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

SPECIAL EXCEPTION
4704

DECISION

Application:	Congregate Living Facility
Applicant:	In Loving Hands, LLC/ Carlos Watson (owner)
Opposition:	None
Hearing Dates:	November 20, 2013
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with Conditions

NATURE OF REQUEST

(1) Special Exception 4704 is a request for permission to use approximately 0.48 acre of land (20,819 square feet) in the R-R (Rural Residential) Zone, identified as 8402 Lucille Court, Fort Washington, Maryland, for a Congregate Living Facility for up to fifteen (15) residents. The property is currently improved with a Congregate Living Facility for eight (8) residents.

(2) The Technical Staff recommended approval with conditions. (Exhibit 12) The Planning Board also recommended approval with conditions. (Exhibit 15(b))

(3) No one appeared in opposition to the instant request at the hearing held by this Examiner.

(4) At the close of the hearing the record was left open to allow the Applicant to submit additional information. (T. 40-42) The revised Site Plan was received on December 18, 2013 and was sent to Staff for review and comments. Staff's comment was received on February 7, 2014, and the record was closed at that time. (Exhibits 35(a)-(e))

FINDINGS OF FACT

(1) The subject property is irregularly shaped and improved with a 7,168 square foot single-family detached residence currently used to house eight elderly individuals in need of assistance.

(2) The subject property is not exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance and there are two previously approved Tree Conservation Plans. (TCPI-003-92 and TCPII-079-94) (Exhibit 12, p. 4) There are no

regulated environmental features on site. (Exhibit 12, p. 68) The property does not lie within a Chesapeake Bay Critical Area Overlay Zone.

Master Plan/Sectional Map Amendment/General Plan

(3) The subject property lies within an area discussed in the 2006 Master Plan and Sectional Map Amendment ("SMA") for the Henson Creek-South Potomac Planning Area. The Master Plan generally designated the entire neighborhood for "Residential, Low Density" land use. One of the policies of the Master Plan was to ensure that institutional and special exception uses are designed to reflect the scale and character of the surrounding neighborhood. (2006 Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area, p. 22)

(4) The SMA retained the property within the R-R Zone.

(5) The 2002 General Plan placed the property in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use pedestrian-oriented, medium-to-high density neighborhoods.

Neighborhood/Surrounding Uses

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

- North – A detached single-family dwelling in the R-R Zone
- South – Lucille Court (a 5-foot-wide public right-of-way)
- East – A vacant lot in the R-R Zone
- West –A detached single-family dwelling in the R-R Zone

(7) The Neighborhood is defined by the following boundaries: Allentown and Tucker Roads to the north; Steed and Allentown Roads to the south; Temple Hill Road and Tinkers Creek to the east; and Indian Head Highway (MD 210) to the west.[1] The neighborhood contains a mixture of single-family dwellings, some institutional and commercial uses along Allentown Road, a few churches, schools and a Volunteer Fire Department. (T. 27)

Applicant's Proposal

(8) The subject property is located on a 50-foot wide cul-de-sac, and there is only one (1) other home on the cul-de-sac.[2] (T. 6-7) Applicant purchased the property in 2006. (T.5) Applicant has operated a Congregate Living Facility for eight individuals since 2007. The average age of the current resident is 80. (T. 5)

(9) Applicant is proposing to continue operating a Congregate Living Facility, but expand the number of residents from eight (8) to fifteen (15). It is requesting the

[1] Applicant's land planner disagreed with these boundaries, preferring a more restricted neighborhood. (Exhibit 27)
[2] There are two unimproved and vacant lots on the street, however. (T. 28)

expansion due to the number of people that they must turn away. (T.9) The 2011-2015 Consolidated Plan for Housing and Community Development also notes that housing and supportive services for the elderly remain a “high” priority and there is a waiting list for senior assisted units. (Exhibit 32, p. 69)

(10) There are eight (8) bedrooms in the dwelling and five (5) bathrooms. (T. 21-22) The bedrooms range in size from 160-900 square feet. No additional construction is proposed. (T.13) Applicant submitted pictures of the existing conditions on site. (Exhibit 12, pp. 32-35) Applicant also submitted a floor plan for the existing use and the proposed expansion. (Exhibit 25(a)-(f))

(11) Visitors are allowed daily between the hours of 10:00 a.m.–7:00 p.m. (T.8) Most visit on the weekends and it is rare to have more than three visitors per day.

(12) Applicant is required to have one (1) staff member for every eight (8) residents. It presently has two staff members and intends to have four staff members if the request is granted. (T.12)

(13) There is no sign advertising the use and Applicant does not intend to erect one.

(14) The Zoning Ordinance allows up to 60% lot coverage and the existing lot coverage is approximately 31%.

(15) The requested expansion is a change from a lower to a higher impact use, thereby making the proposal subject to the requirements of the Landscape Manual. Applicant requested a Departure from Design Standards (“DDS”), for its narrower driveway aisle and narrow side yards along the eastern and western property lines. The Planning Board approved DDS-613 and a copy of the resolution was included in the record. (Exhibit 29)

(16) A Congregate Living Facility for 15 residents would require one space for every four residents. Although Applicant’s long driveway and existing garage would provide at least five spaces, Applicant must now meet the commercial parking requirements of the Zoning Ordinance. These require a van-accessible space and does not allow the garage spaces to be considered in the calculation of parking spaces. Accordingly, Applicant requested a Departure from Parking and Loading Standards (“DPLS”). DPLS-373 was approved by the Planning Board, essentially waiving three of the four required parking spaces. A copy of the resolution was included in the record. (Exhibit 30)

(17) Applicant has agreed to all conditions recommended by Staff. (T. 7-8) Applicant currently lives at the site but will move if the Application is granted. (T. 10)

(18) Mark Ferguson, accepted as an expert in the area of land use planning, testified that the proposal satisfied all criteria, and should, therefore, be approved. In support, he offered the following analysis:

> [T]he amount of coming and going into these facilities is not distinct from say my own neighbors who have, you know, eight kids and have a lot of coming and going. So, it's, you know, it's very comparable in character and in operation to a single-family dwelling, and by expanding it to have…a commercial style parking lot in front…would certainly change the visual character of the neighborhood….
>
> The Master Plan provides the areas for residential low density use, and this is what is going on…. [T]here's a policy to preserve and enhance existing suburban residential neighborhoods, and certainly by preserving the character of the existing dwelling, part of which is the approval of the two departures, does help to implement that policy. There is a specific policy …, a specific strategy in the Master Plan to implement that policy which is design institutional or Special Exception uses to reflect the scale and character of the surrounding neighborhood, and I think that's been done…

(T. 32, 37-38)

(19) The witness also submitted a written Land Planning Analysis that offered further support for his conclusion that the request satisfied all applicable law. (Exhibit 27) In it he opined as follows, concerning the need for the use:

> While this planner does not have particular expertise in the evaluation of economic markets, it is nevertheless possible to take notice of two planning documents which do speak to a demonstrated need for senior housing in this County.
>
> The first is a memorandum in the Technical Staff Report which indicated that need was sufficiently demonstrated.
>
> The second is the Prince George's County Housing and Community Development Consolidated Plan FY 2011-2015, which notes that, "Housing and supportive services for the elderly remain a "high" priority in Prince George's County,… and that there is still a long current waiting list for County-owned senior citizen public housing.

(Exhibit 27, p. 11)

Agency Comment

(20) The Technical Staff found that the proposed use generally is consistent with the vision of the 2002 General Plan and conforms to the general land use recommendations of the 2006 Master Plan and SMA.

(21) The Transportation Planning Section noted that the requested use would result in an increase of 1 AM peak hour trip and 2 PM peak hour trips. As a result, it opined that approval would have a de minimus impact on the transportation facilities within the area, reasoning as follows:

> The site contains a residence that is currently used as a congregate living facility for eight persons, and would be expanded to 15 residents under the special exception with no new construction or expansion of the residence. The impact of the congregate living expansion is estimated using trip rates from *Trip Generation* (Institute of Transportation Engineers). Neither the "Congregate Care Facility" nor the "Assisted Living" uses are ideal descriptors of this use; both uses are much larger than this use with a greater range of services. It appears that these types of facilities have about one-quarter the trip generation of typical housing during the AM peak hour, and about one-third the trip generation during the PM peak hour.
>
> The increased size [does] not appear to be sufficient to trigger the need for additional studies of traffic impacts…. There are no apparent traffic-related safety issues that would result from the expansion of the use. It is important to remember that adequacy of transportation facilities is not an issue in the review of this use; review is strictly within the required findings of health, safety, and welfare.

(Exhibit 12, pp. 83-84)

(22) The Planning Board recommended approval with conditions similar to those suggested by Staff, reasoning, in part, as follows:

> The applicant has operated the use on this property since approximately July 18, 2007 when Use and Occupancy Permit 27720-2007-00 was approved for a congregate living facility for the elderly and physically-handicapped with up to eight residents. Adding seven more residents to the facility, as proposed……, will have no adverse effects on the health, safety, or welfare of residents or workers in the area….
>
> The residents of the facility are primarily 75 years of age or older. From the outside, the facility has the appearance of a typical single-family dwelling, and that is what the applicant hopes to maintain under the current proposal. By requesting the companion departure applications, the applicant is hoping to avoid installing a commercial parking compound in the front yard that would alter the appearance of the existing residential use and character of the neighborhood…..
>
> The applicant frequently must turn away potential residents due to its licensing limitations which is currently capped at eight residents. Approval of the requested special exception would allow the applicant to have seven additional elderly residents for a total of 15 residents. The facility provides an intimate, friendly, home-style environment in a location that provides a tranquil residential setting….

(Exhibit 15(b), pp. 7-8)

(23) Staff reviewed Applicant's revised Site Plan for compliance with the conditions recommended by the Planning Board and noted that all were satisfied. Staff recommended an additional technical condition, however. (Exhibit 31(a)-(e))

LAW APPLICABLE

(1) A Congregate Living Facility is defined in Section 27-107.01(a) of the Zoning Ordinance as follows:

> (54) **Congregate Living Facility**: A residential facility for four (4) to twenty (20) elderly or physically handicapped residents, within which sheltered care services are provided, which may include, but need not be limited to, living and sleeping facilities, meal preparation, laundry services, housekeeping, personal observation and direction in the activities of daily living, transportation for routine social and medical appointments, and the availability of a responsible adult for companionship or nonclinical counseling. The term shall not include an "Adult Day Care Center," "Hospital," "Nursing or Care Home," "Family," or "Group Residential Facility," as defined elsewhere in this Subtitle. A Congregate Living Facility shall comply with the licensing and other regulatory requirements of Subtitle 12, Division 7, of this Code.

The use is permitted as a Special Exception in the R-R Zone in accordance with Sections 27-317(a) and Section 27-344 (a) of the Zoning Ordinance.

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

> (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 2Tree 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 27-344 (a) provides as follows:

> (a) A congregate living facility for more than eight (8) elderly or physically handicapped residents, as defined by Section 12-168(a) of this Code, may be permitted, subject to the following:
> (1) There is a demonstrated need for the facility;

(2) The facility is in compliance with the physical requirements of Subtitle 12, Division 7, of this Code, and shall be operated in accordance with the licensing and other requirements of that Subtitle; and

(3) There shall be a separate bedroom of a minimum of one hundred (100) square feet for each resident, or a separate bedroom of a minimum of one hundred and sixty (160) square feet for every two residents, or any combination of the above, so as to satisfy the accommodations requirements of the "Regulations for Congregate Living Facilities" (required by Section 12-173(d) of this Code), for the maximum number of permitted residents.

(4) 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.

The record in this case 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”. It would, therefore, be proper to grant the request, once the conditions addressed below are satisfied.

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are listed in Section 27-102(a) and Special Exception 4491 is in harmony with the applicable purposes, for the reasons provided:

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

By continuing to operate a Congregate Living Facility, a use that provides safe housing for the elderly or disabled, Applicant is promoting the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County.

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

The General Plan placed the property within the Developing Tier. The Developing Tier envisioned low- to moderate- density suburban residential communities. One of the policies of the Master Plan is to have the use reflect the surrounding neighborhood. Since the departures were approved by the Planning Board I find that this small facility

will be in conformance with both Plans since it will not change the residential character of the area.

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

Approval of the request will result in a minimal increase in vehicular trips to and from the site. Additionally, the use is likely to generate fewer vehicular trips than other uses permitted by right in the R-R Zone, given the age and physical immobility of the residents. Public facilities will be adequate to serve the use.

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

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

The Applicant is not proposing any additional construction. The use will be in a building that will, for all intent and purposes, continue to look like a residential dwelling. These purposes will be satisfied.

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

The continued use of the site with no additional construction will protect the County from fire and other potential dangers. The property is not in a floodplain.

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

Continued use of the property is a positive economic development activity that provides employment and broadens the tax base.

(10) To prevent the overcrowding of land;

The Site Plan is in conformance with the setback and parking requirements of the Zoning Ordinance. The site is not overcrowded as there is only 31% lot coverage.

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

The use will not attract many additional vehicular trips; thus it will not result in an unacceptable level of service on the adjacent roadways. It, therefore, meets this purpose.

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

By continuing the use that has successfully operated on site for several years, Applicant is furthering the social and economic stability of Prince George's County.

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

(2) The general purposes of the Residential Zones are listed in Section 27-428 (a):

> (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.

Special Exception 4704 is in harmony with these purposes since the structure will not change in appearance, no additional construction is proposed and the use is one recognized by the District Council as compatible with other permitted uses in the zone once the Special Exception is approved.

(3) The proposed use and the Site Plan are in conformance with all of the applicable requirements and regulations of the Zoning Ordinance, once the recommended conditions are addressed. No variances, departures or waivers are required. (Section 27-317(a)(2))

(4) The proposed Congregate Living Facility Use will not impair the integrity of the approved Master Plan. The Master Plan recommends residential use for the subject property, and that any institutional/special exception use not detract from the residential character. Applicant is not changing the structure. Accordingly the integrity of the Master Plan remains intact. (Section 27-317(a)(3))

(5) The proposed use of the subject property, on a cul-de-sac with large lots and trees and landscaping, will not adversely impact the health, safety and welfare of residents or workers in the area. (Section 27-317(a)(4))

(6) The continuation and slight expansion of an active use on the subject property will enhance the use or development of adjacent properties and the general neighborhood and will not restrict the availability of land in the area for other uses. (Section 27-317(a)(5))

(7) The site is subject to two Tree Conservation Plans, and is in compliance. (Section 27-317(a)(6))

(8) There are no regulated environmental features on site. (Section 27-317 (a)(7))

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

(10) The request satisfies the provisions of Section 27- 344 of the Zoning Ordinance. There is a demonstrated need for the slight expansion to the facility because many have expressed interest in residing (or having their loved ones reside) therein, only to be turned away due to unavailability. Moreover, the County's 2011-2015 Consolidated Plan for Housing and Community Development noted that there are approximately 224 assisted living beds available in the County for low and moderate-income seniors with a waiting list of 65 seniors. (Exhibit 32, p. 69) There are no requirements in Subtitle 12, Division 7 of the Prince George's County Code. Finally, each bedroom is a minimum of 160 square feet and a maximum of 900 square feet – sufficient size to accommodate the 15 residents.

DISPOSITION

Special Exception 4704 is APPROVED, subject to the following conditions:

1. Prior to the issuance of permits, Applicant shall revise the Site Plan as follows:

    a. Revise the date that the engineer sealed the revised plans since it states on pages 2 and 4 that the plans were certified on December 19, 2014, but states on page 1 that the revised plan was certified on January 16, 2014.
    b. Revise the Site Plan to outline the special exception boundaries in red as required by the Zoning Ordinance.

2. The revised Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record.

(Note: The Special Exception Site and Landscape Plans are (Exhibits 35(b)-(e))