





**Grace House: Preliminary Plan Amendment No. 11997023B (In Response to Forest Conservation Violation)**

-  David Wigglesworth, Senior Planner, [david.wigglesworth@montgomeryplanning.org](mailto:david.wigglesworth@montgomeryplanning.org), 301-495-4581
-  Mark Pfefferle, Chief DARC, [mark.pfefferle@montgomeryplanning.org](mailto:mark.pfefferle@montgomeryplanning.org), 301-495-4730

Staff Report Date: 1-22-15

**Description**

**Preliminary Plan Amendment No. 11997023B Grace House (In Response to Forest Conservation Violation)**

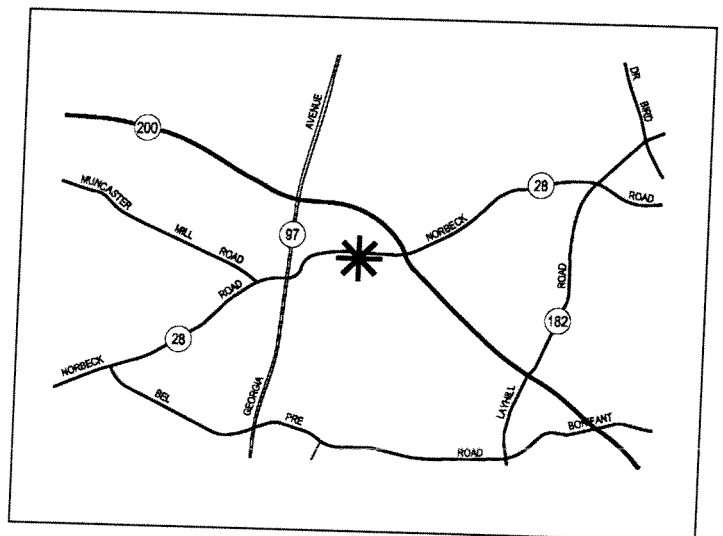
- Remove 0.59 acres of Category I Conservation Easement from Parcels 4 & 717
- Located at 3214 Norbeck Road, Silver Spring
- RE-2/TDR Zone, Aspen Hill Master Plan

**Staff Recommendation:** Approval with conditions

**Applicant:** Victory Housing, LLC

**Submittal Date:** September 29, 2014

**Review Basis:** Chapter 22A



**Summary**

- Removal of 0.59 acres of Category I Conservation Easement.
- Purchase of 1.18 acres of credit at a Forest Mitigation Bank to compensate for the easement removal.
- Complete retention of the 0.36 acre Category II Conservation Easement.
- Preliminary Plan No. 119970230 was approved on November 25, 1996 to create one 7.07 lot for the construction of an assisted living facility.
- Preliminary Plan Amendment 11997023A was approved on January 10, 2002 to modify the location of the Category I Conservation Easements to allow for the construction of Grace House.
- Minor subdivision plat 22578 was approved on May 30, 2003 which created Parcel 3 for the assisted living facility and Parcel 4 for Grace House.

**STAFF RECOMMENDATION:** Approval of the Limited Amendment to the Preliminary Plan and associated Final Forest Conservation Plan as conditioned. All other conditions of Preliminary Plan No. 119970230, and 11997023A, and the associated Forest Conservation Plan that were not modified herein, remain in full force and effect. Specific conditions for 11997023B are:

1. Within sixty (60) days of the mailing of the Planning Board Resolution approving Preliminary Plan No. 11997023B, the Applicant must submit a complete record plat application that removes the Category I Conservation Easement from Parcels 4 & 717. The existing Category I Conservation Easement remains in full force and effect until the record plat is recorded in the Montgomery County Land Records.
2. The record plat must show the Category II Conservation easement that remains on existing Parcel 4 & 717 and must be referenced on the new record plat.
3. Within sixty (60) days of the mailing of the Planning Board Resolution approving Preliminary Plan No. 11997023B, the Applicant must submit a Certificate of Compliance to use an M-NCPPC approved offsite forest mitigation bank to provide 1.18 acres of mitigation credit for the removal of 0.59 acres of Category I Conservation Easement.

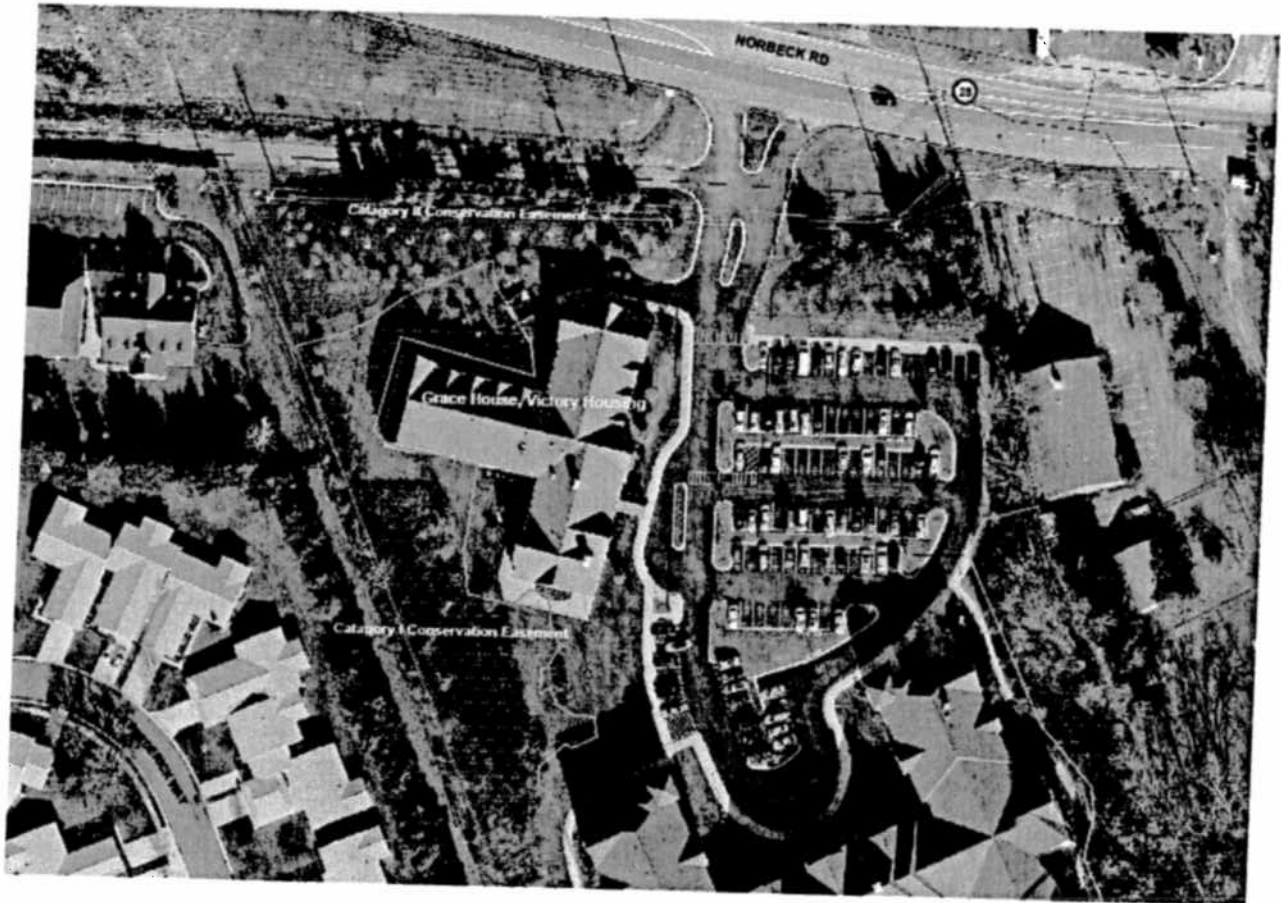
#### **BACKGROUND**

Preliminary Plan 119970230 was approved by the Planning Board November 25, 1996. This approval created a 7.07 acre parcel which allowed for an assisted living facility. The preliminary plan included an associated forest conservation plan. Preliminary plan amendment 11997023A was approved by the Planning Board on January 10, 2002 for the construction of Grace House. This amendment was primarily for the relocation of the onsite recorded conservation easements. On May 30, 2003 the 7.07 acre parcel partitioned into two parcels through a minor subdivision. Plat 22578 created Parcels 3 and 4. Parcel 717 is an adjoining land area that was not subject to preliminary plan 119970230 but was owned by the property owner and used to meet the forest conservation plan requirements.

Grace House, located on Parcel 4, is a senior housing facility located at 3214 Norbeck Road in Silver Spring. This section of Norbeck Road is located between Georgia Avenue and the Maryland Road 200. The application is to change the Conservation Easements on Parcel 4 and does affect any Conservation Easement on Parcel 3. Forest conservation plan 11997023A contains a 0.59 acre Category I Conservation Easement and 0.36 acres of Category II Conservation Easement. The applicant was required to plant 0.18 acres of Category I Conservation Easement Area and the remaining 0.41 acres of Category I Conservation Easement was retained forest.

The exhibit below shows the location of Grace House relative to the Conservation Easements. The area in orange, near Norbeck Road, is the Category II Conservation Easement. The area outlined in green and hugging the backside the facility is the Category I Conservation. Based on the aerial photographs one can see that parts of the Category I Conservation Easement are being mowed, the proximity of the

easement is very close to the structure, and some areas of the easement appear to be over impervious surfaces such as walkways and a dumpster pad.



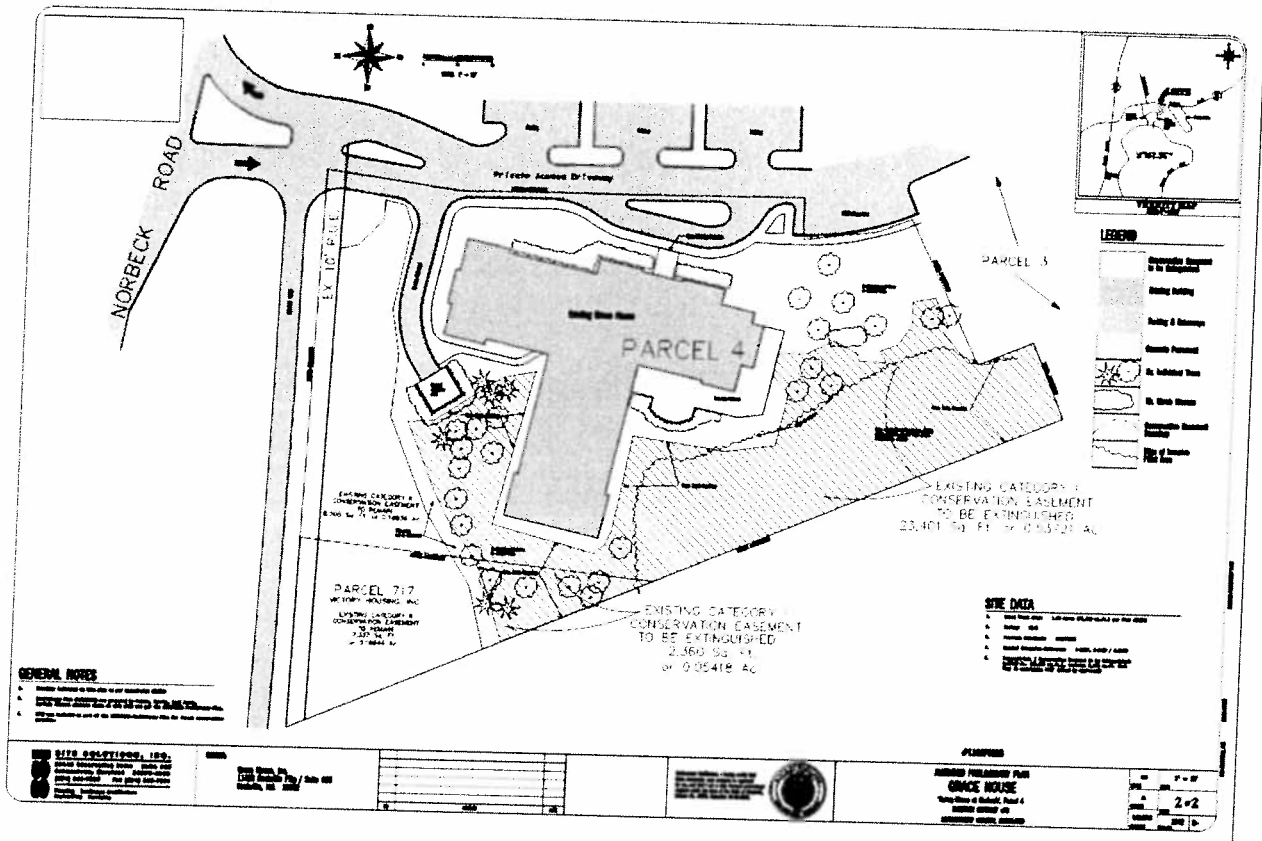
On January 30, 2014, the Forest Conservation Inspector sent a letter notifying the facility operator that activities were occurring within the Category I Conservation Easement, without prior approval. See Attachment A. Upon further inspection the Inspector discovered that portions of the Category I Conservation Easement were within ten feet of the facility. Also, the Category I Conservation Easement included landscape plantings, sod, or is overgrown with thick invasive vegetation. No natural forest regeneration has occurred in the easement area because mowing occurred and thick invasive vegetation has smothered any natural regeneration of native trees. The Inspector did not issue a Notice of Violation. The Category II Conservation is in compliance with the terms of the easement.

On February 6, 2014 a meeting was held with the property owner to discuss the options available to the owner to bring the site into compliance with the Forest Conservation Easement conditions. One of the options included the submission of an amendment to the Preliminary Plan of Subdivision for forest conservation purposes. The applicant chose to remove the Category I Conservation Easement and submitted a preliminary plan amendment.

# DICUSSION OF CURRENT AMENDMENT

## Applicant's Proposal

On September 29, 2014, the Applicant submitted an application to amend Preliminary Plan and Forest Conservation Plan #11997023B (Application or Amendment) to remove all 0.59 acres of Category I Conservation Easement. The Applicant proposes to mitigate for the easement removal by acquiring 1.18 acres of credit in a forest mitigation bank. The Applicant's proposal is consistent with the Planning Board's policy for the removal of conservation easement. The Applicant proposes to extinguish 0.46 acres of easement on Parcel 4 and 0.05 acres on parcel 717, which is an adjacent tract of land, also owned by the Applicant. The exhibit below shows the location of the Category I Conservation Easement proposed for removal.



The Applicant desires to extinguish the easement because it is impractical to maintain the grounds immediately adjacent to an independent living facility in strict accordance with the Category I Easement requirements. The Applicant would like to create and maintain a more formal landscaped setting for the building while offering a safe and aesthetically pleasing amenity space for the residents. In addition, the removal of the Conservation Easement provides additional and necessary space for emergency service vehicles if there is ever a need to get to the back side of the facility. The applicant did plant the Category I Conservation Easement but the survivability was very low.

The applicant proposes to mitigate for the removal of 0.59 acres of Category I Conservation Easement by acquiring 1.18 acres (2:1 ratio) of credit in an approved off-site forest mitigation bank.

#### **Planning Board Review Authority**

The Forest Conservation Law requires Planning Board action on certain types of modifications to an approved FCP. COMCOR 22A.00.01.13 A (2), the Forest Conservation Regulations, state:

*Major amendments which entail more than a total of 5000 square feet of additional forest clearing must be approved by the Planning Board or the Planning Director (depending on who approved the original plan).*

The Applicant proposes to remove 0.59 acres of Category I Conservation Easement from the Subject Property. When the original Forest Conservation Plan was approved the area consisted of existing forest and planted forest. Even though there may not currently be 0.59 acres of forest on the property, the Application must be reviewed by the Planning Board because the Application will result in permanent loss of more than 5000 square feet of area which was credited as retained or planted forest. The Planning Board's policy also requires that all easement removals be approved by the Planning Board.

#### **Analysis and Findings**

The Grace House property originally included 0.40 acres of existing forest. Pursuant to COMCOR 22a-12(h)(2), a Category I Conservation Easement was placed on the forest as a long-term protection measure to protect the existing forest and ensure that it remained a naturally regenerating forest. The Conservation Easement is shown on plat 22578 and the terms of the easement are referenced in the Land Records at Liber 13178 folio 412. At this time, none of the conservation areas to be removed with this amendment meets the definition of forest as defined in Section 22A-3 of the Montgomery County Code. This section states,

*"Forest means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide\*. However, minor portions of a forest stand which otherwise meet this definition may be less than 50 feet wide if they exhibit the same character and composition as the overall stand. Forest includes:*

- (1) areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; and*
- (2) forest areas that have been cut but not cleared."*

(\*Note: The definition of forest was changed in 2001, the minimum width was increased from 35 feet to 50 feet.)

The mitigation ratio identified on the amended Forest Conservation Plan is consistent with the mitigation required of other Property owners who were granted the ability to remove Conservation Easements off site by the Planning Board. Staff supports the removal of the onsite Category I Conservation Easement for the easement area does not include any environmentally sensitive areas such as wetlands, stream buffers, or floodplains. If the Category I Conservation Easement were strictly adhered, the close proximity of the easement to the building would have created conflicts and the

property owner would be repeatedly requesting permission to remove tree branches or trees to protect the facility. In addition, the proximity of the easement to the facility could have hindered emergency services if there was a need for a fire truck to be at the back of the facility. Removal of the Category I Conservation Easement will resolve the outstanding encroachment issues, which brings the Subject Property into compliance.

#### **NOTIFICATION and OUTREACH**

The Subject Property was signed for the upcoming Preliminary Plan Limited Amendment submission and the Applicant sent written notice of the application to all adjoining and confronting property owners, civic associations, and other registered interested parties. These individuals will also be notified of the public hearing on the Application. Staff received comments from one citizen which were primarily a procedural matter and was responded to shortly thereafter (Attachment F). Any comments received hereafter will be forwarded to the Board.

#### **CONCLUSION**

Staff recommends that the Planning Board approve this limited Preliminary Plan amendment to revise the Forest Conservation Plan with the conditions specified above.

#### **ATTACHMENTS**

- A. January 30, 2014 letter from Forest Conservation Inspector
- B. Original Preliminary Plan Opinion 119970230
- C. Original Preliminary Plan Opinion 11997023A
- D. Preliminary Plan No. 11997023A
- E. Preliminary Plan No. 11997023B
- F. Plat 22578



Attachment A

**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

January 30, 2014

Ms. Jackie Smedley, Director of Marketing and Management  
3214 Norbeck Road  
Silver Spring, MD. 20906

Re: 3214 Norbeck Road; Parcel 4; Forest Conservation plan #11997023A; Spring House At Norbeck

Dear Ms. Smedley:

This correspondence concerns the property known at Grace House which is located at 3214 Norbeck Road and is also known as Parcel 4. On this property there is a Category-1 forest conservation easement. Under the authority of the Montgomery County Forest Conservation law (Chapter 22-A), Forest Conservation plan # 11997023A was approved. This Forest Conservation plan required this easement on the property as part of the approval of the Preliminary plan by the Planning Board. Within this Category-1 conservation easement any activity must be approved by the inspector prior to that activity occurring. This includes activities such as mowing. I propose that we have a meeting to discuss the options available to the owner to bring the site into compliance.

Please contact me at your convenience so that we can schedule an appointment to discuss the conservation easement at 3214 Norbeck Road.

Sincerely,

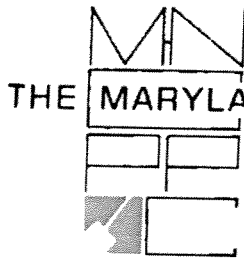
David Wigglesworth

Sr. Planner

Development Applications & Regulatory Coordination Division

Enclosure: Record Plat File No. 620-97, and FC plan 1-97023A

Date of Mailing: November 25, 1996



8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation  
 (Motion of Comm. Aron, seconded by Comm. Richardson with a vote of 5-0; Comms. Aron, Richardson, Baptiste, Hussmann and Holmes all voting in favor.)

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-97023  
 NAME OF PLAN: MANOR CARE - NORBECK

On 09-12-96, MANOR CARE, INC. submitted an application for the approval of a preliminary plan of subdivision of property in the RE2 zone. The application proposed to create 1 lots on 7.07 ACRES of land. The application was designated Preliminary Plan 1-97023. On 11-21-96, Preliminary Plan 1-97023 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-97023 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-97023, subject to the following conditions:

STAFF RECOMMENDATION: Approval, subject to the following:

- (1) Compliance with the conditions of approval of the preliminary forest conservation plan. Applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, as appropriate
- (2) Agreement with Planning Board to limit development to a nursing and care facility as outlined in S-2237 Board of Appeals approval
- (3) Prior to dedication of right-of-way, as shown on plan, submit verification of the issuance of a demolition permit for the existing structure
- (4) Access and improvements as required and approved by MDSHA
- (5) Prior to MCPB release of building permit, applicant to submit a landscape, lighting and parking facilities plan for technical staff approval
- (6) Conditions of MCDPS stormwater management approval dated 11-8-96



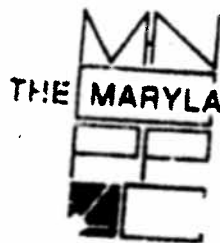
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(7) Other necessary easements

(8) This preliminary plan will remain valid until December 25, 1999  
(37 months from the date of mailing, which is November 25, 1996).  
Prior to the expiration of this validity period, a final record  
plat must be recorded or a request for an extension must be filed.

Attachment C

Date of Mailing: January 10, 2002



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3780

**MONTGOMERY COUNTY PLANNING BOARD  
OPINION**

Preliminary Plan No.: 1-97023A  
Project: Manor Care - Norbeck  
Date of Hearing: October 1, 2001

**Action: APPROVAL SUBJECT TO CONDITIONS.** (Motion to approve was made by Commissioner Bryant, duly seconded by Commissioner Wellington; with a vote of 3-0, Commissioners Holmes, Bryant and Wellington, voting in favor. Commissioner Purdue was necessarily absent. Commissioner Robinson recused himself.)

**INTRODUCTION**

On August 8, 2001, Hampshire Village Associates, L.P. and Victory Housing, Inc. ("Applicant") filed the subject request to revise the previous conditions of approval for Preliminary Plan No. 1-97023, Manor Care - Norbeck (the "Revision"). The proposed Revision is necessary to conform the approved subdivision to the conditions of approval of Special Exception Case Nos. S-2459 and S-2460.

After due notice, the Montgomery County Planning Board ("Planning Board") held a public hearing on the Revision on October 1, 2001, in accordance with the requirements of Maryland Code Ann., Art. 28 ("Regional District Act"), the Montgomery County Code, Chapters 50 ("Subdivision Regulations") and 59 ("Zoning Ordinance"), and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff") and representatives of the Applicant, the Norbeck Citizens Association and the Layhill Alliance, and received evidence into the record on the application.

In presenting the Revision to the Planning Board, Staff prepared packets of information including a Staff report dated September 28, 2001; plan drawings and vicinity maps; the Transportation Planning Division's September 28, 2001 memorandum regarding Adequate Public Facilities ("APF") review; documents associated with the previous Preliminary Plan and Special Exception approvals; correspondence from the Planning Board to the Board of Appeals for Montgomery County ("Board of Appeals"), dated December 21, 2000, and June 22, 2001, regarding the current special exceptions for the site; the corrected Opinion of the Board of Appeals on Case Nos. S-2459 and S-2460, dated August 16, 2001; and correspondence from the Applicant. Staff distributed the information packets to the Planning Board and they are part of the record on the application.

### THE SUBJECT PROPERTY

The subject property is located in Aspen Hill Master Plan area on the south side of Norbeck Road (MD 28), approximately 300 feet west of Bailey's Lane ("Subject Property"). The Subject Property is zoned RE-2/TDR (Residential Zone, with a base density of one dwelling unit per acre and a TDR density of two dwelling units per acre). The site contains approximately 6.47 acres of land and is unimproved. The site is characterized by gently rolling topography and is partially wooded, with portions covered by a Category I Conservation Easement that was established by recordation of a plat pursuant to the original Preliminary Plan approval.

The area immediately surrounding the Subject Property is zoned RE-2, RE-2/TDR and PRC (Planned Retirement Community). Norbeck Road constitutes the northern border of the site. Further north, across the road, are a church, several single-family houses and East Norbeck Park. To the east, fronting on Bailey's Lane, are The New Apostolic Church, three single-family houses and a vacant tract of land. Continuing southeast along Bailey's Lane are single-family houses and a three-story multi-family building that is part of Leisure World Mutual 19. The area to the south and west of the subject property is classified in the PRC Zone and is part of the age-restricted Leisure World community. A maintenance building and gardens are located directly south. A vacant PEPCO easement and right-of-way, the Mutual 18 single-family attached villas, and Our Lady of Grace Catholic Church, including the church, parish house, residence and parking facilities, are located directly west. Further west is Norbeck Boulevard, a private two-lane roadway connecting to a public signal controlled intersection with Norbeck Road, which provides access to the church and a gate-controlled secondary access to Leisure World, is located further west.

### PROPOSED DEVELOPMENT

The Applicant proposes the construction of 110 garden apartments and related facilities for the elderly, with an apartment for a resident manager, and a 30-bed assisted living facility. The existing Conservation Easement will be released and the Applicant will place .57 acres of existing forest into a new Category I Conservation Easement and .22 acres of new plantings into a Category II Conservation Easement. Access will be provided primarily via a left-in and right-in/right-out driveway to Norbeck Road. In addition, a 14-foot wide, one-way westbound driveway to Norbeck Boulevard will enable traffic exiting the site to make left turns at the existing traffic signal at the intersection of Norbeck Road and Norbeck Boulevard. A continuous and connected system of pathways, wide enough to accommodate wheelchairs, will provide internal pedestrian circulation and connect to Norbeck Road. Stormwater management will consist of an on-site stormwater quantity and quality control facility located in the southeast corner of the property. Screening measures will include: (1) extensive setbacks; (2) a landscaped berm ranging up to 10 feet in height along Norbeck Road; (3) the retention of existing trees along the eastern and western property lines; and (4) additional under-story plantings along the eastern edge of the conservation area. The lighting plan has been developed with community input and the lights will be directed away from neighboring houses.

The Subject Property is located within the area covered by the April 1994 Aspen Hill and Vicinity Master Plan ("Master Plan"). The Master Plan identifies the Subject Property as suitable for affordable elderly housing and states that it would be appropriate to include the property in an expansion of Leisure World. The Master Plan further states that there is a strong need in Montgomery County for affordable rental housing. In addition, the Master Plan recommends that

Norbeck Road east of Georgia Avenue be reconstructed as a four-lane divided highway with controlled access and service roads where feasible.

### BACKGROUND

The proposed use requires special exception approval by the Board of Appeals, pursuant to Sections 59-G-2.35 and 59-G-2.37 of the Montgomery County Code. On November 29, 1996, the Board of Appeals approved Special Exception No. S-2237, for the construction and operation of a domiciliary care home for 100 residents on a portion of the Subject Property. In conjunction with that approval, the Planning Board conditionally approved Preliminary Plan No. 1-97023, including a condition limiting development of the site to a nursing and care facility as outlined in Case No. S-2237. Another condition required the delineation of a Category I Conservation Easement over the areas of tree preservation. Subsequently, on May 8, 1997, a plat of subdivision identifying the Category I Conservation Easement was recorded in the land records. The project was never implemented, however, and the Board of Appeals' approval expired.

The Applicant filed new special exception applications on November 7, 2000. Case No. S-2455, filed by Hampshire Village Associates Limited Partnership, sought permission to construct and operate a 130-unit residence for independent elderly persons. Case No. S-2460, filed by Victory Housing, Inc., sought permission to construct and operate a separate assisted living facility containing 30 beds and related facilities. The special exception cases were consolidated for public hearing and decision and the Board of Appeals and the Planning Board held several hearings on the applications, concluding in June 2001. During the course of the hearings, the Applicant revised and refined the plan numerous times to address compatibility, traffic and site access issues. Major revisions included reducing the number of units in, and the size and height of, the independent living facility, adding the driveway to Norbeck Boulevard and substantially modifying the lighting plan. The Planning Board reviewed the applications and recommended approval subject to conditions by letters to the Board of Appeals, dated December 21, 2000, and June 22, 2001. The Board of Appeals approved both special exceptions with conditions by Opinion dated August 16, 2001.<sup>1</sup>

### THE SUBDIVISION CRITERIA

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Subdivision Regulations. The application also must meet the requirements of Chapter 59 of the Montgomery County Code ("Zoning Ordinance") applicable to the subject preliminary plan.

Section 59-35 of the Subdivision Regulations provides the approval procedure for preliminary subdivision plans and requests to revise approved preliminary plans. After presentation of the plan to the Planning Board, the Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Montgomery County Code and all other applicable regulations.

The general provisions for lot design for a subdivision are set forth in Section 59-29 of the Subdivision Regulations. Lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of use contemplated in order to be approved by the Planning Board. Lots must also abut a dedicated street or public road, and the depth and width of

<sup>1</sup> An administrative appeal challenging the special exception approval was subsequently filed by neighboring property owners and is still pending.

nonresidential lots must be adequate for the off-street service and parking needed for the proposed use.

Additionally, Section 50-35(f) of the Subdivision Regulations (the "Adequate Public Facilities Ordinance" or "APFO") directs the Planning Board to approve preliminary plans of subdivision only after finding that public facilities, including the transportation system, will be adequate to serve the subdivision.

### PLANNING BOARD HEARING

In its report and through testimony at the public hearing, Staff recommended approval of the Revision. Staff described the previous preliminary plan and special exception approvals for the site and the recommended revised conditions of approval. Staff explained that the conditions of approval need to be amended, and the record plat revised, to reflect the changes associated with the Board of Appeals' August 16, 2001 approval of Special Exception Case Nos. S-2469 and S-2460 and Transportation Planning Staff's adequate public facilities review before the Applicant may obtain a building permit. Staff further explained that the recorded conservation easements must be amended because the revised proposal for the site, and the special exception approvals, locate buildings in previously designated conservation areas.

The record on the subject application includes uncontested information about the lot area, width, shape and orientation of the proposed one-lot subdivision, the relationship of the proposed lot to public roads, and the off-street service and parking provided. The record also contains uncontested information as to the Revision's conformance with the development standards for the RE-2/TDR Zone.

By memorandum dated September 28, 2001, Transportation Planning Staff provided the Planning Board with its adequate public facilities review of the Revision. Staff's memorandum described vehicular and pedestrian access to the site, the Master Plan classification of surrounding roads and proposed bikeways, and the amount of traffic expected to be generated by the project. Regarding Local Area Transportation Review ("LATR"), Staff estimated site-generated traffic to be 14 morning peak hour trips and 16 evening peak hour trips. Staff concluded that a traffic study was not required because the estimated peak hour traffic is below the LATR threshold of 50 peak hour trips. Regarding Policy Area Review, Staff stated that the subject property is located in the Aspen Hill Policy Area, which had sufficient remaining capacity to accommodate the assisted living component of the project as of July 31, 2001. Staff further explained that, although the policy area could not have sufficient capacity to accommodate the independent living portion of the project as of July 31, 2001, that portion could be approved under the Fiscal Year 2002 Annual Growth Policy, Special Ceiling Allocation for Affordable Housing Facilities. By letter dated September 27, 2001, the Montgomery County Department of Housing and Community Affairs certified that the project qualifies for the special ceiling allocation for affordable housing projects.

The Applicant's representative testified that the proposed Revision is the final administrative step in the process of amending the approvals required to facilitate the development of rental housing and related facilities for the elderly and an assisted living facility on the site. He stated that the Board of Appeals and the Maryland State Highway Administration ("SHA") have reviewed and approved the project, including the proposed site access and the projected impact on the surrounding road network. In accordance with those approvals, site access improvements include a stacking lane for left-in turns, acceleration/deceleration lanes for right-in and right-out turns, and a new one-way driveway to Norbeck Boulevard for left turns exiting the site. The Applicant's

representative further testified that the buildings meet all of the setback requirements of the RE-2/TDR Zone applicable to the special exceptions. In addition, the Applicant's representative testified that the proposed buildings have been reduced in size and height and that the grading will further reduce the perception of height. He also described the revised locations of the forest conservation easements and testified that the project has adequate public facilities. Finally, the Applicant's representative testified that Staff's proposed conditions of approval are acceptable.

Mr. Cary Lamari, President of the Norbeck Citizens Association, testified in opposition to the application. He was particularly concerned about the proposed access to the project and existing traffic problems in the site area. He contended that the Applicant's traffic study significantly underestimated existing traffic and the number of trips that will be generated by the proposed development.<sup>2</sup> He testified that 18,000 vehicles currently travel in front of the property daily, while the road breaks down at 16,000 vehicles per day. Mr. Lamari further contended that the proposed location of the access driveway from Norbeck Road to the parking facility is prohibited by Section 59-E-2.82 of the Zoning Ordinance, which requires that each entrance to and exit from an off-street parking facility must be located so that it is not across the street from property classified in a residential zone "whenever possible". He noted that there are no sidewalks in front of the property and there are several residences located across the street. He argued that the Applicant's proposal of a one-way driveway connecting to Norbeck Boulevard has established that an alternative access is possible. Therefore, Mr. Lamari concluded that each access to the project must be directed to Norbeck Boulevard.

Mr. Richard Kauffinger, on his own behalf and on behalf of the Layhill Alliance, also testified in opposition to the application. He contended that Staff did not critically review the application, particularly with regard to existing traffic volume, projected traffic generation and the traffic safety impact of elderly drivers making turns onto Norbeck Road. He further contended that the Applicant and Staff should not have used the Institute of Transportation Engineers' (ITE) standards in this case. He explained that the ITE generation rates and parking standards are national and inapplicable to Montgomery County, where residents of affordable housing own and drive cars. He testified that his own study of the Applicant's elderly housing project at Randolph Village showed that it generated more than two times the amount of traffic projected in its special exception approval. He also noted that the Applicant based its projections on a study of daytime parking, rather than an overnight study when a greater number of cars would have been parked.

In rebuttal, regarding the location of the access to Norbeck Road, the Applicant's representative testified that the driveway access for any special exception in a residential neighborhood would be located across the street from residential property. In this case, the driveway is curved toward Bailey's Lane so that headlights of vehicles leaving the property will shine away from the existing residences across Norbeck Road and there will not be any adverse impact. Moreover, Staff, SHA, the Applicant's traffic consultant and the Board of Appeals have concluded that the proposed access, with the left turn stacking lane and the acceleration and deceleration lanes, is safe and that there is adequate sight distance to accommodate the turning movements. Accordingly, the Applicant's representative concluded that the proposed driveway access is safe, appropriate and located in compliance with Section 59-E-2.82 of the Zoning Ordinance. He also noted that SHA recommended approval of the one-way driveway to Norbeck Boulevard. Regarding the use of the ITE trip generation rates, he explained that the Applicant's traffic consultant used the

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<sup>2</sup> While the Applicant was not required to conduct a traffic study in connection with this Revision, the Applicant submitted a traffic study in connection with its special exception applications before the Board of Appeals. This traffic study is part of the record before the Planning Board.

ITE rates in accordance with directions from Transportation Planning Staff. The ITE rates are used because no special rates for these uses have been developed in Montgomery County. The Applicant's representative concluded that the trip generation rates are adequate and Norbeck Road has the capacity to handle the traffic.

Finally, the Applicant's representative noted that the project has been in the development process for a long time. He explained that the revised plat would be submitted for recordation as promptly as it can be prepared following the Planning Board's decision, but that review of the plat by all of the agencies involved could take 6 to 8 weeks. Accordingly, the Applicant's representative requested that Staff be authorized to review and release the building permit prior to the actual recordation of the plat.

In response to the Applicant's request, Staff testified that it does not oppose the release of the building permit prior to final recordation of the revised plat. Staff also advised the Planning Board that the Applicant could get a building permit based on the previously recorded plat. Therefore, Staff suggested that the Planning Board could request that the Applicant submit the revised record plat in good faith prior to release of the building permit.

#### FINDINGS

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds that the Applicant's Request to Revise Preliminary Plan No. 1-97023 is in accordance with the Subdivision Regulations, the Zoning Ordinance and the Regional District Act. Based on the information contained in the record, the Planning Board further finds that: (1) the proposed lot is appropriate with regard to lot size, width, shape and orientation for the location of the subdivision and the contemplated use; (2) the proposed lot will abut a public road; (3) the depth and width of the proposed lot are adequate for the off-street service and parking needed for the proposed use; (4) the Revision meets the development standards of the RE 2/TDR Zone; and (5) the site is adequately served by public facilities under the standards imposed by the Fiscal Year 2002 Annual Growth Policy and the affordable housing provisions. The Planning Board also finds that the Revision is consistent with the recommendations of the Master Plan. In addition, the Planning Board adopts the recommendations of Staff and finds that the proposed conditions will ensure the appropriate use of the Subject Property and adequate access and road improvements, forest conservation measures, stormwater management and screening. Therefore, the Planning Board adopts Staff's recommended conditions.

Regarding the adequacy of public facilities and traffic conditions, the Planning Board acknowledges the community's concern about the appropriateness of using the ITE standards to determine trip generation rates. Nevertheless, the Board finds that it is appropriate to use the ITE standards to review the subject Revision because: (1) it has been standard agency practice, as required by the *Local Area Transportation Review Guidelines*, to use the ITE standards where no other standards have been established for a use; (2) no other standards have been established for age-restricted affordable rental housing and assisted living facilities in Montgomery County; and (3) the Applicant followed Staff's directions in determining which standards to use. The Planning Board further notes that the Montgomery County Department of Housing and Community Affairs has certified that the project qualifies for the *Fiscal Year 2002 Annual Growth Policy, Special Ceiling*

3 Again, while no traffic study is required in connection with this Revision, a traffic study was submitted for the special exception applications. The traffic study was reviewed by Transportation Planning Staff during the special exception application process for, among other things, adequacy of methodology which, after additional analysis in consultation with the Applicant, Staff found ultimately to be appropriate for this case.

**Allocation for Affordable Housing Facilities.** In addition, the Planning Board finds that the Applicant's willingness to enter into a traffic mitigation agreement with the Board, as set forth in Condition No. 1(H), will ensure the mitigation of all motor vehicle trips during the peak hours.<sup>4</sup> Moreover, the Planning Board finds that the low level of traffic that will be generated by the proposed uses will not exacerbate existing peak hour traffic problems. Therefore, the Planning Board accepts Staff's findings and recommendations and finds that the site is adequately served by public facilities, including roads, pursuant to the *Fiscal Year 2002 Annual Growth Policy*.

In addition, taking into consideration the recommendations of Staff and SHA, the Planning Board finds that the proposed Norbeck Road access location is safe, efficient, appropriate and in compliance with Section 59-E-2.62 of the Zoning Ordinance. The provision of a left-in turning lane and acceleration/deceleration lanes at the Norbeck Road entrance will provide safe and adequate space for vehicles to enter and exit the site without impeding through travel lanes. The Planning Board also finds that the restriction against left turns exiting the site directly onto Norbeck Road and the construction of a one-way driveway to Norbeck Boulevard will provide safe, efficient and appropriate egress for westbound vehicles. The Planning Board further finds that the construction of a one-way exit driveway connecting to a private road does not establish that construction of a full access driveway is possible in that location.

Regarding stormwater management, the Planning Board accepts MCDPS' determination that the Stormwater Management Concept meets MCDPS' standards and finds that the subject application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.

The Planning Board also finds that the amendment of the previously recorded forest conservation easement is necessary and appropriate and that the newly designated conservation easement area as well as the revised Forest Conservation Plan meet the standards and requirements of Chapter 22A of the Montgomery County Code.

Finally, taking into consideration the length of time that this project has been pending, the nature of the proposed plat modifications, and the existence of a valid recorded plat for the subject property, the Planning Board finds that, in this limited instance, it is appropriate to allow Staff to review the building permit application and release the building permit after submission of the revised plat, but prior to the actual date of recordation of the plat.

#### **CONCLUSION**

Based on the testimony, evidence and exhibits presented, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-97023A to be in accordance with the Subdivision Regulations of the Montgomery County Code and the provisions of the Maryland Code Annotated, Art. 28. Therefore, the Planning Board approves the revision to Preliminary Plan No. 1-97023 to permit 110 garden apartments and related facilities for the elderly and a 30-bed assisted living facility to be constructed on Parcel 1, pursuant to the FY 2002 Annual Growth Policy Limited Residential Development, Special Ceiling Allocation for Affordable Housing, subject to the

<sup>4</sup> Although not required by the Subdivision Regulations, the Applicant proffered to enter into a traffic mitigation agreement with the Planning Board and Montgomery County during the special exception review. The Planning Board accepts the Applicant's proffer and conditions the approval of the Revision on the Applicant entering into a traffic mitigation agreement with the Board and County.



following conditions:

- 1) As part of the Adequate Public Facilities approval, Applicant shall comply with all of the conditions set forth in Transportation Planning Staff Memorandum dated September 25, 2001 (Revised: September 28, 2001) including:
  - A. Limit the proposed development to no more than 110 age restricted elderly garden apartments for the elderly, one resident staff apartment and a 30-bed assisted living facility
  - B. Limit direct access to Norbeck Road (MD 28) to one left-in and right-in/right-out driveway
  - C. Provide a 14-foot one-way access drive to connect the project entrance to Norbeck Boulevard to provide access to the existing traffic signal at Norbeck Road and Norbeck Boulevard in order that left-turn exiting the project can be made at the traffic signal
  - D. Coordinate the construction of the access drive and the entrance with Engineering Access Permits Division of the Maryland State Highway Administration (SHA)
  - E. Dedicate 140 feet of right-of-way for Norbeck Road as shown on the preliminary plan
  - F. Provide a sidewalk connection from the interior of the project to Norbeck Road
  - G. Coordinate with MSHA CTP Project No. M08801, the Norbeck Road (MD28)/Spencerville Road (MD198) connector
  - H. Enter into a traffic mitigation agreement with the Planning Board (as a condition of the special exception and preliminary plan) to mitigate all motor vehicle trips to and from the site in the 7:00 to 9:00 am and 4:00 to 6:00 pm peak periods, Monday through Friday. This traffic mitigation agreement shall be completed before building permits are issued. It shall include a traffic mitigation plan that will:
    1. Require employee work shifts to begin and end so that employees do not travel during the peak periods;
    2. Provide applicant-supplied transportation services for residents such as a van or bus;
    3. Designate an on-site transportation coordinator to manage public transit and applicant-supplied transportation services for residents and employees;
    4. Make available a "meals on wheels" type program for residents;
    5. Manage routine commercial pick up and delivery to occur outside of the peak hours; and
    6. Pay an annual fee to the Planning Board to cover the cost of monitoring motor vehicle travel to and from the site in accordance with the traffic mitigation agreement.
- 2) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 3) All road rights-of-way shown on the approved preliminary plan shall be constructed by the applicant to the full width mandated by the Aspen Hill Master Plan and to the design standards imposed by all applicable road codes.
- 4) All road rights-of-way shown on the approved preliminary plan shall be dedicated by the

applicant to the full width mandated by the Aspen Hill Master Plan, unless otherwise designated on the preliminary plan.

- 5) Submit new record plat delineating the revised Category I conservation easement over the forest conservation areas.
- 6) Compliance with the conditions of approval of the MCDPS stormwater management approval.
- 7) Access and improvements as required and approved by MDCHA prior to release of access permits.
- 8) Applicant to submit a final landscape and lighting plan prior to re-recording of plat.
- 9) Prior to dedication of right-of-way, as shown on plan, submit verification of the issuance of a demolition permit for any existing structures within area of dedication.
- 10) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.
- 11) The Arisquater Public Facilities review for this preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 12) Other necessary easements.

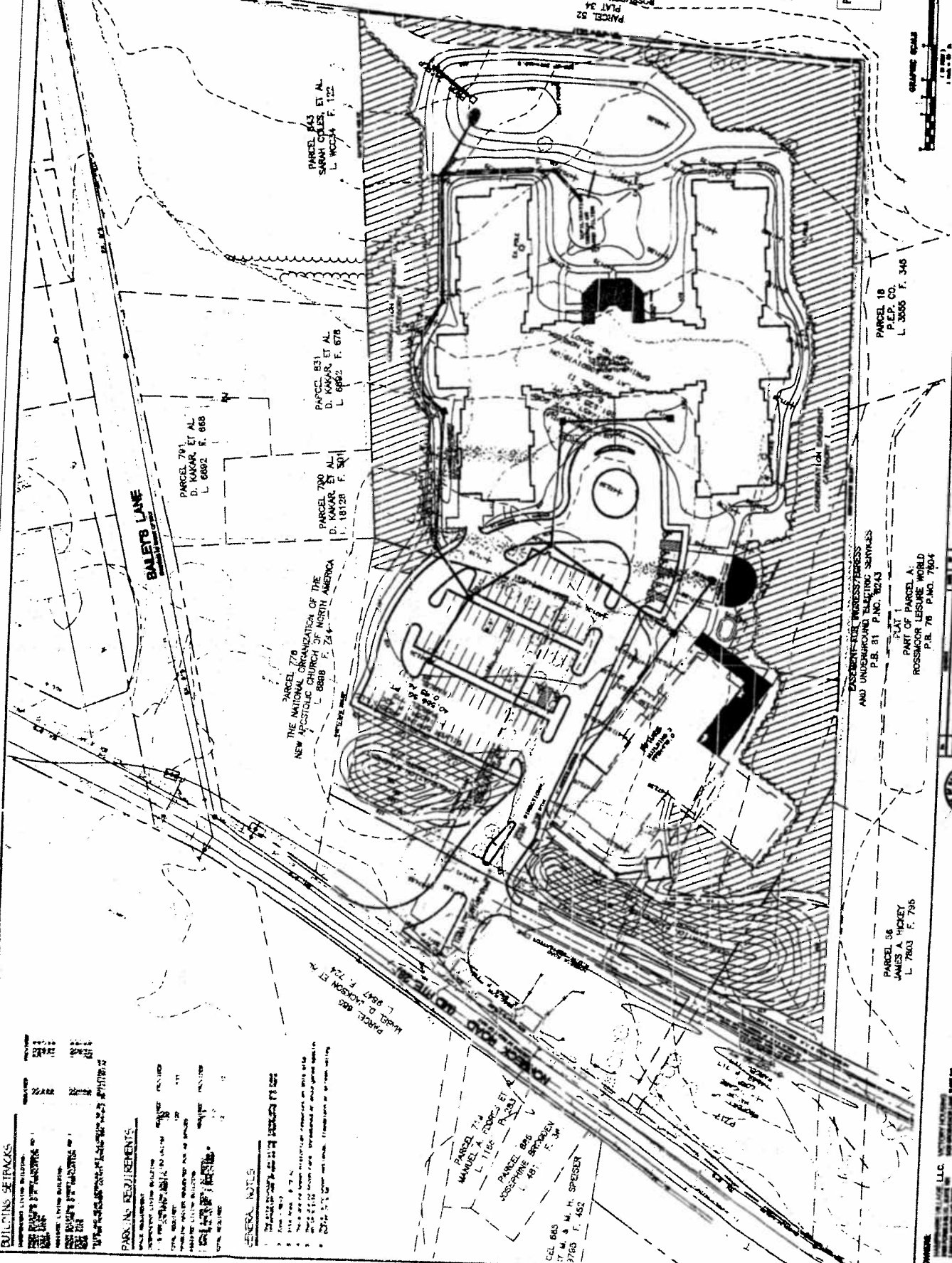
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g:\city\opinion\manorcare.pbo

# Attachment D



PRELIMINARY PLAN #1197702A  
 Best Available Copy  
 Certified Plans Not Available

SCALE  
 1" = 100'



PARCEL 843  
 SARAH COLES, ET AL.  
 L. WCC-34 F. 122

PARCEL 831  
 D. KAKAR, ET AL.  
 L. 6662 F. 676

PARCEL 791  
 D. KAKAR, ET AL.  
 L. 6662 F. 668

PARCEL 790  
 D. KAKAR, ET AL.  
 L. 18126 F. 501

PARCEL 776  
 THE NATIONAL ORGANIZATION OF THE  
 NEW EPISCOPAL CHURCH OF NORTH AMERICA  
 L. 8818 F. 244

PARCEL 18  
 P.E.P. CO.  
 L. 30556 F. 345

PARCEL 81  
 P.M.C. 7043

PARCEL A  
 ROSMORON LEISURE WORLD  
 P.B. 76 P.M.C. 7804

PARCEL 86  
 JAMES A. HICKEY  
 L. 7803 F. 785

PARCEL 714  
 MANUEL A. RODRIGUEZ ET AL.  
 L. 11166 P.M.C. 7043

PARCEL 826  
 ASSOCIATED BUILDERS  
 L. 481 F. 34

CEL 865  
 W. M. & M. H. SPEDER  
 3760 F. 452

GRAPHIC SCALE  
 1" = 100'

PRELIMINARY PLAN  
**HAMPSHIRE VILLAGE AT NORRBUCK**

**PH&A**  
 PLANNING, ARCHITECTURE & INTERIOR DESIGN



OWNER:  
 HAMPSHIRE VILLAGE LLC  
 10000 BAYVIEW BLVD.  
 SUITE 200  
 BAYVIEW, MD 21034

**BUILDING SERVICES**

NO.	DESCRIPTION	DATE
1	REVISIONS	
2	REVISIONS	
3	REVISIONS	
4	REVISIONS	
5	REVISIONS	
6	REVISIONS	
7	REVISIONS	
8	REVISIONS	
9	REVISIONS	
10	REVISIONS	
11	REVISIONS	
12	REVISIONS	
13	REVISIONS	
14	REVISIONS	
15	REVISIONS	
16	REVISIONS	
17	REVISIONS	
18	REVISIONS	
19	REVISIONS	
20	REVISIONS	

**PARKING REQUIREMENTS**

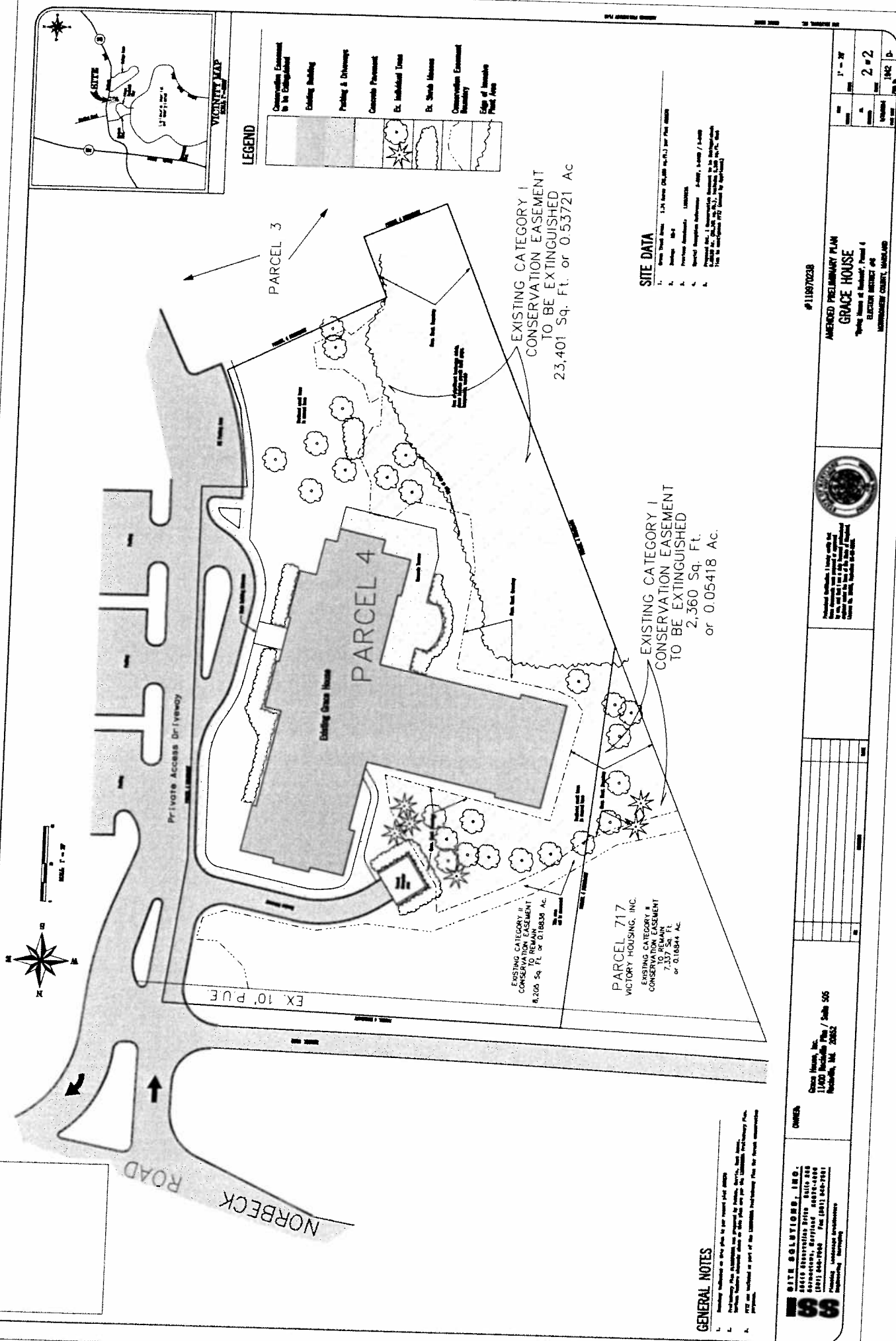
1. ALL PARKING SHALL BE PROVIDED IN ACCORDANCE WITH THE FOLLOWING:

- 1.1. ALL PARKING SHALL BE PROVIDED IN ACCORDANCE WITH THE FOLLOWING:
- 1.2. ALL PARKING SHALL BE PROVIDED IN ACCORDANCE WITH THE FOLLOWING:
- 1.3. ALL PARKING SHALL BE PROVIDED IN ACCORDANCE WITH THE FOLLOWING:
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- 1.9. ALL PARKING SHALL BE PROVIDED IN ACCORDANCE WITH THE FOLLOWING:
- 1.10. ALL PARKING SHALL BE PROVIDED IN ACCORDANCE WITH THE FOLLOWING:

**GENERAL NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE FOLLOWING:
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18. ALL WORK SHALL BE IN ACCORDANCE WITH THE FOLLOWING:
19. ALL WORK SHALL BE IN ACCORDANCE WITH THE FOLLOWING:
20. ALL WORK SHALL BE IN ACCORDANCE WITH THE FOLLOWING:

# Attachment E



**LEGEND**

[Symbol]	Conservation Easement to be Extinguished
[Symbol]	Existing Building
[Symbol]	Parking & Driveways
[Symbol]	Concrete Pavement
[Symbol]	Et. Individual Trees
[Symbol]	Et. Shrub Masses
[Symbol]	Conservation Easement Boundary
[Symbol]	Edge of Mowable Field Area

EXISTING CATEGORY I CONSERVATION EASEMENT TO BE EXTINGUISHED  
23,401 Sq. Ft. or 0.53721 Ac

EXISTING CATEGORY I CONSERVATION EASEMENT TO BE EXTINGUISHED  
2,360 Sq. Ft. or 0.05418 Ac.

**SITE DATA**

1. Area Under Review: 1.24 Acres (54,000 sq. ft.) per the owner
2. Address: 841
3. Previous Address: 1000000
4. Parcel Number: 1000000
5. Parcel Name: 1000000
6. Parcel Size: 1.24 Acres (54,000 sq. ft.)
7. Parcel Use: 1000000
8. Parcel Zoning: 1000000
9. Parcel Status: 1000000
10. Parcel Owner: 1000000

**GENERAL NOTES**

1. All easements shown on this plan are per recorded plat.
2. All easements shown on this plan are per recorded plat.
3. All easements shown on this plan are per recorded plat.

**SITE SOLUTIONS, INC.**  
2000 Pennsylvania Drive, Suite 200  
Baltimore, Maryland 21286-4800  
(410) 542-7000 Fax (410) 542-7001  
www.site-solutions.com

**OWNER**  
Grace House, Inc.  
1100 Rockville Pike / Suite 505  
Rockville, MD 20852

#11970238

AMENDED PRELIMINARY PLAN  
**GRACE HOUSE**  
"Grace House & Parcel", Parcel 4  
SUBJECT MATTER OF  
MONTGOMERY COUNTY, MARYLAND



Professional Seal of the State of Maryland  
The State of Maryland  
Department of the General Land Office  
Professional Seal of the State of Maryland

DATE	11-27
SCALE	2" = 2'
SHEET NO.	1842
TOTAL SHEETS	1842

