

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

SPECIAL EXCEPTION

4749

TCP 2-008-14-01

DECISION

Application: Apartment Housing for the Elderly
Applicant: Bhagya Village, LLC.
Opposition: Dr. Ronald C. Carlson, David R. Brace, Raintree
Homeowners Association, *et. al.*
Hearing Dates: June 24, July 8, 2015, July 23, 2015 and
August 6, 2015
Examiner: Maurene Epps McNeil
Disposition: Denial

NATURE OF PROCEEDINGS

(1) Special Exception 4749 is a request for permission to use approximately 6.01 acres of R-80 (One-Family Detached Residential) zoned land as Apartment Housing for the Elderly and Physically Handicapped. Applicant is also requesting approval of TCP 2-008-14-01. The subject property is located on the east side of Cipriano Road, approximately 2,640 feet north of the its intersection with Good Luck Road, and identified as 6711 Cipriano Road, Greenbelt, Maryland. If approved, Applicant will construct a four-story, 215,378 square foot apartment building with 118 condominium units.

(2) The Technical Staff recommended approval with conditions. (Exhibit 35) The Planning Board chose not to conduct a hearing and adopted the Staff's recommendation as its own. (Exhibit 41(b))

(3) Several individuals appeared in opposition to the application at the hearing held by this Examiner. All were represented by the same counsel.

(4) At the close of the hearing the record was left open to allow staff to comment on Applicant's revised Site and Landscape Plans. Staff's comment was received on August 21, 2015 and the record was closed at that time. (Exhibit 102(b))

FINDINGS OF FACT

Subject Property

(1) The subject property is approximately 6.01 acres of R-80 zoned land. It is improved with a single-family home constructed in 1893. The home is not a historic resource or historic site. (Exhibit 35, p. 10)

(2) The subject property contains 1.58 acres within the 100-year floodplain; accordingly, the net tract area is 4.43 acres. (Exhibit 93(c)) The subject property is not exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because it is in excess of 40,000 square feet in area, and contains more than 10,000 square feet of woodland. A revised Type 2 Tree Conservation Plan has been submitted for approval (TCP 2-008-14-01). (Exhibit 13(a)) A National Resource Inventory and Forest Stand Delineation were approved. (Exhibits 18(a) and (b))

Surrounding Properties/Neighborhood

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

- On the north, a child care center in the R-80 Zone (Themba Creative Learning Academy)
- On the south, by single-family detached development in the R-80 Zone
- On the east, vacant County-owned land and a church in the R-80 Zone
- On the west, Cipriano Road and, across the right-of-way, a single-family residential development in the R-80 Zone

(4) The neighborhood is defined by the following boundaries: to the north, Greenbelt Road (MD 193); to the south and east, Good Luck Road; and, to the west, Cipriano Road.

Master Plan/Sectional Map Amendment

(5) The 2010 Sector Plan for Glenn Dale-Seabrook-Lanham and Vicinity recommends single-family low-density residential uses for the subject property. The request does not satisfy this recommendation, as it is more akin to a multi-family use. The Sector Plan also provided guidelines for infill development (such as the instant request):

Residential infill should be sensitive to existing neighborhood characteristics. The “feel” of a neighborhood is established partially through the scale and massing of its residential units and their relationships with each other and the street. Residential units should continue the rhythm established by setbacks and

compliment building or adjacent properties. Houses should not be disproportionate to the surrounding built environment and overwhelm units on neighboring properties.

(2010 Sector Plan and Sectional Map Amendment for Glenn Dale, Seabrook, Lanham & Vicinity, pp. 73-74)

Applicant's Proposal

(6) The Applicant wishes to construct a 215,378 square-foot four story, H-shaped building housing 118 condominium units. The net lot coverage will be 43.3%. The building height was reduced to 49 feet.¹ (June 24, 2015 T. 80-81)

(7) The units will have the following breakdown:

8 studio units; 3 1-bedroom units;
69 2-bedroom units; and
38 2-bedroom units with den.

(Exhibit 35; June 24, 2015 T. 60)

(8) Pursuant to Section 27-568 of the Zoning Ordinance, the Applicant must provide .66 parking spaces per dwelling unit, or a total of 78 spaces. A few additional spaces are required for the office within the facility. One hundred and nine (109) spaces are provided in an underground parking garage and 48 surface parking spaces are provided, presumably for visitors. (Exhibit 93(c); June 24, 2015 T.97-98) The Applicant's Site Plan indicates that eight (8) handicap parking spaces are provided and two (2) are van accessible. (Exhibit 93(c)) A loading space is required since there will be over 100 dwelling units. It was placed near the day care center to the north to avoid further impact to the adjacent dwellings to the south. (June 24, 2015, T.94-95) The Police Department recommended that the loading space not be placed in the front of the facility adjacent to Cipriano Road since landscaping requirements would reduce visibility. (June 24, 2015 T. 95)

(9) A photometric plan was submitted digitally as part of Exhibit 55. (June 24, 2015, T. 80) No foot candles will cross over Applicant's property lines.

(10) Applicant also submitted several renderings of the proposed use and its elevations. (Exhibits 54 and 55) The exterior will not have vinyl siding but a type of "fiber cement panel", red wire cut brick and stone in order that the building be virtually maintenance free. (Exhibits 47 and 48, June 24, 2015 T. 92)

¹ As a result, Applicant no longer needs alternative compliance to the provisions of the Landscape Manual and has withdrawn AC-14023.

(11) The Applicant submitted a draft of the proposed covenants. (Exhibit 3) They run to the benefit of the Maryland-National Capital Park and Planning Commission and indicate that all units will be occupied by an elderly or physically handicapped family. The covenants will be required to remain in effect for a fixed term not less than twenty (20) years.

(12) No medical services or commercial kitchen will be provided. (June 24, 2015 T. 91-92) However, the Applicant submitted sufficient evidence to establish that the use will serve the needs of the elderly families or physically handicapped families. Some of the amenities to be provided on site include:

- Activity courtyards overlooking environmental preserve areas
- Transportation services to shopping, local and planned distant activities
- Elevators
- Underground and surface parking
- An exercise room with equipment area and a space for dance/yoga, etc.
- A media library room
- A meeting room
- Sitting Porch
- An area to garden
- A five-foot wide sidewalk to connect throughout the site to Cipriano Road

(13) The building will be secure, designed with electronic locks and card readers, (an ability for visitors to be “buzzed” in), and a garage accessed by an electronic “reader”. (June 24, 2015 T. 98-99)

(14) The amenities offered to residents are valued at “over \$320,000.00”. (June 24, 2015, T.89)

(15) The Applicant pointed out the existing amenities near the subject property, to include the Cipriano Square Shopping Center approximately ½ mile to the north, the larger Greenway Shopping Center approximately 1 ¾ miles to the northwest, and a hospital to the south west.

Noise

(16) Scott Harvey, accepted as an expert in acoustical engineering, testified that the Applicant will construct a six-foot-high noise reducing fence along the northern and southern property lines to reduce any negative impact upon the Themba Creative Learning Academy (to the north) and the homes along Magnolia Drive (to the south). A sample of the fencing material was provided. (Exhibit 67) The fence will be an “AIL Turf-Barrier reflective sound wall” designed with a density “of more than four pounds

per-square foot and able to withstand a considerable wind live load.” (Exhibit 66(b), Appendix)

(17) Mr. Harvey prepared noise impact analyses for the proposed use. Current noise levels on site were measured from two locations on May 14, 2015. (Exhibit 66(b), aerial inserts). Afterwards a computer model was developed to address noise that could emanate from the proposed garage door entry to the underground parking and its drive aisle, the garage exhaust which will be located near the northwest corner of the garage (used to draw exhaust fumes through a shaft that leads to the roof), air-conditioning units with condensers in a well in the roof of the facility, the loading area/trash collection to the north, and the emergency generator (to be located inside the eastern side of the building).

(18) The witness explained that the Code of Maryland Regulations (COMAR) pertaining to noise exempts “noise from devices used solely for the purpose of warning, protecting, or alerting the public, or some segment thereof, of the existence of an emergency or hazardous situation.” (Exhibit 66(b)) Mr. Harvey believes this language would exempt back up beepers on any truck using the loading area (August 4, 2015 T. 106-107) COMAR also expressly exempts trash collections between the hours of 7 a.m. and 10 p.m. (Exhibit 66(b), Appendix; August 4, 2015 T. 107)

(19) The witness further explained that his biggest concern with the project had been possible noise from the garage door, given its proximity to the homes to the south of the site. He noted that the subject property being at a higher elevation “lowers the receiver height and it effectively increases the effective height of the barrier because the ... higher the barrier is the better it works.” (July 23, 2015 T. 47) However, it would also be better to use a “quieter” garage door. He found a rubberized vinyl door (the TNR HD CCDD) that he recommends be utilized:

The TNR door measured at 58 decibels at 10 feet So we bought ourselves a ... reduction which brings our calculated noise level down to 46. 46 is really quiet. Normal conversational speech ... at a distance of two or three feet is 65 decibels. So we're well below that

(July 23, 2015 T. 50)

(20) Mr. Harvey concluded that the proposal will meet COMAR noise standards if the following criteria are met:

- The garage door must meet noise level of 64 dBA or less when measured at a distance of 10 feet such as those manufactured by Albany Door or the quieter TNR Doors. These doors include both metal and fabric type which are constructed to be very quiet.

- Speed limit on the drive aisle accessing the garage shall be restricted to 15 mph.
- The emergency generator shall be placed completely inside the building for its exhaust and supply air noise to meet COMAR standards at receiving property lines. This will be achieved with the use of critical exhaust mufflers, inlet and outlet air silencers, and a noise fence as necessary.
- The garage exhaust fan shall be designed to meet COMAR standards at receiving property lines.
- The noise fencing along the northern and southern property lines shall meet minimum acoustic standards of 31 STC such as those produced by AIL Sound Walls.
- Use of the loading area shall be limited to the following schedule:

Monday through Friday	7:00 AM to Noon
Saturday and Sunday	9:00 AM to 2:00 PM

(Exhibit 66(b), p. 6)

(21) Finally, the witness explained that “[t]he traffic noise impacting the front of the building is below 65 dBA Ldn therefore the building does not warrant special mitigation to meet guidelines of 45 dBA Ldn for interior noise levels.” (Exhibit 66(b), p. 6) The Applicant will install signage to indicate that the maximum speed in the drive aisle entering and exiting the garage will be 5 miles per hour to further reduce the possibility of vehicular noise on site. (July 23, 2015 T. 51-52)

Stormwater

(22) Applicant submitted a stormwater concept plan that set forth a concept narrative which explained site conditions and the stormwater management that it will provide:

Concept Narrative: In accordance with Environmental Site Design (ESD), MDE SWM Design Manual Chapter 5, a comprehensive design approach utilizing strategies that replicate natural hydrology was utilized for storm water management at the site.

The site is located ½ mile northeast of the intersection of Cipriano Road and Good Luck Road. The subject site...consists of forested area (4.4 acres) and a large lawn area surrounding the existing building (1.61 acres). The site also includes 100 year floodplain area and wetlands on the east side of Bald Hill Branch. The proposed improvements will include development of a condominium complex with 118 condos, 50 surface parking spaces with drop off facilities. The proposed improvements will add approximately 1.76 acres of new impervious area. Proposed improvements will not have any impact to the 100-year floodplain and floodplain buffer and non-tidal wetlands. A natural resources

inventory/forest stand delineation study of the subject site has established that there are no steep slopes and other natural resources within the footprint of the proposed development. The proposed improvement will impact the existing forest which will be compensated by reforestation and/or fee-in-lieu. A detail FSD plan will be submitted to address any forest obligation.

The natural conveyance of storm runoff through existing site comprises of sheet flow on the west of Bald Hill Branch and open and closed storm system on the east side of Bald Hill Branch. All proposed improvement will be on west side of Bald Hill Branch. There will be no impact on the east side of Bald Hill Branch. On the west side of Bald Hill Branch runoff sheet flows from Cipriano Road to the Bald Hill Branch through existing floodplain buffer and forest area. In proposed conditions, the runoff through this development is conveyed to the proposed bioretention facility which in turn outfalls the filtered runoff to the existing floodplain buffer and forest area. The outfall from bio-retention facilities and closed storm drain systems will outfall as concentrated flow and the flow will spread out within short distance and maintain existing sheet flow condition. Thus, there will be no change in the overall drainage pattern.

The site design promotes the development of the condominiums with one direct access from the Cipriano Road and thus minimizes additional impervious areas. The proposed improvements will include one drop-off facility and one access road to loading and unloading areas located in the south side of the proposed buildings. This design ensures that the impervious areas created are minimum. In addition proposed design also includes grass median in the surface parking area and drop-off areas. Unnecessary connections necessitating the requirements of private drives and walkways that generate additional impervious areas are minimized. All the runoff from the proposed buildings are conveyed to the bio-retention facilities via roof drain and closed storm drain systems. All parking and driveways are conveyed to the proposed bio-retention facilities and pervious pavements via sheet flow. ESD to MEP is provided for proposed improvements.

The grading patterns in rough grading mimic the final grading; this practice ensures that the land disturbance occurs once and once stabilized will not require additional disturbance. Super Silt fence is proposed along the floodplain buffer as shown in the concept erosion and sediment control plan. Super silt fence will capture all sediment laden runoff that sheet flows from Cipriano Road to the east during rough and final site gradings....

(Exhibit 17(b))

Land use

(23) Joseph Del Balzo, accepted as an expert in the area of land use planning, testified that the Application satisfied all applicable provisions of the Zoning Ordinance. Mr. Del Balzo also believed the height of the building would not negatively impact the neighboring homes, reasoning as follows:

Okay. So we're talking about the, the height of the building and the impact on the adjoining property. So I think when you, when, you know, when we look at the height of the building and the impact of this property, the adverse impacts, the very first sentence of this one says what are the, will not adversely impact the character of the surrounding residential community. So this is a residential use. The surrounding, the surrounding uses are residential. This is not uncommon in the county where you have multi-family buildings next to single family homes. And I've got some examples that we're going to talk about a little bit later. About how they co-exist and there don't seem to be a problem with their co-existing. So that's, that's the overall in, in the, in the county. Narrowing down and focusing in and zooming in on this property, what are some of the, what are some of the things that could be adverse impacts on the adjoining properties? We, we talk about the visual impact. We talk about the buffering. So I, I can't, I'm sorry, but I can't separate them because I think they're together. And the visual impact and the landscaping that softens that impact is, is very important. First of all, there's nothing intrinsically adverse about a large building behind single family homes. This is not, this is at least 50 feet from the property line and it is, oh, I don't know, the closest one is 70, maybe 65 feet from the closest home. I have examples that I'll show you later where there are similar buildings closer to single family homes. So what we've done here is we have landscaped, we've over-landscaped this. You know, there's been some suggestion that well, maybe the trees are too big and they're all going to die and the bottom line is we could, we could take out half of that landscaping and we would still be, meet the minimum requirements. We are over-landscaping it with the intent of softening that view from these single family homes to that, to that building...

(July 23, 2015 T. 237-238)

Conditions

(24) The Applicant avers that the proposed use will be in conformance with the applicable provisions of the Zoning Ordinance. No variations or variances are required for the requested use. The Applicant also noted that it agrees with all of the conditions of approval recommended by the Technical Staff with a slight amendment to a recommended condition concerning a shuttle schedule for transporting the residents. (June 24, 2015 T. 61) The Applicant would prefer a note be added that simply stated that shuttle service will be provided. (Exhibit 50)

(25) Those in opposition to the request met with Applicant on several occasions prior to the hearings held by this Examiner. They ultimately provided lists of conditions to address some of their concerns. (Exhibit 35, pp 108-111 and 118; and Attachment to

Exhibit 51(b)) Applicant also submitted proposed conditions that addressed many of those raised by the Opposition. For example, it did suggest the addition of noise fencing, additional landscaping and changes to the garage to address concerns about noise, headlight glare, and vehicle exhaust from cars entering the underground parking area. The loading space will only be used during certain hours to reduce any impact on the children attending the Themba Creative Learning Center. Applicant did not increase the size of the landscape yard to the south, but did increase the size of the proposed plant material to better buffer its building. It agreed to conditions to lessen the possibility of flooding the homes to the south along Magnolia Drive, and will grade an area to the north east to lessen any stormwater runoff onto Themba Creative Learning Center property. (Exhibit 51(b)) Applicant would not consider a revision to its building to reduce size or height, however.

Opposition's Comment

(26) The Opposition's primary concerns with the proposal is the mass/height of the building, the location of the entrance to the underground parking facility, and the impact that construction on site may have on stormwater runoff and the floodplain in the area.

(27) The building is seen as too large for the site. As noted above, it is four stories above ground with a below ground parking garage. The proposed facility will only be approximately 51 feet from its southern property line. The closest home to the south is only approximately 67 feet from the facility. Although landscaping will provide some screening when the trees are fully grown, residents of the apartment building on the third and fourth floors on the southern portion of the building will be able to see into the yards and northern facing windows of those homes. Cars accessing the underground parking will be entering the garage fairly close to those homes. The opposition therefore believes this will adversely affect their privacy rights, health and safety.

(28) The opposition presented a witness, Anthony D. Redman, accepted as an expert in land use planning. Mr. Redman prepared a report and power point on his review of the instant request. (Exhibits 84 and 85)

(29) Mr. Redman opined that the request did not satisfy all applicable provisions of law. He offered the following in support of his opinion:

The staff report states... the use itself is residential in character. However, the 61-foot-high multifamily apartment building in the middle of a single-family neighborhood does not fit within the scale of the neighborhood.... This staff finding [is] unsupportable due to the following facts:

- The proposed building of 215,000 square feet is approximately ... 112 times larger in floor area than the homes adjacent to the site or located in the

neighborhood. In fact, assessment data within the neighborhood places the average home size at less than 2,000 square feet.

- At 118 units, the density for this project eclipses the number of units per acre for other elderly and handicapped senior housing projects involving special exceptions considered by the County, regardless of the zone in which they were located. The proposed density of 19.63 units per acre, or 26 units per “buildable” acre is substantially higher than any project heard as a special exception, that was approved, approved with conditions, or disapproved. Even the one with the highest density and smallest acreage (Trinity Terrace) (SE-4419) only had a height of 38.5 feet, 22.5 feet shorter than the Bhagya Village project at 61 feet.
- The shear mass of the building will dwarf homes in the neighborhood and tower over adjacent residences on Magnolia Drive.

(Exhibit 84)

Agency Comment

(30) The Technical Staff recommended approval with conditions. (Exhibit 35) In reaching its recommendation it provided the following analysis:

The proposed building footprint and its parking lot take up vast majority of the useable land on an environmentally-constrained site. The applicant is proposing a mixture of both indoor and outdoor recreation activities designed to foster interaction amongst residents. The submitted site plan and floor plans indicate some indoor social and recreational amenities including fully equipped exercise room, Billiards room, library, movie lounge, and a large multipurpose room. Outside there are two seating and dining areas at upper and lower courtyards at the rear of the building with seating elements. Also, 12-planter boxes are shown on the site plan as an active recreational amenity. However, the Environmental Health Specialist of Prince George’s County Health Department, has completed a health impact assessment review of the special exception submission. The memorandum dated December 31, 2014, has stated that “there is an increasing body of scientific research suggesting that community gardens enhance nutrition and physical activity and promote the role of public health in improving quality of life. The developer should consider setting aside space for a community garden.” Furthermore, staff estimates that a building of this size would have over 300 residents; therefore, the proposed 12-planter boxes are not sufficient to meet the health departments’ requirements for the community garden for 300 residents. Hence, therefore, staff advises that the applicant consider some outdoor active recreation facility in the form of tennis court, bocce ball court or horseshoes court to demonstrate mix of active outdoor recreational amenities to serve its future residents and their families who will have varying level of physical ability. Staff recommends that the western portion of the site designated as a future parking lot expansion be repurposed as the site for additional active outdoor recreational amenities for the project.

In addition, the Planning Department guidelines suggest that a recreational package with a value of approximately \$118,000 be provided, and include elements such as outdoor seating, picnic areas, walkways, and game courts. Although the applicant meets the requirement of the guidelines, there are no active outdoor recreational amenities being offered by the applicant....

The applicant is proposing housing primarily for the elderly and though not specifically marketing to physically handicapped families, applicant had stated in the statement of justification that at the time of purchase, some of the units could be designed by owners in accordance with Americans with Disabilities Act (ADA) requirement as necessary. The four-story building will have three elevators ensuring a full range of accessibility. The retirement-aged community seeks out housing that allows them to remain active without the necessary maintenance that a house and yard entails. This is the type of housing being proposed by the applicant. Both one-and two-bedroom units and studio units are proposed to accommodate a wide variety of family situations and housing needs.

The proposed development is within a one-half to two-mile radius of churches, shopping centers, grocery stores, restaurants, bank, medical offices and other specialty shops. According to the applicant's statement of justification, the closest shopping center with a grocery store is located one-and a-three-quarter mile northwest of the subject site, at the intersection of Greenbelt Road (MD 193) and Hanover Parkway. It is anticipated that some of the incoming occupants will have cars but not all. Some residents will need to rely on public transportation such as the County's "The Bus" service located approximately one-third mile north at Cipriano Road and Brae Brook Drive intersection. Additionally, "Metro bus" service stop is located within approximately one third mile south at the intersection of Cipriano Road and Tuckerman Street intersection. Furthermore, the applicant is proposing to provide shuttle transportation services for its residents to shopping center and to other nearby services. The private shuttle schedule has not been provided at this time. The applicant did not specify any shuttle service schedule, such as days and time of the week the shuttle will be available. Staff recommends that prior to zoning examiners hearing, the applicant should submit a shuttle schedule showing specific time, and days of the services.

With regard to the security of the residents, applicant is proposing gated entry system and card to access at entries. Also, there will be video monitoring surveillance camera on-site. Location of the surveillance cameras are not shown on the site plan. Applicant shall include a note on the site plan indicating the location of the video surveillance camera on the site....

The use itself is residential in character. However, the 61-foot-high multifamily-apartment building in the middle of a single-family development does not fit within the scale of the neighborhood.... [To] reduce the visibility of the building... the applicant is offering additional fast-growing plant materials densely screen the surrounding single-family development. Nonetheless, staff believes that natural and manmade features of the property in the form of 110-year floodplain, woodland conservation, landscaping, fence, adequate green area (47.9%) and building setbacks could substantially reduce

the perception of the proposed density, the visible mass of the building, and its effect on the surrounding residential communities. Therefore, staff believes that the proposed use will not adversely affect the character of the surrounding residential community....

(Exhibit 35, pp. 7-9)

(31) The Environmental Review Section of the Maryland-National Park and Planning Commission noted that Applicant has “to meet the water quality and control requirements for their property” and DPIE will require more of Applicant as it gets “further into the design of the site [and seeks] final stormwater approval.” (June 24, 2015 T. 50- 56)

(32) The subject property is adjacent to Cipriano Road, a Master Plan arterial roadway. (Exhibit 26) The Transportation Planning Section noted that the critical intersections with Cipriano Road, in the area, will continue to operate at an acceptable level of service - no lower than a B during the AM peak hours and C during the PM peak hours - if the Application is approved. (Exhibit 35 p. 28)

(33) The Technical Staff noted that the Application would be adequately served by existing fire and ambulance services, and police services. (Exhibit 35, pp. 86-87)

(34) The Department of Permitting, Inspections and Enforcement (“DPIE”) issued a Stormwater Management Concept approval in which it noted the following conditions:

- Water quality requirements: permeable pavement, micro-bioretenion
- If the residential project is proposing a below ground basement, at the time of building permit review, please provide the reviewer with a geotechnical report to determine underground water table as per CB-94-2004
- No structures to be built within 25 feet of the 100-year floodplain....
- Outfall stability will be evaluated at each discharge point. Stable outfalls will be required at all discharge locations

(Exhibit 17(a))

(35) DPIE offered additional comment as to what the Applicant will do to prevent water runoff:

The proposed permeable pavement and micro-bioretenion facilities will include perforated underdrain pipes that collect and convey infiltrated water to the storm drain system in accordance with the County’s stormwater design manual. Additionally, we will require the applicant to include a impermeable liner along the bottom of micro-bioretenions facilities No. 6A and No. 12 to prevent the infiltration of water.

Under existing conditions, the site being developed drains towards the homes on Magnolia Drive on the south side and towards the Themba Creative Learning Center on the north side. The development proposes to alter the drainage pattern such that a smaller portion of the site drains towards the north and south.

In order to not contribute towards alleged wet basement matters affecting the adjacent neighborhood, the developer will be asked to install a yard inlet in the proposed landscape buffer to collect some surface runoff from reaching this homes on Magnolia Drive.

A soils investigation report which includes subsurface exploration and a geotechnical engineering evaluation for the proposed building is required.

(Exhibit 35, p. 72)

(36) The Prince George's County Police Department requested that Applicant remove seven American Holly trees located between the front parking lot and Cipriano Road to "allow improved natural surveillance contributing to a safer environment for all occupants." (Exhibit 35, p. 81) The Department also recommended that the sidewalks leading to the outdoor lounge area for residents be illuminated. (Exhibit 35, p. 81)

Statutory Considerations

(37) The instant request for a Special Exception for Apartment Housing for Elderly or Physically Handicapped is permitted in the R-80 Zone subject to the requirements of Sections 27-317 and 27-337 of the Zoning Ordinance.

(38) Section 27-317 requires that the following findings be made prior to the grant of any special exception:

- (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.

(39) Section 27-337, in pertinent part, states:

(a) Apartment housing and related facilities for elderly or physically handicapped families may be permitted within and on the property associated with an existing building, which was formerly used for a public school that has been declared surplus by the government entity which owns (owned) it (known as a surplus public school building), subject to the following:

(1) In addition to the requirements of Section 27-296(c), the site plan shall show the density, and the type and total number of dwelling units proposed;

(2) The District Council shall find that the subject property is suitable for the type of development proposed, and is of sufficient size to properly accommodate the proposed number of dwelling units;

(3) Recreational and social amenities for the residents may be provided, if shown on the site plan and approved by the District Council; and

(4) The height, lot coverage, density, frontage, yard, and green area requirements, including restrictions on the location and height of accessory buildings, as specified for the zone in which the use is proposed, shall not apply to uses or structures provided for in this Section. The dimensions, percentages, and density shown on the approved site plan shall constitute the regulations for development under a given Special Exception.

(b) Apartment housing and related facilities for elderly or physically handicapped families may be permitted within a building other than a surplus public school building, subject to the following:

(1) The owner of the property shall record among the Land Records of Prince George's County a Declaration of Covenants which establishes that the premises will be solely occupied by elderly or handicapped families for a fixed term of not less than twenty (20) years. The covenants shall run to the benefit of the Maryland-National Capital Park and Planning Commission;

(2) In the R-18, R-18C, R-H, and R-10 Zones, the following shall apply:

(A) The owner shall be a private, nonprofit organization;

(B) In addition to the requirements of Section 27-296(c), the site plan shall show the density, type, and total number of dwelling units proposed. The minimum net lot area may be reduced and density may exceed that normally permitted in the applicable zone, provided that:

(i) The net lot area shall not be less than fifty percent (50%) of the minimum net lot area normally required in the zone; and

(ii) The density shall not be greater than twice that normally allowed in the zone;

(3) In the C-S-C Zone, the following shall apply:

(A) The subject property shall contain at least two (2) contiguous acres, and shall not contain more than forty-eight (48) dwelling units per acre of net lot area. The density may be increased by one (1) unit per acre for each one thousand (1,000) square feet of indoor space available for common use by the residents for social, recreational, or educational purposes. The indoor space shall be shown on the site plan;

(B) Not less than fifty percent (50%) of the net lot area shall be devoted to green area; and

(C) The District Council shall find that existing development and uses in the neighborhood (particularly on adjacent properties) will not adversely affect the proposed development;

(4) In the R-R, R-80, and R-55 Zones, the following shall apply:

(A) The requirements of paragraphs (1), (2), (3), and (4) of Subsection (a), above, shall be met;

(B) The District Council shall find that the proposed use:

(i) Will serve the needs of the elderly families or physically handicapped families; and

(ii) Will not adversely affect the character of the surrounding residential community. The

District Council shall consider the lot size, height of the building, lot coverage of all buildings on the property, setbacks from surrounding properties, street frontage, and sufficiency of green area when determining the proposed development's effect on surrounding residential communities.

(c) For the purposes of this Section, the term "elderly family" means a family which is included within age restrictions in conformance with the Federal Fair Housing Act and "physically handicapped family" means a family in which the head of the family, or his dependent, is physically handicapped. A person shall be considered physically handicapped if he has a physical impairment which:

- (1) Is expected to be of continued and indefinite duration;
- (2) Substantially impedes the ability to live independently; and
- (3) Is of a nature that the ability could be improved by more suitable housing conditions.

(40) A special exception use should be approved unless it can be demonstrated that "there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. "Turner, 270 Md. at 54-55, 310 A.2d at 550-51 (1973); Deen, 240 Md. at 330-31; 214 A.2d at 153 (1965); Anderson, 23 Md. App. at 617-18, 329 A.2d at 720, 724 (1974)." Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981); See also, Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are listed in Section 27-102. The purposes furthered by this request to provide additional apartment housing for seniors are as follows:

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

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

The provision of elderly housing and recreational amenities for the residents thereof furthers these purposes.

To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions

The elderly housing will minimally impact the transportation facilities in the area, thereby meeting this requirement. (Section 27-317 (a)(1))

(2) Once the Departure (subject of a separate Application) is granted, the use will be in conformance with most of the applicable regulations of the Zoning Ordinance. (Section 27-317(a)(2)) A revised Tree Conservation Plan is being considered with the instant Application and the proposed site plan is in accordance thereto. (Section 27-317(a)(6)). The site plan demonstrates that any impact to the regulated environmental fixtures will be limited to one stormwater management outfall that is necessary for the proposed development. (Section 27-317(a)(7)) The subject property is not located within the Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(3) The site plan shows the density and the type and total number of dwellings proposed. (Section 27-337(a)(1)) Some of the recreational and social amenities provided residents are shown on the site plan. (Exhibit 99; Section 27-337(a)(3)) The site plan includes information on the height, lot coverage, density, frontage, green area and other dimensions for the site. (Section 27-337(a)(4)) Covenants restricting the subject property to use by the elderly and/or physically disabled have been provided and will be recorded in the land records for Prince George's County. (Section 27-337(b)(1)) The proposed use is to be located in an area that has relatively few such facilities but in which many seniors currently reside. Therefore, it is more than probable that this addition will also serve the needs of the retirement-aged community or physically disabled families. (Section 27-337(b)(4)(B)(i))

(4) This case is unusual in that both sides agree that the use itself is acceptable at the location. The disagreement focuses on the sheer size of the proposed building, and to a lesser degree, the possible impact on the floodplain and traffic. I believe Applicant has satisfactorily addressed the latter two. There is no indication that the traffic to be generated by the request will negatively impact the critical intersections in the area. Additionally, DPIE has preliminarily approved Applicant's stormwater management for the site and will re-access it prior to the issuance of permits to ensure adjacent properties are protected.

(5) However, I must expressly find that the use will not substantially impair the intent of the Master Plan and will not adversely affect the character of the surrounding residential property; will not be detrimental to the use or development of adjacent properties; that the subject property is suitable for the type of development proposed; and is of sufficient size to properly accommodate the proposed number of dwelling units. (Sections 27-317(a)(3), (4) and (5); Sections 27-337(a)(2)) and Section 27-337(b)(4)(B)) I cannot make these findings.

(6) I do not believe the subject property is of sufficient size to properly accommodate the proposed number of dwelling units which are driving the height of the building. (Section 27-337(a)(2) and (b)(4)(A)) As a result, I cannot find that the use will not adversely affect the character of the surrounding residential property. As proposed, the four story building will tower over the properties to the south in a manner that will infringe upon their expectations of privacy. This type of infill development is also not in

furtherance of the Sector Plan's guidelines for residential development discussed *supra*. Applicant has done a yeoman's task of trying to fit this beautiful, but large, square peg into a round hole but it cannot. It must design a smaller building with a larger setback from adjacent properties, to minimize adverse impact upon those landowners.

DISPOSITION

Special Exception 4749 and TCP2-008-14-01 are denied.