

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION
4785**

DECISION

Application:	Planned Retirement Community
Applicant:	Greenlife Property Group, LLC./Beechfield
Opposition:	Steve Brigham, Edwin Brown, Sr., et. al.
Hearing Date:	December 13, 2017
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 4785 is a request for permission to use approximately 82.68 acres of R-E (Residential – Estate) zoned land¹ located in the northeast quadrant of MD 193 (Enterprise Road) and US 50 (John Hanson Highway) for a Planned Retirement Community. The subject property is known as Tax Parcel 3 on Tax Map 53 in Grids E2 and F2, and Tax Map 54 in Grid A-2, recorded in the Prince George's County Land Records in Liber 36831 at Folio 561. Applicant also requests non-zoning variances to the requirements in Sections 25-122(b)(1)(G) and 25-122(d)(5)(A) of the County Code. These variances are requested in order to remove specimen trees and allow additional forest habitat enhancement credits, respectively. Applicant also requests approval of TCP2-014-2017.

(2) A few individuals appeared in opposition to the Application.

(3) The Technical Staff recommended approval with conditions. (Exhibit 28) The Planning Board chose not to hold a hearing and adopted Staff's recommendation as its own. (Exhibit 47)

(4) At the close of the hearing the record was left open to allow the Applicant to submit several items. (T. 185-188) I also allowed Staff the opportunity to respond to Applicant's suggested conditions of approval. The last of the items was received on February 22, 2018 and the record was closed at that time.

¹After research Applicant learned that approximately one acre is improved with the Duckett family cemetery and that acre is not owned by the Applicant. As a result the acreage of the subject property is reduced to 82.68 acres.

FINDINGS OF FACT

Subject Property

(1) The subject property is one large Parcel (Parcel 3) and is currently improved with a vacant house, outbuildings associated with prior agricultural activities, and the driveway serving them. If the request is approved the property will be subdivided into 133 lots and 25 parcels. There are regulated environmental features on site consisting of 100-year floodplain, wetlands, streams, and steep slopes (the Primary Management Area). (Exhibit 28, pp. 21-22)

(2) In 2008 the District Council approved SE-4529 (Zoning Ordinance No. 8-2008) which also allowed a former Applicant to operate a Planned Retirement Community on the subject property.

Surrounding Property

(3) The property is surrounded by the following uses:

- | | | |
|-------|---|--|
| North | - | Single-family detached residences in the R-E Zone and open space in the R-L (Residential Low Development) Zone |
| South | - | Single-family detached residences in the R-A (Residential-Agricultural) Zone |
| East | - | Single-family detached residences in the M-X-C (Mixed Use Community) Zone |
| West | - | Single-family detached residences in the R-R (Rural Residential) Zone |

Neighborhood

(4) The neighborhood is as defined by the District Council in its approval of SE 4529:

- | | | |
|-------|---|--|
| North | - | Open space owned by the Marleigh Community Association, Inc.; land owned by M-NCPCC; and three single-family homes |
| South | - | US 50 (John Hanson Highway) |
| East | - | An open space parcel owned by the Fairwood Community Association, Inc. |
| West | - | MD 193 (Enterprise Road) |

Master Plan/Zoning

(5) The subject property is located in Planning Area 71A, described in the 2006 Master Plan for Bowie and Vicinity and Sectional Map Amendment for Planning Areas 7A, 71B, 74A and 74B.

(6) The Master Plan specifically noted the need for senior housing “of sufficient size to provide amenities, such as ... gardens, ... swimming pools, or common eating areas ... provided in locations proximate to existing residential communities.” (2006 Master Plan, pp. 9 and 11) Specific policies of the Master Plan were to “[d]evelop high-quality senior housing” and to “[p]rovide high-value housing in a variety of price ranges and types.” (2006 Master Plan, pp. 10-11)

General Plan

(7) The subject property is located within an Established Community Growth policy area. The 2014 General Plan (“Plan 2035”) describes Established Communities as those “most appropriate for context-sensitive infill and low- to medium-density development.” (2014 General Plan, p. 20)

Applicant’s Proposal

(8) Applicant purchased the subject property on March 25, 2015. (T. 10) Applicant and affiliates are business entities certified by the State Department of Assessments and Taxation as being in “good standing” to operate in Maryland. (Exhibits 54, 71(b), 71(c) and 71(d); T. 10)

(9) The Applicant seeks to establish a Planned Retirement Community with a maximum of 584 dwelling units, comprised of 74 single-family attached “villas”, 60 single-family detached “villas”, 108 senior condominiums, 150 senior independent rental apartments, 192 assisted living units of various degrees in one “Elderly Care Facility”, and a 5,000 square foot community building with outdoor swimming pool. This amounts to approximately 7.05 dwelling units per gross acre. (Exhibit 70, p. 18) The layout of the proposed units and amenities is shown on Exhibit 56. The blue building will be an assisted living facility which includes independent living apartments and some units dedicated to residents with memory issues. (T. 16) The multifamily rental units are highlighted in purple, and the multifamily condominium units are outlined in yellow. (T. 16-17) The community center is located “in the heart of the community” and is outlined in red. (T. 17) Seventy-four single-family detached units are located along the Spine Road and are also highlighted in red. (T. 17)

(10) A prior owner was granted approval to operate a planned retirement community consisting of 250 multifamily units and 150 townhouse units in a condominium regime. (Exhibit 28; pp. 4-5 and Exhibit 55) on one parcel (SE-4529) The Technical Staff Report contains a thorough description of conditions imposed in that approval and how those

prior conditions (not applicable to the instant new request but appreciated as a means of comparison to it) relate to this application. (Exhibit 28, pp. 5-8)

(11) Applicant provided testimony explaining why it did not wish to proceed under that final approval:

Mr. Haller: Okay. Now since this application is currently still valid, why aren't you simply pursuing the construction of the application as approved on that special exception?

Mr. Dixon: Because we wanted to add different product types more than just the two product types of condominiums and single family attached units. So we revised the plan to add products that we wanted, that we thought were more in keeping with the market.

Mr. Haller: And are there any components that are being added to the special exception other than just simply independent single family –

Mr. Dixon: Yes.
Mr. Haller: -- homes?

Mr. Dixon: Yes. Yes, we're doing single family, excuse me, we're doing multifamily rental apartments. We will still have a smaller component of multifamily condominiums. We have, we've retained some of the single family attached, but we also add single family detached houses. But the biggest change is we've brought in an assisted living facility from a very qualified developer and operator of those facilities. It's in the packet.

Mr. Haller: Okay. And then in addition to wanting to add some product type were there any issues related to the subdivision that caused you to want to revise the application?

Mr. Dixon: Yes, the plan that was approved was done as one lot, the entire thing was done in a condominium regime. We have found that over the last 10 years or so condominium type development is not as well received as fee simple sales of product types. So yes, we do still have some condos but it's much smaller component. This allows us to sell individual homes to purchasers in fee simple.

Mr. Haller: Okay.

Mr. Brown: When you say well received, do you mean in terms of difficulty of obtaining financing for the condominiums?

Mr. Dixon: Yes. It's a challenge.

Mr. Haller: Do ... did these changes in terms of adding the different product type and converting the property from a single lot to fee simple lots require the changes which are the subject of this application?

Mr. Dixon: Yes.

(T. 12-13)

(12) The cemetery is located on a one-acre rectangular area adjacent to Route 50 at the end of the public spine road. (Exhibit 56; T. 19) Applicant explained the relationship of the site and the private cemetery created:

When this property was owned by a prior owner back in the late 1800's, the family that lived on the property ... started burying family members on a portion of the property... and so there was a family cemetery established [and] the historic preservation section[s] memo talks about, lists several names of relatives who they think could be buried in there. And the property was sold in 1911 and then eventually sold to the Turner family....

So the ... relationship to this special exception is that when the original property was sold, ... the family that sold the property reserved title to the cemetery for them to be able to visit ... and possibly to maintain the cemetery but they have since disappeared ... and so ... Mr. Dixon has testified that they will have the community association that will manage all of the other property in the community [to] ... maintain the cemetery as well, ... and they will also provide access to it....

(T. 31-33)

(13) Applicant has entered into an arrangement with Smith Packet/Harmony Senior Services, (through an affiliate known as Enterprise IL-AL Investors, LLC.) a senior housing development company, to operate the independent living, assisted living, and memory care building (outlined in blue on Exhibit 56). This building will be approximately 200,000 square feet and four stories and will house 101 independent living units, 60 assisted living units and 32 memory care units. (Exhibit 71(e)) The units will be owned by Smith Packet but tenants will be provided an option to purchase. (T. 42) A representative of Smith Packet discussed the services that will be provided to residents. These include a spectrum of daily living support services based on the levels of care needed (such as bathing, laundry services, individualized assessment plans, physical therapy, and dietary plans). There will be a central kitchen and transportation

for the residents “to restaurants, Wal-Mart, grocery store, the theater, religious activities.” (T. 44) Security will consist of 24-hour concierge services, security cameras on the exterior, and pull-cords in the units for residents to summon assistance. (T. 56) There will be a panoply of additional amenities, which include “three dining rooms, ... a library, a bistro, a movie theater, walking trails, three courtyards, ... beauty/barber, ... concierge services and medical director. (T. 45) Applicant provided photos of a video of other senior facilities owned and operated by Smith Packet to provide a visual of what would be constructed if the Application is approved. (Exhibits 56 and 59) Applicant also provided architectural renderings of the exterior of this building. (Exhibits 25(a)-(c))

(14) There will be 75 full-time equivalent employees at this facility (approximately 100-130 staff) on different shifts. It will operate 24 hours daily, seven days a week. (T. 51-52)

(15) Applicant noted that there will be sidewalks throughout the community to “connect everything together”, as well as a connection to the Marleigh Community Park located to the northeast and owned by the Maryland National Capital Park and Planning Commission. (T. 64-65) Michael Lenhart, accepted as an expert in the area of transportation planning, prepared reports addressing the impact of the proposal on the closest intersections. (Exhibits 22(a), 22(b) and 64) and submitted a letter from the State Highway Administration (“SHA”) approving his conclusions (Exhibit 63). These studies were undertaken as a prerequisite to the subdivision of the land. Only the unsignalized intersection at MD 193 and Chantilly Lane requires further study. (T. 111-124) A condition has been added to address future study of this intersection.

(16) Mr. Ryan McAlister, accepted as an expert in the area of landscape architecture, testified that the special exception site plan conforms with all applicable requirements of the Zoning Ordinance. In particular he noted that:

- The regulations of the R-E Zone were followed to the extent applicable, but the dimensions and percentages shown on the cover sheet to the Site Plan (Exhibit 46(a)) would apply (if approved); (T. 72)
- The Landscape Plan generally addresses all requirements of the Landscape Manual; (T. 74)
- The treatment of the private cemetery is addressed (outlined in red on Exhibit 46(c) and Exhibit 61); (T. 75-80)
- The area set aside for cemetery is not included in any green area or open space calculation required by the Landscape Manual. (T. 84-85)

(17) Mark Ferguson, accepted as an expert in the area of land use planning, prepared a land planning analysis in support of the Application. (Exhibit 70) In his analysis, he

detailed why the request satisfies the goals of the 2006 Master Plan for Bowie and Vicinity and Sectional Map Amendment for Planning Areas 71A, 71B, 74A and 74B:

The Master Plan's Development Pattern element divides its attention between the Rural Tier and the Developing Tier. The Master Plan identifies five overall issues for the Developing Tier:

- "Lack of pedestrian-oriented environments that give identity to an area or create a sense of place.
- Need for more diversity of housing types.
- Need to protect existing neighborhood character and quality of housing.
- Need for senior housing.
- Achievement of high-quality development...."

The approval of the subject Special Exception will address all of these issues.

The proposed development will contain a network of sidewalks and trails which will promote pedestrian activity, not only in the development itself, but by virtue of the connections to the adjacent MNCPPC park, with the surrounding community. The proposed development will be tightly clustered so that it is more compact and more walkable, while at the same time preserving environmental features and other open space and retaining much of the visual character of the subject property, particularly from US Route 50.

The proposed development will include a number of housing types, including attached and detached single-family dwellings, including rental and condominium ownership of multi-family dwellings, and both independent living and continuing care units.

The proposed development will protect the existing neighborhood character by the provision of perimeter buffers and open space areas, and because most of the developed areas at the subject property will be occupied by single-family housing types that are typical of the surrounding neighborhood.

The proposed development will by definition address the fourth of the Master Plan's overall issues. The fifth issue is further addressed by the Master Plan through a policy and ten associated strategies:

"Policy 4: Develop high-quality senior citizen housing.

Strategies:

1. Active senior citizen developments should be provided according to the following design guidelines:

- a. Development should be located to provide easy access to commercial and cultural centers of the Bowie and vicinity planning area.
- b. Development should include linkages to shopping and services in the Bowie Regional Center or mixed-use activity centers.
- c. Development should be of sufficient size to provide amenities, such as indoor parking or garages, gardens, plazas, swimming pools, or common eating areas.
- d. Development should have direct access to a collector road or greater to allow easy access for emergency medical services.
- e. Development should be served by public transit or shuttle buses to shopping and services in the Bowie Regional Center or mixed-use activity centers.
- f. Prior to approval of new development, a market analysis should be conducted that evaluates and satisfactorily demonstrates the need for senior housing within one mile of a proposed site.
- g. Development should occur at locations in accordance with the guidelines of the Bowie and Vicinity Master Plan and SMA and/or at locations deemed appropriate by the District Council.
- h. Senior housing should be provided in locations proximate to existing residential communities.
- i. All such senior adult residential development shall be subject to a detailed site plan review.
- j. All such active senior adult development may be included in mixed-use and multifamily zones....

The proposed development is in harmony with the Master Plan's strategies of easy access and linkages to commercial and cultural centers of the Planning Area, and for collector road access because of its location on Enterprise Road, an arterial roadway. In addition, residents of the continuing care facility will be provided with a shuttle service for shopping, transportation to medical services, and for field trips to cultural activities.

The proposed development will be of sufficient size to provide many of the amenities listed, including the community center, a swimming pool, and common eating areas for the continuing care facility.

Finally, it is noted that the location of the subject property was approved by the District Council in 2008 for a planned retirement community under SE-4529.

Because the proposed application directly addresses the Master Plan's identified issues for land in the Developing Tier, the approval of the subject planned retirement community would be in harmony with the land use recommendations of the Master Plan.

The subject development proposal also addresses the applicable Environmental Infrastructure goals, policies and strategies, including preservation, protection and enhancement of the green infrastructure network, protection of tree cover, reduction of light pollution and reduction of noise impacts.

(Exhibit 70, pp. 7-9)

(18) Mr. Ferguson also found that the request satisfies the requirements of Section 27-317 and 27-395 (Exhibit 70, pp. 7-20), concluding as follows:

In summary, this planner finds that the subject application would be in compliance with the general criteria for approval of a Special Exception found in Section 27-317(a), and the specific criteria for approval of a planned retirement community found in Section 27-395.

Additionally, it is this planner's opinion that because (1) the subject planned retirement community is located adjacent to high-classification roadways; (2) most of the remaining boundaries of the subject site abut open space or park parcels; and, (3) it contains a mix of unit types which are sited for maximum compatibility with adjacent existing development, that the approval of this particular application would entail less adverse impact to the surrounding neighborhood than those inherently associated with planned retirement communities irrespective of their location in the R-E Zone.

(Exhibit 70, p. 20)

(19) If the request is granted, Applicant envisions a phasing of development:

The first phase will be the entry road coming in to serve the Smith Packet building. As part of that we will be extending sewer through the site back toward the Smith Packet building. Second phase will include the community center and the first phase of each of the product types of different units, the single family detached, the single family attached as all shown on Exhibit 56, as well as likely the first phase of the condos and possibly ... [t]he rental apartments as shown in purple on Exhibit 56. The third phase would be the balance of the units on the west side of the wetland dividing the property and then the last phase will be the crossing of the wetland and the single family detached villas on the far east side of the property.

(T. 63-64)

Woodland Conservation/Variances

(20) A Type 2 Tree Conservation Plan was submitted with the Application (TCP2-014-2017). The woodland conservation threshold for the site is 25% of the net tract area (15.28 acres). (Exhibit 28, p. 107) One of the requested variances to Section 25-122(d)(5)(A) of the County Code is to allow additional forest/habitat enhancement credits above the ¼ : ratio allowed. Applicant requests a 1:1 ratio. Applicant also requests to remove 47 of the existing specimen trees because these trees are not tolerant to construction and/or are in poor condition. Most are located in the center of the site. Removal of these trees require a variance to Section 27-122(b)(1)(G) of the County Code. (Exhibit 28, pp. 108-110)

Noise

(21) Mr. Josh Curley, accepted as an expert in the area of acoustical engineering, prepared a noise analysis for the Application due to the site's proximity to US 50 and Enterprise Road. (Exhibit 37) Measuring from various locations throughout the site, he found the following noise impact, and proffered a way to successfully mitigate:

Phoenix Noise & Vibration has conducted an analysis of transportation noise impact upon the proposed Traditions at Beechfield residential development in Prince George's County, Maryland. Under the current site plan design, the development will contain an assisted living building, apartment and condominium buildings, attached villas, and detached single family homes. This noise analysis, limited to noise impact from Route 50 and Enterprise Road, included:

- On-site 24 hour noise level measurements.
- Computer modeling.
- Determination of existing and future noise levels.
- Preliminary mitigation recommendations for outdoor activity areas and residential building construction.

Noise impact throughout the site will change with height; therefore impact has been presented at the ground level and upper level. Impact is presented in varying levels of noise indicating future roadway noise levels. Both unmitigated and mitigated noise levels at the ground and upper level have been calculated throughout the future site. The noise levels presented are due only to surrounding roadways and do not account for noise from other sources such as construction, mechanical noise, environmental noise, etc.

Noise impact upon future residences has been evaluated according to noise limits typically used by Prince George's County for residential development, which require additional analysis when noise impact is projected to be greater than 65 dBA Ldn. Noise impact and resulting mitigation designs for outdoor activity areas has been evaluated according to both the 24-hour average noise level and average

daytime noise level, while interior noise impact has been evaluated only according to the 24-hour average noise level.

Nearly the entire site will be exposed noise levels above 65 dBA Ldn at the ground level. The noise barrier required to maintain noise levels in the site's outdoor activity areas below 65 dBA Ldn at the ground level would be between 26 and 32 feet high and run the entire length of the southern property, with portions located beyond the southern and eastern property lines. Conversely, the mitigation required to reduce noise levels in outdoor activity areas below an average daytime noise level of 66 dBA Leq would be limited to much shorter, localized noise barriers around the pool and along the lot lines of attached villa rear yards closest to Route 50.

Noise impact at the upper level will also be above 65 dBA Ldn for the entire site. All residential buildings will require further analysis to determine whether proposed building construction used by builders selected for the site will be capable of maintaining interior noise levels below 45 dBA Ldn, or whether modifications will be required to do so. Once builders have been selected for the site and architectural plans for the various residential building types are available, the building construction requirements necessary to achieve the interior limit can be determined.

* * * * *

CONCLUSION

The outdoor activity areas and residential buildings of the Traditions at Beechfield development will be exposed to roadway noise levels above 65 dBA Ldn, with impact as high as 80 dBA Ldn for the proposed condominium buildings closest to Route 50. While the entire site will be exposed to noise levels which exceed the Prince George's County threshold, compliance with Prince George's County's residential noise guidelines can be achieved through modifications to proposed site and building plans.

When evaluated according to the 24-hour average Ldn, the noise barrier required to reduce noise levels throughout the entire site to strictly below 65 dBA Ldn is not reasonable or feasible, with heights above 26 feet and running along the entire southern property line and portions of the barrier needing to be located off of the property to the east and south. When evaluated according to the average daytime noise level (i.e. the noise level more representative of when the outdoor spaces would be primarily in use), the mitigation required is much less extensive and can be achieved using localized noise barriers around the pool and along the lot lines of the few attached villas closest to Route 50.

A majority of the proposed residences throughout the site will be exposed to noise levels above 65 dBA Ldn. Once a builder has been

selected for the various residential building types throughout the site, and architectural plans for residential buildings are available, a detailed analysis can be completed to determine whether each builder's proposed building construction at the site will be capable of maintaining interior noise levels below 45 dBA Ldn, or whether modifications will be required to do so. Where necessary, modifications will include modifications to exterior wall construction and upgraded windows and doors.

Please note: The results of this Phase I & II Noise Analyses have been based upon the site information made available at the time of this study, including existing and proposed topography, existing roadway alignments, projected roadway traffic volumes, and the proposed building layout. Should any of this information be altered, including significant modifications to proposed topography or roadway alignment and projected roadway data, additional analysis will be required to determine if the results and recommendations presented herein are capable of reducing exterior and indoor noise levels to comply with Prince George's County's noise level requirements for residential development.

(Exhibit 37(a), pp. 1 and 15)

(22) Applicant submitted a copy of covenants, conditions and restrictions for the proposed use that include age/occupancy restrictions permitted under applicable federal law and common area uses and maintenance provisions. (Exhibit 18)

(23) Applicant accepts the majority of staff's recommended conditions, with a few suggested revisions. (Exhibits 57, 65 and 71(f)) Staff indicated its general agreements with the majority of the conditions proffered by Applicant. (Exhibit 73)

Opposition's concerns

(24) Some appeared at the hearing in opposition just to gather more information about the request. (T. 29, 60)

(25) Others, residents of nearby Chantilly subdivision, wanted to ensure that a traffic light be installed "due to loss of life and auto accidents there that have been happening for years." (T. 119-121)

(26) Finally, Ms. Brown noted that a traffic light would not solve all of the problems in the area "because there are too many people in that area and too many other small communities that probably have maybe 200 or 300 people or more." (T. 125) She believes Applicant should be required to access the subject property from US Route 50. However, Applicants expert in transportation planning explained that the State Highway Administration would not allow access from there. (T. 128-130)

Agency Comment

(27) The Transportation Planning Section recommended approval of the request, with two conditions concerning a shared-use path and a sidewalk/crosswalk connection. It provided the following in support of its recommendation:

The Transportation Planning Section has reviewed the special exception application ... for conformance with the 2009 *Approved Countywide Master Plan of Transportation* (MPOT) and for the appropriate area master/sector plan in order to implement trails, bikeways, and pedestrian improvements....

The MPOT and area master plan recommend a shared use side path and designated bike lanes along MD 193.... The Transportation Planning Section recommends the construction of a shared use side path along the site's frontage of MD 193. This is consistent with frontage improvements made to the north of the site along the frontage of the Marleigh development. Designated bike lanes can be provided within the dedicated right-of-way at the time of road resurfacing or improvement.

The ... (MPOT) reaffirms the need for sidewalks within new developments and as frontage improvements are made Sidewalks are provided along both sides of most roads. One additional sidewalk and crosswalk connection is recommended along

Private Road CT-A that will connect the Elderly Care Facility with the proposed sidewalk along Public Road A

(Exhibit 28, pp. 97-98)

(28) The Transportation Planning Section also opined that the request "would not pose any unanticipated safety issues on adjacent roadways" subject to the following:

1. The more easterly access to the elderly care facility, as labeled on the site plan, should be located at a median break. Either the access should be moved or the median break should be moved, as deemed appropriate by the County.
2. The cross-section within the 82-foot right-of-way street and the roundabout must have conceptual approval of the County prior to approval of the preliminary plan of subdivision.
3. Minimum dedication of 70 feet from centerline along MD 193 must be demonstrated at the time of preliminary plan of subdivision.

(Exhibit 28, T. 95)

(29) The Environmental Planning Section of the Maryland-National Capital Park and Planning Commission reviewed Applicant's request for variances from Section 25-122(d)(5)(A) (requesting an increase to forest/habitat enhancement credits from the ¼:1 ratio to a 1:1 ratio), and Section 25-122(b)(1)(G) (requesting the removal of 47 of the existing 101 specimen trees on site), in accordance with the variance provision in Section 25.119(d) and recommended approval, reasoning as follows:

[Request for increase in enhancement credits]

(A) Special conditions peculiar to the property have caused the unwarranted Hardship

This has been dormant for the past several years and the previous agricultural fields have begun to regenerate; this regeneration consists almost exclusively of invasive Bradford and/or Calorie pear. The extensive amount of invasive species on the site is a peculiar site condition.

(B) Enforcement of these rules will deprive the Applicant of rights commonly enjoyed by others in similar areas

Removal of invasive species is encouraged for the overall health of a site's ecosystem. Due to the significant amount of invasive species located in the areas proposed for additional enhancement credit, the cost of removal, replacement, and management warrant additional credits.

(C) Granting the variance will not confer on the Applicant a special privilege that would be denied to other Applicants

If other properties containing such a significant amount of invasive species occur, the same considerations would be provided.

(D) The request is not based on conditions or circumstances which are the result of actions by the Applicant

The existing conditions or circumstances are not the result of actions by the Applicant.

(E) The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property

The request for additional enhancement credits does not arise from any condition on a neighboring property.

(F) Granting of the variance will not adversely affect water quality

All proposed land development activities will require sediment control and stormwater management measures to be reviewed and approved by the County.

Recommended Finding: The required findings of Section 25-119(d) have been adequately addressed for the granting of forest/habitat enhancement credit at a 1:1 ratio.

Recommended Condition: At time of grading permit for the forest/habitat enhancement area shown on the TCP2, the bond amount for the forest/habitat enhancement area shall be determined in accordance with the Environmental Technical Manual (ETM).

Recommended Condition: Prior to signature approval of the TCP2, the TCP2 shall be revised to include interpretive signage at a minimum of 3 locations along the edge of forest/habitat enhancement areas. The plan shall provide sign details and locations.

* * * * *

[Request for removal of Specimen trees]

Staff supports the removal of 47 specimen trees based on the findings below; however, several specimen trees are proposed to remain within close proximity of the proposed LOD. Trees 7, 57 – 60, 67, and 71-75 should be monitored during and after the construction process to ensure their long-term survival.

(A) Special conditions peculiar to the property have caused the unwarranted hardship

The property is 83.68 acres and contains approximately 30.04 acres of PMA comprised of streams, wetlands, floodplain, buffers, and steep slopes. This represents approximately 36 percent of the overall site area, which limits the developable area. The developable area is further restricted by an existing cemetery. These existing conditions are peculiar to the property. Specimen trees have been identified in both the upland and lowland/PMA areas of the site. The Applicant is proposing to remove a majority of the open grown specimen trees and a few along the edge of woodland. To further restrict development of the non-wooded upland areas of the site would cause unwarranted hardship.

(B) Enforcement of these rules will deprive the Applicant of rights commonly enjoyed by others in similar areas

The proposed retirement community includes housing options that align with the uses permitted in the R-E zone as well as the vision for such zones as described in the Master Plan. Based on the unique characteristics for the property, enforcement of these rules would deprive the Applicant of the right to develop the property in a similar manner to other properties zoned R-E in the area.

(C) Granting the variance will not confer on the Applicant a special privilege that would be denied to other Applicants

If other constrained properties encounter trees in similar locations on a site, the same considerations would be provided during the review of the required variance application.

(D) The request is not based on conditions or circumstances which are the result of actions by the Applicant

The existing site conditions or circumstances, including the location of the specimen trees, are not the result of actions by the Applicant.

(E) The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property

The request to remove the trees does not arise from any condition on a neighboring property.

(F) Granting of the variance will not adversely affect water quality

All proposed land development activities will require sediment control and stormwater management measures to be reviewed and approved by the County.

Recommended Condition: Prior to signature approval of the TCP2, a specimen tree management plan and monitoring schedule shall be added to the TCP2 to outline maintenance requirements for the long-term survival of the following trees: 7, 57-60, 67, and 71-75.

Recommended Finding: The required findings of Section 25-119(d) have been adequately addressed for the removal

of specimen trees 1-6, 11-12, 50-56, 61-66, 68-70, 76-80, 83-98, and 101.

(Exhibit 28, pp. 109-111)

(30) The Special Projects Section noted that all public facilities (police, fire and rescue, school, and water and sewer) will continue to operate at an acceptable level of service. (Exhibit 28, pp. 130-131)

(31) The Technical Staff opined that the application would serve the needs of the retirement-aged community, reasoning as follows:

The proposed planned retirement community is providing a variety of senior housing including single-family detached, single-family attached, independent multifamily, assisted living, and memory care. The wide variety of residential uses proposed will serve the needs of the retirement-aged community through rental and ownership options.

As stated in the amended SOJ dated August 1, 2017, the original approved special exception was found to meet the needs of the retirement-aged community just by providing two housing options (150 single-family attached and 250 condominium apartments). The proposed special exception expands the number of housing options. The proposed revision will introduce 62 single-family detached units. The proposed community will reduce the number of townhouses to 71, while adding the 62 single-family detached units. The proposed community will also provide a mix of 150 independent living rental apartments and 108 multifamily condominium units, rather than the 250 condominiums previously approved. The elderly care facility building will include 100 independent living apartments, 60 assisted living units, and 32 home care units, for a total dwelling unit count of 583 for the entire planned retirement community. The new variety in dwelling unit types will result [in] a variety of ownership interests. The additional housing options will better serve the senior housing market by providing the opportunity for seniors to age in place, accommodate seniors with different financial needs (rental vs. ownership) and allow a broader number of the existing community members to stay in the community as they age. For these reasons, staff finds that the proposed use will serve the needs of the retirement-aged community....

A special exception use is considered compatible with uses permitted by-right within the zone, as long as specific criteria are met. The standard for determining whether to grant a special exception is whether the use would cause an adverse effect upon adjoining and surrounding properties, unique and

different, in kind or degree than that inherently associated with the use, regardless of its location within the zone. Based on the Applicant's amended SOJ dated August 1, 2017, the referrals contained in the record, and the findings contained in this report with conditions, staff finds that the application meets the required findings and regulations for approval ... of the special exception. Therefore Staff recommends APPROVAL of Special Exception Application No. SE-4785, Type 2 Tree Conservation Plan TCP2-014-2017, a Variance from Section 25-122(b)(1)(G) ... and Section 25-122 (d)(5)(A) ... subject to ... conditions....

(Exhibit 28, pp. 25, 45)

(32) Pursuant to Section 27-687 of the Zoning Ordinance, the Enterprise Road Corridor Development Review Commission was provided notice and an opportunity to review and comment on the Application. It submitted a letter with its recommended conditions of approval:

- According to the Traffic study “the site trips of this propose development added, the MD 193/MD 450 intersection would operate at LOS D with a CLV of 1,423 in the AM peak hour, and at LOS D with a CLV of 1,420 in the PM peak hour. Excess delays occur at the unsignalized intersections of MD 193/MD 953 (Glenn Dale Road) and MD 193/Chantilly Lane.” The commission members express that the traffic condition is already back to back during the AM and PM peak traffic periods and request a complete traffic signal warrant study at this location and install a traffic signal if signal warrants are met after review by SHA.
- A substantial trail system shall be shown which provides connections to both internal private streets, on-site recreational facilities, and the abutting parkland. The trail system shall be designed in a manner which reduces and/or eliminates impacts to the on-site sensitive environmental features to the greatest extent possible. The Commission concur[s].
- Noise impacts from both MD 193 and US 50 are anticipated in relation to both indoor and outdoor activity areas.
- Development should include linkages to shopping and services in the Bowie Regional Center or mixed-use activity centers.
- Development should have direct access to a collector road or greater to allow easy access for emergency medical services.

- Development should be served by public transit or shuttle buses to shopping and services in the Bowie Regional Center or mixed-use activity centers.
- Senior housing should be provided in locations proximate to existing residential communities.
- Countywide Green Infrastructure Plan Conformance.
- Request buffer between abutting surrounding communities and MD 193.
- Request that the main boulevard extend beyond the Traffic Roundabout.

(Exhibit 28, p. 150)

APPLICABLE LAW

(1) A Planned Retirement Community is permitted in the R-E Zone by grant of a Special Exception pursuant to Sections 27-317 and 27-395 of the Zoning Ordinance.

(2) Section 27-317 provides as follows:

(a) A Special Exception may be approved if:

- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
- (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
- (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and
- (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

- (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
- (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-395 provides as follows:

(a) A planned retirement community may be permitted, subject to the following criteria:

(1) **Findings for approval.**

(A) The District Council shall find that:

- (i) The proposed use will serve the needs of the retirement-aged community;
- (ii) The proposed use will not adversely affect the character of the surrounding residential community; and
- (iii) In the R-A Zone, there shall be a demonstrated need for the facility and an existing medical facility within the defined market area of the subject property.

(2) **Site plan.**

(A) In addition to the requirements of Section 27-296(c), the site plan shall set forth the proposed traffic circulation patterns.

(3) **Regulations.**

- (A) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, density, dwelling unit types, and other requirements of the specific zone in which the use is proposed shall not apply to uses and structures provided for in this Section. The dimensions and percentages shown on the approved site plan shall constitute the regulations for a given Special Exception.
- (B) The subject property shall contain at least twelve (12) contiguous acres.

* * * * *

(4) **Uses.**

- (A) The planned retirement community shall include a community center or meeting area, and other recreational facilities which the District Council finds are appropriate. These recreational facilities shall only serve the retirement community. The scope of the facilities shall reflect this fact. The Council may only permit a larger facility which serves more than the retirement community if the facility is harmoniously integrated with the retirement community and the surrounding neighborhood. All recreational facilities shall be constructed prior to, or concurrent with, the construction of the residential units, or in accordance with a schedule approved by the District Council;
- (B) Retail commercial uses, medical uses, health care facilities, and other uses which are related to the needs of the community may be permitted.

(5) **Residents' age.**

(A) Age restrictions in conformance with the Federal Fair Housing Act shall be set forth in covenants submitted with the application and shall be approved by the District Council, and filed in the land records at the time the final subdivision plat is recorded.

(6) **Recreational facilities.**

(A) Covenants guaranteeing the perpetual maintenance of recreational facilities, and the community's right to use the facilities, shall be submitted with the application. The covenants shall be approved by the District Council, and shall be filed in the land records at the time the subdivision plat is recorded. If the recreational facilities are to be part of a condominium development, a proposed condominium declaration showing the recreational facilities as general common elements shall be approved by the District Council, and shall

be recorded (pursuant to Title II of the Real Property Article of the Annotated Code of Maryland) at the time the subplat is recorded.

(4) The request must be found to be in harmony with the following purposes of the R-E Zone set forth in Section 27-427 of the Zoning Ordinance:

(a) **Purposes.**

(1) The purposes of the R-E Zone are:

- (A) To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain;
- (B) To facilitate the planning of one-family residential developments with large lots and dwellings of various sizes and styles;
- (C) To encourage the preservation of trees and open spaces in order to create an estate-like atmosphere; and
- (D) To prevent soil erosion and stream valley flooding.

(5) Applicant requests variances from Sections 25-122 (b)(1)(G) and 25-122(d)(5)(A). These two sections provide in pertinent part as follows:

Sec. 25-122. - Methods for Meeting the Woodland and Wildlife Conservation Requirements.

(a) General

- (1) Woodland conservation shall be designed as stated in this Division unless a variance is approved by the approving authority for the associated case.
- (2) All required conservation measures shall be completed in the time period specified but no later than prior to approval of the associated building permit for the subject lot or parcel or an adjacent lot or parcel. If this is not feasible due to phasing, grading, staging or other on-site constraints, the conservation measures shall be completed prior to the issuance of any temporary or permanent use and occupancy certificate(s) for the subject phase. All timetables shall be set forth on the approved tree conservation plan (TCP).

* * * * *

(b) Design Criteria

- (1) The following design criteria shall be followed on all TCPs unless a variance has been approved by the appropriate approval authority per Sec. 25-119(d).

* * * * *

- (G) Specimen trees, champion trees, and trees that are part of a historic site or are associated with a historic structure shall be preserved and the design shall either preserve the critical root zone of each tree in its entirety or preserve an

appropriate percentage of the critical root zone in keeping with the tree's condition and the species' ability to survive construction as provided in the Technical Manual.

* * * * *

(d) Woodland Conservation Options - Credit and Security

- (1) On-site preservation, on-site afforestation, on-site reforestation and on-site natural regeneration.

* * * * *

(5) On or off-site habitat enhancement projects

- (A) Credit: Habitat enhancement projects may receive credit toward meeting the conservation requirements at a rate of one-quarter acre of additional credit for each acre of on-site or off-site habitat enhancement provided. Habitat enhancement shall be conducted within woodlands that have already received credit for preservation or natural regeneration.
- (B) Security: To receive credit for habitat enhancement a five-year management plan must be prepared as part of the TCP2 following the guidelines provided in the Technical Manual. If the additional credit is sought, habitat enhancement shall be bonded at an amount determined according to the direction provided in the Technical Manual and the proposed management plan activities.

* * * * *

(6) Variances to this Subtitle must satisfy the applicable provisions set forth in Section 25-119. This Section provides, in pertinent part, as follows:

Sec. 25-119. - Applicability.

(a) General

- (1) Except as provided in (b) below, this Woodland and Wildlife Habitat Conservation Division applies to:
 - (A) All applications pursuant to Subtitles 4 (Building Code), 24 (Subdivision Ordinance) and 27 (Zoning Ordinance) of the County Code;
 - (B) All activities by a public utility;
 - (C) All activities of a unit of County or municipal government; and
 - (D) All activities delegated to the local jurisdiction by the State.

* * * * *

(d) Variances

(1) An Applicant may request a variance from this Division as part of the review of a TCP where owing to special features of the site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an Applicant. To approve a variance, the approving authority shall find that:

- (A) Special conditions peculiar to the property have caused the unwarranted hardship;
- (B) Enforcement of these rules will deprive the Applicant of rights commonly enjoyed by others in similar areas;
- (C) Granting the variance will not confer on the Applicant a special privilege that would be denied to other Applicants;
- (D) The request is not based on conditions or circumstances which are the result of actions by the Applicant;
- (E) The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
- (F) Granting of the variance will not adversely affect water quality.

* * * * *

(4) Variances granted under this Subtitle are not considered zoning variances.

* * * * *

(7) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or

disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

The record in this case reveals “no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan”. It would, therefore, be proper to grant the request, once the conditions addressed below are satisfied.

CONCLUSIONS OF LAW

(1) The instant application may be approved, subject to the conditions addressed below, since it satisfies all applicable requirements of the Zoning Ordinance. It meets the following purposes of the Zoning Ordinance (set forth in Section 27-102), and the specific purposes of the R-E Zone:

- 1. To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

The proposed use will offer a panoply of attractive housing options to seniors who reside or wish to reside in Prince George’s County. The Planned Retirement Community will offer various amenities to those residing therein, and those residing within the independent, assisted and memory care facility will have access to van transportation services to medical providers, shopping, religious or other activities. Accordingly, this application does further the health, safety, comfort and convenience of inhabitants of the County.

- 2. To implement the General Plan, Area Master Plans, and Functional Master Plans;*

As noted by the Technical Staff and Mark Ferguson, *supra*, the request implements the 2014 General Plan by providing context-sensitive low-to medium density development in this Established Community and by providing a range of housing densities, types and size for older residents of various ages and income. It implements the 2006 Master Plan for Bowie and Vicinity since that Plan recognized the need for senior housing, diversity of housing types, and the location of senior housing in areas proximate to existing residential communities. Conditions addressing shared-use paths and bike lanes, and protection of the stream valley help implement the Countywide Master Plan of Transportation and the Countywide Green Infrastructure Master Plan. Accordingly, this purpose is met.

- 3. To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;*

The record indicates that there are adequate police and fire services within the area of the proposed development. There will be no school-aged children residing therein, so there will be no negative impact on area schools. The Transportation Section has noted that the request will not adversely impact the roadways in the area once certain conditions are addressed. A traffic study was presented as part of the record in the instant case and it indicates that one unsignalized intersection will undergo further review at the time of subdivision. There's a condition to ensure that any requirement of SHA concerning the intersection will be followed. Thus, the application does promote the conservation of communities that will be developed with adequate public facilities and services.

5. To provide adequate light, air, and privacy;

The development will be designed in a manner that encourages open space, provides ample landscaping, and buffering between existing uses and those proposed. Accordingly, it will satisfy this purpose of the Zoning Ordinance.

6. To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;

The subject property is approximately 84 acres in size but will only house a maximum of 584 dwelling units. There will be approximately 40 acres of open space, and environmental features are conserved to the maximum extent possible. Noise impacts from US 50 and Enterprise Road will be mitigated, via conditions noted below, by the building materials, the buildings themselves, and walls of reasonable height. The Landscape Plan (Exhibits 45(a)-(h)) indicates the entire property is buffered from adjoining properties in the manner required by the Landscape Manual, or will be once all conditions are met. As a result, the application promotes the most beneficial relationship between the uses of land and buildings and it protects adjoining landowners from any adverse impacts.

7. To protect the County from fire, flood, panic, and other dangers:

The proposal will have to conform with all applicable provisions of the County Code which protect from fire, flood, and other dangers, including the stormwater management regulations, the floodplain regulations, the Fire Code, and the Building Code. Accordingly, this purpose is met.

10. To prevent the overcrowding of land;

The subject property is approximately 84 acres yet only a maximum of 584 dwelling units is proposed. The instant application, therefore, is in compliance with this purpose of the Zoning Ordinance.

12. To insure the social and economic stability of all parts of the County;

The proposed development will offer a mix of housing types to seniors who reside or wish to reside within the County. It will provide recreational amenities and will be close to shopping and other services. It will provide an additional tax base but won't burden public facilities. As such it promotes the social stability and economic stability of the County.

The request also satisfies the purposes of the R-E Zone, discussed *supra*, since the planned retirement community will include one-family detached units, and the Type 2 Tree Conservation, Sediment and Erosion Control, and Stormwater Management Concept Approval Plans will ensure the preservation of trees, the prevention of soil erosion and flooding, and the preservation of open space.

(Section 27-317 (a)(1))

(2) The requested use does not require variances, departures or waivers from the requirements of the Zoning Ordinance. Thus, it is in conformance with all the applicable requirements and regulations of the Zoning Ordinance. (Section 27-317(a)(2))

(3) For the reasons noted above, the request satisfies the goals of the 2006 Master Plan to provide a variety of housing for seniors of all ages and incomes. Accordingly, the strictures in Section 27-317 (a)(3) are satisfied.

(4) The proposed use is designed in an aesthetically pleasing manner, with sufficient buffers from adjacent properties. It is also designed in a manner that will minimize impact on adjacent residents since two of its four boundaries abut high-classification roadways (Enterprise Road and US Route 50), buffering neighboring properties from the impact of these roadways. Thus it will neither adversely impact the health, safety, or welfare of residents/workers in the area, nor be a detriment to the use/development of adjacent properties or the general neighborhood. (Section 27-317(a)(4) and (5)).

(5) A Tree Conservation Plan (TCP2/014/2017) is being approved in conjunction with the Application. (Section 27-317(a)(6)).

(6) Once all conditions are met the Application will have the on-site regulated environmental features (streams, stream buffers, wetlands, wetland buffers, 100-year floodplains, and steep slopes) preserved and/or restored to the fullest extent possible. (Section 27-317 (a)(7))

(7) The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(8) The proposed use will offer seniors a safe and attractive community close to shopping, and medical providers, for those that will continue driving, and van transportation will be provided for those that no longer drive. There is a community center and pool on site for use by all residents, and the Elderly Care Facility offers additional amenities, *supra*, for its residents. The single-family detached uses will be located closer to the single-family detached uses on adjacent property. Moreover, the

District Council has already found that a Planned Retirement Community at this site serves the needs of the retirement-aged community and will not adversely affect the character of the surrounding residential community. For these, and the reasons stated above, the provisions of Section 27-395(a)(1) have been met.

(9) The Special Exception Site Plan details proposed traffic circulation. Regulations addressing height, lot size and coverage, frontage, setbacks and density are shown on the Special Exception Site Plan. The property contains over 82 contiguous acres. The average number of dwelling units per gross acre is 7.05. Accordingly, Sections 27-395(a)(2) and (3) are satisfied.

(10) The proposed use includes a community center and other recreational amenities that will only serve the retirement community. The Elderly Care Facility will have additional amenities to include a beauty/barber salon, library, movie theater, exercise room, bocce ball court and a putting green. (Exhibit 71(e)) The Draft Covenants have been prepared that set forth the minimum age of residents (55) and guarantee the perpetual maintenance of the recreational facilities. Accordingly Sections 27-395(a)(4), (5) and (6) are satisfied.

(11) Finally, while objectionable to some residents, the use does not adversely impact the area surrounding it in any manner different from its probable impact on other R-E zoned property. It, therefore, satisfies the Schultz test mentioned above.

(12) Applicant has requested variances from two provisions in Subtitle 25 – one requiring a ¼:1 ratio for forest/habitat enhancements, and the other requiring preservation of specimen trees. Applicant requests a 1:1 ratio in order to manually clear the invasive species and replant with native vegetation. Applicant also wishes to remove the existing specimen trees. I agree with Staff's reasoning in recommending approval of the variances pursuant to Section 25-119 (d), supra, and further find as follows:

- a. Forest/habitat enhancement credits

Special conditions peculiar to the property have caused the unwarranted hardship:

The site has been dormant and the area has regenerated primarily with the invasive Bradford and/or Calorie pear. This is a peculiar site condition.

Enforcement of these rules will deprive the Applicant of rights commonly enjoyed by others in similar areas

Applicant's cost in removing the significant amount of invasive species warrant the additional credits.

Granting the variance will not confer on the Applicant a special privilege that would be denied to others

Staff notes that any similarly situated Applicant would have a right to request this variance.

The request is not based on conditions or circumstances which are the result of actions by the Applicant

Applicant played no role in the proliferation of the invasive species.

The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property

The request is not a result of conditions on a neighboring property.

Granting of the variance will not adversely affect water quality

Applicant must satisfy sediment control and stormwater management criteria imposed by the County.

b. Specimen trees

Special conditions peculiar to the property have caused the unwarranted hardship:

Nearly 36% of the site contains regulated environmental features. This is a peculiar site condition, and it would be a hardship to preserve all specimen trees within the reduced developable portion of the site.

Enforcement of these rules will deprive the Applicant of rights commonly enjoyed by others in similar areas

Requiring that all specimen trees be maintained coupled with preservation of the regulated environmental features would deny Applicant the right to develop in a manner commonly enjoyed by others in the R-E Zone.

Granting the variance will not confer on the Applicant a special privilege that would be denied to others

Staff notes that any similarly situated Applicant would have a right to request this variance.

The request is not based on conditions or circumstances which are the result of actions by the Applicant

Applicant played no role in the location of the specimen trees.

The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property

The request is not a result of conditions on a neighboring property.

Granting of the variance will not adversely affect water quality

Applicant must satisfy sediment control and stormwater management criteria imposed by the County.

DISPOSITION

Special Exception 4785, Tree Conservation Plan (TCP2/014/2017), and the Landscape Plan are Approved, subject to the following conditions:

1. Prior to the issuance of permits the following revisions shall be made to the Special Exception Site Plan or the Type 2 Tree Conservation Plan, as applicable, and the revised site Plans shall be submitted to the Zoning Hearing Examiner for review, approval and inclusion in the record:
 - a. The Applicant shall revise the special exception site plan to include handicap-accessible parking calculations and the number of handicapped spaces provided.
 - b. The Applicant shall revise the special exception site plan to remove the parcel designation from the proposed public street and to label the area "To be dedicated to Public Use," with the acreage and square footage of the area of dedication and dimension of the street width provided.
 - c. The Applicant shall revise the special exception site plan to reconfigure Parcels 3 and 6 to meet the 300-foot lot depth requirement, pursuant to Section 24-121(a)(4) of the Subdivision Regulations.
 - d. The Applicant shall revise the special exception site plan to provide continuous 10-foot-wide public utility easements along both sides of all public streets and at least one side of all private streets, unless a variation to these standards is approved by the Prince George's County Planning Board at the time of approval of the preliminary plan of subdivision. A copy of the resolution approving any variation shall be submitted to the Office of the Zoning Hearing Examiner for inclusion in the record.
 - e. The Applicant shall revise the special exception site plan to provide details for a proposed enclosure for the cemetery and provisions for adequate access and maintenance determined, in accordance with Section 24-135.02 of the Subdivision Regulations.

- f. The Applicant shall revise the special exception site plan to clarify the uses proposed, and correct the labeling of rooms versus dwelling units on the cover sheet of the special exception site plan.
- g. The Applicant shall provide a sidewalk/crosswalk connection linking the elderly care facility with the proposed sidewalk along Public Road A.
- h. The Applicant shall revise the Landscape Plan to demonstrate conformance to Sections 4.2, 4.3, 4.4, 4.6 and 4.7 of the 2010 *Prince George's County Landscape Manual* prior to plan certification.
- i. The Applicant shall revise the special exception site plan to provide appropriate screening for the loading and trash facilities from residential properties and from roadways, specifically, the loading area shown at the independent living apartments which has not been adequately screened from the public road.
- j. The Applicant shall revise the special exception site plan to provide standard sidewalks or paths along both sides of the public and internal private streets, except where the public spine road narrows to cross the environmentally-sensitive area to access the easternmost portion of the site, or if it is determined at the time of preliminary plan of subdivision that no sidewalk is required in a specific location.
- k. The Applicant shall revise the special exception site plan to add a note and calculation to the plan indicating that the average number of dwelling units per acre shall not exceed eight units per acre for the gross tract area.
- l. The Applicant shall revise the special exception site plan to add additional plantings or screening to buffer single-family detached lots from the adjacent townhouse units and private alleys.
- m. The Applicant shall revise the special exception landscape plan to demonstrate conformance to the Prince George's County Tree Canopy Coverage Ordinance.
- n. The Applicant shall revise the Type 2 Tree Conservation Plan as follows:
 - 1. Provide the standard general information table and the site statistics table on the cover sheet.
 - 2. Show all existing site features on the plan and label the proposed disposition.
 - 3. Label the proposed lot line dimensions.

4. Adjust the limit of disturbance to reflect access to, and the work proposed in, the areas of forest/habitat enhancement.
 5. Add the following standard details to the plan:
 - (A) planting distribution (Detail 12)
 - (B) tree maintenance calendar (Detail 13)
 - (C) container and ball and burlap detail (Detail 14)
 - (D) staking and guying (Detail 18)
 6. Revise Note 8 to identify US 50 (John Hanson Highway) as a freeway.
 7. Revise invasive species Note A to remove the language regarding 'prepared by' and 'dated.'
 8. Remove the wetlands hatching.
 9. Show all existing and proposed utilities on the plan.
 10. Show the critical root zones of all specimen trees at the required 1.5 times the diameter at breast height.
 11. Have the plans signed and dated by the qualified professional who prepared them.
- o. The Applicant shall revise the landscape plan to show the overlapping areas being counted as woodland conservation credits.
- p. Documents for the required woodland conservation easements shall be prepared and submitted by the Applicant to the Environmental Planning Section, for review by the County Office of Law and submission to the County Land Records for recordation. The following note shall be added to the standard TCP2 notes on the plan as follows:
- “Woodlands preserved, planted, or regenerated in fulfillment of woodland conservation requirements on-site have been placed in a woodland and wildlife habitat conservation easement recorded in the Prince George’s County Land Records at Liber ___ Folio. Revisions to this TCP2 may require a revision to the recorded easement.”

- q. The Applicant shall revise the TCP2 to include interpretive signage at a minimum of three locations along the edge of forest/habitat enhancement areas. The plan shall provide sign details and locations.
 - r. A revised Phase II noise report shall be submitted by the Applicant to fully evaluate the location, height, and materials required to mitigate all outdoor activity areas to the standard 66 dBA Leq or less. The mitigation shall not include the use of proposed buildings as noise reduction barriers.
 - s. All plans shall be revised by the Applicant to reflect the approved outdoor noise mitigation measures including location, height, and materials.
 - t. An approved stormwater concept shall be submitted by the Applicant. The limits of disturbance shall be consistent between the plans.
 - u. Prior to issuance of any building permits, the applicant shall provide an interpretive sign for the property that summarizes the results of the archeological investigations. The location and wording shall be subject to approval by the staff archeologist of the Historic Preservation Section, and shown on the revised Special Exception Site Plan.
 - v. The Applicant shall revise the special exception to remove the 1 acre area of the Duckett Family Cemetery from the site plans.
 - w. The Applicant shall add a note indicating intent to conform to construction activity dust control requirements, as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.
 - x. Pursuant to Section 27-395(a)(4)(B), a note detailing all of the recreational amenities provided to the residents of the Elderly Care Facility shall be added to the site plan.
 - y. The subject property shall be outlined in red on the revised Special Exception Site Plan, as required in Section 27-296 of the Zoning Ordinance.
 - z. The notation "NOT FOR CONSTRUCTION" shall be removed from the Special Exception Site Plan.
2. In accordance with Section 27-395(a)(5)(A) of the Zoning Ordinance, the Applicant shall file the covenants (presented in the record as Exhibit 18) in the land records of Prince George's County prior to record plat. The liber and folio of the covenants shall be reflected on the final plat prior to recordation.
 3. At the time of Preliminary Plan of Subdivision, private recreational facilities shall be found to be superior, or equivalent, to those that would have been provided under the provisions of mandatory dedication. The development and

maintenance of private recreational facilities shall be ensured in accordance with Section 24-135(b) of the Subdivision Regulations and Section 27-395(a)(6)(A) of the Zoning Ordinance.

4. A minimum dedication of 70 feet from centerline along MD 193 (Enterprise Road) shall be demonstrated by the Applicant at the time of preliminary plan of subdivision.
5. The Applicant shall provide an asphalt shared-use path along the subject site's entire frontage of MD 193 (Enterprise Road), unless modified by the Maryland State Highway Administration.
6. At the time of review of the preliminary plan of subdivision, the Applicant shall evaluate increasing the spacing between the rear yard of the single-family homes and the townhouse units, measuring 25 feet, between the two neighborhoods to increase privacy. Any resulting increase shall not require an amendment to the Special Exception Site Plan, but a copy of the Planning Board's resolution approving this revision shall be submitted to the Office of the Zoning Hearing Examiner for inclusion in this record.
7. Prior to issuance of the first grading permit, copies of the recorded woodland conservation easement documents with the approved liber and folio shall be provided to the Environmental Planning Section by the Applicant. The liber and folio of the recorded woodland conservation easement shall be added to the Type 2 tree conservation plan.
8. At the time of grading permit for the forest/habitat enhancement area shown on the Type 2 tree conservation plan, the bond amount for the forest/habitat enhancement area shall be determined, in accordance with the Environmental Technical Manual.
9. Prior to release of the bond for Forest Enhancement Areas 4 and 5 (located on the eastern side of the stream and as shown on the Type 2 tree conservation plan):
 - a. Specimen Trees 7, 57-60, 67 and 71-75 shall be evaluated for long-term survival as a result of construction. If determined to be hazardous, the trees shall be removed.
 - b. The wetland mitigation work required for the stream crossing shall be completed. Photos of the mitigation areas shall be provided to the Environmental Planning Section.
10. At the time of final plat, a conservation easement shall be provided by the Applicant and described by bearings and distances. The conservation easement shall contain the delineated primary management area, including all temporary impacts for forest enhancement, stream, and wetland mitigation. Areas of

approved permanent impacts shall be excluded from the easement. The Environmental Planning Section shall review the easement prior to approval of the final plat. The following note shall be placed on the plat:

“Conservation easements described on this plat are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed. Temporary disturbances are allowed for the installation of forest enhancement.”

11. Prior to issuance of any permits which impact wetlands, wetland buffers, streams, or waters of the U.S., the Applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.
12. Prior to approval of building permits for all residential buildings on-site, a building shell analysis shall be prepared by an acoustical engineer and provided by the Applicant to determine what specific modifications to building architecture and materials will be necessary to maintain interior noise levels below the state standard of 45 dBA Ldn.
13. Prior to the approval of building permits for all residential buildings on-site, a copy of the proposed list of building materials shall be provided by the Applicant to an acoustical engineer for each of the models in the affected areas. The acoustical engineer shall then prepare a certification, which shall be included in the permit, based on the building materials and a building shell analysis stating the following:
 - a. The date and company who prepared the building shell analysis upon which the certification is based;
 - b. The noise source(s);
 - c. The builder, model, and materials proposed;
 - d. That building shells of structures have been designed to reduce interior noise levels to 45 dBA Ldn or less; and
 - e. That the building materials provided in the permit package meet the requirements specified in the building shell analysis.
14. The limits of disturbance shown on any erosion and sediment control plan shall not exceed the limits of disturbance shown on the approved Type 2 tree conservation plan.

15. Prior to any ground disturbance or the issuance of a grading permit, the Applicant and the Applicant's heirs, successors, and/or assignees shall submit a plan for Phase III archeological investigations. The plan shall provide for the avoidance and preservation of the resources in place or shall provide for mitigating the adverse effect upon these resources. All investigations must be conducted by a qualified archaeologist, must follow *The Standards and Guidelines for Archeological Investigations in Maryland*, and must be presented in a report following the same guidelines.
16. Prior to any ground disturbance or the approval of any grading permits, the Applicant shall provide a final report detailing the Phase III investigations and ensure that all artifacts are curated in a proper manner.
17. Prior to approval of the preliminary plan of subdivision, the Applicant and the Applicant's heirs, successors, and/or assignees shall demonstrate that the Duckett Family Cemetery shall be preserved and protected in accordance with Section 24-135.02 of the Subdivision Regulations, including:
 - a. Arrangements for perpetual maintenance. The homeowners association declaration of covenants shall include a provision requiring that the homeowners association perpetually maintain the cemetery located adjacent to MD 50. An exhibit shall be included in the declaration which delineates the location of the cemetery parcel.
18. Prior to acceptance of the preliminary plan of subdivision, the Applicant shall demonstrate that the boundaries of the cemetery have been delineated and that the corners have been staked in the field.
19. Prior to approval of any grading permits or ground disturbance, the Applicant shall protect the Duckett Family Cemetery with "super silt fence," which shall remain in place until the permanent cemetery fencing or walls are in place and the appropriate interpretive markers are installed, inspected, and approved by the Historic Preservation Section.
20. Prior to approval of the final plat, an access easement shall be established by the Applicant which extends from the Duckett Family Cemetery to MD 193 (Enterprise Road). The easement is intended to protect the visitation rights of relatives of the deceased.
21. Prior to the issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency:

- a. Complete a traffic signal warrant study for the intersection of MD 193 at Chantilly Lane and install a traffic signal if, after review by SHA, the signal warrants are met and the installation of the signal is approved by SHA. If a signal warrant study has already been completed at the intersection, SHA may waive the need for a new study.

[Note: the Special Exception Site Plan and Landscape Plan are Exhibits 45(a) – (h) and 46 (a) – (j).]