

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

NOTICE OF DECISION

Councilmanic District: 1

S.E. 4682

American Legion Post #28

Case Number

On the 12th day of December, 2013, the attached Decision of the Zoning Hearing Examiner in Case No. S.E. 4682 was filed with the District Council.

The Zoning Hearing Examiner's decision shall become final 30 calendar days after the above filing date unless:

- (1) Written appeal within 30 days of the above date is filed\* with the District Council by any person of record or by the People's Zoning Counsel; or
- (2) The District Council directs the case be transmitted to the Council for final disposition by the Council.

Zoning Hearing Examiner  
County Administration Building  
Upper Marlboro, MD 20772  
952-3644

\*Instructions regarding appeals and oral argument are found on the reverse side of this notice.

**Your failure to note an appeal may result in a waiver of your rights to an appeal.**

cc: Michele La Rocca, Esq., 6801 Kenilworth Ave., Suite 400, Riverdale Park, MD 20737  
Persons of Record (7)  
Rajesh A. Kumar, Principal Counsel to the District Council (Hand Delivered)  
Stan D. Brown, People's Zoning Counsel, 1300 Caraway Ct., Suite 101, Largo, MD 20774

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

**SPECIAL EXCEPTION  
4682**

**DECISION**

Application: Private Club  
Applicant: American Legion Post #28  
Opposition: None  
Hearing Date: June 12, 2013  
Hearing Examiner: Joyce B. Nichols  
Disposition: Approval

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4682 is a request for permission to use approximately 3.15 acres of land (part of Parcel 61), in the R-T (Townhouse) Zone, located along the northwest side of Powder Mill Road (MD 212), approximately 600 feet northeast of its intersection with Cherry Hill Road, also identified as 3510 Powder Mill Road, Beltsville, for a Private Club.
- (2) The Technical Staff recommended approval with conditions. (Exhibit 13) The Planning Board elected not to have a hearing on the Application, but in lieu thereof adopted the recommendation of the Technical Staff. (Exhibit 39)
- (3) At the conclusion of the evidentiary hearing, the record was kept open for the inclusion of a Revised Site Plan and the Planning Board's Resolution in NCU-11100-2013, upon receipt of which the record was closed on December 12, 2013.

**FINDINGS OF FACT**

**Subject Property**

- (1) The subject property is approximately 3.15 acres in size and is part of Parcel 61 which consists of approximately 6.43 acres of land. It is improved with an asphalt parking lot, a 750 square foot trailer/mobile home and an existing 275 square foot shed which is proposed to be relocated on site. A construction trailer is also currently located along the southern edge of the parking compound which is proposed to be removed.
- (2) The subject property has direct access to Powder Mill Road (MD 212), a Master Plan arterial roadway with an ultimate right-of-way width of 130 feet.
- (3) NCU-11100-2013 is a companion request for certification of a non-conforming mobile home located on the subject property. The Planning Board approved NCU-11100-2013 by Resolution dated November 5, 2013. (Exhibit 36(b))

## History

(1) The American Legion Post #28 has been in operation on the subject property since approximately 1948. No prior Special Exceptions were found to be approved for the use. The main 4,800-square-foot facility was destroyed by fire a few years ago, and in 2005 Raze Permit No. 22720-2005-RZ was approved by Prince George's County to remove what was left of the existing building and foundation.

On February 23, 2012, the Planning Board approved Preliminary Plan of Subdivision 4-11006 (PGCPB Resolution No. 12-12) for the subject property. (Exhibit 13) The Preliminary Plan Application was for the purpose of subdividing Parcel 61 into 17 lots and 3 parcels. Two of the parcels, Parcels A and B, are proposed for the future development of 17 new residential townhouses. The remaining parcel is proposed for the redevelopment of a 4,800-square-foot American Legion and the retainment of a 750-square-foot trailer and 275-square-foot shed.

At the time of Preliminary Plan, the Planning Board also approved a Type 1 Tree Conservation Plan, TCPI-012-11, and a Variation from Section 24-121(a)(3) of the Subdivision Regulations. The variation request was for the purpose of authorizing direct vehicular access to Powder Mill Road (MD 212), a Master Plan designated arterial roadway. The Preliminary Plan is valid until March 22, 2014. (Exhibit 26) A Final Plat had not yet been recorded in Land Records that reflects the lotting pattern shown on the approved Preliminary Plan of Subdivision. Therefore, the property remains one overall acreage parcel (Parcel 61) until such a time as a Final Plat is recorded for the subject property.

Two separate Stormwater Management Concept Plans have been approved by the Department of Public Works and Transportation for the property. Stormwater Concept Plan 19335-2011 was approved on January 10, 2012 for the entire property, including the new development of the 17 dwelling units that were proposed with Preliminary Plan 4-11006. Stormwater Concept Plan 34431-2008-01 was approved on February 21, 2012 for only the portion of the property located within the Special Exception boundaries and includes the redevelopment of the American Legion facility and its associated parking compound.

## Master Plan/Sectional Map Amendment

(1) In its memorandum dated September 5, 2012, the Community Planning North Division opined that the instant Application does not conform with the medium-high density residential land use recommendations of the 2010 Master Plan and Sectional Map Amendment for Subregion I. However, a Private Club is permitted use in the R-T Zone with the approval of a Special Exception and therefore is deemed compatible.

(2) The 2010 Master Plan and Sectional Map Amendment for Subregion I retained the subject property in the R-T Zone.

(3) The instant Application is consistent with the 2002 General Plan Development Pattern policies for Corridor Nodes in the Developing Tier and does not violate the General Plan's growth goals for the year 2025, based upon review of Prince George's County's current General Plan Growth Policy Update. The General Plan generally recommends low to moderate residential density for the neighborhood.

### **Neighborhood and Surrounding Uses**

(1) The subject property is located within a residential neighborhood that is bounded by Powder Mill Road (MD 212) to the south, Cherry Hill Road to the west, and Calverton Boulevard to the north and to the east. High Point High School is located on the south side of Powder Mill Road directly across from the subject property.

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

North: Multifamily Dwelling Units/Condominiums in the R-30 (Multifamily Low Density Residential) Zone

South: The remainder of Parcel 61 which is currently undeveloped but has an approved Preliminary Plan for the new development of 17 townhouses in the R-T Zone. Beyond is a six store shopping center in the C-S-C (Commercial Shopping Center) Zone and the Powder Mill Road (MD 212) right-of-way

East: Powder Mill Road (MD 212) right-of-way, and beyond High Point High School in the R-R (Rural Residential) Zone

West: Multifamily Dwelling Units/Apartments in the R-30 Zone.

### **Applicant's Proposal**

(1) The property, Parcel 61, has a net lot area consisting of approximately 6.43 acres in the R-T Zone. The Applicant seeks approval of a Special Exception to operate a Private Club on a portion of the property consisting of 3.15 acres. The property is the subject of Preliminary Plan of Subdivision 4-11006. The Preliminary Plan proposed the subdivision of the property into three separate parcels, two of which would contain the future development of 17 new residential townhouses, and the third parcel to contain the redevelopment of a 4,800-square-foot American Legion facility.

A Final Plat of Subdivision has not yet been recorded in Land Records that reflects the lotting pattern shown on the approved Preliminary Plan of Subdivision. Therefore, the property remains one overall acreage parcel (Parcel 61) until such time that a Final Plat is recorded. The Special Exception boundaries are confined to a 3.15 acre portion of the property that will contain the proposed use and the parking and landscaping that is required to serve the proposed use.

American Legion Post #28 has been in operation on the subject property since approximately 1948. However, no prior Special Exceptions were found to be approved for the use. The original building was destroyed by fire sometime in 2005, and the American Legion is now requesting to redevelop the property with a new 4,800-square-foot Private Club. An existing 750-square-foot mobile home, (which is labeled on the Site Plan as a “trailer”), is proposed to remain on the site for the use of the property manger’s residence, and a 275-square-foot storage shed will be relocated to the northwest edge of the existing parking compound next to the proposed trash enclosure. One freestanding sign is proposed along Powder Mill Road (MD 212).

The existing macadam parking lot will be restriped, some small areas of existing paving will be removed, and the interior green islands will be added to comply with the requirements of the 2010 Prince George’s County Landscape Manual. Approximately 17 light posts will be added to the parking lot, each one being approximately 18 feet in height. The Revised Landscape Plan (Exhibits 38(e) and (f)) demonstrates that approximately 47 shade trees, 11 ornamental trees, 6 evergreens and 35 shrubs will be added to the site, all of which are native species. The new plantings that are proposed, along with the areas of existing woodland, will bring the site into compliance with the requirements of the Landscape Manual.

### **LAW APPLICABLE**

(1) A Private Club is permitted as a Special Exception in the R-T Zone in accordance with §27-317 and §27-359(a).

(2) Section 27-317(a) provides:

- (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 Tree Conservation Plan.
- (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).

(3) Section 27-359(a) states:

- (a) A golf course, private club, community building, or other nonprofit recreational use may be permitted, when it is not publicly owned or operated. Concessions for serving food and refreshments to, and entertainment for, club members and guests, may also be permitted. This Special Exception does not apply to community swimming pools, golf driving ranges, or miniature golf courses.

### **Burden of Proof**

(4) The Court of Appeals of Maryland 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 this 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.

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 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); 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. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg V. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

(5) 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 and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

## CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are contained in §27-102(a) and Special Exception 4682 is in harmony with these purposes as follows:

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

American Legion Post #28 has existed on the subject property since 1948 with no evidence that it has had any negative impacts on the present and future inhabitants of the County. In fact, it will protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County by providing a place of relaxation and comradeship for local veterans.

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

The subject property is located in the Developing Tier by the General Plan. The General Plan does not make recommendations for specific properties or uses; rather, it sets forth goals, objectives and policies to guide the overall direction of development in the county. It focuses on residential and employment opportunities and looks to increase mixed use developments that will take advantage of existing public facilities, protect the environment and reduce automobile trips in the Developing Tier. The neighborhood has developed with medium to high density residential uses, with a number of small commercial uses, in accordance with Master Plan recommendations. Rebuilding the American Legion Post in this specific location makes use of existing public facilities and does not impact environmental features on site. The proposed Special Exception is consistent with the goals and objectives of the Developing Tier.

The 2010 Master Plan and Sectional Map Amendment for Subregion I, retained the subject property in the R-T Zone. The Master Plan recommended medium to high density residential land use for the property, but only on the Land Use Map. There is no discussion in the Master Plan specifically about the property. The Master Plan simply recognizes the long standing medium to high density land uses that make up a majority of the neighborhood. As a Special Exception permits approval of a Private Club in the R-T zone, this Application is consistent with the Master Plan.

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

The rebuilding of the American Legion Post #28 promotes providing adequate services within the Beltsville community. An American Legion Post is a service to veterans that reside in the surrounding community. Public facilities are already in place to serve the property, including water and sewer, and nearby police, fire and emergency

services. The use is appropriately located near the intersection of an arterial roadway (Powder Mill Road), and a collector road (Cherry Hill Road).

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

The proposed American Legion Post #28 is a reestablishment of a long existing use in the community. The needs of agriculture, housing, industry, and business will not be negatively impacted by the proposed use.

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

The proposed use, as demonstrated by the Revised Site and Landscape Plans, meets the regulations contained in the Prince George's County Zoning Ordinance and Landscape Manual. The proposed building is single story, setback appropriately from the property lines, and 60 percent of the site is to remain in green area, with much of it wooded. Thus, adequate light, air, and privacy are assured.

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

The Cherry Hill Condominiums and undeveloped land approved for townhouses are adjacent to the subject site. All of the required setbacks and landscaping have been provided on the Revised Site Plan. A large area of trees is between the proposed use and the Cherry Hill Condominiums. A thirty (30) foot landscape strip will separate the proposed use from the approved townhouse development.

There are a number of nonresidential uses in the immediate area. A small inline Shopping Center and Gas Station are located at the corner of Powder Mill Road and Cherry Hill Road. High Point High School is located directly across the street, and a Day Care Center is located north on Powder Mill Road. The use and building fit easily into this mixed use area.

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

No dangers will result from the proposed use. The proposal must satisfy all County regulations regarding fire and flood. The Fire Safety Code (Subtitle 11) will protect from fire (sprinklers will be required); the stormwater regulations found in the Water Resources Protection and Grading Code (Subtitle 32) will protect from flood. No panic or other dangers are anticipated as a result of the proposed rebuilding of the American Legion.

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



This purpose is not relevant to the proposed use of the subject property as no housing is proposed.

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

The proposed American Legion Post #28 is exempt from property taxes as a nonprofit organization. Land available for nonprofit recreational use is a vital part of the County's well being.

***(10) To prevent the overcrowding of land;***

As the Revised Site Plan demonstrates, all the regulations of the Zoning Ordinance that apply to the property and use have been complied with. In fact, 60 percent of the property is proposed as green area. Thus, there is no overcrowding of land by this proposal to rebuild the American Legion Post #28.

***(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;***

As an off-peak use, no congestion is anticipated to result by the reestablishment of American Legion Post #28 on the property. The existing 56-foot wide entrance onto Powder Mill Road will remain the sole point of access to the proposed use. Preliminary Plan 4-11006 was approved for 17 townhouse lots and three parcels. Parcel 1 was proposed for the American Legion Private Club. Planning Board Resolution PGCB 12-12 (March 22, 2012) included a finding that the critical intersection of MD 212 and Cherry Hill Road would operate an acceptable level of service with the proposed development, including the proposed Private Club.

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

The reestablishment of American Legion Post #28 adds to the social stability of the County by providing veterans a place to congregate and socialize.

***(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;***

There are no stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas or other similar features on the property. No air and or water pollution will result from the reestablishment of the use. Any noise will be contained within the proposed building. There will not be any "undue noise" generated by the proposed use. The use has existed on the subject property from 1948 through the fire in 2005 with no apparent adverse impacts on the neighborhood.

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

The proposed use sits on an approximately 3.15 acre property which allows for significant open space on the site. It is not an area of scenic beauty or natural features. The reestablishment of American Legion Post #28 does provide recreational space for the community's veterans and their guests.

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

A Tree Conservation Plan has been approved for the subject property. No agricultural land will be utilized to reestablish American Legion Post #28.

§27-317(a)(1)

(2) The specific purposes of the R-T Zone are provided in §27-433(a)(2) and Special Exception 4682 is in harmony with these purposes as follows:

***(A) To provide the maximum possible amount of freedom in the grouping, layout, and design of townhouses and other attached dwellings;***

This purpose is not applicable to the instant Application.

***(B) To encourage variety in the design and mix of dwelling unit types, and in site design;***

This purpose is not applicable to the instant Application.

***(C) To protect or enhance (where feasible) important or distinguishing natural features of the site through innovative site layout and green area design;***

There are no important or distinguishing natural features on the site. Sixty percent of the property is to remain in green area, in accordance with the requirements of the Zoning Ordinance.

***(D) To avoid the monotony of similarly designed or sited rows of attached dwellings commonly known as "row houses," by encouraging variety in the number of dwelling units per building group and the relationship between building groups and parking;***

This purpose is not applicable to the instant Application.

***(E) To provide the maximum possible amount of visible open space for the development;***

The building is setback approximately 200 feet from Powder Mill Road. Ample amounts of open space are visible on the subject property.

***(F) To provide recreational and other community facilities which are normally associated with less dense zoning categories and are easily accessible to all residents;***

This purpose is not applicable to the instant Application.

***(G) To permit the greatest possible amount of freedom in the type of ownership of attached dwelling unit development;***

This purpose is not applicable to the instant Application.

***(H) To prevent detrimental effects on the use or development of adjacent properties and the neighborhood; and***

No detrimental effects on the use or development of adjacent properties will result from the reestablishment of the use on the site; it has existed on this site for many years with no detrimental effect on adjacent properties

***(I) To promote the health, safety, and welfare of the present and future inhabitants of the County.***

As the proposed use has existed on the property for 57 years, a track record has been established. There is no evidence that it has had or will have any detrimental effects on the health, safety, and welfare of the inhabitants, present and future, of the County.

§27-317(a)(1)

(3) The proposed use and Revised Site and Landscape Plans (Exhibits 38(d)-(f)) are in conformance with all of the applicable requirements and regulations of the Zoning Ordinance. No variances, departures or waivers are required. §27-317(a)(2)

(4) Although the 2010 Master Plan and Sectional Map Amendment for Subregion I recommend a medium high residential land use, a Private Club is permitted in the R-T Zone with an approved Special Exception. The continued use of the subject property as a Private Club is consistent with the planned land use pattern which considers quasi-public uses such as Private Clubs to be an appropriate component of residential areas and thus will not substantially impair the integrity of the approved Master Plan. §27-317(a)(3)

(5) The reconstruction of the original building that was destroyed by fire and the continuation of a use that has existed on the property for several decades will have no adverse effect on the health, safety, or welfare of residents or workers in the area.

In a memorandum dated August 21, 2012, the Transportation Planning Section stated that there are no apparent issues that would be posed by adding this degree of travel to roadways in the immediate area. The adequacy of transportation facilities is not an issue in the review of this use; review is strictly within the required findings of health, safety, and welfare. Furthermore, the review of the prior Preliminary Plan application involved a finding of transportation adequacy, and it is further noted that the use is in compliance with the Preliminary Plan trip cap that was established in Condition 9 of PGCPB Resolution No. 12-12.

The use will be served by an existing driveway that provides access to the site from MD 212. In a memorandum dated August 25, 2012, the State Highway Administration (SHA) concluded that the existing conditions along Powder Mill Road (MD 212) can support the proposed redevelopment of the Private Club. The location of the driveway, and its direct access point on to MD 212, was appropriately reviewed as a variation to Section 24-12(a)(3) of the Subdivision Regulations during the review of the Preliminary Plan application, and the variation request was approved by the Planning Board at that time. As a result, the Transportation Planning Section concluded that the instant Special Exception Application poses no issue regarding the required Special Exception finding that the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area. §27-317(a)(4)

(6) The American Legion has operated a Private Club on the subject property for many decades without any detrimental effects on the use or development of adjacent properties or the general neighborhood. The Revised Type II Tree Conservation Plan and Landscape Plan that demonstrate that the proposed building will be well screened from all of the abutting properties. (Exhibits 38(a)-(c)) The abutting properties to the north and west have already been developed with apartments and condominiums in the R-30 Zone. Outside the Special Exception boundaries, the remainder of the Applicants property (Parcel 61) to the south is currently undeveloped but has an approved Preliminary Plan for the new development of 17 townhouse in the R-T Zone. Appropriate landscaped bufferyards have been established on the Plans in accordance with the requirements of the Landscape Manual to property screen the proposed Private Club from any future townhouses that may be developed on the southern portion of the property in the future.

The redevelopment of the site will bring the property into conformance with the current requirements of the Woodland and Wildlife Habitat Conservation Ordinance, the Landscape Manual, the Zoning Ordinance, the Americans with Disabilities Act, and Stormwater Management regulations, therefore, improving the overall design and appearance of the property. The continuation of the same use that has operated on the property since approximately 1948 will have no detrimental effects on the use or development of adjacent properties or the general neighborhood. §27-317(a)(5)

(7) A Type II Tree Conservation Plan (TCPII-003-13) was submitted with the subject Application. The Plan was reviewed by the Environmental Planning Section for conformance to the prior approved Type I Tree Conservation Plan (TCP1-012-11), and the Woodland and Wildlife Habitat Conservation Ordinance. In a memorandum dated February 27, 2013, the Environmental Planning Section recommended approval of the subject Special Exception Application and the submitted Type II Tree Conservation Plan, TCP2-003-13, subject to

conditions. The Revised Site Plan (Exhibit 38(d)) is in substantial conformance with the Revised Tree Conservation Plan II. (Exhibits (a)-(c)) §27-317(a)(6)

(8) The Environmental Planning Section previously reviewed and approved Natural Resource Inventory, NRI-026-11, for the property on April 4, 2011. The NRI was reviewed at the time of Preliminary Plan for the purpose of identifying and preserving any sensitive environmental features that may exist on the property. According to mapping research and as documented on the approved NRI, streams, wetlands and 100-years floodplain were not found to occur on the subject property. Therefore, no regulated environmental features were found to exist on the site that require preservation and/or restoration. §27-317(a)(7)

(9) The American Legion Post #28 will not be publicly owned or operated. There will be food, refreshments and entertainment for club members and guests. A community swimming pool, a golf driving range or a miniature golf course are not proposed. The subject property is not located in the V-L or V-M Zone and a golf course is not proposed as a part of the Special Exception Application. §27-359(a)

### **Parking/Loading**

(10) The required parking for a Private Club is calculated by the uses that make up the Club. The parking schedule on the Revised Site Plan (Exhibit 38(d)) states that the Club is proposed to have an eating and drinking area with 52 seats, requiring 18 parking spaces, a 160-square-foot office, requiring 1 parking space, an auditorium/meeting room with 69 seats, requiring 18 parking spaces, a pool room with two tables, requiring 9 parking spaces, a 750-square-foot trailer for the property manager's residence, requiring 2 parking spaces and an existing 264-square-foot shed requiring 1 parking space. Therefore, a total of 49 parking spaces are required to serve the proposed use. A total of 91 parking spaces are proposed to be provided on the site, consisting of 64 standard spaces, 20 compact spaces, 5 standard handicapped spaces and 2 van accessible handicapped spaces.

(11) Because the gross floor area (GFA) of the Private Club will be less than 10,000 square feet in size, no loading space is required to serve the proposed use.

### **Landscape Manual**

(12) In accordance with §27-328.02 of the Zoning Ordinance, the instant Application is subject to Section 4.2 Landscape Strips Along Streets; Section 4.3 Parking Lot Requirements (Interior Planting); Section 4.7 Buffering Incompatible Uses; and Section 4.9 Sustainable Landscaping Requirements of the 2010 Prince George's County Landscape Manual.

The Revised Landscape Plan provides required landscape schedules that conform to the above-mentioned requirements except for Section 4.3 regarding the layout of parking lot. Section 4.3(c)(2)(G) requires a minimum of one interior planting island to be provided on average for every ten contiguous parking spaces. The two rows of parking in the middle of the site show 16 contiguous spaces without providing any interior planting island. The Revised

Landscape Plan, Exhibits 38(d) and (e), are in compliance with the requirements of the Landscape Manual.

### **Tree Canopy Coverage Ordinance**

(13) The Tree Canopy Coverage (TCC) Ordinance became effective on September 1, 2010. The subject property is located in the R-T Zone and the proposed total gross floor area is more than 1,500 square feet. Therefore, the Application is subject to 15 percent tree canopy coverage per the requirements of the TCC Ordinance. Since this Application only covers a portion of the larger site, the 15 percent coverage should only be calculated based on the site area within the Special Exception boundaries. The Revised Landscape Plan includes the standard tree canopy coverage schedule demonstrating conformance with the requirements of the TCC Ordinance. (Exhibits 38 (e) and (f))

### **Zone Standards**

(14) No variances, waivers or departures have been requested from any zoning standards. However, an existing 750-square-foot trailer is located just five (5) feet north of the proposed American Legion building. General notes provided on the Revised Site Plan state that the trailer, used as the property manager's residence, has existed on the site since 1965 and the American Legion has been using the trailer as an interim meeting space since the main building was destroyed by a fire a few years ago.

On November 24, 1975 the Zoning Ordinance was amended to prohibit mobile homes in all zones in Prince George's County except the R-M-H Zone. In 1979 the Zoning Ordinance was further amended to allow mobile homes in certain residential zones, (O-S and R-A), by Special Exception approval provided that they are used for residential purposes only, are situated on a concrete platform, are securely anchored and tied down with the wheels removed, and if they meet the specific Special Exception criteria contained in §27-528.5 of the Zoning Ordinance.

In a memorandum dated September 13, 2012, the Permit Review Section noted that the subject mobile home should either be certified as a Nonconforming Use or obtain approval of a Special Exception. However, the current Residential Use Table §27-441(b)(6) of the Zoning Ordinance, does not permit mobile homes the R-T Zone even through the Special Exception process.

In order for the mobile home to remain on the property, as reflected on the Special Exception Revised Site Plan, a separate Nonconforming Use Application (NCU) was submitted by the Applicant and approved by the Planning Board on November 25, 2013. (Exhibit 36(b))

### **Sign Ordinance**

(15) The Revised Site and Landscape Plans, Exhibits 38(d)-(f), the Revised TCP II, Exhibits 38(a)-(c), and the Revised Architectural Elevation, Exhibit 38(g), depict an eight feet in height freestanding sign located outside of the right-of-way dedication area for MD 212 in accordance with the requirements of the Sign Ordinance.

**DISPOSITION**

Special Exception 4682 is APPROVED.

The Revised Site Plan is Exhibit 38(d) and the Revised Landscape Plans are Exhibits 38(e) and (f).

The Approved TCP II is Exhibit's 38(a)-(c).