

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**

**Stella B. Werner Council Office Building**

**Rockville, Maryland 20850**

**(240) 777-6660**

**<https://www.montgomerycountymd.gov/ozah>**

**IN THE MATTER OF:**

**SPECTRUM RETIREMENT COMMUNITIES LLC**

**DEVELOPMENT CENTER, INC.<sup>1</sup>**

**Applicant**

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OZAH Case No. CU 20-05

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Before: Kathleen E. Byrne, Hearing Examiner

**ORDER ADMINISTRATIVELY APPROVING**  
**A SECOND MINOR AMENDMENT**

**I. BACKGROUND**

On February 25, 2021, the Hearing Examiner approved a conditional use filed by Spectrum Retirement Communities LLC (Applicant or HSB), to operate a residential care facility for persons 62 years of age or older on property located at 9545 River Road, Potomac, Maryland.<sup>2</sup> On March 7, 2023, the Hearing Examiner issued an Order Administratively Approving a minor amendment and extended the period of conditional use to March 9, 2024. The property is further identified as Parcel 786 (Tax Account No. 10-00855533) and is zoned RE-2.

The approved residential care facility permits 100 units with a total of 130 beds, comprised of independent dwelling units, assisted living units, and memory care units. The original conditional use approval subjected the use to sixteen conditions (*Hearing Examiner's Report and Recommendation*, February 25, 2021, pp. 40-41). The minor amendment added one additional conditional use noting the physical improvements to the property be limited to those as shown on the Amended Conditional use Site Plan and Landscape Lighting Plan shown on Exhibits 131 and 132. (*Hearing Examiner's Order Administratively Approving a Minor Amendment*, March 7, 2023, p. 13.). A copy of the original conditional use plan is shown on the next page (Exhibit 125(b)).

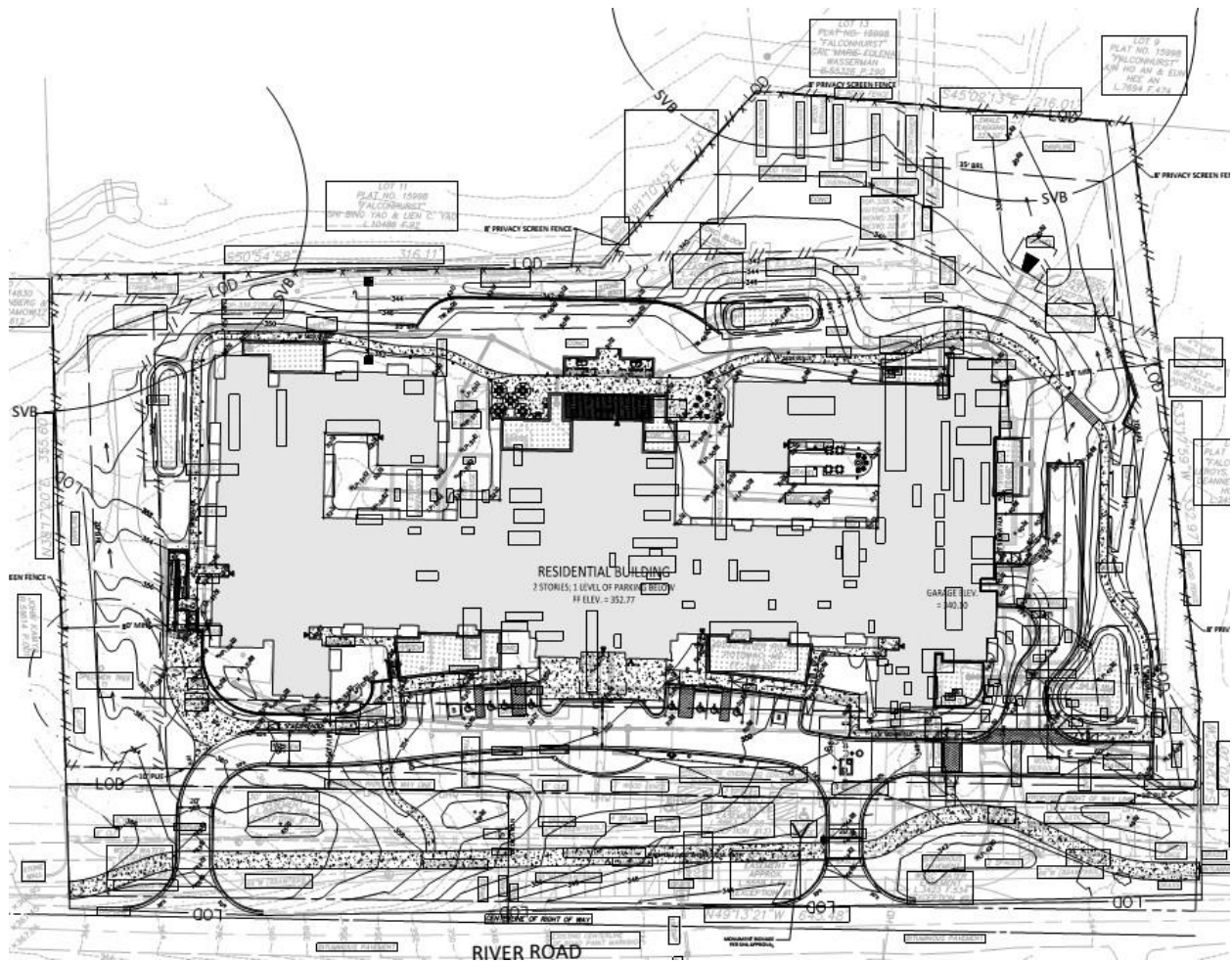
HSB now requests minor amendments to the conditional use plan approved in 2021 and amended in 2023. HSB asserts none of the amendments proposed affect the conditions originally approved. Exhibit 138, p. 1. HSB states:

...HSB is not proposing any changes to the approved use or conditions of approval. Rather, the Petitioner is seeking minor modifications that are reflective of the natural design progression and refinements that occur between schematic level design and full construction drawings to better align with the Petitioner's operations.

<sup>1</sup> Spectrum Retirement Communities LLC, Development Center, Inc. transferred the approved Conditional Use to HSB Potomac, LLC on April 28, 2023. *Exhibit 138 p. 2*

<sup>2</sup> The Hearing Examiner issued a corrected decision and Errata to the February 21, 2021 Report and Decision on March 9, 2021.

With approval of the subject Minor Amendment, HSB is excited to be in a position to commence construction in the near term.



Approved Conditional Use Plan  
Exhibit 125(b)

### **A. Minor Amendments Requested**

The minor amendments to the conditional use plan, according to HSB, arise from changes made as a result of the of the natural progression from schematic level design to construction drawings and are necessary to accommodate the Petitioner's Operations and are fully consistent with the intent of the underlying Conditional Use. Exhibit 133, p. 3. In addition, HSB states that the changes proposed do not change the minimum setbacks approved and the perimeter fencing, and forest conservation areas remain largely unchanged. The amendments requested are listed below (Exhibit 133, pp. 3, 4 (emphasis in original)):

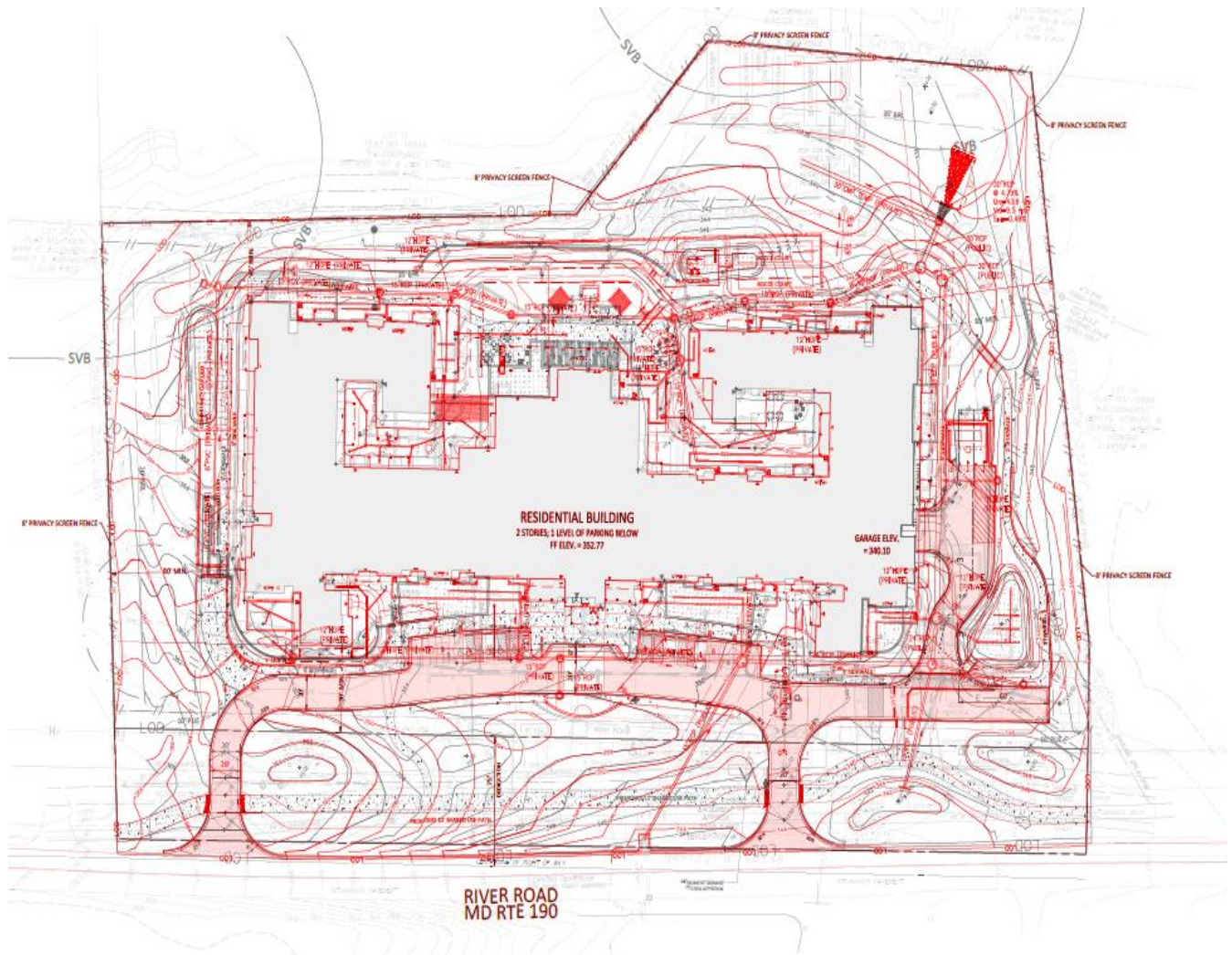
- 1. Slight modification to building footprint and architecture.** To accommodate internal layout modifications, the building footprint has shifted just slightly. Importantly, there are no changes to the minimum building setbacks established by the underlying Conditional Use approval. Additionally, minor modifications are proposed to accommodate the interior layout changes (*e.g.*, slight shifts in doors/windows placement). Importantly, the overall character of the architectural design will remain unchanged.
- 2. Refine loading and service areas.** The Petitioner is proposing minor modifications to the loading and service areas, which shortens the truck turning area on the eastern side of the building and minimizes the impervious area.
- 3. Enhance outdoor amenities.** The Petitioner is proposing to enhance the Project's outdoor amenities. The proposed fire pit, fountains, pergola, grill, and bar will be retained and reconfigured. Additional recreational features including two bocce courts, pergola, dog run, raised garden beds and a playground for visiting grandchildren are proposed. Notably, none of the proposed enhancements to the outdoor amenity facilities will impact the approved perimeter fencing or forest conservation screening.
- 4. Reconfigure stormwater management bioretention facilities abutting the building.** Slight modifications in the building footprint have resulted in minor adjustments to the layout of the bioretention facilities proposed in connection with the Project's stormwater management. No changes are proposed to the overall method of treatment for stormwater management on-site or the overall stormwater capacity of these facilities.
- 5. Enhance entry hardscape and reconfigure signage.** Improved entry hardscape and reconfigured signage are proposed to accommodate the site modifications.

- 6. Fire access continues to be adequate.** Fire department truck access and hose pull distances remain adequate with the proposed modifications. The Petitioner will obtain approval of a revised fire department access plan.
- 7. Modify pedestrian circulation on-site.** The Project includes a walking path around the perimeter of the Project to provide opportunities for residents to exercise and connect with nature. The sidewalk has been rerouted to efficiently connect the facility to the reconfigured and improved outdoor amenity areas.
- 8. Add Electric Vehicle parking spaces.** Designated electric vehicle (“EV”) parking spaces are proposed in the parking area located in front of the main building entrance. These additional EV charging facilities will not impact required parking provided in accordance with the original Conditional Use approval.
- 9. Associated modifications to landscape, hardscape, and lighting design.** As a result of the changes discussed herein, the Petitioner is proposing minor, associated modifications to various elements of the landscape, hardscape, and lighting. For example, the planting and lighting has been updated to accommodate the reconfigured and enhanced amenity areas. Importantly, key screening (including the location of evergreen screening), lighting restrictions, eight-foot privacy fencing, and conservation areas will not be impacted by these modifications and remain as previously approved.
- 10. Update site utilities.** The Petitioner is proposing to update transformers and dry utility connections, as well as to reorient the underground utility network to accommodate the proposed minor modifications.

The Hearing Examiner contacted Staff of the Montgomery County Planning Department requesting an opinion on whether this second minor amendment request would be considered a “major” or “minor” amendment. Staff replied (*Exhibit 144*):

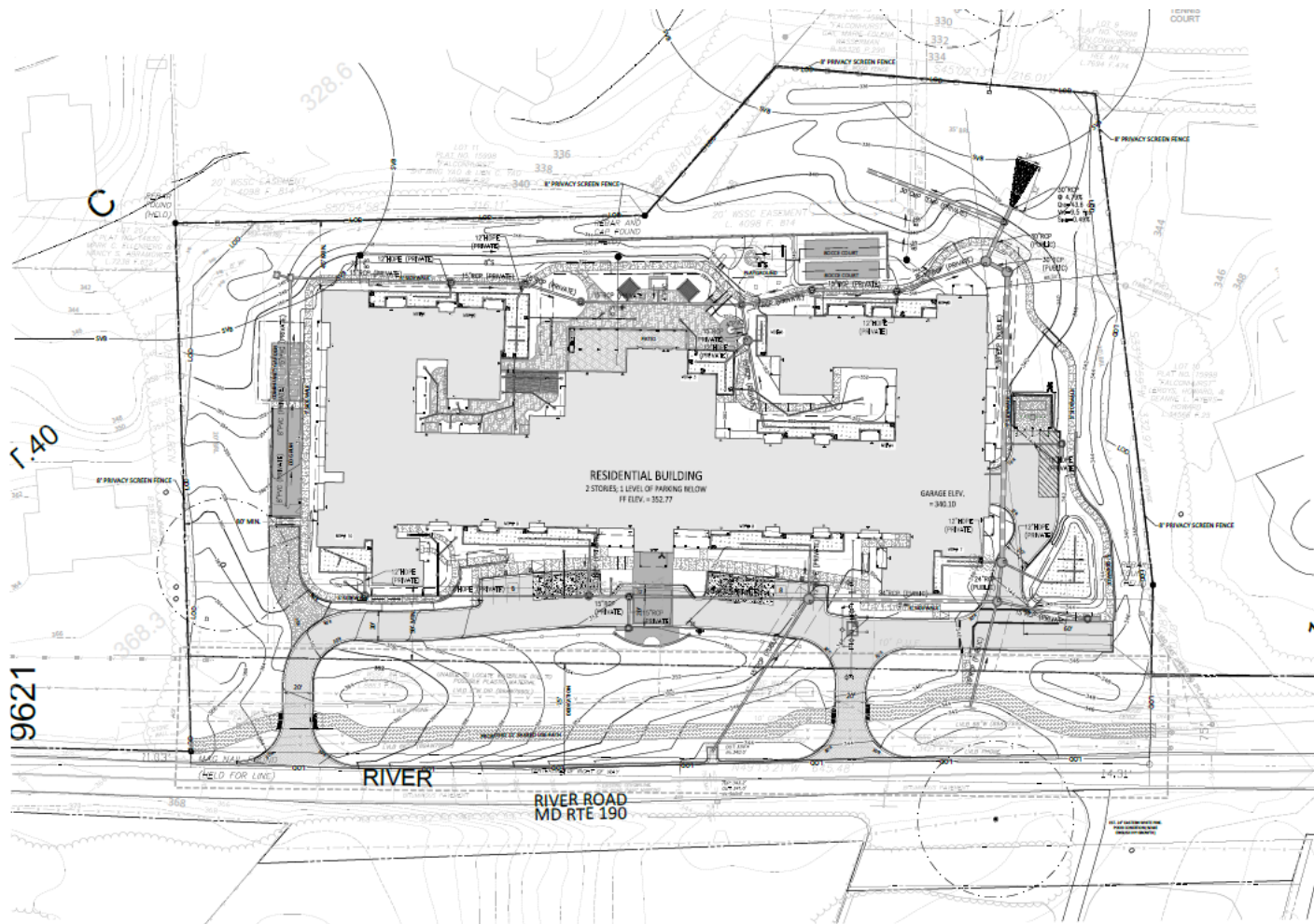
After reviewing the plans, Staff feels the proposed modifications will not change the nature, character, or intensity of the Conditional Use to an extent that substantially causes adverse effects on the surrounding neighborhood. Staff agrees that this would be a Minor Modification to the Conditional Use.

A conditional use plan redlined to show the changes in building footprint, topography, and drives, along with a clean versions of the various plans with proposed amendments (Exhibits 139(c), 139(b), 141, 142(c), 140(d) and 143) are on the following pages.

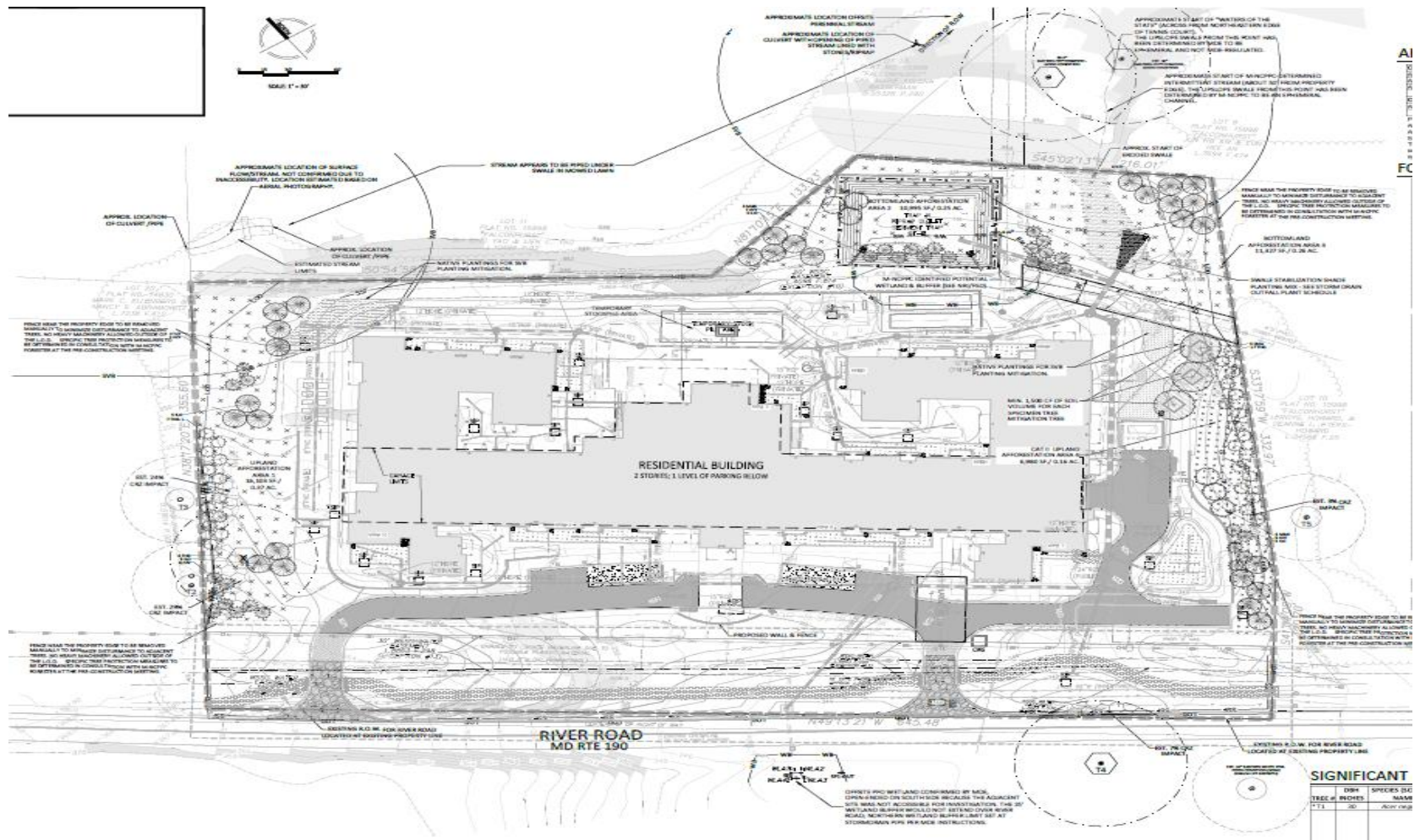


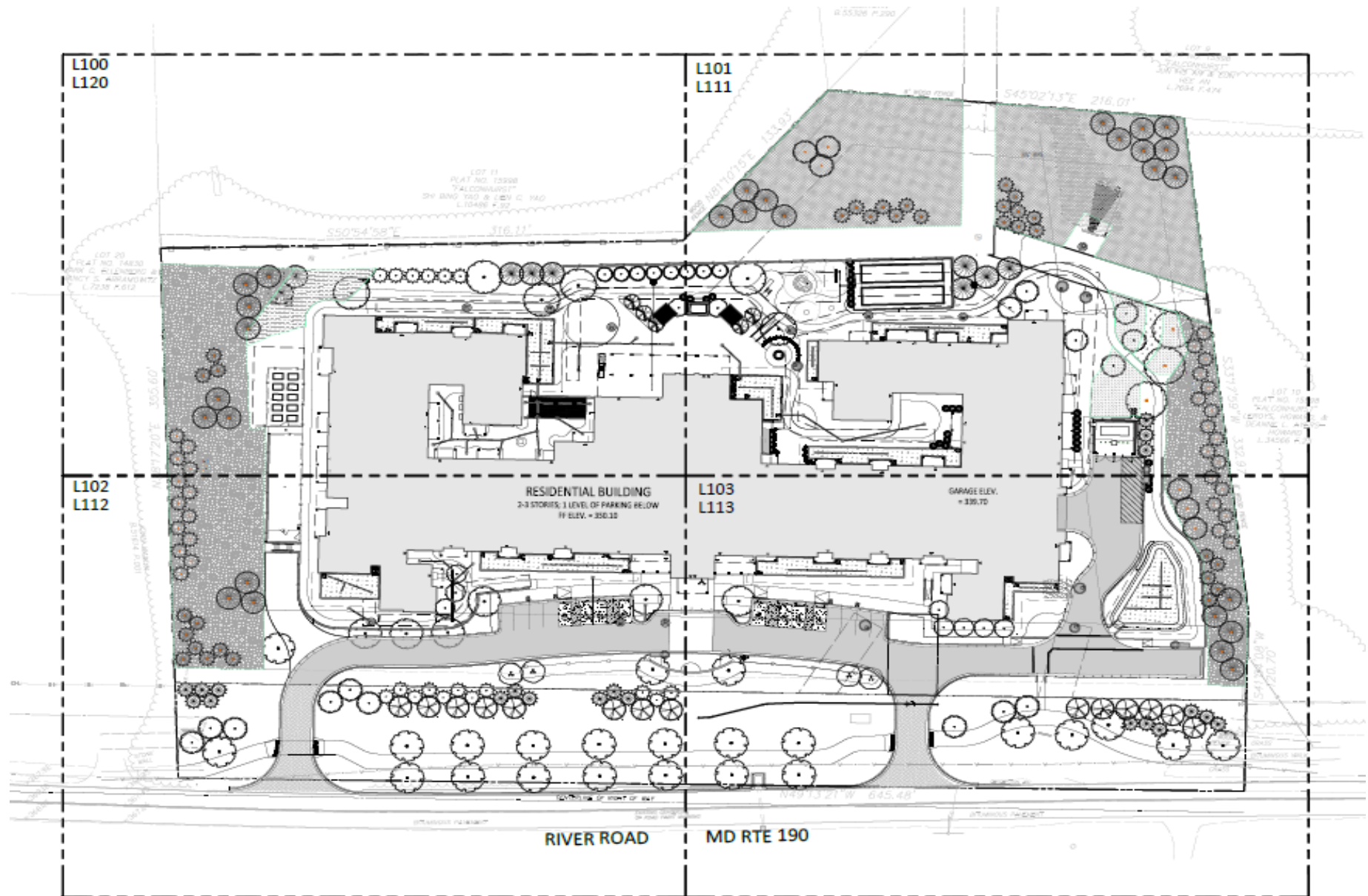
Conditional Use Plan redline changes  
(Exhibit 139(c))





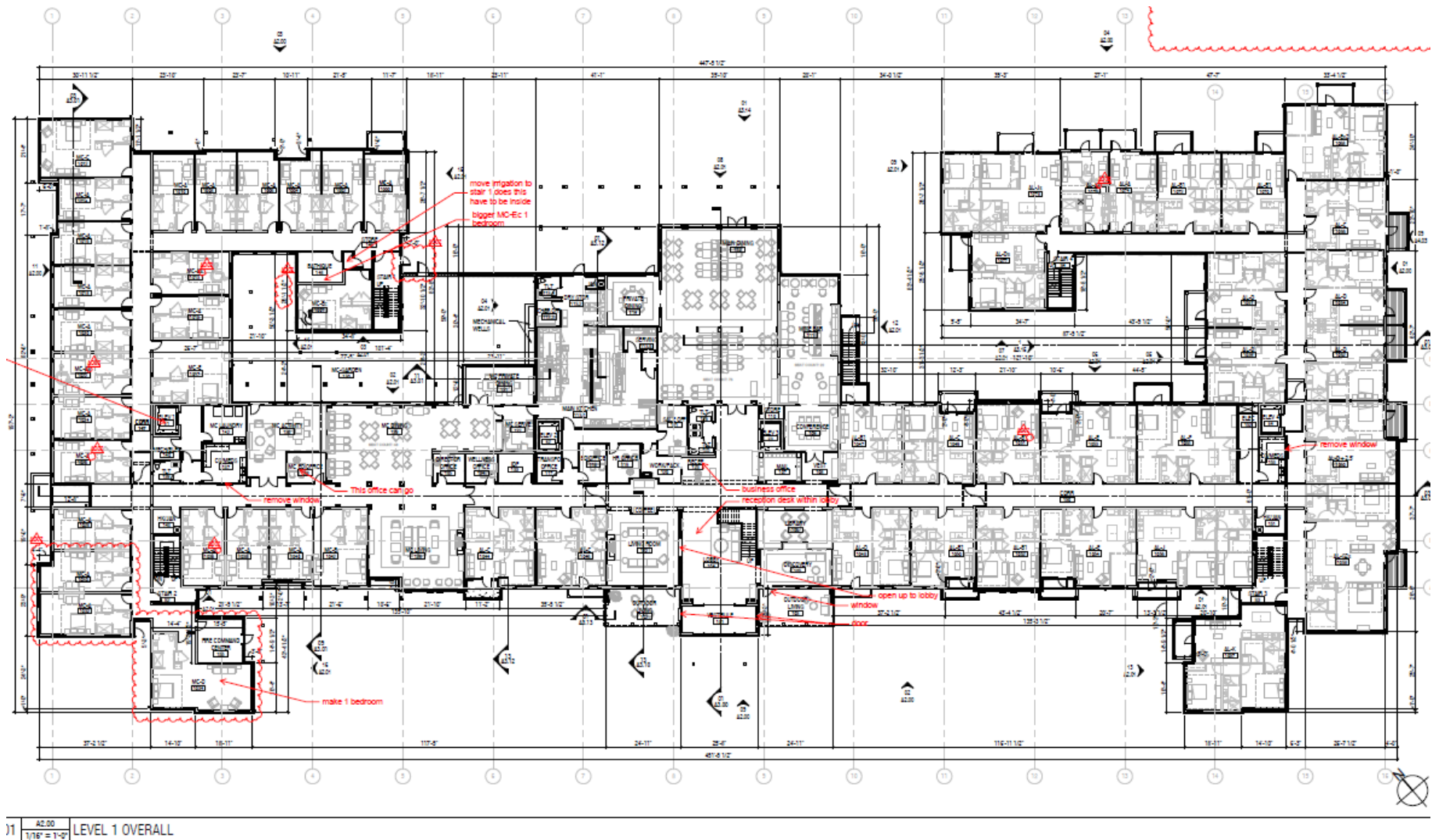
Clean Version of Proposed Amendments to Conditional Use  
Plan (Exhibit 139(b))





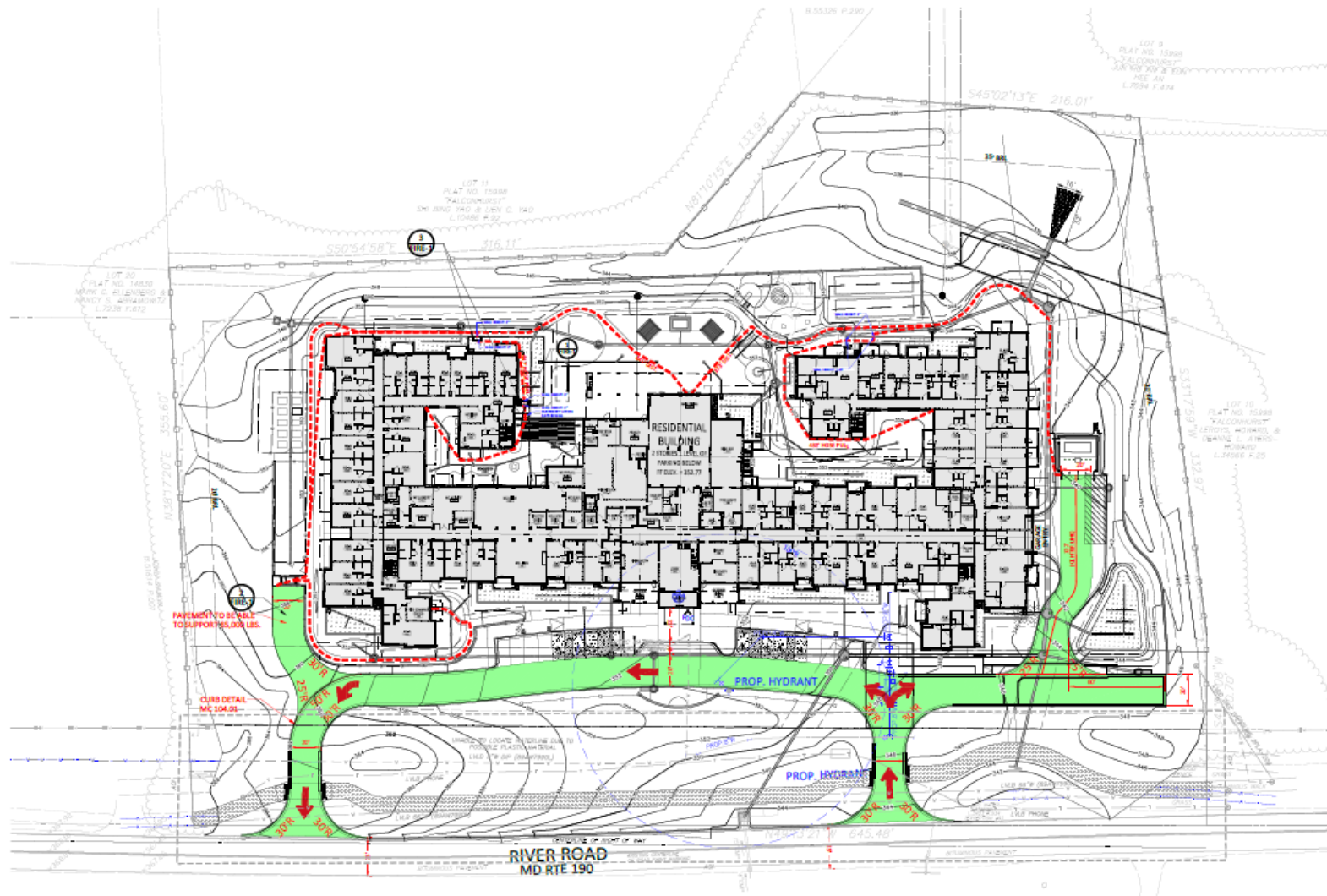
Landscape & Lighting Plan L-000 (Ex. 142(c))





11 A2.00  
1/16" = 1'-0" LEVEL 1 OVERALL

Architectural Drawing Level 1  
Exhibit 140(d)



Fire Access Plan (Exhibit 143)

## II. GOVERNING LAW AND ANALYSIS

### A. Request for Minor Amendments

Requests to amend a conditional use are governed by Zoning Ordinance §59.7.3.1.K.

Whether an amendment request is characterized as a major amendment or for a minor amendment is significant because a *major amendment* application must “*follow the same procedures, must meet the same criteria, and must satisfy the same requirements as the original conditional use application . . .*” Zoning Ordinance §59.7.3.1.K.1.b. However, an application for a *minor amendment* need not go through those extensive procedures. Rather, “. . . *it may be approved administratively by the Hearing Examiner.*” Zoning Ordinance §59.7.3.1.K.2.a.

Zoning Ordinance Section 59.7.3.1.K. also defines major and minor amendments:

§59.7.3.1.K.1.a. *A major amendment to a conditional use is one that changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.*

§59.7.3.1.K.2.a. *A minor amendment to a conditional use is one that does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.*

The Hearing Examiner agrees with Planning Staff that the amendments proposed by the Applicant fall within the definition of “minor” amendments. The amendments represent refinements to the existing plan and enhancements to the exterior to improve entry hardscape, signage, walking paths, and outdoor amenities for the residents. The Hearing Examiner finds it significant that the landscape screening along the perimeter will not be impacted by the changes and that the evergreen screenings, lighting restrictions, eight-foot privacy fence and conservation areas remain unchanged.

Also important to this determination, is that the even though the footprint shifted slightly no changes to the minimum setbacks are proposed, and the conditions of approval remain unchanged. In addition, the loading and service areas are being modified in such a way that minimizes the impervious area. The original Hearing Examiner’s Report indicated that the then Applicant Spectrum had worked with the community on these items, and none of the changes proposed significantly impact those aspects.

## IV. ORDER

Based upon the foregoing, it is hereby,

**ORDERED**, that the second minor amendment to CU 20-05, Application of Spectrum Retirement Communities as transferred to HSB Potomac, LLC to operate a residential care facility on property located at 9545 River Road, Potomac, Maryland, be, and hereby is, approved, and it is further.

**ORDERED**, that Condition No. 1 of the original conditional use and first minor amendment approval is hereby amended as follows:

1. Physical improvements to the Subject Property are limited to those shown on the Amended plans as submitted including the Conditional Use Site Plans, Architectural Drawings, and Landscape and Lighting Plans (Exhibits 139, 140, 141, 142, 143 and related subpart lettering); and it is further

**ORDERED**, that this amendment and the continued use of the conditional use are subject to all terms and conditions imposed in connection with the initial approval and first minor amendment and extension of time approval except as specifically amended by the Hearing Examiner in this Opinion and Order.

Issued this 24<sup>th</sup> day of January, 2024.



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Kathleen E. Byrne  
Hearing Examiner



### **NOTICE OF RIGHT TO REQUEST HEARING**

Under §59.7.3.1.K.2.b of the Zoning Ordinance, any party may object by requesting a public hearing on the Hearing Examiner's action within 15 days after this decision is issued. The request for public hearing must be in writing and must specify the reason for the request and the nature of the objection or relief desired. If a request for a hearing is received, the Hearing Examiner must suspend her administrative approval and conduct a public hearing to consider whether the amendment is a major amendment or a minor amendment under the Zoning Ordinance. A minor amendment is one that does not "substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood." A major amendment is one that does substantially change the nature, character, or intensity of the conditional use on the immediate neighborhood. If the Hearing Examiner determines, after an objection, that the impact will be major, then the application must be treated as a major amendment. A decision of the Hearing Examiner following a public hearing on a minor modification may be appealed based on the Hearing Examiner's record to the Board of Appeals.

#### **COPIES TO:**

Steve Robins, Esq.

Elizabeth C. Rogers, Esq.

Attorneys for the Applicant

Barbara Jay, Executive Director

Board of Appeals

Victor Salazar, Dept. of Permitting Services

Patrick Butler, Planning Department

Mark Beall, Planning Department

Michael Coveyou, Dir. Of Finance

Current abutting and confronting property owners

All parties entitled to notice at the time of the original filing:

Abutting and Confronting Property Owners (or a condominium's council of unit owners or renters if applicable)

Civic, Renters and Homeowners' Associations within a half mile of the site

Any municipality within a half mile of the site.