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## I. STATEMENT OF THE CASE

Filed on March 2, 2015, the Applicant, Artis Senior Living, seeks a conditional use for a residential care facility for over 16 persons at 8301 River Road, Bethesda, Maryland, under Sections 59.3.1.2 and 59.3.3.2.E of the Zoning Ordinance.<sup>1</sup> The Office of Zoning and Administrative Hearings (OZAH) scheduled a public hearing to be held on June 25, 2015. Exhibit 33.

Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report recommending approval of the application on May 22, 2015, subject to 13 conditions. Exhibit 35. The Planning Board recommended approval as well, adopting most of the conditions recommended by Staff, modifying one condition, and recommending an additional condition. Exhibit 38. The Planning Board recommendation contained no mention of traffic impact of the proposed use.

Prior to receiving the Planning Board's recommendation, the Hearing Examiner requested additional information from Technical Staff, including whether the State Highway Administration (SHA) and the Montgomery County Parks Department (Parks Department) consented to the driveway crossing property owned by both to reach River Road, and whether SHA consented to the shared bike and pedestrian path in the right-of-way. Exhibits 36, 43.

The Applicant filed a motion to amend the application, with a revised site plan, on June 12, 2015, and OZAH issued notice of this motion. Exhibits 37, 40. Staff supplied a Supplemental Analysis responding to the Hearing Examiner's questions, and the Applicant submitted a statement from its traffic engineer that the River Road access driveway would be approved via an access permit from the State Highway Administration (SHA). Exhibits 43, 45.

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<sup>1</sup> All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

The June 25, 2015, public hearing proceeded as scheduled. In response to testimony presented at the hearing about the safety of the intersection of Carderock Springs Drive and River Road and the impact approval of this use could have on that intersection, the Hearing Examiner left the record open until July 24, 2015, to receive accident data for the intersection from SHA and to permit Technical Staff and the parties to review and comment on the data. She also requested SHA to provide any volume counts for that section of River Road that were more recent than 2011, and requested SHA's input on the safety concerns about the intersection expressed at the public hearing. Exhibit 57. In addition, she again requested confirmation that the Parks Department consented to the access drive. Exhibits 57.

On July 6, 2015, the Hearing Examiner received a copy of a letter from the Planning Board, unsolicited, addressed to the Acting Administrator and Acting Director of SHA urging SHA and the Montgomery County Department of Transportation (MCDOT) to investigate traffic calming measures at River Road and Carderock Springs Drive because of concerns relating to speeding based on roadway conditions at the intersection.<sup>2</sup> Exhibit 59.

Having received no response from SHA, the Hearing Examiner requested (on July 9, 2015) confirmation whether they would be responding to her request for information in writing. Exhibit 60. Shortly thereafter, Ms. Carlson, a resident of the Carderock Springs subdivision confronting the subject property, submitted information on accidents at the intersection of River Road/Carderock Springs Drive compiled from members of the community. Exhibit 61. On July 13, 2015, a representative of SHA confirmed that they would respond to the Hearing Examiner's in writing. The Applicant objected to the admission of the data supplied by Ms. Carlson, which

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<sup>2</sup> Out of an abundance of caution, the Hearing Examiner placed the Board's letter in the record of this case. Upon further review, neither the Hearing Examiner nor other parties are copied on the letter, and thus, it is unclear whether all parties to this case have had the opportunity to review it. For this reason, the Hearing Examiner does not rely on it for this decision.

the Hearing Examiner denied. Exhibits 63, 64. Additional safety data was submitted into the record by other individuals opposing the application. Exhibits 66, 70, 75.

The SHA supplied the accident data for the River Road/Carderock Springs Drive intersection on July 17, 2015. Exhibit 67. SHA also stated that it agreed (in concept) to placing the bike path within its right-of-way and that it would approve an access permit for the driveway. Exhibit 67. The Hearing Examiner referred both (1) the Applicant's revisions to the bike path (that had been presented at the public hearing), and (2) SHA's accident data to Technical Staff for review and comment. Exhibit 72. With regard to the SHA data, she asked Staff review the meaning of the "Severity Index" for the intersection contained in the data. Staff responded, recommending revisions to the bike path alignment proposed by the Applicant. Exhibit 72. Staff also responded that it was unable to provide information on the meaning of the "Severity Index" because it didn't regularly apply that formula in the course of Staff's review of applications. *Id.*

The Applicant's attorney informed the Hearing Examiner that she had not received Staff's comments on the bike path. As a result, the Hearing Examiner extended the closing of the record to July 29, 2015. Exhibit 78.

Those opposing the application submitted additional information on accidents at the River Road/Carderock Springs intersection. Exhibits 61, 66, 67, 75, 82. Planning Staff provided their comments on the impact of the Artis facility capacity of the roadway at that intersection on July 28, 2015, but were did not specifically comment on the safety of the intersection. Exhibit 83.

Because Staff had provided its comments shortly before the record was to close, those opposing the application asked for additional time to respond to Staff's comments. The Applicant asked that it be able to submit its comments after those of the opposition so that it could respond to both. Exhibits 84 – 87. The Hearing Examiner granted both requests to extend the period the

record would remain open, but denied a request to permit the opposition an additional opportunity to address the Applicant's comments because she did not "anticipate any new information to be presented in the parties' responses." Exhibit 88. Comments from those opposing the application were due on August 3, 2015; comments from the Applicant were due on August 5, 2015. *Id.*

The Hearing Examiner also requested additional information from Staff as to whether the retaining wall proposed on one side of the property met the development standards of the RE-2 Zone. Technical Staff supplemented its report on this issue on July 31, 2015, and recommended that the retaining wall be approved as an alternative method of compliance with the landscaping and screening requirements of the Zoning Ordinance. Exhibit 91. The Hearing Examiner also requested confirmation from the Applicant's engineer that the loading spaces met Section 59.6.2.8 of the Zoning Ordinance. The Applicant's engineer submitted this confirmation on August 4, 2015. Exhibit 98.

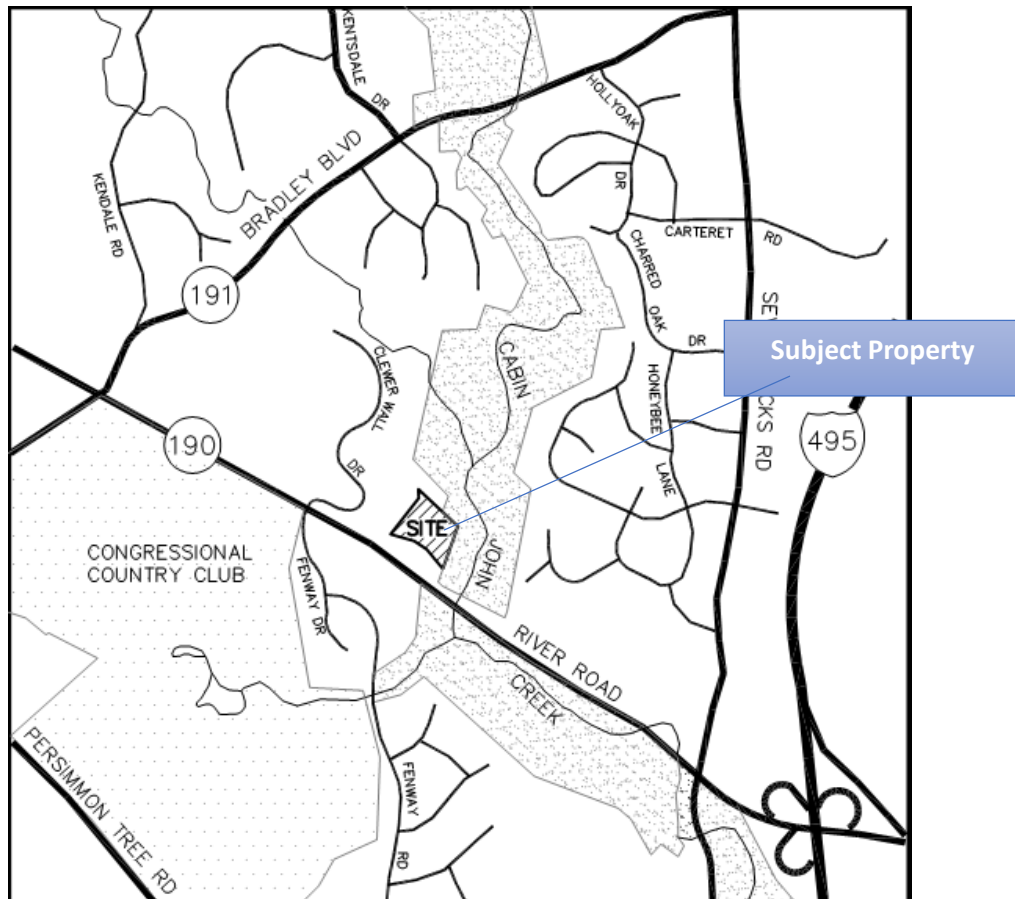
Parties opposing the application filed their comments on Technical Staff's evaluation of the River Road/Carderock Springs Drive intersection within the deadline of August 3, 2015. Exhibits 95, 96. In response, the Applicant submitted information explaining the "Severity Index" that had been provided by SHA to Technical Staff, who had not provided it to the Hearing Examiner or other parties. Because those opposing the application had not had the chance to review the material, the Hearing Examiner extended the close of the record for an additional 10 days, until August 24, 2015, solely for those in opposition to comment on the new data. Exhibit 106. These comments were submitted on August 24, 2015, and the record closed.

For the following reasons, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part V of this Report and Decision.

## II. FACTUAL BACKGROUND

### A. The Subject Property

Located north of River Road within the triangle formed by Seven Locks Road, River Road, and Bradley Boulevard, the subject property is a recorded lot consisting of approximately 4.39 acres in the RE-2 Zone. The eastern property line abuts the Cabin John Stream Valley Park. Exhibit 35, p. 6. A vicinity map from the Applicant's Existing Conditions Plan (Exhibit 1, below), shows the property's general location:



Mr. Patrick LaVay, the Applicant's expert in civil engineering, described the existing conditions on the property, which is located on the north side of River Road approximately 1,200 feet west of the Stoneyhurst Quarry Development, just to the west of a two-lane bridge that crosses Cabin John Creek. T. 47-48. The property is currently developed with a large single-family home and two separate two-car garages, a tennis court, an outdoor pool, a pool house, and a long driveway crossing over property owned by Montgomery County (i.e., the Cabin John Stream Valley Park, managed by the Montgomery County Parks Department) to River Road. The existing driveway is between 16 and 12 feet wide. The authority to use the driveway stems from a 20-foot wide easement over the park property, until the driveway crosses into the SHA right-of-way along River Road. T. 48.

Except for the cleared area, there are significant topographic changes on all sides, according to Mr. LaVay. From west to east, the property slopes generally downward by about 60 feet to the park property. If one includes the entire driveway to River Road, the change in elevation is approximately 100 feet. T. 49-50. He testified that the site is somewhat atypical because the SHA right-of-way is excessively wide along the front of the property, having a depth of approximately 200 feet. The right-of-way also has a steep slopes and forested areas. An existing cleared area is located on the western length of the right-of-way, the reason why the Applicant moved a proposed water easement to this area. T. 50. An aerial view of the property is shown on the following page (Exhibit 73). Because the natural features of the site are of importance to this case, the Hearing Examiner also includes the Applicant's Existing Conditions Plan (Exhibit 1) on page 10.





Aerial Photograph of Subject Property  
Exhibit 73(a)



## B. Surrounding Area

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding area” (i.e., the area that will be directly impacted by the proposed use). Staff determined that the boundaries of the surrounding area included Clewerwall Drive to the north, the Cabin John Stream Valley Park to the east and south, and River Road to the west. Exhibit 35, p. 6.

The Applicant’s expert land planner, Ms. Victoria Bryant, disagreed with Staff’s delineation, opining that the neighborhood boundaries were significantly larger. In her opinion, boundaries of the surrounding area Seven Locks Road to the east, Cabin John Stream Valley Park and a portion of the Clewerwall subdivision to the north and north west, Norwood School to the west, Congressional Country Club to the south west, and the Carderock Springs subdivision, Cabin John Stream Valley Park to the south. An aerial photograph of the boundaries she proposed (Exhibit 47) is shown below:



Ms. Bryant described the surrounding area. West of the subject property, north of River Road, are the Clewerwall subdivision, a neighborhood of single-family detached homes, and the Norwood School, a 30-acre private school. Congressional Country Club and the Carderock Springs subdivision are to the southwest and south, respectively. Cabin John Stream Valley Park is adjacent to the east and north, and uses further east include a townhouse community near Seven Locks Road, the Cabin John Fire Department and the new Stoneyhurst Quarry project, which, according to Ms. Bryant, has 97 “high end” condominiums. T. 90. Ms. Bryant also included a portion of the community behind the quarry development along Split Oak Drive because they have some views across the site and share an entrance point onto River Road. T. 86-87. She characterized the neighborhood as being predominantly single family homes with some townhouse and condominiums clustered closer to I-495. Ms. Bryant acknowledged that two existing special exceptions (now called conditional uses), Congressional Country Club and the Norwood School, located to the west along River Road, are relatively intense. She amended her characterization to include a “fair amount of parkland” in the middle of the area with two more intensive conditional uses to the west. She opined that the neighborhood maintains a “semi-rural ambiance” because of the fairly large lawns in front of both special exceptions. T. 89-90. Zoning categories represented include the CR Zone, R-T 10.00, and R-200. T. 87-88.

The Hearing Examiner characterizes the area as a mix of single-family residential detached homes and wooded parkland in the center of the surrounding area, with two much more intense special exception uses further west on River Road, and higher density residential uses closer to the Beltway to the east. The record supports Ms. Bryant’s opinion that the two special exception uses, Congressional Country Club and the Norwood School, may be intense from an operational standpoint, but do have significant visual buffering from River Road.

### **C. Proposed Use**

Mr. Jay Hicks testified regarding the Applicant's vision for the proposed use. The Applicant plans to develop a 72-room senior living facility for seniors suffering from Alzheimer's disease or other memory disorders. The facility is modeled after a concept that has been successfully implemented both in Great Falls, Virginia, and in Olney, Maryland. He testified that the design is an improvement over older models of care, which primarily sedated or "locked down" patients with dementia. Because Artis's focus is solely on care of patients with dementia, the hallmark of their design is to create a single-story, secure building and outside area that permits residents to walk in and outdoors in a controlled environment. T. 20. He believes that this design gives residents the maximum ability to move freely without the appearance of a minimum security prison. T. 22.

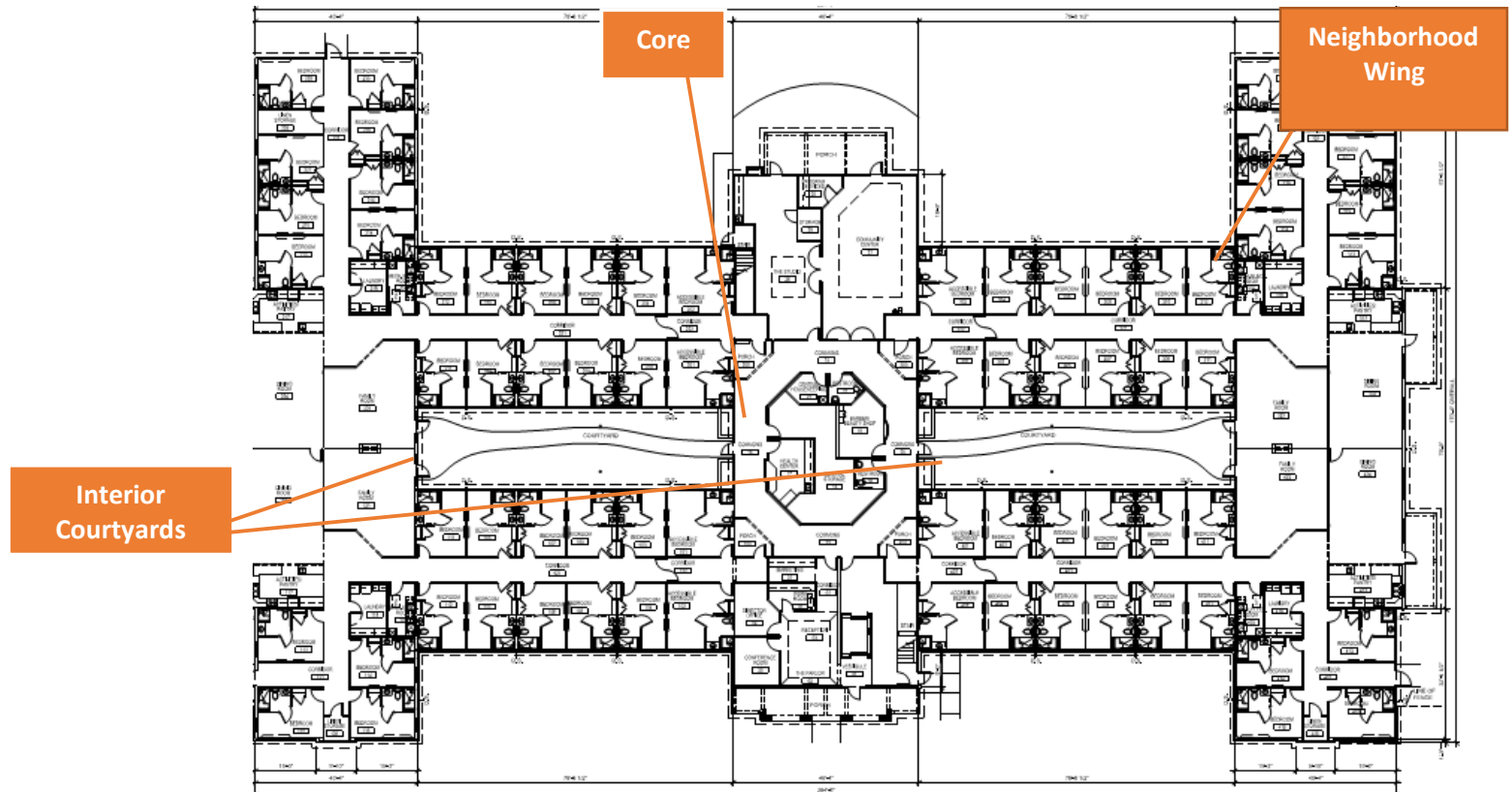
The Applicant's expert architect, Mr. Daniel Dokken, opined that the building design reinforces the Applicant's goal to allow residents less restricted movement within a secure environment. According to him, the living environment is a large part of the care for Alzheimer's patients. Freestanding Alzheimer's care facilities are able to remove barriers to patient's mobility and provide spaces for activities that keep them busy and make them feel that they are experiencing daily life, while still secure. T. 186-187. To that end, the building, while large, is a single story with a pitched roof to mirror residential homes. Exterior materials include cement board siding, stacked stone veneers, white fascia and trim, and asphalt shingles on the roof. An architectural rendering submitted by the Applicant (Exhibit 10(a)), shown on the following page.)



**Exhibit 10(a)**

The building design includes a core or “town center” to house many of the administrative activities and some community spaces such as a beauty parlor and craft rooms. Surrounding this core are four wings or “households,” designed for a smaller number of residents to congregate so that interaction is not overwhelming. Each of the wings, or quadrants, has its own living and dining rooms, and a serving kitchen that looks like one in a normal home. All of the meals are cooked in a kitchen in the core area and transported to the different households. Many times, the residents are involved in plating the food and setting the table. T. 188. To help residents find their household, they code each wing in a different theme, such as a “beach house” wing. *Id.* They try to provide the patients with surroundings that make them feel like they are in their own house. T. 189. A floor plan of the main floor (Exhibit 9) is reproduced on the following page.

Artis also removes barriers to the outside by creating a closed courtyard around the sides and back of the building so that residents can wander in and out of the facility safely. For this



reason, all of the services come through the front door, rather than a rear loading dock. T. 188-189. Because of the grades on the site, the rear (eastern) courtyard is bordered by an 11-foot high retaining wall at the same grade as abutting properties, thus eliminating the need for Artis' typical design of a board on board fence to secure and screen the exterior area. T. 66.

According to Mr. Hicks, the property is a good location for the services provided. He testified that there is a very strong demand for this type of service in Potomac that exceeds what the Applicant can provide. The facility provides a residential environment, similar to the single-family homes in which most Potomac residents have lived most of their lives. T. 22. The site itself requires little additional clearing because it is already developed with a large home, outbuildings, and amenities. It's proximity to the Beltway aids its accessibility to families of residents. T. 23. Based on his experience developing these facilities, he felt that the project had a

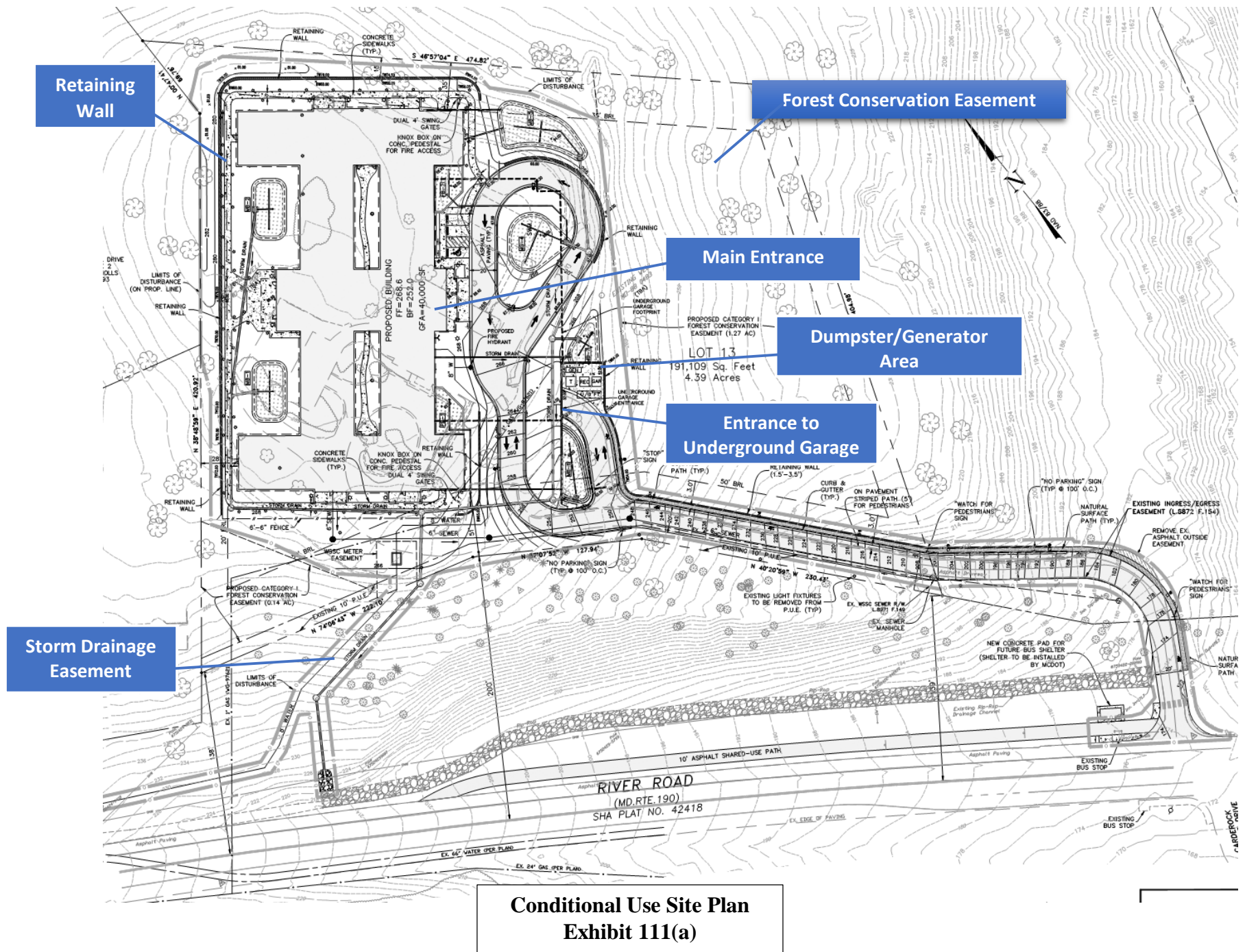
good chance of approval because there was a lot of merit to the location and design of the building and need for the service. T. 23.

The site includes approximately one acre of forested area to the east and north of the driveway, which Artis is willing to dedicate to the Montgomery County Parks Department in exchange for widening of the driveway access. T. 30.

### **1. Site Plan**

The final site plan submitted by the Applicant shows the details of the proposed use (Exhibit 111(a), shown on the following page.) Mr. LaVay explained the proposed site lay-out. The entry is from the eastern side of the property via the existing driveway, which will be expanded to 20 feet in width. Fifteen feet of the total width will be for vehicular traffic and five feet will be shared vehicular and pedestrian use. The shared portion of the driveway will be striped and signs will warn drivers of potential conflicts with pedestrians. T. 33-34; Exhibit 111(a). Mr. LaVay opined that it will be infrequent for cars and persons to conflict there because of the low traffic volume. The Applicant will be replacing the existing pad at the bus stop so the County may install a new bus shelter there. T. 59. There will be an accessible pathway from the bus stop to the beginning of the park easement, where a call box and canopy will be located. This will permit anyone who doesn't wish to climb the hill to stop in a sheltered place and call to the main building to be picked up. T. 59-60. The Applicant also plans to propose a crosswalk in the SHA right-of-way going crossing the driveway entrance to intersect with the striping for the pedestrian walkway. T. 59. A golf-cart type vehicle will be used to shuttle individuals from the call box to the main building.





At the top of the hill, the driveway becomes circular. The garage entry will be near the southwest corner of the forest conservation easement area and an enclosed area that will house the emergency generator, transformer, and dumpster is just east of the garage entrance. The underground parking area has 38 parking spaces (35 regular parking spaces and three accessible spaces) and room for a golf cart-type vehicle used to shuttle pedestrians to and from the call box. Exhibit 111(a). The drive circles around above the garage to the front door for deliveries. T. 60-61. A typical trash truck will be able to pull straight into the dumpster area, back out and turn around. They plan to locate a stop sign on the driveway where it intersects the garage entrance to avoid any conflicts in that area. T. 62. The main floor of the building is approximately 14 feet higher than the grade elevation of the trash area, thus shielding residents from any noise associated with the generator and trash pick-up. T. 63.

Mr. LaVay testified that the Applicant had to use the easement over the park property rather than bringing the access directly through the SHA right-of-way because the SHA right-of-way has very steep slopes. Reduction of the grade would have required the driveway access to come in at a 45-degree angle from River Road, and SHA prefers access points to be perpendicular with a State road. His firm looked at putting the driveway access where the storm drainage easement is to be located, but locating access further west on the property would also have created site distance problems for vehicles entering and exiting the facility. T. 64-65.

The steep slopes also required the pedestrian access to be incorporated into the driveway. From the garage entry to the road, there is about 75 feet of grade change extending for 500 feet. Installing a sidewalk that would meet the grades required by the ADA would need, in his estimation, thousands of feet of sidewalk traversing the forest conservation easement. Having the side walk incorporated with the access drive, in his opinion, was the best balance of environmental

and ADA accessibility requirements. T. 65. The grade between the driveway entrance on River Road (in the SHA right-of-way) and the beginning of the park property is almost flat—it slopes down approximately 2 feet and then rises approximately two feet and may be negotiated by disabled individuals. T. 66.

The grade of the property helped them keep a lower profile for the building, because they were able to construct the garage into the existing grade, and the building will sit down approximately 11 feet from the natural grade. T. 66. The grade also necessitates the retaining wall on the western end of the site, which will eliminate the typical board-on-board fence required in most Artis properties. All that is needed is a safety fence on top of the retaining wall. T. 67.

## **2. Operations**

Mr. Hicks summarized the operation of the facility. Because it is a residential use, it will be open 24 hours a day, 7 days a week. The facility will have a total of 38 employees divided between three shifts that have been designed to avoid peak period traffic. Shifts will be from 6:00 a.m. to 2:00 p.m., 2:00 p.m. to 10:00 p.m. and 10:00 p.m. to 6:00 a.m. T. 24. According to Mr. Hicks, 18 employees will be on the 6:00 a.m. to 2:00 p.m. shift. The second shift (i.e., from 2:00 p.m. to 10:00 p.m.) will have 12 employees and the third shift (i.e., from 10:00 p.m. to 6:00 a.m.) will have 6 employees. T. 196-197.

Visiting hours are unrestricted. Based on information from the Olney facility, the majority of their visitors come on weekends and after dinner on weeknights. The Director of the Olney facility indicates that she has an average of five visitors during a typical weeknight at full occupancy. The Olney facility has 64 beds. Exhibit 99(d); T. 199.

Mr. Hicks testified that the major servicing traffic will be from deliveries made by UPS-type trucks and food perishables that are delivered one to two times per week. T. 24. He

anticipates that there will be three to four resident moves in and out per month during the initial lease-up period, and then it would be an average of zero to two moves a month once the facility is leased and stabilized. T. 24.

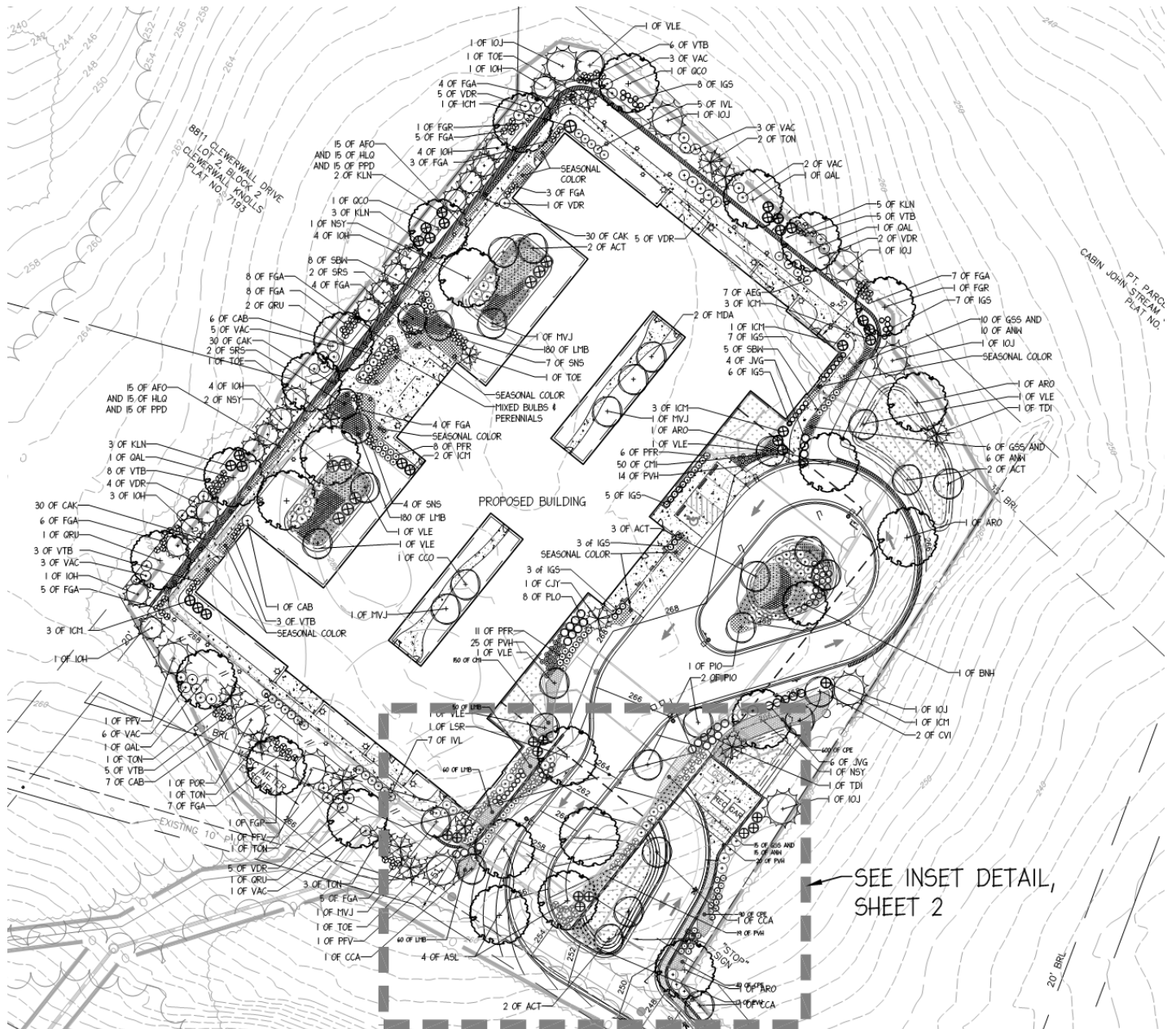
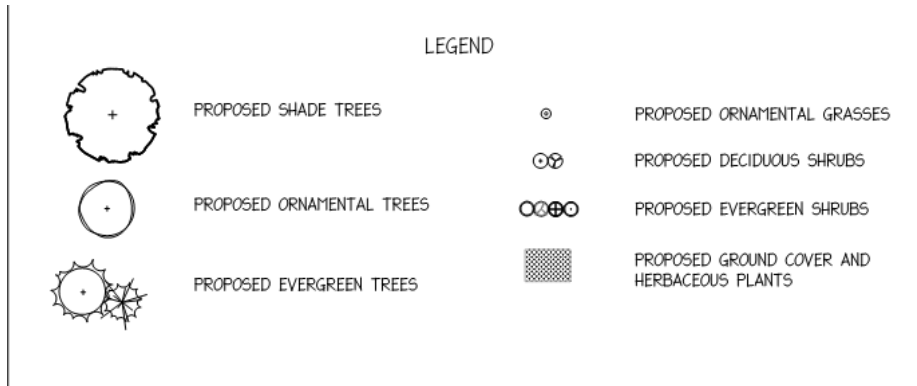
According to Mr. Hicks, members of the community were concerned that they did not have enough on-site parking spaces to accommodate staff and visitors to the facility. He testified that the Zoning Ordinance requires 27 spaces; Artis increased the number of on-site spaces to 38, which is comparable to other facilities. T. 31-32. There may be some days, such as Mother's Day, during which they will need overflow parking. On those "rare" occasions, according to Mr. Hicks, they typically make arrangements with churches and schools in the area and run shuttles from those locations to the facility. Artis plans to do this at this location as well. T. 32. He agreed to a condition of approval requiring these arrangements for overflow parking because they have never had a problem arranging this with nearby churches or other facilities. T. 33. These occasions generally occur on weekends rather than during weekdays. T. 199-200.

### **3. General Site Landscaping and Lighting**

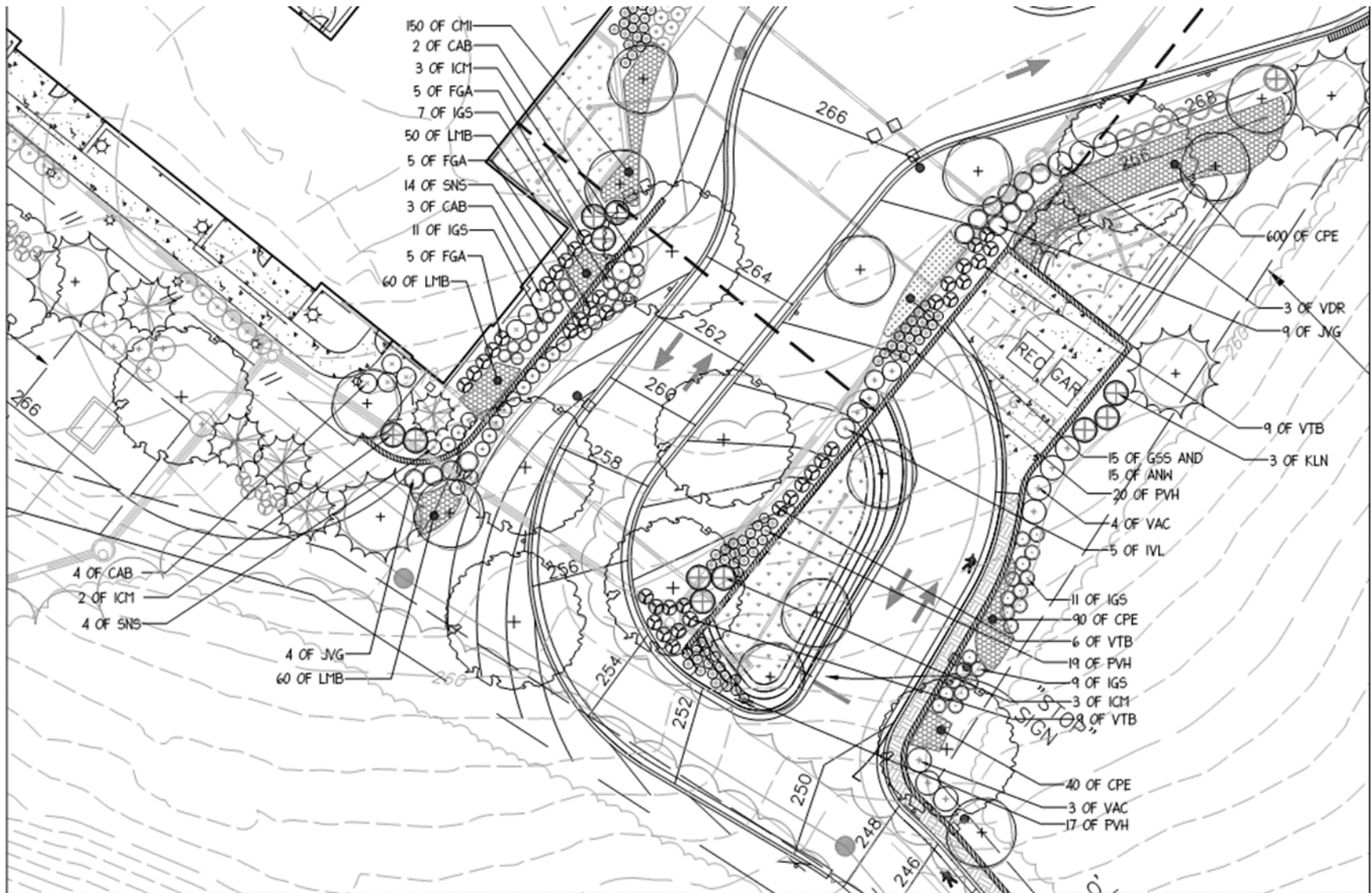
Ms. Bryant described the proposed landscaping on the property. A row of hollies, maples and a series of low deciduous trees and evergreen shrubs help to screen the facility from the houses in the neighboring Clewerall subdivision. The hollies will grow to approximately 15 to 20 feet high and about 10 to 12 feet wide. To the north, Artis has incorporated a similar approach with a mix of hollies and deciduous trees. There are bio-retention facilities in front of the building that will be planted with trees, shrubs, and ornamental plants to make it look like a garden. Another bio-retention facility sits within the cul-de-sac of the driveway and has low shrubs and trees, short shrub plants, ornamental grasses, and some ornamental and deciduous trees. Traditional foundation plantings are located along the front of the building. The property line that faces River

Road will be landscaped with a series of evergreen and deciduous trees. The two outdoor courtyards in the center of the building have plant material and small pine trees. Behind the building is a larger courtyard, with some foundation planting, ornamental trees, deciduous trees and two bio-retention facilities planted to look like gardens. They have tried to include native deciduous and evergreen shade trees. T. 106-107. Excerpts from the Applicant's Landscape Plan (Exhibit 37(c)) are shown beginning on page 22.

Ms. Bryant testified that all lights will have full cut-off downward directional lighting, which will not cause any illumination above 0.1 footcandles at the rear and side property lines. T. 108-110. There will be some pole lights (Exhibit 37(d), shown on page 25) along the driveway that increase the illumination at the property line adjacent to the SHA right-of-way to levels of 2 to 3 footcandles. Mr. Dokken opined that lighting in the parking area would have little impact because the garage is below grade. The driveway and drop-off areas will be illuminated, and some places at levels of 2 to 3 footcandles. They also propose some low level bollards and sidewalk lighting on the rear exterior courtyard, which no one will be able to see because the building is at such a low level. There are light poles illuminating the access drive that will be screened by trees. He opined that very little of the lighting would be visible from River Road. T. 192-193. Low level bollards and sidewalk lighting will illuminate the rear exterior courtyard, which no one will be able to see because the building is well below grade at that location. T. 192-193. The Applicant submitted a photometric study (Exhibit 37(d), shown on page 25), indicating that illumination along the property line bordering the driveway will be between two and four footcandles.



**Landscape Plan  
Exhibit 37(c)**

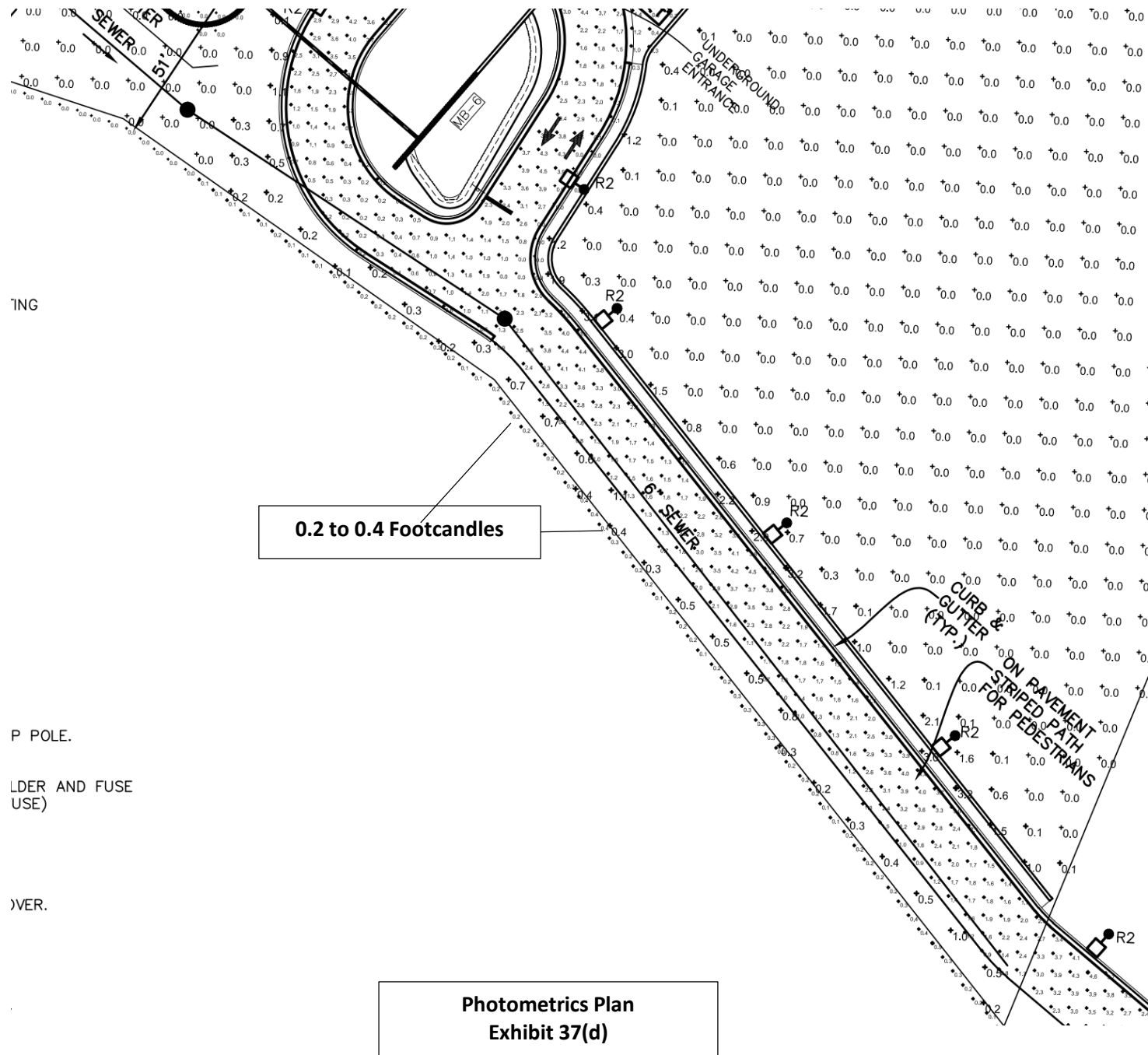


Inset Detail  
Landscape Plan  
Exhibit 37(c)

LANDSCAPE PLANT LST								
KEY	QTY	BOTANICAL NAME	COMMON NAME	CAL	HGT	SFD	ROOT	SPACING
<b>SHADE TREES</b>								
ARO	4	Acer rubrum 'October Glory'	October Glory Red Maple	2½ -3"			B+E	
ASL	4	Acer saccharum 'Legacy'	Legacy Sugar Maple	3-3½"			B+E	
BNIH	1	Betula nigra 'Heritage'	Heritage River Birch	2½ -3"			B+E	
FGR	3	Fagus grandifolia	American Beech	2½ -3"			B+E	
LSR	1	Liquidambar styraciflua 'Rotundiloba'	Fruitless Sweetgum	2½ -3"			B+E	
NSY	4	Nyssa sylvatica	Black Gum	2½ -3"			B+E	
QAL	4	Quercus alba	White Oak	2½ -3"			B+E	
QCO	2	Quercus coccinea	Scarlet Oak	2½ -3"			B+E	
QRU	4	Quercus rubra	Red Oak	2½ -3"			B+E	
<b>EVERGREEN &amp; DECIDUOUS CONIFER TREES</b>								
CJY	1	Cryptomeria japonica 'Yoshino'	Yoshino Cryptomeria		7-8'		B+E	
IOJ	6	Ilex opaca 'Jersey Princess'	Jersey Princess American Holly		7-8'		B+E	
ICH	18	Ilex opaca 'Miss Helen'	Miss Helen American Holly		7-8'		B+E	
PFV	3	Pinus flexilis 'Vanderwolf Pyramid'	Vanderwolf Pyramid Lumber Pine		7-8'		B+E	
POR	1	Picea orientalis	Oriental Spruce		7-8'		B+E	
TDI	2	Taxodium distichum	Common Baldcypress		7-8'		B+E	
TOE	4	Thuja occidentalis 'Emerald'	Emerald Arborvitae		5-6'		Cont.	
TON	8	Thuja occidentalis 'Nigra'	Dark American Arborvitae		5-6'		Cont.	
<b>ORNAMENTAL TREES</b>								
ACT	9	Amelanchier canadensis 'Trazam'	Tradition Serviceberry		6-7'		B+E	
CCA	5	Cercis canadensis	Eastern Redbud		7-8'		B+E	
CCF	2	Cercis canadensis 'Forest Pansy'	Forest Pansy Eastern Redbud		7-8'		B+E	
CCO	1	Cornus x 'Constellation' ('Ruscan')	Constellation Dogwood		7-8'		B+E	
CVI	2	Chionanthus virginicus	White Fringetree		7-8'		B+E	
MDA	2	Magnolia x 'Daybreak'	Daybreak Magnolia		7-8'		B+E	
MVJ	4	Magnolia virginiana 'Jim Wilson'	Moonglow Sweetbay Magnolia		7-8'		B+E	
PID	3	Prunus x incame 'Okame'	Okame Cherry		7-8'		B+E	
SRS	4	Syringa reticulata 'Summer Snow'	Summer Snow Tree Lilac		7-8'		B+E	
VLE	7	Viburnum lentago	Nannyberry		7-8'		B+E	
<b>DECIDUOUS SHRUBS</b>								
AEG	7	Abelia x 'Edward Goucher'	Edward Goucher Abelia		24-30"		Cont.	48" c.c.
CAB	23	Clethra alnifolia 'September Beauty'	September Beauty Summersweet		24-30"		Cont.	48" c.c.
FGA	84	Fothergilla gardenii	Dwarf Fothergilla		18-24"		Cont.	36" c.c.
IVL	17	Itea virginica 'Little Herry'	Little Herry Sweetshrub		24-30"		Cont.	48" c.c.
PFR	25	Potentilla fruticosa 'Red Lady'	Red Lady Cinquefoil		24-30"		Cont.	36" c.c.
SNS	29	Spiraea nipponica 'Snowmound'	Snowmound Spirea		24-30"		Cont.	36" c.c.
SBW	13	Spiraea x bumalda 'Anthony Waterer'	Anthony Waterer Spirea		18-24"		Cont.	36" c.c.
VAC	30	Viburnum acenfolium	Mapleleaf Viburnum		30-36"		Cont.	60" c.c.
VDR	25	Viburnum dentatum 'Ralph Senior'	Autumn Jazz Viburnum		30-36"		Cont.	60" c.c.
VTB	54	Viburnum trilobum 'Bailey Compact'	Bailey Compact Cranberry Viburnum		24-30"		Cont.	36" c.c.
<b>EVERGREEN SHRUBS</b>								
ICM	22	Ilex crenata 'Compacta'	Compact Japanese holly		30-36"		Cont.	60" c.c.
IGS	77	Ilex glabra 'Shamrock'	Shamrock Inkberry		18-24"		Cont.	36" c.c.
JVG	23	Juniperus virginiana 'Grey Owl'	Grey Owl Juniper			18-24"	Cont.	36" c.c.
KLN	16	Kalmia latifolia 'Nipmuck'	Nipmuck Mountain laurel		30-36"		Cont.	60" c.c.
PLO	8	Prunus laurocerasus 'Otto Luyken'	Otto Luyken Cherry laurel		30-36"		Cont.	48" c.c.
<b>ORNAMENTAL GRASSES, GROUNDCOVERS &amp; PERENNIALS</b>								
APD*	30	Agastache foeniculum	Anise Hyssop				#1 Cont.	24" c.c.
ANW*	31	Aster novi-belgii 'Winston Churchill'	Winston Churchill Aster				#1 Cont.	24" c.c.
CAK	90	Calamagrostis x acutiflora 'Carl Foerster'	Feather Reed Grass				#2 Cont.	24" c.c.
CMI	200	Carex morrowii 'Ice Dance'	Ice Dance Japanese Sedge				#1 Cont.	12" c.c.
CPE	730	Carex pensylvanica	Pennsylvania Sedge				4" Pcts	12" c.c.
GSS*	31	Geranium sanguineum 'Stratum'	Stratum Bloody Cranesbill				#1 Cont.	24" c.c.
HLQ*	30	Helianthus 'Lemon Queen'	Lemon Queen Sunflower				#1 Cont.	24" c.c.
LMB	530	Liriodendron muscari 'Big Blue'	Big Blue Lilyturf				4" Pcts	12" c.c.
PPD*	30	Phlox paniculata 'David'	David Garden Phlox				#1 Cont.	24" c.c.
PVH	95	Panicum virgatum 'Heavy Metal'	Heavy Metal Switchgrass				#1 Cont.	24" c.c.

**Landscape Plan  
Exhibit 37(c)**





TING

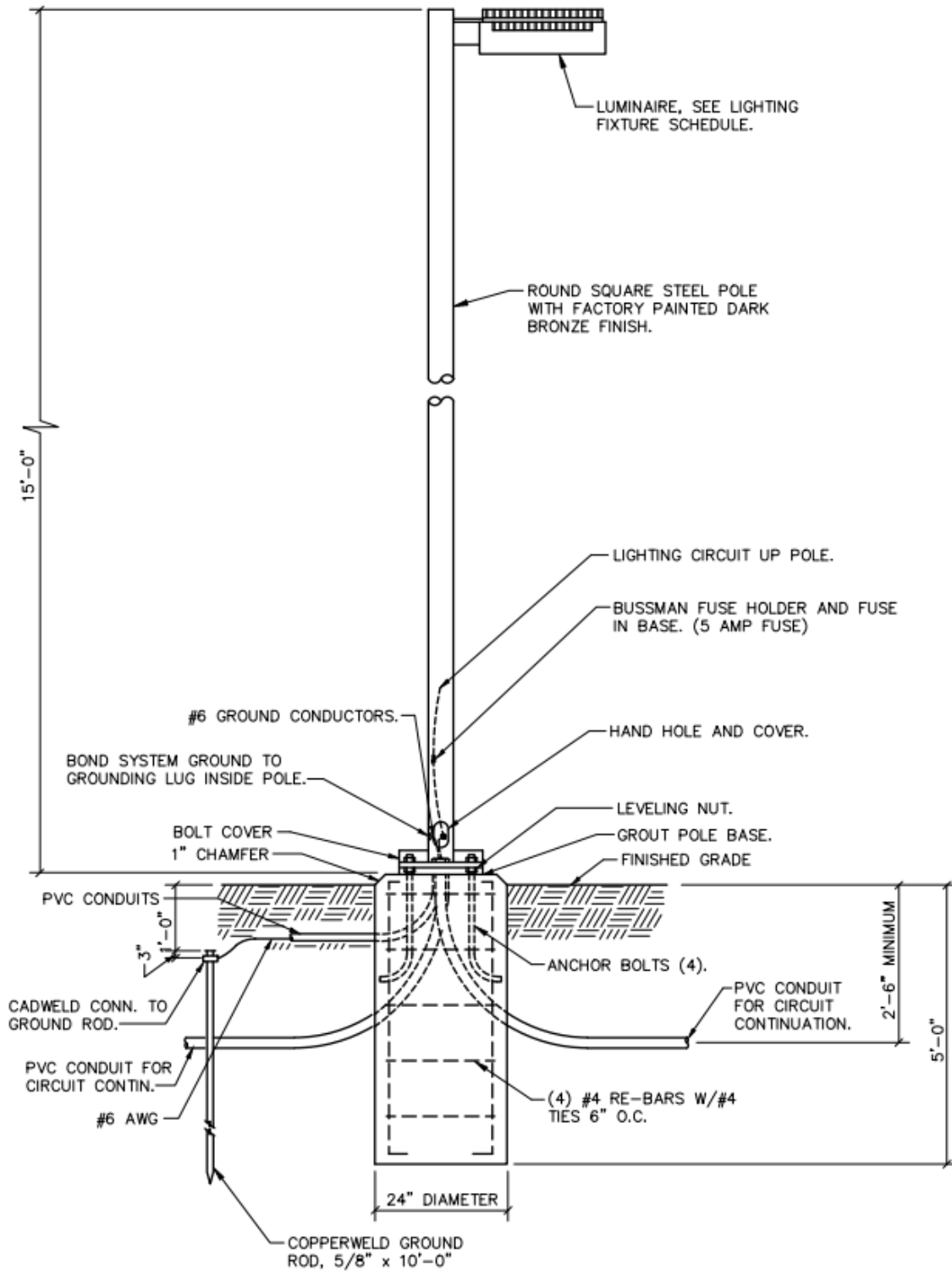
0.2 to 0.4 Footcandles

P POLE.

LDER AND FUSE  
(USE)

OVER.

Photometric Plan  
Exhibit 37(d)



# B FIXTURE TYPE 'R1', 'R2'

## POLE BASE DETAIL

N.T.S.

Pole Light Detail  
Exhibit 37(d)

**D. Transportation, Public Facilities, and Traffic Impacts**

**1. Local Area Transportation Review/Policy Area Transportation Review**

The application does not require approval of a preliminary plan of subdivision. Exhibit 18, p. 14. Therefore, the Hearing Examiner must determine whether roadway capacity is adequate under Section 50-35(k) of the County Code, as implemented by the Subdivision Staging Policy (Council Resolution 17-601, adopted on November 13, 2012) and the Planning Board’s Guidelines for Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR). LATR Guidelines are intended to determine “the adequacy of the local road network by measuring congestion at roadway intersections based on critical lane volume (CLV) and volume to capacity ratio (v/c).” *Local Area Transportation Review and Transportation Policy Area Review Guidelines* (adopted January 24, 2013) (Guidelines). LATR projects the impact of trips to be generated by the proposed development, taking into account existing development and development that is approved, but is not yet built. Applications that are expected to generate fewer than 30 trips are exempt from LATR review, but must submit a “Traffic Exemption Statement” to demonstrate that the number generated by the proposal will be under 30-trip maximum. *Guidelines*, p. 3.

In this case, the Applicant submitted a Traffic Exemption Statement indicating that, as conditioned, the facility would generate only 2 peak hour trips and 2 evening peak hour trips. This estimate is based on the staff shifts, which begin and end outside the peak period. A Table from the Technical Staff Report summarizes this finding (Exhibit 35, p. 15):

**Table 3: Site Trip Generation**

Proposed Development	Beds	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Assisted-Living Facility	72	1	1	2	2	2	4

Staff advises that the property is located in the Potomac Policy Area for the purpose of Transportation Policy Area Review (TPAR). Under the current Subdivision Staging Policy, the Potomac Area is exempt under the roadway test, but inadequate under the transit test. As a result, the Applicant will have to pay 25% of the General District Transportation Impact Tax before it may proceed to building permit. Exhibit 35, p. 15.

## **2. Other Public Facilities**

Stormwater for the site has been designed in accordance with current County and State regulations, according to Mr. LaVay, and meets the State standards requiring environmental site design to the maximum extent practicable. There are five micro bio-retention facilities disbursed throughout the site and two “planter box” bio-retention facilities in the front of the building. He testified that all stormwater is captured and treated on-site except for runoff from the driveway. In order to place a facility at the bottom of the driveway, more of the park property would have to be cleared. Their philosophy has been to treat almost everything higher up on the site to account for the run-off along the driveway. T. 68.

Mr. LaVay testified that the Department of Permitting Services (DPS), which had only some very minor comments, has reviewed a conceptual stormwater management plan. The one outstanding item is the soil boring investigation, which hasn't yet been done because it would disturb the people living in the house. He opined that, while a soil boring is now a requirement, their concept does not require as much infiltration because of the grade change. The boring test determines whether infiltration will be affected by rock underneath the soil. The stormwater management design on this site would not be significantly even if subsurface rock exists, although it may require a liner in the facility to avoid direct contact with record. In his opinion, the remaining elements of stormwater management approval are primarily procedural than

substantive. T. 69. For this reason, he did not agree with Staff's condition of approval requiring an approved stormwater management plan prior to the public hearing. T. 70.

Mr. LaVay further testified that each on-site stormwater facility has an overflow system, which collects water in a storm drain below grade. This is the drainpipe shown on the site plan starts within the site and will follow an easement through the western portion of the SHA right-of-way. Artis chose the location of the easement for several reasons. First, that area is relatively clear of forest, the grade is much less than other portions of the right of way, and it's not located within the area needed for on-site forest conservation. Thus, rather than building a pipe directly to River Road, they have angled it to the west. Otherwise, they may have had to create an outfall within the area dedicated forest conservation on the eastern portion of the site. There is an additional .14 acres  $\pm$  in the southwest corner; the drainpipe location on the site plan is the best location because it outfalls into an open channel system close to Cabin John Creek. According to him, SHA's biggest issue is the capacity of the downstream storm drain system, but here there is no downstream system because the stormwater flows directly into a creek. T. 71.

Mr. LaVay testified that the property is served by well water and is in in water category W-1. T. 54. Public sewer currently serves the property and the existing house drains to a four-inch sewer line that runs west to east down the driveway to a manhole within an existing WSSC sewer right-of-way. It then drains through a public sewer in the park property. T. 55.

Ms. Bryant testified that fire and police facilities are adequate and available to serve the proposed use and, because the facility is designed to serve seniors, will have no impact on the school system. T. 94.

### 3. Master Plan Transportation Facilities (Bike Path)

Planning Staff and the Planning Board recommended that the Applicant provide a shared use (i.e., bike and pedestrian) path along the entire SHA right-of-way in front of the property. According to Staff, the pathway is recommended in the *2002 Approved and Adopted Potomac Subregion Master Plan* (Master Plan or Plan) and the *2005 Approved and Adopted Countywide Bikeways Functional Master Plan* (Bikeways Plan). Exhibit 35, p. 15. Mr. Michael Lenhart, the Applicant's expert traffic planner and engineer, opined that the Master Plan does not require the bike path. According to him, the 2002 Potomac Master Plan included a requirement for a shared use path leading from the Beltway to Seneca Road. The 2005 Bikeways Plan changed this recommendation to a shared use roadway between the District of Columbia Line to Seneca Road. In his opinion, based on remaining portions of the plan, the term "D.C." was a typographical error and should have been "I-495" to Seneca Road. Either way, however, Mr. Lenhard stated that the 2005 Bikeways Plan calls for a shared roadway rather than a shared pathway. T. 155.

Mr. Lenhart testified that a signed shared roadway and a shared pathway are different. According to its definition in the Bikeways Master Plan, the signed shared roadway has paved shoulders with a desirable width of 6 feet, and is designed for use by bicyclists and motorists, but not pedestrians. The width permits a cyclist to ride far enough from the edge of the pavement to avoid debris. The shoulder along River Road at this location is between eight and ten feet wide, and therefore could satisfy the requirements for a signed, shared roadway. T. 156-157. Planning Staff did not agree with Mr. Lenhart's position that the Master Plan calls only for a shared roadway because Staff's goal is to have bicyclists off the roadway entirely.

At the public hearing, the Applicant submitted a "Bike Path Detail" that includes the 10-foot shared use bicycle/pedestrian path along approximately three-quarters of the property's

frontage. Mr. LaVay opined that physical constraints within the SHA right-of-way prevent extension of the path along the entire frontage without a significant cost. While a portion of the site west of the driveway is relatively flat and provides room for a 10-foot wide asphalt path on the shoulder, a drainage ditch begins to curve back and terminates against the edge of the road further west. North of the ditch is a steep embankment. According to Mr. Lenhart, it would be necessary to cut the embankment back to level the last quarter of the shoulder, which would require them to move the storm drain outfall approximately 30% east toward the road. This would affect afforested areas and require installation of an 8-foot high retaining wall. In addition, one would have to use some type of culvert to traverse the drainage ditch. In his opinion, SHA also would object to some of these items. He opined that building 75% of the bike trail has far fewer environmental impacts and less interference with the SHA easement. T. 77-78.

Mr. Lenhart opined that the alternate design proposed by the Applicant would not significantly affect the larger pathway network because there is no shared use path west of the property near Clewerwall Drive, and bicyclists would have to use the shoulder of the road at that point anyway. In his opinion, a shared pathway extending three quarters of the length of the property frontage, beginning from the eastern edge, would permit cyclists to use the shoulder and then return to the roadway. For this reason, he opined that the proposal to construct the majority (approximately 75%) of the shared use path would be sufficient for safe bicycling and pedestrian use along the frontage of the property. T. 158-161. The Hearing Examiner referred the Applicant's revised pathway to Planning Staff for review, who recommended against shortening the bike path to 75% of the property's frontage (Exhibit 72):

- It is difficult to implement a complete shared use path segment solely with redevelopment; therefore, when development comes along, we ask that they construct their frontage improvements, which could be a road and/or shared use path depending on the recommendations in the Master Plan. When enough of a

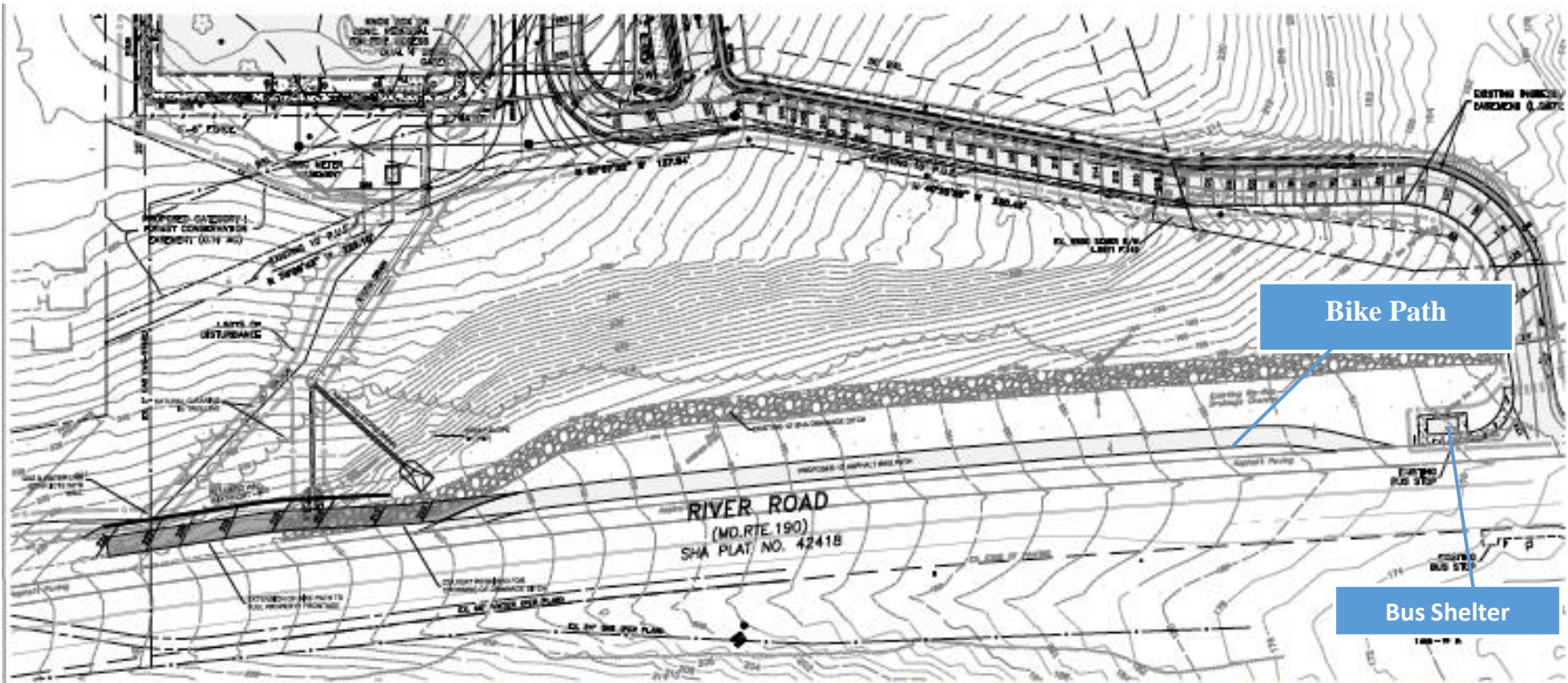
segment has been completed and/or there is sufficient funds in the CIP to construct the missing segments, then that is how a complete shared use path segment, of a significant length, is implemented. For this particular Applicant, Planning Staff recommended that they construct the shared use path along their frontage. This recommendation has been passed on to you in the recommended conditions from the Planning Board. If you look at the marked up site plan that I have attached, you will see this recommended condition has not been met.

- There is no shared use path connecting to the existing bus shelter pad as depicted in the Site Plan. The path should also connect to the driveway and be terminated in an ADA appropriate manner.
- On the west side of the Site, the shared use path is not extended along the frontage as recommended in the conditions. We do acknowledge that there are some topography constraints; however, we are tasked with implementing the recommendations in the Master Plan and to make sure the Site is safe and adequate to accommodate all users of a Site and people using the right-of-way. At times, cost can be an issue, but the Applicant has not provided anything or demonstrated that they cannot implement the shared use along their frontage other than to say there are topography issues.

Responding to Staff's comments, the Applicant provided a revised alignment of the bike path which did not change the length of the Applicant's previous proposal, but which did address Staff's comments to connect the bike path to the driveway and move the bus shelter north of the path. The Applicant's initial proposal, Staff's comments, and the Applicant's response are shown on the following pages.

The Applicant states that the cost to extend the pathway over the westernmost 150 feet of the SHA right-of-way could "easily exceed" \$150,000. Exhibit 99(a). According to the Applicant, the Applicant conveyed this to Staff in a telephone conversation after Staff commented on the revised alignment. The Applicant represents that Staff "agreed to support





VIEW LOOKING TOWARDS SITE FROM RIVER ROAD  
NATURAL CLEARINGS IN TREE LINE



VIEW LOOKING WEST ON RIVER ROAD



VIEW LOOKING WEST ON RIVER ROAD  
AT INTERSECTION WITH BRIDGE

**Applicant's Proposed Bike Path Alignment  
(Presented at Public Hearing)  
Exhibit 50**



early termination of the bike path as long as the proposed public water extension did not conflict with the path, should the County decide to extend it through a future Capital Improvements project.” Exhibit 99(a). For this reason, states the Applicant, it has adjusted the waterline alignment to allow for ten feet ( $\pm$ ) separation from the future retaining wall.

#### **4. Safety of River Road Access**

The major issue in this case relates to the impact of traffic from the proposed facility on the existing intersection of River Road and Carderock Springs Drive, which connects to the south side of River Road slightly to the east of the access drive to the proposed facility, and whether the location of the access drive with additional traffic from the facility will impact the safety of both intersections.

Ms. Carlson, who lives in the Carderock Springs neighborhood and is on the Board of the Carderock Springs Citizen’s Association, testified that the intersection of Carderock Springs and River Road is very dangerous. In 2000, her car was rear-ended by a vehicle traveling at full speed on River Road while she was waiting to turn left on Carderock Springs Drive. Her vehicle was totaled. The Board recently surveyed the neighborhood and learned that there have been many similar crashes at that intersection because motorists don’t anticipate a stopped vehicle even with turn signals on. T. 117. The neighborhood does have another entrance at Fenway Drive, which is used primarily by individuals who live closer to that entrance. Residents leaving the neighborhood to go east turn from right Carderock Springs Drive onto River Road, however. Because the two roadways do not align, these right turns will be competing against traffic coming turning left out of the Artis facility. T. 118-120. Photographs of the intersection (Exhibit 82), submitted by Ms. Carlson are shown below and on the following page.

According to Ms. Carlson, this section of River Road is “a very fast straightaway.” T. 120. There is a very steep grade on River Road just north (or west) of Carderock Springs Drive. The speed limit at that location is 40 miles per hour, and Ms. Carlson testified that many trucks and vehicles travel this stretch outside of rush hour at 50 miles per hour in both directions. Nor do they anticipate a stopped vehicle, even with its turn signal on. She believes that motorists leaving the proposed facility by turning east onto River Road will face great peril due to traffic exceeding speeds at that straightaway, as will drivers trying to make a left turn from River Road into Carderock Springs Drive. T. 122.



River Road

Artis Driveway

Carderock Springs Drive

**View from Car Leaving Carderock Springs Drive and Entering River Road (Above)**  
Exhibit 82



Carderock Springs Drive

Artis Driveway

View from Westbound River Road, East of Intersections Exhibit 82



Artis Driveway (Approx.)

Carderock Springs Drive (Approximate)

View of Eastbound River Road, West of Intersections Exhibit 82

In Ms. Carlson's opinion, many of the drivers visiting residents of the facility will be elderly with compromised reaction times, which will be dangerous because of traffic speed. Visitors leaving the facility, in her opinion, will also make it more difficult and dangerous for residents of Carderock Springs trying to turn on River Road to the east. Employees and visitors using buses to reach the proposed facility will face danger trying to cross the road. T. 122.

Ms. Carlson also expressed concern about changing a private residence into a commercial property. She believes there is already too much traffic on River Road and thinks that the County needs to slow development of the corridor, especially after approving recent condominium and townhouse projects. If the project is approved, she believes that River Road should be widened at the entrance to the facility. T. 122-123.

Ms. Carlson testified that all other projects along River Road in the area, including the River Quarry Condominiums, the River Hill Townhouse development, and Norwood School all have turn lanes in order to reduce the danger from traffic at the entrance. She believes that adding a turn lane on River Road at the intersection with Carderock Springs will benefit drivers within the neighborhood. T. 123. She does not believe the project should be approved until SHA takes additional measures to improve the safety of residents, employees, guests, neighbors, fellow motorists and pedestrians. T. 123-124.

Ms. Carlson disputes the proposition that there will be no increase in traffic as a result of this project. During the 25 years she has lived in Carderock Springs, she has seen a car exiting or entering the property's driveway only approximately a dozen times. Now, there will be 38 employees, conceivably, going in and out of the facility by car, not including visitors, deliveries and service workers. T. 124-125.

Mr. Lenhart testified that he did not feel that it would be difficult for vehicles exiting the Artis driveway to make a left out of the facility going east because they may wait for a gap in traffic and the employee shifts have been scheduled in non-peak hours. He testified that the traffic volumes on River Road (based on SHA data) are much lower during non-peak than peak hour traffic volumes. As a result, anybody that is waiting to turn would not have to sit for extended periods of time. T. 166-167. He stated that SHA does have accident data from that intersection, but they are “very careful about releasing” it and it’s difficult to obtain. T. 168. He testified that a speed camera at that location would slow traffic down and improve the situation that the community is experiencing when making left turns into their subdivision. T. 172-173.

Mr. Lenhart testified that traffic volumes during shift changes are relatively low. One shift change occurs at 6:00 a.m. and traffic volumes are approximately 40-45% of the peak flow. The peak flow occurs between 7:00 a.m. and 9:00 a.m., based on the 2011 Volume Count from SHA. He testified westbound traffic volumes on River Road between 6:00 a.m. and 7:00 a.m. are 153 vehicles during the hour. Between the 7:00 a.m. and 8:00 a.m. period, the volume jumped up to 470 to 480 vehicles per hour. Eastbound volume for the 6 o’clock hour was 630 vehicles and between 7:00 a.m. to 9:00 a.m. it jumped to approximately 1,150 vehicles. Therefore, volumes during the shift change are much lower. T. 179. He testified that traffic flows typically occur by a platoon of vehicles that move through followed by a huge gap and another platoon of vehicles. Based on the SHA volume counts, the intersection would operate at a Level of Service A under the critical lane volume methodology. T. 181.

Because of the safety issues raised by nearby residents, the Hearing Examiner requested accident data on the intersection from the SHA. Before SHA provided its response, some individuals opposing the application submitted their own accident information. Ms. Carlson

submitted a table of accidents occurring at the intersection between 2000 and 2014. Exhibit 61. The table lists six accidents at the intersection during that period, all of which were rear-end collisions between a vehicle waiting to turn left onto Carderock Springs Drive and a second vehicle traveling westbound on River Road. Exhibit 61. Mr. John Tiernan submitted a police report documenting a 2015 accident in which a vehicle traveling westbound on River Road collided with eastbound oncoming traffic while turning left onto Carderock Springs Drive. Mr. Eric Nothman, who lives in the home closest to the intersection, submitted a statement that he regularly sees accidents at that intersection and that he was rear-ended when waiting to turn left into Carderock Springs Drive from westbound River Road. Mr. Nothman attributes the number of accidents to the speed of traffic traveling in both directions on River Road and the lack of a left turn lane for traffic traveling westbound on River Road entering Carderock Springs Drive. Exhibit 70. Ms. Maxine Cohoes expressed concern that cars using the shoulder of River Road in front of the subject property to avoid those turning left onto Carderock Springs Drive will collide with individuals using the bike path. Exhibit 89.

A representative of SHA responded to the Hearing Examiner's request for information on whether SHA would permit the access road. He stated that, "the driveway alignment is acceptable to the SHA and will be permitted through the access permit process." Exhibit 67. SHA also provided accident data from January 1, 2012 through December 31, 2014. Exhibits 67, 99(b). SHA data reports eight accidents at the intersection during that period, seven of which were rear end collisions of vehicles westbound on River Road that struck vehicles while waiting to turn left from River Road onto Carderock Springs Drive. Seven of the rear-end collisions reported by SHA were outside of the peak period. This SHA data includes the following note (Exhibit 67):

Most vehicles were stopped trying to make a left turn onto Carderock Springs Drive when they were struck by a second westbound vehicle.



A review of all of the evidence on accidents in the record indicates that there were 13 accidents at the intersection of River Road and Carderock Springs Drive between 2000 and 2015.<sup>3</sup> All but one of the accidents for which a time and date is reported occurred during non-peak hours. Data from SHA assigns the probable cause of accidents reported by it as (1) failure to give full attention (four accidents), (2) speeding (one accident), (3) following too closely (one accident), and (4) “Other or Unknown” (two accidents). Exhibit 67. A summary of the accident data from all sources is included in the following table:

	<b>2000</b>	<b>2002</b>	<b>2010</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Unknown</b>
Total No.	1	1	1	2	2	4	1	1
Rear End	1	1	1	2	2	3	0	1
Peak Period (PP)/Non-Peak (NP)/Unknown (UNKN) <sup>4</sup>	UNKN	UNKN	UNKN	2 NP	2 NP	3 NP 1 PP	1 NP	UNKN
Total Accidents	13							
Total Rear End Collisions	10							
Total NP	8							
NP out of known dates/times	8/9							

<sup>3</sup> This excludes accidents shown on Ms. Carlson’s report that overlap the years covered by the SHA report in order to reduce the potential for duplication. Mr. Notham states that his accident was not shown on any of the reports and the accident report submitted by Mr. Tiernan is from 2015, so both are included in the table.

<sup>4</sup> The Hearing Examiner was able to determine whether the accident during the peak period because the date and time of the accident included in the SHA data and in the police report submitted by Mr. Tiernan. Accidents in which vehicles were rear-ended waiting to turn left onto River Road occurred on Saturday, May 5, 2012, Monday, December 17, 2012, at 3:00 pm, Monday, March 4, 2013, at 1:00 pm, Friday, April 12, 2013, at 3:00 pm, Sunday, January 19, 2014, Friday, October 3, 2014, at 9:00 a.m. (nearing the end of the peak period), and Wednesday, November 26, 2014, at 11:00 a.m. The accident reported by Mr. Tiernan (fault assigned to the driver of the vehicle turning left onto Carderock Springs Drive), occurred on Wednesday, May 20, 2015, at 9:07 p.m. Another accident was caused by a vehicle on Carderock Springs Drive backing into a light pole at 4:00 a.m. on Saturday, June 14, 2014. If the latter accident is eliminated from the group of accidents with known dates and times (because it did not involve a left turn from River Road onto Carderock Springs drive), the ratio of non-peak period accidents to peak period accidents would be 7 out of 8 accidents.

The data released by SHA states that the intersection has a “Severity Index” (SI) for each of the years reported. The SI is 6 for 2012, 4 for 2013, and 4 for 2014, for an average SI of 5. Exhibit 67. Technical Staff advised the Hearing Examiner that it was unable provide an analysis of this because it does not regularly use this metric (Exhibit 72), but the Applicant submitted the information obtained by Technical Staff from SHA. Exhibit 99(b)(1). This information appears to be an excerpt from a fact sheet explaining that the Severity Index weights the frequency of accidents by their severity. The weighting factors are included below (*Id.*):

Severity	Weighting Factors
Fatality	15
Incapacitating Injury	7
Non-incapacitating Injury	4
Possible Injury	2
Property damage only	1

Unfortunately, the fact sheet appears incomplete and does not contain the exact formula for determining the Severity Index or exactly where this intersection’s SI falls within the upper and lower ranges. Nor is there any information on the Severity Index of other comparable intersections. The information does contain an illustrative chart explaining the weighted frequency of a hypothetical 20 accidents, but does not include how this manifests itself into a numerical SI value (*Id.*):<sup>5</sup>

Category	Frequency	Weighting Factor	Weighted Frequency
Fatality	1	15	15
Incapacitating injury	2	7	14
Non-incapacitating injury	5	4	20
Possible injury	7	2	14
Property damage only	5	1	5
<b>Total</b>	<b>20</b>		<b>68</b>

<sup>5</sup> The formula for determining the SI cannot simply be a matter of dividing the weighted frequency by the frequency, because, in the above example with one fatal accident, this would yield an index number of 3.4, lower than the average index number of 5 for the intersection of River Road and Carderock Springs Drive.

E-mail correspondence between Technical Staff and an SHA representative, provided by the Applicant, states that the intersection is not “on any safety need listing for state maintained locations in 2012,” and contains the following exchange (Exhibit 99(b)(i)):

STAFF: Is a severity index of “6” a relatively low number that means this intersection does not rise high enough to the point where SHA considers it a critical intersection that needs to be evaluated, especially since there have been no fatalities? \* \* \*

SHA: Yes – It’s compared against other state maintained intersections in District 3 on an annual basis. The number of crashes and SI did not qualify the location for any safety needs list.

The Hearing Examiner referred the SHA accident data to Technical Staff for comment on the impact of the proposed facility on existing conditions. While Staff indicated it was unable to comment on the safety of the intersection, Staff did advise that the facility would have little impact on roadway capacity because it generated so few new trips and because it met SHA sight distance standards (Exhibit 83):

Capacity of the Road Network:

- The Assisted-Living Facilities trip generation rate from the Local Area Transportation Review (LATR) guidelines was used to estimate the number of peak hour trips that could be generated from the proposed use. Based on the proposed number of beds, the number of anticipated peak hour trips fell well below the 30-peak hour trip generation threshold that would have required a traffic impact study to be completed by the Applicant. It was estimated that the use would generate only two trips in the morning peak hour and four in the afternoon peak hour. It should be noted that this is a peak hour impact. The morning peak period is from 6:30-9:30am and the afternoon peak period is from 4:00-7:00pm. The peak hour is when the transportation network, in this case the road system, is considered to have the most demand. The road network is generally sized to accommodate the peak hour impact, and improvements are implemented when congestion thresholds exceed the Critical Lane Volume (CLV) threshold set by the County Council. For this area, Potomac, that threshold is 1,450 CLV.
- The trip generation rates associated with the proposed use in the LATR guidelines take into account all trips that would occur during the peak hour, which includes any delivery trucks or visitor trips, in addition to staff. Generally, delivery trucks come during the off-peak hours and thus are not reflected in the trip generation rates. Any trips that occur in the off-peak hours (early morning, midday, late evening, overnight, and weekends) are assumed to be able to be accommodated by the road network as this is not the peak demand.

- All traffic turning movements associated with the proposed use are different than the turning movements associated with vehicles turning into or from Carderock Springs Drive at River Road; therefore, the traffic associated with this proposed use will not exacerbate (in terms of increasing the queue) the turning movements associated with vehicles going to or from Carderock Springs Drive.
- There is guidance in the 2002 Potomac Subregion's Master Plan that a two-lane road policy has been established in order to preserve the Subregion's existing character. The Plan did acknowledge that road construction would ease congestion in the short term, but that would be at a detriment to the character of the area and, thus, is not appropriate. Intersection turn lanes are not part of the two-lane road policy; the necessity of adding turn lanes would be weighed against the overall guidance in the Potomac Master Plan and the impacts they would have on the two-lane road policy.
- There is sufficient room for vehicles to pass another vehicle waiting to make a left turn from River Road to Carderock Springs Drive or into the driveway entrance for the proposed use. This is allowed in accordance with Maryland State Law. Therefore, in terms of throughput capacity on River Road, left turns at either Carderock Springs Drive or the driveway entrance for the proposed use do not diminish the capacity of the road network.<sup>6</sup>
- The bridge over Cabin John Creek does not allow for the ability to construct a left turn lane in the westbound direction to turn left onto Carderock Springs Drive unless SHA eliminates the shoulders (at least one but maybe both) over the bridge. There is room to construct a left turn lane in the eastbound direction; however, the transition for the eastbound through lane to match up with the existing eastbound through lane over the bridge may not work. Additionally, this would require vehicles heading westbound and wishing to turn left onto Carderock Springs Drive to cross one additional lane of traffic. A center turn lane (where both eastbound and westbound traffic could use the lane to turn left) would not be appropriate in this stretch because of the lack of driveways from Carderock Springs Drive to Clewerwall Drive.

#### Sight Distance:

- The Applicant submitted a sight distance worksheet (attached to this email) that shows there is more than adequate sight distance from the driveway of the proposed use both to the east and west on River Road. We have been told that this was submitted into the record. Based on our review of this worksheet, which was prepared by a certified engineer, the sight distance appears appropriate. It also confirms what staff told the Planning Board during the public hearing.
- Because Carderock Springs Drive and the driveway for the proposed use are not aligned directly across from each other, there is a potential for conflict. However, this condition exists today and, as discussed above, the new use will not generate a large number of such turns. Additionally, during the peak periods when the most traffic is on the road, the proposed use will generate on

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<sup>6</sup> One individual opposing the application argues that Technical Staff incorrectly concluded vehicles may use the shoulder to pass other vehicles. Exhibit 96. The Hearing Examiner agrees with Staff that Maryland law *does* permit drivers to use the shoulder to pass a vehicle stopped and waiting to make a left turn in certain circumstances. *Md. Trans. Art., §21-304.*

average only one car every thirty minutes in the morning and one car every fifteen minutes in the afternoon.

- The sight distances are adequate for vehicles heading east on River Road to turn into the site as is shown in the attached sight distance worksheet.

Those in opposition disagree with Staff for several reasons. First, they argue that the comments do not address the safety of the intersection; rather, they focus on the capacity of the roadway to handle vehicle trips during the peak period. Exhibits 95, 96. Thus, they point out, the small number of trips generated during the peak period does not address the impact of the use during non-peak periods, when they claim most accidents occur. *Id.* They also contend that traffic from the Artis facility *will* exacerbate the queue because (1) vehicles turning right into the access drive will slow down, and (2) vehicles exiting the access drive may block the shoulder. Exhibit 96. Even if traffic to the facility doesn't increase the queue, they contend that vehicles travelling westbound on River Road may hesitate to use the shoulder if they see a car attempting to exit the Artis facility. Exhibit 95. Some individuals assert that there is insufficient room when there is a larger vehicle, truck, van or bus, or a bicyclist stopped on the shoulder. If these vehicles block the view of the shoulder, accidents may be caused by the failure to see traffic in front of them. Exhibit 95, 96, 101.

As to the two-lane road policy contained in the Master Plan, several individuals point out that many developments in the area have provided left turn lanes. Exhibits 95, 96, 101. They also submitted evidence that the proposed use will create many modal conflicts occurring near the intersection. These include the pedestrians travelling to/from the bus stop, pedestrians and cyclists using the bike path, and vehicles entering and exiting a parking area just east of the bridge used by those wishing to access the park. They raise concerns that vehicles simultaneously exiting Carderock Springs Drive and the access drive will have conflicting movements. Exhibit 96.

The Applicant asserts that the intersection is safe because it meets SHA sight distance requirements, the SHA states that it will approve the access permit, only four out of the seven rear-end collisions reported by SHA have resulted in personal injury, that the severity index is low, and that there have been no reported accidents related to the existing driveway. They assert that the use will generate few trips during the peak period. Exhibit 99. They also assert that many of the concerns expressed by citizens in opposition are speculative, and therefore may not serve as the basis to deny the conditional use. *Id.*

#### **E. Community Response**

Ms. Anne Carlson appeared in opposition to the application for the reasons stated above. Mr. Carl Koenig, who is Vice President of the West Bradley Citizen's Association, also testified in opposition to the application. He participated both in the adoption of the 1980 Potomac Master Plan and the 2002 Potomac Master Plan. In his opinion, the proposed use does not comply with the Master Plan because the Plan specifically called for senior housing at three different locations, including the Stoneyhurst Quarry site, which is approximately 1,200 feet east of the subject property, a site at Tuckerman Lane and River Road, and another at Seven Locks Road and Montrose, near I-270. The Plan recommended senior housing at the Stoneyhurst Quarry because of that property's unique configuration and topography. In his opinion, this recommendation does not set a precedent for locating senior housing at the subject property. T. T. 133-135.

He testified that citizens have worked hard over two decades to limit commercial development in River Road. The citizens agreed to RMX zoning for the quarry site. In 2014, a comprehensive zoning map amendment changed the zoning for the quarry site from RMX-1 to CRT. At the time, they expressed their concerns to Council members that the binding elements applicable to the Stoneyhurst Quarry site prohibiting commercial development would be abrogated

by the rezoning. In response, Council President Craig Rice confirmed that the binding elements preventing commercial development of the site would remain in place. T. 136-138.

Finally, Mr. Koenig stated that the projected need for the Alzheimer's facility in Potomac does not take into account medical advances in treatment of the disease. T. 141.

#### **F. Environmental Issues**

The Planning Board has approved a Preliminary Forest Conservation Plan for the property permitting the removal of approximately 0.71 of the 2.1 acres of high priority forest. According to Staff, removal of the forested areas are necessary for the circular driveway and along the western perimeter of the site. Approximately 0.02 acres of forest will be removed from the SHA right-of-way for the public water line connection and for stormwater management. About 1.41 acres of forest, primarily in the northeast corner of the property, will be permanently protected and possibly transferred to the County. T. 72. Artis has reviewed how much could be transferred and still have the facility meet the lot coverage requirements under the Zoning Ordinance, and has determined that any transfer to the Parks Department would be approximately 1 acre. T. 73. The amount of forest they could convey is about 15 times the area of the easement they will be widening, so there will be a large return to the Parks Department if the application is approved. T. 74. Staff advises that no additional mitigation is required for clearing of forest on the site or along the driveway access. Exhibit 35, p. 3.

The Planning Board also approved a variance from Montgomery County's Forest Conservation Law (FCL), contained in Chapter 22A of the County Code, which prohibits impacts to trees that measure 30 DBH (diameter at breast height.) The FCL prevents adverse impacts to the tree's Critical Root Zone (CRZ) as well as removal of the tree, without an approved variance. Mr. LaVay opined that they have only one specimen tree that must be removed, which is being

mitigated according to the forest conservation law as described above. The Planning Board approved the variance, concluding that there was no alternative to removal of the tree other than to move the development further to the east, thus requiring the removal of more forest nearer the park. T. 72; Exhibit 38.

Because a portion of the access is through property owned by the County and used for Cabin John Stream Valley Park, the Hearing Examiner requested that the Montgomery County Parks Department confirm in writing its consent to make the improvements shown on the site plan. The Department responded (Exhibit 92):

The Parks Department consents to the access shown on the site plan for the subject facility which utilizes an existing easement through Cabin John Stream Valley Park, Unit 4 and agrees that a minimum temporary limit of disturbance adjacent to the existing access easement area can be accommodated to provide for reconstruction of the driveway and the creation of a 3 foot wide path adjacent to and north of the driveway leading from River Road up to the proposed facility. Permission to build and maintain the 3 foot wide path adjacent to the easement area will need to be granted to the developer by Montgomery County, Maryland, the underlying fee owner of the property, through a lease or license agreement. The Parks Department, as the managing entity for County owned parkland, will be recommending that the County grant this lease or license. Further, the Parks Department will agree to any reasonable conditions that may be placed on the use of the easement as an access to the residential care facility.

As for the widening of the existing driveway and the change in scope from its use as an access to a single family detached home to an access for a residential care facility serving Alzheimer's patients, I can confirm that Parks consents to this change in use provided that the widening of the driveway will be confined to the limits of the existing 20 foot easement, and that any temporary grading onto parkland to accommodate the driveway reconstruction will be kept to an absolute minimum. The applicant will be required to obtain from Parks a "Permit for Construction on Parkland" prior to any work on the driveway widening being undertaken. You do not have to include in your conditional use approval for this project any conditions we may have with regards to the driveway widening. We will include all such necessary conditions in our "Permit for Construction On Parkland".



### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>7</sup>

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 use and general (i.e., applicable to all conditional uses). *Zoning Ordinance*, §7.3.1.E. The specific standards applied in this case are those for a residential care facility for more than 16 persons. *Id.*, §59.3.3.2.E.2.b.

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

#### A. Necessary Findings (Article 59.7)

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:

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

Conclusion: Staff advises that there are no previous land use approvals applicable to the property. Exhibit 35, p. 16. Having no evidence to the contrary, the Hearing Examiner finds that this standard is inapplicable to the subject application.

*b. satisfies the requirements of the zone, use standards under Article [59-3](#), and applicable general requirements under Article [59-6](#);*

Conclusion: The application satisfies the requirements of Article 59-3, 59-4, and Article 59-6, discussed more fully in Parts III.B, C, and D of this Report and Decision, respectively.

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<sup>7</sup> All findings of fact are based on a preponderance of the evidence. *Zoning Ordinance*, §7.1.1.

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

Conclusion: The property lies within the geographic area covered by the *Potomac Subregion Master Plan (2002)* (Master Plan or Plan). Staff advises that the Plan does not contain any site specific recommendations and re-affirms the RE-2 zone for the property. According to Staff, the “overarching theme” of the Master Plan is that “[n]ew development and redevelopment must respect and enhance the Subregion’s environmental quality, while helping to build communities and resources that will serve existing and future generations of residents.” Exhibit 35, p. 10 (*quoting Plan*, p. 1.)

The Plan does contain a number of guidelines for conditional (formerly special exception) uses (*Plan*, p. 35):

Recommendations:

- Limit the impacts of existing special exceptions in established neighborhoods. Increase the scrutiny in reviewing special exception applications for highly visible sites and properties adjacent to the Chesapeake and Ohio Canal National Historical Park.
- Avoid an excessive concentration of special exceptions along major transportation corridors.

The Plan goes to explain that:

Sites along these corridors are more vulnerable to over-concentration because they have high visibility. *Uses that might diminish safety or reduce capacity of roadways with too many access points or conflicting turn movements should be discouraged.* (emphasis supplied). *Id.*

The Plan further admonishes that conditional uses should be designed to be architecturally compatible with surrounding residential neighborhoods and should minimize commercial aspects of the use through enhanced screening and buffering. *Id.* at 36.

The Plan also recognized the deficit of housing for the elderly in the Potomac Subregion and recommended the addition of 40 units per year, which could be built in larger increments over the long-term. It recommended several specific sites for this use, including the Cabin John Shopping Center, Stoneyhurst Quarry, and Fortune Parc. It mentions as possibilities two other sites, Rock Run Advanced Waste Treatment Site (Avenel) and a site adjacent to Potomac Village. As emphasized by Staff, the Plan contains environmental design principles for development, including upgrading stormwater management to current standards and clustering housing to avoid environmentally sensitive areas.

Staff concluded that the project complies with the Plan's recommendations because the building uses residential materials and design, is one-story, and is screened by extensive landscaping and existing forest. Exhibit 35, p. 10. The design also minimizes the commercial aspects of the use because the parking is underground and the building has a lower profile than the single-family homes on adjoining properties. Staff further concluded that the use would have a "minimal" impact on the roadways, in part because of its proximity to an existing transit stop. *Id.* at 11. Staff did not address potential vehicular conflicts on River Road.

Mr. Koenig argues that the property is *not* consistent with the Master Plan because it is not located at one of the sites recommended in the Plan for elderly housing, and the unique characteristics of the Stoneyhurst Quarry site that make it suitable for senior housing do not create a precedent for senior housing at this location.

The Hearing Examiner agrees with Staff that the proposed use *does* comply with the Master Plan, with the conditions imposed in Part V of this Report and Decision. She finds that the use is exceptionally well-screened because the steep grades of the property permitted location of the parking garage below ground and allowed the structure to be lower than other homes in the area.

She agrees that the landscaping and existing forest visually screen the property from River Road, and she finds credible Mr. Dokken's testimony that lights from the facility at night will barely be visible from River Road.

She also agrees with the Applicant that the use will not result in an overconcentration of conditional uses on River Road. While both Congressional Country Club and Norwood School are highly intensive uses in the area from an operational standpoint, Ms. Bryant testified that their large yards provide a buffer from the visual aspects of the use. As previously noted, the proposed facility is well-screened from both neighbors and River Road, and will have little visual impact as well.

The one issue that remains open is whether the application meets the Master Plan's recommendation to minimize uses that may diminish roadway safety by creating too many access points or conflicting turning movements on area roadways. While the access drive currently exists, its use is intensifying to from a single-family dwelling to a 72-bed residential care facility, with associated traffic from visitors, service trucks, and employees. Staff acknowledges that the existing driveway alignment creates at least a "potentially conflicting" turning movement for those exiting the facility. Exhibit 83. For reasons explained more fully below, the Hearing Examiner finds that a condition retaining jurisdiction of this case for a year from 90% occupancy to test the extent of this conflict satisfies this aspect of the Master Plan, and so finds that the facility is compliant with the Master Plan, as conditioned.

The Hearing Examiner also finds that the bikeway proposed by the Applicant complies with the Master Plan, even though it does not extend along the full frontage of the property. As pointed out by Mr. LaVay, the truncated pathway will have little impact on the overall bikeway system in the area, as users must exit the path at the Clewerall subdivision. She also finds credible

Mr. LaVay's testimony that it is unlikely a path will be provided along the Clewerall Knolls subdivision, as it is already developed and would require a capital project. Given that the Applicant has connected the bike path with the driveway as recommended by Staff, the Hearing Examiner finds that the bike path shown on the Conditional Use Site Plan (Exhibit 111(a)) substantially conforms to the Master Plan.

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

Conclusion: The Hearing Examiner has characterized the neighborhood as a mix of single-family residential detached homes adjacent to the subject property, wooded parkland, two much more intense conditional uses further west on River Road, and higher density residential uses closer to the Beltway. The two existing conditional uses are operationally intensive, but have significant visual buffering from River Road. Because of the low height of the proposed facility, the fact that parking is underground, the residential character of the architectural design and exterior materials, and extensive landscaping and existing forest, the Hearing Examiner concludes that this exterior of the use is harmonious with the residential character of the neighborhood immediately surrounding the property, and with the neighborhood as a whole.

Impacts on traffic are another, operational, element of compatibility and the Master Plan specifically recognizes these as a factor to be considered when approving conditional uses in the Potomoc Subregion. *Plan* at 35; *People's Counsel for Baltimore County v. Mangione*, 85 Md. App. 738 (1991); *Gotach Ctr. for Health v. Bd. of County Com'rs of Frederick County*, 60 Md. App. 477, 479 (1984) (applicant failed to prove that roads approaching proposed school were safe for school traffic because, in part, of a particularly dangerous curve approaching school access.)

Because sight distance meets SHA standards and because SHA has indicated that it will approve an access permit at that location, the Hearing Examiner concludes that there is sufficient

evidence to find the use compatible with the neighborhood. Nevertheless, as explained below, the Hearing Examiner also concludes that the Applicant has failed to address fully the impact of the use during non-peak hours. Thus, she includes a condition that the Hearing Examiner retain jurisdiction of this case to monitor traffic safety for one year after the use reaches 90% occupancy, as explained below.

*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;*

Conclusion: As noted, the Hearing Examiner agrees with Ms. Bryant that Congressional Country Club and Norwood School are fairly intense special exceptions within the neighborhood from an operational standpoint, but do maintain visual compatibility with large lawns as buffers from River Road, and thus preserve the area's "semi-rural" character. T. 89. This use is less intensive operationally and is exceptionally well-screened by both landscaping, existing forest, and the ability to use grades to lower the height of the building. The Hearing Examiner finds that this standard has been met.

*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*

Conclusion: The property is a recorded lot and thus the Hearing Examiner makes the determination as to whether public facilities are adequate.<sup>8</sup> Exhibit 18, p. 14.

Because the Applicant has staggered employee shifts outside of the peak hour, Staff concluded that the use will generate only two additional trips in the morning peak hour and four additional trips in the evening peak hour. Based on this evidence, the Hearing Examiner agrees with Staff that the proposed use meets the requirements for LATR review. For the purposes of TPAR, the Potomac Policy area is exempt from roadway capacity limits, but is in deficit for transit facilities. Thus, the Applicant must pay 25% of the General District Transportation Impact Tax in order to develop the property. The Hearing Examiner finds that roadway and transit facilities are deemed adequate for the purposes of LATR and TPAR.

Ms. Bryant testified that the use will have no impact on schools because it serves only seniors, and that police and fire protection is adequate. Mr. LaVay testified at length that stormwater management for the site has been reviewed in concept by Montgomery County and that all that remains to complete the review is soil borings, which should not have a significant impact on the existing design.

Based on this evidence, the Hearing Examiner finds that public facilities are adequate to serve the use, but adds a condition requiring the Applicant to obtain all required stormwater management approvals.

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<sup>8</sup> If any party requests oral argument before the Board of Appeals, the Board will make the final determination in the case.

*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.*

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location 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 special exception. 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, if the adverse impact caused by the non-inherent aspect cannot be mitigated. Planning Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an residential care facility for over 16 persons. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.



Staff found that typical operational characteristics of residential care facility for over 16 persons include (1) buildings and related outdoor recreational areas or facilities; (2) parking facilities; (3) lighting; (4) vehicular trips to and from the site by employees, visitors, residents, delivery, and trash pick-up; (5) noise generated by equipment for the facility and by occasional outdoor activities of residents and their families; (6) driveway impacts (a portion of the driveway is in the stream buffer). Exhibit 43. Staff determined that there were no non-inherent adverse impacts associated with the proposed use because the building is residential in character and is sited to have the least environmental impact, the parking is below grade, eliminating any noise and lighting impacts from parking, lighting is screened from nearby residents, and the generator and dumpster are located near the below-grade parking entrance and away from adjacent residents. As for the driveway, Staff stated that environmental and other site constraints require the existing driveway remain, although it may be upgraded. Exhibit 43.

The Hearing Examiner adopts Staff's list of inherent characteristics, with the exception of driveway impacts. At various points in this record, both Staff and the Applicant point to the "unique" topography of the site, which combined with environmental constraints, dictate its design. Mr. LaVay testified that a combination of site conditions, including steep slopes, forested areas, and sight distance requirements restrict the access drive to the location shown on the site plan and require that pedestrian access be incorporated into the driveway.

According to him, the driveway cannot be moved further to the west because the driveway would have to intersect with River Road at a 45° angle, which is unacceptable to SHA, and would not meet sight distance requirements. The existing driveway alignment creates the potential for conflicting turning movements from those exiting the driveway onto River Road and those attempting to turn left onto Carderock Springs Drive and River Road. In this respect, this case is

similar to *Montgomery County v. Butler*, 417 Md. 271 (2010), in which the driveway alignment could not be changed and its location created a non-inherent adverse impact.

The existence of a non-inherent adverse impact in and of itself does not mean that the Hearing Examiner *must* deny the application; rather, the analysis shifts to whether that non-inherent site condition causes “undue” harm to the health, safety and welfare of the neighborhood.

The burden of proof in this case is on the Applicant. In the Applicant’s favor, the evidence here is that SHA will grant a right-of-way permit and that sight distance is adequate. There is a statement from SHA, not subject to cross-examination, that the Severity Index of this intersection does not put it on the SHA’s 2012 safety needs index and that it is “relatively low.” There is little evidence, however, placing that single statement in a complete context, including (1) how an intersection is placed on a safety needs index, (2) how it compares to other similar intersections, and the low to high range of numerical values of the Severity Index. Mr. LaVay also states that traffic volumes during non-peak periods are relatively low as compared to the peak hour, which should afford traffic from shift changes to find gaps in traffic to exit or enter the facility. While the Applicant states that *every* intersection has accidents (Exhibit 99), no data on other intersections is in the record, nor is it entirely clear how the Index is computed, or what requirements need to be met to get on the State’s “safety needs” list.

Yet, the evidence here demonstrates that even though both intersections (i.e., Artis access road/River Road and Carderock Springs Drive/River Road) may meet sight distance requirements, presumably obtained an access permits from SHA, and that traffic volumes during the non-peak period are lower than the peak period, the Carderock Springs Drive/River Road intersection has experienced a repeated pattern of virtually identical accidents—vehicles travelling westbound on River Road have been rear-ended while waiting to turn left onto Carderock Springs Drive. The

evidence also demonstrates that these accidents almost uniformly occur during *non-peak* hours, exactly when traffic volumes are low, supporting the opposition's position that speeding, or driver inattention, or something else at that location generates a safety issue during non-peak hours.

Both the Applicant and Staff concluded that the use will have a "minimal impact" on the roadway, but support this by using the peak-hour trip generation rates. The Applicant, however, has arranged shifts to avoid the peak hours, which is beneficial for LATR review, but places those trips squarely during the non-peak periods. This leaves the possibility that as many as 18 employees will exit and 12 employees will enter the facility at 2:00 p.m. in the afternoon, a time period when some of the accidents have occurred. In addition, there is little evidence of the impact of the facility on weekends, also a time when accidents have occurred. There is testimony that there are some occasions, such as Mother's Day, when Artis will use a shuttle from a local church to bring visitors to the facility, but there are few details on where the shuttle will be located, how many times it will run during a day, and how frequently it will be required.

The Applicant argues that the evidence submitted regarding potential conflicts from traffic exiting and entering the Artis driveway is speculative. The Hearing Examiner agrees that some of the contentions relating to multi-modal conflicts, such as conflicts stemming from visitors to the park parking area on the east side of the bridge, are speculative at best. Nevertheless, Staff points to a "potential" conflicting movement because the two intersections are not aligned directly across from one another. Again, Staff minimized the potential harm based on the peak hour traffic from the use. Staff also concluded that traffic from the Artis facility would not exacerbate the existing queue on River Road because through traffic could pass on the right shoulder. Those opposing the application point out that cars waiting to exit the facility, or turning right into the facility, could block the through cars. Evidence submitted by the Applicant's expert in traffic engineering one

sense supports this, as it suggests that traffic turning right into the Artis facility will slow speeds at the intersection. While this does not state that through traffic will be completely stopped, it does open the potential for expanding the queue. The Applicant also notes that no accidents thus far have been caused by traffic at the driveway. This statement ignores, however, the fact that the use is changing and non-peak hour traffic will be more intense than that of a single-family home.

The Applicant further argues that the safety of the intersection cannot be the basis for denial of the application because the behavior of motorists on River Road (i.e., speeding) is not within the control of the Applicant. The Hearing Examiner is unaware of any case, and none is cited by the Applicant, which holds that existing conditions proximate to or on the site may not justify denial of a conditional use. In fact, the impact of traffic from a proposed use on existing road conditions have formed the basis for denial of the conditional use.<sup>9</sup> *See, Gotach, supra.*

The Applicant argues that, based on sight distance, the SHA access permit, the minimal impact of the use, and the Severity Index, the intersection is “safe and acceptable.” Exhibit 99. After hearing this case, the Hearing Examiner can only say that “safe” is a relative term. Because the site distance is acceptable, SHA has indicated it will grant an access permit, and the SHA’s statement that the “severity index” is relatively low, the Hearing Examiner finds that there is enough evidence to approve the conditional use. She also finds, however, that the lack of specific evidence regarding the impact of the use during non-peak periods, the established pattern of accidents at that location during those periods, the potential for conflicting turning movements,

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<sup>9</sup> Nor does the Hearing Examiner agree with the Applicant that the term “undue harm” in this section of the 2014 Zoning Ordinance is intended to increase the level of harm needed to justify denial of a special exception under the 2004 Zoning Ordinance. *See, Exhibit 99.* Staff explains this language in the 2014 Zoning Ordinance in a memorandum to the Planning Board dated December 10, 2012: “The inherent versus non-inherent impacts have been re-written to be more rigorous and defensible.” The memorandum further states: “Review of these sections by counsel for the Planning Board, the District Council, the Hearing Examiner and the Board of Appeals has resulted in numerous tweaks to language. These changes are mostly intended to keep the process clear, concise, and consistent with current practice and understandings.”

questions whether Artis will or will not exacerbate the queue, and lack of information regarding weekend events, justifies a condition of approval requiring the Hearing Examiner, or the Board of Appeals, to retain jurisdiction for one year after 90% occupancy to monitor whether traffic safety is impacted by the facility.

*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: 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. Standards Specific to a Residential Care Facility (Article 59.3)**

The specific 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. Standards applicable to this application are:<sup>10</sup>

*(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.*

Conclusion: This facility will provide ancillary services such as common dining rooms (in each of the neighborhoods) and a central kitchen as well as meeting and activity areas and some retail services, such as a beauty parlor. The record does not support a specific condition restricting these activities, except that the Applicant shall be bound by the evidence and testimony submitted.

*(d) Where facility size is based on the number of beds, not dwelling units, the following lot area is required:*

\* \* \*

*(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;*

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<sup>10</sup> Sections 59.3.3.2.E.2.c.ii(b), (c), (f), (g), (h), and (k) are not applicable to the proposed use.

Conclusion: Staff advises that the lot area is 4.39 acres or approximately 191,109 square feet, and the Forest Conservation Easement shown on the site plan will be approximately 1.27 acres. To meet the above standard for 72 beds, the total lot area must be 86,400 square feet. As proposed, the property contains 2,654 square feet per bed. If approximately one acre is transferred to Montgomery County for the Cabin John Stream Valley Park, the area per bed will be approximately 2,049 square feet per bed (i.e.,  $(191,105-43,560)/72=2,049.24$ ). The Hearing Examiner finds that this standard has been met, but includes a condition that any conveyance of a portion of the property to Montgomery County must leave sufficient area for at least 1,200 square feet per bed.

*(e) The minimum side setback is 20 feet.*

Conclusion: The conditional use site plan (Exhibit 37(b)) indicates that the shortest side setback (on the western side) is 28 feet. The eastern side setback is not marked on the plan, although it is significant because the proposed Category I Forest Conservation Easement is located between the lot line and the structure. The Hearing Examiner finds that this standard has been met. Any conveyance to the Parks Department must maintain the minimum required setbacks.

*(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.*

Conclusion: The Hearing Examiner does not find it necessary to impose height, density, coverage, and parking standards greater than the minimums required by the Zone because the property is situated adjacent to significant natural buffers (i.e., a forested stream valley park and the unusually wide right-of-way, also forested, between the subject property and River Road). The proposed use

provides more than the minimum number of required parking spaces, and the steep grades on the property have allowed a lower profile than would normally occur.

**C. Development Standards of the Zone (Article 59.4)**

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 included a table comparing the minimum development standards of the RE-2 Zone to what is provided on the conditional use site plan. Staff compared the minimum development standards of the RE-2 Zone to those provided (Exhibit 35), shown on the following page.<sup>11</sup>

**Table 2. Development Standards**

1. Lot and Density	Conditional Use allowed in the zone	
	Required	Proposed
Lot Area	2 acres/ 87,120 sq. ft.	191,109 sq. ft.
Lot width at front building line	150 ft.	530 ft.
Lot width at front lot line	25' ft.	539 ft.
Density (max.)		
Density (units/acre)	1,200 sf/bed	86,400
Coverage (max)		
Lot	25%	16.9%
<b>2. Placement</b>		
<b>Principle Building Setback (min)</b>		
Front setback	80 ft.	200 ft.
Side street setback, abutting lot fronts on the side street and is in a Residential Detached zone	50 ft.	
Side street setback, abutting lot does not fronts on the side street and is in a Residential Detached zone	20 ft.	28 ft.
Side setback	17 ft.	28 ft.
Rear setbacks	35 ft.	35 ft.
<b>3. Height</b>		
<b>Height (max)</b>		
Principal building	50 ft.	15 ft.
Accessory Structure	50 ft.	N/A

<sup>11</sup> There should be some modifications to the chart. There are no side street setbacks involved. A “side street” setback occurs when a side yard adjoins a street, which is not the case here. *Zoning Ordinance*, §59-1.4.2. A minimum side setback of 17 feet does apply to the zone, although the special standards for this use (listed above) require a greater side setback of 20 feet. Under the RE-2 development standards, the sum of both side setbacks must equal 35 feet. Because the side setback on the eastern side of the property is so large, this is easily met.

Not included in the table above are setback requirements for accessory structures. Section 59-4.4.4.B.2.c of the Zoning Ordinance mandates that accessory structures may only be located in rear yards. The conditional use site plan treats the 11-foot high retaining wall on the western edge of the property as an accessory structure (Exhibit 111(a), shown on the following page.)

MINIMUM FRONT SETBACK (ACCESSORY STRUCTURE) 59-4.4.4.B.2	80 FEET	146 FEET <sup>2</sup>
MINIMUM SIDE SETBACK (ACCESSORY STRUCTURE) 59-4.4.4.B.2	15 FEET	15 FEET <sup>2</sup>
MINIMUM REAR SETBACK (ACCESSORY STRUCTURE) 59-4.4.4.B.2	10 FEET	15 FEET <sup>2</sup>

**Exhibit 111(a)**

Footnote 2 on the site plan states, “[a]ccessory structure setbacks are shown for retaining wall where height exceeds 6’-6 in.” Exhibit 111(a). Screening requirements in Division 6.4 of the Zoning Ordinance exempt retaining walls from setback requirements if they are no more than 6.5 feet high (*see*, §59-6.4.3.C.3.c):

- c. any other wall or fence that is 6.5 feet or less in height, is behind the front building line, and is not on a property abutting a national historic park;

The Applicant now argues that the retaining wall should not be viewed as an accessory structure because the top of the retaining wall is at the same grade as abutting properties. Thus, it has no visual impact on those properties regardless of whether it is in the rear or front yard, and there is no reason to restrict placement of the wall to the rear yard. Alternatively, the Applicant argues that the Hearing Examiner may modify this requirement under the Section 59-3.3.2.E.c.(i), (quoted on page 60 of this Report and Decision), which states:

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



Section 6.8.1 of the Zoning Ordinance permits alternative methods of meeting the landscaping requirements of the Zoning Ordinance. Section 6.8.1 states:

The applicable deciding body may approve an alternative method of compliance with any requirement of Division 6.1 through Division 6.6 if it determines there are unique site or development constraints, such as grade, visibility, an existing building or structure, an easement, a utility line, or use restrictions that preclude safe or efficient development under the requirements of the applicable Division and the alternative design will:

- A. satisfy the intent of the applicable Division;
- B. modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;
- C. provide necessary mitigation alleviating any adverse impacts; and
- D. be in the public interest.

Staff stated that it did not initially review this requirement because Staff was “was less concerned with reviewing the retaining wall in this proposal as accessory structure and more concerned that the grade changes were effectively controlled and that the privacy aspect of the use and adjacent neighbors were met (walls to block views, lighting, noise, etc).” Exhibit 90.

Nevertheless, Staff urged the Hearing Examiner to approve the wall as an alternative method of complying with the setback exemption for walls up to 6.5 feet because the site has unique physical features due to the grade constraints because it “slopes down to the east and up to the west.” *Id.* Staff further concluded that the remaining standards for approval of an alternative method of compliance had been met (*Id.*):

- A. satisfy the intent of the applicable Division;

*The Property’s retaining wall should be exempt from the requirement of being located behind the rear building line of the principal building side building line due to the fact that the site is unique and has grade challenges. Located 200 feet from River Road and well screened from the roadway, the 6 foot 6 inch (6.5 feet) retaining wall will not be visible from the roadway in either leaf-on or leaf-off seasons. In addition, the lighting and noise in the rear of the Residence will be completely screened from adjacent properties by the proposed perimeter retaining*

*wall/fencing and extensive landscaping.*<sup>12</sup>

B. modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;

*The proposal has retaining walls that result in minor encroachments to the side and front yard, however they are minimal and due to the distance, vegetation, and grade, are concealed from River Road.*

C. provide necessary mitigation alleviating any adverse impacts; and

*The proposed screening along the Property's perimeter, adjacent to residential areas, will meet and in most cases exceed all landscaping requirements and provide an effective and attractive screen for the proposed use from neighboring properties, especially when viewed in combination with the significant forested areas to be retained on and adjacent to the Property.*

D. be in the public interest.

*The Project was designed with the public's interest in mind. The project makes every effort to protect the interests of the most affected neighbors (not the drivers on River Road 200 feet way and down the hill, but the adjacent residential homes). First, the proposed siting, one-story scale, and residential-style architecture of the Residence, coupled with the extensive landscaping and screening of the Residence from adjacent residential properties, ensures the compatibility of the building with the adjoining neighborhood. With a maximum height of 15 feet, the Residence has a significantly lower profile than the existing structure on the Property and nearby residences. Second, the parking associated with the use is proposed to be located below grade, in an area removed from the adjacent residential neighbors, and attractive landscaping will be provided around the entrance to the parking area. Finally, the proposed screening along the Property's perimeter, adjacent to residential areas, will provide an effective and attractive screen for the proposed use from neighboring properties. Existing grade and significant vegetation to be retained between the proposed use and River Road will also ensure limited visibility of the Residence from River Road.*

The Zoning Ordinance defines an “accessory structure” as “a structure subordinate to and located on the same lot as a principal building, the use of which is incidental to the use of the principal building or to the use of the land. An Accessory Structure is not attached by any part of a common wall or common roof to the principal building.” *Zoning Ordinance*, §1.4.2. It defines

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<sup>12</sup> Staff's statement that the height of the retaining wall is 6.5 feet is incorrect, as confirmed by the Applicant's civil engineer. Exhibit 98.

the term “structure” as, “[a] combination of materials that requires permanent location on the ground or attachment to something having permanent location on the ground, including buildings and fences.” Thus, the retaining wall arguably does meet the definition of accessory structure included in the Zoning Ordinance, although the Hearing Examiner agrees with the Applicant’s engineer that the particular configuration of the wall in this case (i.e., at the same grade with abutting properties) renders the requirement that it be in the rear yard unnecessary. The Hearing Examiner disagrees that she may modify the requirement for accessory structures under Section 59-3.3.2.E.c.(i) because the restriction on accessory structures does not relate to height, density, coverage or parking standards.

Section 6.8.1 of the Zoning Ordinance, however, does offer some relief. The Hearing Examiner considers the rear yard requirement in Article 4 of the Code in the nature of a setback requirement. While Section 6.8.1 does not permit alternative compliance with the requirements of Article 4, it does permit the Hearing Examiner to find alternative compliance with the *exemption* from setbacks for retaining walls in Division 6.4.3. In this case, because of the unique site constraints due to topography, and the fact that the additional height does not have a significant visual impact on abutting properties, the Hearing Examiner finds that the retaining wall meets the standards for approving an alternative method of complying with the strict requirements of Section 6.4.3 of the Zoning Ordinance for the reasons stated by Staff.

#### **D. General Development Standards (Article 59.6)**

Article 59.6 sets requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the use meets these requirements, are discussed below.

## 1. Parking, Queuing and Loading Standards

Parking, queuing and loading standards are governed by Division 6.2 of the Zoning Ordinance.<sup>13</sup>

For residential care facilities, the required number of vehicle parking spaces is based on the number of beds and the maximum number of employees on a shift. Section 69.6.2.4.B. The applicant must provide .25 spaces per bed and .50 spaces per employee. Based on 72 beds and a maximum of 18 employees, Technical Staff advises that the facility must have 29 parking spaces. In its revised site plan, the Applicant is providing 35 regular spaces and 3 van accessible spaces, totaling 38 parking spaces Exhibit 111(a). According to Mr. LaVay, there is also room for the vehicle similar to a golf cart that will be used to pick individuals up at the call box location on the driveway. T. 35, 61.

The number of required bicycle spaces is based on the number of dwelling units in the facility. Bedrooms are not dwelling units because they do not contain individual cooking facilities.<sup>14</sup> *See, Id.*, §59.1.4.2. Even though no bicycle spaces are required, the Applicant is providing two of these spaces.

Sections 59.6.2.5.K of the Zoning Ordinance imposes additional locational and design requirements on parking facilities for conditional uses in residential zones. That section mandates that parking facilities for conditional uses in these zones must “be located to maintain a residential character and a pedestrian-friendly street.” *Id.*, §59.6.2.5.K.1. The Ordinance also imposes

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<sup>13</sup> Site access requirements included in Section 59.6.1 of the Zoning Ordinance do not apply to this application because the property is not within a Residential Multi-Unit, Commercial/ Residential, Employment, Industrial, and Floating zones. *Zoning Ordinance*, §6.1.2.

<sup>14</sup> The term “dwelling unit,” is defined as: “A building or portion of a building providing complete living facilities for not more than one household, including, at a minimum, facilities for cooking, sanitation, and sleeping.” *Id.*, §59.1.4.2.

minimum setbacks for surface parking lots, but these do not apply to the underground parking structure proposed here.<sup>15</sup>

All of the parking for the use will be located underneath the building and the circular driveway, thus contributing to the residential aspect of the use. Mr. LaVay testified that, because the parking can be built into the existing grade of the property, the Applicant was able to reduce the overall height and visibility of the building. Because of the width of the SHA right-of-way, the parking will have no impact on River Road, and the project will provide a shared use pedestrian/bicycle pathway, contributing to a more “pedestrian friendly” environment.

Residential uses in the RE-2 Zone may have no more than three light commercial vehicles and one recreational vehicles parked on a site. The evidence demonstrates that, while there will be occasional truck deliveries, there will not be any commercial vehicles permanently parked on the property.<sup>16</sup>

Group living facilities, such as a residential care facility, with between 50,000 square feet and 250,000 square feet of gross floor area must provide at least one space for off-street loading that meets certain dimensional requirements and meet the following locational and design requirements (§59.6.2.8.C). The Applicant’s civil engineer confirmed that the loading areas provided on the plan meet all of these requirements. Exhibit 97.

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<sup>15</sup> The Zoning Ordinance requires certain “rear setbacks” and “side setbacks” for parking facilities supporting a conditional use. These setbacks are calculated by the distance between the rear or side lot lines and “to a structure or surface parking lot.” *Id.*, §59-1.4.2.

<sup>16</sup> The “golf-cart” type vehicle to be used to retrieve pedestrians from the call box located in the driveway at the beginning of the park property is not a “recreational” vehicle, as it will not be used for the “leisure” of the operator and guests nor is there any evidence that it will need to be licensed. *Id.*

## **2. Site Landscaping and Screening**

Division 6.4 of the Zoning Ordinance sets minimum standards for site landscaping, which are intended to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” *Id.*, §59.6.4.1. Screening requirements for the use are included in §59.6.5.3 of the Zoning Ordinance. Conditional uses in the RE-2 Zone must meet one of two options set forth in that division. Both options require a particular number of shrubs and bushes for every one hundred feet. Option A permits landscaped buffers to be 8-feet wide with a 4-foot wall or fence and mandates the number trees and shrubs that must be planted within the 8-foot wide landscaped strip. Option B does not require a fence, but the buffer must be 16-feet wide, also with a specified number of trees and shrubs for every 100 feet in length.

While neither Staff nor Ms. Bryant provided a detailed comparison of the landscaping requirements in the Zoning Ordinance and what is shown on the conditional use site plan, Staff found that the application “meets or exceeds” the landscaping requirements. Exhibit 35. The Hearing Examiner accepts Staff’s assessment, which is supported by Ms. Bryant’s testimony. Having no evidence to the contrary, the Hearing Examiner finds that the proposed use meets this standards required by Division 59-6.5 of the Zoning Ordinance.

## **3. Outdoor Lighting**

The Zoning Ordinance mandates certain design requirements for outdoor fixtures, including a requirement to have fixtures that “direct light downward and minimize the amount of light spill, any outdoor lighting fixture must be a full or partial cutoff fixture.” *Id.*, §59-6.4.4.B.1. For conditional uses, the Ordinance imposes an additional requirement: “Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles 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.” *Id.*, §59.6.4.4.E. Under the Zoning Ordinance, two properties abut each other if they “share a property line or easement line.” *Id.*, §59.1.4.2. If not abutting a lot with a detached house building type, on-site illumination must be 0.5 footcandles or less at the lot line, excluding street lights within the right-of-way. Zoning Ordinance, §59-6.4.4.D.

The subject property abuts two single-family detached homes in Clewerwall Knolls. The photometric study submitted by the Applicant shows that illumination at the boundary of these lots will be 0.0 footcandles. Exhibit 37(d).

Illumination at the southern property line is slightly above 0.1 footcandles: it ranges between 0.2 footcandles and 0.4 footcandles, within the parameters permitted by the Zoning Ordinance. Exhibit 37(d). Mr. Dokken testified, because of the unusual width of the SHA right-of-way and because the right-of-way is forested, the lights along the driveway will be barely visible from River Road. For these reasons, the Hearing Examiner finds that this requirement has been met.

#### **4. Signage**

The Applicant does not propose any identification sign for the use. Other signs will be small on-site directional and parking signs, as shown on the site plan. Exhibit 81.

#### **IV. Conclusion**

As set forth above, the application meets all the standards for approval in Divisions 59.7, 59.3, 59.4 and 59.6 of the Zoning Ordinance, with the conditions imposed to mitigate adverse impacts from the use and with the alternative method of complying with the height limitations for the retaining wall contained in Section 6.4.3.

## V. Decision

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Artis Senior Living (CU 15-05) for a conditional use to operate a residential care facility for more than 16 persons at 8301 River Road, Bethesda, Maryland, under Sections 59.3.1.2 and 59.3.5.1 of the Zoning ordinance is **granted**, subject to the following conditions:

1. The Petitioner shall be bound by all of his testimony and exhibits of record, and by the testimony of his witnesses and his representations identified in this report.
2. All development of the property must comply with the approved site plan (Exhibit 111(a)), Landscape Plan (Exhibit 37(c)) and Lighting Plan (Exhibit 37(d)).
3. The facility may operate 24 hours a day, 7 days a week, 365 days a year.
4. The number of employees on-site at any time may not exceed 18 and the total number of employees shall not exceed 38.
5. Employee shifts shall be 18 employees from 6:00 a.m. to 2:00 p.m., 12 employees from 2:00 p.m. to 10:00 p.m., and 6 employees from 10:00 p.m. to 6:00 a.m.
6. The Applicant must construct the bike path shown on the Conditional Use Site Plan (Exhibit 111(a)) prior to issuance of a Use and Occupancy Permit.
7. A five-foot wide pedestrian walking area must be striped on the east/north side of driveway from River Road to the entrance to the parking garage, as shown on the conditional use site plan (Exhibit 111(a)).
8. Any conveyance of a portion of the property to Montgomery County (to be part of Cabin John Stream Valley Park) must not affect any minimum setback or other development standards required by Articles 3, 4, or 6 of the Zoning Ordinance.
9. The Applicant must construct a minimum 3-foot natural surface walking path/pedestrian refuge area at the location shown on the site plan prior to issuance of a use and occupancy permit.
10. The Applicant must post signs on both ends of the driveway warning drivers of the possibility that pedestrians may be using the driveway. The signs must meet standards set in the Manual on Uniform Traffic Control Devices.



11. The Applicant must upgrade the Ride-On bus stop pad site on River Road to be able to accommodate a bus shelter in the future.
12. The Applicant must install a call box with a weather-protected waiting area along the access drive approximately at the point where the park property and the SHA right-of-way meet. The Applicant must provide a shuttle service between the building and the call box. Shuttle service must be provided during visiting hours and when work shifts change.
13. The Applicant must install one bicycle parking rack (“inverted U”) rack or similar in the location as specified on the Conditional Use Site Plan (Exhibit 111(a)).
14. The Applicant must obtain a Permit for Construction on Parkland to widen the portion of the driveway within Cabin Branch Stream Valley Park.
15. The Hearing Examiner shall retain jurisdiction of this case to monitor traffic safety issues raised by the opposition until one year after the facility reaches 90% occupancy. Each year, on the anniversary of the approval of the conditional use, the Applicant must submit to the Hearing Examiner, the Planning Department’s Technical Staff and the opposition, accident data for the intersections of River Road/Carderock Springs Drive and River Road/access driveway and whether any traffic calming measures have been implemented at this location. The Hearing Examiner asks that the Technical Staff evaluate this data and submit a determination to the Hearing Examiner, within 30 days of the Applicant’s data report, as to whether the level and types of accidents shown in the Applicant’s reports amount to a dangerous condition compared to other similar intersections in the County. If Technical Staff so concludes, it should submit recommended remedies to the Hearing Examiner. The Applicant must notify the Hearing Examiner of the date the facility reaches 90% occupancy.
16. No parking for the facility may occur on the shoulder of River Road along the property’s frontage. The Applicant shall provide a shuttle service from an off-site location when visitor parking cannot be accommodated on the subject property; and
17. Prior to issuance of a building permit, the Applicant must obtain all required stormwater management approvals from Montgomery County. If those approvals require modification to the conditional use site plan, the Applicant must apply for an amendment to the site plan.
18. 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 conditional use premises and operate the special exception as granted herein. Petitioner 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.



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Lynn A. Robeson  
Hearing Examiner

Issued this 8th day of September, 2015.

Any party of record or aggrieved party may file a written request to present oral argument before the Board of Appeals, in writing, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. Contact information for the Board of Appeals is listed below:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600