

City of Rockville

MEMORANDUM

June 4, 2010

TO: Board of Appeals

FROM: Cas Chasten, Planner III
Staff Liaison

SUBJECT: Special Exception SPX2010-00381 - Assisted Living Facility
9200 Darnestown Road, Rockville, Maryland 20850

At its May 8, 2010 meeting, the Board of Appeals held a public hearing on the referenced special exception request. Board members Peter Mork and Steven Wilcox heard the matter; the Board's Chairman Alan Sternstein had previously recused himself from sitting in consideration of the matter and Board member Scott Maravilla was absent.

After considering all of evidence and testimony provided, the Board of Appeals voted to continue the public hearing of this matter in order to allow the applicant ample opportunity to present additional witnesses who were unable to attend the subject public hearing. Also, the continuation of the public hearing allows for the Board to receive the Historic District Commission's (HDC) evaluation and determination of the subject site for historic significance. It was at the Board of Appeals April 10, 2010 meeting that the Board agreed to continue the public hearing of the special exception request, in response to a request to delay the public hearing as submitted by persons opposed to the land use request. Also, based on concerns raised by a member of the Board regarding the potential historic significance of the site, the Board voted to continue the public hearing of the request to its May 8, 2010 meeting and thus instruct staff to ask the HDC to conduct an evaluation of the subject property located at 9200 Darnestown Road. Since the HDC was not scheduled to meet until May 20, 2010, at which time this matter of historic evaluation of the site could be considered, the Board noted that the HDC review should be provided to the Board at its June 12, 2010 meeting.

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Thus, in concluding its May 8, 2010 meeting on the special request, the Board of Appeals voted to continue its public hearing on the request, to allow for additional evidence and testimony to be presented.

PUBLIC NOTIFICATION OF BOARD OF APPEALS MEETING:

Staff would like to note that applicant did not mail notification letters to the community informing interested parties of the Board of Appeals scheduled June 12, 2010 meeting on the continued public hearing of this matter. As such the Board has the option of opening the meeting to allow persons in attendance at the June 12, 2010 meeting to speak, or the Board may formally vote to keep the record open and continue the public hearing on this matter to its July 10, 2010 Meeting:

PUBLIC HEARING SUMMARY:

At the start of the Board of Appeals public hearing of the subject special exception request, the applicant's attorney, Mr. Timothy Dugan informed the Board that the applicant had reached a formal agreement with 10 of the 11 abutting homeowners, so as to address many of the concerns the abutting homeowners had raised with regard to the planned site development. Mr. Rusty Richards who gave his address as 2288 Glenmore Terrace, a neighboring property owner, spoke on behalf of the abutting homeowners, confirming that they had worked closely with the applicant to reach an agreement that addresses many of the concerns they had raised with regard to the project.

At the conclusion of Mr. Richards' remarks, the applicant's counsel, provided the Board with a general overview of the land use request, affirming that the proposed building had been redesigned to comply with the 35 foot height limit of the R-90 Zone. Mr. Dugan did point out to the two (2) Board members present, that they wanted to proceed with the public hearing of the request with the understanding that a three (3) member Board of Appeals would be required to approve the applicant's waiver request from the school impact analysis of the Adequate Public Facilities Standards. His point was duly noted by Acting Chair Peter Mork at which point Mr. Dugan proceeded with his presentation of the application request.

The applicant's attorney submitted for the record a list of exhibits that was used in association with the evidence and testimony provided during the course of the applicant's presentation of the request. Respective members of the project development team were asked to come forward by Mr. Dugan, discuss their professional role in association with the special exception request, as well as their professional assessment of the project's compliance with applicable City Zoning requirements and development regulations. Members of the applicant's development team included the landscape architect, project architect, and traffic consultant.

During and throughout the applicant's presentation, respective Board members posed a number of questions to the witnesses, which included but was not limited to the following: a) the residential density created by the planned facility compared to the density were the site developed for use as single family detached residential subdivision, b) the impact of the proposed site use on the character of the surrounding single family detached neighborhood, c) scale of the proposed site development and compatibility with the surrounding single family detached dwellings, d) site lighting and potential spillover onto neighboring land uses, e) the traffic consultant's use of trip generation rates derived from the Institute of Traffic Engineers (ITE) manual in developing the project's transportation analysis; and f) the cost of doing a formal traffic report and the basis for not doing such a study for the proposed site use.

At the conclusion of the applicant's presentation and substantial discussion regarding different aspects of the proposed land use request, the Board's Chairman asked if there were persons in attendance who wanted to speak either in support and/or opposition to the request. Of those in attendance only two persons came forward when requested, both speaking in support of the request, but also raising concerns about the process of keeping residents informed with regard to this planned site development project.

FINDINGS OF THE HISTORIC DISTRICT COMMISSION:

At its meeting on May 20, 2010, the Historic District Commission (HDC) reviewed an Evaluation of Significance for the property located at 9200 Darnestown Road on May 20, 2010. City staff reviewed the historic evaluation report provided in 2007 by a previous applicant, and conducted additional research on building materials, and the

Board of Appeals

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development history of the property. Staff recommended that the property was not eligible for historic designation (See Attachment A). The HDC agreed that the property lacked historic significance as it failed to meet any of the City's criteria for historic designation.

REVISED APPLICATION MATERIALS & STAFF EVALUATION:

The applicant has also provided a copy of the Executed Private Settlement agreement reached with 10 of the 11 abutting homeowners (See Attachment B). As previously noted the applicant over the course of the past several weeks has worked with neighboring property owners attempting to address concerns that many had raised with regard to the proposed site development. The agreement is attached for the Board of Appeals review and consideration.

In follow-up to the Board of Appeals May 8, 2010 public hearing on SPX2010-00381, on May 14, 2010 the applicant submitted amended and supplemental site development and building plans to reflect the agreement, which included but was not limited to the following: a) special exception site plan; b) preliminary forest conservation plan; c) building cross section; and d) rendered building elevations and floor plans (See Exhibits 1 thru 10).

The site plan and preliminary forest conservation plans were amended to illustrate additional fencing and added plantings are to be installed in the southern and western portions of the site, to serve as additional buffers and screening of the proposed site development from the abutting homeowners properties. Both the site plans and building elevations denote that the western and southern wings of the proposed building will be lowered from three stories to two stories, for approximately 15 feet in length.

With the exception of the concern which staff has raised about the extent to which the western and southern wings of the building might be further lowered to two stories in height, the supplemental site plans are found to comply with applicable requirements of the Zoning Ordinance, i.e., building height and setback requirements, lot coverage, landscaping, on-site parking requirements, etc. The rendered building elevations

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provide clarity of the buildings mass and architectural features, as well as indicate types of building materials that would be used in construction of the proposed building.

List of Attachments

Attachment A- HDC Evaluation of Significance

Attachment B – Executed Private Settlement Agreement

Exhibit “1” – Proposed Site Plan

Exhibit “2”- Conceptual Landscape Plan

Exhibit “3” – Preliminary Forest Conservation Plan

Exhibit “4” – Building Section

Exhibits “5 thru 9” – Building Elevations

Exhibit “10” – Proposed Building Floor Plans

/cdc

cc: Planning Commission
Jim Wasilak, Chief of Planning
Bobby Ray, Principal Planner



ATTACHMENT "A"

City of Rockville

MEMORANDUM

June 1, 2010

TO: Planning Commission

FROM: Historic District Commission

SUBJECT: HDC2010-00506: 9200 Darnestown Road
Remanded by Board of Appeals

The Historic District Commission (HDC) reviewed an Evaluation of Significance for the property at 9200 Darnestown Road on May 20, 2010. This was undertaken at the request of the Board of Appeals in the course of their review of SPX2010-00381. City staff reviewed the information provided in 2007, and conducted additional research on building materials, and the development history of the property. Staff recommended that the property was not eligible for historic designation.

The HDC agreed that the property lacked historic significance as it failed to meet any of the City's criteria for historic designation.

Attachments:

Attachment A: Staff report
Attachment B: Letter to owner

cc: Historic District Commission
Jim Wasilak, Chief of Planning
Susan Swift, Director CPDS
Cas Chasten, Planner III

**CITY OF ROCKVILLE HISTORIC DISTRICT COMMISSION
STAFF REPORT
For
May 20 2010
MEETING NO. 8-10**

APPLICATION: HDC2010-00506
ADDRESS: 9200 Darnestown Road
ACCEPTED: 4/12/2010
OWNER: Thomas M. Veirs Jr. &
Harriette S. Veirs
REQUEST: Historic Significance
Evaluation
STAFF: Rosemary Faya Prola



PROJECT SUMMARY:

The Board of Appeals remanded this property to the HDC to re-evaluate its prior Evaluation of Significance.

STAFF RECOMMENDATION:

Staff recommends HDC finds that the property does not possess historical, cultural, or architectural/design significance and, therefore, is not eligible for historic designation. While the house is a fine example of the Colonial Revival-style of residential architecture from the late 1940s, it is not unique in the city of Rockville. While the property is a distinct visual feature of the neighborhood, it is typical of the large lot development that took place outside the corporate limits of Rockville in the mid-twentieth century. The original setting has been diminished by the development of adjacent subdivisions, changes in road configuration, and the demolition of dwellings to the east.

[DRAFT MOTION]

Finding that the property at 9200 Darnestown Road does not possess significance, I recommend that HDC2010-00506, Evaluation of Historic Significance, does not move forward for historic designation.

BACKGROUND:

This property is remanded to the HDC for a formal review of the Evaluation of Significance at the request of the Board of Appeals. The board took this action at an April 10, 2010 public hearing that considered a zoning exception for the "Brightview Assisted Living" project. The

board's action reflects recognition of changes in the review process instituted by the City of Rockville in the past decade.

In 1999, the Mayor and Council adopted the *Environmental Guidelines*, which included the identification of Cultural, Historical and Archaeological Resources as part of the Natural Resources Inventory (NRI). From 1999 – 2007, Historic Preservation staff reviewed NRI submittals to identify properties of potential historic significance. Staff recommendations on historic significance were then forwarded to the HDC for its review and concurrence, with the understanding that the HDC could request a formal presentation at an upcoming public meeting. If Historic Preservation staff did not recommend the property possessed historic significance and the HDC did not request a formal presentation, staff would complete the historic review by signing off on the NRI, thus permitting a future demolition of the property.

In 2007, the process was amended to require that, if the applicant proposed to demolish a building that had been identified in the NRI as having historic potential, the applicant would provide historic research, analysis, and a recommendation to historic preservation staff. When, in 2007, the applicant for a proposed assisted living facility at this site submitted the report of a historian analyzing the historic significance of the property, Historic Preservation staff (Jeff Winstel) followed the standard procedure: he reviewed the report, and provided a staff recommendation that was then forwarded to the HDC for their review, giving the HDC an opportunity to ask for a public hearing. After HDC review and concurrence with the staff recommendation, staff sent an email to the owner's attorney on December 19, 2007, stating that the "HDC had determined that the house and outbuilding at 9200 Darnestown Road do not meet the city's criteria for historic district designation. ... A demolition request for the property will be signed off on if submitted." (See email communication, Circle 17).

Under the current Zoning Ordinance adopted in 2009, the HDC reviews staff evaluations and recommendations of all proposed demolitions in the city. These will be initiated through an Evaluation of Significance request by the owner, or with the submittal of a demolition permit application.

The present staff report records current conditions and supplements information contained in the historian's 2007 report.



Previous Requests:

HBS2007-00786 (12/07) HDC Evaluation of Significance

Property Area: 3.6 acres
Structure Area: 2,714 sq. ft. (dwelling)
Zone: R90

City of Rockville Permits Required:

Demolition Permit
Special Exception granted by Board of Appeals
Site Plan Approval by Planning Commission
Building and associated permits

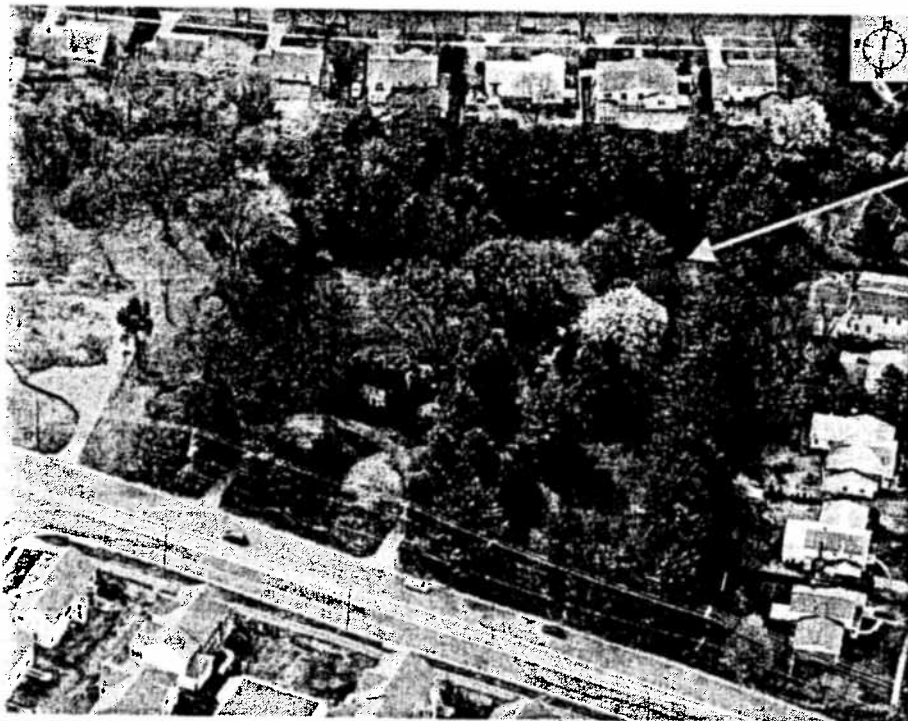
Deed Research

The 2007 report documents the chain of title for the subject property from 1852 to 1948. The following table illustrates the ownership of the property from 1948, when it was transferred to the owner one year after the construction date of the dwelling, to the present.

Liber/Folio	Date	Grantor	Grantee	Acres
22938/601-604	30 Jan 2003	Thomas M. Veirs Jr. (Harriette S.)	Thomas M. Veirs Jr. (Harriette S.), trustees	2.0 & 1.6
7397/230	14 Nov 1986	Thomas M. Veirs Jr.	Thomas M. Veirs Jr. & Harriette S. Veirs	2.0
7397/233	14 Nov 1986	Thomas M. Veirs Jr	Thomas M. Veirs Jr. & Harriette S. Veirs	1.6
3849/453	9 April 1969	Thomas M. Veirs	Thomas M. Veirs Jr	1.6
1177/145	16 August 1948	T. Magruder Veirs (Betty G.)	Thomas M. Veirs Jr.	2.0

Property Description

The subject property is on the south side of Darnestown Road, across from the Fallsgrove development. The house fronts Darnestown Road on a two-acre lot, and is partially screened from the busy street by a stand of trees.



9200
Darnestown
Road

Aerial view
Looking South
(Pictometry
image, 2008)

The property is lushly landscaped and the rear (south) yard features mature boxwood, ornamental trees and shrubs, and beds of perennials. A workshop/garage stands southeast of the house, and there is a small shed located in the southwest corner of the property. The parcel on which the buildings stand as well as an unimproved parcel west of the house are bordered with two rows of mature white pines. The dwelling and grounds are in good condition. The workshop and shed are in fair condition.



9200 Darnestown Road
North elevation (All photographs: April 2010)

The two-story, three-bay house displays characteristic features of the Colonial Revival style. It is clad in brick and has a side-gable roof covered with asbestos shingles. There are exterior end brick chimneys on the east and west elevations. On the east elevation there is a one-story screened porch. On the west elevation there is a one-and-one-half story addition that contains living space and an attached garage. The façade of the main block is symmetrical and is highlighted by a paneled wood door flanked by sidelights and topped by a fanlight. There is a "hyphen" linking the main block with the living space/garage addition. Most of the windows are multi-paned, double-hung wood sashes covered with vinyl storm windows. Design elements include arched window lintels on the first floor, louvered wood shutters, dentil molding along the cornice, a bay window on the south elevation, and gable dormers on the garage.

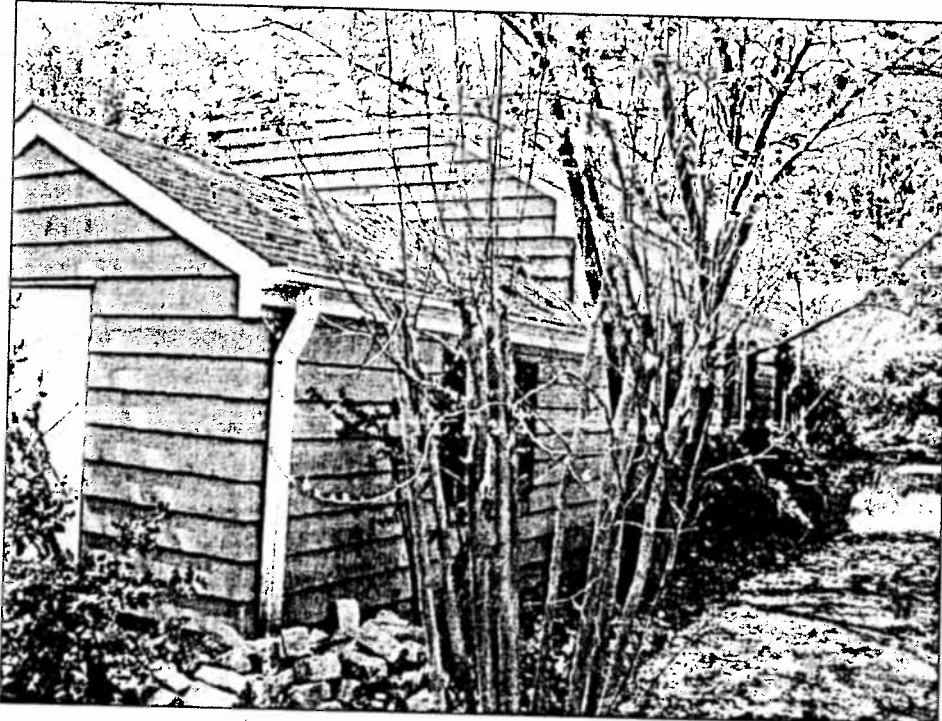
As an example of late 1940s Colonial Revival architecture, the Veirs house is not unique, although it is noteworthy for the cohesiveness of design and the beauty of its setting.



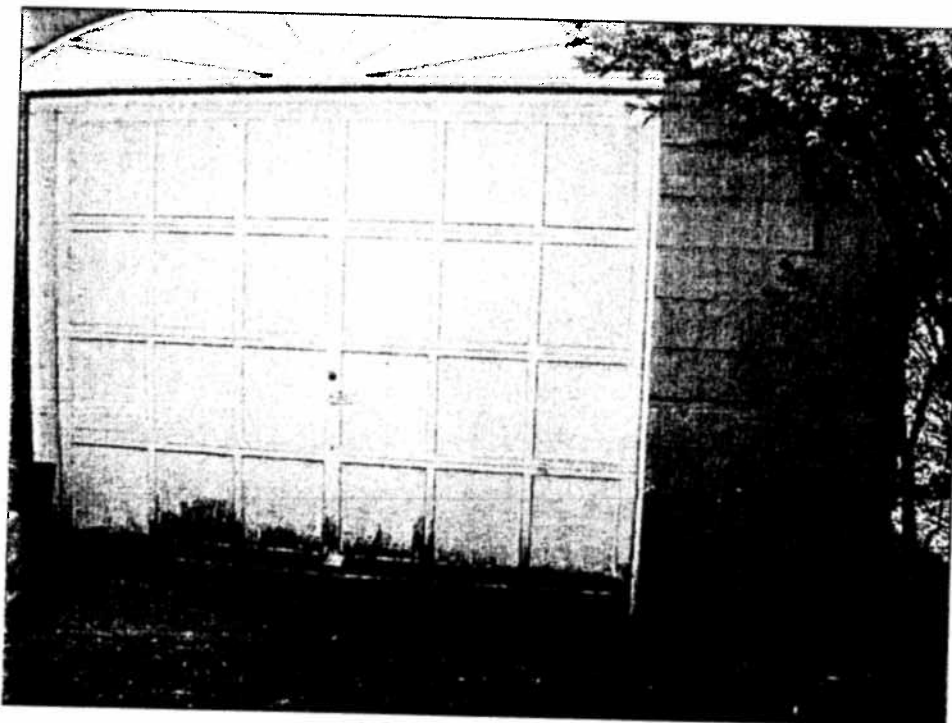
9200 Darnestown Road
View of south (rear) elevation from southeast



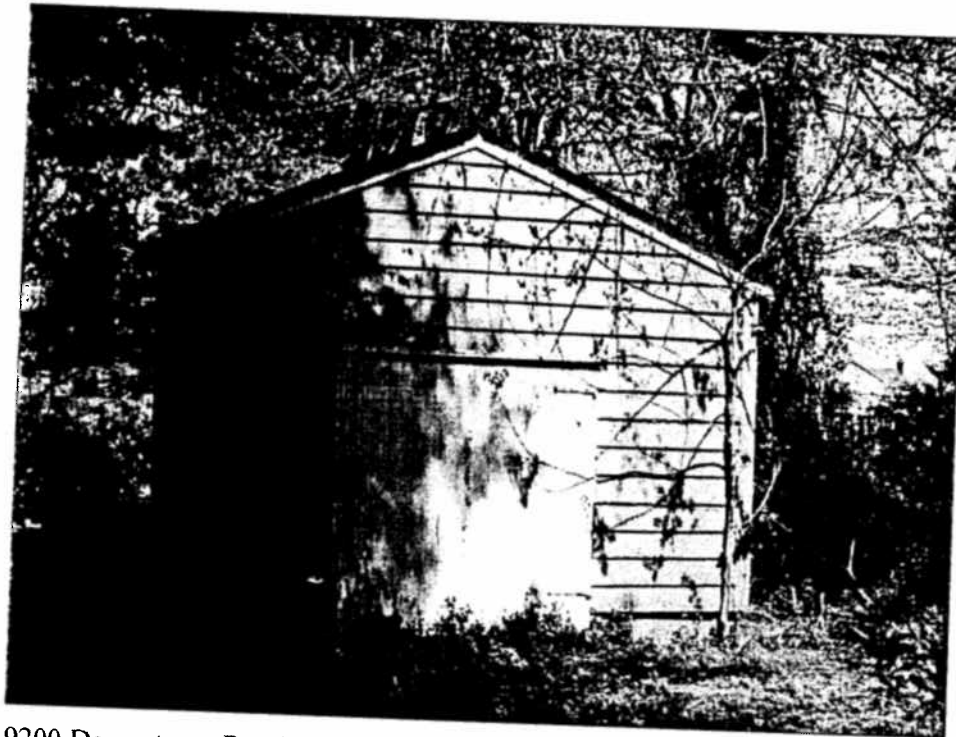
9200 Darnestown Road
South elevation



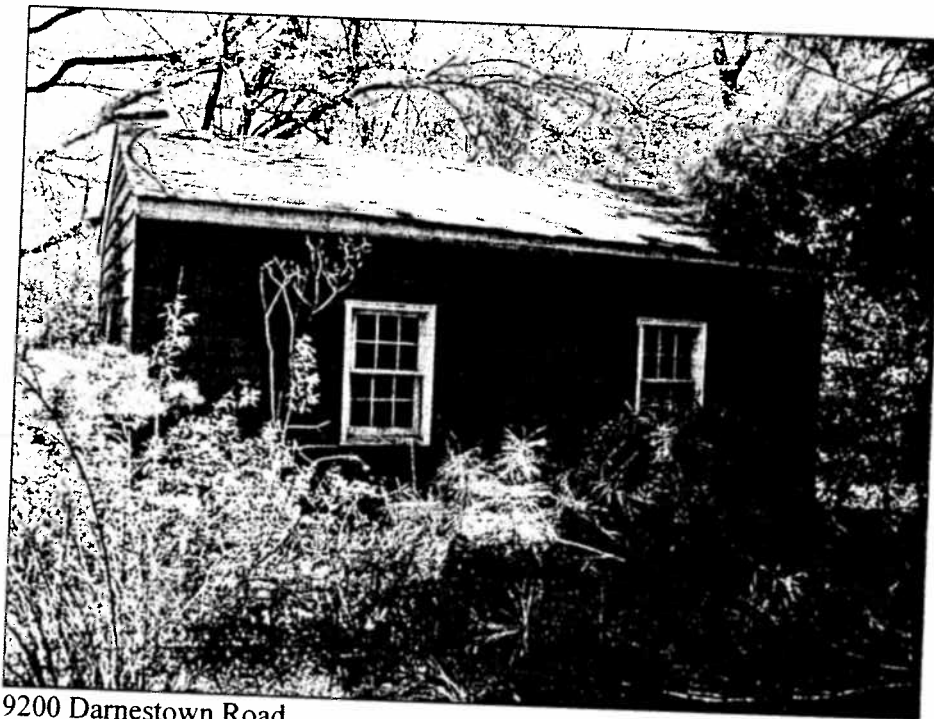
9200 Darnestown Road
View of workshop from northeast



9200 Darnestown Road
Northwest corner of workshop showing concrete block that imitates lap siding



9200 Darnestown Road
Shed, south elevation



9200 Darnestown Road
Shed, west elevation

Historic Significance

The dwelling was designed and built for Thomas M. Veirs Jr. and his wife, Harriet S. Veirs, in 1947. The Veirs still reside on the property. The land is a portion of two parcels that had been conveyed to Mr. Veirs' father, Thomas Magruder Veirs Sr., in 1928 and 1937. The parcel on which the dwelling and other buildings stand was conveyed from the senior Veirs and his wife, Bettie, to their son in 1948. The smaller parcel to the west was conveyed from father to son in 1969. As a young man, Thomas M. Veirs Jr. worked on his father's dairy farm.¹ In his early 20s, he went into business for himself as an excavating and grading contractor, and kept his trucks and equipment on his father's farm.²

The house was designed and constructed for the couple by the firm of Warthen and Ward, according to Mr. Veirs. Warthen & Ward was a building firm based in Kensington and Gaithersburg.³ As stated in the 2007 historian's report, the Colonial Revival style of the Veirs' home enjoyed widespread popularity during the post-World War period. The house's west addition was constructed around 1962, according to Mr. Veirs, and the workshop behind the house was constructed in 1967.⁴ The workshop architect was Jim Hilleary, from Rockville.⁵ While the addition is a frame building clad in brick like the house, the workshop is constructed with a special type of concrete block that gives the appearance of lap siding.⁶

The workshop architect, Jim (James F.) Hilleary is listed in the 1959 Rockville city directory as an architect working for John F. Stann. By 1961, Hilleary is partner in the firm of Stann & Hilleary. The 1965 directory lists Hilleary as president of his own firm, James F. Hilleary & Associates, with offices at 1749 Rockville Pike. Hilleary appears to have moved his architectural practice a few years later: he is not listed in the 1969 Rockville city directory.⁷ Hilleary was a member of the Potomac Valley Chapter of the American Institute of Architects, and received at least three awards for his designs.⁸ In addition to being an architect, Hilleary is also an accomplished painter with his work exhibited at local galleries beginning in 1966.⁹

¹ Telephone interview with Thomas M. Veirs Jr., 14 April 2010.

² Ibid.

³ *The Washington Post and Times Herald*, 13 November 1956, p. B9. In addition to residences, the firm also constructed school buildings (*The Washington Post*, 11 February 1948, p. 2). The 2007 historian's report states that Harold Ward built the house. Mr. Ward was a partner and vice president in the firm of Warthen & Ward, and Willard Warthen Sr. was president. While the report also states that Ward's son served as the architect, this appears to be incorrect since Ward's obituary does not include list any children among his survivors (*The Washington Post, Times Herald*, 23 March 1967, p.D8).

⁴ Veirs telephone interview, 14 April 2010.

⁵ Ibid. The 2007 report stated that the architect was Jim Hinkley.

⁶ The patent for the concrete block used in the workshop construction was issued May 15, 1955 to Carl K. Schels (No. 2,708,358). [<http://www.freepatentsonline.com/2708358.html>]

⁷ R.L. Polk & Co. Rockville Maryland city directories for 1958, 1959, 1961, 1965, 1969. Richmond, VA: R.L. Polk & Co. [Montgomery County Historical Society Jane C. Sween Research Library]

⁸ *The Washington Post*, 15 December 1966, p.C15; 3 June 1967, p. C8; 18 September 1976, p. E1. Hilleary was also editor of the newsletter of the Potomac Valley Architect newsletter (*The Washington Post and Times Herald*, 25 October 1964, p. G10).

⁹ A list of Hilleary's group shows and solo exhibits appears on the Web site: <http://www.revampworks.com/index.htm>

City of Rockville Historic Designation Criteria

Standing structures and sites, including archaeological sites must be determined to be significant in one or more of the following criteria to be found eligible for designation.

I. Historical and cultural significance

A. Event

No. The dwelling at 9200 Darnestown Road is not the site of a significant historic event.

B. Person

No. While the land is associated with a number of prominent families in Rockville, as noted in the historian's report, their ownership predates construction of the dwelling.

C. Pattern of Events

No. While the house was constructed in 1947, it is an example of a residence constructed for upper middle class owners in the first half of the twentieth century and is not associated with the post-World War II housing boom.

D. Part of the development, heritage or cultural characteristics of the city, county, state, or nation

No. The dwelling does not have interest and value as part of the development and heritage of Rockville.

II. Architectural and design significance

A. Distinctive characteristics of its type, period, or method of construction

No. While the house is a good example of a Colonial Revival-style residence constructed during the post-war period, it is not a unique example of the type in the city. The workshop building has distinctive characteristics of specialized concrete block construction; however, it was a common method of construction during the period.

B. Architect

No. The dwelling does not appear to be the work of a master architect.

C. Artistic Value

No, the dwelling does not possess high artistic value.

D. Comprises a distinguishable and significant district

No. As a single building this criterion does not apply.

E. Singular physical characteristics or landscape

No. While the property is a distinct visual feature of the neighborhood, it is typical of the large lot development that took place outside the corporate limits of Rockville in the mid-twentieth century. Its distinctiveness is due, in part, to the contrasting subdivision development adjacent and confronting the property.

III. Structural and Site Integrity

Since the building is not determined significant in any of the above criteria, the issue of integrity is not pertinent.

IV. Level of Significance

The building is not determined to have significance.



City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

Community Planning and
Development Services
240-314-8200
TTY 240-314-8137
FAX 240-314-8210

Historic Preservation Office
240-314-8230

Inspection Services Division
240-314-8240

Long Range Planning
Division
240-314-8200

Planning Division
240-314-8220

Revitalization/Housing Division
240-314-8200

May 21, 2010

Mr. And Mrs. Thomas M. Veirs, Jr.
9200 Darnestown road
Rockville, MD 20850

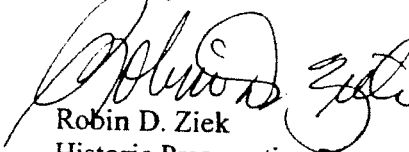
RE: HDC2010-00506 (9200 Darnestown Road)

Dear Mr. And Mrs. Veirs:

Your property at 9200 Darnestown Road was evaluated for historic significance for the second time by the Historic District Commission (HDC) at their May 20, 2010 meeting. This evaluation was given at the request of the Board of Appeals on April 10, 2010, reflecting the fact that the HDC formerly reviewed the historic significance of this property under a process that has been amended with Section 25.14.d.1 (c) of the Zoning Ordinance. The first HDC review was ruled complete by staff on December 19, 2007.

After review of the architecture, history, and ownership history of the property, the HDC passed a motion to not recommend this as eligible for designation as a single site historic district in Rockville. At this time, the City's historic evaluation is complete, and you may proceed with your plans for the proposed demolition. If you have any questions, please do not hesitate to call this office at 240-314-8200.

Sincerely,


Robin D. Ziek
Historic Preservation Planner

MAYOR

Phyllis Marcuccio

COUNCIL

John B. Britton

Piotr Gajewski

Bridget Donnell Newton

Mark Pierzchala

CITY MANAGER

Scott Ullery

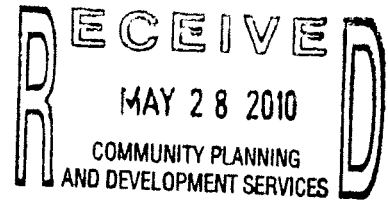
CITY CLERK

Clare F. Funkhouser

CITY ATTORNEY

Debra Yerg Daniel


cc: David Wachen, c/o Shulman, Rogers, Gandal, Pordy & Ecker, P.A.
12505 Park Potomac Avenue, 6th floor, Potomac, MD 20854
Historic District Commission
Susan Swift, CPDS Director
Jim Wasilak, Chief of Planning



MEMORANDUM

Hand Delivered

ATTACHMENT "B"

TO: Cas Chasten
FROM: Timothy Dugan 
Nancy Regelin
DATE: May 27, 2010
RE: Brightview of Rockville
SPX 2010-00381
Submission of the Executed Private Settlement
Between Shelter and the Glenora Hills Neighbors

As promised, we are delivering with this cover memorandum six (6) copies of the executed private "Settlement Agreement" between the Applicant, Shelter Development, LLC, and 10 of the 11 adjoining property owners in the Glenora Hills neighborhood. Let us explain why only the draft Declaration is included with the Settlement Agreement. Full size plans of the referenced Exhibits 1-17 are the same plans used for the original Special Exception filed with the City and used for the May 8, 2010 Board of Appeal hearing. The attached Exhibit 18 is the draft Declaration which is intended to be recorded at the commencement of construction, provided all permits are approved and Shelter moves forward with the project. Exhibits 19-21 are the Special Exception plans revised pursuant to the terms and conditions of the Settlement Agreement. They were submitted to the Rockville Staff on May 14, 2010. Since May 14, 2010, the Rockville Staff has had all of the revised plans. Exhibit 22 pertains to the persons who wish to have fences installed on their properties. It will be completed at a later date after the expected BOA approval of the Special Exception, at which time, it will be determined which of the adjacent property owners want fences constructed on their properties. It does not appear to be germane to your analysis. Thus, the Settlement Agreement, the draft Declaration, and all of the available referenced plans are with Rockville staff.

We note that the Settlement Agreement itself will not be incorporated *in toto* into the Special Exception conditions of approval. Rather, only certain provisions will be incorporated. The provisions that will not be included fall within about three general categories: (1) a provision may be beyond the jurisdiction of the Board of Appeals, such as Shelter's commitment to erect fencing on property other than the subject property; (2) a provision/condition is already included in the Board of Appeals conditions of approval, but the private provision empowers the neighbors to enforce, independently, the condition, even if the Board of Appeals were to decide to change or eliminate the

condition later, such as certain landscaping; or (3) some provisions serve as guidance for the Liaison Committee to resolve issues and are not appropriate conditions of approval. Certainly, the establishment of the Liaison Committee itself would be a proper condition.

We are drafting the conditions of approval that arise from the Settlement Agreement. We will be discussing them with the neighbors. We expect to submit them to you during the week of June 7th

By way of emphasis, even though we noted the point above, the May 14, 2010 revised plans will *not* be incorporated into the Special Exception conditions of approval, because further modifications might be required before they become the definitive, binding, approved, Special Exception plans. We expect to receive any comments from Rockville Staff as soon as possible. In final form, the conditions of approval will reference the Special Exception plans approved by the BOA. They will represent the Special Exception approval, but of course, will be subject to further amendments, if any, as required and approved by the Planning Commission, and any subsequent approved amendments made during the course of final engineering and permitting. Indeed, the Settlement Agreement acknowledges that there will be modifications to the Settlement Agreement exhibits as they continue through the Rockville Staff review, the BOA and Planning Commission approvals, and final engineering and permitting. The final approved plans will be incorporated into the Declaration, pursuant to the Settlement Agreement. They are expected to vary from the ones included in the Settlement Agreement.

Please call with your comments, questions and instructions. Thank you.

Enclosure

cc:

Mr. Andrew Teeters
Mr. David Carliner
Mr. Brian Engle
Mr. David Weber
Mr. Kevin Foster
Mr. Timothy Hoffman

Mr. Lee Driskill
Ms. Cynthia Shonaiya
Mr. Edward Papazian
Mr. Joseph Cronyn
Larry Gandal, Esq.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made this 7th day of May, 2010 by and between: (1) Shelter Development, LLC, a Maryland limited liability company ("Shelter") and its successors and assigns; and (2) the Glenora Hills residents executing this Agreement and each of their respective successors and assigns (collectively the "Resident Signatories").

Recitals

1. Shelter is the applicant seeking approval of a special exception from the City of Rockville for its assisted living community to be located at 9200 Darnestown Road, Rockville, Maryland, Parcel 728 and Parcel 703, whose legal description is described in Liber 7397 folio 230 and Liber 7397 folio 233, as recorded in the Montgomery County, Maryland Land Records (the "Brightview Property"). Shelter is the contract purchaser of the Brightview Property.
2. The project is planned to consist of a 90 unit assisted living facility, which type of land use is currently classified under the Rockville Zoning Ordinance as "Housing for Seniors and Persons with Disabilities." Such proposed use is classified as requiring a Special Exception within the R-90 zoning district. The use is subject to the findings required for special exceptions under Section 25.15.01.a.2 and the additional requirements of Section 25.15.02.j of the Rockville Zoning Ordinance, as amended. The pending special exception application is identified as Special Exception No.: SPX2010-00381.
3. The project is also under consideration by the Historic District Commission to determine whether the existing land, improvements and setting are recommended to be eligible for historic designation due to any historic, archaeological or architectural significance, under Section 25.04.04 of the Rockville Zoning Ordinance, as amended. The pending historic district consideration is identified as HDC 2010-00506.
4. The Resident Signatories identified concerns about such project and would like to resolve such concerns, rather than oppose the special exception application, through project modifications and other means as set forth in this Agreement.

5. Shelter is willing to undertake to resolve such concerns pursuant to the terms and conditions of this Agreement to facilitate governmental approvals of the special exception.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. RECITALS

- 1.1 The above Recitals are incorporated into this Agreement by reference.

2. DEFINITIONS

- 2.1 "Special Exception Plans" means the project application described by written description and by plans, all of which are attached as Exhibits 1-17, which are incorporated by reference.
- 2.2 "Southeast Corner Section" refers to the portion of ground in the southeast corner of the property not included within the proposed Forest Conservation Easement. The "Southeast Corner Section" is a rectangular section of ground which extends in an east-west direction from the property line on the east to the eastern-most edge of the Forest Conservation Easement, and which extends in a south-north direction from the property line on the south to a line demarcated by the northern edge of the portion of the Forest Conservation Easement which runs along the southern border of the property.
- 2.3 "Northwest Corner Section" refers to the portion of ground in the northwest corner of the property not included within the proposed Forest Conservation Easement. The "Northwest Corner Section" is a section of ground which extends in a north-south direction from the property line on the north to the northern-most edge of the Forest Conservation Easement, and which extends in a west-east direction from the property line on the west to a line demarcated by the eastern edge of the portion of the Forest Conservation Easement which runs along the western border of the property.

3. MODIFICATIONS TO THE SPECIAL EXCEPTION PLANS

The parties agree to modify the Special Exception Plans to conform where necessary to the following provisions for consideration and approval by the Board of Appeals:

3.1 Development Standards

3.1.1 The building shall not exceed two stories at the south and west ends, 22 feet in height, measured to the top of the flat roof, and not exceed three stories, 35 feet, to the mid-point of the gable roof, and no more than forty feet to the top of the gable roof, all as shown on Exhibit 19. Height is measured in accordance with the Rockville City Code existing as of the date of this Agreement from the average elevation of the finished grade along the front of the building and excludes the cupola, decorative parapets, and other appurtenances exempt under the Rockville City Code. The two story sections of the building on the southern and western ends shall extend a minimum of 16 feet from the end building facade. The Resident Signatories to this agreement will not require Shelter to extend the two story building depth beyond 16 feet from the end building façade nor make any request or take any action to cause the City to do so.

3.1.2 The building shall be setback no less than 97 feet to the rear property line and no less than 110 feet to the west property line shown on the site plan (Exhibit 2).

3.1.3 Building facades shall be constructed substantially similar to the attached architectural elevations, specifically window types and design, mix of exterior material, and earthen colors, as shown on Exhibit 19.

3.2 Fencing and Landscaping

3.2.1 A 6 foot high wrought iron-style fence, shall be installed in the Northwest Corner Section along the north property line of the Brightview Property parallel to Darnestown Road behind the proposed sidewalk starting from the common rear property corner of 2997 Glenora Lane, located closest to Darnestown Road, curving to the western edge of the entry drive in order to deter cut through pedestrian traffic between

the entry drive and the common rear property line closest to Darnestown Road with 2997 Glenora Lane. After curving, the fence shall run parallel to the west side of the entry drive to the north edge of the retaining wall as shown on Exhibit 20.

3.2.2 Landscaping shall be installed and reasonably maintained along the top of the retaining wall on the west side of the entry drive and connect to the ornamental fence at the front of the property, and it must be of sufficient density and height, together with other landscaping between the retaining wall landscaping and the west property line, with the goal to fully screen light spillage from headlights of vehicles on the Brightview Property 12 months per year onto the first and second floors of adjacent properties on the west side of the property and to deter pedestrian traffic, as shown on Exhibit 20. No fencing is required along the retaining wall.

3.2.3 Starting at the south end of the retaining wall, an 8 feet high stockade-type or equivalent fence shall be installed along the south side of the entry circle connected to the landscaping on the retaining wall along the entry drive on the west side and to the Wellspring Garden fence on the other side, with the goal to fully screen light spillage from headlights of vehicles heading south around the entry circle on the Brightview Property 12 months a year, and Shelter shall install and reasonably maintain thick, evergreen landscaping on both sides of the fence at the south end of the entry circle, as shown on Exhibit 20.

3.2.4 Special Fencing

3.2.4.1 Shelter shall install an up to 8 foot tall stockade-type, or equivalent fence on the rear property line with one (1) eight foot decorative stone or cast stone piers on each rear property corner substantially similar to Exhibit 21 ("Rear Fence") of those lots of Resident Signatories adjoining the western or southern boundary of the Brightview Property who have requested in writing within 120 days of the execution of this Agreement, the installation of such fence. Provided, however, that a Resident Signatory owning a lot adjoining the western or southern boundary of the Brightview Property may request a different type and height of fence to be negotiated

with Shelter. The Resident Signatories requesting a Rear Fence shall be referred to as "Fence Residents." Fence Residents shall grant a construction easement to Shelter, its contractors and agents for installation of a Rear Fence or any other fence under this section and shall join in any permits or approvals required by the City for construction of the fencing. If the Rear Fence is required to be installed on the Brightview Property no additional Rear Fence will be installed on a Fence Residents' property; however any Side Fence installed will be connected to the Rear Fence.

3.2.4.2 Shelter shall install the same fencing along the side property lines ("Side Fence") of each lot of Resident Signatories who have requested installation of a fence along the rear property line of their lot and have requested such side yard fencing within the 120 day time period. Where adjoining Resident Signatories have both requested installation of a fence along the side yard, only one side yard fence shall be installed by Shelter on the common side yard property line after the adjoining Resident Signatories have jointly agreed to the type of fence. If the adjoining Resident Signatories fail to jointly agree on a type of fence within the 120 day period, then Shelter will install a fence type that matches the tallest and most solid rear fence of either adjoining Resident Signatories.

3.2.4.3 Unless required by conditions imposed by the City under the Special Exception or Site Plan, Shelter or its successors shall not erect fencing along a rear property line of an adjoining property unless the owner has requested installation of a fence.

3.2.4.4 Where necessary for installation of a Rear Fence or Side Fence, Shelter shall cause its contractor to reasonably trim trees at the request and direction of a Fence Resident. Any tree that interferes with the installation of a Rear Fence or Side Fence shall be removed by the Fence Resident and reasonable third party expenses for such tree removal shall be reimbursed to Fence Resident by Shelter upon installation of the fencing and submission of third party documentation.

3.2.4.5 Shelter shall install all Rear Fences and Side Fences at the commencement of site construction on the Brightview Property.

3.2.4.6 Shelter may offer any residential property owner adjoining the Brightview Property an opportunity to become a Fence Resident provided that such owner has not opposed or filed an appeal of the Special Exception Matter, Historic District matter or other development approval to implement the Special Exception. Such owners will become Fence Residents and have the rights and obligations of Fence Residents under this Section 3.2.4 but shall not be deemed Resident Signatories and shall not have the rights of Resident Signatories.

3.2.4.7 Shelter shall be required to install any such Rear or Side Fence one time only and only if timely elected by a Resident Signatory. Shelter shall not be responsible for the repair, maintenance or replacement of any Rear Fence or Side Fence located on a property other than the Brightview Property. Upon initial installation, Shelter shall assign any warranties to such property owner and shall have no further responsibilities or liabilities for a Rear Fence or Side Fence on a property other than the Brightview Property.

3.2.5 Shelter shall install and reasonably maintain additional landscaping between the rear property lines of all adjoining properties along Glenora Lane and Glenmore Terrace and the existing double row of pine trees on the Brightview Property, generally as shown on Exhibit 20 - the proposed conceptual landscape plan, and as finally approved on the Forest Conservation Plan. The goal of this landscaping, together with retained pre-existing and proposed landscaping and fencing, is to substantially screen the special exception building and its lighting year-round from the view of properties on both sides of Glenora Lane and Glenmore Terrace. To achieve this goal, Shelter shall install, maintain, and replace to the extent practicable landscaping shown on Exhibit 20 and if necessary install a reasonable number of supplemental plantings requested by the resident members of the Liaison Committee as may be allowed and approved by the City.

- 3.2.6 Shelter shall record a permanent Forest and Tree Conservation Agreement using the City's standard forms in accordance with the Final Forest Conservation Plan which shall be substantially similar to the attached plans (Exhibits 10 and 11) for the installation, preservation, and maintenance of onsite trees and landscaping. The parties acknowledge that minor adjustments to the conceptual landscape plan and preliminary forest conservation plan may be required as the building, stormwater management and utilities are engineered, but the intent of Exhibits 10 and 11 and Exhibits 12-15 shall be respected.
- 3.2.7 Shelter shall install and reasonably maintain, in the Southeast Corner Section of the Brightview Property, from where the Forest Conservation Plan area ends on the west to the eastern property line, extensive landscaping, in accordance with the landscape plan in Exhibit 20. The goal of this landscaping, together with retained pre-existing and proposed landscaping and fencing, is to substantially screen the special exception building and its lighting year-round from the view of properties on both sides of Glenmore Terrace. To achieve this goal, Shelter shall install, maintain, and replace to the extent practicable landscaping shown on Exhibit 20 and if necessary install a reasonable number of supplemental plantings requested by the resident members of the Liaison Committee as may be allowed and approved by the City.
- 3.2.8 Shelter shall install and reasonably maintain, in the Northwest Corner Section of the Brightview Property, from where the Forest Conservation Plan area ends on the north to the northern property line, extensive landscaping, in accordance with the landscape plan in Exhibit 20. The goal of this landscaping, together with retained pre-existing and proposed landscaping and fencing, is to substantially screen the special exception building and its lighting year-round from the view of properties on both sides of Glenora Lane. To achieve this goal, Shelter shall install, maintain, and replace to the extent practicable landscaping shown on Exhibit 20 and if necessary install a reasonable number of supplemental plantings requested by the resident members of the Liaison Committee as may be allowed and approved by the City.

3.2.9 All newly-planted or replacement trees in the Northwest Corner Section of the property, in the Forest Conservation Easement, and in the Southeast Corner Section of the property, shall be at a minimum, ten feet in height when planted, and shall not be required to be greater than ten feet in height.

3.2.10 The goal of newly-planted or replacement trees in the Northwest Corner Section of the property, in the Forest Conservation Easement, and in the Southeast Corner Section of the property, together with retained pre-existing and proposed landscaping and fencing, shall be that within four years of planting, to substantially screen the special exception building and its lighting year-round from the view of properties on both sides of Glenora Lane and Glenmore Terrace. To achieve this goal, Shelter shall install, maintain, and replace to the extent practicable landscaping shown on Exhibit 20 and if necessary install a reasonable number of supplemental plantings requested by the resident members of the Liaison Committee as may be allowed and approved by the City.

3.2.11 To the extent permitted by the City's Forest and Tree Conservation Easement, trees that fall within the Forest Conservation Easement or within the Southeast or Northwest Corner Sections shall be removed from the area within forty-five (45) days of falling to the ground or Shelter being made aware of such felled tree, and any large branches shall be removed from the area four times a year.

3.2.12 To the extent permitted by the City's Forest and Tree Conservation Easement, trees which are removed from the Forest Conservation Easement or from the Southeast or Northwest Corner Sections of the property because they are dead and still standing, or because they have fallen for any reason, must be replaced within 60 calendar days of removal or at the earliest date at which it would be feasible to plant a tree and ensure the tree's viability.

3.3 Lighting

3.3.1 Shelter shall install and maintain decorative light fixtures that include cut-off shields generally as shown on the attached

Landscape Lighting-Photometrics Plan (Exhibit 16) in order to control light trespass off the Brightview Property.

- 3.3.2 Shelter shall install and utilize window treatments such as shades, curtains, or tinted glass on all windows facing the southern and western property lines to minimize light viewed from adjoining homes on the southern and western boundary of the Brightview Property.

4. OPERATIONS

- 4.1 Trash and recycling receptacles shall be located inside the building and not be stored outside the building. Trash and recycling receptacles may be towed outside only for pickup. Trash and recycling truck pick-up times is limited to Monday through Friday (no holidays), between the hours of 9:00 a.m. and 4:00 p.m.
- 4.2 Shelter shall screen the common area HVAC condenser units. HVAC facilities on the roof are to be located on the north and east side of the building, toward the center where the two wings of the building join. Shelter shall locate HVAC facilities as great a distance as practicable from adjoining homes on the southern and western boundary of the Brightview Property.
- 4.3 A Liaison Committee shall be formed upon the execution of this Agreement and continuing as long as the special exception is in effect. The Liaison Committee shall consist of one to three representatives appointed by a majority of the lot owners of the adjoining properties on the southern and western boundary of the Brightview Property and one to three representatives in total of the owner of the Brightview Property and the operator of the special exception. The Liaison Committee shall meet after notice upon the request of any member of the Committee to discuss and try to resolve all or any matters relating to this Agreement, the operations of the special exception and the special exception property. The applicant shall request the Board of Appeals to make the Liaison Committee a condition of approval.
- 4.4 Shelter shall cause construction on the Brightview Property to comply with the City Noise Ordinance.

5. **HISTORIC DISTRICT COMMISSION PROCEEDINGS**

5.1 The Resident Signatories shall not advocate or support, (and must not assist any other person or entity, in any way, in advocating or supporting), the historic designation or preservation of the existing improvements and site located at 9200 Darnestown Road, including without limitation, the brick two-story Colonial revival house with wings, garage, or the free-standing workshop located in the southerly portion of the property.

6. **REIMBURSEMENT**

6.1 Provided that all of the Resident Signatories have complied with the terms and conditions of this Agreement, Shelter shall reimburse the Resident Signatories for all third party costs and expenses, including but not limited to costs billed by Richard Klein of C&EDS (including the amount in Subsection 6.2 below) and Norman Knopf of Knopf & Brown in connection with this Agreement, not to exceed \$9,000 (increased to \$12,000 if Glenora Hills residents cause the owners of at least five adjoining properties on the western and southern boundary of the Brightview Property to execute this Agreement prior to commencement of the Board of Appeals hearing on the Special Exception), after the occurrence of the following events (in the order noted):

- (1) the execution of this Agreement;
- (2) the approval by the Board of Appeals of the Special Exception Request; and
- (3) the transmittal by the Resident Signatories to Shelter a statement with documentation supporting all such third party charges and expenses (as noted above), pursuant to the Notice provisions of Section 11.5 of this Agreement.

Shelter shall reimburse the Resident Signatories within 30 days of receipt of such statement, by transmitting to the Resident Signatories a check payable to Mary or Russell Richards. In the event of the non-approval of the Special Exception by the Board of Appeals and provided the provisions of 6.1 (1), and (3) have occurred, Shelter shall reimburse the Resident Signatories 75% of the amount they would otherwise be eligible for under this Section 6.1.

6.2 Notwithstanding the foregoing preconditions, if all of the Resident Signatories have not complied with the terms and conditions of this Agreement, the parties acknowledge that Shelter agrees nonetheless to reimburse the Resident Signatories for up to \$500 for the C&EDS expenses. Shelter shall pay the amount within 10 days after the Resident Signatories send a statement with documentation supporting all such third party charges and expenses, pursuant to the Notice provisions of Section 11.5 of this Agreement. The check for such amount shall be made payable to Russell or Mary Richards.

7. PRECONDITIONS

7.1 The obligations regarding the recordation of a Final Forest and Tree Conservation Easement Agreement, a Declaration of Covenants, and the construction of the Brightview project according to the terms and conditions of this Agreement are contingent on Shelter's acquisition or lease of the property or Shelter's operation of the Special Exception on the Brightview Property.

8. SUPPORT

8.1 Subject to the terms and conditions of this Agreement

8.1.1 The Resident Signatories agree to support Shelter's Special Exception application, and all subsequent development related applications, including without limitation, subdivision, planning and zoning applications and building permits to implement the Special Exception, and agree not to object or pursue any appeals of the Brightview project applications, approvals, and related permits.

The obligation to support is contingent upon the special exception application and all other applications and permits being consistent, by amendment if necessary, with the provisions of this Agreement. The obligation to support and to not object to an application, approvals, permits, or to appeal is further qualified by Section 10.

8.1.2 The Resident Signatories agree to designate a representative to provide supportive testimony at the Special Exception Hearing, and the Site Plan Hearing. As for any other hearings associated with the project, Shelter and the Resident Signatories may agree as to whether a representative would

be necessary and whether a representative is able to attend and provide supporting testimony.

8.1.3 The Resident Signatories agree not to assist any other party or entity opposing the Brightview project.

8.1.4 The parties agree that Shelter may appeal or otherwise take any and all legal and equitable action concerning the Special Exception matter and the Historic District matter and any other necessary development and permit approval to implement the Special Exception.

9. DECLARATION OF COVENANTS TO BE RECORDED IN THE LAND RECORDS AFTER ALL APPEAL PERIODS HAVE RUN

9.1 Within sixty (60) days after the later of:

(1) The expiration of all appeal deadlines have expired, or if any appeal is noted for any proceedings or processes or the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods, for the special exception, site plan, building permit, demolition permit, and any other necessary permits for the development and construction of the project;

Or,

(2) Shelter's acquisition or lease of the Brightview Property or Shelter's operation of the Special Exception on the Brightview Property,

Shelter shall cause to be recorded in the Montgomery County, Maryland Land Records a Declaration of Covenants, in substantially the same form as the one attached as Exhibit 18, which Declaration of Covenant includes a provision that the Declaration of Covenants must run with the land.

Notwithstanding (1) and (2), the Declaration of Covenants shall be filed no later than 10 days after commencement of construction of the special exception building.

10. MODIFICATIONS TO THE SPECIAL EXCEPTION PLANS AND SUBSEQUENT PLANS

- 10.1** The parties acknowledge that the Board of Appeals review and approval of the Special Exception Plans as modified by the terms and conditions of this Agreement still might include modifications and/or conditions of approval not already addressed by the terms of this Agreement. The Resident Signatories agree not to request any additional modifications or conditions not addressed in this Agreement. The Resident Signatories agree to support and to not oppose the modifications and conditions, as long as they are substantially consistent with the purpose and intent of this Agreement. The Resident Signatories agree that their support shall not be unreasonably withheld, conditioned or delayed.
- 10.2** The parties acknowledge that other subsequent reviews and approvals of the City of Rockville and its agencies, and any federal, state and or local jurisdictions having jurisdiction, including but not limited to subdivision, site plan, building permit, forest conservation, and stormwater management, might require other modifications that result in changes not addressed by the terms of this Agreement. The Resident Signatories agree to support and to not oppose such modifications and conditions, as long as they are substantially consistent with the purpose and intent of this Agreement. The Resident Signatories agree that their support shall not be unreasonably withheld, conditioned or delayed.
- 10.3** The parties acknowledge that Shelter might identify the need for minor modifications that might require the Board of Appeals' approval or the approval of other commissions or agencies of the City of Rockville or any federal, state or local jurisdictions. The parties agree to cooperate in good faith as to such minor modifications as may be required to obtain final approvals to allow the construction of the Brightview project, as long as they are substantially consistent with the purpose and intent of this Agreement. The Resident Signatories agree that their support shall not be unreasonably withheld, conditioned or delayed.
- 10.4** Shelter agrees to notify the Resident Signatories and the Liaison Committee of all proposed modifications, minor or otherwise, requested by Shelter that might require the Board of Appeals' approval or the approval of other commissions of the City of Rockville or the governing or appointed body of any federal, state or

local jurisdictions, or which are inconsistent with the intents and purpose of this Agreement. Shelter shall send such notification to the Resident Signatories no later than five business days before filing the initial request for modifications.

11. Miscellaneous.

- 11.1 This Agreement shall not be amended or rescinded except by an instrument in writing executed by Shelter and at least one title holder from each of at least six of the eleven lots adjoining the western and southern boundary of the Brightview.
- 11.2 No failure or delay by either party in exercising any right, power or privilege set forth in this Agreement shall operate as a waiver. No single or partial exercise must preclude any other or further exercise of any right, power or privilege set forth in this Agreement.
- 11.3 Any claim brought under this Agreement shall be prosecuted in a court of competent jurisdiction located in Montgomery County, Maryland. No claim arising under the Agreement may be filed with a court or governmental agency without first there be an opportunity to cure the claim through the Liaison Committee, except a claim may be filed to meet a jurisdictional time deadline, but not pursued until the earlier to occur of (i) consideration and resolution by consensus by the Liaison Committee, or (ii) thirty (30) days after Notice of submission of the claim to, and request for a meeting of, the Liaison Committee and their failure to consider and/or resolve the matter by consensus within such thirty day period. The Liaison Committee may agree by consensus to recommend mediation or arbitration as an alternative to pursuing legal remedy through a court of competent jurisdiction.
- 11.4 Each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law; provided, however, if any term or condition of this Agreement or its application to any person or circumstance must, at any time, or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term to any person or circumstance, other than those as to which it is held invalid or unenforceable, must not be affected.
- 11.5 This provision is collectively referred to as "Notice." All Notices and communications to any party shall be in writing. All Notices

must be deemed properly given if delivered personally, sent by registered or certified mail, postage prepaid, or by Federal Express or a similar generally recognized overnight carrier regularly providing proof of delivery. Any Notice shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by a U.S. Post Office return receipt or the overnight carrier's proof of delivery. Any Notice not so given shall be deemed given upon the date of the signed receipt by the party to whom the Notice is delivered. Notices shall be sent to the following addressees or at such other addressees as such party may specify from time to time by Notice to the other party:

Shelter	Development Director Brightview 218 N. Charles Street, Suite 220 Baltimore, MD 21201 Attention: David Carliner and Andrew Teeters
	With a copy to: Timothy Dugan, Esq. Nancy P. Regelin, Esq. Shulman, Rogers, Gandal, Pordy & Ecker, P.A. 12505 Park Potomac Avenue 6 th Floor Potomac, Maryland 20854
The Resident Signatories	Mr. Russell M. Richards 2288 Glenmore Terrace Rockville, Maryland 20850
	With a copy to: Norman G. Knopf, Esq. Knopf & Brown 401 East Jefferson Street Rockville, Maryland 20850-2626

11.6 The captions contained in this Agreement are for convenience only and are not a part of this Agreement and are not intended in any way to limit or enlarge the terms and conditions of this Agreement.

Whenever the context so requires, the male must include all genders and the singular shall include the plural.

- 11.7 Shelter may assign all of its rights, title, and interest in and to this Agreement to any affiliate or any subsidiary of Shelter, or to any other third party.
- 11.8 The laws of the State of Maryland shall govern the validity, construction, enforcement, and interpretation of this Agreement, unless otherwise specified herein. Jurisdiction and venue shall be in the Circuit Court for Montgomery County, Maryland.
- 11.9 This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.
- 11.10 This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one original agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
- 11.11 No provision of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Agreement; both parties, being represented by counsel, having fully participated in the negotiation of this Agreement.
- 11.12 No remedy herein conferred upon or reserved to Shelter or the Resident Signatories or anyone claiming by, through, or under them, is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity.
- 11.13 No delay or omission to exercise any right or power accruing upon any default, omission, or failure of performance hereunder shall impair any right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver, amendment, release, or modification of this Agreement shall be established by conduct, custom, or course of dealing.

- 11.14 This Agreement is for the benefit of the executing parties and their respective successors in interest to their respective property. Each may enforce this Agreement by filing a complaint with the appropriate governmental or administrative agency as well as by seeking damages, injunctive or other equitable relief in a Court of competent jurisdiction. In the event any party is required or elects to take legal or equitable action against the other to enforce the non-defaulting party's rights under this Agreement or to require performance by the defaulting party of its obligations under this Agreement, then the losing party shall immediately pay to the prevailing party for all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party in such action. A party is deemed to have prevailed if it obtains a judgment or settlement in its favor, after exhaustion or expiration of all appeals, which substantially provides for the relief contemplated either in its complaint or responsive pleading.
- 11.15 This Agreement shall remain in effect for as long as the Brightview Property is the subject of a Special Exception for Housing for Seniors and Persons with Disabilities, or, the special exception building constructed under SPX2010-00381 remains on the Brightview Property, or 60 years, whichever is longer.
- 11.16 Should the last day of a time period fall on a weekend or legal holiday, the next business day thereafter shall be considered the end of the time period.
- 11.17 Nothing in this Agreement shall be deemed or construed by anyone as creating the relationship of principal and agent or of partners or joint venturers.
- 11.18 No third party rights and/or beneficiaries are intended or created by this Agreement.
- 11.19 All Exhibits attached hereto are incorporated herein and made a part of this Agreement.
- 11.20 This Agreement is effective upon execution by Shelter and the title owners of at least one of the properties adjoining the western and southern boundary of the Brightview Property.

IN WITNESS WHEREOF, the parties' proper and duly authorized representatives have executed this Agreement, as of the date written below each party's signature.

Shelter Development, LLC, a Maryland limited liability company

By: _____

Name: _____

Title: _____

Date: _____

[ADDITIONAL SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the parties' proper and duly authorized representatives have executed this Agreement, as of the date written below each party's signature.

Shelter Development, LLC, a Maryland limited liability company

By: 

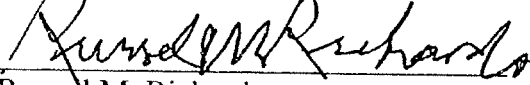
Name: Dan Caplin

Title: Executive Vice President

Date: 5/7/10

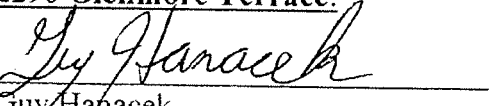
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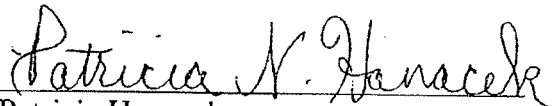
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Russel M. Richards


Mary Richards

2290 Glenmore Terrace:


Guy Hanacek

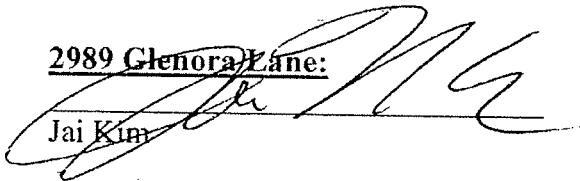

Patricia Hanacek

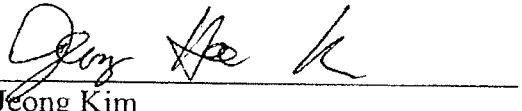
2987 Glenora Lane:

Audrey Rutkove


John Joern

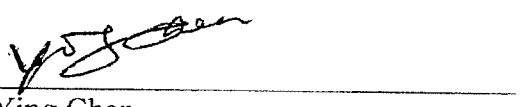
2989 Glenora Lane:


Jai Kim



Jeong Kim

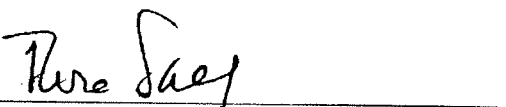
2991 Glenora Lane:


Sheng Xu

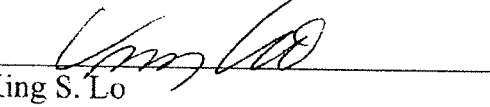

Ying Chen

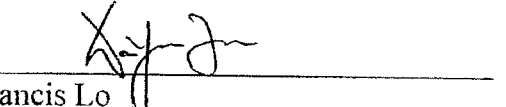
2993 Glenora Lane:


Mark Sacks


Rosa Sacks

2995 Glenora Lane:


King S. Lo


Francis Lo

2288 Glenmore Terrace:

Russell M. Richards
Russell M. Richards

Mary Richards
Mary Richards

2290 Glenmore Terrace:

Guy Hanacek
Guy Hanacek

Patricia N. Hanacek
Patricia Hanacek

2987 Glenora Lane:

Audrey Rutkove
Audrey Rutkove

John Joern
John Joern

2989 Glenora Lane:

Jai Kim

Jeong Kim

2991 Glenora Lane:

Sheng Xu

Ying Chen

2993 Glenora Lane:

Mark Sacks

Rosa Sacks

2995 Glenora Lane:

King S. Lo

Francis Lo

2997 Glenora Lane:

Hazel Cavallo

2292 Glenmore Terrace:

Raymond P. Klimkosky
Raymond Klimkosky

Lucina N. Klimkosky
LH Klimkosky

2294 Glenmore Terrace:

Michael Ayoroa
Michael Ayoroa

N Ayoroa
N Ayoroa

2296 Glenmore Terrace:

Peter Bailey
Peter Bailey

M C Bailey
M C Bailey

2986 Glenora Lane:

Christopher Mauro

Isabel Marbury Mauro

_____:

_____:

EXHIBIT LIST

NO.	DESCRIPTION
1	Narrative Description of the Project
2	Alternate #1 Site Plan (Three story building) Sheet 1 of 8
3	Special Exception Details Sheet 2 of 8
4	Special Exception Details Sheet 3 of 8
5	Special Exception Details Sheet 4 of 8
6	Sidewalk Connection Enlargement Sheet 5 of 8
7	Conceptual Landscape Plan Sheet 6 of 8
8	Landscape Plan Enlargements Sheet 7 of 8
9	Conceptual Landscape Details Sheet 8 of 8
10	Preliminary Forest Conservation Plans Sheet 1 of 2
11	Preliminary Forest Conservation Plan Data Tables Sheet 2 of 2
12	Stormwater Management Concept Plans Sheet 1 of 4
13	Stormwater Management Concept Plan Drainage Area Map Sheet 2 of 4
14	Stormwater Management Concept Plan Preliminary SWM Profile Sheet 3 of 4
15	Stormwater Management Concept Plan Drainage Area Overview Sheet 4 of 4
16	Site and Landscape Lighting-Photometrics Plan Drawing #E0.1, Sheet 1 of 1
17	Architectural Elevations
18	Declaration of Covenants
19	Settlement – Amended Architectural Elevations Sheets 1 and 2
20	Settlement – Amended Landscape Plan and Detail Sheets 1 and 2
21	Settlement – Special Fence and Stone Pier specifications
22	Schedule of Fence Residents and Special Fence Preferences

Note: Exhibits 1-17 are defined in Section 2.1 as “Special Exception Plans” defined as the project application described by written description and by plans.

Exhibits 19-20 are those modifications to the Special Exception Plans referenced in this Agreement to be prepared and filed as an amendment to the project application.

Exhibits 21-22 relate to the Special Fence provisions in Section 3.2.4.

END OF DOCUMENT

EXHIBIT 18

DECLARATION OF COVENANTS

This Declaration of Covenants ("Declaration") is made this _____ day of _____, 2010 by Shelter Development, LLC, a Maryland limited liability company ("Shelter").

Recitals

1. Shelter is the fee simple owner of the land and premises at 9200 Darnestown Road, Rockville, Maryland, Parcel 728 and Parcel 703, whose legal description is described in Liber 7397 folio 230 and Liber 7397 folio 233, as recorded in the Montgomery County, Maryland Land Records (the "Brightview Property").
2. Shelter sought and obtained approval of a special exception and other development approvals from the City of Rockville for its assisted living community to be located and operated at the Brightview Property.
3. The project was planned to consist of a 90 unit assisted living facility, which type of land use is currently classified under the Rockville Zoning Ordinance as "Housing for Seniors and Persons with Disabilities." Such proposed use is classified as requiring a Special Exception within the R-90 zoning district. The use is subject to the findings required for special exceptions under Section 25.15.01.a.2 and the additional requirements of Section 25.15.02.j of the Rockville Zoning Ordinance, as amended. The special exception application is identified as Special Exception No.: SPX2010-00381.
4. The project was also under consideration by the Historic District Commission to determine whether the existing land, improvements and setting are recommended to be eligible for historic designation due to any historic, archaeological or architectural significance, under Section 25.04.04 of the Rockville Zoning Ordinance, as amended. The historic district consideration is identified as HDC 2010-00506. The Brightview Property was not deemed eligible for historic designation due to any historic, archaeological or architectural significance.
5. The Glenora Hills Residents identified concerns about such project and rather than oppose the special exception sought to resolve such concerns through project modifications and other means.
6. Shelter was willing to undertake to resolve such concerns and resolved such concerns by entering into a certain Settlement Agreement dated May 7, 2010 ("Settlement Agreement") making modifications to the special exception application as originally proposed and by agreeing to record this Declaration of Covenants upon the occurrence of certain events, which Shelter acknowledges, have occurred.

NOW, THEREFORE, Shelter hereby declares that the Brightview Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, occupied and used subject to the covenants set forth in this Declaration, which shall run with the Brightview Property and be binding on all parties having any right, title, or interest in all or any portion of the Brightview Property, their respective heirs, personal representatives, successors, transferees and assigns.

1. RECITALS

1.1 The above Recitals are incorporated into this Declaration by reference.

2. DEFINITION

2.1 "Brightview Project" means the project approved pursuant to the necessary approvals from all federal, state and local jurisdictions, including the City of Rockville, for the Brightview Property to be developed as a 90 unit assisted living facility. Such approvals and plans include, without limitation: *[The exhibits referenced must be the final updated ones actually approved – not the original submissions.]*

2.1.1 Architectural elevations Exhibit 1;

2.1.2 The Rockville Board of Appeals' resolution granting the special exception and the approved Special Exception Site Plan and detail sheets Exhibit 2;

2.1.3 The Rockville Planning Commission's resolution approving the Site Plan and the approved Site Plan, Landscape Plan, and detail sheets Exhibit 3;

2.1.4 The Final Forest and Tree Conservation Agreement and the Final Forest Conservation Plan Exhibit 4;

2.1.5 The Final Stormwater Management Plan Exhibit 5.

2.1.6 Special Off-site Rear Fence/ Side Fence Detail Sheet Exhibit 6.

2.1.7 Landscape Lighting Photometric Plan Exhibit 7.

2.1.8 Schedule of Beneficiaries of Declaration of Covenants Exhibit 8.

The above Exhibits are incorporated by reference. *[No need to be attached to this declaration.]*

2.2 "Southeast Corner Section" refers to the portion of ground in the southeast corner of the property not included within the proposed Forest Conservation Easement. The "Southeast Corner Section" is a rectangular section of ground which extends in an east-west direction from the property line on the east to the eastern-most edge of the Forest Conservation Easement, and which extends in a south-north direction from the property

line on the south to a line demarcated by the northern edge of the portion of the Forest Conservation Easement which runs along the southern border of the property.

- 2.3 “Northwest Corner Section” refers to the portion of ground in the northwest corner of the property not included within the proposed Forest Conservation Easement. The “Northwest Corner Section” is a section of ground which extends in a north-south direction from the property line on the north to the northern-most edge of the Forest Conservation Easement, and which extends in a west-east direction from the property line on the west to a line demarcated by the eastern edge of the portion of the Forest Conservation Easement which runs along the western border of the property.
- 2.4 All other capitalized terms in this Declaration if not defined herein shall be deemed to have the same definition as set forth in the Settlement Agreement.

3. OTHER COVENANTS

Notwithstanding anything herein to the contrary, the Brightview Project must comply with the following provisions:

3.1 Development Standards

- 3.1.1 The building shall not exceed two stories at the south and west ends, 22 feet in height, measured to the top of the flat roof, and not exceed three stories, 35 feet, to the mid-point of the gable roof, and no more than forty feet to the top of the gable roof, all as shown on Exhibit 1. Height is measured in accordance with the Rockville City Code from the average elevation of the finished grade along the front of the building and excludes the cupola, decorative parapets, and other appurtenances exempt under the Rockville City Code. The two story sections of the building on the southern and western ends shall extend 16 feet from the end building facade.
- 3.1.2 The building must be set back no less than 97 feet to the rear property line and no less than 110 feet to the west property line as shown on the Site Plan on Exhibit 3.
- 3.1.3 Building facades must be constructed substantially similar to the attached Architectural Elevations shown on Exhibit 1, specifically window types and design, mix of exterior material, and earthen colors.

3.2 Fencing and Landscaping

3.2.1 A 6 foot high wrought iron-style fence, shall be installed in the Northwest Corner Section along the north property line of the Brightview Property parallel to Darnestown Road behind the proposed sidewalk and public utility easement starting from the common rear property line of 2997 Glenora Lane, located closest to Darnestown Road, curving to the western edge of the entry drive in order to deter cut through pedestrian traffic between the entry drive and the common rear property line closest to Darnestown Road with 2997 Glenora Lane. After curving, the fence shall run parallel to the west side of the entry drive to the north edge of the retaining wall as shown on Exhibit 3.

3.2.2 Landscaping shall be installed in accordance with Exhibit 3 and reasonably maintained along the top of the retaining wall on the west side of the entry drive and connect to the ornamental fence at the front of the property, and it must be of sufficient density and height, together with other landscaping between the retaining wall landscaping and the west property line, with the goal to fully screen light spillage from headlights of vehicles on the Brightview Property 12 months per year onto the first and second floors of adjacent properties on the west side of the property and to deter pedestrian traffic. No fencing is required along the retaining wall.

3.2.3 Starting at the south end of the retaining wall, an 8 feet high stockade-type or equivalent fence shall be installed along the south side of the entry circle connected to the landscaping on the retaining wall along the entry drive on the west side and to the Wellspring Garden fence on the other side, with the goal to fully screen light spillage from headlights of cars heading south around the entry circle on the Brightview Property 12 months a year, and Shelter shall install and reasonably maintain thick, evergreen landscaping on both sides of the fence at the south end of the entry circle, as shown on Exhibit 3.

3.2.4 Fencing

3.2.4.1 Shelter shall install an up to 8 foot tall stockade-type, or equivalent fence on the rear property line with one (1) up to eight foot decorative stone or cast stone piers on each rear property corner substantially similar to Exhibit

6 (“Rear Fence”) of those lots of Resident Signatories (as defined in the Settlement Agreement and as scheduled on Exhibit 9) adjoining the western or southern boundary of the Brightview Property who have requested in writing within 120 days of the effective date of the Settlement Agreement, the installation of such fence. Provided, however, that a Resident Signatory owning a lot adjoining the western or southern boundary of the Brightview Property may request a different type and height of fence to be negotiated with Shelter. The Resident Signatories requesting a Rear Fence shall be referred to as “Fence Residents.” Fence Residents shall grant a construction easement to Shelter, its contractors and agents for installation of a Rear Fence or any other fence under this section and shall join in any permits or approvals required by the City for construction of the fencing. If the Rear Fence is required by the City to be installed on the Brightview Property no additional Rear Fence will be installed on a Fence Residents’ property; however any Side Fence installed will be connected to the Rear Fence.

3.2.4.2

Shelter shall install the same fencing along the side property lines (“Side Fence”) of each lot of Resident Signatories who have requested installation of a Rear Fence and have requested such Side Fence within 120 days of the effective date of the Settlement Agreement. Where adjoining Resident Signatories have both requested installation of a Side Fence, only one side yard fence shall be installed by Shelter on the common side yard property line after the adjoining Resident Signatories have jointly agreed to the type of fence. If the adjoining Resident Signatories fail to jointly agree on a type of fence within the 120 day period, then Shelter will install a fence type for the common Side Fence that matches the tallest and most solid Rear Fence of either adjoining Resident Signatories.

3.2.4.3

Unless required by conditions imposed by the City under the Special Exception or Site Plan, Shelter or its successors shall not erect fencing along a rear property line of an adjoining property unless the owner has requested installation of a fence.

- 3.2.4.4** Where necessary for installation of a Rear Fence or Side Fence, Shelter shall cause its contractor to reasonably trim trees at the request and direction of a Fence Resident. Any tree that interferes with the installation of a Rear Fence or Side Fence shall be removed by the Fence Resident and reasonable third party expenses for such tree removal shall be reimbursed to Fence Resident by Shelter upon installation of the fencing and submission of third party documentation.
- 3.2.4.5** Shelter shall install all Rear Fences and Side Fences at the commencement of site construction on the Brightview Property.
- 3.2.4.6** Shelter shall be required to install any such Rear and Side Fences one time only and only if timely elected by a Resident Signatory. Shelter shall not be responsible for the repair, maintenance or replacement of any Rear Fence or Side Fence located on a property other than the Brightview Property. Upon initial installation, Shelter shall assign any warranties to such property owner and shall have no further responsibilities or liabilities for a Rear Fence or Side Fence on a property other than the Brightview Property.
- 3.2.5** Shelter shall install and reasonably maintain additional landscaping between the rear property lines of all adjoining properties along Glenora Lane and Glenmore Terrace and the existing double row of pine trees on the Brightview Property, as shown on the Landscape Plan in Exhibit 3 and as finally approved in the Forest Conservation Plan on Exhibit 4. The goal of this landscaping, together with retained pre-existing and proposed landscaping and fencing, is to substantially screen the special exception building and its lighting year-round from the view of properties on both sides of Glenora Lane and Glenmore Terrace. To achieve this goal, Shelter shall install, maintain, and replace to the extent practicable landscaping shown on Exhibits 3 and 4, and, if necessary, install a reasonable number of supplemental plantings requested by the resident members of the Liaison Committee as may be allowed and approved by the City.
- 3.2.6** Shelter shall record a permanent Forest and Tree Conservation Agreement using the City's standard forms in accordance with the Final Forest Conservation Plan on Exhibit 4 for the installation,

preservation, and maintenance of onsite trees and landscaping. It is acknowledged that minor adjustments may be required from time to time, but the intent of Exhibits 3 and 4 shall be respected.

- 3.2.7 Shelter shall install and reasonably maintain, in the Southeast Corner Section of the Brightview Property, from where the Forest Conservation Plan area ends on the west to the eastern property line, extensive landscaping, in accordance with the final landscape plan in Exhibit 3. The goal of this landscaping, together with retained pre-existing and proposed landscaping and fencing, is to substantially screen the special exception building and its lighting year-round from the view of properties on both sides of Glenmore Terrace. To achieve this goal, Shelter shall install, maintain, and replace to the extent practicable landscaping shown on Exhibit 3 and if necessary install a reasonable number of supplemental plantings requested by the resident members of the Liaison Committee as may be allowed and approved by the City.
- 3.2.8 Shelter shall install and reasonably maintain, in the Northwest Corner Section of the Brightview Property, from where the Forest Conservation Plan area ends on the north to the northern property line, extensive landscaping, in accordance with the landscape plan in Exhibit 3. The goal of this landscaping, together with retained pre-existing and proposed landscaping and fencing, is to substantially screen the special exception building and its lighting year-round from the view of properties on both sides of Glenora Lane. To achieve this goal, Shelter shall install, maintain, and replace to the extent practicable landscaping shown on Exhibit 3, and, if necessary, install a reasonable number of supplemental plantings requested by the resident members of the Liaison Committee as may be allowed and approved by the City.
- 3.2.9 All newly-planted or replacement trees in the Northwest Corner Section of the property, in the Forest Conservation Easement, and in the Southeast Corner Section of the property, shall be at a minimum, ten feet in height when planted, and shall not be required to be greater than ten feet in height.
- 3.2.10 The goal of newly-planted or replacement trees in the Northwest Corner Section of the property, in the Forest Conservation Easement, and in the Southeast Corner Section of the property, together with retained pre-existing and proposed landscaping and fencing, shall be that within four years of planting, to substantially screen the special exception building and its lighting year-round from the view of properties on both sides of Glenora Lane and

Glenmore Terrace. To achieve this goal, Shelter shall install, maintain, and replace to the extent practicable landscaping shown on Exhibit 3 and if necessary install a reasonable number of supplemental plantings requested by the resident members of the Liaison Committee as may be allowed and approved by the City.

3.2.11 To the extent permitted by the City's Forest and Tree Conservation Easement, trees that fall within the Forest Conservation Easement or within the Southeast or Northwest Corner Sections shall be removed from the area within forty-five (45) days of falling to the ground or Shelter being made aware of such felled tree, and any large branches shall be removed from the area four times a year.

3.2.12 To the extent permitted by the City's Forest and Tree Conservation Easement, trees which are removed from the Forest Conservation Easement or from the Southeast or Northwest Corner Sections of the property because they are dead and still standing, or because they have fallen for any reason, must be replaced within 60 calendar days of removal or at the earliest date at which it would be feasible to plant a tree and ensure the tree's viability.

3.3 Lighting

3.3.1 Shelter shall install and maintain decorative light fixtures that include cut-off shields generally as shown on the Landscape Lighting Photometric Plan attached as Exhibit 7 in order to control light trespass off the Brightview Property.

3.3.2 Shelter shall install and utilize window treatments such as shades, curtains, or tinted glass on all windows facing the southern and western property lines to minimize light viewed from adjoining homes on the southern and western boundary of the Brightview Property.

4. OPERATIONS

4.1 Trash and recycling receptacles shall be located inside the building and not be stored outside the building. Trash and recycling receptacles may be towed outside only for pickup. Trash and recycling truck pick-up times is limited to Monday through Friday (no holidays), between the hours of 9:00 a.m. and 4:00 p.m.

4.2 Shelter shall screen the common area HVAC condenser units. HVAC facilities on the roof are to be located on the north and east side of the

building, toward the center where the two wings of the building join. Shelter shall locate HVAC facilities as great a distance as practicable from adjoining homes on the southern and western boundary of the Brightview Property.

- 4.3 A Liaison Committee shall be formed upon the effective date of the Settlement Agreement and continuing as long as the subject special exception is in effect. The Liaison Committee shall consist of one to three representatives appointed by a majority of the lot owners of the adjoining properties on the southern and western boundary of the Brightview Property and one to three representatives in total of the owner of the Brightview Property and the operator of the special exception. The Liaison Committee shall meet after notice upon the request of any member of the Committee to discuss and try to resolve all or any matters relating to this Agreement, the operations of the special exception and the special exception property. The applicant shall request the Board of Appeals to make the Liaison Committee a condition of approval.
- 4.4 Shelter shall cause the construction on the Brightview Property to comply with the City's Noise Ordinance.

5. MODIFICATIONS TO THE DECLARATION OF COVENANTS, PLANS

- 5.1 This Declaration of Covenants may be amended or rescinded by an instrument in writing and filed in the Land Records executed by Shelter, its successors or assigns, and at least one title holder from each of at least six of the eleven lots adjoining the western and southern boundary of the Brightview Property.

The parties acknowledge that Shelter might identify, from time to time, the need for minor modifications that might require the Board of Appeals' approval or the approval of other commissions or agencies of the City of Rockville or any federal, state or local jurisdictions. The Resident Signatories agreed in the Settlement Agreement to cooperate in good faith as to such minor modifications as may be required to obtain final approvals to allow the construction and minor modifications of the Brightview project, as long as they are substantially consistent with the purpose and intent of this Agreement. The Resident Signatories agreed that their support shall not be unreasonably withheld, conditioned or delayed.

Shelter agrees to notify the Resident Signatories and the Liaison Committee of all proposed modifications, minor or otherwise, requested by Shelter that

might require the Board of Appeals' approval or the approval of other commissions of the City of Rockville or the governing or appointed body of any federal, state or local jurisdictions, or which are inconsistent with the intents and purpose of this Agreement. Shelter shall send such notification to the Resident Signatories no later than five business days before filing the initial request for modifications.

6. Miscellaneous.

- 6.1** This Declaration of Covenants is for the benefit of: (i) Shelter, its successors and assigns; and (ii) the owners of the lots identified on Exhibit 8 and their respective successors in interest to their respective property; (individually “Exclusive Beneficiary” and collectively “Exclusive Beneficiaries”). No third party rights and/or beneficiaries are intended or created by this Declaration. Each Exclusive Beneficiary may enforce this Declaration by filing a complaint with the appropriate governmental or administrative agency as well as by seeking damages, injunctive or other equitable relief in a Court of competent jurisdiction. In the event any party is required or elects to take legal or equitable action against the other to enforce the non-defaulting party's rights under this Declaration or to require performance by the defaulting party of its obligations under this Declaration, then the losing party shall immediately pay to the prevailing party for all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party in such action. A party is deemed to have prevailed if it obtains a judgment or settlement in its favor, after exhaustion or expiration of all appeals, which substantially provides for the relief contemplated either in its complaint or responsive pleading.
- 6.2** Any claim brought under this Declaration shall be prosecuted in a court of competent jurisdiction located in Montgomery County, Maryland. No claim arising under the Agreement may be filed with a court or governmental agency without first there be an opportunity to cure the claim through the Liaison Committee, except a claim may be filed to meet a jurisdictional time deadline, but not pursued until the earlier to occur of (i) consideration and resolution by consensus by the Liaison Committee, or (ii) thirty (30) days after Notice of submission of the claim to, and request for a meeting of, the Liaison Committee and their failure to consider and/or resolve the matter by consensus within such thirty day period. The Liaison Committee may agree by consensus to recommend mediation or arbitration as an alternative to pursuing legal remedy through a court of competent jurisdiction.
- 6.3** No failure or delay in exercising any right, power or privilege set forth in this Declaration shall operate as a waiver. No single or partial exercise

must preclude any other or further exercise of any right, power or privilege set forth in this Declaration.

6.4 Each term of this Declaration must be valid and enforceable to the fullest extent permitted by law; provided, however, if any term or condition of this Declaration or its application to any person or circumstance must, at any time, or to any extent, be invalid or unenforceable, the remainder of this Declaration, or the application of such term to any person or circumstance, other than those as to which it is held invalid or unenforceable, must not be affected. The terms of this Declaration control over the Settlement Agreement.

6.5 This provision is collectively referred to as “Notice.” All Notices and required communications shall be in writing. All Notices must be deemed properly given if delivered personally, sent by registered or certified mail, postage prepaid, or by Federal Express or a similar generally recognized overnight carrier regularly providing proof of delivery. Any Notice shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by a U.S. Post Office return receipt or the overnight carrier's proof of delivery. Any Notice given by other means shall be deemed given upon the date of the signed receipt by the party to whom the Notice is delivered. Notices shall be sent to the following addressees or at such other addressees as such party may specify from time to time by Notice to the other party:

Shelter	Development Director Brightview 218 N. Charles Street, Suite 220 Baltimore, MD 21201 Attention: David Carliner and Andrew Teeters With a copy to: Brightview Property at 9200 Darnestown Road : Attention Executive Director
	With a copy to: Timothy Dugan, Esq. Nancy P. Regelin, Esq. Shulman, Rogers, Gandal, Pordy & Ecker, P.A. 12505 Park Potomac Avenue 6 th Floor Potomac, Maryland 20854

<p>The Exclusive Beneficiaries and the Liaison Committee</p>	<p>Mr. Russell M. Richards 2288 Glenmore Terrace Rockville, Maryland 20850</p> <p>With a copy to: the addresses of the owners of the lots scheduled on Exhibit 8 as shown on the SDAT records at the time of the Notice.</p>
	<p>With a copy to: Norman G. Knopf, Esq. Knopf & Brown 401 East Jefferson Street Rockville, Maryland 20850-2626</p>

- 6.6 The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and conditions of this Declaration. Whenever the context so requires, the male must include all genders and the singular must include the plural.
- 6.7 Shelter may assign all of its rights, title, and interest in and to this Declaration to any affiliate or any subsidiary of Shelter, or to any other third party.
- 6.8 The laws of the State of Maryland must govern the validity, construction, enforcement, and interpretation of this Declaration, unless otherwise specified herein. Jurisdiction and venue must be in the Circuit Court for Montgomery County, Maryland.
- 6.9 No provision of this Declaration shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Declaration; all parties, being represented by counsel, having fully participated in the negotiation of this Declaration.
- 6.10 Should the last day of a time period fall on a weekend or legal holiday, the next business day thereafter shall be considered the end of the time period.
- 6.11 This Declaration of Covenants shall automatically terminate on the occurrence of any of the following events:
 - (1) Demolition of the building constructed under Special Exception SPX2010-00381, unless such demolition is for the purpose of reconstruction of the SPX2010-00381 building and such reconstruction commences within one year; or

- (2) Termination or expiration of a Special Exception for Housing for Seniors and Persons with Disabilities on the Brightview Property; or
- (3) Rezoning and/or redevelopment of all lots adjoining on the western and southern boundary of the Brightview Property from single family detached to non-single family detached; or
- (4) The date which is 60 years from the effective date of the Settlement Agreement, that effective date being May 7, 2010.

Nothing herein shall prohibit the filing and consideration of an application for redevelopment of the Brightview Property which contemplates the demolition of the building, major modifications to the building, or redevelopment of the site for a use other than the use approved under SPX2010-00381.

IN WITNESS WHEREOF, the undersigned being Shelter has executed this Declaration, as of the date written below its signature.

Shelter Development, LLC, a Maryland limited liability company

By: _____

Name: _____

Title: _____

Date: _____

State of Maryland
County/City of _____ | ss:

I HEREBY CERTIFY that on _____, 20____, before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared _____, who acknowledged himself or herself to be the _____ of Shelter Development, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and s/he acknowledged that s/he executed the foregoing instrument for the purposes therein contained as the duly authorized representative of Shelter Development, LLC, a Maryland limited liability company

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires:

EXHIBITS LIST

EXHIBIT	DESCRIPTION
1	Architectural Elevations
2	The Rockville Board of Appeals' resolution granting the special exception and the approved Special Exception Site Plan and detail sheets
3	The Rockville Planning Commission's resolution approving the Site Plan and the approved Site Plan, Landscape Plan, and detail sheets
4	The Final Forest and Tree Conservation Agreement and the Final Forest Conservation Plan
5	The Final Stormwater Management Plan
6	Special Off-site Rear Fence/ Side Fence Detail Sheet
7	Landscape Lighting Photometric Plan
8	Schedule of Third Party Beneficiaries under 6.1
9	Schedule of Resident Signatories to Settlement Agreement

EXHIBIT 8
Schedule of Exclusive Third Party Beneficiaries
[Section 6.1]

EXHIBIT 9

Schedule of Resident Signatories to Settlement Agreement

[Section 3.24]

Russell M Richards and Mary Richards, 2288 Glenmore Terrace

Guy Hanacek and Patricia N. Hanacek, 2290 Glenmore Terrace

Audrey Rutkove and John Joern, 2987 Glenora Lane

Jai Kim and Jeong Kim, 2989 Glenora Lane

Sheng Xu and Ying Chen, 2991 Glenora Lane

Mark Sacks and Rosa Sacks, 2993 Glenora Lane

King S. Lo and Francis Lo, 2995 Glenora Lane

Raymond Klimkosky and Lorain H. Klimkosky, 2292 Glenmore Terrace

Michael Ayoroa and N. Ayoroa, 2294 Glenmore Terrace

Peter Bailey and MC Bailey, 2296 Glenmore Terrace

Tax Identification Number(s): _____

After recordation please return to the attention of:

Timothy Dugan, Esq.
Nancy P. Regelin, Esq.
Shulman Rogers Gandal Pordy and Ecker, P.A.
12505 Park Potomac Boulevard
Potomac, Maryland 20854

END OF DOCUMENT