

SUPPLEMENTAL STATEMENT OF JUSTIFICATION
REQUESTING VARIANCE
SE-22002 (STEWART PROPERTY)

Updated: April 29, 2025

I. Introduction

ESC 8215 Springfield L.C. (the “**Applicant**”) by and through its counsel, CL Hatcher LLC, submits this Supplemental Statement of Justification (the “**Statement**”) to demonstrate compliance with the criteria of approval for a variance, as reflected in Sec. 27-230 of the Prince George’s County Zoning Ordinance in effect prior to April 1, 2022 (the “**Prior Zoning Ordinance**”), from the acreage requirements contained in Sec. 27-395(a)(3)(B). Specifically, the Applicant requests that the Zoning Hearing Examiner approve an area variance to allow for the Property to be comprised less than twelve (12) contiguous acres. This Statement is submitted to supplement the Statement of Justification¹ previously submitted together with the Special Exception application, SE-22002.²

The Property is currently zoned RR (Rural Residential) pursuant to Subtitle 27 of the Prince George’s County Zoning Ordinance in effect as of April 1, 2022 (the “**Current Zoning Ordinance**”) and was previously zoned R-R (Rural-Residential), pursuant to the Prior Zoning Ordinance). The Property is subject to the recommendations of the Master Plan 2022 Approved Bowie-Mitchellville and Vicinity Master Plan (the “**Master Plan**”) and is located within the Established Communities Growth Policy Area, as designated by the Plan Prince George’s 2035 Approved General Plan (the “**General Plan**”).

¹ SE-22002-AC-23008 Record Binder, Exhibit 26.

² The Variance is proposed for review under the Prior Zoning Ordinance, pursuant to Sec. 27-1900 of the Current Zoning Ordinance.

II. Variance Request Background

Section 27-395 of the Prior Zoning Ordinance details several regulations and requirements for approval of a Special Exception application for the development of a Planned Retirement Community. Specifically, Section 27-395(a)(3)(B) states that:

(B) The subject property shall contain at least twelve (12) contiguous acres.

Throughout the course of review of the Special Exception application, SE-22002, the Applicant has provided significant evidence, including, but not limited to, a boundary survey, a boundary survey narrative (detailing, among other things, the process, evidence, and field work used to create the boundary survey), and evidence from SDAT, that the Property contains approximately 12.0091 acres. Despite such evidence and documentation, a question has been raised as to the presumed existence of a prescriptive easement (the “**Prescriptive Easement**”) over an approximately 3,542 square-foot (i.e., 0.0813 acres) portion of the Property along the southwest boundary (the “**Prescriptive Easement Area**”) over which a portion of Springfield Road is constructed.

No provision of the Prior Zoning Ordinance requires, nor has any applicable law or precedent been presented that allows, the Prescriptive Easement Area to be excluded from the “contiguous acreage” of the Property. Despite such lack of basis in the Prior Zoning Ordinance and/or in law, it has been contended that the Prescriptive Easement Area should be excluded from the contiguous acreage of the Property. If the Prescriptive Easement Area is excluded, the resulting contiguous acreage of the Property would be approximately 11.9278 acres. Accordingly, as an alternative, only if the Prescriptive Easement Area is determined to be excluded from the Property’s contiguous acreage, the Applicant requests an area variance from Sec. 27-395(a)(3)(B) of the Prior Zoning Ordinance to allow for the Property to be comprised of less than twelve (12) contiguous acres.

III. Analysis: Section 27-230

(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);*

Comment: 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, the Prescriptive Easement 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).

(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;*

Comment: 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.

(3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions;

Comment: The proposed area variance of approximately 0.0722 acres 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 0.718 acres 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.

(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

Comment: The granting of the proposed area variance of 0.0722 acres would not substantially impair the intent, purpose, nor integrity of the Master Plan. The proposed area variance would in no way alter the proposed site development, nor would the proposed area variance reduce the developable area on the Property. As described in the previously submitted Statement of Justification,³ as well as in the Land Planning Analysis Stewart Property,⁴ the Proposed Development (as defined in the previously submitted Statement of Justification) furthers several General and Master Plan goals and recommendations. Accordingly, because the Proposed

³ SE-22002-AC-23008 Record Binder, Exhibit 26.

⁴ SE-22002-AC-23008 Record Binder, Exhibit 102.

Development would substantially remain the same, the General and Master Plan would not be substantially impaired by the granting of the proposed area variance.

(5) Such variance will not substantially impair the use and enjoyment of adjacent properties.

Comment: The granting of the proposed area variance of 0.0722 acres would not substantially impair the use or enjoyment of adjacent properties. As mentioned above, the area variance would in no way alter the proposed site development, nor would the proposed area variance reduce the developable area on the Property. As described in the previously submitted Statement of Justification,⁵ as well as in the Land Planning Analysis Stewart Property,⁶ the Proposed Development will not substantially impair the use or enjoyment of adjacent properties. Accordingly, because the Proposed Development would substantially remain the same, neither the use nor enjoyment of adjacent properties would be substantially impaired by the granting of the proposed area variance.

(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.

Comment: The practical difficulty associated with the Prescriptive Easement Area is not self-inflicted by the owner of the Property. The Prescriptive Easement was not created by an agreement between the owner of the Property and a third party. Instead, the Prescriptive Easement created by the County's construction of Springfield Road within the boundaries of the Property without the permission of the owner of the Property. Accordingly, the practical difficulty was not self-inflicted by the owner of the Property.

⁵ SE-22002-AC-23008 Record Binder, Exhibit 26.

⁶ SE-22002-AC-23008 Record Binder, Exhibit 102.

IV. Analysis – Variance in Conjunction with Special Exception Approval

The Applicant's request for a variance from the 12-contiguous acre requirement applicable to the Planned Retirement Community Special Exception is permissible under Maryland law and the Prior Zoning Ordinance, because the proposed variance is for:

- An area variance from the area standards specific to the Planned Retirement Community Special Exception Use, which:
 - Is in a section of the Prior Zoning Ordinance where variances are not excluded, and
 - Does not so substantially alter the Planned Retirement Community Special Exception criteria in such a manner that the Planned Retirement Use would no longer be as contemplated by the comprehensive zoning scheme.

In Maryland, an “area variance” is defined as “a variance from *area*, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings.”⁷ On the other hand, a “use variance” is defined as “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.”⁸ Further, “a [Maryland] 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*,”⁹ but only if:

- The special exception is “in a section of the local code for which *variances are not excluded*,”¹⁰ and
- Granting the variance(s) would “*not so substantially alter* the [special exception] criteria” such that the resulting special exception use would no longer “be a use that was contemplated in the comprehensive zoning scheme.”¹¹

⁷ *Anderson v. Board of Appeals*, 22 Md. App. 28, 37 (1974) (emphasis added).

⁸ *Id.* at 38.

⁹ *Alviani v. Dixon*, 365 Md. 95, 121, 775 A.2d 1234, 1249 (2001) (emphasis added).

¹⁰ *Id.* (emphasis added).

¹¹ *Id.* (emphasis added).

In the present case, the Applicant's proposed variance allowing the Property to be comprised of less than twelve (12) contiguous acres is an area variance because it is a variance from the *area* standards applicable to the Planned Retirement Community Special Exception Use. Additionally, the Special Exception criteria from which the Applicant seeks an area variance are contained in a section of the Prior Zoning Ordinance (Section 27-395) for which variances are not excluded.¹² In fact, the Prior Zoning Ordinance specifically allows for variances to be approved in conjunction with Special Exception Approval in Section 27-316.¹³ Finally, the granting of the proposed area variance of 0.0722 acres does not "substantially alter the criteria" for the Planned Retirement Community Special Exception Use such that the resulting use would no longer be consistent with the Planned Retirement Community Use as contemplated by the Prior Zoning Ordinance. In fact, as previously mentioned, the proposed area variance would in no way alter the proposed site development, nor would it reduce the developable area on the Property. In light of the foregoing, the Applicant's proposed area variance submitted in conjunction with its Special Exception application is permissible under the Prior Zoning Ordinance and Maryland law.

V. Conclusion

The Applicant respectfully requests that the Zoning Hearing Examiner grant approval of a Variance from Sec. 27-395(a)(3)(B) of the Prior Zoning Ordinance. As discussed throughout this Statement, the Property is unique and unusual due to the extraordinary condition of its encumbrance by the Prescriptive Easement, which will result in peculiar and unusual practical difficulties to the owner of the Property.

¹² The Prior Zoning Ordinance does not exclude variances from being applied to the general standards applicable to Special Exception Approval contained in Part 4, Division 1, Subdivision 9 of the Prior Zoning Ordinance, nor to the specific standards applicable to Planned Retirement Community Special Exceptions contained in Section 27-395 of the Prior Zoning Ordinance.

¹³ "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." Prior Zoning Ordinance, §27-316.

Further, the proposed area variance is the minimum reasonably necessary to overcome the exceptional physical conditions, and would not substantially impair the Master Plan, General Plan, nor the use and enjoyment of adjacent properties. In addition, the practical difficulty associated with the Prescriptive Easement are not self-inflicted by the owner of the Property. Finally, the Applicant's request for an area variance from the specific area standards applicable to the Planned Retirement Community Special Exception Use is permissible under Maryland law and the Prior Zoning Ordinance. The above analysis establishes that the proposed area variance from Sec. 27-395(a)(3)(B) of the Prior Zoning Ordinance satisfies the required findings that the Zoning Hearing Examiner must make to approve this request in accordance with the Prior Zoning Ordinance.