

**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. ¹ (Exhibits 106-109)

¹ 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 Aldag² 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 ...

² Mr. Aldag was not accepted as an expert witness.

SE-22002/AC-23008

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 found 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))

SE-22002/AC-23008

- 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.