

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

**SPECIAL EXCEPTION  
24006**

**DECISION**

Application:	Congregate Living Facility
Applicant:	Tranquility Ridge, Inc.
Opposition:	Ms. Candace Barrett
Hearing Date:	August 25, 2025
Decision Date:	December 11, 2025
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

**NATURE OF REQUEST**

(1) Special Exception 24006 is a request to increase the number of residents in an existing Congregate Living Facility from eight residents to up to sixteen (16) residents. The subject property is approximately 3.63 acres of land in the RSF-95 (Residential, Single-Family-95) Zone, formerly R-80 (One-Family Detached Residential) Zone and consists of one lot (Lot 1 of Norris Pyles' Old Mill Estates, recorded in Plat Book WWW 67 Plat No.3) located on the west side of Temple Hill Road, at the eastern terminus of Gull Road, and is identified as 5401 Temple Hill Road, Temple Hills, Maryland.

(2) The request is reviewed for compliance with the 2019 Edition of the Zoning Ordinance (as permitted under Sections 27-1903 and 27-1904 pursuant to the most recent Supplement to the Zoning Ordinance) since the application was accepted by the Prince George's County Planning Department on February 1, 2023.

(3) The Technical Staff recommended approval of the Application with conditions. (Exhibit 26)

(4) Ms. Candace Barrett appeared in opposition to the request.

(5) At the close of the hearing, the record was left open to allow the submission of additional evidence. These items were received on August, 25, 2025, and the record was closed at that time.<sup>1</sup>

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<sup>1</sup> The record was closed on August 25, 2025. The record consists of thirty-six exhibits and one transcript

## FINDINGS OF FACT

### Subject Property

(1) The subject property is developed and improved with a single 9,223-square-foot structure (roughly divided between a first floor and basement) that currently houses a Congregate Living Facility for up to eight residents. (Exhibit 26, p.5). A facility of this size is permitted by right. It is located on the west side of Temple Hill Road, at the eastern terminus of Gull Road, and accessed from an approximately 375-foot-long driveway off Temple Hill Road to the west, and Suburban Court to the southwest. Mature trees surround the site on the west, south, and east from the adjacent homes on Lambert Drive, Crystal Lane, and Gull Road.

(2) No physical expansion is proposed for the facility, as renovations pursuant to permits issued by the Department of Permitting, Inspections, and Enforcement ("DPIE") a few years ago have already been completed (as discussed below). Applicant must obtain a new use and occupancy permit if this request is approved.

(3) The property lies within Water and Sewer Categories W3 and S3.

(4) The Applicant is exempt from the requirements of the Prince George's County Tree Canopy Coverage Ordinance, as the application proposes less than 2,500 square feet of disturbance. (Prince George's County Code, Section 25-127(a)(1)) The Applicant was issued a Woodland Conservation Letter of Exemption because there is no prior Tree Conservation Plan, the site is over 40,000 square feet in size and has over 10,000 square feet of woodland, and no woodland is proposed for clearing. (Exhibit 22)

(5) In its point-by-point response to comments from the Development Review Division, the need for a future preliminary plan of subdivision was discussed, as follows:

Subdivision Section: Preliminary plan of subdivision may be required. Applicant must demonstrate that development prior to 1990 was for congregate living. A change to congregate living after 1990 constitutes new development of the square footage for such a use. SOJ indicates 1200 +/- sf added in 2020, total sf for congregate living is now 9,223 sf. Please be advised that this SE does not grandfather the filing of a PPS under the prior subdivision regulations.

Response: The applicant is still researching prior permit and prior development history for the subject property. Notwithstanding, the existing congregate living facility has been permitted under Case No. 19144-2018-06 and was approved by DPIE for a maximum of 16 residents. This interior work (with a small building addition) and minimal site grading for stormwater management facilities was completed pursuant to final grading permit (Case No. 15877-2018) circa 2020. No development is proposed with SE-24006. If a future PPS is required, the applicant will pursue the same should SE-24006 be approved.

(Exhibit 24) A condition has been added to address this quandary.

**Surrounding Property/Neighborhood**

(6) The neighborhood is residential in character and is defined by the Technical Staff with the following boundaries:

- North – the Capital Beltway (I-95/495)
- South – Brinkley Road
- East – Temple Hills Road
- West – Brinkley Road

(7) The following uses surround the subject property:

- North – Single-family dwellings in the RSF-95 Zone and beyond, Temple Hill Road
- South – Single-family dwellings in the RSF-95 Zone, the terminus of Crystal Lane and vacant wooded land in the ROS (Reserved Open Space) Zone
- East – Single-family dwellings in the RSF Zone and beyond, Temple Hill Road
- West – Single-family dwellings in the RSF-95 Zone and the terminus of Gull Road

**Master Plan/Zoning/General Plan**

(8) The subject property lies within an area governed by the 2006 Master Plan (“the Master Plan”) and Sectional Map Amendment for the Henson Creek- South Potomac Planning Area. The Master Plan’s Future Land Use Map designated the site for “Residential Low-Density” uses. The General Plan in effect at the time of the Master Plan’s adoption, and discussed therein, placed the site within the Developed Tier. The goals of the Developed Tier included the strengthening of existing neighborhoods, encouraging appropriate infill development, preserving/restoring/enhancing natural features, and providing open spaces. (Master Plan, p. 35)

(9) The 2014 General Plan placed the site within the Established Communities. Its goals are similar to those of the prior Developed Tier as well as those of the Master Plan -i.e., context sensitive infill and low-to medium-density development. The General Plan also addressed the need for this type of housing:

Between 2000 and 2010, the County witnessed noticeable growth in two age groups. The 15 to 29 age group, commonly referred to as the Millennial Generation, steadily grew.... The 55 to 64 age group, commonly referred to as the Baby Boomer Generation, grew by approximately 30,000 residents or 36 percent. This was more than any other age group in the County. Forecasts indicate that over the next ten years, seniors aged 65 or older will account for the largest population gains in the County.... Recent trends show that seniors

and the elderly will demand opportunities to age in place and reside in neighborhoods offering smaller, lower-maintenance housing options in walkable and transit-accessible locations....

(2014 General Plan, p. 56-57)

(10) Applicant provided a copy of a report prepared by the Prince George's County Planning Department concerning the burgeoning senior population. (Exhibit 32) Citing 2020 Census data, the report also noted that the senior population 65 and older mostly reside outside ... the Capital Beltway" and "significant concentrations live near Hillcrest Heights on both sides of MD 5...." (Exhibit 32, p. 2)

(11) The 2009 Countywide Master Plan of Transportation ("MPOT") included a policy recommendation for properties within the Developed Tier to encourage quality infill development, redevelopment, and restoration. (MPOT, p. 3)

### **Applicant's Request**

(12) The Applicant, Tranquility Ridge, Inc, is in good standing to conduct business within the State of Maryland, having been granted a certificate from the State Department of Assessments and Taxation. (Exhibit 28) Applicant wishes to increase the number of residents from eight (8) to a maximum of sixteen(16). It does not propose to add any additional square footage to the existing structure, which physically resembles a single-family dwelling.

(13) Ms. Delores Flowers is the owner and assisted living manager of Tranquility Ridge Assisted Living in Temple Hills, Maryland. (T.16-17) Ms. Flowers holds a state license to operate the facility, issued by the Maryland Office of Health Code Quality. (T.20) The facility currently employs four employees during the day and three employees during the night. They may care for up to eight residents by right at the facility, but require a Special Exception to care for more than eight. The facility is prepared to house up to sixteen (16) residents since the building was renovated, pursuant to a permit approved by the Department of Permitting, Inspections, and Enforcement ("DPIE").

(14) Applicant provided several photographs of the facility, including the bedrooms, bathrooms, dining area, community room, and kitchen. (Exhibits 14 and 49) Ms. Flowers testified that there are 14 single bedrooms with private bathrooms, and 2 bedrooms that share a bathroom in the hallway. (T. 23) All of the bedrooms have windows, and there is a filtering system that was installed to counter the effects of the recent COVID pandemic. (T.24) A 24-hour security monitoring system is in place to help ensure the safety of residents. Ms. Flowers has also applied for a grant to provide transportation for the residents. (T.25) Ms. Flowers testified that they do not currently have a waiting list but have "[recurring] visits from individuals intended "in the facility, as well as constant calls/emails from referral agencies. (T.26-27) The facility has applied to participate in the

Medicaid waiver program which would also increase the number of persons that would be interested in residing at the facility.

(15) Mr. Anthony Olekson is a registered civil engineer and was hired by Applicant to prepare and/or supervise the preparation of the Special Exception Site Plan, the Landscape Plan, and associated documents. (T. 38) He provided the following description of the subject property:

The property has access ... from two different locations, [with] ... an existing access easement to the property ... to the southeast ... directly out to Temple Hill Road, as well as direct access from the end of Suburban Court ... to the property.

The structure itself, which again used to be [a] ... residence and has been converted into ... congregate living [is] ... in the middle of the property, has a driveway and a parking area ... located to the north of the ... building....

(T. 40-41)

(16) Mr. Olekson averred that the Special Exception Site Plan conforms to all bulk regulations required by the Zoning Ordinance. (Exhibit 23; T.42-44) The site is heavily wooded and buffered from adjacent residences. (T. 45) Applicant has submitted a Landscape Plan, and the witness also noted that it satisfies all the requirements of the Landscape Manual. (Exhibit 15; T. 45) Approval of a Tree Conservation Plan in accordance with the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance is not required because "tree canopy coverage... woodland conservation and new stormwater management had already been addressed" when the revisions were made to the facility pursuant to permits issued by DPIE. A tree conservation plan will be required if grading is proposed in the future. (Exhibit 26, Backup p. 32; T. 44-45) Mr. Olekson agreed with the conditions of approval proffered by the Technical Staff. (T. 46-47)

(17) Mr. Michael Lenhart , accepted as an expert in traffic engineering and transportation planning, prepared a trip generation traffic memo (Exhibit 21) and testified in support of the Application. The traffic memo and testimony provided the following explanation as to why, from a transportation perspective, the use will not affect the community or the rights-of-way within the area:

- The facility has approximately 4,650-square-feet on the first floor and the lower floor. The request is to increase the number of residents from 8 to 16.
- The Institute for Transportation Engineers trip generation manual shows that the current use generates two trips in the AM peak hour and four trips in the PM peak hour. If the request is approved, there would be no change in the AM peak hour, and the PM peak hour would only have one additional trip, bringing it to five.
- The Transportation Review Guidelines define five (5) or fewer trips as a

de minimis impact, meaning it has a minimal effect on the surrounding transportation network.

- A traffic study is not required for this Special Exception, but even if this were a subdivision application, one would not be required since this is not the type of use for which a traffic impact study is mandatory. (T. 51) However, the Applicant must show that the use would not adversely impact the public health, safety, and welfare.
- The 30-foot-wide access to the site is adequate to serve the negligible amount of traffic.
- There are five (5) parking spaces on site. The Zoning Ordinance only requires one (1) space per four (4) residents.

(T. 52-59)

(18) Mr. Mark Ferguson, accepted as an expert in land use planning, prepared a Land Planning Analysis (Exhibit 33) and testified in support of the request. Mr. Ferguson provided the following synopsis of his reasoning for concluding that the request satisfies the applicable provisions of the Zoning Ordinance.

- The request is in harmony with the first two purposes of the Zoning Ordinance (Section 27-102(a)(1) and (2)) since: it is an expansion of an existing small congregate living facility; as such it will protect, the public health, safety and promote welfare by meeting the care needs of the burgeoning senior population in a facility that maintains the residential character and scale of the neighborhood; it implements the 2014 General Plan by providing context-sensitive infill and low to medium density development to a site within the Established Communities Category; it implements the 2006 Master Plan because it preserves and enhances the existing neighborhood by designing the addition in a manner that reflects the scale and character of the surrounding homes, it includes amenities within the facility which residents should enjoy, it has direct access to Temple Hill Road (an arterial roadway), the County's Bus Service has a route past the subject property, the use is needed in the area; and as noted in the Technical Staff Report's discussion of the Green Infrastructure Element of the County's 2017 Reserve Conservation Plan, its applicable provisions are furthered by the request.
- The purposes found in Sections 27-102(a)(3)- (8) and (10) are met since: the small size of the addition and the age/type of residents to be served will have minimal impact on the existing public facilities; the small expansion of an existing land use on a developed site would support orderly growth and development in the County; the property is fairly large, and has a wooded perimeter, and the expansion will be done in accordance with all applicable laws, thereby ensuring the provision of adequate light, air and privacy as well as the most beneficial relationship between the subject site and adjoining development;

- Sections 27-102(a)(9) and (12) are met since it is a local business that contributes to the tax base of the County and provides a much-needed social service in the County.
- Section 27-102(a)(11) is met since the site is already developed in accordance with the laws intended to lessen the danger and congestion of traffic, and the additional trips generated by the expansion will have a de minimis impact.
- The small expansion of a use on a development site should not generate undue noise, contribute to air/water pollution, and should protect the natural resources in the area. (Section 27-102(a)(13))
- Sections 27-102(a)(14) and (15) are not directly applicable, “except that approval of this use in an existing, developed location will lessen in a small way the pressure for sprawling development onto undeveloped or agricultural lands that form a great part of the scenic beauty of the County.”

(Exhibit 33, pp. 4-10)

(19) Mr. Ferguson found compliance with the applicable purposes for the R-R Zone in Section 27-429(a)(1)(C) and (D) because the expansion was done in a manner that satisfied the requirements of Subtitle 25 for Tree Canopy Coverage, and the expansion did not entail the disturbance of any ground. (Exhibit 33, p.10)

(20) He noted that the information reviewed indicates that all plans conform to all applicable requirements and regulations of the Zoning Ordinance. (Section 27-317(a)(2)) The use does not impair the integrity of the Master, Functional or General Plans for the reasons noted on pages 5-7 of his Analysis. (Section 27-317(a)(3)) The request will not adversely affect the health, safety, or welfare of residents or workers in the area since: the use satisfies all applicable laws in the County Code; the request is to modestly expand the existing use and its impact would be similar to that of a large family; most residents will be limited to the indoors so the use would generate a limited amount of noise or activity; and “the residential scale and character of the driveway and parking facilities will be sufficient to meet the needs of the facility without adverse effect on the health, safety, or welfare of the residents in the area.” (Section 27-317(a)(4); Exhibit 33, p. 11) Approval of the request will not be detrimental to the use or development of adjacent properties since the character of the facility is the same as the surrounding homes, and the activity on site are comparable to those that would occur in a single-family dwelling unit. (Section 27-317(a)(5)) The property is exempt from the requirements of approval of a Tree Conservation Plan, and the recent expansion and stormwater management installation was accomplished pursuant to a Numbered Letter of Exemption. (Section 27-317(a)(6)) There are no regulated environmental features on site. (Section 27-317 (a)(7)). Finally, the property is not located within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(21) Finally, the witness addressed compliance with Section 27-344(a) as follows: the Planning Department's Report and the General Plan note that the number of seniors is expanding, and Applicant noted an increase in calls asking about availability, thus there is a demonstrated need for the use (Section 27-344(a)); the cited provisions of Subtitle 12 have been removed from the County Code (Section 27-344(b)); and, the Applicant would testify as to the amount of square feet in each bedroom. (Section 27-344(c))

### **Opposition's concerns**

(22) Ms. Candice Barrett, an adjacent resident, offered the following testimony in opposition to the request:

The Tranquility Ridge facility is located feet from my home. We are indeed neighbors, in which I describe as a quiet micro neighborhood, but -- because there are about four homes that kind of sit in this nook, if you will, and the entrance, as stated previously, is from Suburban Court and also from an easement off of Temple Hill Road. Our micro neighborhood has been ... there for about twenty years, twenty to twenty-one years. Upon our arrival, we were welcomed and embraced. So I embrace Tranquility Ridge. Since their arrival, we did notice some small changes to the area. But we view that as kind of transitional period. There was an increase in vehicles, large commercial trucks, landscapers blocking portions of the easement, and also people searching for the facility, but again, nothing extremely impactful or that, you know, would warrant any type of complaint.

Again, we view this as a transitional period. And I have met the owner's daughter and a staff member. And again, they were very welcoming and friendly. So they have definitely been an added plus to the -- to the neighborhood. But with that stated, I don't have any issues with the facility location or zoning at its current maximum occupant number. However, I do have concerns with an exemption being issued to expand from eight to sixteen, and my concerns are as follows. Impact to the micro neighborhood. In prior discussion[s], we've been hearing -- I've been hearing the experts talk about impacts to traffic and to the residents and just the general area at the micro level -- macro level, but not at the micro level, which would be the direct neighbors.

So one of my concerns was the altering or change of the character of our neighborhood ....[I]t is a quiet neighborhood. And my concern is that with the increased number of residents, the increase --there will be increased number of visitors, increased... traffic[.] and that is --is some of the general issues that I -- that I have or concerns that I have. Additionally, because of where the facility locates their trash, which is directly adjacent to my house, I envision that there will be much more garbage as well. And again, it's because of where the location of the actual pickup is, which is further ... down the hill closer to my home. The other concern that I do have is also, as I stated previously ... the parking constraints for additional staff members, family, friends, also again, delivery vehicles and just general traffic -- yes, just general traffic.

The other thing that I have, which they've actually kind of already addressed, so thank you, ... that I may have to look into getting a privacy fence. But again, that concern has already been addressed, so I'll move on from there. And the additional concern that I



had is that they are a small facility. And again, I haven't had any negative experiences, so I don't want that to be a point of concern. So -- and again, I still welcome them and applaud her, the owner, this being her passion. But I do have concerns about, you know, this facility starting small, maybe going into a medium, and then maybe going into a large facility. As I had been listening, it sounds like that there can be additional growth. It does, as you stated, have to go through an approval process. So thank you for that information. But again, those are just some of my concerns that this would not be the end of the actual growth and that prior, as mentioned, this was a church facility. And we had a lot of issues, a lot of issues with parking from the congregation, even so much that they parked on the lawn. We tried to work out those complaints with -- directly with the owner. So I never reported anything officially. But again, it was just -- you know, that was my main concern with the facility possibly growing and even growing even more. And so in closing I would like to say I am not in favor of granting the exception to expand from eight to sixteen. Again, thank you for this opportunity to ... relay my concerns. Thank you.

(T. 90-94) Upon cross-examination, Ms. Barrett noted that her issue with the trash is that there have been occasions where there's so much of it, and not within the receptacle, that it blows onto her property. (T. 97-98)

### **Technical Staff and Other Agency Review**

(23) The Department of Permitting, Inspections and Enforcement ("DPIE") issued a Stormwater Management Concept Approval Letter that allowed the construction of the single-story addition and new ADA-compliant walkways to the Facility. (Exhibit 19) It also reviewed the Application and noted no objection to the proposal as it should have minimal impact on the surrounding road network. It also opined that "this plan is acceptable, consistent with the site design guidelines pursuant to [Subtitle 27], and meets the findings for pedestrian and bicycle transportation purposes" and that the request "is in conformance with the associated Site Development Concept Plan 53459-2017-00." (Exhibit 26, Backup pp. 36-38)

(24) The Technical Staff Report included a statement that the Health Department reviewed information on the current septic tank on site and believed it to be suitable to sustain the potential increase in wastewater flow, but urged that the property owner should continue proper septic system maintenance. (Exhibit 26, p. 14)

(25) The Prince George's County Planning Board ("Planning Board") Transportation Planning Section noted that the Special Exception Site Plan is acceptable from its standpoint, after noting that it is subject to the Master Plan and the Master Plan of Transportation. It did request that bicycle parking be provided. (Exhibit 26, Backup p.35)

(26) The Planning Department Community Planning Division did a thorough analysis of the Application's compliance with the various plans and determined that the request is consistent with the General and Master Plans Residential, Low-density land use

recommendations, and found no Master Plan conformance issues.(Exhibit 26, Backup pp. 39-42)

(27) After reviewing all of the Applicant's information and the comments from the various Divisions and County agencies, the Technical Staff recommended approval with conditions, after addressing the applicable provisions found in Sections 27-317, 27-344, 27-421.01, and 27-442 of the prior Edition of the Zoning Ordinance. A synopsis of its findings follows:

- Staff believed that all of the purposes in Sections 27-102(a) and 27-429(a) address the protection of the public health, safety, and welfare, and opined that they are met because the 9,223-square-foot Facility on a 3.63-acre lot accessed by a 365-foot-long driveway, and surrounded by a green buffer is physically compatible with the surrounding neighborhood. Moreover, there is no land disturbance proposed in the Application, and the few AM and PM peak-hour vehicular trips will have a minimal impact on the neighborhood. Accordingly, there should be no adverse impact on the public health, safety, or welfare.(Section 37-317(a)(1))
- Staff found compliance with all the regulations pertaining to the prior R-80 Zone found in Sections 27-344, 27-421.01, 27-442, the Landscape Manual, and Subtitles 24 and 25, since: there is a demonstrated need for the Facility as the various Plans noted the increase in the senior population and stressed the need to expand housing options for seniors and increase the housing types for the vulnerable to include the elderly, the homeless, and residents with special needs; and the separate bedroom square footages are shown on plans associated with the building permits issued for the renovation; the Site Plan shows that the minimum net lot area, lot/width frontages, and setbacks are exceeded and that the development falls well below the maximum lot coverage and building height requirements; the site has frontage and direct vehicular access to a public street; four parking spaces are required and five are provided; all requirements of the Landscape Manual are met; the request is exempt from the requirement if the Woodland and Wildlife Habitat Conservation Ordinance to provide a Tree Conservation Plan because the site is larger than 40,000 square feet and no grading is proposed; no specimen trees are proposed for removal, and there are no regulated environmental features; a preliminary plan of subdivision *may* be required; and there is no floodplain on the property.(Section 27-317(a)(2))
- The Master Plan is not substantially impaired since it recommends Residential-Low density land use and urges the maintenance of the unique character of established residential neighborhoods and the proposal falls below the recommended density and continues to look like a large home, complementary to the design of others in the area, on a lot with a lot of trees and landscaping, in character with the neighborhood. (Section 27-317(a)(3))
- The request will not adversely affect the health, safety, or welfare of residents or workers in the area since no additional development is proposed, existing trees currently buffer the Facility from adjacent neighbors and roadways, the Facility is

in character with the surrounding residential development, and the parking area illustrates safe internal circulation flow for pedestrians and vehicles on-site and entering/leaving the site. (Section 27-317(a)(4))

- The request will not be detrimental to the use or development of adjacent properties or the general neighborhood since the existing improvements only cover 10.8% of the site, the Facility is designed in architectural harmony with the existing surrounding homes, and existing trees buffer the Facility from adjacent properties and roads. (Section 27-317 (a)(5))
- The Application is exempt from the requirement to have an approved Tree Conservation Plan since there is no existing one associated and no trees are proposed for removal. (Section 27-317(a)(6))
- There are no regulated environmental features on the site. (Section 27-317(a)(7))
- The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317 (b))

(Exhibit 26, pp.6-12)

### **APPLICABLE LAW**

(1) The Congregate Living Facility may not be approved unless the request satisfies the provisions of Sections 27-317, 27-344, and 27-429 (a) of the prior Edition of the Prince George's County Zoning Ordinance.

(2) Section 27-317 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).
- (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.
- (3) Section 27-344 provides as follows:

**Sec. 27-344. Congregate living facility.**

- (a) A congregate living facility for more than eight (8) elderly or physically handicapped residents, as defined by Section 12-168(a) of this Code, may be permitted, subject to the following:
  - (1) There is a demonstrated need for the facility;
  - (2) The facility is in compliance with the physical requirements of Subtitle 12, Division 7, of this Code, and shall be operated in accordance with the licensing and other requirements of that Subtitle; and
  - (3) There shall be a separate bedroom of a minimum of one hundred (100) square feet for each resident, or a separate bedroom of a minimum of one hundred and sixty (160) square feet for every two residents, or any combination of the above, so as to satisfy the accommodations requirements of the "Regulations for Congregate Living Facilities" (required by Section 12-173(d) of this Code), for the maximum number of permitted residents.
- (4) The request must not impair the purposes of the R-80 Zone, found in Section 27-429 (a):
  - (a) **Purposes.**
    - (1) The purposes of the R-80 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 medium-sized 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.

**Special Exceptions**

- (5) 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.

(6) 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.’ ....

(7) 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)

## CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-102. The instant Application satisfies the following purposes for the reasons provided:

*To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

The request will provide an additional housing option for seniors or anyone who will need assistance as they age or face other physical challenges. The Congregate Living Facility was expanded pursuant to a permit issued by DPIE and meets all required bulk regulations, and a Numbered Letter of Exemption to provide modern stormwater management facilities. For these reasons, as well as others set forth in Exhibit 33 and the Technical Staff Report, this purpose is met.

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

As noted by the Technical Staff, the Statement of Justification, and the expert land use planning witness, the General and Master Plans will be implemented if the request is approved, since the Facility qualifies as context-sensitive infill development as the site is surrounded by single-family homes; it will provide an institutional use very similar to the surrounding single-family residences; the Master Plan recommends residential-low density of 5-7 dwelling units per acre and the site proposes a density of approximately 4.39 dwelling units per acre; the site is primarily wooded and screened from other properties and roadways; it is in close proximity to recreation (the Temple Hills Community Center and Henson Creek Park); and, there will be minimal impact on transportation facilities.

*To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities.*

The transportation planning expert and transportation staff found that the use should not impact school facilities and will generate fewer AM and PM peak-hour vehicular trips than those generated by the 20 single-family detached residences permitted by right.

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

The use will provide additional senior housing in conformance with the County's Ordinances and Plans, satisfying this purpose.

*To provide adequate light, air, and privacy;*

The Special Exception Site Plan includes all building dimensions, and there is adequate frontage, setbacks, and lot coverage to ensure the provision of adequate light, air, and privacy.

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

The proposed elderly housing will be required to satisfy all applicable zoning, environmental, and building requirements, and will provide a masonry wall and additional plantings to the north of the site, a wide side path along Westphalia Road for the use of pedestrians and cyclists, and will install a modern stormwater management facility – all of which ensures the most beneficial relationship between land and buildings, and protects landowners from adverse impacts.

*To protect the County from fire, flood, panic, and other dangers;*

Applicant must satisfy all County laws intended to protect the County from fire, flood and other dangers. All internal private roads must be designed for adequate fire emergency access and will be reviewed by the Fire Marshal. Adequacy of public safety facilities will also be revisited at the time of subdivision review. Accordingly, this purpose is met.

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

The request is to add a housing type more suitable for older residents who wish to age in place, as it has smaller lots, and all living areas located on the first floor, to be offered at competitive price levels. There's no way to ensure any housing will be within the economic reach of **all** County residents, however. There are recreational amenities onsite and a plan to connect to the adjacent park owned by MNCPPC, and these will help to create a suitable and healthy living environment.

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

Development of the property will provide employment opportunities and add to the County's tax base.

*To prevent the overcrowding of land;*

Applicant proposes to construct approximately 6 dwelling units per acre -the type of low-to-moderate-density housing recommended in the applicable Plans. Applicant will also satisfy all applicable setback and height requirements.

*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;*

Applicant must undergo subdivision review and transportation adequacy will be addressed further at that time. Applicant has presented information at this stage to show that the proposed use would generate less AM and PM peak-hour traffic than the single-family homes that could be developed by right on the property. The applicant will also have to improve Westphalia Road along its frontage and expand it for the needed multimodal sidewalk.

*To ensure the social and economic stability of all parts of the County;*

Providing much-needed senior housing that will allow residents to age in place satisfies this purpose.

*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;*

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

There are no regulated natural features on the subject property.

*To protect and conserve the agricultural industry and natural resources.*

There are no natural resources located on site and the site is not located within an agricultural area.

(Section 27-317 (a)(1))



- (2) The Application satisfies the applicable purposes of the R-80 Zone found in Sections 27-428(a) and 27-548.51 since trees and open spaces are being preserved, 100-year stormwater management is provided, development must be in accordance with the approved Sediment and Erosion Control Plan, and the dwellings will fall well within the height limitations and will meet the interior noise limitations for properties in proximity to Joint Base Andrews. (Section 27-317 (a)(1))
- (3) The Facility was expanded without disturbance to woodland. (Section 27-317 (a)(2))
- (4) The proposed use actually furthers several policies and goals within the Master Plan, and does not substantially impair the integrity of said Plan, for reasons noted above. (Section 27-317 (a)(3))
- (5) The proposed Facility was expanded in a manner that complemented the original footprint and is compatible with the adjacent homes, the lot is a large one and although the use is allowed to have 60% lot cover, there is only 10.8% lot cover; the site is wooded and landscaping is provided as required by the Landscape Manual; the traffic that will be generated if the request is approved is 5 or less additional trips per peak hour, a number defined as de minimis; the small parking area on the site plan and long driveway are designed in a manner with a safe circulation pattern for vehicles and pedestrians; and no departures or variances are required. Accordingly, 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 general neighborhood. (Sections 27-317(a)(4)) and 27-317 (a)(5))
- (6) There is no prior Tree Conservation Plan and the request is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance (Section 27-317(a)(6))
- (7) There are no regulated environmental features on the site. (Section 27-317 (a)(7))
- (8) The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))
- (9) The request satisfies the specific requirements for Congregate Living Facilities found in Section 27-344(a)(1), as the General and Master Plans note that the number of seniors residing within the County has continued to rise over the years. Aging brings various health challenges; concomitantly, a person of any age may face health challenges. The use addresses the need for safe, suitable housing for those who require assistance. Section 27-344(a)(2) cites a provision of Subtitle 12 that has been removed. Finally, Section 27-344 (a)(3) is addressed since a condition has been added to ensure that the bedroom sizes are either added to the Site Plan or attached thereto.

(10) The applicable purposes of the R-80 Zone found in Section 27-429 (a)(1) are also satisfied since the property will not be graded, thereby preserving the trees and open space on site, and preventing any further soil erosion thereon.

(11) As noted in Shultz and its progeny, Applicant has the burden of showing that its request would have no greater adverse impact at this site than it would at a similarly zoned site within the neighborhood, and need not show that the use would be of benefit to the neighborhood. Applicant's witnesses put forth sufficient evidence to show that the traffic impact should be de minimis (although that will be subject to further review); that the access is better from a transportation perspective than it would be elsewhere on site simply because it may prevent the "stop and starts" that occur by having accesses interspersed along the roadway; that the property will satisfy all applicable provisions without any variance from the provisions of the Zoning Ordinance; and that the request does not impair the applicable Plans. Since the record reveals 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 (to include the Zoning Ordinance itself), it would be proper to grant the request, once the conditions addressed below are satisfied.

(12) Ms. Barrett's concerns are valid, but they are of the type inherent in the use irrespective of its location, and similar to those that may arise if a single-family residence were on site (e.g., an increased number of visitors and associated increase in parking, traffic, and noise). She also raised an issue with trash collection, a unique aspect of the area's trash pickup. A condition has been added to address that concern.

### **DISPOSITION**

Special Exception 24006 is Approved, subject to the following Conditions:

1. Prior to certification of the special exception site plan, the following revisions shall be made, or information shall be provided:
  - a. Applicant shall rename the Site Plan to the Special Exception Site Plan, and the area shall be outlined in red.
  - b. Applicant shall revise the note on the Special Exception Site Plan that addresses the number of residents to include the maximum number of 16 residents.
  - c. Applicant shall add a note to the Special Exception Site Plan that states "Trash will not be put out more than one day prior to the scheduled collection, in a sufficient number of receptacles for containment thereof, and receptacles will be removed as soon as possible after collection."
  - d. Applicant shall add a note to the Special Exception Site Plan that indicates the number and square footage of each single and double occupancy bedroom, or the floor plans with square footage shall be attached to the Special Exception Site Plan.

- e. Applicant shall provide a minimum of two inverted U-style bicycle racks at a location convenient to the building entrance, in accordance with the 2006 *Approved Henson Creek-South Potomac Master Plan*.
  - f. Indicate the provided setback for the existing building in the notes.
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- 2. Prior to approval of a use and occupancy permit for more than eight residents, a preliminary plan of subdivision and final plat shall be required for the proposed development, unless the applicant demonstrates that an exemption is allowed pursuant to Subtitle 24 of the County Code (the Subdivision Regulations).

**[NOTE: The Special Exception Site Plan is Exhibit 23 and the Landscape Plan is Exhibit 15]**