

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

**SPECIAL EXCEPTION
4856
And
ALTERNATIVE COMPLIANCE
23002**

DECISION

Application:	One-Family Attached Housing for the Elderly
Applicant:	ESC 9401 Westphalia, LC
Opposition:	Wanda Collins, et. al.
Hearing Dates:	June 21, 2023, August 2, 2023, and August 30, 2023
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

NATURE OF REQUEST

- (1) Special Exception 4856 is a request to develop approximately 10.00 acres of land in the RR (Residential, Rural) /MIO (Military Installation Overlay) Zones as 61 One-Family Attached Housing for the Elderly. Alternative Compliance ("AC") 23002 is sought to reduce the number of required plantings in a required buffer area along the property's frontage on Westphalia Road, a historic collector road. Applicant also seeks a variance from Section 25-122(b) of the Prince George's County Code to remove approximately 25 specimen trees. The subject property (Tax Map 82-E-4; Parcel 48) is located approximately 300 feet east of the Westphalia Road and Rock Spring Drive intersection and is identified as 9401 Westphalia Road, Upper Marlboro, Maryland.
- (2) The request is reviewed for compliance with the 2019 Edition of the Zoning Ordinance (as permitted under Sections 27-1903 and 27-1904 pursuant to the most recent Supplement to the Zoning Ordinance) since the application was accepted by the Prince George's County Planning Department on February 1, 2023.
- (3) The Technical Staff recommended approval of the Application with conditions. (Exhibit 24)
- (4) Ms. Wanda Collins, Dr. Anna McCall, Ms. Yamala Robinson, Dr. Ramona Burton, and Ms. Kimberly Thomas appeared in opposition to the request.
- (5) At the close of the third hearing, the record was left open to allow the submission of additional evidence. The last of these items was received on September 5, 2023, and the record was closed at that time. Subsequent to the record's closing, this Examiner discovered abnormalities in the ethics affidavits required by state law and requested that

Applicant address them and resubmit the documents. The new documents were submitted on November 9, 2023, the record was reopened to receive them and closed at that time.

FINDINGS OF FACT

Subject Property

(1) The subject property is largely undeveloped and improved with one single-family dwelling unit, a few outbuildings, and a gravel driveway. It is located on the south side of Westphalia Road, approximately 300 feet east of its intersection with Rock Spring Drive. It is currently owned by Shella Alexander and Jessie Alexander.

(2) The proposed development will require approval of a preliminary plat of subdivision as there are no prior preliminary or final plats of subdivision recorded for the property. (Exhibit 24, p. 4) The adequacy of applicable public facilities will be addressed at that time, although Applicant provided and Staff reviewed a transportation statement (addressed below).

(3) The Environmental Planning Section of the Maryland-National Capital Park and Planning Commission (“MNCPPC”) reviewed the application and provided the following information:

This site does not feature any primary management area (PMA), but an area of regulated environmental features (REF) in the form of an isolated wetland feature is present along the eastern property line. No forest interior dwelling species are indicated on site, per PGAtlas. According to information obtained from the Maryland Department of Natural Resources, Natural Heritage Program (DNR NHP), there are no rare, threatened, or endangered (RTE) 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 with the Western Branch of the Patuxent River, a stronghold watershed as established by the Maryland DNR.

(Exhibit 24, Backup p. 61)

(4) The property is subject to the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because the site contains more than 10,000 square feet of woodland and Applicant proposes to clear more than 5,000 square feet. Applicant submitted TCP2-006-2023 for approval along with the parent Special Exception Application. The site has an approved Natural Resources Inventory Plan (NRI-005-2022). (Exhibit 53 (a) and (b))

(5) The property is not located within the Chesapeake Bay Critical Area. It is located within the M-I-O Zone due to its proximity to Joint Base Andrews. A review of the Impact Maps places the site within the high-intensity noise area and within an area of height restrictions. As such no dwelling may exceed 193 feet in height, and the interiors of all of

the villas “must be certified to 45 dBA Ldn or less by an Acoustical Engineer or qualified professional of competent expertise.” (Section 27-548.55(b);Exhibit 68, pp.21-23)

Surrounding Property/Neighborhood

(6) The neighborhood is defined by the following boundaries:

- North – the unbuilt MC-634 right-of-way (unbuilt Presidential Parkway extended) and Turkey Branch
- South – Central Park Drive and the unbuilt MC-631 right-of-way (unbuilt Central Park Drive extended)
- East – The eastern edge of the Westphalia Woods and Parkside developments/the MC-631 right-of-way
- West – Poplar Drive/Presidential Parkway and the unbuilt MC-634 right-of-way

(7) The following uses surround the subject property:

- North – Westphalia Road and single-family detached dwellings and a vacant lot owned by a church in the RR Zone (and formerly in the R-R Zone)
- South – Westphalia Park and vacant land that is part of the Parkside Development in the AG (Agriculture and Preservation) Zone (formerly the O-S Zone)
- East – Single-family detached dwellings in the RR Zone (formerly the R-R Zone)
- West – Vacant land in the CGO (Commercial, General and Office) Zone (formerly in the C-S-C (Commercial Shopping Center) Zone, and to the southwest, land in the LCD Zone (and formerly in the RM Zone)

(See, Exhibit 24, Slide 4 of Power Point)

Sector Plan/Zoning/General Plan

(8) The subject property lies within an area governed by the 2007 Westphalia Sector Plan and Sectional Map Amendment (“SMA”) The SMA retained the property in the R-R/MIO Zones. At the time of the Sector Plan’s enactment the Community Vision for the Sector Plan Area described a need for “[a]ttractive and safe residential neighborhoods with a range of housing types and densities.” (2007 Sector Plan, p. 1) The Sector Plan contains certain design principles applicable to all residential development:

Strategy

Develop approximately 3,500 acres of new low-to medium-density residential areas in a manner that conserves and is integrated with approximately 1,300 acres of existing residential development in accordance with the overall development pattern concept.

Design new low-to medium-density residential neighborhoods that are varied in housing styles and architecture and promote best practices for residential design:

Feature the same quality design and treatments on the exposed facades as on the front façade of highly visible residences on corner lots and elsewhere.

Create varied architecture and avoid flat facades by using bays, balconies, porches, stoops, and other projecting elements.

Design single-family detached and attached homes and multifamily buildings so the mass of the living space and the front door dominates the front façade.

Require garages that are hidden or clearly subordinate to the main structure and do not project beyond the main façade of residential buildings.

Arrange driveways so that cars are parked to the side or rear of the house or otherwise hidden from the street.

Promote rear alleys to have access to parking and garages for residences that are sited back-to-back.

Incorporate a variety of housing types in single-family projects/subdivisions:

Build townhomes and small lot single-family homes to add diversity to neighborhoods or as a transition between higher density units and lower density single-family neighborhoods.

Allow the use of detached accessory dwelling units.

Maximize the number of windows facing public streets.

Design residential developments that connect and appropriately transition to pre-existing communities and neighboring commercial areas:

Develop neighborhoods to reflect the character of their location within Westphalia, with areas closer to the town center being more compact and more urban, and outlying areas more rural.

Create lot divisions that respect the existing pattern of development for neighborhood continuity and compatibility.

Discourage use of walls, gates, and other barriers that separate residential neighborhoods from the surrounding community and commercial areas.

Design an efficient, safe, and interconnected residential street system:
Design or retrofit street systems to link individual subdivisions/projects to each other and the community.

Avoid closed loop subdivisions and extensive cul-de-sac systems, except where the street layout is dictated by the topography or the need to avoid sensitive environmental resources.

Emphasize the provision of high-quality pedestrian and bikeway connections to transit stops/stations, village centers, and local schools.

Clarify neighborhood roadway intersections through the use of special paving and landscaping.

Create a system of open space and parks and preserve sensitive environmental features:

Cluster residences around shared amenities to form distinct neighborhoods with a sense of identity. Use green space to define and divide the clusters.

Preserve large, wooded areas and fields by using cluster or conservation subdivision design techniques, by allowing smaller lot sizes and by permitting usable shared green areas in the immediate neighborhood.

Provide a variety of single-family attached residential lot sizes in and near the Westphalia town center.

Within the town center urban areas, there should be a range of lot sizes for single-family attached dwelling units, with a minimum lot size of 1,000 square feet.

The finished floor area for single-family attached dwelling units should be determined during site plan review in order to ensure an urban character of development.

The percentage of townhouses and other dwelling unit types to be allowed in the town center and surrounding development projects should be determined at site plan review based on the policies and exhibits reference in the sector plan text...

(2007 Westphalia Sector Plan, pp. 30-31)

(9) The 2014 General Plan ("Plan Prince George's 2035"), placed the property in the Established Communities. The vision for the Established Communities encourages "context-sensitive infill and low-to medium-density development". (2014 General Plan, Prince George's 2035, p.16) The General Plan also recognized the growth of our "senior" population:

The 55 to 64 age group, commonly referred to as the Baby Boomer Generation, grew by approximately 30,000 residents or 36 percent. This was more than any other age group in the County. Forecasts indicate that over the next ten years seniors aged 65 years and older will account for the largest population gains in the County....

Recent trends show that seniors and the elderly will demand opportunities to age in place and reside in neighborhoods offering smaller, lower-maintenance housing options in walkable and transit-accessible locations.

(2014 General Plan, p. 57)

Applicant's Request

(10) The Applicant, ESC 9401 Westphalia, LLC, is in good standing to conduct business within the State of Maryland, having been granted a certificate from the State Department of Assessments and Taxation. (Exhibit 61) Applicant intends to purchase and develop the property which is currently owned by two sisters – Jessie and Shella Alexander. Jessie and her husband reside on the subject property and have done so for approximately 38 years. (August 2, 2023 T. 13).

(11) Applicant submitted draft covenants that note that at least 80% of the dwelling units shall be occupied by at least one person 55 years in age or older, that visitors under the age of nineteen are limited as to the number of days they may stay overnight, and state that the covenants are binding and will be recorded in the County's Land Records. (Exhibit 24, Backup pp. 27-29 and Exhibit 82).

(12) Attachments to the revised Special Exception Site Plan include a Detail Plan for a masonry wall at the site's frontage on Westphalia Road, a six-foot-tall sight-tight fence, handicap parking, and light poles; a photometric plan; a Fire Access Plan; a multimodal circulation and recreational facilities plan. (Exhibit 77 (a)-(m)) The Site Plan does not include any dimensions for the proposed signage. Applicant calculated that it would provide recreational facilities valued at \$138,000.00. (Exhibit 41)

(13) Mr. Jude Burke, Vice President of Elm Street Development was authorized by Applicant to testify in support of the request. Elm Street Development created ESC 9401 Westphalia, LLC solely to develop the subject property if the request is approved. He noted that Applicant wishes to construct sixty-one (61) "fee simple one-family attached dwellings for the elderly to create an active community for county residents over the age of 55 that is buffered from the extra activity of children and young families but improved with space for younger friends and relatives to make temporary visits...." (Exhibit 4) The attached dwellings will be villas ranging in size (if finished) 1,586 square feet to 2,915 square feet, and either 24-feet-wide with a single car garage, or 28-feet-wide with a two-car garage. (Exhibit 77(a)) They are designed for seniors with all of the necessary living spaces, such as owner's suite, kitchen, dining, and laundry on the first floor and a smaller upstairs level with additional rooms. (Exhibit 24, Backup pp. 14-15; August 2, 2023, T. 20-21). Community amenities, including a central gathering area, walking trails, and a community garden, will also be provided on-site. Mr. Burke testified that Applicant agrees with the proposed conditions of approval recommended in the Technical Staff Report. (August 2, 2023 T. 24-25)

(14) Applicant submitted a Tree Conservation Plan in accordance with the Woodland and Wildlife Habitat Conservation Ordinance. The TCP2 shows 25 specimen trees marked for removal. Specimen trees are defined as trees having a diameter of 30 inches or more at breast height, and such trees must be preserved unless a variance is granted in accordance with Subtitle 25 of the Prince George's County Code. (Prince George's County Code, Section 25-118, 25-119(d), and 25-122(b)(1)(G)).

(15) Victoria Ballestero, accepted as an expert in landscape architecture, submitted a Statement of Justification explaining why the Applicant seeks the removal of certain specimen trees on site:

This application is being filed to allow the removal of twenty-five (25) specimen trees located on the Property, as shown on the TCP 2 and the associated plans. Of the twenty-five (25) specimen trees to be removed, twelve (12) are to be removed due [to] their central location and associated impacts from required grading, roadway construction, and building footprint conflicts. An additional twelve (12) specimen trees are to be removed due to impacts from the construction and grading associated with the required stormwater management facility. One (1) specimen tree is proposed for removal for safety concerns due [to] the tree's poor condition and proximity to proposed buildings and pedestrian paths....

(Exhibit 3, p. 1)

Ms. Ballestero also explained why the requested variance satisfies the criteria in Section 25-119(d):

The Subject Property is impacted by unique environmental conditions (i.e., steep slopes and wetlands) that restrict the developable area of the Property. The Applicant is seeking to develop the portion of the Property that is outside of any environmental buffers, and away from the sensitive environmental features.... The site layout was revised to prioritize the preservation of specimen trees located near steep slopes along the southwest property line and avoid impacts to offsite specimen trees located within existing forest conservation areas.

The Subject Property is impacted by unique topographical conditions that will necessitate significant grading operations in order to meet the required development standards. There is significant topographic relief from the road frontage down the rear of the site, with thirty (30) to forty (40) feet of vertical fall from the central areas of the site to the southern and eastern edges. This is worsened by the unique shape of the parcel, where the most topographic fall occurs across the narrowest sections of the parcel. This leaves less space to provide topographic relief over a longer horizontal distance, further constraining the ability to limit grading operations across the site.

The significant vertical fall across the Property makes it necessary to grade the majority of the site in order to tie into the existing grades while also

complying with development and design standards (such as the maximum allowable slopes in roadways, lots, stormwater facility embankments, etc.). High areas near the center of the property will need to be lowered to provide more gradual slopes across the site that comply with development standards for proposed streets, driveways, and buildings. Proposed stormwater management must be located at the lowest point of the site, and the proposed location is the only viable solution. The required grading operations needed due to the unique topographical conditions of the site ... will necessitate the removal of specimen trees.

Without the granting of this variance, the Applicant would be denied reasonable and significant use of the Property due to the unique features of the site.... Only specimen trees necessary for the improvement of the site will be removed, which means six (6) specimen trees are proposed to remain on site and an additional seventeen (17) specimen trees immediately adjacent to the site will also be preserved.... [T]he site layout was adjusted to prioritize avoiding impacts to specimen trees located in existing forest conservation areas on the adjacent properties, and onsite forest conservation is proposed in the southwest corner of the site adjacent to the existing offsite forest conservation areas.

This variance is necessary because the tree critical root zones are located in the proposed building footprints, proposed streets, proposed stormwater management facilities, and other areas in which their removal is necessary to grade the Subject Property or any combination thereof....

Should the preservation of these specimen trees be required, the Applicant would be denied reasonable and significant use of the parcel, and the Subject Property would be largely undevelopable due to the unique environmental and topographical conditions of the site. Reasonable and significant use of the entire lot or parcel, such as the ability to perform grading and installation of required stormwater facilities and roadways, is a right commonly enjoyed by others....

This request does not arise from any condition relating to the land or building use on neighboring properties. While consideration was given to the forest conservation areas present on adjacent property, the need for this variance is not related to this consideration. This variance is the result of the unique features of the Subject Property, and the specimen trees proposed to be removed are based only on the reasonable and significant use of the Subject Property. The uses of the surrounding properties ... have no bearing on the need for Specimen Tree removal....

The unique environmental and topographic features present on the Subject Property that make the removal of Specimen Trees necessary for construction and grading would be encountered by any applicant seeking to make reasonable and significant use of the entire parcel. The right to reasonable and significant use of the entire lot or parcel is not a special privilege unique to the Applicant. Therefore, the granting of this variance request will not confer on the Applicant a special privilege that would be denied to other applicants....

The proposed development will comply with County and State requirements for stormwater management, and compliance with those requirements will prevent negative impacts to the water quality in the downstream tributary....

Designing the site to prioritize the protection of the environmental features ... while also providing facilities that comply with stormwater management regulations are both necessary parts of protecting water quality.... Granting this variance will not adversely affect water quality, but instead improve quality by allowing for conformance with the applicable requirements for water quality and quantity treatment....

(Exhibit 3, pp. 4-9)

(16) Ms. Ballestero provided testimony at the final hearing held that provided further elucidation as to the two trees that Staff recommends not be removed pursuant to Applicant's request for a variance from Subtitle 25:

I believe it might be possible to save the two trees in question. Specimen tree 7 isn't in development areas. It's along the property line. It does have substantial critical root zone impacts proposed. We have proposed it as being to be removed because of the condition that was noted in the National Resources Inventory of that tree.

Specimen tree 41 may also be able to be retained, but due to off-site topographic conditions, we are proposing that it be removed. I would recommend that the requested variance for the removal of all 25 trees be approved with this special exception application. I would recommend that the requested variance for the removal of all 25 trees be approved with this special exception application. This action allows for their ultimate removal, if that proves appropriate, but would also still allow future revisions of the Tree Conservation Plan which could be accomplished at a staff level or by the Planning Board as appropriate to the stage of future development review. This would allow for preserving the trees if the future evaluation deems that they are definitely savable without requiring adjustment of the improvements on the special exception site plan.

(August 30, 2023 T. 25-27)

(17) Mr. Devin Leary, a registered Landscape Architect and Vice President of Hanan & Rohde, Inc., Landscape Architect/Land Planners, prepared the Type 2 Tree Conservation Plan (Exhibits 50 and 76) and testified on Applicant's behalf. Mr. Leary walked through the tree conservation plan, describing the location of the various specimen trees concentrated along the southern property line; the off-site small tributary stream and the associated buffer or Primary Management Area (PMA), also off-site; and the small area of isolated nontidal wetlands in the southeastern corner that drains to the south toward the trail that extends to the off-site park. (August 30, 2023 T. 49-50) He noted that the TCP was amended to retain "additional woodland conservation area and specimen trees in the

southwest corner” next to an off-site forest area within an existing woodland conservation easement. As a result, Applicant is “essentially adding area to that existing easement area...” (August 30, 2023 T. 51-52) Mr. Leary opined that the proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features on-site in a natural state, to the fullest extent possible and that the development should not adversely impact (from an environmental perspective) the property of the neighbor directly across from its entrance, reasoning as follows:

So the environmental features are not impacted....[and] the only minimal impacts [are] associated with the sewer connection which ... essentially follows the trail that goes to the park. And so that sewer extension will have some temporary impacts for the installation of the sewer to the 25-foot nontidal wetland buffer. It's very minimal....[b]ut...they connect to the off-site existing sewer that's off-site to the south....

So the existing and proposed topography will drain from Westphalia Road to the south....[Y]ou'll notice that the proposed stormwater management facility is in the...central south location of the site. That...[is] where our stormwater will be draining to.... So it is managed on-site [and]... I do not anticipate any impacts [to the north from this development].

(August 30, 2023 T. 55-56, 58)

(18) Mr. David Nelson, accepted as an expert in the field of transportation engineering, prepared a traffic statement per a scoping agreement with the Maryland-National Capital Park and Planning Commission's Transportation Section. (Exhibit 48) The witness testified in support of the request, in pertinent part, as follows:

[W]e coordinated with Park [and] Planning's transportation staff, and the traffic studies are not required at this stage. They are required ...assuming this is approved and it goes to preliminary planning. That's when the adequate public facilities tests are completed....

Unlike a traditional residential development, this development has been designed to consolidate the access into a single point of access, and so that grades up the side street of the stop sign controlled [intersection] and will be just in that grade intersection....[E]ven though there's 61 units proposed, there's only going to be one access point to Westphalia Road....

It's a ten-acre lot. RR [zoning] could generate 20 lots. So we did a traffic generation study that compared what the trips of a traditional 20-lot RR subdivision would generate versus... [the] attached senior housing [units] we'd develop....

So what we did, we just said well there's not going to be more than 65. And so we prepared the statement based on a higher number than what would more likely be approved or built so that anything that would be less than what we analyzed... [would] certainly [work].

And so the comparison in the letter is, if we had 65 single-family attached senior housing units it would generate 14 trips in the morning and 18 in the evening. When you compare that to just a traditional [20-unit] residential subdivision, which would generate 15 and 18, this site would generate one trip less than the 20-unit subdivision... [and] zero less than in the evening of the same comparison.

And if we [make comparisons using the 61 dwelling units]...we would generate two less trips in the morning and two less trips in the evening than [the] 20 units [in] a traditional subdivision would....There's really no net increase, and there's actually a minor decrease versus what could be built by right.

(August 30, 2023, T. 66-69)

(19) Mr. Nelson offered the following explanation as to why ,from a transportation perspective, the use will not affect the community or the rights-of-way within the area:

[T]he purpose of a collector highway is actually exactly what the name is, is that you have local residential streets, and then the purpose of the collector is to collect the traffic off the residential streets and then carry it to the higher-level classification roadways, which, in this case, would be to the north , to the arterials of White House Road, Ritchie Marlboro Road.

[T]he development itself doesn't connect to any subdivisions. It connects directly to the collectors, which is what it's supposed to do, and then those collectors carry the traffic to the adjoining higher-level roadways to get people to, say, the [B]eltway or further south on Route 4....

[T]he traffic numbers [from the proposed senior housing community] are almost de minimis. They're less than 20 peak hour trips. So you really aren't going to even see the trip loading. But, more importantly, the design, I think, is a benefit to the collectors.... [A]s you can see, if you go further north on Westphalia Road, there's a number of developments that each house has a driveway to the collector, and then, if you go about 1,500 feet, there's a string of about ten of them which have individual driveways. And while it's not allowed, it's significantly better from a traffic safety perspective to consolidate your driveways into a main road and then not have any conflicts along the roadway. So this development actually, I think, is a far superior design to what ordinarily would have been built on this property....

I don't believe there would be an adverse effect, but I think there'd be a net benefit to the community by allowing this to go forward as designed....

(August 30, 2023 T. 72-75)

(20) Upon cross-examination, Mr. Nelson stated that the proposed entrance to the subject property is approximately 1000 feet east of the intersection of Westphalia and D'Arcy Roads that is controlled with a stop sign. While acknowledging that the intersection is "interesting" he still believed that the access for the subject property is located in the best place for the site, but will be reviewed at the time of preliminary plan of subdivision. (August 30, 2023 T. 76-79). He also testified after questioning by Ms. Robinson that Westphalia Road would be considered a rural two-lane collector, and her concerns about the amount of traffic and number of accidents in the area will be addressed:

[O]ne of the things we try, as traffic engineers, to improve capacity and safety is to control access.... And if you just drive down Westphalia Road a little bit to the north, there's like, 15 houses that front on Westphalia Road directly. Each one has a garage ... [and] a driveway.

So you can envision that, as people are traveling down it, people are coming in and out of their driveways. There's waiting to make left turns in, right turns out. Every one of those houses has that kind of experience that the drivers have to confront versus what this plan proposes where you have the entire frontage of the property but ... there's only one driveway and all the ... turning movements are going to occur in one place. So you don't have to respond to multiple ... left turns, right turns, somebody's pulling in to ... get into their house versus backing out of their driveways. None of that will occur at this location.

So from a traffic engineering perspective, the design ... really is significantly safer than ... individual driveways along the entire frontage....

And as far as Westphalia Road, I think the character of the road is... pretty much the way it's been for a long time. With the development to the south, there's no doubt that people are seeing an increase in traffic with that connection from the development opposite D'Arcy [Road].

The site requirement is [does it] meet standards and their level of service requirements, and we'll have to analyze that and make sure that it's adequate. Is it going to be different than what it is today or what it was 15 years ago? It probably is. But the question isn't is it different. The question is it adequate, and that's what we have to prove at the next step....

(August 30, 2023 T.87-90)

(21) Mark Ferguson, accepted as an expert in land use planning, testified and provided a Land Planning Analysis (Exhibit 68) in support of the request. Mr. Ferguson provided the following description of the neighborhood surrounding the subject property:

[The neighborhood is a] circle of approximately a mile in radius surrounding the subject property. And within that area, towards the west particularly, you have higher density uses. You have some existing multifamily and attached dwellings that are ... part of a multifamily development. You have existing attached dwellings that are part of Parkside development.

To the west, you have approved attached dwellings that are parts of the Westphalia development all along – all of these three are along Westphalia Road. You do have the Capital Electrical Warehouse at the very edge of the neighborhood which ... used to be in the MXT zone....

[A]nd then you have developing property to the ... east, which will be more single family detached in character, but ... at certainly much higher densities than the ... current character of the neighborhood.

There are scattered industrial and institutional uses as well throughout the neighborhood, particularly to the north along D'Arcy Road and, in fact, at the intersection of D'Arcy and Westphalia Road just to the west of the subject property, a very short distance, there's an industrial property as well and commercial property both across and to the ... west.

So there is a fairly diverse character that is of higher density and more in conformance with the planned character of the proposed development than the immediately abutting uses would indicate.

(August 2, 2023 T. 44-45)

(22) As noted above, Mr. Ferguson provided a detailed analysis (via a written report and testimony) to support his opinion that the request satisfied the purposes of the Zoning Ordinance and applicable zones, applicable provisions of the Westphalia Sector Plan, and Subtitles 25 and 27. (Exhibit 68; August 2, 2023 T. 33-70, 80-93) The following is an excerpt of said reasoning:

- The purposes of the Zoning Ordinance and the proposed use are in harmony since: approval of the use will provide modern stormwater management; the requested use will introduce a housing type that will be comfortable and convenient for elderly residents in the County to age in place; the requested use would be the type of context-sensitive infill development envisioned for the Established Communities discussed in the 2014 General Plan, and is the type of low-density residential use promoted for that area in the 2007 Sector Plan; the Applicant proffers architectural conditions that ensure provisions of certain high-quality design principles highlighted in the Sector Plan; the "villa" attached homes to be constructed will serve as a transition between Westphalia Estates to the east and the institutional, industrial and attached-dwelling residential uses to the west along Westphalia Road, and will reflect the character of their location along Westphalia Road; the Applicant will provide a 10-12 foot- wide side path along its frontage on Westphalia Road that will provide high-quality pedestrian and bikeway connections; the Applicant will provide special pedestrian crossing markings along the neighborhood roadway intersections.
- The Sector Plan's Environmental Infrastructure policy on noise, and the purposes of the M-I-O Zone are met since noise attenuation measures will be incorporated into the proposed building construction as required to reduce internal noise levels from exterior noise sources to a maximum of 45dBA LDN.
- The Sector Plan's transportation strategies are addressed since Applicant will be required to improve Westphalia Road along its frontage which is without shoulders or adequate drainage.
- The small wetland which is a regulated area within the Green Infrastructure Network will be preserved intact.

- No historic site/resources are located immediately proximate to the site; all setback provisions will be met; all regulations pertaining to the Building Code, Fire Code, floodplain and stormwater will be met.
- The construction and utilization of the dwellings will require employment of suitable craftsmen and will add to the County's tax base; the side path and singular access to the site will be designed in a manner to lessen danger and congestion on the road; and the application will generate no new air/water pollution, disturb no stream valleys or steep slopes, lands of natural beauty, dense forest or similar features.
- The applicable purposes of the R-R Zone are met for many of the reasons noted above concerning preservation of trees and open spaces and prevention of soil erosion and floodplain.
- The request satisfies Section 27-317 since Applicant has requested Alternative Compliance to the provisions of the Landscape Manual and variance to Subtitle 25 requirements concerning specimen tree— if granted the proposed use will be in conformance with all applicable requirements of the Zoning Ordinance. The proposed use will not substantially impair any validly approved Master or Functional Plan (for reasons noted above); the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area since all applicable provisions of law are being addressed; the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood given its location adjacent to a commercially zoned tract, across a collector road from an industrial use and several institutional uses, and close to comparable dwelling units attached and detached; Applicant is requesting approval of TCP2-006-2023 and staff has determined that it meets all requirements once certain conditions are addressed; Applicant's Special Exception Site Plan combines a small regulated environmental feature – the wetland area is to be preserved intact although a portion of the buffer will be temporarily disturbed for the installation of a sewer outfall, and restored upon completion of the sewer construction; and, the Subject Property does not lie within the Chesapeake Bay Critical Area.
- The request satisfies the applicable provisions of Section 27-352 .01 (a)(7) and (b) since :the site has a gross tract area of 10 acres; it is adjacent to a park owned by MNCPPC; it has 918.51 feet of frontage and direct vehicular access to Westphalia Road, a collector roadway; the density proposed is 6.23 dwelling units per acre; all building dimensions and setbacks are shown on the Special Exception Site Plan; Applicant has provided several on-site passive recreational facilities; the dwelling units are not in a linear design and the open space also includes a landscaped buffer from surrounding uses, including the single-family detached dwellings to the east; the proposed development is designed in conformance with the TCP2-006-2023; the open space is of a sufficient size to provide private recreational uses, will further buffer the adjoining uses from the proposed development and will conserve an area of isolated nontidal wetlands and an area of wooded steep

slopes along a stream to the south; Applicant has submitted draft covenants that show age restrictions in conformance with federal law and that run to the benefit of the County; the open space provides scenic value along Westphalia Road and has been enhanced by the addition of a masonry wall and landscape plantings; the villa attached housing type to be constructed is a diverse and original lot layout in the area, and is to be developed in a manner to avoid a linear design layout; the lots, homes and streets were designed to distribute open space in a manner that will buffer adjoining uses and conserve an area of wooded steep slopes along a stream on the adjacent property to the south, and to allow many of the lots to take advantage of the views of the preserved wooded area and to minimize the area devoted to motor vehicles; the design orients the residents away from the noise and traffic on Westphalia Road to afford privacy; the low masonry wall and buffer along Westphalia Road is attractive and will be compatible with planned development surrounding the site; 48.6% of the subject property's land area is devoted to open space, recreation facilities and socially-oriented amenities; no community building is proposed; and, no active recreation areas are proposed.

(Exhibit 68, pp. 5-21)

(23) One requirement referenced in Section 27-352.01(a)(7) – the requirement to use Section 24-137(g)(9) of the Subdivision Regulations as a guideline- was addressed as follows by the witness:

24-137(g)(9) Not more than one fourth (1/4) of any land having slopes greater than twenty-five percent (25%) will be removed or altered, and then only when such slopes are isolated, small, or otherwise occur as insignificant knolls, so that the design of the development or cluster open space will not be adversely affected.

The land having slopes greater than 25% is shown on Sheet 3 of the Special Exception Site Plan. This planner's analysis finds that approximately 49% of those steep areas will be removed, but nonetheless finds that the intent of this guideline is being successfully addressed. This guideline was written prior to changes in land development regulations which made restrictions on slope disturbance more restrictive, considering instead all land with a slope greater than 15% as steep.

The areas of 25% + at the subject property are generally small and isolated, and are distributed among larger areas of 15% - 25% slopes. One of the larger areas of concentrated 25% + slopes is in the area around the outfall of the stormwater management facility; it is the necessary disturbance of the slopes which drives the disturbance over the guidelines threshold, while the other large areas of 25%+ slopes at the subject property's southern perimeter (together with much larger contiguous areas of 15%-25% slopes) are preserved in keeping with this guideline's intent.

(Exhibit 68, p. 20)

(24) Mr. Ferguson explained why Applicant seeks alternative compliance from certain provisions of the Landscape Manual. He first noted that Applicant did not consider the

proposed 10-foot Public Utility Easement as part of the width of the buffers, and that the Landscape Manual only requires that planting material be located outside of the easement. Accordingly, no grant of alternative requirement is needed from Section 4.6(c)(1)(A)(ii) for the 38.8" wide buffer. Applicant still requires alternative compliance from the provision in Section 4.6(c)(2)(A)(ii) because 559 plant units are required but only 343 plant units are proposed. The Landscape Manual allows alternative compliance in part when topography, soil, vegetation or other site conditions are such that full compliance is impossible or impractical, or when space limitations, or unusually shaped lots are the issue. Any alternative compliance proposal must be equal or better than normal compliance in terms of quality, durability, hardiness and ability to fulfill the design criteria. Mr. Ferguson noted that the property has a significant amount of topographic relief and space limitations due to the preservation of wooded steep slopes and wetlands, so compliance is proposed to be provided by adding a 3-foot high masonry wall to provide visual separation between the proposed use and Westphalia Road. He noted that the Planning Director and staff recommended approval of the request, but suggests one of their conditions be revised to remove "additional evergreen or ornamental tree plantings ... as space allows" since that is subject to interpretation and changed to "fifteen additional evergreen or ornamental trees" which would represent one additional tree between every two shade trees provided on the Special Exception Site Plan. This would increase the required plant units to 418. (Exhibit 68, pp. 23 -24)

(25) Mr. Ferguson offered the following conclusion:

In summary, this planner finds that, with the grant of Alternative Compliance AC-23002 for the requirement of Section 4.6 (c)(2)(A)(ii) of the Landscape Manual for a buffer along a historic road in the Developing Tier, and a variance from the provisions of Subtitle 25, Section 25-122 (b)(1)(G) for the removal of 25 specimen trees, the approval of the subject application would be in compliance with the general criteria for approval of a Special Exception found in Section 27-317 (a), and the specific criteria for approval of Elderly Housing (one-family attached dwellings) found in Section 27-352.01(b) of the prior zoning ordinance.

Additionally, it is this planner's opinion that because of it being a moderate-density use at a contextually-appropriate location (adjacent to a commercially zoned tract, across from an industrial use and several institutional uses, and a block to the east away from comparable housing units in Parkside and another approved attached dwelling development which abut Westphalia Road), the proposed development is compatible with both its higher- and lower-intensity neighbors and fits into the predominant low- to moderate-density character which is planned for the general neighborhood, and that the approval of this particular application therefore would not entail a more adverse impact on the public health, safety and welfare than those inherently associated with Elderly Housing (one-family attached dwellings), irrespective of their location in the R-R Zone.

(Exhibit 68, p. 26)

Opposition's concerns

(26) Ms. Wanda Collins' driveway is directly across Westphalia Road from the planned access to the subject property. (August 30, 2023 T. 59-60) She provided the following testimony in opposition to the request:

I have met with Mr. Burke, I guess three times, and he went over the project.... I moved into a rural residential area 31 years ago because the neighborhood was quiet. I had peace of mind until all the recent activities started going on in the neighborhood. I live directly across from the Alexanders' property, and I would be directly impacted. I also believe that the entrance into the development would be in close proximity to my driveway. I know it moved a couple of times.

I'm not sure, Mr. Burke..., where it is right now.... But with all the building that's been going on over the past few years, the traffic has increased, accidents have increased, and drivers are speeding down Westphalia Road like it's a race track. This new plan ... would increase the traffic even more, and I'm concerned that these villas, which my sister lives in one that is called a townhouse that is made the same way with her bedroom downstairs and everything, will decrease the value of not just my property but the – my neighbors in the surrounding area and will be a nuisance for the community for years.

I have received ... information from an HOA member who knew about this property before we did. And by we, I mean the, I guess, 13 families that actually live on Westphalia Road that are directly impacted by the whole thing. And I just think ... we should have known about it before the HOAs knew about it....

The last thing I really want to mention is with the construction in this area ... to the left of me has been bombarded by animals who have made that property their new home. They're destroying the trees. They eat my plants, and they just became a nuisance to my household, and it's nothing I can do about it. So they – we invaded their spaces when we did all the building in Parkside and now some more, and now they're invading mine. And nobody – I can't get help from anybody to fight animals, but that is the reason why I oppose this....

(August 2, 2023 T. 97-100)

(27) Dr. Anna McCall also appeared in opposition to the request at the August 2, 2023 hearing, but was unable to testify at that time. Yamala Robinson resides near the subject property and testified in opposition to the request. She also believes the one access to the site would be "a nightmare" if there were an emergency situation. (August 30, 2023 T. 122) Ms. Robinson was allowed to read the following written testimony provided by Dr. McCall because Dr. McCall was unavailable at the time of the third hearing, but did note her objection during the second:

I'm against rezoning this property. The infrastructure does not support a more densely populated neighborhood. We cannot continue with destruction of forest canopy and wetland in Prince George's County in order to develop poorly-constructed, overpriced homes....

Decisions about zoning should first address preservation of natural habitat, wildlife, and reforestation. It should be about making neighborhoods walkable and traffic patterns more safe.

The development is being promoted as senior living. However, there are no real amenities in the area that would be accessible to many seniors that don't have access to cars. The Westphalia Park that is to be connected to the development is dilapidated and has not had any upgrades in years. Consider requiring the developer to enhance this park for all neighbors to enjoy. Consider requiring that the developers be committed in connecting this development to adjacent areas with sidewalks and trails.

Finally, Westphalia has been plagued with speeding and accidents. Prior to reasoning and any new construction, this county should commit to making Westphalia and D'Arcy intersections safe. This area should be made into a traffic circle or another suitable traffic calming design....

(Exhibit 79, August 30, 2023 T. 124-125)

(28) Dr. Ramona Burton had concerns about the single entrance into the subject property because Westphalia Road, which she believes to be basically rural in nature:

With the limited parking that ... is planned inside of this community, there's a lot of overflow on ... what was the shoulder. So with it being just one lane in each direction ... my concern is what happens when there aren't enough spaces in the new owner's driveway and [there is] ... Sansbury [Road] overflow because of limited space inside.

So, it's more about the road. It's more about Westphalia and it being improved to accommodate this new community and make it safe for everyone, including the residents that will be turning in and out. One driveway or not, they need to be safe coming in and out of that traffic....

There is no light at that busy street, that intersection you were referring to. There is not a light there. There's a four-way stop. There's a two-way stop sign because the traffic on Westphalia continues. So you can sit there for a very long time, and if you're coming from D'Arcy, the cars coming from the new community, Parkside, you've equally been sitting there a long time. It's a – it's a hazard that needs to be addressed. There needs to be a light there. Maybe if there was a traffic light put there, as this community was – is being built, it would slow down the traffic and give them an opportunity to get out in the traffic.

We're also talking about, you know, older residents – okay –driving. I mean, we want to consider that too....

(August 30, 2023 T. 96-97)

(29) Finally, Kimberly Thomas appeared in opposition to the request and provided the following testimony;

I happen to be one house away from Ms. Alexander's property. And so I am also a homeowner that is going to be directly impacted by not only what's proposed to take place

on the Alexander property but also the church, that's proposed to be built, is directly across from where I currently live.

I have been a member of the Westphalia community for going on 21 years, and I have greatly seen how the traffic has changed over these past 21 years. When I first moved on Westphalia Road, I could still hear the cows mooing because it was basically farmland, very rural land, and all of that has been diminished and taken away.

And my concern is the infrastructure is not built or designed to handle the numerous housing developments that are taking place in – on Westphalia Road and the surrounding community. As has already been testified, that intersection is a nightmare. I think people have forgotten driving rules. You can be at the intersection first, waiting to turn; and, you know, while you're trying to make a left turn, which I have to do to get to my property, someone can come down from the Parkside, you know, and I'm already there with my signal light on waiting to turn. And as I'm turning, they will zoom across the street, and I've almost run into cars several times when I've been there waiting to turn, and it's my right-of-way, but they decide they don't want to wait, and they zoom across the highway while I'm, in fact, trying to make a left turn. And I've had to slam on brakes numerous times to keep from running in someone's driver's side door.

So there does need to be some type of traffic mitigation there. It's desperately needed. That's one issue. The second issue, as I said, the infrastructure. Again if anyone has driven up and down Westphalia Road, it's a windy, narrow, curvy road. I happen to live on a section where it's flat, and out of a two-week pay period, I work from home seven days out of ten. Where I – my office is directly faces Westphalia Road.

I've seen I don't know how many accidents nearly happen because I constantly see cars speeding down and passing on the double lane. That concerns me now that school is back in session. This can be five o'clock in the morning, because I start my workday at six, and I see this happen over and over and over again when cars – drivers are impatient, and, as soon as they get on this flat part, they're zooming past other cars who are doing the speed limit. You know, so that concerns me.

You know, I – again, I've seen accidents happen not only from the D'Arcy road intersection, which someone testified to, but I've seen near misses just sitting out – you know, looking out my window because there's been such a significant increase in traffic now with people cutting through Westphalia Road, and that was a direct impact when they were sending people through Westphalia Road when Ritchie Marlboro Road was shut down for that year or so for whatever was happening on Ritchie Marlboro Road.

So now that people know, oh, I can cut through Westphalia to get to Ritchie Marlboro, that's what's happening. And, you know, so I'm concerned about the lack of infrastructure that's not in place and significant increase in traffic.

And as Ms. Collins also testified year, I come outside and see the wildlife all the time. I mean, you know, came outside the other day. There's a raccoon sitting on my step looking at me. Okay. Never had – never seen raccoons in my – on my property before. But, yeah, there's a doe that cuts through my yard, and it's funny because he seems to know the layout of my land, because he actually cuts through and runs out my driveway, and my yard I fenced in.

So the deer actually now know the layout of my land and know how to get in and out of my gate. And, yes I have seen them cross the street going over to that empty property where the church is proposed to be built which is right beside Ms. Collins' property.

So I have seen an increase in wildlife because the more – of course, the wildlife doesn't have anywhere to go. The more development comes, the more it takes away from their natural habitat. So they're looking for places to go.

My other comment was – and this was related to the traffic, in terms of – and I'm sorry, not necessarily the traffic but the one way in and the one way out proposed for the Alexander property. While that may make sense in terms of traffic, how does that make sense in terms of a natural disaster and people have to quickly exit to get somewhere. How do how does that make sense with that – and I they only have one way in and one way out?

So I'd like to hear someone respond to that. That's about all my comments. Thank you so much.

(August 30, 2023 T.115-121)

Technical Staff and Other Agency Review

(30) The Department of Permitting, Inspections and Enforcement (“DPIE”) reviewed the Application and noted right-of-way declarations and improvements may be required, as well as roadside trees and sidewalks, if the request is approved. DPIE also advised that the Applicant will have to provide further information to complete its site development plan review pertaining to stormwater management (required per Subtitle 32 of the Prince George's County Code). (Exhibit 24, Backup pp. 51-53)

(31) The Planning Director and her Alternative Compliance Committee recommended approval of AC-23002, reasoning as follows:

Alternative Compliance is requested from the requirements of Section 4.6-1, Buffering Residential Development from streets, and Section 4.6-2, Buffering Development from Special Roadways, of the 2010...[Landscape Manual], along the subject property's frontage on Westphalia Road, a historic collector road....

The Applicant requests Alternative Compliance from Section 4.6(c)(1)(A)(ii), Buffering Residential Development from Streets, of the Landscape Manual, from the required minimum width of the landscape buffer, and Section 4.6(c)(2)(A)(ii), Buffering Development from Special Roadways, from the required number of plant units within the landscape buffer....

The Alternative Compliance Committee found the Applicant does not require Alternative Compliance for Section 4.6(c)(1)(A)(ii), as the Applicant did not include the 10-foot public utility easement (PUE) width in the provided buffer width...[Once] this width [is] included, the buffer width would be approximately 38.8 feet, which meets the required minimum 35-foot-wide buffer. The Alternative Compliance Committee has provided a condition in...to

revise the plans demonstrating [compliance with] Section 4.6(c)(1)(A)(ii)...[of] the Landscape Manual....

The Applicant requests Alternative Compliance from the requirements of Section 4.6(c)(2)(A)(ii), Buffering Development from Special Roadways, which requires a minimum 20-foot-wide buffer to be planted with a minimum of 80 plant units per 100 linear feet of frontage, excluding driveway openings.... The Applicant provides approximately 61 percent of the 559 required plant units, or 343 units.

This Special Exception meets all other requirements of Section 4.6, apart from the required 559 plant units and the width for two short sections. The Applicant can only provide plantings in 10 feet of the buffer width, as the remaining 10 feet is within the PUE. The Applicant proposes an alternative design element, with a 3-foot-high brick masonry wall, which runs parallel to all proposed lots, except for the two 48-foot-wide private rights-of-way. A condition is included to revise the proposed site detail of the brick masonry wall to correctly demonstrate the height and material of the wall to correctly demonstrate the height and material of the wall. The Applicant proposes an alternative design element, with a 3-foot-high brick masonry wall, in between the shade trees. These additional plantings will enhance the viewshed along Westphalia Road and move the plan closer to meeting the plant unit requirement.

The Alternative Compliance Committee finds the proposal equally effective as normal compliance with Section 4.6(c)(2)(A)(ii), Buffering Development from Special Roadways, subject to three conditions included herein. The Applicant provides a 3-foot-high, brick masonry wall and has been conditioned to provide additional evergreen and ornamental trees, which will increase the number of plant units and provide an enhanced streetscape along Westphalia Road, which will help achieve the purposes of Section 4.6....

(Exhibit 24, Backup pp. 2-3)

(32) The MNCPPC Transportation Planning Section noticed that the Special Exception Site Plan is acceptable from its standpoint, reasoning as follows:

Staff finds that the proposed plan 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 an upgraded side path of 10-12 feet wide, which is supported by the [Master Plan of Transportation] policy.

The current configuration of the site allows for one point of vehicle access along Westphalia Road. Per the approved transportation scoping agreement, traffic counts at the intersection of Westphalia Road and Rock Spring Drive are required to determine adequacy. Staff and the Applicant are in agreement that further analysis related to vehicular adequacy will be examined at the time of [subdivision review]. The Applicant has also provided a fire access plan, which demonstrates that a fire truck has sufficient room to safely navigate through the development.

Lastly, regarding pedestrian circulation and facilities, an 8-foot-wide shared-use path is displayed along the site's frontage [on] Westphalia Road.... [T]he staff is requesting the Applicant update this facility to a width of 10-12 feet wide. Sidewalks are provided throughout the development, providing pedestrian access throughout. Crosswalks have

been provided where sidewalk facilities are ????. A 10-foot-wide trail has been provided surrounding the [stormwater management] facility to the rear of the development, which also leads to Westphalia Park, located to southeast of the project site. Bicycle parking has been provided in the pavilion area. Staff supports the proposed bicycle and pedestrian facilities associated with the subject Application and will further examine them for adequacy at the [preliminary plan of subdivision] stage of development....

(Exhibit 24, Backup, pp. 79-80)

(33) The MCNPPC Community Planning Division noted that the property must satisfy certain requirements for development within the M-I-O Zone:

The subject property is located within the Noise Contours of the Military Installation Overlay Zone and 'interiors of all new residential construction within the Noise Intensity Contours, including additions, must be certified to 45 dBA Ldn or less by an Acoustical Engineer or qualified professional of competent expertise' pursuant to Section 27-548.55(b0) of the prior Zoning Ordinance.

The subject property is located within Height Surface E of the Military Installation Overlay Zone. The limitation on building height in the property's underlying R-R Zone ensure conformance to the structure height requirements of the overlay zone for the proposed development....

(Exhibit 24, Backup p. 47)

(34) The MNCPPC Environmental Planning Section reviewed the request and provided a thorough evaluation of the applicable Master Plan and Countywide Green Infrastructure Plan environmental policies and strategies, and the woodland conservation requirements found in Subtitle 25 of the County Code. (Exhibit 24, Backup pp 60-77) The following is an excerpt of its findings:

[Grandfathering]

The project is subject to the environmental regulations of Subtitle 25 and prior Subtitle 27 because there are no previous development approvals, and this application is for a new special exception....

[Site Description]

This site does not front on any master planned roadway, identifies as arterial or higher. This site does not feature any primary management area [PMA] , but an area of regulated environmental features [REF] in the form of an isolated wetland feature is present along the eastern property line. No forest interior dwelling species are indicated on site, per PGAtlas. According to information obtained from the Maryland Department of Natural Resources, Natural Heritage Program [DNR NHP], there are no rare, threatened, or endangered [RTE] 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 with[in] the Western Branch of the Patuxent River, a stronghold watershed as established by the Maryland DNR....

[Master Plan Conformance]

The site is located within the Environmental Strategy Area 2 (formerly the Developing Tier) of the Regulated Environmental Protection Areas Map, as designated by *Plan Prince George's 2035 Approved General Plan*, and the Established Communities of the General Plan Growth Policy (2035)....

The site is in the 2007 *Approved Westphalia Sector Plan and Sectional Map Amendment*. The Environmental Infrastructure Section of that sector plan, contains goals, policies, and strategies. The following guidelines have been determined to be applicable to the current project....

According to the *Approved Countywide Green Infrastructure Plan*, Evaluation Areas occur on the majority of the property. The approved NRI-005-2022 shows an isolated wetland on the eastern property boundary, which is [a] REF. While the NRI identifies both Stand A and Sub-Stands B-1 and B-2 as low priority for preservation and restoration, the applicant shall strive to meet the threshold on-site to serve multiple ecoservices....

Proposed impacts to REF and the PMA were requested with SE-4856 and evaluated....

The current application proposes development on the majority of the site. A portion of the isolated wetland area of the site is proposed to be impacted with the remainder undisturbed and preserved as part of the total woodland conservation; however, additional preservation areas to fully buffer and preserve this sensitive area is required to the fullest extent possible....

The site does not contain any stream features and is within the Western Branch watershed....

The proposed design places a portion of the isolated wetland on-site within an area of preservation; however, it does not adequately buffer the wetland from potential impacts associated with the proposed townhomes. Additional preservation in this area is strongly encouraged to maximize preservation of the isolated wetland....

[The Master Plan includes policies concerning agricultural uses and assessments for on-site streams.] The site does not contain agricultural uses... [and] [t]here are no on-site stream systems....

[The Master Plan encourages reduction of energy consumption and the implementation of environmentally sensitive building techniques.] The use of green building techniques and energy conservation techniques should be encouraged for the residential portion of the development...[and][t]he use of alternative energy sources should be encouraged....

[Countywide Green Infrastructure Plan]

The 2017 *Countywide Green Infrastructure Plan* was approved with the adoption of the Resource Conservation Plan: A Countywide Functional Master Plan According to the approved Plan, roughly 60 percent of this property is located within an Evaluation Area and the remaining 40 percent does not fall within a designated network area. Aerial imagery from PGAtlas shows that a portion of the site was developed since 1965 with buildings and driveway. This application is for a new SE and the development is subject to the current woodland conservation ordinance requirements....

The site is within Western Branch of the Patuxent River watershed, and is not within a Tier II catchment area. The site does not contain any stream systems, but does feature steep slopes and an isolated wetland. The majority of the southern portion of the site, which contains the isolated wetland and steep slopes, falls within the evaluation area of the Green Infrastructure Plan. A stream system is located off-site along the western property boundary. The current plan proposed to retain the majority of the isolated wetland with one impact proposed for a utility connection. Additional preservation or reforestation shall be proposed for a utility woodland conservation threshold and to fully protect the isolated wetland. While the preservation area along the southwestern property line preserves numerous specimen trees, additional preservation or reforestation in this area is strongly encouraged to reduce the impacts to the critical root zones (CRZ) of specimen trees within the conservation area....

The SE indicates that the regulated system on-site will be impacted with the majority proposed to be protected by reforestation. A TCP2 is required with this review, which shows that 4.90 acres of the required woodland conservation requirement will be met as .90 acres of woodland preservation, 0.13 acres of reforestation, and 3.87-acre of off-site credits. To the greatest extent practicable, the woodland conservation threshold shall be met on-site through the preservation of existing woodland....

Although the applicant proposes a connection of woodland conservation on the southern portion of the property, the wetland area, as well as the woodland preservation and reforestation in the eastern portion of the property, are fragmented from the existing REF to the southern portion of the project. With the SE development proposal, the applicant has an opportunity to connect with an off-site stream system to the south by providing a continuous area of woodland conservation to the Green Infrastructure network. Meeting the woodland conservation threshold on-site would support the implementation of the Green Infrastructure Plan of ensuring the environmentally sensitive areas on-site are being preserved to the extent practicable....

A trail system to connect this site and the adjacent park to the southeast is proposed. This proposed trail is outside of the REF on-site....

On-site woodland conservation shall be placed in Woodland and Wildlife Habitat Conservation [e]asements, prior to the certification of the TCP 2....

The proposal has received stormwater concept approval ...[that meets]the current requirements of Environmental Site Design (ESD) to the maximum extent practicable. No stormwater features are being placed within the REF....

The property contains 4.78 acres of existing woodland. Currently, the TCP 2 proposes to meet the majority of the woodland conservation requirements off-site by purchasing credits within an off-site tree bank. Retention of existing woodlands on-site would support Policy 7 of the Green Infrastructure Plan preserving the connection of the on-site is required by both the Environmental Technical Manual (ETM) and the Prince George's County Landscape Manual. Tree canopy coverage requirements will be evaluated by the Urban Design Section....

Clearing of woodland is proposed with the subject application. Woodland conservation is designed to minimize fragmentation and reinforce new forest edges. This site does not

contain potential Forest Interior Dwelling Species (FIDS). Green space is encouraged to serve multiple eco-services.

Due to the nature of the proposed submerged gravel wetland and the shape of the property, a new forest edge is created along the property boundary shared by the adjacent park site. In addition, the proposed on-site woodland preservation area is 0.97 acres short of the 20 percent woodland conservation threshold, relegates the woodland preservation area to the property boundaries, and fragments the eastern woodland conservation areas from the western conservation areas. While a number of specimen trees are preserved, the majority of on-site greenspace was reduced....

[Environmental Review]

The site has an approved Natural Resources Inventory (NRI-005-2022). The NRI shows steep slopes, specimen trees, and an isolated wetland feature on the eastern property edge. No further information is required with this SE application regarding the existing site conditions....

The site is subject to the provisions of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO) because the property contains more than 10,000 square feet of woodland and proposes clearing of more than 5,000 square feet. A TCP2 was submitted with this application(TCP2-2-006-2023), which shows a total of 4.78 acres of woodland on-site and clearing of 3.88 acres of woodland. The threshold as established by the zone is 20 percent, or 2 acres. Based on the proposed clearing, a total woodland conservation requirement of 4.90 acres is required. The applicant proposes to meet this requirement with 0.90 acres is required. The applicant proposes to meet this requirement with 0.90 acres of on-site preservation, 0.13 acres of on-site reforestation, and 3.87 acres of off-site credits. To find conformance with the area Master Plan and Green Infrastructure Plan, the applicant shall revise the TCP2 to meet the 20 percent threshold on-site....

No areas of PMA are located on this property, based on the approved NRI plan; however, REF are located on-site. The applicant has submitted a statement of justification for impacts to REF dated March 9, 2023....

Impact 1 proposes 998 square feet ... of impact to the on-site wetland buffer for connection, installation, and associated grading for a sanitary sewer line. This proposed impact is for a utility connection and is supported as proposed....

Based on the level of design information currently available, the limits of disturbance shown on the TCP2, and the impact exhibits provided, the regulated environmental features (REF) on the subject property were preserved and/or restored to the fullest extent possible. The necessary impact is to connect to a WSSC sanitary sewer. Staff supports this impact.

(Exhibit 24, Backup pp.60-67, and 75-76)

(35) The Environmental Review Section provided the following analysis of Applicant's variance request from Section 25-122 of the Prince George's County Code for the removal of specimen trees:

Section 25-122(b)(1)(G) requires that '[s]pecimen trees, champion trees, and trees that are part of a historic site or are associated with a historic structure shall be preserved and the design shall either preserve the CRZ of each tree in its entirety or preserve an appropriate percentage of the CRZ in keeping with the tree's condition and the species' ability to survive construction as provided in the Technical Manual.' The code, however, is not inflexible....

Section 5-1611 of the Natural Resources Article requires the local jurisdiction to provide procedures for granting variances to the local forest conservation program. The variance criteria in [the County Code] are set forth in Section 25-119(d)....

A Subtitle 25 variance was submitted for review with this application. The approved NRI (NRI-005-2022) identifies a total of 48 specimen trees on-site [, and Applicant requested the removal of] 25 specimen trees.

The letter of justification (LOJ) requests the removal of 25 specimen trees identified as ST-1 through ST-7, ST-14 through ST-22, ST-31, and ST-41 through ST-48. The condition of trees proposed for removal ranges from poor to good. This site is broken into one major stand (Stand A) and one minor stand (Sub-stands B-1 and B-2). Stand A encompasses the majority of the southern portion of the property. Sub-stand B-1 is located due north of the isolated wetland, and Sub-stand B-2 is located just west of the existing dwelling. The TCP2 shows the location of the trees proposed for removal. These specimen trees are proposed for removal for the development of the site, roadways, utilities, SWM, and associated infrastructure....

Section 25-119(d)[(1)] contains six required findings to be made before a variance from the WCO can be granted.... [The following addresses why Staff believes the first finding in Section 25-119 (d)(1)(A) is satisfied:]

In relation to other properties in the area, special conditions peculiar to the subject property would cause an unwarranted hardship if the applicant were required to retain the 25 specimen trees. Those 'special conditions' relate to the specimen trees themselves, such as their size, condition, species, and on-site location.

The property is 10 acres, and the NRI shows no PMA with an isolated wetland area on the eastern property edge. The applicant is proposing one impact to the site's REF fully minimized to the extent practicable and is proposing woodland conservation and afforestation to further protect the REF.

The specimen trees are located across the entire site, many located along the southern property line. The specimen trees proposed for removal are located outside of the REF, except for ST-6, which lies just within the wetland buffer. This site contains steep slopes and an isolated wetland, which restricts the development envelope....

13 specimen trees [are] requested for removal for proposed roadways, building footprints, and grading. The species in this area are mostly oak, with poplar, sweetgum, and maple. The condition rating of these trees ranges from poor to good, with roughly half classified in good condition. Both poplars and silver maples have poor construction tolerances with the remainder of the trees having good to medium construction tolerances; however, all species of the included specimen trees have limiting factors for their construction tolerance, specifically if impacts are proposed to the CRZ, or that the species generally

have a weak wood structure. These trees are located throughout the site, outside of the steep slope areas. Specimen trees ST-1 and ST-2 are requested for removal for site access. Specimen trees ST-3, ST-4, ST-42, and ST-47 are proposed for removal to adequately provide connectivity throughout the site. Specimen trees ST-31 and ST-43 are proposed for removal to develop lots. Specimen tree ST-48 is proposed for removal for a roadway and for required sidewalk improvements along the Westphalia Road frontage. Specimen trees ST-5 and ST-6 are proposed for removal for utility connections.

Specimen tree ST-7, a yellow poplar in poor condition, appears to be proposed for removal for grading due to its condition. The grade shown in this area on the TCP2 does not impact a significant portion of ST-7's CRZ. While poplars have a poor construction tolerance, this specimen tree is located in an area of proposed reforestation. Thus, this specimen tree could remain, and in the event of decline, could provide additional habitat value.

Specimen tree ST-41 is a sweetgum in good condition. This tree is proposed for removal due to the grading required in the steep slope area for the development of proposed Lot 17. This specimen tree lies on the edge of the proposed preservation area and could be retained if the grading was revised to reduce the impact to the CRZ.

Staff supports the removal of 11 of the requested 13 specimen trees for site access, roads and site grading and recommends that Specimen trees 7 and 41 be retained or evaluated with future entitlement reviews....

(Exhibit 24, Backup pp. 69-73)

(36) Staff also found that the variance request satisfied the remaining findings set forth in Section 25-119(d)(1)(B)-(F), since:

- Having Applicant preserve all specimen trees would deprive it of rights commonly enjoyed by others. The trees have grown to such a large size because they have been undisturbed for many years and allowed to grow. They will have a considerable impact on the developable parts of the site if not removed, and any other applicant facing a similar circumstance would also have the right to request the variance. (Subtitle 25, Section 25-119 (d)(1)(B))
- A special privilege is not being conferred upon Applicant. Denying the variance would prevent the project from being developed in a more functional/efficient manner, and other developments with specimen trees in similar locations and conditions would also be granted the same considerations. (Subtitle 25, Section 25-119 (d)(1)(C))
- The specimen tree variance request is not based on Applicant's actions. The Applicant is not responsible for their location, but their removal is necessitated by the infrastructure and grading for the proposed use. As noted by Staff "[a]ll species of the included specimen trees have limiting factors for their construction tolerance, specifically if impacts are proposed to the CRZ, or that the species generally have a weak wood structure." (Subtitle 25, Section 25-119 (d)(1)(D))
- The need to remove the specimen trees does not result from a neighboring property's land or building use. (Subtitle 25, Section 25-119)(d)(1)(E))

- There is no indication that removal of the specimen trees will adversely affect water quality, and all stormwater management and sediment and control requirements must be satisfied to ensure that the water quality leaving the subject property meets State standards. (Subtitle 25, Section 25-119 (d)(1)(F))

(Exhibit 24, Backup pp.75)

(37) The Technical Staff ultimately recommended approval with conditions (some of which were revised subsequent to the release of its Staff Report). (Exhibit 24) It provided the following analysis in support of its belief that the request satisfied Sections 27-317 and 352.01(b) of the Zoning Ordinance (paraphrased):

Conformance with Section 27-317

Staff believes the purposes of the Zoning Ordinance, set forth in Section 27-102 of the Zoning Ordinance (2019 Edition) are generally to protect the public health, safety and welfare. It concluded that the request meets this purpose since:

- The 61 single-family attached dwelling units will provide diverse housing options for the surrounding community.
- Screening will be provided along the abutting historic right-of-way (Westphalia Road)
- Environmental features will be preserved by new stormwater management system installation and the preservation of on-site wetland.
- Both on-site and off-site woodland conservation areas are proposed. (27-317(a)(1))
- No variances are requested from the requirements of Subtitle 27. (27-317 (a)(2))
- The proposed elderly villas are surrounded by single-family dwellings, vacant land and a public park. The request will satisfy the goal of the Established Communities Policy area to provide context-sensitive infill and low-to medium-density development. Although the 2007 Westphalia Sector Plan and SMA places this property in the low-density residential land use area as recommended development of approximately 3,500 acres of low-to medium-density development. Finally, the proposed use is within the density allowed in the R-R Zone. (Section 27-317(a)(3))
- The request will not adversely affect the health, safety or welfare of residents or workers since the much needed quality senior housing will be developed with walking trails that lead to the adjacent Westphalia Park and community

- garden, an 10 to 12 foot-wide shared use path adjacent to Westphalia Road for safe vehicular, bicycle and pedestrian circulation in that area (consistent with the policies in the 2009 Countywide Master Plan of Transportation).
(Section 27-317(a)(4))
- The request will not be detrimental to the use or development of adjacent properties or the general neighborhood since it will complement the surrounding residential uses (as it is a similar use), and will provide access to adjacent Westphalia Park.
(Section 27-317(a)(5))
 - TCP2-006-2023 was submitted with the application. It shows 4.73 acres of woodland on-site and clearing of 3.88 acres of woodland. The required threshold in the R-R Zone is 20% on-site. Conditions are recommended to ensure that this threshold is met. Applicant also requested a variance from Subtitle 25 in order to remove certain specimen trees. Staff agreed that 23 of the identified trees could be removed. (as discussed above), but believes (T-7 and 4) should be retained and evaluated further.
(Section 27-317(a)(6))
 - Environmental features are being preserved to the fullest extent possible. The site does not contain any primary management area but there is a regulated environmental feature (isolated wetland) along the eastern property line that will be slightly impacted during construction in order to connect to a WSSC sanitary sewer. The remainder of the wetland will be undisturbed and preserved with green space, and the forested portion preserved.
(Section 27-317(a)(7))
 - The subject property does not lie within the Chesapeake Bay Critical Area.
(Section 27-317(b))

Conformance with Section 27-352.01(b)

- The site has a gross tract area of 10 acres.
(Section 27-352.01(b)(1))
- The property is adjacent to a park owned by M-NCPPC.
(Section 27-352.01(b)(2))
- The property has 912 feet of frontage on, and direct vehicular access to, Westphalia Road which is classified as an historic collector roadway.
(Section 27-352.01(b)(3))

- The proposed density is 6.1 dwelling units per acre.
(Section 27-352.01(b)(4))
- The Special Exception Site Plan includes the building dimensions, and percentages.
(Section 27-352.01(b)(5))
- The applicant will provide a 4,990-square-foot outdoor community area shown as Amenity Area A on the Landscape Plan. The community area connects to a hard-surface walking path that loops around the stormwater pond and provides a connection to Westphalia Park.
(Section 27-352.01(b)(6))
- Applicant has submitted draft covenants noting that age restrictions will be in conformance with the Federal Fair Housing Act. The covenants will run to the benefit of the County, shall be approved by the District Council, and filed in the Land Records for Prince George's County at the time that the final subdivision plat is filed.
(Section 27-352.01(b)(7))
- The requirements of Section 27-352.01(a)(7) are satisfied in the Special Exception Site Plan. There is a landscaped buffer along the street frontage. Dwelling units are in groups of 3-5 townhomes with private streets separating each block. The 4,990-square-foot community area (that includes a covered pavilion, bike racks and a community garden) is centrally located along the main internal road. The proposed development will provide 48.6% of open space. No community building is proposed. The on-site amenity will provide passive recreation.
(Section 27-352.01(a)(7) and (b)(8))

APPLICABLE LAW

(1) The elderly housing proposed in the instant Application is permitted in the RR/MIO Zones upon grant of a Special Exception. In order to receive special exception approval, the Applicant must satisfy the provisions of Sections 27-317 and 27-352.01 of the Prince George's County Zoning Ordinance (2019 Edition) The Applicant has also requested approval of TCP 2-006-2023, Alternative Compliance to the Landscape Ordinance (AC-23002) and a variance from Section 25-122(b)(1)(G) of the Woodland and Wildlife Habitat Conservation Ordinance.

(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 27-352.01 provides as follows:

Sec. 27-352.01. Elderly housing (one-family attached dwellings).

- (a) Attached one-family dwellings for the elderly (and related facilities) may be permitted, subject to the following:
 - (1) The subject property shall not be adjoining property in the R-O-S or O-S Zones, unless it is separated by an arterial roadway;
 - (2) The site plan shall show the density (which shall not exceed the maximum allowable density of the zone in which the use is located, as set forth in Section 27-442(h), and the type and total number of dwelling units proposed (which may also include one-family detached dwellings);
 - (3) The District Council shall find that the subject property is suitable for the type of development proposed and is of sufficient size to properly accommodate the proposed number of dwelling units;
 - (4) A recreational facilities plan shall be submitted demonstrating that sufficient recreational facilities or opportunities are provided to serve the prospective resident population, consistent with their needs and abilities. Facilities may be provided on-site or within adjoining development. In any case, but particularly if on adjoining property, there shall be a staging plan for the facilities constructed. Recreational areas should be clustered together to increase levels of activity, use of amenities, and the sense of vitality of the community;

- (5) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, and any other requirements of the specific zone in which the use is proposed (excluding density, which shall be governed by Section 27-352.01(a)(2)) 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;
- (6) The owner of the property shall record among the Land Records of Prince George's County a declaration of covenants which establishes that the premises will be solely occupied by elderly families for a fixed term of not less than sixty five (65) years. The covenant shall run to the benefit of the County; and
- (7) The following guidelines should be considered:
 - (A) Dwelling units should be clustered around a central focal point or public space and should avoid linear design. Open space should be oriented to provide the best possible separation or buffer from adjoining single-family detached uses. The requirements of Section 24-137(g)(1), (2), and (5) through (10) shall serve as guidelines for site layout.
 - (B) No less than ten percent (10%) of the land area should be devoted to open space, recreation facilities, and social-oriented amenities.
 - (C) If a community building is proposed, no less than three (3) physically separate areas, which shall include the separation of a single room, should be provided within the building for recreational and social-oriented amenities of varying activity levels.
 - (D) Each outdoor space intended for active recreation should be a minimum of fifty (50) feet in width in least dimension, with a minimum area of five thousand (5,000) square feet.
- (b) Notwithstanding the provisions of subsection (a) of this Section, attached one-family dwellings for the elderly (and related facilities) may be permitted in the R-R Zone, subject to the following:
 - (1) The gross tract area shall be between nine (9) and twenty (20) acres;
 - (2) The property shall be located adjacent to a park owned by a public agency or land zoned R-O-S and owned by a public agency or the United States of America;
 - (3) The property shall have at least one hundred fifty (150) feet of frontage on, and direct vehicular access to, a roadway with a functional transportation classification of collector or arterial;
 - (4) Density shall be limited to no more than eight (8) dwelling units to the acre;
 - (5) Regulations restricting the height of structures, lot size and coverage, frontage, setbacks, density, and any 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;
 - (6) Recreational facilities shall be required. The requirement may be satisfied with a combination of on-site and off-site facilities. On-site facilities may be passive or active. Off-site recreational facilities obligations may be satisfied through contributions to the adjacent public-owned parkland, in coordination with the Prince George's County Department of Parks and Recreation; and
 - (7) Age restrictions in conformance with the Federal Fair Housing Act shall be set forth in covenants submitted with the application. The covenants shall run to the benefit of the County, shall be approved by the District Council, and filed in the Land Records for Prince George's County shall be approved by the District Council, and filed in the land records at the time the final subdivision plat is recorded.
 - (8) The requirements of Section 27-352.01(a)(7) shall apply.
- (4) Section 27-548.51 provides as follows:

The purposes of the Military Installation Overlay Zone are to regulate the development and use of structures and property in order to promote land uses compatible with operations at Joint Base Andrews; to protect the safety and welfare of individuals in the area from the adverse impacts associated with high levels of noise from flight operations and the potential for aircraft accidents associated with proximity to Joint Base Andrews operations. The intent of the regulations is to recognize the rights of individual property owners while reducing interference with the military operations at Joint Base Andrews.

(5) Section 27-428 provides as follows:

(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.

(b) Uses

- (1) The uses allowed in the R-R Zone are as provided for the Table of Uses (Division 4 of this Part), General (Part 2), Off-Street Parking and Loading (Part 11), Signs (Part 12), and the Landscape Manual.

(6) Variances to the requirements of Subtitle 25 of the Prince George's County Code must satisfy the strictures set forth in Section 25-119(d):

Sec. 25-119. Applicability.

(d) Variances

- (1) An applicant may request a variance from this Division as part of the review of a TCP where owing to special features of the site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an applicant. To approve a variance, the approving authority shall find that:
 - (A) Special conditions peculiar to the property have caused the unwarranted hardship;
 - (B) Enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
 - (C) Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants;
 - (D) The request is not based on conditions or circumstances which are the result of actions by the applicant;
 - (E) The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
 - (F) Granting of the variance will not adversely affect water quality.
- (2) Notice of a request for a variance shall be given to the State of Maryland Department of Natural Resources within 15 days of receipt of a request for a variance.

- (3) Variances shall be approved by the Planning Board, Zoning Hearing Examiner, and/or the District Council for all tree conservation plans that are associated with applications heard by them. The Planning Director may approve variances for tree conservation plans that are not associated with applications heard by the Planning Board, Zoning Hearing Examiner and/or the District Council. The Planning Director's decisions are appealable to the Planning Board.
- (4) Variances granted under this Subtitle are not considered zoning variances.

Special Exceptions

- (7) 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.

- 8() 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.’

(9) 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 general purposes of the Zoning Ordinance are found in Section 27-102. The instant Application satisfies the following purposes for the reasons provided:

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

The request will provide an additional housing option for seniors to age in place if that is their desire. The housing is designed in a manner to protect environmental features and provide modern stormwater management facilities that will be of benefit in that area. For these reasons, as well as others set forth in Exhibit 68, this purpose is met.

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

As noted by the Technical Staff and the expert land use planning witness these Plans will be implemented if the request is approved since it will provide context-sensitive infill development as the site is surrounded by single-family homes, a public park and vacant land in the CGO Zone; it will provide a low-to-medium density residential area that will be integrated with the existing residential development; it introduces a new housing and architectural style in the area and conditions have been added to require the use of brick or other masonry for front facades, as well as additional points of architectural fenestration; the senior villas will provide a transition between Westphalia Estates and the other attached-dwelling residential uses, institutional uses and industrial uses in the neighborhood; usable shared green areas will preserve wooded areas along the southern boundary and these will become a part of a larger area of preserved woodlands along the corridor of the regulated stream to the south; Environmental Site Design techniques will provide water quality treatment and attenuation of quantity of any runoff from frequent storm events; and any impact to sensitive environmental areas will be temporary in order to install a public utility.

To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities;

The Applicant will be required to seek approval of a preliminary plan of subdivision which will confirm the adequacy of public facilities and services. It is important to stress that the transportation planning expert and transportation staff found that the use should not impact school facilities and will generate fewer AM and PM peak-hour vehicular trips than those generated by the 20 single-family detached residences permitted by right.

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

The use will provide additional senior housing in conformance with the County's Ordinances and Plans, satisfying this purpose.

To provide adequate light, air, and privacy;

The Special Exception Site Plan includes all building dimensions, and there is adequate frontage, setbacks, and lot coverage to ensure the provision of adequate light, air, and privacy.

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

The proposed elderly housing will be required to satisfy all applicable zoning, environmental, and building requirements, and will provide a masonry wall and additional plantings to the north of the site, a wide side path along Westphalia Road for the use of pedestrians and cyclists, and will install a modern stormwater management facility – all of which ensures the most beneficial relationship between land and buildings, and protects landowners from adverse impacts.

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

Applicant must satisfy all County laws intended to protect the County from fire, flood and other dangers. All internal private roads must be designed for adequate fire emergency access and will be reviewed by the Fire Marshal. Adequacy of public safety facilities will also be revisited at the time of subdivision review. Accordingly, this purpose is met.

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

The request is to add a housing type more suitable for older residents who wish to age in place, as it has smaller lots, and all living areas located on the first floor, to be offered at competitive price levels. There's no way to ensure any housing will be within the economic reach of **all** County residents, however. There are recreational amenities onsite and a plan to connect to the adjacent park owned by MNCPPC, and these will help to create a suitable and healthy living environment.

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

Development of the property will provide employment opportunities and add to the County's tax base.

To prevent the overcrowding of land;

Applicant proposes to construct approximately 6 dwelling units per acre -the type of low-to-moderate-density housing recommended in the applicable Plans. Applicant will also satisfy all applicable setback and height requirements.

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;

Applicant must undergo subdivision review and transportation adequacy will be addressed further at that time. Applicant has presented information at this stage to show that the proposed use would generate less AM and PM peak-hour traffic than the single-family homes that could be developed by right on the property. The applicant will also have to improve Westphalia Road along its frontage and expand it for the needed multimodal sidewalk.

To ensure the social and economic stability of all parts of the County;

Providing much-needed senior housing that will allow residents to age in place satisfies this purpose.

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;

A condition has been added to require the limitation of interior noise levels due to the subject property's proximity to Joint Base Andrews. Additionally, there is no indication that the use will generate new air pollution, and the plantings that will be added will benefit air quality. Water pollution will be prevented through the submerged gravel wetland that will provide stormwater quality and quantity management. Finally, existing wetlands as identified in NRI-005-2022 will be preserved.

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

The property's regulated natural features are being preserved to the fullest extent possible, and communal recreational space is provided.

To protect and conserve the agricultural industry and natural resources.

Onsite wetlands are being protected and the site is not located within an agricultural area.

(Section 27-317 (a)(1))

(2) The Application satisfies the applicable purposes of the R-R and M-I-O Zones found in Sections 27-428(a) and 27-548.51 since trees and open spaces are being preserved, 100-year stormwater management is provided, development must be in accordance with the approved Sediment and Erosion Control Plan, and the dwellings will fall well within the height limitations and will meet the interior noise limitations for properties in proximity to Joint Base Andrews. (Section 27-317 (a)(1))

(3) The instant Application requires the grant of a variance from Subtitle 25 for the removal of a few specimen trees, discussed below. It does not require a variance, waiver, or departure from the requirements of the Zoning Ordinance and can, therefore, be found in conformance with the applicable provisions of the Zoning Ordinance. (Section 27-317 (a)(2))

(4) The proposed use actually furthers several policies and goals within the Sector Plan, and does not substantially impair the integrity of said Plan, for reasons noted above. (Section 27-317 (a)(3))

(5) The proposed use will provide adequate landscaping, buffers, lighting designed not to spill over into the community, upgrades to Westphalia Road along its frontage,

future subdivision review will be held to ensure adequacy of public facilities, modern stormwater management, a connection trail to the existing MNCPPC park, and well designed, appropriately sized housing for our senior residents, and integrates well with the mixed development in the surrounding neighborhood. Accordingly, it will not adversely affect the health, safety, or welfare of residents/workers in the area, nor be detrimental to the use or development of adjacent properties or the general neighborhood. (Sections 27-317(a)(4)) and 27-317 (a)(5))

(6) Once the companion TCP2-006-2003 is approved, the Special Exception Site Plan will be in conformance therewith. (Section 27-317(a)(6))

(7) There is a small area of isolated wetlands and associated wetlands which are a regulated environmental feature. The wetland will be preserved intact, and a small portion of its buffer will be temporarily disturbed for the installation of a sewer outfall. Accordingly, the Site Plan demonstrates the preservation and/or restoration of the regulated environmental features to the fullest extent possible. (Section 27-317 (a)(7))

(8) The property does not lie within the Chesapeake Bay Critical Area Overlay Zones. (Section 27-317 (b))

(9) The request also satisfies all applicable provisions of Section 27-352.01 of the Zoning Ordinance. The subject property has a gross tract area of 10 acres. It is adjacent to a park owned by MNCPPC. It has 918.51 feet of frontage and direct vehicular access to Westphalia Road, a collector roadway. The density proposed is approximately six (6) dwelling units per acre. All building dimensions and setbacks are shown on the Special Exception Site Plan. Applicant has provided several on-site passive recreational facilities. The dwelling units are not of a linear design, and the open space also includes a landscaped buffer from surrounding uses, including the single-family detached dwellings to the east. The proposed development is designed in conformance with the TCP2-006-2023. The open space is of a sufficient size to provide private recreational uses, will further buffer the adjoining uses from the proposed development and will conserve an area of isolated nontidal wetlands and an area of wooded steep slopes along a stream to the south. Applicant submitted draft covenants that note the age restrictions in accordance with the Federal Fair Housing Act, and that the covenants run to the benefit of the County and shall be approved by the District Council and filed in the County Land Records at the time of final subdivision plat recordation. The open space provides scenic value along Westphalia Road and has been enhanced by the addition of a masonry wall and landscape plantings. The villa attached housing type to be constructed is a diverse and original lot layout in the area, and is to be developed in a manner to avoid a linear design layout. The lots, homes and streets were designed to distribute open space in a manner that will buffer adjoining uses and conserve an area of wooded steep slopes along a stream on the adjacent property to the south, and to allow many of the lots to take advantage of the views of the preserved wooded area and minimize the area devoted to motor vehicles. The design orients the residents away from the noise and traffic on Westphalia Road to afford privacy. The low masonry wall and buffer along Westphalia Road is attractive and will be compatible with planned development surrounding the site.

48.6% of the subject property's land area is devoted to open space, recreation facilities, and socially-oriented amenities. No community building nor active recreation areas are proposed. Although more steep slopes will be removed than the amount suggested in the guidelines found in Section 24-137 of the Subdivision Regulations, the areas removed are generally small and isolated and one of the larger areas must be disturbed in order to provide the outfall of the stormwater management facility. (Sections 27-352.01(a)(7) and 27-352.01(b))

(10) The elderly housing will be designed in a manner to reduce adverse impacts from any noise associated with flight operations at Joint Base Andrews once the condition is satisfied and will be well below the height limitation in the M-I-O Zone. (Section 27-548.51)

(11) Applicant wishes to remove twenty-five of the existing forty-eight specimen trees. Its expert witnesses and the Technical Staff agreed that the identified specimen trees satisfy the criteria for removal found in Section 25-119 (d), although Staff believed Specimen Trees 7 and 41 should be preserved at this time and reevaluated at a later stage of review. Applicant is opposed because it believes that might require an amendment to the instant request, if approved.

I agree that the criteria for a variance has been met: the subject property is impacted by unique environmental conditions with steep slopes and wetlands that restrict the developable portions of the property and require extensive grading; denying the variance would also render the site largely undevelopable, denying a right (development of one's property) commonly enjoyed by others in similar areas; any applicant facing similar environmental issues would have the right to seek and be granted the variance, so no special privilege is being granted Applicant; the property's unique topographical conditions were not caused by the Applicant, nor by a condition related to land or building use on a neighboring property; and, granting the variance will not adversely affect water quality since the development must comply with County and State requirements for stormwater management and the site layout was revised to prioritize the preservation of contiguous wooded areas and specimen trees located along the steep slopes on the southwest corner of the property and to avoid impacts to specimen trees located in existing forest conservation area on the adjacent properties, actions that will improve water quality and quantity treatment. (Section 25-119(d)) I believe the condition below will allow for future review of Specimen Tree No. 7 and No. 4, without necessitating a revision to this Special Exception Site Plan.

(12) I agree with the Planning Director's recommendation to approve the Alternative Compliance request, as amended. The Application satisfies Section 4.6(C)(1)(A)(ii), Buffering Residential Development from Streets, once the PUE width is included in the buffer width. Applicant requires alternative compliance from Section 4.6(C)(1)(A)(ii), Buffering Development from Special Roadways, along Westphalia Road. Applicant has 698 linear feet of frontage, not including the driveway entrance, but does not quite meet the minimum buffer width of 20 feet in two sections where there are terminuses of private roads and PUE, and originally thought that it could only provide 343 plant units and not

the requisite 559. Applicant is willing to provide a 3-foot-high brick masonry wall along with the plant units, and I agree that this proposal is equally as effective as normal compliance with Section 4.6(C)(1)(A)(ii), Buffering Development from Special Roadways, the test provided in Section 1.3b of the Landscape Ordinance. Applicant proposed a slight revision to the Planning Director's first recommended condition of approval ("a. Provide additional ornamental and evergreen tree planting on the back side of the proposed brick masonry wall, in between the shade trees, as space allows.") which is addressed below.

(13) The residents opposed to the request were primarily concerned with the location of the access to the elderly housing, the increase in traffic in an area that is already experiencing increased traffic and parking issues, and the displacement of wildlife that has occurred over the years as new development has been approved and constructed. I can appreciate all of their concerns. There was insufficient evidence as to which law is violated when non-protected animal species move from site to site, even if we assume that Applicant's development would cause that to happen. Moreover, traffic and access concerns will be reconciled at the time of subdivision approval, and I have added a condition that asked that some review of the impact of the "interesting" stop sign at D'Arcy Road occur at that time.

As noted in Shultz and its progeny, Applicant has the burden of showing that its request would have no greater adverse impact at this site than it would at a similarly zoned site within the neighborhood, and need not show that the use would be of benefit to the neighborhood. Applicant's witnesses put forth sufficient evidence to show that the traffic impact should be de minimis (although that will be subject to further review); that the access is better from a transportation perspective than it would be elsewhere on site simply because it may prevent the "stop and starts" that occur by having accesses interspersed along the roadway; that the property will satisfy all applicable provisions without any variance from the provisions of the Zoning Ordinance; and that the request does not impair the applicable Plans. Since the record reveals 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 (to include the Zoning Ordinance itself), it would be proper to grant the request, once the conditions addressed below are satisfied.

DISPOSITION

Special Exception 4856, AC-23002, and TCP2-006-2023 are Approved, subject to the following conditions:

- (1) Prior to certification of the Special Exception Site Plan, the following revisions shall be made, or information shall be provided:
 - (a) Add a note stating "Due to the 22-foot-wide private roads, no on-street parking will be allowed, other than the 21 provided spaces adjacent to the amenity lot."

- (b) Add a note stating "All dwelling units shall have front facades finished with a minimum of 60 percent brick or other masonry. The first floor of all front facades shall be finished with full brick or other masonry.
 - (c) Add a note stating, "All one-family attached end walls shall feature, at a minimum, four points of architectural fenestration on the first floor, three points of architectural fenestration on the second floor, roof line detail, and shutters on all windows to provide a balanced and harmonious composition.
 - (d) Add a note stating, "All highly visible one-family attached end walls, as shown on the Applicant's provided 'Visibility Exhibit,' shall be finished with full brick or other masonry on the first floor "
 - (e) Add a note stating that the interiors of all of the villas must be certified to 45 dba ldn or less by an acoustical engineer or qualified professional of competent expertise.
 - (f) Add a note stating, "All moderately visible one- family attached end walls, as shown on the Applicant's provided 'Visibility Exhibit,' shall be finished with, at a minimum, full brick or other masonry up to the water table."
 - (g) Provide 15 additional ornamental and evergreen trees on the backside of the proposed brick masonry wall, in between the shade trees, which should result on one additional tree between every two shade trees proposed on the Special Exception Site Plan.
 - (h) Adjust the detail for the 3-foot-high brick masonry wall to correctly demonstrate the height and brick material.
 - (i) Revise the Section 4.6-1 and 4.6-2 landscape schedules to state the correct provided buffer width measurements and remove the alternative compliance request from Section 4.6(c) (1)(A) (ii).
 - (j) Prior to the issuance of permits, the Applicant shall revise the Special Exception Site Plan to include all bearings and distances consisted with those on the record plat.
2. The Type 2 tree conservation plan (TCP2) shall be revised, as follows:
- (a) Clearly show specimen trees and specimen tree labels.
 - (b) Prior to certification of the TCP2 for this site, documents for the required woodland conservation easements shall be prepared and submitted to the Environmental Planning Section, for review by the Office of Law and submission to the Office of Land Records for recordation. The following note shall be added to the standard TCP2 notes on the plan, as follows:

"Woodlands preserved, planted, or regenerated in fulfillment of woodland conservation requirements on-site, have been placed in a woodland and wildlife habitat conservation easement, and recorded in the Prince George's County Land Records at Liber___ Folio___. Revisions to this TCP2 may require a revision to the recorded easement."

- (c) Prior to issuance of any permit which impacts wetlands, wetland buffers, and streams, or Waters of the United States, the Applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions were complied with, and associated mitigation plans.
 - (d) The TCP2 shall be revised to include the following note under the specimen tree table, "This plan is in accordance with the following variance from the strict requirements of Subtitle 25, approved by the Zoning Hearing Examiner with SE-4856, for the removal of Specimen Trees 1 through 7, 14 through 22, 31, and 41 through 48. If the Planning Board or its designee determines that Specimen Trees 7 and 41 are savable these trees may be preserved, and said preservation will not require an amendment to the Special Exception.
3. At the time of preliminary plan of subdivision:
- (a) The Applicant shall construct a 10- to 12-foot-wide side path along the site's frontage, subject to modification by the Prince George's County Department of Public Works and Transportation, with written correspondence.
4. The following conditions shall be applicable for all work conducted within Maryland National Capital Park and Planning Commission (MNCPPC) property, and shall be shown on the approved plans, or referenced by notes thereon:
- (a) Blaze orange safety fences shall be erected and maintained around the work area and "Caution/No Trespassing" signs shall be placed along this fence, at a maximum spacing of 100 feet.
 - (b) Construction access to the work area shall be via the Squire Road alignment.
 - (c) Restoration of the affected parkland shall include, but not be limited to:
 - (1) The removal of all flagging, construction equipment, erosion and sediment control practices, construction access road materials, and debris from parkland, upon completion of work.
 - (2) Repair of any damaged asphalt trail or park infrastructure in kind, to the satisfaction of MNCPPC.
 - (3) Stabilization of all disturbed areas; for existing grassed areas, a live, uniform stand of grass is required for acceptance, upon completion of work.

[NOTE: The Special Exception Plan is Exhibit 77 (a)-(n) and includes the Landscape Plan; the Tree Conservation Plan is Exhibi 76]