

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

**SPECIAL EXCEPTION
4811
ALTERNATIVE COMPLIANCE AC-19008
DECISION**

Application:	Congregate Living Facility and Alternative Compliance (AC-19008)
Applicants:	Contee Estate Assisted Living, LLC./Marie Abayomi-Cole
Opposition:	Jennifer Krochmal, et. al.
Hearing Dates:	October 23, 2019 and November 13, 2019
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 4811 is a request to approve a Congregate Living Facility to serve up to sixteen (16) residents in a 7,431-square-foot single-family detached dwelling on approximately 1.32 acres of land in the R-R (Rural Residential) Zone, located at 7111 Veronica Lane, Laurel Marlboro, Maryland. The subject property consists of Lots 15 and 16 of D.A. Robey's Farmlets subdivision. (Exhibits 14 and 15) The property is owned by Marie Abayomi-Cole. Contee Estate Assisted Living, LLC¹ will operate the Congregate Living Facility if the application is approved. This entity has been issued a certificate in good standing to transact business within the State. (Exhibit 28)
- (2) AC-19008 is a request for alternative compliance from the requirements for Section 4.7 (Buffering Incompatible Uses) of the 2010 Landscape Manual.
- (3) The Technical Staff recommended approval with conditions. (Exhibit 22) The Planning Board elected not to consider the Application and in lieu thereof adopted the recommendation of the Technical Staff.
- (4) Jennifer Krochmal, Daniel Sheffield, Irleane Santos and Robert Taylor appeared and testified in opposition to the request.
- (5) At the conclusion of the first evidentiary hearing it was determined that an additional hearing would be necessary in order to allow the opposition time to review exhibits submitted by the Applicants. At the close of the second hearing the record was

¹ This entity is also called "Contee Estates, LLC" intermittently throughout the record.

left open to receive additional exhibits and the record was closed upon receipt thereof. (Exhibits 54 and 55)

FINDINGS OF FACT

(1) The subject property is trapezoidal in shape and consists of approximately 1.32 acres of land located on the southern side of Veronica Lane approximately 200 feet southeast of its intersection with Contee Road, and approximately two blocks away from Laurel Hospital. (T. 10) Although the property has frontage along Veronica Lane, access is currently via a recorded perpetual easement over and across Lot 7 of the "Charles D.A. Robey Farmlets" subdivision. (Exhibit 22, Backup pp. 27-30) The property is improved with a 7, 431-square-foot two-story brick and frame single-family detached dwelling, and a brick shed. Lot cover on the site is 14.17% of the combined lots. ²The site has been used since its construction in 2007 as a single-family dwelling and is currently owned by Applicant Marie Abayomi-Cole. Contee Estate Assisted Living, LLC is the corporate entity that will operate the Congregate Living Facility.

(2) The site was issued a Standard Letter of Exemption from the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance because the property contains less than 10,000 square feet of woodland. (Exhibit 6) The Technical Staff also noted that the site has been issued a Natural Resource Inventory Equivalency Letter (NRI-005-2019) (Exhibit 22, Backup p. 44)³There are no regulated environmental features on site. The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. A stormwater concept plan was not required for review at this time, but an approved Stormwater Management Plan will be required prior to the issuance of permits. (Exhibit 22, Backup p.44)

Neighborhood and Surrounding Uses

(3) The neighborhood is bounded on the north by Sandy Spring Road (MD 198); on the south and east by Van Dusen Road; and, on the west by I-95. The neighborhood is primarily residential in character.

(4) The subject property is surrounded by the following uses:

North and East - Veronica Lane and across, single-family detached dwellings and the Grace Baptist Church of Laurel in the R-R Zone.

South- Single-family detached dwellings in the R-R Zone.

² There is an area on the Special Exception Site Plan just above the signature block that states that the lot coverage is 16.16%. Applicants must address this discrepancy.

³ There is no copy of this Letter in the instant record however.

West- Single-family detached dwellings in the R-R Zone and Contee Road beyond.

Master Plan and Sectional Map Amendment

(5) The subject property is located within Planning Area 60, discussed in the 2010 Master Plan and Sectional Map Amendment (“SMA”) for Subregion 1 (Planning Areas 60,61,62 and 64). The Master Plan recommends residential low density land uses on the site.

(6) The 2014 Prince George’s County General Plan (“*Plan Prince George’s 2035*”) designates the site as within the Established Communities. The General Plan notes that these communities “are most appropriate for context-sensitive infill and low-to medium-density development.” (2014 General Plan, p. 20)

(7) The General Plan stated that the “County’s population is projected to increase by approximately 109,000 residents between 2010 and 2035” and “the Baby Boomer Generation [has grown] more than any other age group in the County [and] seniors aged 65 and older will account for the largest population gains in the County. “ (2014 General Plan, pp 56-57)

(8) The General Plan also noted “the County’s existing housing stock and pipeline – defined as development that has been approved, but not yet constructed – do not meet the anticipated needs of future residents and employers in Prince George’s County.” (2014 General Plan, p. 181) The General Plan included policies recommending that the County “[e]xpand housing options to meet the needs of the County’s seniors who wish to age in place” and “[i]ncrease the supply of housing types that are suitable for, and attractive to, the County’s growing vulnerable populations ... [which] include[s] the elderly, the homeless, and residents with special needs.” (2014 General Plan, pp. 189-190)

Applicant’s Proposal

(9) Ms. Abayomi-Cole purchased the property in 2017. (Exhibit 27) At that time, it was her intent to operate a Congregate Living Facility for up to sixteen (16) male and female residents, since she had experience running a day program for the elderly/disabled. (October 23, 2019 T.14)

(10) The requested use will not require an addition or expansion to the building. Applicant submitted a floor plan for the two-story structure, with basement. (Exhibits 12(a) and (b), and 34 (a) and (b)) There will be 10 bedrooms in total, three of which were added when the attached garage was converted to provide the additional bedroom space.

(Exhibit 51(b); T. 30) The site is improved with a brick “shed” located at the end of the driveway close to Lots 5 and 6. (Exhibits 29 (a)-(c) and 54) Applicants originally proffered an addition of 737 square feet of paving to widen the driveway to add three additional parking spaces. Landscape buffering will also be added between the use and adjoining properties.

(11) Ms. Abayomi-Cole did do some interior renovations, expanding the doors in the main area to accommodate wheelchairs and adding the exterior wheelchair ramp. (T. 12) Applicants submitted exterior and interior pictures of the dwelling, the wheelchair ramp, the outdoor terraced patios, and fireplace to the rear. (Exhibits 32(a)-(c), 45 (a)-(b), and 52(a)-(p))

(12) Applicant Abayomi-Cole testified that the facility would be ideal for use as a Congregate Living Facility:

[T]he home has two large sitting rooms, it has a formal dining room, it has two additional dining areas. It's [a] well equipped, relatively new home built in 2007. It has a kitchen that's modern and well equipped. It has a wheelchair ramp. It has all the adaptations that are required for ... the type of business that we're planning to ... run in it. It has an elevator, it has a stair lift, it also has on the outside a large terraced area with a built-in pizza oven and ... grill area for outdoor activities for our residents in the summertime. And it also has all the ... ramps, ... rails [and] in the bathrooms all the equipment that's required to meet ADA requirements. And it has a full basement with like a party area, a full bar area, it also has a movie theater....

[T]he house was built by someone else, and from what I hear he took ill, and the house was sold and was empty for many, many years. So, I had this this venture in mind, and because I live down the road I stumbled on the house and thought it would be ideal because it's sort of nestled in the woods, it wouldn't be up on the street to cause an obstruction with traffic or anything. So, I decided to ... purchase the home. And because it is a relatively new home it came equipped with all the requirements, with a sprinkler system, carbon monoxide [monitor], all the requirements, and it was ... just ideal ... for the population that I plan to serve, all the people who want peace and quiet, solitude, not so much traffic....

(T. 11-12)

(13) Ms. Abayomi-Cole testified that she will discourage the residents from owning vehicles given the limited parking. (October 23, 2019 T. 15-18) She also proffered that Applicants would add additional parking spaces and fence the rear of the site to reduce any impact upon neighboring properties. A markup of the proposed changes to the Special Exception was included in the record. (Exhibit 43) At the second hearing Applicants' counsel noted that they “are no longer proffering a fence ... because... there is a fence all the way around Ms. Cole's property and the one side that doesn't have a

fence the property slopes downward, and at the bottom there is a beautiful wood pile ... that creates a natural boundary on that side of her yard....” (November 13, 2019, T. 23) Pictures of the yard were provided. (Exhibits 40 (a)-(d), and 42 (a)-(k))⁴

(14) Applicants intend to manage the facility and employ two full- time employees per shift and there will be three shifts. Applicants averred this is the minimum number of staff required by the State to serve 16 residents.

(15) Ms. Abayomi-Cole admitted that the cost of residing at the facility may not be affordable to seniors living on fixed incomes but would cost less than a nursing home. (November 13, 2019, T. 183-188)

(16) Applicants believe that the Congregate Living Facility is needed and relied upon several reports in support of their belief. They submitted a report prepared by Dr. Michael Asante of the Planning Department in collaboration with others, entitled *A Study of the Economic Conditions and Changing Needs of Seniors in Prince George’s County* (May 2012). (Exhibit 22) They also relied upon a Report commissioned by the Prince George’s County Planning Department and prepared by ProMatura Group, LLC (“ProMatura Report”) at some point in the early to mid-2000s. (Exhibit10) Neither report appears to have been “subjected to the requirements for the adoption and approval of a Master Plan.” (Prince George’s County Code, Section 27-140) However, I am not precluded from considering these reports since reference to each was included in the staff studies.

(17) The ProMatura Report found that there would be over 160,000 residents aged 55 years old or higher within Prince George’s County by 2005. (Exhibit 10, p. 9) The report included the following information on assisted living facilities:

Assisted Living Residence

Definition. State-regulated rental properties that provide the same services as independent living communities, but also provide, in a majority of the units, supportive care from trained employees to residents who are unable to live independently and require assistance with activities of daily living, including management of medications, bathing, dressing, toileting, ambulating and eating....

Size of Residences. Assisted living residences range in size from a few units up to 300 apartments. The median size of assisted living residences is 5 units (apartments)

Conclusions about Senior Housing Trends and Their Effect on Prince George’s County....

Prince George’s County is underserved relative to independent living, assisted living and Alzheimer’s care....

(Exhibit 10, Part 2, pp. 35, 50)

⁴ An additional markup was provided subsequent to the final hearing and is addressed below.

(18) Applicant's witness, Greg Benefiel, is a registered professional land surveyor. He prepared the Special Exception Site and Landscape Plan and accompanying documents in support of the Application. He testified that the Special Exception Site and Landscape Plan met all requirements of the Zoning Ordinance applicable to the Special Exception but did not satisfy all requirements of the Landscape Manual. As a result, Applicants filed an application for approval of alternative compliance to said requirements. The Planning Director and the Alternative Compliance Committee recommended approval of that request, with conditions, as noted below.

(19) Mr. Benefiel noted that Applicants revised the Special Exception Site and Landscape Plan to address most of the Staff's recommended conditions, and explained why recommended Conditions d, g, and h were not addressed:

[As to recommended Condition (g)] the shed was never to be removed as far as i knew... [I]t's a very sturdy shed and it's needed... as an accessory to the assisted living... [T]he shed was probably built in 2010 shortly after the house was constructed.... [T]he shed's in great shape, it matches the house....

[As to recommended Condition (d)] Veronica Lane is a public right-of-way, we don't own it. Technically, I... don't know if I'm allowed to improve it or touch it, but if it is lands that are vacant, which this is... then...both sides are deemed compatible. Deemed compatible means there [are] no requirements.... Because this is vacant it's deemed compatible, so there isn't any landscaping that is required, although most of it's wooded....

[As to recommended Condition (h)] [t]he Health Department, other than the septic system, hasn't come out to review the house. We have not made application for the Health Department to come out and review.... [They will] come out... [, if this were approved, prior to the issuance of any permits]....

(October 23, 2019 T. 106-107,109-112)

(20) During cross-examination an issue arose as to sufficiency of parking shown on the Special Exception Site Plan. Mr. Benefiel noted that the four spaces provided are those required by law, but Applicants could provide an additional three spaces if allowed to do so in the landscape strip that was recommended by the Alternative Compliance Committee in its review of the four spaces. (October 23, 2019 T.152-155)

(21) After the second hearing Mr. Benefiel prepared a mockup of the Special Exception Site Plan that showed seven parking spaces and a gate enclosure for the terraced patios. (Exhibit 43) He also submitted a letter explaining that the additional three spaces would not alter the landscaping that was recommended by the Alternative

Compliance Committee after its review of the proposed parking for the use:

The approved Alternative Compliance (AC) with one recommendation by Tom Burke with the Environmental Division of Park & Planning has been complied to[.] [I]n addition, an additional parking space has been added in the alternative location for the 20' landscape strip and two other parking spaces in the existing driveway to help satisfy [opposition]. These parking spaces are additional to [those] required by code, to the parking shown originally. The planting has remained the same as the original Alternative Compliance, but planting adjusted to accommodate the addition[al] space within the 20' Landscape Strip. It is ... my professional opinion [that] the Alternative Compliance [Committee] would be fine with this layout. Any additional parking spaces will create hardship in requirements for stormwater management devices at the time of the use and occupancy permit....

(Exhibit 55)

(22) Applicant's witness, Mark Ferguson, was accepted as an expert in the area of land use planning. He prepared a Land Planning Analysis in support of the Application which provided, in pertinent part, as follows:

The proposed use for ... SE-4811 is the conversion of an existing single family dwelling into a congregate living facility for more than 8 elderly or physically handicapped residents. The maximum number of residents in a congregate living facility is twenty residents, sixteen are proposed.

The only improvements proposed to accommodate the conversion of the existing dwelling are (1) the addition of 737 square feet of paving to widen the existing driveway by two feet and create three of the four parking spaces required for the proposed use; and, (2) the installation of landscaped buffers between the proposed facility and its neighbors. The Special Exception Site Plan indicates that a handicapped ramp will also be constructed, but that improvement appears already to be in place, serving the existing dwelling....

The criteria for approval of a Special Exception for a congregate living facility for more than 8 elderly or physically handicapped residents in the R-R Zone are the general criteria for approval of a Special Exception of §27-317(a), and the special criteria for approval of a congregate living facility of §27-344....

The proposed congregate living facility will be a small-scale and low-impact facility operated in a building which is currently a single-family dwelling in the midst of an area of surrounding single-family dwellings. The existing building is on a large lot, and its site will only be modified to add additional landscaping and three new parking spaces off of the existing driveway. As such, it will promote the health and safety of the present and future inhabitants of the County by being a quiet, low-impact, small-scaled facility, and continuing to provide for a compatible physical appearance so as not to change the character of the

existing neighborhood....

Given its proposed location with almost no modifications in an existing single-family detached dwelling in the midst of an area of single-family detached dwellings, its *de minimis* traffic generation and general low impact on its surroundings, it is this planner's opinion that the approval of the subject application would constitute context-sensitive infill....

The subject property is located in the North Beltsville Living Area. In its discussion of this living area, the Master Plan identified a number of [c]oncerns. Relevant to the subject Application is the [c]oncern that, "there is potential for the R-R-zoned properties in the living [area] to be incompatible with future development." The proposed congregate living facility will retain the existing physical form of a single-family dwelling, and will be a low-impact use that will not affect the character of the existing R-R-zoned surrounding neighborhood....

Because the proposed application is consistent with the [Master] Plan's land use recommendations and does not conflict with its other recommendations, the approval of the subject congregate living facility would be in harmony with the recommendations of the Master Plan....

In summary, this planner finds that the approval of the subject application would be in compliance with the general criteria for approval of a Special Exception found in §27-317(a), and the specific criteria for approval of a congregate living facility found in §27-344 of the Zoning Ordinance.

Additionally, it is this planner' opinion that because of: (1) the physical compatibility of the proposed facility and the surrounding neighborhood by virtue of its proposed location in an existing dwelling; (2) the comparatively large size of the subject property ; (3) the proposed restriction of the use of the shared driveway; and (4) the *de minimis* nature of the traffic impact, that the approval of this particular application would entail less adverse impact on the public health, safety and welfare than those inherently associated with congregate living facilities, irrespective of their location in the R-R Zone.

(Exhibit 35, pp. 4-6 and 13)

(23) Mr. Ferguson also found that the request would be in compliance with applicable provisions of all Functional Master Plans and satisfies the applicable purposes of the Zoning Ordinance, and provided support for his findings. (Exhibit 35, pp. 4 -11). This Examiner agrees with these findings but chose not to repeat them verbatim herein.

(24) Mr. Ferguson provided the following analysis in support of Applicants desire to revise the Staff's recommendation of approval of AC-19008:

The subject application proposes Alternative Compliance for the provisions of Section 4.7 for Buffering Incompatible Uses....

Alternative Compliance is proposed to be provided by increasing the number of plant units to be provided for standard compliance, and by providing them on both sides of the existing driveway to increase the effective depth of the bufferyard. Planning Staff found that the incorporation of the existing paved driveway into the depth of the planted yard is offset by a 12% increase from the required number of plant units, and an increase in the total depth of the planted area will provide equal effectiveness to normal compliance for the required bufferyard.

The Planning Director accordingly forwarded a recommendation of approval to the Zoning Hearing Examiner, to which this planner concurs.

This planner notes, however, that the Technical Staff has recommended a Condition (#1g.) requiring the removal of the existing brick shed which is also located in the buffer area. The existence of this shed was not discussed by the Alternative Compliance committee, and the recommendation for the shed's removal did not come as a part of the Alternative Compliance approval recommendation. This planner's observations are that : (1) the existing shed conforms to the regulations of §27-442 (i) for accessory buildings; (2) the change in use will not propose a change to the physical character of the other existing improvements (other than the parking space additions), and as such it is not clear why a condition should be applied to the existing shed; (3) the shed is substantial – it is not a mere portable wood shed, but is constructed of masonry to match the appearance of the existing dwelling; and (4) the logic which the Alternative Compliance Committee applied for an increased depth of same planted bufferyard and an increase in the number of plant units to compensate for the existence of the existing driveway within the new buffer's depth applies even more to the existing shed – the activity associated with the shed will be much less frequent and much less intensive than the activity associated with the driveway.

As such, this planner believes that a requirement for the removal of the shed is capricious, particularly in light of the approval of Alternative Compliance for the driveway to remain within the very same bufferyard, and would recommend to the Zoning Hearing Examiner that the retention of the existing shed within the same expanded planted buffer which accommodates the existing driveway be approved and that proposed Condition 1g. be stricken.

(Exhibit 35, pp.12-13)

Opposition's concerns

(25) Several appeared in opposition to the request. At least two in opposition owned property touching the subject property: Ms. Krochmal's home is shown in Exhibit 31(e); Mr. Sheffield's is shown in Exhibit 31(h). (October 23, 2019 T. 119)

(26) There were privacy concerns expressed that would arise when the residents are

enjoying the outdoors on the multilevel terraced patios. As a result, Applicant's professional land surveyor agreed to add Leyland Cyprus trees, which grow to 20 feet in height at maturity, to the portion of the subject property closest to the Krochmal and Sheffield properties. (October 23, 2019 T. 138-145)

(27) Some questioned the sufficiency of the level of staffing proffered by Applicants (two staff members for 16 residents.) (October 23, 2019 T. 46-48; November 13, 2019 T. 164-166) There was a fear that the residents would "walk around" the premises (or the neighborhood) unaccompanied or insufficiently accompanied. (October 23, 2019 T.28,74-77).

(28) There was a concern that visitors would be allowed to come at all hours and that there are insufficient parking spaces for visitors, residents and staff. (October 23, 2019, T.78-80, 224-226)

(29) Finally, the opposition did not believe that Applicants had proven a need for the use since many of the documents submitted in support did not specifically address "Congregate Living Facilities". (November 13, 2019 T. 176-188)

Agency Comment

(30) The Technical Staff recommended approval of both requests, with conditions, reasoning as follows:

A special exception use is considered compatible with uses permitted by-right within the R-R Zone, as long as specific special exception criteria are met. Unless unique adverse impacts are identified, the special exception may be approved. The appropriate standard for determining whether the use would create an adverse impact upon surrounding properties is to show that the proposed use, at this particular location proposed, would not have adverse impacts above and beyond those inherently associated with the special exception use, regardless of its location within the R-R Zone.

Based on the applicant's revised statement of justification ..., the analysis contained in the technical staff report, associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings as set forth in Section 27-317 ... and Section 27-344.... Therefore, staff recommends approval

(Exhibit 22, pp. 11-12)

(31) The Transportation Planning Section provided the following comment after its review of the Application:

There are no transportation-related findings related to adequacy associated with a special exception; the main transportation-related requirements are that the use 'will not adversely affect the health, safety, or welfare of residents or workers in the area' and that the use 'will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan.' Section 27-344 of the Zoning Ordinance has special requirements for congregate living facilities; note of these requirements are transportation-related....

The congregate living facility is proposed within an existing residence on Lots 15 and 16 of Farmlets; no expansion of the residence is proposed. Access is proposed from Contee Road via a one-way driveway crossing adjacent Lot 7 of Farmlets. Egress is via a one-way driveway across Lot 16 to Veronica Lane. The driveway or easement over a different residential lot is not acceptable for this use. Specifically, the use of an easement or shared driveway in the R-R Zone is restricted to one-family dwellings or agricultural uses (Section 24-128 (b)(1)). The subject lots (Lots 15/16) have access to and frontage on a public street, Veronica Lane. The public street needs to be improved to the County's standard if required to do so by the County, and access to Lots 15/16 across Lot 7 must be eliminated....

From the standpoint of transportation, it is determined that this plan is acceptable and meets the findings required for a Special Exception ... if the plan is modified to eliminate access over Lot 7 and designate the driveway within Lots 15/16 as two-way (access and egress).

(Exhibit 22, Backup p. 43)

(32) The Alternative Compliance Committee and the Planning Director recommended approval of alternative compliance to Section 4.7 of the Landscape Manual for the bufferyard along the western property line, adjacent to the residents on Lots 6 and 7. Both offered the following support for the recommendation:

The underlying Special Exception, SE-4811, proposes to convert the existing residential dwelling to a congregate living facility for up to 16 residents. The SE includes widening the existing 20-foot-wide driveway to 22 feet and establishing additional parking spaces to serve the new use. The SE is subject to Section 4.2, Requirements for Landscape Strips Along Streets; Section 4.7, Buffering Incompatible Uses; and Section 4.9, Sustainable Landscaping Requirements, of the Landscape Manual because it involves a change of use from a lower-to a-higher-intensity use category, and from a residential use to a nonresidential use. The applicant

has filed this request for alternative compliance from Section 4.7 along the western property line, adjacent to existing single-family detached homes on Lots 6 and 7, for providing the required Section 4.7 bufferyard on both sides of the existing driveway for a total width that is wider than the required 20 feet....

The applicant requests alternative compliance from the requirements of Section 4.7 to propose an alternative solution to providing the required bufferyard along the western boundary line, adjacent to existing single-family detached dwellings. Section 4.7 requires a Type B bufferyard, which includes a 30-foot building setback and a 20-foot-wide landscape yard to be planted with 80 plant units per each 100 linear feet of property line. The applicant is not able to meet the required landscape yard width due to the location of the existing driveway, which runs from Veronica Lane in the north, along the west side of the lot, approximately three to four feet from the property line.

The alternative design solution consists of a landscape strip located between the existing driveway and the western property line, with a varied width of three to four feet, to be planted with trees and shrubs. There is an existing 6-foot-high chain-link fence with a brick foundation on Lot 6 which contributes to the separation. In addition, a 20-foot-wide bufferyard is proposed to be located east of the driveway within the northern portion of the lot, to be planted with trees and shrubs. However, a similar treatment should be provided within the southern portion of the lot, adjacent to the east side of the driveway, except where the building is located. One additional shade and two ornamental trees should be provided in this southern section of the bufferyard. As such, the total plantings will be 184 units, which is an additional 19 units more than required.

The Alternative Compliance Committee finds the applicant's proposal equally effective as normal compliance with Section 4.7, if approved with one condition, given the proposed bufferyard width is provided on both sides of the existing driveway and the provision of 10 percent more plant units than normally required....

The Alternative Compliance Committee recommends APPROVAL of Alternative Compliance AC-19008, Contee Assisted Living, from the requirements of Section 4.7, Buffering Incompatible Uses, of the 2010 Prince George's County Landscape Manual, along the western property line, adjacent to existing single-family detached dwellings, subject to the following condition:

Provide a 20-foot-width landscape yard in the southern portion of the site, east of the existing driveway, with one additional shade tree and two ornamental trees.

(Exhibit 22, Backup pp. 49-50)

(33) On September 19, 2018 Applicants were given a permit from the Prince George's County Health Department ("Health Department") to install a new sewage disposal system "for a 7, 431 square foot Assisted Living Facility with 16 beds." (Exhibit 9) The Health Department subsequently issued a "Certificate of Compliance – Individual Sewage Disposal System" after its inspection and approval of the individual sewage disposal system and trenches on site. (Exhibits 33 (a) and (b))

(34) In its health impact assessment review of the Application, the Health Department recommended the Applicants "[s]ubmit application for the Assisted Living Licenses from the State of Maryland's Department of Health's Office of Health Care Quality" and require "[t]he facility [to] be in compliance with COMAR 10.07.14...." (Exhibit 22, Backup p. 45)

LAW APPLICABLE

(1) A "Congregate Living Facility" is defined in Section 27-107.01 (a)(54) of the Zoning Ordinance as:

A residential facility for four (4) to twenty (20) elderly or physically handicapped residents, within which sheltered care services are provided, which may include, but need not to be limited to, living and sleeping facilities, meal preparation, laundry services, housekeeping, personal observation and direction in the activities of daily living, transportation for routine social and medical appointments, and the availability of a responsible adult for companionship or nonclinical counseling. The term shall not include an "Adult Day Care Center," "Hospital," "Nursing or Care Home," "Family," or "Group Residential Facility,"...." (Section 12-168(a)(54)) A Congregate Living Facility for more than eight (8) elderly or physically handicapped residents is permitted by Special Exception in the R-R Zone in accordance with the requirements of Sections 27-317, 27-344, and 27-428 (a) of the Zoning Ordinance.

(2) An "Assisted Living Facility" is defined in Section 27-107.01(a)(20.3) of the Zoning Ordinance as:

A residential facility with living and sleeping facilities for more than twenty (20) elderly or physically handicapped residents within which sheltered care services are provided, which may include, but need not be limited to, meal preparation, laundry services, housekeeping, personal observation and direction in the activities of daily living, transportation for routine social and medical appointments, and the availability of a responsible adult for companionship or nonclinical counseling. The term shall not include an "Adult Day Care Center,"

"Congregate Living Facility," "Hospital," "Nursing or Care Home," "Family," or "Group Residential Facility" as defined elsewhere in this Subtitle. An "Assisted Living Facility" shall comply with any licensing and other regulatory requirements.

(3) Code of Maryland Regulations (“COMAR”) Section 10.07.14.02 (b)(11)(a) defines an “assisted living program” as “a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to meet the needs of individuals who are unable to perform, or who need assistance in performing , the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence for the individuals.” Prior to approval of an assisted living program the State requires documentation of zoning approval if required by the local jurisdiction in which the Assisted living program is located and where applicable, approval from the local health department. (COMAR, Section 10.07.14.07 (A))

(4) The instant request must meet the provisions of Sections 27-317, 27-344 (a) and 27-428 (a) of the Zoning Ordinance. 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.

(5) Section 27-344 (a) provides as follows:

A Congregate Living Facility for more than eight (8) elderly or physically handicapped residents, as defined by Section 12-168(a) of this Code, may be permitted, subject to the following:

- (1) There is a demonstrated need for the facility;
- (2) The facility is in compliance with the physical requirements of Subtitle 12, Division 7, of this Code, and shall be operated in accordance with the licensing and other requirements of that Subtitle; and
- (3) There shall be a separate bedroom of a minimum of one hundred (100) square feet for each resident, or a separate bedroom of a minimum of one hundred and sixty (160) square feet for every two residents, or any combination of the above, so as to satisfy the accommodations requirements of the "Regulations for Congregate Living Facilities" (required by Section 12-173(d) of this Code), for the maximum number of permitted residents.

(6) Subtitle 12, Division 7 of the Code (which includes Sections 12-168 and 12-173, referenced above), has been repealed. Subtitle 12, Division 8 of the Code governs "Assisted Living Programs" defined as "a residential or facility- based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to meet the needs of residents who are unable to perform, or who need assistance in performing, the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence for the residents." The Division includes regulations and licensing requirements for uses that would meet the definition of an Assisted Living Program.

(7) Section 27-428(a) sets forth the purposes of the R-R Zone and provides as follows:

- (1) The purposes of the R-R 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 moderately large lots and dwellings of various sizes and styles;
 - (C) To encourage the preservation of trees and open spaces; and
 - (D) To prevent soil erosion and stream valley flooding.

(8) As noted above, the Applicant must show a "demonstrated need" for the proposed Congregate Living Facility. "Need" has been judicially held to mean expedient, reasonably convenient, and useful to the public. Lucky Stores, Inc. v. Board of Appeals,

312 A.2d 758, 270 Md. 513 (1973); American Oil Company v. Board of Appeals, 270 Md. 301; 310 A.2d 796 (1973).

Special Exception

(9) It has been predetermined by the District Council that a Congregate Living Facility in the R-R Zone is conditionally compatible with uses permitted as of right in that zone. If the Applicant establishes that the use at the subject property meets the criteria for such uses, the Application should not be denied unless it adversely impacts the surrounding properties in a manner unique from such uses located elsewhere in the R-R Zone. (See, Schultz v. Pritts, 291 Md. 1, 432 A. 2d 1319 (1981); Moseman v. County Council, 99 Md. App. 258, 636 A. 2d 499 (1994))

CONCLUSIONS OF LAW

(1) The instant Application can be found to be in conformance with the general purposes of the Zoning Ordinance, Section 27-102, as follows:

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

The Congregate Living Facility will conveniently serve the elderly inhabitants in the community by providing safe, comfortable housing. Adequate setbacks, landscaped buffers and fencing are provided to soften the views from adjoining properties.

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

As discussed herein, and noted in Mr. Ferguson's Land Planning Analysis, *Plan 2035* and the *2010 Subregion 6 Master Plan for Subregion 1* recommend lower density/ rural residential use of the subject property. The footprint of an existing house will not be change and therefore does not affect the low-density character of the area. No other aspect of these plans or the functional Master Plans are impaired by the request. Indeed, the request specifically furthers the General Plan's recognition of an increase in the "Boomer" generation and the need to expand housing options for seniors.

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

The Application proposes the re-use of a large single family home, and only a de minimis increase in traffic.

- (4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business**

- (5) To provide adequate light, air, and privacy;**

The proposed Special Exception provides adequate light, air and privacy and will insure orderly growth and development since there is no change to the footprint of the existing structures.

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

The proposed use will have minimal impact on adjoining streets and properties. No changes are proposed to the existing building (only four parking spaces will be added), and the addition of required landscaping will soften the appearance of the buildings on this site from views from adjacent properties.

- (7) To protect the County from fire, flood, panic, and other dangers;**

The proposed development must conform to all applicable fire regulations and is exempt from stormwater management requirements. There is no floodplain on the property, as noted on the Site Plan (Exhibit 30).

- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;**

This Special Exception will provide safe housing in a healthy living environment but is an institutional use for senior citizens. Accordingly it cannot be determined that it will be within the economic reach of all.

- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;**

The proposed use will contribute to the tax base and broaden it since Applicant must employ reliable help. It will also encourage more citizens to stay in the County by providing safe, sanitary housing for loved ones who might otherwise need to go elsewhere, whether in or out of the County.

(10) To prevent the overcrowding of land;

As noted, this property is approximately 1.32 acres in size. The Special Exception Site Plan indicates that total lot coverage is less than 17%. The Facility is the size of a large home. The instant Application does not overcrowd the land.

(11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;

As noted by the Transportation Planning Staff, the instant request will generate very little traffic. Accordingly, this use will not add to traffic congestion on the streets.

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

Providing a variety of housing and institutional uses is the backbone of social and economic stability in the County. This use provides housing for some of our neediest citizens. This purpose is, therefore, satisfied.

(13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;

The instant request is a reuse of residence on a site that has no sensitive environmental features. In addition, noise is not typically an issue associated with Congregate Living Facilities. The request is exempt from the requirements of the Woodland and Wildfire Habitat Conservation Ordinance.

(14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and

The subject property is ideal for the proposed uses. It has an existing structure and it contains no particular natural features, such as wetlands, streams, and floodplain. It is in an established neighborhood of single-family homes, and there will be no increase in lot coverage.

(15) To protect and conserve the agricultural industry and natural resources.

The re-use of the existing house will have no impact on the agricultural industry or natural resources. The property is neither used for agricultural purposes, nor has any protected natural features.

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

(2) The request satisfies the purposes of the R-R Zone found in Section 27-428 (a). The re-use of the existing dwelling is still low-density development; and the request will not require any change to the exterior of the existing dwelling, thereby ensuring no additional impact upon natural resources in the area.

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

(3) The proposed use and accompanying Special Exception Site and Landscape Plan are in conformance with all applicable requirements and regulations of the Zoning Ordinance, one the conditions are addressed. (Section 27-317(a)(2))

(4) The proposed use will not substantially impair the integrity of the Master Plan and SMA. The Master Plan presumes the compatibility of Special Exception uses in the zones in which they are permitted, absent specific findings to the contrary. The Applicants are proposing to expand a residential institutional use in a residential zone in a way that will not impair either Plan's rural, low-density vision for the area. (Section 27-317(a)(3))

(5) The size of the facility proposed will be sufficient to meet the needs of sixteen (16) residents. The referral replies received by the Technical Staff and the record in this case indicate that the use will not adversely affect the health, safety, or welfare of residents in the area in a manner that would require disapproval under the Schultz standard. (Section 27-317(a)(4))

(6) In general, Congregate Living Facilities are compatible neighbors that generate little noise or traffic. The proposed use can be accommodated on the site with no change to its existing character and will not be detrimental to the use of adjacent properties or the general neighborhood. The amount of traffic generated by the use is negligible. The neighbors believe the use will impact their privacy—the addition of Leyland Cyprus trees and fencing should ease their concerns. All of these factors support a finding that the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(7) The subject property is exempt from to the provisions of the Prince George's

County Woodland Conservation Ordinance. (Section 27-317(a)(6))

(8) No the subject Application there are no regulated environmental features on site have been fully preserved in a natural state. (Section 27-317(a)(7))

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

(10) One issue throughout the hearings was whether the request was for a Congregate Living Facility or an Assisted Living Facility. The issue most likely arose due to the different definitions for the use found in the Zoning Ordinance, the Health Subtitle and COMAR, which were set forth above. The Zoning Ordinance definitions for "Assisted Living Facility" and "Congregate Living Facility" are practically identical. The primary difference is that the latter must serve 20 residents or less. Both uses must satisfy the provisions of Subtitle 12 of the County Code and COMAR concerning Assisted Living Programs. COMAR also requires that the County's zoning provisions be satisfied before the State will review the use.

(11) The request satisfies the Zoning provisions set forth in Section 27-344. Applicant has shown a demonstrated need for the facility (defined as expedient, reasonably convenient and useful) given the General Plan's discussion of the burgeoning senior population, the obvious necessity that there be adequate housing for seniors, and the Pro Matura Report's conclusion that the County is underserved relative to independent and assisted living. (Section 27-344 (a)(1)) Subtitle 12, Division 7 has been repealed, so there are no physical requirements therein within which the request must comply. (Section 27-344 (a)(2)) Each bedroom in the facility will have to satisfy the minimum size requirements in the Zoning Ordinance. (Section 27-344 (a)(3))

(12) This Examiner agrees that the alternative compliance recommended by the Alternative Compliance Committee is equally effective as normal compliance. I do not believe the Applicant should be required to remove the large, well-constructed masonry shed, however, since it satisfies all setback requirements and contributes to the residential character of the site. I also do not believe that Applicants should be required to add the three additional parking spaces proffered during the hearing as they would detract from the residential character of the site, and are not required by the Zoning Ordinance. There appears to be a disagreement as to what the Staff intended in recommendation 1 (d) and this needs clarification. Finally, Applicants should repair the fencing shown on the Special Exception Site Plan and add additional Leyland Cyprus trees in the areas marked as P1 and P2 on the Plan since these changes would further protect the privacy interests of the adjoining neighbors.

(13) Finally, the Applicants should gate the terraced patios, as proffered, to increase security of the residents given the slope of the yard, provide the Natural Resource

Inventory Equivalency Letter, and revise the floor plans to expressly list the square footage of each bedroom as provided for Bedrooms 6-10 on Exhibit 34.

DISPOSITION

SE-4811 and AC-19008 are Approved subject to the following conditions that shall be satisfied prior to the issuance of permits, and submitted to the Office of the Zoning Hearing Examiner for review and inclusion in the record:

1. Revise the Special Exception Site and Landscape Plan to :
 - a. Provide a 20-foot-wide- landscape yard in the southern portion of the site, east of the existing driveway with one additional shade tree and two ornamental trees.
 - b. Place a Note on the Special Exception Site and Landscape Plans stating that there shall be no access to Lots 15 and 16, through Lot 7.
 - c. Show the "Required" and "Provided" building setbacks in the Note section of the Special Exception Site and landscape plan.
 - d. Revise the Section 4.2 schedule on the Special Exception Site and Landscape Plans to detail why there is conformance with applicable requirements and certify that the woodland contains noninvasive species or submit a letter from the Alternative Compliance Committee that indicates why such certification is not required.
 - e. Provide a note stating the conformance with Section 4.4 requirements.
 - f. Provide a Section 4.9 schedule on the Landscape Plan and demonstrate conformance with the applicable requirements.
 - g. Revise the Landscape Plan to add Leyland Cyprus Trees along the areas, labeled P1 and P2 on Exhibit 30, to help ensure privacy for the adjoining properties in those areas.
 - h. Clarify the actual lot coverage to remove discrepancy between Note 8 and the lot coverage information shown just above the signature block on Exhibit 30.
 - i. Outline the subject property in red as required by Section 27-296 of the Zoning Ordinance.
2. Provide evidence from the Prince George's County Health Department that the facility is in compliance with COMAR 10.07.14 regulations under the Office of Health Care Quality.

3. Submit verification as to whether the County will require improvements to Veronica Lane.
4. Submit a copy of the National Resource Inventory Equivalency Letter.

[Note: The Special Exception Site and Landscape Plan is Exhibit 30.]