



# THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of the Clerk of the Council  
301-952-3600

July 19, 2024

**RE: SE-22002 Stewart Property  
ESC 8215 Springfield, L.C., Applicant**

## ***NOTICE OF DECISION OF THE DISTRICT COUNCIL***

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in this case on July 15, 2024

### ***CERTIFICATE OF SERVICE***

This is to certify that on July 19, 2024, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

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Donna J. Brown  
Clerk of the Council

Case No.: SE-22002  
AC-23008  
Stewart Property

Applicant: ESC 8215 Springfield, L.C.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,  
SITTING AS THE DISTRICT COUNCIL

ORDER OF REMAND

A. Introduction

On June 3, 2024, using oral argument procedures, this matter, an application request for the approval of a special exception to develop and use certain land in the County for a Planned Retirement Community, was considered by the District Council, on its own motion to elect to review and make the final decision, and on written exceptions filed by Applicant and Opposition.<sup>1,2,3</sup>

Primarily at issue after oral argument is whether the District Council should decide the matter on the merits or grant a request from the Zoning Hearing Examiner (ZHE) to remand this matter (albeit opposed by Applicant and Opposition), to allow Applicant, among other things, to file a variance request from the requirements of Section 27-395(a)(3)(B) of the Zoning Ordinance,

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<sup>1</sup> To view the oral argument proceedings, please visit:  
[https://princegeorgescountymd.granicus.com/player/clip/3597?view\\_id=2&meta\\_id=510809&redirect=true](https://princegeorgescountymd.granicus.com/player/clip/3597?view_id=2&meta_id=510809&redirect=true) (last visited July 14, 2024).

<sup>2</sup> The District Council elected to review this matter on April 4, 2024. Applicant filed exceptions on April 24, 2024. Opposition filed exceptions on April 25, 2024. To view the procedural history of this matter, please visit:  
<https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=6602629&GUID=60AB7D30-B145-4873-A182-B8B1087DD590&Options=ID|Text|&Search=SE-22002> (last visited July 14, 2024).

<sup>3</sup> Subsequently, the District Council directed its staff attorney to prepare this order of remand. PGCC § 27-3414; *Grant v. Cty. Council of Prince George's Cty.*, 465 Md. 496, 500, 214 A.3d 1098, 1101 (2019) (when exercising original jurisdiction, the District Council may delegate to its staff attorney the responsibility of preparing a proposed order and accompanying draft findings of fact, and where the District Council maintains original jurisdiction, as is the case here, it is permitted to engage in its own fact-finding).

because the ZHE concluded that Applicant failed to satisfy the requirements of § 27-395(a)(3)(B)—which states that a Planned Retirement Community in the Rural Residential (RR) Zone *shall contain, among other things, at least 12 contiguous acres.*<sup>4,5</sup> PGCC § 27-27-395(a)(3)(B), ZHE Decision (Disposition), 3/26/2024, Applicant Exceptions, 4/24/2024, Opposition Exceptions, 4/25/2024.

Having reviewed the record, including written exceptions and oral arguments, the request from the ZHE to remand this matter is hereby GRANTED. On remand, the ZHE shall reopen the record and conduct evidentiary hearings as necessary for clarification and additional testimony, subject to findings and conclusions of the District Council set forth herein.<sup>6,7,8</sup> Remand to the ZHE does not constitute a waiver of District Council’s original jurisdiction to elect to review and make

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<sup>4</sup> As permitted under the New Zoning Ordinance (New ZO), which became effective April 1, 2022, this Special Exception application was filed under the Transitional Provisions of the New ZO to develop the subject property subject to the provisions of the Old or Prior Zoning Ordinance.

<sup>5</sup> The ZHE also requested that Applicant make any necessary revisions to the Special Exception Site Plan and other applicable documents to include a reduction of the number of dwelling units to the maximum recommended in the 2022 Master Plan or address why such reduction is unnecessary and that remand may be limited in nature—allowing incorporation of the prior record. ZHE Decision (Disposition), 3/26/2024. *See discussion infra.*

<sup>6</sup> The District Council may remand any zoning case heard by the Zoning Hearing Examiner back to the Examiner for clarification or for additional testimony. PGCC § 27-133(a)(1). *See also* PGCC § 27-133(a)(4) (At the conclusion of the argument, the District Council may either: remand the case to the Zoning Hearing Examiner or to the Planning Board for de novo proceedings, citing the reasons therefor; or deny the requested remand, and either conduct the scheduled oral argument or direct the Clerk to schedule or reschedule oral argument on the merits of the case and so notify all persons of record. The denial of a request for remand made pursuant to Subsection (b) of this Section does not prohibit the District Council from subsequently remanding a case pursuant to either Subsection (a) or Subsection (c) of this Section).

<sup>7</sup> Because the District Council grants ZHE’s request for remand, exceptions from Applicant and Opposition are denied as moot and without prejudice.

<sup>8</sup> Where appropriate, the ZHE may incorporate, on remand, the record established prior to remand.

the final decision on the merits of SE-22002, or to decide any exceptions timely filed from Applicant or Opposition after a decision on remand from the ZHE.

B. The Subject Property

The subject property is located 360 feet north of the intersection of Springfield Road and Moriarty Court and it is identified as 8215 Springfield Road, Glenn Dale, approximately 390 feet southeast of the intersection of Lake Glen Drive. The property is not located within the boundaries of the City of Bowie. The property is improved with a single-family detached residence, detached garage, and a separate carport. ZHE Decision at Findings 1–4.

Below is a screenshot from a portion of a State Department of Assessment and Taxation (SDAT) Printout depicting the legal description, property land area, and deeds for 8215 Springfield Road as follows:<sup>9,10,11,12</sup>

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<sup>9</sup> The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property—including a preliminary plan of subdivision. PGCC § 27-141. The District Council may also take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. District Council Rules of Procedure Rule 6.5(f).

<sup>10</sup> To view this information on SDAT, please visit: <https://sdat.dat.maryland.gov/RealProperty/Pages/default.aspx> (last visited July 14, 2024). Once directed to SDAT website: select “Prince George’s County” and for method of search, select “Property Account Identifier,” then click “continue” on lower right of screen. Once directed to next page, enter “District 14” and “Account # “1641547.”

<sup>11</sup> SDAT glossary of terms defines “map number” as “... the number ... to which tax map the property is located on. Tax maps are produced by the Maryland Department of Planning. Please note that properties often cross into neighboring maps, but tax assessment accounts will only have one associated map number per account.” To view, please visit: [https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#Map-Number](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Map-Number) (last visited July 14, 2024).

<sup>12</sup> SDAT glossary of terms defines “parcel” as “...the parcel number of the property as shown on the tax map.” To view, please visit: [https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#Parcel](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Parcel) (last visited July 14, 2024).

Account Identifier:	District - 14 Account Number - 1641547								
<b>Owner Information</b>									
Owner Name:	STEWART JOAN M ETAL KNUPP WILLIAM E				Use:	RESIDENTIAL			
					Principal Residence:	YES			
Mailing Address:	8215 SPRINGFIELD RD GLENN DALE MD 20769-9610				Deed Reference:	/40916/ 00567			
<b>Location &amp; Structure Information</b>									
Premises Address:	8215 SPRINGFIELD RD GLENN DALE 20769-0000				Legal Description:	ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)			
Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	00D3	0131	1405000117	0000				2023	Plat Ref.
Town: None									
Primary Structure Built	Above Grade Living Area			Finished Basement Area		Property Land Area		County Use	
1945	2,768 SF			YES		11,9400 AC		002	

According to SDAT, two (2) deeds from 2018 (40916/00567) are associated with 8215 Springfield Road for Assessment Year 2023. Based on those deeds, 8215 Springfield Road is identified, in relevant part, as Tax Map 28 and Parcel 131. Among other things, SDAT indicates that the *legal description*<sup>13</sup> for “all” of Parcel 131 consists of *only* 10 acres of land that was recombined and/or deleted from another deed on July 1, 2010. SDAT also indicates that the *property land area*<sup>14</sup> for Parcel 131 is 11.94 acres—i.e.—*more* than 10 acres but *less* than 12 acres.

<sup>13</sup> SDAT glossary of terms defines “legal description” as “[t]he description of the property as it appears in the deed.” To view, please visit: [https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#Legal-Description](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Legal-Description) (last visited July 14, 2024).

<sup>14</sup> SDAT glossary of terms defines “property land area” as “[t]he land area of the account in acres or square feet.” To view, please visit: [https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#Property-Land-Area](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Property-Land-Area) (last visited July 14, 2024).

ZHE Exhibits at 788.<sup>15</sup> SDAT further indicates that for Assessment Year 2023, 8215 Springfield Road, identified as Map 28 and Parcel 131, was not land assessed as containing 12 or more acres.<sup>16</sup>

Below is a screen shot from PGAtlas,<sup>17</sup> which reflects the *same tax, parcel, and acreage* information from SDAT as follows:

**PGAtlas** Created on 7/13/2024

**Tax Account:** 1641547  
**Owner Name:** STEWART JOAN M ETAL  
**Premise Address:** 8215 Springfield Rd, Glenn Dale, MD 20769

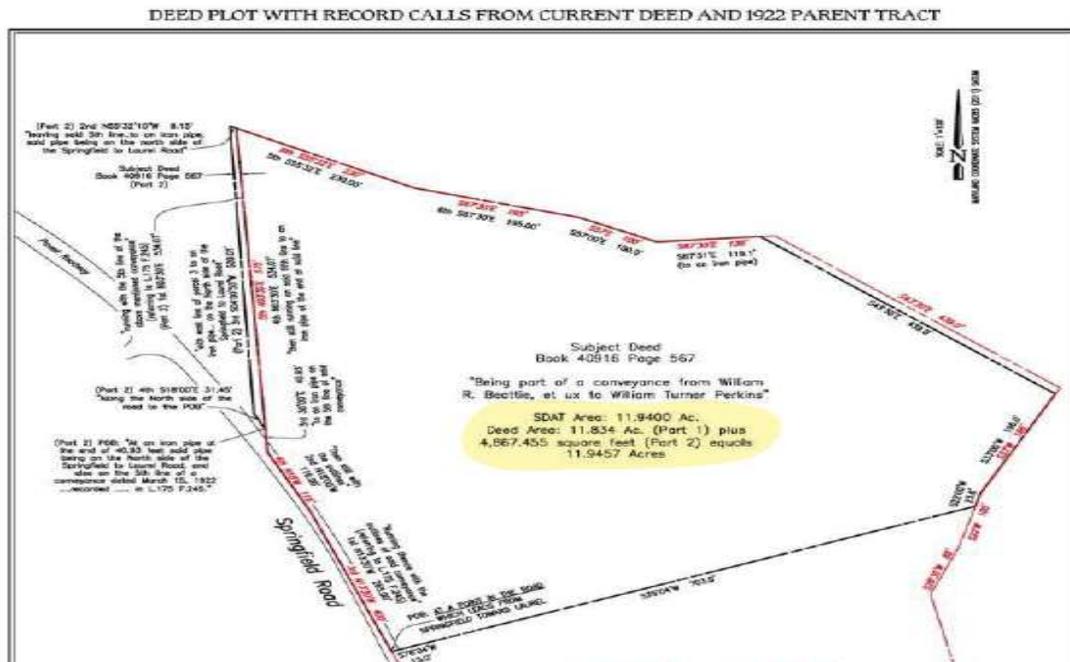
Parcel Details	Ownership Information	Administrative Details
<b>Tax Account #:</b> 1641547	<b>Owner Name:</b> STEWART JOAN M ETAL	<b>Tax Map Grid:</b> 028D3
<b>Assessment District:</b> 14	<b>Owner Address:</b> 8215 Springfield Rd, Glenn Dale, MD 20769	<b>WSSC Grid:</b> 211NE10
<b>Lot: Block: Parcel:</b> 131	<b>Liber:</b> 40916 <b>Folio:</b> 567	<b>Councilmanic District:</b>
<b>Description:</b> ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)	<b>Transfer Date:</b> 5/29/2018	
<b>Plat:</b>	<b>Current Assessment:</b> \$608,467.00	
<b>Subdivision:</b>	<b>Land Valuation:</b> \$323,667.00	
<b>Acreage:</b> 11.94	<b>Improvement Valuation:</b> \$284,800.00	
	<b>Sale Price:</b> \$0.00	
	<b>Structure Area (Sq Ft):</b> 2768	

<sup>15</sup> To view ZHE Exhibits, please visit: <https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=6602629&GUID=60AB7D30-B145-4873-A182-B8B1087DD590&Options=ID|Text|&Search=SE-22002> and click on Item No. 12 under Attachments (last visited July 14, 2024).

<sup>16</sup> “Assessment Year” *only* applies to *area* in which the property is located—which per SDAT is *not* 12 or more acres. To view, please visit: [https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#Assessment-Year](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Assessment-Year) (last visited July 14, 2024).

<sup>17</sup> PGAtlas is a web mapping application maintained by the Maryland-National Capital Park & Planning Commission and Prince George’s County. It provides access to Geographic Information System (GIS) web applications and digital maps, including layers of County GIS data and imagery, *such as tax and parcel identifiers*, distances, and zoning overlays. *Prince George’s Cnty. Council v. Concerned Citizens of Prince George’s Cnty.*, 485 Md. 150, 243, 300 A.3d 857, 912 (2023). (Emphasis added). To view PGAtlas, please visit: <https://www.pgatlas.com/> (last visited July 14, 2024).

Below is another screen shot from a deed mosaic exhibit submitted by Applicant that also confirms the information from SDAT as follows:



ZHE Exhibits at 809.

Whether or not the 11.9457 acres shown on SDAT includes the prescriptive easement described by Applicant representatives below, SDAT does not recognize Parcel 131 as having a legal description of more than 10 acres or a property land area of at least 12 acres—as those terms are defined by SDAT.

Despite this discrepancy, Mark Ferguson, land planner for Applicant, testified that the subject property would be *less* than 12 acres when the prescriptive easement is dedicated or conveyed out of Parcel 131—or stated differently—the legal description or the property land area—as defined by SDAT. (12/12/2023, Tr., pp. 220-227). But Steven Jones, land surveyor for Applicant, testified

that the prescriptive easement, approximately 3,524 square-feet, was *conveyed* in one of the deeds provided in the record—which when deducted—results in the legal description or the property land area—as defined by SDAT—being *only* 11.834 acres—less than at least 12 contiguous acres required for a Planned Retirement Community *use*. (12/20/2023, Tr., pp. 25-26). *See also* ZHE Exhibits at 782/Exhibit 107 (CPJ Boundary Memo-Statement of Square Footage, 12/19/2023).<sup>18</sup>

### C. Planned Retirement Community

In addition to the requirements that an applicant must satisfy for a special exception under PGCC § 27-317, an applicant must also satisfy additional requirements under PGCC § 27-395 for a “Planned Retirement Community,” *use* as follows:

- (a) A planned retirement community *may*<sup>19</sup> be permitted, subject to the following criteria:
  - (1) **Findings for approval.**
    - (A) The District Council shall find that:
      - (i) The proposed use will serve the needs of the retirement-aged community;
      - (ii) The proposed use will not adversely affect the character of the surrounding residential community; and
      - (iii) In the R-A Zone, there shall be a demonstrated need for the facility and an existing medical facility within the defined market area of the subject property.
  - (2) **Site plan.**

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<sup>18</sup> Under the Old Zoning Ordinance, the Applicant has the burden of proof in any zoning case. PGCC § 27-142. Here, Applicant “assumes not merely the lesser burden of generating a fairly debatable issue so as to permit a ruling in its favor but the significantly greater burden of actually dispelling fair debate by proof so clear and decisive as legally to compel a ruling in its favor.” *B. P Oil, Inc. v. Bd. of Appeals*, 42 Md. App. 576, 580, 401 A.2d 1054 (1979). *See also Futoryan v. City of Baltimore*, 150 Md. App. 157, 172, 819 A.2d 1074 (2003), *quoting Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974) (explaining in special exception cases that the applicant bears the burden of persuading the administrative board).

<sup>19</sup> Under the Old Zoning Ordinance, *may* is interpreted as “permissive.” PGCC § 27-108.01(a)(19). *See also Board of Physician Quality v. Mullan*, 381 Md. 157, 166, 848 A.2d 642, 648 (2004); *State v. Green*, 367 Md. 61, 82, 785 A.2d 1275, 1287 (2001); *Brodsky v. Brodsky*, 319 Md. 92, 98, 570 A.2d 1235, 1237 (1990) (construing the word *may* as permissive as opposed to mandatory).

(A) In addition to the requirements of Section 27-296(c), the site plan shall set forth the proposed traffic circulation patterns.

**(3) Regulations.**

(A) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, density, dwelling unit types, and other requirements of the specific zone in which the use is proposed shall not apply to uses and structures provided for in this Section. The dimensions and percentages shown on the approved site plan shall constitute the regulations for a given Special Exception.

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

(C) The average number of dwelling units per acre shall not exceed eight (8) for the gross tract area.

(D) In the R-A Zone, buildings shall not exceed three (3) stories.

(E) In the I-3 Zone, the following shall apply:

(i) The gross tract area shall be a minimum of ninety (90) acres with at least twenty-five percent (25%) of its boundary adjoining residentially-zoned land or land used for residential purposes;

(ii) The property shall have at least one hundred fifty (150) feet of frontage on, and direct vehicular access to, a public street;

(iii) All buildings shall be set back a minimum of seventy-five (75) feet from all no residentially-zoned boundary lines or satisfy the requirements of the Landscape Manual, whichever is greater; and

(iv) The property shall be located within two (2) miles of mass transit, regional shopping, and a hospital.

(F) In the I-3 and C-O Zones, townhouses shall comply with the design guidelines set forth in Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(d).

**(4) Uses.**

(A) The planned retirement community shall include a community center or meeting area, and other recreational facilities which the District Council finds are appropriate. These recreational facilities shall only serve the retirement community. The scope of the facilities shall reflect this fact. The Council may only permit a larger facility which serves more than the retirement community if the facility is harmoniously integrated with the retirement community and the surrounding neighborhood. All recreational facilities shall be constructed prior to, or concurrent with, the construction of the residential units, or in accordance with a schedule approved by the District Council;

(B) Retail commercial uses, medical uses, health care facilities, and other uses which are related to the needs of the community may be permitted.

**(5) Residents' age.**

(A) Age restrictions in conformance with the Federal Fair Housing Act shall be set forth in *covenants* submitted with the application and *shall be approved by the District Council*, and filed in the land records at the time the final subdivision plat is recorded.

**(6) Recreational facilities.**

(A) Covenants guaranteeing the perpetual maintenance of recreational facilities, and the community's right to use the facilities, shall be submitted with the application. *The covenants shall be approved by the District Council*, and shall be filed in the land records at the time the subdivision plat is recorded. If the recreational facilities are to be part of a condominium development, a proposed condominium declaration showing the recreational facilities as general common elements *shall be approved by the District Council*, and shall be recorded (pursuant to Title II of the Real Property Article of the Annotated Code of Maryland) at the time the sub plat is recorded. PGCC § 27-395. (Emphasis added).

D. Reopen Record for Clarification and Additional Testimony

- Proof of Acreage for Planned Retirement Community Use

Because the record before the District Council, and the ZHE, lacks sufficient facts and evidence, or at minimum contains contradictory facts and evidence, to determine, in the *first* instance, whether Parcel 131 *is at least* 12 contiguous acres to qualify for a Planned Retirement *use*, given the undisputed factual information from SDAT, PGAtlas, and testimony from Applicant's own land surveyor that the prescriptive easement was *conveyed* out of Parcel 131, the ZHE is directed, on remand, to reopen the record for clarification and additional testimony as follows:

1. Applicant shall provide proof in writing or through testimony from SDAT indicating whether SDAT included or excluded the land/acreage/square-footage for the prescriptive easement as part of Parcel 131 in Assessment Year 2023.

2. Applicant shall provide proof in writing or through testimony from SDAT indicating whether the total acreage of the property land area—as defined by SDAT (*i.e.*, 11.9400 acres)—is calculated solely from deed reference 40916 and 00567—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from deed reference 40916 and 00567.
3. Applicant shall provide proof in writing or through testimony of the acreage of land—separately—for deed reference 40916 and for deed reference 00567—as they are recorded in the Prince George’s County Land Records.
4. Applicant shall provide proof in writing or through testimony from SDAT describing the legal significance of: ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)—and the total combined acreage of Parcel 131 after 10.0AC was RECOMB/DEL from 3830957 on 7/1/10—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from the RECOMB/DEL 10.0AC.
5. Applicant shall provide proof in writing or through testimony of the date of conveyance of the land/acreage/square-footage for the prescriptive easement out of Parcel 131—and any written agreement memorializing such conveyance.
6. Applicant shall provide proof in writing or through testimony of whether Parcel 131 consists of deeds other than 40916 and 00567.
7. Applicant shall provide proof in writing or through testimony indicating whether the land/acreage/square-footage for the prescriptive easement has a separate or different deed reference other than 40916 or 00567.
  - Variance from PGCC § 27-395(a)(3)(B)

An “area variance” is a variance from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings. And a “use variance” is a variance which permits a *use* other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses. *Richard Roeser Prof'l Builder v. Anne Arundel County*, 368 Md. 294, 309-310, 793 A.2d 545, 555 (2002). The

difference between a special exception and a variance lies in the legislative approval of the underlying *use*. A special exception grants permission to engage in a *use* that the appropriate legislative authority has sanctioned under *certain conditions*. The special exception is an *acknowledgement* by the appropriate zoning authority that those *conditions have been met*. A variance, by contrast, grants permission to engage in a *use* that the appropriate legislative authority has otherwise *proscribed*. *Umerley v. People's Counsel*, 108 Md. App. 497, 510, 672 A.2d 173, 179 (1996). Here, a Planned Retirement Community *use is prohibited* in the RR Zone *unless* the subject property *contains at least 12 contiguous acres*.

Assuming without deciding, if Applicant decides to submit a request for a variance, it must prove in writing or through testimony why a request for an *area* variance from PGCC § 27-395(a)(3)(B) is authorized by law—in the *first* instance—since under PGCC § 27-395(a)(3)(B)—there is a *threshold* requirement that the subject property *contain at least 12 contiguous acres—*which goes to the *use for a Planned Retirement Community*—but (unless Applicant demonstrates otherwise as a matter of law) a *use* variance is *not* authorized or permitted in Prince George's County.

- 2014 General Plan and 2022 Bowie-Mitchellville & Vicinity Master Plan

Whether the proposed development, authorized by special exception, conflicts with or impairs the 2014 General Plan or 2022 Master Plan turns on the District Council's *prior* legislative determination that the *use* is *prima facie* compatible in the residential zones with otherwise permitted uses and with surrounding zones and uses already in place. *People's Counsel for Balt. Cnty. v. Loyola Coll. in Md.*, 406 Md. 54, 102-106, 956 A.2d 166, 194 (2008) (A special exception

is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a specified use district). *See also Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015) (Because special exceptions are created legislatively, they are *presumed to be correct* and an appropriate exercise of the police power) (Emphasis added). Stated differently, the Court of Appeals of Maryland (now the Supreme Court of Maryland), in *Schultz, Schultz v. Pritts*, 291 Md. 1, 15, 432 A.2d 1319, 1327 (1981), described the analysis for special exceptions as follows:

These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

In subsequent cases, the Court explained that the *Schultz* comparison for special exception does not entail a comparative geographical analysis which weighs the impact at the proposed site against the impact the proposed use would have at all other sites within the zone. *Loyola Coll. in Md.*, 406 Md. at 100, 956 A.2d at 194. Rather, this comparison “is focused entirely on the neighborhood involved in each case.” *Id.* at 102. Accordingly, even though a special exception use may have *some* adverse effects on the surrounding area, “the legislative determination necessarily

is that the use conceptually *is 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 [zoning agency] that *actual incompatibility would occur.*” *Id.* at 106. (Emphasis added).

In *Loyola*, the Court concluded its analysis of the *Schultz* test:

With this understanding of the legislative process (the “presumptive finding”) in mind, the otherwise problematic language in *Schultz* makes perfect sense. The language is a backwards-looking reference to the legislative “presumptive finding” in the first instance made when the particular use was made a special exception use in the zoning ordinance. It is not a part of the required analysis to be made in the review process for each special exception application. It is a point of reference explication only. *Id.* at 106-07.

As the Court explained in *Montgomery County v. Butler*, 417 Md. 271, 305 (2010), (quoting *Schultz*, *supra*, 291 Md. at 11), “[i]f [the applicant] shows...that the proposed use would be conducted without real detriment to the neighborhood...[the applicant] has met his burden.” Once the applicant meets this threshold, *the local zoning board will “ascertain in each case the adverse effects that the proposed use would have on the specific, actual surrounding area.”* *Id.* (citing *Schultz*, *supra*, 291 Md. at 11). (Emphasis added). The Court also noted that, “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 functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal.” *Loyola*, *supra*, 406 Md. at 83 (quoting *Turner v. Hammond*, 270 Md. 41, 55, 310 A.2d 543, 551 (1973)).

On remand, any party may clarify or present testimony or evidence for or against the proposed Planned Community Retirement *use* in accordance with the law as described above by the Supreme

Court of Maryland. And the ZHE is authorized, after the close of the record on remand, to make the appropriate recommendations, to the District Council, in accordance with the law as described above by the Supreme Court of Maryland.

- Covenants

Because covenants submitted with the application *shall be approved* by the District Council, and filed in the land records at the time the final subdivision plat is recorded, *any* covenants submitted with the application, to the extent the application is *approved* by the District Council (even if based on a recommendation from the ZHE), shall be *final* executed covenants (*not drafts*) after the record (in this case after remand) is closed. PGCC § 27-395(a)(5)-(6).

ORDERED, this 15<sup>th</sup> day of July 2024, by the following vote:

In Favor: Council Members Burroughs, Blegay, Dernoga, Harrison, Hawkins, Ivey, Olson, and Watson.

Opposed:

Abstained:

Absent: Council Members Fisher and Oriadha.

Vote: 8-0.

COUNTY COUNCIL OF PRINCE GEORGE'S  
COUNTY, MARYLAND, SITTING AS THE  
DISTRICT COUNCIL FOR THAT PART OF THE  
MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S COUNTY,  
MARYLAND

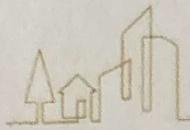
By:   
\_\_\_\_\_  
Jolene Ivey, Chair

ATTEST:

*Donna J. Brown*

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Donna J. Brown  
Clerk of the Council



## APPLICATION FORM

APPLICATION TYPE: SE  Revision of Case # SE-22002

Companion Cases: \_\_\_\_\_

Payment option:  Credit Card  Check (payable to M-NCPPC) *Do not submit payment until requested by staff*

PROJECT NAME: Stewart Property

Complete address (if applicable) 8215 Springfield Road, Glenn Dale, MD

Geographic Location (distance related to or near major intersection)  
Southeast of the intersection of Springfield Road and Lake Glen Drive

Total Acreage: <u>12.01 AC</u>	Aviation Policy Area: <u>none</u>	Election District: <u>14</u>
Tax Map/Grid: <u>028D3</u>	Current Zone(s): <u>RR</u>	Council District: <u>4</u>
WSSC Grid: <u>211NE10</u>	Existing Lots/Blocks/Parcels: <u>131</u>	Dev. Review District:
Planning Area: <u>71A</u>	In Municipal Boundary: <u>no</u>	Is development exempt from grading permit pursuant to 32-127(a)(6)(A)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Tax Account #: <u>1641547</u>	Police District #: <u>II</u>	General Plan Growth Policy: <u>Established Communities</u>

Proposed Use of Property and Request of Proposal: A Planned Retirement Community composed of 57 single-family attached dwelling units. Revision Proposed to Add: Variance from Sec. 27-395(a)(3)(B))	Please list previously approved applications affecting the subject property:
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Applicant Name, Address & Phone: ESC 8215 Springfield L.C. 1355 Beverly Road, Suite 240 McLean, VA 22101 703-734-9730  Owner Name, Address & Phone: (if same as applicant indicate same/corporation see Disclosure) David M. Stewart, as Personal Representative of Estate of Joan M. Stewart 6101 Atlantic Ave #203, Ocean City, MD 21842 410-320-0149	Consultant Name, Address & Phone: Charles P. Johnson & Associates, Inc 1751 Elton Road, Suite 300 Silver Spring, MD 20903 301-434-7000  Contact Name, Phone & E-mail: Amy Sommer Charles P. Johnson & Associates, Inc 301-434-7000 x127 asommer@cpja.com
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SIGNATURE (Sign where appropriate; include Application Form Disclosure for additional owner's signatures):

David M. Stewart P.R. 3/19/25  
Owner's Signature (signed) Date

David M. Stewart, Personal Representative

Jude Burke 19 MAR 2025  
Applicant's Signature (signed) Date

Jude Burke, Manager

Jude Burke 19 MAR 2025  
Contract Purchaser's Signature (signed) Date

Jude Burke, Manager

Applicant's Signature (signed) Date

**FOR STAFF USE ONLY**

Application No.(s): \_\_\_\_\_



**SUBDIVISION CASES: Preliminary Plan of Subdivision/Conservation Sketch Plan**

Type of Application (Check all that apply):  Conventional Subdivision  Conservation Subdivision  
 Conservation Sketch Plan  Subdivision Ordinance Interpretation  Vacation Petition

Variation, Variance or Alternative Compliance Request(s):  Yes  No  
Applicable Zoning/Subdivision Regulation Section(s): \_\_\_\_\_

Total Number of Proposed:  
Lots \_\_\_\_\_ Outlots \_\_\_\_\_ Parcels \_\_\_\_\_ Outparcels \_\_\_\_\_

Number of Dwelling Units:  
Attached \_\_\_\_\_ Detached \_\_\_\_\_ Multifamily \_\_\_\_\_  
Gross Floor Area (Nonresidential portion only): \_\_\_\_\_

**SUBDIVISION CASES: Final Plat**

Water/Sewer:  DPIPE  Health Department  
Number of Plats: \_\_\_\_\_

Detailed Site Plan No.: \_\_\_\_\_  
WSSC Authorization No.: \_\_\_\_\_

Approval Date of Preliminary Plan: \_\_\_\_\_  
Check box if a hearing is requested:

**URBAN DESIGN AND ZONING CASES**

Type of Application (Check all that apply):  Certification of Nonconforming Use  Conservation Plan  
 Detailed Site Plan  Planned Development  Secondary Amendment  Special Exception  
 Zoning Map Amendment  Zoning Ordinance Interpretation

Details of Request:  
A Planned Retirement Community composed of 57 single-family attached dwelling units.  
Revised Request to Include: Variance from Sec. 27-395(a)(3)(B))  
Applicable Zoning Ordinance Section(s):  
Sec. 27-395; Sec. 27-296

Total Number of Proposed:  
Lots <sup>57</sup> \_\_\_\_\_ Outlots \_\_\_\_\_ Parcels <sup>3</sup> \_\_\_\_\_ Outparcels \_\_\_\_\_

Number of Dwelling Units:  
Attached <sup>57</sup> \_\_\_\_\_ Detached \_\_\_\_\_ Multifamily \_\_\_\_\_  
Gross Floor Area (Nonresidential portion only): \_\_\_\_\_

Variance Request:  Yes  No  
Applicable Zoning/Subdivision Regulation Section(s):  
Sec. 27-395(a)(3)(B)

Departure Request:  Yes  No  
Application Filed:  Yes  No

Alternative Compliance Request:  Yes  No  
Application Filed:  Yes  No



**APPLICATION FORM DISCLOSURE**

List all persons having at least five percent (5%) interest in the subject property ONLY required for Special Exception and Zoning Map Amendment Applications.

Owner(s) Name (printed)	Signature and Date	Residence Address
David M. Stewart, Personal Representative	<i>David M Stewart P.R.</i>	6101 Atlantic Ave #203, Ocean City, MD 21842

**CONTRACT PURCHASER**  
If the property is owned by a corporation, please fill in below.

Officers	Date Assumed Duties	Residence Address	Business Address
David Flanagan, President	1978		1355 Beverly Rd, Ste 240, McLean, VA 22101
Lauren Bauer, CFO	2023		1355 Beverly Rd, Ste 240, McLean, VA 22101
Jason Wiley, Regional Partner/ VP	2023		1355 Beverly Rd, Ste 240, McLean, VA 22101
Jude Burke, Partner/ VP	2009		1355 Beverly Rd, Ste 240, McLean, VA 22101

Officers	Date Assumed Duties	Date Term Expires	Residence Address	Business Address

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

**SPECIAL EXCEPTION  
22002  
and  
AC-23008**

**DECISION**

Application: Planned Retirement Community  
Applicant: ESC 8215 Springfield, L.C.  
Opposition: Howard Aldag, Charles Holman, et. al.  
Hearing Dates: December 13, 2023 and December 20, 2023  
Hearing Examiner: Maurene Epps McNeil  
Disposition: Request for Remand

**NATURE OF PROCEEDINGS**

- (1) Special Exception 22002/AC-23008 is a request for permission to develop a Planned Retirement Community with 57 age-restricted single-family attached dwellings on approximately 12.01 acres of RR (Rural Residential) zoned land, and for Alternative Compliance from Section 4.6 and Section 4.10 of the Landscape Manual. Applicant also seeks a variance from Subtitle 25 of the Prince George's County Code for the removal of four specimen trees. The subject property is located approximately 390 feet southeast of the intersection of Lake Glen Drive and Springfield Road, at 8215 Springfield Road, Glenn Dale, Maryland. The subject property is not located within the boundaries of the City of Bowie, Maryland.
- (2) The Technical Staff recommended approval with conditions. (Exhibit 3)
- (3) Howard Aldag, Tanya Aldag, Mary Spencer, Charles Holman, and Mr. Hasani Martin cross-examined Applicant's witnesses and/or testified in opposition to the request. Sean Suhar, Esq. appeared in opposition on his own behalf and on behalf of the Planning and Zoning Committee of the Wingate Homeowners Association, Inc. (Exhibit 109)
- (4) At the close of the second hearing, the record was left open to allow the submission of additional exhibits. The last of these items was received on December 29, 2023 and the record was closed at that time. <sup>1</sup> (Exhibits 106-109)

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<sup>1</sup> The record consists of two days of testimony and 109 Exhibits.

## FINDINGS OF FACT

### Subject Property

(1) The subject property is 523,117 square feet or 12.0091 acres in size and is identified as Parcel 131 on Tax Map 28, Grid 03 for Prince George's County, Maryland. (Exhibit 40) It is located 360 feet north of the intersection of Springfield Road and Moriarty Court, and is identified as 8215 Springfield Road, Glenn Dale, Maryland. It is improved with a single-family detached residence, detached garage, and a separate carport.

(2) The approved Natural Resources Inventory (NRI-069-2022) shows steep slopes, specimen trees, floodplain, a stream, and associated buffer on the northern and eastern property edges. (Exhibit 38) The subject property must comply with the Woodland and Wildlife Habitat Conservation Ordinance because the property contains more than 10,000 square feet of woodland, and the Applicant proposes clearing in excess of 5,000 square feet. TCP2-017-2023 has been submitted for review with this Application.

### Surrounding Property

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

North: Wooded land owned as common area by the Oakstone and Springfield Manor subdivisions mostly across the stream valley of Newstop Branch, in the RR Zone

South: Vacant land in the Glenn Dale Ridge East subdivision and beyond, single-family dwellings in the Springfield Manor subdivision in the RR Zone; and the undeveloped Glenn Dale Ridge West and Galentine's subdivisions, and a few single-family dwellings in the RE-Zone

East: Two single-family dwellings in the Springfield Manor subdivision in the RR Zone, and beyond more single-family dwellings in the Springfield Manor subdivision

West: Springfield Road and beyond, single-family dwellings on small parcels and undeveloped lots in the RE Zone

(Exhibit 102, pp. 3-4)

## **Neighborhood**

(4) The neighborhood has the following boundaries: to the north, Good Luck and Duckettown Roads; to the East, Maple Avenue; to the south, Lanham Severn Road (Maryland Route 564); and to the west, Wingate Drive. Although there are two undeveloped subdivisions in the area, the character of the neighborhood is primarily residential with the “predominant use of single-family detached dwellings on varying lot sizes, from the quarter-acre clustered lots in the abutting Springfield Manor and Oakstone subdivisions, to the larger one-to two-acre estate lots in Wingate.” (Exhibit 102, p. 4) Staff provided a description of the character of the neighborhood as well:

The landscape of the neighborhood is wooded and the elevation ranges from 130 feet above sea level at the Newstop Branch stream center to the east of the property, to 220 feet above sea level at Wycombe Park Lane to the west of the property. The developed character of the neighborhood is that of single-family dwellings along residential, two-lane streets and culs-de-sac. Parcel sizes are in the range of approximately 1.35 acres. Dwellings are frame, executed in the American traditional/Colonial Revival style and have clapboard siding or brick cladding, and most were constructed after 1984.

(Exhibit 3, Backup p. 131)

## **General Plan/Master Plan/Zoning**

(5) The subject property lies within the 2014 General Plan’s Established Communities Growth Policy Area. (2014 General Plan, p. 18) The General Plan “classifies existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers, as Established Communities.” (2014 General Plan, p. 20) The General Plan notes that “Established Communities are most-appropriate for context-sensitive infill and low-to medium-density development.” (2014 General Plan, p. 20) The Generalized Future Land Use Map designates the subject property for Residential Low land use, described as “[r]esidential areas up to 3.5 dwelling units per acre [and] [p]rimarily single-family detached dwellings.” ( 2014 General Plan, p. 100)

The General Plan includes a Section on Housing and Neighborhood Goals, which provided, in pertinent part, as follows:

Growth forecasts and evolving workforce preferences clearly indicate the need for a different approach to County housing policy.... The County’s aging population creates additional opportunities for new compact communities and infill development featuring smaller, accessible units where residents have the option to age in place....

[Policy 4 urges the County to expand] housing options to meet the needs of the County’s seniors who wish to age in place....

[Policy 5 urges the County to increase] the supply of housing types that are suitable for, and attractive to, the County's growing vulnerable populations. These include the elderly ... and residents with special needs....

(General Plan pp. 185,190)

(6) The subject property is located within Planning Area 71 A, an area discussed in the 2022 Bowie-Mitchellville & Vicinity Master Plan (the "Master Plan"). The Master Plan similarly recommended Residential Low land use for the site with the same definition of up to 3.5 dwelling units per acre and primarily single-family detached dwellings. (Master Plan, p. 49) A Housing and Neighborhood Goal was for neighborhoods to contain a range of housing types affordable to the widest range of residents. (Master Plan, p. 152) Another goal was to ensure additional housing options were available in the Established communities. (Master Plan, p. 153)

### **Applicant's Proposal**

(7) The Applicant, ESC 8215 Springfield, L.C., is in good standing to conduct business within the State of Maryland, having been issued a certificate by the State Department of Assessments and Taxation. (Exhibit 92) Applicant is a single-purpose limited liability company created to develop the proposed use on the subject property. Elm Street Development, L.C. is the contract purchaser of the property. It has also been issued a certificate by the State Department of Assessments and Taxation which authorizes it to conduct business with the State of Maryland. (Exhibit 88)

(8) The current owner of the property, Mrs. Stewart, and her son, David Morris Stewart, testified of their preference that the property be used "to provide high-quality housing opportunities for the seniors in the Glenn Dale community." (December 13, 2023 T. 24)

(9) Mr. Jude Burke, Vice President of Elm Street Development, L.C. and Manager of ESC 8215 Springfield, L.C., testified on Applicant's behalf about the product it intends to develop if the request is approved. The Applicant seeks to develop a Planned Retirement Community with a maximum of 57 single-family attached dwelling units (referred to as "villas") designed for seniors by locating necessary living spaces (a bedroom suite, kitchen, dining, and laundry facilities) on the first floor and a smaller upstairs area including a few rooms and a bathroom. (Exhibits 21-23 and 67-70; December 13, 2023 T. 33-34). The dwellings will be 28 feet wide, will include a 2-car garage, and will have a minimum of 60 percent masonry on the front of the house, inclusive of the entire first floor. Units with highly visible end walls will have masonry on the first floor, extra points of architecture on both floors, shutters on all windows, and enhanced roofline details. All of the common areas will be maintained by the Homeowners Association. (December 13, 2023 T. 37) The recreational amenities proposed include an outdoor gathering area with a lighted pavilion, outdoor fitness machines, and walking trails. (December 13, 2023 T. 35) Dwelling dimensions were not included on the Special Exception Site Plan and

must be added prior to certification if the request is approved. Mr. Burke did submit an exhibit that notes there will be a minimum of 1,600 finished square feet. Further, “[t]he architecture of the villas will be consistent with the representative architecture submitted into the record since no builder has been selected at this time. (Exhibit 106) A minimum of 117 parking spaces are required for the 57 attached dwelling units and a total of 228 are provided on the Special Exception Site Plan.

(10) Mr. Burke explained why Applicant proposes the use at the subject property:

We considered different types of residential development for the property since the planned retirement community is allowed in the RR Zone under both the old and new zoning codes and there’s a need for more senior housing in Prince George’s County ... [,] housing of all types, [and] we decided that the [Planned Residential Community] use would be the most appropriate.

An age-restricted community with fee-simple ownership of each house fits in with the residential character of the existing community and it fills the need for more senior housing in Prince George’s County as the population ages. It leverages a convenient location and the existing ... infrastructure while having a lower impact on traffic and schools in the area than the by right single-family large lots would have.

Senior housing of this type on the subject property would be a viable option of neighbors to remain in the Glenn Dale community as they age....

(December 13, 2023 T.32-33)

(11) On cross-examination, Mr. Burke agreed that he may not have discussed the Application with all of the neighbors in the area. (December 13, 2023 T. 51-52)

(12) Ms. Amy Sommer, a senior landscape architect with Charles P. Johnson & Associates (“CPJ”) (and at the time of the first hearing transitioning to the Division Manager of the Planning Department) testified on Applicant’s behalf and prepared the Statement of Justification to support Applicant’s request for a variance from Section 25-119 of the Prince George’s County Code to allow the removal of four of the ten specimen trees on site (Numbers 1, 3, 9 and 10). CPJ provides civil engineering, land planning, and survey services and prepared the Special Exception Site Plan and other associated plans, including the Tree Conservation Plan, for the instant Application. The witness noted that revisions were made to the plans in response to comments made by Maryland-National Capital Park and Planning Commission (“MNCPPC”) staff, and that after discussion with staff, it agreed that Applicant provided sufficient justification for approval of a variance pursuant to Section (Exhibit 74; December 13, 2023 T. 73-75) Upon cross-examination, Ms. Sommer explained that the four specimen trees are located in the middle of the site, and retaining them would make it “challenging to ... manage the infrastructure necessary for development even if [fewer homes were constructed] and also for grading of the site. (December 13, 2023 T. 82)

(13) Ms. Sommer prepared the Statement of Justification for Applicant's request for alternative compliance from Section 4.6 (Buffering Development from Streets) and Section 4.10 (Street Trees Along Private Streets) of the Landscape Manual. This Statement of Justification provided the following reasoning for the request:

Schedule 4.6 requires providing an attractive view of the development from streets and special roadways by buffering the development with landscaping, more specifically, buffering the rear yards and the lowest story of rear exterior walls from the view of any street....

[T]he minimum width of the required buffer is 35 feet, the minimum number of shade trees required is approximately 9, the minimum number of evergreen trees required is approximately 27, and the minimum number of shrubs required is approximately 45. This schedule applies to 2 proposed lots (lots 1 and 46). Although the minimum number of required plants is met and exceeded, the proposed plan provides a minimum buffer width of approximately 20 feet at the narrowest points, therefore not meeting the minimum requirement.... In response, the lots in question will be heavily screened from Springfield Road with shade trees, evergreen trees, and shrubs. In addition, a 6-foot-high fence will be provided in the bufferyard for additional screening, privacy, and aesthetics....

Schedule 4.10-1 [shows] .... The number of street trees required along 1,764 [linear feet ("LF")] of frontage (at 1 tree per 35 LF) is 51 trees. Per the schedule, the number of street trees proposed is 29, therefore not meeting the minimum requirement. In the attempt to provide as many street trees as possible, not every tree is able to be placed a minimum of 10 feet from the point of curvature of a residential driveway.

The number of street trees that can be installed along the private streets at Stewart Property is constrained by several conditions....

Driveways for front loaded single-family attached villas: The space between the driveways at many locations is not wide enough to fit street trees that are also required to be 10 feet from the point of curvature of residential driveways....

Intersections: Per Section 4.10-1, street trees cannot be installed within 35 feet from the point of curvature of an intersection. The project has several short blocks and intersections which limits the amount of street frontage available for street trees....

Utility conflicts: Many areas of street frontage are unavailable for proposed street tree installation due to conflicts with underground utilities such as storm drainage infrastructure, water service, sewers, and the public utility easements. Additional aboveground utility conflicts include street light poles and hydrants. Wherever possible utility conflicts have been minimized to increase the number of street trees.

Additionally, spacing guidelines and best practices for shade and ornamental street trees limit how many trees can be installed in the space between the curb and sidewalk

to an average of 30 feet on center.

Where utility conflicts, driveways, and intersections restrict the potential locations for street trees, every effort has been made to propose large shade trees near the street, but outside of the right-of-way, in order to shade sidewalks and on-street parking, enhance street aesthetics, and achieve many of the same benefits as street trees within the right-of-way. Every effort has also been made to propose shade, ornamental, and evergreen trees on-lot and on HOA parcels wherever feasible so that Landscape Manual Section 4.1-2 (“Residential Requirements for Townhouses, One-Family Semi-Detached, and Two-Family Dwellings Arranged Horizontally”) are met and exceeded (as shown on the Landscape and Lighting Plan). Additionally, the proposed tree planting and on-site woodland conservation exceeds the required Tree Canopy Coverage by approximately 5,700 square feet.

(Exhibit 86)

(14) At the December 13, 2023 hearing, Ms. Sommer noted agreement with the Technical Staff’s recommendation of approval of Applicant’s request for alternative compliance and opined that Applicant proffered an alternative compliance that resulted in an equivalent number of trees within street rights-of-way or in the common park so as to shade the sidewalks, accomplishing the same purpose as the required street trees. (December 13, 2023 T. 85-87) However, upon cross-examination by People's Zoning Counsel, Ms. Sommers did agree that none of the reasons proffered topographical constraints, and Applicant did not consider alternatives to developing the single-family attached dwellings to avoid the need for alternative compliance. (December 13, 2023 T. 90-91)

(15) Mr. David Nelson, Senior Transportation Traffic Engineer for Street Traffic Studies, Ltd., was accepted as an expert in transportation engineering and planning. He prepared a traffic statement (Exhibit 101) and testified in support of the Application. A formal traffic analysis was not required for review of this Special Exception, but one would be required at the time of preliminary plan of subdivision review if the Application is approved. Mr. Nelson evaluated the traffic that 60 age-restricted attached dwellings would generate and compared it to the 22 single-family detached dwellings that could be developed by right in the RR Zone and found that 60 age-restricted single-family attached dwellings would be 4 less trips during the AM peak hours and a little more than 4 trips less during the PM peak hours. Fifty-seven (57) age-restricted single-family detached dwellings would generate 5 fewer vehicular trips. (December 13, 2023 T. 121) Mr. Nelson concluded that the instant request would, therefore, not adversely impact the transportation network in the area nor the health, safety, and welfare of the community or adjacent properties (from a transportation perspective). Upon cross-examination, he acknowledged that seniors may still be working at 55 years of age but stressed that the County and national rates for vehicular trips at retirement communities, based on real-world traffic numbers for such communities, were utilized, and staff will conduct a study at the time of preliminary plan using current traffic counts for the area. (December 13, 2023 T. 134-137)

(16) Mr. Mark Ferguson accepted as an expert in the area of land use planning, testified and prepared a Land Use Analysis on Applicant's behalf. (Exhibit 102) Mr. Ferguson described the proposed use of the property as follows:

The proposed use for Special Exception application SE-22002 is the construction of 57 villa-style single-family attached dwellings served by private roads which are to be improved with sidewalks on both sides and 16 spaces of on-street parking. Each of the proposed dwellings will also have four private parking spaces, two in its garage and two tandem spaces in the driveway in front of each garage. There will be landscaped stormwater management facility behind the easternmost row of houses, surrounded by a pedestrian trail network, as well as two microbioretention facilities to provide full management through Environmental Site Design.

A paved seating plaza with a covered pavilion, seating, picnic tables and bike racks will be located along the southeast edge of the proposed development, with an area of community gardens for the residents abutting it. A trail will also extend from the Master-planned trail along Springfield Road into the northern part of the development.

Units along Springfield Road will be inward facing, and the rear lines of the lots will angle away from Springfield Road (to an average distance of 77' from right-of-way to rear/side lot line) to provide a substantive landscaped buffer which will preserve the character of the surrounding community. The rest of the units along Springfield Road will be further buffered from the traffic on the collector roadway with fencing and landscape plantings. Springfield Road itself will be improved across the entire frontage to the County's standards, including (pursuant to a proposed condition) the bike lane as provided for by the Master Plan of Transportation.

The development will be provided with modern stormwater management using Environmental Site Design (ESD) techniques and landscaping in conformance with the provisions of the Landscape Manual.

(Exhibit 102, p. 5)

(17) Mr. Ferguson concluded that the Application satisfied the strictures of Sections 27-317 and 27-395, in pertinent part, as follows:

- The proposed use and site plan are in harmony with the purposes found in Section 27-102(a) and 27-428(a) since the site will be developed in accordance with modern regulations to bring modern stormwater management to the site; new vehicular entrances along Springfield Road will be limited to one safe access into the property, protecting the public health and safety; the development will include landscaping and tree plantings that meet the Landscape Manual and tree canopy coverage requirements and these will visually buffer the proposed attached dwellings from the surrounding detached dwellings; and, it will provide a comfortable and convenient environment for its future senior residents given the design of the villas and the recreational amenities provided; the General Plan,

Master Plan, and Functional Master Plans are implemented since the first two recommend Residential Low land use for the property, place the property within the Established Communities -areas suited for context-sensitive infill development which the proposed use would be; the Master Plan urged the preservation of sensitive environmental areas and the development is designed to preserve the regulated environmental feature of Newstop Branch and its associated stream valley buffer; the Transportation and Mobility Element of the Master Plan goals are furthered by the provision of a bike lane and street trees along Springfield Road, and the provision of modern stormwater management as well as 100 year control; the green infrastructure network is used as a guide to decision-making and as an amenity since the site's regulated natural features are also the Regulated Areas in the County's green infrastructure network; the policies of the Master Plan pertaining to housing types and options and adding "visitable" units with barrier-free access into the first floor and a first floor bathroom are implemented by approval of the request; The Green Infrastructure Plan element of the County's 2017 Resource Conservation Plan is furthered since minimal impact will be made to two small areas of buffer to allow for the installation of sewer and storm drain outfalls if the requested variance is approved; if approved a preliminary plan of subdivision will ensure that the use is developed with adequate public facilities; If approved the Planned Retirement Community will provide for the orderly growth and development of the County by providing senior housing; the development regulations on the site Plan ensure that there will be adequate light, air, and privacy; if approved the use will be developed in accordance with the various land use principles of the prior Zoning Ordinance that promote the most beneficial relationship between the uses of land and buildings, and provision of modern stormwater management facilities and woodland conservation areas protect landowners from any adverse impacts; since the use will be developed in accordance with the provisions of the Zoning Ordinance and other Subtitles in the County Code it should protect the County from fire, flood, panic and other dangers; the proposed Planned Retirement Community will create a suitable and healthy living environment for its future residents given its architecture and communal outdoor recreational facilities; as a residential use economic development activities are not directly applicable but at the construction and design stages the use will ensure that a certain number of jobs will be created; Applicant will be constructing 41% fewer units than the 96 permitted if the eight units allowed in Section 27-395 (a)(3)(A) were constructed and other provisions of the Zoning Ordinance will prevent the overcrowding of land; the development is not expected to add as many vehicular trips as the single-family detached homes that could be built on the site and, again, at the time of subdivisions the adequacy of public roads will be ensured, Springfield Road will be widened, and a bike lane provided; the social stability of the County will be furthered by providing such housing and recreational amenities for seniors; the use will be designed in a manner that will generate no new air or water pollution, will disturb no stream valleys, steep slopes, large areas of dense forest; regulated natural features are being preserved and communal

recreational space provided; the development of attached housing for seniors has been found by the District Council to be permissible in the R-R Zone so the use need not meet the purposes addressing the provision of one-family detached residential subdivision lots; the site is designed to preserve trees and open spaces, in accordance with the TCP2 and the Tree Canopy Coverage requirements; soil erosion and stream valley flooding will be prevented due to the provision of 100-year stormwater management and development in accordance with an approved Sediment and Erosion Control Plan. (Section 27-317 (a)(1))

- The Applicant has not requested a variance from the provisions of the Zoning Ordinance. (Section 27-317 (a)(2))
- The proposed use will not substantially impair the integrity of the Master Plan, as noted above. (Section 27-317(a)(3))
- The lower proposed density, the single access reducing the number of additional accesses along Springfield Road, and conformance with the requirements of the Zoning Ordinance ensure that the use will not adversely affect the health, safety, or welfare of residents or workers in the area. (Section 27-317 (a)(4))
- The preservation of woodlands along the perimeter where the regulated natural features exist; the orientation inwards and buffering to avoid imposing a different development character along the perimeter road frontage on Springfield Road; use of the larger two-story units to maintain the local building height patterns keep the proposed use from being detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))
- If the TCP 2 is approved the site plan will be in conformance thereto. (Section 27-317(a)(6))
- While the site does contain an area of stream buffer and 100-year floodplain along its northeast border, which are regulated environmental features, a portion of the Primary Management Area will be temporarily disturbed and restored once the sewer construction is completed. The disturbance created by the outfall stabilization from the proposed submerged gravel wetland will be permanent but is de minimus in size and its purpose is to protect the Primary Management Area. (Section 27-317(a)(7))
- The site is not located within the Chesapeake Bay Critical Area. (Section 27-317 (b))

(Exhibit 102, pp. 5-15)

(18) Finally, Mr. Ferguson also opined that the use satisfied the particular criteria found in Section 27-395, reasoning as follows:

The 'Existing Conditions Summary' in the Housing and Neighborhoods Element of the Master Plan addresses public need at length.[See page 152 of the 2022 Bowie-Mitchellville and Vicinity Master Plan]....The General Plan's Housing and Neighborhoods Element has a similar prefatory discussion. [see page 184 of the 2014 General Plan].... [These plans] illustrate that a need [for the elderly and growing vulnerable populations] exists ...[and] the proposed development's two-story villa-type dwellings provide for the

possibility of single-story living, enabling homeowners to age in place and use the upstairs rooms to accommodate guests and/or caretakers....

[T]he characteristics of the development ... minimize its impact on the use and development of the ... surrounding residential community ... because the proposed development is designed to : preserve the woodlands along the perimeter where regulated natural features exist; be oriented inwards to avoid imposing a different development character along the perimeter road frontage on Springfield Road; use larger two-story units to maintain the local building height patterns; and, to provide enhanced setbacks and substantive landscaping along Springfield Road to separate the proposed development from dominating the existing streetscape....

The Site Plan depicts the proposed street network....The restrictions on building height, lot size, lot coverage, lot frontage, setbacks, density which are to be applicable to the proposed development are shown on the Special Exception Site Plan....

The subject property contains 12.0091 contiguous acres....

4.75 dwelling units per gross tract area are proposed....

The proposed villa-style dwellings are to be two stories in height....

The proposed Planned Retirement Community proposes an outdoor meeting area and a number of passive recreational facilities including trails, picnic areas, and community garden beds....

Retail commercial, medical, health care and other nonresidential uses are not proposed....

[T]he proposed covenants [for Age restrictions in conformance with the Federal Fair Housing Act and guaranteeing the perpetual maintenance of recreational facilities and the community's right to use the facilities] ... are in the backup in the Technical Staff Report....

In summary, this planner believes that all of the Additional Requirements of Section 27-395 which are required for the approval of a Planned Retirement Community are met.

(Exhibit 102, pp. 15-19)

(19) Upon cross-examination by People's Zoning Counsel and review of his Exhibit (Exhibit 103), Mr. Ferguson explained his opinion that the request met the requirement that the property contain twelve contiguous acres:

[E]ven though there ... is a public road leading over, you know, roughly the ... first 10 feet of the property boundary along ... Springfield Road, which would be the prescriptive easement.... After subdivision, 40 feet from that ... current boundary will be dedicated to public use and at that point, it will be part of a dedicated public right-of-way and therefore, ultimately get subtracted from the gross area, but ... it is the practice of [MNCPPC] uniformly when dealing with gross to deal with that at the start of development, not later on.... And so right now because that property had never been dedicated or conveyed out it remains part of the gross....

[If you deduct the square footage of the right-of-way prescriptive easement] you absolutely would be below 12 acres post-dedication....I think because of the deed you do have the 12 acres....

I would agree that there are not 12 net acres, because not only is there a ... prescriptive easement along Springhill Road, there's also 100-year floodplain, but the ordinance specifically says gross so that they can say, what does your deed say? Your deed says 12, great, you can proceed to develop ... and then you go and do your development, and all of that development will go and subtract – it will subtract roads, it will subtract other things, it might subtract a ... mandatory park dedication, for instance....

[Even if the Zoning Ordinance does not specifically say gross acreage] I guess I would say ... my uniform experience in evaluating development applications, [is] that evaluation is made at the beginning of the review process, not at the end....

(December 13, 2023 T.220- 227)

(20) Upon cross-examination by Mr. Holman, Mr. Ferguson expounded upon the number of trees on site and the effect that Applicant's plans would have on water runoff in the area:

[The existing dwelling is not located on a steep slope although] I know you believe it is steep. According to the county's definitions, it is not. That requires slopes to be in excess of 15 percent, which it only really appears in the ...banks of the stream and that's a ... protected area.

So ... right now existing today you have a house which has a driveway and it has roofs and the outbuildings have ... roofs and you have cleared area which has ... grass. All of that, even though it ... may be minimal, is still a greater amount of stormwater runoff than if the property were entirely wooded. So what the stormwater management regulations of the state and the county require is

that you manage the stormwater so that the ... discharge is equal to or less than what would come off it if the property were entirely wooded. So ... the design is done really to improve the stormwater conditions over what is there today after you build those 57 houses and that's done through various means.

Micro-bioretenion facilities are sort of like a constructed swamp, but nicely landscaped that both allow water to infiltrate into the soil and [allow] plants to use their... roots and their ... living nature to metabolize the nutrients that are in the runoff. So runoff rainfall generally absorbs ... nitrogen and phosphorus components that come out of principally car exhaust.

And when ... rain forms, those ... nitrogen and phosphorus components that go into the raindrops fall onto the ground and make their way ... onto impervious surfaces and then without management directly into stream bodies, which cause eutrophication....

So the idea is [to] metabolize all of that – all of those nutrients with plants in micro-bioretenion, in the submerged gravel wetland before it's discharged out into the environment and by creating pools, you also impact the water so that it has time to ... infiltrate into the soil, it has time to be metabolized by the plants and only trickles out of the facility at low rates, which ... are designed to match what the property would be in it had never been developed, if it wasn't even a single-family house but rather was entirely wooded.

(December 13, 2023 T.236- 239)

(21) Mr. Aldag cross-examined Mr. Ferguson as to whether the types of soil on site hinder the proposed stormwater facilities from optimal performance. (December 13, 2023 T. 241-242). The witness responded, in pertinent part, as follows:

[T]he bioswale is no longer part of the proposal ... [because] there's maintenance problems with those, so they don't like to approve those anymore....

There's ... two micro bio-retention facilities and a submerged gravel wetland... So those two ... types of facilities are very different in their ... function. So micro bio-retention facilities are suited to areas where the soil is permeable and ... in the case of this site, ... the type B hydrologic soils group soils ... which are up towards Springfield Road and that's where those micro bio-retention facilities are. So in that case they are able to infiltrate and perform the function that they're supposed to do.

On the northern and eastern parts of the site as you get towards Newstop Branch, then the soil characterizations change to C and probably as you get even a little bit more below ... the surface level, D and in that case, those soils are impermeable ... in various degrees.

And so the use of micro bio-retention is not suitable there. So what you do - where you have ... those soil conditions is you use a facility like a submerged gravel wetland, which is explicitly designed to treat the water by ... developing an anaerobic layer ...below a ... local water table that does the treatment and then ... you get discharge of the water as opposed to infiltration, but you were always getting that already because of the soils type.

So both of those facilities act to maintain the natural characteristics – the natural hydrologic characteristics of the site prior to development and that's ... what's proposed here....

So the county certainly and the state have a substantive interest in protecting the water of Newstop Branch and below ... because the watershed is a ... tier II watershed. And so what the county does is impose additional requirements to provide a higher level of protection for Newstop Branch than it would elsewhere....

(December 13, 2023 T. 240-245)

(22) Proposed covenants enforcing the age restriction and recreational facilities were provided. (Exhibit 53) The Applicant must submit the final version for approval if the Application is granted. (December 13, 2023 T. 35-36)

(23) Mr. Steven Jones, Survey Division Manager at CPJ, testified at the second hearing to explain the survey prepared and the effect that the prescriptive easement should have in the review of the criteria for approval. Mr. Jones reviewed the title report for the property, tax maps, deeds, plats and other public records and determined that the property has 12.0091 acres. He did discover evidence of a prescriptive easement on site, with the western property line running in the center line of Springfield Road, meaning a portion of paved area was on the Stewart property. (December 20, 2023 T. 20-21) Mr. Jones further testified that the inclusion of a prescriptive easement in the total acreage of the subject property is “consistent with the standard of care [of] [p]rofessional land surveyors of Maryland.” (December 20, 2023 T. 24) Mr. Jones explained that the prescriptive easement is approximately 3,524 square feet, so the area excluding the easement is 11.834 acres, the amount conveyed in one of the deeds provided. (Exhibit 107) Mr. Jones noted that “quite often ... areas stated in deeds may not be taken to the same decimal place, same accuracy ... “ so better surveying information can lead to a different acreage. (December 20, 2023 T. 25-26)

### **Opposition's Concerns**

(24) Mr. Charles Holman lives site across from Newstop Branch (also referred to as a stream/creek). That area is relatively flat, but the property adjacent to Springfield Road has a much steeper incline, raising concern that Mr. Holman's property may be subject to excessive runoff. He urged that the project be re-thought and scaled back.

(25) Mr. Martin questioned the necessity of placing 57 attached dwellings on the subject property given the traffic and environmental concerns and asked whether the number could be reduced. He also had a concern that there's no access to public transportation in that area which could impact the elderly that don't drive.

(26) Mr. Howard Aldag<sup>2</sup> provided an Exhibit (Exhibit ) and testified that he believes the requested use will adversely impact traffic in the area and the environment:

The residents on Springfield Road have traffic concerns. That includes substantial cut-through traffic from U.S.D.A. Beltsville Agricultural Research Center.

The current traffic volume is such that it is difficult to turn onto Springfield Road from driveways and intersecting resident streets. Area residents experience substantial delays in turning from driveways to Springfield Road and from stop sign-controlled intersections..., and when turning from Springfield Road onto Lanham Severn Road.

These concerns are valid and could be exacerbated by the traffic from the Stewart property plus other future developments affecting the Springfield area. This added traffic could lead to significant safety concerns and delay for me and my neighbors owning property abutting Springfield Road....

I have counted 300 to 400 cars per hour passing by the intersection of Good Luck Road and Springfield Road during rush hour drive times. That is approximately 1 car every 14 seconds today before the Stewart property and 8 to 10 other planned subdivisions are built or abutting ... Springfield Road.

The cumulative effect will make it impossible to have reasonable access and travel to our properties on and in the vicinity of Springfield Road...[I]t's for this reason that I urge you to call upon the zoning hearing examiner to withhold approval of the Stewart property special exception until a cumulative traffic impact study is completed and shows that safety concerns of the motorists, cyclists and pedestrians will not be jeopardized and without causing excessive congestion and delay.

And the second part of my testimony is on the environmental impact for the Newstop Branch. The Maryland Biological Stream Survey["MBSS"] shows that Newstop Branch was of good quality based on the ... most recent sampling done in 2008, which was about a mile downstream of the Stewart property site.

A good quality stream like Newstop Branch usually supports an abundance of fish and other organisms that are sensitive to pollution. A fair quality stream has usually lost most of the pollution-sensitive species....

Generally ... to maintain a good quality stream requires a minimum of 40 percent of the watershed is a forest and impervious surfaces [must] cover no more than 10 percent of watershed. Based on the U.S.G.S. Stream stats Data at 25 percent forest cover ...

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<sup>2</sup> Mr. Aldag was not accepted as an expert witness.

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Newstop Branch is considerable below the goo quality threshold and 14 percent ... cover puts the Newstop watershed above the 10 percent for good quality....

Stewart's property development will lower the forest acreage by 3.44 acres to 153.7 acres, watershed forest cover will go from an existing 25.3 percent down to 24.7 percent.... The Stewart property would add 4.56 acres impervious surface to the Newstop Branch watershed. Newstop Branch impervious cover acres would increase from the existing 84.5 acres to 89 acres....

[Additionally Staff noted] an unapproved stormwater management plan was submitted. The unapproved plan shows the use of two submerged gravel wetlands, two micro retention facilities and a bioswale to meet the stormwater requirements for the site.

The revised layout of the SE-22002 is not consistent with the layout shown on the unimproved stormwater management plan.

[T]hese proposed ... measures can be highly effective in mitigating impervious stormwater impacts....Soil permeability is rated with a system called hydraulic soil groups, which range from A to D .... The A soils are the most permeable, the D soils are the least.... The soils on the Stewart property site are mostly D with some C soils, because the soils are impermeable. The Stewart property development will further degrade Newstop Branch even with stormwater measures that are usually highly effective....

(December 13, 2023 T.265-271)

(27) Mr. Sean Suhar, Esq. did not testify but asked to express the view of his client, ostensibly the Wingate Homeowner's Association (the "Association"). After being asked to present evidence of the Association's vote on the Application Mr. Suhar presented a document from the Association's Planning and Zoning Committee. That body states that it and the Association are opposed to the amount of density requested, possible negative impact upon the roadways, negative impact upon the environment and on the stormwater management pond serving the Wingate community, and, insufficient parking for the future residents of the Planned Residential Community. (Exhibits 105(a)-(c) and 109) It is important to note that no witness testified to these concerns; accordingly, the evidence was not taken under oath and subject to cross-examination. Nonetheless, I will give it the appropriate weight and will make the Homeowner's Association a Person of Record.

(28) Upon redirect Mr. Burke noted that Applicant had a letter of findings and hydraulic planning analysis approved from the Washington Suburban Sanitary Commission ("WSSC") for the revised layout of the development. (Exhibit ; December 13, 2023 T. 261-262)

### Technical Staff/Agency Comment

(29) The Technical Staff's Environmental Planning Section ("EPS") recommended approval of the Special exception ad TCP2-017-2023, with conditions, after reviewing Applicant's revised layout (submitted on August 18, 2023) and revised letter of justification for impacts to environmental features ("REF") (submitted on August 21, 2023. (Exhibit 3, Backup pp. 136-149) The EPS provided extensive support for its recommendation, capsulized as follows:

[PMA] is located to the east of the property, which includes a stream, associated buffer, and floodplain. No forest interior dwelling species are indicated on-site, per PGAtlas.com. According to information obtained from the Maryland Department of Natural Resources ..., there are no rare, threatened or endangered ... species fount to occur on or in the vicinity of this property. No Tier II waterbodies are located on-site; however, the site is located within the Patuxent River upper watershed, a stronghold watershed as established by the Maryland DNR....

The site is located within the Environmental Strategy Area 2 ... of the Regulated Environmental Protection Areas Map, as designated by [2014] General Plan, and the Established Communities of the General Plan Growth Policy....

The site is in the 2022 Approved Bowie-Mitchellville and Vicinity Master Plan, which includes applicable goals, policies and strategies. [The request satisfies policies and Goals in the Natural Environment Section of the Master Plan.] There are no [Nontidal Wetlands of Special State Concern] NTWSSC within the vicinity of this property.... This project will be subject to stormwater review and approval by ... [DPIE]. An unapproved Stormwater Concept plan ... is currently under review. A final stormwater design plan in conformance with County and State laws will be required to issuance of any grading permits for this site....

(Exhibit 3, Backup pp137-138)

The EPS noted that the request complies with the requirements of the Countywide Green Infrastructure Plan, Prince George's Resource Conservation Plan and the Woodland and Wildlife Habitat Conservation Ordinance since:

- The site is in the vicinity of the Special Conservation Area associated with the Patuxent Research Refuge, and the site layout will place an area that is currently a network connection between existing woodlands offsite on the Patuxent Research Refuge with existing woodland preservation, thereby preserving and placing woodlands into either a woodland conservation easement along the northern portion of the site, or in a floodplain easement. Woodland conservation must be designed in a manner that minimizes fragmentation and reinforces new forest edges.

- The on-site woodlands will be placed into Woodland and Wildlife Habitat Conservation Easements prior to approval of the TCP2. The TCP2 prioritizes preservation adjacent to regulated streams and a Special Conservation Area. The approved NRI and the TCP2 preserve a portion of the highest quality of existing woodland on-site while concentrating some areas of the development within the unforested areas. There are no stream crossings, nor any trail systems proposed with the instant request.
- Regulated environmental features are located on-site, and Section 24-130(b)(5) of the prior Subdivision Ordinance requires that the Application demonstrate the preservation and/or restoration of regulated environmental features in a natural state to the fullest extent possible. Impacts to the regulated environmental features will be limited to two areas within the primary management area – a 1,903-square-foot impact to a portion of the floodplain and stream buffer for the connection, installation, and associated grading for a sanitary sewer line; and a 216-square-foot impact to the floodplain for a weir outfall and riprap for a submerged gravel wetland associated with a planned stormwater management facility.

(30) The EPS also recommended approval of Applicant's requested variance from Section 25-122 (b)'s requirement that specimen trees be preserved. There are ten specimen trees on the site. Applicant requests the removal of four -trees 1, 3,9, and 10, all located in the northeastern portion of the site. Staff supported the removal of the specimen trees since the variance request meets the six requirements for approval found in Section 25-119 (d):

[Conditions peculiar to the property have caused the unwarranted hardship.] The specimen trees proposed for removal are located outside of the REF. [T]he four specimen trees requested for removal [are] for proposed roadways, building footprints, and grading.... [A]ll species of the included specimen trees have limiting factors for their construction tolerance, specifically if significant impacts are proposed to the [critical root zone] CRZ. These trees are located throughout the site, outside of the steep slope areas.

Removal of specimen trees ST-1, a 32-inch Post [O]ak in fair condition is requested to adequately provide circulation on the site. Specimen trees proposed for removal for house location include ST-3 and ST-10, both White [O]aks, and ST-9 ,a Southern [R]ed [O]ak. These trees are all in good condition, ranging from 30 to 45 inches in diameter.

Staff finds that ST-1, ST-3, ST-9, and ST-10 are somewhat dispersed yet integral to the developable portion of the site, in that they are more centrally located on the property and not in close proximity to the PMA or any REF. Retention of these trees and protection of their respective CRZs would have a considerable impact on the proposed development by creating challenges for adequate circulation and infrastructure through portions of the site....

Based on the location and species of the specimen trees proposed for removal, retaining the trees and avoiding disturbance to the CRZ of trees ST-1, ST- 3, ST-9,and ST-10 would have a considerable impact on the development potential of the property. If similar trees were encountered on other sites, they would be evaluated under the same criteria. These four specimen trees requested for removal are located within the developable parts of the site....

Not granting the variance to remove trees ST-1, ST-3, ST-9, and ST-10 would prevent the project from being developed in a functional and efficient manner. This is not a special privilege that would be denied to other applicants.... Other applicants with similar circumstances would receive the same recommendation....

The existing site conditions or circumstances, including the location of the specimen trees, are not the result of actions by the applicant. The location of the trees and other natural features throughout the property is based on natural or intentional circumstances that long predate the applicant's interest in developing this site. Additionally, to date, the applicant has not undertaken any construction on the site that would cause the need for the removal of the specimen trees with the proposed development....

There are no existing conditions relating to land or building uses on the site, or on neighboring properties , which have any impact on the location or size of the specimen trees. The trees have grown to specimen tree size based on natural conditions and have not been impacted by any neighboring land or building uses....

Requirements regarding the SWM concept will be reviewed and approved by DPIE. Erosion and sediment control requirements are reviewed and approved by the Soil Conservation District.... Both SWM and sediment and erosion control requirements are to be met in conformance with state and local laws to ensure that the quality of water leaving the site meets the state's standards. State standards are set to ensure that no degradation occurs and granting this variance will require adherence to these standards....

(Exhibit 3, Backup pp. 145-146)

(31) The Planning Director and the Alternative Compliance Committee recommended approval of AC-23008 since:

- The 35-foot-wide buffer required when a rear yard of single-family attached or detached dwellings are oriented toward a street classified as a collector is met for all but two Lots (Lot 1 and Lot 43) where the width is reduced to 26 feet and 20 feet, but the full plant units and a fence will be provided.
- The requirement of one street tree per 35 linear feet of frontage cannot be met due to Section 4.10 (c)(5) and (c)(10)'s requirements of additional setbacks from the point of curvature of driveway entrances and street intersections. Instead, the Applicant will provide additional plantings, and the additional trees are proposed as close to the private streets as possible, but outside of public utility easements.

- Finally, recommended conditions will require more plantings close to the private streets.

(Exhibit 3, Backup pp. 125-129)

(32) The Transportation Section noted that the 2009 Countywide Master Plan of Transportation recommends that a planned bicycle lane be provided along Springfield Road. It then opined that the request could be approved, from a transportation standpoint:

Staff find that the proposed plan with the recommended facilities does not impair the ability to make transportation related recommendations that are supported by an approved Master Plan or Functional Master Plan. In this case, staff recommends a bicycle lane along the site's frontage on Springfield Road, which is supported by the MPOT policy....

The current configuration of the site allows for one point of access along Springfield Road. Per the approved transportation scoping agreement, traffic counts at the site access point and Springfield Road as well as traffic counts at the intersection of Lanham-Severn Road and Springfield Road are required to determine adequacy. Staff and the applicant agree that further analysis related to vehicular adequacy will be examined at the time of Preliminary Plan of Subdivision (PPS).

Lastly, regarding pedestrian circulation and facilities, sidewalks are provided throughout the development, providing pedestrian access throughout. Crosswalks have been provided where sidewalk facilities are interrupted. A natural surface trail has been provided between the sidewalk network along Springfield Road and the western terminus of Private Road B. Staff supports the proposed bicycle and pedestrian facilities associated with the subject application and will further examine adequacy at the PPS stage of development.

(Exhibit 3, Backup pp. 133-135)

(33) The Technical Staff found that the request satisfied applicable provisions of Section 27-317 since:

- The general purposes of the Zoning Ordinance generally protect the public health, safety and welfare, promote compatible relationships between land uses, guide orderly development, and ensure adequate public facilities and the proposed 57 age-restricted residences will provide diverse housing options for the surrounding community through quality senior housing and recreational amenities. Moreover, the environmental features on site will be protected through the addition of a stormwater management system, on and off-site woodland conservation, and the preservation of

the majority of the primary management area. (Section 27-317(a)(1))

- The request demonstrates conformance with the R-R Zone's development regulations. Once conditions are addressed, it can be found in conformance with all the applicable requirements of the Zoning Ordinance, (Section 27-317(a)(2))
- The request will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan since the 2022 Bowie-Mitchellville and Vicinity Master Plan recommends low-density residential land uses for the site, described as residential areas up to 3.5 dwelling units per acre, and a Housing and Neighborhood Goal therein encourages a range of housing types and the preservation and expansion of senior housing. (Section 27-317(a)(3))
- The provision of quality senior housing and the outdoor amenities will enhance the health, safety and welfare of residents in the area. The sidewalk added along the frontage on Springfield Road and the addition of a bicycle lane will as well. (Section 27-317(a)(4))
- The site is bounded to the north and east by open-space and single-family detached dwellings, to the south by vacant land, and to the west by Springfield Road and single-family detached dwellings beyond. The request will complement the existing residential uses by its conformance to the Landscape Manual and the alternative compliance thereto, the preservation of Primary Management Area ("PMA") and certain specimen trees, and adherence to recommended conditions. (Section 27-317(a)(5))
- TCP2-017-2023 shows a total of 4.77 acres of woodland in the net tract and 1.58 acres of wooded floodplain. 3.63 acres of woodland is proposed for clearing (above the threshold requirement in the R-R Zone) in the net tract area and 0.04 acre of wooded floodplain – accordingly, a total woodland conservation requirement of 3.74 acres. On-site woodland and wildlife habitat conservation easements will be required, and will be primarily met by off-site credits. A Subtitle 25 variance was requested and staff recommends approval of the removal of specimen trees 1, 3, 9, 10 and a condition added in order to protect tree 8. (Section 27-317(a)(6))
- PMA is found on the site, as shown on the approved Natural Resources Inventory (NRI-069-2022). Applicant proposes impact of 1,903 square feet to the floodplain and stream buffer in order to install a needed sewer line, and 216 square feet to the floodplain of an outfall associated with a

submerged gravel wetland. All of the specimen trees requested to be removed are outside of the regulated environmental features. Therefore, these features are being preserved and/or restored to the fullest extent possible. (Section 27-317 (a)(7))

- The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(Exhibit 3, October 4, 2023 revisions to Technical Staff Report and Technical Staff Report, pp. 5-10)

(34) The Technical Staff also found compliance with Section 27-395 of the Zoning Ordinance, after certain conditions are met, reasoning in part as follows:

- The development will provide a new housing option for seniors in close proximity to dwellings that are not age-restricted, thereby meeting a goal of the County's *Comprehensive Housing Strategy* which seeks to support the elderly and provide a diverse set of housing opportunities. It will also support the needs of the retirement-aged community by including recreational amenities, dog waste stations, and on-site furniture within the community pavilion. (Section 27-395 (a)(1)(A)(i))
- The layout minimizes the number of rear-facing dwellings along Springfield Road and ensures that adequate landscape buffering is provided on-site to reduce the visual impact of the development. Applicant provided a Visibility Impact Exhibit that will provide more architectural interest for all end units. (Section 27-395 (a)(1)(A)(ii))
- The Special Exception Site Plan shows the one access point from Springfield Road and the private streets. Both will be examined thoroughly at the time of subdivision review. (Section 27-395 (a)(2)(A))
- A regulation table has been provided detailing the standards to be applied to the use. However, Staff believes additional standards must be included or that Applicant should note that the underlying standards in the zone will apply. (Section 27-395(a)(3)(A))
- The property is comprised of 12.01 acres as a result of a prescriptive easement along Springfield Road. Staff finds the DPWT letter and the property survey sufficient evidence demonstrating conformance to the requirement that the site have 12 contiguous acres. (Section 27-395 (a)(3)(B))

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- The gross tract area is approximately 12.01 acres. When multiplied by 8, 96 dwelling units could be constructed, and Applicant only proposes 57. (Section 27-395(a)(3)(C))
- The description of community meeting area and other recreational facilities were provided in Applicant's Statement of Justification. The community gathering area includes a pavilion, benches, bicycle racks, a community garden and tables. Staff recommends a condition to provide additional active recreation activities within or near the community gathering area. (Section 27-395(a)(4)(A))
- No retail commercial uses, medical uses, health care facilities or other uses related to the needs of the community are to be provided. (Section 27-395(a)(4)(B))
- Covenants concerning the age restrictions in conformance with the Federal Fair Housing Act and guaranteeing perpetual maintenance and the community's right to use the recreational facilities are included, and must be approved by the District Council and recorded in the land records of Prince George's County. (Section 27-395(a)(5)(A) and (a)(6))

(35) The Department of Public Works & Transportation (DPW&T) reviewed land records, deeds, and a boundary survey for the property and provided the following comment:

Based on our review we are confirming that : DPW&T has no record of Springfield Road being conveyed to Prince George's County by deed or plat; the portion of the road that fronts 8215 Springfield Road was established by a prescriptive easement; the property at 8215 Springfield Road borders the centerline of the right of way....

DPW&T is requesting that a formal dedication of this portion of Springfield Road be granted to Prince George's County by the property owner.

(Exhibit 3, Backup p. 50 of 169)

(36) The Washington Suburban Sanitary Commission ("WSSC") issued a Letter of Findings that indicated that a hydraulic planning analysis has been completed for the subject property and conceptually approved, with certain conditions required. (Exhibit 105 (c); December 20, 2023 T. 46-47)

## APPLICABLE LAW

(1) A Planned Retirement Community is permitted in the RR Zone by grant of a Special Exception pursuant to Sections 27-317 and 27-395 of the prior Zoning Ordinance. The request must also satisfy the purposes of the Zoning Ordinance found in Section 27-102 (a) and the purposes of the R-R Zone found in Section 27-428 (a).

(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 27-395 provides as follows:

### **Sec. 27-395. Planned retirement community.**

(a) A planned retirement community may be permitted, subject to the following criteria:

**(1) Findings for approval.**

- (A) The District Council shall find that:
  - (i) The proposed use will serve the needs of the retirement-aged community;
  - (ii) The proposed use will not adversely affect the character of the surrounding residential community; and
  - (iii) In the R-A Zone, there shall be a demonstrated need for the facility and an existing medical facility within the defined market area of the subject property.

**(2) Site plan.**

- (A) In addition to the requirements of Section 27-296(c), the site plan shall set forth the proposed traffic circulation patterns.

**(3) Regulations.**

- (A) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, density, dwelling unit types, and other requirements of the specific zone in which the use is proposed shall not apply to uses and structures provided for in this Section. The dimensions and percentages shown on the approved site plan shall constitute the regulations for a given Special Exception.
- (B) The subject property shall contain at least twelve (12) contiguous acres.
- (C) The average number of dwelling units per acre shall not exceed eight (8) for the gross tract area.
- (D) In the R-A Zone, buildings shall not exceed three (3) stories.
- (E) In the I-3 Zone, the following shall apply:
  - (i) The gross tract area shall be a minimum of ninety (90) acres with at least twenty-five percent (25%) of its boundary adjoining residentially-zoned land or land used for residential purposes;
  - (ii) The property shall have at least one hundred fifty (150) feet of frontage on, and direct vehicular access to, a public street;
  - (iii) All buildings shall be set back a minimum of seventy-five (75) feet from all nonresidentially-zoned boundary lines or satisfy the requirements of the Landscape Manual, whichever is greater; and
  - (iv) The property shall be located within two (2) miles of mass transit, regional shopping, and a hospital.
- (F) In the I-3 and C-O Zones, townhouses shall comply with the design guidelines set forth in Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(d).

**(4) Uses.**

- (A) The planned retirement community shall include a community center or meeting area, and other recreational facilities which the District Council finds are appropriate. These recreational facilities shall only serve the retirement community. The scope of the facilities shall reflect this fact. The Council may only permit a larger facility which serves more than the retirement community if the facility is harmoniously integrated with the retirement community and the surrounding neighborhood. All recreational facilities shall be constructed prior to, or concurrent with,

the construction of the residential units, or in accordance with a schedule approved by the District Council;

- (B) Retail commercial uses, medical uses, health care facilities, and other uses which are related to the needs of the community may be permitted.

(5) **Residents' age.**

- (A) Age restrictions in conformance with the Federal Fair Housing Act shall be set forth in covenants submitted with the application and shall be approved by the District Council, and filed in the land records at the time the final subdivision plat is recorded.

(6) **Recreational facilities.**

- (A) Covenants guaranteeing the perpetual maintenance of recreational facilities, and the community's right to use the facilities, shall be submitted with the application. The covenants shall be approved by the District Council, and shall be filed in the land records at the time the subdivision plat is recorded. If the recreational facilities are to be part of a condominium development, a proposed condominium declaration showing the recreational facilities as general common elements shall be approved by the District Council, and shall be recorded (pursuant to Title II of the Real Property Article of the Annotated Code of Maryland) at the time the subplat is recorded.

- (4) Sections 27-102(a) and 27-428(a) provide as follows:

**Sec. 27-102. Purposes.**

- (a) The purposes of the Zoning Ordinance are:

- (1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;
- (2) To implement the General Plan, Area Master Plans, and Functional Master Plans;
- (3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;
- (4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;
- (5) To provide adequate light, air, and privacy;
- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (7) To protect the County from fire, flood, panic, and other dangers;

- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;
- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;
- (10) To prevent the overcrowding of land;
- (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;
- (12) To insure the social and economic stability of all parts of the County;
- (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;
- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and
- (15) To protect and conserve the agricultural industry and natural resources.

**Sec. 27-428. R-R Zone (Rural Residential).**

**(a) Purposes.**

(1) The purposes of the R-R Zone are:

- (A) To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain;
- (B) To facilitate the planning of one-family residential developments with moderately large lots and dwellings of various sizes and styles;
- (C) To encourage the preservation of trees and open spaces; and
- (D) To prevent soil erosion and stream valley flooding.

(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 instant application must satisfy Sections 27-317 and 27-395 as well as the test in Schultz v. Pritts and its progeny, discussed above. I have concerns about the number of units proposed since the Master Plan and General Plan both recommend Residential Low uses on the site, and I do not believe Applicant has satisfied all of the provisions of Section 27-395, which means it also would not satisfy all of the provisions of Section 27-317. Therefore, I cannot reach a conclusion as to compliance with Sections 27-317, 27-395, and applicable case law.

(2) The majority of the applicable provisions of Section 27-395 are satisfied. The record indicates that the use will serve the needs of the retirement-aged community since the proposed homes are attractively and compactly designed, allowing the residents to access all essential living uses on the first floor and minimizing the need to worry about large lawns; and there will be opportunities to socialize with others within the compact community and to exercise and otherwise enjoy the outdoors. (Section 27-395 (a)(i)) While some in the neighborhood disagree, the District Council has determined that this more dense use is permitted in the area, and it was designed to avoid impact to the environmental features; the architecture is compatible with the existing homes nearby; and the homes most visible to the homes across Springfield Road will be buffered and fenced to reduce visibility. (Section 27-395 (a)(ii)) The Special Exception Site Plan includes the single access and will

provide private streets; and most of the development regulations for the site. (Sections 27-395 (a)(2) and (3)(A)) The planned retirement community includes an outdoor meeting area, walking trails and some outdoor exercise stations; if approved, these facilities will be required to be constructed prior to or concurrent with the attached homes. (Section 27-395 (a)(4)) Draft covenants addressing age restrictions for the residents and recreational facilities were submitted; final versions will be required for review and approval prior to signature approval of the Special Exception. (Sections 27-395 (a)(5) and (6))

(3) However, this Examiner believes that the strictures of Sections 27-395 (a)(3) (B) and (C) have not been satisfied. A public road may be created by prescription where, as in this case, there has been exclusive and uninterrupted use of the property as a road open to the public. Holder v. Young, 2023 Md. App. LEXIS 350. The County accepted the 3,542 square feet by grading it and by allowing the public's use of it. Wilkinson v. Board of County Commissioners, 255 Md. App. 213 (2022.) As noted by People's Zoning Counsel "a prescriptive easement is essentially a third [party's] irrevocable right to use a title owner's property- not to have ownership but to have use and in this case the public or agency... has a right to use that property [into ] perpetuity." (December 20, 2023 T. 27) The Zoning Ordinance defines "contiguous acres" as "abutting", and "abutting" as "touching and sharing a common point or line." (Section 27-107.01) For these reasons I believe that the requirement for twelve contiguous acres must be read as requiring 12 full acres within the Applicant's control that all touch, and an applicant does not have 12 contiguous acres when a prescriptive easement precludes its ability to use 3,542 square feet thereof.

(4) The Applicant looks to the other definitions within the prior Ordinance to settle the issue, believing the definitions for "Gross Tract Area ( or Acreage)" and "Net Tract Area (Net Acreage)" are dispositive. (Exhibit 108) The first is defined in Section 27-107.01 (a) as "the total area of a tract of land, including all land area which is to be conveyed for 'Public Facilities.'" The second is defined in Section 27-107.01(a) as "the 'Gross Tract Area' minus all land which: (i) lies within a 'One Hundred (100) Year Floodplain'; and (ii) Has been dedicated, donated, or otherwise conveyed out of the tract." General tenets of statutory construction would hold that all of these provisions should be interpreted in a manner that gives credence to each and does not render nugatory any portion thereof. (See, Hollingsworth v. Severstal Sparrows Point, 448 Md. 648 (2016)) To restate, the District Council expressly provided a different definition for "contiguous acres" not using the language in the other definitions. Accordingly, those other definitions should not be used to define "acres" wherever that term is used in the Ordinance. I also believe it is better to subtract the prescriptive easement portion, even though we are dealing with a very small shortfall in the instant request, to avoid having differing interpretations as to where to draw the line. For example, would the Applicant and staff agree that a 1-acre prescriptive easement is too large to include? Or would anyone argue that it must be 2 acres or larger before a prohibition sets in?

(5) Finally, I have concerns that the proposed development impairs the 2022 Master Plan and 2014 General Plan recommendations of Residential Low land use defined as a density of 3.5 dwelling units per acre - less than the 4.75 dwelling units per acre considered

SE-22002/AC-23008

in the instant request. If the District Council agrees that the area subject to a prescriptive easement could be utilized in meeting the contiguous acreage requirement, the acreage not subject to the easement and the maximum density recommended in the General and Master Plans should be utilized to allow 41 dwelling units (11.83 acres multiplied by 3.5).

(6) The best solution is to require Applicant to file a request for a variance from Section 27-395(a)(3)(B) since the Application was filed under the prior Zoning Ordinance provisions. That is preferable to applying differing interpretations of the law. If granted, all regulations should be recalculated using the correct acreage.

### **DISPOSITION**

The Application should be REMANDED to the Zoning Hearing Examiner in order that the Applicant submit a request for a variance to Section 27-395 (a)(3)(B)'s requirement that the subject property contain 12 contiguous acres, and to make any necessary revisions to the Special Exception Site Plan and other applicable documents. Applicant should also reduce the number of dwelling units to the maximum recommended in the 2022 Master Plan or further address why that is unnecessary. The remand may be limited in nature, allowing the incorporation of the prior record.

**Letter**

**To:** Maryland State Department of Assessment and Taxation  
Attn: Wanda Greeley

**From:** Steven W. Jones | Charles P. Johnson & Associates, Inc.  
Shawn T. Jewell | Charles P. Johnson & Associates, Inc.

**Subject:** Property Land Area for Parcel 131 – 8215 Springfield Road, Glenn Dale, Maryland

**Date:** February 4, 2025

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This letter (this “**Letter**”) dated February 4, 2025, from Charles P. Johnson & Associates, Inc. (“**CPJ**”) to the Maryland State Department of Assessment and Taxation (“**SDAT**”) (i) summarizes the direction from the County Council of Prince George’s County (the “**County**”), sitting as the District Council (the “**Council**”) in the Order of Remand dated July 15, 2024 (the “**Remand Order**”) regarding the Case (defined below); (ii) details CPJ’s review and analysis of land records, the site, SDAT methods and practices with regard to determinations of property land area, and other publicly available information regarding the Property, as well as CPJ’s communication efforts with SDAT staff, in connection with the direction from the Council in the Remand Order; and (iii) requests confirmation from SDAT regarding such review and analysis of the Property in response to the Council’s requests.

CPJ has provided architectural, civil engineering, and land planning services for ESC 8215 Springfield L.C. (“**Applicant**”) in connection with its application for approval of Special Exception, Alternative Compliance, and Variance applications, SE-22002/AC-23008 (the “**Case**”). The land that is the subject of the Case is known as Parcel 131 within Tax Map No. 28, Grid D3 and is located at 8215 Springfield Road, Glenn Dale, Maryland (the “**Property**”). On June 3, 2024, the Council heard oral arguments from the Applicant and other participants in the Case. On July 15, 2024, pursuant to the Remand Order, the Council ordered that the Case be remanded to the County Zoning Hearing Examiner (the “**ZHE**”), with specific instructions to provide additional proof and/or testimony regarding the items listed below.

The Council’s direction in the Remand Order was largely based on a previous review of SDAT’s online real property database, which previously reflected a property land area of 11.94 acres. However, as of January 31, 2025, SDAT’s online real property database reflects a property land area of 12.0091 acres for the Property.

To address the Council's instructions, CPJ has (i) reviewed and analyzed land records and other publicly available information regarding the Property, and (ii) has communicated with SDAT on several occasions regarding the property land area and the methods and practices used by SDAT to determine the property land area for the Property.

### **Council Direction and CPJ Responses**

The following lists each Council instruction<sup>1</sup> in the Remand Order, followed by a response from CPJ that analyzes the request and provides the requested information.

1. *Applicant shall provide proof in writing or through testimony from SDAT indicating whether SDAT included or excluded the land/acreage/square footage for the prescriptive easement as part of Parcel 131 in Assessment Year 2023.*

**Response:** This instruction does not account for the methods and practices of SDAT when determining the property land area of a particular parcel, account or property. SDAT reviews the land records applicable to a particular property and generally relies on the land descriptions and land areas described in such land records when determining the property land area. SDAT does not generally make any assessment of the accuracy of said land descriptions or land areas, nor does SDAT conduct land surveys of properties to make any such determinations. Likewise, SDAT does not review land records for the existence of easements or other nonpossessory interests that might exist on a property without evidence in the land records. Accordingly, the existence of a prescriptive easement on the Property was not assessed by SDAT when determining the property land area of the Property. However, it is clear from the property land area of the Property that the prescriptive easement area was not excluded; the property land area of the Property previously listed on the SDAT database was simply inaccurate, based on inaccurate land area descriptions in the land records.

Further, as mentioned above, as of January 31, 2025, SDAT's online real property database reflects a property land area of 12.0091 acres for the Property. While SDAT does not investigate for the existence of easements or other nonpossessory interests that might exist on a property without evidence in the land records, it is clear that SDAT did not exclude the land/acreage/square footage of the prescriptive easement from the property land area of the Property.

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<sup>1</sup> Direct quotations from the Remand Order are provided in *italics*.

2. *Applicant shall provide proof in writing or through testimony from SDAT indicating whether the total acreage of the property land area—as defined by SDAT (i.e., 11.9400 acres)—is calculated solely from deed reference 40916 and 00567—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from deed reference 40916 and 00567.*

**Response:** The property land area for the Property listed on SDAT’s online database was not calculated solely from the deed reference in Deed Book 40916 starting at Page 567. As mentioned above, as of January 31, 2025, SDAT’s online real property database reflects a property land area of 12.0091 acres for the Property. The property land area of the Property listed on SDAT’s online database as of January 31, 2025, was calculated solely from the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221.

3. *Applicant shall provide proof in writing or through testimony of the acreage of land—separately—for deed reference 40916 and for deed reference 00567—as they are recorded in the Prince George’s County Land Records.*

**Response:** The description of the Property and its size contained in the deed identified in Deed Book 40916 beginning at Page 567 do not accurately reflect the square footage/acreage/property land area of the Property. As mentioned above, as of January 31, 2025, SDAT’s online real property database reflects a property land area of 12.0091 acres for the Property, calculated from the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221. Accordingly, the acreage of the Property is 12.0091 as evidenced by SDAT’s online real property database and the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221.

With respect to the land identified in Deed Book 40916 beginning at Page 567, CPJ previously prepared and submitted into the Record a boundary survey evidencing the property land area of the Property as 12.0091 acres. To substantiate the results of the boundary survey, CPJ also prepared a 32-page boundary survey narrative, prepared and signed by a Maryland professional land surveyor, outlining its process, procedures, and research, including the referenced documents. CPJ’s boundary survey was prepared in accordance with laws, standards, and practices as outlined in the Code of Maryland Regulations (“COMAR”) 09.13.06.03 (Minimum Standards of Practice) applicable to licensed land surveyors in Maryland and is an accurate reflection of the property land area of the Property. In addition to its review of the deeds, plats, and other recorded instruments for the Property and adjacent properties, CPJ prepared the boundary survey using a field run survey (also known as “on the ground” survey), using the location of property monumentation and/or markers,

such as iron pipes and rebar and cap with identifying markers, to support the boundary determination and the resulting surveyed area. Accordingly, the boundary survey and boundary narrative are further evidence that the property land area of the Property identified in Deed Book 40916 beginning at Page 567 is 12.0091 acres.

4. *Applicant shall provide proof in writing or through testimony from SDAT describing the legal significance of: ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)—and the total combined acreage of Parcel 131 after 10.0AC was RECOMB/DEL from 3830957 on 7/1/10—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from the RECOMB/DEL 10.0AC.*

**Response:** SDAT has stated that the language listed on the SDAT real property database for the Property are comments internal to SDAT staff intended to note in the file, for SDAT's internal purposes, how areas are accounted for from previous tax account numbers. SDAT has made clear that these internal notations should not be interpreted as the legal description of the property and are not intended to be relied upon by others.

5. *Applicant shall provide proof in writing or through testimony of the date of conveyance of the land/acreage/square-footage for the prescriptive easement out of Parcel 131—and any written agreement memorializing such conveyance.*

**Response:** There is no evidence of any conveyance of the land/acreage/square footage of the prescriptive easement area out of Parcel 131. In fact, by its very nature as an *easement*, the prescriptive easement area remains part of the property land area/acreage/square footage of the Property (i.e., Parcel 131), because an easement is a *nonpossessory* interest in the real property of another. Further, by its nature as a *prescriptive* easement, the easement would have been created by *implication* (i.e., by use of another party of the Property without the owner's permission), NOT by an express agreement. Accordingly, there could not exist a date of conveyance of a prescriptive easement nor a written agreement memorializing a prescriptive easement.

Even if evidence existed of the prescriptive easement being conveyed, the prescriptive easement area would remain part of the property land area. There remains no legal justification for excluding *any* easement from the property land area. In preparing the boundary survey in accordance with the laws, standards, and practices outlined in the COMAR 09.13.06.03, applicable to licensed land surveyors in Maryland, CPJ accurately interpreted the deed references, including the specific language stating that the Property's boundary runs with the centerline of the roadway and performing a field run survey (also

known as “on the ground” survey). Further, CPJ coordinated with the County Department of Public Works & Transportation (“DPW&T”) regarding the prescriptive easement area, and DPW&T confirmed in writing that, to DPW&T’s knowledge, no deeds nor documents exist which granted or conveyed any portion of nor any interest in the Property (including the prescriptive easement area and/or any portion of the Property on Springfield Road) to DPW&T, the County or any other County or State agency. Accordingly, no evidence exists to indicate that the prescriptive easement area should not be included in the property land area of the Property, and CPJ’s boundary survey reflects the accurate boundaries and property land area of the Property.

6. *Applicants shall provide proof in writing or through testimony of whether Parcel 131 consists of deeds other than 40916 and 00567.*

**Response:** Prior to recordation of the deed referenced in Deed Book 50486 starting at Page 221, there existed no evidence in the land records that the Property (i.e., Parcel 131) consisted of any deed other than that located at Deed Book 40916 starting at Page 00567. Following recordation of the deed referenced in Deed Book 50486 starting at Page 221, the deed located at Deed Book 40916 starting at Page 00567 is no longer relevant for the purposes of determining the property land area of the Property.

As of January 31, 2025, SDAT’s online real property database reflects a property land area of 12.0091 acres for the Property, calculated from the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221. Accordingly, the Property (i.e., Parcel 131) consists solely of the land described in the deed referenced in Deed Book 50486 starting at Page 221.

7. *Applicant shall provide proof in writing or through testimony indicating whether the land/acreage/square footage for the prescriptive easement has a separate or different deed reference other than 40916 or 00567.*

**Response:** As mentioned above, as of January 31, 2025, SDAT’s online real property database reflects a property land area of 12.0091 acres for the Property, calculated from the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221. Accordingly, the Property (i.e., Parcel 131), which includes the prescriptive easement area, consists solely of the land described in the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221. The prescriptive easement area does not have a separate deed reference other than the deed located at Deed Book 50486 starting at Page 221.

Further, in preparing the boundary survey for the Property, CPJ reviewed and analyzed the information contained in deeds, plats, and other recorded instruments for *both* the Property and adjacent properties, performed a field run survey (also known as “on the ground” survey), using the location of property monumentation and/or markers, such as iron pipes and rebar and cap with identifying markers, all in accordance with the laws, standards, and practices outlined in the COMAR 09.13.06.03, applicable to licensed land surveyors in Maryland. No evidence was discovered throughout the exhaustive surveying process that any portion of the Property consisting of 12.0091 acres was conveyed by any other deed or instrument, nor was any such evidence discovered or provided by DPW&T, title attorneys, County agencies, nor any other parties with whom CPJ consulted.

### **Request for SDAT Confirmation**

In light of the foregoing, CPJ hereby requests that SDAT provide the information below, in a signed and dated writing on SDAT letterhead.

1. CPJ requests that SDAT confirm from SDAT that CPJ’s response to Council direction No. 1 accurately reflects SDAT’s procedures for review, calculation and determination of property land area for individual tax accounts.
2. To the extent that SDAT’s procedures for review, calculation and determination of property land area for individual tax accounts differ from those described in CPJ’s response to Council direction No. 1, CPJ requests additional information and/or clarity from SDAT regarding such procedures.
3. CPJ requests that SDAT confirm that, as of January 31, 2025, SDAT’s online real property database reflects a property land area of 12.0091 acres for the Property.
4. CPJ requests that SDAT confirm that, as of January 31, 2025, the property land area for the Property listed on SDAT’s online database was calculated solely from the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221.
5. CPJ requests that SDAT confirm that, as of January 31, 2025, the Property (i.e., Parcel 131) consists solely of the land described in the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221.
6. CPJ requests that SDAT confirm that SDAT does not investigate for the existence of easements or other nonpossessory interests that might exist on a property without evidence in the land records.



# Charles P. Johnson & Associates, Inc.

Civil and Environmental Engineers • Planners • Landscape Architects • Surveyors

Silver Spring, MD • Annapolis, MD • Greenbelt, MD • Frederick, MD • Fairfax, VA

7. CPJ requests that SDAT confirm that, in determining the property land area of the Property, SDAT did not specifically identify nor exclude the land/acreage/square footage of any prescriptive easement from the property land area of the Property.
8. CPJ requests that SDAT confirm that SDAT did not investigate nor find evidence of any conveyance of the land/acreage/square footage of any prescriptive easement area out of the Property.
9. CPJ requests that SDAT confirm that SDAT did not investigate nor find any evidence to indicate that the prescriptive easement area should not be included in the property land area of the Property.
10. CPJ requests that SDAT confirm that, as of January 31, 2025, SDAT has found no evidence of a separate deed reference for the prescriptive easement area other than the deed located at Deed Book 50486 starting at Page 221.
11. CPJ requests that SDAT confirm that the language from the SDAT real property database described in Council direction No. 4 (i.e., “ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)—and the total combined acreage of Parcel 131 after 10.0AC was RECOMB/DEL from 3830957 on 7/1/10—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from the RECOMB/DEL 10.0AC”) (a) are intended to be used by SDAT staff to note in the file, for SDAT’s internal purposes, how areas are accounted for from previous tax account numbers, and (b) are internal notation, which should not be interpreted as the legal description of the property and are not intended to be relied upon by others.

Sincerely,

2/4/25

Steven W. Jones  
Professional Land Surveyor  
Division Manager of Surveys  
Charles P. Johnson & Associates, Inc.



EXPIRES 2/8/27



February 27, 2025

Stewart David M Personal Rep  
6101 Atlantic Avenue  
Apt 203  
Ocean City, MD 21842

RE: Account #17141641547 – 215 SPRINGFIELD RD, GLENN DALE MD

Dear Stewart David M Personal Rep,

This letter is in response to the questions presented to Prince George's County Assessment office on February 4, 2025, by CPJ Associates. Questions and answers are below.

1. **CPJ requests that SDAT confirm from SDAT that CPJ's response to Council direction No. 1 accurately reflects SDAT's procedures for review, calculation and determination of property land area for individual tax accounts.**  
SDAT can confirm that CPJ's response to Council direction No. 1 accurately reflects SDAT's procedures for review, calculation and determination of property land area for individual tax accounts. SDAT does not, however, make any representation as to the accuracy of the remainder of CPJ's response to Council direction No. 1.
2. **To the extent that SDAT's procedures for review, calculation and determination of property land area for individual tax accounts differ from those described in CPJ's response to Council direction No. 1, CPJ requests additional information and/or clarity from SDAT regarding such procedures.**  
SDAT was able to revise the land area as requested, due to the provisions of a newer, current deed with a recorded survey.
3. **CPJ requests that SDAT confirm that, as of January 31, 2025, SDAT's online real property database reflects a property land area of 12.0091 acres for the Property.**  
SDAT can confirm that as of January 31, 2025, our database reflects 12.0091 acres. With the review of older map books and of prior deeds, including Book 40916 Page 567, SDAT was able to verify the land area previously reflected 11.94 acres. However, with the recording of a current survey and deed, recorded on January 10, 2025, among the Land Records of Prince Georges County at Book 50486 Page 221, the land area was changed to 12.0091 acres.
4. **CPJ requests that SDAT confirm that, as of January 31, 2025, the property land area for the Property listed on SDAT's online database was calculated solely from the deed (including**



**the legal description) referenced in Deed Book 50486 starting at Page 221.**

SDAT calculated the land area solely from the survey and deed's legal description using metes and bounds.

5. **CPJ requests that SDAT confirm that, as of January 31, 2025, the Property (i.e., Parcel 131) consists solely of the land described in the deed (including the legal description) referenced in Deed Book 50486 starting at Page 221.**

SDAT cannot confirm this because it does not perform title review, survey land, or verify the accuracy of a legal description, as CPJ as referenced in its response to #1. SDAT cannot confirm exactly what land the property consists of.

SDAT can confirm that the legal description in SDAT records comes from solely from the legal description in the deed and the survey.

6. **CPJ requests that SDAT confirm that SDAT does not investigate for the existence of easements or other nonpossessory interests that might exist on a property without evidence in the land records.**

SDAT confirms that it does not investigate the existence of easements or nonpossessory interests.

7. **CPJ requests that SDAT confirm that, in determining the property land area of the Property, SDAT did not specifically identify nor exclude the land/acreage/square footage of any prescriptive easement from the property land area of the Property.**

SDAT determined the land area solely from the legal description of recorded deeds.

8. **CPJ requests that SDAT confirm that SDAT did not investigate nor find evidence of any conveyance of the land/acreage/square footage of any prescriptive easement area out of the Property.**

SDAT reviewed old map books and deeds dating back to that deed recorded at Book 5227 page 168 on February 15, 1980, with no mention of easements being conveyed.

9. **CPJ requests that SDAT confirm that SDAT did not investigate nor find any evidence to indicate that the prescriptive easement area should not be included in the property land area of the Property.**

SDAT did not investigate for any prescriptive easements.

10. **CPJ requests that SDAT confirm that, as of January 31, 2025, SDAT has found no evidence of a separate deed reference for the prescriptive easement area other than the deed located at Deed Book 50486 starting at Page 221.**

SDAT did not look for such a separate deed, and as such, has uncovered none.



11. **CPJ requests that SDAT confirm that the language from the SDAT real property database described in Council direction No. 4 (i.e., “ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)—and the total combined acreage of Parcel 131 after 10.0AC was RECOMB/DEL from 3830957 on 7/1/10—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from the RECOMB/DEL 10.0AC”) (a) are intended to be used by SDAT staff to note in the file, for SDAT’s internal purposes, how areas are accounted for from previous tax account numbers, and (b) are internal notation, which should not be interpreted as the legal description of the property and are not intended to be relied upon by others.**

The purpose of the notation “(RECOMB/DEL 10.0AC FROM 3830957 7/1/10)” was for SDAT’s internal purposes, to allow the property owner to receive a homestead credit. SDAT previously had to create an account for 1 acre, or the amount of land zoning required for a homesite, in order for the property to qualify for the homestead credit. SDAT has combined the split account back together now that its database can be coded for both the homesite and excess land that would not qualify for the homestead credit.

If you have any questions regarding this matter, please contact me on the number provided below.

Sincerely,

A handwritten signature in black ink that reads "Kim Jackson". The signature is written in a cursive, flowing style.

Kim Jackson  
Supervisory of Assessments

***STATE OF MARYLAND***  
***Department of Assessments and Taxation***

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I, DANIEL K. PHILLIPS OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE DEPARTMENT, BY LAWS OF THE STATE, IS THE CUSTODIAN OF THE RECORDS OF THIS STATE RELATING TO LIMITED LIABILITY COMPANIES , OR THE RIGHTS OF LIMITED LIABILITY COMPANIES TO TRANSACT BUSINESS IN THIS STATE, AND THAT I AM THE PROPER OFFICER TO EXECUTE THIS CERTIFICATE.

I FURTHER CERTIFY THAT ESC 8215 SPRINGFIELD, L.C. (W23195142) , REGISTERED AUGUST 09, 2022, IS A LIMITED LIABILITY COMPANY EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF MARYLAND, AND THAT THE LIMITED LIABILITY COMPANY IS AT THE TIME OF THIS CERTIFICATE IN GOOD STANDING TO TRANSACT BUSINESS.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY SIGNATURE AND AFFIXED THE SEAL OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND AT BALTIMORE ON THIS MARCH 06, 2025.



Daniel K. Phillips  
Director



700 East Pratt Street, 2nd Flr, Ste 2700, Baltimore, Maryland 21202  
Telephone Baltimore Metro (410) 767-1344 / Outside Baltimore Metro (888) 246-5941  
MRS (Maryland Relay Service) (800) 735-2258 TT/Voice

Online Certificate Authentication Code: rNgdGj6EKkypYnspou66Wg  
To verify the Authentication Code, visit <http://dat.maryland.gov/verify>

TP 12-108(F)  
TP 13-207(a) 2

PRINCE GEORGE'S COUNTY, MD  
APPROVED BY: # BC  
DATE: 1/8/25  
RECORDATION TAX PAID  
TRANSFER TAX PAID

**THIS CONFIRMATORY  
QUIT CLAIM DEED**

THIS CONFIRMATORY QUIT CLAIM DEED made and entered into on this 20<sup>th</sup> day of December, 2024, by and between **David M. Stewart**, Personal Representative of the Estate of Joan M. Stewart (who was surviving spouse of George A. Stewart, deceased), hereinafter referred to as Grantor, and **David M. Stewart**, Personal Representative of the Estate of Joan M. Stewart, hereinafter referred to as Grantee.

WITNESSETH: That by Quit Claim Deed dated March 18, 2018 and recorded in Liber 40916 at folio 567 among the Land Records of Prince Georges County, Maryland, Joan M. Stewart conveyed a parcel of land described in Exhibit A thereof to herself and William E. Knupp as joint tenants with right of survivorship. William E. Knupp died on or about May 25, 2020, leaving Joan M. Stewart as sole owner. Joan M. Stewart died on or about May 20, 2024 and David M. Stewart has been appointed as her Personal Representative in Estate No. 133609 in said County; and

WITNESSETH: That Grantor has determined by current survey that the legal description in the Quit Claim Deed was incorrect and Grantor desires to confirm the conveyance of said property as currently surveyed.

NOW, THEREFORE, the said Grantor, for and in consideration of the sum of ZERO and NO/100 (\$0.00) DOLLARS, does this day remise, release and quitclaim to the said Grantee the following described real estate located in PRINCE GEORGES County, MARYLAND:

**SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION**

Also known as: 8215 Springfield Road, Glenn Dale, MD 20769

This conveyance is subject to easements, covenants, conditions, restrictions, reservations, rights-of-way and limitations of record, if any.

Prior instrument reference: Liber 5452, Folio 595, Recorded: 09/15/1981

TO HAVE AND TO HOLD the lot or parcel above described together with all and singular the rights, privileges, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining unto the said Grantee(s) and unto the heirs, administrators, successors or assigns of the Grantee(s) forever in FEE SIMPLE.

12-108(F) - Previously recorded instrument -

An instrument of writing previously recorded is not subject to Recordation tax when the instrument or a counterpart is recorded in another County or in the same County

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) MEA 50486, p. 0221, MSA\_CE64\_50795. Date available 01/22/2025. Printed 03/06/2025.

IN TESTIMONY WHEREOF, the said **David M. Stewart**, Personal Representative of the Estate of Joan M. Stewart, has on the 20<sup>th</sup> day of December, 2024, given his hand and seal.

Michelle Johnson  
Witness

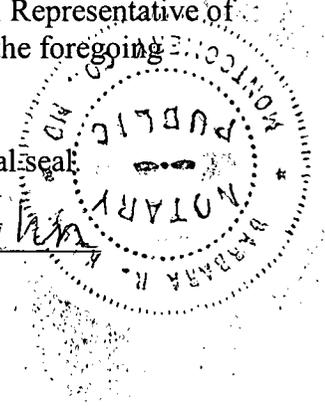
David M Stewart (SEAL)  
**David M. Stewart**, Personal Representative of the Estate of Joan M. Stewart

STATE OF MARYLAND )  
 ) SS:  
COUNTY OF Montgomery )

On this the 20<sup>th</sup> of December, 2024 before me, the undersigned officer, personally appeared David M. Stewart, who acknowledged himself to be the Personal Representative of the Estate of Joan M. Stewart and he, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Barbara R. Kahan  
Notary Public

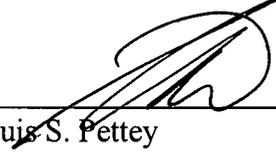


My Commission expires:  
December 7, 2026

By the execution of the Deed, the party of the first part hereby certifies under the penalties of perjury that the actual consideration paid or to be paid, including the amount of any mortgage or deed of trust outstanding, is in the sum total of \$ZERO.

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) MEA 50486, p. 0222, MSA\_CE64\_50795. Date available 01/22/2025. Printed 03/06/2025.

I hereby certify this instrument was prepared under my supervision and that I am an attorney duly admitted to practice before the Supreme Court of Maryland.

  
\_\_\_\_\_  
Louis S. Pettey

Tax ID: 14-1641547

Grantor/Grantee: 6101 Atlantic Ave, #203  
Ocean City, MD 21842

Property Address: 8215 Springfield Road  
Glenn Dale, MD 20769

Return to: Fenton Title Company  
Montvale Center  
18310 Montgomery Village Avenue  
Suite 400  
Gaithersburg, Maryland 20879

# CPJ Charles P. Johnson & Associates, Inc.

Civil and Environmental Engineers • Planners • Landscape Architects • Surveyors

Silver Spring, MD • Gaithersburg, MD • Annapolis, MD • Greenbelt, MD • Frederick, MD • Fairfax, VA

Tax I.D. No. 14-1641547

## Schedule "A"

### Description of the Property of Joan M. Stewart and William Knupp

Being a strip or parcel of land lying in Prince George's County Maryland and being all of the lands conveyed by Joan M. Stewart, as surviving spouse of George A. Stewart, deceased to **Joan M. Stewart, an unmarried woman and Willima E. Knupp, an unmarried man, as joints tenants with right of survivorship**, by deed dated march 10, 2018 and recorded among the Land Records of said County in **Book 40916 at Page 567**, and being more particularly described as now surveyed in the Maryland Coordinate System NAD83 (2011) Datum as follows:

**Beginning** for the same at a point, said point being an iron pipe found at the and held at the northwesterly end of the North 62°28'19" West, 238.15 feet line of Parcel A, as shown on a plat entitled, "Lots 1 thru 31 and Parcel A, Oakstone", said plat being recorded among said Land Records in Plat Book NLP 149 at Plat No. 18, thence running with and bonding on said line with the following course and distance

1. **South 62°37'05" East, 238.15 feet** to an iron pipe found and held, said point being the northwesterly end of the North 74°27'02" West, 194.71 feet line of Parcel F, as shown on a plat entitled, "Plat One of Section Two, Springfield Manor Cluster", said plat being recorded among said Land Records in Plat Book NLP 126 at Plat No. 24; thence running with and binding on the outline of aforesaid Parcel F, with the following four (4) courses and distances
2. **South 74°15'14" East, 194.49 feet** to an iron pipe found; thence
3. **South 63°46'35" East, 100.02 feet** to an iron pipe found and held; thence
4. **North 87°07'49" East, 121.95 feet** to an iron pipe found and held; thence
5. **South 50°21'36" East, 435.20 feet** to an iron pipe found and held, said point being the northeasterly end of the North 26°03'00" East, 196.00 feet line of Lots 19 & 18, Block D, as shown on a plat entitled, "Plat of Correction, Plat Two of Section Two, Springfield Manor Cluster", said plat being recorded among said Land Records in Plat Book NLP 127 at Plat No. 66; thence running with and bonding on said plat line, in part with the following two (2) courses and distances

Schedule "A"  
 Description of the  
 Property of  
 Joan M. Stewart and  
 William E. Knupp

Page 2 of 2

6. **South 26°12'36" West, 195.84 feet to a point; thence**
7. **South 15°04'51" West, 23.43 feet to an iron pipe found; thence leaving afore said plat line and running with the northerly or North 69°11'50" East, 704.76 feet line of Lot 31, as shown on a plat entitled, "Subdivision Record Plat, Lots 19-31, Parcel B, Glenn Dale Ridge East", said plat being recorded among said Land Records in Plat Book REP 215 at Plat No. 36, with the following course and distance**
8. **South 69°00'55" West, 723.86 feet to a point, said point lying in the centerline of Springfield Road as shown in the attached Boundary Survey; thence running with and along said centerline, with the following two (2) courses and distances**
9. **North 19°23'39" West, 84.43 feet to a point; thence**
10. **296.83 feet along the arc of a non-tangent curve, deflecting to the left, having a radius of 2,231.32 feet and a chord bearing and distance of North 23°12'19" West, 296.61 feet to a point, thence leaving the said centerline of Springfield Road and running with the outline of the property of the owners hereto, with the following four (4) courses and distances**
11. **North 62°59'02" East, 12.60 feet to a point; thence**
12. **North 03°35'05" West, 40.94 feet to a point; thence**
13. **North 25°05'16" West, 35.26 feet to a point; thence**
14. **North 02°54'42" West, 505.48 feet to the point of beginning, containing an area of 523,117 square feet or 12.0091 acres of land.**

**Surveyor's Certificate**

I hereby certify that this description was prepared by me in compliance with requirements set forth in 09.13.06.12 of the COMAR Regulations.

Date: 12/23/24



Shawn T. Jewell  
 Professional Land Surveyor  
 Maryland Reg. No. 21847  
 Exp.: 05/29/2026



PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) MEA 50486, p. 0225, MSA\_CE64\_50795. Date available 01/22/2025. Printed 03/06/2025.



State of Maryland Land Instrument Intake Sheet

Baltimore City County: Prince Georges
Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.
(Type or Print in Black Ink Only--All Copies Must Be Legible)

Space Reserved for Circuit Court Recording Validation

1 Type(s) of Instruments
2 Conveyance Type Check Box
3 Tax Exemptions (if applicable)
Cite or Explain Authority

4 Consideration and Tax Calculations
Consideration Amount
Finance Office Use Only
Transfer and Recordation Tax Consideration

5 Fees
Amount of Fees
Doc. 1
Doc. 2
Agent:
Tax Bill:
C.B. Credit:
Ag. Tax/Other:

6 Description of Property
SDAT requires submission of all applicable information.
A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

7 Transferred From
Doc. 1 - Grantor(s) Name(s)
Doc. 2 - Grantor(s) Name(s)

8 Transferred To
Doc. 1 - Grantee(s) Name(s)
Doc. 2 - Grantee(s) Name(s)
New Owner's (Grantee) Mailing Address

9 Other Names to Be Indexed
Doc. 1 - Additional Names to be Indexed (Optional)
Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information
Instrument Submitted By or Contact Person
Name: Jude Burke
Firm Elm Street Development
Address: 1355 Beverly Road Suite 240
McLean VA 22101 Phone: (703) 734-9730

11 IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER
Assessment Information
Will the property being conveyed be the grantee's principal residence?
Does transfer include personal property?
Was property surveyed?

Assessment Use Only - Do Not Write Below This Line
Terminal Verification
Agricultural Verification
Whole Part Tran. Process Verification
Transfer Number Date Received: Deed Reference: Assigned Property No.:

REMARKS:

Space Reserved for County Validation

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) MEA 50486, p. 0227, MSA\_CE64\_50795, Date available 01/22/2025, Printed 03/06/2025.

# CLERK VALIDATION SHEET

LR - Deed (No-Taxes)  
 Recording Fee 20.00  
 Name: STEWART  
 Ref:  
 LR - Deed (No-Taxes)  
 Surcharge .40.00  
 =====  
 SubTotal: 60.00  
 =====  
 Total: 60.00  
 01/10/2025 12:01  
 CC16-KaP  
 #18638216 CC0703 -  
 Prince George's  
 County/CC07.03.04 -  
 Register 04

---

*Mahasin El Amin* – Clerk  
 Prince George's County Circuit Court  
 14735 Main Street  
 Upper Marlboro, MD 20772



May 31, 2024

**VIA EMAIL**

Ms. Donna Brown, Clerk  
Clerk of the County Council  
Wayne K. Curry Administration Building  
1301 McCormick Drive  
Largo, MD 20774  
Email: ClerkoftheCouncil@co.pg.md.us

**Re:** SE-22002/AC-23008: Stewart Property – 8215 Springfield Road, Glenn Dale, Maryland (the “**Property**”)  
**Notice of (1) Death of Joan M. Stewart; (2) Filing of Estate of Joan M. Stewart; (3) Appointment of David M. Stewart as Personal Representative of Estate**

Dear Ms. Brown:

ESC 8215 Springfield L.C. (“**Applicant**”), by and through its attorneys, CLHatcher LLC, hereby provides notice to the District Council (i) of the death of the owner of the Property, Joan M. Stewart on May 20, 2024, (ii) that the Estate of Joan M. Stewart (Estate No. 133609) (the “**Estate**”) was filed with the Prince George’s County Register of Wills and opened on May 28, 2024, and (iii) that David M. Stewart, son of Joan M. Stewart, has been appointed as the Personal Representative of the Estate, as certified by the Register of Wills of Prince George’s County in the Letter of Administration dated May 28, 2024, attached hereto as Exhibit 1. Pursuant to Maryland Estates and Trusts Code §7-401, in his capacity as the Personal Representative of the Estate, David M. Stewart has the power to act on behalf of the Estate in connection with the Property and Case No. SE-22003/AC-23008 (the “**Case**”).

Respectfully,

---

Christopher L. Hatcher  
CLHatcher LLC

Enclosure

cc: Stan Brown, Esq. | People’s Zoning Counsel, Prince George’s County

**EXHIBIT 1**

**Letter of Administration**



**STATE OF MARYLAND  
LETTERS OF ADMINISTRATION**

ESTATE NO. 133609

I certify that administration of the Estate of

JOAN MARIE STEWART

was granted on the 28th day of MAY, 2024,  
to DAVID MORRIS STEWART

as personal representative(s) and the appointment is in effect  
this 28th day of MAY 2024.

Will probated May 28, 2024  
(date)

Intestate estate



Cereta A. Lee #14  
CERETA A. LEE  
Register of Wills for  
PRINCE GEORGE'S

VALID ONLY IF SEALED WITH THE SEAL OF THE COURT OR THE REGISTER

RW1120 ROWNET  
11/2009

# SE 22002/AC23008 Testimony for 6-3-24 Hearing

---

March 6, 2025

Howard and Tanya Aldag  
8485 Springfield Road  
Glenn Dale, Maryland 20769

## **RE: Stewart Property (SE-22002/AC-23008) Concept, Functionality, Traffic & Environmental Concerns**

Dear Clerk of the County Council:

This is testimony that will be given by Howard Aldag during the Zoning Hearing for the Stewart Property residential development SE-22002/AC-23008 proposed on Springfield Road, Glenn Dale MD 20769. The 12.01-acre Stewart Property site would be developed as a planned retirement community consisting of 57 single-family attached homes. Please make this testimony a part of the record for the hearing.

I moved to Springfield Road in 1986. It was a wonderful country road with acreage, and everything was green and beautiful. The houses were all on 1 to 10 acre lots or more. The Stewart's had a horse that was fenced up to Springfield Road. It was a pleasant rural atmosphere and a nice place to live. Now, there is construction everywhere and approximately 150 houses are being built. Literally there is approximately 50 or more acres of ground being cleared on 3 jobsites, where not a single tree is left standing. Now to add this high-density retirement community on top of the present construction it will totally destroy the beautiful place we moved into 38 years ago.

There is no demonstrable urgent need for this type of housing in the Glenn Dale/Springfield Road market place. Presently there are 7 large senior living facilities in and around Bowie/Greenbelt. To name a few of them:

- Woodlands at Reid Temple – Glenn Dale MD, 62+ seniors, 252 units
- Pin Oak Village – Bowie MD, 55+ seniors, 220 units
- Evergreen Senior Community – Bowie MD, 62+ seniors, 108 units
- Tribute at Melford – Bowie MD, 55+ seniors, 150 units
- The Willows – Bowie MD, 62+ seniors, 79 units
- Vistas at Lake Largo – Largo MD, 55+ seniors, 111 units
- Manor at Victoria Park – Temple Hills MD, 55+ seniors, 148 units

**Presently there are 1,068 Units for 55 to 65+ senior living, with literally 100s of available units.**

In and near Bowie there are 52 independent Assisted Living facilities.  
In and near Greenbelt there are approximately 199 assisted living facilities.

**Presently there are approximately 251 independent Assisted Living Facilities all around and near the Bowie/Greenbelt area. These Assisted Living Facilities also provide senior living accommodations.**

As a resident of the area, I find that this SE 22002 Project misleading in concept and functionality. The parcel size of useable land is not 12.01 acres large, but recorded as 11.94 acres in the PG Atlas. The calculation of land to be used includes the easement of approximate 24 foot of land that is under the asphalt under half of Springfield Road in front of the Steward property, and additional approximate 12 foot easement for utilities along the road. There is no plan to remove the asphalt and take back the lane of road to be used as part of the project or give back the utility easement along the road. Further, if you subtract the land under Springfield Road, the land used to provide landscape buffering, the land under the roads within the project, the land for the retention pond and the setback for the Newstop Branch all of the 57 single family buildings are really being built on approximately 5-6 acres of land, (equivalates to approximately 10 homes per acer) and that is extremely high density development that was never contemplated or consistent with the rural nature of the neighborhood/Springfield Road area.

Each housing unit has a 2-car driveway, and in the published Bowie demographics the average household in Bowie has 2 vehicles. Thus, we are looking at approximately 114 cars that would be added to the overused Springfield Road. Finally, this project has only one entrance for ingress and egress which is not sufficient in handling the coming and going traffic of this subdivision. Literally, there would be an unacceptable traffic jam inside the project subdivision every day.

This development is supposed to be a retirement community. Per the Bowie MD demographics the average age of retirement is 65 years of age. This project is for 55+ years of age which means the occupants may have an additional 10 years of working after purchasing a home in this subdivision. That means the traffic in the rush time periods would be similar to other houses in the immediate area and would not have a greatly diminished traffic load as was portrayed by the retirement community developer.

This project was designed to maximize revenue not functionality, and does not take into account it's negative impact on the immediate area.

## **TRAFFIC**

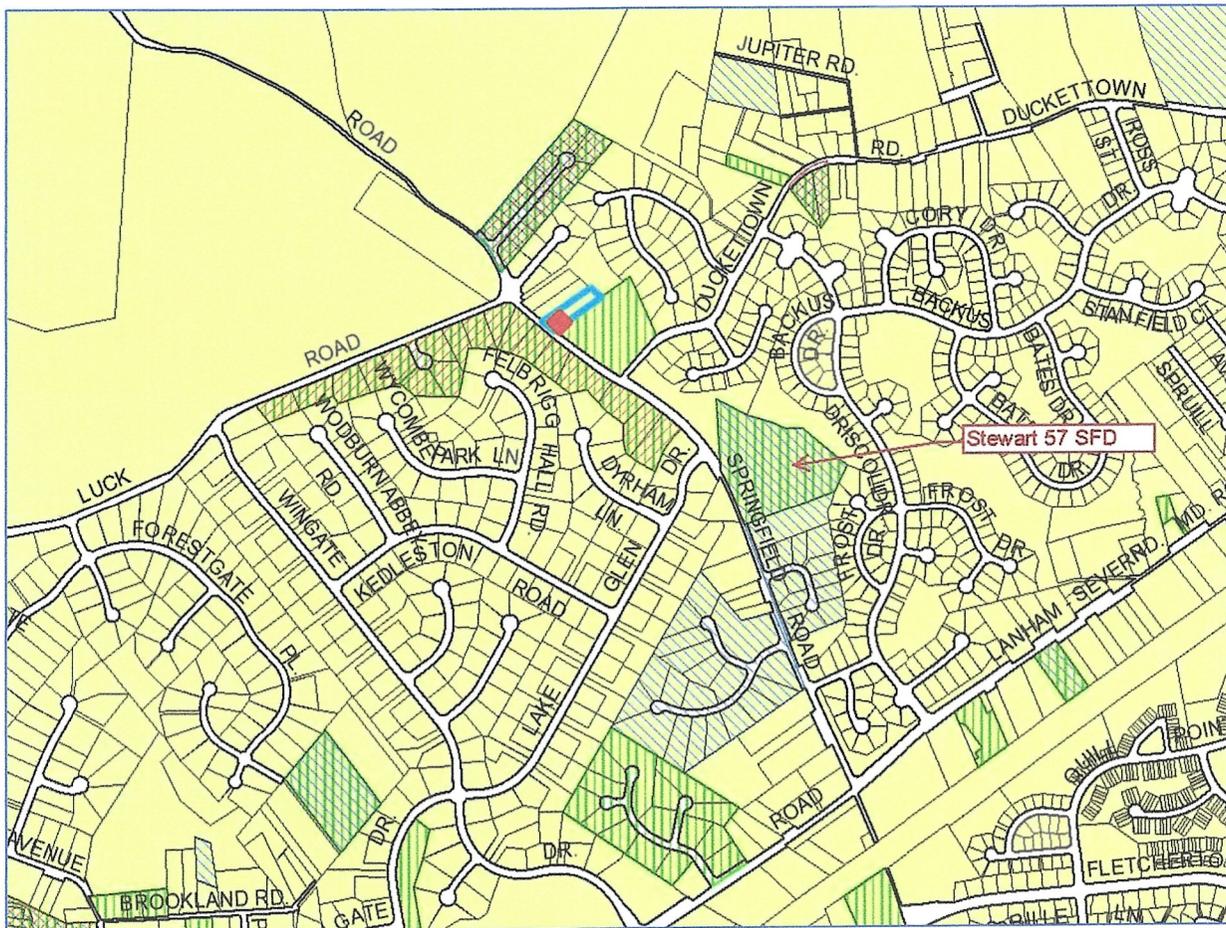
The traffic concerns of our neighbors include:

- There is substantial cut-through traffic from the USDA Beltsville Agricultural Research Center,
- The current traffic volume is such that it is difficult to safely turn onto Springfield Road from driveways and intersecting residential streets,

- Area residents experience substantial delay in turning from:
  - Driveways onto Springfield Road, and from
  - Stop-sign controlled intersections such as:
    - Springfield Road-Lanham Severn Road,
    - Springfield Road-Lake Glen Drive, and at
    - Good Luck Road-Springfield Road.
  - And when turning from Springfield Road onto Lanham-Severn Road

I believe that these concerns are valid and could be exacerbated by the traffic from the Stewart Property plus other future development affecting Springfield Road. This added traffic could lead to significant safety concerns and delay for you and your neighbors owning property abutting Springfield Road.

The map on the next page is from [PGAtlas](#) and shows that the Stewart Property is one of a number of development projects proposed for the area as indicated by the hatching.



Unfortunately, it appears Stewart Property trip generation falls below the threshold for a full Traffic Impact Study (TIS). There is presently approxitmal 150 home not including this retirement

community that are under construction or proposed on/around Springfield Road, It is likely that other development under construction or proposed for the Springfield Road area may also fall below the TIS threshold. As a result, an assessment of the cumulative impacts of existing and future traffic volume does not appear to exist.

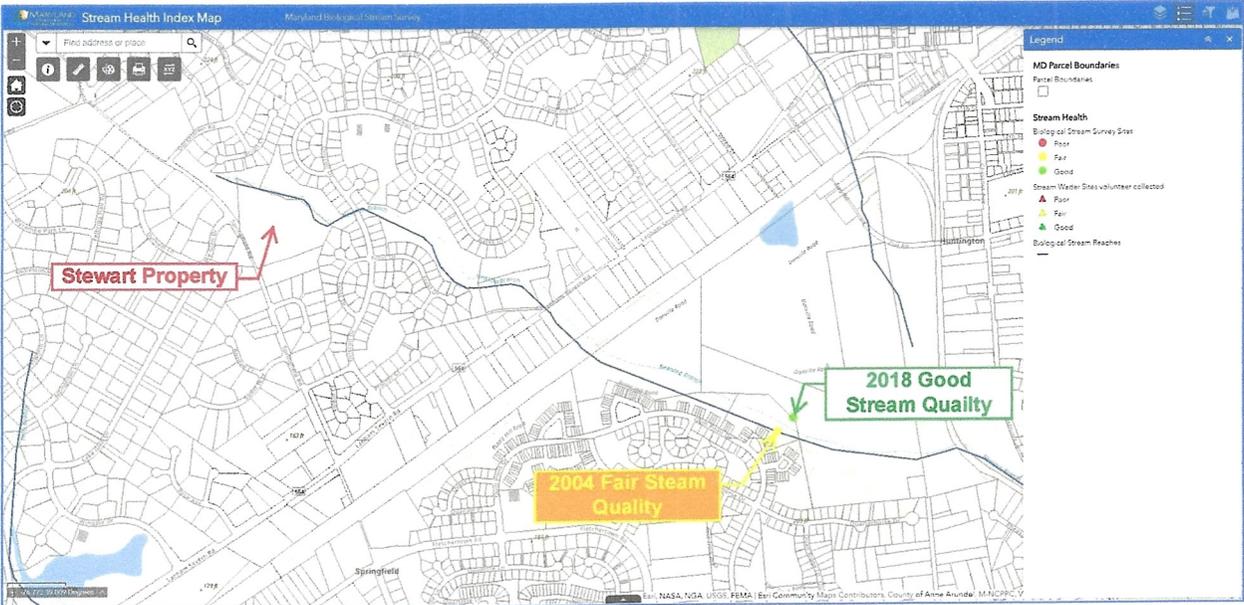
While one might assume that Springfield Road future traffic conditions would be included in regional or countywide analyses, this does not appear to be the case based on my reading of the Prince George’s County [Master Plan of Transportation 2035](#) and the [2022 Approved Bowie-Mitchellville and Vicinity Master Plan](#).

However, I am not a traffic engineer and I lack the expertise to assess future traffic impacts.

It is for this reason that I urge you to call upon the Zoning Hearing Examiner to withhold approval of the Stewart Property Special Exception until a cumulative traffic impact study is completed and shows that the safety of motorists, cyclists, and pedestrians will not be jeopardized and without causing excessive congestion-delay.

**ENVIRONMENTAL IMPACT – NEWSTOP BRANCH**

The Stewart Property abuts Newstop Branch. The [Maryland Biological Stream Survey \(MBSS\) Stream Health Index Map](#) below shows that Newstop Branch was of Good quality based on the [most recently sampling done in 2018](#) about a mile downstream of the Stewart Property site.



MBSS rates stream quality on a scale of Poor, Fair and Good.

A Good-quality stream, like Newstop Branch, usually supports an abundance of fish and other organisms that are sensitive to pollution. A Fair-quality stream has usually lost most of the pollution-sensitive species making it less enjoyable for children and adults. There are also reasons to

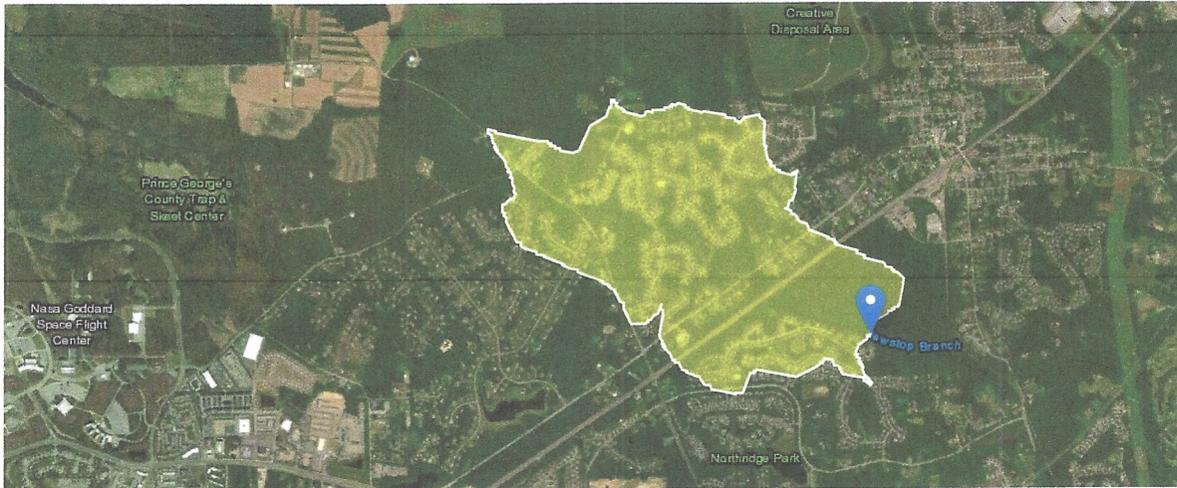
believe a Fair or Poor-quality stream may be less safe for human contact such as wading or a child's hand darting into these troubled waters in pursuit of a crayfish, salamander or other aquatic creature.

On the next page of these comments is a data sheet for Newstop Branch which I downloaded from the U.S. Geological Survey [StreamStats](#) website. The map in the data sheet shows the entirety of the Stewart Property drains to Newstop Branch. At the 2018 MBSS sampling location a mile below the Stewart Property, Newstop Branch drains a 0.97-square mile (621-acre) watershed that as of 2010-2011 had a 25% forest cover and 14% was covered by buildings, streets and other impervious surfaces.

Generally, maintaining a Good-quality stream requires that a [minimum of 40% of the watershed is in forest](#) and [impervious surfaces cover no more than 10% of a watershed](#). Based on the USGS StreamStats data, at 25% forest cover Newstop Branch is considerably below the Good quality threshold and a 14% impervious cover puts the Newstop watershed above the 10% threshold where Good quality usually declines to Fair. In other words, Newstop Branch is on the cusp separating as stream fit for most human uses and one where area residents could become leery of allowing their children to play near these waters.

## Newstop Branch StreamStats

**Region ID:** MD  
**Workspace ID:** MD20231207155221724000  
**Clicked Point (Latitude, Longitude):** 38.99792, -76.78557  
**Time:** 2023-12-07 10:52:48 -0500



[Collapse All](#)

### > Basin Characteristics

Parameter Code	Parameter Description	Value	Unit
DRNAREA	Area that drains to a point on a stream	0.97	square miles
FOREST_MD	Percent forest from Maryland 2010 land-use data	25.3	percent
LC11IMP	Average percentage of impervious area determined from NLCD 2011 impervious dataset	13.6	percent

**USGS Data Disclaimer:** Unless otherwise stated, all data, metadata and related materials are considered to satisfy the quality standards relative to the purpose for which the data were collected. Although these data and associated metadata have been reviewed for accuracy and completeness and approved for release by the U.S. Geological Survey (USGS), no warranty expressed or implied is made regarding the display or utility of the data for other purposes, nor on all computer systems, nor shall the act of distribution constitute any such warranty.

**USGS Software Disclaimer:** This software has been approved for release by the U.S. Geological Survey (USGS). Although the software has been subjected to rigorous review, the USGS reserves the right to update the software as needed pursuant to further analysis and review. No warranty, expressed or implied, is made by the USGS or the U.S. Government as to the functionality of the software and related material nor shall the fact of release constitute any such warranty. Furthermore, the software is released on condition that neither the USGS nor the U.S. Government shall be held liable for any damages resulting from its authorized or unauthorized use.

**USGS Product Names Disclaimer:** Any use of trade, firm, or product names is for descriptive purposes only and does not imply endorsement by the U.S. Government.

**Application Version:** 4.19.1  
**StreamStats Services Version:** 1.2.22  
**NSS Services Version:** 2.3.2

The first paragraph on page 9, of the September 20, 2023, Prince George’s County Planning Department [Technical Staff Report](#) notes that:

- 3.63 acres of forest on the Stewart Property site will be removed,
- 0.19 acres will be planted with trees, for
- A net loss of 3.44 forest acres in the Newstop Branch watershed.

With 25.3% existing forest in the 621-acre Newstop Branch watershed at the 2018 MBSS sampling point, there were:

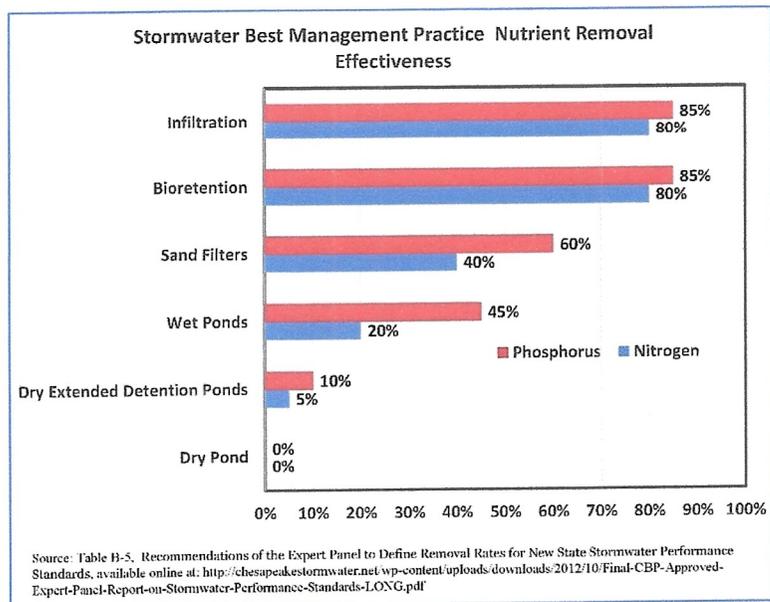
- 157.1 acres of forest,
- Stewart Property development will lower forest acreage by 3.44 acres to 153.7 acres,
- Watershed forest cover will go from the existing 25.3% down to 24.7%.

At an average lot size of 0.21 acres, the 12.01-acre site could be 38% impervious based on Table 2-2a, in the USDA report [Urban Hydrology for Small Watersheds](#):

- The Stewart Property would add (38% x 12.01 acres) 4.56-acres of impervious surfaces to the Newstop Branch watershed.
- Newstop Branch Watershed impervious cover acres would increase from the existing 84.5-acres to 89.0 acres,
- The Stewart Property development would raise Newstop Branch watershed impervious cover from 13.6% to 14.3%.

By further reducing Newstop Branch forest cover and increasing watershed impervious area, the Stewart Property, as proposed increases the likelihood of stream quality declining from Good to Fair.

Normally, the use of highly-effective measures to treat stormwater runoff could reduce the impact of increased impervious surfaces. Unfortunately, the soils on the Stewart Property site are mostly unsuited to measures that have a high-pollutant removal efficiency, like the infiltration-bioretenion measures shown in the graph to the right, and can maintain the groundwater recharge providing the abundant dry-weather groundwater inflow crucial to Good stream quality.

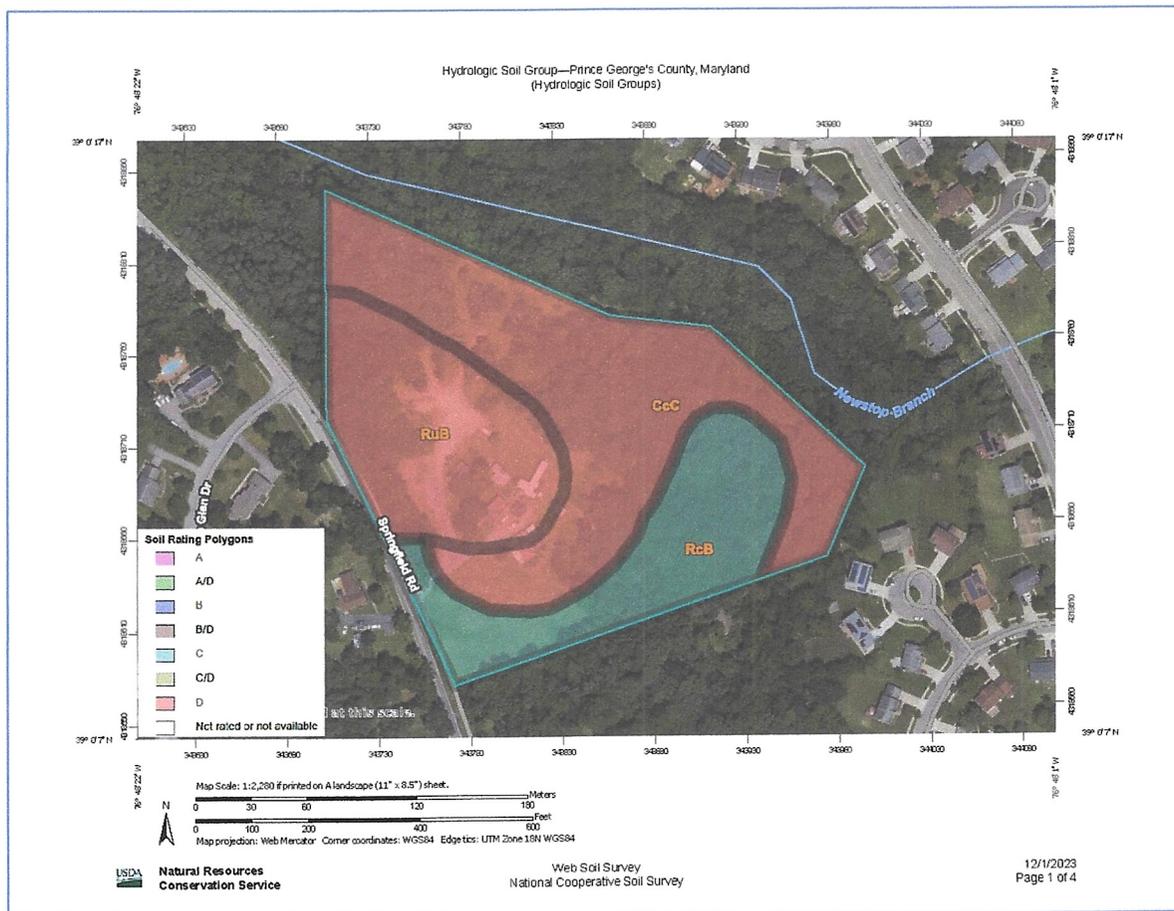


The following description of proposed stormwater management measures proposed for the Stewart Property appears on page 23, second paragraph, of the September 20, 2023 [Technical Staff Report](#):

“An unapproved SWM plan (29311-2022-0) was submitted with this application. The unapproved plan shows the use of two submerged gravel wetlands, two micro-bioretenion facilities, and a bioswale to meet the stormwater requirements for the site. The revised layout of SE-22002 is not consistent with the layout shown on the unapproved SWM plan. The SWM technical plan shall match the layout of the SE site plan and TCP2, prior to issuance of the first permit.”

While these proposed measures can be highly-effective in mitigating impervious stormwater impacts, the soils on the Stewart Property site are not suitable to obtaining the full benefits of these highly-effective measures. Stormwater measures are most effective when located on moderately- to highly-permeable soils. Soil permeability is rated with a system called [Hydrologic Soil Groups](#), which ranges from A to D. The “A” soils are the most permeable and “D” soils are the least. Maximum benefits are obtained when highly-effective stormwater measures are located on “A” and “B” soils and the more permeable “C” soils.

The aerial below is from the USDA [Web Soil Survey](#) and shows the soils on the Stewart Property site are mostly “D” with some “C” soils. Because the soils are so impermeable, the



increased impervious surfaces will not prevent Stewart Property development from further degrading Newstop Branch even with stormwater measures that are *usually* highly-effective.

Further degradation would be reduced if:

- a. The density of proposed housing units was reduced which would also reduce impervious surfaces, and
- b. The reduced number of units were clustered on the portions of the site which presently lacks forest and occupy "C" soils.

The following statement appears on page 6, of the [Staff Report](#):

"The environmental features of the site will be protected through the majority preservation of the primary management area (PMA) and a stormwater management (SWM) system. In addition, both on-site and off-site woodland conservation areas are proposed."

The facts presented in these comments show that one of the most important environmental features of the site – Newstop Branch – will not be protected by just preserving the Primary Management Area and the proposed stormwater management system.

I recommend that the Zoning Hearing Examiner to deny the Special Exception, because conditions requiring that new impervious surfaces be restricted to the portions of the site that lack forest and where runoff from new impervious surfaces are not directed into highly-effective stormwater measures placed within the "C" soils.

**I recommend that the Zoning Hearing Examiner deny this Special Exception; because this project has environmental issues, is too high of a density of housing, and not compatible with surrounding housing units, it is demonstrated that there is no urgent need for this type of housing, will increase the amount of traffic on Springfield Road, and is a dysfunctional community layout. This project will diminish the area for every resident if it is allowed to proceed.**

**I want to be clear that Tanya and I do not support this use and special exception.** This use is not compatible with the surrounding neighborhood, is not an appropriate land use on Springfield Road. This use is just a way to have almost 3 to 5 times the density of use on this piece of land using a special exception to do it. This is not an acceptable project for the surrounding residents and will change the Springfield Road area forever. This special exception should not be approved.

Best regards,

Howard and Tanya Aldag


**Zoning Hearing Examiner**

Prince George's County • 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772 • 301-952-3644

**NOTICE OF VIRTUAL HEARING**

**Application Number:** SE-22002/AC-23008 REMAND

**Applicant(s) Name:** ESC 8215 Springfield, L.C. (Applicant)

**Date and time of scheduled Zoning Hearing Examiner meeting:** March 12, 2025

**Description of Request** Application of ESC 8215 Springfield, L.C. (Applicant), request for a Special Exception to permit a Planned Retirement Community use with 57 age restricted single-family attached dwelling units, Alternative Compliance from Section 4.6 of the Landscape Manual, and a Variance from Section 25-119(d) of the County Code for the removal of four specimen trees, the property consisting of 12.01 acres, zoned RR (Rural Residential), and located approximately 390 feet southeast of the intersection of Lake Glen Drive and Springfield Road, also identified as 8215 Springfield Road, Glenn Dale, Maryland 20769. Evidence at the Remand Hearing shall be limited to the items discussed in the District Council’s Order of Remand dated July 15, 2024.

\* \* \* \* \*

**Attention:** All or a portion of the hearing will be conducted virtually and in accordance with District Council Rules of Procedure.

**Requests to become Persons of Record should be submitted electronically by email to: ZHE@co.pg.md.us no later than 5:00 p.m. on March 10, 2025.** Persons of Record will receive an email with information to join the virtual meeting platform. **Once you have received your Notice of Hearing, please provide an email address to ZHE@co.pg.md.us**

**If you have not viewed the documents you can find them at https://pgccouncil.us/LZIS. Once there, select “Guide,” then “ZHE,” then the application name and hearing date, then “Meeting details,” and finally “Attachments.”**

Upon notification of an evidentiary hearing before the Zoning Hearing Examiner, any interested party shall submit documents for the record in person, by email, by other electronic portals, or in the County provided drop box. **A copy of all large Site Plans or other documents must be submitted in person or the County provided drop box.** All documents for the record shall be submitted no later than five (5) business days before the scheduled evidentiary hearing. With permission from the Zoning Hearing Examiner, a party may submit supplemental documents for the record. Any interested party may contact The Office of the Zoning Hearing Examiner to receive a paper copy of a document if the document is not accessible online.

The Zoning Hearing Examiner shall not be responsible for resolving any technical difficulties incurred by any person participating in a virtual/remote hearing.

This notice is for informational purposes only. You have received this Notice of Public Hearing because you signed up to become a Person of Record. If you have any questions, please contact the Zoning Hearing Examiner at email [ZHE@co.pg.md.us](mailto:ZHE@co.pg.md.us). or call (301) 952-3644.

**DATE MAILED BY US POSTAL SERVICE/EMAILED: February 6, 2025**



to Persons of Record (List attached to original in file)  
 THE PRINCE GEORGE'S COUNTY GOVERNMENT  
 Office of the Clerk of the Council 301-952-3600  
 July 19, 2024  
 RE: SE-22002 Stewart Property  
 ESC 8215 Springfield, L.C., Applicant

***NOTICE OF DECISION  
 OF THE DISTRICT COUNCIL***

Pursuant to the provisions of Section 27-134 of the Zoning Ordinance of Prince George's County, Maryland requiring notice of decision of the District Council, you will find enclosed herewith a copy of the Council Order setting forth the action taken by the District Council in this case on July 15, 2024  
 CERTIFICATE OF SERVICE

This is to certify that on July 19, 2024, this notice and attached Council Order was mailed, postage prepaid, to all persons of record.

Donna J. Brown  
 Clerk of the Council *Donna J. Brown*  
 Wayne K. Curry Administration Building  
 1301 McCormick Drive Largo, MD 20774  
 Case No.: SE-22002  
 AC-23008  
 Stewart Property

Applicant: ESC 8215 Springfield, L.C.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND, SITTING AS THE  
 DISTRICT COUNCIL  
 ORDER OF REMAND

A. Introduction

On June 3, 2024, using oral argument procedures, this matter, an application request for the approval of a special exception to develop and use certain land in the County for a Planned Retirement Community, was considered by the District Council, on its own motion to elect to review and make the final decision, and on written exceptions filed by Applicant and Opposition.<sup>1,2,3</sup> Primarily at issue after oral argument is whether the District Council should decide the matter on the merits or grant a request from the Zoning Hearing Examiner (ZHE) to remand this matter (albeit opposed by Applicant and Opposition), to allow Applicant, among other things, to file a variance request from the requirements of Section 27-395(a)(3)(B) of the Zoning Ordinance,

<sup>1</sup> To view the oral argument proceedings, please visit:  
[https://princegeorgescountymd.granicus.com/player/clip/3597?view\\_id=2&meta\\_id=510809&redirect=true](https://princegeorgescountymd.granicus.com/player/clip/3597?view_id=2&meta_id=510809&redirect=true) (last visited July 14, 2024).

<sup>2</sup> The District Council elected to review this matter on April 4, 2024. Applicant filed exceptions on April 24, 2024. Opposition filed exceptions on April 25, 2024. To view the procedural history of

this matter, please visit:

<https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=6602629&GUID=60AB7D30-B145-4873A182-B8B1087DD590&Options=ID|Text|&Search=SE-22002> (last visited July 14, 2024).

<sup>3</sup> Subsequently, the District Council directed its staff attorney to prepare this order of remand. PGCC § 27-3414; *Grant v. Cty. Council of Prince George's Cty.*, 465 Md. 496, 500, 214 A.3d 1098, 1101 (2019) (when exercising original jurisdiction, the District Council may delegate to its staff attorney the responsibility of preparing a proposed order and accompanying draft findings of fact, and where the District Council maintains original jurisdiction, as is the case here, it is permitted to engage in its own fact-finding).  
SE-22002/AC-23008

because the ZHE concluded that Applicant failed to satisfy the requirements of § 27395(a)(3)(B)—which states that a Planned Retirement Community in the Rural Residential (RR) Zone shall contain, among other things, at least 12 contiguous acres.<sup>4,5</sup> PGCC § 27-27395(a)(3)(B), ZHE Decision (Disposition), 3/26/2024, Applicant Exceptions, 4/24/2024, Opposition Exceptions, 4/25/2024.

Having reviewed the record, including written exceptions and oral arguments, the request from the ZHE to remand this matter is hereby GRANTED. On remand, the ZHE shall reopen the record and conduct evidentiary hearings as necessary for clarification and additional testimony, subject to findings and conclusions of the District Council set forth herein.<sup>1,2,3</sup> Remand to the ZHE does not constitute a waiver of District Council's original jurisdiction to elect to review and make

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<sup>4</sup> As permitted under the New Zoning Ordinance (New ZO), which became effective April 1, 2022, this Special Exception application was filed under the Transitional Provisions of the New ZO to develop the subject property subject to the provisions of the Old or Prior Zoning Ordinance.

<sup>5</sup> The ZHE also requested that Applicant make any necessary revisions to the Special Exception Site Plan and other applicable documents to include a reduction of the number of dwelling units to the

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1 The District Council may remand any zoning case heard by the Zoning Hearing Examiner back to the Examiner for clarification or for additional testimony. PGCC § 27-133(a)(1). See also PGCC § 27-133(a)(4) (At the conclusion of the argument, the District Council may either: remand the case to the Zoning Hearing Examiner or to the Planning Board for de novo proceedings, citing the reasons therefor; or deny the requested remand, and either conduct the scheduled oral argument or direct the Clerk to schedule or reschedule oral argument on the merits of the case and so notify all persons of record. The denial of a request for remand made pursuant to Subsection (b) of this Section does not prohibit the District Council from subsequently remanding a case pursuant to either Subsection (a) or Subsection (c) of this Section).

2 Because the District Council grants ZHE's request for remand, exceptions from Applicant and Opposition are denied as moot and without prejudice.

3 Where appropriate, the ZHE may incorporate, on remand, the record established prior to remand.

maximum recommended in the 2022 Master Plan or address why such reduction is unnecessary and that remand may be limited in nature— allowing incorporation of the prior record. ZHE Decision (Disposition), 3/26/2024. See discussion infra.

SE-22002/AC-23008

the final decision on the merits of SE-22002, or to decide any exceptions timely filed from Applicant or Opposition after a decision on remand from the ZHE.

B. The Subject Property

The subject property is located 360 feet north of the intersection of Springfield Road and Moriarty Court and it is identified as 8215 Springfield Road, Glenn Dale, approximately 390 feet southeast of the intersection of Lake Glen Drive. The property is not located within the boundaries of the City of Bowie. The property is improved with a single-family detached residence, detached garage, and a separate carport. ZHE Decision at Findings 1–4.

Below is a screenshot from a portion of a State Department of Assessment and Taxation (SDAT) Printout depicting the legal description, property land area, and deeds for 8215 Springfield Road as follows:<sup>9,10,11,12</sup>

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<sup>9</sup> The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property—including a preliminary plan of subdivision. PGCC § 27-141. The District Council may also take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. District Council Rules of Procedure Rule 6.5(f).

<sup>10</sup> To view this information on SDAT, please visit: <https://sdat.dat.maryland.gov/RealProperty/Pages/default.aspx> (last visited July 14, 2024). Once directed to SDAT website: select “Prince George’s County” and for method of search, select “Property Account Identifier,” then click “continue” on lower right of screen. Once directed to next page, enter “District 14” and “Account # “1641547.”

<sup>11</sup> SDAT glossary of terms defines “map number” as “... the number ... to which tax map the property is located on. Tax maps are produced by the Maryland Department of Planning. Please note that properties often cross into neighboring maps, but tax assessment accounts will only have one associated map number per account.” To view, please visit: [https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#Map-Number](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Map-Number) (last visited July 14, 2024).

<sup>12</sup> SDAT glossary of terms defines “parcel” as “...the parcel number of the property as shown on the tax map.” To view, please visit: [https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#Parcel](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Parcel) (last visited July 14, 2024).

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Account Identifier:	District - 14 Account Number - 1641547								
<b>Owner Information</b>									
Owner Name:	STEWART JOAN M ETAL KNUPP WILLIAM E				Use:	RESIDENTIAL			
Mailing Address:	8215 SPRINGFIELD RD GLENN DALE MD 20769-9610				Principal Residence:	YES			
					Deed Reference:	/40916/ 00567			
<b>Location &amp; Structure Information</b>									
Premises Address:	8215 SPRINGFIELD RD GLENN DALE 20769-0000				Legal Description:	ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)			
Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	00D3	0131	1405000117	0000				2023	Plat Ref:
Town: None									
Primary Structure Built:	Above Grade Living Area			Finished Basement Area		Property Land Area		County Use	
1945	2,768 SF			YES		11,9400 AC		002	

According to SDAT, two (2) deeds from 2018 (40916/00567) are associated with 8215 Springfield Road for Assessment Year 2023. Based on those deeds, 8215 Springfield Road is identified, in relevant part, as Tax Map 28 and Parcel 131. Among other things, SDAT indicates that the legal description<sup>4</sup> for “all” of Parcel 131 consists of only 10 acres of land that was recombined and/or deleted from another deed on July 1, 2010. SDAT also indicates that the property land area<sup>5</sup> for Parcel 131 is 11.94 acres—i.e.—more than 10 acres but less than 12 acres.

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ZHE Exhibits at 788.<sup>6</sup> SDAT further indicates that for Assessment Year 2023, 8215 Springfield Road, identified as Map 28 and Parcel 131, was not land assessed as containing 12 or more acres.<sup>7</sup> Below is a screen shot from PGAtlas,<sup>8</sup> which reflects the same tax, parcel, and acreage information from SDAT as follows:

4 SDAT glossary of terms defines “legal description” as “[t]he description of the property as it appears in the deed.” To view, please visit:

[https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#LegalDescription](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#LegalDescription) (last visited July 14, 2024).

5 SDAT glossary of terms defines “property land area” as “[t]he land area of the account in acres or square feet.” To view, please visit:

[https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#Property-Land-Area](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#Property-Land-Area) (last visited July 14, 2024).

6 To view ZHE Exhibits, please visit:

<https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=6602629&GUID=60AB7D30-B145-4873A182-B8B1087DD590&Options=ID|Text|&Search=SE-22002> and click on Item No. 12 under Attachments (last visited July 14, 2024).

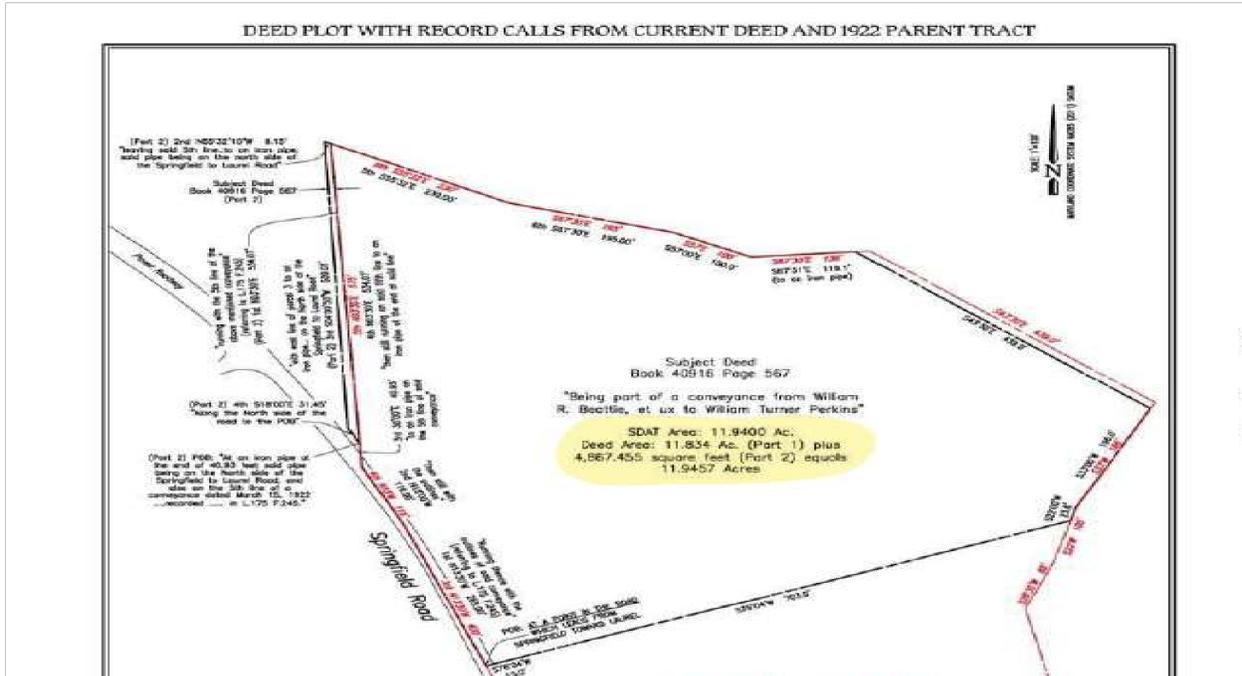
7 “Assessment Year” only applies to area in which the property is located—which per SDAT is not 12 or more acres. To view, please visit:

[https://sdat.dat.maryland.gov/RealProperty/Pages\\_HTML/rp\\_def.aspx#AssessmentYear](https://sdat.dat.maryland.gov/RealProperty/Pages_HTML/rp_def.aspx#AssessmentYear) (last visited July 14, 2024).

<b>Tax Account:</b> 1641547		
<b>Owner Name:</b> STEWART JOAN M ETAL		
<b>Premise Address:</b> 8215 Springfield Rd, Glenn Dale, MD 20769		
<b>Parcel Details</b>	<b>Ownership Information</b>	<b>Administrative Details</b>
<b>Tax Account #:</b> 1641547	<b>Owner Name:</b> STEWART JOAN M ETAL	<b>Tax Map Grid:</b> 028D3
<b>Assessment District:</b> 14	<b>Owner Address:</b> 8215 Springfield Rd, Glenn Dale, MD 20769	<b>WSSC Grid:</b> 211NE10
<b>Lot: Block: Parcel:</b> 131	<b>Liber:</b> 40916 <b>Folio:</b> 567	<b>Councilmanic District:</b>
<b>Description:</b> ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)	<b>Transfer Date:</b> 5/29/2018	
<b>Plat:</b>	<b>Current Assessment:</b> \$608,467.00	
<b>Subdivision:</b>	<b>Land Valuation:</b> \$323,667.00	
<b>Acreage:</b> 11.94	<b>Improvement Valuation:</b> \$284,800.00	
	<b>Sale Price:</b> \$0.00	
	<b>Structure Area (Sq Ft):</b> 2768	

8 PGAtlas is a web mapping application maintained by the Maryland-National Capital Park & Planning Commission and Prince George’s County. It provides access to Geographic Information System (GIS) web applications and digital maps, including layers of County GIS data and imagery, such as tax and parcel identifiers, distances, and zoning overlays. Prince George’s Cnty. Council v. Concerned Citizens of Prince George’s Cnty., 485 Md. 150, 243, 300 A.3d 857, 912 (2023). (Emphasis added). To view PGAtlas, please visit: <https://www.pgatlas.com/> (last visited July 14, 2024).

Below is another screen shot from a deed mosaic exhibit submitted by Applicant that also confirms the information from SDAT as follows:



ZHE Exhibits at 809.

Whether or not the 11.9457 acres shown on SDAT includes the prescriptive easement described by Applicant representatives below, SDAT does not recognize Parcel 131 as having a legal description of more than 10 acres or a property land area of at least 12 acres—as those terms are defined by SDAT.

Despite this discrepancy, Mark Ferguson, land planner for Applicant, testified that the subject property would be less than 12 acres when the prescriptive easement is dedicated or conveyed out of Parcel 131—or stated differently—the legal description or the property land area—as defined by SDAT. (12/12/2023, Tr., pp. 220-227). But Steven Jones, land surveyor for Applicant, testified

- 6 -

that the prescriptive easement, approximately 3,524 square-feet, was conveyed in one of the deeds provided in the record—which when deducted—results in the legal description or the property land area—as defined by SDAT—being only 11.834 acres—less than at least 12 contiguous acres required for a Planned Retirement Community use. (12/20/2023, Tr., pp. 25-26). See also ZHE

Exhibits at 782/Exhibit 107 (CPJ Boundary Memo-Statement of Square Footage, 12/19/2023).<sup>9</sup>

<sup>9</sup> Under the Old Zoning Ordinance, the Applicant has the burden of proof in any zoning case. PGCC § 27-142. Here, Applicant “assumes not merely the lesser burden of generating a fairly debatable issue so as to permit a ruling in its favor but the significantly greater burden of actually dispelling fair debate by proof so clear and decisive as legally to compel a ruling in its favor.” B. P Oil, Inc. v. Bd. of Appeals, 42 Md. App. 576, 580, 401 A.2d 1054 (1979). See also Futoryan v. City of Baltimore, 150 Md. App. 157, 172, 819 A.2d 1074 (2003), quoting Anderson v. Sawyer,

### C. Planned Retirement Community

In addition to the requirements that an applicant must satisfy for a special exception under PGCC § 27-317, an applicant must also satisfy additional requirements under PGCC § 27-395 for a “Planned Retirement Community,” use as follows:

(a) A planned retirement community may<sup>10</sup> be permitted, subject to the following criteria:

(1) Findings for approval.

(A) The District Council shall find that:

(i) The proposed use will serve the needs of the retirement-aged community;

(ii) The proposed use will not adversely affect the character of the surrounding residential community; and

(iii) In the R-A Zone, there shall be a demonstrated need for the facility and an existing medical facility within the defined market area of the subject property.

(2) Site plan.

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(A) In addition to the requirements of Section 27-296(c), the site plan shall set forth the proposed traffic circulation patterns.

(3) Regulations.

(A) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, density, dwelling unit types, and other requirements of the specific zone in which the use is proposed shall not apply to uses and structures provided for in this Section. The dimensions and percentages shown on the approved site plan shall constitute the regulations for a given Special Exception.

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

(C) The average number of dwelling units per acre shall not exceed eight (8) for the gross tract area.

(D) In the R-A Zone, buildings shall not exceed three (3) stories.

(E) In the I-3 Zone, the following shall apply:

(i) The gross tract area shall be a minimum of ninety (90) acres with at least twenty-five percent (25%) of its boundary adjoining residentially-zoned land or land used for residential purposes;

(ii) The property shall have at least one hundred fifty (150) feet of frontage on, and direct vehicular access to, a public street;

(iii) All buildings shall be set back a minimum of seventy-five (75)

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23 Md. App. 612, 329 A.2d 716 (1974) (explaining in special exception cases that the applicant bears the burden of persuading the administrative board).

<sup>10</sup> Under the Old Zoning Ordinance, may is interpreted as “permissive.” PGCC § 27-108.01(a)(19). See also Board of Physician Quality v. Mullan, 381 Md. 157, 166, 848 A.2d 642, 648 (2004); State v. Green, 367 Md. 61, 82, 785 A.2d 1275, 1287 (2001); Brodsky v. Brodsky, 319 Md. 92, 98, 570 A.2d 1235, 1237 (1990) (construing the word may as permissive as opposed to mandatory).

feet from all no residentially-zoned boundary lines or satisfy the requirements of the Landscape Manual, whichever is greater; and (iv) The property shall be located within two (2) miles of mass transit, regional shopping, and a hospital.

(F) In the I-3 and C-O Zones, townhouses shall comply with the design guidelines set forth in Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(d).

(4) Uses.

(A) The planned retirement community shall include a community center or meeting area, and other recreational facilities which the District Council finds are appropriate. These recreational facilities shall only serve the retirement community. The scope of the facilities shall reflect this fact. The Council may only permit a larger facility which serves more than the retirement community if the facility is harmoniously integrated with the retirement community and the surrounding neighborhood. All recreational facilities shall be constructed prior to, or concurrent with, the construction of the residential units, or in accordance with a schedule approved by the District Council;

(B) Retail commercial uses, medical uses, health care facilities, and other uses which are related to the needs of the community may be permitted.

(5) Residents' age.

(A) Age restrictions in conformance with the Federal Fair Housing Act shall be set forth in covenants submitted with the application and shall be approved by the District Council, and filed in the land records at the time the final subdivision plat is recorded.

(6) Recreational facilities.

(A) Covenants guaranteeing the perpetual maintenance of recreational facilities, and the community's right to use the facilities, shall be submitted with the application. The covenants shall be approved by the District Council, and shall be filed in the land records at the time the subdivision plat is recorded. If the recreational facilities are to be part of a condominium development, a proposed condominium declaration showing the recreational facilities as general common elements shall be approved by the District Council, and shall be recorded (pursuant to Title II of the Real Property Article of the Annotated Code of Maryland) at the time the sub plat is recorded. PGCC § 27-395. (Emphasis added).

#### D. Reopen Record for Clarification and Additional Testimony

- Proof of Acreage for Planned Retirement Community Use

Because the record before the District Council, and the ZHE, lacks sufficient facts and evidence, or at minimum contains contradictory facts and evidence, to determine, in the first instance, whether Parcel 131 is at least 12 contiguous acres to qualify for a Planned Retirement use, given the undisputed factual information from SDAT, PGAtlas, and testimony from Applicant's own land surveyor that the prescriptive easement was conveyed out of Parcel 131, the ZHE is directed, on remand, to reopen the record for clarification and additional testimony as follows:

1. Applicant shall provide proof in writing or through testimony from SDAT indicating whether SDAT included or excluded the land/acreage/squarefootage for the prescriptive easement as part of Parcel 131 in Assessment Year 2023.
2. Applicant shall provide proof in writing or through testimony from SDAT indicating whether the total acreage of the property land area—as defined by SDAT (i.e., 11.9400 acres)—is calculated solely from deed reference 40916 and 00567—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from deed reference 40916 and 00567.
3. Applicant shall provide proof in writing or through testimony of the acreage of land—separately—for deed reference 40916 and for deed reference 00567— as they are recorded in the Prince George’s County Land Records.
4. Applicant shall provide proof in writing or through testimony from SDAT describing the legal significance of: ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10)—and the total combined acreage of Parcel 131 after 10.0AC was RECOMB/DEL from 3830957 on 7/1/10—and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from the RECOMB/DEL 10.0AC.
5. Applicant shall provide proof in writing or through testimony of the date of conveyance of the land/acreage/square-footage for the prescriptive easement out of Parcel 131—and any written agreement memorializing such conveyance.
6. Applicant shall provide proof in writing or through testimony of whether Parcel 131 consists of deeds other than 40916 and 00567.
7. Applicant shall provide proof in writing or through testimony indicating whether the land/acreage/square-footage for the prescriptive easement has a separate or different deed reference other than 40916 or 00567.

- Variance from PGCC § 27-395(a)(3)(B)

An “area variance” is a variance from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings. And a “use variance” is a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses. *Richard Roeser Prof'l Builder v. Anne Arundel County*, 368 Md. 294, 309-310, 793 A.2d 545, 555 (2002). The difference between a special exception and a variance lies in the legislative approval of the underlying use. A special exception grants permission to engage in a use that the appropriate legislative authority has sanctioned under certain conditions. The special exception is an acknowledgement by the appropriate zoning authority that those conditions have been met. A variance, by contrast, grants permission to engage in a use that the appropriate legislative authority has otherwise proscribed. *Umerley v. People’s Counsel*, 108 Md. App. 497, 510, 672 A.2d 173, 179 (1996). Here, a Planned Retirement Community use is prohibited in the RR Zone unless the subject property contains at least 12 contiguous acres.

Assuming without deciding, if Applicant decides to submit a request for a variance, it must prove in writing or through testimony why a request for an area variance from PGCC § 27395(a)(3)(B) is authorized by law—in the first instance—since under PGCC § 27-395(a)(3)(B)— there is a threshold requirement that the subject property contain at least 12 contiguous acres— which goes to the use for a Planned Retirement Community—but (unless Applicant demonstrates otherwise as a matter of law) a use variance is not authorized or permitted in Prince George’s County.

- 2014 General Plan and 2022 Bowie-Mitchellville & Vicinity Master Plan

Whether the proposed development, authorized by special exception, conflicts with or impairs the 2014 General Plan or 2022 Master Plan turns on the District Council's prior legislative determination that the use is prima facie compatible in the residential zones with otherwise permitted uses and with surrounding zones and uses already in place. *People's Counsel for Balt. Cnty. v. Loyola Coll. in Md.*, 406 Md. 54, 102-106, 956 A.2d 166, 194 (2008) (A special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, prima facie, properly be allowed in a specified use district). See also *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 120 A.3d 677 (2015) (Because special exceptions are created legislatively, they are presumed to be correct and an appropriate exercise of the police power) (Emphasis added). Stated differently, the Court of Appeals of Maryland (now the Supreme Court of Maryland), in *Schultz, Schultz v. Pritts*, 291 Md. 1, 15, 432 A.2d 1319, 1327 (1981), described the analysis for special exceptions as follows:

These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

In subsequent cases, the Court explained that the Schultz comparison for special exception does not entail a comparative geographical analysis which weighs the impact at the proposed site against the impact the proposed use would have at all other sites within the zone. *Loyola Coll. in Md.*, 406 Md. at 100, 956 A.2d at 194. Rather, this comparison "is focused entirely on the neighborhood involved in each case." *Id.* at 102. Accordingly, even though a special exception use may have some adverse effects on the surrounding area, "the legislative determination necessarily is that the use conceptually is 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 [zoning agency] that actual incompatibility would occur." *Id.* at

106. (Emphasis added).

In *Loyola*, the Court concluded its analysis of the Schultz test:

With this understanding of the legislative process (the "presumptive finding") in mind, the otherwise problematic language in Schultz makes perfect sense. The language is a backwards-looking reference to the legislative "presumptive finding" in the first instance made when the particular use was made a special exception use in the zoning ordinance. It is not a part of the required analysis to be made in the review process for each special exception application. It is a point of reference explication only. *Id.* at 106-07.

As the Court explained in *Montgomery County v. Butler*, 417 Md. 271, 305 (2010), (quoting *Schultz*, supra, 291 Md. at 11), “[i]f [the applicant] shows...that the proposed use would be conducted without real detriment to the neighborhood...[the applicant] has met his burden.” Once the applicant meets this threshold, the local zoning board will “ascertain in each case the adverse effects that the proposed use would have on the specific, actual surrounding area.” *Id.* (citing *Schultz*, supra, 291 Md. at 11). (Emphasis added). The Court also noted that, “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 functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal.” *Loyola*, supra, 406 Md. at 83 (quoting *Turner v. Hammond*, 270 Md. 41, 55, 310 A.2d 543, 551 (1973)). On remand, any party may clarify or present testimony or evidence for or against the proposed Planned Community Retirement use in accordance with the law as described above by the Supreme

SE-22002/AC-23008

Court of Maryland. And the ZHE is authorized, after the close of the record on remand, to make the appropriate recommendations, to the District Council, in accordance with the law as described above by the Supreme Court of Maryland.

• Covenants

Because covenants submitted with the application shall be approved by the District Council, and filed in the land records at the time the final subdivision plat is recorded, any covenants submitted with the application, to the extent the application is approved by the District Council (even if based on a recommendation from the ZHE), shall be final executed covenants (not drafts) after the record (in this case after remand) is closed. PGCC § 27-395(a)(5)-(6).

ORDERED, this 15<sup>th</sup> day of July 2024, by the following vote:

In Favor: Council Members Burroughs, Blegay, Dernoga, Harrison, Hawkins, Ivey, Olson, and Watson.

Opposed:

Abstained:

Absent: Council Members Fisher and Oriadha.

Vote: 8-0.

COUNTY COUNCIL OF PRINCE GEORGE'S  
COUNTY, MARYLAND, SITTING AS THE  
DISTRICT COUNCIL FOR THAT PART OF THE  
MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S COUNTY,  
MARYLAND *Jolene Ivey*

By: \_\_\_\_\_

Jolene Ivey, Chair

SE-22002/AC-23008

*Donna J. Brown*

\_\_\_\_\_  
Donna J. Brown  
Clerk of the Council

STATE ETHICS COMMISSION  
45 CALVERT STREET, 3<sup>RD</sup> FLOOR  
ANNAPOLIS, MD 21401  
410-260-7770  
1-877-669-6085

This Form Is To Be Filed With:  
CLERK OF THE COUNTY COUNCIL  
COUNTY ADMINISTRATION BUILDING  
ROOM 2198  
UPPER MARLBORO, MD 20772  
301-952-3600

## Individual Applicant Affidavit

(Form PG 1)

### General Information

The Prince George's County land use ethics law (General Provisions Article, §§ 5-833 to 5-839, Annotated Code of Maryland) ("Public Ethics Law") requires applicants to file this affidavit with applications filed with the District Council. This form should be submitted only by an individual who is: (i) a title owner or contract purchaser of land that is the subject of an application; (ii) a trustee who holds an interest in land that is the subject of an application, excluding a trustee described in a mortgage or deed of trust; or (iii) a holder of at least a 5% interest in a business entity that has an interest in the land that is the subject of an application, provided the individual has substantive involvement in directing the affairs of the business entity regarding the disposition of the land, or is engaged in substantive activities specifically pertaining to land development in Prince George's County as a regular part of the business entity's business activities. **In short, this form should be used whenever an individual, rather than a business entity<sup>1</sup>, is required to file an affidavit as part of an application. All other applicants should file the Business Entity Applicant Affidavit (Form PG 2).**

In completing this form, you should also review §§ 5-833 to 5-839 of the Public Ethics Law. These provisions of the Public Ethics Law include the affidavit requirement, define applicants and agents, set out District Council member disqualification requirements, and specify ex parte disclosure procedures. Please note that a single application may result in the filing of one or more affidavits. For example, if the application involves a partnership, one or more partners may be required to file. As another example, if the applicant filer has a corporate interest attributable to him making the corporation also an applicant, then the corporation must file a Business Entity Applicant Affidavit. You may direct questions about the affidavit or other requirements of the Law to the State Ethics Commission office by phone, at 410-260-7770, or in writing, to the State Ethics Commission at the above address. Copies of the Public Ethics Law may be obtained at the Commission's website <http://ethics.maryland.gov/public-ethics-law/>. Additionally, there is a Special Ethics Law Memo on the Prince George's County land use ethics law at <http://ethics.maryland.gov/download/local-gov/local-gov-forms/PG%20County%20Zoning%20Memo.pdf> that contains additional filing information, including timing requirements.

### Filing Deadline

You must file a signed original of this affidavit with the Clerk of the County Council no later than 30 days prior to the District Council's consideration of the application. You should file a supplemental affidavit as expeditiously as possible whenever a payment/contribution is made after the filing of the original affidavit and prior to the Council's consideration. Please note that under §5-835(a) of the Public Ethics Law, payments/contributions during the pendency of an application are generally prohibited.

### Identifying Information

Name of Applicant David M. Stewart Case No. (where applicable) SE-22002

Address of Applicant 6101 Atlantic Ave #203, Ocean City, MD 21842

Identity of the Property/  
Subject of Application

Glenn Dale Cove (Stewart Property) Type of Application Special Exception  
(see §5-833(d))

<sup>1</sup>Section 5-833 of the Public Ethics Law defines a business entity as a corporation, a general partnership, a joint venture, a limited liability company, a limited partnership or a sole proprietorship.

Applicant Payment/Contribution to Member Information (check or complete applicable blanks)

1. Was a payment/contribution made by the applicant to a treasurer or a continuing committee, either directly or through a political action committee (PAC), during the 36 months before the application filing or during the pendency of the application? \_\_\_\_\_ Yes  No

If the answer to #1 is yes, list below the name of the member or members and the date or dates of the payment/contribution:

<u>Name of Member</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

If the payment/contribution above was through a PAC, identify the PAC and the date of the transfer to the treasurer or continuing committee:

\_\_\_\_\_

\_\_\_\_\_

Solicitation and other Payment/Contribution Information

2. Did the applicant solicit a person or business entity to make a payment/contribution to a member during the 36 months before the application filing or during the pendency of the application? \_\_\_\_\_ Yes  No

If the answer to #2 above is yes, and a payment/contribution was made, list below the name of the member or members, the date or dates of the payment/contribution, and the name of the contributor:

<u>Name of Member</u>	<u>Date</u>	<u>Name of Contributor</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Did a member of the applicant's household make a payment/contribution to a member during the 36 months before the application filing or during the pendency of the application? \_\_\_\_\_ Yes  No

If the answer to #3 above is yes, list below the name of the member or members, the date or dates of the payment/contribution, and the name of the household member who made the contribution/payment:

<u>Name of Member</u>	<u>Date</u>	<u>Name of Contributor</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

I hereby make oath or affirmation that the contents of this affidavit are true and correct to the best of my knowledge, information and belief.

David M Stewart  
Signature (original to be filed with the Clerk)

3/7/25  
Date

David M. Stewart  
Printed Name of Signer

Personal Representative of the Estate of Joan M. Stewart  
Title of Signer (if applicable)

Real Property Data Search ( )  
 Search Result for PRINCE GEORGE'S COUNTY

[View Map](#)

[View GroundRent Redemption](#)

[View GroundRent Registration](#)

**Special Tax Recapture: None**

**Account Number:** District - 14 Account Identifier - 1641547

**Owner Information**

<b>Owner Name:</b>	STEWART DAVID M PERSONAL REP STEWART JOAN M	<b>Use:</b>	RESIDENTIAL
<b>Mailing Address:</b>	6101 ATLANTIC AVE APT 203 OCEAN CITY MD 21842-	<b>Principal Residence:</b>	NO
		<b>Deed Reference:</b>	/50486/ 00221

**Location & Structure Information**

**Premises Address:** 8215 SPRINGFIELD RD  
GLENN DALE 20769-0000

**Legal Description:** ALL PAR 131

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	00D3	0131	14050001.17	0000				2023	Plat Ref:

**Town:** None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1945	2,768 SF	YES	12.0091 AC	002

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	YES	STANDARD UNIT	FRAME/	3	4 full	1Det/1Carport	

**Value Information**

	Base Value	Value	Phase-in Assessments	
		As of	As of	As of
		01/01/2023	07/01/2024	07/01/2025
<b>Land:</b>	299,700	374,300		
<b>Improvements</b>	275,700	303,000		
<b>Total:</b>	575,400	677,300	642,433	677,300
<b>Preferential Land:</b>	0	0		

**Transfer Information**

Seller:	Date:	Price:
STEWART JOAN M ETAL	01/10/2025	\$0
<b>Type:</b> NON-ARMS LENGTH OTHER	<b>Deed1:</b> /50486/ 00221	<b>Deed2:</b>
STEWART GEORGE A & JOAN M	05/29/2018	\$0
<b>Type:</b> NON-ARMS LENGTH OTHER	<b>Deed1:</b> /40916/ 00567	<b>Deed2:</b>
STEWART,JOAN M	09/15/1981	\$0
<b>Type:</b> NON-ARMS LENGTH OTHER	<b>Deed1:</b> /05452/ 00595	<b>Deed2:</b>

**Exemption Information**

Partial Exempt Assessments:	Class	07/01/2024	07/01/2025
<b>County:</b>	000	0.00	
<b>State:</b>	000	0.00	
<b>Municipal:</b>	000	0.00 0.00	0.00 0.00

**Special Tax Recapture: None**

**Homestead Application Information**

**Homestead Application Status:** Approved 07/22/2013

**Homeowners' Tax Credit Application Information**

**Homeowners' Tax Credit Application Status:** No Application **Date:**

Craig B Zaller: MD/DC  
Erin K Voss: MD/DC/IL  
John Tsikerdanos MD/DC  
Sean E. Suhar: MD  
Scott E. Silverman: MD/DC



Stefan B. Ades: MD  
Kelly B. Crockett: MD  
Sean T. McGee: MD/CA  
Joseph M. Peterson: MD

March 10, 2025

Zoning Hearing Examiner  
Prince George's County  
Sent via email to: [ZHE@co.pg.md.us](mailto:ZHE@co.pg.md.us)

Re: **Letter of Opposition**  
**Request to Become a Person of Record**  
**Request to Speak at the Hearing**  
**Our client: Wingate Homeowners Association, Inc.**  
**SE-22002/AC-23008 REMAND**  
**Applicant: ESC 8215 Springfield Road, L.C.**  
**Hearing Date: March 12, 2025**

Dear Zoning Hearing Examiner:

As you know, this firm represents the Wingate Homeowners Association, Inc. (“Wingate”). I am sending this letter on behalf of Wingate to state our opposition to the Application (SE-22002/AC-23008 REMAND) that was submitted by ESC 8215 Springfield Road, L.C. to request a Special Exception to permit a Planned Retirement Community use with 57 age restricted single-family attached dwelling units. The property is zoned RR (Rural Residential) and is located approximately 390 feet southwest of the intersection of Lake Glen Drive and Springfield Road, also identified as 8215 Springfield Road, Glenn Dale, Maryland 20769 (the “Subject Property”). We are requesting that this letter and the attachments be made part of the record in this matter.

The State Department of Assessments and Taxation (“SDAT”) allegedly describes the Subject Property as having a land area of 10 acres. However, the website for PGATLAS Geographic Information Systems allegedly provides that the land area of the Subject Property is 11.94 acres. In addition, the Applicant’s land surveyor testified that the Subject Property has a land area of 11.834 acres. This presented a major problem for the Applicant because the Subject Property fails to satisfy the requirements of Section 27-395(a)(3)(B) of the Prince George’s County Code which requires the property to be at least 12 contiguous acres. Thus, the Subject Property does not qualify for a Planned Retirement Community and should not be considered for such.

On July 19, 2024, the ZHE was directed, on remand, by the District Council to reopen the record for clarification and additional testimony as follows:

1. Applicant shall provide proof in writing or through testimony from SDAT indicating whether SDAT included or excluded the land/acreage/square footage for the prescriptive easement as part of Parcel 131 in Assessment Year 2023.



Zoning Hearing Examiner

March 10, 2025

Page 2

2. Applicant shall provide proof in writing or through testimony from SDAT indicating whether the total acreage of the property land area – as defined by SDAT (i.e., 11.9400 acres) – is calculated solely from deed reference 40916 and 00567 – and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from deed reference 40916 and 00567.
3. Applicant shall provide proof in writing or through testimony of the acreage of land – separately – for deed reference 40916 and for deed reference 00567 – as they are recorded in the Prince George’s County Land Records.
4. Applicant shall provide proof in writing or through testimony from SDAT describing the legal significance of ALL PAR 131 (RECOMB/DEL 10.0AC FROM 3830957 7/1/10 – and whether the land/acreage/square-footage for the prescriptive easement is included or excluded from the RECOMB/DEL 10.0AC.
5. Applicant shall provide proof in writing or through testimony of the date of conveyance of the land/acreage/square-footage for the prescriptive easement out of Parcel 131 – and any written agreement memorializing such conveyance.
6. Applicant shall provide proof in writing or through testimony of whether Parcel 131 consists of deeds other than 40916 and 00567.
7. Applicant shall provide proof in writing or through testimony indicating whether the land/acreage/square-footage for the prescriptive easement has a separate or different deed reference other than 40916 or 00567.

However, the Applicant failed to provide the information as requested in items 1 through 7 above. Specifically, the original deed for the Subject Property was recorded among the Land Records for Prince George’s County, Maryland on February 15, 1980, in Liber 5227, Folio 168, et. seq. (the “1980 Deed”). The 1980 Deed has been attached hereto as Exhibit A. In preparation of the 1980 Deed, the Subject Property was surveyed and the legal description for the Subject Property clearly stated that the property was comprised of 11.834 acres. This same deed also indicated another 4,867.455 square feet of land or 0.1117 acres, which is purportedly the area which extends into the roadway (the prescriptive easement area). Although a representative of the SDAT stated that they will not search for a prescriptive easement among the Land Records for Prince George’s County, the prescriptive easement area which has been utilized by Prince George’s County prior to 1980, does not need to be recorded in the Land Records to be effective.

Pursuant to the 1980 Deed, the combined acreage of the Subject Property totals 11.94 acres, which is what was historically indicated in the SDAT records. Please see Paragraph #3 of a letter from a representative of the SDAT dated February 27, 2025. On May 29, 2018, the Subject Property was conveyed again pursuant to a Quit Claim Deed which was recorded among the Land



Zoning Hearing Examiner  
March 10, 2025  
Page 3

Records of Prince George's County, Maryland in Liber 40916, Folio 467, et seq. (the "2018 Deed"). The 2018 Deed has been attached hereto as Exhibit B.

The legal description that was used in the 1980 Deed was also used in the 2018 Deed. The same 11.94 acres was recorded in the 2018 Deed. The 11.94 acres was also noted on the SDAT. Thus, the current owners of the Subject Property never challenged the legal description or the acreage for over forty-five years. If we subtract the 0.1117 acres for the prescriptive easement from the 11.94 acres, the total usable area on the Subject Property is 11.82 acres, which is less than the 12 acres which is required for a Planned Retirement Community under the Prince George's County Code. However, in preparation for the upcoming hearing in this case, the Applicant recorded a Confirmatory Deed a little over a month ago (January 22, 2025) for the purpose of changing the legal description and increasing the size of the Subject Property so that they could overcome the problem that the Subject Property failed to satisfy the requirements of Section 27-395(a)(3)(B) of the Prince George's County Code. See Paragraphs #2 and #3 of the February 27, 2025, letter from a representative of the SDAT.

The District Council did **not** direct the ZHE to reopen the record so that the Applicant could change the legal description of the Deed for the Subject Property recorded in Liber 40916, Folio 467, et seq. or so that the Applicant could have the Subject Property re-surveyed. Regardless, the Applicant recorded the Confirmatory Deed for the Subject Property which changed the legal description and acreage of the Subject Property. In doing so, the land surveyor alleged to have conducted a land survey of the Subject Property. Miraculously, the Applicant's land surveyor now says that the Subject Property grew to 12.001 acres. The Confirmatory Deed was recorded in January 2025 as a last-minute attempt to try and have the Subject Property comply with the requirements of Section 27-395(a)(3)(B) of the Prince George's County Code.

Despite the Applicant's last-minute attempt to change the legal description and size of the Subject Property, there are five easements that were granted by prior owners of the Subject Property to the Washington Suburban Sanitary Commission ("WSSC"), which further limits the total usable area. The easements were recorded in 1981, 1987, 1990 (0.2163 acres), 2003 (0.4646 acres), and 2004, which have been attached hereto as Exhibit C. The easements to WSSC represent at least an additional 0.6809 acres of land on the Subject Property which are not usable by the Applicant. Therefore, the usable area on **the Subject Property is further limited to just 11.1391 acres**. Again, the 11.1391 acres of land is less than the 12 minimum acres required for a Planned Retirement Community under Section 27-395(a)(3)(B) of the Prince George's County Code.

Granting the Applicant's request for a Special Exception in this matter would have an adverse impact effect upon the adjoining and surrounding properties which is unique and different



Zoning Hearing Examiner  
March 10, 2025  
Page 4

from the adverse effect that would otherwise result from the development of such a special exception use located in another area.

For the foregoing reasons, Wingate opposes the Applicant's request for a Special Exception. On behalf of Wingate, I am requesting that this letter be made part of the record. I also request to become a Person of Record. In addition, I request an opportunity to speak during the hearing which is scheduled for March 12, 2025.

Wingate is focused on this project. I am in constant contact with the Board of Directors and Planning & Zoning Committee. Members of the Board and the Planning & Zoning Committee are listening to the hearings on this matter. We meet on a regular basis and include homeowners who are not on the Board. When I attend meetings, I am sent by the Board and Planning and Zoning Committee. The Board is informed on a quarterly basis. If you have any questions or concerns, please do not hesitate to contact me via email at [sean@naglezaller.com](mailto:sean@naglezaller.com) or by phone at (410) 212-4112. Thank you.

Sincerely,

*Sean E. Suhar*

Sean E. Suhar

Cc: Board of Directors  
for Wingate Homeowners Association, Inc.

(HME/slt 4/22/81)

R/W 33591

45

RIGHT OF WAY AGREEMENT

5407 239

The undersigned hereby grant to BALTIMORE GAS AND ELECTRIC COMPANY, its successors, licensees, and assigns, for value received, the right to construct, operate and maintain electric and telephone lines, including the necessary poles, crossarms, electric, telephone and other wires, anchors, guys, conduits, cables, street lights and equipment in, over, under and through the property of the undersigned situated on the east side of Springfield Road north of Lanham-Severn (Bowie-Springfield) Road

in 14 Dist., Prince Georges County and acquired from

CLARA V. LEE  
by deed dated JANUARY 2ND, 1930  
Prince Georges County in Liber

and recorded among the Land Records of  
No. 5227, folio 168

R/W 33591

MAY 21 1 53 PM '81

Together with the right to: have access at all times to the lines; extend them to adjacent properties; string wires between any poles and from the nearest pole to any building; and trim, top, or cut down trees adjacent to the wires to provide ample clearance. No buildings or structures are to be erected under or over the lines.

The lines are or are to be located beginning at Springfield Road approximately 2405 feet north of Lanham-Severn Road and extending in an easterly direction approximately 137 feet.

"Grantor also grants and conveys to the Company free and clear of all encumbrances, for value received, the existing pole line on Grantor's property."

STEWART, JOAN M.

WITNESS MY hand and seal this 4TH day of MAY 1981.

WITNESS:  
Howard M. Estep, Jr.  
HOWARD M. ESTEP, JR.

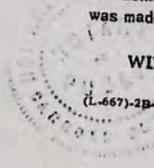
Joan M. Stewart (SEAL)  
Joan M. Stewart

STATE OF MARYLAND } TO WIT:  
PRINCE GEORGES COUNTY }

I HEREBY CERTIFY, that on this 4TH day of MAY 1981, before me, the subscriber, a Notary Public of the State of Maryland, in and for CARROLL COUNTY aforesaid, personally appeared Joan M. Stewart

and acknowledged the foregoing agreement to be her act and deed, and said act and deed was made without monetary consideration.

WITNESS my hand and Notarial seal.



(L-667)-2B-16 (83-529) Rev. 8/80

Howard M. Estep, Jr.  
HOWARD M. ESTEP, JR. Notary Public

MAY 21 1 53 PM '81

MAY 4, 1981

5407 240

AGREEMENT

BETWEEN

JOHN M. STEWART

AND

BALTIMORE  
GAS AND ELECTRIC COMPANY

DISTRIBUTION ENGINEERING DEPARTMENT  
DISTRIBUTION RECORDS  
BALTIMORE GAS AND ELECTRIC CO.  
ROOM 401 FRONT STREET  
P.O. BOX 1475  
BALTIMORE, MARYLAND 21203

J. 80

CLERK OF THE CIRCUIT COURT  
FOR  
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND  
PRINCE GEORGE'S COUNTY, TO WIT,

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF  
RIGHT OF WAY

TAKEN FROM LIBER 5407 FOLIO 239 OF THE LAND RECORDS OF THIS  
STATE AND COUNTY AFORESAID.

IN TESTIMONY WHEREOF, I HERETO SET  
MY HAND AND AFFIX THE SEAL OF THE  
CIRCUIT COURT FOR THE STATE AND  
COUNTY AFORESAID, THIS 11TH  
DAY OF MARCH 2025



True Copy Test  
Mahasin El Amin, Clerk

---

MAHASIN EL AMIN  
CLERK OF THE CIRCUIT COURT, PRINCE GEORGE'S CO, MD  
CLERK #880

6710 65

# This Right of Way

Made this 10th day of April in the year  
of our Lord one thousand nine hundred and eighty-seven, by and between

GEORGE A. STEWART AND JOAN M. STEWART, HIS WIFE, OWNERS

of the County of Prince George's in the State of Maryland, parties  
of the first part, and the WASHINGTON SUBURBAN SANITARY COMMISSION, a public corporation  
of the State of Maryland, organized and existing under the laws of said State, party of the second part.

**Witnesseth:** That in consideration of the sum of One Dollar (\$1.00) to them in hand paid  
by the party of the second part, the receipt of which is hereby acknowledged, the said parties of the  
first part do hereby grant and convey unto the said party of the second part, its successors and assigns,  
the easement and right of way hereinafter described for the installation, construction, reconstruction,  
maintenance, repair, operation and inspection of a storm drain -----

within said easement  
and right of way, together with the right of ingress and egress along and over said right of way, for any  
and all of such purposes; the said right of way and easement being described as follows:

SEE ATTACHED SCHEDULE "A"

JUL 16 9 03 AM '67

CLERK OF THE  
CIRCUIT COURT  
NORMAN L. PRITCHETT

**To Have and to Hold** said easement and right of way for a storm drain-----

above described or mentioned and hereby intended to be granted and conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the only proper use, benefit and behoof forever of the said Washington Suburban Sanitary Commission, its successors and assigns.

**And** the parties of the first part, for themselves/their heirs and assigns, covenant and agree with the party of the second part, its successors and assigns, as follows: **FIRST:** that they will obtain the written consent of the Commission before

6710 67

DESCRIPTION OF RIGHT OF WAY  
FOR STORM DRAIN  
GEORGE A. STEWART AND JOAN M. STEWART,  
HIS WIFE, OWNERS

TO

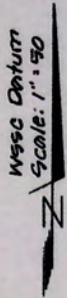
WASHINGTON SUBURBAN SANITARY COMMISSION

Being a strip or parcel of land hereinafter described in, through, over and across the property acquired by the owners from Joan M. Stewart, by deed dated September 14, 1981, and recorded among the Land Records of Prince George's County, Maryland in Liber 5452 at Folio 595

Beginning for the said strip or parcel of Land at a point on the tenth or South 33°00' West 196.00 foot course of said deed, said line also being the northwesterly or North 26°03'00" West 196.00 foot line of Block D, as shown on a plat of subdivision entitled "Plat of Correction, Plat Two of Section One, Springfield Manor Cluster", and recorded among the aforesaid Land Records in Plat Book NLP 127 as Plat No. 66, said point being 136.64 feet southwesterly from the beginning thereof and running thence with a part of said 10th course

1. South 26°03'00" West, true, 16.01 Feet to a point;  
thence
2. North 43°29'34" West, true, 16.01 feet to a point;  
thence
3. North 26°03'00" East, true, 16.01 feet to a point; thence
4. South 43°29'34" East, true, 16.01 feet to the beginning,  
containing 240.14 Square Feet or 0.0055 of an Acre  
of Land.

6710 68

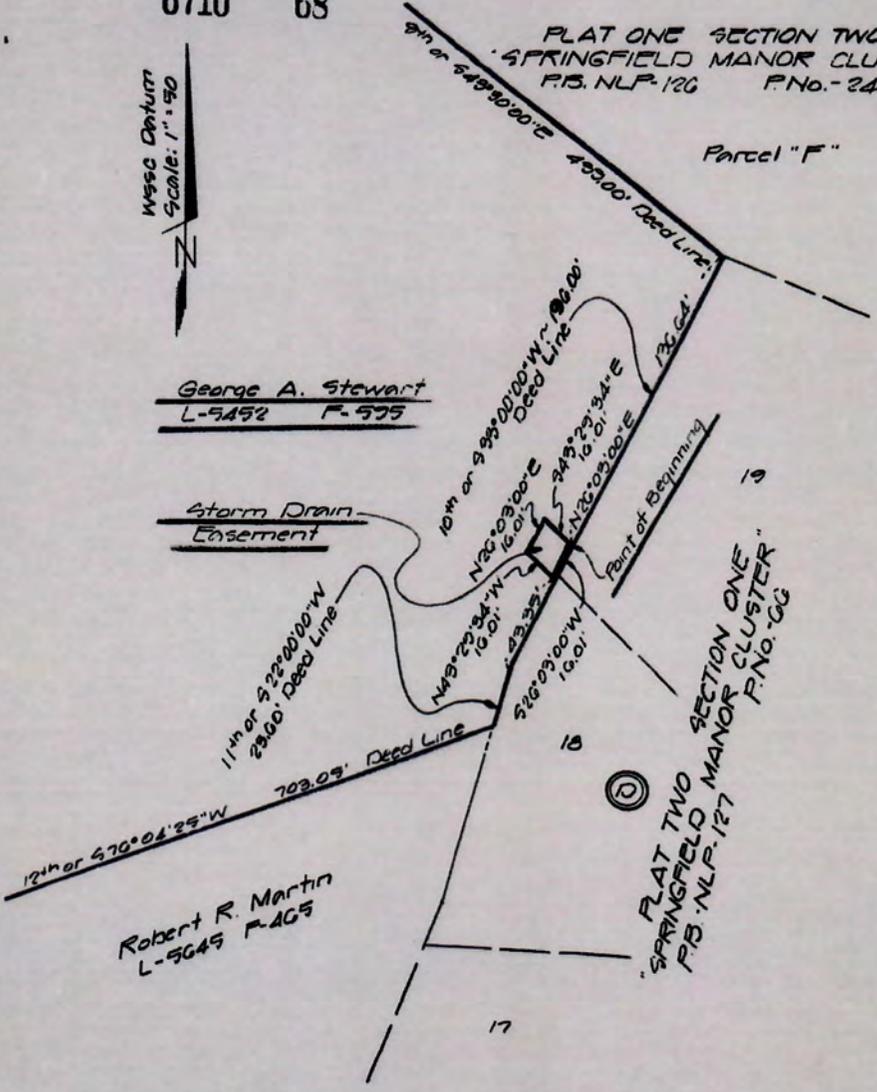


PLAT ONE SECTION TWO  
"SPRINGFIELD MANOR CLUSTER"  
P.B. NLP-126 P.No.-24

Parcel "F"

George A. Stewart  
L-5452 F-575

Storm Drain  
Emsement



Robert R. Martin  
L-5645 F-465

PLAT TWO SECTION ONE  
"SPRINGFIELD MANOR CLUSTER"  
P.No.-26

Δ-15261

they erect or permit to be erected any building or structure, or before they fill or excavate within the above described easement and right of way. SECOND: that the party of the second part, its successors and assigns, shall at all times have right of ingress and egress over said easement and right of way for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating and inspecting the storm drain -----

within said easement and right of way, said ingress and egress to be along the line herein designated and along such other lines as the parties of the first part may designate. THIRD: that they will warrant specially said easement and right of way and will execute such further assurances thereof as may be requisite.

Witness THEIR HAND AND SEAL the day and year first hereinabove written.

Witness:

*[Handwritten signatures]*

*[Handwritten signature]* (SEAL)  
GEORGE A. STEWART

*[Handwritten signature]* (SEAL)  
JOAN M. STEWART

----- (SEAL)  
----- (SEAL)  
----- (SEAL)  
----- (SEAL)  
----- (SEAL)

STATE OF MARYLAND

COUNTY OF PRINCE GEORGE'S : ss

On this the 10th day of April, 19 87, before me, Leah Wilson-----, the undersigned officer, personally appeared

GEORGE A. STEWART known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

*[Handwritten signature]*  
Leah Wilson  
Notary Public

My Commission expires 7/1/90-----

STATE OF MARYLAND

COUNTY OF PRINCE GEORGE'S : ss

On this the 10th day of April, 19 87, before me, Leah Wilson-----, the undersigned officer, personally appeared

JOAN M. STEWART----- known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

*[Handwritten signature]*  
Leah Wilson  
Notary Public

My Commission expires 7/1/90-----

STATE OF  
COUNTY OF

6710 70

On this the day of

, 19 , before me,  
the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that executed the same for the purposes therein contained.

**In Witness Whereof,** I hereunto set my hand and official seal.

Notary Public

My Commission expires -----

STATE OF  
COUNTY OF

On this the day of

, 19 , before me,  
the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that executed the same for the purposes therein contained.

**In Witness Whereof,** I hereunto set my hand and official seal.

Notary Public

My Commission expires -----

**Right of Way**

FROM

GEORGE A. STEWART AND JOAN M. STEWART,  
HIS WIFE, OWNERS

TO

WASHINGTON SUBURBAN  
SANITARY COMMISSION  
210621LINE10

Subscribed for Record on the day  
of , A. D. 19  
at o'clock M., and recorded in  
Liber No. at Folio, one of  
the Land Records for the

Clerk.

Return to  
WASHINGTON SUBURBAN  
SANITARY COMMISSION  
4017 Hamilton Street, Hyattsville, Md.

Contract No. SD86062A  
Sketch No. A-15261  
Locality Springfield Manor-Bowie

Across property northwest of Lot  
19, Block D, Springfield Manor  
Cluster

JUL 1 1987  
LAND & RW SECTION  
W.S.S.C.

CLERK OF THE CIRCUIT COURT  
FOR  
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND  
PRINCE GEORGE'S COUNTY, TO WIT,

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF  
RIGHT OF WAY

TAKEN FROM LIBER 6710 FOLIO 65 OF THE LAND RECORDS OF THIS  
STATE AND COUNTY AFORESAID.

IN TESTIMONY WHEREOF, I HERETO SET  
MY HAND AND AFFIX THE SEAL OF THE  
CIRCUIT COURT FOR THE STATE AND  
COUNTY AFORESAID, THIS 11TH  
DAY OF MARCH 2025



True Copy Test  
Mahasin El Amin, Clerk

---

MAHASIN EL AMIN  
CLERK OF THE CIRCUIT COURT, PRINCE GEORGE'S CO, MD  
CLERK #880

7652 778

# This Right of Way

Made this *15th* day of *May*

In the year one thousand nine hundred and *ninety*, by and between

GEORGE A. STEWART AND JOAN M. STEWART, HIS WIFE, OWNERS

of the County of *Prince Georges* in the State of *Maryland*, part  
of the first part, and the WASHINGTON SUBURBAN SANITARY COMMISSION, a public corporation  
of the State of Maryland, organized and existing under the laws of said State, party of the second part.

**Witnesseth:** That in consideration of the sum of One Dollar (\$1.00) to them in hand paid  
by the party of the second part, the receipt of which is hereby acknowledged, the said parties of the  
first part do hereby grant and convey unto the said party of the second part, its successors and assigns,  
the easement and right of way hereinafter described for the installation, construction, reconstruction,  
maintenance, repair, operation and inspection of a sanitary sewer and appurtenances thereto,  
including service connections----- within said easement  
and right of way, together with the right of ingress and egress along and over said right of way, for any  
and all of such purposes; the said right of way and easement being described as follows:

SEE ATTACHED SCHEDULE "A"

Mar 23 10 41 AM '90  
Notary Public - Prince Georges County, MD

NO CONSTRUCTION  
COMMITMENTS

7652 779

**To Have and to Hold** said easement and right of way for a sanitary sewer and appurtenances thereto, including service connections----- above described or mentioned and hereby intended to be granted and conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the only proper use, benefit and behoof forever of the said Washington Suburban Sanitary Commission, its successors and assigns.

**And** the parties of the first part, for themselves/their heirs and assigns, covenant and agree with the party of the second part, its successors and assigns, as follows: **FIRST:** that they will obtain the written consent of the Commission before

7652 780

SCHEDULE "A"  
DESCRIPTION OF A RIGHT-OF-WAY  
FOR A SANITARY SEWER AND APPURTENANCES

GEORGE A. STEWART AND JOAN M. STEWART, HIS WIFE OWNERS

TO

WASHINGTON SUBURBAN SANITARY COMMISSION  
8103 SANDY SPRING ROAD  
LAUREL, MARYLAND 20707

Being two (2) strips or parcels of land, the first being twenty (20) feet wide, hereinafter described in Part One, the second being twenty (20) feet wide, ten (10) feet on each side of the centerline, hereinafter described in Part Two in, through, over and across the property acquired by the owner from Joan M. Stewart, by deed dated September 14, 1981 and recorded among the Land Records of Prince George's County, Maryland, in Liber 5452 at Folio 595.

PART ONE Right of way for a sanitary sewer

The said twenty (20) feet wide strip or parcel of land lying northeasterly of and adjacent, contiguous and parallel to part of the northeasterly line of Springfield Road (forty (40) feet wide), as now laid out and existing and extending from the southerly boundary line of the aforesaid property being the twelfth or South 76°04'25" West 703.05 foot deed line of the aforesaid deed said twelfth line being also the first or North 76°30'00" East 704.46 foot deed line of a deed from Angus Winston McLaurin to Robert R. Martin, dated February 8, 1983 and recorded among the aforesaid Land Records in Liber 5645 at Folio 465, in a northerly direction a distance of 172.50 feet containing 3,450 square feet or 0.0792 acres of land.

AND ALSO:

The right of the Washington Suburban Sanitary Commission to use, one (1) additional strip or parcel of land, ten (10) feet wide, lying northeasterly of the above described strip or parcel of land and adjacent, contiguous and parallel thereto, during the period of the original construction only

of the said sanitary sewer within the above described easement and right of way for any and all purposes pertinent thereto including the right to trim or cut down trees during the course of the original construction.

PART TWO Right of way for a sanitary sewer.

Beginning for the said centerline of the said twenty (20) feet wide strip or parcel of land at a point on said southerly boundary line being the said twelfth or South 76°04'25" West 703.05 foot line of the first aforesaid deed and located at a distance of 71.11 feet from the beginning thereof; thence leaving said southerly boundary line and running across the first aforesaid property.

North 22°18'14" East, true, 275.96 feet to a point; thence South 78°33'00" East, true, 22.71 feet to a point on northeasterly boundary line of the first aforesaid property, being the ninth or South 43°30' East 439 foot deed line of the first aforesaid deed, said ninth deed line being also the North 50°26'54" West 434.97 foot plat line as shown on a plat of subdivision entitled "Springfield Manor Cluster" and recorded among the aforesaid Land Records in Plat book 126 as Plat No. 24 said end point being located at a distance of 41.32 feet from the beginning of said plat line containing 5,973.4 square feet or 0.1371 acres of land.

AND ALSO:

The right of the Washington Suburban Sanitary Commission to use, one (1) additional strip or parcel of land, ten (10) feet wide, lying northwesterly of the above described strip or parcel of land and adjacent, contiguous and parallel thereto, during the period of the original construction only of the said sanitary sewer within the above described easement and right of way for any and all purposes pertinent thereto including the right to trim or cut down trees during the course of the original construction.

they erect or permit to be erected any building or structure, or before they fill or excavate within the above described easement and right of way. SECOND: that the party of the second part, its successors and assigns, shall at all times have right of ingress and egress over said easement and right of way for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating and inspecting the sanitary sewer and appurtenances thereto, including service connections-----within said easement and right of way, said ingress and egress to be along the line herein designated and along such other lines as the parties of the first part may designate. THIRD: that they will warrant specially said easement and right of way and will execute such further assurances thereof as may be requisite.

Witness

HAND AND SEAL the day and year first hereinabove written.

Witness:

BY: *George A. Stewart* (SEAL) GEORGE A. STEWART

BY: *Joan M. Stewart* (SEAL) JOAN M. STEWART

(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF *Maryland*

COUNTY OF *Anne Arundel* ss

On this the *15<sup>th</sup>* day of *May*, 19*90*, before me, *Linda M. Riley*, the undersigned officer, personally appeared *George A. Stewart and Joan M. Stewart*

known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

MY COMMISSION EXPIRES JULY 1, 1990

My Commission expires -----

*Linda M. Riley*  
Linda M. Riley Notary Public

STATE OF

COUNTY OF ss

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_ the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that \_\_\_\_\_ executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires -----

Notary Public

STATE OF 7652 783 :  
COUNTY OF : ss

On this the day of , 19 , before me, the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that executed the same for the purposes therein contained.

**In Witness Whereof,** I hereunto set my hand and official seal.

Notary Public

My Commission expires

STATE OF :  
COUNTY OF : ss

On this the day of , 19 , before me, the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that executed the same for the purposes therein contained.

**In Witness Whereof,** I hereunto set my hand and official seal.

Notary Public

My Commission expires

**Right of Way**

FROM

GEORGE A. STEWART & JOAN M. STEWART

CONTRACT NO. 88AS7771-A

SKETCH NO. F-957A

LOCALITY Bowie #14

TO  
WASHINGTON SUBURBAN  
SANITARY COMMISSION  
210NE10

Retrieved for Record on the day of , A. D. 19 at o'clock M., and recorded in Liber No. at Folio , one of the Land Records for the

Clerk.

Return to  
WASHINGTON SUBURBAN  
SANITARY COMMISSION  
4017 Hamilton Street, Hyattsville, Md.

Across L. 5452 F. 595, Northeast side Springfield Road & NW of Lot 19, Block D Springfield Manor Cluster



CLERK OF THE CIRCUIT COURT  
FOR  
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND  
PRINCE GEORGE'S COUNTY, TO WIT,

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF  
RIGHT OF WAY

TAKEN FROM LIBER 7652 FOLIO 778 OF THE LAND RECORDS OF THIS  
STATE AND COUNTY AFORESAID.

IN TESTIMONY WHEREOF, I HERETO SET  
MY HAND AND AFFIX THE SEAL OF THE  
CIRCUIT COURT FOR THE STATE AND  
COUNTY AFORESAID, THIS 11TH  
DAY OF MARCH 2025

  
True Copy Test  
Mahasin El Amin, Clerk

---

MAHASIN EL AMIN  
CLERK OF THE CIRCUIT COURT, PRINCE GEORGE'S CO, MD  
CLERK #880

### THIS RIGHT OF WAY

Made this 2<sup>ND</sup> day of APRIL the year 200<sup>3</sup>, by and between

**GEORGE A. STEWART AND JOAN M. STEWART, OWNERS**

the owner(s) of the property located in the County of Prince George's in the State of Maryland, parties of the first part, and the WASHINGTON SUBURBAN SANITARY COMMISSION, a public corporation of the State of Maryland, organized and existing under the laws of said State, party of the second part.

*Witnesseth:* That in consideration of the sum of One Dollar (\$1.00) to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant and convey unto the said party of the second part, its successors and assigns, the easement and right of way hereinafter described for the installation, construction, reconstruction, maintenance, repair, operation and inspection of a sanitary sewer and appurtenances thereto, including service connections within said easement and right of way, together with the right of ingress and egress along and over said right of way, for any and all of such purposes; the said right of way and easement being described as follows:

**SEE ATTACHED SCHEDULE "A"**

To have and to hold said easement and right of way for a sanitary sewer and appurtenances thereto, including service connections above described or mentioned and hereby intended to be granted and conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the only proper use, benefit and behoof forever of the said Washington Suburban Sanitary Commission, its successors and assigns.

And the parties of the first part, for themselves/their heirs and assigns, covenant and agree with the party of the second part, its successors and assigns, as follows: **FIRST:** that they will obtain the written consent of the Commission before they erect or permit to be erected any building or structure, or before they fill or excavate within the above described easement and right of way. **SECOND:** that the party of the second part, its successors and assigns, shall at all times have right of ingress and egress over said easement and right of way for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating and inspecting the sanitary sewer and appurtenances thereto, including service connections within said easement and right of way, said ingress and egress to be along the line herein designated and along such other lines as the parties of the first part may designate. **THIRD:** that they will warrant specially the easement and

NOTED & SURE \$ 0.00  
RECORDING FEE 0.00  
TAXES 0.00  
RECORDING RECEIPT 0.00  
REP LJJ 6147350  
APR 17 2003 08:00 AM

PRINCE GEORGE'S COUNTY, MD.  
NO TRANSFER/RECORDATION  
TAXES TO BE COLLECTED  
DATE 4/14/03 BY TLT

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) REP 17222, p. 0327, MSA\_CE64\_17302, Date available 09/15/2005, Printed 03/07/2025.

2003 APR 17 A 8:00

CLERK OF THE CIRCUIT COURT

SCHEDULE "A"  
 DESCRIPTION OF A  
 RIGHT OF WAY FOR A SANITARY SEWER  
 GEORGE A. STEWART & JOAN M. STEWART, HIS WIFE, OWNERS  
 TO  
 WASHINGTON SUBURBAN SANITARY COMMISSION

Being two (2) strips or parcels of land, the first being twenty five (25) feet wide, twelve and one half (12.50) feet on each side of the centerline hereinafter described as Part One, and the second being twenty (20) feet wide, ten (10) feet on each side of the centerline hereinafter described as Part Two, in, through, over and across the property acquired by George A. Stewart and Joan M. Stewart, his wife from Joan M. Stewart, by deed dated September 14, 1981, and recorded among the Land Records of Prince George's County, Maryland in Liber 5452 at Folio 595.

PART ONE

Beginning for the centerline of the said twenty five (25) feet wide strip or parcel of land at a point on North 62°28'19" West, 238.15 foot line of Parcel 'A' as shown on a plat of subdivision entitled "Lots 1 thru 31 and Parcel 'A': Oakstone", distant 56.00 feet westerly of the easterly end thereof, thence across the property of the owners hereto

1. South 12°24'50" West, 64.77 feet to a point, and thence
2. South 70°00'31" East, 328.57 feet to a point; containing 9,833.50 square feet or 0.2257 of an acre of land

AND ALSO:

The right of the Washington Suburban Sanitary Commission to use two (2) additional strips or parcels of land, each being (10) feet wide, one (1) on each side and adjacent, contiguous and parallel to the above described strip or parcel of land during the period of the original construction only of the said sanitary sewer within the above described easement and right-of-way for any and all purposes pertinent thereto, including the right to trim or cut down trees during the original period of construction.

PART TWO

Beginning for the centerline of the said twenty (20) feet wide strip or parcel of land at a point at the southeasterly end of the South 70°00'31" East, 328.57 foot centerline described in Part One above and running thence across said lands of the owner hereto

1. North 82°02'52" East, 150.03 feet to a point;
2. South 40°41'54" East, 273.00 feet to a point; and thence
3. South 89°22'40" East, 97.24 feet to the westerly right-of-way line of an existing twenty (20) foot right-of-way for a sewer from George A. Stewart, et ux., to the Washington Suburban Sanitary Commission, dated May 15, 1990, and recorded among the aforesaid Land Records in Liber 7652 at Folio 778, distant North 89°22'40" West, 10.76 feet from the northeasterly end of the North 22°18'14" East, 275.96 foot centerline of Part Two as described in the aforesaid Liber 7652 at Folio 778, containing 10,405.40 square feet or 0.2389 of an acre of land.

AND ALSO

The right of the Washington Suburban Sanitary Commission to use two (2) additional strips or parcels of land, the first being five (5) feet wide and lying to the left of and adjacent, contiguous and parallel to the 1<sup>st</sup> thru the 3<sup>rd</sup> lines of above described strip of parcel of land, the second being ten (10) feet wide lying to the right of and adjacent, contiguous and parallel to the 1<sup>st</sup> thru the 3<sup>rd</sup> lines of above described strip or parcel of land during the period of the original construction only of the said sanitary sewer within the above described easement and right-of-way for any and all purposes pertinent thereto, including the right to trim or cut down trees during the original period of construction.

5-Desc. George & Joan Stewart.1122/sh

right of way and will execute such further assurances thereof as may be requisite. **FOURTH:** that they have the right to grant the easement and right of way.

Witness HAND and SEAL the day and year first hereinabove written.

Witness:

George A. Stewart

BY: \_\_\_\_\_ (SEAL)  
GEORGE A. STEWART, OWNER

BY: Joan M. Stewart (SEAL)  
JOAN M. STEWART, OWNER

STATE OF \_\_\_\_\_ :

COUNTY OF \_\_\_\_\_ :

I HEREBY CERTIFY THAT on this 2<sup>ND</sup> day of APRIL, 2003, before me, the subscriber, a Notary Public, in and for the County aforesaid, personally appeared JOAN M. STEWART known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that SHE executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Hope R. Oden  
Notary Public

My Commission expires 4/5/05

VALID ONLY  
WITH  
IMPRESSED  
SEAL

I HEREBY CERTIFY THAT THE ATTACHED IS A TRUE COPY  
OF A RECORD ON FILE IN THE DIVISION OF VITAL RECORDS.

DATE ISSUED: **NOV 04 1997**  
17222 331

*John L. Davidson-Randall*  
STATE REGISTRAR OF VITAL RECORDS

Please Type or Print in Black Indelible Ink. Assure All Copies Are Legible.

State of Maryland / Department of Health and Mental Hygiene **97 32800**

TEM 23A-PART I, 23B PER PHY. FILM G-753,11-4-97 Certificate of Death RC

Reg. No.

1. Decedent's Name (First, Middle, Last) <b>George A. Stewart, Jr.</b>		2. Date of Death Month Day Year <b>Oct. 10 1997</b>		3. Time of Death <b>5:35 A.M.</b>	
4a. Facility Name (If not institution, give street and number) <b>8215 Springfield Rd.</b>			4b. City, Town, or Location of Death <b>Glenn Dale</b>		4c. County of Death <b>Prince George's</b>
5. Social Security Number <b>265 12 9017</b>		7. Age (In yrs. last birthday) Yrs. <b>71</b>		8. Date of Birth (Month, Day, Year) <b>April 7, 1926</b>	
9. Birthplace (State or Foreign Country) <b>Pa.</b>		10a. State <b>Md.</b>		10b. County <b>Prince Georges</b>	
10c. City, Town or Location <b>Glenn Dale</b>		10d. Inside City Limits <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		10e. Street and Number <b>8215 SPRINGFIELD RD.</b>	
10f. Zip Code <b>20769</b>		10g. Citizen of What Country? <b>U.S.A.</b>		11. Marital Status <input type="checkbox"/> Never Married <input checked="" type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced	
12. Was Decedent Ever in U.S. Armed Forces? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes Give Year or Dates: <b>WWII</b>		13. Was Decedent of Hispanic Origin? (Specify Yes or No - If Yes, specify Cuban, Mexican, Puerto Rican, etc.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Specify:		14. Race - American Indian, Black, White, etc. <b>WHITE</b>	
15. Decedent's Education (Specify only highest grade completed) Elementary/Secondary (0-12) <b>12</b> College (1-4 or 5+) <b>2</b>		16a. Decedent's Usual Occupation (Give kind of work done during most of working life. DO NOT use retired) <b>SELF EMPLOYED</b>		16b. Kind of Business/Industry <b>UTILITY WORK</b>	
17. Father's Name (First, Middle, Last) <b>GEORGE A. STWEART, SR.</b>			18. Mother's Name (First, Middle, Maiden Surname) <b>HELEN KELLEY</b>		
19a. Informant's Name/Relationship (Type, Print) <b>DAVID STEWART / SON</b>		19b. Mailing Address (Street and Number or Rural Route Number, City or Town, State, Zip Code) <b>3505 WILLIAMSBURG RD., DAVIDSONVILLE, MD. 21035</b>			
20a. Method of Disposition <input type="checkbox"/> Burial <input checked="" type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Donation <input type="checkbox"/> Other (Specify)		20b. Place of Disposition (Name of cemetery, crematorium or other place) <b>METROPOLITAN CREMATORY OCT II, 1997 ALEXANDRIA, VA.</b>		20c. Location - City or Town, State	
21. Signature of Funeral Service Licensee <i>Michael Byler</i>		22. Name and Address of Facility <b>Robert E. Evans Funeral Home, Inc. 16000 Annapolis Rd. Bowie Maryland 20715</b>			
23a. Part I. Enter the disease, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. Immediate Cause (Final disease or condition resulting in death) a. <b>Esophageal Cancer</b> Due to (or as a consequence of): Approximate Interval Between Onset and Death <b>One Year</b> Sequentially list conditions, if any, leading to immediate cause. Enter Underlying Cause (Disease or injury that initiated events resulting in death) Last b. _____ Due to (or as a consequence of): c. _____ Due to (or as a consequence of): d. _____					
Part II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.				23b. Did tobacco use contribute to the cause of death? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Probably <input type="checkbox"/> Unknown	
24a. Was an autopsy performed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		24b. Were autopsy findings available prior to completion of cause of death? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
25. Was case referred to medical examiner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		26. Place of Death (Check only one) Hospital: <input type="checkbox"/> Inpatient <input checked="" type="checkbox"/> ER/Outpatient <input type="checkbox"/> DOA Other: <input type="checkbox"/> Nursing Home <input checked="" type="checkbox"/> Residence <input type="checkbox"/> Other (Specify)			
27. Manner of Death <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accident <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending investigation <input type="checkbox"/> Could not be determined		28a. Date of Injury (Month, Day Year)		28b. Time of Injury <b>M</b>	
28c. Injury at Work? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		28d. Describe how injury occurred		28e. Place of Injury - At home, farm, street, factory, office building, etc. (Specify)	
28f. Location (Street and Number or Rural Route Number, City or Town, State)		29a. Certifier (Check only one) <input checked="" type="checkbox"/> Certifying Physician: To the best of my knowledge, death occurred at the time, date and place, and due to the cause(s) and manner as stated. <input type="checkbox"/> Medical Examiner: On the basis of examination and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.			
29b. Signature and title of certifier <i>J. Miller, MD</i>		29c. License number <b>D33686</b>		29d. Date signed (Month, Day, Year) <b>Oct 10, 1997</b>	
30. Name and address of person who completed cause of death (Item 29a) (Type, Print) <b>Kenneth Miller MD 1811 Prince Philip Dr. Chevy, MD 20832</b>					
31. Date filed (Month, Day, Year) <b>OCT 14 1997</b>		32. Registrar's Signature <i>John Davidson-Randall</i>			

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) REP 17222, p. 0331, MSA CE64-17302-Date available 09/15/2005. Printed 03/07/2025.

To Be Completed by Funeral Director

Medical Certification: To Be Completed by Physician/Medical Examiner

17222

332

RIGHT OF WAY

CONTRACT NO: 89DA8266-A

SKETCH NO(S):D-1776

LOCALITY:OAKSTONE

North of Springfield Road @ Oakstone

FROM

GEORGE A. STEWART AND JOAN M. STEWART, OWNERS

TO

WASHINGTON SUBURBAN SANITARY COMMISSION

Return to

WASHINGTON SUBURBAN SANITARY COMMISSION  
SURVEYS & ACQUISITION SECTION  
14501 SWEITZER LANE, LAUREL, MD 20707

NO CONSTRUCTION  
COMMITMENTS

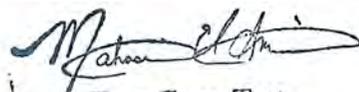
CLERK OF THE CIRCUIT COURT  
FOR  
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND  
PRINCE GEORGE'S COUNTY, TO WIT,

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF  
RIGHT OF WAY

TAKEN FROM LIBER 17222 FOLIO 327 OF THE LAND RECORDS OF THIS  
STATE AND COUNTY AFORESAID.

IN TESTIMONY WHEREOF, I HERETO SET  
MY HAND AND AFFIX THE SEAL OF THE  
CIRCUIT COURT FOR THE STATE AND  
COUNTY AFORESAID, THIS 11TH  
DAY OF MARCH 2025

  
True Copy Test  
Mahasin El Amin, Clerk

---

MAHASIN EL AMIN  
CLERK OF THE CIRCUIT COURT, PRINCE GEORGE'S CO, MD  
CLERK #880

Clerk of the  
Circuit Court

19752 730

2004 JUN 21 AM 10:17

PR GEO CO MD #9

Contract No. 89DA8266-A

THIS RIGHT OF WAY

PRINCE GEORGE'S COUNTY, MD  
APPROVED BY *[Signature]*  
#08

Made this 27<sup>th</sup> day of April the year 2004, by and between

JUN 14 2004

GEORGE A. STEWART AND JOAN M. STEWART, HIS WIFE OWNERS

RECORDATION TAX PAID  
TRANSFER TAX PAID

the owner(s) of the property located in the County of Prince George's in the State of Maryland, parties of the first part, and the WASHINGTON SUBURBAN SANITARY COMMISSION, a public corporation of the State of Maryland, organized and existing under the laws of said State, party of the second part.

Witnesseth: That in consideration of the sum of One Dollar (\$1.00) to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant and convey unto the said party of the second part, its successors and assigns, the easement and right of way hereinafter described for the installation, construction, reconstruction, maintenance, repair, operation and inspection of a sanitary sewer and appurtenances thereto, including service connections within said easement and right of way, together with the right of ingress and egress along and over said right of way, for any and all of such purposes; the said right of way and easement being described as follows:

IMP FD SURF \$ 0.00  
RECORDING FEE 0.00  
TOTAL 0.00  
Res PG13 Rcpt#999999  
REP RLH BIK#7498  
Jun 21, 2004 10:15 am

SEE ATTACHED SCHEDULE "A"

To have and to hold said easement and right of way for a sanitary sewer and appurtenances thereto, including service connections above described or mentioned and hereby intended to be granted and conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the only proper use, benefit and behoof forever of the said Washington Suburban Sanitary Commission, its successors and assigns.

And the parties of the first part, for themselves/their heirs and assigns, covenant and agree with the party of the second part, its successors and assigns, as follows: **FIRST:** that they will obtain the written consent of the Commission before they erect or permit to be erected any building or structure, or before they fill or excavate within the above described easement and right of way. **SECOND:** that the party of the second part, its successors and assigns, shall at all times have right of ingress and egress over said easement and right of way for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating and inspecting the sanitary sewer and appurtenances thereto, including service connections within said easement and right of way, said ingress and egress to be along the line herein designated and along such other lines as the parties of the first part may designate. **THIRD:** that they will warrant specially the easement and

19752 731

right of way and will execute such further assurances thereof as may be requisite. **FOURTH:** that they have the right to grant the easement and right of way.

Witness HAND and SEAL the day and year first hereinabove written.

Witness:

William W. Flourey  
David M. Stewart

BY: \_\_\_\_\_ (SEAL)  
GEORGE A. STEWART, OWNER

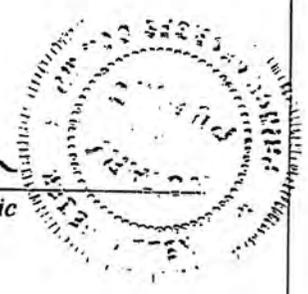
BY: Joan M. Stewart (SEAL)  
JOAN M. STEWART, OWNER

STATE OF : Maryland  
COUNTY OF : Prince Georges

I HEREBY CERTIFY THAT on this 27<sup>th</sup> day of April, 2004, before me, the subscriber, a Notary Public, in and for the County aforesaid, personally appeared Joan Stewart known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Kelly L. Meier  
Notary Public



My Commission expires 11/2/2005

19752 732

SCHEDULE "A"

DESCRIPTION OF A

RIGHT-OF-WAY FOR A SANITARY SEWER

GEORGE A. STEWART & JOAN M. STEWART, HIS WIFE, OWNERS

TO

WASHINGTON SUBURBAN SANITARY COMMISSION

Being a strip or parcel of land, in, through, over and across the property acquired by George A. Stewart and Joan M. Stewart, his wife from Joan M. Stewart, by deed dated September 14, 1981, and recorded among the Land Records of Prince George's County, Maryland in Liber 5452 at Folio 595.

Beginning for the said strip or parcel of land at a point on the North  $62^{\circ}28'19''$  West, 238.15 foot line of Parcel 'A' as shown on a plat of subdivision entitled "Lots 1 thru 31 and Parcel 'A' Oakstone" recorded among the aforesaid Land Records in Plat Book NLP 149 as Plat No. 18, said point also being on the northerly right-of-way line of an existing twenty five (25) foot right-of-way for a sewer from George A. Stewart, et ux., to the Washington Suburban Sanitary Commission, dated April 2, 2003, and recorded among the aforesaid Land Records in Liber 17222 at Folio 327, distant 12.95 feet easterly of the northeasterly end of the 1<sup>st</sup> or South  $12^{\circ}24'50''$  West, 64.77 foot line as described in the aforesaid Liber 17222 at Folio 327, and thence with part of said plat line

1. South  $62^{\circ}28'19''$  East, 10.36 feet to a point; thence crossing the lands of the owners hereto the following four (4) courses
2. South  $12^{\circ}24'50''$  West, 38.99 feet to a point;
3. South  $70^{\circ}00'31''$  East, 319.27 feet to a point;
4. North  $82^{\circ}02'52''$  East, 132.54 feet to a point; and
5. South  $40^{\circ}41'54''$  East, 5.95 feet to a point at the easterly end of the northerly right-of-way line of the twenty (20) foot wide existing right-of-way line of Part Two as described in the aforesaid Liber 17222 at Folio 327, thence with said northerly line of said right-of-way the following three (3) courses
6. South  $82^{\circ}02'52''$  West, 147.66 feet to a point;
7. North  $70^{\circ}00'31''$  West, 319.85 feet to a point; and
8. North  $12^{\circ}24'50''$  East, 50.45 feet to the place or beginning, containing 4,343 square feet or 0.0997 of an acre of land.

19752 733



PARCEL F  
SPRINGFIELD MANOR CLUSTER  
PLATBOOK NLP126 PLAT No. 24

POINT OF BEGINNING  
N41850.54  
E58145.04  
TIE 12.85  
N62°28'19"E 10.36  
N62°28'19"W 238.15  
PLAT LINE  
S12°24'50"W 38.99  
S12°24'50"W 64.77  
N12°24'50"E 50.45

RIGHT OF WAY  
FOR SANITARY SEWER  
4,343 sq. ft. OR 0.0991 ac.

PART ONE  
EXISTING  
25' RIGHT OF WAY  
FOR SANITARY SEWER  
LIBER 17222 FOLIO 327

319.27  
319.85

N41°16'41"E 5.95  
E58627.14  
132.54  
N82°02'52"E 147.66  
S82°02'52"W 150.03  
N82°02'52"E

PROPERTY OF  
GEORGE A. & JOAN M. STEWART  
LIBER 5452 FOLIO 545

PART TWO  
EXISTING  
20' RIGHT OF WAY  
POINT OF BEGINNING



A-24676

VALID ONLY WITH IMPRESSED SEAL

19752 734

I HEREBY CERTIFY THAT THE ATTACHED IS A TRUE COPY OF A RECORD ON FILE IN THE DIVISION OF VITAL RECORDS.

DATE ISSUED: NOV 04 1997

John E. Davidson-Randall STATE REGISTRAR OF VITAL RECORDS

Please Type or Print in Black Indelible Ink. Assure All Copies Are Legible.

State of Maryland / Department of Health and Mental Hygiene 97 32800

23A-PART I, 23B PER\_PHY... FILM G-753, 11-4-97 Certificate of Death RC Reg. No. Decedent's Name (First, Middle, Last) George A. Stewart, Jr. 2. Date of Death Oct. 10 1997 3. Time of Death 5:35 A.M. 4a. Facility Name (If not institution, give street and number) 8215 Springfield Rd. 4b. City, Town, or Location of Death Glenn Dale 4c. County of Death Prince George's 5. Social Security Number 65 12 9077 6. Sex M 7. Age (In yrs. last birthday) 71 8. Date of Birth April 7, 1926 9. Birthplace (State or Foreign Country) Pa. 10a. State Md. 10b. County Prince Georges 10c. City, Town or Location Glenn Dale 10d. Inside City Limits YES 10e. Street and Number 8215 SPRINGFIELD RD 10f. Zip Code 20769 10g. Citizen of What Country? U.S.A. 11. Marital Status 1 Never Married 2 Married 3 Widowed 4 Divorced 12. Was Decedent Ever in U.S. Armed Forces? 1 Yes 2 No 13. Was Decedent of Hispanic Origin? 1 Yes 2 No 14. Race - American Indian, Black, White, etc. WHITE 15. Decedent's Education Elementary/Secondary (0-12) 12 College (1-4 or 5+) 2 16a. Decedent's Usual Occupation SELF EMPLOYED 16b. Kind of Business/Industry UTILITY WORK 17. Father's Name (First, Middle, Last) GEORGE A. STEWART, SR. 18. Mother's Name (First, Middle, Maiden Surname) HELEN KELLEY 19a. Informant's Name/Relationship (Type, Print) DAVID STEWART / SON 19b. Mailing Address (Street and Number or Rural Route Number, City or Town, State, Zip Code) 3505 WILLIAMSBURG RD., DAVIDSONVILLE, MD. 21035 20a. Method of Disposition 1 Burial 2 Cremation 3 Removal from State 4 Donation 5 Other (Specify) 20b. Place of Disposition (Name of cemetery, crematory or place) METROPOLITAN CREMATORY OCT 11, 1997 ALEXANDRIA, VA. 21. Signature of Funeral Service Licensee [Signature] 22. Name and Address of Facility Robert E. Evans Funeral Home, Inc. 16000 Annapolis Rd. Bowie Maryland 20715 23a. Part I. Enter the disease, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. Immediate Cause (Final disease or condition resulting in death) a. Esophageal Cancer Due to (or as a consequence of): b. c. d. Approximately Interval Between Onset and Death TWO YEARS One Year Part II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I. 23b. Did tobacco use contribute to the cause of death? 1 Yes 2 No 3 Probably 4 Unknown 24a. Was an autopsy performed? 1 Yes 2 No 24b. Were autopsy findings available prior to completion of cause of death? 1 Yes 2 No 25. Was case referred to medical examiner? 1 Yes 2 No 26. Place of Death (Check only one) Hospital: 1 Inpatient 2 ER/Outpatient 3 DOA Other: 4 Nursing Home 5 Residence 6 Other (Specify) 27. Manner of Death 1 Natural 2 Accident 3 Suicide 4 Homicide 5 Pending investigation 6 Could not be determined 28a. Date of Injury (Month, Day Year) 28b. Time of Injury M 28c. Injury at Work? 1 Yes 2 No 28d. Describe how injury occurred 28e. Place of Injury - At home, farm, street, factory, office building, etc. (Specify) 28f. Location (Street and Number or Rural Route Number, City or Town, State) 29a. Certifier (Check only one) 1 Certifying Physician: To the best of my knowledge, death occurred at the time, date and place, and due to the cause(s) and manner as stated. 2 Medical Examiner: On the basis of examination and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner as stated. 29b. Signature and title of certifier [Signature] 29c. License number D33686 29d. Date signed (Month, Day, Year) Oct 10, 1997 30. Name and address of person who completed cause of death (Item 23a) (Type, Print) Kenneth Miller MD 1811 Prince Philip Dr. Chevy, MD 20832 31. Date filed (Month, Day, Year) OCT 14 1997 32. Registrar's Signature [Signature]

PRINCE GEORGES COUNTY CIRCUIT COURT (and Relief) 19752, 734, USA FILED 1997, 11-4-97

19752 735

RIGHT OF WAY

CONTRACT NO: 89DA8266-A

SKETCH NO(S): A-24676

LOCALITY: BOWIE

North of Springfield Road at Oakstone

FROM

GEORGE A. STEWART AND JOAN M. STEWART, HIS WIFE,  
OWNERS

TO

WASHINGTON SUBURBAN SANITARY COMMISSION

Return to

WASHINGTON SUBURBAN SANITARY COMMISSION  
SURVEYS & ACQUISITION SECTION  
14501 SWEITZER LANE, LAUREL, MD 20707

**NO CONSTRUCTION  
COMMITMENTS**

CLERK OF THE CIRCUIT COURT  
FOR  
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND  
PRINCE GEORGE'S COUNTY, TO WIT,

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF  
RIGHT OF WAY

TAKEN FROM LIBER 19752 FOLIO 730 OF THE LAND RECORDS OF THIS  
STATE AND COUNTY AFORESAID.

IN TESTIMONY WHEREOF, I HERETO SET  
MY HAND AND AFFIX THE SEAL OF THE  
CIRCUIT COURT FOR THE STATE AND  
COUNTY AFORESAID, THIS 11TH  
DAY OF MARCH 2025

  
True Copy Test  
Mahasin El Amin, Clerk

---

MAHASIN EL AMIN  
CLERK OF THE CIRCUIT COURT, PRINCE GEORGE'S CO, MD  
CLERK #880

5227 168

1980 JUN 15

THE  
COUNTY

THIS DEED, Made this 2<sup>nd</sup> day of Jun, 1980, by and between CLARA V. LEE, surviving tenant by the entirety of COY NUM LEE, deceased, party of the first part, and JOAN M. STEWART, sole owner, party of the second part,

WITNESSETH: That in consideration of the sum of Ten Dollars (\$10.00) <sup>No CONSIDERATION</sup> and other good and valuable considerations, the receipt of which is hereby acknowledged, the said party of the first part does grant and convey unto JOAN M. STEWART, sole owner, her heirs and assigns in fee simple, all those pieces or parcels of ground situate, lying and being in Prince George's County, Maryland, and being described as follows, to wit:

Being a part of a conveyance from William R. Beattie, et ux to William Turner Perkins recorded among the Land Records of Prince George's County, Maryland, and being described as follows:

Beginning for the same at a point in the road which leads from Springfield toward Laurel 2123.00 feet from the center of the County road leading from Springfield to Bowie, said point being North 13 30' west 135.00 feet on the third line of a deed dated March 15, 1922 from William R. Beattie and Emma M. Beattie, his wife, to William Turner Perkins and recorded on March 17, 1922 in liber 175 at folio 245, one of the Land Records of Prince George's County, Maryland, and running thence with the outlines of said conveyance, North 13 30' West 265.00 feet to a point at the end of said third line, then still with the outlines North 18 00' West 116.00 feet to a point, thence North 3 30' East 40.93 feet to an iron pipe on the fifth line of said conveyance then still running on said fifth line, North 3 30' East 534.07 feet to an iron pipe at the end of said line, then South 55 32' East 230.00 feet to an iron pipe, then South 67 30' East 195.00 feet to an iron pipe then South 57 00' East

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) NLP-5227 - p. 0168, MSA, CE64\_5308 Date available 06/12/2006 Printed 03/07/2025.

REC'D JUN 15 1980

5227 169

100.00 feet to an iron pipe, then South 87 31'25" East 119.11 feet to an iron pipe, then South 43 30' East 439.00 feet to an iron pipe, then South 33 00' West 196.00 feet to an iron pipe, then with a part of the twelvth line of said conveyance, South 22 00' West 23.60 feet to an iron pipe, then leaving said twelvth line and crossing over the above mentioned conveyance so as to include a part thereof South 76 04' 25" West 703.05 feet to an iron pipe, then still the same course South 76 04' 25" West 15.00 feet to a point, said point being the place of beginning, containing 11.834 acres of land as per survey of Joseph N. Starkey, Civil Engineer and Land Surveyor,

also all of the right, title and interest of the party of the first part in and to a strip of land located in the Bowie District, Prince George's County, Maryland, lying West of Parcel No. 3, as per plat of Thomas E. Latimer and Co., by a Joseph A. Brooke, Jr. dated October 25, 1951, said strip of land being East of a conveyance from William R. Beattie and Emma M. Beattie, to William Turner Perkins, recorded among the Land Records of Prince George's County, Maryland, in Liber 175, at folio 245, particularly described as follows:

Beginning for the same at an iron pipe at the end of 40.93 feet said pipe being on the North side of the Springfield to Laurel Road, and also on the 5th line of a conveyance dated March 15, 1922 from William R. Beattie and Emma M. Beattie, his wife, to William Turner Perkins, recorded March 17, 1922, in Liber 175 at folio 245, among the Land Records of Prince George's County, Maryland, then running with the 5th line of the above mentioned conveyance North 3 30' East 534.07 feet to a point, then leaving said 5th line and running so as to include a strip of land North 55 32' West 8.15 feet to an iron pipe, said pipe being at the end of 371.66 feet from a stone on the line of parcels 2 and 3 as per plat of Thomas E. Latimer & Co. by Joseph A. Brooke, Jr., dated October 25, 1951 then with the East line of parcel 3 South 4 00'50" West 509.01 feet to an iron pipe, said pipe being on the North side of the Springfield to Laurel Road then along the North side of the road, South 18 00' East 31.45 feet to an iron pipe, said pipe being the place of beginning, containing 4,867.455 square feet of land.

TOGETHER with the buildings and improvements thereupon, erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances, and advantages, to the same belonging or in anywise

5227 170

appertaining.

AND the said party of the first part covenant that she will warrant specially the parcel hereby conveyed containing 11.834 acres of land; and that she will execute such further assurances of said parcel of land as may be requisite.

WITNESS her hand and seal.

TEST:

*Phyllis J. Raymond*  
*[Signature]*

*CLARA V. LEE*  
CLARA V. LEE (SEAL)

STATE OF MARYLAND :  
COUNTY OF PRINCE GEORGE :

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of Jan 1980, before me the undersigned Notary Public, personally appeared CLARA V. LEE, known to me or satisfactorily proven to me to be the person whose name is subscribed to the within instrument and she executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

*Miles Athey*  
Notary Public

My commission expires: July - 1982



5227 172

Taxes levied and on record  
as of this date

FEB 15 1980

DEPT. OF FINANCE  
TREASURY DEPARTMENT  
PRINCE GEORGE'S COUNTY, MD.

I have made a search for  
Real Estate property taxes levied  
on the above described property  
and found all taxes paid.

Tax Co. Jack Luntin

By: B. Luff

Date: 2-15-80

JACK WARRS  
(GUBERTIN)

**TRANSFERRED**  
FEB 15 1980  
BY DL CLERK  
TRANSFER OFFICE

CLERK OF THE CIRCUIT COURT  
FOR  
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND  
PRINCE GEORGE'S COUNTY, TO WIT,

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF  
DEED

TAKEN FROM LIBER 5227 FOLIO 168 OF THE LAND RECORDS OF THIS  
STATE AND COUNTY AFORESAID.

IN TESTIMONY WHEREOF, I HERETO SET  
MY HAND AND AFFIX THE SEAL OF THE  
CIRCUIT COURT FOR THE STATE AND  
COUNTY AFORESAID, THIS 11TH  
DAY OF MARCH 2025



True Copy Test  
Mahasin El Amin, Clerk

---

MAHASIN EL AMIN  
CLERK OF THE CIRCUIT COURT, PRINCE GEORGE'S CO, MD  
CLERK #880

1 of 2

PRINCE GEORGE'S COUNTY, MD  
APPROVED BY: # 13  
DATE: 5.26.18  
\$473.75 RECORDATION TAX PAID  
\$1709.74 TRANSFER TAX PAID

AFTER RECORDING RETURN TO:  
Closing USA, LLC  
903 Elmgrove Road  
Rochester, NY 14624  
File No. CL170049381LD

Tax ID No.: 14-1641547

LR - Deed (w Taxes)  
Recording only ST20.00  
Name: STEWART/KNUPP  
Ref:  
LR - Deed (with Taxes)  
Surcharge 40.00  
LR - Deed State  
Transfer Tax 610.62  
LR - NR Tax - 1kd 0.00  
SubTotal: 670.62

QUIT CLAIM DEED

Total: 730.62  
05/29/2018 11:59  
CC16-PP  
#10425969 CC0703 -  
Prince George's  
County/CC07.03.01 -  
Register 01

THIS DEED made and entered into on this 10<sup>th</sup> day of March, 2018, by and between **Joan M. Stewart, as surviving spouse of George A. Stewart, deceased**, residing at 8215 Springfield Road, Glenn Dale, MD 20769, hereinafter referred to as Grantor(s) and **Joan M. Stewart, an unmarried woman and William E. Knupp, an unmarried man, as joint tenants with right of survivorship**, residing at 8215 Springfield Road, Glenn Dale, MD 20769, hereinafter referred to as Grantee(s).

WITNESSETH: That the said Grantor(s), for and in consideration of the sum of ZERO and NO/100 (\$0.00) DOLLARS, do this day remise, release and quitclaim to the said Grantee(s) the following described real estate located in PRINCE GEORGES County, MARYLAND:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

Also known as: 8215 Springfield Road, Glenn Dale, MD 20769

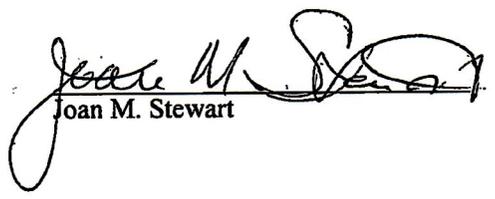
This conveyance is subject to easements, covenants, conditions, restrictions, reservations, rights-of-way and limitations of record, if any.

Prior instrument reference: Liber 5452, Folio 595, Recorded: 09/15/1981

TO HAVE AND TO HOLD the lot or parcel above described together with all and singular the rights, privileges, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining unto the said Grantee(s) and unto the heirs, administrators, successors or assigns of the Grantee(s) forever in FEE SIMPLE.

Taxable Amount: \$122,124.43; based on 1/2 unpaid principal balance of \$244,248.87.

IN WITNESS WHEREOF, the said Grantor(s) has/have signed and sealed this deed, the day and year above written.

  
Joan M. Stewart

STATE OF Maryland  
COUNTY OF Howard

On this 10th day of March, 2018, before me,  
Lawrence Akinlosotu, the undersigned Notary Public, personally appeared  
Joan M. Stewart known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are  
subscribed to the within instrument bearing date of 10th March, 2018 and acknowledged  
that he/she/they has/have executed the same for the purpose therein contained.

In witness whereof, I have hereunto set my hand and official seal:

  
Notary Public  
My commission expires: 05/31/2021



The signature below is an electronic signature.  
Maryland Code: Title 21, Section 21-106(a) "A record or signature may not be denied legal effect or enforceability solely because it is in electronic form."  
THIS IS TO CERTIFY THAT THE WITHIN INSTRUMENT HAS BEEN PREPARED BY, OR UNDER THE SUPERVISION, OF THE UNDERSIGNED MARYLAND ATTORNEY, OR BY A PARTY TO THIS INSTRUMENT.



NATHAN BERRY, ESQ.

No title search was performed on the subject property by the preparer. The preparer of this deed makes neither representation as to the status of the title nor property use or any zoning regulations concerning described property herein conveyed nor any matter except the validity of the form of this instrument. Information herein was provided to preparer by Grantor/Grantee and/or their agents; no boundary survey was made at the time of this conveyance.

**LEGAL DESCRIPTION**

The following described land and premises, with the improvements, easements and appurtenances thereunto belonging, situate, lying and being in the Prince George's County, State of Maryland, namely:

Being a part of a conveyance from William R. Beattie, et ux to William Turner Perkins recorded among the Land Records of Prince George's County, Maryland, and being described as follows:

Beginning from the same at a point in the road which leads from Springfield toward Laurel 2123.00 feet from the center of the County Road leading from Springfield to Bowie, said point being North 13°30' West 135.00 feet on the third line of a deed dated March 15, 1922 from William R. Beattie and Emma M. Beattie, his wife, to William Turner Perkins and recorded on March 17, 1922 in Liber 175 at folio 245, one of the Land Records of Prince George's County, Maryland, and

Running thence with the outlines of said conveyance, North 13°30' West 265.00 feet to a point at the end of said third line, then still with the outlines North 18°00' West 116.00 feet to a point,

Thence North 3°30' East 40.93 feet to an iron pipe on the fifth line of said conveyance then still running on said fifth line, North 3° 30' East 534.07 feet to an iron pipe at the end of said line,

Then South 55°32' East 230.00 feet to an iron pipe,

Then South 67°30' East 195.00 feet to an iron pipe,

Then South 57°00' East 100.00 feet to an iron pipe, then South 87°31'25" East 119.11 feet to an iron pipe,

Then South 43°30' East 439.00 feet to an iron pipe,

Then South 33°00' West 196.00 feet to an iron pipe, then with part of the twelfth line of said conveyance, South 22°00' West 23.60 feet to an iron pipe, then leaving said twelfth line and crossing over the above mentioned conveyance so as to include a part thereof South 76°04'25" West 703.05 feet to an iron pipe,

Then still the same course South 76°04'25" West 15.00 feet to a point, said point being the place of beginning, containing 11.834 acres of land as per survey of Joseph N. Starkey, Civil Engineer and Land Surveyor,

Also all the right, title and interest of the party of the first part in and to a strip of land located in the Bowie District, Prince George's County, Maryland, and lying West of Parcel No. 3, as per plat of Thomas E. Latimer and Co., by a Joseph A. Brooke, Jr. dated October 25, 1951, said strip of land being East of a conveyance from William R. Beattie and Emma M. Beattie, to William Turner Perkins, recorded among the Land Records of Prince George's County, Maryland, in Liber 175, at folio 245, particularly described as follows:

Beginning for the same at an iron pipe at the end of 40.93 feet said pipe being on the North side of the Springfield to Laurel Road, and also on the 5<sup>th</sup> line of a conveyance dated March 15, 1922 from William R. Beattie and Emma M. Beattie, his wife, to William Turner Perkins, recorded March 17, 1922, in Liber 175 at folio 245, among the Land Records of Prince George's County, Maryland,

Then running with the 5<sup>th</sup> line of the above mentioned conveyance North 3°30' East 534.07 feet to a point,

Then leaving said 5<sup>th</sup> line and running so as to include a strip of land North 55°32' West 8.15 feet to an iron pipe, said pipe being at the end of 371.66 feet from a stone on the line of parcels 2 and 3 per plat of Thomas E. Latimer & Co. by Joseph A. Brooke, Jr., dated October 25, 1951 then with the East line of parcel 3 South 4°00'50" West 509.01 feet to an iron pipe, said pipe being on the North side of the Springfield to Laurel Road

Then along the North side of the road, South 18°00' East 31.45 feet to an iron pipe, said pipe being the place of beginning, containing 4,867.455 square feet of land.

Tax ID/APN#: 14-1641547

MARYLAND FORM WH-AR

Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence

2018

Based on the certification below, Transferor claims exemption from the tax withholding requirements of §10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that effects a change

in ownership of real property is presented for recordation. The requirements of §10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor Joan M. Stewart

2. Reasons for Exemption

Resident Status [X] As of the date this form is signed, I, Transferor, am a resident of the State of Maryland.

[ ] Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR)03.04.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.

Principal Residence [ ] Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 (principal residence for 2 (two) of the last 5 (five) years) and is currently recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors

[Signature] Witness

Joan M. Stewart 5-10-18 Name \*\*Date [Signature] Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name \*\*Date

Title

\*\* Form must be dated to be valid.

Note: Form is only valid if recordation occurs within 60 days of execution of this form.

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) SJH 40916, p. 0571, MSA\_CE64\_41225. Date available 06/08/2018. Printed 03/07/2025.

State of Maryland Land Instrument Intake Sheet

Baltimore City  County: Prince George's

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.  
(Type or Print in Black Ink Only-All Copies Must Be Legible)

1	Type(s) of Instruments	<input type="checkbox"/> Check Box if Addendum Intake Form is Attached.							
		<input checked="" type="checkbox"/> Deed	<input type="checkbox"/> Mortgage	<input type="checkbox"/> Other	<input type="checkbox"/> Other				
2	Conveyance Type Check Box	<input type="checkbox"/> Improved Sale	<input type="checkbox"/> Unimproved Sale	<input type="checkbox"/> Multiple Accounts	<input checked="" type="checkbox"/> Not an Arms-Length Sale [9]				
		Arms-Length [1]	Arms-Length [2]	Arms Length [3]					
3	Tax Exemptions (if Applicable) Cite or Explain Authority	Recordation	Refinance; taxable 1/2 unpaid principal balance						
		State Transfer	Refinance; taxable 1/2 unpaid principal balance						
		County Transfer	Refinance; taxable 1/2 unpaid principal balance						
4	Consideration And Tax Calculations	Consideration Amount		Finance Office Use Only					
		Purchase Price/Consideration	\$	Transfer and Recordation Tax Consideration					
		Any New Mortgage	\$ 300,000.00	Transfer Tax Consideration	\$				
		Balance of Existing Mortgage	\$244,248.87	X ( )%	=	\$			
		Other:	\$	Less Exemption Amount	-	\$			
		Other:	\$	Total Transfer Tax	=	\$			
		Full Cash Value:	\$	Recordation Tax Consideration	=	\$			
5	Fees	Amount of Fees		Doc. 1	Doc. 2				
		Recording Charge	\$20.00	\$20.00	Agent:				
		Surcharge	\$40.00	\$40.00	Tax Bill:				
		State Recordation Tax	\$673.75	\$308.00	C.B. Credit:				
		State Transfer Tax	\$610.62	\$	Ag. Tax/Other:				
		County Transfer Tax	\$1,709.74	\$					
		Other	\$	\$					
6	Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG		
		14	1641547					<input type="checkbox"/> (5)	
		Subdivision Name		Lot (3a)	Block (3b)	Sec/AR (3c)	Plat Ref.	SqFt/Acreage (4)	
		Location/Address of Property Being Conveyed (2)							
		8215 Springfield Rd, Glenn Dale, MD 20769							
		Other Property Identifiers (if applicable)					Water Meter Account No.		
		Residential <input checked="" type="checkbox"/> or Non-Residential <input type="checkbox"/> Fee Simple <input type="checkbox"/> or Ground Rent <input type="checkbox"/> Amount:							
		Partial Conveyance? <input type="checkbox"/> Yes <input type="checkbox"/> No Description/Amt. of SqFt/Acreage Transferred:							
		If Partial Conveyance, List Improvements Conveyed:							
		Doc. 1 - Grantor(s) Name(s)			Doc. 2 - Grantor(s) Name(s)				
		Joan M. Stewart			Joan M. Stewart				
			William E. Knupp						
Doc. 1 - Owner(s) of Record, If Different from Grantor(s)			Doc. 2 - Owner(s) of Record, If Different from Grantor(s)						
Joan M. Stewart			LoanDepot.Com, LLC						
William E. Knupp									
New Owner's (Grantee) Mailing Address									
7	Transferred From	Doc. 1 - Grantor(s) Name(s)			Doc. 2 - Grantor(s) Name(s)				
		Joan M. Stewart			Joan M. Stewart				
8	Transferred To	Doc. 1 - Grantee(s) Name(s)			Doc. 2 - Grantee(s) Name(s)				
		Joan M. Stewart			LoanDepot.Com, LLC				
9	Other Names To Be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)			Doc. 2 - Additional Names to be Indexed (Optional)				
10	Contact/Mail Information	Instrument Submitted By or Contact Person					<input type="checkbox"/> Return to Contact Person		
		Name: Hoi Au					<input type="checkbox"/> Hold for Pickup		
		Firm Closing USA, LLC					<input checked="" type="checkbox"/> Return Address Provided		
		Address: 903 Elm Grove Road, Rochester, NY 14624							
11	IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER	Assessment Information							
		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Will the property being conveyed be the grantee's principal residence?							
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Does transfer include personal property? If yes, identify:							
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).							
Assessment Use Only - Do Not Write Below This Line									
<input type="checkbox"/> Terminal Verification		<input type="checkbox"/> Agricultural Verification		<input type="checkbox"/> Whole <input type="checkbox"/> Part		<input type="checkbox"/> Tran. Process Verification			
Transfer Number:		Date Received:		Deed Reference:		Assigned Property No.:			
Year	20	20	Geo.	Map	Sub	Block			
Land			Zoning	Grid	Plat	Lot			
Buildings			Use	Parcel	Section	Occ. Cd.			
Total			Town Cd.	Ex. St.	Ex. Cd.				
REMARKS:									

Distribution: White - Clerk's Office  
Canary - SDAT  
Pink - Office of Finance  
Goldenrod - Preparer  
AOC-CC-300 (6/95)

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) SJH 40916, p. 0572, MSA\_CE64\_41225, Date available 06/08/2018, Printed 03/07/2025.

CLERK OF THE CIRCUIT COURT  
FOR  
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND  
PRINCE GEORGE'S COUNTY, TO WIT,

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF  
  
DEED

TAKEN FROM LIBER 40916 FOLIO 567 OF THE LAND RECORDS OF THIS  
STATE AND COUNTY AFORESAID.

IN TESTIMONY WHEREOF, I HERETO SET  
MY HAND AND AFFIX THE SEAL OF THE  
CIRCUIT COURT FOR THE STATE AND  
COUNTY AFORESAID, THIS 11TH  
DAY OF MARCH 2025

  
True Copy Test  
Mahasin El Amin, Clerk

---

MAHASIN EL AMIN  
CLERK OF THE CIRCUIT COURT, PRINCE GEORGE'S CO, MD  
CLERK #880

**DECLARATION OF COVENANTS RELATED TO  
HOUSING FOR OLDER PERSONS; AGE RESTRICTION**

(Glenn Dale Cove)

This **DECLARATION OF COVENANTS RELATED TO HOUSING FOR OLDER PERSONS; AGE RESTRICTION** (the "HOPA Covenant") is executed this \_\_\_\_ day of \_\_\_\_\_, 2025, by **David M. Stewart, Personal Representative of the Estate of Joan M. Stewart (who was surviving spouse of George A. Stewart, deceased)** (the "Owner"), for the benefit of **PRINCE GEORGE'S COUNTY, MARYLAND**, a public body corporate (the "County").

**RECITALS**

**WHEREAS**, Grantor is the fee simple owner of 12.0091 acres, more or less, in the R-R Zone of Prince George's County, Maryland, located off of Springfield Road near its intersection with Lanham Severn Road, more particularly described in **Exhibit "A"** attached hereto and incorporated herein (the "**Property**");

**WHEREAS**, the Owner desires to establish a residential community on the Property intended to be operated as "Housing for Older Persons" as defined by 42 U.S.C 3607(b)(2), as amended and regulations promulgated thereunder, and by Section 20-704(c) of the State Government Article of the Annotated Code of Maryland and regulations promulgated thereunder (collectively, the "**Fair Housing Acts**"); and

**WHEREAS**, Section 27-352.01(b) of the Prince George's County Code permits attached one-family dwellings for the elderly (and related facilities) in the R-R Zone, subject to obtaining approval of a Special Exception for the proposed use within the Property; and

**WHEREAS**, one of the conditions to obtain the Special Exception is to record in the Land Records of Prince George's County, age restriction covenants to the benefit of the County, after approval thereof by the Prince George's County District Council (the "**District Council**"); and

**WHEREAS**, this HOPA Covenant is intended to meet the requirements of the Special Exception and has been approved by the District Council, **AND THIS HOPA COVENANT SHALL BE RECORDED IN THE LAND RECORDS OF PRINCE GEORGE'S COUNTY ONLY AFTER THE APPROVAL OF SPECIAL EXCEPTION SE-22002 AND A PRELIMINARY PLAN OF SUBDIVISION BASED ON SE-22002.**

**NOW, THEREFORE**, in accordance with the requirements of Section 27-352.01(b) of the Prince George's County Code, the Owner hereby declares that the Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions and easements set forth in this HOPA Covenant in accordance with the Fair Housing Acts, which are for the purpose of establishing a residential community that is Age Restricted and qualifies as "Housing for Older Persons" as defined by the Fair Housing Acts and which shall run with the Property and be binding on all parties having any right, title or interest in all or any portion of the Property, their heirs, personal representatives,

successors, transferees and assigns, and which shall inure to the benefit of each owner of any portion thereof.

### **I. Housing for Older Persons.**

A. The Property shall be owned and operated as "Housing for Older Persons" as defined by the Fair Housing Acts which is intended for occupancy by persons, who are Age Restricted, in accordance with the Fair Housing Acts, which shall mean at least eighty percent (80%) of the residential units in the Property shall be occupied by at least one person fifty-five (55) years of age or older per each residential unit (an "Age-Qualified Occupant"). Additionally, residential units may be occupied by any person nineteen (19) years of age or older with an Age-Qualified Occupant. Any person nineteen (19) years of age or older who occupied a residential unit in the Property with an Age-Qualified Occupant and who continues, without interruption, to occupy the same residential unit after termination may continue to occupy the residential unit.

B. Occupants who meet the requirements in I.A. above shall be defined as a "Resident". The term "occupy", "occupies", "occupancy" and "occupying" shall mean staying overnight in a residential unit in the Property for at least thirty (30) days in a consecutive twelve (12) month period. No person under nineteen (19) years of age shall stay overnight in a residential unit in the Property for more than thirty (30) days in a consecutive twelve (12) month period.

C. The Property is intended to be developed to be operated by one or more homeowners' associations pursuant to Title 11B of the Real Property Article of the Annotated Code of Maryland, respectively (each such homeowners association shall hereinafter be referred to as a "common interest community"). The governing documents of any common interest community in the Property shall reference and incorporate this HOPA Covenant and may contain additional conditions and restrictions relating to Housing for Old Persons which are not inconsistent with this HOPA Covenant or the Fair Housing Acts and shall contain procedures for verification of compliance with the age restriction requirements.

### **II. Miscellaneous.**

A. **Binding Covenant.** The provisions of this HOPA Covenant shall be covenant which runs with the lands and is binding on the Owner, its heirs, successors and/or assigns for a period of not less than sixty-five (65) years from the date this HOPA Covenant is recorded.

B. **Recordation.** This HOPA Covenant shall be recorded in the Land Records of Prince George's County, Maryland after the Special Exception SE-22002 for a Planned Retirement Community is approved by the District Council, and after a Preliminary Plan of Subdivision reflecting the approved SE-22002 site plan has been approved by the Prince George's County Planning Board. All recording fees shall be paid by the Owner. The original recorded HOPA Covenant shall be returned to the County.

C. **Modification.** Any modification to this HOPA Covenant shall require the consent of the Owner and the County, or its assigns.

D. **Severability.** The invalidity or illegality of any provisions of this HOPA Covenant shall not affect the remainder of this HOPA Covenant or any other provision contained herein.

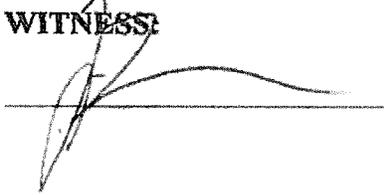
E. **Applicable Law.** This HOPA Covenant shall be interpreted and enforced in accordance with the laws of the State of Maryland and shall be effective upon its recordation among the Land Records of Prince George's County, Maryland and the approval of Special Exception SE-22002 by the Prince George's County District Council.

F. **Waiver.** The failure of the County to enforce any part of this HOPA Covenant shall not be deemed as a waiver thereof.

G. **Recitals.** The Recitals are hereby incorporated in this HOPA Covenant.

IN WITNESS WHEREOF, the Owner has caused this HOPA Covenant to be properly executed on the day and year first written above.

WITNESS:



OWNER:

David M. Stewart,  
Personal Representative of  
the Estate of Joan M. Stewart

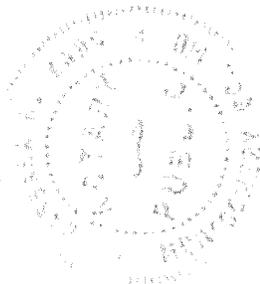
By: David M Stewart  
Name: David M Stewart  
Title: Personal Representative  
of the Estate of Joan M. Stewart

STATE OF Maryland :

COUNTY OF Montgomery : ss

I HEREBY CERTIFY that before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared David M. Stewart, Personal Representative of the Estate of Joan M. Stewart, who acknowledged that he/she is authorized to execute the above HOPA Covenant for the reasons and purposes stated therein.

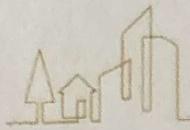
AS WITNESS, I hereunder set my hand and Notarial Seal this 10<sup>th</sup> day of March 2025.



Barbara B. Kahn  
Notary Public

My Commission Expires: December 7, 2026

**EXHIBIT A**



## APPLICATION FORM

APPLICATION TYPE: SE  Revision of Case # SE-22002  
 Companion Cases: \_\_\_\_\_  
 Payment option:  Credit Card  Check (payable to M-NCPPC) *Do not submit payment until requested by staff*

PROJECT NAME: Stewart Property  
 Complete address (if applicable) 8215 Springfield Road, Glenn Dale, MD  
 Geographic Location (distance related to or near major intersection)  
Southeast of the intersection of Springfield Road and Lake Glen Drive

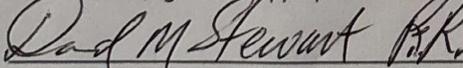
Total Acreage: <u>12.01 AC</u>	Aviation Policy Area: <u>none</u>	Election District: <u>14</u>
Tax Map/Grid: <u>028D3</u>	Current Zone(s): <u>RR</u>	Council District: <u>4</u>
WSSC Grid: <u>211NE10</u>	Existing Lots/Blocks/Parcels: <u>131</u>	Dev. Review District:
Planning Area: <u>71A</u>	In Municipal Boundary: <u>no</u>	Is development exempt from grading permit pursuant to 32-127(a)(6)(A)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Tax Account #: <u>1641547</u>	Police District #: <u>II</u>	General Plan Growth Policy: <u>Established Communities</u>

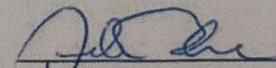
Proposed Use of Property and Request of Proposal:  
 A Planned Retirement Community composed of 57 single-family attached dwelling units.  
 Revision Proposed to Add: Variance from Sec. 27-395(a)(3)(B))

Please list previously approved applications affecting the subject property:

Applicant Name, Address & Phone: ESC 8215 Springfield L.C. 1355 Beverly Road, Suite 240 McLean, VA 22101 703-734-9730  Owner Name, Address & Phone: (if same as applicant indicate same/corporation see Disclosure) David M. Stewart, as Personal Representative of Estate of Joan M. Stewart 6101 Atlantic Ave #203, Ocean City, MD 21842 410-320-0149	Consultant Name, Address & Phone: Charles P. Johnson & Associates, Inc 1751 Elton Road, Suite 300 Silver Spring, MD 20903 301-434-7000  Contact Name, Phone & E-mail: Amy Sommer Charles P. Johnson & Associates, Inc 301-434-7000 x127 asommer@cpja.com
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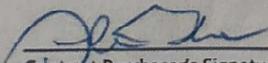
SIGNATURE (Sign where appropriate; include Application Form Disclosure for additional owner's signatures):

 3/19/25  
 Owner's Signature (signed) Date

 19 MAR 2025  
 Applicant's Signature (signed) Date

David M. Stewart, Personal Representative

Jude Burke, Manager

 19 MAR 2025  
 Contract Purchaser's Signature (signed) Date

Applicant's Signature (signed) Date

Jude Burke, Manager

**FOR STAFF USE ONLY** Application No.(s): \_\_\_\_\_



**SUBDIVISION CASES: Preliminary Plan of Subdivision/Conservation Sketch Plan**

Type of Application (Check all that apply):  Conventional Subdivision  Conservation Subdivision  
 Conservation Sketch Plan  Subdivision Ordinance Interpretation  Vacation Petition

Variation, Variance or Alternative Compliance Request(s): <input type="checkbox"/> Yes <input type="checkbox"/> No	Applicable Zoning/Subdivision Regulation Section(s): _____
---	---

Total Number of Proposed:  
 Lots \_\_\_\_\_ Outlots \_\_\_\_\_ Parcels \_\_\_\_\_ Outparcels \_\_\_\_\_

Number of Dwelling Units: Attached _____ Detached _____ Multifamily _____	Gross Floor Area (Nonresidential portion only): _____
--	--

**SUBDIVISION CASES: Final Plat**

Water/Sewer: <input type="checkbox"/> DPIPE <input type="checkbox"/> Health Department	Number of Plats: _____
--	------------------------

Detailed Site Plan No.: _____	WSSC Authorization No.: _____
-------------------------------	-------------------------------

Approval Date of Preliminary Plan: _____	Check box if a hearing is requested: <input type="checkbox"/>
--	---

**URBAN DESIGN AND ZONING CASES**

Type of Application (Check all that apply):  Certification of Nonconforming Use  Conservation Plan  
 Detailed Site Plan  Planned Development  Secondary Amendment  Special Exception  
 Zoning Map Amendment  Zoning Ordinance Interpretation

Details of Request: A Planned Retirement Community composed of 57 single-family attached dwelling units. Revised Request to Include: Variance from Sec. 27-395(a)(3)(B))	Applicable Zoning Ordinance Section(s): Sec. 27-395; Sec. 27-296
--	---

Total Number of Proposed:  
 Lots <sup>57</sup> \_\_\_\_\_ Outlots \_\_\_\_\_ Parcels <sup>3</sup> \_\_\_\_\_ Outparcels \_\_\_\_\_

Number of Dwelling Units: Attached <sup>57</sup> _____ Detached _____ Multifamily _____	Gross Floor Area (Nonresidential portion only): _____
--	--

Variance Request: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Applicable Zoning/Subdivision Regulation Section(s): Sec. 27-395(a)(3)(B)
--	--

Departure Request: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Application Filed: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
---	---

Alternative Compliance Request: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Application Filed: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	---



**APPLICATION FORM DISCLOSURE**

List all persons having at least five percent (5%) interest in the subject property ONLY required for Special Exception and Zoning Map Amendment Applications.

Owner(s) Name (printed)	Signature and Date	Residence Address
David M. Stewart, Personal Representative	<i>David M Stewart P.R.</i>	6101 Atlantic Ave #203, Ocean City, MD 21842

**CONTRACT PURCHASER**  
If the property is owned by a corporation, please fill in below.

Officers	Date Assumed Duties	Residence Address	Business Address
David Flanagan, President	1978		1355 Beverly Rd, Ste 240, McLean, VA 22101
Lauren Bauer, CFO	2023		1355 Beverly Rd, Ste 240, McLean, VA 22101
Jason Wiley, Regional Partner/ VP	2023		1355 Beverly Rd, Ste 240, McLean, VA 22101
Jude Burke, Partner/ VP	2009		1355 Beverly Rd, Ste 240, McLean, VA 22101

Officers	Date Assumed Duties	Date Term Expires	Residence Address	Business Address

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

ESC 8215 Springfield L.C. (the “**Applicant**”) by and through its counsel, CL Hatcher LLC, submits this Supplemental Statement of Justification (the “**Statement**”) to demonstrate compliance with the criteria of approval for a variance, as reflected in Sec. 27-230 of the Prince George’s County Zoning Ordinance in effect prior to April 1, 2022 (the “**Prior Zoning Ordinance**”), from the acreage requirements contained in Sec. 27-395(a)(3)(B). Specifically, the Applicant requests that the Zoning Hearing Examiner approve an area variance to allow for the Property to be comprised less than twelve (12) contiguous acres. This Statement is submitted to supplement the Statement of Justification<sup>1</sup> previously submitted together with the Special Exception application, SE-22002.<sup>2</sup>

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

**II. Variance Request Background**

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

---

<sup>1</sup> SE-22002-AC-23008 Record Binder, Exhibit 26.

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

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

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

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

#### **IV. Analysis: Section 24-230**

*(a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:*

*(1) A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional*

*topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);*

**Comment:** The Property is unique and unusual with respect to the extraordinary condition of the presumed existence of the Prescriptive Easement on a portion of the Property along its southwest boundary. While it does not transfer ownership, the Prescriptive Easement encumbers the Property by granting the public with the right to use and enjoy the portion of Springfield Road that comprises the Prescriptive Easement Area. Accordingly, it is unique, unusual and extraordinary that the Property is encumbered by a public road created by prescriptive easement; public roads are generally created by eminent domain and/or the express agreement of the owner of the property (e.g., dedication).

*(2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;*

**Comment:** If excluded from the Property's contiguous acreage, the unique and peculiar condition of the Prescriptive Easement encumbering the Property causes peculiar and unusual practical difficulties to the owner of the Property. With the exclusion of the Prescriptive Easement Area from the Property, strict application of Section 27-395(a)(3)(B) would result in the Property (which would otherwise be comprised of 12.0091 acres) being deemed to consist of 11.9278 acres (i.e., less than 12 acres). The impact and practical difficulties resulting from the Prescriptive Easement is peculiar and unique to the Property and is not an impact that would usually be experienced by other developers of Planned Retirement Communities in the prior R-R Zone.

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

**Comment:** The proposed area variance of approximately 0.0722 acres is the absolute minimum reasonably necessary to overcome the exceptional condition of the Prescriptive Easement Area's existence on the Property. Assuming that the Prescriptive Easement Area is excluded from the contiguous acreage, the area variance reducing the requirements of Section 27-395(a)(3)(B) of the Prior Zoning Ordinance by approximately 0.718 acres would overcome the exceptional condition by allowing the resulting 11.9278 contiguous acreage of the Property to satisfy the requirements of Section 27-395(a)(3)(B) of the Prior Zoning Ordinance.

*(4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and*

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

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

**Comment:** The granting of the proposed area variance of 0.0722 acres would not substantially impair the use or enjoyment of adjacent properties. As mentioned

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<sup>3</sup> SE-22002-AC-23008 Record Binder, Exhibit 26.

<sup>4</sup> SE-22002-AC-23008 Record Binder, Exhibit 102.

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

*(6) Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.*

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

## V. **Conclusion**

The Applicant respectfully requests that the Zoning Hearing Examiner grant approval of a Variance from Sec. 27-395(a)(3)(B) of the Prior Zoning Ordinance. As discussed throughout this Statement, the Property is unique and unusual due to the extraordinary condition of its encumbrance by the Prescriptive Easement, which will result in peculiar and unusual practical difficulties to the owner of the Property. Further, the proposed area variance is the minimum reasonably necessary to overcome the exceptional physical conditions, and would not substantially impair the

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<sup>5</sup> SE-22002-AC-23008 Record Binder, Exhibit 26.

<sup>6</sup> SE-22002-AC-23008 Record Binder, Exhibit 102.

Master Plan, General Plan, nor the use and enjoyment of adjacent properties. Finally, the practical difficulty associated with the Prescriptive Easement are not self-inflicted by the owner of the Property. The above analysis establishes that the proposed area variance from Sec. 27-395(a)(3)(B) of the Prior Zoning Ordinance satisfies the required findings that the Zoning Hearing Examiner must make to approve this request in accordance with the Prior Zoning Ordinance.

# SIGN POSTING AND INSPECTION AFFIDAVIT

I, Amy Sommer, hereby certify that the subject property was posted with  
(print or type name)

Six (6) sign(s) on 03/28/2025  
specify number (date)

Signs reinspected on 4/4/2025

Signature: *Amy J. Sommer*

Application Numbers: SE-22002/ AC-23008 (Requesting for Variance) Name: ESC 8215 Springfield, L.C.  
(Applicant)

Date: 04/07/2025

Address: Charles P. Johnson & Associates, Inc.  
1751 Elton Road, Suite 300 Silver Spring, MD 20903

Telephone: 301-434-7000

Capacity in which you are acting: Agent  
(Owner, Applicant, Agent)

**NOTE:** Attach legible photograph(s) return this affidavit and photographs to the Zoning Hearing Examiner no later than 15 days prior to the scheduled Zoning Hearing Examiner meeting (see attached map for posting locations).

HYBRID  
ZONING HEARING EXAMINER

# HEARING

## 301-952-3644

Email: ZHE@co.pg.md.us

HEARING INFORMATION:

SE-22002/AC-23008  
REMAND (REQUEST FOR VARIANCE)

DATE/TIME: APRIL 30, 2025 9:30 AM  
REQUEST: FOR A 3,542-Square-Foot  
FROM THE REQUIREMENT OF  
CONTIGUOUS-ACRE, SEC 27-395(a)

PROPERTY: ZONED RR (RURAL RESIDENTIAL)  
AND Located 300 Feet South of the Intersection  
of OF LAKE GLEN DRIVE and SPRINGFIELD ROAD,  
200 East of 25A Springfield Road,  
POTOMAC, MARYLAND, 20949

PLEASE CONTACT US IF YOU WISH TO ATTEND/SPEAK  
AT THE HEARING  
Wynne K. Cary Administration Building  
1321 McClellan Drive, Largo, Maryland, 20774  
Phone: 301-952-3644  
www.pgandm.gov

HYBRID  
ZONING HEARING EXAMINER

# HEARING

## 301-952-3644

Email: ZHE@co.pg.md.us

HEARING INFORMATION:

SE-22002/AC-23008  
REMAND (REQUEST FOR VARIANCE)

DATE/TIME: APRIL 30, 2025 9:30 AM  
REQUEST: FOR A 3,542-Sq-Ft VARIANCE FROM  
THE REQUIREMENT OF 12-  
CONTIGUOUS-ACRE, SEC 27-395(a)

PROPERTY: ZONED RR (RURAL  
RESIDENTIAL) AND LOCATED 300 FEET  
SOUTHEAST OF THE INTERSECTION OF  
LAKE GLEN DRIVE AND SPRINGFIELD  
RD, ALSO IDENTIFIED AS SEC 27-395(a)  
RD, GLENN DALE, MARYLAND 20774

PLEASE CONTACT US IF YOU WISH TO ATTEND/SPEAK  
AT THE HEARING  
Wynne K. Cary Administration Building  
1321 McClellan Drive, Largo, Maryland, 20774  
Phone: 301-952-3644  
www.pgandm.gov

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www.hearing.org

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HYBRID  
ZONING HEARING EXAMINER

# HEARING

301-952-3644

Email: ZHE@co.pg.md.us

HEARING INFORMATION:

SE-22002/AC-23008  
REMAND (Request for variance)

DATE/TIME: April 30, 2025 9:30 AM

REQUEST FOR A 3,342 SQUARE FOOT  
VARIANCE FROM THE REQUIREMENT  
OF 12-CONFIG-3 ORC, SEC 27-315(a)

PROPERTY: 7 acres VNC (Rural Residential)  
and located 390 feet south east of the  
intersection of Lake Glen Drive and  
Springfield Road, Glen Dale, Maryland 20769

PLEASE CONTACT US IF YOU WISH TO ATTEND/SPEAK  
AT THE HEARING  
Wayne K. Curry Administration Building  
4301 McCormick & Drive, Largo, Maryland, 20774

HYBRID  
ZONING HEARING EXAMINER

# HEARING

301-952-3644

Email: ZHE@co.pg.md.us

HEARING INFORMATION:

SE-22002/AC-23008  
REMAND (REQUEST FOR VARIANCE)

DATE/TIME: APRIL 30, 2025 9:30 A.M.

REQUEST FOR A 3,342 SQUARE FOOT  
VARIANCE FROM THE REQUIREMENT  
OF 12-CONFIG-3 ORC, SEC 27-315(a)

PROPERTY: ZONED R1C Rural Residential  
and located 390 FEET south east of the  
intersection of LAKE GLEN DRIVE  
AND SPRINGFIELD ROAD, ALSO IDENTIFIED  
AS 8215 SPRINGFIELD ROAD, GLEN DALE  
MARYLAND 20769

PLEASE CONTACT US IF YOU WISH TO ATTEND/SPEAK  
AT THE HEARING  
Wayne K. Curry Administration Building  
4301 McCormick & Drive, Largo, Maryland, 20774

Mid A



ZONING HEARING EXAMINER  
**HEARING**  
301-952-3644  
Email: CH1500-pp.med.us  
S. J. [unclear]  
Monday, April 30, 2018, 9:30 am  
15000 [unclear]

ZONING HEARING EXAMINER  
**HEARING**  
301-952-3644  
Email: CH1500-pp.med.us  
S. J. [unclear]  
Monday, April 30, 2018, 9:30 am  
15000 [unclear]

HYBRID  
ZONING HEARING EXAMINER  
**HEARING**  
301-952-3644  
Email: ZHE@co.pg.md.us  
HEARING INFORMATION:  
SE-22002/AC-23008  
REMAND (REQUEST FOR VARIANCE)  
DATE/TIME: APRIL 30, 2025 9:30 AM.  
REQUEST: FOR 3.6424 VARIANCE FROM THE REQUIREMENT OF 12-CONTINGUOUS-ACRE SEC. 21-  
PROPERTY ZONED RR (RURAL RESIDENTIAL) AND LOCATED 3014 SOUTHWEST OF THE INTERSECTION OF LAKE CREEK DRIVE & SPRINGFIELD RD. IDENTIFIED AS 1215 SPRINGFIELD RD. GLENN DALE, MARYLAND 207169  
PLEASE CONTACT US IF YOU WANT TO ATTEND/SPEAK AT THE HEARING  
Phone: 410-336-6600  
1200 Northpointe Center, Columbia, MD 21044

HYBRID  
ZONING HEARING EXAMINER  
**HEARING**  
301-952-3644  
Email: ZHE@co.pg.md.us  
HEARING INFORMATION:  
SE-22002/AC-23008  
Remand (Request for Variance)  
DATE/TIME: April 30, 2025 9:30am  
REQUEST: For A 3.6424 - Single Use VARIANCE from the maximum of 12- contiguous acres SEC. 21-  
PROPERTY: Zoned RR (Rural Residential) and located 3014 SW of the intersection of Lake Creek Drive & Springfield Road. Identified as 1215 Springfield Road. Glenn Dale, Maryland 20716  
PLEASE CONTACT US IF YOU WANT TO ATTEND/SPEAK AT THE HEARING  
Phone: 410-336-6600  
1200 Northpointe Center, Columbia, MD 21044



South B

HEARING  
301-952-3644

HEARING  
301-952-3644





April 28, 2025

Via email only to: [ZHE@co.pg.md.us](mailto:ZHE@co.pg.md.us)  
Zoning Hearing Examiner  
Prince George's County  
14741 Governor Oden Bowie Drive\  
Upper Marlboro, MD 20772

RE: SE-22002/AC-23008 (Request For Variance)  
April 30, 2025 Remand  
Applicant: ESC Springfield Road, L.C.

Notice of Appearance and  
Request for Postponement

Dear Hearing Examiner:

On behalf of my clients, parties of record Howard and Tanya Aldag (8485 Springfield Road, Glen Dale, Maryland) please accept this letter into the record of the above-referenced matter.

First, with this letter I am entering my appearance as legal counsel on behalf of my clients.

Second, having only just been retained and needing time to review the record and prepare for the upcoming contested hearing, I request a short, 10-day postponement of the scheduled April 30 hearing. This has been a lengthy, complicated case, with unusual factual and legal issues to be addressed in the upcoming remand hearing.

A 10-day postponement will allow me enough time to prepare adequately for the upcoming proceeding. As you may know, my clients have a well-documented interest in this matter. During their preparation for the hearing, they decided that they needed the assistance of legal counsel and so have retained me to represent their interests in this case.

While a short postponement of the upcoming hearing will allow my clients to be represented by an attorney in this complex matter, a short delay would not prejudice the interests of the Applicant in any cognizable way.

In the alternative, should this request for postponement not be granted, I request permission to submit written evidence, testimony and legal authority into the record at any time prior to and during the April 30, 2025 hearing.

Respectfully submitted,

Michele McDaniel Rosenfeld

Cc via email only:

Jahi P. Banks, Office Manager, Prince George's County Council,  
Office of Zoning Hearing Examiner, [JPBanks@co.pg.md.us](mailto:JPBanks@co.pg.md.us)  
Howard and Tanya Aldag, [taaldag@gmail.com](mailto:taaldag@gmail.com)

April 25, 2025

Howard and Tanya Aldag  
8485 Springfield Road  
Glenn Dale, Maryland 20769

**RE: Stewart Property (SE-22002/AC-23008) Variance**

Dear Clerk of the County Council:

This is testimony that will be given by Howard Aldag during the Zoning Hearing for the Stewart Property residential development SE-22002/AC-23008 Variance proposed on Springfield Road, Glenn Dale MD 20769. The 11.94-acre Stewart Property site would be developed as a planned retirement community consisting of 57 single-family attached homes. Please make this testimony a part of the record for the hearing.

I moved to Springfield Road in 1986. It was a wonderful country road with acreage, and everything was green and beautiful. The houses were all on 1 to 10 acres or more. The Stewart's had a horse that was fenced up to Springfield Road. It was a pleasant rural residential atmosphere and a nice place to live. Now, there is construction everywhere and approximately 150 houses are being built right now. Literally there is approximately 50 or more acres of ground being cleared on 3 jobsites, where not a single tree is left standing. These homes have sold very well and some of the construction projects are completely sold out. Now to add this high-density retirement community on top of the present construction it will totally destroy the beautiful place we moved into 38 years ago.

We are here to strongly oppose the Variance request for the Stewart Property. This development as a planned retirement community is out of character with our rural residential neighborhood, and it directly conflicts with the zoning intent of the RR zoning. This Variance should not be approved.

**There is no hardship regarding this property.** Not once but twice in these zoning hearings it was shown that there are not 12 acres of continuous acreage and there never was 12 acres. According to SDAT, two deeds from 2018 (401916/00567) are associated with 8215 Springfield Road for Assessment Year 2023. Based on those deeds, 8215 Springfield Road is identified, in relevant part, as tax map 28 and parcel 131. SDAT indicates that the legal description for "all" of parcel 131 consists of only 10 acres of land that was recombined with another deed on July 1, 2010. SDAT also indicates the property land area for parcel 131 is 11.94 acres - i.e. - more than 10 acres but less than 12 acres. SDAT further indicates that for Assessment year 2023, 8215 Springfield Road, was identified as Map 28 and Parcel 131, was not land assessed as containing 12 or more acres.

Mark Ferguson, land planner for Applicant, testified that the subject property would be less than 12 acres when the prescriptive easement is conveyed out of Parcel 131 as defined by SDAT. Then Steven Jones, land surveyor for Applicant, testified that the prescriptive easement, approximately 3,524 sf was conveyed in one of the deeds provided in the record - which when

deducted - results in a legal description of the property area - as defined by SDAT – being only 11.83 acres – less than at least 12 contiguous acres required for a Planned Retirement Community use. (12/20/2023, Tr., pp 25-26) ZHE Exhibits at 782/Exhibit 107.

Thus, the Stewart's and Developer knew several years before submitting the Special Exception to the Zoning Board that there was not 12 acres of contiguous land. They thought that it was so close that the Special Exception would be approved, and the project and the size of the parcel would not be scrutinized.

Also, finding 12 acres of contiguous land is not unusual or a hardship in this area; for instance, a 12-acre property just became available on Greenbelt Road which would make a much better site and location for a planned retirement community.

In essence, they tried to pull a fast one on the Zoning board and Community. As you can see there was no hardship plea that would justify granting this Variance. They knew the parcel was too small for the project years before they submitted for the Special Exception.

**This Special Exception and Variance will negatively affect the surrounding area and contradicts the spirit of the zoning code.** On Springfield Road there has been approximately 150 detached single family homes approved and under construction. There is no commercial, multi family dwellings or office buildings. Springfield Road is just a two-lane rural road with houses on it. To put a retirement community on this road will negatively impact this community and change the rural residential nature of the Springfield Road area. Having single family houses is much different than having a retirement community. There will be 57 attached houses with one entrance, on 11.94 acres that will need to have more services coming into the property such as ambulances, nursing care, wheelchair transportation and other community services that are related to the elderly community. There are no hospitals or shopping centers 2 miles or less from this property as discussed in the zoning requirements, making this property not an appropriate fit for the use. The proposed construction on the Stewart's property is so extensive it is too dense and not compatible with the area. Being that the County has approved the construction of approximately 150 houses, and all the construction is presently going on, the timeline to approve this project has passed. The approved present construction on Springfield Road has already maximized the infrastructure and the volume the roads can handle. This project is not a compatible use and contradicts the spirit of RR zoning. Literally, adding this project to what has already been approved would destroy the urban nature of the immediate and surrounding area.

**There is no demonstrable urgent need for this type of housing in the Glenn Dale/Springfield Road marketplace.** Presently there are 7 large senior living facilities in and around Bowie/Greenbelt. To name a few of them:

- Woodlands at Reid Temple – Glenn Dale MD, 62+ seniors, 252 units
- Pin Oak Village – Bowie MD, 55+ seniors, 220 units
- Evergreen Senior Community – Bowie MD, 62+ seniors, 108 units
- Tribute at Melford – Bowie MD, 55+ seniors, 150 units
- The Willows – Bowie MD, 62+ seniors, 79 units

Vistas at Lake Largo – Largo MD, 55+ seniors, 111 units  
Manor at Victoria Park – Temple Hills MD, 55+ seniors, 148 units

**Presently there are 1,068 Units for 55 to 65+ senior living, with literally 100s of available units.**

In and near Bowie there are 52 independent Assisted Living facilities.  
In and near Greenbelt there are approximately 199 assisted living facilities.

**Presently there are approximately 251 independent Assisted Living Facilities all around and near the Bowie/Greenbelt area. These Assisted Living Facilities also provide senior living accommodations.**

**TRAFFIC** - Each housing unit has a 2-car driveway, and in the published Bowie demographics the average household in Bowie has 2 vehicles. Thus, we are looking at approximately 114 cars that would be added to the overused Springfield Road. Finally, this project has only one entrance for ingress and egress which is not sufficient in handling the coming and going traffic of this subdivision. There would be an unacceptable traffic jam inside the project subdivision and on Springfield Road every day.

This development is supposed to be a planned retirement community. Per the Bowie MD demographics the average age of retirement is 65 years of age. This project is for 55+ years of age which means the occupants may have an additional 10 years of working after purchasing a home in this subdivision. That means the traffic in the rush time periods would be similar to other houses in the immediate area and would not have a greatly diminished traffic load as was portrayed by the retirement community developer.

This project was designed to maximize revenue not functionality and does not take into account it's negative impact on the immediate area.

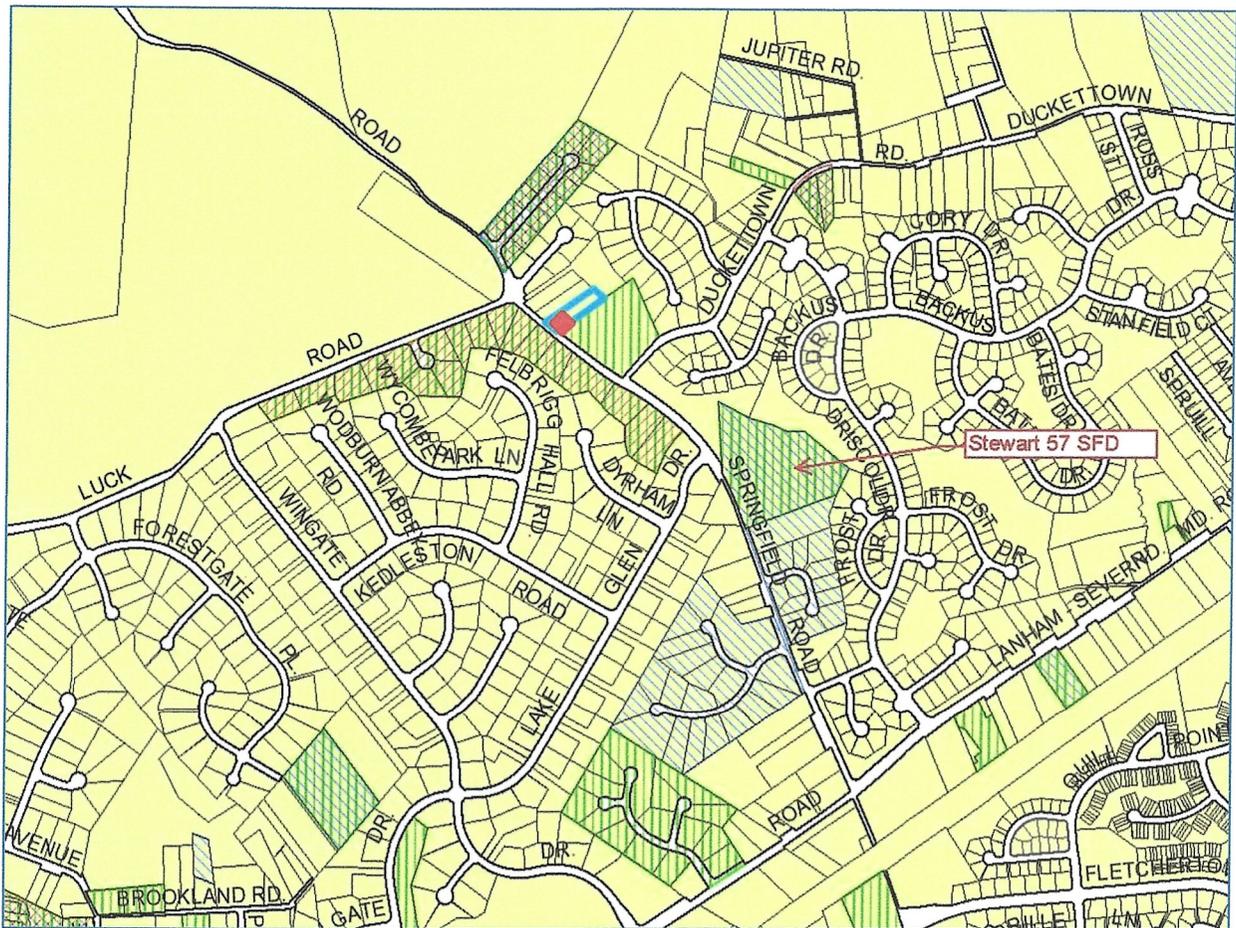
The traffic concerns of our neighbors include:

- There is substantial cut-through traffic from the USDA Beltsville Agricultural Research Center,
- The current traffic volume is such that it is difficult to safely turn onto Springfield Road from driveways and intersecting residential streets,
- Area residents experience substantial delay in turning from:
  - Driveways onto Springfield Road, and from
  - Stop-sign controlled intersections such as:
    - Springfield Road-Lanham Severn Road,
    - Springfield Road-Lake Glen Drive, and at
    - Good Luck Road-Springfield Road.
  - And when turning from Springfield Road onto Lanham-Severn Road

- Personally, I need to plan an extra 10 minutes to get out of my driveway. (8485 Springfield Road)

I believe that these concerns are valid and could be exacerbated by the traffic from the Stewart's Property plus other future developments affecting Springfield Road. This added traffic could lead to significant safety concerns and delay everyone owning property abutting Springfield Road.

The map on the next page is from [PGAtlas](#) and shows that the Stewart Property is one of a number of development projects proposed for the area as indicated by the hatching.



Unfortunately, it appears Stewart Property trip generation falls below the threshold for a full Traffic Impact Study (TIS). There is presently approximately 150 home not including this proposed retirement community that are under construction or proposed on/around Springfield Road. It is likely that other developments under construction or proposed for the Springfield Road area may also fall below the TIS threshold. As a result, an assessment of the cumulative impacts of existing and future traffic volume does not appear to exist. Already, the traffic volume on Springfield Road is too much for the two-lane road.

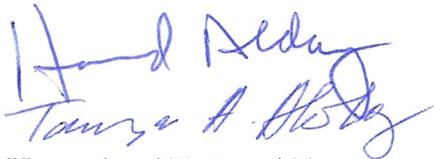
also fall below the TIS threshold. As a result, an assessment of the cumulative impacts of existing and future traffic volume does not appear to exist. Already, the traffic volume on Springfield Road is too much for the two-lane road.

I recommend that the Zoning Hearing Examiner deny this Variance; because this project has **environmental issues**, is **too high of a density of housing for a rural residential area**, and **not compatible with surrounding housing** units, it is demonstrated that there is no urgent need for this retirement community, will increase the amount of traffic on Springfield Road, and is a dysfunctional community layout. This project will diminish the area for every resident if it is allowed to proceed.

I want to be clear that my wife and I do not support this Variance. This use is not compatible with the surrounding neighborhood, a planned retirement community is not an appropriate land use on Springfield Road. This use is just a way to have almost 3 to 5 times the density of use on this piece of land using a Variance so that the developer may obtain a Special Exception to do it.

This is not an acceptable project for the surrounding residents and will change the Springfield Road area forever. This Variance should not be approved.

Best regards,

Handwritten signature in blue ink, appearing to read "Howard Aldag" and "Tatjana A. Aldag".

Howard and Tatjana Aldag

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

*Updated: April 29, 2025*

**I. Introduction**

ESC 8215 Springfield L.C. (the “**Applicant**”) by and through its counsel, CL Hatcher LLC, submits this Supplemental Statement of Justification (the “**Statement**”) to demonstrate compliance with the criteria of approval for a variance, as reflected in Sec. 27-230 of the Prince George’s County Zoning Ordinance in effect prior to April 1, 2022 (the “**Prior Zoning Ordinance**”), from the acreage requirements contained in Sec. 27-395(a)(3)(B). Specifically, the Applicant requests that the Zoning Hearing Examiner approve an area variance to allow for the Property to be comprised less than twelve (12) contiguous acres. This Statement is submitted to supplement the Statement of Justification<sup>1</sup> previously submitted together with the Special Exception application, SE-22002.<sup>2</sup>

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

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<sup>1</sup> SE-22002-AC-23008 Record Binder, Exhibit 26.

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

## II. Variance Request Background

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

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

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

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

**III. Analysis: Section 27-230**

*(a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:*

*(1) A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);*

**Comment:** The Property is unique and unusual with respect to the extraordinary condition of the presumed existence of the Prescriptive Easement on a portion of the Property along its southwest boundary. While it does not transfer ownership, the Prescriptive Easement encumbers the Property by granting the public with the right to use and enjoy the portion of Springfield Road that comprises the Prescriptive Easement Area. Accordingly, it is unique, unusual and extraordinary that the Property is encumbered by a public road created by prescriptive easement; public roads are generally created by eminent domain and/or the express agreement of the owner of the property (e.g., dedication).

*(2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;*

**Comment:** If excluded from the Property's contiguous acreage, the unique and peculiar condition of the Prescriptive Easement encumbering the Property causes peculiar and unusual practical difficulties to the owner of the Property. With the exclusion of the Prescriptive Easement Area from the Property, strict application of Section 27-395(a)(3)(B) would result in the Property (which would otherwise be comprised of 12.0091 acres) being deemed to consist of 11.9278 acres (i.e., less than 12 acres). The impact and practical difficulties resulting from the Prescriptive

Easement is peculiar and unique to the Property and is not an impact that would usually be experienced by other developers of Planned Retirement Communities in the prior R-R Zone.

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

**Comment:** The proposed area variance of approximately 0.0722 acres is the absolute minimum reasonably necessary to overcome the exceptional condition of the Prescriptive Easement Area's existence on the Property. Assuming that the Prescriptive Easement Area is excluded from the contiguous acreage, the area variance reducing the requirements of Section 27-395(a)(3)(B) of the Prior Zoning Ordinance by approximately 0.718 acres would overcome the exceptional condition by allowing the resulting 11.9278 contiguous acreage of the Property to satisfy the requirements of Section 27-395(a)(3)(B) of the Prior Zoning Ordinance.

*(4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and*

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

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<sup>3</sup> SE-22002-AC-23008 Record Binder, Exhibit 26.

<sup>4</sup> SE-22002-AC-23008 Record Binder, Exhibit 102.

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

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

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

*(6) Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.*

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

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<sup>5</sup> SE-22002-AC-23008 Record Binder, Exhibit 26.

<sup>6</sup> SE-22002-AC-23008 Record Binder, Exhibit 102.

#### IV. Analysis – Variance in Conjunction with Special Exception Approval

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

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

In Maryland, an “area variance” is defined as “a variance from *area*, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings.”<sup>7</sup> On the other hand, a “use variance” is defined as “a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses.”<sup>8</sup> Further, “a [Maryland] zoning body may grant a special exception together with *area variances* to what otherwise would be *specific standards or requirements applicable to such special exception*,”<sup>9</sup> but only if:

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

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

<sup>8</sup> *Id.* at 38.

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

<sup>10</sup> *Id.* (emphasis added).

<sup>11</sup> *Id.* (emphasis added).

In the present case, the Applicant's proposed variance allowing the Property to be comprised of less than twelve (12) contiguous acres is an area variance because it is a variance from the *area* standards applicable to the Planned Retirement Community Special Exception Use. Additionally, the Special Exception criteria from which the Applicant seeks an area variance are contained in a section of the Prior Zoning Ordinance (Section 27-395) for which variances are not excluded.<sup>12</sup> In fact, the Prior Zoning Ordinance specifically allows for variances to be approved in conjunction with Special Exception Approval in Section 27-316.<sup>13</sup> Finally, the granting of the proposed area variance of 0.0722 acres does not "substantially alter the criteria" for the Planned Retirement Community Special Exception Use such that the resulting use would no longer be consistent with the Planned Retirement Community Use as contemplated by the Prior Zoning Ordinance. In fact, as previously mentioned, the proposed area variance would in no way alter the proposed site development, nor would it reduce the developable area on the Property. In light of the foregoing, the Applicant's proposed area variance submitted in conjunction with its Special Exception application is permissible under the Prior Zoning Ordinance and Maryland law.

## V. Conclusion

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

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

<sup>13</sup> "The District Council may grant variances from the strict application of this Subtitle in conjunction with its approval of a Special Exception (or revised site plan) in accordance with Part 3, Division 5, Subdivision 2, of this Subtitle. Variances granted under the authority of this Section are applicable only to the structure or use the variance was granted in conjunction with." Prior Zoning Ordinance, §27-316.

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

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

*Updated: April 29, 2025*

**I. Introduction**

ESC 8215 Springfield L.C. (the “**Applicant**”) by and through its counsel, CL Hatcher LLC, submits this Supplemental Statement of Justification (the “**Statement**”) to demonstrate compliance with the criteria of approval for a variance, as reflected in Sec. 27-230 of the Prince George’s County Zoning Ordinance in effect prior to April 1, 2022 (the “**Prior Zoning Ordinance**”), from the acreage requirements contained in Sec. 27-395(a)(3)(B). Specifically, the Applicant requests that the Zoning Hearing Examiner approve an area variance to allow for the Property to be comprised less than twelve (12) contiguous acres. This Statement is submitted to supplement the Statement of Justification<sup>1</sup> previously submitted together with the Special Exception application, SE-22002.<sup>2</sup>

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

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<sup>1</sup> SE-22002-AC-23008 Record Binder, Exhibit 26.

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

## II. Variance Request Background

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

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

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

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

**III. Analysis: Section 27-230**

*(a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:*

*(1) A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);*

**Comment:** The Property is unique and unusual with respect to the extraordinary condition of the presumed existence of the Prescriptive Easement on a portion of the Property along its southwest boundary. While it does not transfer ownership, the Prescriptive Easement encumbers the Property by granting the public with the right to use and enjoy the portion of Springfield Road that comprises the Prescriptive Easement Area. Accordingly, it is unique, unusual and extraordinary that the Property is encumbered by a public road created by prescriptive easement; public roads are generally created by eminent domain and/or the express agreement of the owner of the property (e.g., dedication).

*(2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;*

**Comment:** If excluded from the Property's contiguous acreage, the unique and peculiar condition of the Prescriptive Easement encumbering the Property causes peculiar and unusual practical difficulties to the owner of the Property. With the exclusion of the Prescriptive Easement Area from the Property, strict application of Section 27-395(a)(3)(B) would result in the Property (which would otherwise be comprised of 12.0091 acres) being deemed to consist of 11.9278 acres (i.e., less than 12 acres). The impact and practical difficulties resulting from the Prescriptive

Easement is peculiar and unique to the Property and is not an impact that would usually be experienced by other developers of Planned Retirement Communities in the prior R-R Zone.

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

**Comment:** The proposed area variance of approximately 0.0722 acres is the absolute minimum reasonably necessary to overcome the exceptional condition of the Prescriptive Easement Area's existence on the Property. Assuming that the Prescriptive Easement Area is excluded from the contiguous acreage, the area variance reducing the requirements of Section 27-395(a)(3)(B) of the Prior Zoning Ordinance by approximately 0.718 acres would overcome the exceptional condition by allowing the resulting 11.9278 contiguous acreage of the Property to satisfy the requirements of Section 27-395(a)(3)(B) of the Prior Zoning Ordinance.

*(4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and*

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

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<sup>3</sup> SE-22002-AC-23008 Record Binder, Exhibit 26.

<sup>4</sup> SE-22002-AC-23008 Record Binder, Exhibit 102.

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

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

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

*(6) Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.*

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

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<sup>5</sup> SE-22002-AC-23008 Record Binder, Exhibit 26.

<sup>6</sup> SE-22002-AC-23008 Record Binder, Exhibit 102.

#### IV. Analysis – Variance in Conjunction with Special Exception Approval

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

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

In Maryland, an “area variance” is defined as “a variance from *area*, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings.”<sup>7</sup> On the other hand, a “use variance” is defined as “a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses.”<sup>8</sup> Further, “a [Maryland] zoning body may grant a special exception together with *area variances* to what otherwise would be *specific standards or requirements applicable to such special exception*,”<sup>9</sup> but only if:

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

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

<sup>8</sup> *Id.* at 38.

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

<sup>10</sup> *Id.* (emphasis added).

<sup>11</sup> *Id.* (emphasis added).

In the present case, the Applicant's proposed variance allowing the Property to be comprised of less than twelve (12) contiguous acres is an area variance because it is a variance from the *area* standards applicable to the Planned Retirement Community Special Exception Use. Additionally, the Special Exception criteria from which the Applicant seeks an area variance are contained in a section of the Prior Zoning Ordinance (Section 27-395) for which variances are not excluded.<sup>12</sup> In fact, the Prior Zoning Ordinance specifically allows for variances to be approved in conjunction with Special Exception Approval in Section 27-316.<sup>13</sup> Finally, the granting of the proposed area variance of 0.0722 acres does not "substantially alter the criteria" for the Planned Retirement Community Special Exception Use such that the resulting use would no longer be consistent with the Planned Retirement Community Use as contemplated by the Prior Zoning Ordinance. In fact, as previously mentioned, the proposed area variance would in no way alter the proposed site development, nor would it reduce the developable area on the Property. In light of the foregoing, the Applicant's proposed area variance submitted in conjunction with its Special Exception application is permissible under the Prior Zoning Ordinance and Maryland law.

## V. Conclusion

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

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

<sup>13</sup> "The District Council may grant variances from the strict application of this Subtitle in conjunction with its approval of a Special Exception (or revised site plan) in accordance with Part 3, Division 5, Subdivision 2, of this Subtitle. Variances granted under the authority of this Section are applicable only to the structure or use the variance was granted in conjunction with." Prior Zoning Ordinance, §27-316.

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

## 1 COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

## 2 SITTING AS THE DISTRICT COUNCIL

3 Legislative Session \_\_\_\_\_ 1987 \_\_\_\_\_

4 Bill No. \_\_\_\_\_ CB-144-1987 \_\_\_\_\_

5 Chapter No. \_\_\_\_\_ 80 \_\_\_\_\_

6 Proposed and Presented by Council Member Casula7 Introduced by Council Members Casula, Cicoria, Mills and Wilson

8 Co-Sponsors \_\_\_\_\_

9 Date of Introduction October 27, 1987

## 10 ZONING BILL

## 11 AN ORDINANCE concerning

12 Planned Retirement Community

13 FOR the purpose of eliminating the dwelling restrictions and  
14 lowering the acreage requirements for a planned retirement  
15 community.

16 BY repealing and reenacting with amendments:

17 Section 27-395,

18 The Zoning Ordinance of Prince George's County, Maryland,

19 being also

20 SUBTITLE 27. ZONING.

21 The Prince George's County Code

22 (1983 Edition, 1986 Supplement).

23 SECTION 1. BE IT ENACTED BY the County Council of Prince  
24 George's County, Maryland, sitting as the District Council for  
25 that part of the Maryland-Washington Regional District in Prince  
26 George's County, Maryland, that Section 27-395 of the Zoning  
27 Ordinance of Prince George's County, Maryland, being also Subtitle

1 27 of the Prince George's County Code, be and the same is hereby  
2 repealed and reenacted with the following amendments:

3                   SUBTITLE 27. ZONING.

4                   PART 4. SPECIAL EXCEPTIONS.

5                   DIVISION 3. ADDITIONAL REQUIREMENTS FOR  
6                   SPECIFIC SPECIAL EXCEPTIONS.

7 Sec. 27-395. Planned retirement community.

8           (a) A planned retirement community may be permitted, subject  
9 to the following criteria:

10 \*       \*       \*       \*       \*       \*       \*       \*       \*       \*

11                   (3) Regulations

12 \*       \*       \*       \*       \*       \*       \*       \*       \*       \*

13                   (B) The subject property shall contain at least  
14 [fifty (50)] twelve (12) contiguous acres, except in the R-A Zone  
15 the subject property shall contain at least fifty (50) contiguous  
16 acres; and

17 \*       \*       \*       \*       \*       \*       \*       \*       \*       \*

18                   (4) Uses

19                   (A) The planned retirement community shall include  
20 a community center or meeting area, and other recreational  
21 facilities which the District Council finds are appropriate.  
22 These recreational facilities shall only serve the retirement  
23 community. The scope of the facilities shall reflect this fact.  
24 The Council may only permit a larger facility which serves more  
25 than the retirement community if the facility is harmoniously  
26 integrated with the retirement community and the surrounding  
27 neighborhood. All recreational facilities shall be constructed

1 prior to, or concurrent with, the construction of the residential  
2 units, or in accordance with a schedule approved by the District  
3 Council[.];

4 (B) In the R-A Zone, [D]dwelling units shall be  
5 limited to one-family dwellings (detached or attached); and

6 (C) Retail commercial uses, medical uses, health  
7 care facilities, and other uses which are related to the needs of  
8 the community may be permitted.

9 \* \* \* \* \*

10 SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall  
11 take effect on the date of its adoption.

12 Adopted this 19th day of November, 1987.

COUNTY COUNCIL OF PRINCE GEORGE'S  
COUNTY, MARYLAND, SITTING AS THE  
DISTRICT COUNCIL FOR THAT PART OF  
THE MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S  
COUNTY, MARYLAND

17 BY: Hilda R. Pemberton  
18 Hilda R. Pemberton  
19 Chairperson

20 ATTEST:

21 Jean M. Schmuhl  
22 Jean M. Schmuhl, Clerk

23 KEY:

24 Underscoring indicates language added to existing law.  
25 [Brackets] indicate language deleted from existing law.  
26 Asterisks \*\*\* indicate intervening existing Code provisions  
27 that remain unchanged.

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**A G E N D A   I T E M   S U M M A R Y**

**Reference No:** CB-144-1987

**Meeting Date:** November 19, 1987

**P r i n c e   G e o r g e ' s  
C o u n t y   C o u n c i l**

**Requestor:** Council Member  
Casula

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**Item Title:** An ordinance to eliminate the dwelling restrictions and lower the acreage requirements for a planned retirement community.

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**Background and Information:**

The proposed legislation is proffered to help meet the housing needs of the retirement-aged citizens in Prince George's County. In order to encourage the development of more planned retirement communities throughout the County, the following amendments are being proposed to the Zoning Ordinance:

- o To reduce the amount of land required for a planned retirement community from a minimum of 50 contiguous acres to 12 contiguous acres; and
- o To delete the restriction that dwelling units must be limited to one-family dwellings.

**PLANNING AND ZONING COMMITTEE REPORT**

**DATE:** October 19, 1987

**Committee Vote:** Favorable, with amendments, 3-0-1 (In Favor: Council Members Castaldi, Casula, and Herl; Abstaining: Council Member Wilson)

A representative of the Department of Housing and Community Development addressed the Committee supporting CB-144 and the need to encourage private development of Planned Retirement Communities.

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<b>Drafter:</b> Joyce B. Hope	<b>Resource</b>	Ruth Senes
Assoc. County Attorney	<b>Personnel:</b>	Park and Planning

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<b>Items Under Separate Cover:</b>	<b>Statutory References:</b>
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In accordance with the Planning Board's recommendation, the Committee amended this legislation leaving the current Ordinance requirements in place for the R-A Zone since this zone is specifically for large-lot, one-family detached residential subdivisions.

Introduced 10/27/87

Enacted 11/19/87 - 6-0-1 vote (Abstain - Pemberton; absent - Cicoria and Wilson)

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COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

SITTING AS THE DISTRICT COUNCIL

Legislative Session \_\_\_\_\_ 1987 \_\_\_\_\_

Amendment Introduced by \_\_\_\_\_

Bill No. \_\_\_\_\_ CB-144-1987 \_\_\_\_\_

Amendment No. \_\_\_\_\_

Amendment Introduced by Council on October 27, 1987

PROPOSED AMENDMENT

On Page 3 in Section 2 of the bill, delete "thirty (30) calendar days after" and insert in lieu thereof "on".

ADOPTED 10/27/87

1 COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2 SITTING AS THE DISTRICT COUNCIL

3 Legislative Session \_\_\_\_\_ 1987

4 Bill No. \_\_\_\_\_ CB-144-1987

5 Chapter No. \_\_\_\_\_

6 Proposed and Presented by Council Member Casula

7 Introduced by Council Member Casula

8 Co-Sponsors \_\_\_\_\_

9 Date of Introduction October 27, 1987

10 ZONING BILL

11 AN ORDINANCE concerning

12 Planned Retirement Community

13 FOR the purpose of eliminating the dwelling restrictions and  
14 lowering the acreage requirements for a planned retirement  
15 community.

16 BY repealing and reenacting with amendments:

17 SUBTITLE 27. ZONING.

18 Section 27-395,

19 The Zoning Ordinance of Prince George's County, Maryland,

20 being also

21 SUBTITLE 27. ZONING.

22 The Prince George's County Code

23 (1983 Edition, 1986 Supplement).

24 SECTION 1. BE IT ENACTED BY the County Council of Prince  
25 George's County, Maryland, sitting as the District Council for  
26 that part of the Maryland-Washington Regional District in Prince  
27 George's County, Maryland, that Section 27-395 of the Zoning

1 Ordinance of Prince George's County, Maryland, being also Subtitle  
2 27 of the Prince George's County Code, be and the same is hereby  
3 repealed and reenacted with the following amendments:

4 SUBTITLE 27. ZONING.

5 PART 4. SPECIAL EXCEPTIONS.

6 DIVISION 3. ADDITIONAL REQUIREMENTS FOR  
7 SPECIFIC SPECIAL EXCEPTIONS.

8 Sec. 27-395. Planned retirement community.

9 (a) A planned retirement community may be permitted, subject  
10 to the following criteria:

11 \* \* \* \* \*

12 (3) Regulations

13 \* \* \* \* \*

14 (B) The subject property shall contain at least  
15 [fifty (50)] twelve (12) contiguous acres, except in the R-A Zone  
16 the subject property shall contain at least fifty (50) contiguous  
17 acres; and

18 \* \* \* \* \*

19 (4) Uses

20 (A) The planned retirement community shall include  
21 a community center or meeting area, and other recreational  
22 facilities which the District Council finds are appropriate.  
23 These recreational facilities shall only serve the retirement  
24 community. The scope of the facilities shall reflect this fact.  
25 The Council may only permit a larger facility which serves more  
26 than the retirement community if the facility is harmoniously  
27 integrated with the retirement community and the surrounding

1 neighborhood. All recreational facilities shall be constructed  
2 prior to, or concurrent with, the construction of the residential  
3 units, or in accordance with a schedule approved by the District  
4 Council[.];

5 (B) In the R-A Zone, [D]dwelling units shall be  
6 limited to one-family dwellings (detached or attached); and

7 (C) Retail commercial uses, medical uses, health  
8 care facilities, and other uses which are related to the needs of  
9 the community may be permitted.

10 \* \* \* \* \*

11 SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall  
12 take effect thirty (30) calendar days after the date of its  
13 adoption.

14 Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 1987.

15 COUNTY COUNCIL OF PRINCE GEORGE'S  
16 COUNTY, MARYLAND, SITTING AS THE  
17 DISTRICT COUNCIL FOR THAT PART OF  
18 THE MARYLAND-WASHINGTON REGIONAL  
19 DISTRICT IN PRINCE GEORGE'S  
20 COUNTY, MARYLAND

21 BY: \_\_\_\_\_  
22 Hilda P. Pemberton  
23 Chairperson

24 ATTEST:

25 \_\_\_\_\_  
26 Jean M. Schmuhl, Clerk

27 KEY:

Underscoring indicates language added to existing law.  
[Brackets] indicate language deleted from existing law.  
Asterisks \*\*\* indicate intervening existing Code provisions  
that remain unchanged.

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**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**  
**SITTING AS THE DISTRICT COUNCIL**

Legislative Session \_\_\_\_\_ 1991 \_\_\_\_\_  
Bill No. \_\_\_\_\_ CB-77-1991 \_\_\_\_\_  
Chapter No. \_\_\_\_\_ 58 \_\_\_\_\_  
Proposed and Presented by Council Member Wineland  
Introduced by \_\_\_\_\_ Council Member Wineland \_\_\_\_\_  
Co-Sponsors \_\_\_\_\_  
Date of Introduction \_\_\_\_\_ September 17, 1991 \_\_\_\_\_

**ZONING BILL**

AN ORDINANCE concerning

Planned Retirement Community

FOR the purpose of amending the Special Exception provisions for  
Planned Retirement Communities in the R-A Zone.

BY repealing and reenacting with amendments:

Section 27-395,

The Zoning Ordinance of Prince George's County, Maryland,

being also

SUBTITLE 27. ZONING.

The Prince George's County Code

(1987 Edition, 1990 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince  
George's County, Maryland, sitting as the District Council for that  
part of the Maryland-Washington Regional District in Prince George's  
County, Maryland, that Section 27-395 of the Zoning Ordinance of  
Prince George's County, Maryland, being also Subtitle 27 of the  
Prince George's County Code, be and the same is hereby repealed and



1 | property shall contain at least fifty (50) contiguous acres]; [and]

2 |                   (C) The average number of dwelling units per acre  
3 | shall not be more than eight (8) for the gross tract area[.]; and

4 |                   (D) In the R-A Zone, buildings shall not exceed  
5 | three (3) stories.

6 |                   (4) Uses

7 | \*           \*           \*           \*           \*           \*           \*

8 |                   [(B) In the R-A Zone, dwelling units shall be limited  
9 | to one-family dwellings (detached or attached); and]

10 |                   [(C)] (B) Retail commercial uses, medical uses,  
11 | health care facilities, and other uses which are related to the  
12 | needs of the community may be permitted.

13 | \*           \*           \*           \*           \*           \*           \*

14 |                   SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall  
15 | take effect on December 31, 1991.

16 |                   Adopted this 22nd day of October, 1991.

17 |                   COUNTY COUNCIL OF PRINCE GEORGE'S  
18 | COUNTY, MARYLAND, SITTING AS THE  
19 | DISTRICT COUNCIL FOR THAT PART OF  
20 | THE MARYLAND-WASHINGTON REGIONAL  
21 | DISTRICT IN PRINCE GEORGE'S COUNTY,  
22 | MARYLAND

21 | BY:   
22 | Richard J. Castaldi  
23 | Chairman

24 |  
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26 |  
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1 | ATTEST:

2 | *Maurene W. Epps*  
3 | Maurene W. Epps  
4 | Acting Clerk of the Council

5 | KEY:

6 | Underscoring indicates language added to existing law.  
7 | [Brackets] indicate language deleted from existing law.  
8 | Asterisks \*\*\* indicate intervening existing Code provisions that  
9 | remain unchanged.

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**AGENDA ITEM SUMMARY**

**Prince George's  
County Council**

**Reference No: CB-77-1991**

**Draft No: 1**

**Meeting Date: 10/22/91**

**Requester: WI**

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**Item Title: An Ordinance for the purpose of amending  
the Special Exception provisions for  
Planned Retirement Communities in the R-A  
Zone.**

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**Sponsors WI**

**Date Presented** 7/30/91      **Executive Action**  
**Committee Referral** (1) 7/30/91    P&Z      **Effective Date** 12/31/91 —  
**Committee Action** (1) 9/9/91    FAV  
**Date Introduced** 9/17/91  
**Pub. Hearing Date** (1) 10/22/91 1:30 PM

**Council Action** (1) 10/22/91 Enacted  
**Council Votes** CA: A, B: A, C: A, D: A, F: A, MC: A,  
M: N, P: A, WI: A, —: —, —: —, —: —  
**Pass/Fail** P

**Remarks**

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**Drafter:** Mary Lane  
Committee Director

**Resource** Mary Lane  
**Personnel:** Committee Director

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**LEGISLATIVE HISTORY**

**PLANNING AND ZONING COMMITTEE REPORT**

**DATE: 9/9/91**

**Committee Vote:** Favorable, 4-1 (In favor: Council Members Casula,  
Wineland, Fletcher and Del Giudice; in opposition:  
Council Member Mills)

Staff explained that CB-77 is a substitute for CB-52-1991, which was held in committee earlier in the year. It resulted from a P&Z subcommittee meeting regarding CB-52. The legislation is supported by the M-NCPPC.

**BACKGROUND INFORMATION/FISCAL IMPACT**

**(Includes reason for proposal, as well as any unique statutory requirements)**

Planned Retirement Communities are permitted by Special Exception in every residential zone except the O-S and R-10A Zones. In every zone, except the R-A Zone, a minimum of 12 acre is required, and any type of dwelling may be built. In the R-A Zone, 50 acres is required, and only one-family (attached or detached) dwellings are permitted. This legislation brings the acreage and unit type regulations in the R-A Zone into conformance with the other zones, with an additional requirement that buildings shall not exceed 3 stories. It also requires that the District Council make a finding that there is a need for the facility, and that there is an existing medical facility in the vicinity.



1 reenacted with the following amendments:

2                                   **SUBTITLE 27. ZONING.**

3                                   **PART 4. SPECIAL EXCEPTIONS.**

4                   **DIVISION 3. ADDITIONAL REQUIREMENTS FOR SPECIFIC SPECIAL**  
5                                   **EXCEPTIONS.**

6 **Sec. 27-395. Planned retirement community.**

7           (a) A planned retirement community may be permitted, subject  
8 to the following criteria:

9                   (1) Findings for approval

10                                   (A) The District Council shall find that:

11   (1) The proposed use will serve the needs of  
12 the retirement-aged community; [and]

13   (ii) The proposed use will not adversely affect  
14 the character of the surrounding residential community[.]; and

15   (iii) In the R-A Zone, there shall be a  
16 demonstrated need for the facility and an existing medical facility  
17 within the defined market area of the subject property.

18 \*           \*           \*           \*           \*           \*           \*

19                   (3) Regulations

20                                   (A) Regulations restricting the height of  
21 structures, lot size and coverage, frontage, setbacks, density, and  
22 other requirements of the specific zone in which the use is proposed  
23 shall not apply to uses and structures provided for in this Section.  
24 The dimensions and percentages shown on the approved site plan shall  
25 constitute the regulations for a given Special Exception.

26                                   (B) The subject property shall contain at least  
27 twelve (12) contiguous acres[, except in the R-A Zone the subject

1 | property shall contain at least fifty (50) contiguous acres]; [and]

2 |                   (C) The average number of dwelling units per acre  
3 | shall not be more than eight (8) for the gross tract area[.]; and

4 |                   (D) In the R-A Zone, buildings shall not exceed  
5 | three (3) stories.

6 |                   (4) Uses

7 | \*           \*           \*           \*           \*           \*           \*

8 |                   [(B) In the R-A Zone, dwelling units shall be limited  
9 | to one-family dwellings (detached or attached); and]

10 |                   [(C)] (B) Retail commercial uses, medical uses,  
11 | health care facilities, and other uses which are related to the  
12 | needs of the community may be permitted.

13 | \*           \*           \*           \*           \*           \*           \*

14 |                   SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall  
15 | take effect on December 31, 1991.

16 |                   Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

17 |   COUNTY COUNCIL OF PRINCE GEORGE'S  
18 |   COUNTY, MARYLAND, SITTING AS THE  
19 |   DISTRICT COUNCIL FOR THAT PART OF  
20 |   THE MARYLAND-WASHINGTON REGIONAL  
21 |   DISTRICT IN PRINCE GEORGE'S COUNTY,  
22 |   MARYLAND

22 | BY: \_\_\_\_\_  
23 |                   Richard J. Castaldi  
24 |                   Chairman

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1 | ATTEST:

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4 | Maurene W. Epps  
Acting Clerk of the Council

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6 | KEY:

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8 | Underscoring indicates language added to existing law.  
9 | [Brackets] indicate language deleted from existing law.  
10 | Asterisks \*\*\* indicate intervening existing Code provisions that  
11 | remain unchanged.

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**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**

**SITTING AS THE DISTRICT COUNCIL**

**1999 Legislative Session**

Bill No. CB-89-1999

Chapter No. 49

Proposed and Presented by Council Member Hendershot

Introduced by Council Member Hendershot

Co-Sponsors \_\_\_\_\_

Date of Introduction October 26, 1999

**ZONING BILL**

1 AN ORDINANCE concerning

2 **Planned Retirement Community**

3 For the purpose of permitting planned retirement communities in the I-3 Zone under certain  
4 circumstances.

5 BY repealing and reenacting with amendments:

6 Sections 27-395 and 27-473,

7 The Zoning Ordinance of Prince George's County, Maryland,

8 being also

9 **SUBTITLE 27. ZONING.**

10 The Prince George's County Code

11 (1995 Edition, 1998 Supplement).

12 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,  
13 Maryland, sitting as the District Council for that part of the Maryland-Washington Regional  
14 District in Prince George's County, Maryland, that Sections 27-395 and 27-473 of the Zoning  
15 Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's  
16 County Code, be and the same are hereby repealed and reenacted with the following  
17 amendments:

18 **SUBTITLE 27. ZONING.**

19 **PART 4. SPECIAL EXCEPTIONS.**

**DIVISION 3. ADDITIONAL REQUIREMENTS FOR SPECIFIC SPECIAL  
EXCEPTIONS.**

**Sec. 27-395. Planned retirement community.**

(a) A planned retirement community may be permitted, subject to the following criteria:

**(1) Findings for approval.**

(A) The District Council shall find that:

(i) The proposed use will serve the needs of the retirement-aged community;

(ii) The proposed use will not adversely affect the character of the surrounding residential community; and

(iii) In the R-A Zone, there shall be a demonstrated need for the facility and an existing medical facility within the defined market area of the subject property.

**(2) Site plan.**

(A) In addition to the requirements of Section 27-296(c), the site plan shall set forth the proposed traffic circulation patterns.

**(3) Regulations.**

(A) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, density, and other requirements of the specific zone in which the use is proposed shall not apply to uses and structures provided for in this section. The dimensions and percentages shown on the approved site plan shall constitute the regulations for a given Special Exception.

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

(C) The average number of dwelling units per acre shall not be more than eight (8) for the gross tract area; and

(D) In the R-A Zone, buildings shall not exceed three (3) stories.

(E) In the I-3 Zone, the following shall apply:

(i) The gross tract area shall be a minimum of ninety (90) acres with at least 25% of its boundary adjoining residentially zoned land or land used for residential purposes;

(ii) The property shall have at least one hundred fifty (150) feet of frontage on and direct vehicular access to a public street;

1                    (iii) All buildings shall be set back a minimum of seventy-five (75) feet  
2 from all non-residentially zoned boundary lines or satisfy the requirements of the Landscape  
3 Manual, whichever is greater;

4                    (iv) The property shall be located within two (2) miles of mass transit,  
5 regional shopping and a hospital; and

6                    (v) Townhouses shall comply with the design guidelines set forth in  
7 Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(d).

8                    **DIVISION 3. USES PERMITTED.**

9 **Sec. 27-473. Uses permitted**

(b) TABLE OF USES

	*	*	*	*	*	*	*
<b>(7) RESIDENTIAL/LODGING:</b>							
<i>USE</i>			<i>I-1<sup>33</sup></i>	<i>I-2<sup>33</sup></i>	<i>ZONE</i> <i>I-3</i>	<i>I-4</i>	<i>U-L-I</i>
<b>Hotel or motel (which may include public spas, swimming pools, or tennis courts, provided they are enclosed by a fence or wall at least 6 feet high):</b>							
<b>(A) In an industrial park having a gross tract area of at least 25 acres</b>	<b>SE</b>	<b>SE</b>			<b>P</b>	<b>X</b>	<b>X</b>
<b>(B) All others</b>	<b>SE</b>	<b>SE</b>			<b>X</b>	<b>X</b>	<b>X</b>
<b><u>Planned retirement community</u></b>	<b>X</b>	<b>X</b>			<b><u>SE</u><sup>39</sup></b>	<b>X</b>	<b>X</b>

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<sup>39</sup> Townhouses shall comply with the design guidelines set forth in Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(d).

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SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall take effect forty-five (45) calendar days after its adoption.

Adopted this 23rd day of November, 1999.

COUNTY COUNCIL OF PRINCE GEORGE'S  
COUNTY, MARYLAND, SITTING AS THE  
DISTRICT COUNCIL FOR THAT PART OF  
THE MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S COUNTY,  
MARYLAND

BY:   
M. H. Jim Estepp  
Chairman

ATTEST:

  
Joyce T. Sweeney  
Clerk of the Council

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks \*\*\* indicate intervening existing Code provisions that remain unchanged.

**PRINCE GEORGE'S COUNTY COUNCIL  
AGENDA ITEM SUMMARY**

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**Meeting Date:** 11/23/99

**Reference No.:** CB-89-1999

**Proposer:** Hendershot

**Draft No.:** 1

**Sponsors:** Hendershot

**Item Title:** An Ordinance permitting planned retirement communities  
in the I-3 Zone under certain circumstances

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**Drafter:**

**Resource Personnel:** Carol B. White  
Legislative Aide

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**LEGISLATIVE HISTORY:**

**Date Presented:** \_\_/\_\_/\_\_

**Executive Action:** \_\_/\_\_/\_\_

**Committee Referral:** 10/26/99 PZED

**Effective Date:** 1/10/2000

**Committee Action:** 11/3/99 FAV

**Date Introduced:** 10/26/99

**Public Hearing:** 11/23/99 1:45 P.M.

**Council Action:** 11/23/99 ENACTED

**Council Votes:** JE:A, DB:A, IG:N, TH:A, WM:N, RVR:A, AS:N, PS:A, MW:A

**Pass/Fail:** P

**Remarks:** \_\_\_\_\_

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**PLANNING, ZONING & ECON. DEV. COMMITTEE REPORT**

**DATE:** 11/3/99

**Committee Vote:** Favorable, 3-2 (In favor: Council Members Russell, Bailey and Hendershot. Opposed: Council Members Gourdine and Maloney)

Committee staff explained that this legislation had previously been discussed in Committee as CB-49-1999 on October 20, 1999. During that Committee meeting, the bill's sponsor requested that the bill be removed from the agenda and that the Committee not provide a recommendation.

Subsequently, CB-89-1999 bypassed presentation and was introduced on October 26, 1999; staff indicated that a public hearing was scheduled for November 23, 1999.

This bill amends the Zoning Ordinance to permit, by Special Exception, planned retirement communities in the I-3 Zone under certain circumstances. The I-3 property must contain a minimum of ninety (90) acres with at least 25% of its boundary adjoining residentially zoned land or land used for residential purposes, have at least one hundred fifty (150) feet of frontage

on and direct vehicular access to a public street, and be located within two (2) miles of mass transit, regional shopping and a hospital.

During the review of the original bill, CB-49-1999, the Planning Board opposed the legislation for several reasons as follows. 1) The use is contrary to the purpose of the I-3 Zone; 2) There are ample opportunities in all residential zones (except the O-S and R-O-S Zones) to develop planned retirement communities by special exception; and 3) The bill as written in Draft #1 needed improvements to: a) assure that a significant portion of the development abutted residential land; b) assure that there was ample buffering and setbacks from other uses on the I-3 property; c) assure that the planned retirement community is conveniently located near mass transit, regional shopping and medical facilities; and, d) assure that primary access to the community is through its own entrance, not through the I-3 property.

A Proposed Draft-2 of CB-49-1999, containing amendments to address the Planning Board's concerns, was presented at the Committee meeting held on October 20, 1999. A Council Member displayed a map depicting all I-3 properties containing 90 or more acres and adjoining residentially zoned land. During discussion of the proposed Draft-2, a question was raised by a Council Member regarding how many properties would be affected by the amendments in the second draft. This information was not available at that time. The bill's sponsor requested that the bill be removed from the agenda indicating his intent to have a new bill drafted containing the amendments in the Proposed Draft-2 for introduction during the next Council legislative session. Committee staff was directed to obtain another map of I-3 properties that meet the locational criteria contained in the second draft, specifically, those properties containing a minimum of ninety (90) acres with at least 25% of its boundary adjoining residentially zoned land or land used for residential purposes, and located within two (2) miles of mass transit, regional shopping and a hospital. The Planning Board supported the Proposed Draft-2.

CB-89-1999 was introduced on October 26, 1999 and referred to the Planning, Zoning and Economic Development Committee. At the November 3<sup>rd</sup> Committee meeting, staff displayed and explained the map that was requested during the October 20<sup>th</sup> Committee meeting for CB-49-1999. The map reflected that two I-3 properties, both in the northern portion of the County, meet the criteria provided in the legislation, one of which is developed and the other is undeveloped.

The County Executive takes no position on CB-89-1999. The Office of Law has determined that the bill is in proper legislative form and noted a technical amendment to delete the word "and" on page 29, line 2. The Office of Audits and Investigations has determined there should be no negative fiscal impact on the County as a result of enacting this legislation.

Letters in opposition to CB-89-1999 were received from Senator Arthur Dorman as well as the Gunpowder Citizens' Association, Inc.

## **BACKGROUND INFORMATION/FISCAL IMPACT**

**(Includes reason for proposal, as well as any unique statutory requirements)**

Planned retirement communities are permitted by Special Exception in most Residential Zones. This legislation amends the Industrial Use Tables in the Zoning Ordinance to permit, by Special Exception, planned retirement communities in the I-3 Zone under certain circumstances.

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL**

**2002 Legislative Session**

Bill No. CB-22-2002

Chapter No. 18

Proposed and Presented by Council Member Wilson

Introduced by Council Member Wilson

Co-Sponsors \_\_\_\_\_

Date of Introduction April 30, 2002

**ZONING BILL**

1 AN ORDINANCE concerning

2 Planned Retirement Community

3 For the purpose of permitting planned retirement communities in the C-O Zone, under certain  
4 circumstances.

5 BY repealing and reenacting with amendments:

6 Sections 27-395 and 27-461(b),

7 The Zoning Ordinance of Prince George's County, Maryland,

8 being also

9 SUBTITLE 27. ZONING.

10 The Prince George's County Code

11 (1999 Edition, 2001 Supplement).

12 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,  
13 Maryland, sitting as the District Council for that part of the Maryland-Washington Regional  
14 District in Prince George's County, Maryland, that Sections 27-395 and 27-461(b) of the Zoning  
15 Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's  
16 County Code, be and the same are hereby repealed and reenacted with the following  
17 amendments:

18 **SUBTITLE 27. ZONING.**

19 **PART 4. SPECIAL EXCEPTIONS.**

20

**DIVISION 3. ADDITIONAL REQUIREMENTS FOR SPECIFIC  
SPECIAL EXCEPTIONS.**

**Sec. 27-395. Planned retirement community.**

(a) A planned retirement community may be permitted, subject to the following criteria:

**(1) Findings for approval.**

(A) The District Council shall find that:

(i) The proposed use will serve the needs of the retirement-aged community;

(ii) The proposed use will not adversely affect the character of the surrounding residential community; and

(iii) In the R-A Zone, there shall be a demonstrated need for the facility and an existing medical facility within the defined market area of the subject property.

**(2) Site plan.**

(A) In addition to the requirements of Section 27-296(c), the site plan shall set forth the proposed traffic circulation patterns.

**(3) Regulations.**

(A) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, density, dwelling unit types, and other requirements of the specific zone in which the use is proposed shall not apply to uses and structures provided for in this Section. The dimensions and percentages shown on the approved site plan shall constitute the regulations for a given Special Exception.

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

(C) The average number of dwelling units per acre shall not [be more than] exceed eight (8) for the gross tract area[; and] .

(D) In the R-A Zone, buildings shall not exceed three (3) stories.

(E) In the I-3 Zone, the following shall apply:

(i) The gross tract area shall be a minimum of ninety (90) acres with at least 25% of its boundary adjoining residentially-zoned land or land used for residential purposes;

(ii) The property shall have at least one hundred fifty (150) feet of frontage on, and direct vehicular access to, a public street;

1 (iii) All buildings shall be set back a minimum of seventy-five (75) feet  
 2 from all nonresidentially-zoned boundary lines or satisfy the requirements of the Landscape  
 3 Manual, whichever is greater;

4 (iv) The property shall be located within two (2) miles of mass transit,  
 5 regional shopping, and a hospital; and

6 [(v) Townhouses shall comply with the design guidelines set forth in  
 7 Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(d).]

8 (F) In the I-3 and C-O Zones, townhouses shall comply with the design  
 9 guidelines set forth in Section 27-274(a)(11) and the regulations for development set forth in  
 10 Section 27-433(d).

11 (4) **Uses.**

12 (A) The planned retirement community shall include a community center or  
 13 meeting area, and other recreational facilities which the District Council finds are appropriate.  
 14 These recreational facilities shall only serve the retirement community. The scope of the  
 15 facilities shall reflect this fact. The Council may only permit a larger facility which serves more  
 16 than the retirement community if the facility is harmoniously integrated with the retirement  
 17 community and the surrounding neighborhood. All recreational facilities shall be constructed  
 18 prior to, or concurrent with, the construction of the residential units, or in accordance with a  
 19 schedule approved by the District Council;

20 (B) Retail commercial uses, medical uses, health care facilities, and other uses  
 21 which are related to the needs of the community may be permitted.

22 (5) **Residents' age.**

23 (A) At least one (1) resident of each household shall be at least fifty (50) years  
 24 old, unless the applicant can demonstrate that a lesser minimum age requirement should be  
 25 approved. No permanent resident of the planned retirement community shall be under eighteen  
 26 (18) years old. Covenants setting forth the minimum age of the residents shall be submitted with  
 27 the application. The covenants shall be approved by the District Council, and shall be filed in  
 28 the land records at the time the subdivision plat is recorded. No change in the minimum age  
 29 shall be permitted, unless both the covenants and the Special Exception have been amended.  
 30  
 31

1                   (6) **Recreational facilities.**

2                   (A) Covenants guaranteeing the perpetual maintenance of recreational facilities,  
3 and the community's right to use the facilities, shall be submitted with the application. The  
4 covenants shall be approved by the District Council, and shall be filed in the land records at the  
5 time the subdivision plat is recorded. If the recreational facilities are to be part of a  
6 condominium development, a proposed condominium declaration showing the recreational  
7 facilities as general common elements shall be approved by the District Council, and shall be  
8 recorded (pursuant to Title II of the Real Property Article of the Annotated Code of Maryland) at  
9 the time the subdivision plat is recorded.

**PART 6. COMMERCIAL ZONES.  
DIVISION 3. USES PERMITTED.**

**Sec. 27-461. Uses permitted.**

**(b) TABLE OF USES I.**

USE	ZONE					
	C-O	C-A	C-S-C	C-W	C-M	C-R-C
* * * * *	*	*	*	*	*	*
<b>(6) Residential/Lodging:</b>						
* * * * *	*	*	*	*	*	*
Hotel or motel:						
(A) Hotel or motel in general	P <sup>22</sup>	X	P	SE	P	P
(B) Including any use allowed in the C-S-C Zone (but not generally allowed in the C-M Zone, excluding those permitted by Special Exception), when located within a hotel, provided the uses shall not be located above the ground floor; not more than fifteen (15) percent of the gross floor area of the building shall be devoted to the uses; and not more than 3,000 square feet shall be allotted to any one use (CB-105-1985; CB-58-1990)	X	X	X	X	PA	X
<u>Planned retirement community</u>	P <sup>39</sup>	X	X	X	X	X
Tourist cabin camp	X	X	X	SE	SE	X
* * * * *	*	*	*	*	*	*

**39 Provided:**

- (A) The property in the C-O Zone is within a Special Taxing District and adjoins or lies across a public right-of-way from land in the R-H Zone with an existing planned retirement community.
- (B) The Planning Board approves a Detailed Site Plan, in accordance with Part 3, Division 9, and makes the following findings:
  - (1) The site plan meets all Special Exception requirements in Section 27-395; and
  - (2) The proposed project will serve, in a high-quality, well-designed retirement community, the needs of a retirement-aged population while not adversely affecting the character of the surrounding neighborhood.

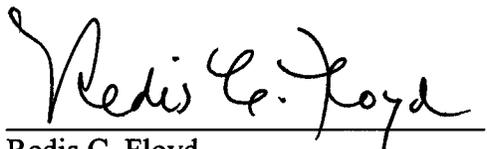
1 SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall take effect forty-five  
2 (45) calendar days after its adoption.

Adopted this 4th day of June, 2002.

COUNTY COUNCIL OF PRINCE GEORGE'S  
COUNTY, MARYLAND, SITTING AS THE  
DISTRICT COUNCIL FOR THAT PART OF  
THE MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S COUNTY,  
MARYLAND

BY:   
Peter A. Shapiro  
Chair

ATTEST:

  
Redis C. Floyd  
Acting Clerk of the Council

KEY:  
Underscoring indicates language added to existing law.  
[Brackets] indicate language deleted from existing law.  
Asterisks \*\*\* indicate intervening existing Code provisions that remain unchanged.

**PRINCE GEORGE'S COUNTY COUNCIL  
AGENDA ITEM SUMMARY**

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**Meeting Date:** 6/4/2002

**Reference No.:** CB-22-2002

**Proposer:** Wilson

**Draft No.:** 2

**Sponsors:** Wilson

**Item Title:** An Ordinance permitting planned retirement communities in the C-O Zone, under certain circumstances

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**Drafter:**

**Resource Personnel:** Eugene Singleton  
Legislative Aide

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**LEGISLATIVE HISTORY:**

**Date Presented:** 3/26/2002

**Executive Action:** \_\_\_/\_\_\_/\_\_\_

**Committee Referral:** 3/26/2002 PZED

**Effective Date:** 7/22/2002

**Committee Action:** 4/24/2002 FAV(A)

**Date Introduced:** 4/30/2002

**Public Hearing:** 6/4/2002 10:00 A.M.

**Council Action:** 6/4/2002 ENACTED

**Council Votes:** PS:A, DB:A, TD:A, JE:-, TH:A, TK:A; RVR:A, AS:A, MW:A

**Pass/Fail:** P

**Remarks:** \_\_\_\_\_

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**PLANNING, ZONING & ECONOMIC DEV. COM. REPORT**

**DATE:** 4/24/02

Committee Vote: Favorable, 3-0 (In favor: Council Members Russell, Hendershot and Wilson)

This legislation amends the Commercial Zones Use Table to allow planned retirement communities in the C-O (Commercial Office) Zone under certain circumstances. The use may only be located on property that meets the criteria contained in Footnote 39 on page 5 of the legislation. The footnote also requires a Detailed Site Plan review for the use and that the site plan meets all Special Exception requirements for planned retirement communities in Section 27-395 of the Zoning Ordinance. The legislation facilitates the development of this use on Lottsford Road near the existing Collington retirement community.

The sponsor of the bill informed the Committee that he supports this project in this location even though the use is not currently permitted in the zone because the character of the Lottsford Road

corridor has changed over the past few years and since the zoning was put in place. He indicated that with construction of a church underway as well as several single-family detached housing developments, the original plans for a commercial office at this location is now inconsistent with the corridor's development.

Staff presented a Proposed Draft-2 of the bill with amendments to address Planning Board comments discussed below. In Draft-2, new language that had been included on page 2, lines 22 and 23, was deleted. Also, on page 3, subsection (v) was deleted and the language originally contained in that subsection was incorporated in new Section (F) for readability and clarity.

The Planning Board opposes the bill and provided the following comments. The Board indicates that CB-22 is contrary to the purpose of the C-O Zone and the bill would essentially eliminate some commercial zoned property and make it residential. In a county where more commercial development is sought, this provision is counter to the newly amended General Plan, which encourages increased commercial development in the next few years. There is ample opportunity for planned retirement communities throughout the County without permitting them in commercial office areas. The Planning Board and its staff also raised concerns about the location of townhouse units on separate lots, vehicular access to the townhouse lots, and the permitted density for this dwelling unit type within the development.

The County Executive takes no position. The Legislative Officer and the Office of Law found the bill to be in proper legislative form. The Office of Audits and Investigations determined there should be no negative fiscal impact on the County as a result of enacting CB-22-2002.

Thomas Haller spoke in support of the legislation indicating that the development is planned as an extension of the retirement development currently under construction at the Villages of Collington. Mr. Haller offered a suggestion for additional language on page 2 of the bill in the "Regulations" section to address Planning Board comments. He suggested adding the words "dwelling unit types" in this section to clarify that regulations for dwelling unit types applicable to the specific zone do not apply for the units within a planned retirement community. The Committee accepted this amendment for inclusion in Draft-2.

#### **BACKGROUND INFORMATION/FISCAL IMPACT**

**(Includes reason for proposal, as well as any unique statutory requirements)**

The legislation permits a planned retirement community on C-O property adjoining or across a public right-of-way from R-H property with an existing planned retirement community. The Planning Board must approve a Detailed Site Plan and make certain findings.

#### **CODE INDEX TOPICS:**

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL  
2002 Legislative Session**

Bill No. CB-22-2002

Chapter No. \_\_\_\_\_

Proposed and Presented by Council Member Wilson

Introduced by \_\_\_\_\_

Co-Sponsors \_\_\_\_\_

Date of Introduction \_\_\_\_\_

**ZONING BILL**

1 AN ORDINANCE concerning

2 Planned Retirement Community

3 For the purpose of permitting planned retirement communities in the C-O Zone, under certain  
4 circumstances.

5 BY repealing and reenacting with amendments:

6 Sections 27-395 and 27-461(b),  
7 The Zoning Ordinance of Prince George's County, Maryland,  
8 being also

9 SUBTITLE 27. ZONING.

10 The Prince George's County Code  
11 (1999 Edition, 2001 Supplement).

12 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,  
13 Maryland, sitting as the District Council for that part of the Maryland-Washington Regional  
14 District in Prince George's County, Maryland, that Sections 27-395 and 27-461(b) of the Zoning  
15 Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's  
16 County Code, be and the same are hereby repealed and reenacted with the following  
17 amendments:

18 **SUBTITLE 27. ZONING.**

19 **PART 4. SPECIAL EXCEPTIONS.**

**DIVISION 3. ADDITIONAL REQUIREMENTS FOR SPECIFIC  
SPECIAL EXCEPTIONS.**

**Sec. 27-395. Planned retirement community.**

(a) A planned retirement community may be permitted, subject to the following criteria:

**(1) Findings for approval.**

(A) The District Council shall find that:

(i) The proposed use will serve the needs of the retirement-aged community;

(ii) The proposed use will not adversely affect the character of the surrounding residential community; and

(iii) In the R-A Zone, there shall be a demonstrated need for the facility and an existing medical facility within the defined market area of the subject property.

**(2) Site plan.**

(A) In addition to the requirements of Section 27-296(c), the site plan shall set forth the proposed traffic circulation patterns.

**(3) Regulations.**

(A) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, density, and other requirements of the specific zone in which the use is proposed shall not apply to uses and structures provided for in this Section. The dimensions and percentages shown on the approved site plan shall constitute the regulations for a given Special Exception.

(B) Each group of townhouses shall be on a separate record lot, but individual townhouse units are not required to be on separate lots.

(C) The subject property shall contain at least twelve (12) contiguous acres[;

(C) The] , and the average number of dwelling units per acre shall not [be more than] exceed eight (8) for the gross tract area[; and] .

(D) In the R-A Zone, buildings shall not exceed three (3) stories.

(E) In the I-3 Zone, the following shall apply:

(i) The gross tract area shall be a minimum of ninety (90) acres with at least 25% of its boundary adjoining residentially-zoned land or land used for residential purposes;

1 (ii) The property shall have at least one hundred fifty (150) feet of frontage  
 2 on, and direct vehicular access to, a public street;

3 (iii) All buildings shall be set back a minimum of seventy-five (75) feet  
 4 from all nonresidentially-zoned boundary lines or satisfy the requirements of the Landscape  
 5 Manual, whichever is greater;

6 (iv) The property shall be located within two (2) miles of mass transit,  
 7 regional shopping, and a hospital; and

8 (v) Townhouses shall comply with the design guidelines set forth in  
 9 Section 27-274(a)(11) and the regulations for development set forth in Section 27-433(d).

10 (F) In the C-O Zone, townhouses shall comply with the design guidelines set  
 11 forth in Section 27-274(a)(11) and the regulations for development set forth in Section  
 12 27-433(d).

13 (4) **Uses.**

14 (A) The planned retirement community shall include a community center or  
 15 meeting area, and other recreational facilities which the District Council finds are appropriate.  
 16 These recreational facilities shall only serve the retirement community. The scope of the  
 17 facilities shall reflect this fact. The Council may only permit a larger facility which serves more  
 18 than the retirement community if the facility is harmoniously integrated with the retirement  
 19 community and the surrounding neighborhood. All recreational facilities shall be constructed  
 20 prior to, or concurrent with, the construction of the residential units, or in accordance with a  
 21 schedule approved by the District Council;

22 (B) Retail commercial uses, medical uses, health care facilities, and other uses  
 23 which are related to the needs of the community may be permitted.

24 (5) **Residents' age.**

25 (A) At least one (1) resident of each household shall be at least fifty (50) years  
 26 old, unless the applicant can demonstrate that a lesser minimum age requirement should be  
 27 approved. No permanent resident of the planned retirement community shall be under eighteen  
 28 (18) years old. Covenants setting forth the minimum age of the residents shall be submitted with  
 29 the application. The covenants shall be approved by the District Council, and shall be filed in  
 30 the land records at the time the subdivision plat is recorded. No change in the minimum age  
 31 shall be permitted, unless both the covenants and the Special Exception have been amended.

1                   **(6) Recreational facilities.**

2                   (A) Covenants guaranteeing the perpetual maintenance of recreational facilities,  
3 and the community's right to use the facilities, shall be submitted with the application. The  
4 covenants shall be approved by the District Council, and shall be filed in the land records at the  
5 time the subdivision plat is recorded. If the recreational facilities are to be part of a  
6 condominium development, a proposed condominium declaration showing the recreational  
7 facilities as general common elements shall be approved by the District Council, and shall be  
8 recorded (pursuant to Title II of the Real Property Article of the Annotated Code of Maryland) at  
9 the time the subdivision plat is recorded.

**PART 6. COMMERCIAL ZONES.  
DIVISION 3. USES PERMITTED.**

**Sec. 27-461. Uses permitted.**

**(b) TABLE OF USES I.**

USE	ZONE					
	C-O	C-A	C-S-C	C-W	C-M	C-R-C
* * * * *	*	*	*	*	*	*
<b>(6) Residential/Lodging:</b>						
* * * * *	*	*	*	*	*	*
Hotel or motel:						
(A) Hotel or motel in general	P <sup>22</sup>	X	P	SE	P	P
(B) Including any use allowed in the C-S-C Zone (but not generally allowed in the C-M Zone, excluding those permitted by Special Exception), when located within a hotel, provided the uses shall not be located above the ground floor; not more than fifteen (15) percent of the gross floor area of the building shall be devoted to the uses; and not more than 3,000 square feet shall be allotted to any one use (CB-105-1985; CB-58-1990)	X	X	X	X	PA	X
<u>Planned retirement community</u>	P <sup>39</sup>	X	X	X	X	X
Tourist cabin camp	X	X	X	SE	SE	X
* * * * *	*	*	*	*	*	*

**39 Provided:**

- (A) The property in the C-O Zone is within a Special Taxing District and adjoins or lies across a public right-of-way from land in the R-H Zone with an existing planned retirement community.
- (B) The Planning Board approves a Detailed Site Plan, in accordance with Part 3, Division 9, and makes the following findings:
  - (1) The site plan meets all Special Exception requirements in Section 27-395; and
  - (2) The proposed project will serve, in a high-quality, well-designed retirement community, the needs of a retirement-aged population while not adversely affecting the character of the surrounding neighborhood.

1 SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall take effect forty-five  
2 (45) calendar days after its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2002

COUNTY COUNCIL OF PRINCE GEORGE'S  
COUNTY, MARYLAND, SITTING AS THE  
DISTRICT COUNCIL FOR THAT PART OF  
THE MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S COUNTY,  
MARYLAND

BY: \_\_\_\_\_  
Peter A. Shapiro  
Chair

ATTEST:

\_\_\_\_\_  
Redis C. Floyd  
Acting Clerk of the Council

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks \*\*\* indicate intervening existing Code provisions that remain unchanged.

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**  
**SITTING AS THE DISTRICT COUNCIL**  
**2005 Legislative Session**

Bill No. CB-78-2005  
Chapter No. 62  
Proposed and Presented by Council Member Dernoga  
Introduced by Council Member Dernoga  
Co-Sponsors \_\_\_\_\_  
Date of Introduction October 18, 2005

**ZONING BILL**

1 AN ORDINANCE concerning  
2 Special Exception Requirements- Apartment housing for elderly or physically handicapped  
3 families, Medical/residential Campus, and Planned Retirement Community  
4 For the purpose of amending the age requirements for the Apartment housing for elderly or  
5 physically handicapped families, Medical/residential Campus, and Planned Retirement  
6 Community special exceptions to conform with the Federal Fair Housing Act.

7 BY repealing and reenacting with amendments:

8 Sections 27-337, 27-374 and 27-395,  
9 The Zoning Ordinance of Prince George's County, Maryland,  
10 being also  
11 SUBTITLE 27. ZONING.  
12 The Prince George's County Code  
13 (2003 Edition, 2004 Supplement).

14 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,  
15 Maryland, sitting as the District Council for that part of the Maryland-Washington Regional  
16 District in Prince George's County, Maryland, that Sections 27-337, 27-374 and 27-395 of the  
17 Zoning Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince  
18 George's County Code, be and the same are hereby repealed and reenacted with the following  
19 amendments:

20 **SUBTITLE 27. ZONING.**

**PART 4. SPECIAL EXCEPTIONS.**

**DIVISION 3. ADDITIONAL REQUIREMENTS FOR SPECIFIC SPECIAL  
EXCEPTIONS.**

**Sec. 27-337. Apartment housing for elderly or physically handicapped families.**

(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;

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

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

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

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

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

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

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

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

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

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

23 (i) Will serve the needs of [the retirement-aged community]elderly  
 24 families or physically handicapped families; and

25 (ii) Will not adversely affect the character of the surrounding residential  
 26 community. The District Council shall consider the lot size, height of the building, lot coverage  
 27 of all buildings on the property, setbacks from surrounding properties, street frontage, and  
 28 sufficiency of green area when determining the proposed development's effect on surrounding  
 29 residential communities.

30 (c) For the purposes of this Section, the term "elderly family" means a family which is  
 31 included within age restrictions in conformance with the Federal Fair Housing Act and "[elderly

1 or] physically handicapped family" means a family in which the head of the family, or his  
2 dependent, is [at least sixty-two (62) years of age or is] physically handicapped. A person shall  
3 be considered physically handicapped if he has a physical impairment which:

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

8 **Sec. 27-374. Medical/residential campus.**

9 (a) A medical/residential campus for retirement-aged persons may be permitted, subject to  
10 the following:

11 (1) **General requirements.**

12 (A) The campus shall primarily serve needs of the retirement-aged community.  
13 [At least one (1) resident of each household shall be at least fifty (50) years old, unless the  
14 applicant can demonstrate that a lesser minimum age requirement should be approved] Age  
15 restrictions in conformance with the Federal Fair Housing Act shall be set forth in covenants  
16 submitted with the application and shall be approved by the District Council and filed in the land  
17 records at the time the final subdivision plat is recorded;

18 (B) The campus shall achieve a balanced residential/medical environment which  
19 is unique to the neighborhood in which it is located, and which cannot be achieved through the  
20 use of conventional zoning proposals;

21 (C) Residences shall be functionally, physically, and architecturally integrated  
22 with service and recreational/activity centers;

23 (D) Medical services (if any) shall be conveniently located for the residents; and

24 (E) Commercial or service-oriented uses shall be grouped together, and shall be  
25 located near the population being served.

26 \* \* \* \* \*

27 **Sec. 27-395. Planned retirement community.**

28 (a) A planned retirement community may be permitted, subject to the following criteria:

29 \* \* \* \* \*

30 (5) **Residents' age.**

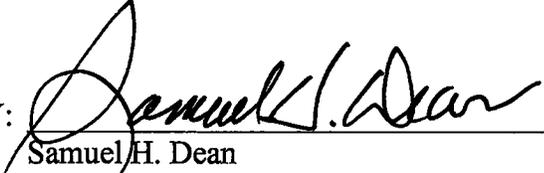
1 (A) [At least one (1) resident of each household shall be at least fifty (50) years  
2 old, unless the applicant can demonstrate that a lesser minimum age requirement should be  
3 approved. No permanent resident of the planned retirement community shall be under eighteen  
4 (18) years old.] Age restrictions in conformance with the Federal Fair Housing Act shall be set  
5 forth in covenants submitted with the application and [Covenants setting forth the minimum age  
6 of the residents shall be submitted with the application. The covenants] shall be approved by the  
7 District Council, and [shall be] filed in the land records at the time the final subdivision plat is  
8 recorded. [No change in the minimum age shall be permitted, unless both the covenants and the  
9 Special Exception have been amended.]

10 \* \* \* \* \*

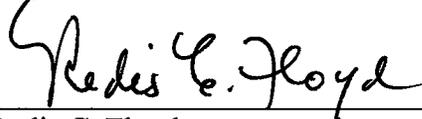
11 SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall take effect forty-five  
12 (45) calendar days after its adoption.

Adopted this 22nd day of November, 2005.

COUNTY COUNCIL OF PRINCE GEORGE'S  
COUNTY, MARYLAND, SITTING AS THE  
DISTRICT COUNCIL FOR THAT PART OF  
THE MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S COUNTY,  
MARYLAND

BY:   
Samuel H. Dean  
Chairman

ATTEST:

  
Redis C. Floyd  
Clerk of the Council

KEY:

Underscoring indicates language added to existing law.  
[Brackets] indicate language deleted from existing law.  
Asterisks \*\*\* indicate intervening existing Code provisions that remain unchanged.

## Prince George's County Council Agenda Item Summary

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**Meeting Date:** 11/22/2005  
**Reference No.:** CB-078-2005  
**Draft No.:** 2  
**Proposer(s):** Dernoga  
**Sponsor(s):** Dernoga  
**Item Title:** An Ordinance to amend the age requirements for the Apartment housing for elderly or physically handicapped families, Medical/residential Campus and Planned Retirement Community special exceptions to conform with the Federal Fair Housing Act

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**Drafter:** Ralph E. Grutzmacher, Legislative Officer  
**Resource Personnel:** Judith Thacher, Legislative Aide

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### LEGISLATIVE HISTORY:

<b>Date Presented:</b>	9/27/2005	<b>Executive Action:</b>	
<b>Committee Referral:</b>	9/27/2005 - PZED	<b>Effective Date:</b>	1/9/2006
<b>Committee Action:</b>	10/5/2005 - FAV(A)		
<b>Date Introduced:</b>	10/18/2005		
<b>Public Hearing:</b>	11/22/2005 - 10:00 AM		
<b>Council Action (1)</b>	11/22/2005 - ENACTED		
<b>Council Votes:</b>	MB:A, WC:-, SHD:A, TD:A, CE:A, DCH:A, TH:A, TK:A, DP:A		
<b>Pass/Fail:</b>	P		
<b>Remarks:</b>			

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**AFFECTED CODE SECTIONS:**  
27-374, 27-395

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### COMMITTEE REPORTS:

#### PLANNING, ZONING AND ECONOMIC DEVELOPMENT

**Date 10/5/2005**

Committee Vote: Favorable with amendments, 3-0-1 (In favor: Council Members Exum, Harrington, and Peters; Abstain: Dean)

As originally drafted, CB-78-2005 amends age requirements for two housing special exception uses provided for in the Zoning Ordinance, the medical/residential campus use and the planned retirement community use. Presently, the special exception requirements for both of these uses are that at least one resident of the household be at least 50 years old unless the applicant can show that a lesser minimum age requirement should be approved. This bill will amend the age restriction requirements for these uses to conform with the Federal Fair Housing Act. These regulations, promulgated after the Zoning Ordinance age requirements were enacted, prohibit "familial status" discrimination. Defining "retirement" age as a certain number of years in the Zoning Ordinance may not fully comply with present federal requirements.

The bill's sponsor informed the committee that he proposed this legislation at the request of Council staff to bring current Zoning Ordinance provisions concerning retirement-aged uses in conformance with the Federal Fair Housing

Act regulations.

Staff presented a Proposed Draft-2 (DR-2) to include an additional section, 27-337, Apartment housing for elderly or physically handicapped families, for the purpose of ensuring that this section of the Zoning Ordinance also complies with the Federal Fair Housing Act.

The Principal Counsel and the Office of Law reviewed CB-78-2005 and determined that it is in proper legislative form. The Planning Board supports CB-78-2005 with a suggested amendment to include a grandfather clause, which would allow properties approved under the old age restriction requirements to continue to be in conformance with the Zoning Ordinance.

Fern Piret, Planning Director, was present to address the committee concerning existing language in Section 337. Dr. Piret expressed concern with language in subparagraph (b)(1) which requires that covenants run to the benefit of the Maryland-National Capital Park and Planning Commission and requested that the committee delete this requirement. She indicated that the Commission's legal counsel have advised that their staff should not be a party to such covenants or be responsible for enforcement.

The committee discussed concerns with lack of enforcement if the language is removed. Dr. Piret suggested that the Department of Environmental Resources could enforce the regulations in this part of the Ordinance as part of that Department's zoning enforcement role. The Legislative Officer informed the committee that management companies as well as the Human Relations Commission also have involvement in oversight and enforcement of such matters.

The committee voted to amend the bill to delete the language as requested by the Planning Director.

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**BACKGROUND INFORMATION/FISCAL IMPACT:**

(Includes reason for proposal, as well as any unique statutory requirements)

At the time the Zoning Ordinance was amended to add the special exception requirement for a Medical/residential Campus or a Planned Retirement Community, there was no controlling state or federal law in this area pertaining to the age of residents. Subsequently, the Federal Fair Housing Act was amended to prohibit discrimination on the basis of familial status and the County's Human Relations Code was amended to implement those amendments and provide enforcement in the County. The proposed amendments delete inconsistent provisions for age-based senior housing and require that age criteria for a Medical/residential Campus and a Planned Retirement Community conform to the Federal Fair Housing Act requirements.

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**CODE INDEX TOPICS:**

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**INCLUSION FILES:**

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**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL  
2005 Legislative Session**

Bill No. CB-78-2005

Chapter No. \_\_\_\_\_

Proposed and Presented by Council Member Dernoga

Introduced by \_\_\_\_\_

Co-Sponsors \_\_\_\_\_

Date of Introduction \_\_\_\_\_

**ZONING BILL**

1 AN ORDINANCE concerning  
2 Special Exception Requirements- Medical/residential Campus and Planned Retirement  
3 Community

4 For the purpose of amending the age requirements for the Medical/residential Campus and  
5 Planned Retirement Community special exceptions to conform with the Federal Fair Housing  
6 Act.

7 BY repealing and reenacting with amendments:

8 Sections 27-374 and 27-395,  
9 The Zoning Ordinance of Prince George's County, Maryland,  
10 being also  
11 SUBTITLE 27. ZONING.  
12 The Prince George's County Code  
13 (2003 Edition, 2004 Supplement).

14 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,  
15 Maryland, sitting as the District Council for that part of the Maryland-Washington Regional  
16 District in Prince George's County, Maryland, that Sections 27-374 and 27-395of the Zoning  
17 Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's  
18 County Code, be and the same are hereby repealed and reenacted with the following  
19 amendments:

20 **SUBTITLE 27. ZONING.**

**PART 4. SPECIAL EXCEPTIONS.**

**DIVISION 3. ADDITIONAL REQUIREMENTS FOR SPECIFIC SPECIAL  
EXCEPTIONS.**

**Sec. 27-374. Medical/residential campus.**

(a) A medical/residential campus for retirement-aged persons may be permitted, subject to the following:

**(1) General requirements.**

(A) The campus shall primarily serve needs of the retirement-aged community. [At least one (1) resident of each household shall be at least fifty (50) years old, unless the applicant can demonstrate that a lesser minimum age requirement should be approved] Age restrictions in conformance with the Federal Fair Housing Act shall be set forth in covenants submitted with the application and shall be approved by the District Council and filed in the land records at the time the final subdivision plat is recorded;

(B) The campus shall achieve a balanced residential/medical environment which is unique to the neighborhood in which it is located, and which cannot be achieved through the use of conventional zoning proposals;

(C) Residences shall be functionally, physically, and architecturally integrated with service and recreational/activity centers;

(D) Medical services (if any) shall be conveniently located for the residents; and

(E) Commercial or service-oriented uses shall be grouped together, and shall be located near the population being served.

\* \* \* \* \*

**Sec. 27-395. Planned retirement community.**

(a) A planned retirement community may be permitted, subject to the following criteria:

\* \* \* \* \*

**(5) Residents' age.**

(A) [At least one (1) resident of each household shall be at least fifty (50) years old, unless the applicant can demonstrate that a lesser minimum age requirement should be approved. No permanent resident of the planned retirement community shall be under eighteen (18) years old.] Age restrictions in conformance with the Federal Fair Housing Act shall be set forth in covenants submitted with the application and [Covenants setting forth the minimum age

1 of the residents shall be submitted with the application. The covenants] shall be approved by the  
2 District Council, and [shall be] filed in the land records at the time the final subdivision plat is  
3 recorded. [No change in the minimum age shall be permitted, unless both the covenants and the  
4 Special Exception have been amended.]

5 \* \* \* \* \*

6 SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall take effect forty-five  
7 (45) calendar days after its adoption.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2005.

COUNTY COUNCIL OF PRINCE GEORGE'S  
COUNTY, MARYLAND, SITTING AS THE  
DISTRICT COUNCIL FOR THAT PART OF  
THE MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S COUNTY,  
MARYLAND

BY: \_\_\_\_\_  
Samuel H. Dean  
Chairman

ATTEST:

\_\_\_\_\_  
Redis C. Floyd  
Clerk of the Council

KEY:  
Underscoring indicates language added to existing law.  
[Brackets] indicate language deleted from existing law.  
Asterisks \*\*\* indicate intervening existing Code provisions that remain unchanged.

## Alviani v. Dixon

Court of Appeals of Maryland

July 13, 2001, Filed

No. 132, September Term, 2000

### Reporter

365 Md. 95 \*; 775 A.2d 1234 \*\*; 2001 Md. LEXIS 458 \*\*\*

DENNIS ALVIANI et al. v. PHYLLIS DIXON et al.

**Prior History:** [\*\*\*1] Certiorari to the Court of Special Appeals (Circuit Court for Anne Arundel County). Case # C-97-43190AA. Michael E. Loney, JUDGE.

**Disposition:** JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED; COSTS TO BE PAID BY PETITIONERS.

**Counsel:** ARGUED BY Stanley D. Abrams (Cathy G. Borten, Abrams, West, Storm & Diamond, P.C., on brief) of Bethesda, MD FOR PETITIONERS.

ARGUED BY Susanne Koster Henley of Annapolis, MD FOR RESPONDENTS.

**Judges:** ARGUED BEFORE Bell, C.J.; Eldridge, Raker, Wilner, Cathell, Harrell, and Battaglia, JJ. Opinion by Cathell, J.

**Opinion by:** Cathell

## Opinion

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[\*97] [\*\*1235] Opinion by Cathell, J.

The Board of Appeals of Anne Arundel County (hereinafter Board) granted an application for a special exception to build an automotive service facility and variance requests incident to the proposed automotive service facility made by Phyllis Dixon and Jonathan Aaron, respondents. Dennis Alviani, Fulvio Alviani, Maryann Alviani, Leonard Bender, and William E. Neiman, petitioners, filed a request for judicial review with the Circuit Court for Anne Arundel County. The Circuit Court affirmed the decision of the Board.

[\*98] Petitioners then filed an appeal to the Court of Special Appeals. The Court of Special Appeals, in an unreported opinion, affirmed the decision. Petitioners then filed a Petition for Writ of Certiorari with this Court. We granted the Petition. Petitioners have presented two questions in the Petition:

1. Whether the Anne Arundel County Board of Appeals erred as a matter of law in granting the special exception [\*\*\*2] when the only way to approve the special exception was by approving three (3) variances to the statutory standards for the automobile filling station special exception use?
2. Whether the Board erred as a matter of law by failing to make the necessary findings required in order to grant a variance, and whether the record before the Board contained evidence sufficient to support such findings?<sup>[1]</sup>

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<sup>1</sup> Petitioners changed question two in their brief to this Court to state:

Whether the Board erred as a matter of law by failing to make the necessary findings required in order to grant *the special exception and variances in that the board did not define in its opinion the limits of the neighborhood as it relates to certain*

**[\*\*1236]** We answer no to both questions **[\*\*\*3]** and affirm the decision of the Court of Special Appeals. We hold that the Board had the authority to grant a special exception with variances when the Anne Arundel County Code precluded variances from being applied to some sections of the code and the special exception section was not one of those excluded sections. We also hold that there is substantial evidence in the record to establish that the Board made the necessary findings to grant the variances.

## I. Facts

Respondents own a 1.2 acre parcel of land located on Old Mill Bottom Road at U.S. Route 50 east in Annapolis, Maryland. **[\*99]** The property was originally part of a larger tract, but in 1990 the State Highway Administration obtained 7.65 acres of that tract by threat of condemnation for placement of an access ramp to Route 50. After the access ramp was built and various improvements were made to Route 50, the remaining parcel was an isolated, circular plot of land that was surrounded by roads and access ramps. As it currently sits, the parcel is partially developed with an old service station that is in a state of disrepair.

Prior to 1995, the parcel of land was split zoned 40% C1-B (community retail) and 60% RLD (residential **[\*\*\*4]** low density). <sup>2</sup> **[\*\*\*5]** In 1995, respondents, who hoped to develop an automotive service facility <sup>3</sup> on the parcel, filed an application with the Anne Arundel County Department of Planning and Code Enforcement requesting a zoning reclassification. An automotive service facility could not be developed on that part of the parcel encumbered with a RLD classification. Respondents requested that the Department of Planning and Code Enforcement reclassify the entire property as either C4 (highway commercial) or C1-B. A C4 classification would permit an automotive service facility to be constructed without a special exception, while a C1-B classification of the entire parcel would require a special exception for the automotive service facility to be constructed. Both zoning classifications would require variances to permit the proposed development because of the circular shape of the isolated parcel, a shape that resulted from the 1990 taking. In their application, respondents requested the variances and the special exception if the parcel was zoned C1-B.

In respect to the special exception, respondents requested variances from two of the criteria required by Article 28, section 12-206(b) **[\*100]** of the Anne Arundel County Code as conditions for approval of the special exception. Section 12-206(b) states, in relevant part, that:

### § 12-206. Automotive service stations.

...

(b) An automobile service station is permitted in a C1-B or C3 District, provided:

(1) any lot used for a station has at least 150 feet of frontage along each **[\*\*1237]** street, and a lot area of at least 22,500 square feet;

...

(8) pump islands are at least 20 feet apart . . . .

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*statutory standards for approval and whether the record before the board contained evidence sufficient to support any such finding?* [Emphasis added.]

We will answer question two as it was submitted to us in the Petition for Writ of Certiorari.

<sup>2</sup> Split zoned is a zoning phrase indicating that one parcel of land is encumbered with two different zoning classifications; a portion of the parcel is zoned differently than the remaining parcel.

<sup>3</sup> The automotive service facility was to include six covered pump islands in three parallel rows, a canopy, a 2,657 square foot convenience store, a drive-through car wash, and a parking area.

As a result of the extensive taking in 1990 by the State Highway Administration, the parcel was left with only 143 feet of frontage along Old Mill Bottom Road. Respondents, therefore, were requesting a variance of seven feet from the 150 feet of frontage required by section 12- 206(b)(1).

Respondents also requested [\*\*\*6] a variance from section 12-206(b)(8), which requires that pump islands be at least twenty feet apart. Respondents were proposing to operate six gasoline dispensers at the site, with each dispenser located on a separate pump island. The dispensers would be located in three parallel rows, with two dispensers per row. The rows would have thirty feet of space between them and the two dispensers in each row, on their separate pump islands, would be twelve feet apart. Respondents were requesting a variance of eight feet from the twenty feet distance that was required by section 12-206(b)(8).<sup>4</sup>

[\*\*\*7] [\*101] Respondents requested one other variance from Article 28, section 10-103(a) of the Anne Arundel County Code, which covers general setback requirements for all uses located on a dual, multi-lane, or divided highway. Section 10-103 states, in relevant part, that:

#### **§ 10-103. General setback requirements.**

(a) Notwithstanding any provision to the contrary, each structure that is located on a dual, multi-lane, or divided highway shall be setback at least 60 feet from the existing right-of-way line. An accessory use may not be permitted in this setback.

The proposed overhead elevated canopy over the pump islands would roughly be located at the site of the present dilapidated service station structure. It was proposed that one corner of the overhead canopy be setback thirty-five feet from the Route 50 access ramp. Respondents requested a variance of twenty-five feet from the sixty-foot setback requirement for this corner of the edge of the elevated canopy. Because it was elevated, it would not interfere with ground level lines of sight across the edge of the property.

The Department of Planning and Code Enforcement for Anne Arundel County recommended to the Hearing Officer that [\*\*\*8] respondent's application for the C1-B zoning option and the special exception and variances, subject to certain conditions, be approved. In its Findings and Recommendations, the Department of Planning and Code Enforcement stated that:

#### **VARIANCE**

Relative to the variance application, the Department has no major issues with the granting of the setback, lot frontage and distance between pump islands. The canopy and pump islands are to be located in the general vicinity of the existing building which is to be torn [\*\*1238] down. Only a small corner of the canopy projects into the setback area and the [\*102] area at issue is oriented towards the ramps, not the main highway. The lot frontage issue was created by State action with the resulting configuration limited by roadways. There is no option to reconfigure the property. *The distance between pump islands is almost a non-issue. The 20 foot minimum distance between pump islands was established to allow two cars side by side served from parallel pump islands.* The 12 foot break between islands results in the splitting of a single island to enhance drainage and pedestrian flow.

#### **SPECIAL EXCEPTION**

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<sup>4</sup>The applicants apparently could have put each row of gas dispensers on one continuous elevated island without the necessity of getting a variance. The variance was required because the applicants believed that it would be better for pedestrian movement, drainage, etc., to cut up the islands so that people wanting to go between the pumps would not have to step up and down. In any event, it appears that the twenty-foot provision was intended to apply to the distance between parallel lines of pump islands to enable two cars to be side by side - one at each island. Its wording, however, is not that specific. Here, it was applied, perhaps incorrectly, to a distance between two dispensers on the same dispenser line because the operator desired to eliminate the elevated area between two dispensers.

The site plan submitted as part of the application, [\*\*\*9] appears to satisfy the specific design standards for a service station with the approval of the variances. Though the ability to access Ferguson Road is not yet resolved, Special Exception approval should remain flexible to accommodate the general layout whether this access point occurs or not. Relative [to] the more general standards, the issue of "need" should be addressed by the applicant to the satisfaction of the Hearing Officer.

### **RECOMMENDATION**

Based on the reasoning as outlined herein, the Department of Planning and Code Enforcement would recommend denial of the C-4 zoning option and in the alternative support C-1-B, the variances and the special exception subject to:

- 1) the upgrading of Old Mill Bottom Road to a 70 rating as outlined by Public Works.
- 2) the resolution of the Ferguson Road issue with the State Highway or the modification of the plan to contain only one access point from Old Mill Bottom Road.
- 3) the showing of "need" to the satisfaction of the Administrative Hearing Officer. [Emphasis added.]

On March 7, 1996, a hearing was held by a Hearing Officer to consider respondent's application. The Hearing Officer's Findings and Recommendations of [\*\*\*10] March 28, 1996 approved the C1-B reclassification but denied the C4 reclassification and also denied the special exception and variances. Respondents appealed to the Board of Appeals, seeking reversal of [\*103] either the Hearing Officer's denial of the C4 reclassification or a reversal of the denial of the special exception and variances. The Board of Appeals made respondents either appeal the denial of the C4 reclassification or the denial of the special exception and variances. Respondents chose to appeal the denial of the C4 reclassification. That appeal was denied by the Board of Appeals.

Respondents filed a Petition for Judicial Review in the Circuit Court for Anne Arundel County. The Circuit Court held that the Board of Appeals should have allowed respondents to present evidence on the special exception and variances under the C1-B classification. The Circuit Court remanded the case to the Board of Appeals for the taking of testimony and a determination on the issue of the special exception and the variances in a C1-B classification.<sup>5</sup>

[\*\*\*11] On September 11, 1997, after the case was remanded, the Board of Appeals held a public hearing on the special exception and variances. The Board of Appeals then issued a Memorandum of Opinion on December 2, 1997 in which the Board conditionally approved the special exception and variances. The Board stated that:

[\*\*1239] The Board finds from the testimony presented and its site visit, that, except where a variance has been requested, the Petitioners meet the criteria set forth in Section 12-206 of the Zoning Regulations. The Board finds further that the Petitioners have presented sufficient evidence to warrant the grant of the three requested variances.

The Board then discussed the granting of the variances, stating that "in order to grant the variances requested, the Board must find that the Petitioners comply in all respects with the relevant provisions of Section 2-107 of Article 3 of the Anne Arundel County Code."<sup>6</sup>

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<sup>5</sup> On remand respondents dropped their request for the parcel to be zoned C4 and concentrated on the special exception and variances under the C1-B classification.

<sup>6</sup> Article 3, section 2-107 of the Anne Arundel County Code states, in relevant part:

**§ 2-107. Standards for granting variance.**

(a) The County Board of Appeals may vary or modify the provisions of Article 28 of this Code when it is alleged that practical difficulties or unnecessary hardships prevent carrying out the strict letter of that article, provided the spirit of law shall be observed, public safety secured, and substantial justice done. A variance may be granted only after determining:

**[\*\*\*12]** **[\*104]** The first variance examined by the Board was the seven-foot variance from the requirement of having 150 feet of road frontage. The Board stated that there was testimony that the parcel was bound on three sides by State Highway Administration rights-of-way and the remaining side was bound by Old Mill Bottom Road for 143 feet. The Board then stated:

The Board finds that requiring the Petitioners to strictly meet the requirement of at least 150 of road frontage, where the property actually binds on all sides by either unbuildable road rights-of-way or actual road bed, represents an exceptional circumstance and an unnecessary hardship upon the Petitioners. Since the Petitioners cannot change their amount of lot frontage, the request for a 7 foot variance is the minimum necessary to afford relief to the Petitioners.

**[\*105]** The Board then examined the eight-foot variance from the twenty-foot pump island separation requirement. Respondents were going to have three rows with two gasoline dispensers in each row. Instead of connecting the two dispensers in each row into one pump island, respondents were going to make each dispenser its own pump island. Respondents, however, only wanted to leave **[\*\*\*13]** twelve feet of space between each pump island in a single lineal row of pump islands, not the twenty feet that is required to exist between adjacent parallel rows containing multiple pumps. The Board stated that:

The separation of each pump dispenser into a separate pump island will ease the **[\*\*1240]** flow of runoff and pedestrian traffic under the canopy. The Board finds that requiring the Petitioners to include each row of pump dispensers in one pump island would result in a practical difficulty to and an unnecessary hardship upon the Petitioners and the community. Pedestrian traffic should be as unencumbered as possible. Large raised islands would hinder the ability of pedestrians, handicapped individuals, families with strollers and the like to move freely under the canopy and to access the convenience store component of this project. The Petitioners are providing 30 feet of width between adjacent rows of pump islands to create more than ample space for vehicles to access the pumps. The Board finds that the grant of a variance to this requirement will increase the public welfare which represents an exceptional circumstance worthy of the grant of a variance. The request for a variance of **[\*\*\*14]** 8 feet to the 20 foot required setback is the minimum necessary to afford relief to the Petitioners while providing the maximum public accommodation. [Footnote omitted.]

The last variance requested by respondents and approved by the Board was a twenty- five-foot variance from the sixty-foot setback requirement for any structures on a dual, multi- lane, or divided highway. The Board found that the circular shape of the property and its proximity to Route 50 and its service ramps would leave respondents with "no reasonable **[\*106]** possibility of developing the lot with a canopy over the pump islands which meets the requirements of the Zoning Regulations." The Board found the canopy to be reasonable in size and that the canopy would not harm the public welfare by blocking sight lines for drivers.

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(1) that because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or

(2) that because of exceptional circumstance other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop such lot.

...

(c) A variance may not be granted under subsection (a) or (b) of this section unless the Board finds that:

(1) the variance is the minimum variance necessary to afford relief;

(2) the granting of the variance will not:

(i) alter the essential character of the neighborhood or district in which the lot is located;

(ii) substantially impair the appropriate use or development of adjacent property;

(iii) be contrary to acceptable clearing and replanting practices required for development in the critical area; or

(iv) be detrimental to the public welfare.

The Board then determined that the three variances would not alter the essential character of the area as the neighborhood is mixed with residential and commercial uses and is impacted by its proximity to Route 50. The Board also stated that the variances would not impair the use or development of adjacent properties and would not even be noticed by the public. It then concluded that there was ample [\*\*\*15] evidence to grant the requested variances, noting, however, that the respondents also were required to meet the general criteria for a special exception.<sup>7</sup>

[\*\*\*16] [\*107] [\*\*1241] The Board then discussed its finding that respondents had presented sufficient evidence to satisfy the twelve criteria for the granting of a special exception listed in section 12-104. The Board went through each of the twelve criteria, explaining the evidence that the Board felt satisfied each criterion.

Petitioners filed a Petition for Judicial Review in the Circuit Court for Anne Arundel County seeking a reversal of the Board's conditional approval of the special exception and variances. On August 12, 1998, the Circuit Court filed a Memorandum Opinion in which the Circuit Court affirmed the Board's decision. Petitioners appealed to the Court of Special Appeals and the Court of Special Appeals also affirmed the decision of the Board.

## II. Standard of Review

A proceeding on a special exception is subject to a full judicial review. [Mossburg v. Montgomery County, 329 Md. 494, 506, 620 A.2d 886, 892 \(1993\)](#). We examined the correct standard of judicial review in [White v. North, 356 Md. 31, 44, 736 A.2d 1072, 1079-80 \(1999\)](#), when we stated that:

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<sup>7</sup> Article 28, section 12-104 of the Anne Arundel County Code sets forth the general criteria for the granting of a special exception. Section 12-104 states:

### § 12-104. Standards for granting.

A special exception use may be granted only if, in the opinion of the hearing authority:

- (1) the use will not be detrimental to the public health, safety, and welfare;
- (2) the location, nature, and height of each building, wall, and fence, the nature and extent of landscaping on the site, and the location, size, nature, and intensity of each phase of the use and its access streets will be compatible with the appropriate and orderly development of the district in which it is located;
- (3) operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in permitted uses;
- (4) the proposed use will not conflict with an existing or programmed public facility, public service, school, or road;
- (5) if electric, sewer, storm drainage, or water service is available, the service will be adequate to service the proposed use and will have suitable access;
- (6) the proposal will not overburden existing facilities as proposed in the master plan of water and wastewater for development of the surrounding areas;
- (7) on-site water supply, sewerage treatment, storm drainage disposal, or power plant proposals will be adequate to service the proposed use;
- (8) the proposed use has the written recommendations and comments of the Health Department, the Department of Public Works, and the Department of Utilities;
- (9) the applicant has presented sufficient evidence of public need for the use;
- (10) the applicant has presented sufficient evidence that the applicant meets and will be able to maintain adherence to the criteria specified in Subtitle 2 of this title for the specific use;
- (11) the application will conform to the critical area criteria for sites located in the critical area; and
- (12) the site plan demonstrates the applicant's ability to comply with the requirements of the Landscape Manual by its designation of the area necessary for screening, buffering, landscaping, and off-street parking.

In judicial review of zoning matters, including special exceptions and variances, "the correct test [\*\*\*17] to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." [Sembly v. County Bd. of Appeals](#), [**\*108**] 269 Md. 177, 182, 304 A.2d 814, 818 (1973). See also [Board of County Comm'rs v. Holbrook](#), 314 Md. 210, 216-17, 550 A.2d 664, 668 (1988); [Prince George's County v. Meininger](#), 264 Md. 148, 151, 285 A.2d 649, 651 (1972); [Zengerle v. Board of County Comm'rs](#), 262 Md. 1, 17, 276 A.2d 646, 654 (1971); [Gerachis v. Montgomery County Bd. of Appeals](#), 261 Md. 153, 156, 274 A.2d 379, 381 (1971). For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have "substantial evidence" on the record supporting its decision. See [Mayor of Annapolis v. Annapolis Waterfront Co.](#), 284 Md. 383, 395, 396 A.2d 1080, 1087 (1979); [Montgomery County v. Woodward & Lothrop, Inc.](#), 280 Md. 686, 706, 376 A.2d 483, 495 (1977), cert. denied sub nom. [Funger v. Montgomery County](#), 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978); [\*\*\*18] [Agneslane, Inc. v. Lucas](#), 247 Md. 612, 619, 233 A.2d 757, 761 (1967).

In [Annapolis v. Annapolis Waterfront Co.](#), 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979), we defined the substantial evidence test as "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached," [Insurance Comm'r v. Nat'l Bureau](#), 248 Md. 292, 309, 236 A.2d 282 (1967), or as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," [Bulluck v. Pelham Apts.](#), 283 Md. 505, 390 A.2d 1119 (1978); [Snowden v. Mayor & C.C. of Balto.](#), supra, 224 Md. 443 at 448[, 168 A.2d 390]. In applying the substantial evidence test: [**\*\*1242**]

The question for the reviewing court is . . . whether the conclusions "reasonably may be based upon the facts proven." The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.

[Annapolis Waterfront Co.](#), 284 Md. at 399, 396 A.2d at 1089, quoting 4 K. Davis, *Administrative Law*, § 29.05, 137, 139 [\*\*\*19] (1958).

[**\*109**] When we review an administrative agency's order, we make sure that it is not premised upon an error in the law. Ad + [Soil, Inc. v. County Commissioners of Queen Anne's County](#), 307 Md. 307, 338, 513 A.2d 893, 909 (1986). "Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law." [Belvoir Farms Homeowners Association, Inc. v. North](#), 355 Md. 259, 267, 734 A.2d 227, 232 (1999), citing [Catonsville Nursing Home, Inc. v. Loveman](#), 349 Md. 560, 569, 709 A.2d 749, 753 (1998).

### III. Discussion

We hold a special exception with variances may be granted by a zoning agency when the applicable code contains provisions excluding certain areas of the code from being subject to variance relief, but does not exclude the section covering the relevant special exception from being modified by variances. In so holding, we answer the question first raised by the Court of Special Appeals in [Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County](#), 103 Md. App. 324, 653 A.2d 532 (1995). We also find that there [\*\*\*20] is sufficient evidence in the record to support the Board's findings.

#### A. Granting of Special Exception With Variances

Petitioners contend that the Board erred as a matter of law in granting the special exception because the criteria for the granting of a special exception must be met without a variance.<sup>8</sup> In support of its proposition that the criteria for

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<sup>8</sup> The Board granted respondents' three variances; however, only two of the variances were for criteria necessary for the special exception. Only the two variances that relate to the special exception are expressly relevant to this part of our discussion. The

a special exception must be satisfied without a variance, petitioners [\*110] rely on *Chester Haven, supra*, and *Umerley v. People's Counsel for Baltimore County, 108 Md. App. 497, 672 A.2d 173 (1996)*. Although neither *Chester Haven* nor *Umerley* decided the issue before this Court, petitioners point to language in *Chester Haven*, that was cited in *Umerley*, to support the idea that variances cannot be used to avoid meeting the expressed criteria required for the grant of a special exception. In *Chester Haven*, the Court of Special Appeals stated:

\*\*\*21] The attempt to follow this procedure creates fundamental and conceptional problems with the generally accepted proposition that, if the express conditions necessary to obtain a conditional use are met, it is a permitted use because the legislative body has made that policy decision. Does the legislative intent that the use be permitted remain if the conditions are not met but are eliminated by an administrative body granting a variance? Upon such an occurrence, the application for a conditional use becomes dependent upon the granting [\*\*\*1243] of the variances. Under those circumstances, the presumption that a conditional use is permitted may well fall by the wayside. The policy that establishes certain uses as permitted is predicated upon the satisfaction, not avoidance, of conditions. Conditions the legislative body attaches to the granting of a conditional use normally must be met in accordance with the statute-not avoided. In any event, even if such a procedure would pass muster, if the variance process fails, the entire application fails.

*Chester Haven, 103 Md. App. at 336, 653 A.2d at 538*. While the Court of Special Appeals in *Chester Haven* realized that this [\*\*\*22] could be an issue, it did not resolve the issue; it decided the case based upon the failure of the variance process itself.

The Anne Arundel County Code provides the standards for granting a variance and when variance procedures cannot be utilized. The Code, Article 3, section 2-107, states in relevant part:

**§ 2-107. Standards for granting variance.**

[\*111] (a) *The County Board of Appeals may vary or modify the provisions of Article 28 of this Code* when it is alleged that practical difficulties or unnecessary hardships prevent carrying out the strict letter of that article, provided the spirit of law shall be observed, public safety secured, and substantial justice done. A variance may be granted only after determining:

(1) that because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or

(2) that because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties [\*\*\*23] or unnecessary hardship, and to enable the applicant to develop such lot.

...

(d) *This section does not apply to Title 1B or § 15-104A of Article 28 of this Code.* [9] [Emphasis added.]

The Code grants the Board the authority to grant variances from sections within the code, except for the titles and sections enumerated in section 2-107(d) aforesaid.

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two variances from criteria for the granting of a special exception are the seven-foot variance from the requirement of having 150 feet of frontage along each street and an eight-foot variance from the requirement of having the pump islands twenty feet apart. In any event, there was sufficient evidence to support the granting of all three variances.

<sup>9</sup>Both Title 1B and section 15-104A of Article 28 concern the Parole Town Center Growth Management Area and section 2-107 does not apply, facially, to the area at issue in this case. The Parole Town Center Growth Management Area, as far as we have been informed, is not relevant to the parcel of land in the case sub *judice*.

The local legislative body clearly knew that it could except certain parts of the Code from the application of the variance provisions. The section relating to the granting of a special exception for an automotive service station, located in Article 28, section 12-206, the special exception provision at issue here, was [\*\*\*24] not one of the sections that was excepted. We have held that when there is an express exception to a statute, additional exceptions should not be implied. See [Taylor v. Friedman, 344 Md. 572, 581, 689 A.2d 59, 63 \(1997\)](#) ("Taylor's [\*112] position is reinforced by the rule of statutory construction dealing with statutes that express a general rule, followed by one or more specific exceptions to the general rule. Under those circumstances, a court ordinarily cannot add to the list of exceptions."); [Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Gartelman, 288 Md. 151, 156, 416 A.2d 734, 737 \(1980\)](#) ("Where a statute expressly provides for certain exclusions, other should not be inserted."). Accordingly, in an ordinance in which certain matters are excluded from the applicability [\*\*1244] of variance relief, it can be inferred that the legislative body's intent is that all other areas are susceptible to variance relief. The concerns about the intention of the legislative body, expressed in *Chester Haven*, are thus resolved. The legislative body has, by excluding portions of the code from the variance provisions, while not excluding others, expressed an intent that variance [\*\*\*25] provisions be applied to all areas not excluded. That includes the special exception provision at issue here.

We discussed the granting or denial of a special exception in [Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 \(1981\)](#), when we stated that:

This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that this use meets the prescribed standards and requirements, [\*\*\*26] he does not have the burden of [\*113] 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 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. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. 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. [Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 \(1973\)](#); [Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 \(1970\)](#); [Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 \(1953\)](#); [\*\*\*27] [Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 \(1974\)](#). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.

[291 Md. at 11-12, 432 A.2d at 1325](#). We discussed the granting of a special exception in [Board of County Commissioners for Cecil County v. Holbrook, 314 Md. 210, 550 A.2d 664 \(1988\)](#), when we stated, after discussing the standard for judicial review of the grant or denial of a special exception stated in *Schultz*, that:

In summary, where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied. Furthermore, if the evidence [\*\*1245] makes the issue of harm fairly debatable, the matter is one for the [\*114] Board's decision, and should not be second-guessed by an appellate court.

The *Schultz* test accords with the general standard for **[\*\*\*28]** judicial review of the ruling of an administrative agency, which we have defined as "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." [Supervisor of Assess. v. Ely, 272 Md. 77, 84, 321 A.2d 166](#) [, 170] (1974).

[314 Md. at 217-18, 550 A.2d at 668.](#)

In [Stacy v. Montgomery County, 239 Md. 189, 210 A.2d 540 \(1965\)](#), we examined the granting of a special exception and a variance. Ernest Kendall purchased a piece of property with the intention of applying for a special exception to open a child care home. The special exception was granted by the County Board of Appeals for Montgomery County. This ruling was appealed to the Circuit Court for Montgomery County, which reversed the decision of the Board of Appeals on the ground that the building failed to meet the requirements of the zoning ordinance as to distance.<sup>10</sup> While his case had been pending on appeal, Mr. Kendall realized that the building did not meet the distance requirement so he applied for a variance from the distance requirement. **[\*\*\*29]** His application for the variance was granted by the Board of Appeals. The Board of Appeals' decision to grant the variance was appealed to the Circuit Court, which affirmed the decision. Appellants appealed to the Court of Appeals.

The appellants first contention on appeal was "that where one purchases realty with the intention to apply for a variance from restrictions imposed by a zoning ordinance, he may not **[\*115]** contend that such restrictions caused him peculiar hardships that entitle him to the special privileges he seeks."<sup>11</sup> [Id. at 192, 210 A.2d at 541-42.](#) **[\*\*\*30]** The Court of Appeals found that Mr. Kendall did not know he was going to need a variance when he bought the property and that the need for the variance was not determined until after the special exception had been granted. The Court went on to state that:

**[\*\*\*31]**

**[\*\*1246]** There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception within the meaning of the zoning ordinance is one which is controlled and which is expressly permissible in a given zone. It is granted by the Board, after a public hearing, upon a finding that conditions of the zoning ordinance are satisfied. A variance is authorized under the terms of the zoning ordinance where the literal enforcement of its terms would result in unnecessary hardships. By Section 104-22(a)(1) of the Montgomery County

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<sup>10</sup>The Zoning Code required that the building be twenty-five feet from the property lines. Mr. Kendall's building was 24.42 feet from the property line and the building had a porch that was 21 feet from the property line. Mr. Kendall offered to remove the porch if he was required to by the Board. The Court, in *Stacy*, was not presented, and did not address, the combination variance - special exception nature of the applications as they evolved.

<sup>11</sup>The recent Supreme Court case of [Palazzolo v. Rhode Island, 531 U.S. 606, 121 S. Ct. 2448, 150 L. Ed. 2d 592, 2001 U.S. LEXIS 4910 \(2001\)](#), stands for the proposition that a purchaser of realty that is already subject to particular regulations is not foreclosed from constitutionally challenging that regulation or statute as an impermissible "taking." Justice Kennedy, for the Court, wrote:

When title was transferred to petitioner . . . the wetlands regulations were in force. The state court held [that] . . . [a] purchaser or a successive title holder like petitioner is deemed to have notice of an earlier-enacted restriction and is barred from claiming that it effects a taking.

...

The State may not put so potent a Hobbesian stick into the Lockean bundle . . . . Were we to accept the States rule, the postenactment transfer of title would absolve the State of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. A State would be allowed, in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use and value of land. [Citations omitted.]

Code, the County Board of Appeals is authorized to "grant variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property \* \* \* or by reason of exceptional topographical conditions or other extraordinary situations or conditions of [\*116] specific parcels of property, the strict application of these regulations or amendments thereto would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of said property; provided that such relief or variances can be granted without substantial impairment of the intent, [\*\*\*32] purpose, and integrity of the general plan \* \* \*." It is further provided that this provision shall not be construed to permit the Board "under the guise of a variance, to change the use of land." See [Montgomery County v. Merlands Club, 202 Md. 279, 96 A.2d 261](#).

The Board heard the testimony of Clinton Frey, Jr., a surveyor, who, after having been qualified as an expert, testified as to the unusual shape of the property. The Board exercising its discretion in accordance with its expertise in zoning matters, determined from all of the evidence that all criteria had been met by the applicant to sustain the granting of the variance. We find that the court below was not in error in affirming the decision of the Board in granting the variance as provided in Section 104-22 of the Montgomery County ordinance under the circumstances presented in this case.

[Id. at 193, 210 A.2d at 542](#) (alteration in original). While the facts in *Stacy* are slightly different from the facts in the case *sub judice*, and the question raised for the first time in *Chester Haven* and squarely presented in the case *sub judice* was not presented, nor addressed in *Stacy*, the [\*\*\*33] Court, in that case, nonetheless affirmed the granting of a variance in a special exception case.

The Anne Arundel County Code, while prohibiting the application of variances from applying to certain sections of the Code, does not restrict Article 28, section 12-206, which contains the criteria for the granting of a special exception for an automotive service facility. The drafters of the Code obviously understood that they could restrict the application of variances as to certain sections within the Code. They chose to not restrict the application of variances to special exceptions.

[\*117] We hold that the Anne Arundel County Board of Appeals may grant a special exception and, at the same time, also may grant area variances from the specific criteria provided in section 12-206 (b) of Article 28 (Zoning Ordinance) of the County Code.

In the case *sub judice*, respondents substantially satisfied the criteria for the granting of a special exception. The two variances granted by the Board were for modifications of criteria that did not cause adverse effects upon the neighborhood or allow a use for the parcel that was outside of the special exception provisions of the general zoning plan. [\*\*\*34] The two variances did not change the objectives of the Code [\*1247] to make the special exception satisfy certain criteria; the variances only allowed a slight modification that still enabled the special exception to fall into the comprehensive zoning scheme of that area. As utilized in this case, the variance procedure did not change the essential nature of the special exception use sought by the applicants. The Board did not err as a matter of law by granting the two minor variances that enabled respondents to satisfy the criteria for the granting of a special exception.

## **B. Granting the Variances**

In their Petition for Certiorari, petitioners contended that the Board failed to make the necessary findings required in order to grant a variance and that the record does not contain evidence sufficient to support such a finding. Specifically, petitioners allege that the Board failed to properly define the relevant neighborhood that was considered when the Board found that the variances would not affect the neighborhood. We disagree with petitioners and find, after examining the record, that the Board established the relevant neighborhood and that the findings made by the Board were supported [\*\*\*35] by substantial evidence.

Respondents were granted three variances by the Board. The three variances are the seven-foot variance in respect to frontage on one street from the requirement of having 150 [\*118] feet of frontage along each street, an

eight-foot variance from the requirement of having the pump islands twenty feet apart,<sup>12</sup> and, in respect to one corner of an overhead canopy, a twenty-five-foot variance from the sixty-foot setback requirement from a dual, multi-lane, or divided highway. The standard for granting a variance is codified in Article 3, section 2-107 of the Code, which states in relevant part:

**\*\*\*36] [\*\*1248] § 2-107. Standards for granting variance.**

...

**[\*119]** (c) A variance may not be granted under subsection (a) or (b) of this section unless the Board finds that:

(1) the variance is the minimum variance necessary to afford relief;

(2) the granting of the variance will not:

(i) *alter the essential character of the neighborhood or district in which the lot is located* . . . [Emphasis added.]

In its Memorandum of Opinion and Order dated December 2, 1997, the Board examined each variance and determined that each variance satisfied the requirements of section 2-107(a) and (c). Addressing section 2-107(c)(i), the Board stated:

The granting of the three requested variances will not alter the essential character of this area. *This neighborhood is developed with a mix of residential and commercial uses and is heavily impacted by its close proximity to Route 50 and its access ramps. The commercial uses are clustered along Route 50, as is the subject property, while the residential properties are further from the highway.* The subject property is within the C1B district and is permitted to accommodate commercial uses. It is also immediately adjacent to Route 50 and a commercially **\*\*\*37]** developed property. The canopy will not encroach on the required setbacks to residential property, but rather, the [setback from the] Route 50 right-of-way. [Emphasis added.]

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<sup>12</sup>The matter of the ground level crossovers between dispensers on the same line of dispensers probably did not need a variance in the first instance. It appears evident that the provision of distance separation between pump islands was intended to apply as to the distance between parallel pump islands, not to the distance between dispensers on one of the parallel lines of dispensers.

At the hearing on the special exception and variances held before the Board of Appeals, Larry Burkins represented the Department of Planning and Code Enforcement. Mr. Burkins, discussing the requested eight-foot variance from the requirement of having the pump islands twenty feet apart, stated that:

Section 12-206 (b) (a), a variance was sought to this action by the applicant, and I think I had indicated before at the previous hearing that personally I do not believe this is required, but the applicant did apply.

But this standard requires 20 feet between pump islands, and the pump islands in this case are basically parallel to one another. And they do have at least 20 feet between those pump islands so that two cars can fit in between, one served by each pump island.

However, in this instance - and it's quite common in the modern service stations - they split the pump islands, the linear pump islands so that it doesn't disrupt the flow of water in hosing down the pumps and so forth.

In this situation, they've split those linear islands to help free up drainage and that sort of thing, a necessity in cleaning up, and people crossing will - to go inside the store or anything from the pump islands will not trip over the curb. They have the spacing of only 12 feet from that linear split, so they asked for an 8-foot variance to allow that to occur.

The code isn't real clear and isn't up to the current technology, and the standards have changed slightly, but if I were reviewing the plans, I would not even require that because I think we're all aware of what the basic intent of that provision is, and there is no need for a car to go through that 12-foot slot.

They fit between the islands. They do not go at right angles to those pumps. So I think that basically summarizes the variance issue, and of course the special exception addresses the service station operation.

We find the description of the neighborhood stated by the Board to be sufficient to satisfy the requirement of section 2-107(c)(i). The Board's description is precise enough to enable a party or an appellate court to comprehend the area that the Board considered when deciding to grant the variances. Furthermore, we cannot foresee how a more specific description of a larger or smaller neighborhood would have led the Board to determine that the three variances that were granted would [\*120] alter the essential character of the neighborhood. The Board's Memorandum and Opinion clearly explains the Board's reasoning behind the granting of the variances, and its explanation of the considered neighborhood properly led to an understanding of the area the Board considered when granting the variances.

We agree with the Court of Special Appeals's discussion when addressing the cases that petitioners have cited to show that the Board failed to properly define the neighborhood. The Court of Special Appeals, in its opinion, [\*\*\*38] stated:

The cases cited by appellants [petitioners] in support of their contention that that Board failed to define the surrounding neighborhood with sufficient particularity are inapposite. See [\*Prince George's County Council v. Prestwick, Inc.\*, 263 Md. 217, 282 A.2d 491 \(1971\)](#); [\*Chevy Chase Village v. Montgomery County Council\*, 258 Md. 27, 264 A.2d 861 \(1970\)](#); [\*Templeton v. County Council\*, 21 Md. App. 636, 321 A.2d 778 \(1974\)](#). In those cases, the property owners sought to vary use restrictions imposed by the zoning ordinance through a zoning map amendment. By contrast, appellees seek to vary the Code's area restrictions, not its use restrictions. The standards applied to area variances are more relaxed than those applied to use variances because "the impact of an area variance is viewed as being much less drastic than that of a use variance." [\*Anderson v. Board of Appeals\*, 22 Md. App. 28, 39, 322 A.2d 220 \(1974\)](#); see also [\*McLean v. Soley\*, 270 Md. 208, 215, 310 A.2d 783 \(1973\)](#); [\*Cromwell\*, 102 Md. App. 691 at 695 n.1, 651 A.2d 424](#). Consequently, [\*\*1249] the cases cited by appellants do not support their contention [\*\*\*39] that the surrounding "neighborhood" must be defined with the same precision in approving area variances as is required in approving use variances.

The description given by the Board of the neighborhood sufficiently defined the relevant neighborhood for variance purposes so that the Board could make a determination about whether the variance would alter the essential character of that neighborhood.

#### [\*121] IV. Conclusion

We hold that in certain circumstances, a zoning body may grant a special exception together with area variances to what otherwise would be specific standards or requirements applicable to such special exception. The special exception, however, must be in a section of the local code for which variances are not excluded. Moreover, the granting of the variances may not so substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception.

In the case at bar, the Board properly granted the special exception and the variances. [\*\*\*40] The variances granted only slightly modified the specific area standards for the special exception and did not enable a special exception use to be granted that would be outside of the scope of the special exception provisions of the general zoning scheme for that area.

We also hold that the Board made the appropriate findings in order to grant the variances and that there was substantial evidence on the record to support those findings. The Board established the relevant neighborhood in enough detail to enable the Board to determine that the essential character of the neighborhood would not be altered. It was, thus, in compliance with section 2-107(c)(i).<sup>13</sup>

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<sup>13</sup> As we have indicated at the beginning of this opinion, petitioners, in their brief, modified one of the questions for which we had granted certiorari, attempting to add the special exception to what, in their petition, had been termed as solely a variance issue as to "findings." That is inappropriate, and, accordingly, we have not specifically addressed that part of our opinion to the matter

**[\*\*41] JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED; COSTS TO BE PAID BY PETITIONERS.**

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of the special exception. However, had we done so, we would still have upheld the granting of the special exception as well as the variances.

## Anderson v. Board of Appeals

Court of Special Appeals of Maryland

July 12, 1974, Decided

No. 531, September Term, 1973

### Reporter

22 Md. App. 28 \*; 322 A.2d 220 \*\*; 1974 Md. App. LEXIS 328 \*\*\*

McRAE ANDERSON et al. v. BOARD OF APPEALS, TOWN OF CHESAPEAKE BEACH, MD. et al.

**Prior History:** [\*\*\*1] Appeal from the Circuit Court for Calvert County; Bowen, J.

**Disposition:** *Order reversed. Costs to be paid by appellees.*

## Syllabus

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McRae Anderson and Carmen Anderson, his wife, filed an order of appeal in the court below from a decision of the Board of Appeals of the Town of Chesapeake Beach granting a special exception and granting a variance to Ronald W. Pickett from the town's zoning ordinance's requirement relating to distance between facing walls and for multiple dwellings in a marine commercial recreation district. From an order affirming the decision, they appeal.

**Counsel:** *Eugene E. Pitrof*, with whom were *Pitrof & Starkey* on the brief, for appellants.

*Steny S. Hoyer*, with whom were *Hoyer & Fannon* and *Allen S. Handen* on the brief, for appellees.

**Judges:** Moylan, Menchine and Davidson, JJ. Davidson, J., delivered the opinion of the Court.

**Opinion by:** DAVIDSON

## Opinion

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[\*29] [\*\*221] This appeal is from an order of the Circuit Court for [\*30] Calvert County which affirmed a decision of the Board of Appeals of the Town of Chesapeake Beach granting variances from the town's zoning ordinance's requirement relating to minimum horizontal distance between facing walls of two buildings and granting a special exception for multiple dwellings [\*\*\*4] in the MCR (Marine Commercial Recreation) district. After a careful review of the record, we find that the action of the Board of Appeals in granting the variances was arbitrary and capricious and should not be sustained. Because the special exception is conditioned on the placement of the buildings as shown on the site plan, and because that placement, absent the grant of the requested variances, is violative of the "distance between facing walls" requirement of the ordinance, the granting of the special exception should not be upheld.

On 26 May 1972 the Mayor and Town Council of Chesapeake Beach enacted a zoning ordinance for the town, which is located in Calvert County. Section 300 of the ordinance divides the town into six classes of districts, or zones, one of which was delineated as the Marine Commercial Recreation (MCR) district. Sections 401(c) and 406 provide that multiple dwellings may be permitted in the MCR district if the Board of Appeals grants a special exception and certain other specified requirements are met. One such specified requirement, contained in § 406

(5) (b) (i), **[\*\*222]** relates to the minimum horizontal distance permitted between facing walls **[\*\*\*5]** of any two buildings on one lot.<sup>1</sup>

On 19 January 1973 Ronald W. Pickett, contract purchaser of the subject property and one of the appellees in this proceeding, filed an application for a zoning permit and an application for a special exception to develop 22.10 +/- acres of land zoned MCR with 320 condominium apartment units and a 38,000 square foot convenience shopping center. A site plan **[\*31]** was attached which indicated that in addition to the commercial facility the applicant proposed to build four apartment buildings, each nine stories high. Parking spaces were to be provided for 898 cars, with 640 spaces allocated to service the apartment dwellers and **[\*\*\*6]** 258 to service the shopping center. An existing swimming pool, bathhouse and clubhouse were to be improved and retained for use by the residents of the proposed condominiums<sup>2</sup> and four tennis courts were to be constructed for their enjoyment. All four buildings were to be positioned in a row along the edge of the Chesapeake Bay and were to be parallel to one another. The existing swimming pool and bathhouse lies between the proposed sites of Building No. 1 and Building No. 2, which were to be separated by a distance of more than 300 feet. The distance between Buildings No. 2 and No. 3 was to be approximately 90 feet while that between Buildings No. 3 and No. 4 was to be approximately 100 feet. Section 406 (5) (b) (i) requires a minimum distance of about 250 feet between buildings of the height proposed.<sup>3</sup>

**[\*\*\*7]** On 7 February 1973 the application for a special exception and the accompanying site plan were reviewed by the Planning and Zoning Commission. The minutes of that meeting reflect that a member of the staff of the State Planning and Zoning Commission advised the Commission **[\*32]** not only that variances were required because of non-compliance with § 406 (5) (b) (i) but also that the inclusion of a shopping area was violative of § 406.<sup>4</sup> The Planning and Zoning Commission voted to recommend to the Board of Appeals that the proposed special exception be granted, "providing that all commercial buildings be deleted and that the Board of Appeals grant a variance for the non-compliance of distances between buildings." On 13 February 1973 the Board of Appeals received the following **[\*\*223]** written communication from the Chairman of the Planning and Zoning Commission:

"The Planning and Zoning Commission accepts the plan submitted by Mr. Ron Pickett to construct four nine-story buildings on site of attached plan, providing you delete all commercial on said plan and that you grant a variance for the non-compliance of distances between buildings required in Section 406 (5) (b) **[\*\*\*8]** (i)."

Thereafter Mr. Pickett filed an application for a variance alleging that:

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<sup>1</sup> More specifically, § 406 (5) (b) (i) provides:

"[W]here two (2) facing walls both contain a window or windows the minimum horizontal distance shall be three (3) feet of horizontal distance for each foot of average height of the facing wall of the building with greatest height but in no case less than seventy-five (75) feet . . . ."

<sup>2</sup> The site was previously occupied by the Chesapeake Beach Amusement Park.

<sup>3</sup> The record is unclear as to the precise distances involved. The minutes of a meeting of the Planning and Zoning Commission held on 7 February 1973 indicate that the proposed buildings were to be 86 feet high, which would necessitate a distance of 258 feet between buildings and that the distance between Buildings No. 2 and No. 3 was to be 90 feet, while between Buildings No. 3 and No. 4 the distance was to be 100 feet. Under this set of facts variances of 168 feet and 158 feet are required.

Although the zoning permit application indicates a building height of 81 feet, the architect testified at the public hearing held by the Board of Appeals on 12 April 1973 that the maximum height would be 80 feet. A site plan submitted to the Board of Appeals at this hearing indicates a distance of approximately 100 feet both between Buildings No. 2 and No. 3 and between Buildings No. 3 and No. 4. Under this set of facts, two variances of either 143 or 140 feet each would be required.

However, at the hearing before the Board of Appeals and here on appeal the parties agree that the ordinance requires a minimum distance of 240 feet between the buildings and that variances of 153 feet and 143 feet are necessary.

<sup>4</sup> Section 406 provides for a minimum lot area of 3,000 square feet for each unit in an MCR development. The staff member pointed out that on a tract of 22.1 acres, where 960,000 square feet would be needed to fulfill the requirements for the erection of 320 units, only 2,676 square feet would be left for the construction of the shopping area.

"Due to the exceptional physical characteristics of the site a hardship is created by conforming to the 3' for 1' which would deprive me of the reasonable use of the land and buildings."

On 12 April 1973 a hearing was held before the Board of Appeals. The site plan submitted there deleted the proposed commercial use in its entirety, but the four proposed apartment buildings remained in approximately the same position they had occupied on the original site plan.

Two witnesses testified with respect to the need for the requested variances. Mr. Ronald W. Pickett, the contract [\*\*\*9] purchaser of the property, testified that the property, bounded on the west by Route 261 and the east by the [\*33] Chesapeake Bay, is "very unique." It is "almost like an L shape" with the southern portion of the property being considerably narrower than the northern portion. Building No. 1 is located on "Pool Hill," a hill which "slopes rather quickly down to the swimming pool." The location of Building No. 1 was dictated by the setback requirements of the ordinance and the slope of the hill, which together prohibited the placement of the building on any other spot. According to Mr. Pickett "there is no other way for us to locate that building. . . . We were locked in on the first building site, we virtually had no alternative if we were going to use that particular piece of property, Pool Hill. Because of the requirements of the ordinance and the dimensions of the building, that building had to go there."

Mr. Pickett further testified that the topography of the site also dictated the location of the remaining three buildings. He pointed out that the terrain generally slopes upward from Route 261, the western boundary of the property, to the center of the property, and [\*\*\*10] then slopes downward, finally leveling off near the water's edge. Three alternatives were available. Buildings No. 2, No. 3 and No. 4 could have been located near the western boundary of the property at the bottom of the slope, "which would have meant that our people wouldn't even have any view of the water." They could have been located on the top of the hill, "which would have given us higher elevations and probably more water view," but which also "would have been much more obtrusive from Route 261." Finally, they could have been located on the level land on the east side of the slope near the water's edge. The latter alternative was chosen to maximize the residents' view of the water and minimize the visibility of the structures from Route 261.

Mr. Pickett testified that the possibility of replacing Buildings Nos. 2, 3 and 4 with two buildings was considered. He pointed out that in order to "use the density to maximize the value of the property" the two substitute buildings would have to be 12 or 13 stories in height. While such a mode of development would have obviated the need for a variance and would have been more economical to construct, [\*34] this alternative was [\*\*\*11] rejected "in order to minimize the appearance of the structures from the road." Consideration was also given to placing Building No. 3 to the rear of, rather than between, Buildings No. 2 and No. 4. This alternative was rejected for a variety of reasons. Since the balconies on the rear building would overlook the balconies on the front buildings, the arrangement would interfere with the privacy which the balconies were specifically designed to provide. Parking would have to be provided in front of Building No. 3, [\*\*224] which would interfere with the residents' view of the natural beauty of the shoreline. Either Building No. 3 would have to be located on the crown of the hill, making the building more visible from the road, or the crown of the hill would have to be removed to make the building less visible from the road, neither of which was a desirable mode of development. Finally, the principles of sound planning would be violated by the changes in the traffic patterns which would be required and which would result in residents from all the buildings driving in front of Building No. 3. Under the proposed site plan, mobile activity is confined to the rear of all the buildings.

[\*\*\*12] Mr. Herbert Fleischer, an architect, engineer and planner, who had prepared the site plan for the subject property, qualified as an expert. He testified that the subject property had "intriguing natural beauty" with distinct contours and vegetation which should not be disturbed. He opined that the buildings are located so as to preserve the shoreline and indeed to enhance the view from the bay toward the project. He stated that although it would have been possible to place Building No. 3 in a different location, the plan as drawn maximized the permissible density while producing a "well-organized project." In his view, the four roughly parallel buildings are more in harmony with the appearance and character of Chesapeake Beach than a "staggered" layout would be. Moving the building to the west, behind Buildings No. 2 and No. 4, would mean building it in a "hole" behind the hill. In addition a parking area would be required in front of the building which would have divided the planned open park recreation

area. Such a parking lot would [\*35] destroy the "resort" character of the project and create traffic hazards for pedestrians attempting to use it. Mr. Fleischer concluded [\*\*\*13] his testimony on direct examination by stating that the grant of the requested variances would have no adverse effect on the residents of the buildings, the abutting property owners, the surrounding properties or the neighborhood of Chesapeake Beach. Indeed, in his view, the development as planned would enhance the general area.

On recross-examination the following colloquy took place:

"Q. The only other question I would ask, can you tell the board what hardship would be suffered by your client if the variance was not granted?

"A. The only hardship would be the loss of income because you couldn't have the other buildings. You see, you have to approach it two ways. My opinion is, the density that we have is a low one, in my opinion.

"Q. If you would just try to answer the question directly, if you can, what hardship would you suffer if the variance is not granted?

"A. Maybe poor planning.

"Mr. Handen [Town Attorney for Chesapeake Beach]: I think we have batted back and forth enough, gentlemen, it's got to come to an end."

On 18 April 1973 the Board of Appeals issued a written statement and decision. With respect to the request for variances, the Board [\*\*\*14] of Appeals found, among other things:

"1. That, as a matter of fact, the variance requested will not be contrary to the public interest and that practical difficulties and unnecessary hardship would result if it is not granted.

\* \* \*

"4. That, as a matter of fact, the Petitioner met the burden of proving unique circumstances in that a strict application of the Zoning Ordinance would deprive the Petitioner of the reasonable use of his land and proposed buildings.

[\*36] "5. That, as a matter of fact, Petitioner met the burden of proving unnecessary hardship as required by the Ordinance in that to disallow the variance would impose a special hardship on the subject property.

" [\*\*225] 6. That, in addition to paragraphs numbered 1 through 5 above, the Board found as a fact that the granting of the variance is necessary for the reasonable use of the land and Petitioner's buildings; that the hardship complained was not economical nor self-created; that the hardship resulted from the application of the Ordinance and that the hardship would be specifically suffered by the property in question."

With respect to the special exception the Board of Appeals found:

"7. [\*\*\*15] That, as a matter of fact, the special exception requested is consistent with the spirit, purpose and intent of the Ordinance.

"8. That, as a matter of fact, the special exception requested is suitable for the property in question and designed to be in harmony with and appropriate in appearance with the existing and intended character of the general vicinity; and that the special exception does not adversely effect street traffic and safety."

The Board of Appeals granted the variances and special exception subject to a condition, among others, "that petitioner must substantially adhere to matters of construction to the initial plans presented before the Board."<sup>5</sup>

[\*\*\*16] [\*37] On 3 August 1973 the Circuit Court for Calvert County affirmed the grant of the variances and the special exception. With respect to the variances, the Court said:

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<sup>5</sup> Section 1002 (c) of the zoning ordinance states that each resolution of the Board of Appeals "shall contain a statement of the grounds and any findings forming the basis of such action or decision." Despite repeated admonitions by the Court of Appeals that the findings of administrative boards are not to be limited to conclusions couched in the terms of the ordinance itself but rather are to include specific findings of facts that support their conclusions, the Board of Appeals in this case set forth its conclusions in its statement and decision in a boilerplate form employing the terms of the ordinance itself without setting forth any specific findings of fact. See, e.g., [Hooper v. City of Gaithersburg, 270 Md. 628, 637, 313 A. 2d 491, 496 \(1974\)](#); [Baker v. Board of Trustees, 269 Md. 740, 747, 309 A. 2d 768, 771-72 \(1973\)](#); [Pistorio v. Zoning Board, 268 Md. 558, 570, 302 A. 2d 614, 619 \(1973\)](#); [Turner v. Hammond, 270 Md. 41, 56, 310 A. 2d 543, 551 \(1973\)](#).

"Finally, with respect to the granting of the Variance, the Appellant's position seems to be that because the Applicants' desire to use their land to the fullest extent, the need for the Variance is something they created and, therefore, it should not be considered. The Board, however, seemed to take the position that there was a problem created by the special topographic features and existing structures on this property, as well as its relation to the principal natural feature of the area; that is, the Chesapeake Bay, which entitled the Applicants to some consideration. Once again, this is a matter of judgment and in view of the evidence bearing on this question, the Court is satisfied that the Board had before it sufficient evidence to support the result it reached."

The appellants, McRae and Carmen Anderson, who opposed the granting of the application at the Board of Appeals hearing and appealed the Board's decision to the Circuit Court, contend that the zoning ordinance of the Town of Chesapeake [\*\*\*17] Beach requires the applicant to show that a denial of the requested variance would result not only in "practical difficulty" but also in an "unnecessary hardship" depriving the owner of the reasonable use of the land or building involved. They maintain that because this dual showing was not made, the action of the Board in granting the variances was arbitrary and capricious.

The appellees, the Board of Appeals and Mr. Pickett, the applicant, contend that the variances requested in this case involve an "area variance" (a variance from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings) [\*\*226] and not a [\*38] "use variance" (a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses). They maintain that area variances may be allowed on proof of "practical difficulty" alone and that such variances do not require a showing of "undue hardship." They insist that more than sufficient evidence was presented to make the question of whether practical difficulties would result [\*\*\*18] from the denial of the requested variances "fairly debatable." They conclude that the action of the Board in granting the requested variances and the special exception should be upheld.

The Court of Appeals has recognized a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not. Use variances are customarily concerned with "hardship" cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with "practical difficulty." [Loyola Loan Ass'n v. Buschman, 227 Md. 243, 248, 176 A. 2d 355, 358 \(1961\)](#). Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:

1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. [Pem Co. v. Baltimore City, 233 Md. 372, 378, 196 A. 2d 879, 882 \(1964\)](#); [Marino v. City of Baltimore, 215 Md. 206, 218, 137 A. 2d 198, 202 \(1957\)](#); [\*\*\*19] see [Salisbury Bd. v. Bounds, 240 Md. 547, 555, 214 A. 2d 810, 815 \(1965\)](#). Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance. [Daihl v. County Board of Appeals, 258 Md. 157, 167, 265 A. 2d 227, 232 \(1970\)](#); [Salisbury Bd. v. Bounds, supra, 240 Md. at 555, 214 A. 2d at 814](#); [Marino v. City of Baltimore, supra](#); [Easter v. City of Baltimore, 195 Md. 395, 400, 73 A. 2d 491, 492 \(1950\)](#).

[\*39] 2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district. [Burns v. Baltimore City, 251 Md. 554, 559, 248 A. 2d 103, 106 \(1968\)](#); [Marino v. City of Baltimore, supra](#); [Easter v. City of Baltimore, supra](#).

3) The hardship was not the result of the applicant's own actions. [Salisbury Bd. v. Bounds, supra](#); [Marino v. City of Baltimore, supra](#); [Gleason v. Keswick Impvt. Ass'n, 197 Md. 46, 50-51, 78 A. 2d 164, 165-66 \(1951\)](#).

Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue [\*\*\*20] hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

"1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." *McLean v. Soley*, 270 Md. 208, 214-15, 310 A. 2d 783, 787 (1973), quoting 2 *Rathkopf, The Law of [\*\*227] Zoning and Planning*, 45-28-29 (3d ed. 1972).

The lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance.

[\*40] While a distinction [\*\*\*21] between use and area variances has been recognized and clearly articulated in Maryland, the Court of Appeals has applied the "practical difficulty" standard to area variance applications in only three cases. *McLean v. Soley*, *supra*, 270 Md. at 213-14, 310 A. 2d at 786-87; *Zengerle v. Bd. of Co. Comm'rs*, 262 Md. 1, 21, 276 A. 2d 646, 656 (1971); *Loyola Loan Ass'n v. Buschman*, *supra*, 227 Md. at 248-50, 176 A. 2d at 358-59. In each of them the governing local ordinance authorized the grant of an area variance when strict compliance with the regulations would result in practical difficulties *or* unreasonable hardship. In each of them the Court of Appeals emphasized that the grant of the requested area variance was justified on proof of "practical difficulty" alone and that proof of hardship was not required because the governing zoning ordinance, which phrased the criteria of "practical difficulty *or* unreasonable hardship" in the disjunctive, could be construed as requiring that only the lesser standard of proof be applied.

The zoning ordinance of the Town of Chesapeake Beach differs from those ordinances in a number of significant respects. Section 1005 (c) (2) of the [\*\*\*22] ordinance prohibits the Board of Appeals from granting a use variance. Section 1005 (a) authorizes the Board to grant an area variance only where the strict application of the regulations "would result in practical difficulty *and* unnecessary hardship depriving the owner of the reasonable use of land or building involved. . . ." (Emphasis added.) Section 1005 (c) provides that the applicant must show that "practical difficulty *and* unnecessary hardship will result if [the variance] is not granted." (Emphasis added.) Section 1005 (c) (3) provides that:

"There must be proof of unique circumstances . . . and that said circumstances or conditions are such that strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building."

Finally, § 1005 (c) (5) requires an applicant to show:

"That the granting of the variance is necessary for the reasonable use of the land or building and that [\*41] the variance as granted by the Board is the minimum variance that will accomplish this purpose. It is not sufficient proof of hardship to show that greater profit would result if the variance were [\*\*\*23] awarded. Furthermore, hardship complained of cannot be self-created; it cannot be claimed by one who purchases with or without the knowledge of restrictions; it must result from the application of the Ordinance; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered."

Thus the zoning ordinance of the Town of Chesapeake Beach permits area variances only. Not only does it express the criteria of practical difficulty and unnecessary hardship in the conjunctive, but it also independently requires that no area variance be granted unless it is shown that strict application of the regulations will deprive the applicant of the reasonable use of his land and that the grant of the variance is necessary for the reasonable use of the land. It defines the hardship which must be shown as the equivalent of a constitutional taking, and utilizes the same criteria employed by the Court of Appeals for establishing undue hardship. The words of the statute are clear

and unambiguous and require no construction. Under the express terms of the ordinance, an area variance **[\*\*228]** can be granted only if there **[\*\*\*24]** is proof that the strict application of the regulations would result in an unnecessary hardship which deprives the owner of the reasonable use of his land. Proof of "practical difficulties" alone is insufficient. *McLean, Zengerle* and *Loyola, supra*, are inapposite.

Appellees do not contend that the applicant presented sufficient proof of an unnecessary hardship which deprived the owner of the reasonable use of his land. The record shows that the only hardship allegedly suffered by the applicant as a result of the strict application of the ordinance is "loss of profit" and "maybe poor planning." This evidence falls far short of a showing of unnecessary **[\*42]** hardship as defined by the specific ordinance here involved as well as by the Court of Appeals. One who shows no more than that the granting of the variance would do no harm and that it would be profitable to him fails to meet the burden. *M. & C. C. v. Polakoff, 233 Md. 1, 9, 194 A. 2d 819, 824 (1963)*. Moreover, the very testimony which shows the practical difficulties encountered in attempting to develop the land at a maximum density in accordance with the distance between buildings restriction simultaneously **[\*\*\*25]** establishes unequivocally that not only is it possible to develop the land at the maximum permitted density in accordance with the distance between buildings requirement, but also that such development could be less costly than the mode of development proposed. Given the evidence presented on behalf of the applicant, it is impossible for him to contend that the strict application of the ordinance prevents him from making a reasonable use of his land.

Based on the record before us, we find that the question of whether the strict application of the distance between buildings requirement would result in an unnecessary hardship to the applicant by depriving him of the reasonable use of his land was not fairly debatable. *Baltimore v. Sapero, 230 Md. 291, 296, 186 A. 2d 884, 887 (1962)*; *Marino v. City of Baltimore, supra, 215 Md. at 222, 137 A. 2d at 205*. The action of the Board of Appeals in granting the variances was arbitrary and capricious and cannot be sustained. *Daihl v. County Bd. of Appeals, supra, 258 Md. at 167, 265 A. 2d at 232*; *Dampman v. M. & C. C. of Baltimore, 231 Md. 280, 286-87, 189 A. 2d 631, 634 (1963)*. Because the grant of the special exception **[\*\*\*26]** is conditioned on adherence to a site plan in which, absent the variances, the buildings are located in a manner violative of the ordinance, it too cannot be sustained. Accordingly, the order of the lower court affirming the grant of the variances and the special exception shall be reversed.<sup>6</sup>

*Order reversed.*

*Costs to be paid by appellees.*

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<sup>6</sup> In view of our decision, all of the other contentions made by appellants need not be considered.

# [Bay City Prop. Owners Ass'n, Inc. v. Cnty. Comm'rs of Queen Anne's Cnty.](#)

Appellate Court of Maryland

October 2, 2024, Filed

No. 0034, September Term, 2023

## Reporter

263 Md. App. 385 \*; 323 A.3d 1179 \*\*; 2024 Md. App. LEXIS 796 \*\*\*; 2024 WL 4368287

BAY CITY PROPERTY OWNERS ASSOCIATION, INC. v. COUNTY COMMISSIONERS OF QUEEN ANNE'S COUNTY, ET AL.

**Subsequent History:** Writ of certiorari denied [Bay City Prop. Owners Ass'n v. Cnty. Comm'Rs of Queen Anne's Cnty.](#), 489 Md. 288, 328 A.3d 794, 2024 Md. LEXIS 551 (Md., Dec. 20, 2024)

**Prior History:** [\*\*\*1] Circuit Court for Queen Anne's County. Case No. C-17-CV-22-000042, Lynn Knight, Judge..

**Disposition:** JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

**Counsel:** Argued by David C. Blitzer, Wise & Blitzer, Attorneys at Law, Stevensville, MD, on brief, for Appellant.

Argued by Justin M. Hoyt, Steven Palmer, LLC, Centreville, MD & Patrick E. Thompson, Braden, Thompson, Poltrack, Mundy & McQueeney, LLP, Stevensville, MD, on brief, for Appellee.

**Judges:** Argued before: Leahy, Albright, Harrell, Glenn T., Jr. (Senior Judge, Specially Assigned), JJ. Opinion by Leahy, J.

**Opinion by:** Leahy

## Opinion

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[\*390] [\*\*1181] Opinion by Leahy, J.

This controversy arises from neighborhood opposition to a planned subdivision in Queen Anne's County (the "County").<sup>1</sup> The developer, Land Bridge, LLC, seeks approval to build 'Placek's Place,' comprising [\*\*1182] ten homes, on a parcel adjacent to a large existing residential community known as Bay City. The parcel borders the L-shaped intersection of Stafford Road and Victoria Drive. Stafford Road is a private road maintained by Bay City Property Owners Association, Inc. ("Bay City" or "Appellant"), and Victoria Drive is a public road maintained by the County. The County approved Land Bridge's plan to connect the access road to Placek's Place at the termination of Victoria Road in the L-shaped intersection.

After learning of the proposed development, Bay City took the position that Stafford Road subsumes the entire L-shaped intersection, terminating Victoria Drive fifty feet short of the proposed Placek's Place development. In February 2022, Bay City brought an action in the Circuit Court for Queen Anne's County seeking a declaration that the entire intersection [\*\*\*6] was part of the private road maintained by Bay City and to quiet [\*391] title. The

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<sup>1</sup> In the underlying lawsuit, the defendants were the County Commissioners of Queen Anne's County and Land Bridge, LLC. We have replaced references to the "Board of Commissioners" with "the County."

circuit court found in favor of Land Bridge, LLC ("Land Bridge"),<sup>2</sup> and the County ("Appellees" or "defendants" below).

Bay City noted this timely appeal and presented three issues,<sup>3</sup> which we condense into two:

1. Whether the circuit court erred in deciding that the disputed section of road is a public road by prescription.
2. Whether the circuit court erred in finding that Bay City's claims for declaratory relief and to quiet title are barred by the doctrine of laches.

We hold that the trial court correctly declared that a public easement has been established over and through the L-shaped intersection of Victoria Drive and Stafford Road (the "Intersection"). The court's finding that the Intersection has been in continuous public use for at least twenty years is [\*\*\*7] fully supported by the testimony of several witnesses that they, and other members of the public, travelled freely through the Intersection without having to request permission, and by the testimony and exhibits demonstrating that the County has improved and maintained the Intersection since 1995. Therefore, we affirm the circuit court's judgment that the Intersection is a public road by prescription without reaching the court's alternative determination based on the doctrine of laches.

## BACKGROUND

Bay City is the dues-collecting homeowner's association for the Bay City community located on Kent Island in Stevensville, Maryland. The community comprises over 750 homes, a private playground, and a private park with boat launch. [\*392] When Bay City was created in the 1950s, all of the roads within the Bay City community were privately owned by Bay City under a set of covenants that specify various rights and responsibilities over the common areas within the community. The land conveyed through the covenants is "subject to an easement in favor of the owners and occupants of lots and houses bordering other parts of the . . . road or roads." The covenants provide that Bay City is responsible [\*\*1183] for [\*\*\*8] maintaining the private roadways within the community, and Bay City collects annual assessments from Bay City residents to maintain all the private amenities, including the private roads. As authorized by the covenants, Bay City dedicated several of the private roads within the community, or portions thereof, to Queen Anne's County by written and recorded conveyances in 1967, 1975, and 1987.

### *County Investment in the 1990s*

When the County brought public water and sewer service to the Bay City community in the mid-1990s, Bay City agreed to have several roads improved to meet public-road standards and to transfer the responsibility for maintaining those roads to the County. Although the County held public hearings on the proposal to upgrade the roads in Bay City and imposed a special tax assessment for improvements, the parties agree that there are no recorded deeds or plats reflecting the dedication of the roads that were transferred to the County. The parties also agree that the transfer included the stretch of Victoria Drive at issue in this case<sup>4</sup>—they disagree, however, on where Victoria Drive ends.<sup>5</sup> As summarized in the circuit court's underlying opinion, Bay City alleges that it

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<sup>2</sup>We refer to Land Bridge, LLC, and Lacrosse Homes t/a Land Bridge, LLC, as "Land Bridge."

<sup>3</sup>The issues presented by Appellant, as written, are:

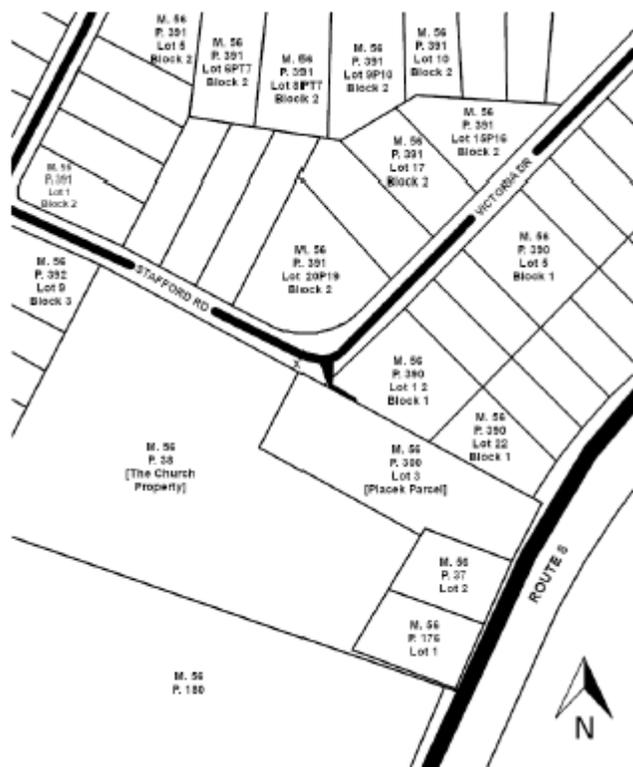
1. Whether the Circuit Court erred in deciding that the disputed section of road is a public road by prescription?
2. Whether the Circuit Court impermissibly shifted the burden of proof in this case to Bay City?
3. Whether the Circuit Court erred in finding that Bay City's claims for declaratory relief and to quiet title are barred by the doctrine of laches?

<sup>4</sup>Earlier sections of Victoria Drive were transferred to the County by written and recorded dedications—those are not implicated in the present dispute.

intended [\*\*\*9] "for the County to stop any improvements to Victoria Drive before the Intersection with Stafford Road, with the entire [I]ntersection left unimproved and under the control of Bay City."

[\*393] Victoria Drive runs 0.18 miles south from its intersection with Bay City Road, a main artery into the Bay City community, and terminates in the Intersection with Stafford Drive. The right of way for both Victoria Road and Stafford Drive is 50 feet in width, of which 20 feet in width is paved. The diagram below, taken from County Exhibit 2A introduced at trial, shows the Intersection, and, at the south side of the Intersection, the approximate location of the driveway to parcel 390 with an address of 721 Victoria Drive.<sup>6</sup>

[\*394] [\*\*1184]



### *Placek's Place Planning*

On February 10, 2014, Land Bridge, through its predecessors in title, contracted to purchase a parcel of land from the Living Water Lutheran Church (the "church property") to be the site of Placek's Place development. The church property is landlocked except for a northern frontage along Stafford Road terminating just shy of the Intersection and an easement over private property extending to Route 8.

On February 5, 2015, Land Bridge also contracted to buy a half-acre [\*\*\*10] lot abutting the church property on its eastern boundary (the "Placek parcel") from Paul and Rebecca Placek. [\*395] The northern frontage of the Placek parcel spans the Intersection, and from there, the boundary extends east along a residential lot line and terminates

<sup>5</sup> Bay City's witness, Michael John Dreisedel, President of Bay City Property Owner's Association, testified that "[t]he portion of Victoria Drive from Bay City Road to where it stops at Stafford is a county road."

<sup>6</sup> To better orient the reader, we have modified County Exhibit 2A to identify: 1) the parcel of land purchased by Land Bridge from the Living Water Lutheran Church (the "church property"); 2) the half-acre lot abutting the church property on its eastern boundary, purchased from the Placeks (the "Placek parcel"); 3) Route 8; 4) the approximate location of the fire hydrant installed by Queen Anne's County (marked with an X); and, 5) an arrow pointing North.

at Route 8. Together, the Placek parcel and the church property comprise the proposed Placek's Place development, which has a direct point of access from the Intersection that is 50 feet wide.

Bay City meeting minutes reflect discussions pertaining to road access for a potential [\*1185] development on the church property during at least two property-owners' meetings, in September and November of 2016.<sup>7</sup> Living Waters Lutheran Church inquired with the County's Department of Public Works ("DPW") whether it would grant access or permission to extend Victoria Drive and provide access to property owned by the church. Todd Mohn, then director of DPW, responded that "access to extend" Victoria Drive, "the county road," could not be granted to the church. He noted, however, that the Placek parcel, adjacent to the church property, appeared "to have adequate frontage along Victoria Drive[.]"

In November 2016, the County's Planning Director asked [\*\*\*11] the planning attorney, Christopher Drummond, Esq., whether the owner of the Placek parcel "may access the property through the public road system in the Bay City community." Mr. Drummond responded that "Victoria Drive . . . is maintained by the County[.]" "is open to the public[.]" and "is not dedicated to the use of Bay City residents only." He determined that "Victoria Drive dead ends at the Placek [parcel] at a width of 50'[.]" and so "common sense suggests that [the Placek parcel] has 50' of frontage on Victoria Drive."

In July 2017, the County's Department of Planning and Zoning ("DPZ") issued conditional approval of the Placek's Place subdivision plan, including comments from DPW:

Both field evidence and historical County Road inventory records indicate that Victoria Drive extends to the Placek [\*396] property and Stafford Road begins on the northwestern side of Victoria Drive. Based on this, it is the County's position that the property fronts on Victoria Road and can be granted access by the County Roads Division.

Either [Bay City] or the developer may need to seek a declaratory judgment to clarify the status of Stafford Road and the public's right to use of same and/or the location [\*\*\*12] of the demarcation line between Stafford Road and Victoria Drive.

Land Bridge closed on the contracts for sale and acquired the deed to the Placek parcel in 2019, and the deed to the church property on November 6, 2020. In early 2021, Land Bridge submitted Placek's Place to the DPZ for preliminary subdivision approval, showing access from the Placek parcel's frontage on the Intersection. Representatives from Land Bridge, along with the County's Principal Planner, Rob Gunter, presented the Placek's Place project at the September 2021 public meeting of the County Planning Commission ("Commission"). Representatives from Bay City opposed the project, contesting the County's ownership of the Intersection on the ground that Victoria Drive terminates before the Intersection. The Commission granted preliminary approval of the project at the meeting, and then finalized its approval at the next meeting on October 14, 2021.

#### *Lawsuit is Filed*

On February 16, 2022, Bay City filed the subject action in the Circuit Court for Queen Anne's County for declaratory judgment under [Maryland Code \(1974, 2020 Repl. Vol.\), Courts and Judicial Proceedings Article \("CJP"\), § 3-409](#), and for quiet title against the County and Land Bridge. The defendants each filed answers in which they asserted laches and other [\*\*\*13] affirmative defenses. The County asserted that it had "considered the section of Victoria [\*1186] Drive in question as a part of the County road system since 1995, [and] ha[d] collected Highway User Revenue for the same and ha[d] maintained the road as a part of its road system, including the intersection of Stafford Road and Victoria Drive." All parties engaged [\*397] in discovery, and on September 30, 2022, Land Bridge moved for summary judgment. The motion was denied on October 17 and the parties went to trial.

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<sup>7</sup> Bay City meeting minutes from September 6, 2016, refer to "issues related to [Land Bridge] and Victoria Drive Access Road Questions[.]" and the minutes from November 3, 2016, refer to the "Church Queen Anne's County Road Access Dispute."

### *The Trial*

The action was tried by the court on February 2, 2023. The first witness, Michael John Dreisedel, President of the Bay City Property Owner's Association, testified that "[t]he portion of Victoria Drive from Bay City Road to where it stops at Stafford is a county road." Mr. Dreisedel admitted that the County maintains Victoria Drive and typically removed snow through the Intersection, testifying that "[i]t would be unrealistic for snow removal for a truck to go and stop before Stafford with a pile of snow in front of it and not push it all the way through Stafford because it would landlock that resident." He claimed that when the County resurfaced the Intersection with asphalt between [\*\*\*14] 2014 and 2017, the County overlapped the tar and chip paving that Bay City used in resurfacing Stafford Road in 2014.

John Joseph ("Jay") Sullivan, a Bay City board member, testified that he had owned the property located "at the end of Victoria Drive and the corner of Stafford Road" since 2019. He said that when he moved in, use of "this section of Stafford Road" by Amazon trucks making deliveries was "common[.]" but he did not recall seeing school buses or utility trucks. He explained that when going to his house, he enters through Bay City Road and turns onto Victoria Drive.

Mr. Sullivan recounted that at one point the Intersection itself had become overgrown such that it was only "passable to walk or maybe [by] a small car" and that he and other residents had trimmed trees and cut back brush on behalf of Bay City to "clear the opening out to where it is now passable by normal vehicles." He added that there is "nothing in . . . [the] community anywhere that's open to the public" and, as such, "[t]here's no reason to be in this area of the neighborhood."

[\*398] On cross-examination, defense counsel asked Mr. Sullivan if Bay City had posted any signs that restricted the use of the roadway, [\*\*\*15] and he replied, "I think we do have Bay City residents and guests only signs up at our entrances" and "on our facilities[.]" Mr. Sullivan could not produce documentation of any signage at trial, however, because "nobody talked to [him] about signs[.]"

Bay City also called as a witness Ronald Shane Moore, DPW's Chief Roads Engineer, who testified that the County used a "special tax assessment process" in 1995 to add Victoria Drive and other Bay City roads to its inventory. Mr. Moore related that on April 19, 1995, before his tenure began,<sup>8</sup> the Queen Anne's County Commissioners held a public meeting of the roads board in which they identified specific roads within Bay City to be upgraded to public standards and thereafter maintained by the County, and that "the majority of what was left was private." Because Mr. Moore was not present at that meeting, he described only the customary process for dedication:

[\*\*1187] There's typically an information meeting with that particular road, the residents of that road spearheaded by the people that live on the road that want to upgrade it. Based on the support from the residents—commissioners are invited to those meetings, as well, but they don't always attend, [\*\*\*16] but based on that we'll go to the commissioners and we'll ask for a hearing and we'll usually them [*sic*], you know, 10 people showed up, four against, one not, you know, that kind of thing. Then based on that we'll actually have a public hearing; that's advertised in the newspaper, certified letters. The roads board chairs the hearing, they listen to the testimony. We provide two weeks of open record and then after that, the commissioners review all that data at their normal meeting and decide whether or not to move forward with the project.

[\*399] Mr. Moore said that he had not come across County records specifying "a discussion between the County or representatives of the County and members of [Bay City] regarding this particular intersection or Victoria Drive being transferred to the County[.]" However, he explained that the proposal to upgrade specific roads to county roads was approved at the regular commissioner meeting on May 2, 1995, and "from that moment on is when the County consider[ed] [the Intersection] their road[.]" Mr. Moore clarified that while the County "added that section [of Victoria Drive] into our inventory [in] December of 1995[.]" the County would have only performed [\*\*\*17] minimal maintenance work at that time "because the idea is that the actual improvements are paid for by the residents, as

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<sup>8</sup> Mr. Moore began to work for the County in 2000, in the "roads department"; he became Chief Roads Engineer in 2003.

part of . . . a private to public road improvement project[.]" and that "once that's completed and paid for by the residents, then we begin normal maintenance activities that we would log as going out and fixing potholes or driveway pipes, things like that." However, he confirmed that "once the commissioners make their decision, we consider it our road and we will respond to citizens calling and saying they need assistance with something on the roadway."

Although he had reviewed county records with the road superintendent and did not find a record of tar and chip paving of Victoria Drive before 2015, Mr. Moore explained that he and the superintendent both believed that it "most likely happened" at some point. "For some reason it's just not in the files. For tar and chip to last from the late '90s all the way until 2015 is pretty—it would be pretty amazing tar and chip to last that long." He noted that the slurry seal that the County applied in 2015 is a product used as a sealer, "[s]o the road itself has to [already] be in pretty good shape."

Mr. Moore authenticated [\*\*\*18] the 1995 Roads Inventory Report from the County to the State of Maryland, which reflects the **addition of Victoria Drive "from Stafford Road to Bay City Road" as a distance of 0.18 miles.** (Emphasis added). He stated that the distance of 0.18 miles equated to the distance of 910 linear feet "used in the public hearing for the cost estimate[.]" He noted that in addition to the corroborating [\*400] evidence of "the 910 feet" there is the evidence that "721 Victoria Drive[.]" the home whose driveway springs directly from the curve of the Intersection, was "included as part of the assessment of the . . . original project" to upgrade the road. He further explained that every year the County submits the roads inventory report to the State, and that the "Maryland State Highway takes that information . . . create[s] maps . . . using GPS . . . [which is] part of the highway user revenue system to calculate how much money the County gets . . . and how [the County] use[s] revenue [\*\*1188] designated to every municipality in the [S]tate."

Mr. Moore identified a 2002 map from the State Highway Inventory Report, which the Queen Anne County DPW received every year, showing "roads that were included" as County roads [\*\*\*19] and assigned a "county route number." He observed that on the map from 2002, Victoria Drive was demarcated as a county road and assigned a county route number. He noted an arrow on the map pointing to the Intersection, which indicated "the terminus." Mr. Moore was asked, looking at the map, "Does the County consider the [I]ntersection as part of the county road, that part of Victoria Drive?" Mr. Moore responded, "Yes." Importantly, Mr. Moore was able to identify on a street-level photograph a fire hydrant, installed by the County's "sanitary division," located on the south side of Stafford Road just before it joins the Intersection.

Mr. Moore said he disagreed with Mr. Sullivan's testimony that "there were signs restricting the use of roads to Bay City residents," saying "I have never seen a sign restricting anything." Mr. Moore testified that Bay City Road and Victoria Drive are public roads, and "[a]nyone can drive down there" including "[d]elivery trucks, postmen, school buses, guests, . . . [s]ightseers, anybody around."

### *Land Bridge's Case*

Lindsay Dixon, managing member of Land Bridge, testified that he had been to the Intersection "[m]any times" and was not aware of any signage at [\*\*\*20] the Intersection limiting access by [\*401] "people from outside the community[.]" nor had he ever been told that he "shouldn't have been back there" because he was not "a resident or invitee" of Bay City. Mr. Dixon reviewed a photograph of the Intersection that was entered into evidence and observed a "[d]istinct line between Stafford and Victoria on the quality and width of the road." He also noted that there was a fire hydrant "maybe a hair on the Stafford side."

Mr. Dixon described the history of the Placek's Place project. He said that after contracting for the church property, he "reached out to the County for clarification." He "received a letter from public works stating that Victoria would be the access and that we'd have to acquire [the Placek parcel] to gain access." As the result of this communication, he "went to Mr. Placek and worked out a contract with him in 2015 to acquire [the Placek parcel] to gain access to Victoria."

Mr. Dixon acknowledged that he had entered into multiple contracts on both properties, with closing contingent on subdivision approval, and that Land Bridge "had the ability to choose not to go forward, not to close under the contract, if any of [its] contingency [\*\*\*21] concerns were not satisfied[.]" He admitted that he closed on the contracts before he received approval on the subdivision, relying instead upon "two letters, from a county attorney and from public works saying that [Land Bridge] had access from Victoria Road[.]" as well as his consultant engineer's survey.<sup>9</sup>

He acknowledged that the church property had an easement that was 15 feet wide "through the parking lot of the American Legion" and a wetlands area, connecting the property to Route 8, but asserted that the easement could not be used to construct the ingress and egress to a residential [\*\*1189] subdivision. If Land Bridge were denied access to Victoria Drive, he said, it would "have to go back through the process and try to work [\*402] with the County and State Highway to figure out some form of access onto Route 8[.]" at "significant" additional cost.

Mr. Dixon acknowledged comments from DPZ on the Placek's Place plan review stating that "[e]ither the Bay City—the BCPOA [Bay City Property Owners Association] or the developer may need to seek declaratory judgment to clarify . . . the line between Stafford and Victoria." He also authenticated an email that he wrote to a representative of Living Waters [\*\*\*22] Lutheran Church in June 2017, stating:

We are still held up by local politics on the Placek subdivision. The County attorney has asked to go to the courts for a declaratory judgment, an opinion, on the title access to Placek. We feel that this is crazy and we are unwilling to waste time and money on something we've already received the County's position on from public works.

According to Mr. Dixon, Land Bridge could not have sought a declaratory judgment for itself, because the dispute over the possession of the land was between "Bay City[] and the County."

Mr. Dixon authenticated a survey conducted by Lane Engineering for the Placek Place subdivision. On the survey, Mr. Dixon identified the Intersection and where there was a change in the pavement. He observed that the survey "even shows the hydrant." The survey was marked as "Defense Exhibit 1" and entered into evidence. The survey shows the fire hydrant on the south side of Stafford Road just west of the Intersection.

#### *Memorandum Opinion and Order*

In a Memorandum Opinion and Order entered on February 7, 2023, the trial court declared "that the [I]ntersection of Victoria Drive and Stafford Road, Stevensville, MD 21666 is [] part of Victoria [\*\*\*23] Drive," and "that Victoria Drive is a public road, under the ownership and control of Queen Anne's County, Maryland."

The judge found that since the mid-1990's, "the County initiated a project to install public water and sewer infrastructure" [\*403] in Bay City. Bay City "agreed to have several roads improved, including Victoria Drive" after the County installed "the public utilities." Although Bay City claimed that it "intended for the County to stop any improvements to Victoria Drive before the Intersection[.]" the judge observed that the County had nevertheless "performed maintenance and snow removal throughout the entirety of the Intersection . . . since 1995[.]" and that Bay City had "never objected to these maintenance efforts by the County." Moreover, the judge found that the County's repaving of Victoria Drive in 2015 "extended throughout the Intersection and around the corner onto Stafford Road[.]" and was done with Bay City's acquiescence. Further, the judge observed that "the entire Intersection has continuously been traversed by members of the public as well as residents of Bay City," and that Bay City has never restricted public use with "barricades, restrictions, or signage[.]" [\*\*\*24] Although the court acknowledged that Bay City "did have a survey conducted which identified the Intersection as part of Stafford Road" in 2017, "neither the County nor Land Bridge was made aware of this survey and were given no other indications that Bay City believed the [I]ntersection is part of Stafford Road." She observed that "[u]ntil the filing of the

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<sup>9</sup>Mr. Dixon testified that, by that point in time, Land Bridge paid "[a]round \$200,000" for the church property and over \$350,000 for the Placek parcel and had invested "pushing \$900,000" in Placek's Place in total.

Complaint in this action, Bay City made no efforts to assert control over the Intersection." Finally, the judge quoted from the Placek's Place plan review [\*\*1190] comments issued by DPZ in July 2017, including:

Both field evidence and historical County Road inventory records indicate that Victoria Drive extends to the Placek property and Stafford Road begins on the northwestern side of Victoria Drive. Based on this[,] [i]t is the County's position that the property fronts on Victoria Road and can be granted access by the County Roads Division.

In her analysis, the judge compared the action to the Maryland Supreme Court case, [Garrett v. Gray, 258 Md. 363, 266 A.2d 21 \(1970\)](#), which concerned "the rights of appellants to the use of a twelve-foot-wide dirt road running a short distance between two public roads" that "[m]embers of the public had used . . . for over twenty years." She observed [\*\*\*25] that [\*404] here, as in *Garrett*, "the traffic may have been sparse; nonetheless, members of the public freely passed over [the road] *without seeking permission* of the owners through whose property the road passed, and it was a continued and uninterrupted use by persons other than the property owners whose property is traversed by the road." (Quoting [Garrett, 258 Md. at 378](#)) (emphasis supplied by the trial court).

The court iterated facts tending to show Bay City's acquiescence to the public's use of right of the Intersection:

Here, no members of the public have ever asked permission or felt the need to ask permission to use the Intersection, as no barricades, signs, or other restrictions have ever been placed by Bay City to indicate that the intersection was part of the private Stafford Road and not part of Victoria Drive. Despite testimony by Plaintiff's witness Jay Sullivan that he believed there to be some signage at the entrance of the Bay City Community, no signage has ever been placed at the Intersection indicating any restriction on its use. Due to the maintenance, snow plowing, and repaving of the intersection by the County, the Intersection has every appearance of being the natural end of Victoria Drive, [\*\*\*26] not a part of Stafford Road. In fact there is no signage posted at the Intersection at all, including any signs indicating the name "Stafford Road."

Although she agreed with Bay City's assertion that "that the public use here has been even more sparse than the use in *Garrett*," the judge countered:

This may be true, but the use has been public, continuous, and uninterrupted all the same. Importantly, in addition to that public use, Bay City has permitted the County, with taxpayer funding, to run public utilities upon and beneath both Victoria Drive and Stafford Road, to maintain those utilities, to perform snow plowing and other maintenance, and to repave the entirety of the Intersection.

The judge concluded that the Intersection was part of Victoria Drive, and had become "a public road, under the ownership and control" of the County. Turning to Bay City's [\*405] delay in initiating the declaratory judgment action, she found that Bay City had waited five and a half years from the time Bay City had knowledge of the road dispute to file the complaint, and concluded that "if Bay City believed it had control over the Intersection while knowing that both the County and Land Bridge believed the opposite, [\*\*\*27] any claim for relief became barred by the doctrine of laches several years ago."

## DISCUSSION

### I.

#### Acquisition of Land and Burden of Proof

[\*\*1191] **Parties' Contentions**<sup>10</sup>

Bay City challenges the circuit court's declaration that the public acquired the Intersection by prescription. Bay City asserts that the court erred by assigning to it the burden to prove that there had been no acquisition by prescription, and that Appellees had failed to establish public use of the disputed area that was continuous and adverse. According to Bay City, the court relied only on negative factors, such as the non-barricading of the road, and thereby imposed an impermissible shift of the burden of proving adverse use onto the party seeking to quiet title.

Bay City also disputes the factual findings that underpin the court's legal conclusion that the Intersection is public and a part of Victoria Drive. First, Bay City claims the trial court was erroneous in its finding that "the entire [I]ntersection has continuously been traversed by members of the public as well as residents of Bay City." In fact, Bay City contends, Appellees failed to produce "any testimony or other evidence demonstrating uninterrupted use of the disputed [\*\*\*28] section of road [\*406] by any member of the public for twenty years or more[.]" Resting on Mr. Sullivan's testimony, Bay City argues that for "some portion of time during the alleged prescriptive period[.]" a portion of Victoria Drive was in disrepair and "largely impassable[.]" which resulted in Victoria Drive functioning as "a dead end at the disputed [I]ntersection."

Second, Bay City challenges the court's factual finding that "the County has performed maintenance and snow removal throughout the entirety of the [I]ntersection and around the corner for a number of feet after the turn onto Stafford Road since 1995[.]" It notes that the County "ha[d] no records" confirming that it resurfaced or repaired potholes on Victoria Drive prior to the County resurfacing the Intersection with slurry seal in 2015. Bay City assigns error to the trial court's declaration that the Intersection is a "road by prescription" because there was a "complete lack of any testimony or other evidence demonstrating uninterrupted use[.]"

Bay City contends that the court also erred in determining that public use of the Intersection had been adverse because Bay City had not placed any signs restricting public access. Bay [\*\*\*29] City points out that the court found that it "**permitted** the County . . . to run public utilities" upon and beneath Victoria Drive. (Emphasis supplied by Bay City). Therefore, says Bay City, the court should have recognized that such permission *defeated* any claim of adverse use. (Citation omitted).

Appellees, as expected, contend the trial court was correct in its determination that the Intersection has become a public road by prescription, and Appellees compare the case at bar to *Garrett v. Gray*, as an example of "a public way predicated on the uninterrupted use by the public for over twenty years." (Quoting [Garrett, 258 Md. at 370](#)). They maintain that the court properly assigned the burdens of proof in this quiet title action. While they acknowledge that "a party asserting prescriptive rights bears the burden of proving use of the land in question," they rely on *Garrett* for the principle that once a party demonstrates adverse access, "the burden is upon the owner of the land to show that the use of [the land] was by [\*407] license or contract inconsistent with a claim of right." (Quoting [Garrett, 258 Md. at 375](#)). [\*\*1192] Appellees urge that once they met their burden to show continuous public use, the burden shifted back to Bay City to prove [\*\*\*30] that the use had been permissive.

Appellees counter Bay City's contention that they failed to provide an adequate factual basis upon which the court was able to determine that the Intersection was used continuously for more than twenty years. They point out, for example, that both Mr. Moore and Mr. Dixon testified that they repeatedly travelled through the Intersection over many years, and that Bay City's own witness, Mr. Sullivan, testified that traffic by retail delivery trucks was common. They note that their witnesses testified that no signage prohibiting public access was posted on Victoria Drive, and emphasize that the court indicated in its memorandum opinion that it did not find credible the contradictory testimony from Mr. Sullivan. Appellees highlight the County roads engineer's testimony that "all of Victoria including

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<sup>10</sup> Bay City also contests the trial court's alternate ruling that its claim for relief was barred by the doctrine of laches. As previously noted, because we affirm the trial court's declaration that the public acquired the Intersection by prescription, we need not address the trial court's alternate ruling.

the [I]ntersection had been a public road since 1995 and that 'anyone' could drive down the road including delivery trucks, postman, school, buses, guests and sightseers."

While Appellees acknowledge that they did not present numerous witnesses to testify to their personal use of the roadway, as in [Garrett](#), they direct our attention to the Supreme Court's instruction [\*\*\*31] in that case, that "the extent to which the public actually used the road was of less import than the right to use it." (Citing [Garrett 258 Md. at 378](#)). Here, the public use is supported by the County's maintenance and the Intersection "is located in a community comprised of approximately 780 homes with two different access points."

Appellees describe Bay City's statement that the Intersection "cannot be accessed from any public road located outside the development" as misleading, because in fact, the disputed section of road is accessed by turning off Maryland Route 8, a State Road, onto Bay City Road, a County Road, and then [\*408] making a quick left onto Victoria, another County Road. They assert that "the trial court could reasonably infer from the testimony and evidence presented" of the Intersection's "nature and location," that it "had nonetheless been used by the public for twenty years."

Abundant evidence was presented at trial, Appellees insist, establishing that Victoria Drive extends through the Intersection. Appellees point to the testimony by County officials that the County had performed maintenance on the Intersection after it was "upgraded to a public road in 1995"; that the two properties situated [\*\*\*32] adjacent to the Intersection have Victoria Drive addresses and were assessed for public improvements in 1995; and that the County installed a fire hydrant on the Stafford side of the Intersection at the "approximate line of demarcation between the County's maintenance of the Intersection and [Bay City's] maintenance of Stafford Road."

Finally, Appellees contend that the public use of the Intersection in this case has been "by acquiescence" and therefore adverse. (Quoting [Garrett, 258 Md. at 375](#)). "The *Garrett* court made clear[,] Appellees argue, "that [m]ere failure to protest" the hostile claim of another "is not permission but acquiescence." (Quoting [id. at 377](#)).

## Legal Framework

A declaratory judgment "generally is a discretionary type of relief." [Converge Servs. Grp., LLC v. Curran, 383 Md. 462, 477, 860 A.2d 871 \(2004\)](#). [Section 3-409 of the Courts and Judicial Proceedings Article of the Maryland Code](#) authorizes trial courts to enter declaratory judgments and provides, in relevant part:

[\*\*1193] (a) Except as provided in subsection (d) of this section, a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:

(1) An actual controversy exists between contending parties;

[\*409] (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; [\*\*\*33] or

(3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

[Maryland Code \(1974, 2020 Repl. Vol.\), Courts and Judicial Proceedings Article \("CJP"\), § 3-409.](#)

Whether the "use of [a] disputed area establish[es] a prescriptive easement, is a legal question involving the interpretation of Maryland case law" that we review without deference. [Turner v. Bouchard, 202 Md. App. 428, 442, 32 A.3d 527 \(2011\)](#). See also [Webb v. Nowak, 433 Md. 666, 681, 72 A.3d 587 \(2013\)](#) ("The interpretation of mortgages, plats, deeds, easements and covenants has been held to be a question of law."). We also review the question of "whether the circuit court *properly assigned* the burden of proving the elements of a prescriptive easement" *de novo*. [Turner, 202 Md. App. at 443](#) (emphasis added). However, a trial court's *finding* that a party did or did not "carry the burden of showing a permissive use [is] a factual determination," *id.*, as is the court's ultimate determination of whether there has been an adverse use. See [Forrester v. Kiler, 98 Md. App. 481, 487-88, 633 A.2d](#)

[913 \(1993\)](#); 4 Tiffany Real Prop. § 1213 (3d ed.) ("The determination of whether there has been an adverse use is a question of fact[.]"). Therefore, on these matters, we give due regard to the trial court's role as factfinder as we review the court's factual determinations "under the clearly erroneous standard." [Turner, 202 Md. App. at 443](#) (citation omitted). [\*\*\*34]

In Maryland, "public roads are established by: (1) public authority, (2) dedication, or (3) prescriptive easement." [Bd. of Cnty. Comm'rs of St. Mary's Cnty. v. Aiken, 483 Md. 590, 623-24, 296 A.3d 933 \(2023\)](#) (citing [Clickner v. Magothy River Ass'n Inc., 424 Md. 253, 269, 35 A.3d 464 \(2012\)](#)) (citation omitted). Government authorities may create a public road by "public authority"—that is, through condemnation [\*410] proceedings and its mechanism of eminent domain. [Id. at 624](#) (footnote omitted). This case does not involve the establishment of a public road by public authority because there were no condemnation proceedings by which the County acquired the Intersection. [Id. at 624-25](#).

The second method—a dedication—requires an offer to dedicate and an acceptance of that offer, and "no particular form or ceremony is necessary" to create a public road by dedication. [Id. at 626](#) (quoting [Smith v. Shiebeck, 180 Md. 412, 419, 24 A.2d 795 \(1942\)](#)). Here, the parties, who were unable to agree that in 1995 the intention was to convert the Intersection to a public road, were able to agree that the issue before the circuit court was whether a public road was established under the third method—an easement by prescription.

### Easement by Prescription

Maryland courts have long held that it is possible to establish the existence of a public way by "evidence of an uninterrupted use[] by the public for twenty years" because of "the presumption [] that [\*\*1194] such long continued [\*\*\*35] use and enjoyment by the public of such way had a legal rather than an illegal origin." [\*411] [Mt. Sinai Nursing Home, Inc. v. Pleasant Manor Corp., 254 Md. 1, 6, 253 A.2d 915 \(1969\)](#) (quoting [Thomas v. Ford, 63 Md. 346, 351-52 \(1885\)](#)). We have described this "long, uninterrupted use by the public as a road, for twenty years or more" as "bear[ing] so close an analogy to [prescription] that it is not inappropriate to apply to the right thus acquired the term prescriptive." [Wilkinson v. Bd. of Cnty. Comm'rs of St. Mary's Cnty., 255 Md. App. 213, 245-46, 279 A.3d 1052 \(2022\)](#) (quoting [Thomas, 63 Md. at 351-52](#)), *aff'd sub nom. Bd. of Cnty. Comm'rs of St. Mary's Cnty. v. Aiken, 483 Md. 590, 296 A.3d 933 (2023)*. Such use "serves to give the owner notice" that in order to "dispute the rightfulness of the public use, the owner must assert his or her right within a statutory period by physical action or suit." 10A McQuillin Mun. Corp. § 30:23 (3d ed.). After such public use for that period, "a perfect title by prescription . . . vests in the public." [Mt. Sinai Nursing Home, Inc., 254 Md. at 5](#) (citation omitted).

### Burden of Proof

Because "[t]he purpose" of a quiet title action is to protect owners of legal title from being disturbed in the possession of their property and from "being harassed by suits in regard to [their] title by persons setting up unjust and illegal pretensions[.]" [Wilkinson, 255 Md. App. at 259](#) (quoting [Porter v. Schaffer, 126 Md. App. 237, 260, 728 A.2d 755 \(1999\)](#)), "the plaintiff has the burden of establishing both possession and legal title by 'clear proof.'" [Porter, 126 Md. App. at 260](#) (quoting [Stewart v. May, 111 Md. 162, 173, 73 A. 460 \(1909\)](#)). If the party seeking to quiet title establishes possession and legal title, [\*\*\*36] and the opposing party raises the affirmative defense of adverse possession, then the burden shifts to the proponent of the adverse use "to show that it has had the character and is of the duration required by the law." [Dalton v. Real Estate & Improvement Co. of Balt. City, 201 Md. 34, 41, 92 A.2d 585 \(1952\)](#) (citing [Cox v. Forrest, 60 Md. 74, 79 \(1883\)](#)). Because the "use of a way over the lands of another whenever one sees fit, and without asking leave, is an adverse use," once such adverse use has been established, the responsibility shifts back to "the owner of the land, to show that the use of the way was by license or contract inconsistent with a claim of right." [Clickner, 424 Md. at 280-81](#) (quoting [Cox, 60 Md. at 79-80](#)) (emphasis in original).

"[I]n order to rebut the presumption of adverse use," the owner "must do more than merely *present* evidence of permission—he or she must *prove* its existence by affirmative evidence." [Mavromoustakos v. Padussis, 112 Md. App. 59, 68, 684 A.2d 51 \(1996\)](#). Therefore, "once it is established that a presumption of adverse use applies in Maryland, the burden of persuasion shifts to the servient owner, and remains there" and "[t]he trial court evaluates the evidence with that in mind." [Id. at 69](#).

#### [\*412] *Volume and Continuity of Traffic*

To establish a public way by prescription, the proponent must show "an adverse, exclusive, and uninterrupted use of another's real property for twenty years." [Banks v. Pusey, 393 Md. 688, 699, 904 A.2d 448 \(2006\)](#) (emphasis [\*\*\*37] removed). "[T]he element of exclusivity necessarily functions differently in the context of public use." [Clickner, 424 Md. at 278](#). The standard for a public easement obviously does not require that one person or group show exclusive use over the twenty-year [\*\*1195] period. Instead, as the Supreme Court of Maryland has instructed, "[p]ublic use requires that all persons must have an equal right to the use and that it must be in common, upon the same terms, however few the number who avail themselves of it. . . . as it is the right of public travel and not the exercise of the right which constitutes a road a public highway." [Garrett v. Gray, 258 Md. 363, 378, 266 A.2d 21 \(1970\)](#) (quoting [Dep't of Pub. Works & Bldgs. v. Farina, 29 Ill.2d 474, 194 N.E.2d 209 \(1963\)](#)) (internal citations omitted). See [39 Am. Jur. 2d Highways, Streets, and Bridges § 1](#) (stating that it is "the right of travel by all the world, and not the exercise of the right, which constitutes a road a public highway") (citing [City of Novi v. Robert Adell Children's Funded Tr., 473 Mich. 242, 251, 701 N.W.2d 144, 151 \(2005\)](#)); also 4 Tiffany Real Prop. § 1212 (3d ed.) (stating the right to traverse "must not be confined to persons who can be identified or segregated from the members of the community as a whole, that is, use[] by the public does not mean use[] by certain specific members of the public").

The requirement that adverse use be uninterrupted or continuous also does not mean that the use "must be exercised constantly and without any intermission[;]" [\*\*\*38] rather, the requirement "may be satisfied by use 'with such frequency and constancy as to affect the landowner with notice that it is being exercised[.]'" [Zimmerman v. Summers, 24 Md. App. 100, 108, 330 A.2d 722 \(1975\)](#) (quoting 4 Tiffany Real Prop. § 1202 (3d ed.)). See also [Miceli v. Foley, 83 Md. App. 541, 560, 575 A.2d 1249 \(1990\)](#) ("While continuity is an element of [\*413] adverse possession, what is continuous for purposes of adverse possession depends greatly on the type of land at issue."); 4 Tiffany Real Prop. § 1212 (3d ed.) (stating "the public" means "all those who have occasion for the use[]," and "the amount of travel is immaterial"); 10A McQuillin Mun. Corp. § 30:29 (3d ed.) ("[U]se for the required period is the sole test; it is not a question of the frequency of the use.").

To acquire rights by prescription, "[d]aily use of the right of way is not required, but only that use normally resulting from the nature of the use itself. It is only required that a cessation of use not indicate a voluntary abandonment of the use by the person claiming it." [Clayton v. Jensen, 240 Md. 337, 344-45, 214 A.2d 154 \(1965\)](#). See also [Cox, 60 Md. at 80](#) ("Nor does the law mean by 'an uninterrupted and continuous enjoyment,' that a person shall use the way every day for twenty years, but simply that he exercises the right . . . according to the nature of the use to which its enjoyment may be [\*\*\*39] applied[.]").

#### *Adversity of Use*

When a non-owner "has used a right of way for twenty years unexplained, it is fair to presume that the use has been under a claim of right, unless it appears to have been by permission." [Garrett, 258 Md. at 375](#) (quoting [Smith v. Shiebeck, 180 Md. 412, 419, 24 A.2d 795 \(1942\)](#)). See also [Day v. Allender, 22 Md. 511, 526-27 \(1865\)](#) (holding that if the "claim of a way through enclosed and cultivated land" is "an invasion of property and a trespass[.]" then it is the exercise of "a privilege adverse to the right of property" and acquiescence or submission to it "may justify the inference of a legal right in the person who exercises the privilege"). "Mere failure to protest is not permission but acquiescence[.]" which is "the inactive status of quiescence or unqualified submission to the hostile claim of another[.]" [Dalton, 201 Md. at 50](#) (quoting [Alstad v. Boyer, 228 Minn. 307, 37 N.W.2d 376 \(1949\)](#)).

[\*414] [\*\*1196] The claim of right requirement "appears ordinarily to be satisfied by acts and circumstances of a character which serve to show that the use[] is adverse; as, for example, by exercising jurisdiction over the road, working it, or expending money in repairing it." 4 Tiffany Real Prop. § 1214 (3d ed.).<sup>11</sup> Further, "recognition by the municipal authorities . . . is the strongest sort of evidence that the use[] is not permissive merely." 4 Tiffany Real Prop. § 1217 (3d ed.). Our Supreme [\*\*\*40] Court explained in *Shiebeck*,

If, for example, a person throws open a passage through his land, and makes no effort to prohibit persons from passing through it, and does not show by any visible sign that he wishes to preserve his right over it, his action is a manifestation of an intention to dedicate the highway to public use and he is presumed to have so dedicated it.

[180 Md. at 419-20](#). On the other hand, where owners of a private road permit their neighbors to use a road but do not allow the public at large to use it, those who use it by permission cannot gain a private easement by prescription thereby. See [Easter v. Overlea Land Co. of Balt. Cnty., 129 Md. 627, 632, 99 A. 893 \(1917\)](#) (holding that "[t]he permissive use[] of the road" by neighbors of the owner "did not make it a public road"). Accordingly, in *Pennsylvania R. R. Co. v. Breeden*, although there was evidence of "an increase in the travel" over a section of private land, the Supreme Court held that no public way by prescription was created because, among other things, "there has never been any assumption of control, nor work, labor, care, or maintenance done or undertaken [\*415] by the public authorities[.]" and because the "evidence [was] clear" that those using the lane were "warned by a sign posted along the roadside [\*\*\*41] that the way is a private road[.]" [154 Md. 91, 97, 140 A. 82 \(1928\)](#).

#### *Garrett v. Gray*

In *Garrett*, the petitioners filed a complaint for injunctive relief in the Circuit Court for Prince George's County requesting that the court compel the Grays to reopen a "meandering dirt road," which they had barricaded after purchasing the property over which it ran. [258 Md. 363, 365, 266 A.2d 21 \(1970\)](#). The dirt road in question ran from a public road, through the Gray farm, to its terminus at Osborne Road. *Id.* at 367. Twelve witnesses, including the Garretts and Wilkersons, who owned neighboring properties, testified that they had used the road across the Gray farm and that it was used by members of the public "from at least the year 1914." *Id.* at 368.

In reversing the trial court's determination that road was "a private way for [the property owner's] friends going and coming in either direction[.]" the Supreme Court stated that the "testimony spells out the existence of a public way predicated on the uninterrupted use by the public for over twenty years." *Id.* at 370. [\*\*1197] The Court noted that members of the public had used the road "without objection from 1914 to 1961" and that while "traffic may have been sparse[.]" nonetheless, members of the public freely passed over it without seeking permission [\*\*\*42] of the owners through whose property the road passed, and it was a continued and uninterrupted use by persons other than the property owners whose property is traversed by the road." *Id.* at 378. On the question of permissive use, the Court further explained:

The chancellor dismissed the user by the many witnesses who testified below as 'permissive use.' However, we think the use would more appropriately be characterized as use by 'acquiescence.' In [Dalton \[v. Real Estate & Improvement Co. of Balt. City, 201 Md. 34, 45, 92 A.2d 585 \(1952\)\]](#), *supra*, we said:

[\*416] . . . .

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<sup>11</sup> Other states have found that infrequent traffic by non-owners combined with public maintenance of the roadway can lead to a public easement by prescription. In one Alabama case, [Darby v. Robbins](#), aerial photographs showed that an access road had existed on the property for more than forty years, and testimony proved that the road had been used by a neighbor, the neighbor's invitees, "mail carriers, garbage collectors and meter readers[.]" and had been "been graded on occasions by employees of the state or county road departments." [Darby v. Robbins, 409 So. 2d 722, 723 \(Ala. 1981\)](#). The trial court in [Darby](#) found this testimony sufficient to find that the "road has been in existence and use by members of the public, as well as [neighbors], for over forty years[.]" and was now a public road. *Id.* at 723-24.

\* \* \* Mere failure to protest is not permission but acquiescence. [4 Tiffany Real Prop. § 1196 (3d ed.)]. In *Alstad v. Boyer*, the Minnesota case cited above, the Court expressed it as follows ([228 Minn. 307, 37 N.W.2d 372, 376 \[1949\]](#)):

'Acquiescence is the inactive status of quiescence or unqualified submission to the hostile claim of another, and is not to be confused with permission, which denotes a grant of permission in fact or a license.'

[Id. at 377-78](#). The Court concluded that the dirt farm road was a public way and that the chancellor erred in denying the petitioners' request for injunctive relief. [Id. at 370](#).

## Analysis

### *Burden of Proof*

Appellant Bay City brought suit to quiet title to the Intersection, and so initially it bore "the burden of establishing both possession and legal title by 'clear proof.'" [Porter v. Schaffer, 126 Md. App. 237, 260, 728 A.2d 755 \(1999\)](#) (quoting [Stewart v. May, 111 Md. 162, 173, 73 A. 460 \(1909\)](#)). Here, Bay [\*\*\*43] City satisfied this requirement when it produced original land records showing that both Victoria Drive and Stafford Road were owned by Bay City and attested that it did not dedicate the Intersection to the County at any time.

Thereupon, the burden shifted to Appellees to show the Intersection was in continuous use by the public for a period of 20 years, and thus was conveyed by prescription to the County. Once established, long continuous use by the public is presumed to be by claim of right—adverse to private ownership—a presumption that Bay City must rebut to defeat the prescriptive establishment of a public road. See [Clickner, 424 Md. at 280-81](#). Therefore, Bay City was required to prove that the use was permissive in order to prevail where there was, as we explain below, evidence of continuous use by the public for a period greater than twenty years.

[\*417] On appeal, Bay City argues that the trial court *must* have "based its decision on Bay City's failure to disprove the Appellees' claim of prescription[,] because the court allegedly "did not rely on any actual evidence or testimony of adverse, exclusive, and uninterrupted use by the public for twenty years or more." Bay City claims that the court lacked evidentiary [\*\*\*44] support for its finding that "the entire Intersection has continuously been traversed by members of the public as well as residents of Bay City, including by public utility vehicles, emergency vehicles, trash and delivery trucks, and other public vehicles." We disagree with Bay City's contention that the trial court impermissibly shifted the burden of proof in this case, and we decline its invitation to recast questions of fact as a question of law regarding [\*\*1198] burden of proof. As previously noted, we "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." [Md. Rule 8-131\(c\)](#).

### *Continuity of Public Use: Traffic*

Given the paucity of Maryland decisions that concern the creation of a public road by prescription, the circuit court in this case relied appropriately on the Maryland Supreme Court's opinion in [Garrett v. Gray, 258 Md. 363, 266 A.2d 21 \(1970\)](#). We recognize, as did the trial court below, that [Garrett](#) is immediately distinguishable from the case at bar with regard to the number of witnesses who testified to public travel through the Intersection. The claimants in [Garrett](#) produced twelve eyewitnesses who could [\*\*\*45] testify to quantifiable trips along the farm road by specific persons within a given timeframe; whereas here, only three people testified about public travel through the Intersection.<sup>12</sup> [Id. at 368](#).

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<sup>12</sup> Mr. Dixon, managing member of Land Bridge, testified that during his visits through the Intersection he had never been told that he "shouldn't have been back there" because he was not "a resident or invitee" of Bay City. Mr. Sullivan, a Bay City board member, also testified that while the Intersection "was [not] heavily trafficked[,] use by retail trucks making deliveries "would be

[\*418] Although compared to *Garrett* the testimony of three witnesses may seem sparse, the testimony of these witnesses was sufficient here because, as we discuss further below, there was evidence that the County has maintained the Intersection for a period of over twenty years. For one thing, it does not require a leap in fact or logic to conclude that the public maintenance of Victoria Drive, including the Intersection, for over twenty years required numerous non-resident County employees and contractors to travel over and through the Intersection. Thus, in contrast to the witness testimony in *Garrett*, in this case the witnesses testified not just about their own personal use of the Intersection, but also to their knowledge of the public's use of the Intersection (i.e., delivery trucks), as well as the regular maintenance of the Intersection by the County government since 1995.

Depending on the circumstances, at least one Maryland opinion suggests, although only in *dicta*, that the testimony of a single witness [\*\*\*46] may be sufficient to support a finding of continuous and uninterrupted use by the public for a period of twenty years. In *Mt. Sinai Nursing Home, Inc. v. Pleasant Manor Corp.*, a decision concerning a claim of public way by prescription, the Supreme Court of Maryland held that claimants had failed to supply evidence to "support [] a finding of the necessary continuous and uninterrupted use for twenty years" of the disputed land by the public. [254 Md. 1, 6-7, 253 A.2d 915 \(1969\)](#). Among other theories advanced by the claimants that ultimately failed, they purported to prove that the subject passage "was used for twenty years between 1922 and 1942 by the public for travel by foot and by horse and automobile[.]" by the testimony of a single witness "who appear[ed] to have courted [the land owner's] daughter for [\*419] seven or eight years before they were married and made frequent visits to the [land owner's] home [\*\*1199] before and after the marriage beginning in 1922[.]" *Id. at 7*. The Court observed that

[The witness's] testimony perhaps would have been enough to sustain a finding by the trier of fact of the necessary public use except for the fact that it covered only a period of sixteen or seventeen years from 1922 on, [the witness] having [\*\*\*47] lost all contact with the area after late 1938 or early 1939. There is not one word in the record as to the [p]eriod from 1938 or 1939 to 1942.

*Id.*

On the question of continuity, while we acknowledge that the witnesses here did not, as in *Garrett*, attest to quantifiable trips along the road by specific persons within a given timeframe, as mentioned above, "[t]he requirement that adverse use be continuous does not mean that the user must be exercised constantly and without any intermission[.]" rather, the requirement "may be satisfied by use 'with such frequency and constancy as to affect the landowner with notice that it is being exercised.'" [Zimmerman v. Summers, 24 Md. App. 100, 108, 330 A.2d 722](#) (quoting 4 Tiffany Real Prop. § 1202 (3d ed.)). Moreover, we are mindful of the instruction from *Garrett* that "it is the right of public travel and not the exercise of the right which constitutes a road a public highway." [258 Md. at 378](#) (citation omitted). The *Garrett* Court emphasized that even where "traffic may have been sparse[.]" it was the condition that "members of the public freely passed over it *without seeking permission of the owners*" that constituted "continued and uninterrupted use by persons other than the property owners[.]" *Id.* (emphasis added). *Cf. Miceli v. Foley, 83 Md. App. 541, 560, 575 A.2d 1249 (1990)* (holding that claimant's consistent [\*\*\*48] use of the property as a storage area between periods of active use was sufficient to provide the continuity required for adverse possession, because "what is continuous for purposes of adverse possession depends greatly on the type of land at issue").

#### [\*420] *Continuity of Public Use: Improvements and Maintenance*

It is uncontested that the County performed considerable construction on Victoria Drive to convert it to a public road in the late 1990's. After holding a public hearing on April 19, 1995, the Planning Commission approved the project to bring Victoria Drive and several other Bay City roads up to County standards and "added that section into [the

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common." Finally, Mr. Moore, the County's Chief Road Engineer, testified that in 1995, after a public hearing, the County "approve[d] the project" to upgrade the stretch of Victoria Drive to the County roads inventory, and that the County would have "beg[u]n maintenance immediately." He also testified that the roads were open to the public and accessible to mail delivery trucks, postmen, school buses, and guests.

County's] inventory." At trial, Mr. Moore testified that the County's construction work began in July 1995, and an ordinance to levy the special assessment charges for the project went into effect in March 1998. He also confirmed that the County installed a fire hydrant at the end of Victoria Drive and provided water and sewage services to Bay City. He testified to the location of the fire hydrant using a street-level photograph that was entered into evidence, showing the hydrant just beyond the Intersection on the south side of Stafford Road. [\*\*\*49] He explained that the new utilities would need to pass underneath the Intersection to connect to the hydrant. The location of the fire hydrant alone supports the trial court's conclusion that the upgrade to Victoria Drive in the late 1990's included the Intersection.

In her Memorandum Opinion and Order, the trial court judge found that when the County repaved Victoria Drive in 2015, the "repaving extended throughout the Intersection and around the corner onto Stafford Road" with Bay City's acquiescence, and that "[u]ntil the filing of the Complaint in this action, Bay City made no efforts to assert control over the Intersection." This [\*\*1200] finding is supported by Mr. Dreisedel's testimony that when the County resurfaced the Intersection with slurry seal in 2015, the County covered over tar and chip paving that Bay City had installed as part of its resurfacing of Stafford Road. Also, at trial Mr. Moore used aerial and street-level photographs to show that the County's resurfacing of Victoria Road in 2015 extended through the Intersection.

Mr. Dreisedel and Mr. Moore testified that the County maintains Victoria Drive by providing stormwater management and snow removal. According to their testimony, [\*\*\*50] as of April 1995, the County considered Victoria Drive a county [\*421] road and responded to motorists in need of assistance. They explained that the County performed significant construction during the next three years that extended into the Intersection and began regular maintenance no later than 1998. The County further resurfaced the Victoria Drive in the late 2000's, and again in 2015, encompassing the Intersection in the work. The trial judge found that Bay City failed to assert control over the Intersection even though the County's actions of resurfacing, maintaining, and plowing the Intersection gave Bay City ample notice that the County considered it to be a public road.

We hold that the trial court's finding that the Intersection had been in continuous public use for at least twenty years is fully supported by the testimony of several witnesses that they, and other members of the public, travelled freely through the Intersection without having to request permission, and by the testimony and exhibits demonstrating that the County has improved and maintained the Intersection since 1995.

#### *Adversity of Use*

We return to the decision in *Garrett v. Gray*, in which the Court invoked the "familiar [\*\*\*51] principle" that "the use of a way whenever one sees fit over the land of another, without asking leave is an adverse use, and the burden is upon the owner of the land to show that the use of the way was by license or contract inconsistent with a claim of right." [258 Md. at 375](#) (quoting [Smith v. Shiebeck, 180 Md. 412, 419, 24 A.2d 795 \(1942\)](#)). In *Garrett*, the Court described the witnesses' testimony of traversing the road "without objection" and "without seeking permission of the owners through whose property the road passed[.]" as "use by acquiescence" rather than "permissive use." [Id. at 377, 378](#).

Likewise, in the instant case, Appellees presented some evidence that members of the public had traversed the Intersection in conjunction with their use of Victoria Drive, whenever they saw fit, and without asking leave of Bay City.

[\*422] As we addressed above, because such unchallenged use without permission is presumptively adverse to private ownership, see [Clickner v. Magothy River Ass'n Inc., 424 Md. 253, 280-81, 35 A.3d 464 \(2012\)](#), to rebut that presumption, the owner "must do more than merely *present* evidence of permission—he or she must *prove* its existence by affirmative evidence." [Mavromoustakos v. Padussis, 112 Md. App. 59, 68, 684 A.2d 51 \(1996\)](#). There is no evidence in the record of any member of the public asking permission, paying a fee, or believing permission could be withheld with regard to their use of [\*\*\*52] the Intersection. The trial court found that "no signage has ever been placed at the Intersection indicating any restriction on its use[.]" and Bay City had never restricted public use with "barricades . . . or other restrictions[.]" This finding is supported in the record by the courtroom testimony of Mr.

Dixon, managing member of Land Bridge, who asserted that there was no signage at the Intersection limiting access by "people from outside the community[.]" [\*\*1201] and the trial testimony of Mr. Moore, the County's Chief Road Engineer, in which he said, "I have never seen a sign restricting anything" in Bay City.

Because Maryland decisional law includes few cases concerning the establishment of a public way by prescription, we may consult decisions concerning the doctrine of adverse possession.<sup>13</sup> In *Senez v. Collins*, fixed improvements to the contested property, as well as maintenance, supported a finding [\*423] that the claimant established the adversity of her possession. [182 Md. App. 300, 328, 957 A.2d 1057 \(2008\)](#). There:

Both [claimant and predecessor in privity] engaged in basic yard work and maintenance over the disputed area. [Predecessor] constructed the boat ramp in its entirety, and constructed the wooden bulkhead along the north [\*\*\*53] side of the boat ramp, entirely within the disputed area, to prevent erosion of the land. After [claimant] purchased the [adjacent] property from the [predecessor], she constructed a privacy fence bordering the disputed area and a gate to prevent her dogs from using the boat ramp to enter the creek. She also repaired and extended the boat ramp by pouring additional concrete.

*Id.* We held that a claimant's "[p]ossessory acts of dominion over land may be sufficient to charge the record owner with knowledge that the land is adversely possessed." *Id. at 325* (quoting *Miceli, 83 Md. App. at 561*). Pertinent to the instant case, we also held that "[w]hen an adverse claimant has used the disputed land in the same manner as adjacent land she owns by title, such acts are, if anything, *further* evidence of actual possession." *Id. at 330*.

In the instant case, it is undisputed that beginning sometime in 1995, the County performed the initial construction to run utilities under the Intersection and upgrade Victoria Drive to meet county road standards. Ever since the County began maintenance of Victoria Drive and placed the fire hydrant on the Stafford side of the Intersection in the late 1990s, Bay City was sufficiently on notice that the County [\*\*\*54] was taking dominion and control of the Intersection. We conclude that, because Bay City did nothing to assert its own dominion or control over the Intersection, its failure to stop the County from using taxpayer funds to maintain the Intersection was acquiescence; in other words, it was an "unqualified submission to the hostile claim of another, [] not to be confused with permission, which denotes a grant of permission in fact or a license." *Garrett, 258 Md. at 377-78* (citation omitted).

[\*424] **JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**

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<sup>13</sup> The Maryland Supreme Court has observed that the doctrines are so "markedly similar" that it has "rel[ied] on, as instructive, law concerning adverse possession in a case involving a prescriptive easement" to discuss adverse use and hostility. *Breeding v. Koste, 443 Md. 15, 36, 115 A.3d 106 (2015)* (citing *Banks v. Pusey, 393 Md. 688, 709, 904 A.2d 448 (2006)*). In *Breeding*, the Supreme Court concluded that the "woodlands exception" to the finding of a prescriptive easement, under which there is "a legal presumption that the use is by permission of the owner" where land is "unimproved or in a general state of nature," applies equally to claims of adverse possession because "the case law between the two is consistent to the point at which we are satisfied that extending the 'woodlands exception' to adverse possession cases is the logical, common sense course of action." *Id. at 29-30, 36*.

## *Mt. Sinai Nursing Home, Inc. v. Pleasant Manor Corp.*

Court of Appeals of Maryland

June 2, 1969, Decided

No. 269, September Term, 1968

### Reporter

254 Md. 1 \*; 253 A.2d 915 \*\*; 1969 Md. LEXIS 841 \*\*\*

MT. SINAI NURSING HOME, INC., et al. v. PLEASANT MANOR CORPORATION, et al.

**Prior History:** [\*\*\*1] Appeal from the Circuit Court No. 2 of Baltimore City; Cullen, J.

**Disposition:** *Decree affirmed, with costs.*

## Syllabus

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Bill of complaint by Mt. Sinai Nursing Home, Inc., and Alex Burkoff against Pleasant Manor Corporation and Frank F. Favazza & Sons, Inc. asking a declaration that plaintiffs had an easement or right of way over certain property and injunctive relief. From a decree dismissing the bill of complaint, plaintiffs appeal.

**Counsel:** *Max E. Blumenthal and Leonard E. Cohen, with whom were Joseph Bernstein and Frank, [\*\*\*2] Bernstein, Conaway & Goldman* on the brief, for appellants.

*Eugene P. Smith, with whom were M. William Adelson, Reuben Caplan and Frank B. Cahn, II* on the brief, for appellees.

**Judges:** Hammond, C. J., and Barnes, Finan, Singley and Smith, JJ. Hammond, C. J., delivered the opinion of the Court.

**Opinion by:** HAMMOND

## Opinion

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[\*2] [\*\*915] Two nursing homes in Baltimore are locked in legal combat over a strip of land claimed by the appellants to be a public way established by long user and by the appellee Pleasant Manor to be its absolute property unencumbered by any easement, on which it has now built part of its nursing home. The protagonists cater to the old, the ill, the weak, and the infirm but their owners are strong, resolute, determined and dogged in their litigious struggles.

Mt. Sinai Nursing Home, Inc. and Alex Burkoff, lessee and owner respectively of 4613 Park Heights Avenue, sued Pleasant Manor Corporation, owner of adjacent property, 4615-17 Park Heights Avenue and a portion of the ground in the rear of 4619-4633 Park Heights Avenue, in order to obtain a declaration that they as complainants in an amended bill had an "easement or right-of-way" in or over Hentschel's [\*\*\*3] Lane (ten feet wide which runs east from Park Heights Avenue between 4617 and 4619 Park Heights Avenue), a strip of land running from a twenty-foot alley, referred [\*\*916] to as the "first alley" (which runs north and south along the rear of the houses numbered 4619 to 4633 Park Heights Avenue and is the westerly end of the strip in dispute) some one hundred feet to another twenty-foot alley (the "second alley") which runs north and south in back of houses on Pimlico Road parallel to the

first alley. A twelve-foot alley runs east to Pimlico Road from the second alley. Complainants also sought an injunction requiring Pleasant Manor to stop building part of its proposed nursing home then in course of construction on the strip in dispute, to remove any obstructions and never thereafter in any way to obstruct or interfere with Mt. Sinai's easement of passage or right-of-way.

The amended bill alleged that the portion of Hentschel's Lane, ten feet wide, running from Park Heights Avenue to the first alley "exists by express grant in the chain of title," and the portion running from the first [\*3] alley to the second alley "exists, as shown below, by implied grant, dedication, [\*\*\*4] and long and continuous use." It was alleged below that Mt. Sinai and Burkoff,

"their tenants, invitees, and visitors, Baltimore City garbage collectors, and the public in general have used Hentschel's Lane as an easement or right of way between Park Heights Avenue and the second 20 foot alley for more than 20 consecutive years. Such use has been actual, open, notorious, adverse, exclusive, hostile, continuous, uninterrupted, and under a claim of right and has given the Plaintiffs an easement or right of way by prescription in said Hentschel's Lane up to said second 20 foot alley."

Two other supporting grounds for the claim of an easement were next alleged; the first "an implied grant or implied reservation thereof in their deeds and in the deeds of their predecessors in title," and the second "a dedication thereof to the public in general and to themselves and their predecessors in title in particular as neighboring property owners and residents." Pleasant Manor in its answer controverted all the pertinent and significant allegations of the amended complaint.

Judge Cullen heard an array of witnesses and considered various deeds, plats and documents, and held against [\*\*\*5] the complainants on all three of their contentions. He found:

"In the opinion of the Court, the testimony of the witnesses does not substantiate the Plaintiff's contention that the usage constituted a prescriptive right to an easement over the land on the grounds of adverse possession or implied grant in the chain of title, or by dedication to the public. The continuous use of the area by the various delivery men servicing the nursing home is not well taken by this Court. The testimony of the Defendant's witnesses of the impassable nature and pothole condition of the property [\*4] seems more plausible. The Court lends considerable weight to the disinterested testimony of Officer John H. Erdman, whose description and occasional surveillance of the area leads this Court to believe that an occasional truck or automobile may have crossed the area in order to get out to Park Heights Avenue or Pimlico Road, but the aspect of a continuous or uninterrupted use hardly seems possible. The Court also finds that the use to which the area was subject was temporary and permissive in nature, and as a result can never ripen into an easement by prescription.

"The Plaintiff's argument [\*\*\*6] that an implied grant by deed to use the disputed portion of Hentschel's Lane as an additional exit to another street is without merit. In [Dalton v. Real Estate, 201 Md. 34](#), it was held that when land is granted to various grantees, an easement can only be implied if it is reasonably necessary to the enjoyment of the land conveyed. In this case none of the grantees are landlocked, they all have access to an alley which will exit [\*\*917] them on to a city street. Necessity has not been proven.

"Finally, the contention that the area of land in controversy was dedicated to the public again lacks essence. In order for land to be dedicated to the public, there must be an intention on the part of the grantor to offer the land in question to the public use and a manifest intention on the part of the municipality to accept the dedication thereof. Plaintiff's contention in this area is completely devoid of any evidence of corroboration. The Court is of the opinion that the case of *Chapman v. Rogan*, 222 Md. [12] is controlling."

In this Court the appellants have abandoned the three explicit grounds for relief alleged in their amended bill, grounds to which the testimony [\*\*\*7] pro and con was directed [\*5] and with which the lower court dealt, conceding that they cannot meet their burden of showing that the trial judge was clearly wrong in his findings of fact or wrong in his statements of the law. They turn now to a theory of law which they say was at least inferentially or tangentially presented to the lower court but which the appellee says was neither raised nor decided below -- that irrespective of intent express or implied, to offer to dedicate a way to the public, continuous adverse, hostile travel

over private land by the public for more than twenty years brings into being a public easement. They argue that this theory of law is valid in the current context and urge us, if we agree, to remand the case for determination by the trial judge that the facts justify the application of their present view of the controlling law.

We shall assume that the point they now raise is properly before us for decision (the appellants printed in their reply brief portions of their trial memorandum of law which indicate that their present theory was presented to Judge Cullen, although not with the clarity and vigor of their other theories) but the triumph of [\*\*\*8] the appellants must be short-lived since we conclude that they cannot prevail on that theory and therefore must lose entirely, having abandoned here their three theories relied on at trial.

The texts and the cases reveal that a right in the public to travel over a road or a way may arise by acceptance, evidenced by long continued user by the public, of an offer to dedicate a road to the public. There is another rule of law, which sometimes in an opinion seems to blend into, reflect or overlap the rule as to acceptance by user of an offer of dedication. The second rule, the one now relied on by the appellants, is that "irrespective of the question of intention, uninterrupted use by the public may give the public an irrevocable right. This result follows not because an intention to dedicate is conclusively presumed, but because by the lapse of the statutory period [twenty years] a perfect title by prescription [to an easement in gross] vests in the public." Frank, [\*6] *Title to Real and Leasehold Estates* (1912) p. 203. II *American Law of Property* § 9.50, pp. 483-486; 4 Tiffany, *Real Property* (Third Ed.) §§ 1211-1216. In [Thomas v. Ford, 63 Md. 346](#), Chief Judge Alvey [\*\*\*9] for the Court said at pp. 351-352:

"It is certainly a settled doctrine in this State that public roads or ways of any kind can only be established by public authority, or by dedication, or by long user by the public, which, though not strictly prescription, yet bears so close an analogy to it that it is not inappropriate to apply to the right thus acquired the term prescriptive. Hence the existence of a public way may be established by evidence of an uninterrupted user by the public for twenty years; the presumption being that such long continued use and enjoyment by the public of such way had a legal rather than an illegal origin. *Day v. Allender, 22 Md. 511.*"

See also [State, Use of James v. Kent County, 83 Md. 377, 381](#); [Canton Co. v. Baltimore City, 104 Md. 582, 584-585](#); [Easter v. \[\\*\\*918\] Overlea Land Co., 129 Md. 627, 630](#); [Gray v. Shell Realty Corp., 219 Md. 531, 534](#); cf. [Delmarva Power Co. v. Eberhard, 247 Md. 273](#), and cases cited.

The difficulty the appellants now face is that although the law they now cite would support their right to prevail, they lack the facts to do so. The record offers no support for a finding of the necessary [\*\*\*10] continuous and uninterrupted use for twenty years of Hentschel's Lane from the first alley to the second alley. Mr. Burkoff came to the area first in 1942 and he and the witnesses he called testified only as to what had taken place in regard to Hentschel's Lane from 1942 to the time of trial. The testimony produced by the complainants as to travel and use of the Lane from 1942 on was completely denied and refuted by an impressive array of witnesses whose testimony was accepted as accurate by Judge Cullen, entirely permissibly as we see it. To avoid the findings adverse [\*7] to them as to what occurred from 1942 on, appellants now urge that they proved by the witness Whiteford White, who appears to have courted Mr. Hentschel's daughter for seven or eight years before they were married and made frequent visits to the Hentschel's home before and after the marriage beginning in 1922, that Hentschel's Lane between the first and second alleys was used for twenty years between 1922 and 1942 by the public for travel by foot and by horse and automobile from Park Heights Avenue to Pimlico Road. Mr. White's testimony perhaps would have been enough to sustain a finding by the trier of [\*\*\*11] fact of the necessary public use except for the fact that it covered only a period of sixteen or seventeen years from 1922 on, Mr. White having lost all contact with the area after late 1938 or early 1939. There is not one word in the record as to the period from 1938 or 1939 to 1942. This hiatus makes it entirely speculative that prior to 1942 there was a continuous user by the public for more than sixteen or seventeen years and this failure of proof means that the appellants did not meet their burden of showing use by the public for the necessary twenty years between 1922 and 1942.

*Decree affirmed, with costs.*

Craig B Zaller: MD/DC  
Erin K Voss: MD/DC/IL  
John Tsikerdanos MD/DC  
Sean E. Suhar: MD  
Scott E. Silverman: MD/DC



Stefan B. Ades: MD  
Kelly B. Crockett: MD  
Sean T. McGee: MD/CA  
Joseph M. Peterson: MD

April 29, 2025

Zoning Hearing Examiner  
Prince George's County  
Sent via email to: [ZHE@co.pg.md.us](mailto:ZHE@co.pg.md.us)

Re: **Supplemental Letter of Opposition  
Request for a Continuance  
Request for Subpoenas to be Issued  
Request to Become a Person of Record  
Request to Speak at the Hearing  
Our client: Wingate Homeowners Association, Inc.  
SE-22002/AC-23008 REMAND – Request for Variance  
Applicant: ESC 8215 Springfield Road, L.C.  
Hearing Date: April 28, 2025**

Dear Zoning Hearing Examiner:

As you know, this firm represents the Wingate Homeowners Association, Inc. (“Wingate”). I am sending this letter on behalf of Wingate to state our opposition to the Application (SE-22002/AC-23008 REMAND) that was submitted by ESC 8215 Springfield Road, L.C. to request a Special Exception, and a Variance, to permit a Planned Retirement Community use with 57 age restricted single-family attached dwelling units. The property is zoned RR (Rural Residential) and is located approximately 390 feet southwest of the intersection of Lake Glen Drive and Springfield Road, also identified as 8215 Springfield Road, Glenn Dale, Maryland 20769 (the “Subject Property”). We are requesting that this Supplemental Letter of Opposition and the attachments be made part of the record in this matter.

During the hearing on March 12, 2025, Wingate objected to the Applicant’s request for a continuance (so that the Applicant could request a variance) in this case due to the fact that the Subject Property fails to satisfy the requirements of Section 27-395(a)(3)(B) of Prince George’s County’s prior Zoning Ordinance which requires the property to be at least twelve (12) contiguous acres, and that they would not qualify for a variance. Plus, it is too late to request a variance. However, the Applicant’s request for a continuance was granted over Wingate’s objection. In addition, Wingate requested a continuance and requested a subpoena be issued for the representative of the SDAT, Kim Jackson, Supervisor of Assessments, who sent a letter dated February 27, 2025 to the owner of the Subject Property, David M Stewart, Personal Representative. We also objected to the SDAT’s letter being admissible in this case due to hearsay. However, the letter was admitted into evidence over my objection. Wingate would like for Ms.



Zoning Hearing Examiner  
April 29, 2025  
Page 2

Jackson to appear at the hearing so that we can cross examine the statements in the letter. Wingate also requested a subpoena to be issued for email correspondence and other written communication from Steven W. Jones, Professional Land Surveyor, of CPJ Associates, that he sent to and received from everyone concerning his work to examine older surveys and concerning his work on the new survey of the Subject Property, including but not limited to the Applicant and the owner of the Subject Property. We would like an opportunity to examine this communication so that we can know the reasons why the property was surveyed again in January 2025.

Since the March 12<sup>th</sup> hearing, the Applicant posted the Subject Property with notice of the request for a variance to Section 27-395(a)(3)(B) of Prince George's County's prior Zoning Ordinance. In addition, we received notice of the April 30, 2025 hearing from the ZHE's office to consider the Applicant's request for a variance. However, Wingate did not receive a copy of the Applicant's Supplemental Statement of Justification Requesting Variance until April 27, 2025 from another Person of Record. In addition, we just received Applicant's exhibits late this afternoon, which does not allow enough time for us to examine them and prepare a response. Because we did not receive a copy of the Applicant's Supplemental Statement of Justification Requesting Variance until April 27<sup>th</sup>, and exhibits until today, Wingate hereby requests a continuance of the April 30<sup>th</sup> hearing. We also want to ensure that the subpoenas have been served and that we have an opportunity to cross-examine witnesses and obtain critical information and documents.

In the Supplemental Statement, Applicant admits that the prescriptive easement (the "Prescriptive Easement"), which is comprised of 3,542 square-foot (i.e., 0.0813 acres), should be excluded from the contiguous acreage of the Subject Property. Thus, the Subject Property does not contain 12 contiguous acres and does not comply with Section 27-395(a)(3)(B) of Prince George's County's prior Zoning Ordinance.

However, the Applicant has not acknowledged the existence of 5 easements which were granted to the Washington Suburban Sanitary Commission ("WSSC"). Wingate submitted into the record certified copies of each of these easements which further limits the total usable area. The easements were recorded in 1981, 1987, 1990 (0.2163 acres), 2003 (0.4646 acres), and 2004, which have been attached hereto as Exhibit C. The easements to WSSC represent at least an additional 0.6809 acres of land on the Subject Property which are not usable by the Applicant. Therefore, the usable area on **the Subject Property is further limited to just 11.1391 acres.** Again, the 11.1391 acres of land is less than the required 12 contiguous acres required for a Planned Retirement Community under Section 27-395(a)(3)(B) of Prince George's County's prior Zoning Ordinance. Therefore, the Applicant has now requested a variance to the strict provisions



Zoning Hearing Examiner  
April 29, 2025  
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of the Special Exception requesting a further exception to the specific requirements under Section 27-395(a)(3)(B) of Prince George's County's prior Zoning Ordinance, which requires that the Subject Property contain at least twelve (12) contiguous acres.

A variance can sometimes be granted in conjunction with a special exception, **but only when the specific requirements for the special exception are met.** In this case, the Subject Property does not satisfy even the minimum requirements for a Special Exception under Section 27-295 of the Zoning Ordinance for a Planned Retirement Community, which requires that the property contain at least 12 contiguous acres. Rather, the Subject Property is comprised of only 11.1391 acres of usable area after the easement areas have been subtracted. The Applicant may request a variance to the specific requirements of the general zoning requirements, which in this case the Subject Property is zoned RR. The Applicant may also request approval of a Special Exception, which under Section 27-395 of the prior Zoning Ordinance would be permitted if the Subject Property satisfies specific requirements, including but not limited to the requirement that the property contain at least 12 contiguous acres as provided under Section 27-395(a)(3)(B) of Prince George's County's prior Zoning Ordinance. However, the Applicant may not request a variance to the specific requirements for obtaining a Special Exception. In other words, the Applicant may not request a variance to the specific requirement that the Subject Property contain at least 12 contiguous acres, as required under Section 27-395(a)(3)(B) of Prince George's County's prior Zoning Ordinance. Therefore, Applicant's request for a variance must fail as it is impermissible.

This request for a variance is the latest attempt by the Applicant to try and force the development of a high density development within a low density residential area. However, the Applicant's request for a variance cannot succeed. Specifically, the Subject Property does not satisfy the requirements for a Special Exception because it does not contain 12 contiguous acres. Therefore, the Applicant's request for a variance to the Special Exception requirements is improper and impermissible. The Subject Property is too small for the Special Exception. The Subject Property is also too dense for the surrounding area, which is comprised of low density large residential lots, and the zoning is Rural Residential. The Applicant's proposed Planned Retirement Community will also have a negative impact upon the traffic flow in the area, and a negative impact upon the stormwater facilities, including the pond which is located on Wingate's property for which they have to pay to maintain. Therefore, the Applicant's request for a Special Exception and a Variance to the Special Exception should both be denied. I appreciate you allowing me to make verbal comments during the hearing and for allowing me to submit written comments all on behalf of my client, Wingate Homeowners Association, Inc. If you have any questions or concerns,



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please do not hesitate to contact me via email at [sean@naglezaller.com](mailto:sean@naglezaller.com) or by phone at (410) 212-4112. Thank you.

Sincerely,

Sean E. Suhar

Cc: Board of Directors  
for Wingate Homeowners Association, Inc.



April 29, 2025

Via email only to: [ZHE@co.pg.md.us](mailto:ZHE@co.pg.md.us)  
Zoning Hearing Examiner  
Prince George's County  
14741 Governor Oden Bowie Drive\  
Upper Marlboro, MD 20772

RE: SE-22002/AC-23008 (Request For Variance)  
April 30, 2025 Remand  
Applicant: ESC Springfield Road, L.C.  
Renewed Request for Postponement

Dear Madam Hearing Examiner:

On behalf of my clients, parties of record Howard and Tanya Aldag (8485 Springfield Road, Glen Dale, Maryland) please accept this letter into the record of the above-referenced matter.

I renew my request for a postponement of the scheduled April 30 hearing in this case in light of the approximately 250 pages of **new** materials filed by the Applicant **this afternoon** at 2:41 PM including:

1. A revised "Revised Supplement Statement of Justification";
2. Nine additional documents; and
3. 167 pages of archival Prince George's County Code excerpts.

Agency proceedings, while operating under less rigid rules than those that govern judicial proceedings, nonetheless must adhere to due process considerations which ensure fundamental fairness to all parties. The Applicant's voluminous last-minute submissions guarantee just the opposite by ensuring that my clients are substantively prejudiced as the result of a lack of a reasonable amount of time (by any measure) to review these new materials in order to address them in a meaningful way during tomorrow's hearing. Certainly, considerations of fundamental fairness and due process should ensure that my clients -- and I as their legal counsel -- have more than 21 hours advance service of these voluminous documents to review and prepare for a contested quasi-judicial agency hearing on the merits of the issues which were remanded for further consideration in this case.<sup>1</sup> As in my prior request for postponement, I am not asking for a long delay (10 days would suffice), ensuring no prejudice (and at best *de minimus* inconvenience) to the Applicant.

I am filing concurrently with this letter several two documents into the record. In so doing I do not waive my objection to this case proceeding on April 30 should a postponement not be granted, and formally preserve this objection for the record in that event.

Respectfully submitted,

*Michele McDaniel Rosenfeld*

Michele McDaniel Rosenfeld

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<sup>1</sup> "A zoning board, along with other administrative agencies, is generally not bound by the technical rules of evidence although it must observe 'fundamental fairness' in dealing with the parties who appear before it." *Cremins v. Cty. Comm'rs*, 164 Md. App. 426, 446, 883 A.2d 966, 978 (2005).

Cc via email only:

All counsel of record

Jahi P. Banks, Office Manager, Prince George's County Council,

Office of Zoning Hearing Examiner, [JPBanks@co.pg.md.us](mailto:JPBanks@co.pg.md.us)

Howard and Tanya Aldag, [taaldag@gmail.com](mailto:taaldag@gmail.com)



**User Name:** Michele Rosenfeld

**Date and Time:** Tuesday, April 29, 2025 7:06 PM EDT

**Job Number:** 251643971

## Document (1)

1. [\*Cromwell v. Ward, 102 Md. App. 691\*](#)

**Client/Matter:** -None-

**Search Terms:** 102 Md. App. 691

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Cases

**Narrowed by**  
Court: State Courts > Maryland



Questioned

As of: April 29, 2025 11:06 PM Z

## Cromwell v. Ward

Court of Special Appeals of Maryland

January 4, 1995, Filed

No. 617, SEPTEMBER TERM, 1994

### Reporter

102 Md. App. 691 \*; 651 A.2d 424 \*\*; 1995 Md. App. LEXIS 9 \*\*\*

DAVID CROMWELL et al. v. ARTHUR THOMAS  
WARD, III

**Prior History:** [\*\*\*1] APPEAL FROM THE Circuit  
Court for Baltimore County. Lawrence Daniels, JUDGE.

**Disposition:** JUDGMENT REVERSED; COSTS TO BE  
PAID BY APPELLEE.

### Core Terms

variance, hardship, ordinance, zoning, cases, peculiar,  
practical difficulties, special exception, height, zoning  
ordinance, conditions, unnecessary hardship, subject  
property, Appeals, circumstances, properties, elevation,  
plans, building permit, property owner, restrictions,  
constructed, terms, special circumstance, trial court,  
self-inflicted, provisions, opined, special condition,  
conditional use

### Case Summary

#### Procedural Posture

Appellant sought review from the judgment of the Circuit  
Court for Baltimore County (Maryland) affirming the  
order of the Zoning Board of Appeals granting a height  
variance for an accessory building already built by  
appellee.

#### Overview

Appellee's act of constructing a building of such a height  
as to produce a roof pitched at the angle he desired  
caused the roof to extend above the fifteen-foot height  
limit. The Zoning Board of Appeals granted appellee a  
height variance. The circuit court affirmed the order. On  
appeal, the court found that a property's peculiar  
characteristic relating only and uniquely to that property  
must exist in conjunction with the ordinance's more  
severe impact on the specific property because of the  
property's uniqueness before any consideration will be

given to whether practical difficulty or unnecessary  
hardship exists. The court reversed, holding that  
practical difficulty or unnecessary hardship for zoning  
variance purposes could not generally be self-inflicted;  
however, it was not the purpose of variance procedures  
to effect a legalization of a property owner's intentional  
or unintentional violations of zoning requirements.  
Where administrative entities such as the zoning  
authorities took it upon themselves to ignore the  
provisions of the statutes enacted by the legislative  
branch of government, they substituted their policies for  
those of the policy-makers.

#### Outcome

The court reversed the order of the circuit court affirming  
the order of the Zoning Board of Appeals grant a height  
variance for an accessory building already built by  
appellee.

### LexisNexis® Headnotes

Business & Corporate Compliance > Real  
Property > Zoning > Ordinances  
Real Property Law > Zoning > Ordinances

Real Property Law > Zoning > Variances  
Business & Corporate Compliance > Real  
Property > Zoning > Variances

#### [HN1](#) Zoning, Ordinances

Baltimore Co., Md., Zoning Ordinance § 307, titled  
"Variances," provides, in part, that variances from the  
ordinances provision, i.e., height, may be granted only  
in cases where special circumstances or conditions  
exist that are peculiar to the land or structure which is  
the subject of the variance request and where strict  
compliance would result in practical difficulty or

unreasonable hardship.

Business & Corporate Compliance > Real  
Property > Zoning > Ordinances  
Real Property Law > Zoning > Ordinances

Environmental Law > Land Use &  
Zoning > Conditional Use Permits & Variances

Real Property Law > Zoning > Variances  
Business & Corporate Compliance > Real  
Property > Zoning > Variances

### [HN2](#) **Zoning, Ordinances**

A variance is an authorization for that which is prohibited by a zoning ordinance. The difference between variances and special exceptions is of practical significance. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use once the prescribed conditions therefor are met. A variance is authority to use his property in a manner forbidden, while an exception allows him to put his property to a use which the enactment expressly permits.

Real Property Law > Zoning > Variances  
Business & Corporate Compliance > Real  
Property > Zoning > Variances

Environmental Law > Land Use &  
Zoning > Conditional Use Permits & Variances

### [HN3](#) **Zoning, Variances**

A special exception is one which is controlled and permissible in a given zone. It is granted upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized where the literal enforcement of its terms would result in unnecessary hardships.

Real Property Law > Zoning > Variances  
Business & Corporate Compliance > Real  
Property > Zoning > Variances

### [HN4](#) **Zoning, Variances**

The general rule is that variances and exceptions are to

be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. A variance should be strictly construed.

Real Property Law > Zoning > Variances  
Business & Corporate Compliance > Real  
Property > Zoning > Variances

Environmental Law > Land Use &  
Zoning > Conditional Use Permits & Variances

### [HN5](#) **Zoning, Variances**

A zoning board has authority to grant variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property or by reason of exceptional topographical conditions or other extraordinary situations of specific parcels of property, the strict application would result in unusual practical difficulties to, or exceptional or undue hardship.

Real Property Law > Zoning > Variances  
Business & Corporate Compliance > Real  
Property > Zoning > Variances

### [HN6](#) **Zoning, Variances**

A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met. While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use so long as conditions are met. Therefore, conditional use grants cannot be encompassed within the statutory authority to grant variances.

Business & Corporate Compliance > Real  
Property > Zoning > Nonconforming Uses  
Real Property Law > Zoning > Nonconforming Uses

### [HN7](#) **Zoning, Nonconforming Uses**

Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions hardship arises. The restrictions of the ordinance, taken in conjunction with the unique

circumstances affecting the property must be the proximate cause of the hardship. The hardship, arising as a result of the act of the owner will be regarded as having been self-created, barring relief.

Administrative Law > Judicial  
Review > Administrative Record > General  
Overview

Business & Corporate Compliance > Real  
Property > Zoning > Administrative Procedure  
Real Property Law > Zoning > Administrative  
Procedure

Real Property Law > Zoning > Judicial Review

Environmental Law > Land Use & Zoning > Judicial  
Review

### [HN8](#) **Judicial Review, Administrative Record**

In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.

Real Property Law > Zoning > Variances  
Business & Corporate Compliance > Real  
Property > Zoning > Variances

### [HN9](#) **Zoning, Variances**

A variance may be granted only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, of the zoning ordinance would result in peculiar and exceptional practical difficulties or exceptional hardships.

Real Property Law > Zoning > Variances  
Business & Corporate Compliance > Real  
Property > Zoning > Variances

### [HN10](#) **Zoning, Variances**

A hardship exists only if due to special conditions unique to a particular parcel of land, the ordinance

unduly restricts the use. The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner.

Business & Corporate Compliance > Real  
Property > Zoning > Regional & State Planning  
Real Property Law > Zoning > Regional & State  
Planning

Governments > Local Governments > Duties &  
Powers

Governments > Local Governments > Licenses

### [HN11](#) **Zoning, Regional & State Planning**

A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.

**Counsel:** ARGUED BY Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A. on the brief) all of Towson, MD., FOR APPELLANTS.

ARGUED BY Newton A. Williams (Nolan, Plumhoff & Williams, Chtd. on the brief) all of Towson, MD., FOR APPELLEE.

**Judges:** ARGUED BEFORE WENNER, CATHELL, and MURPHY, JJ.

**Opinion by:** CATHELL

## **Opinion**

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**[\*\*425] [\*693]** Opinion by Cathell, J.

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances **[\*694]** requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations

II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require [\*\*\*2] a different pitch from all other buildings on the property?

III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of § 307 of the Baltimore County Zoning Regulations?

[\*\*426] While those questions are limited, appellant expands in his arguments supporting the questions and argues that

the restrictions of the applicable ordinance, taken in conjunction with the unique circumstances affecting the property, must be the proximate cause of the hardship [Emphasis added.]

and

Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request . . . . [Emphasis added.]

and

Mr. Ward's property is not unique from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the variance process, i.e., it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is -- in and of itself -- unique [\*\*\*3] and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and [\*695T] the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or <sup>1</sup>

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<sup>1</sup>Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard,

unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

[\*\*\*4] What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case sub judice, appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process -- an inherent uniqueness of the subject property not shared by surrounding properties.

#### [\*696] The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for [\*\*\*5] a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;" "[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for

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this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

accessory buildings and **[\*\*427]** was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14'" and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost **[\*\*\*6]** suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height elevations might have been discernable, though we are at a loss to understand why the **[\*697]** elevations were not given in feet and why the plans contained no scale.<sup>2</sup>

**[\*\*\*7]** After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.<sup>3</sup> Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

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<sup>2</sup>Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown -- they are not shown at all -- but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

<sup>3</sup>As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

## The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl. Vol., 1994 Cum. Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they **[\*\*\*8]** normally had to conform to the provisions of Article 66B.

Baltimore County, however, is a charter county and is exempt from many of the provisions in Md. Code Art. 66B. See Md. Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] . . . this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

**[\*698]** The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

Modification only of density, bulk, or area requirements in the zoning ordinance . . . where owing to conditions peculiar to the property, and not the result of any action taken by the applicant, a literal enforcement . . . would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

**HN1**<sup>(↑)</sup> The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, **[\*\*\*9]** i.e., height, may be granted only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance . . . would result in practical difficulty **[\*\*428]** or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions . . . peculiar to the land . . . and . . . practical difficulty . . . ." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than

use variances,<sup>4</sup> if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity **[\*\*\*10]** and **[\*699]** uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses<sup>5</sup> (where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore **[\*\*\*11]** County statute will then be restated and applied to the facts and circumstances of the case sub judice.

#### Special Exceptions (and Conditional Uses) and Variances -- Distinguished

The treatise writers define the concept as:

**HN2**<sup>↑</sup> A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . .

<sup>4</sup>It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

<sup>5</sup>Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, however, "conditional uses" refer to uses while exceptions normally apply to area, i.e., yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

. . . **[\*\*\*12]** . The difference between the two [variances and special exceptions] . . . is of practical significance. . . .

". . . The variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception **[\*700]** contemplates a permitted use . . . [once] the prescribed conditions therefor are met."

. . . [A] variance is "authority . . . to use his property in a manner forbidden . . .," while an exception "allows him to put his property to a use which the enactment expressly permits."

. . . The standards for . . . exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.

**HN3**<sup>↑</sup> "A special exception . . . is one which is controlled and . . . permissible in a given zone. It is granted . . . upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized . . . where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193, 210 A.2d 540 (1965)). **[\*\*\*13]** See also *Schultz v. Pritts*, 291 Md. 1, 11, **[\*\*429]** 432 A.2d 1319 (1981); *People's Counsel v. Mangione*, 85 Md. App. 738, 748, 584 A.2d 1318 (1991).

A distinction commonly is made between [special] exceptions . . . and variances . . . . An "exception" . . . is a dispensation permissible where a board . . . finds existing those facts . . . specified in the ordinance as sufficient . . . . ". . . But zoning ordinances usually provide for another kind of dispensation, . . . by which a variance . . . may be authorized . . . where a literal enforcement . . . would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

**HN4**<sup>↑</sup> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. . . . A variance should be strictly construed . . . .

Id. § 25.162 (footnotes omitted). See also 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* [\*701] § 38.01 (4th ed. 1981); 3 E. C. Yokley, *Zoning Law* [\*\*\*14] and Practice § 21-6 (4th ed. 1979); 3 Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); *Anderson, supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception . . . is expressly permissible . . . . [HN5](#) [↑] [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property . . . or by reason of exceptional topographical conditions or other extraordinary situations . . . of specific parcels of property, the strict application . . . would result in . . . unusual practical difficulties to, or exceptional or undue hardship . . . .

[Stacy, 239 Md. at 193.](#)

Judge Hammond for the Court of Appeals noted in [Montgomery County v. Merlands Club, Inc., 202 Md. 279, 288-91, 96 A.2d 261 \(1953\)](#):

It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which [\*\*\*15] ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area . . . the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance. . . .

....

. . . There is a distinction between . . . the ordinance provisions . . . in those cases [Baltimore City cases] and the facts and the ordinance provision in this case . . . .

See also our case of [Martin Marietta Aggregates v. Citizens, 41 Md. App. 26, 34-35, 395 A.2d 179 \(1978\)](#). [\*702]

[HN6](#) [↑] A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional<sup>6</sup> use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met . . . . While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use . . . so long as . . . conditions are met. Therefore, conditional use grants cannot be encompassed [\*\*\*16] within the . . . statutory authority to grant variances.

[Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459](#) (Ind. App. 3 Dist. 1983) (citations omitted).

In a case affirming the granting of a special exception, the court in [Ash v. Rush County Bd. of Zoning Appeals, 464 N.E.2d 347, 350](#) (Ind. App. 1 Dist. 1984), opined:

A great deal of confusion has been generated . . . because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions . . . . A variance involves a deviation . . . from the [\*\*\*430] legislated zoning classification . . . . A special exception involves a use which is permitted . . . once certain statutory criteria have been satisfied. [Citations omitted.]

See also [Lindquist v. Board of Adjustment, 490 So.2d 16, 18 \(Ala. Civ. App. 1986\)](#) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a [\*\*\*17] special exception may not be used as a substitute for a variance in order to avoid the . . . burden of proving . . . hardship"); [Wolfner v. Board of Adjustment, 672 S.W.2d 147, 150 \(Mo. App. 1984\)](#) ("an exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); [Urban Farms, Inc. v. Franklin Lakes, 179 N.J. Super. 203, 431 A.2d 163, 167](#) (N.J. Super. A.D.), cert. denied, [87 N.J. 428, 434 A.2d 1099 \(1981\)](#) (special exception and variance defined - case decided on zoning estoppel basis); [A. J. Grosek & Associates v. Zoning Hearing Bd., 69 Pa. Commw. 38, 450 \[\\*703\] A.2d 263, 265 \(Pa. Commonwealth 1982\)](#); [Bell v. City Council, 224 Va. 490, 297 S.E.2d 810, 813-14 \(Va. 1982\)](#).

<sup>6</sup> Exceptional is used here in its generic sense.

VARIANCE -

### The First Step - Uniqueness or Peculiarity of the Subject Property

The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. See, e.g., A. Rathkopf, 3 *The Law of Zoning and Planning* [\*\*\*18] § 38 (1979).

*Doorack v. Board of Adjustment*, 709 S.W.2d 140, 143 (Mo. App. 1986). See also *Morrow v. Board of Adjustment*, 765 S.W.2d 700, 701-02 (Mo. App. 1989); *Taylor v. Board of Zoning Adjustment*, 738 S.W.2d 141, 144 (Mo. App. 1987).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md. Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws -- and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because the board of zoning appeals is in effect given the power [\*\*\*19] to set aside or annul the ordinance . . . with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships" . . . . Under our system of written constitutions it is essential that they accomplish those . . . objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them . . . . For such [\*704] phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred . . . .

*Jack Lewis, Inc. v. Mayor and City Council of Baltimore*, 164 Md. 146, 151, 164 A. 220, appeal dismissed, 290 U.S. 585, 78 L. Ed. 517, 54 S. Ct. 56 (1933) (though it

questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487, 165 A. 703 (1933), [\*\*\*20] the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 300, 49 A.2d 799 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "chaos would result if [a building engineer] were allowed to make exceptions or variances [\*\*431] in his own discretion." 187 Md. at 301. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible [\*\*\*21] where the Board . . . finds . . . those facts . . . specified in the ordinance . . . ." Id. at 303.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some [\*705] confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore [\*\*\*22] City special exceptions procedure is one only by title. For all practical purposes, it is also a

variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in [Dampman v. Mayor and City Council of Baltimore](#), 231 Md. 280, 285, 189 A.2d 631 (1963) ("In Baltimore City there appears to be no distinction between the two terms . . . .").<sup>7</sup> We also attempted to indicate the problem in [North v. St. Mary's County](#), 99 Md. App. 502, 510, 638 A.2d 1175 (1994), in footnote 3:

**\*\*\*23]** Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances. . . . It is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

**\*706]** It was incumbent upon the Marinos to have shown . . . (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district, and (iii) that the hardship was not the result of the applicants' own actions.

[Marino v. Mayor and City Council of Baltimore](#), 215 Md. 206, 218, 137 A.2d 198 (1957) (emphasis added). [Salisbury Bd. of Zoning Appeals v. Bounds](#), 240 Md. 547, 214 A.2d 810 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

The only evidence before the Board as to hardship or injustice **\*\*\*24]** involving the property was the fact that repairs and alteration work had been substantially

completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees. . . .

[240 Md. at 554](#). The Court first quoted from 2 Rathkopf, The Law of Zoning and Planning, § 48-1, and then noted:

**HNT** [↑] "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions . . . hardship **\*\*432]** arises . . . . The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. . . . The hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief. . . ."

The instant case fits squarely within the above general rule. . . . If the appellees had used proper diligence . . . and then made accurate measurements . . . [the resultant hardship could have been avoided]. The hardship . . . was entirely self-created . . . .

[Id. at 554-55](#) **\*\*\*25]** (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. See also [Burns v. Mayor and City Council of Baltimore](#), 251 Md. 554, 559, 248 A.2d 103 (1968); [Pem Constr. Co. v. Mayor and City Council of Baltimore](#), 233 Md. 372, 378, 196 A.2d 879 (1964) ("[There was] no evidence of any limitation . . . by . . . size of yards, irregularity of shape of land or buildings, topography, grade or accessibility" . . . .); [Mayor and City Council v. Sapero](#), 230 Md. 291, 186 A.2d 884 (1962); [Frankel v. Mayor and City Council of Baltimore](#), 223 Md. 97, 104, 162 A.2d 447 (1960) ("It was incumbent . . . to show that the hardship . . . affected his particular premises and was not . . . common to other property in the neighborhood. . . . He met the burden . . . ."); [Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.](#), 216 Md. 271, 277-78, 139 A.2d 843 (1958).

<sup>7</sup> Another typical Baltimore City case in that regard is [Easter v. Mayor and City Council of Baltimore](#), 195 Md. 395, 400, 73 A.2d 491 (1950), where the Court noted "facts to justify an exception . . . [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance standard.

Secs. 14 (b), 14 (d) and 16 . . . have been **\*\*\*26]** held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property . . . .

[Mayor and City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 \(1963\).](#)

The Court in [Kennerly v. Mayor and City Council of Baltimore, 247 Md. 601, 606-07, 233 A.2d 800 \(1967\)](#), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "urgent necessity, hardship peculiar to the particular property . . . ." . . . Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In [McLean v. Soley, 270 Md. 208, 210, 310 A.2d 783 \(1973\)](#), [\*\*\*27] one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection [\*708] with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." [270 Md. at 211](#). The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to [\*\*\*28] full occupancy . . . that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance . . . .

. . . .

Concededly, this is a close case, but it is nevertheless sufficient . . . .

[\*\*433] [Id. at 215](#). We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with [Loyola Federal Savings & Loan Assoc. v. Buschman, 227 Md. 243, 176 A.2d 355 \(1961\)](#), and [Frankel v. Mayor & City Council of Baltimore, 223 Md. 97, 162 A.2d 447 \(1960\)](#), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, [\*\*\*29] exceedingly rare. [\*709]

The Court in the sludge storage case of [AD + Soil, Inc. v. County Comm'rs, 307 Md. 307, 513 A.2d 893 \(1986\)](#), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." [307 Md. at 317](#). After addressing the important preemption issues therein raised, the Court directed its attention to the area variances sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question . . . that do not apply generally to other properties . . . in the . . . district." [Id. at 340](#). [\*\*\*30] The Court concluded:

The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary characteristics of the land itself and therefore not the kind of hardship cognizable under the Zoning Ordinance. . . .

We think the Board's decisions . . . reflect no error of law.

[Id. at 340-41](#) (emphasis added).

In [Red Roof Inns, Inc. v. People's Counsel](#), 96 Md. App. 219, 224, 624 A.2d 1281 (1993), after noting the standard of review, we said:

**HNS** [↑] In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.

**[\*710]** The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect **[\*\*\*31]** to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist that are peculiar to the land . . . and where strict compliance . . . would result in practical difficulty . . ." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances of a particular location and must be analyzed individually." *Id.* at 227-28 (emphasis added).

In [North v. St. Mary's County](#), 99 Md. App. at 512, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land . . ." We there stated that, in the zoning context, the term "unique" has a customized meaning:

In the zoning context the "unique" aspect of a variance requirement does not refer **[\*\*\*32]** to the extent of improvements upon the property, or upon neighboring property. **[\*\*434]** "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

....

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, **[\*711]** in [Ad + Soil, Inc. v. County Comm'rs](#), 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . ., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property . . . the literal enforcement . . . would make it **[\*\*\*33]** exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .

The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

[Id.](#) at 514-15.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are [McLean, supra](#); [Stacy, supra](#); [Sapero, supra](#); [Loyola Federal Savings & Loan Assoc., supra](#) (a Baltimore County case); and [Frankel, supra](#). All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, Frankel, Loyola, and McLean appear to be somewhat at odds with accepted Maryland law. McLean was described by the Court as **[\*\*\*34]** a "concededly . . . close case . . ." Frankel has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. [Mayor and City Council of Baltimore v. Borinsky](#), 239 Md. 611, 212 A.2d 508 (1965), involved one of the same issues that was presented in Frankel, i.e., whether a zoning restriction so compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance -- a variance Frankel was granted. The Court noted that the trial court had found Frankel controlling. The Court of Appeals disagreed. The Court acknowledged **[\*712]** that Borinsky had the "same expert witness," "he was asked the same general questions . . . and gave the same answers," and that the

"economic suicide" present in Frankel was "doubly true in this instance." *Id.* at 624. The Court, nevertheless, made a factual distinction and declined to apply Frankel. Judge Barnes opined in dissent that, based on what the Court had done in Frankel, the facts for variances were stronger in Borinsky. Sapero and Stacy met traditional standards for the granting [\*\*\*35] of variances. Frankel, Loyola, and McLean were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York*, 240 Neb. 201, 482 N.W.2d 537 (Neb. 1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell*, 160 Neb. 354, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of Frank, the court said at 545: [HN9](#) [↑] "[A] variance [may be granted] . . . only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of [\*\*435] the zoning ordinance] 'would result in peculiar and exceptional practical difficulties . . . or exceptional . . . hardships . . . .'"

In *Shafer v. Zoning Bd. of Appeals*, 24 Mass. App. Ct. 966, 511 N.E.2d 635 (Mass. App. Ct. 1987), [\*\*\*36] the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

There was no evidence . . . regarding "soil conditions, shape or topography of [the property] . . . especially affecting [the property] but not affecting generally the zoning district in which it is located" . . . . The . . . argument that [\*713] the insufficient width . . . constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

[511 N.E.2d at 636-37](#) (citation omitted). See also *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d

[503, 509 \(Minn. 1983\)](#) ("the plight of respondent was not due to circumstances 'unique to his property.' . . . Some of the problems were the result of illegal acts of respondent's predecessor in title, [\*\*\*37] of which respondent was aware . . . .")

In *St. Clair v. Skagit County*, 43 Wash. App. 122, 715 P.2d 165 (Wash. App. 1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board, approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings . . . ." [715 P.2d at 167](#). The code also required that an application for a variance include a narration that "special conditions and circumstances exist . . . peculiar to the land . . . ." *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case sub judice:

[The appellant] relied primarily upon the fact that the County issued a building permit . . . and that she acted in good faith . . . .

[Id.](#) at 168. [\*\*\*38] The court responded: "Reasons for a variance must be reasons pertaining to the property itself . . . . Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity . . . ." [Id.](#) at 169. In the case sub judice, the [\*714] Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla. 1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created [\*\*\*39] by the owner . . . constitutes no valid basis for a

variance . . . . Deprivation of an advantage does not constitute an unnecessary hardship." [706 P.2d at 904](#). It concluded:

The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, not to activities peculiar to the owner of such property.

[Id. at 904-05](#) (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of [Lucas v. South Carolina Coastal Council, \[\\*\\*436\] 120 L. Ed. 2d 798, 112 S.Ct. 2886 \(1992\)](#), but had facts similar to Lucas, the Supreme Court of Delaware in [Baker v. Connell, 488 A.2d 1303 \(Del. Supr. 1985\)](#), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned [\*\*\*40] open space and nothing could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0-1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the [\*715] property could not conform to open space land. The appellate court affirmed, stating:

Financial return . . . alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0-1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R-2 zone containing multi-family units.

[488 A.2d at 1309](#). Whether this Delaware opinion remains viable in light of Lucas and Dolan v. City of Tigard, \_\_\_ U.S. \_\_\_, [129 L. Ed. 2d 304, 114 S. Ct. 2309 \[62 U.S.L.W. 4576\]](#) (1994), is doubtful.

The case of [Xanthos v. Board of Adjustment, 685 P.2d 1032 \(Utah 1984\)](#), involved a factual [\*\*\*41] scenario similar to the case sub judice. The Xanthoses received

notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance . . . the applicant [must] show . . . that there are special conditions with regard to the property . . ." [685 P.2d at 1035-36](#). The court continued:

What must be shown . . . is that the property itself contains some special circumstance that relates to the hardship complained of . . . .

. . . The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.

.....

Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic [\*\*\*42] loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthoses brought [\*716] their losses upon themselves. The application affirmatively alleged . . . that no dwelling existed . . . . [8]

[Id. at 1036-37](#) (footnotes omitted).

The Xanthoses also argued, in a fashion similar to the argument in the case sub judice, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "To hold that the city should have been put on notice . . . in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication . . . and . . . shift the burden of proof in variance cases to the city. None of these results is acceptable." [\*\*\*43] [Id. at 1038](#). In the case at bar, appellants' application for the permit contained a clear statement that he would

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<sup>8</sup>The application and plans in the case sub judice were, at best, vague and unclear as to the height of the structure.

comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimensions from other schematics, they certainly were not required **[\*\*437]** to do so in light of appellants' affirmative statement of compliance.

See also [\*Chambers v. Smithfield City\*, 714 P.2d 1133, 1135 \(Utah 1986\)](#), where the court stated: "There is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in [\*Prince William County Bd. of Zoning Appeals v. Bond\*, 225 Va. 177, 300 S.E.2d 781 \(Va. 1983\)](#), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted **[\*\*\*44]** that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, **[\*717]** in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." [\*300 S.E.2d at 783\*](#). It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." *Id.*

The court in [\*Richardson v. Town of Salisbury\*, 123 N.H. 93, 455 A.2d 1059, 1061 \(N.H. 1983\)](#), noted:

We have defined unnecessary hardship as follows:

**HN10**<sup>(↑)</sup> "A hardship exists only if due to special conditions unique to a particular parcel of land, the ordinance unduly restricts the use . . . . The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner." [Emphasis added.]

See also [\*Margate Motel, Inc. v. Gilford\*, 130 N.H. 91, 534 A.2d 717 \(N.H. 1987\)](#); [\*Ryan v. City of Manchester Zoning Bd. of Adjustment\*, 123 N.H. 170, 459 A.2d 244 \(N.H. 1983\)](#). **[\*\*\*45]**

In [\*Sibley v. Inhabitants of the Town of Wells\*, 462 A.2d 27, 30-31 \(Me. 1983\)](#), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

The need for a variance [must be] due to the unique

circumstances of the property and not to the general conditions in the neighborhood;

· · · ·

. . . The hardship [must] not [be] the result of action taken by the appellant or a prior owner.

· · · ·

. . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size. . . .

. . . However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also [\*Williams v. Salem Township\*, 92 Pa. Commw. 634, 500 A.2d 933 \(Pa. Commonwealth 1985\)](#) alloc. denied, [\*531 A.2d 781, 516 Pa. 615 \(1987\)\*](#); **[\*718]** [\*Hersh v. Zoning Hearing Bd. of Marlborough Township\*, 90 Pa. Commw. 15, 493 A.2d 807 \(Pa. Commonwealth 1985\)](#); [\*Serban v. Zoning Hearing Bd. of the City of Bethlehem\*, 84 Pa. Commw. 558, 480 A.2d 362 \(Pa. Commonwealth 1984\)](#) **[\*\*\*46]** (burden sustained); [\*Davis v. Zoning Bd. of Adjustment\*, 78 Pa. Commw. 645, 468 A.2d 1183 \(Pa. Commonwealth 1983\)](#) (burden sustained); [\*Malakoff v. Zoning Bd. of Adjustment\*, 72 Pa. Commw. 109, 456 A.2d 1110 \(Pa. Commonwealth 1983\)](#); [\*Immordino v. Zoning Hearing Bd.\*, 65 Pa. Commw. 79, 441 A.2d 818, 821 \(Pa. Commonwealth 1982\)](#) ("Property owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship which is unique to his particular property . . . .") (Emphasis added.)

A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by other property owners in the area . . . . Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.

[\*Town of Indialantic v. Nance\*, 400 So.2d 37, 40 \(Fla. App. 5th Dist. 1981\)](#), *aff'd*, [\*419 So.2d 1041 \(1982\)\*](#) **[\*\*\*47]** (citation omitted). See also [\*Fort Lauderdale Bd. of Adjustment v. Nash\*, 425 So.2d 578, 579 \(Fla. App. 4th Dist. 1983\)](#); [\*City of Naples v. Clam Court Marina Trust\*, 413 So.2d 475, 477 \(Fla. App. 2d](#)

Dist. 1982); Lakeshore [\*\*438] Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments, 481 So.2d 162, 168 (La. App. 4th Cir. 1985), cert. denied, 484 So. 2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in Russell v. District of Columbia Bd. of Zoning Adjustment, 402 A.2d 1231 (D.C. App. 1979), where, due to the size of the lot, no viable economical use of the property could be had without the [\*719] variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. [\*\*\*48] The Supreme Court of New Hampshire reversed the denial of a variance in U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord, 122 N.H. 910, 451 A.2d 1315, 1317 (N.H. 1982), saying: "The location and characteristics of the property involved create greater security requirements . . . than . . . other property in the area because the parcel . . . is less central . . . less populated and . . . less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In Atwood v. City of Portland, 55 Ore. App. 215, 637 P.2d 1302 (Or. App. 1981), cert. denied, 292 Ore. 722, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. See also Higgins v. Township of Radnor, 13 Pa. Commw. 195, 318 A.2d 761, 763 (Pa. Commonwealth 1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of [\*\*\*49] a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

It is fundamental that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions to particular property and not general in character . . . . It is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the

hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides] . . . . The hardship [in order to justify a variance, however,] . . . must relate to the particular property of the applicant . . . .

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

[\*720] It is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, supra [\*\*\*50] § 14.55 (1968).

It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance . . . .

In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question. . . .

Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, supra § 18.30 (2d ed.) (footnotes omitted).

The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot . . . arises from circumstances peculiar to that lot . . . ; and in that case the appropriate remedy is . . . a variance . . . . In the other types of cases, the hardship . . . may arise because of conditions which are general in the neighborhood; . . . it is often [\*439] held that the appropriate remedy is a change in the zoning . . . [\*\*\*51] . The courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, supra § 142.

The great strengthening of the criteria for granting variances, . . . has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the

particular lot in question . . . . Moreover, the courts have again emphasized that a variance granted to take care of some hardship [\*721] personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. See also Rathkopf, *supra* § 38.04; Yokley, *supra* § 21-6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship."). Yokley quotes from [Taxpayers' Association v. Board of Zoning Appeals, 301 N.Y. 215, 93 N.E.2d 645, 647 \(N.Y. 1950\)](#):

The record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general [\*\*\*52] and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21-6.

We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been -- a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case sub judice, we must touch upon two other aspects of the process, i.e., the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

### Self-Inflicted Hardship

We have before referred to [Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 137 A.2d 198](#). There, [\*\*\*53] the Court said, "it was incumbent [on the applicant] to [show] . . . that the hardship was not the result of the applicants' own actions." *Id.* at 218. The Court of Appeals [\*722] noted in *AD + Soil, Inc. v. County Comm'rs, 307 Md. at 340*:

The essence of Ad + Soil's argument . . . is that the setback requirements . . . would cause . . . unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of

these local requirements. . . . The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted . . . and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. See [Pollard v. Zoning Bd. of Appeals, 186 Conn. 32, 438 A.2d 1186, 1190 \(Conn. 1982\)](#) ("Self-inflicted or self-created hardship . . . is never considered proper grounds for a variance." . . . "Where the applicant . . . creates a nonconformity, the board lacks power to grant a variance.") (citations omitted); [Volkman v. City of Kirkwood, 624 S.W.2d 58 \(Mo. App. 1981\)](#); [\*\*\*54] [Matter of Schrader, 660 P.2d 135 \(Okla. 1983\)](#); [Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals, 279 S.C. 598, 310 S.E.2d 438 \(S.C. App. 1983\)](#); [McClurkan v. Board of Zoning Appeals, 565 S.W.2d 495 \(Tenn. 1977\)](#); [Steele v. Fluvanna County Bd. of Zoning Appeals, 246 Va. 502, 436 S.E.2d 453, 456 \(Va. 1993\)](#) ("The hardship, if any, was self-inflicted. The placement of the improvements . . . was within the control of the Garretts and their contractor, Raintree."). See also [Shafer, supra](#); [VanLandschoot, supra](#); [Walkingstick, supra](#); [Xanthos, supra](#); [St. Clair, supra](#). Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively [\*\*\*440] not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning [\*\*\*55] variance purposes cannot generally be self-inflicted.

### The Granting of the Permit

In [Francis v. MacGill, 196 Md. 77, 75 A.2d 91 \(1950\)](#), a property owner sought equitable injunctive relief. The facts [\*723] were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

"Adoption of zoning ordinance ipso facto revokes permit for construction . . . where no construction has begun."

. . . They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

[196 Md. at 85](#) (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in [Mayor and City Council of Baltimore v. Shapiro, 187 Md. 623, 634, 51 A.2d 273 \(1947\)](#), overruled on other grounds in [Nutter v. Non-Profit Housing Co., 230 Md. 6, 185 A.2d 360 \(1962\)](#), [\*\*\*56] where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit . . . does not create a vested right, or estop<sup>9</sup> the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in [Board of County Comm'rs v. Snyder, 186 Md. 342, 347, 46 A.2d 689 \(1946\)](#): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

[\*\*\*57] In the mandamus case of [County Comm'rs v. Ward, 186 Md. 330, 340, 46 A.2d 684 \(1946\)](#), the Court held:

The Board . . . , as an administrative body, was bound to follow the regulations it adopted, in the exercise of . . . [\*\*\*724] delegated legislative power. The fact that it might have re-zoned . . . does not alter its obligation to adhere to existing regulations . . . .

In the case of [Lipsitz v. Parr, 164 Md. 222, 164 A. 743 \(1933\)](#), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

[HN11](#)  A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law. . . . The ordinance forbade the officials . . . to grant the permit which the plaintiff asked and obtained . . . .

. . . It was therefore unlawful for the officers . . . to grant

---

<sup>9</sup>The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of [Offen v. County Council, 96 Md. App. 526, 625 A.2d 424 \(1993\)](#), rev'd in part, [334 Md. 499, 639 A.2d 1070 \(1994\)](#).

the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned.

[\*\*\*58] A permit thus issued . . . does not . . . prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. . . . Every one dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.

So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act . . . it is not estopped by the unauthorized or wrongful act of its officer . . . in issuing a permit that is forbidden by the explicit terms of an ordinance. . . . [Valentine v. Rds. Directors, \[\\*\\*\\*441\] 146 Md. 199, 206, 126 A. 147 \[\(1924\)\]](#) . . . . [Citations omitted, emphasis added.]

[164 Md. at 227-28.](#)

The Court cited Lipsitz in [Inlet Associates v. Assateague House Condominium Assoc., 313 Md. 413, 545 A.2d 1296 \(1988\)](#), a case seeking specific performance and injunctive relief, and also cited [City of Hagerstown v. Long Meadow \[\\*\\*\\*725\] Shopping Center, 264 Md. 481, 287 A.2d 242 \(1972\)](#), [\*\*\*59] a case of a timely appeal of the denial of a building permit. In Inlet Associates, the Court opined that "consequently, 'everyone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" [313 Md. at 437](#). The Court added: "The doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" Id.

Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding

disregards the principal that hardship relates to the special [\*\*\*60] character of the land, not to the circumstances of the owner.

**JUDGMENT REVERSED; COSTS TO BE PAID  
BY APPELLEE.**

[Richardson, 455 A.2d at 1062.](#)

Relator argues the Board should be estopped from denying the height variance because a city building inspector visited the premises several times and observed the construction taking place but made no complaint . . . .

In any case there is no authority on the part of a building inspector to grant a variance . . . .

[Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 \(La. App. 4th Cir. 1970\).](#) See also [Klanke v. Zoning Bd. of Adjustment, 83 Pa. Commw. 441, 477 A.2d 907, 909 \(Pa. Commonwealth 1984\),](#) and [Walkingstick, supra; Xanthos, supra;](#) and [St. Clair, supra.](#) [\*726]

## Resolution

We resolve here only the issue of the granting of the variance sought and applied for by Ward.

There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's [\*\*\*61] impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

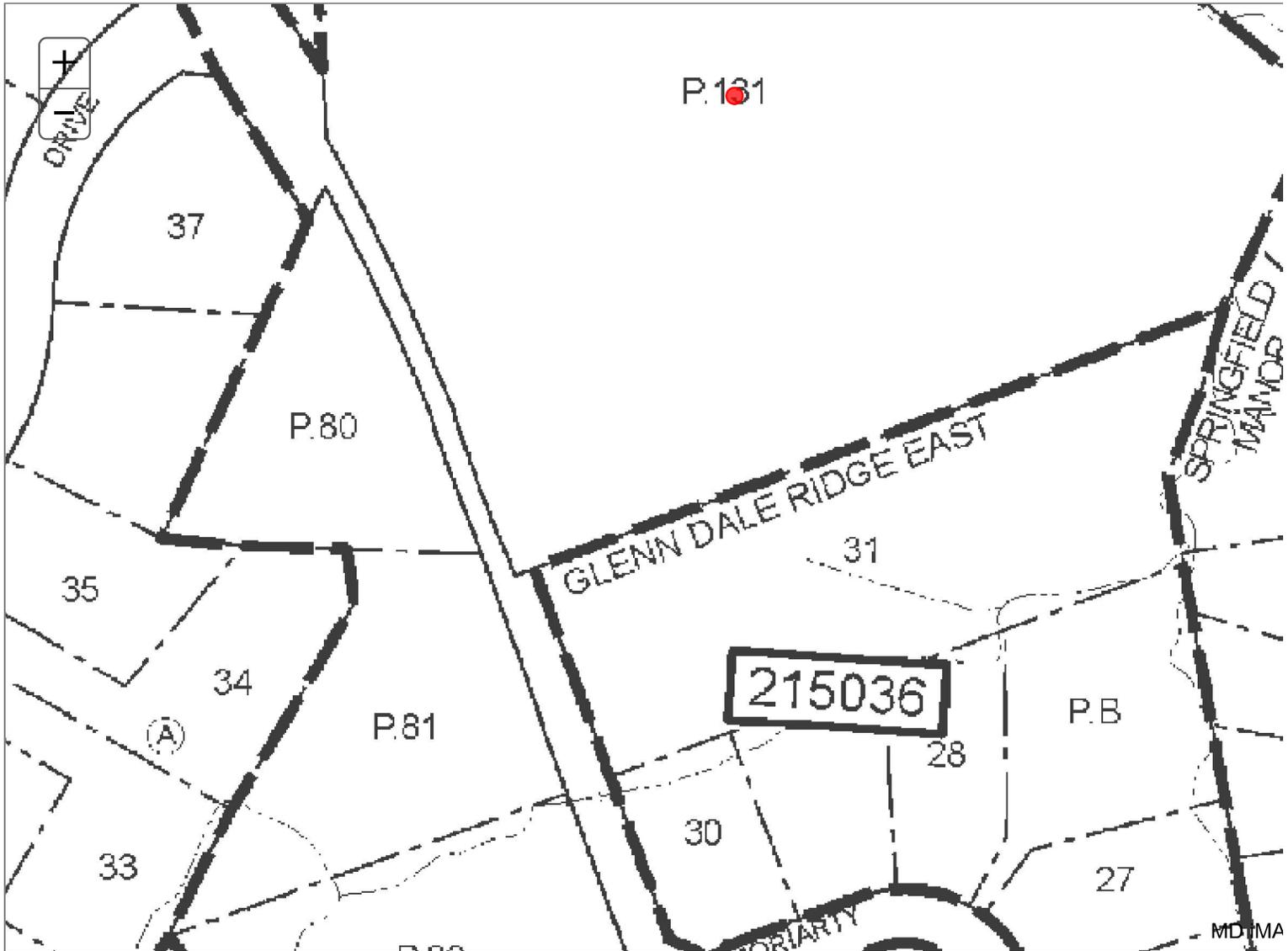
It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policy-makers. That is improper. We shall reverse.

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District: **14** Account Number: **1641547**



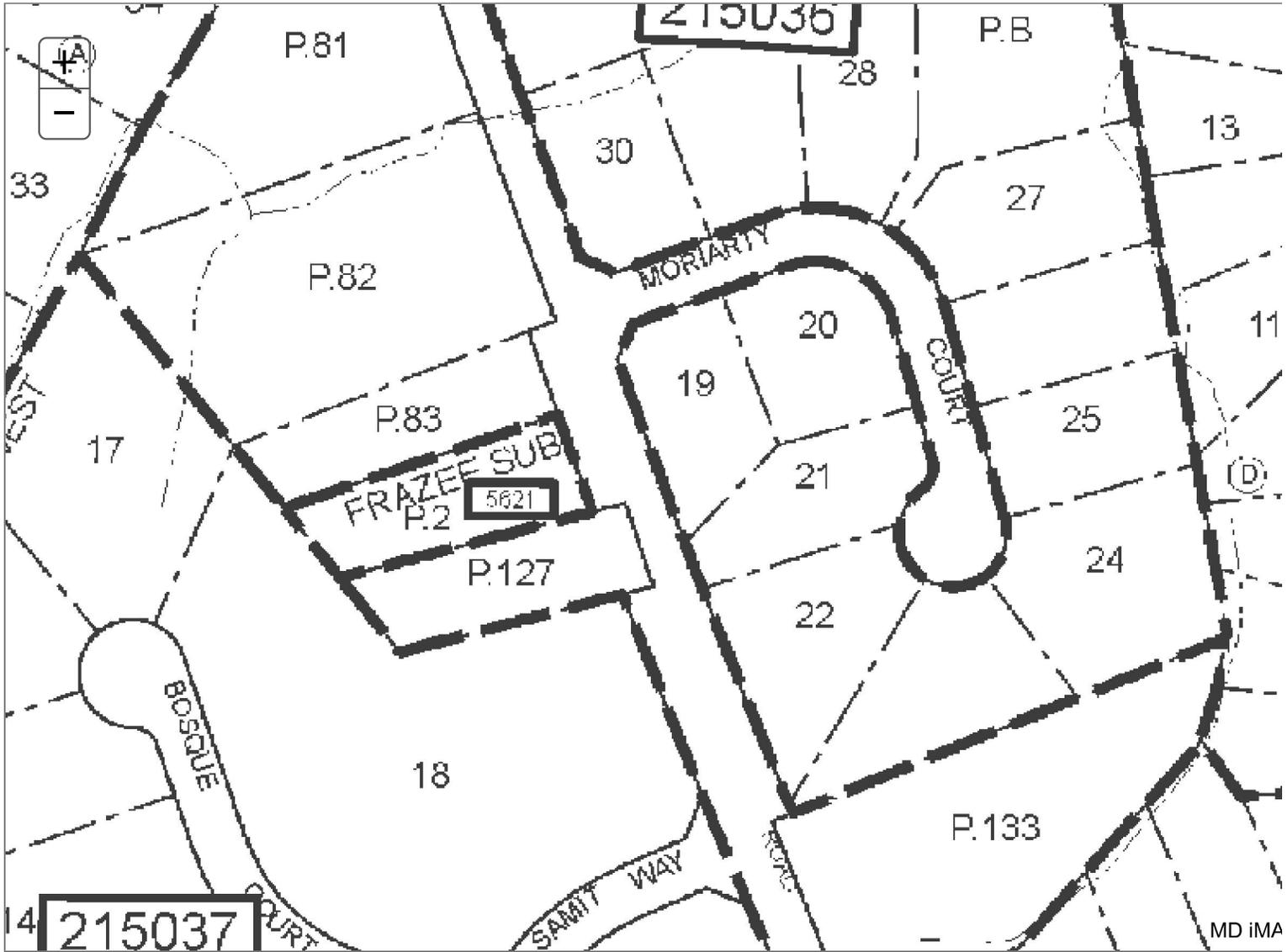
The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at [www.plats.net](http://www.plats.net) (<http://www.plats.net>).

Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at <http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx> (<http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx>).

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District: **14** Account Number: **1641547**



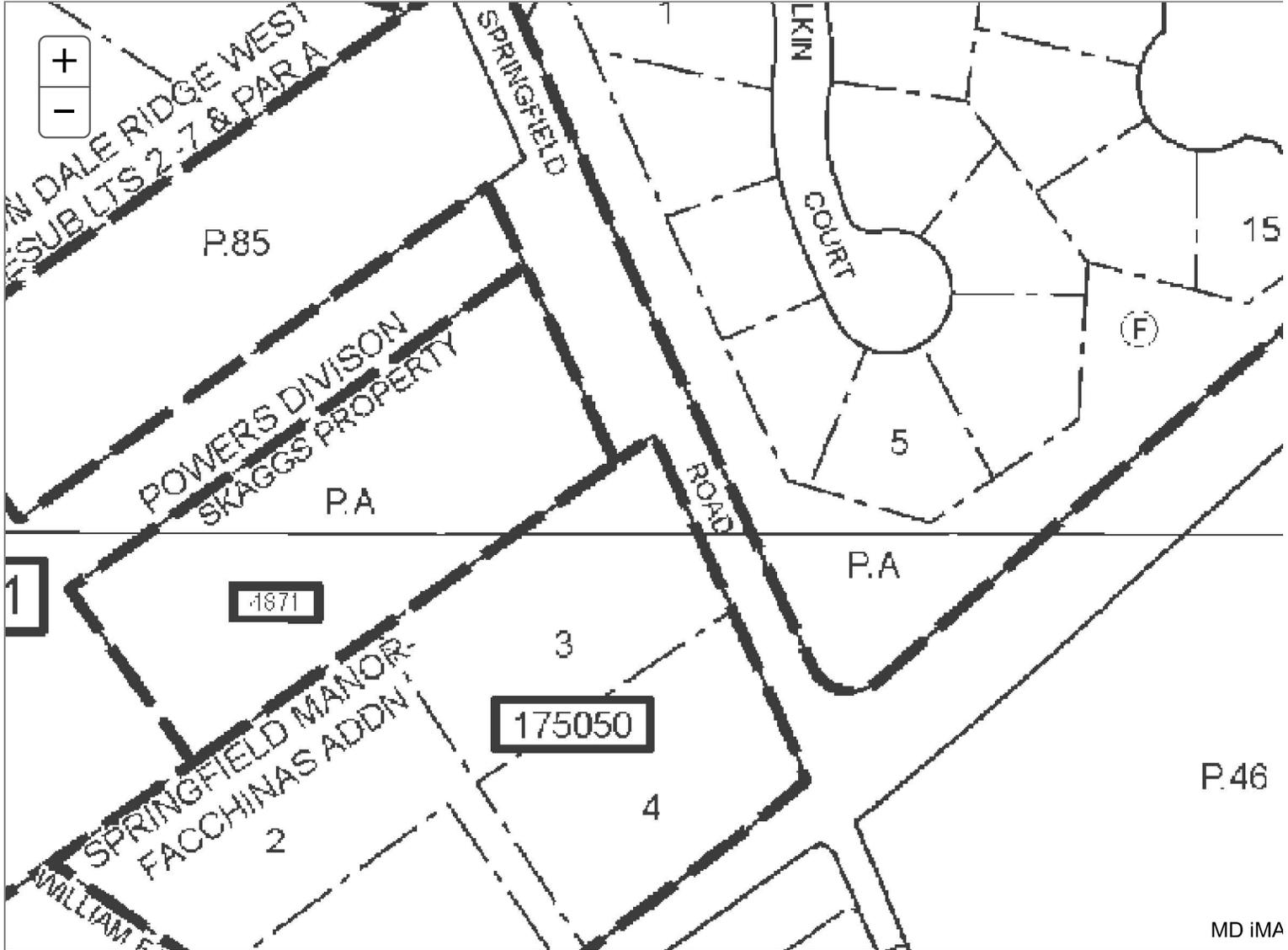
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LAND PLANNING ANALYSIS  
ADDENDUM

Stewart Property

Prepared in connection with  
Special Exception SE-22002

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



May 1, 2025

**NEIGHBORHOOD ANALYSIS**

Per the graphic on PGAtlas, there are (by this planner’s hand count) 1,138 lots and/or parcels of land within the defined neighborhood of SE-22002. A map has been appended to this addendum with the defined neighborhood outlined in red, and the subject property outlined in blue.

Of the 1,138 lots and parcels within the defined neighborhood, 1,085 are platted lots (or parcels), fronting on dedicated streets. These lots and parcels have been colored orange on the appended map.

There are 53 parcels (including the subject property) of as-yet unsubdivided acreage with public road frontage. The 52 parcels of unsubdivided acreage other than the subject property are listed following, with their most recent deeds of record and an excerpt of the legal description from each deed referring to the limit of ownership along their frontages:

<b>Tax Map/Parcel</b>	<b>Liber/folio</b>	<b>Description of Ownership Along Road Frontage</b>
T.M. 29, pp. 309 & 31	38777/401	“pipe set on the southerly side of Sixth Street”
T.M. 29, p. 187	33254/341	“one acre of land excluding that land within the right of way of the Duckettown Road”
T.M. 28, p. 112	38777/401	[no explicit road reference in legal description]
T.M. 28, p. 126	5214/639	“pipe set on the south edge of a 30 foot county road known as Duckett Town Road”
T.M. 28, p. 125	48650/4	“pipe set on the south edge of a 30 foot county road know [sic] as Duckettown Road”
T.M. 28, p. 37	31468/423	“said pipe also being on the South side of Duckett Town Road”
T.M. 28, p. 36	11433/597	“to a point in the center of the Bowie-Duckettville Road”
T.M. 28, p. 34	38732/47	“at a point in the center of the Bowie-Duckettville Road”
T.M. 28, p. 113	41883/26	“thence with the southerly right of way line of Duckettown Road”
T.M. 28, p. 115	18440/265	“to the center of Duckettown Road”
T.M. 28, p. 114	6110/173	“to the center of Duckettown Road”
T.M. 28, p. 183	11552/709	“lying in the southerly line of Duckettown Road”
T.M. 28, p. 80	36242/376	“a point on the west side of Springfield Road”
T.M. 28, p. 81	7937/968	“a point in the center of the Springfield Road”
T.M. 28, p. 82	15958/565	“to an iron pipe in the edge of Perkins Chapel Road”
T.M. 28, p. 83	27395/136	“an iron pipe in the westerly right of way of Springfield Road, 40 feet from the centerline thereof”
T.M. 28, p. 2	41373/199	“to a point on the west side of Perkins Chapel Road”
T.M. 28, p. 133	42705/288	“at a pipe set on the east side of 40 foot wide Springfield-Hillmeade Road”
T.M. 28, p. 85	49135/240	“at a point on the westerly side of Springfield Road”
T.M. 36, p. 35	8650/818	“and the north line of the Lanham Severn Road”
T.M. 36, p. 33	10196/326	“an iron pipe...on the north line of the Lanham-Severn Road”
T.M. 28, p. 93	36108/613	“iron pipe found in the north line of the Lanham-Severn Road”
T.M. 28, p. 95	23284/130	“a pipe on the west side of the Lanham-Severn Road”
T.M. 28, p. 101	49428/413	“with the north edge of said [Lanham-Severn] road”

T.M. 28, p. 98	16172/189	"an iron pipe set on the northerly edge of the right of way of the Lanham-Severn Highway"
T.M. 28, p. 99	40714/238	"at an iron pipe found on the north side of the Lanham Severn Road"
T.M. 28, p. 55	34356/493	"at the point of intersection between the north right-of-way line of the Lanham-Severn Road"
T.M. 28, p. 152	37318/392	"being the intersection of the easterly property line and the northernly right-of-way line of Lanham-Severn Road"
T.M. 28, p. 171	25116/178	"on the north side of the Lanham Severn Road"
T.M. 28, p. 111	27146/188	"on the west line of Cowan Avenue"
T.M. 28, p. 146	47012/446	"said point also being the north end of the southwesterly right of way line of Cowan Avenue"
T.M. 28, p. 70	28011/387	"running... along the East line of Cowan Avenue"
T.M. 28, p. 71	7336/80	"said pipe being in the east line of Cowan Avenue"
T.M. 28, p. 72	50669/509	"to a stake in the eastern boundary of Cowan Avenue"
T.M. 28, p. 18	49010/477	"at an iron pipe set on the west side of Church Lane (30 feet wide)"
T.M. 28, p. 62	10628/57	[no explicit road reference in legal description]
T.M. 28, p. 63	50231/21	"at a point on the west side of a 30 foot roadway"
T.M. 28, p. 64	50231/25	"with the westerly line of a 30 foot road"
T.M. 28, p. 162	39439/128	"at an iron pipe found on the west side of Church Lane"
T.M. 28, p. 58	38725/139	[no explicit road reference in legal description]
T.M. 28, p. 59	32877/484	[no explicit road reference in legal description]
T.M. 29, p. 62	31809/559	"in the northwesterly line of 8 <sup>th</sup> Street"
T.M. 29, p. 63	44423/70	[no explicit road reference in legal description]
T.M. 29, p. 64	10413/767	[no explicit road reference in legal description]
T.M. 29, p. 66	44055/1	"on the eastern side of Park Street"
T.M. 29, p. 67	43566/92	"on the east side of a 30 foot right of way"
T.M. 29, p. 72	35279/509	"with the northerly right of way line of Lanham-Severn Road"
T.M. 29, p. 73	38008/35	"an iron pipe in the northern line of Lanham-Severn Road"
T.M. 29, p. 74	45674/486	"at an iron pipe on the northern side of the Lanham-Severn [sic] Road"
T.M. 29, p. 65	43596/384	"at a point on Park Avenue"
T.M. 29, p. 69	3746/216	"to a point in the northerly line of Lanham-Severn Road"

The land ownership in five of the 52 parcels (in addition to the subject) are described as running to the center of the road. These five parcels have been colored blue on the appended map, with the remaining 47 deed parcels having been colored green.



Craig B Zaller: MD/DC  
Erin K Voss: MD/DC/IL  
John Tsikerdanos MD/DC  
Sean E. Suhar: MD  
Scott E. Silverman: MD/DC



Stefan B. Ades: MD  
Kelly B. Crockett: MD  
Sean T. McGee: MD/CA  
Joseph M. Peterson: MD

May 2, 2025

Zoning Hearing Examiner  
Prince George's County  
Sent via email to: [ZHE@co.pg.md.us](mailto:ZHE@co.pg.md.us)

**Re: Second Supplemental Letter in Opposition**  
**Our client: Wingate Homeowners Association, Inc.**  
**SE-22002/AC-23008 REMAND – Request for Variance**  
**Applicant: ESC 8215 Springfield Road, L.C.**  
**Hearing Date: May 7, 2025**

Dear Zoning Hearing Examiner:

As you know, this firm represents the Wingate Homeowners Association, Inc. (“Wingate”). After having reviewed the Applicant’s latest submissions, I am sending this letter on behalf of Wingate to further state our opposition to the Applicant’s Statement of Justification Requesting Variance. We are requesting that this Second Supplemental Letter in Opposition be made part of the record in this matter.

A variance may only be granted if a parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features). In this case, the Applicant claims that the portion of the Subject Property which is subjected to a prescriptive easement, or the public roadway, is a unique physical characteristic affecting the Subject Property. We disagree, however, because a prescriptive easement is a legal right to use another’s land gained through continuous, open, and adverse use for a specific period of time, which is not a unique physical condition, and therefore, does not justify the granting of a variance in this case. In addition, prescriptive easement which is caused of the public roadway is something that is shared by several surrounding properties in the neighborhood. Therefore, the prescriptive easement does not make the Subject Property unique and unusual from surrounding properties. “Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.” Cromwell v. Ward, 102 Md.App. 691, 695-696.

If there is a finding that the property is unique, unusual, or different, the variance may only be granted if the alleged particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of



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the provision will result in peculiar and unusual practical difficulties to the owner of the property. In this case, the Applicant argues that the impact and practical difficulties resulting from the prescriptive easement are peculiar and unique to the Subject Property and is not an impact that would usually be experienced by other developers of Planned Retirement Communities in the prior R-R Zone. We disagree because the prescriptive easement is not unique, unusual or different. Rather, the prescriptive easement is comprised of a public roadway which affects every property owner and every developer of property on Springfield Road. In addition, the Special Exception's requirement that the property consist of 12 contiguous acres is not unique to the Stewart property alone. Such requirement applies to every property in the neighborhood which applies for a special exception for a Planned Retirement Community. Also, the strict application of the Special Exception requirements will not create hardship because the Applicant and owner of the Subject Property are not prevented development under the general Rural Residential Zoning. Moreover, the Applicant will still have reasonable and significant use of the Subject Property. Although the property owner and Applicant do not qualify for a Special Exception for a Planned Retirement Community on the Subject Property, the owner and Applicant may still be able to develop the Subject Property for uses which are permitted under the Rural Residential Zoning. There is no evidence to suggest that a denial of the variance requested by the Applicant would deprive it of all beneficial use of the Subject Property.

If there is a finding that the property is unique, unusual, or different, a variance may be granted only if such variance is the minimum reasonably necessary to overcome the exceptional physical conditions. Again, the Applicant claims that the prescriptive easement is a physical condition, which it is not. However, the Applicant also claims that the grant of a variance is minimal. This is also untrue. There are five additional easements granted to WSSC, which reduces the developable area to just 11.13 acres. Therefore, this would have a significant impact upon the 12 contiguous acre requirement is a critical requirement of the Special Exception for a Planned Retirement Community.

In addition to the foregoing, the Applicant claims that granting a variance in this case will not create a substantial impairment to the intent, purpose and integrity of the General Plan or any Area Master Plan, Sector Plan, or Transit District Development Plan affecting the Subject Property. We disagree because the entire neighborhood is comprised of lots which are zoned Rural Residential, and all other lots are low density made up of 1 acre or more. For example, a new development, Glenn Dale Estates by Mid-Atlantic Builders, is currently under construction on property which is immediately adjacent to the Subject Property on Springfield Road. The adjacent property under development consists of lots which exceed 2-acres in size and complement the low-density residential character of the neighborhood because it complies with the Rural Residential



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Zoning. In addition, the 256 residential lots in Wingate, which is directly across the road from the Subject Property, are all zoned Residential Estate where the lots are between 1 and 2 acres or more. There is no use in the neighborhood, which is a Planned Retirement Community, and none of the lots are comprised of 57 attached homes or a high-density community like what is planned as a part of the Applicant's proposed development. In addition, the Applicant has not presented any evidence to prove that a variance will avoid causing a substantial impairment to the intent, purpose and integrity of the General Plan or any Area Master Plan. Therefore, the Applicant's request for a variance should not be granted.

The Applicant also claims that a variance will not substantially impair the use and enjoyment of adjacent properties. We disagree, however, because the granting of a variance in this case will substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception. Therefore, the Applicant's request for a variance should be denied.

There is not a substantial amount of evidence to support the Applicant's claims. If the variance is granted, the essential character of the neighborhood would be altered and negatively impacted. The Applicant's experts have not proven otherwise. The Special Exception should also be denied because the Applicant has not proven the Subject Property consists of 12 contiguous acres and therefore, the Subject Property does not satisfy the requirements under Section 27-395(a)(3)(B) of Prince George's County's prior Zoning Ordinance.

Therefore, the Applicant's request for a Special Exception and a Variance to the Special Exception should both be denied. I appreciate you allowing me to make verbal comments during the hearing and for allowing me to submit written comments all on behalf of my client, Wingate Homeowners Association, Inc. If you have any questions or concerns, please do not hesitate to contact me via email at [sean@naglezaller.com](mailto:sean@naglezaller.com) or by phone at (410) 212-4112. Thank you.

Sincerely,

Sean E. Suhar

Cc: Board of Directors  
for Wingate Homeowners Association, Inc.

May 2, 2025

Howard and Tanya Aldag  
8485 Springfield Road  
Glenn Dale, Maryland 20769

**RE: Stewart Property (SE-22002/AC-23008) Variance**

Dear Clerk of the County Council:

This is testimony that will be given by Howard Aldag during the Zoning Hearing for the Stewart Property residential development SE-22002/AC-23008 Variance proposed on Springfield Road, Glenn Dale MD 20769. The 11.94-acre Stewart Property site would be developed as a planned retirement community consisting of 57 single-family attached homes. Please make this testimony a part of the record for the hearing on May 7, 2025.

I moved to Springfield Road in 1986. It was a wonderful country road with acreage, and everything was green and beautiful. The houses were all on 1 to 10 acres or more. The Stewart's had a horse that was fenced up to Springfield Road. It was a pleasant rural residential atmosphere and a nice place to live. Now, there is construction everywhere and approximately 150 houses are being built right now. Literally there is approximately 50 or more acres of ground being cleared on 3 jobsites, where not a single tree is left standing. These homes have sold very well and some of the construction projects are completely sold out. Now to add this high-density retirement community on top of the present construction it will totally destroy the beautiful place we moved into 38 years ago.

Tatjana (Tanya) and I are here to strongly oppose the Variance request for the Stewart Property. This development as a planned retirement community is out of character with our rural residential neighborhood, and it directly conflicts with the zoning intent of the RR zoning. This Variance should not be approved.

**There is no hardship regarding this property.** Not once but twice in these zoning hearings it was shown that there are not 12 acres of continuous acreage and there never was 12 acres. According to SDAT, two deeds from 2018 (401916/00567) are associated with 8215 Springfield Road for Assessment Year 2023. Based on those deeds, 8215 Springfield Road is identified, in relevant part, as tax map 28 and parcel 131. SDAT indicates that the legal description for "all" of parcel 131 consists of only 10 acres of land that was recombined with another deed on July 1, 2010. SDAT also indicates the property land area for parcel 131 is 11.94 acres - i.e. - more than 10 acres but less than 12 acres. SDAT further indicates that for Assessment year 2023, 8215 Springfield Road, was identified as Map 28 and Parcel 131, was not land assessed as containing 12 or more acres.

Mark Ferguson, land planner for Applicant, testified that the subject property would be less than 12 acres when the prescriptive easement is conveyed out of Parcel 131 as defined by SDAT.

Then Steven Jones, land surveyor for Applicant, testified that the prescriptive easement, approximately 3,524 sf was conveyed in one of the deeds provided in the record – which when deducted - results in a legal description of the property area - as defined by SDAT – being only 11.83 acres – less than at least 12 contiguous acres required for a Planned Retirement Community use. (12/20/2023, Tr., pp 25-26) ZHE Exhibits at 782/Exhibit 107.

We further do not agree with the comments of the Supplemental Statement of Justification transmitted on 4/30/25 – Analysis Section 24-230, section 6. There is no way that the County would, without the Stewart’s knowledge or permission, spend at least an estimated \$200K to build the road and maintain the roadway for over 30 years using their property. There was no condemnation or Government “taking” recorded, and for over 30 years there have been no demand letters or filed claims from the Stewart’s for return of the property or for compensation. Even if the property was 12 acres the area under the pavement will never be returned to the Stewarts and is not part of the property due to the actions and lack of actions by the Stewarts.

Thus, the Stewart’s and Developer knew many years before submitting the Special Exception to the Zoning Board that there was not 12 acres of contiguous land. When it was shown they did not have 12 contiguous acres they pursued this Variance to rectify the land issue so they could continue with the Special Exception. They thought that parcel size was so close that the Special Exception would be approved, and the project and the size of the parcel would not be scrutinized. Having a property that is smaller than what the zoning requires is not a hardship relating to the physical property.

Also, finding 12 acres of contiguous land is not unusual or a hardship in this area; for instance, a 12-acre property just became available on Greenbelt Road which would make a much better site and location for a planned retirement community. It has a better location, next to a shopping center, under 2 miles from the hospital, and is on public transportation.

In essence, they tried to pull a fast one on the Zoning board and Community. As you can see there was no hardship plea that would justify granting this Variance. They knew the parcel was too small for the project years before they submitted for the Special Exception. They even paid their taxes on the property 2023 for a parcel that was less than 12 acres.

**This Special Exception and Variance will negatively affect the surrounding area and contradicts the spirit of the zoning code.** On Springfield Road there has been approximately 150 detached single family homes approved and under construction. There is no commercial, multi family dwellings or office buildings. Springfield Road is just a two-lane rural road with houses on it. To put a retirement community on this road will negatively impact this community and change the rural residential nature of the Springfield Road area. Having single family houses is much different than having a retirement community. There will be 57 attached houses with one entrance, on 11.94 acres that will need to have more services coming into the property such as ambulances, nursing care, wheelchair transportation and other community services that are related to the elderly community. There are no hospitals or shopping centers 2 miles or less from this property as discussed in the zoning requirements, making this property not an appropriate fit for the use. The proposed construction on the Stewart’s property is so extensive it is too dense and not compatible

with the area. Being that the County has approved the construction of approximately 150 houses, and all the construction is presently going on, the timeline to approve this project has passed. The approved present construction on Springfield Road has already maximized the infrastructure and the volume the roads can handle. This project is not a compatible use and contradicts the spirit of RR zoning. Literally, adding this project to what has already been approved would destroy the urban nature of the immediate and surrounding area.

This project was designed to maximize revenue not functionality and does not take into account it's negative impact on the immediate area.

**There is no demonstrable urgent need for this type of housing in the Glenn Dale/Springfield Road marketplace.** Presently there are 7 large senior living facilities in and around Bowie/Greenbelt. To name a few of them:

- Woodlands at Reid Temple – Glenn Dale MD, 62+ seniors, 252 units
- Pin Oak Village – Bowie MD, 55+ seniors, 220 units
- Evergreen Senior Community – Bowie MD, 62+ seniors, 108 units
- Tribute at Melford – Bowie MD, 55+ seniors, 150 units
- The Willows – Bowie MD, 62+ seniors, 79 units
- Vistas at Lake Largo – Largo MD, 55+ seniors, 111 units
- Manor at Victoria Park – Temple Hills MD, 55+ seniors, 148 units

**Presently there are 1,068 Units for 55 to 65+ senior living, with literally 100s of available units.**

In and near Bowie there are 52 independent Assisted Living facilities.

In and near Greenbelt there are approximately 199 assisted living facilities.

**Presently there are approximately 251 independent Assisted Living Facilities all around and near the Bowie/Greenbelt area. These Assisted Living Facilities also provide senior living accommodations.**

**TRAFFIC** - Each housing unit has a 2-car driveway, and in the published Bowie demographics the average household in Bowie has 2 vehicles. Thus, we are looking at approximately 114 cars that would be added to the overused Springfield Road. Finally, this project has only one entrance for ingress and egress which is not sufficient in handling the coming and going traffic of this subdivision. There would be an unacceptable traffic jam inside the project subdivision and on Springfield Road every day.

This development is supposed to be a planned retirement community. Per the Bowie MD demographics the average age of retirement is 65 years of age. This project is for 55+ years of age which means the occupants may have an additional 10 years of working after purchasing a home in this subdivision. That means the traffic in the rush time periods would be similar to other

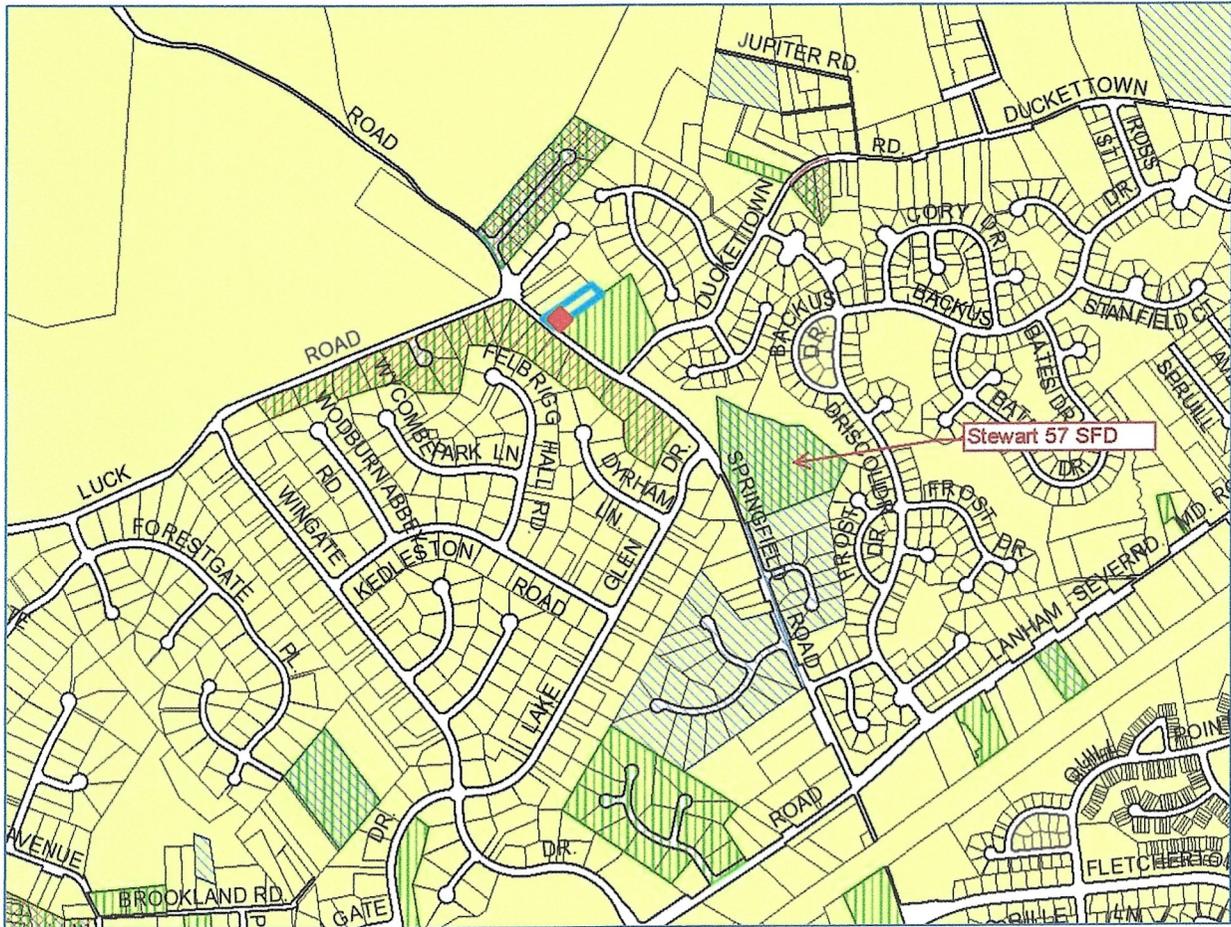
houses in the immediate area and would not have a greatly diminished traffic load as was portrayed by the retirement community developer's testimony.

The traffic concerns of our neighbors include:

- There is substantial cut-through traffic from the USDA Beltsville Agricultural Research Center,
- The current traffic volume is such that it is difficult to safely turn onto Springfield Road from driveways and intersecting residential streets,
- Area residents experience substantial delay in turning from:
  - Driveways onto Springfield Road, and from
  - Stop-sign controlled intersections such as:
    - Springfield Road-Lanham Severn Road,
    - Springfield Road-Lake Glen Drive, and at
    - Good Luck Road-Springfield Road.
  - And when turning from Springfield Road onto Lanham-Severn Road
  - Personally, I need to plan an extra 10 minutes to get out of my driveway. (8485 Springfield Road)

I believe that these concerns are valid and could be exacerbated by the traffic from the Stewart's Property plus other future developments affecting Springfield Road. This added traffic could lead to significant safety concerns and delay everyone owning property abutting Springfield Road.

The map on the next page is from [PGAtlas](#) and shows that the Stewart Property is one of a number of development projects proposed for the area as indicated by the hatching.



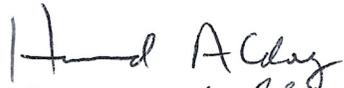
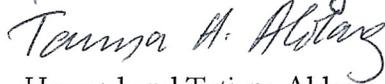
Unfortunately, it appears Stewart Property trip generation falls below the threshold for a full Traffic Impact Study (TIS). There is presently approximately 150 home not including this proposed retirement community that are under construction or proposed on/around Springfield Road. It is likely that other developments under construction or proposed for the Springfield Road area may also fall below the TIS threshold. As a result, an assessment of the cumulative impacts of existing and future traffic volume does not appear to exist. Already, the traffic volume on Springfield Road is too much for the two-lane road.

I recommend that the Zoning Hearing Examiner deny this Variance; because this project has **environmental issues**, is **too high of a density of housing for a rural residential area**, and **not compatible with surrounding housing** units, it is demonstrated that there is no urgent need for this retirement community, will increase the amount of traffic on Springfield Road, and is a dysfunctional community layout. This project will diminish the area for every resident if it is allowed to proceed.

I want to be clear that my wife and I do not support this Variance. This use is not compatible with the surrounding neighborhood, a planned retirement community is not an appropriate land use on Springfield Road. This use is just a way to have almost 3 to 5 times the density of use on this piece of land using a Variance so that the developer may obtain a Special Exception for this retirement community.

This is not an acceptable project for the surrounding residents and will change the Springfield Road area forever. This Variance should not be approved.

Best regards,

  
  
Howard and Tatjana Aldag

