

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
SPECTRUM RETIREMENT
COMMUNITIES

Applicant

Michael Longfellow
Joshua Sloan
Logan Kelso
Brian Van Winkle
Anne Randall

For the Application
Elizabeth Rogers, Esquire
Steve Robins, Esquire

Attorneys for the Applicant

Neither in support or opposition:

David W. Brown, Esquire
Attorney for West Montgomery
County Citizens Association
Nancy Abramowitz
Mark Ellenberg

In support:

Erik Gaull
Joel Albert

Before: Derek J. Baumgardner, Co-Hearing Examiner
Lynn A. Robeson, Co-Hearing Examiner

OZAH Case No. 20-05

HEARING EXAMINER'S REPORT AND DECISION

TABLE OF CONTENTS

I. STATEMENT OF THE CASE	3
II. FACTUAL BACKGROUND.....	5
A. The Subject Property.....	5
B. Surrounding Neighborhood	7
C. Proposed Use	8
1. Conditional Use Site Plan	11
2. Site Landscaping, Screening, Lighting, and Signage	11
3. Operations	13
D. Environmental Issues.....	16
E. Community Response	17
III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	18
A. Necessary Findings (Section 59.7.3.1.E)	19
1. Substantial Conformance with the Master Plan	20
2. Adequate Public Services and Facilities.....	24
3. No Undue Harm from Non-Inherent Adverse Effects	27
4. Compatibility with the Neighborhood.....	29
B. Development Standards of the RE-2 Zone	30
C. Use Standards for Residential Care Facility (Section 59-3.3.2.E.2.c.).....	31
D. General Development Standards (Article 59.6).....	33
1. Transportation, Parking, and Walkways.....	34
2. Site Landscaping & Screening	36
3. Outdoor Lighting	39
4. Signage	40
IV. CONCLUSION AND DECISION	40
V. APPENDIX.....	44

I. STATEMENT OF THE CASE

On March 19, 2020, Spectrum Retirement Communities, LLC (hereinafter “Applicant” or “Spectrum”) filed an application seeking a conditional use to establish a Residential Care Facility for over 16 persons under §59-3.3.2.E.2.c of the Zoning Ordinance.¹ The original application proposed a two- to three-story, 100-unit residential care facility with 120 beds including 40 independent living units, 42 assisted living units, and an 18-unit memory care section. The subject site consists of 5.93 acres, identified as Parcel 786, Tax Account No. 10-00855533, with an address of 9545 River Road, Potomac, Maryland, 20854. It is zoned RE-2 (Residential-Estate).

On July 18, 2020, Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued its report² recommending approval of the application subject to 14 conditions:

- 1) Residential care units are limited to 100 units with 130 beds;
- 2) Maximum number of employees on site may not exceed 42;
- 3) No more than eight food supply deliveries to the site per month;
- 4) Collection of solid waste and recyclable materials must occur on weekdays only (no Saturday/Sunday pickup), between the hours of 8:00 a.m. and 9:00 p.m., consistent with Solid Waste regulations;
- 5) Landscaping must be in accordance with the revised Landscape Plan (revision date May 18, 2020);
- 6) Existing Conditional Use, Special Exception BAS-1782, must be vacated upon approval of the proposed Conditional Use (CU 20-05);³
- 7) 85 parking spaces must be maintained as shown on the Conditional Use plan and may not expand or be reduced without express permission from the Hearing Examiner through modification of this Conditional Use;
- 8) Prior to the issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use Site Plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH;
- 9) As part of the Preliminary Plan, Applicant shall provide additional operational information concerning the resident shuttle service for review and incorporation into LATR/APF;

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, as amended.

² Exhibit 66.

³ The existing approval is a special exception under the 2004 Zoning Ordinance. Under the 2014 Zoning Ordinance, special exceptions were renamed as “conditional uses.” *2014 Zoning Ordinance*, §1.4.2 (definition of “conditional use”).

- 10) Prior to the approval of the Preliminary Plan of Subdivision application, Applicant must obtain approval of the Stormwater Management Concept Plan from the Montgomery County Department of Permitting Services (MCDPS);
- 11) Applicant must obtain a permit for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Hearing Examiner before the sign is constructed;
- 12) A directional sign for the garage parking shall also include information on the location of the bicycle and motorcycle spaces;
- 13) Applicant must obtain and satisfy the requirements of all licenses including a use and occupancy permit; and
- 14) The proposed development must comply with the Preliminary Forest Conservation Plan and all conditions of the approval, and the Applicant must obtain approval of the Final Forest Conservation Plan by the Planning Board, after which time the Applicant must comply with the terms of the Final Forest Conservation Plan.

On September 23, 2020, the Planning Board accepted Staff's recommendation and recommended approval of the application with conditions.⁴ The Planning Board amended the second condition in the Staff Report to permit 52 employees on-site at one time to accommodate shift changes. At the recommendation of Staff, the Planning Board also increased the number of food service deliveries permitted from eight to ten per month to accommodate for those months that have five weeks. *Id.*

On November 24, 2020, the Applicant filed a request to amend the application by removing the third-story component of the proposed building, increasing the building's footprint, removing the independent living units as originally proposed, and adding perimeter landscaping, grading, and fencing to screen the building from neighboring lots. OZAH issued a Notice of Motion to Amend on December 15, 2020, and no objections were received.⁵

On January 11, 2021, OZAH received comments from Staff stating that the proposed amendments to the application do not impact the Planning's Boards findings and recommendations issued on September 3, 2020. Exhibit 119.

⁴ Exhibit 73.

⁵ This application has been amended several times to address issues raised by Staff and the surrounding community. *See*, Exhibits 64, 83. OZAH issued notices of these amendments and received no objections. Exhibits 65, 116.

On January 15, 2021, the public hearing on this conditional use application was conducted by Hearing Examiners Derek J. Baumgardner and Lynn Robeson Hannan. The following witnesses testified on behalf or in support of the application: Michael Longfellow (Spectrum); Joshua Sloan (VIKA); Logan Kelso (VIKA); Brian Van Winkle (Vessel Architecture); and Anne (Nancy) Randall (Wells & Associates). Three members of the community also testified in support of the revised and modified application: Mr. Erik Gaull, Mr. Joel Albert, and Mr. Matt Gordon on behalf of the Bethesda Chamber of Commerce.

At the conclusion of the hearing, the Hearing Examiner held the record open for 10 business days, or until January 29, 2021, for the purpose of supplementing the record with revised plans to reflect the minor modifications and clarifications testified to on the record in this case. T. 176. Those supplemental documents were received, are included in this record, and will be referenced herein as necessary. *See* Exhibit 125(b).

For the reasons that follow, the Hearing Examiner finds that the application meets all Zoning Ordinance requirements for approval of a conditional use for a residential care facility for over 16 persons, subject to the conditions of approval listed in Part IV of this Report.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located on the north side of River Road, approximately 0.5 miles east of the intersection of River Road and Falls Road. Figure 1 from the Staff Report, Exhibit 66, p. 3, shows the property's general location below:



Figure 1: The Subject Site

The property is a 5.93-acre lot (219,757 sq. ft.) currently used as a nursery/garden center/florist shop and improved by a structure containing the existing uses as well as a surface parking lots, sheds, outdoor storage, and planting areas. The property has 645 feet of frontage on River Road from which it is accessed. If approved, the Petitioner will seek approval of a Preliminary Plan of Subdivision to create a record lot. Exhibit 98, p. 3. Following subdivision, the property will consist of approximately 219,757 square feet of land (or ± 5.04 acres). *Id.* The subject property drains to Cabin John Creek, a Maryland state use I-P stream. The property is not located within a Special Protection Area (SPA) or Primary Management Area (PMA). The Preliminary FCP plan indicates that no wetlands, streams, or 100-year floodplain were found onsite during field investigations. Exhibit 66, p. 20. The property sits in a valley along River Road and the site falls approximately 30 feet from the western corner on River Road to the eastern corner at the rear property line. Exhibit 69 (b), p. 2. A partially piped stream runs across the residential properties to the north/northeast. *Id.* Applicant states that there is no forest and no rare, threatened, or endangered species or habitats on site. With its current use, the property remains mostly impervious surface (79%) including pavement, principle, and accessory buildings, with essentially no water stormwater management. Exhibit 69, p. 2; T. 67.

B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff describes the neighborhood as follows (Exhibit 66, p.3):

For purposes of this application, Staff defines the surrounding neighborhood boundaries (red and black circle—Figure 2) as the area within 0.5 miles (approximately 2,640 feet) of radius of the subject property.

The eastern portion of the neighborhood consists of RE-2 zoned large-lot residential properties improved with large, single-family dwellings as well as some unimproved properties, on both the north and south sides of River Road. The east portion of the defined neighborhood also includes Victory Terrace Senior Housing located at the east-central edge of the boundary. The western portion of the neighborhood is predominantly developed with single-family detached dwellings in the R-200 Zone.

The subject property is located in the central portion of the defined neighborhood on the north side of River Road in the RE-2 Zone. The property is surrounded by RE-Zoned properties to the south (across River Road), north and east. The property abuts R-200 Zoned residential properties to the west.

The Hearing Examiner accepts this delineation as the surrounding neighborhood for the purposes of evaluating this proposed conditional use. This “surrounding area,” is shown on the aerial photograph below, Figure 2. Exhibit 66, p. 4.

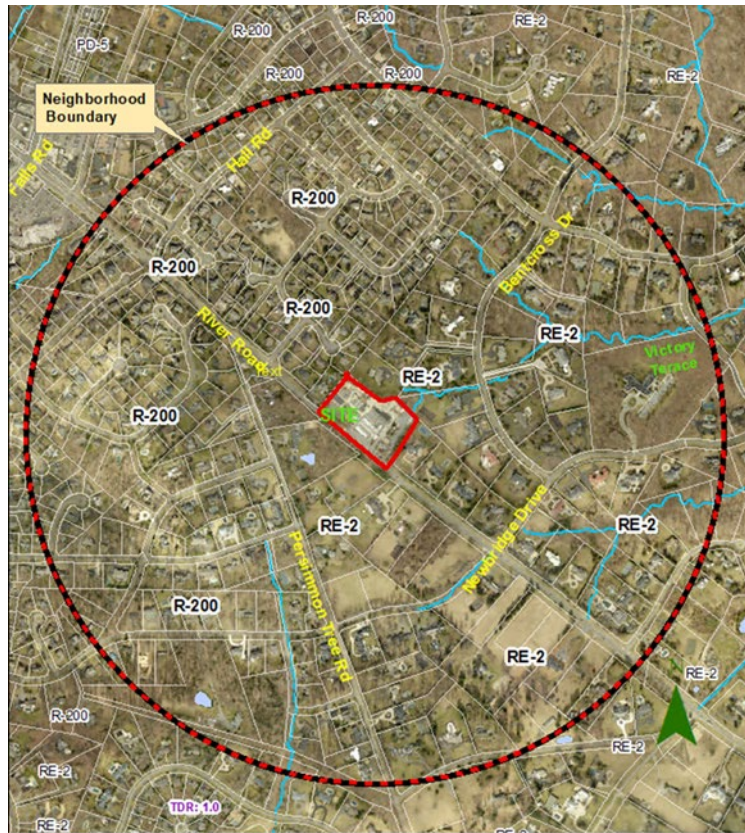


Figure 2: Neighborhood Boundaries

The surrounding area can be fairly characterized as large lot RE-2 properties on the east transitioning to smaller lot single-family detached homes in the R-200 Zone. *See* Figure 2 above; *See also* Exhibit 98, p. 4.

Conclusion: Based on this record, the Hearing Examiner finds that the subject property is large to medium-sized lot single-family detached residential in character.

C. Proposed Use

The Applicant seeks a conditional use for a Residential Care Facility with over 16 persons with 100 units including up to 130 beds with 18 separate memory care units. Originally proposed as a new three-story structure facing River Road stepping down to two- and one-stories where it faces adjoining neighboring lots, the application was amended to remove the third-story component. Exhibits 69 and 106. The building will total 152,655 sq. ft. of floor area with an

underground parking garage containing 69 parking spaces and surface parking lot containing 16 parking spaces including 8 handicap spaces. The Applicant states that these facilities are needed in Montgomery County, as the aging population will increase more quickly than facilities can be available. Exhibit 98, p. 1.

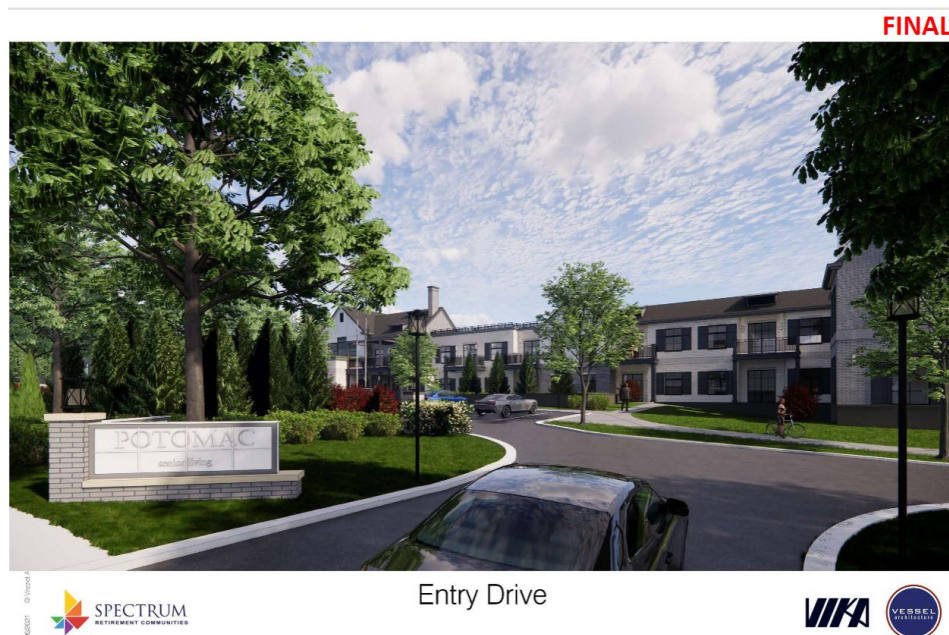
The Applicant asserts that the site layout and building architecture have been designed to be compatible with and complementary to the surrounding residential neighborhoods which are zoned RE-2 and R-200. The Applicant further asserts that exterior architectural features including shutters, trellises, balconies, gables, detailed masonry, and a variety of other features “evoke an inviting residential quality of [home]” that “complements the residential character of the surrounding area.” Exhibit 98, p. 6.

The proposed building will have a maximum height of 40 feet and is designed to minimize surface parking by locating most of the required parking for the facility underneath the building; only 16 handicapped and visitor spaces by the front entry will remain as surface parking and will be screened from River Road by a landscape buffer. Exhibit 98, p. 5.

The proposed structure exceeds the minimum setback requirements for such uses in the RE-2 Zone: the rear setback is approximately 45 feet (required 35-foot minimum setback), for an approximately 25 foot segment of the building, while the remaining portion of the building is setback at least 87 feet from the rear property boundary, with a maximum setback of approximately 140 feet; the required 25-foot minimum side-yard setback is exceeded with setbacks of at least 80 feet to the north and 88 feet to the south; the front of the building is setback approximately 50 feet from the property boundary and 120 feet from the existing curb (required minimum 50-foot setback). Exhibit 98, p. 5.

The exterior of the building has been designed to be residential in nature and to “read as a series of attached, single-family homes with varying massing, material, and details that effectively reduce the apparent scale of the overall building.” Exhibit 98, p. 6. The Applicant has submitted revised architectural plans that incorporate a variety of building materials and use more tonal colors to break down the perceived building mass and promote compatibility with the surrounding architecture. *Id.* The Applicant states that “biophilic design principals are utilized to connect the building with nature through the use of trellises, plantings, and earthy materials such as brick and stone masonry, heavy timber, and wrought-iron” and the building style includes peaked and gabled roofs, with architectural composition shingle and façades with shutters, brick soldier courses at window and door heads, large windows, traditional trim and details that tap into the rich architectural history of the area.” *Id.*

A rendering of the completed “Potomac Senior Living” is shown below. Exhibit 121, p. 35.



Rendering of Potomac Senior Living – Exhibit 121, p. 35

1. Conditional Use Site Plan

The revised conditional use site plan illustrates the lot, structure, contours and topography, access, and general design of the proposed building. Exhibit 125(b); *See* Appendix A.

2. Site Landscaping, Screening, Lighting, and Signage

Landscape buffers are proposed that surround the property along the northern, eastern and southern property boundaries in order to provide additional screening from the surrounding residential homes. Exhibit 125(b); Appendix B. Spectrum asserts that they have worked closely with neighbors to identify strategic locations for enhanced, more mature plantings. The Applicant also proposes an 8' tall perimeter privacy fence, as requested by neighboring property owners. The Applicant asserts that "the building setbacks, perimeter landscaping and fence will provide extensive screening from the surrounding residential uses and ensure compatibility of the Project with the Surrounding Neighborhood." Exhibit 98, p. 6. Further, dense landscape plantings are proposed to help obscure the ends of the buildings, so as to visually reduce the perceived length of the front building façade. Additionally, the landscaping and site design along the property's River Road frontage has been designed to provide limited, strategic view corridors of the building, leading the design to read as a series of much smaller structures. Joshua Sloan, Spectrum's designated expert in land planning and landscape architecture, testified that "we not only have the buffering of the landscape, we have a grading condition that we took advantage of to get parking and services about 8 to 10 feet below our neighbor to the southeast and River Road" further obscuring the view from River Road and neighboring properties. T. 77. Spectrum asserts that given the grade change on-site, significant setbacks, and substantial plantings in the right-of-way, the building will be largely obscured from view of the street. Exhibit 106. Staff concludes that

the proposed landscaping meets or exceeds the requirements under Section 59.6.5.3.C.7. The property is within the RE-2 Zone and abuts other properties on three sides within the same zone that are improved with residential uses. Since there are abutting properties improved with residential uses to the northeast, north, and the southeast of the property, the Applicant must ensure adequate screening in these directions under Section 59.6.5.3.C.7. Exhibit 66. Spectrum proposes screening in three directions utilizing afforestation plantings along the northeast, east and west property lines. Gaps in current screening will be filled with adequate canopy trees, evergreen trees, tall shrubs and medium shrubs. In addition, there is an 8-foot high composite wood privacy fence surrounding the property within a minimum 10-foot wide planting area. *See Appendix A, Exhibit 111(a).* The Staff Report shows Spectrum's original landscape plan as Figure 10, shown below:

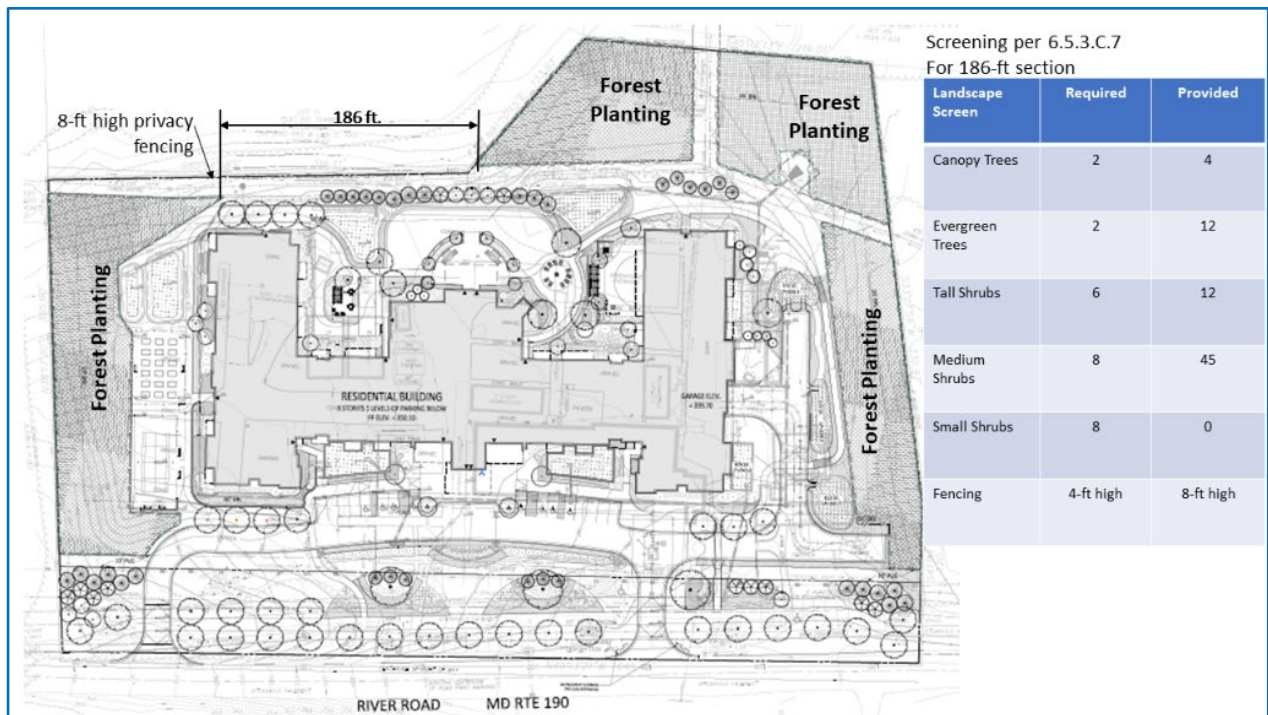


Figure 10 – Proposed Landscape Plan

Staff notes the plantings provided on the original and amended landscape plans generally meet or exceed the minimum requirements of Section 6.5.3.C.7. Exhibit 66, pp.16-18; *See also*

Exhibit 119. The proposal uses the Forest Conservation plantings along the northeastern, eastern, and western property lines to satisfy 6.5.3.C.7 Option A including: 2 canopy trees, 2 understory evergreen trees, 6 large shrubs, 8 medium shrubs, 8 small shrubs and a minimum of 4-foot high fence per 100-feet of a property line. *See* Figure 10 above. Joshua Sloan, Spectrum's expert landscape architect and land planner, testified that the revised landscape plans offer more coverage and screening of the conditional use from River Road and neighboring properties. T. 82-84; *See* Exhibit 125(b), Appendix B.

Staff concludes that the Lighting Plan is adequate and safe for vehicular and employee movement. Exhibit 66, p. 18. The proposed lighting illuminates the site entrance, provides visibility lighting in the employee parking areas and area lighting near the structures. A photometric study submitted with the application shows measured lighting intensity across the entire property in foot-candles, the locations of lighting fixtures and the manufacturer's specifications on the proposed lighting fixtures. Exhibit 109(a). The Photometric Plan shows that the lighting will not cause glare on adjoining properties, nor will it exceed the 0.1 foot-candle standard at the side and rear property lines. *See* Appendix C, Exhibit 109(a). The revised landscape and lighting plans show the same. Exhibit 125(b). Staff finds that the proposed lighting will not have a negative impact on neighboring properties as no direct light or light glare escapes the property.

The Applicant proposes three signs as illustrated on Exhibit 79(a): one monument sign, one site wall sign, and one building mounted sign. The proposed signage is subject to review by the Montgomery County Department of Permitting Services and must meet the applicable requirements of Division 6.7 of the Zoning Ordinance. Exhibit 66, p. 19. *Also see* T. 84.

3. Operations

The Applicant states that the facility will serve seniors who are 62 years of age or older and will provide programs and coordination of various services for residents, including the following: transportation services for off-site excursions; wellness programs and services (including strength and balance, yoga/meditation, and dance classes); organized community service and volunteering events; holiday celebrations; and other planned social events (e.g. socials and dances, game show nights and intergenerational connections). The Project also will incorporate various indoor and outdoor amenity spaces. The Memory Care wing currently is proposed to include a dining room, living room, activity spaces, and outdoor courtyard for the exclusive use of Memory Care residents. Common facilities are provided for Assisted Living residents on the ground floor. The Applicant proposes a commercial kitchen that serves three chef-prepared meals daily in a central dining room. The Project also includes a variety of other common amenity spaces to create opportunities for residents to socialize and host visitors, such as a cybercafé, bistro, fitness center, theater, salon, and multiple lounges. The Project will provide significant landscaping and outdoor amenities for use by the residents, including outdoor walking paths, courtyards, and activity areas. Exhibit 98, p. 4-5. Michael Longfellow, senior Vice President of Spectrum, testified that Spectrum has multiple sites throughout the country and is owner-operator of all its residential care facilities. T. 38-40.

Staffing

With regards to staffing, the Applicant states that the community will employ a total of approximately 68 team members. Employee schedules fall into three categories. Care staff work on three eight-hour shifts, with shift changes occurring at 7:00 AM, 3:00 PM, and 11:00 PM. Food & Beverage staff work on three shifts: 6:00 AM – 2:00 PM, 10:00 AM – 2:00 PM, and 2:00 PM – 8:00 PM. All other employees, including administrative, housekeeping and maintenance teams,

work from 8:00 AM to 5:00 PM. The maximum number of employees working in any shift will be 42 individuals, with no more than 52 employees on-site at any given time. The minimum number of employees on site at one time will be nine, from 11:00 PM – 7:00 AM. The typical number of employees on site from 7:00 AM – 11:00 PM on Saturday and Sunday will be approximately 24. Exhibit 91, p. 1; T. 48-49.

Parking

The Conditional Use site plan provides a total of 85 spaces including eight handicap-accessible spaces (four van accessible). Exhibit 66, p. 13. Eleven of the regular spaces and the eight handicap spaces are surface spaces while the remaining spaces are located underground within the building. The proposed parking spaces exceed the required number of spaces and are sufficient to accommodate the parking needs of 42 employees (full and part-time) as well as visitors to the facility. See Table 7 shown below for parking calculations. Exhibit 66, p. 13:

Table 7 – Required Parking

Section 6.2.4	Assisted Living beds	Memory Care Units	Employee	Total Required
0.25 sp Per Bed	112X 0.25=28 sp	18X.25=4.5=5 sp		34 sp
0.50 sp/ employee			42X.50=21 sp	20 sp
Total Spaces	28 sp	5 sp	21 sp	54 sp
Total Spaces Provided	85 spaces: <u>Surface:</u> 8 regular spaces and 8 handicapped spaces 4 of which are van accessible <u>Garage:</u> 69 regular spaces			

Deliveries & Waste Management

Spectrum states that deliveries are arranged during regular business hours, in consideration of both the on-site residents and the surrounding community. Food deliveries are typically made twice per week by a 20' to 30' box truck. All other deliveries are made by USPS, FedEx, and UPS on their standard routes. All laundry, linens, etc. is performed in house and requires no outside

vendors or deliveries. Exhibit 91, p. 2. An enclosed dumpster will be located to the southeast of the building, near the underground parking garage entrance. The dumpster will be emptied approximately twice per week by a standard garbage truck. Exhibit 91, p. 3. Spectrum's land planning expert, Joshua Sloan, testified that "any loading and service vehicles will come into the site on our southeast entry point. They will turn around the southeastern part of the building which goes down in grade several feet to either the contained trash and recycling receptacle corral, or to a loading space that's at the bottom of this hill." T. 96.

D. Environmental Issues

Staff concludes that the application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. Exhibit 66, p. 19. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 420200520 was approved for the 5.93-acre property on March 5, 2020. Exhibits 84(a) and (b). The site does not contain a forest but a forest on an adjacent property abuts the site's northeastern property boundary. Staff notes that the revised Forest Conservation Plan (FCP) shows tree lines along much of the property's perimeter. Exhibit 66, p. 20; *See* Exhibits 112(a) and (b). Spectrum submitted the approved and signed Forest Conservation Plan (FCP) into the record following the hearing. *See* FCP, Exhibit 125(b).

Staff notes that the original Conditional Use Plan shows that one specimen tree, (30" DBH Boxelder) is in poor condition. Exhibit 66, p. 20. The tree is proposed for removal and is included in the tree variance request. The application proposes to plant three specimen trees as replacements for the tree that is proposed for removal. No other significant or specimen trees are found on the

property and no champion trees or trees 75% of the state champion for their species were found on the subject property. Enhanced plantings were added at the request of community members and are reflected in the revised Conditional Use plan and Landscape and Lighting plans. *See* Exhibit 125(b).

The subject property drains to Cabin John Creek, a Maryland state use Class I-P stream. The property is not located within a Special Protection Area (SPA) or Primary Management Area (PMA). The Preliminary FCP plan indicates that no wetlands, streams, or 100-year floodplain were found onsite during field investigations. Exhibit 66, 19-30.

E. Community Response

As originally filed, Staff summarized community concerns as follows (Exhibit 66, pp. 20-21):

Staff has received two letters from area residents in opposition to the application expressing concerns regarding density, concentration of Residential Care Facilities Conditional Uses in the area, and Storm drain and flooding (Attachment C). Seven other community residents and The Greater Bethesda Chamber of Commerce have also submitted letters in support of the application, indicating that there is a need for such a facility in the area and that the project is compatible with the community.

The Applicant has submitted supplemental information (via e-mail, May 12, 2020) to show community outreach efforts concerning the proposed Residential Care Facility. The Applicant's document provides the following information on efforts in community outreach (Attachment D):

- July 22, 2019 – WMCCA Leadership Meeting
Members of the Spectrum development team met informally with West Montgomery County Citizens Association's (WMCCA) President, Ginny Barnes and incoming President, Susanne Lee to brief them on Spectrum's vision and learn of any comments or concerns.
- October 2, 2019 – Adjacent/Abutting Neighbor Meeting

The Spectrum team organized an informal dinner meeting for close-in neighbors to acquaint them with the proposal and discuss concerns specific to adjacent neighbors. We held phone conversations with interested neighbors that were not able to attend the dinner.

- October 9, 2019 – WMCCA Membership Meeting

Spectrum presented its plans at WMCCA's general membership meeting, where members provided feedback and asked questions. The Applicant has indicated plans for continuing dialogue with the community and neighbors.

Subsequent to filing and leading up to the hearing, discussions between the parties were beneficial such that counsel for the opposition withdrew the opposition as initially indicated in their pre-hearing statement. Exhibit 102; T. 17. The record also includes numerous letters of support. Exhibits 33(a)-(j). In addition, community members Erik Gaull and Joel Albert testified in support of the proposed residential care facility under the revised and amended plans, as well as Matt Gordon representing the Bethesda Chamber of Commerce. It seems good faith negotiation works.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific to a particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a residential care facility for more than 16 persons. *Montgomery County Zoning Ordinance*, §59.3.3.2.E.2.c. "The appropriate standard to be used in determining whether a requested [conditional use] would have an adverse effect and, therefore, should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a [conditional use]." *Montgomery County v. Butler*, 417 Md. 271, 275 (2010).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's findings for each standard, are set forth below.⁶ The major topics of discussion are further divided under the following headings:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

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

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

The property enjoys one existing Conditional Use which was approved in 1990 by Special Exception BAS-1782, for a horticultural nursery that currently operates as a nursery and florist. The Applicant must submit an application to the Board of Appeals to abandon the existing special exception upon approval of the subject Conditional Use application.

Conclusion: The Hearing Examiner concludes that with this condition the application satisfies this standard.

⁶ Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;

This subsection requires an analysis of the development standards of the R-200 Zone contained in Article 59-4; the use standards for a residential care facility for more than 16 persons contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively).

Conclusion: Based on the analysis contained in those discussions, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

1. Substantial Conformance with the Master Plan

c. substantially conforms with the recommendations of the applicable master plan;

The subject property is within the Potomac Subregion Master Plan of 2002 and is located in the "Potomac" Area of the Master Plan. Exhibit 66, pp. 8-9. The Potomac planning area consists of 28.1 square miles of area. The Master Plan describes the Potomac area as having a large area of older and well-established residential communities with access to major employment centers. At the time of adoption, the Master Plan estimated that the development of the 28-square mile area had reached 93 percent of its capacity with an anticipated slow growth rate of future developments. *Id.* There are no specific recommendations for the subject property in the Master Plan but it does make specific recommendations on the need for additional housing for the elderly, accurately predicting the unmet need for such housing. Potomac Subregion Master Plan, pp. 36-38.

The Master Plan does provide guidelines for the design and review of Conditional Uses:

- a. *Adhere to Zoning Ordinance requirements to examine compatibility with the architecture of the adjoining neighborhood. The Council is considering amendments to strengthen this section of the Zoning Ordinance.*
- b. *Parking should be located and landscaped to minimize commercial appearance. In situations where side or rear yard parking is not available, front yard parking should be allowed only if it can be adequately landscaped and screened.*
- c. *Efforts should be made to enhance or augment screening and buffering as viewed from abutting residential areas and major roadways.*

Potomac Subregion Master Plan, pp. 5-6

Staff concludes that the application substantially conforms to these guidelines and conforms to the recommendations of the 2002 Potomac Subregion Master Plan and is compatible with the character of the surrounding area. Exhibit 66, p. 8. Staff concludes that there are no major Master Plan concerns associated with this application and the proposed Residential Care facility is consistent with the land use objectives of the Potomac Subregion Master Plan. *Id.* Joshua Sloan, Spectrum's land planning expert, and Brian Van Winkle, the project's architect, both concurred with Planning's conclusion that the Project substantially conforms to the recommendation of the Master Plan. T. 85; T. 148. Staff notes that the Master Plan emphasizes that senior housing is appropriate throughout the Subregion wherever zoning permits the use either by right or as a [conditional use]. *Id.* Joel Albert, a community member testifying in support of the application, stated that he supported the project as:

"The plain and simple fact in my mind is that we need more senior living communities in Montgomery County as we look to our future. Communities as the one Spectrum is proposing affords seniors an opportunity to stay in the area near friends and family, and services they've come to know and trust. Why should someone be forced to move far away simply because the current residence no longer suits their needs as well as a senior living community might?" T. 22.

The evidence shows and the Hearing Examiner finds the proposed project is compatible with the existing development pattern of the adjoining uses (e.g. residential) as well as the immediate neighborhood (e.g. residential), in terms of height, size, scale, traffic and visual impacts

when reduced to two-stories and with architectural designs and features as detailed by Mr. Van Winkle to match with local architectural styles. T. 141-146.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the proposed use substantially conforms to the Master Plan. It fulfills a need for elderly housing identified in the plan and is quite similar to similar nearby uses which serve the same purpose. The Hearing Examiner further agrees that the facility is compatible with surrounding residential uses, as set forth in detail in Part III.A.4 of this Report.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.

Conformity to the Master Plan is discussed above. Staff concludes that the proposed use will be in harmony with the general character of the neighborhood with recommended conditions. Exhibit 66, p. 28.

Spectrum's Statement of Operations details the functioning of the proposed residential care facility including hours, services, staffing, and general operations. Exhibit 91. Mr. Longfellow reiterated in detail the scope of Spectrum's operations both at the proposed site and other sites throughout the country. T. 45-50. The Conditional Use Plan provides for sufficient off-street parking with 80 percent of the parking accommodated in an underground parking facility substantially minimizing parking and onsite traffic congestion. The proposed facility replaces another Conditional Use that was operating on the site for several decades. The proposed conditional use is not likely to result in any notable negative impact on the residential neighborhood, in terms of increased traffic and noise as evidenced by Spectrum's Traffic Statement and corroborating testimony from Ms. Randall. Exhibit 88; T. 155-157. The character of the surrounding area is primarily residential, consisting of single-family attached and detached

homes. T. 70. As a residential use, the proposed residential care facility will not disrupt the surrounding residential setting and its construction limited to two-stories will not overwhelm surrounding residential homes.

Trash will be picked up two to three times a week during weekdays only. The Conditional Use Plan and Landscape Plan show an enclosed dumpster located southeast of the building near the entrance to the underground parking. Exhibit 125(b). The dumpster is enclosed by a masonry wall of at least 6'-6" matching the building. The dumpster enclosures are not visible from the road or any of the adjoining properties. The Plans also show a loading area on the southeast corner of the property near River Road. The compatibility of the proposed development is discussed in Part III.A.4 of this Report.

Conclusion: Based on this record, the Hearing Examiner finds that the proposed development will not alter the character of the neighborhood in a manner inconsistent with the Master Plan and the specific operation of this conditional use will not interfere with the orderly use, development, and improvement of surrounding properties.

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

Staff advises that the neighborhood contains several older special exceptions with many of the uses no longer active or smaller uses such as accessory apartments and riding stables. Exhibit 66. Staff found that the most current and notable in terms of size, intensity and similarity to the proposed use is special exception S-2462 Victory Terrace, a-72-unit independent living senior housing that was approved in 2001, located approximately 1,300 feet northeast of the subject

property. *Id.* at 4. As an Assisted Living Facility, Staff notes that the proposed facility will complement Victory Terrace senior housing given the growing need for the type of services the proposed use will provide including, memory care units, on-site indoor and outdoor amenities. *Id.* at 28.

Conclusion: Based on the evidence of record, the proposed residential care facility will not affect the area adversely or alter the predominantly residential nature of the area. The site design, architecture, and landscaping have been used to make it compatible with the surrounding residences, as detailed in Part III.A.4 of this Report.

2. Adequate Public Services and Facilities

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

The Conditional Use will require approval of a Preliminary Plan of Subdivision and Record Plat prior to construction. The adequacy of public facilities will be addressed by the Planning Board at that time. However, the Applicant presented evidence on adequacy of public facilities to

demonstrate that it will not have an adverse impact on the surrounding area. A brief summary of the evidence adduced at the hearing with regard to adequacy of public facilities is provided below.

Local Area Transportation Review and Transportation Policy Area Review

A preliminary traffic review was conducted by Spectrum and a Traffic Statement was submitted into the record. Exhibit 88. The review concluded that based on the trip generation analysis contained in Table 1 of the Traffic Statement, the existing use is estimated to generate 59 AM peak hour and 168 PM peak hour person trips, while the proposed use will generate 38 AM peak hour and 53 PM peak hour person trips. Therefore, the proposed use will reduce traffic on River Road by generating 20 fewer AM peak hour and 115 fewer PM peak hour person trips. Exhibit 88. Nancy Randall, Spectrum's transportation planner and the author of the Traffic Statement, testified that "Based on the results of the trip generation comparison using ITE and then the adjustment factors as required by LATR, this site actually reduces the potential for person trips as well as vehicle trips [from its current authorized use as a garden center/nursery]. And therefore, met the criteria for providing just a traffic statement." T. 155. Staff concurred with Spectrum's assessment that a full LATR study was not required as the proposed land use generates fewer than 50 peak-hour net new person trips within the weekday morning and evening peak periods. Exhibit 66, p. 12. The Hearing Examiner concurs with this finding and concludes that the Traffic Statement is sufficient for conditional use review.

Ms. Randall testified that, "In this particular site and redevelopment of the existing garden center is going to reduce the impacts to the neighborhood from that of the garden center special exception. And will also greatly improve the access to the property." T. 161. Through her analysis with respect to queueing, Ms. Randall concluded that:

...about 25 percent of the traffic that will occur during peak hours is going to come from the north and about 75 percent from the south. But we tested it both with the 25 percent as

well as assuming a worst case, if 100 percent of the traffic was heading in the eastbound direction or southbound to make the left into the property. In both instances, there were less than a vehicle length queue occurring. T. 159.

Conclusion: The Hearing Examiner concludes from this record that both traffic generation and queuing do not present aggravating factors that would adversely impact the surrounding neighborhood or public safety on River Road or other local roadways.

Other Public Facilities

The adequacy of other public facilities, including schools, police and fire protection, water, sanitary sewer and storm drainage to serve the proposed facility, will also be evaluated in detail at the time of preliminary plan but may reviewed on a preliminary basis here. Evaluation of public facilities is controlled by Subdivision Staging Policy approved by the County Council. The 2012-2016 Subdivision Staging Policy provides, at p. 21, that we “. . . must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.” Exhibit 66. Mr. Kelso testified that:

plan “there is adequate gas, electric, power, water and sewer. The property is located in the Washington Suburban Sanitary Commission or the WSSC in a water and sewer category one meaning that there is water availability to the site. WSSC will evaluate the water and sewer capacity through a hydraulic planning analysis at the time of the preliminary plan. And the gas, electric, telephone, and cable utilities are all available to the site through connections of the existing services. As previously testified, given that the preliminary plan is subsequently required, the Planning Board will make a detailed finding regarding the adequacy of the public facilities in proving the preliminary plan.” T. 130-131.

Currently, the site lacks any stormwater management. T. 67. An approved stormwater management concept plan has been approved by DPS with conditions. Exhibit 115. The Project will substantially reduce the amount of impervious area on-site by approximately 41% (i.e. 98,049

sf or 38% impervious area proposed as compared to approximately 195,865 square feet or 79% impervious area today). Exhibit 69, p. 2; *See also* T. 131-135.

Staff notes that Spectrum submitted a Fire Access Plan to the MCDPS Fire Department Office of the Fire Marshall which approved the proposed fire access concept plan on June 12, 2020. Exhibit 66, p 30. Per comments, fire access was modified to permit easier access per revised plans reflected in the revised Conditional Use Plan. *See* Exhibit 125(b). Mr. Sloan testified that FCP and stormwater plans will not be impacted by the minor changes, and explained that the revision “pushes our vehicular access 18 feet which just pushes our stair about 18 feet, which creates a little bit different situation with the ramp. Instead of one long ramp we're now going to have a switchback ramp that goes north for a little bit and then turns around and then lands where the stairs do. So, it's not a significant change to the design.” T. 98.

Staff further notes that there are adequate police and fire services to serve the use. Exhibit 66. The Cabin John Park Fire Station 30 is located at 9404 falls Road in Potomac MD, 1.6 miles northwest of the property. The Montgomery County Police Department 2nd District is located at 4823 Rugby Avenue in Bethesda, Maryland, 6.5. miles southeast of the property. Exhibit 66, p. 30. Staff concludes that these facilities are deemed adequate to serve the facility. *Id.*

Conclusion: Based on this record, for purposes of conditional use review subject to preliminary plan of subdivision, the Hearing Examiner finds that public facilities are adequate to support the proposed residential care facility.

3. No Undue Harm from Non-Inherent Adverse Effects

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood.

Technical Staff listed the following physical and operational characteristics that are necessarily associated with (*i.e.*, inherent in) a residential care facility for over 16 persons (Exhibit 66, pp. 30-31):

The inherent, generic physical and operational characteristics associated with a Residential Care Facility include:

1. A building large enough to house the proposed number of residents.
2. On-site parking sufficient to meet the requirements of the use and of the Zoning Ordinance.
3. Outdoor lighting consistent with residential standards and adequate for safe vehicular and pedestrian access at night.
4. Vehicular trips to and from the site by employees, visitors, residents, delivery, and trash pick-up.
5. A modest level of outdoor activities associated with use of passive recreation areas, and;

6. Noise from ambulances in emergency situations.

Staff concluded that the “proposed scale of the building, the internal vehicular circulation system, and the on-site parking areas shown on the Conditional Use site plan are operational characteristics typically associated with Assisted Living Facilities.” Id. at 31. Ms. Randall, Spectrum’s transportation planner, agreed with Staff’s summary of inherent characteristics for the use and could not identify any noninherent characteristics unique to this site that would be of concern. T. 164

Conclusion: The evidence shows that the proposed facility is consistent with all applicable standards of the RE-2 Zone and satisfies all applicable requirements for a Residential Care Facility Conditional Use. The lighting concept, as proposed, is appropriate for the proposed use at the subject location. Further, the size, scale, and scope of the proposed Residential Care Facility will not adversely affect the residential character of the neighborhood or result in any unacceptable noise, traffic disruption, or environmental impact. Based on this record, the Hearing Examiner finds that there are no inherent or non-inherent adverse effects associated with this application sufficient to warrant a denial of the proposed Conditional Use.

4. Compatibility with the Neighborhood

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

According to the Applicant’s expert in architecture, Mr. Van Winkle, the proposed architecture for the building is mostly residential in character. The architect worked closely with staff and the community to address the overall building massing and articulation, site design, colors, and building materials to mitigate potential impact to the neighborhood. Mr. Van Winkle testified that:

...collaboration [with the community] led us to a much more compatible design that harmonizes the architectural fabric of the community. A much richer, warmer, natural materials you can see are introduced into this version of the design. We used the material and the color to break down the mass of the building into smaller, more residential scale masses, and we introduced more human scale design elements like operable shutters, cornices, chimneys, and residential style windows and trim elements. And then we dramatically increase the landscape around the building, the buffering, but also up against the building. T. 145.

The building footprint is centralized on the site, maximizing usable open space. The coverage allows for open space to be used by residents and visitors. Staff notes that "The decision to centralize the building also helps to minimize the potential impacts to the surrounding neighborhood properties." Exhibit 66, p. 32. Mr. Van Winkle further testified that "the Contemporary Georgian design style that I mentioned earlier reflects that predominant style in the surrounding neighborhoods. Second, residential design principles that create a home for our elders, and just by nature of creating a home that looks like a home, feels like a home, and is a home, it will be a nice fit in the neighborhood." T. 150.

Conclusion: Based on this record, the Hearing Examiner finds that the structure to be constructed is compatible with the character of this residentially zoned RE-2 neighborhood.

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

Conclusion: Based on this record, the Hearing Examiner finds that the application satisfies all specific requirements for the conditional use, and with the conditions imposed to mitigate adverse impacts, meets the standards required for approval.

B. Development Standards of the RE-2 Zone

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the RE-2 Zone, contained in Article 59-4 of the Zoning

Ordinance. Staff concluded that the application meets the development standards of the RE-2 Zone. See Appendix D; Exhibit 66, p. 11. Spectrum's expert land planner, Joshua Sloan, also testified that the development meets all of the standards of the underlying zone. T. 92; Exhibit 92(b).

Conclusion: Based on this evidence, and having no evidence to the contrary, the Hearing Examiner concludes that the use as proposed meets all standards of the RE-2 Zone.

C. Use Standards for Residential Care Facility (Section 59-3.3.2.E.2.c.)

The specific use standards for approval of a residential care facility are set out in Section 59-3.3.2.E.2.c.ii of the Zoning Ordinance.

ii. Where a Residential Care Facility (Over 16 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:⁷

(a) The facility may provide ancillary services such as transportation, common dining room and kitchen, meeting or activity rooms, convenience commercial area or other services or facilities for the enjoyment, service or care of the residents. Any such service may be restricted by the Hearing Examiner.

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

** * **

(i) In RE-2, RE-2C, RE-1, and R-200 Zone: 1,200 square feet per bed;

(e) The minimum side setback is 20 feet.

(i) Height, density, coverage, and parking standards must be compatible with surrounding uses; the Hearing Examiner may modify any standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.

⁷ The only relevant subsections are Sections 59.3.3.2.E.2.c.ii.(a), (d), (e) and (i). Subsections (b), (c), (f), (g), (h), and (j) are not applicable to the proposed use.

The application describes in detail the proposed residential care facility for more than 16 persons housing seniors ages 62 and above, including a number of ancillary services within the facility, as well as outdoor amenity spaces for use by the residents and visitors. Spectrum's Statement of Operations states:

“[The facility will] provide[s] personal services to all of its residents, including utilities, anytime dining, housekeeping, full maintenance, scheduled transportation, fitness and exercise classes along with other innovative activity and wellness programs, resident concierge services, theater, educational and cultural programs, and 24-hour staffing and 24-hour emergency call system. Spectrum will also provide assistance with activities of daily living, including dressing, bathing, toileting, medication reminders, and dining.” Exhibit 91. P. 3.

Michael Longfellow, senior Vice President of Spectrum, testified as to the general operation of the facility as an assisted living facility with necessary services for residents. T. 45-46. The proposed residential care facility will house seniors but does not provide individual residential dwelling units as contemplated under §59-3.3.2.E.2.c.ii.c above. The project proposes a shared commercial kitchen (“bistro”) to serve the assisted living residents on the ground floor. The kitchen will serve “three chef-prepared” meals daily in a central dining room. Other internal amenities include a cyber-café, bistro, fitness center, theater, beauty salon, multi-purpose community center and lounges. The statement of operation further indicates that these amenities are intended to be used by the residents and their families as well as the community at organized events. Exhibit 91. Mr. Van Winkle testified that the facility will be “rich with amenities that are all designed to support wellness and health and lifestyles. We have a pub, a cafe, tech and media center, various social spaces, a rooftop terrace and a nature trail for the residents to be able to enjoy the surrounding landscape.” T. 143.

The facility also proposes to provide a privately funded shuttle service for up to 16 residents per trip. The service will run seven days a week between the hours of 8:00 a.m. and 4:00 p.m.

providing access to facilities within 10 miles radius of the subject property. Staff does not recommend restrictions of any of the services identified above.

Conclusion: Staff advises that the proposed facility encompasses many ancillary services without any identified adverse impacts. For this reason, the Hearing Examiner sees no need to restrict any of these services, provided that the shuttle system passes the test for Local Area Transportation Review at the time of preliminary plan.

The proposed facility also meets the minimum required site area. After subdivision, the property will consist of 219,757 square feet. As Spectrum proposes a maximum of 130 beds and has eliminated independent dwelling units, the ratio of beds to site area is 1,690 square feet, well above the minimum of 1,200 square feet per bed required.⁸

The conditional use site plan (Exhibit 125(b)) also reflects that the proposed residential care facility more than meets the minimum required setback of 20 feet and the Hearing Examiner has already concluded that the application is compatible with the surrounding area. The proposed building will have a maximum height of 40' from grade to the highest portion of the roof. The building has an average roof height which falls within the established neighborhood character and massing of the surrounding residential properties, as most of the adjacent homes are multi-story, single-family residences. Based on this record, the Hearing Examiner finds that the proposed development is compatible with surrounding residential uses.

D. General Development Standards (Article 59.6)

Article 59-6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Under the amendments to Section 59-7.3.1.E.1.b. of the new Zoning Ordinance, effective December 21, 2015, the requirements of these sections need be satisfied only

⁸ 219,757/1,200=1,690.

“to the extent the Hearing Examiner finds necessary to ensure compatibility.”

Staff notes the following areas in which §59-6 General Development Standards are considered under this application: transportation, parking, screening, walkways, conditional uses in detached residential zones, landscaping, tree canopy, lighting, and signage.

Conclusion: After review of the standards contained herein, the Hearing Examiner finds that these standards have been satisfied to the extent they are compatible with the proposed use, the zone, and the Master Plan. This Report analyzes the elements pertinent to this conditional use review in more detail below.

1. Parking and Walkways

The Conditional Use site plan provides a total of 85 spaces including eight handicap-accessible spaces (four van accessible). Exhibit 125(b). Eleven of the regular spaces and the eight handicap spaces are surface spaces while the remaining spaces are located underground within the building. Staff concludes that the proposed parking spaces exceed the required number of spaces and are sufficient to accommodate the parking needs of 42 employees (full and part-time) as well as visitors to the facility. The proposal also provides for two motorcycle spaces in the garage as required by §6.2.3.C. The application also proposes a bike rack in the parking garage with 4 spaces for use by employees and visitors. Staff suggests at least one bicycle space be provided above ground as an added amenity. Exhibit 66, p. 13.

Under §59.6.2.5.b (Vehicle Parking Design Standards), each required parking space must be within ¼ mile of an entrance to the establishment served by such facilities. This application meets this requirement as all proposed parking spaces are within 150 feet of the entrance to the facility.

Under §59.6.2.5.C (Access), each parking space must have access to a street or alley open

to use by the public. All proposed parking spaces will be directly accessed from River Road, a public street, via the two driveway aprons located at the southeastern and southwestern corners of the property.

Under §59.6.2.5.D (Marking), any off-street parking area must be arranged and marked to provide for orderly and safe loading, unloading, parking, and storage of vehicles; each individual parking space must be clearly marked, and directional arrows and traffic signs must be provided as necessary for traffic control; and each space or area for compact parking must be clearly marked to indicate the intended use. Staff notes that the drive lanes serving the parking spaces will be arranged and marked to allow for safe, adequate and efficient circulation within the parking areas. A total of 16 surface parking spaces are provided as well as 69 regular spaces located in a below-grade parking garage. Exhibit 66, p. 14. Having no evidence to the contrary, the Hearing Examiner finds the off-street parking area meets these standards.

Under §59.6.2.5.H (Parking Separation), each parking space must be separated from any road, street, alley, or sidewalk by curbing or wheel stops; and any road, street, alley, sidewalk, or other public right-of-way must be protected from vehicular overhang by wheel stops, curbs, spacing between the right-of-way line and the parking area, or other method approved by DPS. The 16 surface parking spaces that are located adjacent to River Road are separated from the road by setback, utility easement, and landscaped islands. All of the 16 spaces are located near the building and farther from the edge of the property line and the right-of-way of River Road. *Id.* Staff concluded that the parking met the requirements of §59.6.2.5.H. Having no evidence to the contrary, the Hearing Examiner finds that the proposed parking separation meets these standards.

Under §59.6.2.5.I (Walkways), an off-street parking facility must have pedestrian walkways or sidewalks as needed for pedestrian safety. A pedestrian walkway or sidewalk must

be distinguished by stripes, wheel stops, curbs, or other methods approved by the applicable deciding body. Staff advises that the Conditional Use plan shows a 10-foot shared use path within the 75-foot dedication along the property's street frontage. The Plan also provides for lead-in walkways from the 10-foot path through the landscaped island and crossing the driveway leading to the front entrance of the facility then continuing in a loop connecting to all building entrances and outdoor amenities providing efficient pedestrian circulation safe and adequate pedestrian access for residents. Having no evidence to the contrary, the Hearing Examiner finds that the proposed walkways meet these standards.

Under §59.6.2.5.K (Facilities for Conditional Uses in Residential Detached Zones), any off-street parking facility for a conditional use that is located in a Residential Detached Zone where 3 or more parking spaces are provided must satisfy the following standards:

1. *Location: Each parking facility must be located to maintain a residential character and a pedestrian-friendly street.*
2. *Setbacks*
 - a. *The minimum rear parking setback equals the minimum rear setback required for the detached house.*
 - b. *The minimum side parking setback equals 2 times the minimum side setback required for the detached house.*
 - c. *In addition to the required setbacks for each parking facility:*
 - i. *the required side and rear parking setbacks must be increased by 5 feet for a parking facility with 150 to 199 parking spaces.*
 - ii. *the required side and rear parking setbacks must be increased by 10 feet for a parking facility with more than 199 parking spaces.*

The surface parking areas are located in a manner where direct views of the parking spaces from the road are restricted by landscaped islands including a row of trees, setbacks, new grading, and the placement of the existing building on the property. Having no evidence to the contrary, the Hearing Examiner finds that the proposed plan satisfies all applicable setback requirements under section §59.6.2.5.K

2. Site Landscaping & Screening

Under §59.6.2.9.C (Parking Lot Requirements for 10 or More Spaces), certain landscaping requirements apply to parking areas. Under §6.2.9.C.1, a surface parking lot must have landscaped islands that are a minimum of 100 contiguous square feet each comprising a minimum of 5 percent of the total area of the surface parking lot. Where possible, any existing tree must be protected and incorporated into the design of the parking lot. A maximum of 20 parking spaces may be located between islands; and a landscaped area may be used for a stormwater management ESD facility. Further, §59.6.2.9.C.2 (Tree Canopy), requires each parking lot to maintain a minimum tree canopy of 25 percent coverage at 20 years of growth, as defined by the Planning Board's Trees Technical Manual, as amended. Under §59.6.2.9.C.3 (Perimeter Planting), the perimeter planting area for a property that abuts an Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use must: i.) be a minimum of 10 feet wide; ii.) contain a hedge, fence, or wall a minimum of 6 feet high; iii.) have a canopy tree planted every 30 feet on center; and iv.) have a minimum of 2 understory trees planted for every canopy tree.

The Applicant is proposing surface parking of 16 spaces and below grade garage parking of 69 spaces. Staff notes that the surface parking is located at the front of the residential building in close proximity to the main entry and is comprised of eight handicap-accessible and eight standard parking spaces located on either side of the main entrance walkway. Exhibit 66, p. 17. Each pod of 8 stalls has one tree on each side of the parking row, but the canopies are small and there is no canopy coverage. *Id.* The remainder of resident and visitor parking is beneath the main building in a below-grade parking garage. Both surface and garage parking are accessed via a loop drive from River Road. Staff concludes that the current parking design satisfies Section 59.6.2.1 and the parking is safe and efficient but recommends alternative compliance as allowed for under

section 6.8 regarding the canopy requirement since the provided plans: A) still satisfy the intent of the parking landscaping division, B) only modify the requirement for canopy coverage in a small area of the total site, and since most parking is under ground, C) still provides some landscaping including all other perimeter plantings, and D) the safety and circulation afforded by not meeting the full code intent is better than had the requirements been met. Exhibit 66, p. 17.

Conclusion: The Hearing Examiner finds that the revised Landscape Plan satisfies the requirements of Section 6.2.9.C.1 through 3: Parking Lot Requirements for 10 or more Spaces. See Exhibit 125(b). Tree canopy and perimeter planting requirements are met through a combination of afforestation areas as well as a combination of canopy trees, evergreen trees, large and medium size shrubs and an 8-foot high, composite wood privacy fence with a minimum of at least a 10-foot-wide planting area along the entire perimeter of the Conditional Use site.

Under §59.6.5.2.B, in the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

The property is within the RE-2 Zone and abuts other properties on three sides within the same zone that are improved with residential uses. Since there are abutting properties improved with residential uses to the northeast, north, and the southeast of the property, the Applicant must ensure adequate screening in these directions under Section 6.5.3.C.7. Spectrum proposes screening in three directions comprised of afforestation plantings along the northeast, east and west

property lines. There is a small gap in the afforestation along the north (rear) property line. This gap is screened with adequate canopy trees, evergreen trees, tall shrubs and medium shrubs. In addition, there is an 8-foot high composite wood privacy fence surrounding the property within a minimum 10-foot wide planting area.

Conclusion: The Hearing Examiner finds that the landscaping proposed under the revised Landscape Plan meets or exceeds these requirements. The proposal uses the Forest Conservation plantings along the northeastern, eastern, and western property lines to satisfy 6.5.3.C.7 Option A. Staff advises that the proposed landscape screening satisfies the requirements in Sections 59.6.4.3 and 59.6.5.3 of the Zoning Ordinance. Spectrum's land planner, Mr. Sloan, testified extensively with regards to screening, afforestation, and landscaping in this regard. T. 73-90. The Hearing Examiner concurs with the conclusion of Staff and Spectrum and finds that these standards have been met.

3. Outdoor Lighting

Under §59-6.4.4.E, outdoor lighting for Conditional Uses must be directed, shielded or screened to ensure that the illumination is 0.1 foot-candles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or employment zone.

Staff concluded that the Lighting Plan is adequate and safe for vehicular and employee movement and the Hearing Examiner agrees with this assessment. Exhibit 66; See Exhibit 125(b). The proposed lighting illuminates the site entrance, provides visibility lighting in the employee parking areas, and area lighting near structures. *Id.* The Photometric Plan indicates that the lighting will not cause glare on adjoining properties, nor will it exceed the 0.1 foot-candle standard at the side and rear property lines. Exhibit 109(a); Appendix C. Mr. Sloan testified that minor

changes to the lighting scheme will be required because of the revisions to the Fire Access Plan, but that these changes do not increase the scope or intensity of light and will have no impact on neighboring properties. T. 101-102. These changes are reflected in the revised Conditional Use plan submitted as Exhibit 125(b).

Conclusion: The Hearing Examiner finds that the proposed lighting complies with this standard and does not adversely impact the surrounding neighborhood. The lighting will have no negative impact on neighboring properties as no direct light or light glare emanates onto neighboring properties as the Photometric Plan shows that emanating light will not exceed the 0.1 foot-candle standard.

4. Signage

The Applicant proposes three signs as illustrated on Exhibit 79(a): one monument sign, one site wall sign, and one building mounted sign. The proposed signage is subject to review by the Montgomery County Department of Permitting Services and must meet the applicable requirements of Division 6.7 of the Zoning Ordinance. Also see T. 84.

Conclusion: The Hearing Examiner finds that the proposed signs are generally compliant with the requirements of Division 6.7 subject to any variances under Division 7.4 necessary for approval. The Hearing Examiner further finds that the proposed signs are consistent with this proposed use in this RE-2 zone, are compatible with the surrounding area, and will not adversely impact the surrounding neighborhood.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance. Based on the foregoing findings and conclusions, the application of Spectrum Retirement Communities LLC for a conditional use under Section 59-3.3.2.E.2.c. of the Zoning Ordinance to build and operate a residential care facility for more than 16 persons at 9545 River Road, Potomac, Maryland, 20854, is hereby **GRANTED**, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Conditional Use Site Plan, Landscape Plan, and Lighting Plan submitted in support of this application (Exhibit 125(b));
2. Residential care units are limited to 100 units with 130 beds;
3. The maximum number of employees working on any shift shall be 42, with no more than 52 employees on site at any one time to accommodate for shift changes;
4. No more than ten (10) food supply deliveries to the site per month are permitted;
5. Collection of solid waste and recyclable materials must occur on weekdays only (no Saturday/Sunday pickup), between the hours of 8:00 a.m. and 9:00 p.m., consistent with Solid Waste regulations;
6. Prior to the issuance of a use and occupancy certification, the existing special exception, Special Exception BAS-1782, must be abandoned;
7. 85 parking spaces must be maintained as shown on the Conditional Use plan and may not expand or be reduced without express permission from the Hearing Examiner through modification of this Conditional Use;
8. Prior to the issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use Site Plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH;
9. As part of the Preliminary Plan, Applicant shall provide additional operational information concerning the resident shuttle service for review and incorporation into LATR/APF to the Planning Department;
10. Prior to the approval of the Preliminary Plan of Subdivision application, Applicant must obtain approval of the Stormwater Management Concept Plan from the Montgomery County Department of Permitting Services (MCDPS);
11. A directional sign for the garage parking shall also include information on the location of the bicycle and motorcycle spaces;
12. The proposed development must comply with the Preliminary Forest Conservation Plan and all conditions of the approval, and the Applicant must obtain approval of the Final Forest Conservation Plan by the Planning Board, after which time the Applicant must comply with the terms of the Final Forest Conservation Plan;

13. The Applicant must obtain a sign permit issued by the Department of Permitting Services or the Sign Review Board, as appropriate, and must file a copy of any such sign permit with OZAH. The final design of the proposed sign must be in compliance with the Zoning Ordinance restrictions for signs displayed in a residential zone, or the Applicant must first obtain a sign variance from the Sign Review Board; and
14. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Corrected and issued this 9th day of March, 2021.



Derek J. Baumgardner
Hearing Examiner

RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:

The Board of Appeals website sets forth these procedures for filing documents with the Board:

Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request, and will contact you regarding scheduling.

.
If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

Notification of Decision sent to:

Adjoining property owners

V. APPENDIX

Appendix A



9545 RIVER ROAD
LANDSCAPE AND LIGHTING PLAN



Appendix C

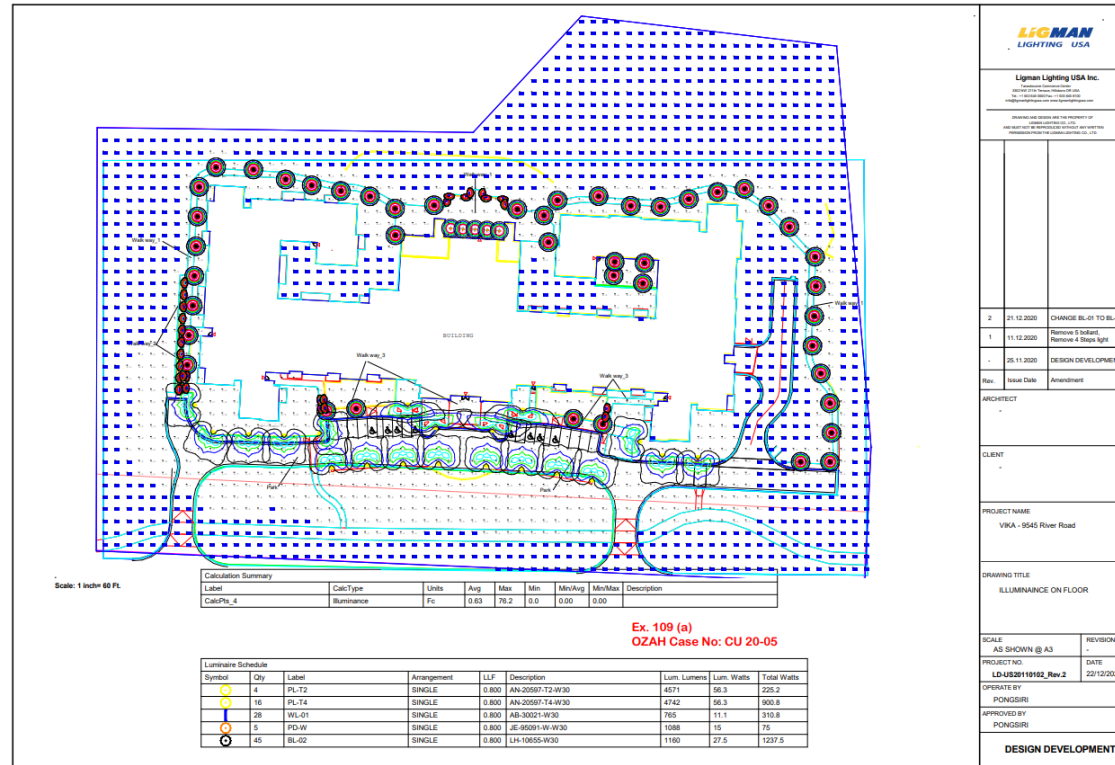


Exhibit 109(a) – Photometric Plan

Appendix D

RE-2 Zone Development Standards	Zoning Ordinance 59-4.4.7.B	Proposed
Minimum Lot Area	2.0 ac	5.93 ac Tract area 0.88 ac Road dedication 5.04 ac± Net lot area
Minimum Lot width: - at front building line - at front lot line	150 ft 25 ft	650 ft 645 ft
Maximum lot Coverage	25 percent	25 percent
Minimum Building Setback Principal Building: - front - Side - One side - Sum of both sides - rear yard	50 ft 17 ft 35 ft 35 ft	50 ft 105 ft 215 ft 35 ft.
Maximum Building Height	50 ft	50 ft
Green Area	50 percent (2.52 ac)	65 Percent (3.28 ac)
Parking: 59-6.2.4.B and C		
Min. Vehicle Parking spaces 0.25 sp/Per Bed 0.50/Per employee (See Table 8 below under: D Parking)	30 sp* 21 sp Total=51 spaces	<u>Surface:</u> 8 regular Sp and 8 HC/van <u>Garage:</u> 69 regular sp Total: 85 spaces
Motorcycle Spaces: 59-6.2.3.C 2% of the no. of vehicle spaces	85x.02=1.7=2 sp	2 sp (garage)

Table 5: Development Standards