

Zoning Hearing Examiner

Prince George's County • 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772 • 301-952-3644

NOTICE OF VIRTUAL HEARING

Application Number: SE-22002/AC-23008 REMAND

Applicant(s) Name: ESC 8215 Springfield, L.C. (Applicant)

Date and time of scheduled Zoning Hearing Examiner meeting: March 12, 2025

Description of Request Application of ESC 8215 Springfield, L.C. (Applicant), request for a Special Exception to permit a Planned Retirement Community use with 57 age restricted single-family attached dwelling units, Alternative Compliance from Section 4.6 of the Landscape Manual, and a Variance from Section 25-119(d) of the County Code for the removal of four specimen trees, the property consisting of 12.01 acres, zoned RR (Rural Residential), and located approximately 390 feet southeast of the intersection of Lake Glen Drive and Springfield Road, also identified as 8215 Springfield Road, Glenn Dale, Maryland 20769. Evidence at the Remand Hearing shall be limited to the items discussed in the District Council’s Order of Remand dated July 15, 2024.

* * * * *

Attention: All or a portion of the hearing will be conducted virtually and in accordance with District Council Rules of Procedure.

Requests to become Persons of Record should be submitted electronically by email to: ZHE@co.pg.md.us no later than 5:00 p.m. on March 10, 2025. Persons of Record will receive an email with information to join the virtual meeting platform. **Once you have received your Notice of Hearing, please provide an email address to ZHE@co.pg.md.us**

If you have not viewed the documents you can find them at https://pgccouncil.us/LZIS. Once there, select “Guide,” then “ZHE,” then the application name and hearing date, then “Meeting details,” and finally “Attachments.”

Upon notification of an evidentiary hearing before the Zoning Hearing Examiner, any interested party shall submit documents for the record in person, by email, by other electronic portals, or in the County provided drop box. **A copy of all large Site Plans or other documents must be submitted in person or the County provided drop box.** All documents for the record shall be submitted no later than five (5) business days before the scheduled evidentiary hearing. With permission from the Zoning Hearing Examiner, a party may submit supplemental documents for the record. Any interested party may contact The Office of the Zoning Hearing Examiner to receive a paper copy of a document if the document is not accessible online.

The Zoning Hearing Examiner shall not be responsible for resolving any technical difficulties incurred by any person participating in a virtual/remote hearing.

This notice is for informational purposes only. You have received this Notice of Public Hearing because you signed up to become a Person of Record. If you have any questions, please contact the Zoning Hearing Examiner at email ZHE@co.pg.md.us. or call (301) 952-3644.

DATE MAILED BY US POSTAL SERVICE/EMAILED: February 6, 2025



to Persons of Record (List attached to original in file)
 THE PRINCE GEORGE'S COUNTY GOVERNMENT
 Office of the Clerk of the Council 301-952-3600
 July 19, 2024
 RE: SE-22002 Stewart Property
 ESC 8215 Springfield, L.C., Applicant

***NOTICE OF DECISION
 OF THE DISTRICT COUNCIL***

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in this case on July 15, 2024
 CERTIFICATE OF SERVICE

This is to certify that on July 19, 2024, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

Donna J. Brown
 Clerk of the Council *Donna J. Brown*
 Wayne K. Curry Administration Building
 1301 McCormick Drive Largo, MD 20774
 Case No.: SE-22002
 AC-23008
 Stewart Property

Applicant: ESC 8215 Springfield, L.C.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND, SITTING AS THE
 DISTRICT COUNCIL
 ORDER OF REMAND

A. Introduction

On June 3, 2024, using oral argument procedures, this matter, an application request for the approval of a special exception to develop and use certain land in the County for a Planned Retirement Community, was considered by the District Council, on its own motion to elect to review and make the final decision, and on written exceptions filed by Applicant and Opposition.^{1,2,3} Primarily at issue after oral argument is whether the District Council should decide the matter on the merits or grant a request from the Zoning Hearing Examiner (ZHE) to remand this matter (albeit opposed by Applicant and Opposition), to allow Applicant, among other things, to file a variance request from the requirements of Section 27-395(a)(3)(B) of the Zoning Ordinance,

¹ To view the oral argument proceedings, please visit:
https://princegeorgescountymd.granicus.com/player/clip/3597?view_id=2&meta_id=510809&redirect=true (last visited July 14, 2024).

² The District Council elected to review this matter on April 4, 2024. Applicant filed exceptions on April 24, 2024. Opposition filed exceptions on April 25, 2024. To view the procedural history of

this matter, please visit:

<https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=6602629&GUID=60AB7D30-B145-4873A182-B8B1087DD590&Options=ID|Text|&Search=SE-22002> (last visited July 14, 2024).

³ Subsequently, the District Council directed its staff attorney to prepare this order of remand. PGCC § 27-3414; *Grant v. Cty. Council of Prince George's Cty.*, 465 Md. 496, 500, 214 A.3d 1098, 1101 (2019) (when exercising original jurisdiction, the District Council may delegate to its staff attorney the responsibility of preparing a proposed order and accompanying draft findings of fact, and where the District Council maintains original jurisdiction, as is the case here, it is permitted to engage in its own fact-finding).
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because the ZHE concluded that Applicant failed to satisfy the requirements of § 27395(a)(3)(B)—which states that a Planned Retirement Community in the Rural Residential (RR) Zone shall contain, among other things, at least 12 contiguous acres.^{4,5} PGCC § 27-27395(a)(3)(B), ZHE Decision (Disposition), 3/26/2024, Applicant Exceptions, 4/24/2024, Opposition Exceptions, 4/25/2024.

Having reviewed the record, including written exceptions and oral arguments, the request from the ZHE to remand this matter is hereby GRANTED. On remand, the ZHE shall reopen the record and conduct evidentiary hearings as necessary for clarification and additional testimony, subject to findings and conclusions of the District Council set forth herein.^{1,2,3} Remand to the ZHE does not constitute a waiver of District Council's original jurisdiction to elect to review and make

⁴ As permitted under the New Zoning Ordinance (New ZO), which became effective April 1, 2022, this Special Exception application was filed under the Transitional Provisions of the New ZO to develop the subject property subject to the provisions of the Old or Prior Zoning Ordinance.

⁵ The ZHE also requested that Applicant make any necessary revisions to the Special Exception Site Plan and other applicable documents to include a reduction of the number of dwelling units to the

1 The District Council may remand any zoning case heard by the Zoning Hearing Examiner back to the Examiner for clarification or for additional testimony. PGCC § 27-133(a)(1). See also PGCC § 27-133(a)(4) (At the conclusion of the argument, the District Council may either: remand the case to the Zoning Hearing Examiner or to the Planning Board for de novo proceedings, citing the reasons therefor; or deny the requested remand, and either conduct the scheduled oral argument or direct the Clerk to schedule or reschedule oral argument on the merits of the case and so notify all persons of record. The denial of a request for remand made pursuant to Subsection (b) of this Section does not prohibit the District Council from subsequently remanding a case pursuant to either Subsection (a) or Subsection (c) of this Section).

2 Because the District Council grants ZHE's request for remand, exceptions from Applicant and Opposition are denied as moot and without prejudice.

3 Where appropriate, the ZHE may incorporate, on remand, the record established prior to remand.

maximum recommended in the 2022 Master Plan or address why such reduction is unnecessary and that remand may be limited in nature— allowing incorporation of the prior record. ZHE Decision (Disposition), 3/26/2024. See discussion infra.

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the final decision on the merits of SE-22002, or to decide any exceptions timely filed from Applicant or Opposition after a decision on remand from the ZHE.

B. The Subject Property

The subject property is located 360 feet north of the intersection of Springfield Road and Moriarty Court and it is identified as 8215 Springfield Road, Glenn Dale, approximately 390 feet southeast of the intersection of Lake Glen Drive. The property is not located within the boundaries of the City of Bowie. The property is improved with a single-family detached residence, detached garage, and a separate carport. ZHE Decision at Findings 1–4.

Below is a screenshot from a portion of a State Department of Assessment and Taxation (SDAT) Printout depicting the legal description, property land area, and deeds for 8215 Springfield Road as follows:^{9,10,11,12}

⁹ The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property—including a preliminary plan of subdivision. PGCC § 27-141. The District Council may also take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. District Council Rules of Procedure Rule 6.5(f).

¹⁰ To view this information on SDAT, please visit: <https://sdat.dat.maryland.gov/RealProperty/Pages/default.aspx> (last visited July 14, 2024). Once directed to SDAT website: select “Prince George’s County” and for method of search, select “Property Account Identifier,” then click “continue” on lower right of screen. Once directed to next page, enter “District 14” and “Account # “1641547.”

¹¹ SDAT glossary of terms defines “map number” as “... the number ... to which tax map the property is located on. Tax maps are produced by the Maryland Department of Planning. Please note that properties often cross into neighboring maps, but tax assessment accounts will only have one associated map number per account.” To view, please visit: https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Map-Number (last visited July 14, 2024).

¹² SDAT glossary of terms defines “parcel” as “...the parcel number of the property as shown on the tax map.” To view, please visit: https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Parcel (last visited July 14, 2024).

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Account Identifier:	District - 14 Account Number - 1641547								
Owner Information									
Owner Name:	STEWART JOAN M ETAL KNUPP WILLIAM E				Use:	RESIDENTIAL YES			
Mailing Address:	8215 SPRINGFIELD RD GLENN DALE MD 20769-9610				Principal Residence:	YES			
					Deed Reference:	/40916/ 00567			
Location & Structure Information									
Premises Address:	8215 SPRINGFIELD RD GLENN DALE 20769-0000				Legal Description:	ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)			
Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	00D3	0131	1405000117	0000				2023	Plat Ref:
Town: None									
Primary Structure Built:	Above Grade Living Area			Finished Basement Area			Property Land Area		County Use
1945	2,768 SF			YES			11,9400 AC		002

According to SDAT, two (2) deeds from 2018 (40916/00567) are associated with 8215 Springfield Road for Assessment Year 2023. Based on those deeds, 8215 Springfield Road is identified, in relevant part, as Tax Map 28 and Parcel 131. Among other things, SDAT indicates that the legal description⁴ for “all” of Parcel 131 consists of only 10 acres of land that was recombined and/or deleted from another deed on July 1, 2010. SDAT also indicates that the property land area⁵ for Parcel 131 is 11.94 acres—i.e.—more than 10 acres but less than 12 acres.

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ZHE Exhibits at 788.⁶ SDAT further indicates that for Assessment Year 2023, 8215 Springfield Road, identified as Map 28 and Parcel 131, was not land assessed as containing 12 or more acres.⁷ Below is a screen shot from PGAtlas,⁸ which reflects the same tax, parcel, and acreage information from SDAT as follows:

4 SDAT glossary of terms defines “legal description” as “[t]he description of the property as it appears in the deed.” To view, please visit:

https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#LegalDescription (last visited July 14, 2024).

5 SDAT glossary of terms defines “property land area” as “[t]he land area of the account in acres or square feet.” To view, please visit:

https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Property-Land-Area (last visited July 14, 2024).

6 To view ZHE Exhibits, please visit:

<https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=6602629&GUID=60AB7D30-B145-4873A182-B8B1087DD590&Options=ID|Text|&Search=SE-22002> and click on Item No. 12 under Attachments (last visited July 14, 2024).

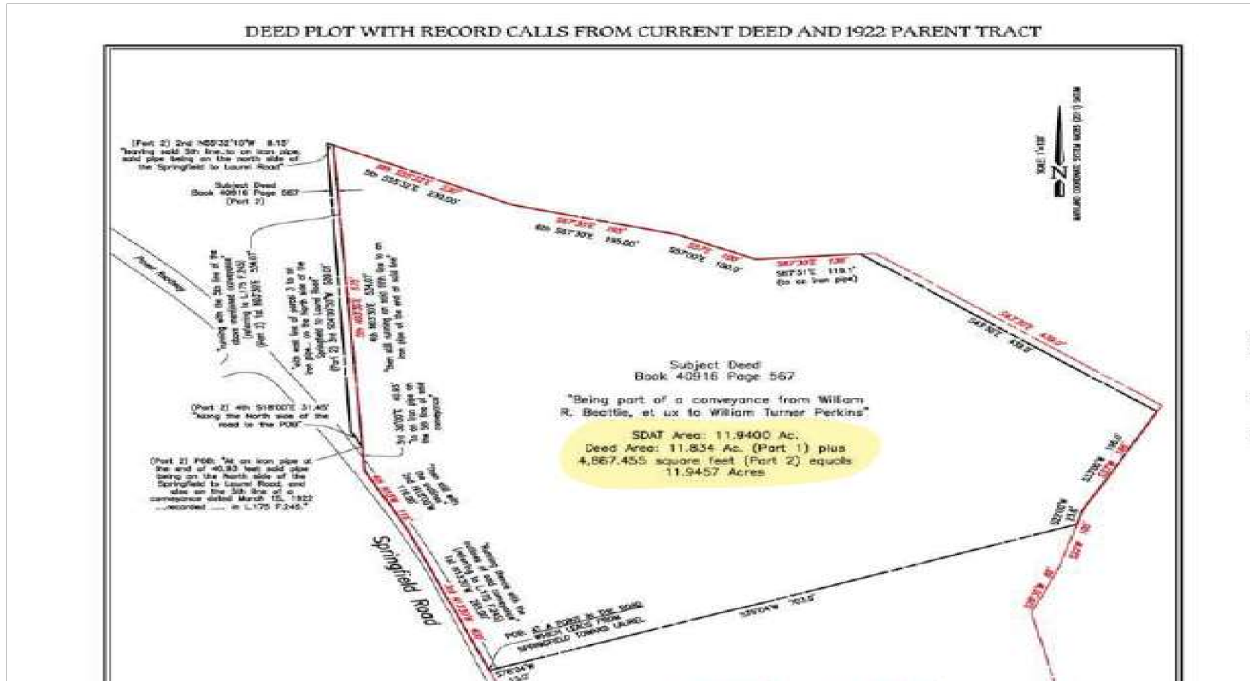
7 “Assessment Year” only applies to area in which the property is located—which per SDAT is not 12 or more acres. To view, please visit:

https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#AssessmentYear (last visited July 14, 2024).

Tax Account: 1641547		
Owner Name: STEWART JOAN M ETAL		
Premise Address: 8215 Springfield Rd, Glenn Dale, MD 20769		
Parcel Details	Ownership Information	Administrative Details
Tax Account #: 1641547	Owner Name: STEWART JOAN M ETAL	Tax Map Grid: 028D3
Assessment District: 14	Owner Address: 8215 Springfield Rd, Glenn Dale, MD 20769	WSSC Grid: 211NE10
Lot: Block: Parcel: 131	Liber: 40916 Folio: 567	Councilmanic District:
Description: ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)	Transfer Date: 5/29/2018	
Plat:	Current Assessment: \$608,467.00	
Subdivision:	Land Valuation: \$323,667.00	
Acreage: 11.94	Improvement Valuation: \$284,800.00	
	Sale Price: \$0.00	
	Structure Area (Sq Ft): 2768	

8 PGAtlas is a web mapping application maintained by the Maryland-National Capital Park & Planning Commission and Prince George’s County. It provides access to Geographic Information System (GIS) web applications and digital maps, including layers of County GIS data and imagery, such as tax and parcel identifiers, distances, and zoning overlays. Prince George’s Cnty. Council v. Concerned Citizens of Prince George’s Cnty., 485 Md. 150, 243, 300 A.3d 857, 912 (2023). (Emphasis added). To view PGAtlas, please visit: <https://www.pgatlas.com/> (last visited July 14, 2024).

Below is another screen shot from a deed mosaic exhibit submitted by Applicant that also confirms the information from SDAT as follows:



ZHE Exhibits at 809.

Whether or not the 11.9457 acres shown on SDAT includes the prescriptive easement described by Applicant representatives below, SDAT does not recognize Parcel 131 as having a legal description of more than 10 acres or a property land area of at least 12 acres—as those terms are defined by SDAT.

Despite this discrepancy, Mark Ferguson, land planner for Applicant, testified that the subject property would be less than 12 acres when the prescriptive easement is dedicated or conveyed out of Parcel 131—or stated differently—the legal description or the property land area—as defined by SDAT. (12/12/2023, Tr., pp. 220-227). But Steven Jones, land surveyor for Applicant, testified

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that the prescriptive easement, approximately 3,524 square-feet, was conveyed in one of the deeds provided in the record—which when deducted—results in the legal description or the property land area—as defined by SDAT—being only 11.834 acres—less than at least 12 contiguous acres required for a Planned Retirement Community use. (12/20/2023, Tr., pp. 25-26). See also ZHE

Exhibits at 782/Exhibit 107 (CPJ Boundary Memo-Statement of Square Footage, 12/19/2023).⁹

⁹ Under the Old Zoning Ordinance, the Applicant has the burden of proof in any zoning case. PGCC § 27-142. Here, Applicant “assumes not merely the lesser burden of generating a fairly debatable issue so as to permit a ruling in its favor but the significantly greater burden of actually dispelling fair debate by proof so clear and decisive as legally to compel a ruling in its favor.” B. P Oil, Inc. v. Bd. of Appeals, 42 Md. App. 576, 580, 401 A.2d 1054 (1979). See also Futoryan v. City of Baltimore, 150 Md. App. 157, 172, 819 A.2d 1074 (2003), quoting Anderson v. Sawyer,

C. Planned Retirement Community

In addition to the requirements that an applicant must satisfy for a special exception under PGCC § 27-317, an applicant must also satisfy additional requirements under PGCC § 27-395 for a “Planned Retirement Community,” use as follows:

(a) A planned retirement community may¹⁰ 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.

(C) The average number of dwelling units per acre shall not exceed eight (8) for the gross tract area.

(D) In the R-A Zone, buildings shall not exceed three (3) stories.

(E) In the I-3 Zone, the following shall apply:

(i) The gross tract area shall be a minimum of ninety (90) acres with at least twenty-five percent (25%) of its boundary adjoining residentially-zoned land or land used for residential purposes;

(ii) The property shall have at least one hundred fifty (150) feet of frontage on, and direct vehicular access to, a public street;

(iii) All buildings shall be set back a minimum of seventy-five (75)

23 Md. App. 612, 329 A.2d 716 (1974) (explaining in special exception cases that the applicant bears the burden of persuading the administrative board).

¹⁰ Under the Old Zoning Ordinance, may is interpreted as “permissive.” PGCC § 27-108.01(a)(19). See also Board of Physician Quality v. Mullan, 381 Md. 157, 166, 848 A.2d 642, 648 (2004); State v. Green, 367 Md. 61, 82, 785 A.2d 1275, 1287 (2001); Brodsky v. Brodsky, 319 Md. 92, 98, 570 A.2d 1235, 1237 (1990) (construing the word may as permissive as opposed to mandatory).

feet from all no residentially-zoned boundary lines or satisfy the requirements of the Landscape Manual, whichever is greater; and (iv) The property shall be located within two (2) miles of mass transit, regional shopping, and a hospital.

(F) In the I-3 and C-O Zones, townhouses shall comply with the design guidelines set forth in Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(d).

(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 sub plat is recorded. PGCC § 27-395. (Emphasis added).

D. Reopen Record for Clarification and Additional Testimony

- Proof of Acreage for Planned Retirement Community Use

Because the record before the District Council, and the ZHE, lacks sufficient facts and evidence, or at minimum contains contradictory facts and evidence, to determine, in the first instance, whether Parcel 131 is at least 12 contiguous acres to qualify for a Planned Retirement use, given the undisputed factual information from SDAT, PGAtlas, and testimony from Applicant's own land surveyor that the prescriptive easement was conveyed out of Parcel 131, the ZHE is directed, on remand, to reopen the record for clarification and additional testimony as follows:

1. Applicant shall provide proof in writing or through testimony from SDAT indicating whether SDAT included or excluded the land/acreage/squarefootage for the prescriptive easement as part of Parcel 131 in Assessment Year 2023.
2. Applicant shall provide proof in writing or through testimony from SDAT indicating whether the total acreage of the property land area—as defined by SDAT (i.e., 11.9400 acres)—is calculated solely from deed reference 40916 and 00567—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from deed reference 40916 and 00567.
3. Applicant shall provide proof in writing or through testimony of the acreage of land—separately—for deed reference 40916 and for deed reference 00567— as they are recorded in the Prince George’s County Land Records.
4. Applicant shall provide proof in writing or through testimony from SDAT describing the legal significance of: ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)—and the total combined acreage of Parcel 131 after 10.0AC was RECOMB/DEL from 3830957 on 7/1/10—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from the RECOMB/DEL 10.0AC.
5. Applicant shall provide proof in writing or through testimony of the date of conveyance of the land/acreage/square-footage for the prescriptive easement out of Parcel 131—and any written agreement memorializing such conveyance.
6. Applicant shall provide proof in writing or through testimony of whether Parcel 131 consists of deeds other than 40916 and 00567.
7. Applicant shall provide proof in writing or through testimony indicating whether the land/acreage/square-footage for the prescriptive easement has a separate or different deed reference other than 40916 or 00567.

- Variance from PGCC § 27-395(a)(3)(B)

An “area variance” is a variance from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings. And a “use variance” is a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses. *Richard Roeser Prof'l Builder v. Anne Arundel County*, 368 Md. 294, 309-310, 793 A.2d 545, 555 (2002). The difference between a special exception and a variance lies in the legislative approval of the underlying use. A special exception grants permission to engage in a use that the appropriate legislative authority has sanctioned under certain conditions. The special exception is an acknowledgement by the appropriate zoning authority that those conditions have been met. A variance, by contrast, grants permission to engage in a use that the appropriate legislative authority has otherwise proscribed. *Umerley v. People’s Counsel*, 108 Md. App. 497, 510, 672 A.2d 173, 179 (1996). Here, a Planned Retirement Community use is prohibited in the RR Zone unless the subject property contains at least 12 contiguous acres.

Assuming without deciding, if Applicant decides to submit a request for a variance, it must prove in writing or through testimony why a request for an area variance from PGCC § 27395(a)(3)(B) is authorized by law—in the first instance—since under PGCC § 27-395(a)(3)(B)— there is a threshold requirement that the subject property contain at least 12 contiguous acres— which goes to the use for a Planned Retirement Community—but (unless Applicant demonstrates otherwise as a matter of law) a use variance is not authorized or permitted in Prince George’s County.

- 2014 General Plan and 2022 Bowie-Mitchellville & Vicinity Master Plan

Whether the proposed development, authorized by special exception, conflicts with or impairs the 2014 General Plan or 2022 Master Plan turns on the District Council's prior legislative determination that the use is prima facie compatible in the residential zones with otherwise permitted uses and with surrounding zones and uses already in place. *People's Counsel for Balt. Cnty. v. Loyola Coll. in Md.*, 406 Md. 54, 102-106, 956 A.2d 166, 194 (2008) (A special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, prima facie, properly be allowed in a specified use district). See also *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015) (Because special exceptions are created legislatively, they are presumed to be correct and an appropriate exercise of the police power) (Emphasis added). Stated differently, the Court of Appeals of Maryland (now the Supreme Court of Maryland), in *Schultz, Schultz v. Pritts*, 291 Md. 1, 15, 432 A.2d 1319, 1327 (1981), described the analysis for special exceptions as follows:

These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

In subsequent cases, the Court explained that the Schultz comparison for special exception does not entail a comparative geographical analysis which weighs the impact at the proposed site against the impact the proposed use would have at all other sites within the zone. *Loyola Coll. in Md.*, 406 Md. at 100, 956 A.2d at 194. Rather, this comparison "is focused entirely on the neighborhood involved in each case." *Id.* at 102. Accordingly, even though a special exception use may have some adverse effects on the surrounding area, "the legislative determination necessarily is that the use conceptually is compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the [zoning agency] that actual incompatibility would occur." *Id.* at 106. (Emphasis added).

In *Loyola*, the Court concluded its analysis of the Schultz test:

With this understanding of the legislative process (the "presumptive finding") in mind, the otherwise problematic language in Schultz makes perfect sense. The language is a backwards-looking reference to the legislative "presumptive finding" in the first instance made when the particular use was made a special exception use in the zoning ordinance. It is not a part of the required analysis to be made in the review process for each special exception application. It is a point of reference explication only. *Id.* at 106-07.

As the Court explained in *Montgomery County v. Butler*, 417 Md. 271, 305 (2010), (quoting *Schultz*, supra, 291 Md. at 11), “[i]f [the applicant] shows...that the proposed use would be conducted without real detriment to the neighborhood...[the applicant] has met his burden.” Once the applicant meets this threshold, the local zoning board will “ascertain in each case the adverse effects that the proposed use would have on the specific, actual surrounding area.” *Id.* (citing *Schultz*, supra, 291 Md. at 11). (Emphasis added). The Court also noted that, “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 functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal.” *Loyola*, supra, 406 Md. at 83 (quoting *Turner v. Hammond*, 270 Md. 41, 55, 310 A.2d 543, 551 (1973)). On remand, any party may clarify or present testimony or evidence for or against the proposed Planned Community Retirement use in accordance with the law as described above by the Supreme

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Court of Maryland. And the ZHE is authorized, after the close of the record on remand, to make the appropriate recommendations, to the District Council, in accordance with the law as described above by the Supreme Court of Maryland.

• Covenants

Because covenants submitted with the application shall be approved by the District Council, and filed in the land records at the time the final subdivision plat is recorded, any covenants submitted with the application, to the extent the application is approved by the District Council (even if based on a recommendation from the ZHE), shall be final executed covenants (not drafts) after the record (in this case after remand) is closed. PGCC § 27-395(a)(5)-(6).

ORDERED, this 15th day of July 2024, by the following vote:

In Favor: Council Members Burroughs, Blegay, Dernoga, Harrison, Hawkins, Ivey, Olson, and Watson.

Opposed:

Abstained:

Absent: Council Members Fisher and Oriadha.

Vote: 8-0.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND *Jolene Ivey*

By: _____

Jolene Ivey, Chair

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Donna J. Brown

Donna J. Brown
Clerk of the Council