

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:

VICTORY OAKS, INC.

Petitioner

James A. Brown, Jr.

Father Michael Richard Johnson

Alfred S. Blumberg, II

Logan Schutz

For the Petitioner

Jody S. Kline, Esquire

Attorney for the Petitioner

Mary Pat Wilson

For Montgomery County Public Schools (MCPS)

Michael Molinaro, Esquire, MCPS Attorney

Martin Klauber, Esquire, People's Counsel

In Support of the Petition

Before: Martin L. Grossman, Hearing Examiner

Board of Appeals No. S-2751
(OZAH No. 09-27)

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

On June 2, 2009, Petitioner Victory Housing, Inc.,¹ filed a petition for a special exception to establish housing for seniors at 1600 St. Camillus Drive, Silver Spring, Maryland. The property is owned by Donald W. Wuerl, Archbishop of Washington, on behalf of the St. Camillus Church.² The special exception site consists of 1.93 acres of land, which is part of a 16.5-acre tract, more particularly known as Lot N-070, Part of Parcel B, St. Camillus Church Property. Victory Housing, Inc. has an option to lease the site from the Church for 99 years. Exhibit 9.

The site is zoned R-60, a single family zone which permits Senior Housing under Zoning Ordinance §59-G-2.35, as a special exception. Petitioner proposes to construct a three-story plus basement residential housing facility for the elderly to be known as “Victory Oaks at St. Camillus” to house 49 apartment units for senior adults (*i.e.*, age 62 and over).³

Notice of a public hearing for January 25, 2010, was issued on October 28, 2009. Exhibit 26. On December 28, 2009, the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed its Report (Exhibit 30),⁴ which recommended approval of the Petition, with conditions. On January 14, 2010, the Montgomery County Planning Board voted unanimously to recommend approval, with conditions in addition to those suggested by Technical Staff (Exhibit 26).

Numerous letters of support were received, including from the Oakview Citizens Association

¹ The original petition named the following Petitioner: “VICTORY HOUSING, INC. On behalf of itself and Its Affiliate, ‘Victory Oaks, Inc.’” Exhibit 1(a). The petition was amended on January 27, 2010, to name “Victory Oaks, Inc.” as the sole Petitioner instead of Victory Housing, Inc. because federal regulations require that ownership be in a “single purpose entity,” rather than an organization, like Victory Housing, Inc., which owns and controls other housing for the elderly projects. *See* Exhibits 54, 56 and 56(a). Victory Housing, Inc., the original petitioner, created “Victory Oaks, Inc.” as a wholly owned and controlled subordinate entity. Exhibit 54.

² The State property records (Exhibit 66) list “O’Boyle, Patrick A. , St. Camillus Church” as the owner, as does the petition (Exhibit 1(a)). Archbishop Patrick A. O’Boyle owned the land as a “corporation sole,” pursuant to an Act of Congress. Private Law 319 (80th Congress, approved May 29, 1948). He is now deceased, and his successor in office is Donald W. Wuerl, Archbishop of Washington. Tr. 23-25. Under Private Law 319, the Church property owned by Archbishop Patrick A. O’Boyle passed to Archbishop Donald W. Wuerl. Exhibit 67.

(Exhibit 25); St. Camillus Church (Exhibit 23); County Health and Human Services' Agency on Aging (Exhibit 29); and the Silver Spring Advisory Board (Exhibit 18(a)).⁵ There was one letter of opposition from a neighbor, Kathleen Mayers, whose objections seem to center on non-land use issues, which will be discussed in Part II. G. of this report (Exhibit 32).

The hearing was held, as scheduled, on January 25, 2010. Petitioner called four witnesses, and there was no opposition testimony. A representative of the Montgomery County Public Schools (MCPS) testified in support of the proposal, subject to a condition which would facilitate Petitioner's access over land owned by the Broad Acres Elementary School. Tr. 27-38 and Exhibit 63. Martin Klauber, the People's Counsel, participated in the hearing in support of the petition. Tr. 142.

The record was held open until February 19, 2010, for additional filings by Petitioner and review by Technical Staff. Petitioner made the additional filings (Exhibits 54 to 57, 59 and 62) and Technical Staff completed its review on February 19, 2010 (Exhibits 58, 60, 63 and 64). The record closed, as scheduled on February 19, 2010, but it was reopened on March 8, 2010, to allow admission of some additional documents and a post-hearing exchange between Technical Staff and the parties regarding noise attenuation (Exhibits 65 to 67). It was closed again on the same date since all parties had already had an opportunity to comment.

II. FACTUAL BACKGROUND

A. Description of Petitioner

The original Petitioner, Victory Housing, Inc., is the nonprofit housing arm of the Catholic

³ As defined in Zoning Ordinance §59-A-2.1.

⁴ The Technical Staff Report is frequently quoted and paraphrased herein.

⁵ A letter from Petitioner's attorney (Exhibit 16) indicates that there were 23 letters of support he forwarded to Technical Staff, but they do not appear to be in the Hearing Examiner's record. The Staff report (Exhibit 30) refers to the correspondence but does not attach the actual letters. Staff does summarize the community response: "The proposed special exception use is generally supported by the residents of the surrounding area, civic associations, and political leaders as evidenced by the attached correspondence. Staff has not received any oral or written comments in opposition to the proposed special exception." Exhibit 30, p. 7.

Archdiocese of Washington, specializing in the development and operation of affordable housing, with an emphasis on housing for seniors. It operates 14 communities in Montgomery County, both assisted living and independent living communities, two affordable housing communities for families, and a total of 23 communities in the metropolitan area. Tr. 38-39.

After filing the application, Victory Housing created the wholly owned legal entity known as Victory Oaks, Inc., in order to comply with federal regulations. Petitioner therefore asks that the special exception be granted in the name “Victory Oaks, Inc.” rather than Victory Housing, Inc., and has amended the petition to so reflect. Tr. 40-42. *See* Exhibits 54, 56 and 56(a).

B. The Subject Property and Surrounding Neighborhood

The subject property is located on the east side of Beacon Road approximately 600 feet north of its intersection with Northampton Drive and approximately 1200 feet west of New Hampshire Avenue. Although the St. Camillus Church property consists of 16.5 acres known as Lot N-070, Part of Parcel B, the special exception site occupies only 1.93 acres of that R-60 zoned land. The remainder of the property, which consists of 14.5 acres of land, is developed with St Camillus Church and St Camillus School. The entire property can be seen on the following aerial photo from the Staff report (Ex. 30, p.5):

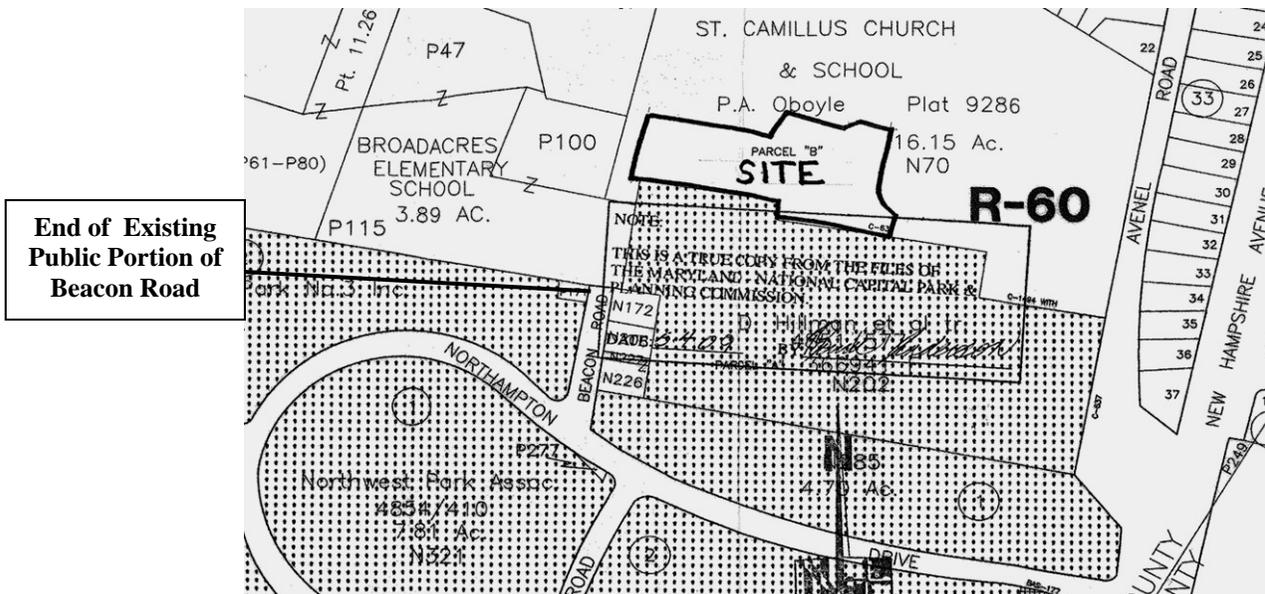


Overall Church Property = Dashed Line; Subject Site = Solid Line

The special exception site is located across Beacon Road from the Broad Acres Elementary School and the Broad Acres Local Park. The special exception site along with the larger church property is zoned R-60. The church school is located immediately to the north of the subject site, on the west side of the overall church property. Immediately to the east of the subject property is the sanctuary of the church. Further east is the seminary. Just to the north of the church is a friary. Parking is located in the northwest corner of the overall property, as well as between the existing school and the church. There is also existing parking to the south of the church and seminary.

As noted by Petitioner’s land planner, Alfred Blumberg, St. Camillus fronts on Avenel Road, to the east. Its main entrance is off of Avenel Road through a driveway at the northern edge of the property. Avenel Road has single-family houses confronting the church and seminary. Tr. 70-71, 97.

Beacon Road is the access into the Broad Acres Elementary School, the park to its north and secondarily to the St. Camillus School. Beacon intersects with North Hampton Drive, which divides the two apartment complexes to the south of the subject site. North Hampton Drive intersects with New Hampshire Avenue to the east. There are three single-family houses on the east side of Beacon Road, just north of North Hampton Drive. Tr. 70-71. Beacon is a dedicated public road up to the northern property line of northernmost single-family house of the three, as shown on the certified Zoning Map (Exhibit 13), a portion of which is reproduced below:



The portion of Beacon Road to the north of the public road is owned by Montgomery County Public Schools (MCPS) and used by Broad Acres Elementary School. Because the public portion of the road does not extend all the way north to the subject site, as can be seen on the above Zoning Map, the Board of Education must agree to Petitioner's access in order for the proposed senior housing to be feasible. Mary Pat Wilson, a real estate management specialist for MCPS, testified in support of the proposed special exception, subject to a condition, which must be approved by the Board of Education, to give Petitioner's access over the MCPS property. Tr. 27-38. Petitioner and MCPS have agreed to the following condition to implement such an agreement as part of this special exception (Exhibit 63):

Petitioner is required to enter into a Limited License Agreement with the Board of Education of Montgomery County granting rights of ingress and egress over that portion of Beacon Road located within the boundaries of the Broad Acres Elementary School under terms and conditions established in said agreement.

At the suggestion of the People's Counsel at the hearing (Tr. 36), the Hearing Examiner would add the following sentence: "Such a Limited License Agreement must be signed and a copy delivered to the Board of Appeals prior to the issuance of any building permits in this case." This proposed condition is included in Part V of this report and satisfies Planning Board condition #8.

Technical Staff proposed the following definition of the General Neighborhood: The Capital Beltway (I-495) on the north; New Hampshire Avenue on the east; and Northwest Branch Stream and New Hampshire Avenue on the west and south. Exhibit 30, p. 6. Although the text of the report states that New Hampshire Avenue is the eastern boundary of the neighborhood, the illustration accompanying it actually depicts the County line as the eastern border of the neighborhood. Mr. Blumberg introduced Exhibit 39, an aerial photograph of the surrounding area, on which he outlined the neighborhood, as he defined it. It differs only slightly from the map on page 6 of the Technical Staff report, but coincides exactly with the text description by Technical Staff of the neighborhood.

Mr. Blumberg believes that it would not make a big difference either way, but he feels that the eastern boundary should be New Hampshire Avenue, which is a six to eight lane divided highway.

Tr. 66-67. The Hearing Examiner agrees, and accepts the text description of both Staff and Mr. Blumberg as the defined neighborhood. It is depicted below in a portion of Exhibit 39:



Technical Staff describes the general neighborhood as follows (Exhibit 30, p. 6):

The surrounding area consists mostly of single-family detached homes and low-rise apartment buildings, classified in the R-60 and R-20 zones. Northwest Branch Park and Broadacre Park, as well as several churches and schools, are also located within the surrounding area. The special exception site is situated between St. Camillus Church and St. Camillus School. The 16.5-acre church/school campus separates the single-family development to the north from the multi-family development to the south. The special exception site most closely borders the multi-family development south of the church/school campus.

Mr. Blumberg notes that the northern two-thirds of the neighborhood is all single-family residential in the R-60 Zone. In the northwest corner of the neighborhood is the Roscoe Nix Elementary School, located close to the Beltway. There is a park adjacent to the Broad Acres Elementary School, just to the west of the St. Camillus campus, and there are several ball fields associated with the park. These institutional uses, the school, St. Camillus campus and the developed portion of the Northwest Branch Park constitute a dividing line between the single-family residential uses to the north and the multi-family uses to the south.

C. The Master Plan

The property at issue is subject to the *2000 East Silver Spring Master Plan*. Community-Based Planning staff, in their review of the special exception application, found the proposed senior housing project to be consistent with the recommendations of the applicable Master Plan. Their comments include the following:

The 2000 East Silver Spring Master Plan does not contain specific recommendations for this particular site, but the general recommendations in the Plan are applicable. The Plan recommends that the area's existing residential character be preserved. It encourages neighborhood reinvestment and enhancement of the quality of life throughout East Silver Spring. Staff finds that the proposed project meets these goals. By providing affordable independent senior housing to the area this project provides an opportunity for senior residents to remain in the community.

The Plan also supports providing adequate social, employment, and health facilities and services. On an as-needed basis this proposed senior housing

facility will offer geriatric wellness services and fitness programs, periodic seminars and classes of interest, and social activities to the residents.

The Plan recommends that special exceptions be sensitive to the character and the scale of the adjoining neighborhoods....Staff finds that an independent senior housing facility is appropriate amongst this mix of institutional and multifamily residential uses.

Petitioner's land planner agreed, noting that although there are no specific recommendations for the subject property contained in that Master Plan, there are some general guidelines and principles which this special exception will promote. One of those is that the Master Plan recommends that special exceptions should be sensitive to the character and scale of the adjoining neighborhood. In Mr. Blumberg's opinion, the proposed three-story building is "a good fit" in the context of the church, the school and the multi-family housing. Senior housing is "a terrific use for this property because it will allow the elderly in the community to stay within the community." Tr. 68.

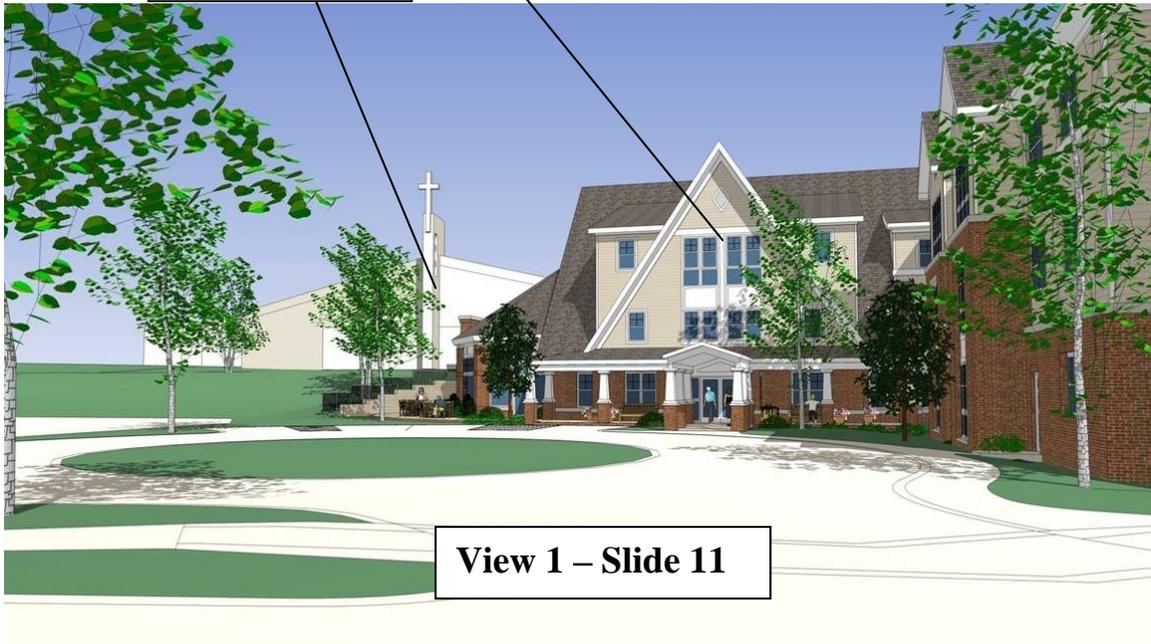
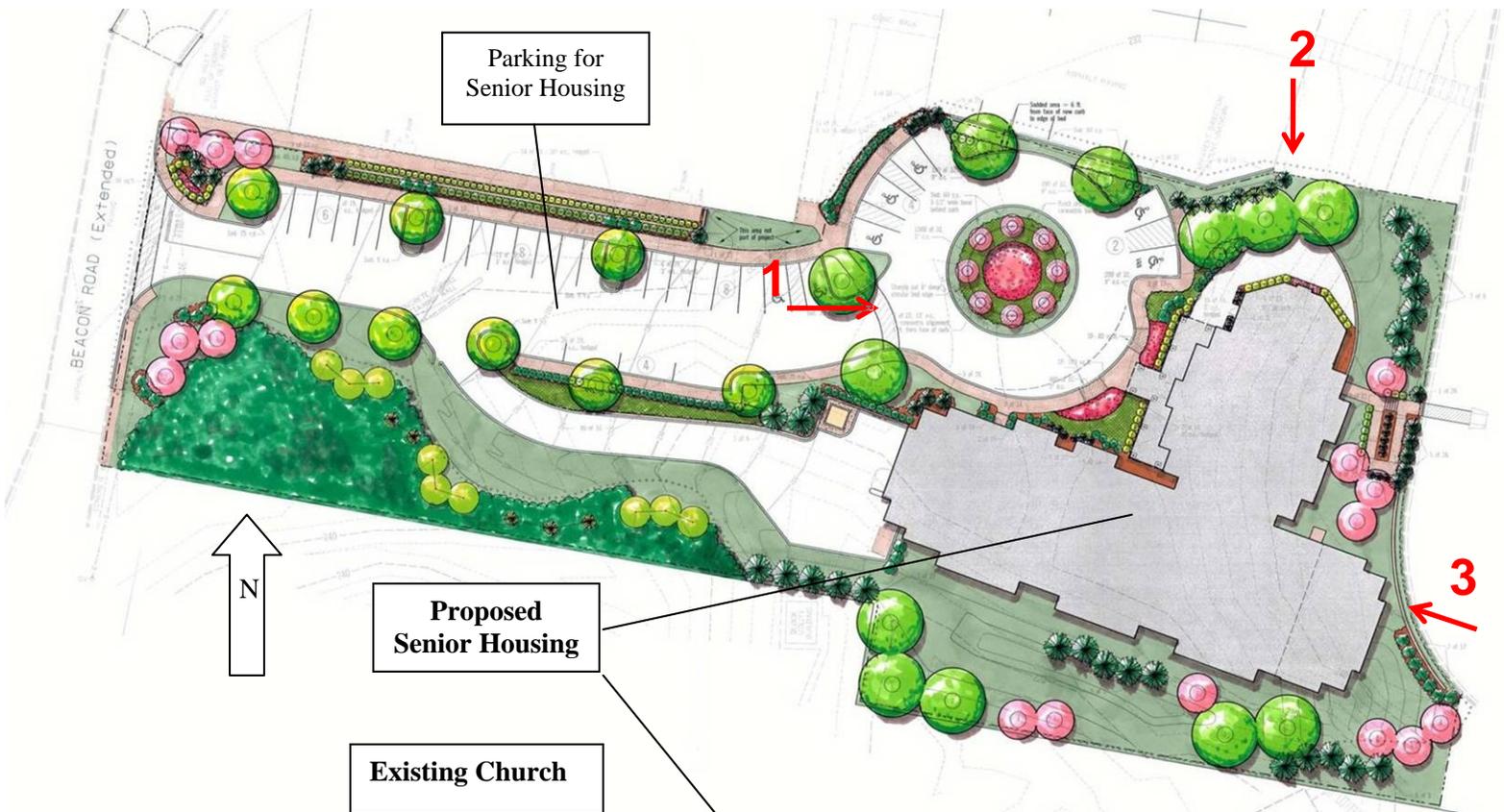
That Master Plan supports the current R-60 Zone, which permits the proposed use by Special Exception. Given this fact, and the observations of Technical Staff and Mr. Blumberg, the Hearing Examiner finds that the proposed special exception is consistent with the goals of the applicable Master Plan.

D. Proposed Use

Petitioner seeks authorization to construct a three-story, plus basement, residential housing facility for the elderly to be known as "Victory Oaks at St. Camillus." The proposed building will have a gross floor area of 48,132 square feet, and according to the Statement of Operations (Exhibit 3(a)), it will include 49 one-bedroom apartments for independent low-income elderly residents (either 48 or 49 of these apartments will be for residents and, under the former option, one unit will be reserved for staff.). The project will include a multi-purpose community room, television lounge,

crafts room, wellness center, fitness room, offices and an outdoor patio area. A management agency will be retained to oversee the operations of the facility.

Petitioner’s vision for Victory Oaks at St. Camillus is shown in the following rendered landscape plan (Exhibit 41 and Slide 10 from Exhibit 34) , keyed to slides showing illustrative views of the proposed building (Exhibit 34, Slides 11 – 13):





View 2 – Slide 12

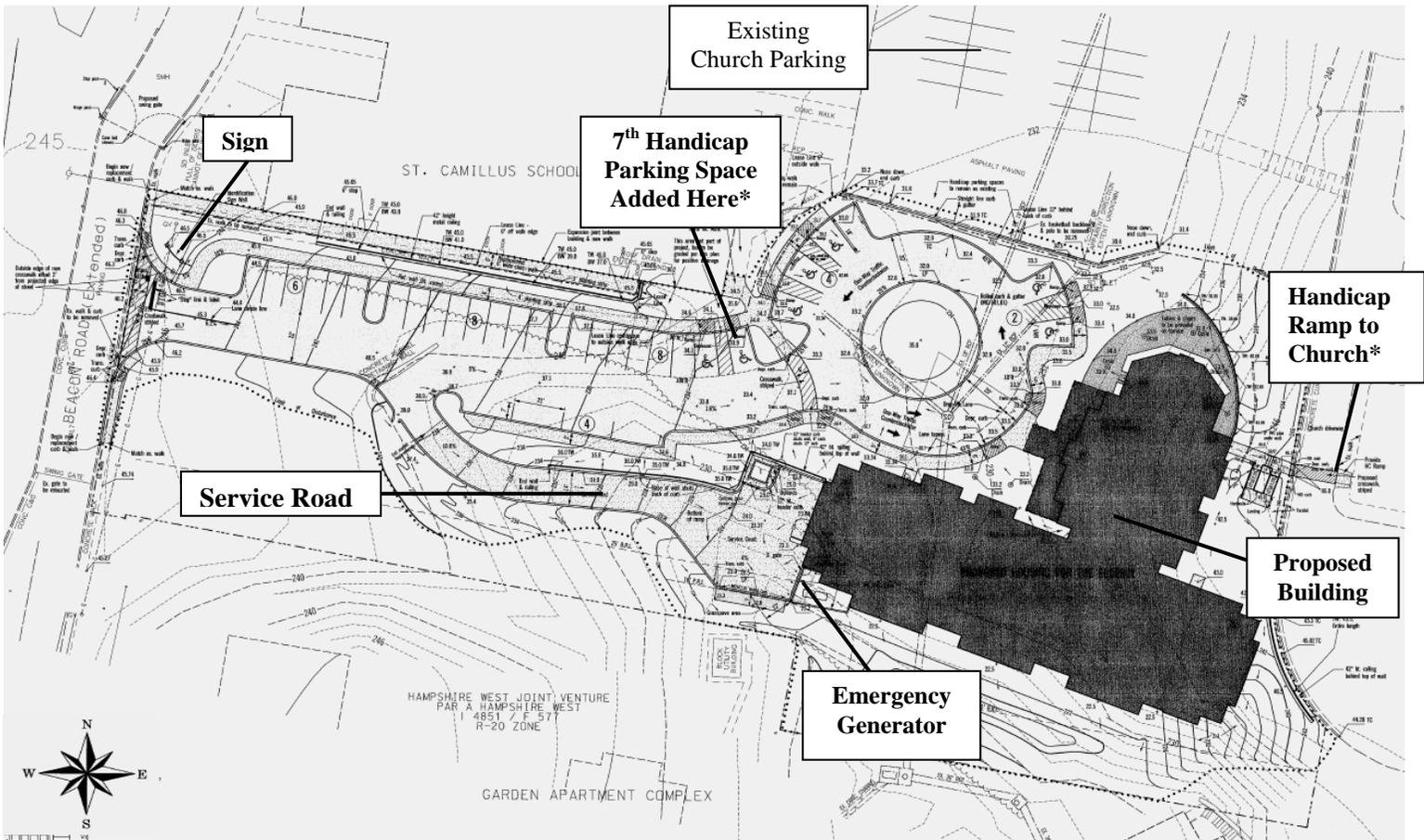
Proposed Senior Housing

Existing Church



View 3 – Slide 13

The revised Special Exception Plan for the subject site (Exhibit 57(a)) is reproduced below:



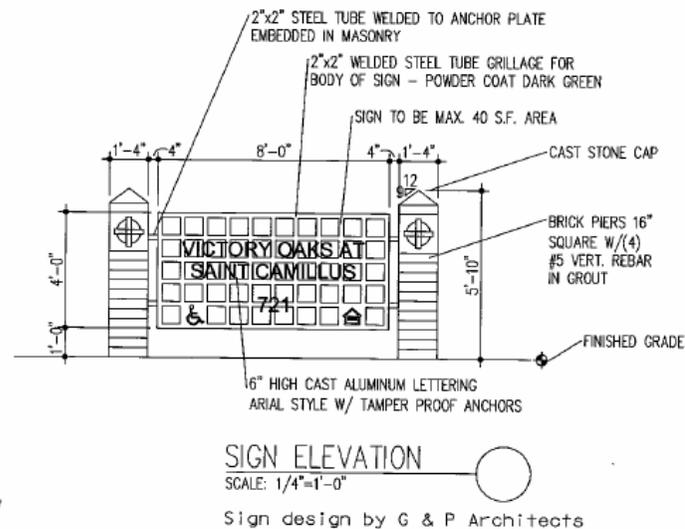
* Note: The handicap ramp and 7th handicapped parking space were added to the plans to satisfy concerns raised by Technical Staff and the Planning Board.

Site Data

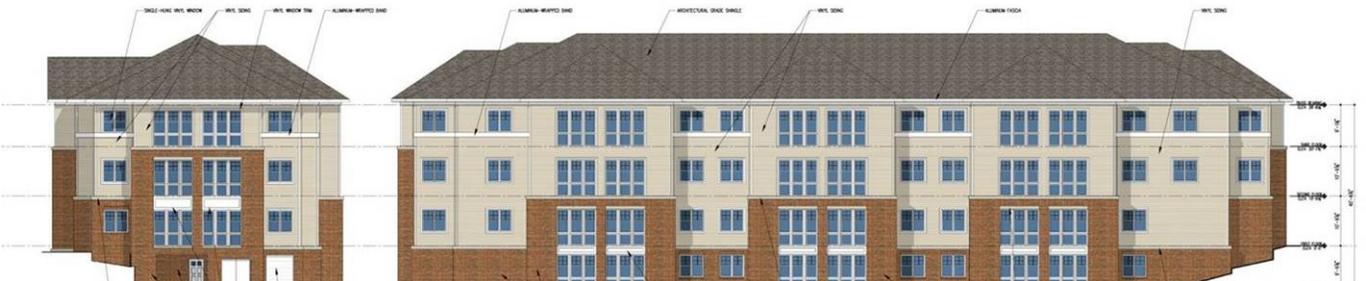
1. Special Exception Area: 1.93 Acres
2. Zoning: R-60
3. Watershed: Northwest Branch
4. Requested Use: Housing & Related Facilities for Senior Adults (59-G-2.35)
5. Units Proposed: 49
6. Parking Required: 20 Spaces, Proposed = 32 Spaces
7. Standards - Required Proposed

Setbacks:

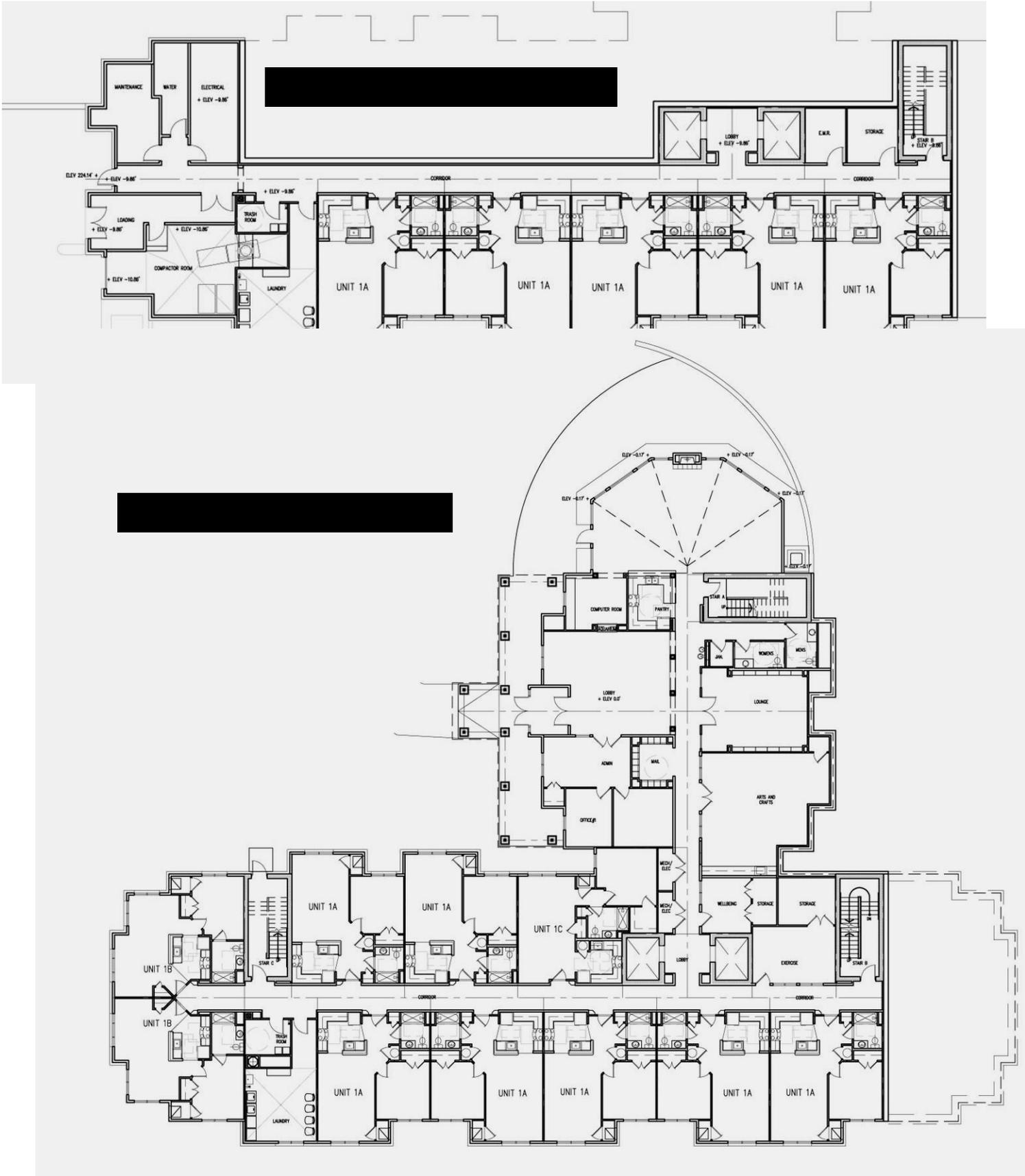
From Street	50 feet	300 feet
From Side	25 feet	25 feet
Building Height:	3 Stories / 40' Max.	3 Stories /
Maximum Lot Coverage	35%	18%
Minimum Green Area	50%	55%



Elevations planned for the proposed building (Exhibit 34, Slides 18 -20) are reproduced below:



The following Floor Plans (Exhibit 34, Slides 14 -16) are proposed for the new building:



the church on the east, and pursuant to Staff's condition #5, a ramp has been added to provide ADA compliant handicapped access between the proposed senior housing and the church. The proposed sidewalk was also widened per Staff's condition #4. These changes to the Site Plan were reviewed by Staff after the hearing and approved by them. Exhibit 64(a).

The facility will be a three-story building, plus a walk-out basement. There will be a trash chute on each floor with recycling, and this allows all the trash to be dropped down into a compactor. Periodically, the dumpsters will be picked up by a garbage truck that will be coming from Beacon and down to the loading and delivery area off of a service driveway to the south of the main driveway. According to Logan Schutz, Petitioner's architect, there will be very few deliveries to this building other than through mail and UPS.

There will be a front porch on the northwest corner of the building, with seating available, an amenity popular for seniors. There will also be amenity spaces in the north wing, a one-story great room with fireplace, and lots of glass which looks out over the patio.

In Mr. Schutz's professional opinion as an architect, the proposed use and its design will be in harmony with the character of the surrounding neighborhood and would not have an adverse effect on the residents, the people visiting the site or people living around the property. In his opinion, it will be residential in appearance. Technical Staff agreed, finding that the proposed building will be compatible in terms of scale, bulk, height and architectural features. Exhibit 30, p. 11.

Noise Attenuation:

The loading dock, the emergency generator and a transformer are all located at the southwest corner of the building, at a level below where the residents and visitors travel, so they will be kept out of sight and the impact of noise produced by testing the generator will be reduced. At the very end of the service driveway, there is a row of trees which will shield this, as well as a screening wall

which is required to screen the loading area and for sound mitigation of the emergency generator.

The Planning Board specified, in its Condition #7, that Petitioner be required to submit evidence to Technical Staff, prior to Board of Appeals approval, establishing that all outside noise sources satisfy County noise standards. As a result, Petitioner submitted a noise study, prepared by acoustical consultant, Miller, Beam and Paganelli, at the hearing (Exhibit 47). The study addressed potential noise from any HVAC system and from running the emergency generator, and made recommendations to insure that noise generated on the site would comply with the Montgomery County Noise Ordinance. Noise levels not exceeding 65 decibels at the property line for the daytime hours and 55 decibels at the nighttime are required.

The noise issue was reviewed by Technical Staff after the hearing, and it generated a significant post-hearing exchange among Technical Staff, the Hearing Examiner and the parties (Exhibits 62 and 65). From that exchange, the Hearing Examiner has derived the following condition, agreed to by Petitioner, which is recommended in Part V of this report:

Petitioner must comply with all applicable County noise standards. Petitioner must make reasonable efforts to obtain and install emergency generators with a maximum noise output suitable to meet the County standards, or, if infeasible, install acoustical treatment as necessary for compliance. Petitioner may conduct periodic non-emergency testing of the generator only during daytime hours (7:00 AM to 9:00 PM weekdays, 9:00 AM to 9:00 PM weekends and holidays). Garbage/dumpster pick-up shall comply with time of day restrictions specified in Chapter 48 ("Solid Waste Regulations") of the County Code (*i.e.*, no pick-ups between 9:00 PM and 7:00 AM on any weekday, or 9:00 PM and 9:00 AM on Sundays and federal holidays).

Compliance with Federal Law:

According to the Statement of Operations (Exhibit 3(a), p. 3), construction of the project will be funded through a grant from the U. S. Department of Housing and Urban Development under its Section 202 program. HUD will also subsidize the operation of the project. Occupancy of the project will be restricted to applicants with a minimum age of 62, whose incomes do not exceed 50

percent of the area median income. HUD requires these occupancy limits to remain in effect for a least 40 years. Each tenant will be required to pay rent in the amount of 30 percent of his or her adjusted income. With the possible exception of a single unit that may be reserved for resident staff, all of the proposed units will meet the requirements for moderately priced dwelling units (MPDUs).

Pursuant to Planning Board condition #2, Petitioner submitted a copy of the federal law, 42 USC §3607 (Section 807(b)(1) of the Fair Housing Act), which provides that its rules prohibiting discrimination on the basis of familial status do not apply to “housing for older persons.” Exhibit 36(a). Zoning Ordinance §59-A-2.1 provides that a “Senior Adult” is a “person who is 62 years of age or older.” Since the proposed facility will be restricted to those 62 years or older, the facility will not be in violation of the Fair Housing Act.

Operations:

As a residential facility, the building will be “in operation” 24 hours of the day. However, the general hours of most activities will be from 9:00 A.M. until 6:00 P.M. The facility will be staffed during the day with a maximum of three (3) employees and during the evening hours with one (1) on-call staff. Since this is a proposed independent living project, there is only one (1) shift of employees per day during normal business hours with a maximum of three (3) employees during the shift. Statement of Operations (Exhibit 3(a), pp. 2-3).

Petitioner provided photographs of the interiors in other similar facilities operated by Victory Housing and its affiliates (Exhibit 34, Slide 22), two of which are reproduced below:



Petitioner describes services to be provided at the facility in its Statement of Operations

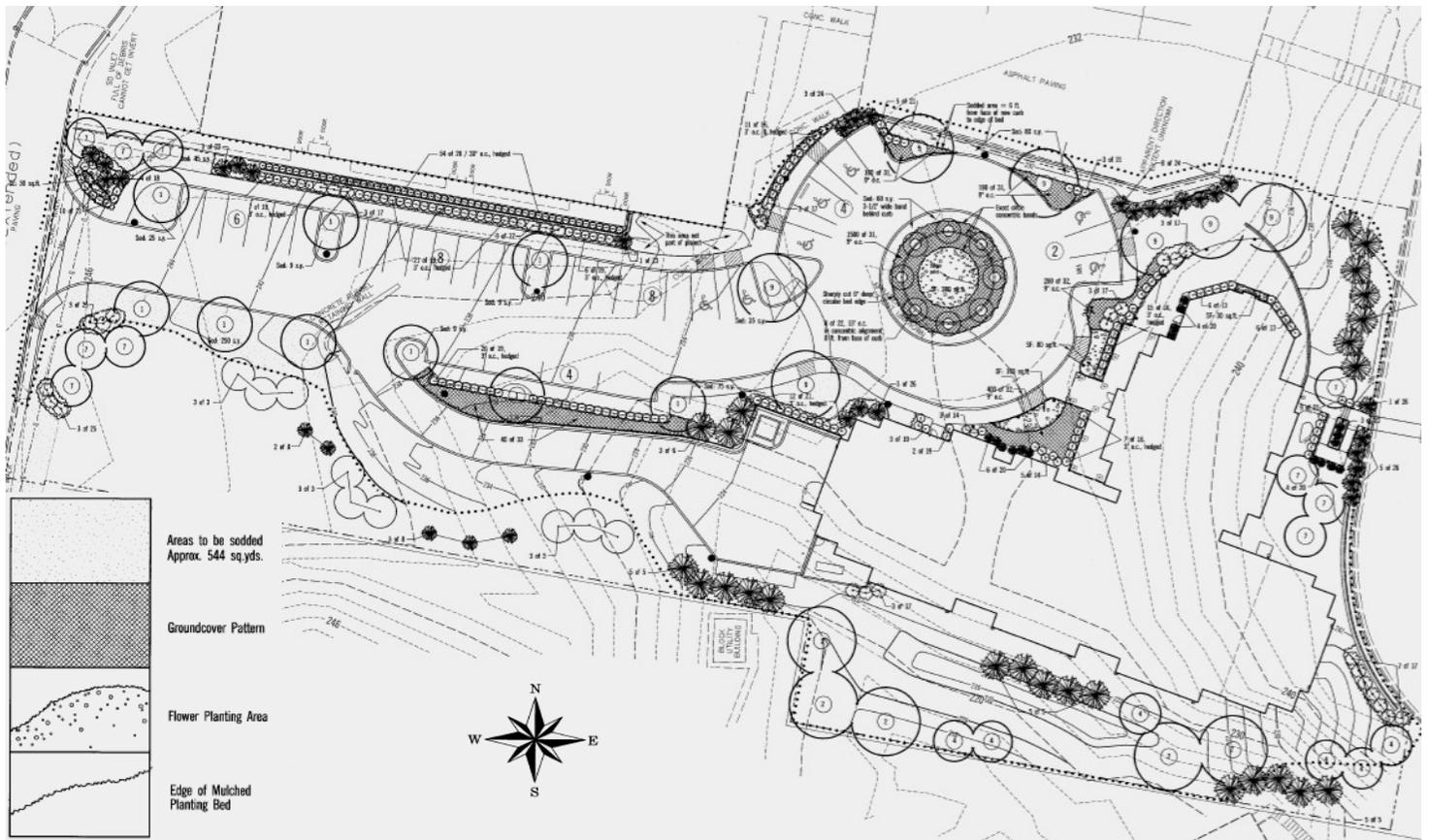
(Exhibit 3(a), p. 3):

Services to be offered initially on an as-needed basis include geriatric wellness services and fitness programs as well as periodic classes and seminars of interest plus social activities. Residents needing transportation can use the nearby Ride-On and Metro buses which stop adjacent to the property. These buses provide access to shopping areas, doctors' offices, and metro stations. Additionally, VHI operates a van service among its various local properties that will be available to Victory Oaks for resident transportation needs. The sponsor of the project also expects that parishioners of the neighboring St. Camillus Parish will volunteer to assist project residents. Volunteers may organize group activities and respond to individual requests for assistance, such as transportation to a doctor's appointment or group outings.

Landscaping, Lighting and Signage:

Landscaping for the planned development is shown on the revised Landscape Plan (Exhibits

57(b) and (c)).



PLANT LIST

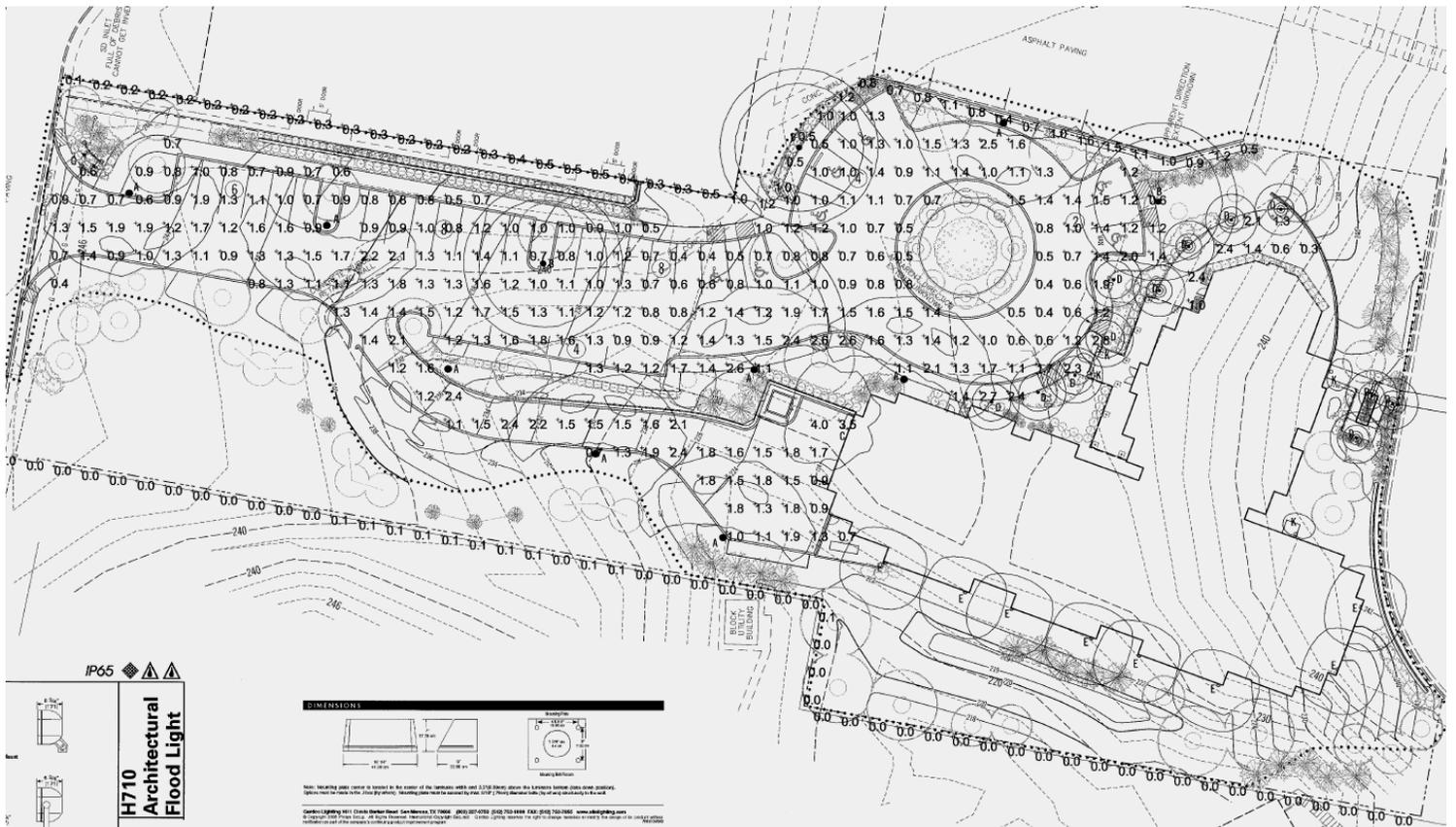
KEY #	BOTANICAL NAME	COMMON NAME	SIZE*	QUANTITY	REMARKS	
TREES	1	Acer rubrum 'Armstrong'	Armstrong Red Maple	3.5" - 4" cal. / 14' - 16' ht.	9	B & B, well formed & full crowns
	2	Acer saccharum 'Green Mountain'	Green Mountain Sugar Maple	3.5" - 4" cal. / 14' - 16' ht.	5	B & B, well formed & full crowns
	3	Amelanchier canadensis	Shadblow Serviceberry	5' - 6' ht. / 3' - 4' spd., multi-stem	9	B & B only, full plants
	4	Cercis canadensis	Eastern Redbud	8' - 10" ht. / 4' - 5' spd., multi-stem	6	B & B, well formed & full crowns
	5	Picea abies	Norway Spruce	8' - 10" ht. / 5' - 6' spd.	15	B & B, tightly sheared & full
	6	Picea omorika	Serbian Spruce	7' - 8' ht. / 4' - 5' spd.	10	B & B, tightly sheared & full
	7	Prunus yedoensis	Yoshino Cherry	2.5" - 3" cal. / 10' - 12' ht.	10	B & B, well formed & full crowns
	8	Ilex opaca	American Holly	5' - 6' ht. / 3' - 4' spd.	5	B & B, strong central leader
	9	Zelkova serrata 'Green Vase'	Green Vase Japanese Zelkova	3.5" - 4" cal. / 14' - 16' ht.	7	B & B, well formed & full crowns
	10					
	11					
	12					
SHRUBS	13	Azalea 'Delaware Valley White'	Delaware Valley White Azalea (Evergreen)	21" - 24" ht. & spd.	12	B & B or container
	14	Azalea 'Hershey Red'	Hershey Red Azalea (Evergreen)	21" - 24" ht. & spd.	8	B & B or container
	15	Item deleted				
	16	Buxus sinica insularis 'Wintergreen'	Wintergreen Boxwood	21" - 24" ht. & spd.	33	B & B or container
	17	Ilex crenata 'Chesapeake'	Chesapeake Japanese Holly	3.5' - 4' ht.	25	B & B only
	18	Ilex crenata 'Sentinel'	Sentinel Japanese Holly	5' - 6' ht.	4	B & B only
	19	Ilex glabra 'Shamrock'	Shamrock Holly	24" - 30" ht. & spd.	65	B & B or container
	20	Juniperus chinensis 'Pfitzeriana Compacta'	Compact Pfitzer Juniper	24" - 30" ht. & spd.	19	B & B or container
	21	Juniperus chinensis 'Sea Green'	Sea Green Juniper	21" - 24" ht. & spd.	40	B & B or container
	22	Lagerstroemia indica x fauriei 'Tonto'	Tonto Crape Myrtle (Nat'l Arboretum var.)	9' - 10" ht., 5' - 6' spd., multi-stem	8	B & B, full crown, match all 8 in form
	23	Photinia x fraseri	Red Tip Photinia	5' - 6' ht. / 3' - 4' spd.	4	B & B, full & tight branching
	24	Thuja occidentalis 'Nigra'	Dark Green American Arborvitae	5' - 6' ht.	11	B & B, full branching, strong central leader
	25	Rhododendron 'PJM'	PJM Rhododendron	3.5' - 4' ht. & spd.	6	B & B only, well branched
	26	Taxus media 'Densiflormis'	Dense Anglojap Yew	30" - 36" spd.	9	B & B only
	27	This Item Deleted				
	28	Ilex crenata 'Helleri'	Helleri Holly	21" - 24" ht. & spd.	54	B & B or container, plant 30" o.c., hedged
	29					
	30					
BEDS	31	Liriope muscari	Big Blue Liriope	2" - 2.5" peat pots, 2 yr. plants	1850	Plant 9" o.c. in staggered pattern
	32	Pachysandra terminalis	Japanese Spurge	2" - 2.5" peat pots, 2 yr. plants	600	Plant 9" o.c. in staggered pattern
	33	Jasminum nudiflorum	Winter Jasmine	1 gal. container, full plants	40	Plant 4" o.c. in staggered pattern
	34					
	SF	Seasonal Flowers	Species to be determined at planting time	To be determined dependent on species	680 sq.ft.	Provide cost allowance per Owner

SIZE* All plant material specified on this plant list shall conform to size, root condition, ball dimensions, spread / height, etc., as specified in "American Standard for Nursery Stock" (ANSI Z60.1), most recent edition, published by the American Nursery & Landscape Association, Washington, D.C.

The landscape plan was revised by changing some of the proposed plantings (red spruce instead of white spruce) pursuant to Technical Staff's condition #3. Staff subsequently approved the changes in Exhibit 64(a).

A revised lighting and photometric plan was introduced as Exhibit 57(d). It was approved by Technical Staff after the hearing (Exhibit 64(b)). Petitioner will be using 14-foot pole mounted lights along the driveway from Beacon Road. At the approach to the building, there is bollard lighting.

Several lights will be mounted on the back of the building, which are “wall wash,” and actually light the ground, purely for security. Tr. 120-128. The lighting and photometric plan is reproduced below:



At the southern property line, which borders the residential areas, the lighting can be seen to be at or below the 0.1 footcandles permitted by the Zoning Ordinance along rear and side lot lines in residential zones. The front lot line is to the west, and may therefore exceed the 0.1 footcandle limit. To the north and east of the subject site, there is no property line because it is part of the church’s property. Petitioner’s architect testified that the church has no concern about the spillage of light. In fact, the church actually welcomed more light casting on their area to illuminate their parking lot. Tr. 120.

According to Petitioner’s architect, he tries to obtain about a 1 footcandle minimum on all the paved surfaces internal to the site. For seniors, that level of light is important, and it is an industry

standard as well as a Pepco standard. Tr. 121. The lights have internal baffling to prevent light from spilling across the property line. All of these lights will be on a photometric switch, to switch off during the daytime. According to Mr. Schutz, light will not leak into residential areas.

The cut sheets and notes from the lighting plan are reproduced below:

**Cast Aluminum Posts
extruded shafts**

SALEM Series
9" sq. base

POST LIGHT:

Manufacturer	Holophane
Model Series	Granville Premier Series
Model Number	GVP10M00MX8NXX, Lunar optics
Lamp	100 Watt Clear Metal Halide
Color	Symmetric or Assymetric distribution per plan
Options	Dark Green
Pole Height	Include band and ribs trim
Quantity	14 feet
	11

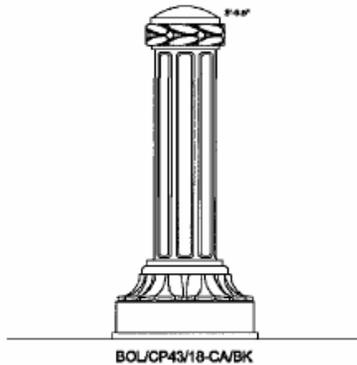
POLE:

Manufacturer	Holophane
Model Series	Salem Series - Smooth shaft
Model Number	BOL/CP44/13/L-CA/DG
Color	Dark Green
Height	14'
Quantity	10

STATISTICS						
Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min
Lease Line	+	0.6 fc	1.6 fc	0.1 fc	16.0:1	6.0:1
Parking & Drive	+	1.2 fc	4.0 fc	0.4 fc	10.0:1	3.0:1
Patio	+	1.4 fc	2.4 fc	0.3 fc	8.0:1	4.7:1
Property Line	+	0.0 fc	0.1 fc	0.0 fc	N/A	N/A

CHESAPEAKE Series

Cast Aluminum Bollard



Specifications

DESCRIPTION The bollard shall be cast aluminum constructed with a classic decorative base. The bollard shall be provided with a cast aluminum, decorative dome top.

MATERIALS The bollard and top shall be heavy wall, cast aluminum produced from certified ASTM 358.1 ingot per AS B170-95a or ASTM B28-95. The castings shall be formed in the pattern with complete detail. All exposed hardware shall tamper resistant stainless steel. Anchor bolts to be completely hot dip galvanized.

CONSTRUCTION The bollard shall be made from a one-piece casting with the cast dome top welded to the top. All exposed welds shall be ground smooth. All welding shall be per ANSI/AWS D1.2-90. All welding shall be per ANSI/AWS D1.2-90. All welders shall be certified per Section 5 of ANSI/AWS D1.2-90.

DIMENSIONS The bollard shall be 3'-6.5" in height with a 1 diameter base, a 7.75" diameter shaft, and a 5.5" tall top.

INSTALLATION The bollard shall be provided with four 3/4" diameter, hot dip galvanized L-type anchor bolts to be installed on a 13" bolt circle. Two doors shall be provided in the base anchor-rod access.

For finish specifications and color options, see "Finish" section in catalog.

DIMENSIONS



Note: Mounting plate center is located in the center of the luminaire with and 3.75" (3") above the luminaire center (data does not position). Options must be made in the 1/8" (1/8") offset. Mounting plate must be secured by max. 5/16" (1/2") diameter bolts (by offset) diagonally to the wall.

Gardco Lighting 4511 Clevo Barker Blvd. San Marcos, TX 78666 (800) 227-4753 (512) 750-8888 FAX: (512) 750-7955 www.gardco.com

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Gardco Lighting is a Philips group brand

BUILDING WALL SCONCE:

Manufacturer	Gardco
Model Series	100 Line / 101 Performance Sconce
Model Number	101MT100
Lamp	100 Watt Clear Metal Halide
Color	White or custom color to match brick
Dimensions	16.25"W X 7"H X 9"D
Quantity	8

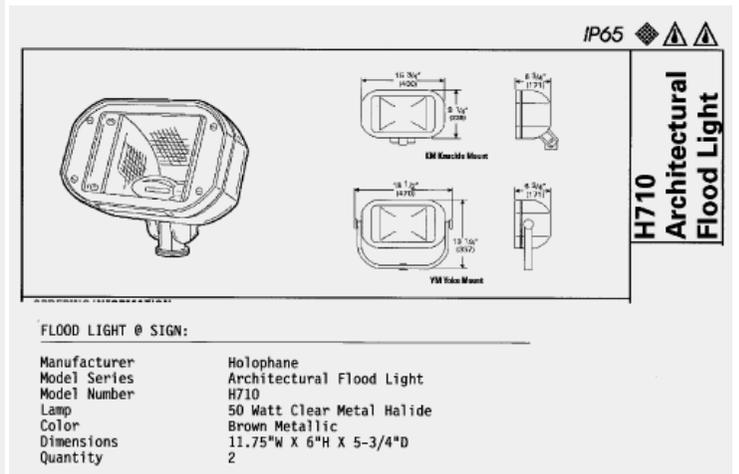
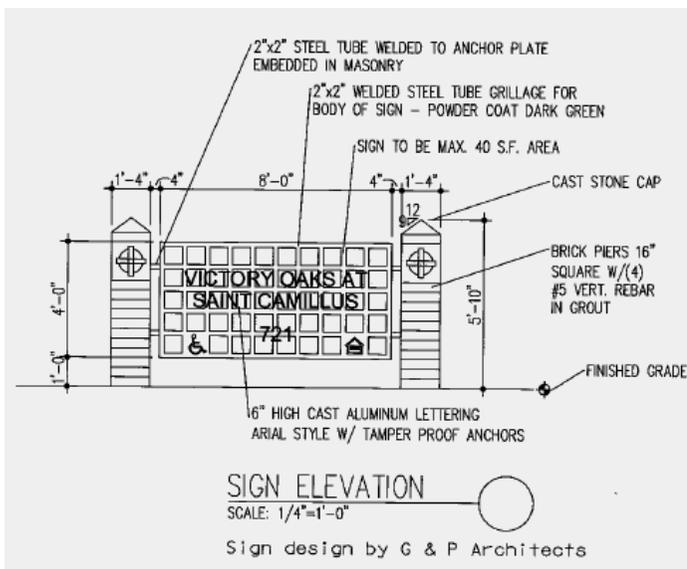
LIGHTED BOLLARDS:

Manufacturer	Holophane
Model Series	Chesapeake Series
Model Number	BOL/CP47/18/L-CA
Lamp	100 Watt
	Clear Metal Halide
Color	Dark Green
Height	3'-6.5"
Quantity	13

LUMINAIRE SCHEDULE

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	A	8	GVP10M00MX8NX X	GRANVILLE PREMIER, LUNAR OPTICS, ASYMMETRIC DISTRIBUTION	100W CLEAR MH	GVP17M00MX 8NXX.ies	9500	0.75	138
	B	3	GVP10M00MX8NX X	GRANVILLE PREMIER, LUNAR OPTICS, SYMMETRIC DISTRIBUTION	100W CLEAR MH	GVP17M00MX 8NXX.ies	9500	0.78	211
	C	1	W410DMH00CX	WALLPACK IV	100W CLEAR MH	LTL15999.ies	9500	0.75	128
	D	12	BOL/CP47/18/L- CA/XX-M100/00	CHESAPEAKE SERIES, CAST ALUMINUM BOLLARD	100W CLEAR MH MED ED-17	BOL_CP47_18 _L-CA_XX- M70_00.ies	7900	0.75	138
	E	8	101-MT-100MH-SL	GARDCO REAR WALL SCONCES - FLAT DIFFUSING SOLITE GLASS LENS	CLEAR 100MH/MED	M1MS17M.JES	8500	0.75	210
	G	2	H710 50MH HFL ISS	FLOODLIGHT (UPLIGHTS) NARROW HORIZ. FLOOD. DIE CAST ALUMINUM FLOODLIGHT, SPECULAR REFLECTOR, FLAT GLASS LENS	ONE 50-WATT CLEAR METAL HALIDE, HORIZONTAL POS.	H710 150CMT8 NHSP.IES	3400	0.72	88
	K	4	Progress 5633	Progress Arts & Crafts Sconce	13W COATED CFL	W442CFL00UX .ies	1000	0.85	18

A monument sign measuring 8 feet in width and 5.83 feet in height will be located to the northwest of the site entrance, off of Beacon Road, as depicted on the Special Exception Site Plan, Exhibit 57(a). It will have a metal grillage with the name “Victory Oaks at St. Camillus” and the Beacon Road address. There will also be a little pre-cast cap to pick up on the architecture of the building and the church itself. There will be a spotlight for the sign, which is shown below, along side of the sign. A sign permit will be obtained and a copy forwarded to the Board of Appeals.



E. Public Facilities (Water, Sewer, Traffic and Parking)

Subdivision will not be required in this case because the subject site is located on a platted lot. Tr. 95. Therefore, the Board of Appeals must determine the adequacy of the public facilities. Public school capacity is not an issue in this case because the nature of the special exception (senior housing) would preclude demand for school facilities.

Water and Sewer:

Petitioner’s land planner, Alfred Blumberg, testified that the existing systems are adequate to accommodate the amount of water that will be utilized, even with fire protection system, and the

sewage needs of the proposed development as well. Tr. 95-96. There is a sewer line in Avenel Road which serves the school, the park facilities and nearby homes and apartments. Petitioner will connect to that sewer. Water will be connected to service in Beacon Road. Tr. 102.

Electricity, Police and Fire:

Other public facilities – electricity, police and fire – are also adequate. There is a fire station just north of the Beltway off of New Hampshire Avenue, which is less than a mile from the property. There is a police substation in Takoma Park, which is a mile or two south of the site. Hence, there is ready access to fire and police protection. Tr. 96-98. Technical Staff also found that “[t]he proposed use will be adequately served by existing public facilities.” Exhibit 30, p. 15. These findings are undisputed in the record.

Traffic:

Petitioner’s transportation engineer, Michael Lenhart, applying trip generation rates for senior/independent living facilities from Appendix A-7 of the Local Area Transportation Review (LATR) Guidelines, determined that the proposed 49-unit senior housing would generate only three trips in the a.m. peak hour and two trips in the p.m. peak hour. It therefore satisfies LATR without a formal traffic study. Per section 1.D. of the LATR and PAMR Guidelines, an applicant need not take any mitigating action under the Policy Area Mobility Review (PAMR), if the Planning Board finds that the proposed development will generate three or fewer peak hour trips. Hence, no mitigation is required under PAMR. Exhibits 10 and 50.

Technical Staff reviewed Mr. Lenhart’s findings and agreed with them. As stated by Staff (Exhibit 30, p. 15):

The Local Area Transportation Review (LATR) Guidelines require that a traffic study be performed if the use generates 30 or more peak hour trips. The proposed independent living senior housing facility is expected to generate only 3 weekday

morning peak-hour trip and 2 weekday evening peak hour trip; therefore, a traffic study is not needed to satisfy LATR requirements. Since the proposed facility will generate less than 4 peak-hour trips during the weekday morning and evening peak-periods, it is not required to satisfy Policy Area Mobility Review (PAMR) for the Silver Spring/Takoma Park Policy Area. The proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic.

Parking:

Base parking requirements for the proposed facility are determined by Zoning Ordinance §59-E-3.7, which specifies different parking standards for different policy areas and different numbers of bedrooms per unit. Technical Staff indicates that for the subject site (which is in the “Southern Area” as designated by the Council’s 1984 specifications), the Petitioner must provide 0.50 parking spaces per unit. Thus, the base requirement for the planned 49-unit facility would be 25 parking spaces (Exhibit 30, p. 10). Section 59-E-3.7 modifies this requirement with the statement, “The base requirement may be reduced in accordance with the credit provisions of Section 59-E- 3.33.”

Under that section, Technical Staff calculates that Petitioner should be granted a 20% reduction in its parking space requirements, resulting in a net parking space requirement of 20 parking spaces, as shown in the following chart from the Staff report (Exhibit 30, p. 10):

No. of Bedrooms	Southern Area	Required Spaces With 20% credit	Proposed Spaces
0—1	0.50	49 BR x 0.50=24.50 = 25 25x.8=20 SP	32 sp

The revised site plan provides a total of 32 parking spaces, including 7 handicap spaces, which satisfies Planning Board Condition #6, as confirmed by Technical Staff (Exhibit 64(a)). In sum, the parking to be provided meets or exceeds all requirements.

F. Environmental Impacts

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420091690 was approved on May 22, 2009. Exhibit 7(b). According to Technical Staff, “There are no streams,

wetlands, or floodplain on-site. This property is not located within a Special Protection Area.” Exhibit 30, p. 7.

Forest Conservation:

The property is subject to the Montgomery County Forest Conservation Law, and Environmental Planning staff recommended approval of the proposed Preliminary Forest Conservation Plan (PFCP) with conditions that include compensation for forest loss at an off-site location. Exhibit 30, p. 8. A Revised Preliminary Forest Conservation Plan (PFCP, Exhibit 42) was approved by the Planning Board on January 14, 2010,⁶ as was a Specimen Tree Variance Plan (Exhibit 43), in accordance with new state regulations. Tr. 81-86.

According to Mr. Blumberg, the Specimen Tree Variance has nothing to do with a Board of Appeals variance; rather it is a variance that has to be requested through the County arborist, with approval of the Planning Board. Tr. 84-86. Technical Staff notes (Exhibit 30, p. 10), “This special exception site is also subject to [Montgomery County Code] Chapter 22A-21, which requires that a variance be granted by the Planning Board for the applicant to remove four specimen trees located inside the special exception area. Environmental Planning staff recommend[ed] approval of the requested variance to remove four specimen trees.”

Stormwater Management:

Mr. Blumberg testified that the northern portion of the 16-acre St. Camillus property is a higher elevation than the southern portion. As a result, the existing parking lot drains southward and is caught in an inlet that is part of the Northwest Branch Tributary at the southern end of the driveway (which is the northern end of the subject site). There is no quality or quantity control of that stormwater today.

⁶ The formal Planning Board resolution always lags behind the approval at the Planning Board meeting, but it is in the works. Exhibit 55(a).

Petitioner has proposed a Stormwater Management Concept Plan (Exhibit 44) that will relocate the big storm drain, which is an 18-inch pipe, to the edges of the western side of the building and in doing so, it will also capture the runoff from the parking lot and the roof of the proposed building. From there it will go into a filtering system for water quality, and then drain to an outfall on the south of the subject property. According to Mr. Blumberg, that will be a significant improvement over the current situation because it will be picking up so much of the untreated water from the parking lot. There will also be bio-retention areas and underground recharge areas associated with this draining system. He does not believe that the plan will be affected by the new Maryland Storm Water Statutes. When this project is completed, the amount of runoff from the property into the neighborhood will be reduced. It will thus be an improvement over the existing conditions, both for this property and for the neighborhood. Tr. 90-94.

Technical Staff discusses the Stormwater Management Concept Plan in its report (Exhibit 30, p. 8):

The plan encourages the exploration and promotion of innovative stormwater management options when the opportunities present themselves. The applicant's engineer is working with County DPS to provide Best Management Practices (BMPs) in the site's Concept Stormwater Management Plan. The proposed building footprint has been designed to keep the amount of impervious surface to a minimum while incorporating green building and LEED techniques.

The Department of Permitting Services (DPS) approved the Stormwater Management Concept Plan on December 16, 2009 (Exhibit 45).

Noise Attenuation:

Issues related to noise control were discussed in Part II. D., on pages 16-17 of this report.

Based on this record, the Hearing Examiner finds that there are no environmental issues warranting denial of the subject petition.

G. Community Concerns

As mentioned in Part I of this report, there have been numerous letters of support, including from the Oakview Citizens Association (Exhibit 25); St. Camillus Church (Exhibit 23); County Health and Human Services' Agency on Aging (Exhibit 29); and the Silver Spring Advisory Board (Exhibit 18(a)).⁷ Staff summarizes the community response: "The proposed special exception use is generally supported by the residents of the surrounding area, civic associations, and political leaders as evidenced by the attached correspondence. Staff has not received any oral or written comments in opposition to the proposed special exception." Exhibit 30, p. 7.

There was one letter of opposition filed with the Hearing Examiner by a neighbor, Kathleen Mayers (Exhibit 32), but there was no opposition testimony at the hearing. Ms. Mayers' letter raises four concerns:

1. "[S]anitary issues" relating to trash receptacles outside the church which have become "a communal dumping area for local residents;"
2. Loitering in the St Camillus parking lot, accompanied by "drinking, fighting, and car racing" as well as "loud music and equally loud swearing that lasts well into the early morning hours";
3. Increased crime and "a constant barrage of police" as well as other emergency responders; and
4. Safety issues for the children because of the other listed concerns.

Petitioner responded with evidence from the Pastor of St. Camillus Church, Father Michael Johnson. Tr. 54-58. He testified that there are a number of things on Ms. Mayers' list over which he has no control, such as people gathering at night. That is largely as a result of the County park which has recently been improved. There are some athletic fields immediately north of the Broad

⁷ A letter from Petitioner's attorney (Exhibit 16) indicates that there were 23 letters of support he forwarded to Technical Staff, but they do not appear to be in the Hearing Examiner's record. The Staff report (Exhibit 30) refers to the correspondence but does not attach the actual letters.

Acres Elementary School. Some people park on Church property and go into the park. He has contacted the Park Department and the County police, but there is not much he can do about it.

As to the sanitary issue, the dumpster has been at the church about six years, and there are recycling containers for the school. They are all enclosed. There was some waste material, such as old file cabinets, from a remodeling at the school, but that has been carted away.

Father Johnson has no idea about Ms. Mayers' safety concerns. Late at night, people go back to the park, and the police go back there regularly to patrol at the request of the neighbors up on the upper end of the parking lot. The only entrance to the park is through church property, so when the County police go up there, that is the route they follow, but he has no control over their actions. He does not perceive it as a large problem. "It's like anything else in a neighborhood where you have teenagers hanging out . . . they drink sometimes and then they leave the bottles and we have to clean it up." Tr. 58. Father Johnson feels that there is no relationship between the activities proposed in the special exception and the issues and questions raised in Ms. Mayers' opposition letter. The addition of residents and lighting on the site might actually reduce some of the problem. Mr. Blumberg added that clearing the forests for this project and having the activities associated with residential development, with "eyes of the street," should alleviate some of the problems that were highlighted by Ms. Mayers' letter. Tr. 100.

The Hearing Examiner agrees with these observations. Ms. Mayers' concerns do not really militate against the planned development. If anything, the proposed residential use would tend to alleviate some of the concerns.

It appears to be recognized by the community, overall, that the provision of additional quality housing for low-income seniors is a highly desirable outcome for the community, and the proposal will be compatible with the neighborhood.

III. SUMMARY OF THE HEARING

The hearing took place on January 25, 2010, as scheduled. Petitioner called four witnesses, Mr. James A. Brown, Jr., President of Victory Housing, Inc.; Father Michael Johnson, Pastor of St. Camillus Church; Alfred S. Blumberg, land planner; and Logan Schutz, an architect.

Michael Lenhart, a traffic engineer previously qualified as an expert in traffic engineering and transportation planning before the Hearing Examiner in other cases, was unable to attend. Petitioner's counsel proffered that his testimony was summarized in Exhibits 10 and 50, the latter of which was notarized, and his statements were introduced into evidence as his expert opinion, without objection. Tr. 128-131. In his opinion, the use will generate no more than three morning peak hour trips and two evening peak hour trips and therefore, it satisfies LATR and PAMR without a formal traffic study.

At the beginning of the hearing, the Hearing Examiner disclosed that his wife's aunt spent a number of years in Victory Housing, specifically Byron House on Kentsdale Drive in Potomac. He noted that he did not feel that caused any conflict, but he asked the parties whether or not they objected to his serving on the case. All parties present (Petitioner and the People's Counsel) indicated that they had no objection. Tr. 8-9.

Petitioner's attorney outlined the fact that to access the subject site, Petitioner must cross land owned by Montgomery County Public Schools (MCPS), and specifically Broad Acres Elementary School's portion of Beacon Road. Tr. 21-22. Michael Molinaro, Esquire, appeared as counsel to the Montgomery County Public Schools, and called Mary Pat Wilson, real estate management specialist for MCPS, to discuss a proposed condition which would allow Petitioner access to a portion of Beacon Road owned by MCPS. Tr. 7-8.

Martin Klauber, the People's Counsel, did not call any witnesses, but he participated in the hearing and supported the petition. Tr. 142.

A. Petitioner's Case

1. James A. Brown, Jr. (Tr. 23-25; 38-52):

James A. Brown, Jr., testified that he is the President of Victory Housing, Inc. He stated that Archbishop Patrick A. O'Boyle owned the St. Camillus Church land as a "corporation sole." He is now deceased, and his successor in office is Donald W. Wuerl, Archbishop of Washington, who now has title to the land. Tr. 23-25.

Mr. Brown further testified that Victory Housing, Inc. is the nonprofit housing arm of the Catholic Archdiocese of Washington, specializing in the development and operation of affordable housing, with an emphasis on seniors housing. It operates 14 communities in Montgomery County, both assisted living and independent living communities, two affordable housing communities for families, and a total of 23 communities in the metropolitan area. Tr. 38-39.

Victory Housing was approached by the parish some years ago to explore the possibility of affordable housing. It reached agreement in February of 2008, with the parish counsel and the pastor to submit an application to HUD [*i.e.* the federal agency, Housing and Urban Development] for grant funding pursuant to "the 202 housing program," and Victory Housing received a grant. Tr. 39

Victory Housing entered into an option agreement with the Archdiocese of Washington for a 99 year ground lease for the property. The option provides that it is assignable to an affiliate of Victory Housing and in this instance, that would be Victory Oaks, Inc. An affiliate is used because HUD requires a single asset corporation to be the owner of these communities. Tr. 39.

After filing the application, Victory Housing created the wholly owned legal entity known as Victory Oaks, Inc., in order to comply with federal regulations. Petitioner therefore asks that the

special exception be granted in the name "Victory Oaks, Inc." rather than Victory Housing, Inc. [Petitioner's attorney indicated that Petitioner will amend the petition to so reflect. Tr. 40-42.]

Mr. Brown further testified that the people to served by the facility have to be 62 years above and older pursuant to the HUD-202 program. They will have sufficient mental and physical capacity to live independently, and the average age coming in is probably the early 70s and of low income. There is no requirement that they be Catholic. It is first come, first served if they're income and age-qualified.

A building with forty-nine units is proposed, one of which may be devoted to overnight staff. There would be a maximum of three staff members, a site manager, an assistant site manager and a maintenance person. The maintenance person may or may not be onsite. For 49 units, it is typical that there would not be a staff unit. It's just too small a building. Typically, the primary business hours would be 9:00 to 6:00, but it will be a residential community, so theoretically it would be operating 24 hours a day.

Victory Housing has four wheel-chaired accessible vans that serve seniors at the various communities, and they will take the residents to shopping, drugstore, food store, a department store, community outings, and things of that sort. They are also close to the Ride-On and the Metro buses, so that will be helpful for the transportation of the seniors.

In terms of other amenities for the residents, Victory Oaks will include a computer room, arts and crafts room, community room, TV room and an outdoor patio. And then depending upon resident need and interest, Victory Oaks will also offer geriatric wellness services, fitness program, classes and seminars of interest and social activities for the residents.

Per HUD requirements, the income of each resident for Victory Oaks must be below 50 percent of area median income. For 2009, the combined household income cannot exceed \$35,950

for a one-person household and \$41,100 for a two-person household. HUD sets the maximum allowable incomes every year.

[Petitioner's attorney submitted a letter (Exhibit 36) confirming that the age restrictions applied to the subject development qualify for at least one type of exemption from familial status requirements of the Federal Fair Housing Act.] According to Mr. Brown, the Fair Housing Act allows purpose built housing for seniors age 55 and older, and that's what Victory Oaks intends to construct, so that it can restrict it to seniors of a certain age. Mr. Brown also indicated that Victory Oaks will comply with the ADA [*i.e.*, Americans with Disabilities Act].

Mr. Brown further testified that beginning in 2008, members of the Victory Housing staff and St. Camillus Church began holding meetings with community members to discuss the proposed project. He has met with St. Camillus Church members, the Northwest Park/Oak View community, Wheaton C Group [phonetic sp.], Southern Management, which is the owner of the adjacent multi-family community, and the Oak View Citizens Association.

Based on his experience in developing communities in Montgomery County and elsewhere in the Metropolitan Region and his familiarity with the St. Camillus property, Mr. Brown believes that this use can be constructed and operated on this property and be in character with the surrounding neighborhood. To his knowledge, there is nothing about the proposed use that would have an objectionable nature to the surrounding neighborhood; nor would it create noise, lights, activity, or anything that would be bothersome to people living around the property.

Finally, Mr. Brown, indicated that the conditions recommended in Planning Board's letter are acceptable to the Petitioner.

2. Father Michael Johnson (Tr. 52-61):

Father Michael Johnson testified that he is the pastor of St. Camillus Church. He described

St. Camillus as, “on any given Sunday, the largest parish in the archdiocese even though it's tucked away in this neighborhood that nobody seems to know about.” Tr. 53.

About 4,700 people come to St. Camillus Church on the weekend. A lot of the church’s outreach is to immigrants, to the poor, to the marginalized because that's a big part of the Franciscan charism. He felt that outreach to seniors, especially low-income seniors, was a nice fit for the church, which has two food pantries and reaches out to a lot of people. It would also be a great opportunity for people in later life to stay active and involved in a ministry situation, helping out in the school if they want, and for the church’s young people and others to take a hand at helping other people. Making people feel included and active in this community could be a wonderful ministry for the parish as well.

Father Johnson noted that St. Camillus Church has the land. The land is used currently as a kind of a playground, but there is the County playground in the back. So while it would be a sacrifice, it's the church’s way of tithing back to the community, to give back to people who are vulnerable, to give them a nice comfortable place to live in the community.

Father Johnson feels that Victory Oaks can be constructed and operated in a manner that can co-exist and be compatible with the church and its operations.

Father Johnson is familiar with Kathleen Mayers [*i.e.*, the neighbor who wrote an opposition letter.] He indicated that there are a number of things on her list over which he has no control, such as people gathering at night. That's largely as a result of the County park which has recently been improved. There are some athletic fields immediately north of the Broad Acres Elementary School. Some people park on Church property and go into the park. He has contacted the Park Department and the County police, but there is not much he can do about it. The dumpster has been there about six years, and there are recycling containers for the school. They are all enclosed. There was some

waste material, such as old file cabinets, from a remodeling at the school, but that has been carted away.

Father Johnson has no idea about Ms. Mayer's safety concerns. Late at night, people go back to the park, and the police go back there regularly to patrol at the request of the neighbors up on the upper end of the parking lot. The only entrance to the park is through church property, so when the County police go up there, that's how they go, but he has no control over that. He does not perceive it as a large problem. "It's like anything else in a neighborhood where you have teenagers hanging out . . . they drink sometimes and then they leave the bottles and we have to clean it up." Tr. 58. Father Johnson feels that there is no relationship between the activities proposed in the special exception and the issues and questions raised in Ms. Mayers' opposition letter. The addition of residents and lighting on the site might actually reduce some of the problem.

[Mr. Klauber did not feel that there was any condition that could be imposed that would address Ms. Mayer's concerns because the issue is not under the control of the church or the special exception site. Tr. 58.]

3. Alfred S. Blumberg, II (Tr. 61-104):

Alfred Blumberg testified as an expert in land planning. His office helped with the design of the site along with the architects. His firm also prepared the natural resources inventory and the landscape plan, and did the civil engineering for the site as well.

He described the church property and the subject site. The special exception site is just under two acres in size, 1.93 acres. The church school is located immediately to the north of the subject property. On the west side of the campus is the existing elementary school, a parochial school associated with the St. Camillus campus. Immediately to the east of the subject property is the sanctuary of the church. Further east is the seminary. Just to the north of the church is a friary

where Franciscan friars live. There is a lot of parking. On the upper left northwest corner, all the parking is associated with the school. There is parking between the existing school and the church in the middle, and then parking associated with the church and the seminary to the south of the church and seminary.

The frontage of the St. Camillus campus is actually on Avenel Road, to the east. It is almost a service road, running parallel to New Hampshire Avenue, which is in the lower right-hand corner of Exhibit No. 40. Avenel Road has six single-family houses fronting towards the church and seminary. The main entrance into the St. Camillus campus, the church, the seminary and the school is off of Avenel Road through a driveway at the northern edge of the property. The secondary access is from Beacon Road.

Beacon Road is the access into the Broad Acres Elementary School, the park and secondarily, the St. Camillus school. Beacon intersects with North Hampton Drive, which divides the two apartment complexes to the south of the subject site. North Hampton Drive intersects with New Hampshire Avenue to the east. There are three single-family houses on the east side of Beacon Road, just north of North Hampton Drive. Beacon is a dedicated public road up to the northern property line of northernmost single-family house of the three.

Mr. Blumberg introduced Exhibit 39, an aerial photograph of the surrounding area, on which he outlined the neighborhood, as he defined it. It differs only slightly from the map on page 6 of the Technical Staff report, but coincides exactly with the text description by Technical Staff of the neighborhood. The text of the report says that New Hampshire Avenue is the eastern boundary of the neighborhood, but the illustration is actually the County line. Mr. Blumberg believes that it would not make a big difference either way, but he feels that the eastern boundary should be New Hampshire Avenue, which is a six to eight lane divided highway.

The neighborhood is bordered by the Beltway to the north, New Hampshire Avenue and the County Line on the east and the Northwest Branch of Stream Valley Park on the west. The northern two-thirds of the neighborhood is all single-family residential in the R-60 Zone. In the northwest corner of the neighborhood is the Roscoe Nix Elementary School, located pretty close to the Beltway.

There is a park adjacent to the Broad Acres Elementary School, just to the west of the St. Camillus campus, and there are several ball fields associated with the park. These institutional uses, the school, St. Camillus campus and the developed portion of the Northwest Branch Park are a nice dividing line between the single-family residential, R-60, to the north and the multi-family, R-30, to the south. There is a large element of multi-family residential development to the south, with all single-family detached to the north.

The property is situated within the Master Plan for East Silver Spring, and there's no specific recommendations on the subject property contained in that master plan, but there are some general guidelines and principles which this special exception will lead towards. One of those is that the Master Plan recommends that special exceptions should be sensitive to the character and scale of the adjoining neighborhood. In Mr. Blumberg's opinion, the proposed three-story building in the context of the church, the school and the multi-family housing, is a good fit. Senior housing is "a terrific use for this property because it will allow the elderly in the community to stay within the community." Tr. 68.

Using Exhibit 41, a rendered copy of the landscape plan, Mr. Blumberg described the proposed site. The proposed building is in gray in the lower right-hand corner. Sole access is from Beacon road extended, turning into a driveway which is about 300 feet from Beacon Road to the proposed building. There are 32 parking spaces proposed, including seven handicap spaces, in

accordance with Technical Staff's requirements. Also pursuant to Staff's conditions, a ramp has been added to provide handicapped access between the proposed senior housing and the church, and the landscape plan has been modified by changing some of the proposed plantings (red spruce instead of white spruce). The loading dock, the generator and a transformer are all located below the level of where the residents and visitor, so they will be kept out of sight.

According to Mr. Blumberg, the Planning Board approved the preliminary forest conservation plan and a specimen variance plan, in accordance with new state regulations. Tr. 81-86.

Mr. Blumberg adopted Technical Staff's evaluation of Petitioner's compliance with the general and specific conditions for a special exception (*i.e.*, the petition is compliant), but he would add emergency generators as an inherent adverse impact. Tr. 87-88. He also submitted a revised Storm Water Management Concept Plan (Exhibit 44) and its approval by the Department of Permitting Services (DPS) on December 16, 2009 (Exhibit 45).

Mr. Blumberg testified that the northern portion of the 16 acre St. Camillus property is a higher elevation than the southern portion. So all the parking lot drains down and is caught in a, in an inlet that's part of the Northwest Branch Tributary at the southern end of the driveway (which is the northern end of the subject site). There is no quality or water quantity control of that water today.

Petitioner will relocate the big storm drain, which is an 18-inch pipe, to the edges of the western side of the building and in doing so, it will also capture the runoff from the parking lot and the roof of the proposed building. From there it will go into a filtering system for water quality, and then drains to an outfall on the south of the subject property. According to Mr. Blumberg, that will be a 50 percent increase over the minimum requirement because it will be picking up so much of the untreated water from the parking lot. There will be bio-retention areas and underground recharge

areas associated with this draining system, and this the concept that was approved by DPS. He does not believe that the plan will be affected by the new Maryland Storm Water Statutes. When this project is completed, the amount of runoff from the property into the neighborhood will be reduced. It will be an improvement over the existing conditions, both for this property and for the neighborhood.

There is a sewer line in Avenel Road which serves both the school and the park facilities and these homes and the apartments, and Petitioner will connect to that sewer. Water will be connected to service in Beacon Road. The systems are adequate to accommodate the amount of water that will be utilized, even with fire protection system, and the capacity of the sewer is adequate to accommodate this proposed development as well.

Subdivision will not be required here because it's a platted lot already. One slight anomaly from the usual aspect is that the lease area is set 1.5 feet off of the north of the southern property line of St. Camillus's property, so that if St. Camillus Church ever wants to put a fence around that southern end of their property, they would have enough room to do that.

Other public facilities, electricity, police and fire are also adequate. There is a fire station just north of the Beltway off of New Hampshire Avenue which is less than a mile from the property. There's a police substation in Takoma Park which is a mile or two south of it. So there's ready access to fire and police protection.

In Mr. Blumberg's opinion, the proposal is in accordance with the recommendations of the master plan and will be in harmony with the general character of the surrounding neighborhood. Nothing in the operation, design and operation would be detrimental to the use, enjoyment or development of surrounding properties. Although for elderly, 62 years and above, it's very similar in operation to the multi-family apartments immediately to the south. This special exception, in combination with other special exceptions, would not alter the character of the neighborhood. There

are a couple of special exceptions for home occupations within the neighborhood, but they're all very minor special exceptions, so this would not in any way adversely affect the neighborhood.

Mr. Blumberg noted that the one letter in opposition mostly had to do with the activities surrounding the St. Camillus campus and the subject property. If anything, clearing those forests and having the activities associated with residential development and having the eyes of the street should alleviate some of the problems that were highlighted by Ms. Mayers' letter.

4. Logan Schutz (Tr. 104-128):

Logan Schutz testified as an expert in architecture. Mr. Schutz used a PowerPoint presentation (Exhibit 34, Slide 10) and a rendered landscape plan (Exhibit 41) to describe the proposed development. Beacon Road is the main entrance to the site from the west. As you come in and down, you will see the front of the building to the east. There's a traffic circle that will be good for UPS drop-offs, taxis, local buses and for dropping off to the building.

There is a service area that drops down six or seven feet. It will be a three story building plus a walk-out basement. There will be a trash chute on each floor with recycling, and this allows all the trash to be dropped down into a compactor and then periodically, the dumpsters are then pulled out and will be picked up by a garbage truck that will be coming from Beacon and down to the loading and delivery area. Other than the move-ins, there are very, very few deliveries to this building other than through mail and UPS.

There is a transformer located to the west of the building, just below the entrance that comes in on the northwest corner of the site. There will also be an emergency generator tucked into the southwest corner of the building. At the very end of the service driveway, there is a row of trees which will shield this as well as a screening wall which is required to screen the loading area and for sound mitigation of the emergency generator. Exhibit 47 is a sound study prepared by a sound

consultant, Miller, Beam and Paganelli, who are experts in the area of sound. Given the emergency generator, the site plan, the topography, the property lines, and the parameters of the Montgomery County Noise Ordinance, they recommended a level 2 sound attenuating enclosure. There should also be a wall with no gaps that would be constructed and run 30 feet along the southwest corner of the building. Noise levels of no greater than 65 decibels at the property line for the daytime hours and 55 decibels at the nighttime are required.

There will be a front porch on the northwest corner of the building. This is a sitting porch and an amenity, very popular for seniors. There will be amenity spaces in the north wing. There is a one-story great room with fireplace, lots of glass which looks out over the patio. The hill slopes up rapidly to where the church is to the east, and there's the church parking lot to the north. There is a drive that comes in for access to the church at the upper level, and there will be an ADA ramp coming out of the building on the east to tie it in to the church.

There will be a covered canopy which allows people to embark and disembark from buses and taxis. Mr. Schutz used a map (Slide 10) with keys to show illustrative views of the proposed building from different angles (Slides 11, 12 and 13). Other slides showed floor plans and a cross section.

A site sign will be located to the northwest of the site entrance, off of Beacon Road. It will have a metal grillage with the name "Victory Oaks at St. Camillus," with the address for Beacon Road. There will also be a little pre-cast cap to pick up on the architecture of the building and the church itself. The sign is depicted on the Site plan. A sign permit will be obtained and a copy forwarded to the Board of Appeals.

A revised lighting photometric plan was marked as Exhibit 48. At the southern property line, which borders the residential, the footcandle from the photometrics can be seen to be either 0.0

or in a couple places, it's 0.1 which is allowed by the County Ordinance. To the north, because it is part of the community of the church, there was not a concern for the spillage of light over there. In fact, the church actually welcomed more light casting on their area so they were happy. They would like to have more light to illuminate their parking lot.

Petitioner will be using 14-foot pole mounted lights as you come in from Beacon Road. As you approach the building, there is bollard lighting. He tries to obtain about a 1 footcandle minimum on all the paved surfaces. For seniors, it's important and is an industry standard as well as a Pepco standard. The lights have internal baffling to prevent light from spilling across the property line, and in the lower left-hand corner there is the spotlight for the sign. All of these lights will be on a photometric switch, to switch off during the daytime.

Several lights will be mounted on the back of the building which are wall wash and actually light the ground, purely for security. According to Mr. Schutz, light will not leak into residential areas. Because of the nature of the fixtures, that light will be directed downward and there will not be spillage beyond the limits of the lease area.

In Mr. Schutz's professional opinion as an architect, the proposed use and its design will be in harmony with the character of the surrounding neighborhood and would not have an adverse effect on the residents, the people visiting the site or people living around the property. In his opinion, it will be residential in appearance.

B. Testimony of Montgomery County Public Schools

Mary Pat Wilson (Tr. 27-38):

Mary Pat Wilson, a real estate management specialist with Montgomery County Public Schools, testified that Beacon Road is a part of the school system property. Using Photograph No. 4 in the exhibit known as No. 34 in the record of the case, she indicated that Broad Acres Elementary

School is due west of the proposed project. This part of Beacon Road from North Hampton Drive is a public street which stops south of the proposed project at approximately the point between the single-family home and the parking for the multi-family parcel. From there on (*i.e.*, to the north), the portion of Beacon Road in front of Broad Acres Elementary School to the west of the St. Camillus property remains titled to the Board of Education. The portion that appears tree covered over the road and the part that is south of it about equal in size is the portion that is Board of Education property.

According to Ms. Wilson, the position of the Montgomery County Public Schools is that it does not want to deny Petitioner access. As a part of the condition of continued use for the Victory Housing project, MCPS would propose a temporary agreement that addresses issues of liability and includes language that would require the Petitioner to pursue public dedication in the future of that portion of Beacon Road.

Montgomery County Public Schools officials support Condition No. 8 that was recommended by the Montgomery County Planning Board, and that is that the applicant enter into a limited license agreement with the Board of Education to grant Victory Housing temporary rights of ingress and egress while indemnifying the Board of Education against liability and insuring that the applicant complete actions for a future dedication of the road. The portion of Beacon Road that's projected to be part of a public road is not needed for the public school operation, so school officials would be in favor of it eventually becoming part of a public road. The Facilities Department would so recommend to the Board of Education. [Mr. Molinaro indicated that he hoped to be able to work out an agreement with Petitioner in a matter of weeks to be submitted to the Board of Education for approval.]

C. The People's Counsel

Martin Klauber, the People's Counsel, did not call any witnesses, but he participated in the hearing and supported the petition. Tr. 142. He also recommended that the Hearing Examiner put a standard condition on this special exception calling for noise testing of emergency generators after construction to be monitored by the Department of Environmental Protection. Tr. 13. As to Petitioner's access to the portion of Beacon Road owned by MCPS, Mr. Klauber recommended a condition in which the Board of Appeals would acknowledge the existence of an access agreement between the petitioner and MCPS, and that the agreement be reached prior to building permit issuance. Tr. 36.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed use will successfully avoid any adverse effects on the community and will meet the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Ordinance § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with housing for senior adults. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff listed the following inherent characteristics associated with Housing and Related Facilities for Senior Adults and persons with Disabilities (Exhibit 30, pp. 11-12):

- (1) buildings and related outdoor recreational areas or facilities;

- (2) parking areas;
- (3) lighting; and
- (4) vehicular trips to and from the site by employees, visitors, residents, delivery, and trash pick-up.

Petitioner's land use expert, Al Blumberg, would add the presence of an emergency generator to this listing of inherent characteristics because "If the electricity goes out, Pepco has a power failure, there has to be an emergency generator to operate the elevators and lights for the elderly." Tr. 88. The Hearing Examiner does not disagree with this observation. Otherwise, the inherent characteristics of an age restricted residential facility are typical of any multi-family residential facility, except that there will likely be more staff directly serving residents, and residents are typically not working, at least full time. Another difference is that there will be many fewer children around, thus reducing noise and car trips. Due to differences in the number of dwelling units which may exist in any given senior housing residence, the size of the building and parking facilities will vary considerably, as will the amount of traffic generated. Thus, no particular size or scale can be identified as an inherent characteristic.

Technical Staff found that "[t]he proposed scale of the building, the number of access points, the internal vehicular circulation system, and the onsite parking areas shown on the site plan are operational characteristics typically associated with Housing and Related Facilities for Senior Adults and persons with Disabilities." Exhibit 30, p. 12. Staff therefore concluded (*Id.*, p. 12):

There are no non-inherent characteristic as associated with the application. The proposed senior housing facility is consistent with all applicable standards of the R-60 zone and satisfies all applicable requirements for Housing and Related Facilities for Senior Adults and persons with Disabilities special exception. Based on the traffic analysis, the vehicular and pedestrian movement surrounding the site and on Beacon Road would be safe, adequate, and efficient. The lighting concept as depicted on the lighting plan is appropriate for the proposed use at the subject location.

With the recommended conditions of approval, the inherent and non-inherent impacts associated with the proposed use do not rise to a level sufficient to warrant a denial of the application.

The Hearing Examiner notes that there is a non-inherent characteristic of the subject site itself, in that there is no direct access to it unless Montgomery County Public Schools (MCPS) agrees to grant access through its private portion of Beacon Road. However, because MCPS has indicated its willingness to do so (Tr. 27-38 and Exhibit 63), the Hearing Examiner finds that this non-inherent characteristic does not warrant denial of the petition. To insure that access is obtained prior to construction, the Hearing Examiner has recommended a condition in Part V of this report, which has been agreed to by the parties.

There appears to be nothing else atypical about the proposed senior housing that would create non-inherent adverse effects. Its size and bulk do not seem excessive for the area, and it is actually a part of the much larger church property. Moreover, there is no evidence in the record that the proposed use would have any adverse effects on its neighbors, inherent or non-inherent. In fact, its closest neighbor is the church which owns the subject site and is supporting the senior housing.

After carefully reviewing the entire record, the Hearing Examiner is convinced, as was the Technical Staff, that the requested use will have no significant adverse effects, inherent or non-inherent, on the general neighborhood.

B. General Standards

The general standards for a special exception are found in Zoning Code Section 59-G-1.21(a). The Technical Staff reports and the Petitioner's exhibits and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Zoning Ordinance §59-C-1.31(a) permits housing for seniors or those with disabilities as a special exception in the R-60 Zone.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use would comply with the standards and requirements for housing for seniors set forth in Code §59-G-2.35, as detailed in Part IV.D., below.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The property at issue is subject to the *East Silver Spring Master Plan*, approved and adopted in 2000. As observed by Technical Staff (Exhibit 30, pp. 12-13),

“... The most recent East Silver Spring Master Plan does not have any specific guidance regarding housing and related facilities for senior adults or persons with disabilities at the particular site or in general. Community Based planning staff indicated that the master plan encourages neighborhood reinvestment and enhancement of the quality of life throughout East Silver Spring and that the

proposed project meets these goals. The proposed affordable independent living senior housing provides an opportunity for senior residents to remain in the community.

Moreover, the Master Plan supports the current R-60 Zone, and the R-60 Zone permits the proposed use by Special Exception. For all the reasons set forth here and in Part II.C. of this report, the Hearing Examiner concludes that the proposed special exception is consistent with the goals of the applicable Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: Technical Staff found that the proposed use would be in harmony with the general character of the neighborhood “considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.” The Hearing Examiner agrees with Staff’s observation (Exhibit 30, p. 13), “The site and landscape plans provide for the integration of the modestly sized, well designed building and landscaped yard into an area that is currently vacant that is surrounded by aging developments in a manner that will invigorate the character of the surrounding residential neighborhood.” Moreover, because it is housing for seniors, Victory Oaks will not generate much traffic, particularly during the peak hour periods. Adequate parking exists in combination with the adjacent church parking lots. Based on all the evidence, the Hearing Examiner concludes that the proposed use will exist in harmony with its

neighborhood. Technical Staff reports, and the Hearing Examiner finds, that the site is adequately served by public facilities and will continue to be adequately served under the growth management policies in effect when the application was filed.

Exhibit 30, p. 15.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the requested special exception would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. The use is residential in nature, and the subject site is adjacent residential uses. The proposed building conforms to the residential character of the neighborhood, and will fit harmoniously within the context of the surrounding residential uses and the general neighborhood.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The use is residential and will create no noise that is inconsistent with other residential uses in the surrounding neighborhood. Given that it is housing for seniors, the absence of children will undoubtedly reduce the amount of noise and physical activity at the site. Moreover, a condition has been recommended in Part V of this report which will require Petitioner to take steps to attenuate any noise generated by

HVAC equipment and emergency generators, and to comply with County noise ordinances, as discussed in Par II. B. of this report.

A lighting and photometric plan has been provided herewith as Exhibit 57(d), and it demonstrates that the lighting levels will have no adverse impact on adjoining properties.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The Hearing Examiner finds that the proposed special exception, which is consistent with the Master Plan, will not increase the number, intensity, and scope of approved special exceptions in the area enough to affect the area adversely or alter its residential nature. Staff has identified four special exception uses within the general neighborhood. Two of the Special Exceptions (BAS-1326 and BAS-2569) are accessory apartments that were granted in 1988 and 2003, respectively. Other special exceptions include BAS- 643, a beauty shop that was approved in 1978, and S-2669, a wireless telecommunications facility approved in 2006. The telecommunication facility is located on the grounds of a community pool, and the others are located north of the subject site in the R-60 zoned residential area. The nearest special exception use is located approximately 2000 feet from the subject site. Exhibit 30, p. 14. There is no evidence that the addition of the proposed senior housing would produce any adverse effects, and the Hearing Examiner so finds.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. In fact, the proposed project will benefit the neighborhood by providing a needed service to the community.

- (9) *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.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 30, p. 15), and the evidence supports this conclusion, as discussed in Part II. E. of this report.

(A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*

(B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area

Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Technical Staff did do such a review, and concluded that the senior housing use would generate fewer than 30 peak hour trips and fewer than 4 new peak hour trips; therefore, the special exception application is not subject to either Local Area Transportation Review (LATR) or Policy Area Mobility Review (PAMR). Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff’s found that “The proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic.” Ex. 30, p. 15. Based on this record, the Hearing Examiner finds that the use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards: Housing for Senior Adults

The specific standards for senior adult housing are found in Code § 59-G-2.35. The Technical Staff report and the Petitioner’s exhibits and testimony provide sufficient evidence that the proposed use would be consistent with the specific standards, as outlined below.

Sec. 59-G-2.35. Housing and related facilities for senior adults and persons with disabilities.

A special exception may be granted for housing and related facilities for senior adults or persons with disabilities, subject to the following provisions:

- (a) *Prerequisites for granting:*
 - (1) *A minimum of 15 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined*

by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Income levels are defined as follows:

(A) "MPDU income" is the income limit determined by the Department of Housing and Community Affairs in the administration of the moderately priced dwelling unit (MPDU) program, as prescribed by Chapter 25A.

(B) "Low income" is income at or below 60 percent of the area median income adjusted for household size.

(C) "Very low income" is income at or below 50 percent of the area median income adjusted for household size.

(D) "Area median income" is as determined annually by the U.S. Department of Housing and Urban Development.

Conclusion: The above-quoted provision may be satisfied by a Petitioner complying with one of three alternative criteria, 15% of the dwelling units reserved for households with "very low income" (defined as "income at or below 50% of the "area median income" or AMI); or 20% of the dwelling units reserved for households with "low income" (defined as "income at or below 60% of the AMI); or 30% of the dwelling units reserved for households with "MPDU income."

As stated in Petitioner's Statement of Operations (Exhibit 3(a), p. 3), construction of the project will be funded through a grant from the U. S. Department of Housing and Urban Development under its Section 202 program. HUD will also subsidize the operation of the project. Occupancy of the project will be restricted to applicants with a minimum age of 62, whose incomes do not exceed 50 percent of the area median income (*i.e.*, defined as "very low income"). HUD requires these occupancy limits to remain in effect for a least 40 years. Each tenant will be required to pay rent in the amount of 30 percent of his or her adjusted income. With the possible exception of a single unit that may be reserved for resident Staff, all of the proposed

units will meet the MPDU requirements for rent levels. Thus, Petitioner will more than meet the statutory standards.

(2) *The site or the proposed facility has adequate accessibility to or provides on site public transportation, medical service, shopping areas, recreational and other community services frequently desired by senior adults or persons with disabilities.*

Conclusion: The evidence supports the conclusion that the proposed use would have adequate access to these services. As noted by Technical Staff, the site of the proposed facility has adequate accessibility to public transportation, medical service, shopping areas, recreational and other community services. Petitioner describes services to be provided at the facility in its Statement of Operations (Exhibit 3(a), p. 3):

Services to be offered initially on an as-needed basis include geriatric wellness services and fitness programs as well as periodic classes and seminars of interest plus social activities. Residents needing transportation can use the nearby Ride-On and Metro buses which stop adjacent to the property. These buses provide access to shopping areas, doctors' offices, and metro stations. Additionally, VHI operates a van service among its various local properties that will be available to Victory Oaks for resident transportation needs. The sponsor of the project also expects that parishioners of the neighboring St. Camillus Parish will volunteer to assist project residents. Volunteers may organize group activities and respond to individual requests for assistance, such as transportation to a doctor's appointment or group outings.

Based on this record, the Hearing Examiner finds that residents at the proposed facility will have adequate access to needed services.

(3) *The site or the proposed facility is reasonably well protected from excessive noise, air pollution, and other harmful physical influences.*

Conclusion: Technical Staff reports the following (Exhibit 30, p. 18):

Due to the existing pattern of development in the area, which is characterized by residential developments and institutional uses (churches and schools), the subject property, is not likely to be susceptible to air

pollution and other harmful physical influences. Given the placement of the building on the property relative to adjoining properties and roads, and considering current traffic pattern on the adjacent streets, potential visual and noise intrusion to and from the proposed site would be minimal.

There is no evidence to the contrary. Thus, the record supports the conclusion that the proposed facility will be “reasonably well protected from excessive noise, air pollution, and other harmful physical influences.”

(b) *Occupancy of a dwelling unit is restricted to the following:*

- (1) *A senior adult or person with disabilities, as defined in Section 59-A-2.1;*
- (2) *The spouse of a senior or disabled resident, regardless of age or disability;*
- (3) *A resident care-giver, if needed to assist a senior or disabled resident; or*

Conclusion: Petitioner has indicated that occupancy will be restricted to senior adults, as previously noted.

- (4) *In a development designed primarily for persons with disabilities rather than senior adults, the parent, daughter, son, sister or brother of a handicapped resident, regardless of age or disability. Additional Occupancy Provisions are:*

Conclusion: Not Applicable. The facility is not planned primarily for persons with disabilities.

- (5) *Age restrictions must comply with 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, and subsequent amendments thereto. (In that Act, “familial status” refers to discrimination against families with children.)*

Conclusion: Petitioner is compliant, as discussed previously in this report, at page 18.

- (6) *Resident staff necessary for operation of the facility are also allowed to live on site.*

Conclusion: One unit in the facility may be used for resident staff.

(c) *Development standards, other than density, in residential zones where allowed by special exception:*

(1) *Minimum setbacks:*

(A) *From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified by the zone applies.*

(B) *From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater.*

(2) *Maximum building height: four stories or the height of the applicable zone, whichever is less. Additional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.*

(3) *Maximum lot coverage: As specified by the relevant zone.*

(4) *Minimum green area:*

(A) *R-60, R-90, and the RT Zones: 50 percent*

(B) *R-150 and R-200 Zones: 60 percent*

(C) *RE-1, RE-2, and RE-2C Zone: 70 percent, except where the minimum green area requirement is established in an approved and adopted master plan.*

The Board may reduce the green area requirement by up to 15% if it is necessary to accommodate a lower building height for compatibility reasons.

Conclusion: Petitioner meets these development standards, except that building height is higher than standard, as permitted by the Code because “*the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.*” Technical Staff reports (Exhibit 30, p. 19):

The proposed building will have a maximum height of 40 feet (3 stories), slightly over the maximum 35 ft allowed in the zone. Given the location of the senior housing facility adjacent to a garden apartment complex in the R-20 zone, and surrounded by a church and schools, and substantially distanced from the R-60 zoned one and two-story detached dwellings to

the north, the proposed building will be in conformity with general character of the neighborhood and suitable for additional building height up to 40 feet.

The Hearing Examiner concurs. The applicable Development Standards are shown on the following Table from the Technical Staff report (Exhibit 30, p. 9):

Development Standard	Required (current)	Proposed/Existing
Minimum Lot Area	6,000	1.93 ac
Minimum Lot width: <ul style="list-style-type: none"> ▪ at front building line ▪ at street line 	25 ft	130 ft
Minimum Building Setback: §59-G-2.35(c)(1) <ul style="list-style-type: none"> • From street • Side Yards • Rear 	50 ft 25 ft 25	300 ft 25+ ft NA
Maximum Building Height*	2½ stories or 35 ft	3 stories at 40 ft*
Maximum Lot coverage § 59-C-1.328 § 59-G-2.35 (c)(3)	35% 35%	18%
Minimum Green Area § 59-G-2.35 (c)(4)	50%	55%

*59-G-2.35 permits four stories or the height limit of the applicable zone, whichever is less. Additional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.

- (d) *Development standards, other than density, in the R-30, R-20, R-10 and R-H Zones are as specified by the relevant zone in Section 59-C-2.41, except that the lot coverage and building setbacks may be modified as specified in Section 59-C-2.42 concerning standards for moderately priced dwelling units.*

Conclusion: Not Applicable. The site is in the R-60 Zone.

(e) Maximum density:

In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-60, R-40, RT-6, RT-8, RT-10, and RT-12.5 Zones, the number of units is governed by the overall size of the building as determined in accordance with the development standards by Paragraph (c) of this section. Minimum unit size is governed by the minimum space and other relevant standards of Chapter 26, title "Housing Standards," of this Code, as amended.

Conclusion: As noted by Technical Staff, the development standards for the R-60 Zone in the Zoning Ordinance do not specify a requirement for the number of units in a senior housing facility of any given size. Exhibit 30, p. 20. However, Section 26-5(a) of the Montgomery County Code, which is part of the "Housing and Building Maintenance Standards" specifies the following.

(a) Floor area, dwelling unit. Every dwelling unit must contain at least 150 square feet of floor area for the first occupant and at least 100 additional square feet of floor area for every additional occupant. The floor area of that part of any room where the ceiling height is less than 5 feet or where the room width is less than 7 feet must not be considered in computing the habitable space of the room to decide its maximum permissible occupancy.

Staff reports: "All 49 units in the proposed facility exceed the minimum 150 square feet of area. The sizes of the one-room units range from 574 square feet to 696 square feet of floor area." Exhibit 30, p. 20. Thus, the proposed development complies with this section.

(f) Parking and loading:

Parking must be provided in accordance with the provisions of Section 59-E-3.7 and Section E-2.83. The Board must require adequate scheduling and long-term continuation of any services for which parking credits are granted in accordance with Section 59-E-3.33(b) and may require additional parking for any facilities and services provided in accordance with Paragraph (g)(2) of this section, if they

serve nonresident senior adults or persons with disabilities. When considering the need for additional parking, the Board may consider the availability of nearby public or private parking facilities.

Conclusion: Parking on the subject site substantially exceeds the parking requirements of the Zoning Ordinance, as discussed in Part II. E. of this report. After receiving a 20% credit pursuant to Zoning Ordinance §59-E-3.33(b), a total of 20 parking spaces are required, and 32 will be provided. Also, in accordance with the Planning Board's condition #6, seven of the parking spaces will be handicap spaces, and one of those will be van accessible.

(g) *Additional provisions:*

(1) One or more of the following ancillary facilities and services may be included to serve the residents and possibly nonresident senior adults or persons with disabilities. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized.

(A) Provision for on-site meal service;

(B) Medical or therapy facilities or space for mobile medical or therapy services;

(C) Nursing care;

(D) Personal care services;

(E) Day care for senior adults or persons with disabilities;

(F) On-site facilities for recreation, hobbies or similar activities; or

(G) Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services.

Conclusion: The proposed facility will include a multi-purpose community room, television lounge, crafts room, wellness center, fitness room, offices and outdoor patio area. Petitioner describes services to be provided at the facility in its Statement of Operations (Exhibit 3(a), pp. 2- 3):

Services to be offered initially on an as-needed basis include geriatric wellness services and fitness programs as well as periodic classes and seminars of interest plus social activities. Residents needing transportation can use the nearby Ride-On and Metro buses which stop adjacent to the

property. These buses provide access to shopping areas, doctors' offices, and metro stations. Additionally, VHI operates a van service among its various local properties that will be available to Victory Oaks for resident transportation needs. The sponsor of the project also expects that parishioners of the neighboring St. Camillus Parish will volunteer to assist project residents. Volunteers may organize group activities and respond to individual requests for assistance, such as transportation to a doctor's appointment or group outings.

(2) *Retail facilities may be included to serve exclusively the residents of the building.*

Conclusion: Petitioner does not propose any retail facilities on site.

(3) *The application must contain 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.*

Conclusion: Vicinity maps are in the record as Exhibits 39 and 40.

(4) *Construction is subject to all applicable Federal, State and County licenses or certificates.*

Conclusion: A condition so requiring has been recommended.

(h) *Provisions governing facilities approved prior to March 7, 1990:*

(1) *A housing facility for senior adults or persons with disabilities existing before May 6, 2002, is a conforming use and structure, and may be continued in accordance with the terms and conditions of the special exception grant. Modifications may be approved that are in compliance with the special exception standards in effect at the time the modification is filed. If damaged, the facility may be rebuilt, repaired or reconstructed as it existed on May 6, 2002.*

(2) *A housing facility for senior adults or persons with disabilities existing on March 7, 1990, or for which a petition was approved prior to March 7, 1990, located on property containing at least 85 acres of land, may be extended, enlarged, or modified in accordance with the special exception standards in effect prior to March 7, 1990.*

Conclusion: Not Applicable.

D. Additional Applicable Standards

59-G § 1.23. General development standards

- (a) ***Development Standards.*** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The discussion on pp. 58-59 of this report and the chart reproduced on page 59, demonstrate Petitioner's compliance with all the applicable development standards for the R-60 Zone and the special exception.

- (b) ***Parking requirements.*** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: Parking requirements have been discussed in Part II. E. of this report and on page 61 of this report in connection with the specific requirements of the special exception. Petitioner more than meets all parking requirements.

- (c) ***Minimum frontage.*** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*
- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
 - (2) *Sand, gravel or clay pits, rock or stone quarries.*
 - (3) *Sawmill.*
 - (4) *Cemetery, animal.*
 - (5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
 - (6) *Riding stables.*
 - (7) *Heliport and helistop.*

Conclusion: This section is not applicable.

- (d) ***Forest conservation.*** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: As stated in Part II.F. of this report, the property is subject to the Montgomery County Forest Conservation Law, and Environmental Planning staff recommended approval of the proposed Preliminary Forest Conservation Plan (PFCP) with conditions that include compensation for forest loss at an off-site location. Exhibit 30, p. 8. A Revised Preliminary Forest Conservation Plan (PFCP, Exhibit 42) was approved by the Planning Board on January 14, 2010, as was a Specimen Tree Variance Plan (Exhibit 43), in accordance with new state regulations. Tr. 81-86. Compliance with the PFCP is a condition recommended in Part V of this report.

- (e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: This section is not applicable because the subject site is not in a special protection area, and therefore a water quality plan is not required. Nevertheless, it should be noted that the Department of Permitting Services (DPS) approved the Stormwater Management Concept Plan on December 16, 2009 (Exhibit 45).

- (f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: A monument sign measuring 8 feet in width and 5.83 feet in height has been proposed. It is depicted on Petitioner's revised special exception plan (Exhibit 57(a)), and that diagram is reproduced on page 24 of this report. The Hearing Examiner has recommended a condition requiring Petitioner to obtain a permit and variance for its

planned sign, and to submit copies of these documents to the Board of Appeals prior to posting of the sign.

- (g) ***Building compatibility in residential zones.*** Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: The use is residential in nature, and the proposed building conforms to the residential character of the neighborhood. As stated by Technical Staff (Exhibit 30, p. 11):

. . . The proposed building relates and blends well with the architectural elements and features of the existing buildings that surround site. The proposed building is compatible with the surrounding area in terms of its scale, bulk, height, and architectural features.

The Hearing Examiner agrees and so finds.

- (h) ***Lighting in residential zones.*** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:
- (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.
 - (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: Petitioner's Lighting And Photometric Plan (Exhibit 57(d)) demonstrates that Petitioner's lighting will not create direct light intrusion into the residential areas neighboring the site. As discussed in Part II. D. of this report, there is no property line to the north and east of the subject site because it is part of the church's property. Petitioner's architect testified that the church has no concern about the spillage of light. In fact, the church actually welcomed more light casting on their

area to illuminate their parking lot. Tr. 120. At the southern property line, which borders the residential areas, the lighting can be seen to be at or below the 0.1 footcandles permitted by the Zoning Ordinance along rear and side lot lines in residential zones. The front lot line, which is to the west, is not governed by the 0.1 footcandle limit.

Based on the testimony and evidence of record, I conclude that the use proposed by Petitioner meets the specific and general requirements for the special exception, and that the petition should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition numbered S-2751, in which Petitioner “Victory Oaks, Inc.” seeks a special exception to construct and operate a senior housing residence at 1600 St. Camillus Drive, Silver Spring, Maryland, be *granted* with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. The development must be limited to a residential independent living facility for up to 49 senior adults and persons with disabilities or 48 senior adults and persons with disabilities and one resident staff member.
3. ADA access must be available between the senior housing facility and St. Camillus Church, as per the revised special exception plan (Exhibit 57(a)).
4. Petitioner must comply with the approved Preliminary Forest Conservation Plan and all applicable stormwater and sediment control regulations.

5. Petitioner must obtain a permit and variance for its planned sign, and must submit copies of these documents to the Board of Appeals prior to posting of the sign.
6. Petitioner shall obtain and maintain all appropriate licensing from Montgomery County and the State of Maryland for operation of an age-restricted, rental housing facility for independent seniors.
7. Petitioner shall construct, staff and operate this senior housing facility in accordance with all federal, state and local requirements.
8. Petitioner must comply with all applicable County noise standards. Petitioner must make reasonable efforts to obtain and install emergency generators with a maximum noise output suitable to meet the County standards, or, if infeasible, install acoustical treatment as necessary for compliance. Petitioner may conduct periodic non-emergency testing of the generator only during daytime hours (7:00 AM to 9:00 PM weekdays, 9:00 AM to 9:00 PM weekends and holidays). Garbage/dumpster pick-up shall comply with time of day restrictions specified in Chapter 48 (“Solid Waste Regulations”) of the County Code (*i.e.*, no pick-ups between 9:00 PM and 7:00 AM on any weekday, or 9:00 PM and 9:00 AM on Sundays and federal holidays).
9. Petitioner is required to enter into a Limited License Agreement with the Board of Education of Montgomery County granting rights of ingress and egress over that portion of Beacon Road located within the boundaries of the Broad Acres Elementary School under terms and conditions established in said agreement. Such a Limited License Agreement must be signed and a copy delivered to the Board of Appeals prior to the issuance of any building permits in this case.

10. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: March 23, 2010

Respectfully submitted,

Martin L. Grossman
Hearing Examiner