY ONLINE GIS DATA.
6. NRI 420222360 FOR THE SUBJECT PROPERTY WAS APPROVED 06/10/22.
7. THE SUBJECT PROPERTY IS LOCATED IN THE MILL CREEK SUBWATERSHED OF THE UPPER ROCK CREEK WATERSHED, A USE CLASS IV STREAM.
8. THIS SITE IS NOT WITHIN AN SPA OR PMA.
9. STREAMS ON, OR WITHIN 200' OF THE SUBJECT PROPERTY, ARE SHOWN ON THE PLAN WITH THEIR ASSOCIATED BUFFERS, AS PER NRI 420222360.
10. AS PER NRI 420222360, WETLANDS ARE SHOWN WITH THEIR ASSOCIATED BUFFERS ON THE PLAN.
11. THE SUBJECT PROPERTY IS LOCATED IN ZONE "X" (AREA OF MINIMAL FLOOD HAZARD) AS SHOWN ON FLOOD INSURANCE RATE MAP (FIRM) COMMUNITY PANEL NO. 24031C0195D, FOR MONTGOMERY COUNTY, MARYLAND, DATED SEPTEMBER 29, 2006.
12. IN A LETTER DATED 05/13/22, THE WILDLIFE AND HERITAGE DIVISION OF THE MD DNR STATED THAT THERE ARE NO FEDERAL OR STATE RECORDS OF RARE, THREATENED OR ENDANGERED SPECIES ON THE SUBJECT PROPERTY OR WITHIN THE NRI STUDY AREA. NO RARE, THREATENED OR ENDANGERED SPECIES WERE NOTED DURING THE FIELD WORK.
13. THE SUBJECT PROPERTY IS NOT IDENTIFIED IN THE MONTGOMERY COUNTY HISTORIC PRESERVATION ON-LINE MAPPER.
14. PER NRI 420222360, THERE ARE NO AREAS OF EXISTING FOREST AS DEFINED BY MONTGOMERY COUNTY FOREST LEGISLATION LOCATED ON THE SUBJECT PROPERTY OR WITHIN THE REMAINDER OF THE NRI STUDY AREA.
15. SEE THE SIGNIFICANT AND SPECIMEN TREE TABLE AND PLAN FOR LOCATIONS AND INFORMATION ABOUT SIGNIFICANT AND SPECIMEN TREES ON THE SUBJECT PROPERTY AND WITHIN THE REMAINDER OF THE NRI STUDY AREA.
16. THERE ARE NO CHAMPION TREES OR TREES 75% OF THE STATE CHAMPION ON THE SUBJECT PROPERTY OR WITHIN THE REMAINDER OF THE NRI STUDY AREA.
17. ALL TREES <24" DBH WITHIN THE LOD ARE TO BE REMOVED. ALL SIGNIFICANT AND SPECIMEN TREES TO BE REMOVED ARE SHOWN WITH AN 'X' AS DETAILED IN THE LEGEND.
18. A VARIANCE REQUEST FOR SPECIMEN TREES TO BE IMPACTED OR REMOVED IS SUBMITTED WITH THIS PRELIMINARY FCP. THIS PLAN PROPOSES 26 3" CALIPER NATIVE SHADE TREES AS MITIGATION FOR THE REMOVAL OF SPECIMEN TREES PER THE SPECIMEN TREE MITIGATION TABLE SHOWN ON THIS SHEET. SEE THE LANDSCAPE PLAN FOR ALL MITIGATION TREE DETAILS.

FCP WORKSHEET

FOREST CONSERVATION WORKSHEET 16998 OVERHILL RD. NET TRACT AREA: A. Total tract area ... 3.78 B. Additions to tract area ... 0.50 C. Land dedication acres ... 0.00 D. Land dedication for roads or utilities ... 0.00 E. Area to remain in commercial agricultural production/use ... 0.00 F. Other deductions ... 0.00 G. Net Tract Area ... 4.28 LAND USE CATEGORY: (from Chapter 22A-3, Definitions) Input the number "1" under the appropriate land use, limit to only one entry. ARA MDR IDA HDR MDP CIA 0 1 0 0 0 0 G. Afforestation Threshold ... 20% x G = 0.86 H. Conservation Threshold ... 25% x G = 1.07 EXISTING FOREST COVER: I. Existing forest cover ... 0.00 J. Area of forest above afforestation threshold ... 0.00 K. Area of forest above conservation threshold ... 0.00 BREAK EVEN POINT: L. Forest retention above threshold with no mitigation ... 0.00 M. Clearing permitted without mitigation ... 0.00 PROPOSED FOREST CLEARING: N. Total area of forest to be cleared ... 0.00 O. Total area of forest to be retained ... 0.00 PLANTING REQUIREMENTS: P. Reforestation for clearing above conservation threshold ... 0.00 Q. Reforestation for clearing below conservation threshold ... 0.00 R. Credit for retention above conservation threshold ... 0.00 S. Total reforestation required ... 0.00 T. Total afforestation required ... 0.86 U. Credit for landscaping (may not exceed 20% of "S") ... 0.00 V. Total reforestation and afforestation required ... 0.86

RESOURCE DATA TABLE

ACRES ACREAGE OF TRACT (GROSS TRACT AREA) 3.78 ACREAGE OF TRACT REMAINING IN AGRICULTURAL USE 0.00 ACREAGE OF TOTAL EXISTING FOREST 0.00 ACREAGE OF 100-YR FLOODPLAINS 0.00 ACREAGE OF FOREST W/IN 100-YR FLOODPLAINS 0.00 ACREAGE OF WETLANDS 0.00 ACREAGE OF FOREST WITHIN WETLANDS 0.00 ACREAGE OF ENVIRONMENTAL BUFFERS 0.53 ACREAGE OF FOREST WITHIN ENVIRONMENTAL BUFFERS 0.00 LINEAR FEET AND AVERAGE WIDTH OF ENVIRONMENTAL BUFFER PROVIDED (EACH SIDE OF STREAM) Linear Feet: 2451 Average Width: 125' - 150'

PLANTING SUMMARY

CATEGORY I FOREST CONSERVATION FOREST RETENTION AREA SF 0 AC 0.00 AFFORESTATION AREA 1 26,928 0.62 TOTAL CAT. I AFFORESTATION 26,928 0.62

AFFORESTATION/REFORESTATION SUMMARY

PROPOSED AFFORESTATION/REFORESTATION CREDIT TABLE (IN ACRES) AFFORESTATION/REFORESTATION REQUIRED 0.86 PROPOSED FOREST PLANTING AREA (CATEGORY I EASEMENT) 0.62 PROPOSED FOREST PLANTING AREA (CATEGORY II EASEMENT) 0.00 PROPOSED TREE PLANTINGS 20 YR. CANOPY CREDIT 0.00 SAVED EXISTING CRITICAL ROOT ZONE CREDIT 0.00 LANDSCAPE AREAS AT FULL CREDIT 0.00 LANDSCAPE AREAS AT 1/4 CREDIT 0.00 TOTAL PROPOSED LANDSCAPE CREDIT 0.00 PROPOSED FEE-IN-LIEU 0.24 TOTAL CREDITS 0.86 REMAINING REQUIREMENT (OR EXCESS PLANTING IF NUMBER IS NEGATIVE) 0.00

SIGNIFICANT & SPECIMEN TREE TABLE

Table with columns: TREE NO., BOTANICAL NAME, COMMON NAME, D.B.H. (in.)\*, VARIANCE TREE, CONDITION, CRZ (SF), CRZ IMPACT (SF), CRZ IMPACT %, DISPOSITION. Includes trees like Carya sp., Liriodendron tulipifera, Acer saccharinum, Quercus rubra, etc.

BOLD TEXT = SPECIMEN TREE 30" OR GREATER DBH \*DIAMETER AT BREAST HEIGHT

SOILS TABLE

Table with columns: SYMBOL, SOIL\*, CHARACTERISTICS (PRIME FARMLAND, FARMLAND OF STATEWIDE IMPORTANCE, HIGHLY ERODIBLE, HYDRIC SOIL, HYDROLOGIC GROUP). Includes soil types like GLENELG SILT LOAM 3-8% SLOPES.

SOURCES: USDA NRCS WEB SOIL SURVEY (http://websoilsurvey.sc.egov.usda.gov) HIGHLY ERODIBLE SOILS STATUS FROM MONTGOMERY COUNTY ENVIRONMENTAL GUIDELINES

SPECIMEN TREE MITIGATION TABLE

Table with columns: TREE TO REMOVE (TAG #), DBH (INCHES), MITIGATION REQUIRED @ 1"/4" REMOVED, # OF 3" CALIPER REPLACEMENT TREES. Includes trees 244 through 261.

FOREST PLANTING SCHEDULE

Forest Conservation Data Table. Includes sections for Tract (3.78 acres), Land Use & Thresholds (MDR, Conservation Threshold 25%, Afforestation Threshold 20%), Stream(s) (245 ft length, 125'-150' width), and Acres of Forest in Wetlands, 100-Year Floodplain, Stream Buffers, Priority Areas.

1 Only Road or Utility ROWs not to be improved as part of development application. 2 Information from FC Land Use Categories & Thresholds document. 3 Measured from stream edge to buffer edge.

SHEET INDEX

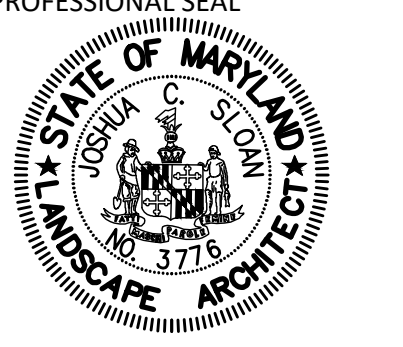
- PFPC-100 PRELIMINARY FCP COVER PFPC-200 PRELIMINARY COMPOSITE FCP

DEVELOPER'S CERTIFICATE The undersigned agrees to execute all the features of the Site Plan Approval No. 820130088, including Approval Conditions, Development Program and Certified Site Plan. Developer's Name: Community Housing Initiative, Inc. Contact Person: Patrick Byrne Address: 1123 Ormond Court, McLean, VA 22101 Phone: 703.556.9569 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

REVISIONS DATE

16998 OVERHILL ROAD 4TH ELECTION DISTRICT MONTGOMERY COUNTY, MARYLAND WSSC GRID: 223NW07 TAX MAP:GT41

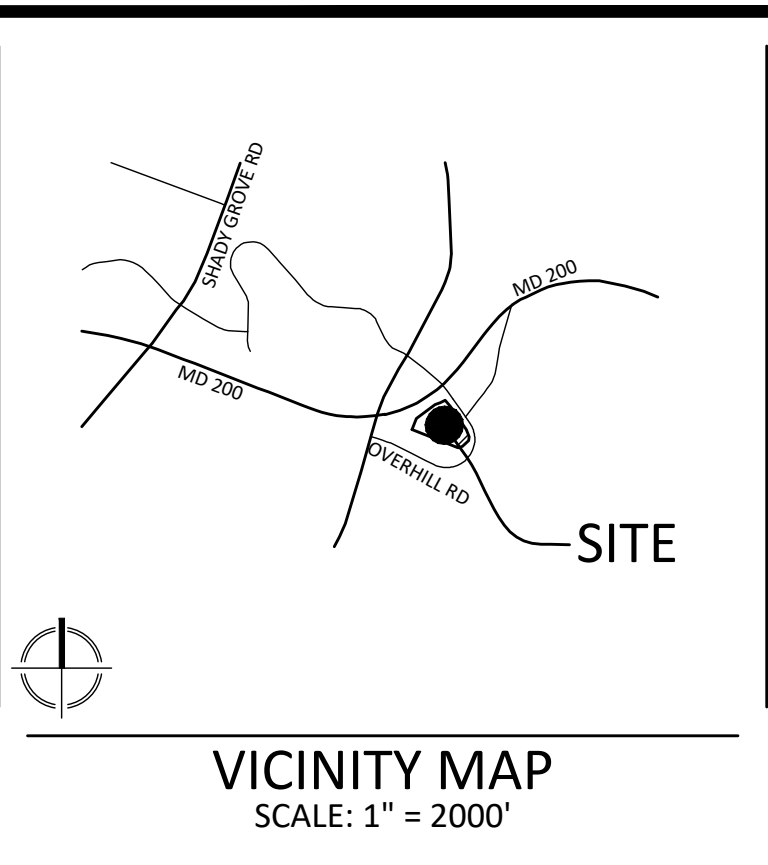
PRELIMINARY FOREST CONSERVATION PLAN COVER CU#2023-14 PROFESSIONAL SEAL



DRAWN BY: \_\_\_\_\_ DESIGNED BY: \_\_\_\_\_ DATE ISSUED: \_\_\_\_\_ VIK A PROJECT VMS0571 DRAWING NO. \_\_\_\_\_ SHEET NO. PFPC-100



E-FILE STAMP



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Germantown, MD 20874  
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*Our Site Set on the Future.*

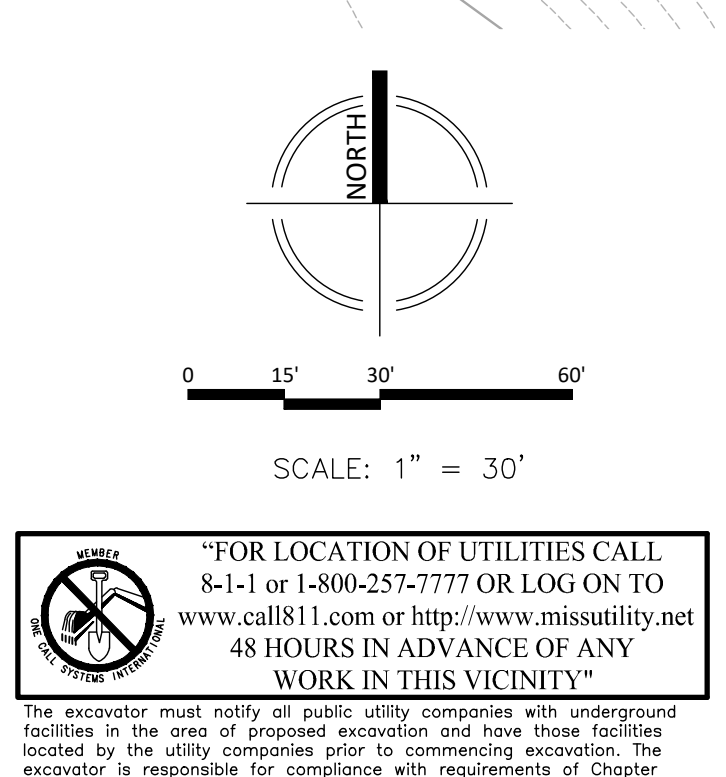
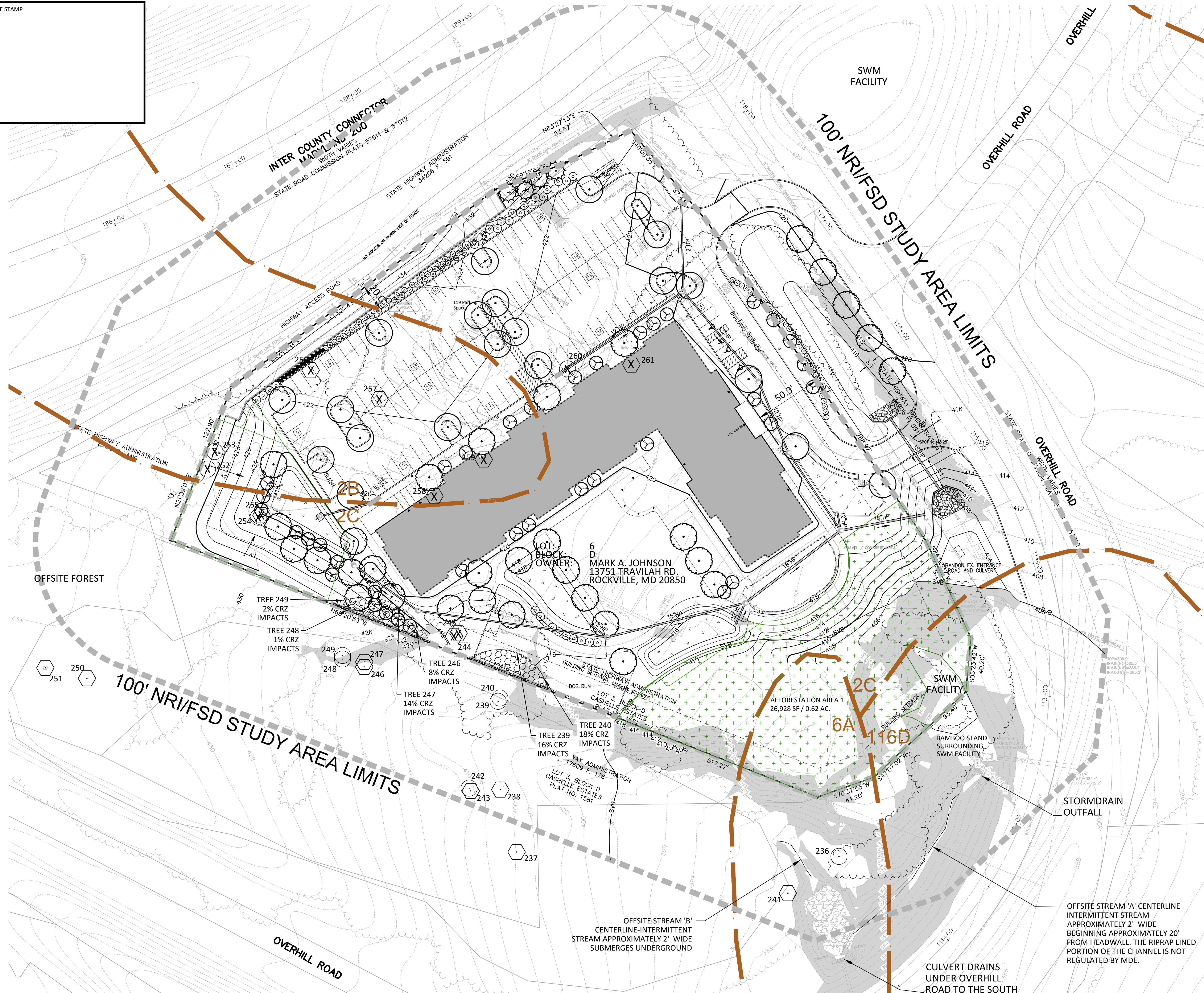
PREPARED FOR:  
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CONTACT: PATRICK BYRNE  
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ARCHITECT:  
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mlenhart@lenharttraffic.com

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SUITE 700  
ROCKVILLE, MD 20850  
CONTACT: SCOTT WALLACE  
(301) 762-1600  
swallace@milesstockbridge.com



- LEGEND**
- LIMITS OF SUBJECT PROPERTY
  - ADJACENT PROPERTY LINES
  - SLOPES ≥ 25%
  - SOIL BOUNDARY & TYPE
  - EX. SHRUB
  - EX. TREE CANOPY  
EDGE (NOT FOREST)
  - EXISTING FOREST EDGE

- EX. TREE <24" DBH
- EX. SIGNIFICANT TREE  
≥ 24" - 29.9" DBH  
AND CRITICAL ROOT ZONE (CRZ)
- EX. SPECIMEN TREE  
≥ 30" DBH  
AND CRITICAL ROOT ZONE (CRZ)
- PROPOSED CATEGORY I  
FOREST CONSERVATION EASEMENT  
& BOUNDARY MARKER  
TREE PROTECTION FENCE/ROOT PRUNE  
(OFFSET FROM LOD FOR VISUAL PURPOSES,  
MAY BE COMBINED WITH SILT FENCE)  
TREE PROTECTION FENCE  
(OFFSET FROM LOD FOR VISUAL PURPOSES,  
MAY BE COMBINED WITH SILT FENCE)

- CATEGORY I AFFORESTATION AREA
- EX. CABLE TV CONDUIT
  - EX. ELECTRICAL CONDUIT
  - EX. EDGE OF PAVEMENT
  - EX. FENCE LINE
  - EX. NATURAL GAS CONDUIT
  - EX. OVERHEAD WIRES
  - EX. FIBEROPTIC CONDUIT
  - EX. TELEPHONE/COMM. CONDUIT
  - EX. PUBLIC UTILITIES EASEMENTS
  - EX. SANITARY SEWER
  - EX. STORM DRAIN

- STREAM CENTERLINE
- EX. WATER VALVE
  - EX. HOLLARD
  - EX. SIGN POST
  - EX. WOOD POST
  - EX. INLETS
  - EX. CURB INLET
  - EXISTING
  - CONC. .... EX. CONCRETE
  - C&G ..... EX. CURB AND GUTTER
  - BLDG. .... EX. BUILDING
  - STY. .... EX. STORY
  - TRV ..... EX. ELEC. TRANSFORMER
  - ASPH ..... EX. ASPHALT
  - ESMT. .... EX. CASSEMENT
  - RCP ..... EX. REINFORCED CONC. PIPE
  - CMP ..... EX. CORRUGATED METAL PIPE
  - BR. .... EX. BLDG. RESTRICTION LINE
  - R/W ..... EX. RIGHT-OF-WAY
  - FF. .... EX. FINISHED FLOOR ELEVATION
  - EX. SANITARY CLEANOUT
  - EX. STORM DRAIN MANHOLE
  - EX. ELECTRICAL JUNCTION BOX
  - EX. ELECTRICAL MANHOLE
  - EX. FIRE DEPT. CONNECTION
  - EX. FIRE HYDRANT
  - EX. GAS MANHOLE
  - EX. GAS VALVE
  - EX. GAS VALVE
  - EX. LIGHT POLE
  - EX. PHONE PEDESTAL
  - EX. PHONE MANHOLE
  - EX. UTILITY POLE
  - EX. SANITARY MANHOLE
  - EX. TRAFFIC CONTROL BOX
  - EX. TRAFFIC SIGNAL POLE
  - EX. UNKNOWN UTILITY MANHOLE
  - EX. WATER METER

- EX. WATER VALVE
- EX. HOLLARD
- EX. SIGN POST
- EX. WOOD POST
- EX. INLETS
- EX. CURB INLET
- EXISTING
- CONC. .... EX. CONCRETE
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The undersigned agrees to execute all the features of the Site Plan Approval No. 820130088, including Approval Conditions, Development Program and Certified Site Plan.

Developer's Name: Community Housing Initiative, Inc.  
Contact Person: Patrick Byrne  
Address: 1123 Ormound Court, McLean, VA 22101  
Phone: 703.556.9569

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

REVISIONS	DATE

16998  
OVERHILL  
ROAD  
4TH ELECTION DISTRICT  
MONTGOMERY COUNTY,  
MARYLAND  
WSSC GRID: 223NW07  
TAX MAP:GT41

PRELIMINARY  
FOREST  
CONSERVATION  
PLAN  
CU#2023-14



I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A duly LICENSED PROFESSIONAL ARCHITECT UNDER THE LAWS OF THE STATE OF MARYLAND.  
NAME: JOSH SLOAN  
MVA LICENSE NUMBER: 5776 EXP. DATE: MAY 13, 2025

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DRAWN BY: \_\_\_\_\_  
DESIGNED BY: \_\_\_\_\_  
DATE ISSUED: \_\_\_\_\_  
VIKA PROJECT: VM50571  
DRAWING NO.  
SHEET NO. PFCP-200

**Ambient Noise Study Conducted From 05/30/2023 – 05/31/2023 at  
16998 Overhill Road, Derwood, MD**



**Submitted by:**

Ryan Sullivan, Meteorologist, Certified Environmental Professional (CEP),  
Project Management Professional (PMP)  
Sullivan Environmental Consulting, Inc.  
1900 Elkin Street, Suite 200  
Alexandria VA 22308  
703-780-4580

**Date Submitted:**

Friday, June 2<sup>nd</sup>, 2023

## **Executive Summary**

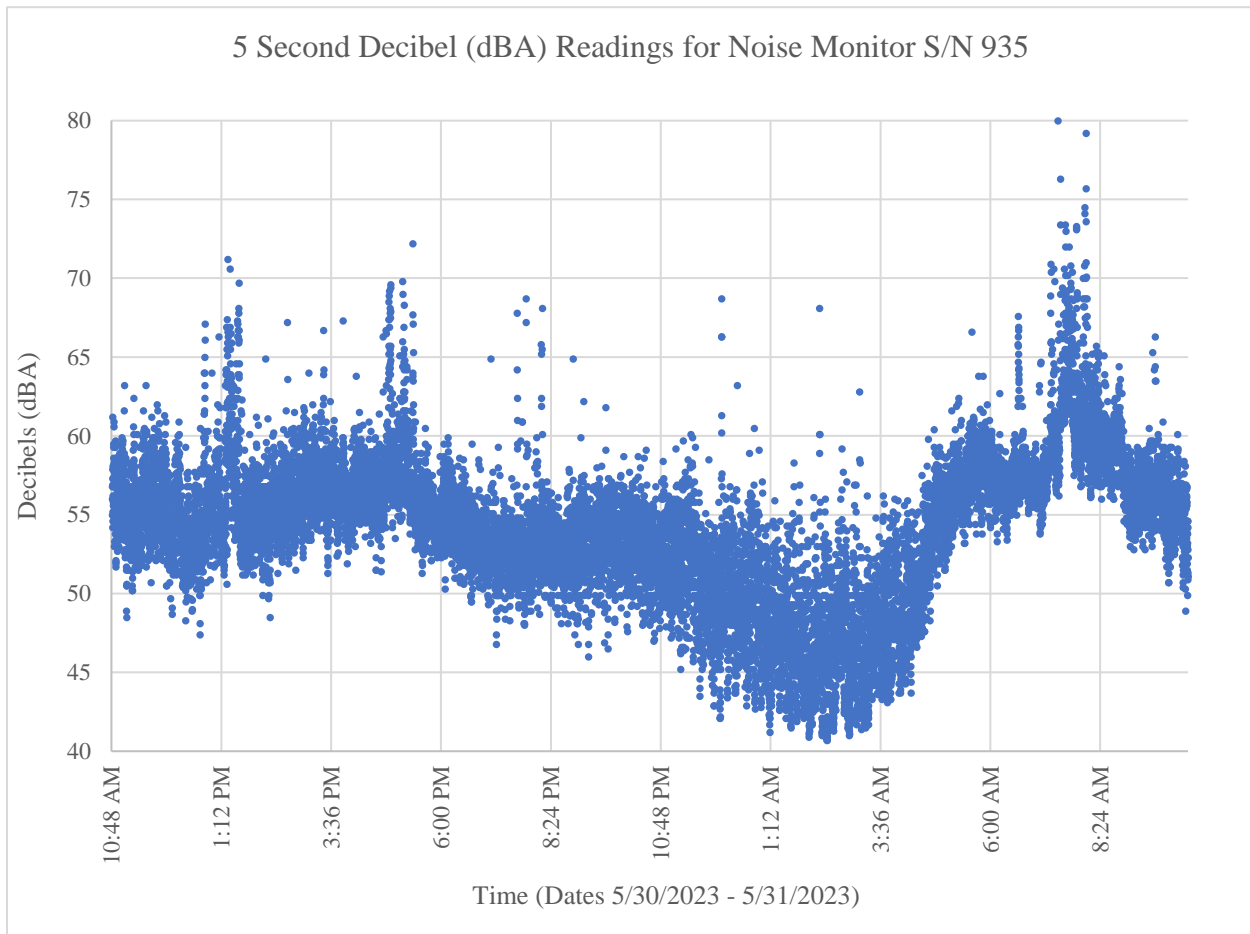
Three sound monitors were set up at the property in order to record sound for a typical weekday and night with typical weather conditions (recorded every 5 seconds). The results produced average dBA decibel readings below 65 decibels for daytime and below 55 decibels during the nighttime which met the residential standards in Montgomery County, MD. Figure 1 shows the noise sampling locations and Figure 2 shows an example of the decibel trends during the study period for the datalogger in the center of the property (S/N 935). Note that airplanes, birds, braking of vehicles, etc. can cause peaks in terms of sound and the average across a typical day and night provides a representative dataset.

**Figure 1. Noise Sampling Locations <sup>1</sup>**



<sup>1</sup> The noise monitors were placed across the property in locations that would not be obstructed by current facility vehicle operations and are representative of the property.

**Figure 2. Example Datalogger Output During the Study <sup>2</sup>**



### Study Description and Summary Documentation

Three data logging noise monitors were instrumented at 16998 Overhill Road, Derwood, MD for the purpose of monitoring the noise coming from nearby sources prior to the potential construction of a facility that is proposed to be built at this location. The study was conducted during the week with typical weather conditions. Three Extech brand decibel noise monitors were instrumented at the proposed construction site and were programmed to log the decibel readings every five seconds for a period of approximately one day. These units were all calibrated based on 94.0 decibels prior to the study initiation (on the day of the study) based on

<sup>2</sup> Note that some of the increased sounds especially during the daytime (to the right of the chart) are due to animal noises.

the manufacturer's suggested calibration of their noise meters. The sound meters were established on tripods and logged sound readings for approximately 24 hours. The data logging sound decibel recorders were all within manufacture calibration standards during the time of the study. Documentation of instrument factory calibration is available upon request. Video documentation of instrument siting and the location of research was recorded during aspects of the study and video documentation is available upon request. In terms of potential sources for noise, during the study, there were birds in the nearby woods, and vehicular traffic on MD Route 200 was observed during the study. Upon the completion of the approximately 24-hour monitoring period, the decibel recording was stopped on the instruments, the data were downloaded from the units, and processed in Excel to determine day and night sound readings. The weather conditions during the study were not a factor in terms of potential impacts to the study as there were no high wind or rain events and should be interpreted as typical conditions at the study site during the weekdays.

### **Study Details and Results**

The noise monitor with Serial Number 130613714 was assessed with a noise calibrator and the initial calibration reading was calibrated to 94.0 decibels. The noise monitor started recording at 5-second intervals at 10:41 am on 05/30/23. The noise monitor with the Serial Numer Z337935 was calibrated to 94.0 decibels and started recording at 5-second intervals at 10:49 am on 05/30/23. The noise monitor with Serial Number 13063706 had an initial calibration level of 94.0 decibels and started recording at 5-second intervals at 10:58 am on 05/30/23.

Observations: There were no significant manmade noises at the location of the study aside from the vehicles that were on Maryland Route 200. There were noises related to animals (primarily birds) that impacted the noise readings slightly.



The day and night time average decibel (dBA) readings are as follows: (Note that night time is defined as 9 PM - 7 AM in Montgomery County, MD.) See Appendix A for more details on the noise standards in Montgomery County, MD).

Extech HD600 data logger - Serial No. 13063706 <sup>3</sup>

Daytime dBA Avg: **51.93**

Nighttime dBA Avg: **49.45**

Extech HD600 data logger - Serial No. Z337935

Daytime dBA Avg: **56.85**

Nighttime dBA Avg: **52.73**

Extech HD600 data logger - Serial No. 130613714

Daytime dBA Avg: **56.61**

Nighttime dBA Avg: **52.87**

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<sup>3</sup> Note that this location was at a significantly lower elevation than the other monitors and was at a greater distance from MD Route 200. Based on the layout of the yard the decreased average sound readings make sense based on my interpretation of the terrain and primary source of noise impacting this location (MD Route 200).

## Appendix A. Montgomery County Maryland Noise Documentation

## Chapter 31B – Noise Control

- § 31B-2. Definitions.
- § 31B-3. Regulations.
- § 31B-4. Noise control advisory board.
- § 31B-5. Noise level and noise disturbance violations.
- § 31B-6. Noise level and noise disturbance standards for construction.
- § 31B-7. Measurement of sound.
- § 31B-8. Noise sensitive areas.
- § 31B-9. Leafblowers.
- § 31B-10. Exemptions.
- § 31B-11. Waivers.
- § 31B-12. Enforcement and penalties.

### Sec. 31B-1. Declaration of policy.

- (a) The County Council finds that excessive noise harms public health and welfare and impairs enjoyment of property. The intent of this Chapter is to control noise sources to protect public health and welfare and to allow the peaceful enjoyment of property. This Chapter must be liberally construed to carry out this intent.
- (b) The Department of Environmental Protection administers this Chapter.
  - (1) The Department must coordinate noise abatement programs of all County agencies, municipalities, and regional agencies.
  - (2) A County agency, municipality in which this Chapter applies, or regional authority subject to County law must not adopt a standard or regulation that is less stringent than this Chapter or any regulation adopted under this Chapter.
  - (3) The Director may form an Interagency Coordinating Committee to assist the Director in coordinating noise control policy. If the Director forms the Committee, the Director must designate an individual to chair the Committee. The members of the Committee should be designated by County, local, and regional agencies that the Director invites to participate.
  - (4) The Department must establish procedures to identify and reduce noise sources when the County plans and issues permits, variances, exemptions, or approvals.
  - (5) The Department should make recommendations to the County Executive, County Council, and Planning Board regarding noise control policy, regulations, enforcement, and noise sensitive areas. (1996 L.M.C., ch. 32, § 1.)

**Editor's note**—See County Attorney Opinion dated 3/16/92 explaining that the Washington Metropolitan Area Transportation Authority (esp. Metrorail) is subject to the County's noise control law, although an exemption may be obtained if it is in the public interest.

### Sec. 31B-2. Definitions.

In this Chapter, the following words and phrases have the following meanings:

- (a) *Construction* means temporary activities directly associated with site preparation, assembly, erection, repair, alteration, or demolition of structures or roadways.
- (b) *dba* means decibels of sound, as determined by the A-weighting network of a sound level meter or by calculation from octave band or one-third octave band data.
- (c) *Daytime* means the hours from 7 a.m. to 9 p.m. on weekdays and 9 a.m. to 9 p.m. on weekends and holidays.

- (d) Decibel means a unit of measure equal to 10 times the logarithm to the base 10 of the ratio of a particular sound pressure squared to the standard reference pressure squared. For this Chapter, the standard reference pressure is 20 micropascals.
- (e) *Department* means the Department of Environmental Protection.
- (f) *Director* means the Director of the Department of Environmental Protection or the Director's authorized designee.
- (g) *Enforcement officer* means:
  - (1) for a noise originating from any source:
    - (A) an employee or agent of the Department designated by the Director to enforce this Chapter;
    - (B) a police officer; or
    - (C) a person authorized under Section 31B-12(a) to enforce this Chapter;
    - (D) a person authorized by a municipality to enforce this Chapter; or
  - (2) for a noise originating from an animal source, the Director of the Animal Services Division in the Police Department or the Director's authorized designee.
- (h) *Impulsive noise* means short bursts of a acoustical energy, measured at a receiving property line, characterized by a rapid rise to a maximum pressure followed by a somewhat slower decay, having a duration not greater than one second and a field crest factor of 10 dBA or more. Impulsive noise may include, for example, noise from weapons fire, pile drivers, or punch presses.
- (i) *Leaf blower* means any portable device designed or intended to blow, vacuum, or move leaves or any other type of unattached debris or material by generating a concentrated stream of air. Leafblower includes devices or machines that accept vacuum attachments.
- (j) *Nighttime* means the hours from 9 p.m. to 7 a.m. weekdays and 9 p.m. to 9 a.m. weekends and holidays.
- (k) *Noise* means sound, created or controlled by human activity, from one or more sources, heard by an individual.
- (l) *Noise area* means a residential or non-residential noise area:
  - (1) *Residential noise area* means land in a zone established under Section 59-C-1.1, Section 59-C-2.1, Division 59-C-3, Section 59-C-6.1, Section 59-C-7.0, Section 59-C-8.1, Section 59-C-9.1 for which the owner has not transferred the development rights, or Section 59-C-10.1, or land within similar zones established in the future or by a political subdivision where Chapter 59 does not apply.
  - (2) *Non-residential noise area* means land within a zone established under Section 59-C-4.1, Section 59-C-5.1, Section 59-C-9.1 for which the owner has transferred the development rights, or Division 59-C-12, or land in similar zones established in the future or by a political subdivision where Chapter 59 does not apply.
- (m) *Noise disturbance* means any noise that is:
  - (1) unpleasant, annoying, offensive, loud, or obnoxious;
  - (2) unusual for the time of day or location where it is produced or heard; or
  - (3) detrimental to the health, comfort, or safety of any individual or to the reasonable enjoyment of property or the lawful conduct of business because of the loudness, duration, or character of the noise.
- (n) *Noise sensitive area* means land designated by the County Executive as a noise sensitive area under Section 31B-8.

- (o) *Noise-suppression plan* means a written plan to use the most effective noise-suppression equipment, materials, and methods appropriate and reasonably available for a particular type of construction.
- (p) *Person* means an individual, group of individuals, corporation, firm, partnership, or voluntary association; or a department, bureau, agency, or instrument of the County or any municipality, or of any other government to the extent allowed by law.
- (q) *Prominent discrete tone* means a sound, often perceived as a whine or hum, that can be heard distinctly as a single pitch or a set of pitches. A prominent discrete tone exists if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the 2 contiguous one-third octave bands by:
  - (1) 5 dB for center frequencies of 500 Hz and above;
  - (2) 8 dB for center frequencies between 160 and 400 Hz; or
  - (3) 15 dB for center frequencies less than or equal to 125 Hz.
- (r) *Qualifying performing arts facility* means the outdoor area of a building, outdoor seasonal, temporary, or permanent stage, or other clearly defined outdoor area or space, which is:
  - (1) used for an outdoor arts and entertainment activity; and
  - (2) owned or operated by the County; and
  - (3) so designed by the County Executive in an Executive Order published in the County Register. The Executive may revoke a designation at any time by publishing an Executive Order revoking the designation in the County Register.
- (s) *Receiving property* means any real property where people live or work and where noise is heard, including an apartment, condominium unit, or cooperative building unit.
- (t) *Sound* means an auditory sensation evoked by the oscillation of air pressure.
- (u) *Source* means any person, installation, device, or animal causing or contributing to noise. (1996 L.M.C., ch. 32, § 1; 2001 L.M.C., ch. 2, § 1.)

**Editor's note**—See County Attorney Opinion dated 10/6/00 indicating that long-term parking on public streets is prohibited in certain circumstances, but not based on the size of the vehicle. See County Attorney Opinion dated 3/16/92 explaining that the Washington Metropolitan Area Transportation Authority (esp. Metrorail) is subject to the County's noise control law, although an exemption may be obtained if it is in the public interest.

**Sec. 31B-3. Regulations.**

The County Executive may establish noise control regulations and standards as necessary to accomplish the purposes and intent of this Chapter. Any regulation must be at least as stringent as this Chapter. The Executive by regulation may set fees that are sufficient to offset the costs of Department reviews or other actions required or authorized by this Chapter. (1996 L.M.C., ch. 32, § 1.)

**Sec. 31B-4. Noise control advisory board.**

- (a) A Noise Control Advisory Board must advise the County Executive, Director, County Council, and Planning Board on noise control issues, including administration and enforcement of this Chapter.
- (b) The Board consists of 11 members appointed by the Executive and confirmed by the Council.
- (c) The Board must elect one member as Chair and another member as Vice-Chair to serve at the pleasure of the Board. The Board must meet at the call of the chairperson as required to perform its duties, but not less than once each quarter. A majority of the members of the

Board constitutes a quorum for transacting business. The Board may act by a majority vote of those present.

- (d) At least every third year, the Board must evaluate the effectiveness of the County's noise control program and recommend any improvements to the Director, County Executive, County Council, and Planning Board.
- (e) No later than March 1 each year, the Chair of the Board must report to the Director, County Executive, County Council, and Planning Board on activities and actions the Noise Control Advisory Board took during the previous calendar year. (1996 L.M.C., ch. 32, § 1; 1999 L.M.C., ch. 2, § 1.)

**Editor's note-**1999 L.M.C., ch. 2, § 1, increased the number of Board members from 7 to 11. 1999 L.M.C., ch. 2, § 2, states:

Sec. 2. Transition.

- (a) The terms of the 4 members of the Noise Control Advisory Board added by this Act end:
  - (1) for 1 member, on September 30, 1999, and every third year thereafter;
  - (2) for 2 members, on September 30, 2000, and every third year thereafter; and
  - (3) for 1 member, on September 30, 2001, and every third year thereafter.
- (b) When appointing the first individual to serve in one of the 4 new positions, the County Executive must designate the term in subsection (a) for which the Executive is appointing the individual.
- (c) This Act does not affect the term of any current member of the Board.  
**Cross reference-**Boards and commissions generally, § 2-141 et seq.

**Sec. 31B-5. Noise level and noise disturbance violations.**

- (a) *Maximum allowable noise levels.*
  - (1) Except as otherwise provided in Sections 31B-6(a) and 31B-8, a person must not cause or permit noise levels that exceed the following levels:

<i>Maximum Allowable Noise Levels (dBA) for Receiving Noise Areas</i>		
	<i>Daytime</i>	<i>Nighttime</i>
Non-residential noise area	67	62
Residential noise area	65	55

- (2) A person must not cause or permit the emission of a prominent discrete tone or impulsive noise that exceeds a level, at the location on a receiving property where noise from the source is greatest, that is 5 dBA lower than the level set in paragraph (1) for the applicable noise area and time.
  - (3) Sound that crosses between residential and non-residential noise areas must not exceed the levels set in paragraph (1) for residential noise areas.
- (b) *Noise disturbance.* A person must not cause or permit noise that creates a noise disturbance.
- (c) *Examples.* The following examples illustrate common noise-producing acts that violate this section if they exceed the noise level standards set in subsection (a) or create a noise

disturbance. The examples are illustrative only and do not limit or expand the noise level or noise disturbance standards of this section:

- (1) Sounding a horn or other signaling device on any motor vehicle on private property except:
  - (A) in an emergency; or
  - (B) as a danger warning signal during daytime hours if the device complies with noise level limits.
- (2) Operating a sound-producing device on public streets for commercial advertising or to attract public attention.
- (3) Selling anything by outcry.
- (4) Loading, unloading, opening, closing or otherwise handling containers, building materials, construction equipment, or similar objects.
- (5) Operating a device that produces, reproduces, or amplifies sound.
- (6) Allowing an animal to create a noise disturbance.
- (7) Operating power equipment mounted on a motor vehicle or operating other devices powered by a generator or a motor vehicle. (1996 L.M.C., ch. 32, § 1.)

**Editor's note**—See County Attorney Opinion dated 10/6/00 indicating that long-term parking on public streets is prohibited in certain circumstances, but not based on the size of the vehicle. See County Attorney Opinion dated 3/16/92 explaining that the Washington Metropolitan Area Transportation Authority (esp. Metrorail) is subject to the County's noise control law, although an exemption may be obtained if it is in the public interest.

**Sec. 31B-6. Noise level and noise disturbance standards for construction.**

- (a) *Maximum allowable noise levels for construction.*
  - (1) A person must not cause or permit noise levels from construction activity that exceed the following levels:
    - (A) From 7 a.m. to 5 p.m. weekdays:
      - (i) 75 dBA if the Department has not approved a noise-suppression plan for the activity; or
      - (ii) 85 dBA if the Department has approved a noise-suppression plan for the activity.
    - (B) The level specified in Section 31B-5 at all other times.
  - (2) Construction noise levels must be measured at the location, at least 50 feet from the source, on a receiving property where noise from the source is greatest.
  - (3) The Department must by regulation establish requirements for noise-suppression plans and adopt procedures for evaluating and approving plans. The regulations must provide that, at least 10 days before approving a noise-suppression plan, the Director must provide public notice reasonably calculated to reach at least a majority of households that might be affected by the construction activity noise levels above 75 dBA.
- (b) *Construction noise disturbance.* The prohibition on noise disturbance in Section 31B-5(b) applies to construction activities, notwithstanding subsection (a).
- (c) *Examples.* The following examples illustrate common construction noise-producing acts that violate this section if they exceed the noise level standards set in subsection (a) or create a noise disturbance. The examples are illustrative only and do not limit or expand the construction noise level or noise disturbance standards of this section:
  - (1) Delivering materials or equipment, or loading or unloading during nighttime hours in a residential noise area.
  - (2) Operating construction equipment with audible back-up warning devices during nighttime hours. (1996 L.M.C., ch. 32, § 1.)

**Sec. 31B-6A. Seasonal noise level standard for qualifying outdoor arts and entertainment activities.**

- (a) Each outdoor arts and entertainment activity held at a qualifying performing arts facility must not exceed the following noise decibel limits:
  - (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75 dBA, as measured on the receiving property; and
  - (2) at all other times, the maximum allowable noise level set in Section 31B-5.
- (b) A qualifying performing arts facility which has complied with this Section must not cause or permit noise levels from an outdoor arts and entertainment activity to exceed the standards in subsection (a).
- (c) Any outdoor arts and entertainment activity conducted at a qualifying performing arts facility which has complied with this Section must not be cited as causing a noise disturbance.
- (d) The Department must annually advise the Executive and Council, and the operator of each qualifying performing arts facility, whether the noise levels specified in this Section remain appropriate for that facility and the extent of compliance with those levels. (2011 L.M.C., ch. 7, § 1)

**Sec. 31B-7. Measurement of sound.**

- (a) The Department must issue regulations establishing the equipment and techniques it will use to measure sound levels. The Department may rely on currently accepted standards of recognized organizations, including the American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), and the United States Environmental Protection Agency.
- (b) For multiple sources of sound, the Department may measure sound levels at any point to determine the source of a noise. (1996 L.M.C., ch. 32, § 1.)

**Sec. 31B-8. Noise sensitive areas.**

- (a) The County Executive may designate by regulation land within any geographical area as a noise sensitive area to protect public health, safety, and welfare. The regulation may prohibit certain noise producing activities in the noise sensitive area.
- (b) A regulation under subsection (a) must:
  - (1) describe the area by reference to named streets or other geographic features;
  - (2) explain the reasons for the designation;
  - (3) establish specific noise limits or requirements that apply in the noise sensitive area; and
  - (4) describe by example or enumeration activities or sources that violate the limits or requirements.
- (c) A regulation under subsection (a) may establish limits or requirements for a noise sensitive area that are more stringent than those that otherwise would apply to the area under this Chapter. (1996 L.M.C., ch. 32, § 1.)

**Sec. 31B-9. Leafblowers.**

- (a) Except as provided in this section, a person must not sell, buy, offer for sale, or use a leafblower at any time that has an average sound level exceeding 70 dBA at a distance of 50



feet. This requirement is in addition to any other noise level or noise disturbance standard that applies under this Chapter.

- (b) An individual who owns or occupies a residence in a residential noise area may use at the individual's residence a leafblower bought or manufactured before July 1, 1990, until July 1, 1998, even if it exceeds the standard in subsection (a). After July 1, 1998, a person must not use any leafblower that violates the standard in subsection (a).
- (c) The Department must apply the standard in subsection (a) in accordance with the most current leaf-blower testing standard of the American National Standards Institute (ANSI).
- (d) The Department may inspect, and on its request a person must produce, any leafblower that is sold, offered for sale, or used in the County, to determine whether the leafblower complies with this section. A person who relies in good faith on a manufacturer's written representation of the sound level of a leafblower that has not been modified is not subject to a penalty for violating this section. (1996 L.M.C., ch. 32, § 1.)

**Sec. 31B-10. Exemptions.**

- (a) This Chapter does not apply to:
  - (1) agricultural field machinery used and maintained in accordance with the manufacturer's specifications;
  - (2) emergency operations by fire and rescue services, police agencies, or public utilities and their contractors;
  - (3) a source or condition expressly subject to any State or federal noise-control law or regulation that is more stringent than this Chapter;
  - (4) sound, not electronically amplified, created between 7 a.m. and 11 p.m. by sports, amusements, or entertainment events or other public gatherings operating according to the requirements of the appropriate permit or licensing authority. This includes athletic contests, carnivals, fairgrounds, parades, band and orchestra activities, and public celebrations.
- (b) The County Executive may issue regulations exempting from Section 31B-5 sources associated with routine residential living during daytime hours, such as home workshops, power tools, and power lawn and garden equipment, when used in accordance with manufacturer specifications. This exception does not apply to repairs or maintenance on a motor vehicle that is not registered for use on public roads. (1996 L.M.C., ch. 32, § 1.)

**Sec. 31B-11. Waivers.**

- (a) *Temporary waiver.*
  - (1) The Director may waive any part of this Chapter for a temporary event if the noise the event will create or cause in excess of the limits established under this Chapter is offset by the benefits of the event to the public.
  - (2) When the Director receives an application under this subsection, the Director must provide public notice of the application reasonably calculated to reach at least a majority of households that might be affected by noise levels anticipated for the event. The Director must not approve an application under this subsection less than 10 days after the public notice.
- (b) *General waiver.*
  - (1) The Director may waive any part of this Chapter if the Director determines that compliance in a particular case is not practical and would impose undue hardship.
  - (2) When the Director receives an application under this subsection, the Director must schedule a hearing on the application within 60 days.
  - (3) At least 30 days before the hearing, the applicant must advertise the hearing by:

- (A) placing a display advertisement in a newspaper of general circulation in the community where the source that is the subject of the application is located; and
  - (B) posting a sign at the location of the source.
  - (4) Based on evidence presented at the hearing, the Director may grant a waiver for up to 3 years, under terms and conditions appropriate to reduce the impact of the exception.
  - (5) The Director may renew a waiver granted under this subsection if the applicant shows that the circumstances supporting the original waiver have not changed.
- (c) *Violation of waiver.* The Director may suspend, modify, or revoke a waiver granted under this section if a person violates the terms or conditions of the waiver.
- (d) *Regulations and fees.* The County Executive must issue regulations implementing this section that:
- (1) set the procedures and fees to apply for a waiver under subsections (a) or (b);
  - (2) require the applicant to use the best technology and strategy reasonably available to mitigate noise, as determined by the Director;
  - (3) allow temporary waivers under subsection (a) of no more than 30 days, renewable at the discretion of the Director no more than twice; and
  - (4) specify the requirements for the hearing advertisement and sign required under subsection (b)(3). (1996 L.M.C., ch. 32, § 1.)

**Sec. 31B-12. Enforcement and penalties.**

- (a) The Department must enforce this Chapter. The County Executive may delegate in writing the authority to enforce parts of this Chapter to the Police Department or any other Executive agency.
- (b) A violation of this Chapter is a Class A violation. Each day a violation continues is a separate offense. A violation of Section 31B-6 is a separate offense in addition to any other violation of this Chapter arising from the same act or occurrence.
- (c) The Department may seek injunctive or other appropriate judicial relief to stop or prevent continuing violations of this Chapter.
- (d) If the Director finds that a person has violated this Chapter, the Director may issue a notice of violation and corrective order to the person. The notice must contain the following information:
  - (1) the section of this Chapter that the person violated;
  - (2) the date, nature, and extent of the violation;
  - (3) the action required to correct the violation;
  - (4) if the Director requires a compliance plan, the deadline for submitting the plan to the Director; and
  - (5) the deadline for compliance.
- (e) The compliance plan referred to in subsection (d)(4) must establish a schedule for achieving compliance with this Chapter, as specified in the corrective order. A compliance plan, and amendments to a plan, are not effective until the Director approves the plan or amendment. An action allowed under an approved compliance plan does not violate this Chapter.
- (f) An enforcement officer may issue a civil citation for any violation of this Chapter if the enforcement officer:
  - (1) witnesses the violation; or

- (2) receives complaints from at least 2 witnesses of a noise disturbance. Complaints by 2 witnesses are required to issue a citation under paragraph (2), but are not required to prove that a person violated this Chapter.
- (g) The Director of the Animal Services Division may initiate administrative action before the Animal Matters Hearing Board instead of an enforcement officer issuing a citation under subsection (f) for a violation of this Chapter originating from an animal source.
- (h) A person aggrieved by any action or order of the Director under Sections 31B-9 and 31B-11 may seek reconsideration within 10 days after the date of the action or order. A request for reconsideration must be in writing to the Director, and must specify the date and nature of the action or order, the injury sustained, the remedy requested, and the legal basis for the remedy. If the Director finds that there are material facts in dispute, the Director may refer the matter to a hearing officer under the procedures specified in Chapter 2A. If the Director finds that there are no material facts in dispute, the Director must make a final decision on the request for reconsideration in writing within 45 days after receiving the request. The aggrieved person may appeal from the Director's final decision within 30 days after the Director issues the decision, as provided in Section 2A-11.
- (i) (1) A person responsible for a violation of Section 31B-6 and the person responsible for the management or supervision of the construction site where the source of the violation is located are jointly and severally liable for the violation.  
(2) For recurring violations of Section 31B-6 on the same construction site, in addition to any other penalty under this Chapter, the Director may issue a stop work order, as provided in Section 8-20, for up to:  
(A) 3 consecutive working days for a second violation within 30 days after the first violation;  
(B) 5 consecutive working days for a third violation within 60 days after the first violation; and  
(C) 7 working days per offense for the fourth and subsequent violations within a 120-day period.  
(3) This Chapter does not limit the Director's authority under Chapter 8 to revoke a permit or approval issued under that Chapter.
- (j) Any person aggrieved by a violation of this Chapter may file a civil action in any court with jurisdiction against a person responsible for the alleged violation. The aggrieved person must notify the alleged violator and the Director of the alleged violation at least 60 days before filing the action. A person must not file an action under this subsection if the County Attorney has filed a civil action against the same alleged violator regarding the same violation. (1996 L.M.C., ch. 32, § 1; 2001 L.M.C., ch. 2, § 1.)

Endnotes

Editor's note—In *Burrows v. United States*, 2004 U.S. Dist. LEXIS 1104 (2004), the Court interpreted Montgomery County Code Chapter 31B neither to permit a private cause of action for noise control, nor to permit suit against the federal government. Chapter 31B is discussed in *Miller v. Maloney Concrete Company*, 63 Md.App. 38, 491 A.2d 1218 (1985). \*Cross references—Noise from quarries, § 38-14; radio, etc., without earphones prohibited in public transit facilities, § 54A-2; industrial area noise regulations, § 59-A-5.7.

[Note]