

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

**SPECIAL EXCEPTION**

**4667**

**and**

**TCP2 -003-14**

**REMAND**

**DECISION**

Application: Adult Day Care and Assisted Living  
Applicant: Presidential Care, LLC/Stoddard Baptist  
Home, Inc.  
Opposition: The Willow Grove Citizens Association, et. al.  
Hearing Date: June 18, 2015  
Hearing Examiner: Maurene Epps McNeil  
Disposition: Approved

**NATURE OF PROCEEDINGS**

(1) Special Exception 4667 is a request for permission to operate an Adult Day Care for 15 persons and a 63-unit Assistant Living Facility for 78 persons on approximately 7.91 acres of R-R (Rural Residential) zoned land located on the east side of Lottsford Vista Road, across from its intersection with Cleary Lane, also identified as 3911 Lottsford Vista Road, Bowie, Maryland. (Exhibit 19)

(2) This Examiner issued a decision approving the request with conditions. This decision was subsequently appealed to the District Council.

(3) On May 4, 2015 the District Council issued a remand to the Zoning Hearing Examiner to "conduct a public hearing or hearings to receive, and evaluate additional testimony and evidence" to address the following:

On Remand, the ZHE shall allow Applicant the opportunity to submit the necessary information as to its corporate status in Maryland into the administrative record for S.E. 4667....

Determine if the applicant, "Presidential Care, LLC" is in good standing with the State Department of Assessment and Taxation (SDAT). If the applicant is not in good standing and has merged with another entity, the proper applicant registered with SDAT shall provide a letter of good standing from the new entity before issuance of a new or revised disposition recommendation. The new or revised

disposition recommendation shall also reflect the proper name and address, if any, of the applicant in this case....

Determine if the applicant, "Stoddard Baptist Home, Inc.", is in good standing with SDAT. If the applicant is not in good standing and has merged with another entity, the property owner shall provide a letter of good standing from the new entity before issuance of a new or revised disposition recommendation. The new or revised disposition recommendation shall also reflect the proper name and address, if any, of the applicant in this case....

After Applicant has submitted the evidence regarding its corporate status in Maryland on remand, the Zoning Hearing Examiner shall permit the Citizens opposition to submit additional evidence to the administrative record concerning expert testimony and/or expert reports concerning the stated issues of traffic and transportation related to the ... proposed development on the subject property....

(Exhibit R-2)<sup>1</sup>

(4) Applicant, its counsel, and several in opposition to the request appeared at the remand hearing held by this Examiner.

## FINDINGS OF FACT

### Subject Property

(1) The subject property is an irregularly shaped parcel improved with a vacant structure formerly used as a dwelling and as a Congregate Living Facility for 12 elderly or physically disabled residents. (Exhibits 3(b) and (17)) The property slopes from a high elevation of 190± feet to the northwest to an elevation of 140± feet along its southern property line. This elevation change requires extensive grading of the building and parking areas, while leaving the remainder of the site with steep slopes. Applicant will construct a stormwater management pond along the southern portion of the site that abuts Lottsford Vista Road.

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<sup>1</sup> The entire record of the prior proceeding in SE-4667 and the transcript thereof are adopted by reference and incorporated herein. Any reference to exhibits in the remand hearing will be prefaced by "R" to differentiate them from those admitted in the initial hearing.

(2) A preliminary Plan of Subdivision was approved in 2013, as well as a variance to Section 25-122(b)(1)(G) of the Woodland and Wildlife Habitat Conservation Ordinance. A Tree Conservation Plan (TCP1-010-10) and a Natural Resources Inventory have also been approved for the site.

### **Zoning History**

(3) In 1997, SE-4256 was approved, permitting a 160-Child Day Care Center, 40-person Adult Day Care Center, and expansion of an existing 12-person Congregate Living Facility to a 72-person Congregate Living Facility.

(4) All of the uses were never implemented due to the cost and technical issues associated with developing the site. (Exhibit 17, pp. 4-5; Exhibit 32, p.3)

### **Neighborhood and Surrounding Uses**

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

North:	Single-family detached dwellings in the R-R zoned Vista Estates East (Vista Glen) Subdivision
South and East:	Public parkland in the Folly Branch Stream Valley Park
West:	Lottsford Vista Road

(6) The neighborhood has the following boundaries:

North:	John Hanson Highway (US 50)
South:	The Enterprise Farm
East:	Folly Branch
West:	Bald Hill Branch

### **Master Plan, Sectional Map Amendment and General Plan**

(7) The subject property was rezoned from the R-E Zone to the R-R Zone upon adoption of the 1990 Largo-Lottsford Master Plan and Sectional Map Amendment (Zoning Change E-3). The Master Plan recommended residential uses for the property.

(8) The 2002 General Plan places the property in the Developing Tier. The 2014 General Plan ("Plan 2035") places the property within the Established Communities Policy Area.

## **Applicant's Request**

(9) Presidential Care, LLC, is affiliated with Stoddard Baptist Home, Inc. – both entities are the combined “Applicant” in the instant case. Stoddard Baptist Home, Inc. is a foreign corporation incorporated in Washington, D.C. while Presidential Care, LLC is a Limited Liability Company organized pursuant to Maryland Law. Applicant requests approval to operate a 78-bed Assisted Living Facility with 63 bedrooms for individuals generally 60 years old and older in need of physical and general medical assistance and an Adult Day Care Facility for fifteen (15) elderly or disabled persons. Both uses will operate in the same 65,608 square foot building, in separate “villages”. The 78 residents in the Assisted Living Facility will be housed in 15 double-occupant units and 48 single-occupant units. The Adult Day Care Facility will share an entrance with the Assisted Living Facility but will then be housed within its own area. (Exhibits 17 and 41)

(10) Both uses are permitted by Special Exception in the R-R Zone. However, Section 27-441(b)(2), fn. 77 places a further limitation on Assisted Living Facilities:

Up to seventy-five (75) dwelling units are permitted only if adjoining and operated by the same organization as an Adult Day Care use, approved by Special Exception. All assisted living facilities standards and requirements in Part 6, Division 5, must be met, including Detailed Site Plan approval under Part 3, Division 9.

(11) Applicant intends to raze the existing 6,378 square foot vacant, one-story Congregate Living Facility and replace it with a 65,608 square foot 2-story building with a full basement, and 49 parking spaces and one loading space to accommodate both uses. Applicant submitted architectural elevations for the two-story building, and floor plans. (Exhibits 6(b) and 41(a)-b))

(12) Nicole White, accepted as an expert in transportation planning, collected traffic/data at two intersections that would potentially be impacted by the request - Vista Road/Cleary Lane and Lottsford Vista Road/Forbes Boulevard. (Exhibit 7(a)) The A.M. peak hour study period was 7:30 AM to 8:30 AM for both intersections. The PM peak hour study period for Lottsford Vista Road/Forbes Boulevard was 5:00 PM to 6:30 PM.

(13) The Transportation Planning Section of the Technical Staff found that the requested use would operate within the trip cap imposed by the approved Preliminary Plan of Subdivision:

The proposed uses; Adult Day Care and Assisted Living, are low traffic generators. The proposed uses in the 65,608-square foot building with 63 assisted living units (78 occupants) and the 15-person adult day center will generate 18 AM peak-hour trips and 27 PM peak-hour trips. The proposed uses in the 65,608 square foot building will generate 121 fewer AM peak hour trips and 119 fewer PM peak hour trips than the previous special exception request. Also, this special exception appears to be fully consistent with the recent Preliminary Plan of Subdivision 4-

12020. In particular, this application is consistent with the approved trip cap on that plan....

A traffic count was submitted by the applicant. Under existing conditions there is a delay of 15.8 seconds in the AM peak hour and 18.2 seconds in the PM peak hour at the critical intersection. Background traffic for through movements on Lottford Vista Road was increased by two percent to account for traffic growth. Under background traffic conditions there is a delay of 18.6 seconds in the AM peak hour and 21.9 seconds in the PM peak hour. With site traffic added under total traffic conditions the delay is 18.8 seconds during the AM peak hour and 22.1 seconds during the PM peak hour. Vehicle delay in any movement exceeding 50.0 seconds is deemed to be an unacceptable operating condition at unsignalized intersections. The critical intersection operates far below this threshold.

(Exhibit 17, pp. 106-107)

(14) Ms. White testified that she agreed with staff's transportation conclusions, and also reiterated that the approved subdivision cap of 18 vehicular trips during the AM peak hours and 27 trips during the PM peak hours would not be exceeded. (T. 100-101)

## **Facts adduced upon remand**

### **Traffic**

(15) The opposition chose not to produce a witness with expertise in the area of transportation planning. Applicant and People's Zoning Counsel objected to their lay testimony as to traffic conditions in the area, as well as the traffic count that two residents (Barrington McCoy and Frances Hawkins) performed on their own on November 5, 2014. (Exhibit R-11) I allowed the Exhibit and testimony because the District Counsel's language in the Remand Order concerning traffic could be interpreted as allowing those opposed to any expert traffic evidence an opportunity to submit additional evidence of any kind on the subject.

(16) The citizens that testified as to traffic conditions noted (as many did in the first hearing) that there have been accidents in the area, the road has not been paved and there is a "hodgepodge of potholes" there that makes the area difficult to traverse. All believed there is too much traffic in the area. It was noted that access and egress lanes should be constructed prior to any buildings. (Exhibit R-12) Some noted that the bike routes in the area aren't protected making it difficult to achieve the Master Plan's recommendation for pedestrian and bike access. It was also noted that the closest bus route in the area was near Forbes Business Park, and Applicant should provide van transportation for its employees/residents to ensure access to public transportation.

(17) Mr. McCoy prepared the traffic information and was unable to appear at the remand hearing. However, Ms. Frances Hawkins assisted in the study and did testify. She noted that they performed the count by hand, and did not use any formula or equipment in gathering the data. Their count was taken between 7:15 and 8:45 a.m. on November 5, 2014. The Count notes, that during that period there were a total of 588 vehicles heading southbound on Lottsford Vista Road, and 1,009 vehicles heading north, for a total of 1,595 vehicles.

(18) Nicole White, Applicant's witness accepted as an expert in transportation planning, had the opportunity to review the McCoy/Hawkins traffic study and found the data to be consistent with the critical direction of traffic movements that she had also found for northbound traffic. As noted in the prior hearing this was the critical direction for traffic in the area.<sup>2</sup> Nothing in the McCoy/Hawkins study changed Ms. White's findings as to the adequacy of the affected intersection if the Special Exception is approved.

### **Standing**

(19) At the remand hearing Applicant submitted certifications from the Maryland Department of Assessments and Taxation ("SDAT") indicating that both Presidential Care, LLC and Stoddard Baptist Home, Inc. are in "good standing" with the Department as of May 18, 2005 and June 2, 2015, respectively. (Exhibits R-6(a)-(c))

(20) The Willow Grove Citizens Association and Tiffany Alston argue that Maryland law voids any action taken by a business entity whose charter is forfeited. The opposition noted that Applicant Presidential Care, LLC's charter was forfeited in 2012 for failure to pay a penalty assessed by SDAT in 2010. (Exhibit R-7) Since the instant request was accepted on February 21, 2014, during the time that the Applicant's right to do business was forfeited, it must be voided.

(21) Applicant admits that the LLC was in forfeiture status "from October 1, 2012 until May 4, 2015." (Exhibit R-8) There was no further clarification as to Stoddard Baptist Home, Inc.'s status to operate in Maryland and D.C. prior to June 2, 2015, but it did not deny that the Corporation's ability to conduct business in Maryland had also been forfeited. (Exhibit R-6(c)) Despite the forfeitures, Applicant believes that provisions of the Maryland Code Annotated, Corporations and Associations Article, validate any actions taken during forfeiture once the entity is reinstated by SDAT.

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<sup>2</sup> A full discussion of the traffic analysis undertaken by Applicant and sanctioned by Staff, is found on pp. 98-113 of the Transcript in the prior hearing.

## APPLICABLE LAW

(1) An Adult Day Care Center and an Assisted Living Facility are permitted in the R-R zone upon approval of a Special Exception in accordance with Sections 27-317, 27-332 and 27-464.04 of the Zoning Ordinance.

(2) These Sections provide 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).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

(1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or

(2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

### **Sec. 27-332. Adult Day Care center.**

(a) An adult day care center may be permitted, subject to the following:

(1) The subject property shall be suitable for the type of facility proposed, taking into account the character of surrounding properties and the general neighborhood, and any other uses on the subject property;

(2) The subject property shall be of sufficient size to accommodate a facility of the scope proposed;

(3) Vehicular access to the subject property shall be adequate, taking into account the scope of the facility, the type and amount of traffic expected to be generated, and the type, service level, and capacity of the streets along which the subject property has frontage; and

(4) A statement shall be submitted explaining:

- (A) The policies and goals of the center;
- (B) The characteristics and number of occupants to be served;
- (C) The type of care and activities proposed;
- (D) Operating methods and procedures proposed;
- (E) The type and amount of traffic expected to be generated; and
- (F) Other appropriate aspects of the center's operation.

#### **Sec. 27-464.04. Assisted living facilities.**

(a) An assisted living facility permitted (P) in the Table of Uses shall be subject to the following:

(1) Guidelines for development.

(A) The following guidelines shall be considered:

(i) If more than one (1) building is proposed, residential units should be clustered together in small to medium size groups to give a more residential character to the site.

(ii) The entry to the assisted housing site should provide easy recognition of the facility and a safe and unambiguous vehicular route to the building entry and passenger drop-off area.

(iii) The radius and width of the entry drive should allow cars and vans to maneuver easily.

(iv) The drop-off area should be close and convenient to the building entry, but should be spacious enough to accommodate wheelchairs, open car doors, and passing cars.

(v) A canopy or cover offering protection from the weather should normally be provided over the building entry and passenger drop-off area.

(2) Requirements.

(A) A recreational facilities plan shall be submitted demonstrating that sufficient recreational facilities or opportunities are provided to serve the prospective resident population. Facilities may be provided on site or within adjoining development. In any case, but particularly if on adjoining property, there shall be a staging plan for the facilities constructed. Recreational areas should be clustered together to increase levels of activity, use of amenities, and the sense of vitality of the community.

(B) The facility shall not be more than four (4) stories.

(C) The facility shall be located on a minimum of three and one-half (3.5) acres of land.

(D) The subject property shall be adjoining residentially zoned land.

(E) A Detailed Site Plan shall be approved for the facility in accordance with Part 3, Division 9, of this Subtitle.

(3) The requested uses should also comport with the following purposes of the R-R Zone found in Section 27-428 of the Zoning Ordinance:

(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.

(b) **Uses.**

(1) The uses allowed in the R-R Zone are as provided for in the Table of Uses (Division 3 of this Part).

(c) **Regulations.**

(1) Additional regulations concerning the location, size, and other provisions for all buildings and structures in the R-R Zone are as provided for in Divisions 1 and 5 of this Part, the Regulations Tables (Division 4 of this Part), General (Part 2), Off-Street Parking and Loading (Part 11), Signs (Part 12), and the Landscape Manual.

### **Special Exceptions (Common Law)**

(4) As noted in the seminal case concerning the grant or denial of a special exception, Schultz v. Pritts, 291 Md. 1,11, 15, 432 A.2d 1319 (1981):

The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. [A] special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.

## CONCLUSIONS OF LAW

(1) The Order of Remand asked that I review any additional evidence concerning the traffic impacts of the requested use, and that I allow Applicant to submit any information from SDAT that indicates whether Presidential Care, LLC and Stoddard Baptist Home, Inc. are in good standing with SDAT. The opposition also raised the legal issue of whether any actions taken by the two entities during the period that its status was forfeited must be voided by operation of law.

(2) Opposition submitted a traffic study that was not prepared by a professional and does not conform to the “Guidelines for the Analysis of the Traffic Impact of Development Proposals” – the regulations applied by the Maryland-National Capital Park and Planning Commission when evaluating the impact of vehicular trips that will be generated by a proposed development. Although I allowed the evidence in I cannot give it much weight for the above referenced reasons. Some in opposition also noted their concerns with the increased traffic on Lottsford-Vista Road, the increased vehicular accidents along said road, the mobility of bikes or pedestrians to traverse the road, and the lack of available public transportation for the future employees/residents of the proposed uses if the Application is approved. All of this testimony was addressed at the prior hearing. The impermissible change of mind rule precludes one from granting a zoning request after previously denying it, without any change in facts or conditions. Gerachis v. Montgomery County Board of Appeals, 261 Md. 153, 274 A. 2d 0379 (1971) (“We have said in the past that an ‘about face’ by an administrative board, without any material change in facts and conditions upon which the earlier decisions were based...would constitute an impermissible change of mind demonstrating ‘arbitrary, unreasonable and capricious conduct amounting to a denial of due process of law’.”) Accordingly, I would approve the Application on remand if traffic was the only issue I had to address.

(3) Applicant submitted proof that Presidential Care, LLC and Stoddard Baptist Home, Inc., are presently certified by SDAT to be in good standing. However, the remaining issue is whether the Application can be approved if it was the filed during the period that SDAT forfeited Applicant’s rights to conduct business within the State of Maryland.

(4) The opposition cited two recent decisions, Tri-County Unlimited, Inc. v. Kids First Swim School, Inc. 191 Md. App. 613, 993 A.2d 146 (2010) and A Guy Named Moe, LLC, T/A Moe’s Southwest Grill v. Chipotle Mexican Grill of Colorado, LLC, No. 2270, Sept. Term 2013, CSA (May 29, 2015), to support their contention that Applicant could not have legally filed the Special Exception Application while it was in forfeiture status. Applicant counters that Sections 3-512 and 4A-920 of the Maryland Annotated Code, Corporations and Associations Article support its ability to file the subject Application despite the fact that Presidential Care, LLC and Stoddard Baptist Home, Inc.’s right to do business in the State of Maryland had been forfeited.

(5) Pursuant to Maryland Annotated Code, Corporations and Associations Article, Section 3-503(d), once SDAT has declared a corporate charter forfeited “the powers conferred by law on the corporations are inoperative, null, and void as of the date of the proclamation, without proceedings of any kind either at law or in equity.”

(6) Section 3-512 of the Corporation and Associations Article reinstates the Corporation’s rights. This Section provides as follows:

The reinstatement and extension of a corporation’s existence under [Section] 3-501 of this subtitle or the revival of a corporation’s charter under [Section] 3-507 of this subtitle has the following effects:

- (1) If otherwise done within the scope of its charter, all contracts or other acts done in the name of the corporation while the charter was void are validated, and the corporation is liable for them; and
- (2) All the assets and rights of the corporation, except those sold or those of which it was otherwise divested while the charter was void, are restored to the corporation to the same extent that they were held by the corporation before the expiration or forfeiture of the charter.

(7) Similarly, Section 4A-911 of the Corporations and Associations Article allows SDAT to forfeit a limited liability company’s right to do business in Maryland. Section 4A-920 notes that the forfeiture does not impair all of the limited liability company’s rights, however, providing as follows:

The forfeiture of the right to do business in Maryland and the right to the use of the name of the limited liability company under this title does not impair the validity of a contract or act of the limited liability company entered into or done either before or after the forfeiture, or prevent the limited liability company from defending any action, suit, or proceeding in a court of this State.

(8) In Tri-County Unlimited, Inc. v. Kids First Swim School, Inc., 191 Md. App. 613, 993 A.2d 146 (2010) (cert. denied 415 Md. 43, 997 A.2d 792), Tri-County brought suit in the Circuit Court against Kids First for failure to fulfill certain contractual obligations. On the scheduled trial date Kids First filed a Motion to Dismiss challenging Tri-County’s standing since its corporate charter had been forfeited at the time it filed the lawsuit. Tri-County argued that its charter was later revived and therefore its right to sue was restored retroactively. In holding for Kids First the Court held:

Tri-County is correct in its broad statement that the revival of a corporation’s charter restores its right to sue. Tri-County certainly has the right to initiate a lawsuit now that its charter has been revived and it is a legal entity; in fact, the circuit court instructed Tri-County to re-file its complaint. The fact that a corporation’s right to

sue is restored upon revival of its charter, however, is not enough to answer the real question before this Court: whether a corporation can validate a lawsuit that it initiated when its charter was forfeited – and therefore, it legally did not exist – by reviving its charter....[W]e conclude that the answer is no....

*Id.* at 621.

(9) In A Guy Named Moe's, LLC, T/A Moe's Southwest Grill v. Chipotle Mexican Grill of Colorado, LLC, 2015 Md. App. LEXIS 72 (May 29, 2015) the Court reached a similar conclusion when addressing the effect of a forfeiture on a limited liability company. Chipotle filed an Application for a special exception to operate a restaurant fairly close to Moe's existing restaurant. The Annapolis Board of Appeals approved the Application over Moe's objections. Moe's noted an appeal to the Circuit Court, which ruled that it did not have standing because it was not a taxpayer, and then filed an appeal to the Court. The Court affirmed the Circuit Court, on a different ground, reasoning as follows:

Moe's filed a petition for judicial review in the Anne Arundel County circuit court. Although the filing fell within the 30 day period for filing such a petition..., it notably occurred several years after Moe's right to do business in Maryland had been forfeited, a right that was not restored until September 24, 2013, over four months after the 30 day filing period for such petitions had lapsed. That is to say, Moe's had lost its right to do business in Maryland when it filed its otherwise timely petition for judicial review. What is more, notwithstanding the forfeiture of its right to do business in this State, Moe's continued to do business in Maryland without pause or interruption and, in fact, was conducting business in Maryland on the very day that it invoked the assistance of the Maryland judiciary by filing the petition at issue....

Although it acknowledged that it did file its petition for judicial review after its right to do business in Maryland had been forfeited and while it was nonetheless continuing to conduct business in this State, Moe's asserts that it could nonetheless legally maintain a suit because it did file its petition for judicial review within the 30 days of the Board's decision... and because that petition was revived when, several years later, its right to do business in Maryland was restored....

Moe's had its right to do business forfeited by the SDAT on November 16, 2006. That forfeiture occurred...because Moe's [didn't file the proper registration and fees] in violation of C.A. [Sections] 4A-1002 and 4A-1013 [laws concerning ability of foreign corporations to do business in Maryland].... Moe's nonetheless continued to do business in Maryland – that is, to operate its restaurant – during the period of forfeiture. And during that period, it not only opposed Chipotle's special exception application before the Board but then filed the petition at issue...contesting the Board's decision to grant Moe's a special exception....

[W]e cannot conceive of any reason to treat an LLC differently from a corporation with respect to the right to file or maintain a suit when its respective right to do business has been forfeited.... [N]either a Corporation nor, by implication, an LLC like Moe's may revive a suit that, though timely filed, was initiated by such an entity, after it had lost the right to do business in Maryland and yet persisted in doing business in this State....

*Id.*, at 4-5, 9, 11, 15 and 20.

(10) Section 4A-920 had been interpreted in the past as allowing the limited liability company to continue to do certain things during the period of its forfeiture. See, Bayly Crossing, LLC v. Consumer Protection Division, 417 Md. 128, 9 A.3d 4 (2010). Section 3-512 applies to corporations and does not mirror the language in Section 4A-920. However, the decision in A Guy Named Moe's, *supra*, clarified that an LLC should not be treated differently from a corporation "with respect to the right to file or maintain a suit when its respective right to do business has been forfeited...." The Opposition believes these decisions should also be applied to the administrative action before me – the request for a Special Exception use.

(11) Research has not revealed the existence of any case law that would allow me to do so. The express language in Section 3-512 validates "all contracts or other acts done in the name of the corporation while the charter was void" upon reinstatement or revival of the corporation's existence. The express language in Section 4A-920 notes that the forfeiture of the right to do business "does not impair the validity of a contract or act of the limited liability company entered into or done either before or after the forfeiture...." The decisions discussed *supra* expand the language slightly to prohibit access to the courts during forfeiture, but do not go further. Since some of the powers of both a corporation and a limited liability company are to have perpetual existence, to transact its business and to carry on its operations, it would be improper for me to add words to the State law that would defeat these powers. (Maryland Annotated Code, Corporations and Associations Article, Sections 2-103 and 4A-203).

(12) I am also reluctant to expand the Court decisions to the current situation because it is an express tenet of statutory construction that the absence of prohibition or silence is construed as permissive. International Association of Fire Fighters v. Mayor & City Council of Cumberland, 407 Md. 1, 12, 962 A.2d 374 (2008). The State, and the courts, chose not to include administrative actions in its list of acts that may not be revived after a corporate charter or articles of organization are reinstated, if undertaken during the period of forfeiture. Accordingly, I cannot deny the Application on the ground that it was filed when Applicant's rights to exist as a business entity were revoked, since the rights have been reinstated.

(13) I would, therefore, approve the Application, with conditions, for the same reasons noted in my prior decision.

## DISPOSITION

Special Exception 4667 and TCP2-003-14 are Approved subject to the following conditions:

- (1) A raze permit must be obtained through the Prince George's County Department of Permitting, Inspections and Enforcement prior to removal of any existing buildings. Any hazardous materials located in any structures on-site must be removed and properly stored or discarded prior to the structure being razed.
- (2) Prior to approval of any building/grading permit:
  - (a) A detailed site plan shall be reviewed and approved for the Assisted Living Facility for the subject development.
  - (b) A complete set of plans for the kitchen, along with the required fee must be submitted to the Prince George's County Health Department, Division of Environmental Health, for review and approval.
  - (c) Conformance to the sign regulations shall be reviewed at the time of detailed site plan approval.
- (3) At the time of detailed site plan review, the proposed architecture and entrance sign shall be revised according to the Urban Design Section memorandum dated April 3, 2014, on pages 92-97 of the Technical Staff Report.
- (4) The Applicant must comply with any outstanding preliminary plan conditions and apply for any needed access permits from the Prince George's County Department of Permitting, Inspections and Enforcement.
- (5) Prior to the issuance of permits, the Special Exception Site Plan shall be revised as follows, and submitted to the Office of the Zoning Hearing Examiner for review and inclusion in the record:
  - a. A Note shall be added to show how all of the applicable regulations of the R-R Zone (set forth in Section 27-442 of the Zoning Ordinance) are being met.
  - b. The 2010 Prince George's County Landscape Manual Section 4.2 schedules shall be removed from the plan and a Section 4.6 schedule and notes shall be added to the plan demonstrating the project's conformance to its requirements. If such demonstration cannot be made, the Applicant shall apply for, and bring forward a companion case, an alternative compliance (AC) application at the time of detailed site plan review.

- c. A 2010 Prince George's County Landscape Manual Section 4.9 schedule shall be provided on the plan demonstrating conformance to all of its requirements.
- d. The amount of on-site woodland conservation claimed for tree canopy coverage credit shall be verified against the amount shown on the Type 2 tree conservation plan.
- e. The correct stormwater management concept plan number, 46822-2005-03, and its approval date shall be added to General Note 21 on the plan.
- f. The existing sign shown on the left of the driveway, along Lottsford Vista Road, shall be removed and a detail for the new sign that shows its size and location shall be provided.
- g. The preliminary plan number and its approval date shall be added to the Site Plan.
- h. The right-of-way and center line of Lottsford Vista Road shall be provided on the site plan to ensure that the landscape strip does not fall within the proposed right-of-way.
- i. The hours of operation for the Adult Day Care Center (Monday-Friday from 7:30 a.m. - 8:00 p.m., and Saturday from 9:00 a.m. – 8:00 p.m.) and hours of aftercare (if any) shall be added.

(6) Prior to the issuance of permits, the TCP2 shall be revised as followed, and submitted to the Office of the Zoning Hearing Examiner for review and inclusion in the record:

- a. The steep slopes must be removed from the plan and the legend for plan clarity. This information has been adequately shown on the Natural Resources Inventory (NRI) for the site.
- b. Permanent Tree Protection fence and signs must be shown along all vulnerable edges of the reforestation area; specifically, the permanent fence and signs must be added along the public utility easement and below the stormwater management pond.
- c. A specimen tree sign must be shown on the plan adjacent to preserved specimen tree 4; this symbol must be added to the plan.
- d. The assigned plan number must be typed into the approval block (TCP2-003-14).

- e. TCP2 general note 7 must be revised to indicate that the site fronts on Lottsford Vista Road, which is a designated historic road.
  - f. Planting Specification Note 16 must be revised to indicate that the source of seedlings is “to be determined.”
  - g. The planting schedule must be revised to show the planting of seedlings at a density with a minimum of 700 seedlings/ acre and not to exceed 1,000 seedlings/ acre.
  - h. The following standard details must be added to the plan in accordance with the Environmental Technical Manual:
    - 1. Reforestation sign detail (DET-2)
    - 2. Specimen tree sign detail (DET-3)
    - 3. Tree pruning detail (DET-11)
    - 4. Planting months detail (DET-13)
    - 5. Handling bare root stock (DET-15 and 16)
    - 6. Seedling/ whip planting detail (DET-17)
  - i. If any land containing woodland conservation is to be dedicated to a county agency, the applicant shall provide written correspondence from that county agency stating that the agency agrees to the area of woodland conservation on the dedicated land.
- (7) After the Detailed Site Plan is approved, a copy shall be submitted to the Office of the Zoning Hearing Examiner for inclusion in the record.

[Note: The Special Exception Site Plan and Landscape Plan are Exhibits 14(a)-(e). The Tree Conservation Plan is Exhibit 15 (a)-(c).]