

LAND PLANNING ANALYSIS

Sterling Care Hillhaven

Prepared in connection with
Special Exception SE-24003

Prepared by:
Mark G. L. Ferguson, R.A.



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Adelphi, Maryland

This report is written to consider the planning matters relevant to Special Exception application SE-24003 for approval of an expansion of an existing nursing or care home facility to 162 beds, and including the addition of new land area to the special exception area, on a site in the RR Zone (prior R-R Zone), under the provisions of the prior zoning ordinance, pursuant to the provisions of Sections 27-1704(d) and/or 27-1903(b) of the Zoning Ordinance. This report will also consider a request for Alternative Compliance for a landscaped bufferyard and to allow the planting of trees on slope steeper than 3:1, and a variance from the provisions of Subtitle 25 to permit the removal of two specimen trees.

THE PROPERTY

Location -	The east side of Power Mill Road (Maryland Route 212), approximately 850 feet north of its crossing of Paint Branch
Address -	3210 Powder Mill Road
Municipality -	None.
Current Zoning -	RR (Residential, Rural)
Prior Zoning -	R-R (Rural Residential)
Gross Acreage -	8.3447 Acres
Rights-of-Way -	Powder Mill Road (MD 212) – Variable (Ultimate 80') Pleasant Acres Drive – 50'
Frontages -	Powder Mill Road – 723.20' Pleasant Acres Drive – 295.26'
Zoning Map -	213NE3 & 214NE3
Tax Map -	Tax Map 18, Grids A-2 & B-2
Subdivision -	Lots 1 & 2, "Malin Subdivision," recorded in Plat Book NLP 123 at plat 90; and Tax Map 18, Parcels 23, 24 & 108
Historic Sites -	The Gallant House (County Historic Site #61-013)
Councilmanic District -	1

Master Plan & SMA - The subject property is located in Planning Area 61. The applicable Master Plan is the *Approved Master Plan and Sectional Map Amendment for Subregion I (Planning Areas 60, 61, 62, and 64)*, approved on May 10, 2010.

The Master Plan's Land Use Map designated the subject property for "Low Density Residential" future land use.

The most recent Sectional Map Amendment in May, 2010 retained the subject property in the previously-existing R-R Zone, and the 2022 Countywide Map Amendment reclassified it to the comparable RR Zone.

The Growth Policy Map in the May, 2014 General Plan placed the property in the Established Communities growth policy area. The printed Generalized Future Land Use Map in the General Plan designated it for "Residential Low" land use.

The subject property is not within a Priority Preservation Area.

NEIGHBORHOOD DEFINITION

The neighborhood of the subject property was defined in the Technical Staff Report by the following boundaries:

South & East – Capital Beltway (I-495)

West – County Line

North – Cherry Hill Road

This planner finds this neighborhood to be unduly large given the low intensity of the use, the substantial change in use character and use intensity along Cherry Hill Road west of its intersection with Powder Mill Road and the substantive barriers to the south and west in the form of the wooded stream valley of Paint Branch and the unbroken perimeter barrier of the U.S. Army Research Laboratory. Accordingly, this planner would define the neighborhood in a more constrained fashion, as follows:

West – U.S. Army Research Laboratory

North – Coffman Road (U.S. Army Research Laboratory access road)

East – Cherry Hill Road & I-95

South – Paint Branch/Southern boundary of Subregion I

This planner also notes that this is the same neighborhood approved in the earlier grant of Special Exception SE-3505 when the nursing home was previously expanded to 60 beds in 1984 and very similar

to that approved in 1995 with the grant of SE-4197 approving a further expansion to its current capacity of 126 beds.

PROPERTY LOCATION AND NEIGHBORHOOD INSPECTION

The subject property comprises a combination of two recorded subdivided lots and three unsubdivided tax parcels. There are existing dwelling structures on two of the tax parcels, while the southeasternmost parcel is vacant. The subject property is located on the west side of Powder Mill Road, a collector roadway. The existing nursing or care home facility has access from Powder Mill Road via two entrance points, and there is a driveway serving the dwelling structure on Parcel 108 which loops between Pleasant Acres Drive and Powder Mill Road. The property is a mix of wooded and previously-developed areas. An unnamed tributary of Paint Branch runs across the property behind the existing nursing home structure; the stream valley of that unnamed tributary and all of the property area to the northwest of it is wooded.

Surrounding the subject property to the northeast and southwest are single-family dwellings in the RR Zone, with single-family dwellings in the RR and RSF-95 Zone also occupying the remainder of the defined neighborhood area, except for a portion of the Paint Branch Stream Valley Park in the ROS Zone at the southern edge of the neighborhood, and house of worship of the First Hijrah Foundation in the RR Zone directly across Powder Mill Road from the subject property. A historic site, the Gallant House, is close to the property boundary of Parcel 23, separated only by the pipestem of abutting Parcel 22 to the southwest. Finally, a former "retirement home" in the RR Zone, now owned by a church, abuts and is southwest of the wooded portion at the rear of the subject property

DESCRIPTION OF THE PROPOSED USE

The proposed use for Special Exception application SE-24003 is the construction of a 36-bed expansion to the existing nursing home (to a new total of 162 beds), including an attendant expansion of the parking and associated stormwater management systems, and a widening of the driveway serving the dwelling structure on Parcel 108 for improved firefighting access.

CRITERIA FOR APPROVAL

The criteria for approval of a Special Exception for a nursing or care home in the prior R-R Zone are the general criteria for approval of a Special Exception of §27-317(a) of the prior zoning ordinance, and the Additional Requirements of Section 27-364(a)(6) for a Nursing Or Care Home In All Other Zones Where This Use Is Permitted By Special Exception, Where Eleven (11) Or More Persons Are Cared For. The criteria for approval of the Alternative Compliance and the variance from the provisions of Subtitle 25 will be discussed, following.

Compliance With Section 27-317:

Section 27-317(a) of the prior zoning ordinance provides that a Special Exception may be approved if:

27-317(a)(1) The proposed use and site plan are in harmony with the purpose of this Subtitle;

The prior zoning ordinance has a hierarchy of Purposes, for the Ordinance as a whole, and for the R-R Zone in specific. Each of these series of purposes is addressed, following.

The fifteen purposes of the prior zoning ordinance are laid out in section 27-102(a). The harmony of the subject project with these purposes is as follows:

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

The proposed nursing home expansion will be developed in accordance with modern development regulations to provide modern stormwater management and landscaping, protecting the public health and safety. The proposed development will include landscaping and tree preservation to meet the Landscape Manual, forest conservation and tree canopy coverage requirements, and that design, as well as the construction of a retaining structure around the proposed parking area in front of the proposed addition, will maintain much of the substantial visual buffer to the facility and from Powder Mill Road and from the neighboring dwellings to the southwest, and will thus continue to provide a comfortable and convenient environment for its residents and promote the comfort and welfare of the present and future inhabitants of the County.

(2) To implement the General Plan, Area Master Plans, and Functional Master Plans;

The relevant plans which apply to this site are the 2014 General Plan, the 2010 *Approved Master Plan and Sectional Map Amendment for Subregion I (Planning Areas 60, 61, 62, and 64)*, and a number of Functional Master Plans, including the Resource Conservation Plan (which includes the Green Infrastructure Plan), the County Master Plan of Transportation, the Public Safety Facilities Master Plan, The Historic Sites and Districts Plan, and the Water Resources Functional Master Plan.

General Plan

As noted above, the General Plan classified the subject site in its Growth Policy Map¹ in the Established Communities category. The printed Generalized Future Land Use Map² designated it for Residential Low land use.

“Established Communities” are described by the General Plan as “the County’s heart – its established neighborhoods, municipalities and unincorporated areas outside designated centers,”³ and recommends

¹ M-NCP&PC, *Plan Prince George’s 2035 – Approved General Plan* (May, 2014), p. 107.

² *General Plan*, p. 101.

³ *Ibid.*, p. 106.

that, "Established communities are most appropriate for context-sensitive infill and low- to medium-density development...."⁴

It is this planner's opinion that the approval of the subject application would be context-sensitive infill development by virtue of (1) the architectural and site design and landscaping of the proposed addition; and (2) by virtue of the long existence of this use on the subject property.

Master Plan

As noted above, the applicable Master Plan is the *Approved Master Plan and Sectional Map Amendment for Subregion I (Planning Areas 60, 61, 62, and 64)*, approved on May 10, 2010. The appended "Future Land Use" map recommends the subject property and the entirety of the defined neighborhood for "Residential Low" land use.⁵

The Master Plan contains a number of more specific goals, policies and strategies which are relevant to the proposed development. These are discussed as follows:

The first policy of the Development Pattern Element for the portion of Subregion I in the Developing Tier is, "preserve and enhance the suburban neighborhood character."⁶ While the strategies laid out in the Development Pattern Element to implement this policy are not applicable to the proposed nursing home expansion, the discussion of this policy in the Living Areas Element proposes strategies of:

- "Establish guidelines that ensure that new development is compatible with the current character of the neighborhood.
- Encourage maintenance and preservation of housing and streetscapes through code enforcement, neighborhood improvement programs, and other appropriate techniques."⁷

The proposed expansion will implement these strategies by proposing a building scale and character which is harmonious with both the existing and surrounding development, and by preserving most of the wooded steep slope between the proposed addition and the road section of Powder Mill Road, thereby preserving the existing streetscape.

The first policy of the Environmental Infrastructure section of the Infrastructure Elements Element is to, "protect, preserve and enhance the identified green infrastructure network within the Subregion 1 plan area."⁸ The third strategy proposed to implement this policy is, "preserve or restore regulated areas designated in the plan's green infrastructure network or through the development review process during the review of land development proposals."⁹

⁴ *Ibid.*, p. 20.

⁵ M-NCP&PC, *Approved Master Plan and Sectional Map Amendment for Subregion I (Planning Areas 60, 61, 62, and 64)* (March, 2022), appended map.

⁶ *Master Plan*, p. 13.

⁷ *Ibid.*, p. 117.

⁸ *Ibid.*, p. 40.

⁹ *Ibid.*

This policy and strategy will be implemented by the preservation of the regulated stream which runs through the property and its associated buffers in its current natural, wooded state.

The second policy of the Environmental Infrastructure section is to, "restore and enhance water quality in areas that have been degraded and preserve water quality in areas not degraded."¹⁰ The ninth strategy proposed to implement this policy is, "use Low-Impact Development (LID) stormwater management techniques such as green roofs, rain gardens, innovative stormwater outfalls, underground stormwater management, bioretention with appropriate soil mixtures, green streets, cisterns, rain barrels, grass swales, and stream restoration to the fullest extent possible during the development review process."¹¹

This policy and strategy will be implemented by the use of Environmental Site Design methods to manage the runoff from the proposed addition, as shown on the Special Exception Site Plan and the approved Site Development Concept Plan. While the following policy, to, "implement the State Storm Water Management Act of 2007 in Subregion I as of the adoption of this Plan to enhance the water quality and control flooding in the Anacostia and Patuxent River watersheds"¹² has been made moot to a degree by its subsequent full implementation as of 2013, the proposed stormwater management measures will meet the intent of this policy as well.

The first policy of the Roadways section of the Infrastructure Elements Element is to, "achieve efficient access to residential, commercial, and employment areas with improvements to existing roadways and new roadways, and minimize dislocation and disruption."¹³ For this project, the fourth strategy proposed is the relevant strategy to implement this policy. That strategy is, "maintain, improve and construct **collectors** as required by current and future development. Collectors are two-, four-, or five-lane (four lanes plus center turn lane) roadways with minimal control of access providing movement between developed areas and the arterial system. Rights-of-way are generally a minimum of 70 feet for two- and four-lane collectors, and 80 feet for five-lane collectors where underground drainage is provided."¹⁴ And more specifically,

"The following facilities are recommended to be maintained at their current width—either two lanes or four lanes—with frontage, pedestrian, and safety improvements as deemed necessary:

5. C-107—Powder Mill Road between Montgomery County and Cherry Hill Road (two lanes)."¹⁵

It is to be noted that the 2010 Subregion I Master Plan amended the 2009 Master Plan of Transportation by formally downgrading this segment of Powder Mill Road from an arterial (the former A-8, albeit within an 80' right-of-way and a two-lane configuration for this segment) to a collector roadway classification which reflects its intended physical configuration.

¹⁰ *Ibid.*, p. 41.

¹¹ *Ibid.*

¹² *Ibid.*, p. 42.

¹³ *Ibid.*, p. 45.

¹⁴ *Ibid.*, p. 48.

¹⁵ *Ibid.*, pp. 48-49.

Through the conformance of the facility with these policies and strategies, this planner finds that the expansion of the proposed nursing facility in the contextually-sensitive manner proposed is in conformance with the 2010 Subregion I Master Plan.

Other Applicable Functional Master Plans

The special exception area contains areas of Regulated Areas of the County's Green Infrastructure Network. They are proposed to be preserved intact, with the exception of a small temporary area of stream buffer disturbance for the installation of a building sewer to serve the proposed addition. This preservation will implement the first policy of the Green Infrastructure Plan, which is to, "preserve, enhance and restore the green infrastructure network and its ecological functions while supporting the desired development pattern of Plan 2035."¹⁶

The stormwater management proposed with the subject Application, as well as the preservation of the stream buffer and the wooded areas to the west will implement the fifth policy of the Green Infrastructure Plan, which is to, "improve water quality through stream restoration, stormwater management, water resource protection, and strategic conservation of natural lands."¹⁷

The preservation of the stream buffer and the wooded areas to the west will also implement the seventh policy of the Green Infrastructure Plan, which is to, "Preserve, enhance, connect, and restore forest and tree canopy coverage."¹⁸

With regard to the Historic Sites and Districts Plan, the property containing Gallant House (County Historic Site #61-013) is located twenty five feet southwest of the subject property. While the separation of the subject property from the historic site because of the intervening pipestem means that a historic landscaped buffer is not required, the building setback, proposed landscaping, the topographic separation and the compatible scale and character of the proposed architecture will collectively protect the environmental setting of the Gallant House. Thus, the approval of the subject application will implement the intent of the policy of the Historic Sites and Districts Plan "evaluate and mitigate the potential impact of development applications on historic sites and environmental settings during the application review process."¹⁹ And as such, the approval of the instant application will be in harmony with the purpose of the prior zoning ordinance to implement this Functional Master Plan, and will not substantially impair the integrity of this Functional Master Plan.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed planning, and as such makes no recommendations which are directly applicable to the subject application.

No proposed sites for Public Safety facilities are in the area affected by the subject application.

¹⁶ M-NCP&PC, *Approved Prince George's County Resource Conservation Plan: A Countywide Functional Master Plan* (March, 2017), p. 49.

¹⁷ *Resource Conservation Plan*, p. 53.

¹⁸ *Ibid.*, p. 55.

¹⁹ M-NCP&PC, *Approved Historic Sites and Districts Plan* (June, 2010), p. 47.

The 2009 Countywide Master Plan of Transportation as amended by the 2010 Subregion I Master Plan classifies Powder Mill Road as a collector roadway (C-107) with 2 lanes in an 80' right-of-way. This configuration is shown on the Special Exception Site Plan. The Master Plan of Transportation also proposes a bike lane on Powder Mill Road.

In conclusion, because the proposed nursing home is in keeping with the General Plan's land use policies for the Established Communities areas, actively implements the Master Plan's many applicable recommendations, and is in harmony with the applicable Functional Master Plans, approval of the subject application will be in harmony with the Ordinance's purpose of implementing those plans.

- (3) *To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;*

This Application proposes the development which also has required the approval of a preliminary plan of subdivision to confirm the adequacy of public facilities and services. Through this associated requirement, approval of the subject Application would be in harmony with this purpose of promoting the conservation of a community which will be developed with adequate public facilities.

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

Approval of the subject nursing home would provide for the orderly growth and development of the County by providing for a needed addition to a use which serves a special population in conformance with the County's planning policies and zoning regulations.

- (5) *To provide adequate light, air, and privacy;*

The proposed nursing home will be in harmony with this Purpose of the prior zoning ordinance as it will be developed in conformance with the regulations to govern height, lot coverage, frontage and setbacks to ensure the provision of adequate light, air and privacy, both for the occupants of the subject site and for its neighbors. It will preserve much of the existing character of the property, and its modest building height will both fit with the character of the surrounding development and will have the additional benefit of preserving access to light and air for its neighbors.

The Special Exception Site Plan will also conform to the provisions of the Landscape Manual which require landscaped bufferyards to provide additional light, air and privacy to its neighbors.

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

This proposed nursing home would be in harmony with this Purpose of the prior zoning ordinance as it will be developed in accordance with the various principles that have been codified in the prior zoning ordinance to promote the beneficial relationships between land and buildings. These principles include conformance with the tables of permitted uses for the various zones as laid out in the Ordinance, providing modern stormwater management, by conformance with the provisions of the Landscape Manual which provide for buffering of its neighbors, and by the provision of woodland conservation

areas along the existing stream and the areas to the west to both enhance the required buffering and protect regulated environmental features.

(7) To protect the County from fire, flood, panic, and other dangers;

The approval of the subject application would be in harmony with this Purpose of the prior zoning ordinance as it will be developed in conformance with regulations established in the body of the prior zoning ordinance, as well as other County Ordinances, which are intended to protect from fire, flood, panic and other dangers, namely: the floodplain regulations, stormwater management regulations, the fire prevention code, the building code, and the tables of permitted uses for the various zones.

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

While strictly an institutional use rather than a residential use, the proposed nursing home will create a suitable and healthy living environment for its residents through its lower, wider architecture, and the preservation of large amounts of the natural areas of the subject property.

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

Because the subject use will continue to provide employment opportunities to its health care, administrative and maintenance workers, the approval of the instant application will be in harmony with this Purpose of the prior zoning ordinance.

(10) To prevent the overcrowding of land;

The approval of the subject nursing home would be in harmony with this Purpose as it will conform to the provisions of the prior zoning ordinance which were codified to ensure the prevention of overcrowding, including setback requirements; lot coverage limits; and building height limits, and further through the extensive preservation of wooded natural areas on the subject property.

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

The approval of the subject nursing home would be in harmony with this Purpose because, as noted above, the proposed use will also be governed by the recent approval of the preliminary plan of subdivision which insured the adequacy of the public roads. And, the proposed nursing home will be developed in accordance with the regulations established in the body of the prior zoning ordinance (and other County ordinances) which are intended to lessen the danger and congestion of traffic on roads, such as the requirements for the provision of adequate off-street parking.

(12) To insure the social and economic stability of all parts of the County;

As a zoning ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic

stability of the County, this planner believes that conformance with the requirements and regulations of the prior zoning ordinance will be prima facie evidence of the Application's harmony with this purpose.

Beyond that, however, the approval of the subject nursing home would promote the social stability of the County by providing for needed care for the elderly and other citizens requiring special care outside of a hospital.

(13) *To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;*

The subject application will generate no new air or water pollution, and will disturb no stream valleys, lands of natural beauty, large areas of dense forest, scenic vistas and other similar features, and will in fact actively preserve stream valleys and steep slopes. As such, approval of this Application will be in harmony with this Purpose of the prior zoning ordinance.

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

The approval of these proposed nursing home would be in harmony with this Purpose of the Ordinance because the subject property's regulated natural features are being preserved to the fullest extent possible.

(15) *To protect and conserve the agricultural industry and natural resources.*

Because the subject property is not located in an agricultural area, this Purpose is not applicable to the approval of this Application.

In addition to the purposes of the broader Ordinance, there are four Purposes for the R-R (Rural Residential) Zone specifically, which are laid out in Section 27-428(a)(1), as follows:

(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;*

Because the proposed use is for a specialized institutional use that is provided for in the Table of Uses for the R-R Zone, these two purposes are not directly applicable to the instant Application, except to the extent that the proposed nursing home will meet the requirement of Section 27-364(a)(6)(A), which requires a larger minimum area which is compatible with this purpose of the R-R Zone.

(C) *To encourage the preservation of trees and open spaces; and*

The proposed nursing home will be in conformance with this purpose of the R-R Zone by virtue of its Tree Conservation Plan, by its compliance with the requirements of Subtitle 25 for Tree Canopy

Coverage and through those, the preservation of the large area of woodland around the stream valley and the areas to its west.

(D) To prevent soil erosion and stream valley flooding.

The proposed Special Exception Site Plan proposes to provide 100-year stormwater management, and to be developed in accordance with the requirements of an approved Sediment and Erosion Control Plan, thus being in harmony with this Purpose of the R-R Zone.

The other criteria for approval of a Special Exception laid out in Section 27-317(a) of the prior zoning ordinance continue as follows:

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;

Based upon an inspection of the proposed Special Exception Site Plan and Landscape Plan, and to the best of this planner's professional knowledge, information and belief, that, with the grant of Alternative Compliance AC-25008, discussed below, and the variance from variance from the provisions of Section 25-122(b)(1)(g) of the Woodland and Wildlife Habitat Conservation Ordinance, that the proposed use will be in conformance with all of the applicable requirements and regulations of the prior zoning ordinance.

This planner notes that the approval of the requested variance from the provisions of Section 25-122(b)(1)(g) which is being requested from the Zoning Hearing Examiner (or, if their authority is exercised, by the District Council) by the authority of Section 25-119(c)(1) of the Woodland and Wildlife Habitat Conservation Ordinance is not an applicable regulation of the prior zoning ordinance per se, but is made a requirement through Section 27-124.02(a).

(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;

As discussed at length above, it is the Applicant's belief that the subject Application is in harmony with the Purposes of the prior zoning ordinance generally to implement the General Plan, Master Plans and Functional Master Plans, and to provide for the efficient and desirable use of land in accordance with those Plans. Accordingly, the approval of the subject application will not impair the integrity of either the approved Master Plan or any of the County's Functional Master Plans.

(4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;

As this planner believes to have been amply demonstrated, the conformance of the subject application with the principles laid out in the purposes of the prior zoning ordinance, its compliance with the provisions of the prior zoning ordinance, its compliance with the provisions of other State and County regulations for environmental protection, site construction and building construction represent a high level of protection against adverse effects to the public health, safety and welfare.

Beyond those basic principles, however, the because of the improvements to the driveway of Parcel 108 which will provide for improved fire access to existing portions the nursing home structure, and because the existing building and the proposed addition are in character and height which are comparable with the surrounding single-family attached development, the proposed nursing home will not adversely affect the health, safety and welfare of residents and workers in the area beyond what is generally expected of nursing or care homes regardless of their location in the R-R Zone.

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

Because of its long existence in the neighborhood, the relatively low traffic generation and relatively low impact generally, and because the proposed development is designed to: Preserve much of the existing woodlands along its Powder Mill Road frontage as well as along the stream valley and to the property's rear; the residential character of the proposed addition to maintain the character of the existing nursing home; the expansion of the existing nursing home will not adversely affect the use or development of the adjacent properties or the general neighborhood.

(6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

If the companion Tree Conservation Plan, TCP2-007-2025, is approved in conjunction with the requested Special Exception, this Application will be in conformance with this required finding.

(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.

As discussed above, the special exception area does contain an area of regulated stream, its associated buffer and 100-year floodplain, which are regulated environmental features. Two small areas of the Primary Management Area will be disturbed: A temporary disturbance to allow for the installation of the building sewer for the proposed addition; and, a small disturbance for the installation of an outfall from a stormwater management device; the temporary disturbance will be restored at the completion of the sewer construction so that the Primary Management Area in that area is ultimately retained. The proposed permanent impact is for outfall stabilization from a microbioretenion facility. While this second impact will be permanent, the purpose of its installation is to protect the Primary Management Area and the stream from erosion and sediment deposition.

Finally, this planner notes that because the site is not located within the Chesapeake Bay Critical Area, the provisions of §27-317(b) are not applicable to the subject application.

In summary, this planner believes that the general findings discussed above which are required for approval of a Special Exception are met. There are, however, further additional requirements for approval of a nursing or care home (among other uses), which are laid out in section 27-364(a).

Compliance With Section 27-364(a)(6):

Section 27-364(a)(6) provides the additional requirements for approval of a Special Exception for a nursing or care home in all zones other than the prior C-O Zone, where eleven (11) or more persons are cared for.

(a) A hospital, eleemosynary or philanthropic institution, or nursing or care home may be permitted, subject to the following:

(6) Nursing or care home in all other zones where this use is permitted by Special Exception, where eleven (11) or more persons are cared for:

(A) Total area - 1/2 acre, plus 1,000 contiguous square feet for each person cared for above 10;

As noted above, the approval of the proposed expansion would bring the capacity of the existing nursing home up to 162 persons. This provision would translate to a required total area of 21,780 SF + (162 beds – 10 beds) x 1,000 SF/bed, or 173,780 square feet (or 3.9894 acres). Because the gross tract area of the subject property is 8.3447 acres, it amply meets this additional requirement.

(B) Street frontage - 150 feet;

The Special Exception Site Plan indicates a total street frontage of 1,018.46 feet on Powder Mill Road and Pleasant Acres Drive, which also amply meets this additional requirement.

(C) Setback - 25 feet from all boundary lines of the Special Exception.

The Special Exception Site Plan indicates that the closes point of the proposed addition, which will be the closest point of any part of the perimeter of the nursing home, will be 25.4' from the boundary of the Special Exception, meeting this additional requirement.

In summary, this planner believes that all of the additional requirements which are required for approval of a Special Exception for a nursing or care home are met.

Alternative Compliance AC-25008:

The instant application proposes Alternative Compliance for the provisions of Section 4.7 of the prior Landscape Manual for Buffering Incompatible Uses, and for a provision of Section 4.9 of the prior Landscape Manual for Sustainable Landscaping.

Alternative Compliance was requested for the provision of Table Section 4.7-3 of the prior Landscape Manual requiring a 30-foot building setback from the lot line of the abutting single-family residence to the southwest.

Alternative Compliance was also requested for the requirement of Section 4.9(b)(7) of the prior Landscape Manual, stipulating that, "slopes greater than three-to-one (3:1) are not conducive to tree growth and should not be planted to fulfill the requirements." This planner notes that this requirement is not prescriptive, and suggests that approval of Alternative Compliance is not necessary to permit the

planting of a single tree in an area of existing steeper, wooded slopes which will otherwise not be disturbed by the proposed development.

Section 1.3a of the Landscape Manual provides that, *"Requests for alternative compliance may be approved for any application to which the requirements of this manual apply, when one or more of the following conditions are present:*

"(1) Topography, soil, vegetation, or other site conditions are such that full compliance with the requirements of this manual is impossible or impractical; or improved environmental quality would result from the alternative compliance.

"(2) Space limitations, unusually shaped lots, prevailing practices in the surrounding neighborhood, in-fill sites, and for improvements and redevelopment in older communities.

"(3) Change of use on an existing site increases the buffer required by Section 4.7, Buffering Incompatible Uses, of this manual, more than it is feasible to provide.

"(4) Safety considerations make alternative compliance necessary.

"(5) An alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the design criteria in Section 3, Landscape Elements and Design Criteria, of this manual."

Section 1.3b further provides that, *"A proposed alternative compliance measure must be equally effective than normal compliance in terms of quality, durability, hardness, and ability to fulfill the design criteria in Section 3."*

In this case, the conditions which apply to the approval of alternative compliance are provisions (1) and (2), namely that there is aggressive topography on much of the subject property, including regulated natural features and their associated buffers, limiting the area available for siting the proposed addition. The site conditions exacerbate the unusual shape of the subject property, leaving the developable portion in a "T-shaped" configuration.

Alternative compliance is proposed to be provided by exceeding the total planting requirement across the entire buffer's width and proposing a fence, providing denser planting in compensation for the reduced building setback. The impact of the reduced building setback will be further ameliorated by the lower building height proposed.

Staff opined that the proposed Alternative Compliance would be acceptable, and the Planning Director accordingly forwarded a recommendation of approval to the Zoning Hearing Examiner. This planner concurs with staff's analysis and recommendation.

Variance from Subtitle 25, Section 25-122(b)(1)(G)

The subject Application proposes the removal of two of the nineteen existing specimen trees; Section 25-122(b)(1)(G) requires that,

- (G) *Specimen trees, champion trees, and trees that are part of a historic site or are associated with a historic structure shall be preserved and the design shall either preserve the critical root zone of each tree in its entirety or preserve an appropriate percentage of the critical root zone in keeping*

with the tree's condition and the species' ability to survive construction as provided in the Technical Manual.

With the technical objection from this planner that strictly applying the rules of construction of the text of Section 25-122(b)(1)(G) would only require the preservation of trees that are a part of a historic site, including specimen trees and champion trees thereon, this planner agrees with the staff's analysis of the variance request in the Technical Staff Report.

Technical Staff supported the removal of the two requested specimen trees, finding that: the trees in question are integral to the developable portion of the site and their retention would create challenges by forcing relocation of the building into the area of the stream buffer (which is a special condition peculiar to the property) and the relocation of the driveway improvement into the required bufferyard of the abutting single-family dwelling; the location of the trees proposed to be removed would deprive the Applicant of the extent of use of the developable area of the property for a permitted use (which is commonly enjoyed by others); that other applicants with properties with similar circumstances would be similarly considered; that the request is solely based on the locations of the trees; that the request does not arise from conditions on a neighboring property; and, that granting the variance will not adversely affect water quality.

This planner agrees with the staff's evaluation for the two trees.

CONCLUSION

In summary, this planner finds that, with the grant of Alternative Compliance AC-25008 for the requirement of Table 4-7.3 of the prior Landscape Manual for a 30-foot building setback from the property line of the abutting house to the southwest, and (if actually required) from the permissive provision of Section 4-9(b)(7) discouraging planting of trees on slopes steeper than 3:1, and a variance from the provisions of Subtitle 25, Section 25-122(b)(1)(G) for the removal of two specimen trees, the approval of the subject application would be in compliance with the general criteria for approval of a Special Exception found in §27-317(a), and the additional requirements for approval of a Nursing Home In All Other Zones [than the C-O Zone] Where This Use Is Permitted By Special Exception, Where Eleven (11) Or More Persons Are Cared For found in §27-364(a)(6) of the prior zoning ordinance.

Additionally, it is this planner's opinion that because of its long-established existence in the neighborhood, the subject property's greater area, the building's larger setback from Powder Mill Road, the character of the existing and proposed architecture, and the extensive areas of preserved woodland, that the approval of this particular application therefore would not entail a more adverse impact on the public health, safety and welfare than those inherently associated with nursing or care homes, irrespective of their location in the R-R Zone.