

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

**SPECIAL EXCEPTION
4739**

DECISION

Application:	Planned Retirement Community
Applicant:	Henson Creek House, LLC
Opposition:	Jeannine Taylor Gianois
Hearing Date:	June 25, 2014
Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 4739 is a request for permission to use approximately 16.38 acres of land, in the R-80 (One-Family Detached Residential) Zone, located on the west side of Temple Hill Road, approximately 200 feet south of the Capital Beltway (I-95/495), in Temple Hills, Maryland, for a Planned Retirement Community.
- (2) The Planning Board did not elect to conduct a hearing and in lieu thereof adopted the recommendations of the Technical Staff (Exhibit 23), and the Technical Staff recommended approval with conditions. (Exhibit 18)
- (3) At the close of the evidentiary hearing, the record was left open for the Applicant to submit a variety of documents, and, upon receipt of which, the record was closed on February 2, 2105.

FINDINGS OF FACT

Subject Property

- (1) The subject property is irregularly shaped and consists of a collection of 18 lots and one parcel totaling approximately 16.38 acres located on the west side of Temple Hill Road, south of the Capital Beltway (I-95/495). The property contains a large two-story brick and frame residence with a walk-out basement. At present, access is by means of an access easement from Temple Hill Road containing a 22-foot driveway. The site has been used since 2005 as a Congregate Living Facility for eight persons, a permitted use in the R-80 Zone.

(2) The center of the site is partially cleared and maintained as a lawn. Some of the site is wooded; other portions have been recently cleared pursuant to a rough grading permit, 5276-2012-G. The site has frontage on Florist Way and Florist Place, two paper streets which bisect the property east-west and north-south, respectively. There are floodplains, streams, and wetlands found to occur on the site, for the most part in the southern and western portion of the subject property.

Neighborhood and Surrounding Uses

(3) The neighborhood is bounded on the north by the Capital Beltway (I-95/495), on the east by Temple Hill Road, and on the south and west by Brinkley Road.

(4) The neighborhood is residential in character and is predominantly developed with a mix of single-family detached dwellings and a few multifamily complexes. The subject property itself is located within a platted, but largely unbuilt, subdivision known as Chambers Estates, which comprises 35 lots. The uses surrounding the subject property are scattered single-family residences in the R-80 Zone, including the three developed lots in Chambers Estates, several houses on Temple Hill Road, and residences along Fisher Road and Fisher Drive.

History

(5) The Prince George's County District Council approved Special Exception 4678 on April 26, 2011. As part of this approval, a portion of the subject property was approved for a Congregate Living Facility for 20 elderly residents. The Applicant has operated a Congregate Living Facility, referred to as Henson Creek House, on the premises since 2005. In addition, the District Council also approved an Adult Day Care Center, including a community center. The Adult Day Care Center was approved to operate Monday through Friday during the hours of 7:00 a.m. to 5:00 p.m. and to host 60 participants and five staff members. The building itself was approved to be 8,468 square feet in size and the Applicant is required to provide daily transportation to and from the Adult Day Care Center.

(6) As part of SE 4678, the Applicant was also granted Alternative Compliance to Section 4.7 (Buffering Incompatible Uses) of the 2010 Prince George's County Landscape Manual (Landscape Manual) along the eastern property line. The existing Congregate Care building does not meet the 30-foot-wide building setback, and the 20-foot-wide landscape yard is partially and temporarily occupied by the existing access drive and parking lot.

Master Plan/Sectional Map Amendment

(7) The 2002 Prince George's County Approved General Plan (General Plan) placed the subject property in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium-to high-density neighborhoods. The instant Application is consistent with the Development Pattern policies for the Developed Tier by encouraging appropriate infill development and strengthening existing neighborhoods.

(8) The 2006 Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area recommends a residential low-density land use for the subject property. One of the strategies of the Plan is to:

Encourage institutionally based development proposals with a mix of uses that focus on the institutional mission that may include high-quality residential, limited commercial, or community-oriented uses to provide a public benefit, to enhance community character, and are designed for compatibility with the surrounding neighborhood. Institutionally based development proposed should adhere to the following guidelines:

- **Development should include pedestrian linkages to nearby commercial, institutional, or cultural uses.**
- **Development should be of sufficient size to provide amenities, such as indoor parking or garages, gardens, plazas, recreation facilities, or common eating areas.**
- **Development should have direct access to a collector road or greater to allow easy access for emergency services.**
- **Development should be served by public transit or shuttle buses to shopping and services in the surrounding area.**
- **Prior to approval of new development for senior citizen housing, a market analysis should be conducted that evaluates and satisfactorily demonstrates the need for senior housing within one mile of proposed site. (Master Plan, page 22)**

The Applicant is proposing this type of housing and amenities as a companion to the Adult Day Care Center and Congregate Care Facility approved by the District Council in SE 4678.

Applicants Proposal

(9) The Applicant is requesting permission to establish a Planned Retirement Community with a maximum of 26 duplex units, for a total of 52 dwelling units. These units will be independent living units, rented to senior citizens. In addition, there will be a total of four Congregate Living Facilities, each with a maximum occupancy of 20 individuals. One of these will be the existing Henson Creek House. The 60-person Adult Day Care Center approved in SE 4678 is to be retained and relocated to the intersection of Florist Way and Florist Place. It will also incorporate a Community Center, courtyard with benches, bocce courts, and a community gardening plot. Access to the site will be via Florist Way from Temple Hill Road. The duplex villas will line both Florist Way and Florist Place, with the Congregate Living Facilities and Adult Day Care Center centrally-located around a courtyard and served by a circular driveway for clients arriving by vans operated by the Applicant. Each of the villas will be 1,439 square feet in size and will include a one-car garage. Thus, the

Applicant is proposing three levels of care (independent living, day care, and congregate living) in the same community. A large stormwater management pond is proposed in the northwestern portion of the subject property, along the Capital Beltway (I-95/495).

APPLICABLE LAW

(1) A Planned Retirement Community is permitted in the R-80 Zone by grant of a Special Exception pursuant to 27-317 and 27-395 of the Zoning Ordinance.

(2) §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;
 - (6) The proposed site plan is in conformance with an approved 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).

(3) §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 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 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) feet from all nonresidentially-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) At least one (1) resident of each household shall be at least fifty (50) years old, unless the applicant can demonstrate that a lesser minimum age requirement should be approved. No permanent resident of the planned retirement community shall be under eighteen (18) years old. Covenants setting forth the minimum age of the residents 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. No change in the minimum age shall be permitted, unless both the covenants and the Special Exception have been amended.

(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 subdivision plat is recorded.

Burden of Proof

(4) The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Special Exception use. The Special Exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The Special Exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the

legislature has determined to be permissible absent any fact or circumstance negating this presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Plan.

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 Board 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. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. 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. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested Special Exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

(5) 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 and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

CONCLUSIONS OF LAW

General Requirements

- (1) §27-317(a)(1) requires that the proposed use and Site Plan be in harmony with the general purposes of the Zoning Ordinance (§27-102) and with the specific purposes of the R-80 Zone (§27-429(a)).
- (2) The instant Application is in harmony with the general purposes of the Zoning Ordinance (§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 proposed development satisfies this Purpose. The existing Congregate Living Facility conveniently serves the present elderly inhabitants of the county by providing safe, comfortable housing. The Applicant has recognized a need to expand it, and adding the Adult Day Care Center will enable the Applicant to provide these services to more elderly citizens while not negatively impacting the safety or welfare of surrounding residents. The addition of 52 single-family dwellings for the retirement-aged community on the site provides a pleasant, safe comfortable, convenient environment for all. Adequate setbacks and landscaped buffers are provided to soften the views from adjoining properties.

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

The 2014 Adopted Plan Prince George's 2035 ("Plan 2035") amends and updates the 2002 General Plan for Prince George's County. It sets forth goals and policies for guiding development over the next 20 years. The overriding Vision of Plan 2035, as stated on Page 9, is:

In 2035, Prince George's County is the community of choice for families, businesses, and workers in the region. It is distinguished by strong, green, and healthy communities; a competitive, innovative, and adaptive economy; vibrant and walkable mixed-use centers; restored ecosystems; and iconic destinations. It meets the diverse needs of all Prince Georgians and embraces and builds on the momentum generated by new residents, technology, and business opportunities.

The overriding Goal, found on Page 12, is:

Prince George's County develops sustainably and equitably. It directs new development to existing transit-oriented centers; focuses public investment on its economic engines; capitalizes on and maintains its infrastructure; strengthens its established communities; and proactively preserves its natural, historic, and cultural resources.

Themes of equity and serving the needs of the range of citizens, including the rapidly growing elderly population are rife throughout Plan 2035.

Six guiding principles and numerous sub goals and strategies are offered to achieve the goal. The sub goals deal with the Planning Elements of "Land Use," "Economic Prosperity," "Transportation and Mobility," "Natural Environment," "Housing and Neighborhoods," "Community Heritage, Culture and Design," "Healthy Communities," and "Public Facilities."

The first Guiding Principle is to "Concentrate Future Growth" (p. 12). Plan 2035 basically eliminates the 2002 General Plan Tier designations. (They are maintained for some purposes, such

as Landscape Manual compliance determinations.) The Tiers are replaced with Growth Policy Areas, being Regional Transit Centers, Local and Suburban Centers, Established Communities, and Rural and Agricultural.

Table 15 sets forth the planned growth rate for each of these areas, broken down by dwellings and employment. Plan 2035 recommends that 60 percent of new dwellings be concentrated in the Regional Transit Centers, with another 25 percent in the Local and Suburban Centers. The majority of the County land area is found in the Established Communities and the Rural and Agricultural policy areas, which generally follow the outline of the old Developing and Rural Tiers. Plan 2035 recognizes that growth will occur in the Established Communities, generally in the form of infill development, and allocates 14 percent of all new dwellings in the Established Communities.

The subject property is in an Established Community as identified in Plan 2035. As a General Plan, Plan 2035 does not and cannot deny housing in areas zoned for it; it can, however, set forth goals and policies that will guide land use decisions. In preparation for Plan 2035, staff analyzed demographic trends and found the following:

The 55 to 64 age group, commonly referred to as the Baby Boomer generation, grew by approximately 30,000 residents or 36 percent. This was more than any other age group in the county. Forecasts indicate that over the next ten years seniors aged 65 years and older will account for the largest population gains in the county.

Recent trends show that seniors and the elderly will demand opportunities to age in place and reside in neighborhoods offering smaller, lower-maintenance housing options in walkable and transit-accessible locations. (p. 42)

“Aging in Place” is a relatively new term in planning, given the relatively new phenomenon of the rapid growth in the elderly population. While there are a number of Planning Elements that include Goals, Policies and Strategies, the Goals and Policies found in Plan 2035 that apply to the Special Exception for a Planned Retirement Community on the Property are primarily found in the Housing and Neighborhood Element:

HOUSING AND NEIGHBORHOOD GOAL

Provide a variety of housing options—ranging in price, density, ownership, and type—to attract and retain residents, strengthen neighborhoods, and promote economic prosperity. (p. 133)

Beginning on page 136, the Policies for this Goal are:

Policy 1: Concentrate medium- to high-density housing development in Regional Transit Centers and Local and Suburban Centers with convenient access to jobs, schools, child care, shopping, recreation, and other services to meet projected demand and changing consumer preferences.

Policy 2: Preserve and expand the range of housing types and ownership opportunities at different price points (ranging from workforce and affordable units to upper income housing) to reduce housing and transportation burdens.

Policy 3: Stabilize existing communities and encourage revitalization and rehabilitation.

Policy 4: Expand housing options to meet the needs of the county's seniors who wish to age in place.

Policy 5: Increase the supply of housing types that are suitable for, and attractive to, the county's growing vulnerable populations. These include the elderly, the homeless, and residents with special needs.

Policy 6: Increase funding for county housing projects and programs and leverage state, federal, and nonprofit funding and resources.

Policy 7: Strengthen the county's institutional capacity to streamline, administer, and implement the housing programs.

The Planned Retirement Community proposes a mix of rental single-family semi-detached dwellings for independent living, congregate facilities for those with special needs and an Adult Day Care Center for those with daytime needs. It is a relatively low density development in an Established Communities area. It expands the range of housing types and ownership options for the retired and elderly population. It helps to revitalize the area by bringing in additional jobs and a full time active population.

Expanding the housing opportunities for seniors who wish to age in place is a concern not only established in Policy 4 above, but found throughout Plan 2035. As quoted above, Plan 2035 recognizes the rapid growth in the retirement-aged community and the desire new retirees have to age in place. The proposed Planned Retirement Community provides such an opportunity for those in the area who are looking for active retirement, and for those who need more specialized care. It provides this in a mix of housing types suitable for many phases of the retirement experience (Policy 5). It provides for active living in independent dwelling units and a more structured living environment in the Congregate Living Facilities.

The Planned Retirement Community, including the existing Congregate Living Facility onsite since 2009, the already approved, but relocated Adult Day Care Center, and the additional 52 single-family, semi-detached dwellings for independent living, along with the passive and active recreational opportunities on the site, implements the recommendations of Plan 2035.

The 2006 Approved Master Plan for the Henson Creek – South Potomac Planning Area recommends residential, low density land use for the property. Strategies for the area include ensuring that “the design of new development in suburban residential areas maintains or enhances

the character of the existing community.” To this end, the Plan recommends that low-density residential land use be retained on “undeveloped parcels in established residential neighborhoods.” The Plan also recommends that institutional and special exception uses be designed to “reflect the scale and character of the surrounding neighborhood.” (See Page 36.)

The proposed development includes semi-detached housing; each building footprint will be more than 2,800 square-feet and the buildings will be one-story. These are compatible with the surrounding neighborhood. Congregate living facility buildings proposed are two- and three-story structures. The building closest to the adjoining residential structures is proposed to be two stories ensuring its compatibility with surrounding uses. With single-family semi-detached housing mainly on the perimeter and the institutional uses generally interior to the Property, the proposed development will be compatible with the scale and character of the surrounding residential properties. Beyond the immediate surroundings, the larger zoning neighborhood includes multifamily buildings and other institutional uses, including day care facilities and churches. The proposal is in character and scale with the larger neighborhood.

While Plan 2035 eliminated the Tier system, the Master Plan still identifies the Property in the Developed Tier. Policies for the area are still valid: for this area, the Master Plan includes Policy 1: “**Preserve and enhance existing suburban residential neighborhoods.**” (See p. 36.) One of the Strategies to implement Policy 1 is:

- **Encourage institutionally based development proposals with a mix of uses that focus on the institutional mission that may include high-quality residential, limited commercial, or community-oriented uses to provide a public benefit, to enhance community character, and are designed for compatibility with the surrounding neighborhood. Institutionally based development proposed should adhere to the following guidelines:**
 - **Development should include pedestrian linkages to nearby commercial, institutional, or cultural uses.**
 - **Development should be of sufficient size to provide amenities, such as indoor parking or garages, gardens, plazas, recreation facilities, or common eating areas.**
 - **Development should have direct access to a collector road or greater to allow easy access for emergency services.**
 - **Development should be served by public transit or shuttle buses to shopping and services in the surrounding area.**
 - **Prior to approval of new development for senior citizen housing, a market analysis should be conducted that evaluates and satisfactorily demonstrates the need for senior housing within one mile of a proposed site.**

Pedestrian linkages from the subject property to Temple Hills Road are provided on-site; each of the semi-detached dwellings include a one-car garage; outdoor amenities, including gardens, recreation facilities and an open seating area are provided; and public transit is available along Temple Hills Road. Dedicated but not yet constructed public streets on the project will direct sole access to Temple Hills Road, a designated arterial roadway. With regard to the last point, the master plan suggests a market study be done, but does not require one. None of the Zoning Ordinance standards for this use in the R-80 Zone include a requirement for a market analysis. The Applicant has had success with the Congregate Living Facility on the subject property and believes the expansion and additional uses are warranted. To complement this use, the Adult Day Care Center is proposed. And to further solidify the use of the subject property as a retirement community, 52 semi-detached single-family dwellings are proposed. This will be, in the end, a unified retirement community, meeting the needs of a wide variety of seniors. The Application implements the Master Plan recommendations.

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

This is an excellent example of a well thought out infill development. It uses an existing internal street pattern (dedicated, though not yet built). Planned Retirement Communities are typically less stressful on public facilities than standard development. Schools are not impacted and less traffic is generated. The subject property is in the Existing Neighborhoods Policy area established in Plan 2035. It is served by public water and sewer. The “number of total peak hour trips to be generated by this development is actually lower than that already approved for the site through the preliminary plan and the previous special exception.” (Exhibit 18, p. 14) This proposal makes advantageous use of existing public facilities and services, while not overburdening them.

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

By combining like services and uses, the Congregate Living Facilities, Adult Day Care Center, and independent living single-family homes, the Planned Retirement Community on this property promotes orderly growth in the county. The proposed Special Exception provides additional housing options for the retirement and elderly community, both independent and those in need of care.

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

The proposed Special Exception provides adequate light, air and privacy. The proposed development is a residential development with the tallest new building being 45 feet in height. Large setbacks and landscaped buffers are provided between the proposed development and the adjacent residences. Nearly 60 percent of site remains in green / open space.

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

Combining like uses—all residential and intended to serve the retirement community—represents a beneficial relationship between uses onsite. Landscaped buffers, adequate setbacks, appropriately-scaled buildings, and access that is not intrusive to the adjacent residential community, all serve to protect the adjoining developments from adverse impacts. In addition, low impact, full cut-off light fixtures will be used in outdoor areas to limit light spill onto the adjoining properties.

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

The proposed development must conform to all applicable fire and stormwater management regulations. These issues will be addressed at the time of permit.

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

This Special Exception provides safe and affordable housing for senior citizens with a range of needs and at all income levels. As noted in the previous Special Exception on this Property, not only does this proposal advance this Purpose, it is the basis for this Application. To the existing Congregate Living Facility, the Applicant proposes the addition of single-family homes to serve the active retirement community, the Adult Day Care Center to provide a healthy environment for those who do not yet need assisted living services, and the expansion of the Congregate Living Facilities for those who do.

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

The uses will contribute to the tax base and broaden it. It allows more citizens to age in place in safe, affordable, sanitary housing.

- (10) *To prevent the overcrowding of land;*

The proposal does not overcrowd the land. At 7.88± dwellings per acre, it falls within the allowable density. Setbacks and landscaping separate the development from adjoining development, and nearly 60 percent of the land is left in green / open space.

- (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;*

The Planned Retirement Community will generate less than 100 peak hour trips and less traffic than the uses already allowed on the site by the preliminary plan and the previous Special Exception. Thus, the total development of 52 single-family semi-detached homes, 80 Congregate

Living Facility units, and the Adult Day Care Center will not add to traffic congestion on the streets. All traffic will exit the site onto Temple Hills Road and not burden local streets.

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

The subject property is in a residential zone, therefore, the County has decided it is appropriate for residential uses. Providing a variety of housing and institutional uses in such a location helps provide the basis for social and economic stability in the county. Ensuring that the retirement community—those who are active and those who are less so—can age in place in a safe and healthy housing environment promotes social and economic stability. This proposal does just that.

(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 site includes no such areas. Noise is not expected to be an issue generated from the property, although noise from the Capital Beltway will affect the proposed development. The submitted noise study recommends actions to mitigate noise as it will affect the proposed residences and outdoor space.

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

The property is ideal for a Planned Retirement Community. It contains no areas of particular scenic beauty or natural features, such as streams or floodplain. There are wetlands on the site, but they are preserved in their entirety. The subject property is the subject of a record plat for 35 lots that could be developed with no active public recreational space. Many opportunities for outdoor recreation are proposed in this special exception. Additionally, the Adult Day Care Center will provide recreational opportunities for residents.

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

The proposed Planned Retirement Community will have no impact on the agricultural industry, and minimal impacts to natural resources. This property has not been used for agricultural purposes in recent history, nor has it been planned for such uses. It is not part of the Green Infrastructure Plan. Any impacts to environmental features are minimal and within the limits allowed by law. §27-317(a)(1)

(3) The instant Application is also in harmony with the specific purposes of the R-80 Zone (§27-429(a)) as follows:

(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;

The purposes of the R-80 Zone relate primarily to the creation of single family residential lots and subdivisions, not the establishment of other uses permitted in the R-80 zone. However, the property is more than 16 acres in size, and the Site Plan provides a variety of residential, institutional and accessory recreational uses, allowed by the Zoning Ordinance. The site has been designed to take advantage of already-dedicated public rights-of-way and to be built around the existing structure on the subject property. The existing structure was built with 2 stories in the front and a walk-out style basement in the rear, taking full advantage of the gently rolling terrain. The proposed Site Plan (Exhibit 52) creates a development around the existing structure and dedicated infrastructure.

(B) To facilitate the planning of one-family residential developments with medium-sized lots and dwellings of various sizes and styles;

The R-80 Zone allows for Planned Retirement Communities as Special Exception uses. As such, it allows residential uses that are not specifically one-family. The proposed Site Plan (Exhibit 52) includes 52 single-family semi-detached dwellings, dwelling styles that are not typically found in the R-80 Zone. This Site Plan provides dwelling types and styles that vary from others in the area, directly satisfying this Purpose. Additional dwellings, in the Congregate Living Facility, are also permitted. No lots are proposed because all dwellings are proposed as rental units and the grounds will be maintained by the property manager. However, the distance between buildings averages between 15 and 20 feet, depending on the location of the patio. This is in keeping with the lot sizes/setbacks typically found in the R-80 Zone.

(C) To encourage the preservation of trees and open spaces;

The property is subject to Tree Conservation Plan TCP II/142/04. The Site Plan (Exhibit 52) includes significant open space and outdoor areas.

(D) To prevent soil erosion and stream valley flooding.

The proposed development must conform to all applicable Soil Conservation and Stormwater Management regulations. A Stormwater Management Concept Plan, Concept #7500-2003-04, has been approved and the pond is under construction. §27-317(a)(1)

(4) Special Exception uses such as Planned Retirement Communities are presumed compatible with other residential uses provided the established setbacks, lot coverage, landscaping, minimum acreage, traffic and parking improvements and all other regulations can be met. The instant Application is in compliance with the regulations and requirements of the Zoning Ordinance and no variances or departures are requested. There is no evidence to support a finding that this presumption of compatibility has been rebutted and that this Application is not in concert with the purposes of the Zoning Ordinance. §27-317(a)(2)

(5) The proposed Application will not substantially impair the integrity of the 2006 Henson Creek-South Potomac Master Plan which recommends low density residential use for the subject property. The attendant Sectional Map Amendment retained the subject property in the R-80 Zone. 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 instant Application is to expand a senior

oriented residential use in a residential zone in accordance with the recommended land use and with the General Plan's vision for the Developed Tier and, as such, does not impair the integrity of the Master Plan. §27-317(a)(3)

(6) The instant proposal is for a substantially residential use in a residential zone. The buildings are compatible with those buildings closest to the subject property. Although the 52 single-family dwellings are villa-style, semi-detached homes, the footprint is generally in keeping with the footprint of dwellings in the R-80 Zone. New Congregate Living Facilities are proposed to be only 45 feet tall, compatible with the height restrictions in the R-80 Zone. The institutional use, the Adult Day Care Facility, is located in the center of the property, and landscaping and setbacks will ensure that the activities on the subject property are not adverse to the residents in the area. The instant Application will generate 9 fewer AM and 3 fewer PM peak-hour trips than that previously approved, which will have a net positive impact on the transportation system. The existing Congregate Living Facility has been a compatible use in the community, and its continued expanded operation to include additional similar uses commensurate with the need for these types of uses, will not adversely affect the health, safety or welfare of residents or workers in the area. §27-317(a)(4)

(7) The neighborhood is a mix of residential densities. Immediate to the subject property, it is generally developed with single-family detached housing in the R-80 Zone. Multifamily development is generally found south and west near Brinkley Road and the Capitol Beltway (I-95/495) in the R-10 (Multi-Family High Density Residential), R-18C (Multi-Family Density Residential-Condominium) and R-30C (Multi-Family Low Density Residential-Condominium) Zones. A small neighborhood of townhomes is located just north of the multifamily dwellings. Maryland National Capital Parks and Planning Commission parkland is located in southeast portions of the neighborhood. In general, the neighborhood has developed in a well-organized manner, with like uses clustered in a Euclidean fashion.

The existing Congregate Living Facility has operated for some time without detriment to the use and development of adjacent properties and neighborhood. Expanding these facilities, adding the Adult Day Care Center, and developing 52 villa-style single-family semi-detached homes is very compatible with the neighborhood's environment. While setbacks established for the R-80 Zone do not apply in Planned Retirement Communities, the requirements of the Landscape Manual do apply. The building setback and landscaped yard requirements for "A" bufferyards – 20 feet and 10 feet, respectively – are met on the Site Plan and Landscape Plans. (Exhibits 52 and 53) The development, which (1) meets density and landscaping requirements, (2) is generally compatible with bulk zoning requirements in the R-80 Zone, (3) produces less traffic than a typical R-80 subdivision, and (4) is not known to be harmful in anyway, will not be detrimental to the use or development of the neighborhood or adjacent properties. §27-317(a)(5)

(8) The proposed Site Plan, Exhibit 52, is in conformance with the approved Type II Tree Conservation Plan, TCP II/142/04. (Exhibit 14) §27-317(a)(6)

(9) The subject property has been rough graded pursuant to previously approved plans, including Rough Grading Permit 5279-2012. Although there will be improvements on site wetland

and wetland buffers, these impacted areas will be restored to the fullest extent possible with plantings. §27-317(a)(7)

(10) With a mix of independent and assisted living arrangements, the proposed Planned Retirement Community serves the needs of the retirement-aged community. The mix includes 52 single-family semi-detached (duplex or villa) units. These units are designed for independent elderly adults who desire a maintenance free residential setting as well as organized activities. In addition, four Congregate Living Facilities with a total capacity of 80 residents are proposed. The Congregate Living Facilities will provide a residential setting with 24 hour care for those who need assistance with daily activities. An Adult Day Care Center is proposed for those requiring supervision during daytime hours, but for whom a 24 hour environment is not required. The Congregate Living Facilities are being provided in four separate buildings to avoid the introduction of one large institutional building. The new Congregate Living Facilities will be similar in style and size to the existing Congregate Living Facility on site.

The development is to have a single secure point of entry from Temple Hill Road via Florist Way. Food and clothing are available within one and one-half miles north at Gordons Corner at the intersection of St. Barnabas Road (MD 414) and Branch Avenue (MD 5) and the nearby Iverson Mall. Less than two miles to the south along Brinkley Road, are additional shopping opportunities at the Rosecroft Shopping Center.

Recreational facilities proposed include a bocce ball court, an open seating area central to the development, and a community garden. Additional indoor recreational activities special to the needs of residents are provided in the Congregate Living Facilities and Adult Day Care Center.

In addition to the basic necessities, the retirement-aged community has further needs: transportation, medical, recreational, and social. Transportation for this segment of the population is perhaps not as critical as for more elderly-oriented developments such as medical-residential campus or apartments for the elderly. This Planned Retirement Community is designed for active seniors, most of whom will retain their cars, as least at first. There are bus stops heading both north and south along Temple Hill Road served by the H11, H12, and H13 bus routes. The county also provides limited on-call bus service to seniors, and the Applicant will have a fleet of vans picking up Day Care participants that may also be able to provide transportation.

Medical needs can be provided by the Fort Washington Hospital and its adjunct facilities; they are located eight miles to the southwest at the intersection of Indian head Highway (MD 210) and Livingston Road. In addition, there are doctor's offices to the north in Marlow Heights and to the west in Oxon Hill.

Due to the site's location and through the provision of numerous amenities, the Applicant's proposal will meet the needs of the retirement-aged community. §27-395(a)(1)(A)(i)

(11) The surrounding residential area is suburban in nature and predominantly developed with single-family detached homes in the R-80 Zone. As a Planned Retirement Community, the proposed development is residential as well. Semi-detached, villa-style housing can be compatible with

single-family, detached development very easily through design. The proposed villa homes are similar in size to the homes in the surrounding area, which are generally in the area of 2,500 square feet. With a footprint of 2,860 square feet, the duplex buildings fit comfortably into the area. The Adult Day Care Center, the largest footprint on the subject property, is located in the center of the site, keeping it as far from the surrounding single-family homes as possible. Four Congregate Living Facility buildings on site are generally oriented toward the center of the site as well, but one backs to adjoining single-family development to the southwest. This building is proposed as a two-story structure, is setback from the property line more than 35 feet, and buffered by significant landscaping and a sight-tight fence. Set at an angle to the property line, it will not overwhelm the adjoining properties. All in all, the proposal represents a suburban-style residential development in the middle of a suburban residential area. The character of the surrounding area will remain unaffected by the proposed Planned Retirement Community. By virtue of the age restriction, these units will have less of any impact on the surrounding area than would a conventional residential community, with no impact on public schools. The proposed uses will generate fewer total peak hour trips in both the AM and PM peak hours than would the currently approved 35-lot subdivision, Congregate Living Facility and Adult Day Care Center. §27-395(a)(1)(A)(ii)

(12) The subject property is made up of 35 lots in the Chambers Subdivision, recorded in NLP 152 @ 52-53, April 19, 1990. Streets within this subdivision have been dedicated, but have not been built. The proposed Planned Retirement Community will use the streets as dedicated in the existing subdivision. These are shown on the Site Plan, Exhibit 52. The major traffic circulation pattern within the development is along Florist Way and Florist Place. There is a circular driveway in front of the Community Center/Adult Day Care to facilitate drop-offs. §27-395(a)(2)

(13) The Site Plan (Exhibit 52) sets forth the proposed development standards which are applicable to the subject property. The development standards generally follow those applicable in the R-80 Zone where possible. For example, while no side yard setbacks are proposed, the distance between villa homes ranges between 15 and 20 feet. Required side yard setbacks in the R-80 Zone are eight (8) feet on one side, with a minimum of 17 feet of combined side yard; therefore, the distance between buildings in a typical R-80 subdivision is 17 feet. The proposed 15-to 20-foot separation between buildings closely follows the Zoning Ordinance requirement. Height in the R-80 Zone is limited to 40 feet for all uses. The proposed villa homes are one-story and will therefore not exceed 30 feet in height. However, this finding requires that development standards be set though the Special Exception. Out of an abundance of caution, the maximum height for the villa homes is proposed to be 40 feet, although most likely, in all cases, they will not exceed approximately 30 feet in height. The tallest structure on the site is the existing Congregate Living Facility, which is 60 feet tall in the back, given the walkout basement design based on the sites topography. Height of Building is defined in Section 27-107(a).

(113) Height of Building:

(A) The vertical distance between an approved “Street” grade at a point at the middle of the front of the “Building” to either:

- (i) The highest point of roof surface of a flat roof;**
- (ii) The deck line of a mansard roof; or**
- (iii) The average height between the eaves and ridge of a**

gable, hip, or gambrel roof. (See Figure 68)

(B) If a “Building” is located on a terrace, the height above the “Street” grade may be increased by the height of the terrace but not over five (5) feet. If the “Building” is set back from the “Street Line” thirty-five (35) feet or more, the “Building Height” is measured from the average elevation of the finished ground surface along the side of the “Building” facing the “Front of the Lot.” On a “Through Lot”, the side of the “Building” (facing the “Front of the Lot”) which has the lowest elevation shall be used.

Taken from the “street grade” the tallest point will not exceed 45 feet for any of the Congregate Living Facilities or the Adult Day Care Center. In fact, the majority of the Adult Day Care Center will be one story above ground with a basement. A taller, two-story entrance foyer is shown only in the area of the entrance to the building. These are all compatible with standard R-80 height restrictions. §27-395(a)(3)(A)

(14) The subject property consists of 16.38 contiguous acres. §27-395(a)(3)(B)

(15) The Technical Staff has found that the proposed development does not exceed eight dwelling units per acre for the gross tract area. (Exhibit 18) §27-395(a)(3)(C)

(16) The Application proposes a Community Center in the same building as the Adult Day Care Center shown at the intersection of Florist Way and Florist Place. It is to contain a variety of recreational and social amenities in the interior meeting space. Past experience has shown that, at this point in the planning, it is difficult to say what the indoor activities will be, they will be decided upon according to the wishes of the residents. The development is to be served by sitting areas, community garden plots, and bocce courts. These recreational facilities will be constructed concurrent with the residential units. They are to serve only the residents and their guests. §§27-395(a)(4)(A)

(17) No retail commercial uses, medical uses, health care facilities or other uses which are similarly related to the needs of the community are proposed. Minor medical assistance may be provided in the Adult Day Care Center and Congregate Living Facilities. §27-395(a)(4)(B)

(18) Exhibit 49 is a Draft Declaration of Covenants, Condition and Restrictions which shall be required to be recorded prior to the issuance of the first building permit as a condition of approval. §§27-395(a)(5) and (6)

(19) 150 parking spaces are required and the Site Plan, Exhibit 52, provides 174 parking spaces.

(20) The Landscape Plan, Exhibit 53, meets the requirements of the Landscape Manual.

(21) Concerns raised at the evidentiary hearing regarding noise, setbacks, screening, fencing of the stormwater management pond and berming/landscape along the Fisher Road properties have all been addressed by the Applicant and included in the revised Site and Landscape Plans. (Exhibits 52 and 53)

DISPOSITION

Special Exception 4739 is approved subject to the following conditions:

1. Prior to the approval of any residential building permits for buildings located within the 65 dBA (Ldn) noise contour, a certification by a professional engineer with competency in acoustical analysis shall be placed on the building plans stating that building shells of structures have been designed to reduce interior noise levels to 45 dBA (Ldn) or less.
2. A minimum of 60 percent of the front facades of all duplex units shall be finished with 100 percent brick, stone, or equivalent masonry finish (excluding windows, gables, trim or other similar accessory architectural features).
3. Prior to the issuance of the first building permit, the Declaration of Covenants, Conditions and Restrictions required by §§27-395(a)(5) and (6), and which are substantially in accordance with Exhibit 49, shall be recorded.

The Approved Site Plan is Exhibit 52(a)-(j)

The Approved Landscape Plan is Exhibit 53(a)-(g)