

August 8, 2025



VIA EMAIL

Ms. Donna Brown, Clerk
Clerk of the County Council
Wayne K. Curry Administration Building
1301 McCormick Drive
Largo, MD 20774
Email: ClerkoftheCouncil@co.pg.md.us

Re: SE-22002/AC-23008: Stewart Property – 8215 Springfield Road, Glenn Dale, Maryland (the “**Property**”)
Appeal of Zoning Hearing Examiner Remand Decision dated July 10, 2025

Dear Ms. Brown:

ESC 8215 Springfield L.C. (“**Applicant**”), by and through its attorneys, CLHatcher LLC, asserts errors in the Remand Decision of the Zoning Hearing Examiner (“**ZHE**”) in Case No. SE-22003/AC-23008 (the “**Case**”) filed on July 10, 2025 (the “**ZHE Remand Decision**”), with the County Council of Prince George’s County, sitting as the District Council (the “**District Council**”), attached hereto as Exhibit A. As described hereinbelow, several findings and conclusions of the ZHE contained in the ZHE Remand Decision are inconsistent with the testimony, facts or evidence within the ZHE record (the “**Remand Record**”) compiled in connection with the remand of the Case. In addition, the Applicant respectfully requests oral argument on this appeal before the District Council.

The Decision of the ZHE filed with the District Council on March 26, 2024, will be referred to herein as the “Original ZHE Decision,” and the ZHE record compiled in connection with the Original ZHE Decision will be referred to herein as the “Original Record.” The Applicant identifies any references to the Original ZHE Decision or the ZHE Remand Decision by the finding or conclusion number listed therein and to the Original Record or Remand Record by page number. Further, as used herein, the “Remand Order” refers to the District Council Order of Remand dated July 15, 2024, which was included in the Remand Record as Exhibit 3.

In support thereof, Applicant notes the following errors in the ZHE Decision:

1. Exception #1: The Property Contains Twelve (12) Acres in Satisfaction of Section 27-395(a)(3)(B).

a. In Section D (Pages 9-10) of the Remand Order, the District Council concluded that the Original Record required additional evidence to determine whether the Property contained at least twelve (12) contiguous acres in satisfaction of Section 27-395(a)(3)(B) and directed the ZHE to reopen the record to allow the Applicant to provide additional

testimony and/or clarification, with a particular focus on additional information the District Council sought from the Maryland State Department of Taxation and Assessments (“SDAT”). The District Council directed the Applicant to provide the following upon the ZHE’s reopening of the record:

- 1. Applicant shall provide proof in writing or through testimony from SDAT indicating whether SDAT included or excluded the land/acreage/square footage 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. Applicants 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.*

The ZHE found that, in accordance with the District Council’s direction in the Remand Order, Mr. Steven Jones of Charles P. Johnson and Associates (“CPJ”) had submitted a letter, on behalf of the Applicant, to SDAT requesting the information specified by the District Council in the Remand Order, which letter was included in the Remand Record as Exhibit 3.¹ The ZHE also found that Mr. Jones received a response letter (the “SDAT

¹ ZHE Remand Decision, Finding of Fact No. 40.

Letter”) from SDAT providing responses and additional information related to SDAT’s process for determining the area and/or acreage properties, which response letter was included in the Remand Record as Exhibit 4.² Further, the ZHE found that the SDAT Letter also confirmed that, in accordance with current documentation, the Property consists of approximately 12.0091 acres,³ which acreage was confirmed by the SDAT Data Sheet showing a “property land area” of 12.0091 acres for the Property.⁴

Accordingly, it is clear that the ZHE found that the Applicant acted in accordance with the Remand Order direction by requesting, obtaining, and submitting the information requested by the District Council from SDAT in writing, which, among other information, confirmed that the Property consists of approximately 12.0091 acres (i.e., more than twelve (12) acres).⁵ Despite the District Council’s Remand Order direction and the ZHE findings described above, it does not appear that the ZHE considered the findings in determining whether the Property contains the requisite twelve (12) acres.⁶ In fact, in its conclusion that the Property does not contain twelve (12) contiguous acres, the ZHE did not make any reference to the SDAT Letter in its Conclusions of Law, instead relying the analysis contained in the Original ZHE Decision where the ZHE unilaterally added a stricture of exclusive control to the Zoning Ordinance’s definition of “contiguous acreage.” The Applicant takes exception to the ZHE concluding that the Property does not contain twelve (12) contiguous acres without specifying in the ZHE Remand Decision how the ZHE applied the information requested by the District Council in its Remand Order, the information provided by SDAT, SDAT’s determination that the Property contains 12.0091 acres, and/or the SDAT Data Sheet’s confirmation of the Property’s 12.0091 acres.

b. In the ZHE Remand Decision, the ZHE concluded in Conclusion of Law No. 6 the following:

(6) At the original hearing, this Examiner opined that the strictures of Sections 27-395 (a)(3) (B) and (C) cannot be satisfied unless a variance to the requirement of having 12 contiguous acres is satisfied. For reasons not apparent in the record, a portion of the subject property was appropriated for public use many years ago when Springfield Road was paved and used as a public right-of-way. A public road may be created by prescription where, as in this case, there has been exclusive and uninterrupted use of the property as a road open to the public. Holder v. Young, 2023 Md. App. LEXIS 350. The County accepted the 3,542 square feet by grading it and allowing the public to use it. Wilkinson v. Board of County Commissioners,

² ZHE Remand Decision, Finding of Fact No. 40.

³ ZHE Remand Decision, Finding of Fact No. 41.

⁴ Remand Record, Exhibit 11.

⁵ See ZHE Remand Decision, Findings of Fact Nos. 40-41.

⁶ See ZHE Remand Decision, Conclusion of Law No. 6.

255 Md. App. 213 (2022) The Zoning Ordinance defines “contiguous acres” as “abutting”, and “abutting” as “touching and sharing a common point or line.” (Section 27-107.01) For these reasons, I believe that the requirement for twelve contiguous acres must be read as requiring 12 full acres within the Applicant’s control that all touch, and an applicant does not have 12 contiguous acres when a prescriptive easement precludes its ability to use 3,542 square feet thereof, and when the Applicant does not own/have control over the property that touches the other side of the easement area.

In short, despite the Applicant’s witnesses providing significant evidence and testimony to the contrary,⁷ the ZHE concluded that:

- i. The 3,542 square foot portion of the Property upon which a prescriptive easement benefitting the County is presumed (the “**Prescriptive Easement Area**”) was “appropriated for public use”,
- ii. That for the requirement that a planned retirement community “contain at least twelve (12) contiguous acres”⁸ must be read as “12 full acres within the Applicant’s control that all touch,” and
- iii. That the Prescriptive Easement Area must be excluded from the Property’s contiguous acres, because the Applicant “does not own/have control” over the Prescriptive Easement Area.

The Applicant takes exception to the ZHE’s conclusions. As previously discussed in the Applicant’s Appeal from the Original ZHE Decision (the “**Original Appeal**”), a prescriptive easement only provides the easement holder with a limited right to use the land that is subject to the prescriptive easement and does not change the ownership status of the subject land. This remains true even where the easement holder is a public entity, such as the County. Further, while *Holder v. Young* did hold that a public road could be created by a prescriptive *easement*, thus, preventing the landowner from blocking public’s access to and use of the subject land, the Court did not determine that *ownership* of the land was transferred to the public.⁹ Accordingly, without additional evidence, statute, or other law to the contrary, there is no basis in fact or law to support the conclusion that the Prescriptive Easement Area is not owned by the Applicant.

Second, the Applicant takes exception to the notion that the Prescriptive Easement Area must be excluded from the Property’s contiguous acres. The Applicant provided a detailed analysis showing that the Prescriptive Easement Area must be included in the Property’s contiguous acres in Section 1 of the Original Appeal and rests on the arguments made therein.

⁷ See Remand Decision, Findings of Fact Nos. 40-42.

⁸ Section 27-395(a)(3)(B).

⁹ See *Holder v. Young*, 2023 Md. App. LEXIS 350.

c. The above analysis (together with the analysis contained the Original Appeal) and the testimony, facts and evidence in the Remand Record and the Original Record demonstrate that the Property contains twelve (12) contiguous acres in satisfaction of Section 27-395(a)(3)(B).

2. Exception #2: The Applicant Provided a Final Age-Restriction Covenant in Satisfaction of Section 27-395(a)(5).

a. On Page 13 of the Remand Order, the District Council directed the Applicant to provide the final executed age-restriction covenants. The Applicant takes exception to the ZHE's conclusion in Conclusion of Law No. 3 that the covenant provided by the Applicant was still a draft. The Applicant provided the executed final covenant, which is included the Remand Record as Exhibit 16. To the extent that the executed, final covenant provided by the Applicant was incomplete, the Applicant has attached the complete final and executed covenant as Exhibit B, attached hereto.

3. Exception #3: The Proposed Development of 57 Single-Family Attached Dwellings Satisfies the Applicable Density Requirements.

a. The Applicant takes exception to Conclusion of Law No. 11 in the ZHE Remand Decision, which states:

(11) Finally, I have concerns that the proposed development impairs the 2022 Master Plan and 2014 General Plan recommendations of Residential Low land use defined as a density of 3.5 dwelling units per acre, since it is less than the 4.75 dwelling units per acre considered in the instant request. If the District Council either agrees that the area subject to a prescriptive easement could be utilized in meeting the contiguous acreage requirement, or that the variance should be granted, the acreage not subject to the easement and the maximum density recommended in the General and Master Plans should be utilized to allow 41 dwelling units (11.94 acres multiplied by 3.5). This density conforms with the Master Plan, and the reduction is one allowed in Section 27-396, which sets the maximum number of dwelling units but otherwise provides flexibility in determining the average number of units per acre.

Similarly, the Applicant takes exception to the following portion of Recommendation on Remand No. 1 in the ZHE Remand Decision¹⁰:

¹⁰ The Applicant does not take exception to the remainder of Recommendation on Remand No. 1 or its subparts.

1. Prior to certification of the Special Exception Site Plan, Applicant shall decrease the number of attached dwellings from 57 to 41 and make any necessary revisions (changes to Notes, Tables, lots, etc.) to reflect this lower figure.

The Applicant provided a detailed analysis of how the District Council's statutory determination of density for a planned retirement community use supersedes the density recommendations of the Master Plan and General Plan in Section 2 of the Original Appeal, and rests on the arguments contained therein, with specific attention to Section 1(c), which states:

c. As noted by the ZHE in Conclusion No. 2, despite the density recommendations in the Master and General Plans "the District Council has determined that this more dense use is permitted in the area." The Applicant respectfully asserts that the ZHE's analysis of the density should have gone no further; the District Council has expressly decided by statute that the "planned retirement community" use is allowed at a higher density than that recommended by the Master Plan and General Plan pursuant to special exception in the R-R Zone so long as the requirements of Section 27-395 of the Zoning Ordinance are satisfied, as has occurred in this instance. This includes the requirement contained in Section 27-395[(a)](3)(C) that the "average number of dwelling units shall not exceed eight (8) for the gross tract area." The Applicant proposes only 4.75 dwelling units per acre on the Property, significantly lower than that allowed by Section 27-395[(a)](3)(C).

The Applicant further notes that there is no evidence in the Original Record or the Remand Record to support the conclusion that the specific density requirements of Section 27-395(a)(3)(C) is superseded by the recommendations of the Master Plan or those of the General Plan.

b. The above analysis (together with the analysis contained the Original Appeal) and the testimony, facts and evidence in the Remand Record and the Original Record demonstrate that the Proposed Development of 57 single-family attached dwelling units at the Property satisfies the density requirements of Section 27-395(a)(3)(C).¹¹ Accordingly, the Applicant respectfully requests that the District Council (i) find that Conclusion of Law No. 11 and the first sentence of Recommendation on Remand No. 1 are erroneous, (ii) revise the proposed condition contained in Recommendation on Remand No. 1 to state:

1. Prior to certification of the Special Exception Site Plan, the following revisions shall be made, or information shall be provided . . .

¹¹ The proposed planned retirement community with 57 single-family attached dwellings results in a density of 4.75 (if the Property is determined to contain 12.0091 contiguous acres) or 4.77 (if the Property is determined to contain 11.9278 acres), each of which are significantly lower than the maximum of eight (8) dwelling units per acre permitted by Section 27-395(a)(3)(C).

The Applicant does not request any additional changes to subparts of the condition contained in Recommendation on Remand No. 1.

4. Requested Relief

a. Special Exception, SE-22002. There is sufficient testimony, facts and evidence in the Record to show that the Applicant's special exception application has met each required finding contained in Section 27-395 of the Zoning Ordinance for approval of the Special Exception to develop a planned retirement community with 57 age-restricted single-family attached dwellings on the Property (without approval of a variance from Section 27-395(a)(3)(B)).

i. Accordingly, the Applicant respectfully requests that the District Council approve the Applicant's Special Exception application, SE-22002, for the development of 57 single-family attached dwellings within a planned retirement community, subject to the applicable conditions provided by Recommendations on Remand Nos. 2 through 7 and Recommendation on Remand No. 1 (revised as requested by the Applicant in Section 3(b) of this Appeal, above), based on the following findings:

(a) The Applicant requested, obtained, and provided all information from SDAT detailed by the District Council in Section D (Pages 9-10) of the Remand Order;

(b) The information provided by SDAT in Exhibit 11 of the Remand Record confirmed that the Property contains 12.0091 acres,

(c) The Applicant has satisfied the applicable density requirements for planned retirement communities in in Section 27-395(3)(C), which density requirements supersede the Master Plan and General Plan density recommendations.

(d) The Applicant has provided final, executed age-restriction covenants in satisfaction of Section 27-395(a)(5)(A), and

(e) The facts, evidence and testimony contained in the Remand Record and the Original, as well as in the ZHE Remand Decision, show that the special exception application satisfies all other requirements for planned retirement communities contained in Section 27-395 of the Zoning Ordinance.

- ii. In the alternative, if the District Council finds that the Property does not contain twelve (12) contiguous acres in satisfaction of Section 27-395(a)(3)(B) based on this appeal and the testimony, facts and evidence contained in the Record, the Applicant respectfully requests that the District Council approve the Applicant's Special Exception application, SE-22002, together with Applicant's Variance request from Section 27-395(a)(3)(B), subject to the applicable conditions provided by Recommendations on Remand Nos. 2 through 7 and Recommendation on Remand No. 1 (revised as requested by the Applicant in Section 3(b) of this Appeal, above), based on the following findings:
 - (a) The Applicant has satisfied all applicable required findings for approval of a Variance from Section 27-395(a)(3)(B)¹² and, thus, may proceed with development of the proposed planned retirement community on the Property consisting of 11.9278 contiguous acres (presuming the Prescriptive Easement Area is excluded from the Property's contiguous acres);¹³
 - (b) The Applicant has satisfied the applicable density requirements for planned retirement communities in in Section 27-395(3)(C), which density requirements supersede the Master Plan and General Plan density recommendations.
 - (c) The Applicant has provided final, executed age-restriction covenants in satisfaction of Section 27-395(a)(5)(A), and
 - (d) The facts, evidence and testimony contained in the Remand Record and the Original, as well as in the ZHE Remand Decision, show that the special exception application satisfies all other requirements for planned retirement communities contained in Section 27-395 of the Zoning Ordinance.
- b. Alternative Compliance, AC-23008. There is sufficient testimony, facts and evidence in the Remand Record, Original Record, and the ZHE Remand Decision to show that the Applicant's proposed Alternative Compliance to Section 4.6 of the Landscape Manual (Buffering Development from Streets) for its frontage on Springfield Road and

¹² See ZHE Remand Decision, Conclusions of Law Nos. 7-9; see also Remand Record, Exhibit 21.

¹³ In Section D (Pages 10 and 11) of the Remand Order, the District Council directed the Applicant to "prove in writing or through testimony why a request for an area variance from PGCC § 27-395(a)(3)(B) is authorized by law." In response, the Applicant submitted (i) a detailed analysis showing why an area variance is authorized by law in Section IV. (Pages 6-7) of Exhibit 21 of the Remand Record and (ii) supporting case law in Exhibit 23 of the Remand Record. Further, the ZHE analyzed this issue and similarly concluded in Conclusions of Law Nos. 7 and 8 of the ZHE Remand Decision that an area variance from Sec. 27-395(a)(3)(B) of the Prior Zoning Ordinance is authorized by law.

Section 4.10 (Street Trees along Private Streets) for all private streets in the proposed development should be approved. Accordingly, the Applicant respectfully requests that the District Council approve Alternative Compliance, AC-23008, subject to the applicable conditions provided by the ZHE Remand Decision in Recommendations on Remand Nos. 2-7.

c. Variance from Section 25-122(b)(1)(G). There is sufficient testimony, facts and evidence in the Record to show that the Applicant's proposed variance from Section 25-122(b)(1)(G) for the removal of four (4) specimen trees, ST#1, ST#3, ST#9, and ST#10, should be approved. Accordingly, the Applicant respectfully requests that the District Council approved the proposed variance from Section 25-122(b)(1)(G) for the removal of four (4) specimen trees, ST#1, ST#3, ST#9, and ST#10, subject to the conditions subject to the applicable conditions provided by the ZHE Remand Decision in Recommendations on Remand Nos. 2-7.

5. Request for Oral Argument. The Applicant hereby respectfully requests oral argument on this appeal before the District Council.

Respectfully,



Christopher L. Hatcher
CLHatcher LLC

Enclosure

cc: Stan Brown, Esq. | People's Zoning Counsel, Prince George's County
Cheryl Summerlin
Persons of Record

EXHIBIT A

ZHE DECISION

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

SPECIAL EXCEPTION

**And
VARIANCE
22002
and
AC-23008**

**REMAND
DECISION**

Application: Planned Retirement Community
Applicant: ESC 8215 Springfield, L.C.
Opposition: Howard Aldag, Charles Holman, et. al.
Hearing Dates: March 12, 2025, and May 7, 2025
Decision Date: July 10, 2025
Hearing Examiner: Maurene Epps McNeil
Recommendation:¹ Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 22002/AC-23008 is a request for permission to develop a Planned Retirement Community with 57 age-restricted single-family attached dwellings on approximately 12.01 acres² of RR (Rural Residential)³ zoned land, and for Alternative Compliance from Sections 4.6 and 4.10 of the Landscape Manual. Applicant also seeks a variance from Subtitle 25 of the Prince George's County Code for the removal of four specimen trees. The subject property is located approximately 390 feet southeast of the intersection of Lake Glen Drive and Springfield Road, at 8215 Springfield Road, Glenn Dale, Maryland. The subject property is not located within the boundaries of the City of Bowie, Maryland.

(2) The Technical Staff recommended approval with conditions. (Exhibit 3)

(3) Howard Aldag, Charles Holman, and Mr. Hasani Martin testified in opposition to the

¹ Generally, the ZHE may make the final decision on a Special Exception Application. This matter was remanded upon appeal to the District Council, so a recommendation is being made in this instance.

² Applicant framed the request in this manner, but from its inception it appears that the subject property had 3,542 -square-feet less than the 12 acres because this portion of the land lies underneath the adjacent paved Springfield Road.

³ Upon adoption of the Countywide Map Amendment ("CMA") the subject property's zoning was changed from R-R (Rural Residential) to RR (Rural Residential). The current nomenclature is used throughout this decision. However, the Zoning Ordinance Edition in effect prior to the CMA is being used because the Application was accepted on May 12, 2023 and Applicant had the choice to request review under the prior Edition, pursuant to Section 27-1900 of the Zoning Ordinance.

request. Sean Suhar, Esq., appeared in opposition on his own behalf and on behalf of the Planning and Zoning Committee of the Wingate Homeowners Association, Inc. (Exhibit 109)

(4) This Examiner issued a decision on March 26, 2024, and asked that the District Council remand the proceedings to allow the Applicant to address certain concerns, including the need for a variance to the requirement that the property contain twelve contiguous acres.⁴ (Exhibit R-2(b)) This decision was appealed to the District Council. The District Council ultimately issued an Order of Remand on July 15, 2024,⁵ which held in pertinent part as follows:

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/square footage 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.

⁴ This Decision incorporates the decision and the record from the original hearing, amended as a result of the new evidence received upon remand or to address typographical errors. The first record consists of 109 exhibits and two hearing dates. The record on remand consists of 29 exhibits and two hearing dates.

⁵ Part of the District Council's Order required Applicant to obtain certain information from the State Department of Assessments and Taxation. The Applicant was unable to acquire the information for several months, which resulted in the delay of the Remand Hearings.

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 § 27-395(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.*....

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 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).

(Exhibit R-1, pp. 9-14; emphasis in the original)

(5) The Technical Staff recommended approval with conditions in the original case, but did not offer any additional comments on the Remand case. (Exhibit 3) ⁶

(6) Howard Aldag and Chris Holman testified in opposition at the Remand hearings⁷. Sean Suhar, Esq. appeared in opposition on his own behalf and on behalf of the Planning and Zoning Committee of the Wingate Homeowners Association, Inc. (Exhibit 109) Michele McDaniel Rosenfeld, Esq., appeared on behalf of the Aldags at the second hearing, where the request for a variance was addressed. (Exhibit R-25(a))

(7) At the close of the second hearing, the record was left open to allow the submission of additional exhibits. The last of these items was received on May 7, 2025, and the record was closed at that time. (Exhibits R-28 and R-29)

FINDINGS OF FACT FROM THE ORIGINAL RECORD

Subject Property

(1) The subject property is 523,117 square feet or 12.0091 acres in size, inclusive of an approximate 3,542-square-foot easement area that lies beneath the paved area of Springfield Road. It is identified as Parcel 131 on Tax Map 28, Grid 03 for Prince George's County, Maryland. (Exhibit 40) It is located 360 feet north of the intersection of Springfield Road and Moriarty Court, and is identified as 8215 Springfield Road,

⁶ Exhibits generated in the remanded case will be preceded by an "R".

⁷ All Persons of Record in the original Application remained Persons of Record in the remanded Application.

Glenn Dale, Maryland. It is improved with a single-family detached residence, detached garage, and a separate carport.

(2) The approved Natural Resources Inventory (NRI-069-2022) shows steep slopes, specimen trees, floodplain, a stream, and associated buffer on the northern and eastern property edges. (Exhibit 38) The subject property must comply with the Woodland and Wildlife Habitat Conservation Ordinance because the property contains more than 10,000 square feet of woodland, and the Applicant proposes clearing in excess of 5,000 square feet. TCP2-017-2023 has been submitted for review with this Application.

Surrounding Property

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

- | | |
|--------|--|
| North: | Wooded land owned as common area by the Oakstone and Springfield Manor subdivisions mostly across the stream valley of Newstop Branch, in the RR Zone |
| South: | Vacant land in the Glenn Dale Ridge East subdivision and beyond, single-family dwellings in the Springfield Manor subdivision in the RR Zone; and the undeveloped Glenn Dale Ridge West and Galentine's subdivisions, and a few single-family dwellings in the RE-Zone |
| East: | Two single-family dwellings in the Springfield Manor subdivision in the RR Zone, and beyond more single-family dwellings in the Springfield Manor subdivision |
| West: | Springfield Road and beyond, single-family dwellings on small parcels and undeveloped lots in the RE Zone |

(Exhibit 102, pp. 3-4)

Neighborhood

(4) The neighborhood has the following boundaries: to the north, Good Luck and Duckettown Roads; to the East, Maple Avenue; to the south, Lanham Severn Road (Maryland Route 564); and to the west, Wingate Drive. Although there are two undeveloped subdivisions in the area,⁸ the character of the neighborhood is primarily residential with the "predominant use of single-family detached dwellings on varying lot sizes, from the quarter-acre clustered lots in the abutting Springfield Manor and Oakstone

⁸ At the time of the remand, at least one of these subdivisions was under construction. (March 12, 2025 Remand T. 104)

subdivisions, to the larger one-to two-acre estate lots in Wingate.” (Exhibit 102, p. 4)
Staff provided a description of the character of the neighborhood as well:

The landscape of the neighborhood is wooded and the elevation ranges from 130 feet above sea level at the Newstop Branch stream center to the east of the property, to 220 feet above sea level at Wycombe Park Lane to the west of the property. The developed character of the neighborhood is that of single-family dwellings along residential, two-lane streets and cul-de-sacs. Parcel sizes are in the range of approximately 1.35 acres. Dwellings are frame, executed in the American traditional/Colonial Revival style and have clapboard siding or brick cladding, and most were constructed after 1984.

(Exhibit 3, Backup p. 131)

General Plan/Master Plan/Zoning

(5) The subject property lies within the 2014 General Plan’s Established Communities Growth Policy Area. (2014 General Plan, p. 18) The General Plan “classifies existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers, as Established Communities.” (2014 General Plan, p. 20) The General Plan notes that “Established Communities are most-appropriate for context-sensitive infill and low-to medium-density development.” (2014 General Plan, p. 20) The Generalized Future Land Use Map designates the subject property for Residential Low land use, described as “[residential] areas up to 3.5 dwelling units per acre [and] primarily single-family detached dwellings.” (2014 General Plan, p. 100)

The General Plan includes a Section on Housing and Neighborhood Goals, which provided, in pertinent part, as follows:

Growth forecasts and evolving workforce preferences clearly indicate the need for a different approach to County housing policy.... The County’s aging population creates additional opportunities for new compact communities and infill development featuring smaller, accessible units where residents have the option to age in place....

[Policy 4 urges the County to expand] housing options to meet the needs of the County’s seniors who wish to age in place....

[Policy 5 urges the County to increase] the supply of housing types that are suitable for, and attractive to, the County’s growing vulnerable populations. These include the elderly ... and residents with special needs....

(General Plan pp. 185,190)

(6) The subject property is located within Planning Area 71 A, an area discussed in the 2022 Bowie-Mitchellville & Vicinity Master Plan (the “Master Plan”). The Master

Plan similarly recommended Residential Low land use for the site with the same definition of up to 3.5 dwelling units per acre and primarily single-family detached dwellings. (Master Plan, p. 49) A Housing and Neighborhood Goal was for neighborhoods to contain a range of housing types affordable to the widest range of residents. (Master Plan, p. 152) Another goal was to ensure additional housing options were available in the established communities. (Master Plan, p. 153)

Applicant's Proposal

(7) The Applicant, ESC 8215 Springfield, L.C., is in good standing to conduct business within the State of Maryland, having been issued a certificate by the State Department of Assessments and Taxation. (Exhibit 92) Applicant is a single-purpose limited liability company created to develop the proposed use on the subject property. Elm Street Development, L.C. is the contract purchaser of the property. It has also been issued a certificate by the State Department of Assessments and Taxation which authorizes it to conduct business with the State of Maryland. (Exhibit 88)

(8) The current owner of the property, Mrs. Stewart, and her son, David Morris Stewart, testified of their preference that the property be used "to provide high-quality housing opportunities for the seniors in the Glenn Dale community." (December 13, 2023 T. 24)

(9) Mr. Jude Burke, Vice President of Elm Street Development, L.C., and Manager of ESC 8215 Springfield, L.C., testified on Applicant's behalf about the product it intends to develop if the request is approved. The Applicant seeks to develop a Planned Retirement Community with a maximum of 57 single-family attached dwelling units (referred to as "villas") designed for seniors by locating necessary living spaces (a bedroom suite, kitchen, dining, and laundry facilities) on the first floor and a smaller upstairs area including a few rooms and a bathroom. (Exhibits 21-23 and 67-70; December 13, 2023 T. 33-34). The dwellings will be 28 feet wide, will include a 2-car garage, and will have a minimum of 60 percent masonry on the front of the house, inclusive of the entire first floor. Units with highly visible end walls will have masonry on the first floor, extra points of architecture on both floors, shutters on all windows, and enhanced roofline details. All of the common areas will be maintained by the Homeowners Association. (December 13, 2023 T. 37) The recreational amenities proposed include an outdoor gathering area with a lighted pavilion, outdoor fitness machines, and walking trails. (December 13, 2023 T. 35) Dwelling dimensions were not included on the Special Exception Site Plan and must be added prior to certification if the request is approved. Mr. Burke did submit an exhibit that notes there will be a minimum of 1,600 finished square feet. Further, "[t]he architecture of the villas will be consistent with the representative architecture submitted into the record since no builder has been selected at this time. (Exhibit 106) A minimum of 117 parking spaces is required for the 57 attached dwelling units, and a total of 228 are provided on the Special

Exception Site Plan.

- (10) Mr. Burke explained why Applicant proposes the use at the subject property:

We considered different types of residential development for the property since the planned retirement community is allowed in the RR Zone under both the old and new zoning codes and there's a need for more senior housing in Prince George's County ... [.] housing of all types, [and] we decided that the [Planned Residential Community] use would be the most appropriate.

An age-restricted community with fee-simple ownership of each house fits in with the residential character of the existing community and it fills the need for more senior housing in Prince George's County as the population ages. It leverages a convenient location and the existing infrastructure while having a lower impact on traffic and schools in the area than the by right single-family large lots would have.

Senior housing of this type on the subject property would be a viable option of neighbors to remain in the Glenn Dale community as they age....

(December 13, 2023 T.32-33)

- (11) On cross-examination, Mr. Burke agreed that he may not have discussed the Application with all of the neighbors in the area. (December 13, 2023 T. 51-52)

(12) Ms. Amy Sommer, a senior landscape architect with Charles P. Johnson & Associates ("CPJ") (and at the time of the first hearing transitioning to the Division Manager of the Planning Department) testified on Applicant's behalf and prepared the Statement of Justification to support Applicant's request for a variance from Section 25-119 of the Prince George's County Code to allow the removal of four of the ten specimen trees on site (Numbers 1, 3, 9 and 10). CPJ provides civil engineering, land planning, and survey services and prepared the Special Exception Site Plan and other associated plans, including the Tree Conservation Plan, for the instant Application. The witness noted that revisions were made to the plans in response to comments made by Maryland-National Capital Park and Planning Commission ("MNCPPC") staff, and that after discussion with staff, it agreed that Applicant provided sufficient justification for approval of a variance pursuant to Section 25-119. (Exhibit 74; December 13, 2023 T. 73-75) Upon cross-examination, Ms. Sommer explained that the four specimen trees are located in the middle of the site, and retaining them would make it "challenging to ... manage the infrastructure necessary for development even if [fewer homes were constructed] and also for grading of the site. (December 13, 2023 T. 82)

- (13) Ms. Sommer prepared the Statement of Justification for the Applicant's request for alternative compliance from Section 4.6 (Buffering Development from Streets) and Section 4.10 (Street Trees Along Private Streets) of the Landscape Manual. This

Statement of Justification provided the following reasoning for the request:

Schedule 4.6 requires providing an attractive view of the development from streets and special roadways by buffering the development with landscaping, more specifically, buffering the rear yards and the lowest story of rear exterior walls from the view of any street....

[T]he minimum width of the required buffer is 35 feet, the minimum number of shade trees required is approximately 9, the minimum number of evergreen trees required is approximately 27, and the minimum number of shrubs required is approximately 45. This schedule applies to 2 proposed lots (lots 1 and 46). Although the minimum number of required plants is met and exceeded, the proposed plan provides a minimum buffer width of approximately 20 feet at the narrowest points, therefore not meeting the minimum requirement.... In response, the lots in question will be heavily screened from Springfield Road with shade trees, evergreen trees, and shrubs. In addition, a 6-foot-high fence will be provided in the buffer yard for additional screening, privacy, and aesthetics....

Schedule 4.10-1 [shows] The number of street trees required along 1,764 [linear feet ("LF")] of frontage (at 1 tree per 35 LF) is 51 trees. Per the schedule, the number of street trees proposed is 29, therefore not meeting the minimum requirement. In the attempt to provide as many street trees as possible, not every tree is able to be placed a minimum of 10 feet from the point of curvature of a residential driveway.

The number of street trees that can be installed along the private streets at Stewart Property is constrained by several conditions....

Driveways for front loaded single-family attached villas: The space between the driveways at many locations is not wide enough to fit street trees that are also required to be 10 feet from the point of curvature of residential driveways....

Intersections: Per Section 4.10-1, street trees cannot be installed within 35 feet from the point of curvature of an intersection. The project has several short blocks and intersections which limits the amount of street frontage available for street trees....

Utility conflicts: Many areas of street frontage are unavailable for proposed street tree installation due to conflicts with underground utilities such as storm drainage infrastructure, water service, sewers, and the public utility easements. Additional aboveground utility conflicts include street light poles and hydrants. Wherever possible, utility conflicts have been minimized to increase the number of street trees.

Additionally, spacing guidelines and best practices for shade and ornamental street trees limit how many trees can be installed in the space between the curb and sidewalk to an average of 30 feet on center.

Where utility conflicts, driveways, and intersections restrict the potential locations for street trees, every effort has been made to propose large shade trees near the street,

but outside of the right-of-way, in order to shade sidewalks and on-street parking, enhance street aesthetics, and achieve many of the same benefits as street trees within the right-of-way. Every effort has also been made to propose shade, ornamental, and evergreen trees on-lot and on HOA parcels wherever feasible so that Landscape Manual Section 4.1-2 ("Residential Requirements for Townhouses, One-Family Semi-Detached, and Two-Family Dwellings Arranged Horizontally") are met and exceeded (as shown on the Landscape and Lighting Plan). Additionally, the proposed tree planting and on-site woodland conservation exceeds the required Tree Canopy Coverage by approximately 5,700 square feet.

(Exhibit 86)

(14) At the December 13, 2023 hearing, Ms. Sommer noted agreement with the Technical Staff's recommendation of approval of Applicant's request for alternative compliance and opined that Applicant proffered an alternative compliance that resulted in an equivalent number of trees within street rights-of-way or in the common park so as to shade the sidewalks, accomplishing the same purpose as the required street trees. (December 13, 2023 T. 85-87) However, upon cross-examination by People's Zoning Counsel, Ms. Sommers did agree that none of the reasons proffered topographical constraints, and Applicant did not consider alternatives to developing the single-family attached dwellings to avoid the need for alternative compliance. (December 13, 2023 T. 90-91)

(15) Mr. David Nelson, Senior Transportation Traffic Engineer for Street Traffic Studies, Ltd., was accepted as an expert in transportation engineering and planning. He prepared a traffic statement (Exhibit 101) and testified in support of the Application. A formal traffic analysis was not required for review of this Special Exception, but one would be required at the time of preliminary plan of subdivision review if the Application is approved. Mr. Nelson evaluated the traffic that 60 age-restricted attached dwellings would generate and compared it to the 22 single-family detached dwellings that could be developed by right in the RR Zone and found that 60 age-restricted single-family attached dwellings would be 4 less trips during the AM peak hours and a little more than 4 trips less during the PM peak hours. Fifty-seven (57) age-restricted single-family detached dwellings would generate 5 fewer vehicular trips. (December 13, 2023 T. 121) Mr. Nelson concluded that the instant request would, therefore, not adversely impact the transportation network in the area nor the health, safety, and welfare of the community or adjacent properties (from a transportation perspective). Upon cross-examination, he acknowledged that seniors may still be working at 55 years of age but stressed that the County and national rates for vehicular trips at retirement communities, based on real-world traffic numbers for such communities, were utilized, and staff will conduct a study at the time of preliminary plan using current traffic counts for the area. (December 13, 2023 T. 134-137)

(16) Mr. Mark Ferguson, accepted as an expert in the area of land use planning, testified

and prepared a Land Use Analysis on Applicant's behalf. (Exhibit 102) Mr. Ferguson described the proposed use of the property as follows:

The proposed use for Special Exception application SE-22002 is the construction of 57 villa-style single-family attached dwellings served by private roads which are to be improved with sidewalks on both sides and 16 spaces of on-street parking. Each of the proposed dwellings will also have four private parking spaces, two in its garage and two tandem spaces in the driveway in front of each garage. There will be landscaped stormwater management facility behind the easternmost row of houses, surrounded by a pedestrian trail network, as well as two microbioretention facilities to provide full management through Environmental Site Design.

A paved seating plaza with a covered pavilion, seating, picnic tables and bike racks will be located along the southeast edge of the proposed development, with an area of community gardens for the residents abutting it. A trail will also extend from the Master-planned trail along Springfield Road into the northern part of the development.

Units along Springfield Road will be inward facing, and the rear lines of the lots will angle away from Springfield Road (to an average distance of 77' from right-of-way to rear/side lot line) to provide a substantive landscaped buffer, which will preserve the character of the surrounding community. The rest of the units along Springfield Road will be further buffered from the traffic on the collector roadway with fencing and landscape plantings. Springfield Road itself will be improved across the entire frontage to the County's standards, including (pursuant to a proposed condition) the bike lane as provided for by the Master Plan of Transportation.

The development will be provided with modern stormwater management using Environmental Site Design (ESD) techniques and landscaping in conformance with the provisions of the Landscape Manual.

(Exhibit 102, p. 5)

(17) Mr. Ferguson concluded that the Application satisfied the strictures of Sections 27-317 and 27-395, in pertinent part, as follows:

- The proposed use and site plan are in harmony with the purposes found in Section 27-102(a) and 27-428(a) since the site will be developed in accordance with modern regulations to bring modern stormwater management to the site; new vehicular entrances along Springfield Road will be limited to one safe access into the property, protecting the public health and safety; the development will include landscaping and tree plantings that meet the Landscape Manual and tree canopy coverage requirements and these will visually buffer the proposed attached dwellings from the surrounding detached dwellings; and, it will provide a comfortable and convenient environment for its future senior residents given the design of the villas and the recreational amenities provided; the General Plan, Master Plan, and Functional Master Plans are implemented since the first two

recommend Residential Low land use for the property, place the property within the Established Communities -areas suited for context-sensitive infill development which the proposed use would be; the Master Plan urged the preservation of sensitive environmental areas and the development is designed to preserve the regulated environmental feature of Newstop Branch and its associated stream valley buffer; the Transportation and Mobility Element of the Master Plan goals are furthered by the provision of a bike lane and street trees along Springfield Road, and the provision of modern stormwater management as well as 100 year control; the green infrastructure network is used as a guide to decision-making and as an amenity since the site's regulated natural features are also the Regulated Areas in the County's green infrastructure network; the policies of the Master Plan pertaining to housing types and options and adding "visitable" units with barrier-free access into the first floor and a first floor bathroom are implemented by approval of the request; The Green Infrastructure Plan element of the County's 2017 Resource Conservation Plan is furthered since minimal impact will be made to two small areas of buffer to allow for the installation of sewer and storm drain outfalls if the requested variance is approved; if approved a preliminary plan of subdivision will ensure that the use is developed with adequate public facilities; If approved the Planned Retirement Community will provide for the orderly growth and development of the County by providing senior housing; the development regulations on the site Plan ensure that there will be adequate light, air, and privacy; if approved the use will be developed in accordance with the various land use principles of the prior Zoning Ordinance that promote the most beneficial relationship between the uses of land and buildings, and provision of modern stormwater management facilities and woodland conservation areas protect landowners from any adverse impacts; since the use will be developed in accordance with the provisions of the Zoning Ordinance and other Subtitles in the County Code it should protect the County from fire, flood, panic and other dangers; the proposed Planned Retirement Community will create a suitable and healthy living environment for its future residents given its architecture and communal outdoor recreational facilities; as a residential use economic development activities are not directly applicable but at the construction and design stages the use will ensure that a certain number of jobs will be created; Applicant will be constructing 41% fewer units than the 96 permitted if the eight units allowed in Section 27-395 (a)(3)(A) were constructed and other provisions of the Zoning Ordinance will prevent the overcrowding of land; the development is not expected to add as many vehicular trips as the single-family detached homes that could be built on the site and, again, at the time of subdivisions the adequacy of public roads will be ensured, Springfield Road will be widened, and a bike lane provided; the social stability of the County will be furthered by providing such housing and recreational amenities for seniors; the use will be designed in a manner that will generate no new air or water pollution, will disturb no stream valleys, steep slopes, large areas of dense forest; regulated natural features are being preserved and communal

recreational space provided; the development of attached housing for seniors has been found by the District Council to be permissible in the R-R Zone so the use need not meet the purposes addressing the provision of one-family detached residential subdivision lots; the site is designed to preserve trees and open spaces, in accordance with the TCP2 and the Tree Canopy Coverage requirements; soil erosion and stream valley flooding will be prevented due to the provision of 100-year stormwater management and development in accordance with an approved Sediment and Erosion Control Plan. (Section 27-317 (a)(1))

- The Applicant has not requested a variance from the provisions of the Zoning Ordinance. (Section 27-317 (a)(2))
- The proposed use will not substantially impair the integrity of the Master Plan, as noted above. (Section 27-317(a)(3))
- The lower proposed density, the single access reducing the number of additional accesses along Springfield Road, and conformance with the requirements of the Zoning Ordinance ensure that the use will not adversely affect the health, safety, or welfare of residents or workers in the area. (Section 27-317 (a)(4))
- The preservation of woodlands along the perimeter where the regulated natural features exist; the orientation inwards and buffering to avoid imposing a different development character along the perimeter road frontage on Springfield Road; use of the larger two-story units to maintain the local building height patterns keep the proposed use from being detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))
- If the TCP 2 is approved, the site plan will be in conformance thereto. (Section 27-317(a)(6))
- While the site does contain an area of stream buffer and 100-year floodplain along its northeast border, which are regulated environmental features, a portion of the Primary Management Area will be temporarily disturbed and restored once the sewer construction is completed. The disturbance created by the outfall stabilization from the proposed submerged gravel wetland will be permanent but is de minimis in size, and its purpose is to protect the Primary Management Area. (Section 27-317(a)(7))
- The site is not located within the Chesapeake Bay Critical Area. (Section 27-317 (b))

(Exhibit 102, pp. 5-15)

(18) Finally, Mr. Ferguson also opined that the use satisfied the particular criteria found in Section 27-395, reasoning as follows:

The 'Existing Conditions Summary' in the Housing and Neighborhoods Element of the Master Plan addresses public need at length.[See page 152 of the 2022 Bowie-Mitchellville and Vicinity Master Plan]....The General Plan's Housing and Neighborhoods Element has a similar prefatory discussion. [see page 184 of the 2014 General Plan]....

[These plans] illustrate that a need [for the elderly and growing vulnerable populations] exists ... [and] the proposed development's two-story villa-type dwellings provide for the possibility of single-story living, enabling homeowners to age in place and use the upstairs rooms to accommodate guests and/or caretakers....

[T]he characteristics of the development ... minimize its impact on the use and development of the ... surrounding residential community ... because the proposed development is designed to preserve the woodlands along the perimeter where regulated natural features exist; be oriented inwards to avoid imposing a different development character along the perimeter road frontage on Springfield Road; use larger two-story units to maintain the local building height patterns; and, to provide enhanced setbacks and substantive landscaping along Springfield Road to separate the proposed development from dominating the existing streetscape....

The Site Plan depicts the proposed street network....The restrictions on building height, lot size, lot coverage, lot frontage, setbacks, density which are to be applicable to the proposed development are shown on the Special Exception Site Plan....

The subject property contains 12.0091 contiguous acres....

4.75 dwelling units per gross tract area are proposed....

The proposed villa-style dwellings are to be two stories in height....

The proposed Planned Retirement Community proposes an outdoor meeting area and a number of passive recreational facilities including trails, picnic areas, and community garden beds....

Retail commercial, medical, health care and other nonresidential uses are not proposed....

[T]he proposed covenants [for Age restrictions in conformance with the Federal Fair Housing Act and guaranteeing the perpetual maintenance of recreational facilities and the community's right to use the facilities] ... are in the backup in the Technical Staff Report....

In summary, this planner believes that all of the Additional Requirements of Section 27-395 which are required for the approval of a Planned Retirement Community are met.

(Exhibit 102, pp. 15-19)

(19) Upon cross-examination by People's Zoning Counsel and review of his Exhibit (Exhibit 103), Mr. Ferguson explained his opinion that the request met the requirement that the property contain twelve contiguous acres:

Even though there is a public road leading over, you know, roughly the ... first 10 feet of the property boundary along ... Springfield Road, which would be the prescriptive easement.... After subdivision, 40 feet from that ... current boundary will be dedicated to public use and at that point, it will be part of a dedicated public right-of-way and therefore, ultimately get subtracted from the gross area, but ... it is the practice of [MNCPPC] uniformly when dealing with gross to deal with that at the start of development, not later on... And so right now because that property had never been dedicated or conveyed out it remains part of the gross....

[If you deduct the square footage of the right-of-way prescriptive easement] you absolutely would be below 12 acres post-dedication....I think because of the deed you do have the 12 acres....

I would agree that there are not 12 net acres, because not only is there a ... prescriptive easement along Springhill Road, there's also 100-year floodplain, but the ordinance specifically says gross so that they can say, what does your deed say? Your deed says 12, great, you can proceed to develop ... and then you go and do your development, and all of that development will go and subtract – it will subtract roads, it will subtract other things, it might subtract a ... mandatory park dedication, for instance....

[Even if the Zoning Ordinance does not specifically say gross acreage] I guess I would say ... my uniform experience in evaluating development applications, [is] that evaluation is made at the beginning of the review process, not at the end....

(December 13, 2023, T.220- 227)

(20) Upon cross-examination by Mr. Holman, Mr. Ferguson expounded upon the number of trees on site and the effect that Applicant's plans would have on water runoff in the area:

[The existing dwelling is not located on a steep slope although] I know you believe it is steep. According to the county's definitions, it is not. That requires slopes to be in excess of 15 percent, which it only really appears in the ...banks of the stream and that's a ... protected area.

So ... right now existing today you have a house which has a driveway and it has roofs and the outbuildings have ... roofs and you have cleared area which has ... grass. All of that, even though it ... may be minimal, is still a greater amount of stormwater runoff than if the property were entirely wooded. So what the stormwater management regulations of the state and the county require is that you manage the stormwater so that the ... discharge is equal to or less than what would come off it if the property were entirely wooded. So ... the design is done really to improve the stormwater conditions over what is there today after you build those 57 houses and that's done through various means.

Micro-bioretention facilities are sort of like a constructed swamp, but nicely landscaped that both allow water to infiltrate into the soil and [allow] plants to use their... roots and their ... living nature to metabolize the nutrients that are in the runoff. So runoff rainfall generally absorbs ... nitrogen and phosphorus components that come out of principally car exhaust.

And when ... rain forms, those ... nitrogen and phosphorus components that go into the raindrops fall onto the ground and make their way ... onto impervious surfaces and then without management directly into stream bodies, which cause eutrophication....

So the idea is [to] metabolize all of that – all of those nutrients with plants in micro-bioretention, in the submerged gravel wetland before it's discharged out into the environment and by creating pools, you also impact the water so that it has time to ... infiltrate into the soil, it has time to be metabolized by the plants and only trickles out of the facility at low rates, which ... are designed to match what the property would be in it had never been developed, if it wasn't even a single-family house but rather was entirely wooded.

(December 13, 2023 T.236- 239)

(21) Mr. Aldag cross-examined Mr. Ferguson as to whether the types of soil on site hinder the proposed stormwater facilities from optimal performance. (December 13, 2023 T. 241-242). The witness responded, in pertinent part, as follows:

[T]he bioswale is no longer part of the proposal ... [because] there's maintenance problems with those, so they don't like to approve those anymore....

There's ... two micro bio-retention facilities and a submerged gravel wetland.... So those two ... types of facilities are very different in their ... function. So micro bio-retention facilities are suited to areas where the soil is permeable and ... in the case of this site, ... the type B hydrologic soils group soils ... which are up towards Springfield Road and that's where those micro bio-retention facilities are. So, in that case they are able to infiltrate and perform the function that they're supposed to do.

On the northern and eastern parts of the site as you get towards Newstop Branch, then the soil characterizations change to C and probably as you get even a little bit more below ... the surface level, D and in that case, those soils are impermeable ... in various degrees.

And so the use of micro bio-retention is not suitable there. So what you do - where you have ... those soil conditions is you use a facility like a submerged gravel wetland, which is explicitly designed to treat the water by ... developing an anaerobic layer ...below a ... local water table that does the treatment and

then ... you get discharge of the water as opposed to infiltration, but you were always getting that already because of the soils type.

So both of those facilities act to maintain the natural characteristics – the natural hydrologic characteristics of the site prior to development and that's ... what's proposed here....

So the county certainly and the state have a substantive interest in protecting the water of Newstop Branch and below ... because the watershed is a ... tier II watershed. And so what the county does is impose additional requirements to provide a higher level of protection for Newstop Branch than it would elsewhere....

(December 13, 2023 T. 240-245)

(22) Proposed covenants enforcing the age restriction and recreational facilities were provided.⁹ (Exhibit 53) The Applicant must submit the final version for approval if the Application is granted. (December 13, 2023 T. 35-36)

(23) Mr. Steven Jones, Survey Division Manager at CPJ, testified at the second hearing to explain the survey prepared and the effect that the prescriptive easement should have in the review of the criteria for approval. Mr. Jones reviewed the title report for the property, tax maps, deeds, plats and other public records and determined that the property has 12.0091 acres. He did discover evidence of a prescriptive easement on site, with the western property line running in the center line of Springfield Road, meaning a portion of paved area was on the Stewart property. (December 20, 2023 T. 20-21) Mr. Jones further testified that the inclusion of a prescriptive easement in the total acreage of the subject property is "consistent with the standard of care [of] professional land surveyors of Maryland." (December 20, 2023 T. 24) Mr. Jones explained that the prescriptive easement is approximately 3,524 square feet, so the area excluding the easement is 11.834 acres, the amount conveyed in one of the deeds provided. (Exhibit 107) Mr. Jones noted that "quite often ... areas stated in deeds may not be taken to the same decimal place, same accuracy ... " so better surveying information can lead to a different acreage. (December 20, 2023 T. 25-26)

Opposition's Concerns

(24) Mr. Charles Holman lives site across from Newstop Branch (also referred to as a stream/creek). That area is relatively flat, but the property adjacent to Springfield Road has a much steeper incline, raising concern that Mr. Holman's property may be subject to excessive runoff. He urged that the project be re-thought and scaled back.

(25) Mr. Martin questioned the necessity of placing 57 attached dwellings on the

⁹ Upon remand it was discovered that this exhibit only addressed the age-restricted covenants.

subject property given the traffic and environmental concerns and asked whether the number could be reduced. He also had a concern that there's no access to public transportation in that area which could impact the elderly that don't drive.

(26) Mr. Howard Aldag¹⁰ provided an Exhibit (Exhibit 104) and testified that he believes the requested use will adversely impact traffic in the area and the environment:

The residents on Springfield Road have traffic concerns. That includes substantial cut-through traffic from U.S.D.A. Beltsville Agricultural Research Center.

The current traffic volume is such that it is difficult to turn onto Springfield Road from driveways and intersecting resident streets. Area residents experience substantial delays in turning from driveways to Springfield Road and from stop sign-controlled intersections..., and when turning from Springfield Road onto Lanham Severn Road.

These concerns are valid and could be exacerbated by the traffic from the Stewart property plus other future developments affecting the Springfield area. This added traffic could lead to significant safety concerns and delay for me and my neighbors owning property abutting Springfield Road....

I have counted 300 to 400 cars per hour passing by the intersection of Good Luck Road and Springfield Road during rush hour drive times. That is approximately 1 car every 14 seconds today before the Stewart property and 8 to 10 other planned subdivisions are built or abutting ... Springfield Road.

The cumulative effect will make it impossible to have reasonable access and travel to our properties on and in the vicinity of Springfield Road....[I]t's for this reason that I urge you to call upon the zoning hearing examiner to withhold approval of the Stewart property special exception until a cumulative traffic impact study is completed and shows that safety concerns of the motorists, cyclists and pedestrians will not be jeopardized and without causing excessive congestion and delay.

And the second part of my testimony is on the environmental impact for the Newstop Branch. The Maryland Biological Stream Survey["MBSS"] shows that Newstop Branch was of good quality based on the ... most recent sampling done in 2008, which was about a mile downstream of the Stewart property site.

A good quality stream like Newstop Branch usually supports an abundance of fish and other organisms that are sensitive to pollution. A fair quality stream has usually lost most of the pollution-sensitive species....

Generally ... to maintain a good quality stream requires a minimum of 40 percent of the watershed is a forest and impervious surfaces [must] cover no more than 10 percent of watershed. Based on the U.S.G.S. Stream stats Data at 25 percent forest cover ... Newstop Branch is considerable below the good quality threshold and 14 percent ...

¹⁰ Mr. Aldag was not accepted as an expert witness.

cover puts the Newstop watershed above the 10 percent for good quality....

Stewart's property development will lower the forest acreage by 3.44 acres to 153.7 acres, watershed forest cover will go from an existing 25.3 percent down to 24.7 percent.... The Stewart property would add 4.56 acres impervious surface to the Newstop Branch watershed. Newstop Branch impervious cover acres would increase from the existing 84.5 acres to 89 acres....

[Additionally, Staff noted] an unapproved stormwater management plan was submitted. The unapproved plan shows the use of two submerged gravel wetlands, two micro retention facilities, and a bioswale to meet the stormwater requirements for the site. The revised layout of the SE-22002 is not consistent with the layout shown on the unimproved stormwater management plan.

[These proposed ... measures can be highly effective in mitigating impervious stormwater impacts.... Soil permeability is rated with a system called hydraulic soil groups, which range from A to D The A soils are the most permeable, the D soils are the least.... The soils on the Stewart property site are mostly D with some C soils, because the soils are impermeable. The Stewart property development will further degrade Newstop Branch even with stormwater measures that are usually highly effective....

(December 13, 2023 T.265-271)

(27) Mr. Sean Suhar, Esq. did not testify but asked to express the view of his client, ostensibly the Wingate Homeowner's Association (the "Association"). After being asked to present evidence of the Association's vote on the Application. Mr. Suhar presented a document from the Association's Planning and Zoning Committee. That body states that it and the Association are opposed to the amount of density requested, possible negative impact upon the roadways, negative impact upon the environment and on the stormwater management pond serving the Wingate community, and, insufficient parking for the future residents of the Planned Residential Community. (Exhibits 105(a)-(c) and 109) It is important to note that no witness testified to these concerns; accordingly, the evidence was not taken under oath and subject to cross-examination. Nonetheless, I will give it the appropriate weight and will make the Homeowner's Association a Person of Record.

(28) Upon redirect, Mr. Burke noted that Applicant had a letter of findings and hydraulic planning analysis approved from the Washington Suburban Sanitary Commission ("WSSC") for the revised layout of the development. (December 13, 2023 T. 261-262)

Technical Staff/Agency Comment

(29) The Technical Staff's Environmental Planning Section ("EPS") recommended approval of the Special exception ad TCP2-017-2023, with conditions, after reviewing

Applicant's revised layout (submitted on August 18, 2023) and revised letter of justification for impacts to environmental features ("REF") (submitted on August 21, 2023. (Exhibit 3, Backup pp. 136-149) The EPS provided extensive support for its recommendation, capsulized as follows:

[PMA] is located to the east of the property, which includes a stream, associated buffer, and floodplain. No forest interior dwelling species are indicated on-site, per PGAtlas.com. According to information obtained from the Maryland Department of Natural Resources ..., there are no rare, threatened or endangered ... species found to occur on or in the vicinity of this property. No Tier II waterbodies are located on-site; however, the site is located within the Patuxent River upper watershed, a stronghold watershed as established by the Maryland DNR....

The site is located within the Environmental Strategy Area 2 ... of the Regulated Environmental Protection Areas Map, as designated by [2014] General Plan, and the Established Communities of the General Plan Growth Policy....

The site is in the 2022 Approved Bowie-Mitchellville and Vicinity Master Plan, which includes applicable goals, policies and strategies. [The request satisfies policies and Goals in the Natural Environment Section of the Master Plan.] There are no [Nontidal Wetlands of Special State Concern] NTWSSC within the vicinity of this property.... This project will be subject to stormwater review and approval by ... [DPIE]. An unapproved Stormwater Concept plan ... is currently under review. A final stormwater design plan in conformance with County and State laws will be required [for the] issuance of any grading permits for this site....

(Exhibit 3, Backup pp. 137- 138)

The EPS noted that the request complies with the requirements of the Countywide Green Infrastructure Plan, Prince George's Resource Conservation Plan and the Woodland and Wildlife Habitat Conservation Ordinance since:

- The site is in the vicinity of the Special Conservation Area associated with the Patuxent Research Refuge, and the site layout will place an area that is currently a network connection between existing woodlands offsite on the Patuxent Research Refuge with existing woodland preservation, thereby preserving and placing woodlands into either a woodland conservation easement along the northern portion of the site, or in a floodplain easement. Woodland conservation must be designed in a manner that minimizes fragmentation and reinforces new forest edges.
- The on-site woodlands will be placed into Woodland and Wildlife Habitat Conservation Easements prior to approval of the TCP2. The TCP2 prioritizes preservation adjacent to regulated streams and a Special Conservation Area. The approved NRI and the TCP2 preserve a portion of the highest quality of existing woodland on-site while concentrating some areas of the development within the unforested areas. There are no stream crossings, nor any trail systems proposed

with the instant request.

- Regulated environmental features are located on-site, and Section 24-130(b)(5) of the prior Subdivision Ordinance requires that the Application demonstrate the preservation and/or restoration of regulated environmental features in a natural state to the fullest extent possible. Impacts to the regulated environmental features will be limited to two areas within the primary management area – a 1,903-square-foot impact to a portion of the floodplain and stream buffer for the connection, installation, and associated grading for a sanitary sewer line; and a 216-square-foot impact to the floodplain for a weir outfall and riprap for a submerged gravel wetland associated with a planned stormwater management facility.

(30) The EPS also recommended approval of the Applicant's requested variance from Section 25-122 (b)'s requirement that specimen trees be preserved. There are ten specimen trees on the site. Applicant requests the removal of four trees 1, 3, 9, and 10, all located in the northeastern portion of the site. Staff supported the removal of the specimen trees since the variance request meets the six requirements for approval found in Section 25-119 (d):

[Conditions peculiar to the property have caused the unwarranted hardship.] The specimen trees proposed for removal are located outside of the REF. [T]he four specimen trees requested for removal [are] for proposed roadways, building footprints, and grading.... [A]ll species of the included specimen trees have limiting factors for their construction tolerance, specifically if significant impacts are proposed to the [critical root zone] CRZ. These trees are located throughout the site, outside of the steep slope areas.

Removal of specimen trees ST-1, a 32-inch Post [O]ak in fair condition is requested to adequately provide circulation on the site. Specimen trees proposed for removal for house location include ST-3 and ST-10, both White [O]aks, and ST-9, a Southern [R]ed [O]ak. These trees are all in good condition, ranging from 30 to 45 inches in diameter.

Staff finds that ST-1, ST-3, ST-9, and ST-10 are somewhat dispersed yet integral to the developable portion of the site, in that they are more centrally located on the property and not in close proximity to the PMA or any REF. Retention of these trees and protection of their respective CRZs would have a considerable impact on the proposed development by creating challenges for adequate circulation and infrastructure through portions of the site....

Based on the location and species of the specimen trees proposed for removal, retaining the trees and avoiding disturbance to the CRZ of trees ST-1, ST-3, ST-9, and ST-10 would have a considerable impact on the development potential of the property. If similar trees were encountered on other sites, they would be evaluated under the same criteria. These four specimen trees requested for removal are located within the developable parts of the site....

Not granting the variance to remove trees ST-1, ST-3, ST-9, and ST-10 would prevent the

project from being developed in a functional and efficient manner. This is not a special privilege that would be denied to other applicants.... Other applicants with similar circumstances would receive the same recommendation....

The existing site conditions or circumstances, including the location of the specimen trees, are not the result of actions by the applicant. The location of the trees and other natural features throughout the property is based on natural or intentional circumstances that long predate the applicant's interest in developing this site. Additionally, to date, the applicant has not undertaken any construction on the site that would cause the need for the removal of the specimen trees with the proposed development....

There are no existing conditions relating to land or building uses on the site, or on neighboring properties, which have any impact on the location or size of the specimen trees. The trees have grown to specimen tree size based on natural conditions and have not been impacted by any neighboring land or building uses....

Requirements regarding the SWM concept will be reviewed and approved by DPIE. Erosion and sediment control requirements are reviewed and approved by the Soil Conservation District.... Both SWM and sediment and erosion control requirements are to be met in conformance with state and local laws to ensure that the quality of water leaving the site meets the state's standards. State standards are set to ensure that no degradation occurs and granting this variance will require adherence to these standards....

(Exhibit 3, Backup pp. 145-146)

(31) The Planning Director and the Alternative Compliance Committee recommended approval of AC-23008 since:

- The 35-foot-wide buffer required when a rear yard of single-family attached or detached dwellings are oriented toward a street classified as a collector is met for all but two Lots (Lot 1 and Lot 43) where the width is reduced to 26 feet and 20 feet, but the full plant units and a fence will be provided.
- The requirement of one street tree per 35 linear feet of frontage cannot be met due to Section 4.10 (c)(5) and (c)(10)'s requirements of additional setbacks from the point of curvature of driveway entrances and street intersections. Instead, the Applicant will provide additional plantings, and the additional trees are proposed as close to the private streets as possible, but outside of public utility easements.
- Finally, recommended conditions will require more plantings close to the private streets.

(Exhibit 3, Backup pp. 125-129)

(32) The Transportation Section noted that the 2009 Countywide Master Plan of Transportation recommends that a planned bicycle lane be provided along Springfield Road. It then opined that the request could be approved, from a transportation standpoint:

Staff find that the proposed plan with the recommended facilities does not impair the ability to make transportation related recommendations that are supported by an approved Master Plan or Functional Master Plan. In this case, staff recommends a bicycle lane along the site's frontage on Springfield Road, which is supported by the MPOT policy....

The current configuration of the site allows for one point of access along Springfield Road. Per the approved transportation scoping agreement, traffic counts at the site access point and Springfield Road as well as traffic counts at the intersection of Lanham-Severn Road and Springfield Road are required to determine adequacy. Staff and the applicant agree that further analysis related to vehicular adequacy will be examined at the time of Preliminary Plan of Subdivision (PPS).

Lastly, regarding pedestrian circulation and facilities, sidewalks are provided throughout the development, providing pedestrian access throughout. Crosswalks have been provided where sidewalk facilities are interrupted. A natural surface trail has been provided between the sidewalk network along Springfield Road and the western terminus of Private Road B. Staff supports the proposed bicycle and pedestrian facilities associated with the subject application and will further examine adequacy at the PPS stage of development.

(Exhibit 3, Backup pp. 133-135)

(33) The Technical Staff found that the request satisfied applicable provisions of Section 27-317 since:

- The general purposes of the Zoning Ordinance generally protect the public health, safety and welfare, promote compatible relationships between land uses, guide orderly development, and ensure adequate public facilities and the proposed 57 age-restricted residences will provide diverse housing options for the surrounding community through quality senior housing and recreational amenities. Moreover, the environmental features on site will be protected through the addition of a stormwater management system, on and off-site woodland conservation, and the preservation of the majority of the primary management area. (Section 27-317(a)(1))
- The request demonstrates conformance with the R-R Zone's development regulations. Once conditions are addressed, it can be found in conformance with all the applicable requirements of the Zoning Ordinance, (Section 27-317(a)(2))
- The request will not substantially impair the integrity of any validly

approved Master Plan or Functional Master Plan since the 2022 Bowie-Mitchellville and Vicinity Master Plan recommends low-density residential land uses for the site, described as residential areas up to 3.5 dwelling units per acre, and a Housing and Neighborhood Goal therein encourages a range of housing types and the preservation and expansion of senior housing. (Section 27-317(a)(3))

- The provision of quality senior housing and the outdoor amenities will enhance the health, safety and welfare of residents in the area. The sidewalk added along the frontage on Springfield Road and the addition of a bicycle lane will as well. (Section 27-317(a)(4))
- The site is bounded to the north and east by open-space and single-family detached dwellings, to the south by vacant land, and to the west by Springfield Road and single-family detached dwellings beyond. The request will complement the existing residential uses by its conformance to the Landscape Manual and the alternative compliance thereto, the preservation of Primary Management Area ("PMA") and certain specimen trees, and adherence to recommended conditions. (Section 27-317(a)(5))
- TCP2-017-2023 shows a total of 4.77 acres of woodland in the net tract and 1.58 acres of wooded floodplain. 3.63 acres of woodland is proposed for clearing (above the threshold requirement in the R-R Zone) in the net tract area and 0.04 acre of wooded floodplain – accordingly, a total woodland conservation requirement of 3.74 acres. On-site woodland and wildlife habitat conservation easements will be required and will be primarily met by off-site credits. A Subtitle 25 variance was requested, and staff recommends approval of the removal of specimen trees 1, 3, 9, 10, and a condition added in order to protect tree 8. (Section 27-317(a)(6))
- PMA is found on the site, as shown on the approved Natural Resources Inventory (NRI-069-2022). Applicant proposes impact of 1,903 square feet to the floodplain and stream buffer in order to install a needed sewer line, and 216 square feet to the floodplain of an outfall associated with a submerged gravel wetland. All of the specimen trees requested to be removed are outside of the regulated environmental features. Therefore, these features are being preserved and/or restored to the fullest extent possible. (Section 27-317 (a)(7))
- The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(Exhibit 3, October 4, 2023 revisions to Technical Staff Report and Technical Staff Report, pp. 5-10)

(34) The Technical Staff also found compliance with Section 27-395 of the Zoning Ordinance, after certain conditions are met, reasoning in part as follows:

- The development will provide a new housing option for seniors in close proximity to dwellings that are not age-restricted, thereby meeting a goal of the County's *Comprehensive Housing Strategy* which seeks to support the elderly and provide a diverse set of housing opportunities. It will also support the needs of the retirement-aged community by including recreational amenities, dog waste stations, and on-site furniture within the community pavilion. (Section 27-395 (a)(1)(A)(i))
- The layout minimizes the number of rear-facing dwellings along Springfield Road and ensures that adequate landscape buffering is provided on-site to reduce the visual impact of the development. Applicant provided a Visibility Impact Exhibit that will provide more architectural interest for all end units. (Section 27-395 (a)(1)(A)(ii))
- The Special Exception Site Plan shows the one access point from Springfield Road and the private streets. Both will be examined thoroughly at the time of subdivision review. (Section 27-395 (a)(2)(A))
- A regulation table has been provided detailing the standards to be applied to the use. However, Staff believes additional standards must be included or that Applicant should note that the underlying standards in the zone will apply. (Section 27-395(a)(3)(A))
- The property is comprised of 12.01 acres as a result of a prescriptive easement along Springfield Road. Staff finds the DPWT letter and the property survey sufficient evidence demonstrating conformance to the requirement that the site have 12 contiguous acres. (Section 27-395 (a)(3)(B))
- The gross tract area is approximately 12.01 acres. When multiplied by 8, 96 dwelling units could be constructed, and Applicant only proposes 57. (Section 27-395(a)(3)(C))
- The description of community meeting area and other recreational facilities were provided in Applicant's Statement of Justification. The community gathering area includes a pavilion, benches, bicycle racks, a community garden and tables.

Staff recommends a condition to provide additional active recreation activities within or near the community gathering area. (Section 27-395(a)(4)(A))

- No retail commercial uses, medical uses, health care facilities or other uses related to the needs of the community are to be provided. (Section 27-395(a)(4)(B))
- Covenants concerning the age restrictions in conformance with the Federal Fair Housing Act and guaranteeing perpetual maintenance and the community's right to use the recreational facilities are included and must be approved by the District Council and recorded in the land records of Prince George's County. (Section 27-395(a)(5)(A) and (a)(6))

(35) The Department of Public Works & Transportation (DPW&T) reviewed land records, deeds, and a boundary survey for the property and provided the following comment:

Based on our review we are confirming that : DPW&T has no record of Springfield Road being conveyed to Prince George's County by deed or plat; the portion of the road that fronts 8215 Springfield Road was established by a prescriptive easement; the property at 8215 Springfield Road borders the centerline of the right of way....

DPW&T is requesting that a formal dedication of this portion of Springfield Road be granted to Prince George's County by the property owner.

(Exhibit 3, Backup p. 50 of 169)

(36) The Washington Suburban Sanitary Commission ("WSSC") issued a Letter of Findings that indicated that a hydraulic planning analysis has been completed for the subject property and conceptually approved, with certain conditions required. (Exhibit 105 (c); December 20, 2023 T. 46-47)

FINDINGS OF FACT FROM THE REMAND

Applicant's Additional Evidence

(37) Applicant presented witnesses and exhibits to address the District Council's Order of Remand, arguing that the additional evidence "together with that provided on December 13th, 2023, and December 20th, 2023" will show that the subject application "satisfies all applicable requirements for approval of the Special Exception. (March 12,

2025 Remand T. 7)

(38) Mr. David Stewart testified that his mother, Joanne Stewart, had passed away since the original hearing. He is now the Personal Representative of her estate, and the subject property is now owned by the estate. (March 12, 2025 Remand T. 15) Mr. Stewart executed a confirmatory quitclaim deed as personal representative. (Exhibit R-6)

(39) Mr. Jude Burke, Vice President of Elm Street Development, provided a copy of an executed age-restricted covenant for the Planned Retirement Community that also included a paragraph for recreational facilities. (Exhibit R-16) The recitals in the covenant noted that the grantor is the owner of the subject property, and that the property contains 12.0091 acres. Attachment A, which purportedly further describes the property, was left blank.

(40) Mr. Steven Jones, survey division Manager for Charles P. Johnson and Associates ("CPJ"), and a licensed surveyor in Maryland and two other jurisdictions, testified that CPJ wrote a letter to the State Department of Assessments and Taxation ("SDAT") requesting that it address certain portions of the District Council's Order of Remand. (Exhibit R-3) He received a letter from SDAT in response, which provided in pertinent part as follows:

This letter is in response to the questions presented to Prince George's County Assessment office on February 4, 2025, by CPJ Associates. Questions and answers are below.

1. **CPJ requests that SDAT confirm from SDAT that CPJ's response to Council direction No. 1 accurately reflects SDAT's procedures for review, calculation and determination of property land area for individual tax accounts.**
SDAT can confirm that CPJ's response to Council direction No. 1 accurately reflects SDAT's procedures for review, calculation and determination of property land area for individual tax accounts. SDAT does not, however, make any representation as to the accuracy of the remainder of CPJ's response to Council direction No. 1.
2. **To the extent that SDAT's procedures for review, calculation and determination of property land area for individual tax accounts differ from those described in CPJ's response to Council direction No. 1, CPJ requests additional information and/or clarity from SDAT regarding such procedures.**
SDAT was able to revise the land area as requested, due to the provisions of a newer, current deed with a recorded survey.

3. **CPJ requests that SDAT confirm that, as of January 31, 2025, SDAT's online real property database reflects a property land area of 12.0091 acres for the Property.**
SDAT can confirm that as of January 31, 2025, our database reflects 12.0091 acres. With the review of older map books and of prior deeds, including Book 40916 Page 567, SDAT was able to verify the land area previously reflected 11.94 acres. However, with the recording of a current survey and deed, recorded on January 10, 2025, among the Land Records of Prince Georges County at Book 50486 Page 221, the land area was changed to 12.0091 acres.
4. **CPJ requests that SDAT confirm that, as of January 31, 2025, the property land area for the Property listed on SDAT's online database was calculated solely from the deed (including the legal description) referenced in Deep Book 50486 at Page 221.**
SDAT calculated the land area solely from the survey and deed's legal description using metes and bounds.
5. **CPJ requests that SDAT confirm that, as of January 31, 2025, the Property (i.e., Parcel 131) consists solely of the land described in the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221.**
SDAT cannot confirm this because it does not perform title review, survey land, or verify the accuracy of a legal description, as CPJ as referenced in its response to #1. SDAT cannot confirm exactly what land the property consists of.

SDAT can confirm that the legal description in SDAT records comes from solely from the legal description in the deed and the survey.
6. **CPJ requests that SDAT confirm that SDAT does not investigate for the existence of easements or other nonpossessory interests that might exist on a property without evidence in the land records.**
SDAT confirms that it does not investigate the existence of easements or nonpossessory interests.
7. **CPJ requests that SDAT confirm that, in determining the property land area of the Property, SDAT did not specifically identify nor exclude the land/acreage/square footage of any prescriptive easement from the property land area of the Property.**
SDAT determined the land area solely from the legal description of recorded deeds.

8. **CPJ requests that SDAT confirm that SDAT did not investigate nor find evidence of any conveyance of the land/acreage/square footage of any prescriptive easement area out of the Property.**
SDAT reviewed old map books and deeds dating back to that deed recorded at Book 5227 page 168 on February 15, 1980, with no mention of easements being conveyed.
9. **CPJ requests that SDAT confirm that SDAT did not investigate nor find any evidence to indicate that the prescriptive easement area should not be included in the property land area of the Property.**
SDAT did not investigate for any prescriptive easements.
10. **CPJ requests that SDAT confirm that, as of January 31, 2025, SDAT has found no evidence of a separate deed reference for the prescriptive easement area other than the deed located at Deed Book 50486 starting at Page 221.**
SDAT did not look for such a separate deed, and as such, has uncovered none.
11. **CPJ requests that SDAT confirm that the language from the SDAT real property database described in Council direction No. 4 (i.e., "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") (a) are intended to be used by SDAT staff to note in the file, for SDAT's internal purposes, how areas are accounted for from previous tax account numbers, and (b) are internal notation, which should not be interpreted as the legal description of the property and are not intended to be relied upon by others.**
The purpose of the notation "(RECOMB/DEL 10.0AC FROM 3830957 7/1/10)" was for SDAT's internal purposes, to allow the property owner to receive a homestead credit. SDAT previously had to create an account for 1 acre, or the amount of land zoning required for a homesite, in order for the property to qualify for the homestead credit. SDAT has combined the split account back together now that its database can be coded for both the homesite and excess land that would not qualify for the homestead credit.

(Exhibit R-4)

(41) Thus, SDAT's letter indicated that the site had 11.94 acres in earlier documentation and 12.0091 acres in more current documentation. Mr. Jones stated that he surveyed the property himself and was aware that a deed from the late 1980s

had a different acreage but believed "[t]hat the metes and bounds description ... in that particular deed, did not represent a current boundary survey" that he relied upon for his description of the property. (March 12, 2025 Remand T. 36) Upon cross-examination, Mr. Jones expounded further:

My role as a surveyor is to identify use of the property inconsistent with the current title owner, which I did on my survey.... [The] title deed and the survey run with the center of the road. So, a portion of the roadway is within the limits of the... Stuart property, and so would have been contained in the 12.0091 acres.

(March 12, 2025 Remand T. 45)

(42) Mark Ferguson also testified at the Remand Hearing. He concurred with Mr. Jones' opinion that the subject property contains approximately 12.0091 acres despite a portion lying beneath Springfield Road since "the fee rights do retain in ... easement areas and ...the zoning ordinance does not subtract the easement area from the gross until it is dedicated." (March 12, 2025 Remand T. 70-71) He also explained why he believes the request does not substantially impair the Bowie-Mitchellville Master Plan:

[Pursuant to Section] 27-317 (a)(3), the required finding for approval under the prior zoning ordinance is that 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. So we do have a master plan. And ... the point that I was going to draw some distinction about was the difference between an impairment and substantially impairing the integrity....

I would opine that anything which does not conform to a statement or a recommendation, or a goal in the master plan would be an impairment. But the required finding doesn't ask whether there are any impairments. It asks whether ... in total ... does the use substantially impair the integrity? It seems to me [this] speaks to a totality of the ... zoning ordinance. In my land use report, which is in the record and in my testimony in December of 2023, I did speak to a substantial number of elements which the proposed development plan actively implements.

One of the questions which was raised is that there is a definition of the residential low land use, which is the land use recommendation, which says between [1/2 and 3 1/2] units per acre. And so [,] the question then is, is the density in excess of 3 1/2 units per acre at a particular site ... an impairment of the master plan. And..., viewed in the totality, is it a substantial impairment of the integrity of the plan? So I think you could look at it as an impairment. But in totality, I do not believe that rises to a substantial impairment of the integrity of the plan as a whole.

And the reason for that is that certainly... the master plan is a guide, which is to be used by the District Council in making decisions about which zoning districts and therefore which permitted uses can be applied in a certain area....

What you do have to do is look at really the totality of the plan's recommendation, and then certainly apply that not just in the light of 27-317 (a)(3), but of course, of the other criteria for approval of a special exception, which include... does the property adversely affect the public health, safety, and welfare, and would it impair the use of development of the other properties and the general neighborhood? To which, of course, I also testified both in my report and in my oral testimony at the... prior hearing....

(March 12, 2025 Remand T. 76-78)

(43) In response to a question from Applicant's counsel, Mr. Ferguson also opined that the Council's retention of the RR zoning in the SMA, language in the Bowie Master Plan stressing the need for senior housing, and the Zoning Ordinance language permitting a planned residential community with up to eight dwelling units per acre by special exception in the RR Zone, support a conclusion that the Council intended to allow up to 8 dwelling units per acre. (March 12, 2025 Remand T. 79-80)

(44) The Remand Hearing was continued to allow Applicant the opportunity to file a request for a variance to the requirement in Section 27-395(a)(3)(B) that the subject property contain twelve contiguous acres. In its Supplemental Statement of Justification for the Variance Request, Applicant reiterated its belief that the subject property meets the 12 contiguous acre requirement but is requesting a variance from this provision in the event that the 3,542-square-foot portion of the site used for Springfield Road (the Prescriptive Easement area) must be excluded from its 12.0091 acres. It offered the following support for its belief that the variance request would satisfy the provisions of Section 27-230 of the Zoning Ordinance:

The Property is unique and unusual with respect to the extraordinary condition of the presumed existence of the Prescriptive Easement on a portion of the property along its southwest boundary. While it does not transfer ownership [it] encumbers the property by granting the public with the right to use and enjoy the portion of Springfield Road that comprises the prescriptive easement area. Accordingly, it is unique, unusual and extraordinary that the property is encumbered by a public road created by prescriptive easement; public roads are generally created by eminent domain and/or the express agreement of the owner of the property (e.g., dedication)....

If excluded from the Property's contiguous acreage, the unique and peculiar condition of the Prescriptive Easement encumbering the property causes peculiar and unusual practical difficulties to the owner of the Property. With the exclusion of the Prescriptive Easement Area from the property, strict application of Section 27-395 (a)(3)(B) would result in the property (which would otherwise be comprised of 12.0091 acres) being deemed to consist of 11.9278 acres (i.e., less than 12 acres.) The impact and practical difficulties resulting from the Prescriptive Easement is peculiar and unique to the property and is not an impact that would usually be experienced by other developers of Planned Retirement Communities in the prior R-R Zone....

The proposed area variance ... is the absolute minimum reasonably necessary to

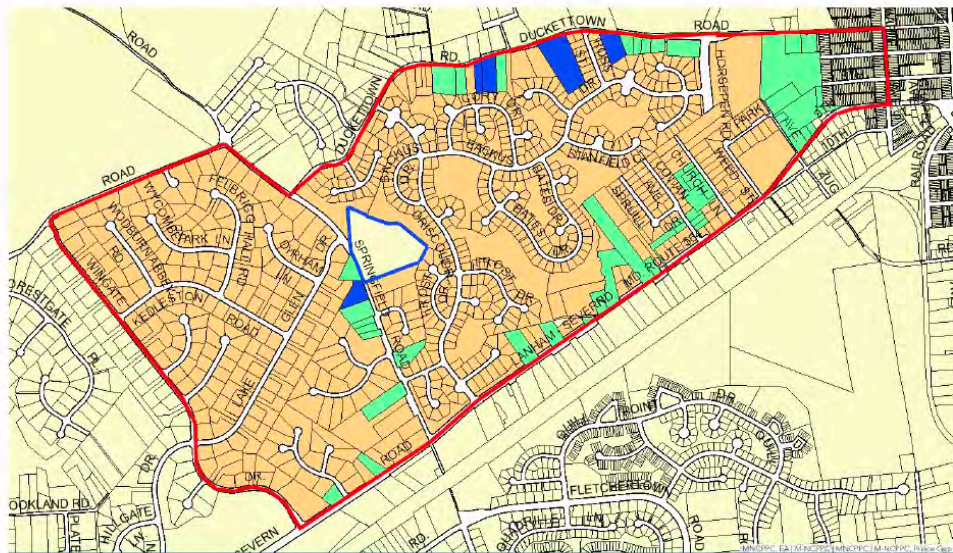
overcome the exceptional condition of the Prescriptive Easement Area's existence on the Property. Assuming that the prescriptive easement area is excluded from the contiguous acreage, the area variance reducing the requirements of Section 27-395 (a)(3)(B) of the Prior Zoning Ordinance by approximately [3,542-square-feet] would overcome the exceptional condition by allowing the resulting 11.9278 contiguous acreage of the property to satisfy the requirements of Section 27-395 (a)(3)(B) of the Prior Zoning Ordinance.

(Exhibit R-21) ¹¹

(45) Mr. Ferguson, while not believing the variance to be required, first noted that there was no prohibition on granting a variance to the additional requirements for Special Exceptions in the prior Edition of the Zoning Ordinance. (May 7, 2025 Remand T. 18) He also offered testimony that the request satisfies the requirements in the Zoning Ordinance because: it is a de minimis amount; the subject property is only one of six in the neighborhood (which consists of approximately 1,185 properties) that are similarly situated in that they have not transferred rights via a subdivision or independently by deed, yet a portion of each has been paved over and used as a public right-of-way; and, the subject property is the only one of the properties larger than 10 acres in size (and therefore of the size required for the use); the use, if the variance is granted, will still not substantially impair the use and enjoyment of adjacent properties for the reasons noted in the original hearing since the impact will not be worse than that of any other planned retirement community developed elsewhere within the neighborhood and in the RR Zone. (May 7, 2025 Remand T. 39-46, 63, 86, 88, and 90-92)

(46) He prepared the following map of the neighborhood (as defined in the original hearings), and the subject property and the others that have some portion thereof lying beneath Springfield Road are outlined in blue and colored blue, respectively. (Exhibit R-26)

¹¹ Statement of Justifications in the record of the Remand hearing were adopted by Mr. Ferguson, accepted as an in expert land use planning.



(47) Upon cross-examination, Mr. Ferguson admitted that there are other easements within the subject property, but did not believe their square footage should be subtracted from the subject property's acreage; and that the subject property could be developed with single-family detached homes. However, he reiterated that the subject property is unique since five similarly situated properties (unsubdivided with a portion of their land underneath a public right-of-way) would need much larger variances if they were to request approval of the same Special Exception; and that the grant of the variance and approval of the Special Exception will not have a greater adverse impact on properties within the neighborhood than any other Planned Retirement Community in the RR Zone since the Applicant satisfies every other requirement for the use, and the requested variance is de minimis in nature.

(May 7, 2025 Remand T. 57-60; 79-80; 89-91)

Opposition's Additional Evidence

(48) Mr. and Mrs. Aldag submitted a written summary of their basis for opposing the variance and the Special Exception, and Mr. Aldag provided testimony. He first noted that over 150 dwellings are being constructed along Springfield Road right now and adding the instant use "is going to exacerbate the issues that we're having right now on Springfield Road." (March 12, 2025 Remand T. 104) He noted there is no need for the use at this location given all of the senior living apartment

and houses and independent/ assisted living facilities “in and around Bowie and Greenbelt.” (March 12, 2025 Remand T. 105) The witness also opined that the site isn’t “usable land,” given the area under the asphalt of Springfield Road, the number of easements for utilities, the roads that have to be developed on the site, the retention ponds, and the landscape buffering.

He also disagreed that the density proposed would not substantially impair the Master Plan:

You know, basically they’re building the fifty-seven single-family houses on five to six acres of land, which is extremely high ... density, especially for this particular area. And we sort of contest that. It does impair the zoning master plan because of the density that is there.... [Each] of these particular buildings have a two car driveway. And the demographic average for the households in Bowie has two vehicles. Since most people in Bowie are retiring after fifty-five, more like sixty-two, most of these particular people who would actually ... buy these houses would actually probably end up still working. So we’re looking at approximately 114 cars that could be possibly leaving in the morning and in the evening. And there is ... only one egress/ingress into the property site....

We are [stating] that this would actually make a traffic jam every single day, coming and going in and out of that property.... I live just ... maybe 200 [feet] up the road for this and ... I plan five to ten minutes of waiting in my ...driveway right now trying to actually ... get out to go anywhere. And it’s not just rush hour, it’s also ... at 3 o’clock in the afternoon.

So, in the traffic, it’s an unusual thing where the USDA, Beltsville Agricultural Research Center is there, and this is a cut through for it. And a lot of people run down ... Springfield Road to actually go to the Beltway, into Bowie, and to Greenbelt, and it’s [become] quite a busy road....

So in essence, ... you’re looking at having issues with ... the demonstrated need, acreage, traffic, and environmental issues. And I just want to put on the record that my wife and I, we basically are not supportive of this at all.... [W]e would recommend [that the] zoning hearing ... examiner could actually deny the special exception.... [I]t will increase the traffic ... and just diminish the area for everybody. We’ve always enjoyed a nice little country feel and it’s gone right now, and that’s my testimony....

(March 12, 2025 Remand T. 105-109)

(49) Charles Holman testified that he is opposed to the request for many of the reasons mentioned by the Aldag’s, but shared additional concerns:

The developer ... is attempting to put a square peg in a round hole. They’re trying to violate the spirit of ... the laws and requirements for this type of project, because

they really don't have twelve acres to develop, and that's the minimum.

And you know, we've got the roadway, we've got other easements. All of these things have been mentioned. There simply is not enough land for this type of development, and we're concerned because they will be attempting to squeeze this proposed development into an area that's too small, and their proposed development would be inconsistent with the surrounding community. It's going to increase the traffic and it's going to create ... multi-family dwellings that are different from anything else that are here. There are none in this immediate area.

[W]e believe that this project is going to affect this area not only in terms of our property values, but it's going to adversely affect our ability to travel in this area. Because as it is now, there's no traffic light at the corner of Springfield and Lanham Severn Road. And there are times of the day where I can barely get out of Severn Crossing, and now they're going to put a multifamily unit development, and add that to all of this, where there's only a two-lane road, no sidewalks, no curbs and gutters, where this thing is going.

I just say think this is a really, really bad idea. And I say this as a senior citizen. I'm an attorney. I'm still working, and I think there's a lot of people in my position [,] and my position is to work as long as I'm able. Because I enjoy what I do. And I think there's a lot of people that feel the same way. And so we just want to make sure the record is clear that we oppose this project....

(March 12, 2025 Remand T. 111-112)

(50) The Aldags were also present at the May 7, 2025, hearing, with Michele Rosenfeld, Esq. as counsel. The Aldags prepared an exhibit describing their opposition to the variance request (Exhibit R-28), and Mr. Aldag provided testimony, summarized as follows:

- The request is out of character with the rural residential neighborhood.
- The property does not contain the requisite acreage.
- Applicant's supplemental Statement of Justification, transmitted on April 30, 2025 incorrectly infers that the street was paved without the Applicant's knowledge since "there is no way that the county would, without the Stewart's knowledge or permission" spend the funds necessary to construct and maintain the roadway for all these years.
- The Applicant cannot show a hardship related to the physical property if the owners knew that they had less acreage than required for the requested use.
- The surrounding area would negatively impact the surrounding detached family homes since there aren't other "commercial multi-family dwellings or other buildings on Springfield Road.
- There are no hospitals or shopping centers within two miles of the property

making it an inappropriate fit.

- The traffic is already unacceptable, and the single access to a site developed with 57 homes would create "an unacceptable traffic jam inside the [subject property] on Springfield Road every day."

(May 7, 2025 Remand T. 99-107)

(51) Ms. Rosenfeld objected to the requested variance, arguing that it is not one that the ZHE or District Counsel can grant, given the language found in Sections 27-316 and 27-395 of the Zoning Ordinance, and that the property is not unique:

I'd like to start by drawing your attention to Exhibit 21, which is the updated April 29th, 2025 supplemental Statement of Justification. And at the very end of this letter there are two footnotes that are included. They were presented for the first time with the submission just before last week's hearing. And footnote 12 notes that the prior zoning ordinance, which applies to this case, does not exclude variances from being applied to the general standards for a special exception. Footnote 13, however, notes a second provision of the zoning code, which applies to variances being granted in connection with a special exception. And just for the convenience of everybody, I have a printout of that provision that's quoted in section -- in footnote 13. And what I'd like to note is that the last sentence of that ... Section 27-316 -- and this is not evidence. This is just for the convenience of the participants.

This is variance in conjunction with special exception approval, and it talks about the authority that the district counsel has in that regard. And the last sentence says, "Variances granted under the authority of this section are applicable only to the structure or use the variance was granted in conjunction with". Now, clearly in land use and zoning terms, structure and use have very specific meanings. The variance that's been requested in this case doesn't apply to either. It does not apply to a structure. We heard that from expert testimony. And the use that is the subject of this special exception application is the planned retirement community use.

What is at issue here is a variance requesting a deviation from the minimum property requirement associated with this special exception. And so when we look at Section 27-395, which is the zoning code provision governing planned retirement community, findings include things like this. The district counsel shall find that the proposed use will serve the needs of the community. The proposed use will not adversely affect the character. Regulations governing uses and structures are generally waived for purposes of this special exception. And then we go to the next -- to 27-395(a)(3)(B). The subject property shall contain at least twelve contiguous acres. The variance here that's being requested and clearly reiterated repeatedly in the statement of justification is not a request for a variance from a structure, and it's not a request for a variance from a use. It is a request for a variance from the subject property size, which is something entirely different.

Now, what I also would like to refer you to are two other provisions in the zoning code that I think shed some clarity on this in case there's any question in your mind, and that are the definitions of nonconforming use and of use. And the nonconforming use definition -- I'm only doing this in alphabetical order -- 27-107.01 of the definitions, "A nonconforming use is the use of any building structure or land", and it says, "The term shall include any building, structure, or land use in connection with a nonconforming use". So in this case, the definition of nonconforming use clearly includes building, a defined term in the code; structure, a defined term in the code; or land. Now, use itself, which is a separate definition, is either the purpose for which a building structure or land is designed, arranged, or intended. The use in this case, of course, is the planned retirement community use, or an activity, occupation, business, or operation carried on or in a building structure or parcel of land. So use and structure are distinct from property or land. So I bring you back to Section 27- 316, "Variances in conjunction with special exception approval", which limits the district counsel's authority to grant a variance in conjunction with special exception approval to only the structure or use the variance was granted in conjunction with. So it's our position that, as a matter of law, an application of the governing provisions of the Prince George's County Zoning Code, the district counsel does not have the legal authority to grant the requested variance. Now, assuming simply for the purpose of argument that the district counsel ultimately does not agree with that reading of the code, the variance should also be denied because it does not meet the threshold question as to whether or not this property in fact satisfies the uniqueness requirement.

When you look at the Statement of Justification in Exhibit 21, the sole basis argued in support of why this property is unique is that there is a prescriptive easement that impacts the size of the property. We heard expert testimony that, in fact, that is not a unique characteristic. We have the defined neighborhood as shown in the map attached to Exhibit 26 that includes multiple properties. The expert testified that, at least based on his analysis, there are at least -- I believe it was five, maybe six other properties that also are affected by prescriptive easements. And we also heard the expert testify that there are other properties that were platted that he was unable to determine if, prior to platting, they had been affected by a prescriptive easement or not. Regardless they ultimately were able to develop, even though they had been, presumably some of them, subjected to a prescriptive easement.

The question of uniqueness in this case does not go to the question of whether or not this property is twelve acres. The question of uniqueness in this property goes to whether or not the prescriptive easement is a unique characteristic that would merit a variance, assuming the district counsel even has the authority to grant one. So when you look at the Cromwell case, which has been mentioned several times today, what constitutes a unique characteristic? It's something that goes to the physical characteristics of the property itself. Exceptional narrowness, shallowness, shape of specific parcels of property, or exceptional topographical conditions or other extraordinary situations of specific parcels. So in this case, that's not what we have in this situation. We don't have something specifically unique. We don't have bedrock underneath; we don't have wetlands; we don't have a stream buffer that's limiting development of the property because it's bisecting the usable area. We don't have any of that.

What we have is a prescriptive easement that runs at least the length of – or the width of the defined neighborhood and on other roads as well. So that is not – the prescriptive easement itself is not a unique characteristic because it's common among other properties within the neighborhood. And as I mentioned also, not only is the acreage of the almost twelve acres not unique, it's certainly not cited as a unique characteristic in the application itself. As for hardship, it's clear from the record that the applicant and property owner knew for decades that this property was less than twelve acres.

It was a matter of public record in the SDAT records. They were paying taxes on less than twelve acres for some period of time. So to the extent that they argue a hardship, it really is a self-imposed hardship. They knew at the time they filed this application, or should have known, that it didn't meet the twelve-acre requirement. And frankly, the fact that they're here in the last minute now asking for a variance only underscores, to me, the fact that they either were careless or not paying attention to what the actual size of the property was. That's on them. That's not on my clients or the community.

Finally, with respect to – assuming we even get to this point, the question of substantial impairment to the intent of the master plan and adverse impacts on the neighboring properties. You heard Mr. Aldag testify as to his firsthand personal knowledge, his firsthand experience that even under current conditions that he has to wait sometimes ten minutes to get out of his driveway. And that's before this subdivision is developed only one or two lots away from where he now lives. This is a variance. We are not at the time of special exception. We're not at the time of preliminary plan. This is not the time where traffic studies are considered. We're not here to prove APFO. We are here to prove or determine your role to make recommendations as to whether or not this use potentially has adverse impacts on the surrounding community or otherwise impairs the intent of the master plan. And the traffic impacts alone on this small road, and adding the number of additional housing units, certainly based on the factual testimony of my clients, will do that. And I think I had one more point to make. Oh, yes, I did. Thank you. In closing, what I'd like to remind you is that, as stated in Cromwell, the general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.

And I submit to you that even had this been a robust set of evidence in support of the application, it wouldn't justify that, given the fact that under the code, the district counsel from the outset doesn't have the authority to grant the type of variance that's being requested here. It should be denied only on those grounds. And then beyond that the applicant has not demonstrated that the prescriptive easement is unique. More than that, they've proven that it is not in any respect unique within the defined neighborhood given their knowledge of the size of the property for decades, the owners. There's no hardship. And then I ask that you look carefully at the testimony from my clients, which clearly demonstrate from firsthand personal, factual knowledge that there will be impairment to the neighborhood, and this does not do justice to the recommendations of the master plan. We ask that you deny the variance. Thank you....

(May 7, 2025 Remand T. 116-126)

(52) Sean Suhar, Esq. appeared at both hearings on behalf of his client and submitted an exhibit in opposition to the request, which were summarized at the hearings. (Exhibits R-12 and R-24) Mr. Suhar argued that the 1980 deed to Ms. Joanne Stewart depicted a total of 11.94 acres, and the latest confirmatory deed increased the size to include the square footage that lies beneath Springfield Road to attempt to satisfy the minimum acreage requirement found in Section 27-395(a)(3)(B) of the prior Edition of the Zoning Ordinance. (March 12, 2025 Remand T. 115-116) He also argued that the prescriptive easements within the site should be subtracted from the acreage, which would reduce the site to approximately 11.13191 acres. ((March 12, 2025 Remand T. 117)

(53) At the second hearing, Mr. Suhar accurately noted that Applicant must first prove that the subject property is unique, and argued that it has failed to do so:

[T]he easement does not make the subject property unique and unusual from surrounding properties. Pursuant to the *Cromwell v. Ward* case, unless there's a finding that the ... property is unique, unusual, or different, the process stops here, and the variance should be denied....

But if there is a finding that the property is unique, which I don't see how, based on the testimony and evidence presented today, then a variance can only be granted if the alleged uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property. In this case, the applicant argues that the impact and practical difficulties resulting from the prescriptive easement are peculiar and unique to the subject property and that it is not an impact that would usually be experienced by other developers of planned retirement communities in the RR zone.

We disagree because the prescriptive easement is not unique, unusual, or different. Rather, the prescriptive easement is comprised of a public roadway which affects every property and owner [or] ... developer of a property on Springfield Road. In addition, the special exception[s] requirement that the property consist of twelve contiguous acres is not unique to the Stewart property alone. Such requirement applies to every property in the neighborhood which applies for a special exception for a planned retirement community. The strict application of the special exception requirements will also not have or will not create hardship because the applicant and owner of the subject property are not prevented from development under the general rural residential zoning....

[T]he owner and applicant of the property can still develop the property without a variance.... There's no evidence to suggest that a denial of the variance requested by the applicant would deprive the applicant or the owner of the property from beneficial use of the subject property....

Again, the applicant claims that the prescriptive easement is a physical condition,

which it is not. The applicant also claims that the grant of a variance is minimal. That's also untrue. There are five additional easements granted to WSSC. They remain part of the record. In fact, I had included certified copies of these easements that were certified by the Clerk of Courts in Prince George's County, which reduces the developable area to just 11.13 acres, not just under twelve acres, which is what the applicant's attorney and witness were claiming....

[I]n addition ..., the applicant claims that granting a variance ... will not create a substantial impairment to the intent, purpose, and integrity of the general plan or any area master plan. We disagree with this claim also because the entire neighborhood is comprised of lots which are zoned residential. My clients' properties in Wingate are zoned rural residential estate. This is all low density. The entire neighborhood....

There is no use in the neighborhood which is a planned retirement community, and none of the lots ... are comprised of fifty-seven attached homes or a high-density community like what is being proposed by the applicant in this case.

In addition, the applicant has not presented any evidence to prove that a variance will avoid causing a substantial impairment to the intent, purpose, and integrity of the general plan or any area master plan.... The applicant also claims that a variance will not substantially impair the use and enjoyment of adjacent properties. We disagree with this also because the granting of a variance in this case will substantially alter the criteria for the granting of the special exception, so that the criteria of the special exception would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the Comprehensive Zoning Scheme in respect to any particular special exception. Therefore, the applicant's request for a variance should be denied.

(May 7, 2025 Remand T. 109-114)

APPLICABLE LAW

(1) A Planned Retirement Community is permitted in the R-R (now RR) Zone by grant of a Special Exception pursuant to Sections 27-317(a) and 27-395 of the prior Zoning Ordinance. A Variance to Section 27-395(a)(3)(B) must satisfy the strictures found in Section 27-230. Finally, the request must also satisfy the purposes of the Zoning Ordinance found in Section 27-102 (a) and the purposes of the R-R Zone found in Section 27-428 (a). Applicant's request for a variance from Section 25-122(b)(1)(G) requires a review of that Section and Section 25-119(d). Finally, the request for alternative compliance requires a review of Section 1.3 of the Landscape Manual.

(2) Section 27-317(a) provides as follows:

Sec. 27-317. Required findings.

- (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).
- (3) Section 27-395 provides as follows:

Sec. 27-395. Planned retirement community.

- (a) A planned retirement community may be permitted, subject to the following criteria:
 - (1) **Findings for approval.**
 - (A) The District Council shall find that:
 - (i) The proposed use will serve the needs of the retirement-aged community;
 - (ii) The proposed use will not adversely affect the character of the surrounding residential community; and
 - (iii) In the R-A Zone, there shall be a demonstrated need for the facility and an existing medical facility within the defined market area of the subject property.
 - (2) **Site plan.**
 - (A) In addition to the requirements of Section 27-296(c), the site plan shall set forth the proposed traffic circulation patterns.
 - (3) **Regulations.**
 - (A) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, density, dwelling unit types, and other requirements of the specific zone in which the use is proposed shall not apply to uses

and structures provided for in this Section. The dimensions and percentages shown on the approved site plan shall constitute the regulations for a given Special Exception.

- (B) The subject property shall contain at least twelve (12) contiguous acres.
- (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) 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) Age restrictions in conformance with the Federal Fair Housing Act shall be set forth in covenants submitted with the application and shall be approved by the District Council, and filed in the land records at the time the final subdivision plat is recorded.

(6) Recreational facilities.

- (A) Covenants guaranteeing the perpetual maintenance of recreational facilities, and the community's right to use the facilities, shall be submitted with the application. The covenants shall be approved by

the District Council, and shall be filed in the land records at the time the subdivision plat is recorded. If the recreational facilities are to be part of a condominium development, a proposed condominium declaration showing the recreational facilities as general common elements shall be approved by the District Council, and shall be recorded (pursuant to Title II of the Real Property Article of the Annotated Code of Maryland) at the time the subplat is recorded.

- (4) Sections 27-102(a) and 27-428(a) provide as follows:

Sec. 27-102. Purposes.

- (a) The purposes of the Zoning Ordinance are:

- (1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;
- (2) To implement the General Plan, Area Master Plans, and Functional Master Plans;
- (3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;
- (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;
- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (7) To protect the County from fire, flood, panic, and other dangers;
- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;
- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;
- (10) To prevent the overcrowding of 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;
- (12) To insure the social and economic stability of all parts of the County;
- (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;

- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and
- (15) To protect and conserve the agricultural industry and natural resources.

Sec. 27-428. R-R Zone (Rural Residential).

(a) Purposes.

- (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.

- (5) Section 27-230 of the prior Edition of the Zoning Ordinance provides as follows:

- (a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:

- (1) A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);
- (2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;
- (3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions;
- (4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and
- (5) Such variance will not substantially impair the use and enjoyment of adjacent properties.
- (6) Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.

- (6) Section 27-316 allows variances to be granted in conjunction with the Special

Exception:

Sec. 27-316. Variances in conjunction with Special Exception approval.

The District Council may grant variances from the strict application of this Subtitle in conjunction with its approval of a Special Exception (or revised site plan) in accordance with [PART 3](#), Division 5, Subdivision 2, of this Subtitle. Variances granted under the authority of this Section are applicable only to the structure or use the variance was granted in conjunction with.

- (7) Section 25-122 (b)(1)(G) generally prohibits the removal of specimen trees:

Specimen trees, champion trees, and trees that are part of a historic site or are associated with a historic structure shall be preserved and the design shall either preserve the critical root zone of each tree in its entirety or preserve an appropriate percentage of the critical root zone in keeping with the tree's condition and the species' ability to survive construction as provided in the Technical Manual.

- (8) Section 25-119(d) of the Prince George's County Code allows the approval of the variance requested by Applicant to allow the removal of four (4) specimen trees from the subject property. This Section provides as follows:

(d)Variances

- (1) An applicant may request a variance from this Division as part of the review of a TCP where owing to special features of the site or other circumstances, implementation of this Division would result in unwarranted hardship to an applicant.
- (2) An applicant shall request a variance from [Section 25-122\(b\)\(1\)\(G\)](#) and (H) as part of the review of the TCP when:
 - (A) Specimen trees, champion trees and trees that are part of a historic site or are associated with a historic structure are impacted or removed; or
 - (B) Trees, plants, and vegetation identified on the national or state list of rare, threatened, and endangered lists are impacted or removed.
- (3) To approve a variance, the approving authority shall find that:

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

(9) Section 1.3 (a) of the Landscape Manual allows Alternative Compliance under the following circumstances:

a. The standards contained in this manual are intended to encourage development that is economically viable and environmentally sound. The standards are not intended to be arbitrary or to inhibit creative solutions. Project conditions may justify approval of alternative methods of compliance with the standards. Conditions may arise where normal compliance is impractical or impossible or where maximum achievement of the purposes can only be obtained through alternative compliance. Requests for alternative compliance may be approved for any application when one or more of the following conditions are present:

1. Topography, soil, vegetation, or other site conditions are such that full compliance with the requirements is impossible or impractical and improved environmental quality would result from the alternative compliance.
2. Space limitations, unusually shaped lots, prevailing practices in the surrounding neighborhood, in-fill sites, or improvements and redevelopment in older communities support alternative compliance.
3. Change of use on an existing site increases the buffer required by Section 4.7, Buffering Incompatible Uses, more than it is feasible to provide.
4. Safety considerations make alternative compliance necessary.

Special Exception

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

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements; he does not have the burden of

establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material.... But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

- (11) The test in Schultz has been applied over the decades, but there has been clarification as to what was meant by “the neighborhood,” as noted in Attar v. DMS Tollgate, LLC., 451 Md. 272, 280 (2017):

[Under the County’s law], a special exception use is prohibited if it is ‘detrimental to the health, safety or general welfare of the locality involved.’ In Schultz v. Pritts, we held that an applicant for a special exception ‘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 ... he has met his burden.’ 291 Md. 1, 11, 432 A. 2d 1319, 1325 (1981).

We further held in Montgomery County v. Butler, ‘the phrase ‘detriment to the neighborhood’ implies necessarily that the Board’s task is to determine if there is or likely will be a detriment to the *surrounding properties*.’ 417 Md. 271, 305, 9 A. 3d 824, 844 (2010) (emphasis added). Thus, we held that, within the context of a special exception, the ‘neighborhood’ means ‘the surrounding properties.’

- (12) Finally, absent language in the Code to the contrary, the special exception use is “conceptually ... 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 body to whom the power to grant or deny individual applications is given that actual incompatibility would occur.” People’s Counsel for Baltimore County v. Loyola College Md., 406 Md. 54, 95 (2008)

VARIANCE

- (13) In North v. Saint Mary’s County, 99 Md. App. 502, 638 A.2d 1175 (1994), the Court provided the following explanation of “uniqueness” of a property for zoning purposes:

‘Uniqueness’... requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.*, due to size, it’s shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions), or other similar restrictions. In respect to structures, it should relate to such characteristics as unusual architectural aspects and bearing or party walls...

(Id. at 514; also see Cromwell v. Ward, 102 Md. App. 691, 710, 651 A.2d

424,434 (1995))

(14) In Dan's Mt. Wind Force, LLC v. Allegany County Board of Zoning Appeals, 236 Md. App. 483, 182 A. 3d 252 (2018), the Court of Special Appeals (now the Appellate Court) reiterated that the terms 'unique,' 'unusual,' and 'peculiar,' in the analysis of variances "are used more or less interchangeably to mean 'unusual,' and that the uniqueness 'must have a nexus with the aspect of the zoning law from which a variance is sought.'" (Id. at 494, 497) The Court concluded that the Board must review the variance request in the following manner:

The proper analysis requires the following inquiry: first, the Board must determine whether the unusual factors identified by the applicant are, in fact, features of that particular property; second, the Board must determine whether the effect or effects those features have on the property, taken together, have a nexus with the part of the zoning law from which a variance is sought; and, third, the Board must determine whether the effect of these factors on the property is unique as compared to similarly situated properties....

The second step of the variance test examines whether the disproportionate effect of the ordinance, caused by the uniqueness of the property, creates practical difficulty for or unnecessary hardship on the owner of the property. *Cromwell*, 102 Md. App. at 694-95; see also LU § 4-206(b)(2) ("The modifications in a variance ... may only be allowed where ... a literal enforcement of the zoning law would result in unnecessary hardship or practical difficulty as specified in the zoning law....") These are two different standards: a more lenient "practical difficulty" test; or a more strict "unnecessary hardship" test. Although it is unclear on the face of its opinion, and the Board was not consistent in its terminology, it appears to us that the Board used the more stringent "unnecessary hardship" standard. Wind Force argues that the Board should have used the more lenient "practical difficulty" standard.... "The determination of which standard to apply, 'practical difficulties' or '[unnecessary] hardship,' rests on which of two types of variances is being requested: 'area variances' or 'use variances.'" *Rotwein*, 169 Md. App. at 728. "[T]he less stringent 'practical difficulties' standard applies to area variances, while the '[unnecessary] hardship' standard applies to use variances." Id. at 729...; *Zengerle v. Board of County Comm'rs*, 262 Md. 1, 21, 276 A.2d 646 (1971). Area variances, such as the variances requested by Wind Force, [are] ... "from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings." *Rotwein*, 169 Md. App. at 728. Use variances, by contrast, "permit 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." Id. (cleaned up). As noted, Allegany County does not permit use variances....

(Dan's Mt. Wind Force, LLC V. Allegany Cty. Bd. of Zoning Appeals, 236 Md. App. at 498, 500-502) This decision also described a "use" variance as one that would allow a use not permitted in the zone or that would not satisfy the specific criteria for the requested Special Exception.

(15) In an unreported Opinion¹², Herr v. Bd. of Mun. & Zoning Appeals, 2019 Md. App. LEXIS 436 (2019), the Board granted a variance despite there being at least one similarly shaped triangular property in the vicinity of the subject property, although not of the same size. The Court held that it was not erroneous for the Board to have found the property “unique” even though it was not singular within the neighborhood.

(16) In Alviani v. Dixon, 365 Md. 95, 109-110, 116-117, 121 (2001), the Court affirmed the administrative body’s grant of variances to certain special exception requirements, reasoning as follows:

We hold a special exception with variances may be granted by a zoning agency when the applicable code contains provisions excluding certain areas of the code from being subject to variance relief, but does not exclude the section covering the relevant special exception from being modified by variances. In so holding, we answer the question first raised by the Court of Special Appeals in Chester Haven Beach Partnership v. Board of Appeals for Queen Anne’s County, 103 Md. App. 324, 653 A. 2d 532 (1995). We also find that there is sufficient evidence in the record to support the Board’s findings....

Petitioners contend that the Board erred as a matter of law in granting the special exception because the criteria for the granting of a special exception must be met without a variance...[However,] the local legislative body clearly knew that it could except certain parts of the Code from the application of the variance provisions. The section relating to the granting of a special exception for an automotive service station, located in Article 28, section 12-206, the special exception provision at issue here, was not one of the sections that was excepted. We have held that when there is an express exception to a statute, additional exceptions should not be implied. See Taylor v. Friedman, 344 Md 572, 581, 689 A.2d 59, 63 (1997) (“Taylor’s position is reinforced by the rule of statutory construction dealing with statutes that express a general rule, followed by one or more specific exceptions to the general rule. Under those circumstances, a court ordinarily cannot add to the list of exceptions.”)

We hold that the Anne Arundel County Board of Appeals may grant a special exception and, at the same time, also may grant area variances from the specific criteria provided in section 12-206 (b) of Article 28 (Zoning Ordinance) of the County Code.

In the case *sub judice*, respondents substantially satisfied the criteria for the granting of a special exception. The two variances granted by the Board were for modifications of criteria that did not cause adverse effects upon the neighborhood or allow a use for the parcel that was outside of the special exception provisions of the general zoning plan. The two variances did not change the objectives of the Code to make the special exception satisfy certain criteria; the variances only allowed a slight modification that still enabled the special exception to fall into the comprehensive zoning scheme of that area.

¹² Decisions issued prior to 2023 could not be cited as precedence or persuasive authority in a court of law, per Md. Rule 1-104. Since 2023 such decisions may be cited as persuasive authority if they were not *per curiam*. It is proper to consider the decision as persuasive authority in this quasi-judicial proceeding.

As utilized in this case, the variance procedure did not change the essential nature of the special exception use sought by the applicants. The Board did not err as a matter of law by granting the two minor variances that enabled respondents to satisfy the criteria for the granting of a special exception...

We hold that in certain circumstances, a zoning body may grant a special exception together with area variances to what otherwise would be specific standards or requirements applicable to such special exception. The special exception, however, must be in a section of the local code for which variances are not excluded. Moreover, the granting of the variances may or so substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception....

CONCLUSIONS OF LAW

(1) In AC-23008, the Applicant requested Alternative Compliance to Section 4.6 of the Landscape Manual (Buffering Development from Streets) for its frontage on Springfield Road, and Section 4.10 (Street Trees along Private Streets) for all private streets in the proposed development. Section 4.6 requires the provision of an attractive view from streets by buffering the development with landscaping. The buffer is required to be 35 feet in width, and a minimum number of trees/shrubs is required, as discussed above. The Applicant's landscape architect and the Technical Staff noted that the rear of two lots is located at the narrowest point of the lot and cannot meet the minimum buffer width requirement. Instead, Applicant has requested approval to add additional shade trees, evergreen trees, and shrubs, and to add a six-foot-high fence, which would offset the requested reduction in the required buffer along that road for a small area. Section 4.10 requires 51 street trees, but Applicant can only provide 29 due to several site constraints to include narrow areas between many of the driveways (not wide enough to fit street trees that are also required to be 10 feet from the point of curvature of residential driveways); short blocks and intersections which also prevent the installation of enough street trees (again due to the requirement that the trees be 10 feet from the point of curvature); and conflicts with underground utilities required because aboveground utilities conflict with street light poles and fire hydrants. The Alternative Compliance Committee and the Planning Director recommended approval because the buffer is provided for all but two lots, and all plant units, and a fence will be provided; and the street tree requirement (that cannot be met due to point of curvature of driveway entrances and street intersections) will be satisfied by providing additional plantings and trees as close to the private streets as possible, while avoiding public utility easements. It is proper to grant alternative compliance pursuant to Section 1.3 (a) of the Landscape Manual since site conditions and space limitations prevent Applicant from meeting the standards, but what

will be provided can achieve the purposes of the standards.

(2) Applicant requested a variance be granted to Section 25-122(b)(1)(G) prohibition against the removal of specimen trees, in accordance with the provisions in Section 25-119 (d) of the Prince George's County Code, in order to remove four specimen trees (Numbers 1, 3, 9, and 10) located in the northeastern (close to central) portion of the site. As noted above, the four trees are located in an area designated for proposed roadways, building footprints, and grading, and the trees have limiting factors for their construction tolerance. Due to their size, retaining the trees would have a considerable impact on the development potential of the property. If similar trees were requested for removal, they would be evaluated under the same criteria and would likely be granted the variance. Similarly, granting the variance will not confer any special privileges on Applicant. The site conditions and the location of these four trees are not the result of actions by the Applicant since they are based on natural circumstances that occurred long before the instant request. The request also does not arise from conditions occurring on a neighboring property but is based on natural conditions on-site. Granting the variance will not adversely affect water quality since Applicant will be required to satisfy all erosion and sediment control requirements. Accordingly, the criteria within Section 25-119 (d) are met.

(3) The District Council asked that information provided by the State Department of Assessments and Taxation in the original hearing be clarified as part of the instant remand. Applicant submitted that clarification. (Exhibits R-3 and R-4) The Applicant also submitted information explaining the acreage of land for deed references 46916 and 00567. (Exhibits R-6 and R-11) Applicant was asked to provide an executed Covenant concerning recreational facilities and the Housing for Older Persons age restrictions. The covenant was provided, but it is still a draft since the description to be found in Attachment A was not provided. (Exhibit R-16) Applicant provided several exhibits and proffered testimony concerning its variance application, as requested by the District Counsel. (Exhibits R-17(a), R-17(b), R-21, R-22(a)-(f), R-23(a)-(d), and R-26) Finally, Applicant's expert witness offered additional testimony as to why the request does not impair the Master Plan.

(4) The approval of the Special Exception must satisfy Sections 27-317 and 27-395 of the prior Edition of the Zoning Ordinance, and the test in Schultz v. Pritts and its progeny, discussed above. The majority of the applicable provisions of Section 27-395 are satisfied, if the requirement for a variance is satisfied (as discussed below). The record indicates that the use will serve the needs of the retirement-aged community since the proposed homes are attractively and compactly designed, allowing the residents to access all essential living uses on the first floor and minimizing the need to worry about large lawns; and there will be opportunities to socialize with others within the compact community and to exercise and otherwise enjoy the outdoors. (Section 27-395 (a)(1)(A)(i)) While some in the neighborhood disagree, the District Council has determined that this denser use is permitted in the area by virtue of its allowing the use within the RR Zone; it is designed to avoid impact to the environmental features; the architecture is compatible with the existing homes nearby; and

the homes most visible to the homes across Springfield Road will be buffered and fenced to reduce visibility. (Section 27-395 (a)(1)(A)(ii)) The use will not be located within the R-A Zone. (Section 27-395(a)(1)(A)(iii)) The Special Exception Site Plan includes a single access and will provide private streets, and most of the development regulations for the site. (Sections 27-395 (a)(2)(A) and (a)(3)(A)) Section 27-395(a)(3)(B) will be addressed if the variance is approved. Section 27-395 (a)(3)(C) is met since Applicant does not propose more than eight (8) dwelling units per gross tract acre. Sections 27-395 (a)(3)(D)-(F) are inapplicable. The Planned Retirement Community includes an outdoor meeting area, walking trails, and some outdoor exercise stations, with conditions to add more amenities; if approved, these facilities will be required to be constructed prior to or concurrent with the attached homes. (Section 27-395 (a)(4)(A)) Applicant is not providing any retail commercial uses, medical/health care uses, or other uses that serve the needs of the community. (Section 27-395(a)(4)(B)) Covenants addressing age restrictions for the residents and recreational facilities were submitted; however, they do not include any language in the "Attachment A." This must be included for review and approval prior to the signature approval of the Special Exception. (Sections 27-395 (a)(5)(A) and (6)(A))

(5) The strictures in Section 27-317 are also met (once the variance and proposed conditions are addressed). The use can be found to be in harmony with the purposes of the Zoning Ordinance since the provision of senior housing will promote the public health, safety, morals, comfort, welfare, and convenience of a growing segment of the County and those who care for them); it can be found to implement the General Plan and Master Plans for the same reason; the attached dwellings will be constructed in accordance with the applicable building codes, fire protection codes, the Landscape Manual, Subtitle 14, and Subtitle 25, thereby ensuring adequate light, air, and privacy, the protection of landowners from adverse impacts, and the orderly growth and development of the County; these laws also ensure that there will be protection against undue noise, air and water pollution, and other adverse environmental impact; and provision of homes for the senior residents of the County will help ensure the social and economic stability of the County.(Sections 27-102(a)(1),(2), (3),(5)-(7),(11)-(14); Section 27-428(a)(1)(A), (C) and (D), and 27-317 (a)(1)) Once the variance is addressed, one can find that the use is in conformance with all the applicable requirements/regulations of the Zoning Ordinance, for the reasons noted above. (Section 27-317(a)(2)) The proposed use will not impair the integrity of the 2022 Bowie-Mitchellville & Vicinity Master Plan since the District Council's approval of this use within the zone is *prima facie* evidence of its compatibility with the other uses in the zone; the Master Plan included a goal to ensure that additional housing options were available in established communities; and the number of dwellings (once the conditions of approval are addressed) will conform with the Master Plan's recommendation of Residential Low land use, defined as up to 3.5 dwelling units per acre, for the area. (Section 27-317 (a)(3)) The proposed use must satisfy all applicable provisions of the Zoning Ordinance and the County Code, and the District Council has determined that it is one presumed compatible with the adjacent properties and the general neighborhood; therefore it will not adversely affect the health, safety, or welfare of residents/workers in the area, nor be detrimental to the use or development of adjacent properties or the generally neighborhood. (Section 27-317 (a)(4)-

(5)) Once the conditions are satisfied, the Site Plan will be in conformance with an approved Type 2 Tree Conservation Plan.(Section 27-317 (a)(6)) There is an approved Natural Resource Inventory for the site (NRI-069-2022), which shows the environmental features that must be protected; the four specimen trees that are the subject of the alternative compliance request are all located outside of the regulated environmental features. (Exhibit 3; Section 27-317(a)(7))

(6) At the original hearing, this Examiner opined that the strictures of Sections 27-395 (a)(3) (B) and (C) cannot be satisfied unless a variance to the requirement of having 12 contiguous acres is satisfied. For reasons not apparent in the record, a portion of the subject property was appropriated for public use many years ago when Springfield Road was paved and used as a public right-of-way. A public road may be created by prescription where, as in this case, there has been exclusive and uninterrupted use of the property as a road open to the public. Holder v. Young, 2023 Md. App. LEXIS 350. The County accepted the 3,542 square feet by grading it and allowing the public to use it. Wilkinson v. Board of County Commissioners, 255 Md. App. 213 (2022) The Zoning Ordinance defines "contiguous acres" as "abutting", and "abutting" as "touching and sharing a common point or line." (Section 27-107.01) For these reasons, I believe that the requirement for twelve contiguous acres must be read as requiring 12 full acres within the Applicant's control that all touch, and an applicant does not have 12 contiguous acres when a prescriptive easement precludes its ability to use 3,542 square feet thereof, and when the Applicant does not own/have control over the property that touches the other side of the easement area.

(7) The Applicant ultimately requested a variance to the 12-acre requirement. Counsel for the Aldags raised an argument that the District Council and the Zoning Hearing Examiner are precluded from granting this variance since Section 27-316 of the prior Edition of the Zoning Ordinance expressly notes that any variance granted for a Special Exception is applicable only to the structure or use the variance was granted in conjunction with. I disagree that this Section precludes consideration of the instant variance request, since such an interpretation would conflict with the general tenets of statutory construction and a provision of the Zoning Ordinance. A "cardinal rule of statutory construction is to ascertain and effectuate the real and actual intent of the Legislature." Bush v. PSC, 212 Md. App. 127, 133, 66 A.3 1123, 1126 (2013). The words used are to be given their "ordinary and common meaning within the context in which they are used." Mayor of Baltimore City v. Johnson, 156 Md. App. 569,592 (2004). In its affirmation of the Court of Special Appeals (now the Appellate Court) decision, the Court of Appeals (now the Supreme Court) reiterated that "legislation is not read in isolation, but in light of the legislature's general purpose and in the context of the statute as a whole." Johnson v. Mayor & City Council of Baltimore, 387 Md. 1,12, 874 A. 2d 439, 446 (2005). No provision of an ordinance should be interpreted in a manner to render nugatory any portion thereof. Hollingsworth, (supra); Md. Dept. of State Police v. Md. State Conf. of NAACP Branches, 430 Md. 179, 590 A.3d. 1037 (2013). Section 27-108.01 (a)(23) provides that it "is not intended that specific requirements be interpreted separately from

all other requirements in the ordinance; [rather] the zoning ordinance shall be read as a whole.” Finally, the administrative body’s longstanding interpretation of an ordinance is accorded some weight.

When all of these tenets are applied to the evidence at bar, I believe Applicant may request a variance to the 12-acre requirement. If Section 27-316 is read to not allow variances to the regulations found in Section 27-395 (a)(3), there could be no variances granted for this use, since Section 27-229 (b)(12) and (18) prohibit the grant of a variance that will permit a use in a zone where the use is prohibited or the grant of a variance to any specific findings required to be made. The remaining provisions in Section 27-395 concern the Site Plan itself, findings for approval, the other uses that may be provided, the residents’ age, and covenants – all the types of things for which a variance clearly could not be granted. A reasonable interpretation of Section 27-316 – one that would meld with the longstanding interpretation of the Section, one that would effectuate the District Council’s intent, one that would not render nugatory any other Section – is that the variance granted should concern the Special Exception under consideration, and not any variance needed from other provisions within the Zoning Ordinance. For example, if a resident of this Planned Retirement Community later wishes to erect a privacy fence (other than fences approved as a part of the Special Exception) and the fence required a variance, the Board of Appeals could consider the request, and not the ZHE/District Council. This would be a reasonable interpretation, considering the Zoning Ordinance as a whole, that will not make Section 27-316 meaningless.

(8) In its Order of Remand, the District Council asked that it be determined whether this request would be considered an area variance, which is permitted, or a use variance, which has been determined not to be permitted in some decisions and is not permitted in the Zoning Ordinance. It is important to note that the Maryland common law for variances only applies in the absence of locally adopted standards. Dan’s Mt. Wind Force, LLC v. Allegany County Board of Appeals, 236 Md. App. 483, 491, 182 A. 3d 252, 257 (2018). It is therefore unnecessary to decide which type of variance is before us since, in the prior Edition of the Zoning Ordinance, the District Council clearly prescribed standards for the grant of a variance concerning Special Exception uses and structures, as noted above, and the court in Alviani, *supra*, has held that such variances are allowed unless the District Council expressly states otherwise. Assuming, arguendo, the issue must be resolved, the use is more akin to an area use since Section 27-229(b)(12) of the prior edition of the Zoning Ordinance expressly noted that a variance may not be granted that would permit a use in a zone where it is prohibited, and the District Council did not exclude variances for special exception standards from that Section; Section 27-230 of that Edition has adopted the standard usually applied to an “area” variance (again indicating the District Counsel’s intent that variances to dimensional standards were not the equivalent of “use” variances); and, the requested variance is di minimis and would not change the essential nature of the special exception being requested. See, Cromwell v. Ward, 102 Md. App. 691,696 (1995); Dan’s Mt. Wind Force, LLC v. Allegany County Board of Appeals, *supra*, at 262-263.

(9) The variance would satisfy all provisions of Section 27-230. The prescriptive easement has taken a portion of the subject property making it slightly less than 12 acres in size. While five other properties may be similarly situated, only one of them is close enough to be considered a "surrounding property." The issue hinges on whether the Applicant has shown that the subject property is physically unique and unusual in a manner different from the nature of the surrounding properties, and if so, whether the 12-acre requirement would therefore result in peculiar and unusual practical difficulties to the owner of the property. I believe the existence of the small easement is sufficiently unique or unusual in that there is no explanation of how it was taken from the owner of the property as indicated in the letter from DPIE. (Exhibit 3, Backup p. 50) There are five other properties that have been similarly affected by the easement but only one is close to the subject site, and none are as large. These facts are similar to those at issue in Herr, supra, and that Court found it was not erroneous for the Zoning Board to have found the property to be unique. (Section 27-230(a)(1)) There is a nexus between the uniqueness of the property and the disproportionate impact of 12-acre requirement on the property, and the strict application of the law will result in unusual practical difficulty because the Applicant will not be allowed to develop the Planned Retirement Community. (Dan's Mt. Wind Force, LLC V. Allegany County Board of Appeals, supra; Section 27-230 (a)(2)) This small variance from the acreage requirement is the minimum necessary to overcome the property's physical uniqueness. (27-230(a)(3)) If the variance is granted it will not substantially impair the integrity of the General or Master Plan, nor substantially impair the use and enjoyment of adjacent properties since the variance is di minimis, there will be sufficient buffering of the uses, the density has been found to be acceptable for this use within the RR Zone, any adverse impact on traffic will be addressed at the time of subdivision review, and the use will provide much needed senior housing. (Section 27-230(a)(4) and (5)) There is no evidence in the record that the practical difficulty from the easement was self-inflicted by the owner of the property. (Section 27-230 (a)(6))

(10) The approval of the Special Exception would satisfy the test set forth in Schultz v. Pritts, supra, and its progeny. There is no evidence that the use at this location would have more of an adverse impact than it would if located elsewhere within the surrounding neighborhood and within the same zone. Moreover, if all of the suggested conditions are imposed, it will have less impact on the traffic or character of the neighborhood.

(11) Finally, I have concerns that the proposed development impairs the 2022 Master Plan and 2014 General Plan recommendations of Residential Low land use defined as a density of 3.5 dwelling units per acre, since it is less than the 4.75 dwelling units per acre considered in the instant request. If the District Council either agrees that the area subject to a prescriptive easement could be utilized in meeting the contiguous acreage requirement, or that the variance should be granted, the acreage not subject to the easement and the maximum density recommended in the General and Master Plans should be utilized to allow 41 dwelling units (11.94 acres multiplied by 3.5). This density conforms with the

Master Plan, and the reduction is one allowed in Section 27-396, which sets the maximum number of dwelling units but otherwise provides flexibility in determining the average number of units per acre.

RECOMMENDATION ON REMAND

1. Prior to certification of the Special Exception Site Plan, Applicant shall decrease the number of attached dwellings from 57 to 41 and make any necessary revisions (changes to Notes, Tables, lots, etc.) to reflect this lower figure. Additionally, the following revisions shall be made, or information shall be provided:

(a) Provide a bicycle lane along the subject property's entire frontage of Springfield Road, in accordance with the 2009 Master Plan of Transportation and the 2022 Bowie-Mitchellville and Vicinity Master Plan and Sectional Map Amendment, unless modified by the operating agency with written correspondence.

(b) Provide dimensions for all sidewalks and trails on-site on the Special Exception Site Plan. All sidewalks shall be at least 5 feet wide, unless modified by the operating agency with written correspondence.

(c) Provide the following notes on the Special Exception Site Plan and revise the representative architectural plans to demonstrate the following:

(1) "All dwelling units shall have front façades finished with a minimum of 60 percent brick or other masonry. The first floor of all front façades shall be finished with full brick or other masonry."

(2) "All single-family attached end walls shall feature, at a minimum, four points of architectural fenestration on the first floor, three points of architectural fenestration on the second floor, roof line detail, and shutters on all windows to provide a balanced and harmonious composition."

(3) "All highly visible single-family attached end walls, as shown on the Applicant's provided 'Visibility Exhibit,' shall be finished with full brick or other masonry on the first floor."

(4) "All moderately visible single-family attached end walls, as shown on the Applicant's 'Visibility Exhibit,' shall be finished with, at a minimum, full brick or other masonry up to the water table."

(d) Comply with all related fire hydrant regulations, in accordance with the National Fire Protection Association (NFPA)1, Chapter 18 standards.

(e) Obtain approval of a preliminary plan of subdivision and reflect the approved lotting pattern of the preliminary plan on the approved Special Exception Site Plan.

(f) Revise the development standards table on the Special Exception Site Plan to include the following:

(1) Provide accessory building development standards, or note that the underlying zoning standards will apply to the special exception plan.

(g) Revise the project title on the provided draft covenants to be consistent with the Special Exception Site Plan.

(h) Provide site details for the proposed dog waste stations and demonstrate the locations of these dog waste stations on the Special Exception Site Plan.

(i) Demonstrate conformance to Section 27-395(a)(4)(A) by:

(1) Providing three exercise stations along the walking path.

(2) Providing additional on-site active recreational activities within, or adjacent to, the community gathering area.

(j) The Landscape Plan shall be revised as follows:

(1) Increase the minimum size of Section 4.1 and Section 4.10 trees (close to the street) from 2.5-3-inch caliper to 3-3.5-inch caliper.

(2) Correct Schedule 4.6-1(F), which identifies the linear feet of frontage as 179.7 feet, which is inconsistent with the landscape plans that identify this segment as 140.8 feet.

(3) Confirm that each proposed street tree meets the requirements for soil surface, pursuant to Section 4.10 (c)(10), or provide details of the alternative construction techniques that will be implemented to ensure survivability.

(4) Provide a shade tree, instead of an ornamental tree, between Lots 32 and 33, Block B, and in the side yard of Lot 29, Block B.

(5) Provide a shade tree (outside of the public utility easement) between Lots 54 and 55, Block C.

(6) Provide an ornamental tree (outside of the public utility easement) between Lots 46 and 47, Block C.

- (7) On Sheet 1, correct the table to identify that Lot 43, Block B, needs alternative compliance, not Lot 42.
 - (8) Provide labels for the private roads.
 - (9) Reduce the plant unit requirement in Schedule 4.7-1 (B) by 50 percent since a 6-foot-high fence is included in the bufferyard.
 - (10) Revise the number of plantings in all landscape schedules to correspond with the plant schedule provided on Sheet 2 of the Landscape Plan.
 - (11) Round all plant requirements for all landscape schedules to whole numbers.
 - (12) Indicate the landscape schedules where alternative compliance is being requested.
 - (13) Provide the following General Notes on Sheet 1 of the Landscape Plan:
 - (a) Landscaping in front of the residential gateway signs will change seasonally.
 - (b) Plantings in the raised garden beds will be installed by residents.
 - (14) Revise the tree canopy coverage on-site woodland conservation acres provided, and non-woodland conservation acres provided, in conformance with the provided Type 2 tree conservation plan.
 - (15) Provide a column stating if the proposed planting is native or non-native, on the plant schedule, on Sheet 2 of the Landscape Plan.
 - (16) Label the lighting fixtures and fence on Sheet 2 of the Landscape Plan. Revise the lighting fixtures to be full cut-off.
 - (17) Provide site details for representative on-site furniture that will be utilized within the community pavilion, on Sheet 3.
 - (18) In addition to the Landscape Plan, provide a photometric plan demonstrating the lighting will consist of full cut-off fixtures that reduce spill-over into the surrounding community.
2. The Type 2 tree conservation plan (TCP2-017-2023) shall be revised, as follows:
- (a) Label the proposed development features on the plan (raised garden beds, sitting plaza, etc.).

- (b) Provide the following note under the specimen tree table, "This plan is in accordance with the following variance from the strict requirements of Subtitle 25 approved by the Prince George's County District Council with SE-22002 for the removal of Specimen Trees ST-1, ST-3, ST-9, and ST-10."
- (c) Add a footnote to the specimen tree table for ST-8, providing the methodologies proposed to protect the critical root zone at pre-construction, during construction, and post construction
- (d) Provide the symbols in the legend for the sewer and associated easement(s), and all other features on the TCP2.
- (e) Provide a planting schedule for each of the reforestation areas and area for landscape credits. The schedules shall include the quantity of plant material, common name, scientific name, size of plant material, and the spacing of plants.
- (f) Add the Site Statistics Table and General Information Table from the approved Natural Resources Inventory (NRI).
- (g) Correct errors in the TCP2 worksheet to accurately reflect the woodland conservation requirement, and how the requirement is being met.
- (h) Prior to certification of the Type 2 tree conservation plan (TCP2-017-2023) for this site, documents for the required woodland conservation easements shall be prepared and submitted to the Environmental Planning Section, for review by the Office of Law and submission to the Prince George's County Land Records office for recordation. The following note shall be added to the standard TCP2 notes on the plan, as follows:

"Woodlands preserved, planted, or regenerated in fulfillment of woodland conservation requirements on-site, have been placed in a woodland and wildlife habitat conservation easement, and recorded in the Prince George's County Land Records at Liber____ Folio _____. Revisions to this TCP2 may require a revision to the recorded easement."

3. Prior to the acceptance of the preliminary plan of subdivision, the applicant shall:

- (a) Provide a Pedestrian and Bikeway Facilities Plan and demonstrate the following:

- (i) Provide a bicycle lane along the subject property's entire frontage of Springfield Road, in accordance with the 2009 Master Plan of Transportation and the 2022 Bowie-Mitchellville and Vicinity Master Plan and Sectional Map Amendment, unless modified by the operating agency, with written correspondence.
 - (ii) Provide dimensions for all sidewalks and trails on-site. All sidewalks shall be at least 5 feet wide, unless modified by the operating agency, with written correspondence.
 - (b) Provide a geotechnical report that includes a slope stability analysis for both unmitigated and mitigated conditions.
 - (c) Identify archaeological resources in the project area by conducting Phase I archaeological investigations
4. Prior to the approval of the final plat, the applicant shall:
- (a) Provide a plan for evaluating the resource at the Phase II level, or avoiding and preserving the resource in place, if it is determined upon receipt of the Phase I report by the Prince George's County Planning Department that potentially significant archeological resources exist on the subject property.
 - (b) In accordance with Section 27-395(a) (5)(A) of the Prince George's County Zoning Ordinance, the applicant shall provide age-restricted covenants, in conformance with the Federal Fair Housing Act, and the covenants shall be approved by the Prince George's County District Council and filed in the land records of Prince George's County prior to record plat. The liber and folio of the covenants shall be reflected on the final plat prior to recordation.
5. Prior to issuance of the first permit, revise the stormwater management technical plan to match the layout of the special exception site plan and the Type 2 tree conservation plan.
6. Prior to issuance of any permit that impacts wetlands, wetland buffers, and streams, or waters of the United States, the applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions were complied with, and associated mitigation plans.
7. Prior to any ground disturbance or the approval of any grading permits, the applicant shall:
- (a) Provide a final report detailing the Phase II and/or Phase III investigations and ensure that all artifacts are curated in a proper manner if a Phase II and/or Phase III

archeological evaluation or mitigation is necessary.

[NOTE: The Special Exception Site Plan and Landscape Plan are Exhibit 65; TCP 2-017-2023 is Exhibit 74]

EXHIBIT B

FINAL AGE-RESTRICTION COVENANT

**DECLARATION OF COVENANTS RELATED TO
HOUSING FOR OLDER PERSONS; AGE RESTRICTION**

(Glenn Dale Cove)

This **DECLARATION OF COVENANTS RELATED TO HOUSING FOR OLDER PERSONS; AGE RESTRICTION** (the “HOPA Covenant”) is executed this ____ day of _____, 2025, by **David M. Stewart, Personal Representative of the Estate of Joan M. Stewart (who was surviving spouse of George A. Stewart, deceased)** (the “Owner”), for the benefit of **PRINCE GEORGE’S COUNTY, MARYLAND**, a public body corporate (the “County”).

RECITALS

WHEREAS, Grantor is the fee simple owner of 12.0091 acres, more or less, in the R-R Zone of Prince George’s County, Maryland, located off of Springfield Road near its intersection with Lanham Severn Road, more particularly described in **Exhibit “A”** attached hereto and incorporated herein (the “Property”);

WHEREAS, the Owner desires to establish a residential community on the Property intended to be operated as “Housing for Older Persons” as defined by 42 U.S.C 3607(b)(2), as amended and regulations promulgated thereunder, and by Section 20-704(c) of the State Government Article of the Annotated Code of Maryland and regulations promulgated thereunder (collectively, the “Fair Housing Acts”); and

WHEREAS, Section 27-352.01(b) of the Prince George’s County Code permits attached one-family dwellings for the elderly (and related facilities) in the R-R Zone, subject to obtaining approval of a Special Exception for the proposed use within the Property; and

WHEREAS, one of the conditions to obtain the Special Exception is to record in the Land Records of Prince George’s County, age restriction covenants to the benefit of the County, after approval thereof by the Prince George’s County District Council (the “**District Council**”); and

WHEREAS, this HOPA Covenant is intended to meet the requirements of the Special Exception and has been approved by the District Council, **AND THIS HOPA COVENANT SHALL BE RECORDED IN THE LAND RECORDS OF PRINCE GEORGE’S COUNTY ONLY AFTER THE APPROVAL OF SPECIAL EXCEPTION SE-22002 AND A PRELIMINARY PLAN OF SUBDIVISION BASED ON SE-22002.**

NOW, THEREFORE, in accordance with the requirements of Section 27-352.01(b) of the Prince George’s County Code, the Owner hereby declares that the Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions and easements set forth in this HOPA Covenant in accordance with the Fair Housing Acts, which are for the purpose of establishing a residential community that is Age Restricted and qualifies as “Housing for Older Persons” as defined by the Fair Housing Acts and which shall run with the Property and be binding on all parties having any right, title or interest in all or any portion of the Property, their heirs, personal representatives,

successors, transferees and assigns, and which shall inure to the benefit of each owner of any portion thereof.

I. Housing for Older Persons.

A. The Property shall be owned and operated as "Housing for Older Persons" as defined by the Fair Housing Acts which is intended for occupancy by persons, who are Age Restricted, in accordance with the Fair Housing Acts, which shall mean at least eighty percent (80%) of the residential units in the Property shall be occupied by at least one person fifty-five (55) years of age or older per each residential unit (an "**Age-Qualified Occupant**"). Additionally, residential units may be occupied by any person nineteen (19) years of age or older with an Age-Qualified Occupant. Any person nineteen (19) years of age or older who occupied a residential unit in the Property with an Age-Qualified Occupant and who continues, without interruption, to occupy the same residential unit after termination may continue to occupy the residential unit.

B. Occupants who meet the requirements in I.A. above shall be defined as a "**Resident**". The term "**occupy**", "**occupies**", "**occupancy**" and "**occupying**" shall mean staying overnight in a residential unit in the Property for at least thirty (30) days in a consecutive twelve (12) month period. No person under nineteen (19) years of age shall stay overnight in a residential unit in the Property for more than thirty (30) days in a consecutive twelve (12) month period.

C. The Property is intended to be developed to be operated by one or more homeowners' associations pursuant to Title 11B of the Real Property Article of the Annotated Code of Maryland, respectively (each such homeowners association shall hereinafter be referred to as a "**common interest community**"). The governing documents of any common interest community in the Property shall reference and incorporate this HOPA Covenant and may contain additional conditions and restrictions relating to Housing for Old Persons which are not inconsistent with this HOPA Covenant or the Fair Housing Acts and shall contain procedures for verification of compliance with the age restriction requirements.

II. Miscellaneous.

A. **Binding Covenant.** The provisions of this HOPA Covenant shall be covenant which runs with the lands and is binding on the Owner, its heirs, successors and/or assigns for a period of not less than sixty-five (65) years from the date this HOPA Covenant is recorded.

B. **Recordation.** This HOPA Covenant shall be recorded in the Land Records of Prince George's County, Maryland after the Special Exception SE-22002 for a Planned Retirement Community is approved by the District Council, and after a Preliminary Plan of Subdivision reflecting the approved SE-22002 site plan has been approved by the Prince George's County Planning Board. All recording fees shall be paid by the Owner. The original recorded HOPA Covenant shall be returned to the County.

C. **Modification.** Any modification to this HOPA Covenant shall require the consent of the Owner and the County, or its assigns.

D. **Severability.** The invalidity or illegality of any provisions of this HOPA Covenant shall not affect the remainder of this HOPA Covenant or any other provision contained herein.

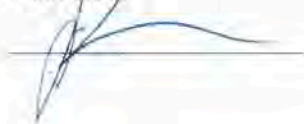
E. **Applicable Law.** This HOPA Covenant shall be interpreted and enforced in accordance with the laws of the State of Maryland and shall be effective upon its recordation among the Land Records of Prince George's County, Maryland and the approval of Special Exception SE-22002 by the Prince George's County District Council.

F. **Waiver.** The failure of the County to enforce any part of this HOPA Covenant shall not be deemed as a waiver thereof.

G. **Recitals.** The Recitals are hereby incorporated in this HOPA Covenant.


IN WITNESS WHEREOF, the Owner has caused this HOPA Covenant to be properly executed on the day and year first written above.

WITNESS:



OWNER:

David M. Stewart,
Personal Representative of
the Estate of Joan M. Stewart

By: 
Name: David M. Stewart
Title: Personal Representative
of the Estate of Joan M. Stewart

STATE OF Maryland :

COUNTY OF Montgomery : ss

I HEREBY CERTIFY that before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared David M. Stewart, Personal Representative of the Estate of Joan M. Stewart, who acknowledged that he/she is authorized to execute the above HOPA Covenant for the reasons and purposes stated therein.

AS WITNESS, I hereunder set my hand and Notarial Seal this 10th day of March 2025.



Barbara B. Kahn

Notary Public

My Commission Expires: December 7, 2026

EXHIBIT A



Tax I.D. No. 14-1641547

Schedule "A"
Description of the
Property of
Joan M. Stewart and William Knupp

Being a strip or parcel of land lying in Prince George's County Maryland and being all of the lands conveyed by Joan M. Stewart, as surviving spouse of George A. Stewart, deceased to **Joan M. Stewart, an unmarried woman and Willima E. Knupp, an unmarried man, as joints tenants with right of survivorship**, by deed dated march 10, 2018 and recorded among the Land Records of said County in **Book 40916 at Page 567**, and being more particularly described as now surveyed in the Maryland Coordinate System NAD83 (2011) Datum as follows:

Beginning for the same at a point, said point being an iron pipe found at the and held at the northwesterly end of the North 62°28'19" West, 238.15 feet line of Parcel A, as shown on a plat entitled, "Lots 1 thru 31 and Parcel A, Oakstone", said plat being recorded among said Land Records in Plat Book NLP 149 at Plat No. 18, thence running with and bonding on said line with the following course and distance

1. **South 62°37'05" East, 238.15** feet to an iron pipe found and held, said point being the northwesterly end of the North 74°27'02" West, 194.71 feet line of Parcel F, as shown on a plat entitled, "Plat One of Section Two, Springfield Manor Cluster", said plat being recorded among said Land Records in Plat Book NLP 126 at Plat No. 24; thence running with and binding on the outline of aforesaid Parcel F, with the following four (4) courses and distances
2. **South 74°15'14" East, 194.49** feet to an iron pipe found; thence
3. **South 63°46'35" East, 100.02** feet to an iron pipe found and held; thence
4. **North 87°07'49" East, 121.95** feet to an iron pipe found and held; thence
5. **South 50°21'36" East, 435.20** feet to an iron pipe found and held, said point being the northeasterly end of the North 26°03'00" East, 196.00 feet line of Lots 19 & 18, Block D, as shown on a plat entitled, "Plat of Correction, Plat Two of Section Two, Springfield Manor Cluster", said plat being recorded among said Land Records in Plat Book NLP 127 at Plat No. 66; thence running with and bonding on said plat line, in part with the following two (2) courses and distances

Schedule "A"
Description of the
Property of
Joan M. Stewart and
William E. Knupp

Page 2 of 2

6. **South 26°12'36" West, 195.84** feet to a point; thence
7. **South 15°04'51" West, 23.43** feet to an iron pipe found; thence leaving afore said plat line and running with the northerly or North 69°11'50" East, 704.76 feet line of Lot 31, as shown on a plat entitled, "Subdivision Record Plat, Lots 19-31, Parcel B, Glenn Dale Ridge East", said plat being recorded among said Land Records in Plat Book REP 215 at Plat No. 36, with the following course and distance
8. **South 69°00'55" West, 723.86** feet to a point, said point lying in the centerline of Springfield Road as shown in the attached Boundary Survey; thence running with and along said centerline, with the following two (2) courses and distances
9. **North 19°23'39" West, 84.43** feet to a point; thence
10. **296.83** feet along the arc of a non-tangent curve, deflecting to the left, having a radius of **2,231.32** feet and a chord bearing and distance of **North 23°12'19" West, 296.61** feet to a point, thence leaving the said centerline of Springfield Road and running with the outline of the property of the owners hereto, with the following four (4) courses and distances
11. **North 62°59'02" East, 12.60** feet to a point; thence
12. **North 03°35'05" West, 40.94** feet to a point; thence
13. **North 25°05'16" West, 35.26** feet to a point; thence
14. **North 02°54'42" West, 505.48** feet to the point of beginning, containing an area of **523,117** square feet or **12.0091** acres of land.

Surveyor's Certificate

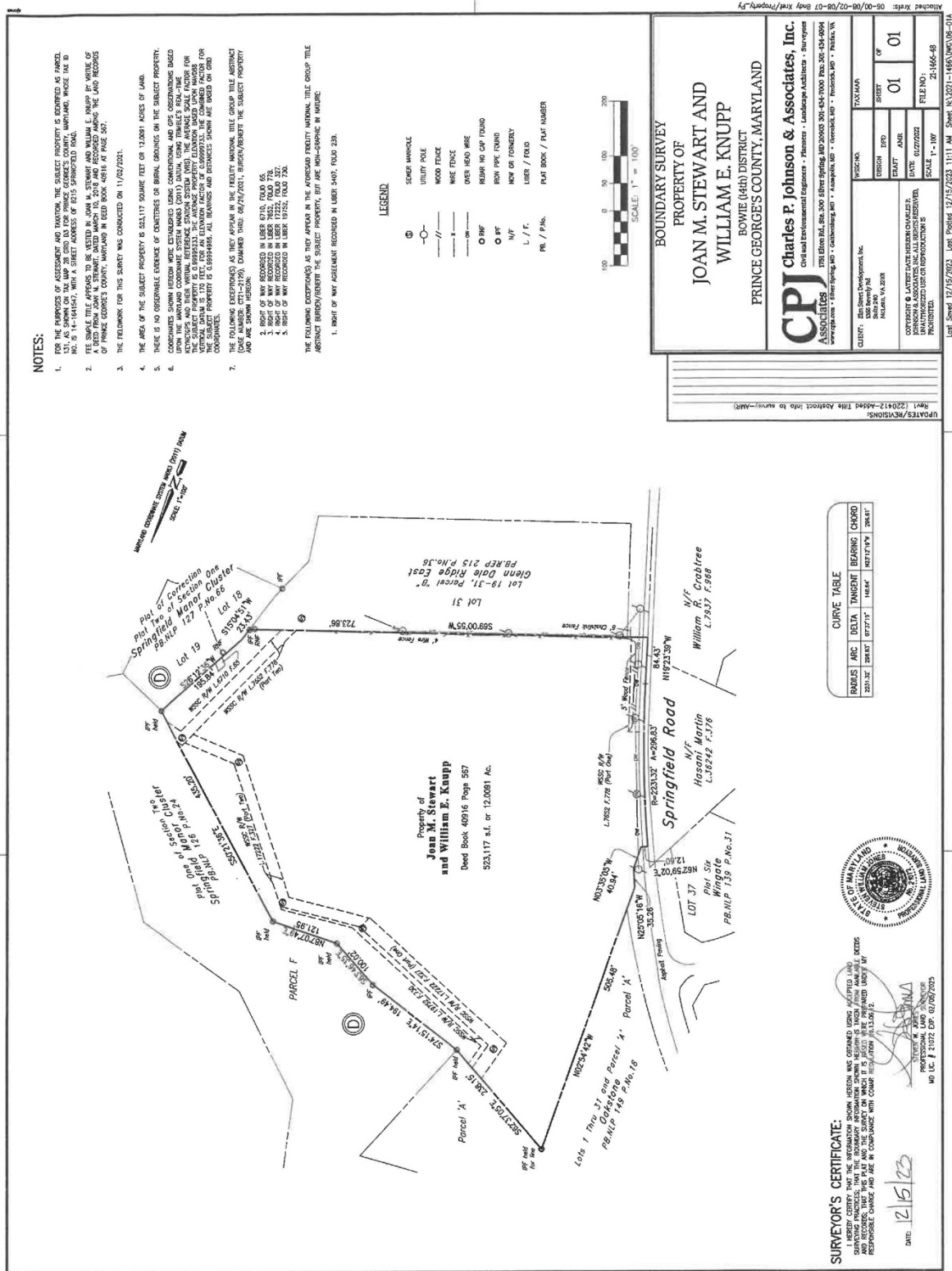
I hereby certify that this description was prepared by me in compliance with requirements set forth in 09.13.06.12 of the COMAR Regulations.

Date: 12/23/24




Shawn T. Jewell

Professional Land Surveyor
Maryland Reg. No. 21847
Exp.: 05/29/2026



August 7, 2025

Re: Case No. SE-22002/AC-23008: Stewart Property
Notice of Appeal of Zoning Hearing Examiner Decision

Dear Person of Record:

This letter is to inform you that an appeal and request for oral argument (the “**Appeal**”) from Decision of the Zoning Hearing Examiner (“**ZHE**”) in Case No. SE-22003/AC-23008 filed with the District Council on July 10, 2025 (the “**ZHE Decision**”) will be filed by ESC 8215 Springfield L.C. (“**Applicant**”) with the District Council on or before August 9, 2025. A copy of the Appeal is attached hereto as Exhibit A.

Once the Appeal is formally accepted by the District Council, it will be scheduled for a future District Council meeting. All persons of record may testify before the District Council. Persons arguing must adhere to the District Council’s rules of procedures, and argument shall be limited to thirty (30) minutes for each side, and to the ZHE record.

Sincerely,



Amy Sommer, PLA

Enclosure: Exhibit A

AFFIDAVIT OF MAILING

The purpose of this affidavit is to certify that pursuant to Section 27-131.01(b)(1) of the Prince George's County Zoning Ordinance in effect prior to April 1, 2022 and the Instructions for Filing provided in the Office of the Zoning Hearing Examiner's Notice of Decision, notice and copies of the appeal and request for oral argument from Decision of the Zoning Hearing Examiner in Case No. SE-22003/AC-23008 filed with the District Council on July 10, 2025 were mailed to all persons of record on August 8, 2025.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Amy J. Sommer

Amy Sommer, PLA



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SE-22004
Stewart Pro

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SUITE 1800

2. DANNY FENDLAY
8102 SPRINGFIELD RD
GLENN DALE, MD 20769

3. DAVE NELSON
400 CRAIN HIGHWAY NW
GLEN BURNIE, MD 21061

4. DAVID & JOAN M STEWART
3505 WILLIAMSBURG ROAD
DAVIDSONVILLE, MD 21035

5. DAVID FENDLAY JR
8104 SPRINGFIELD RD
GLENNDALE, MD 20769

6. DAVID FENDLAY SR
8102 SPRINGFIELD RD
GLENN DALE, MD 20769

7. DERRICK COLEY
8300 DRISCOLL DR
BOWIE, MD 20720

8. DR KEVIN FISHER
10402 JOHN GLENN ST
LANHAM, MD 20706

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- ☐ Priority Mail Express
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- ☐ Signature Confirmation Restricted Delivery

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Handling Charge - if Registered and over \$50,000 in value

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Return Receipt

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Signature Confirmation Restricted Delivery

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BURKE
1355 BEVERLY RD - STE 240
MCLEAN, VA 22101

2. HASANI MARTIN

8204 SPRINGFIELD RD
GLENN DALE, MD 20769

3. HOWARD ALDAG

8485 SPRINGFIELD RD
GLENN DALE, MD 20769

4. JEFFREY SPENCER

8061 SPRINGFIELD RD
GLENN DALE, MD 20769

5. JOSEPH MEINERT

CITY OF BOWIE
15901 FRED ROBINSON WAY
BOWIE, MD 20716

6. JOSHUA ROSE

8104 SPRINGFIELD RD
GLENN DALE, MD 20769

7. KEN WALLIS

2661 RIVA ROAD - BLDG 800
ANNAPOLIS, MD 21401

8. KIM GARNER

11501 DUCKETTOWN RAD
LAUREL, MD 20708

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Addressee (Name, Street, City, State, & ZIP Code™)

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8485 SPRINGFIELD RD
GLENN DALE, MD 20769
- LAURA FENDLAY
8102 SPRINGFIELD RD
GLENN DALE, MD 20769
- MARCIA TUCKER
11310 WYCOMBE PARK LN
GLENN DALE, MD 20769
- MARK FERGUSON
5407 WATER STREET STE 206
UPPER MARLBORO, MD 20759
- MARY SPENCER
8061 SPRINGFIELD RD
GLENN DALE, MD 20769
- MICHELE McDaniel
1 RESEARCH COURT, SUITE 450
ROCKVILLE, MD 20850
- MOJDEH DANTRASSY
11702 CROFT CT
BOWIE, MD 20720
- PAMELA J PINE
8100 SPRINGFIELD RD
GLENN DALE, MD 20769

Postage	(Extra Service) Fee	Handling Charge - If Registered and over \$50,000 in value	Actual Value if Registered	Insure Value
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Adult Signature Restricted Delivery				
Restricted Delivery				
Return Receipt				
Signature Confirmation				
Signature Confirmation Restricted Delivery				
Special Handling				

Total Number of Pieces Listed by Sender

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