

**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:**  
**HERITAGE GARDENS LAND LLC**

\*  
\*  
\*  
\*  
\*  
\*

OZAH Case No. CU 22-01

For the Application  
Patricia A. Harris, Esq.  
Attorney for the Applicant

\*\*\*\*\*

Before: Kathleen E. Byrne, Hearing Examiner

**ORDER ADMINISTRATIVELY APPROVING**  
**AN EXTENSION OF THE IMPLEMENTATION PERIOD AND MINOR AMENDMENT**

**I. BACKGROUND**

On September 6, 2022, the Hearing Examiner approved a conditional use filed by Heritage Gardens Land LLC (Applicant or Heritage), to build and operate a Residential Care Facility (Senior Care Community) at 10701 South Glen Road, Potomac, Maryland.<sup>1</sup> On September 9, 2022, the Hearing Examiner issued an errata making certain corrections and removing Condition No. 8.<sup>2</sup> The property is further identified as Parcels P950, P896 and Parcel B of the Glen Vista Subdivision 786 and is zoned RE-2.

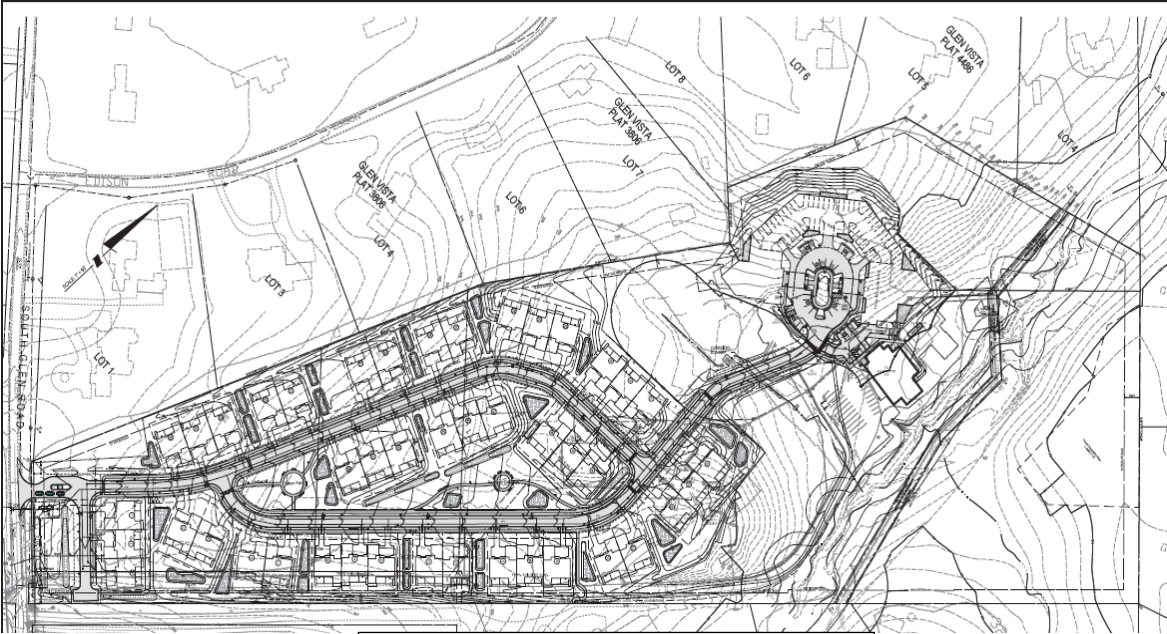
The approved Senior Care Community permits a maximum number of independent dwelling units for seniors to 73 in the following configuration: 44 units located in Cottage units and 29 units located in the multi-use building known as the Lodge. A copy of the original conditional use plan is shown on the next page as Exhibit 181(c).

Heritage now requests an extension of the implementation time period and ten minor amendments. Exhibit 202. Specifically, Heritage states “that the modifications will not result in any changes to the minimum setbacks” that the changes sought “are reflective of the natural design progression and refinements that occur between schematic level decision and full construction drawings.” *Id.* at pg. 3. In addition Heritage states the “changes are deemed necessary” and that M-NCPPC Staff see the changes as “positive changes as it pertains to both the neighbors and the overall enhancement of the project.” *Id.*

---

<sup>1</sup> See Final Report and Decision at [CU 22-01, Heritage Land LLC, Report and Decision \(Robeson\) Final\(1\).pdf \(montgomerycountymd.gov\)](#)

<sup>2</sup> See Errata at [Errata.pdf \(montgomerycountymd.gov\)](#).



**Overall Conditional Use Site Plan  
(Exhibit 181(c))**

**A. Extension of Implementation Time Period**

The conditional use period for CU 22-01 expires on September 6, 2024. Exhibit 202, pg. 1. Heritage seeks an extension of the time stating it is necessary to implement the granted conditional use. *Id.* Out of an abundance of caution, Heritage seeks a full 12-month extension due to the following factors:

1. Heritage proceeded expeditiously following the approval of the Conditional Use. Within five months of approval of the Conditional Use, Heritage prepared and filed a Preliminary Plan application and the Planning Board approved the Preliminary Plan on May 11, 2023. Nonetheless, there remains a significant amount of post entitlement work to obtain the necessary permit to vest the Conditional Use.
2. The issuance of the demolition permit cannot occur until certain preconditions are satisfied, which are outside Heritage’s control (e.g. the disconnection of the utilities).
3. The Property is 30 acres and as a result, the amount of time needed to conduct the necessary engineering work is significantly more than the time associated with a conditional use on a considerably smaller parcel. However, the Zoning Ordinance’s provisions governing Duration of Approvals for conditional uses do not distinguish between the size and scope of a conditional use. Since the approval of the Preliminary Plan, Heritage has been working closely over the

past 11 months with the architect and the civil, mechanical and structural engineers to finalize the plans. We are pleased that as noted above, the plans for the sediment control permit and right-of-way permit have already been filed with the Department of Permitting Services (“DPS”) and we look forward to filing the other necessary permits in the next few months.

Exhibit 202, pgs. 2-3.

Heritage also notes that it fully expects to secure the needed demolition permit which will vest the conditional use within 6 months of September 2024, but are requesting the full 12 months in the event of unanticipated events causing a further delay. *Id.*

### **B. Minor Amendment Requests**

Heritage does not propose any changes to the approved use or conditions of approval. *Id.* Nor do the requested changes impact the minimum setbacks. *Id.* Specifically, Heritage requests the following:

1. **Modification to Lodge Footprint.** Heritage is proposing minor modifications to the Lodge building footprint to increase the efficiency of the building and to accommodate changes to the interior programming and layout. Most notably, the square footage of the building footprint *decreased* by 724 square feet. More specifically, the footprint on the rear of the Lodge facing the neighbors remains the same, with *no* changes. On the sides, the triangular “bump outs” on the north and south sides of the Lodge were cut back and squared off. In the interior courtyard, minor adjustments that push and pull the building footprint in select locations were made. Importantly, the Petitioner is not proposing any changes to the building setbacks. Additionally, the architectural character and overall design remains essentially unchanged.
2. **Modifications to Stormwater Management.** Two bio-retention storm water management facilities that were adjacent to two of the Cottage independent living units located next to Heritage Gardens (the garden area in the center of Cottage area) have been eliminated, as has the bio-retention facility located adjacent to the north side of the Lodge. Bio-retention facilities located adjacent to the rear side of the Lodge have been added. These facilities are approximately 18 inches high and will include plantings. While the facilities will not be visible from the Property line given the slope surrounding the Lodge building, when viewed from directly behind the Lodge they will read as additional landscaping adjacent to the Lodge. No changes are proposed to the overall method of treatment for stormwater management on-site or the overall stormwater capacity of these facilities.
3. **Elimination of Retaining Walls.** The retaining wall located in the northern portion of Heritage Gardens and the retaining wall located north of the Lodge are eliminated.

Further engineering work revealed that these areas could be appropriately graded, thereby eliminating the need for the retaining walls.

4. **Relocation of the Front Property Line.** The Preliminary Plan approval required dedication to accommodate a South Glen Road right-of-way 35 feet from the centerline. Further engineering revealed that a minor shift in the alignment of the proposed dedication up to three feet was needed to accommodate this requirement.
5. **Frontage Improvements Relocation of sign and fence and addition of mailboxes.** In order to not obstruct sight lines and to increase the visibility of the monument sign, the sign is proposed to be relocated 30 feet to the south along the South Glen Road frontage of the Property. In addition, the fence along the Property's frontage running parallel to South Glen Road is proposed to be relocated approximately eight feet to the north to accommodate the relocation of the sign. The U.S Post Office informed the Petitioner that mail delivery to the individual Cottage units was not possible and that mail needed to be delivered to one location. The Conditional Use modification includes the addition of two "cluster mailbox" units located along the western side of the entrance drive, beyond the entry feature.
6. **Addition of Wayfinding Signs.** The overall number of wayfinding signs have been reduced (they are no longer required by DPS Fire and Safety) and two small wayfinding signs measuring less than 11 square feet in size and 3'-7" feet in height and mounted on a supporting stone base will be located along the access drive leading to the Lodge.
7. **Changes to Light Fixtures in Heritage Gardens and Saxton Park.** The previously proposed light poles within Heritage Gardens and Saxton Park will be replaced with lower height bollard lighting. The bollard lighting will provide adequate lighting in this area and because the bollard lights are lower in height, they are more compatible with the surrounding Cottage units than the originally proposed light poles.
8. **Relocation of Natural Trail.** A small portion of the natural trail located near the existing multi-purpose gym building will be relocated approximately 50 feet to the north to provide a more direct route to the gym.
9. **Revisions to Lodge Courtyard.** The Lodge Courtyard and gym areas will continue to provide surface parking for users of the buildings, including visitors, (the number of surface parking spaces will be reduced by one from 35 to 34), but the spaces and landscaping areas have been reconfigured; access to the parking underneath the building from the Courtyard has been eliminated allowing for a more continuous landscaping and amenity feature along the inner perimeter of the Lodge building; the entrance locations to the assisted living and memory care units have shifted slightly; and the landscaping in this area has been revised to accommodate these revisions. These changes result in more aesthetically pleasing Courtyard area.

10. **Minor Revisions Adjacent to Northeast Corner of Lodge Building.** The Petitioner has reoriented the dumpster and generator locations in this area due primarily to the location of proposed utilities. The generator has been moved closer to the building and the dumpster has shifted approximately 18 feet to the north. A pedestrian path has been realigned to provide a direct path from the building to the sidewalk on the south side of this small parking area. In addition, the entrance to the parking underneath the Lodge has been relocated to this area.

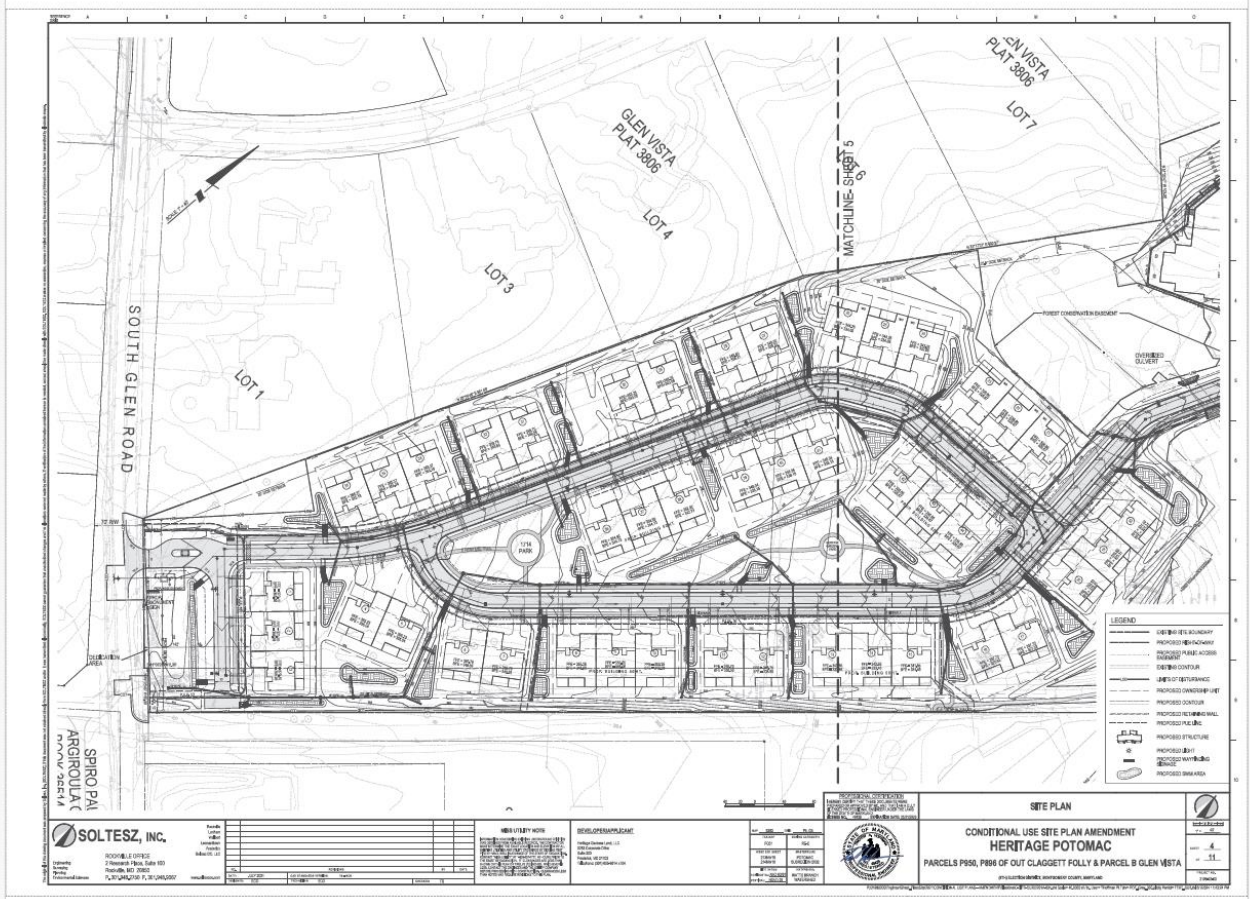
Exhibit 202, pg. 3-5.

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 as follows:

After reviewing the documents, 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.

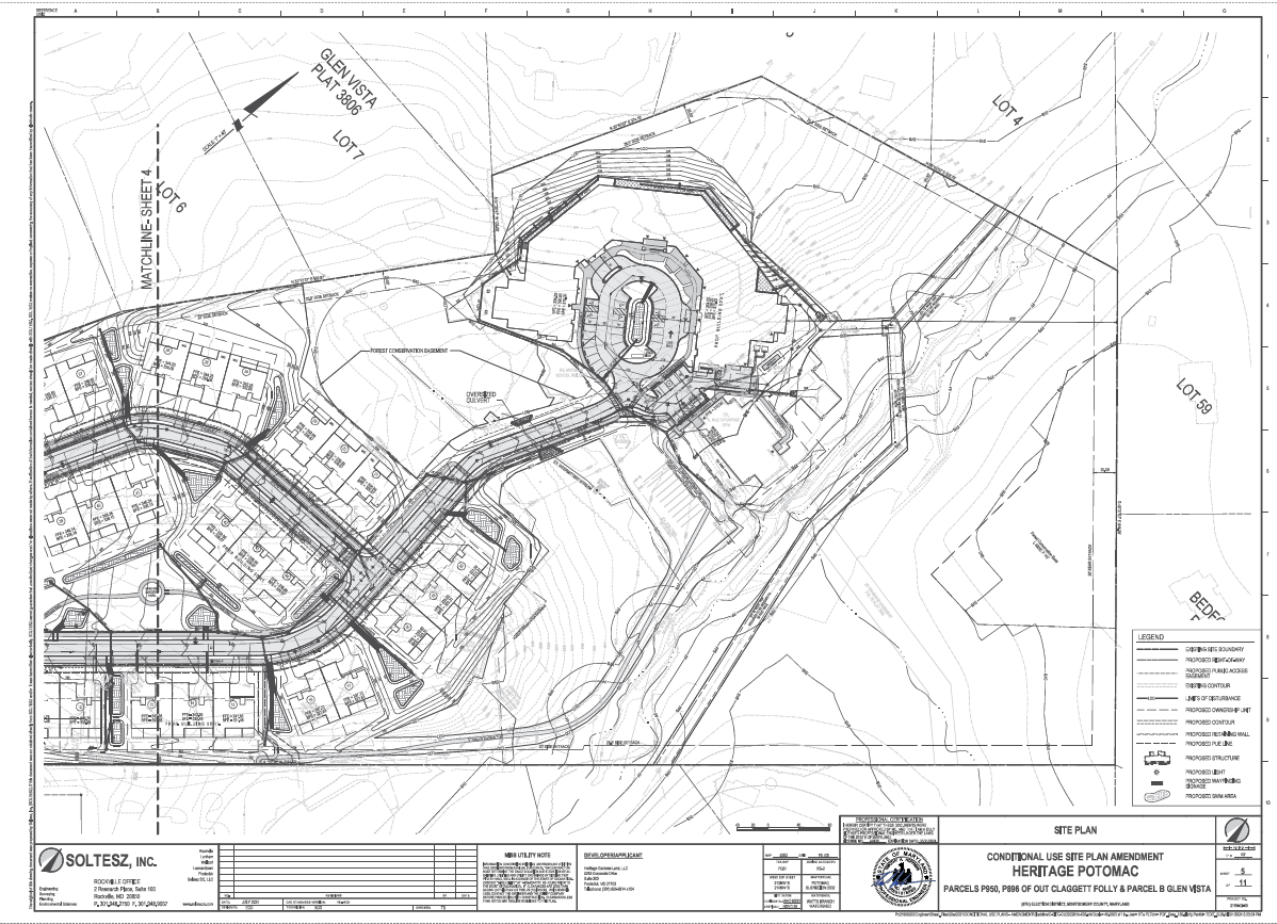
Exhibit 206.

The Applicant provided conditional use and lighting/landscape plans redlined to show the changes as well as clean copies with the proposed amendments (Exhibits 204(a)-(k) and 205(a)-(k)). Exhibits 204(b), 204(c), 205(b), 205(c) and 205(k) are shown on the following pages.

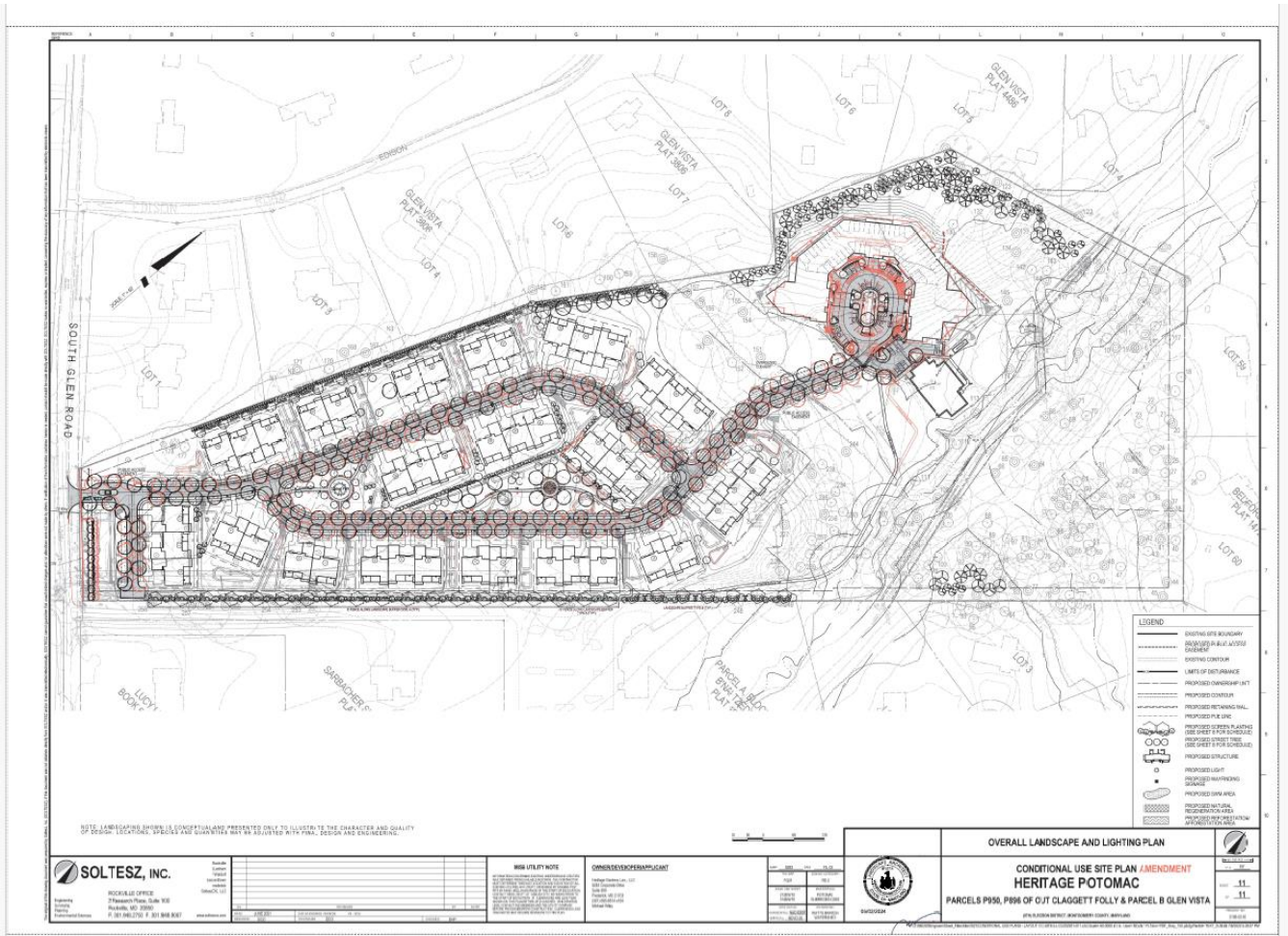


Amended Conditional Use Site Plan 204(b)





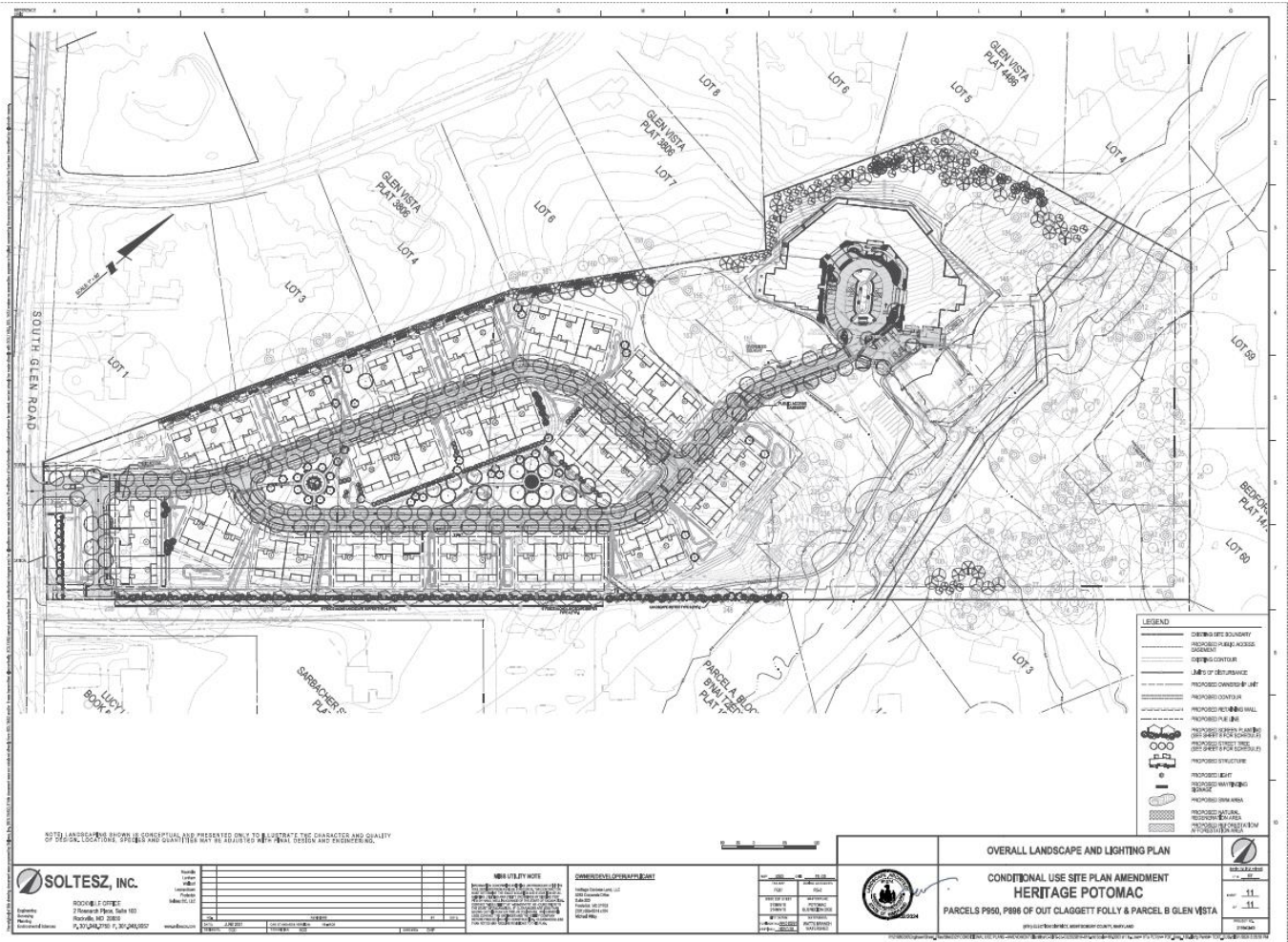
Amended Conditional Use Site Plan Exhibit 204(c)



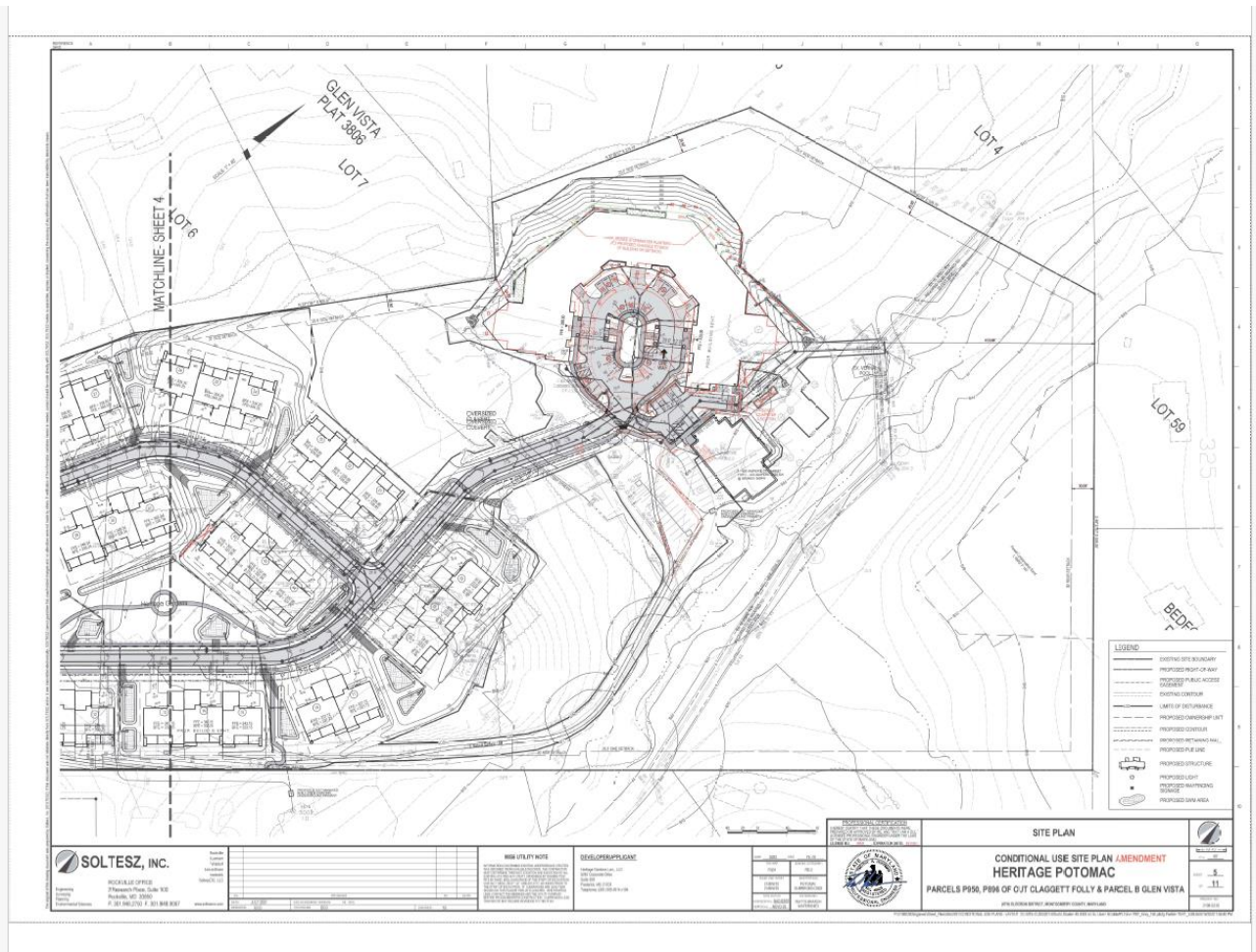
Amended Overall Landscape and Lighting Plan – Exhibit 205(k)



CU 22-01, Application of Heritage Gardens Land, LLC  
 Order Administratively Approving Minor Amendment

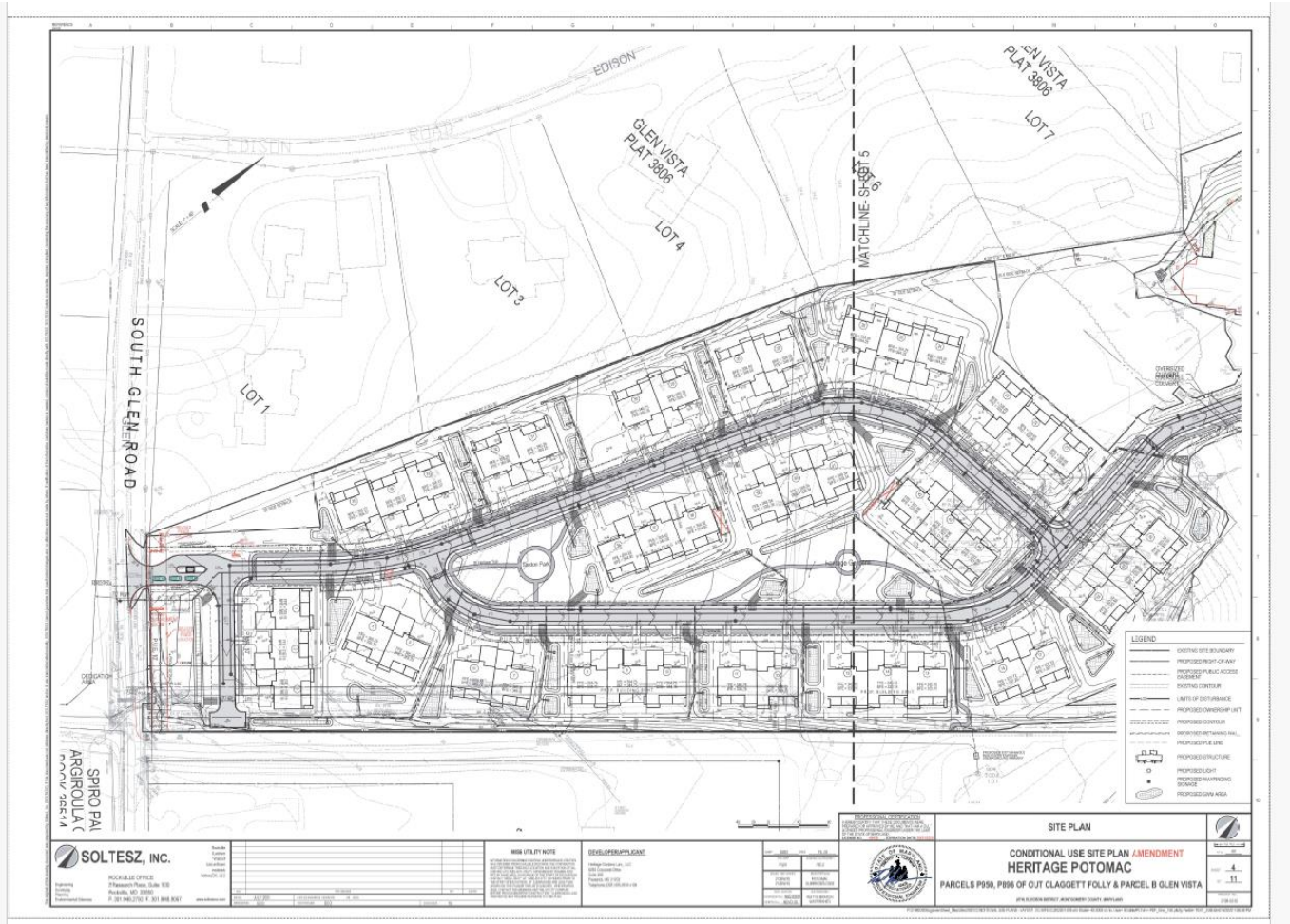


Overall Landscape and Lighting Plan – Exhibit 204(k)



Amended Conditional Use Site Plan – Exhibit 205(c)





Amended Conditional Use Site Plan – Exhibit 205(b)

**I. GOVERNING LAW AND ANALYSIS**

**A. Request for Extension of Implementation Time Period**

Section 59.7.3.1.I.1 sets an expiration date for any conditional use that is not established or that has not obtained a building permit within 24-months from the date of issuance of the decision or resolution. However, Section 59.7.3.1.I.2 allows the Hearing Examiner to extend the time limit for a period of 12 months for a conditional use to be established or for a building permit to issue, “if the record establishes that drawing of architectural plans, preparation of the land, or other factors involved in the particular use will delay the start of construction or the establishment of the use being the period of validity.”

The Hearing Examiner agrees with the Applicant that it moved expeditiously toward seeking the required approvals to begin construction and vest the granted conditional use. The Hearing

Examiner also agrees with the Applicant that the time required to prepare drawings and obtain approvals related to the development of a 30-acre site takes longer than that of a smaller development. In addition, the Hearing Examiner agrees with the Applicant that the issuance of a demolition permit will “vest” the conditional use and the issuance of the demolition permit is the first physical step in construction for the site. In particular, the Hearing Examiner finds that the large site and the fact that the issuance date for the demolition permit is out of the control of the Applicant, establishes a record that “preparation of the site” and “other factors” are causing a delay in establishment of the use. The Hearing Examiner finds a 12-month extension of time a reasonable request given the facts presented.

### **B. 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, including the reduction in the square footage of the Lodge and shifts for the building utilities as well as several minor changes around the structure, to the stormwater management, retaining walls, in addition to slight shifts to signage, fencing and front property line as well as mailbox changes are in direct response to regulatory authority requests and create better functionality and in some instances creating a more aesthetically pleasing area for residents.

The Hearing Examiner finds it significant that all the changes requested are deemed positive changes by M-NCPPC Staff as it relates to both the neighbors and the overall project

itself. Also important to this determination is that no changes to the minimum setbacks are proposed and the original conditions of approval remain unchanged. In addition, the changes to stormwater management do not impact the method of treatment, management or capacity of the on-site facilities and while the revisions to the northeast corner of the Lodge building do impact the location of the utilities, dumpster, sidewalk and parking, but those shifts and changes are minimal. The Hearing Examiner finds that the changes proposed will not change the nature, character, or intensity of the Conditional Use.

#### IV. ORDER

Based upon the foregoing, it is hereby,

**ORDERED**, that the request to extend the implementation period 12 months from September 6, 2024 to September 6, 2025 is hereby **GRANTED**; and it is further;

**ORDERED**, that Condition No. 1 of the original conditional use is hereby amended as follows:

1. The Physical improvements to the Subject Property are limited to those shown on the Applicant's Conditional Use site plan (Exhibits 204(a)-(c) and Exhibits 205(a)-(c)), and Landscape and Lighting Plan (Exhibits 204(d)-(k) and Exhibits 205(d)-(k)).

**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 except as specifically amended by the Hearing Examiner in this Opinion and Order.

Issued this 21<sup>st</sup> day of June, 2024.



---

Kathleen E. Byrne  
Hearing Examiner