

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

**SPECIAL EXCEPTION  
4852**

**DECISION**

Application:	Alteration of a Certified Nonconforming Use (Multifamily Dwellings)
Applicant:	Westgate at Laurel, LLC
Opposition:	None
Hearing Date:	December 14, 2022
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

**NATURE OF REQUEST**

- (1) Special Exception 4852 is a request to alter a certified Nonconforming Use (Multifamily Dwellings known as "Westgate at Laurel Apartments") located on 9.22 acres in the RMF-20 (Residential, Multifamily-20) Zone and formerly in the R-18 (Multifamily Medium Density Residential) Zone.<sup>1</sup> The subject property is located on the north side of Gorman Avenue (MD 198), approximately 600 feet east of its intersection with Van Dusen Road and identified as 8100-8216 Gorman Avenue, Laurel, Maryland. The relevant portions of the subject property are not within the municipal boundaries of the City of Laurel.
- (2) The Technical Staff recommended approval with conditions. (Exhibit 20)
- (3) No one appeared at the hearing in opposition to the Application.
- (4) At the close of the hearing the record was left open to allow Applicant to submit additional information. The information was received on January 4, 2023, and the record was closed at that time. (Exhibit 35).
- (5) Both the Countywide Map Amendment and the revised Zoning Ordinance took effect on April 1, 2022, approximately three months prior to the acceptance of the instant Application. Applicant chose to have its Application proceed under the provisions of the Zoning Ordinance in effect prior to April 1, 2022, as permitted pursuant to Section 27-1900, et. seq., of the current Zoning Ordinance (2019 Edition, 2022 Supplement). The Application is, therefore, brought pursuant to Sections 27-317 and 27-384(a) of the Zoning Ordinance (2019 Edition), discussed below.

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<sup>1</sup> The property was in the R-18 Zone prior to April 1, 2022, when the Countywide Map Amendment and the revised Zoning Ordinance took effect.

## FINDINGS OF FACT

### Subject Property

(1) The subject property is developed with three 3-story rectangularly shaped brick buildings that house a total of 218 dwelling units, associated parking, a separate leasing office, a swimming pool and open space.

(2) The subject property is not located within the Chesapeake Bay Critical Area Overlay Zone. (Exhibit 20, p. 12) The request is exempt from the 2010 Landscape Manual and the tree canopy coverage requirements since no site changes are proposed. (Exhibit 20, pp. 12-13) The site is also exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance because it has less than 10,000 square feet of woodland and has no previously approved tree conservation plan. (Exhibit 20, p. 13)

### Surrounding Property/Neighborhood

(3) The subject property is surrounded by the following uses, some within the jurisdiction of the City of Laurel:

- To the north, commercial/business uses and single-family residential uses in the OB (Office Building) and R-55 (One-family detached Residential Zones)
- To the south, MD 198 and single-family residential uses in the R-55 Zone
- To the east, single-family residential uses in the R-55 Zone
- To the west, commercial /business uses in the OB Zone

(4) The neighborhood is bounded on the north by Sandy Spring Road and West Street; on the east by Tenth Street; on the south by MD 198; and, on the west by Van Dusen Road.

### Master Plan/General Plan/Countywide Map Amendment

(5) The subject property lies within the area governed by the 2010 Subregion 1 Master Plan and Sectional Map Amendment. The Master Plan recommends medium-high residential use for the site. (Exhibit 20, Backup p. 16) It included a policy to preserve and expand the residential character and housing options within the Subregion, and an accompanying strategy to incorporate a diversity of housing types to accommodate all income levels. (2010 Subregion 1 Master Plan, p. 79)

(6) The 2014 General Plan (Plan Prince George's 2035) placed the subject property within the Established Communities. These are areas appropriate for context-sensitive infill and low- to medium- density development that maintains/enhances existing public services, facilities and infrastructure to ensure that the needs of residents are met. (2014 General Plan, p.20)

(7) The Countywide Map Amendment rezoned the site to the zone most similar to the subject property's R-18 zoning in the revised Zoning Ordinance, thereby recognizing the District Council's intent that the land be developed with multifamily dwellings.

### **Applicant's Request**

(8) The Applicant is authorized to conduct business within Maryland by the State Department of Assessments and Taxation. (Exhibit 31)

(9) The Subject Property is improved with three 3-story garden style apartment complexes, a separate 1.5-story leasing office, surface parking, swimming pool and open space. Each garden style building is comprised of multiple component blocks that are approximately 94' x 49.5' in size, with each individual block having a separate address. In total, the Subject Property is improved with nineteen (19) blocks throughout the three (3) buildings. (Exhibits 3,6,8 and 32) Building 1, which is the westernmost complex, is comprised of eight (8) blocks; Building 2, which backs up to MD 198, is comprised of three (3) blocks; and finally Building 3, which forms an inverted "U", is comprised of eight (8) blocks. (Exhibits 3, 6, 8 and 32) The site provides a total of 289 parking spaces, comprising 279 standard spaces, seven (7) handicapped spaces with 5' drive aisles, and two (2) van-accessible handicapped spaces. (Exhibit 30) No loading spaces are provided or proposed.

(10) Applicant explained that the property was purchased by Harry and Max Kay in 1964 through a deed recorded in Liber 3052 at Folio 194 and sold in 1985 to Gate Laurel Associates through a deed recorded in Liber 6221 at Folio 333. (Exhibits 17 and 18) Applicant's Statement of Justification (which was prepared in consultation with, and adopted by its land use planner) provides an excellent zoning summary for the subject property:

The Subject Property is generally encircled by land within the corporate limits of the City of Laurel. According to the City of Laurel's Zoning Map (attached hereto as Attachment 3) to the south and west beyond Gorman Avenue (MD 198) - a six lane (6) divided arterial roadway—lie single-family detached homes in the R-55 Zone; to the east are three (3) single-family homes in the R-55 Zone; to the northeast is unimproved land in the R-55 Zone; and to the north and northwest are office buildings in the O-B (Office Building) Zone. The boundaries of the Subject Property and limits of the City of Laurel are clearly shown on Attachment 4....

Per County and State records, the Subject Property was subdivided in 1964 through the recording of Plat 54-82 among the Land Records of Prince George's County, which created Parcel A consisting of 9.46 acres (attached hereto as Attachment 5). In 1965, Maryland-National Capital Park and Planning Commission approved a site plan for the construction of the apartment buildings in the same configuration as they exist today (attached hereto as Attachment 6). When the Subject Property was constructed, the R-18 Zone permitted a maximum of 21.78 units per acre, which would have permitted a maximum of 206 dwelling units. In 1975, the maximum permitted density in the R-18 Zone was decreased to twelve (12) dwelling units an acre.

While subdivision and site plans were being approved for the Subject Property, the Maryland State Highway Administration (“SHA”) was in the midst of expanding the MD 198 right-of-way between I-95 and US Route 1 in Laurel. A portion of this expanded MD 198 (Gorman Avenue) was to run contiguous with the Subject Property’s frontage. Upon final construction of the expanded MD 198 project, the roadway was increased from a two-lane road to a six-lane divided highway. For reasons that are unclear from SHA records, the final right-of-way line for MD 198 does not consist of a standard 60’ distance from the centerline along the Subject Property’s frontage. Instead, as shown on SHA Plats No: 35115 and 35117 (attached hereto as Attachments 7 and 8), the distance from the right-of-way line to the center line varies from as little as 60’ to as great as 143’ along the far western portion of the Subject Property frontage. This variable right-of-way line resulted in SHA taking a portion of the Subject Property, such that by the time of a 1981 survey (attached hereto as Attachment 9), the total acreage was decreased to 9.22 acres.

As a result of subsequent changes in the Zoning Ordinance, as well as the SHA taking, by 2000 the Subject Property was nonconforming in regard to bedroom percentages, maximum lot coverage, minimum green area, front yard setback, density and parking and loading regulations. In May 2000, through Permit No.: 41302-2000-U (approved administratively, and attached hereto as Attachment 10), the Subject Property became a certified nonconforming use for 206 multifamily dwelling units—the maximum number of dwelling units permitted in the R-18 Zone at the time of construction. Furthermore, as shown on the permit plan for Permit No.: 41302-2000, the parking calculations remained at the 1965 level for the R-18 Zone—meaning the required parking remained at the rate of 1 parking space per 1.25 dwelling units when this use was certified. Thus, with 206 dwelling units permitted in the R-18 Zone at the time of construction, the Subject Property was required to provide a total of 258 parking spaces. Currently the Property provides 289 parking spaces.

The following year, a prior owner submitted a Validation of a Permit Issued in Error application (Case No.: ERR-180) to expand the number of dwelling units from 206 to 218 based on the biannual issuance of multifamily licenses beginning in 1971—the year multifamily rental licenses were first issued by Prince George’s County. The Zoning Hearing Examiner (“ZHE”) recommended approval of ERR-180 in a written decision (attached hereto as Attachment 11). The District Council adopted the ZHE’s recommendation through Zoning Ordinance No. # 2 –2001 (attached hereto as Attachment 12). The ZHE, in her decision, determined that: (a) the additional twelve (12) units would not be against the public interest; and (b) that with the exception of density, the Subject Property was constructed in accordance with all other bulk regulations in effect at the time of construction. The ZHE did not find additional parking spaces were necessary for the twelve (12) units. Thus, the Applicant submits that through Permit No.:41302-2000-U and ERR-180, the Subject Property was certified for, and required to provide 258 parking spaces for the 218 dwelling units. As mentioned previously, the Subject Property provides a total of 289 parking spaces—an excess of thirty (30) parking spaces.<sup>2</sup>

(Exhibit 2, pp.3-4)

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<sup>2</sup> The record in ERR-180 is incorporated by reference herein. The ZHE decision and District Council approvals are Exhibits 13 and 14, respectively.

(11) Applicant submitted a copy of Use and Occupancy Permit No. 8339-2020 which certified the entire multifamily dwelling development, for a total of 218 dwelling units, as a nonconforming use. (Exhibit 16) This permit expressly noted that parking was “ok per Sec. 27-584”.

(12) Mr. Shraga Rabinowitz, Senior Regional Manager for the entity that owns Westgate at Laurel, LLC, was authorized to testify on Applicant’s behalf. He explained that shortly after Applicant purchased the subject property in January, 2020 it completed many improvements to the apartments, spending approximately \$520,000 by the close of 2021. (T.9) Applicant also made significant improvements to the site in 2022 although an exact figure was unavailable at the hearing date.

(13) Mr. Rabinowitz noted that the occupancy rate at the apartments is “a steady 95 percent.” (T.11) The witness also stated that Applicant seeks the additional units because “[there is] also a very, very high demand in our area for one-bedroom apartments.” (T.17)

(14) Mr. Rabinowitz reiterated that the development had 219 dwelling units when Applicant purchased the apartment development although the use and occupancy permit that it received only allowed 218. (T.11) Applicant learned that the former owner had converted a laundry/storage room into a dwelling unit. Applicant has allowed that unit to remain occupied, although it was converted illegally:

The unpermitted unit was ... and still is occupied by the same resident from before the sale. [B]efore we evicted the tenant ... we wanted to see if there was some process to allow a 219th unit. Also, we bought the property in January of 2020. Pretty much right afterwards is when the pandemic happened and evictions for any reason [were] extremely hard to do. So, we ... also bought the property at 219 units and we wanted to try to keep the minimum of the property at 219 units....

(T. 12)

(15) Applicant therefore seeks to legalize the 219<sup>th</sup> unit and add an additional six units for a total of 225. The new units will also require the conversion of storage/laundry rooms (that are no longer required since every unit currently includes a washer/dryer). If approved the seven additional units would be dispersed throughout the subject property and identified as 8100 #A, 8110 #A, 8116 #A, 8204 #A, 8208 #A, and 8216 #A. (Exhibit 30; T. 17)

(16) Applicant’s witness, Kevin Foster, was accepted as an expert in the area of land use planning. After visiting the site on several occasions, reviewing applicable provisions of the Zoning Ordinance, the Master Plan and the General Plan, he opined as follows:

[I]t certainly appears the NCU41302-2000 was approved administratively for ... 206 dwelling units, which was the quantity on the original Site Plan. The ... non-conforming use ... could only support 206 dwelling units because that was the maximum that in theory could have been built in 1965 based on the size of the property and the density of the R-18 Zone in effect in '65. The maximum density for the [R-18] was 21.78 dwellings per acre, and at 9.64 acres, that would have only permitted 206 dwelling units.

The reason you really can't know for sure is there were no use and occupancy permits issued back then; so, it was clear how many units were actually built and approved by the County in '65. When the first building opened ... there's also some, some inclinations in the record that some spaces may have been used for an engineer's office and also for a doctor's office.

The history of the property definitely supports the existence of 218 units, not the original Site Plan approved, 206; and the same 206 that were in the original non-conforming use. The first definitive instance of listing of dwelling units on a document issued by the County, and Park and Planning, was the first rental license in '71, the first year the rental licenses were issued in the county; and they've been issued every two years thereafter; and they were originally issued for 218 dwelling units. Because there was evidence to support the 218 through the issuance of the rental licenses, previous applicants submitted and received approval for the 218 dwelling units through a validation of a permit issued in error which was ERR-180, which was in 2001....

[B]ased on the deed, history of the property which is shown in Exhibits 15, 17 and 18, it was a single property under single ownership [since the time the use became nonconforming]. Obviously, it's been sold over time; but it still remained under single ownership....

There are sufficient parking spaces to support the additional seven ... one-bedroom dwelling units. When the property was constructed in 1965, the Zoning Ordinance at that time would have required ... 1.25 parking spaces per dwelling unit. With 218 dwelling units, the total number of required spaces would have been 273 spaces. Parking for a one-bedroom dwelling unit is calculated at a rate of two spaces per unit now. With seven dwelling units, the parking lot must provide an additional 14 spaces to those already previously required for the, for the site, which was 273. Thus, the total parking for the existing units and the additional proposed units would be 287 parking spaces. The site currently provides 288 parking spaces. For this reason, the requirement is satisfied....

[I]n my opinion the additional seven dwelling units are in harmony with the purposes of the Zoning Ordinance. There's no exterior changes proposed. Only interior renovations are required to create these seven dwelling units. The existing multi-family buildings will continue to be compatible with the surrounding neighborhood....

The subject property previously certified as a non-conforming use through NCU-41032-2000 and ERR-180 a year later. All non-conformities have existed and have been certified most recently by the approval of ERR-180. In fact, the basis for that approval was that the property was constructed in excess of the density required under the R-18 Zone back in '65. The site has never been in conformance with density and that has not caused any issues over the years. Moreover, the limited increase in density from 23.7 dwelling units an acre to 24.3 units an acre will have very limited impact on the property....

The limited increase in density will not substantially impair the integrity of ... either [the Master Plan or the General Plan].... The site is located within an established community's growth policy area in accordance with the Plan Prince George's 2035. Established communities are areas appropriate for context-sensitive infill. Moreover, within [Subregion] 1 Sector Plan, the site is designated for medium to high-density residential....

There's no reason to believe that the additional seven dwelling units will have any adverse impact on the health, safety or welfare of the residents, or workers in the area. The conditions proposed by Park and Planning Staff for sidewalk connections [and] bike racks will enhance the property above and beyond what would otherwise have been required had this application not been filed. With proposed site improvements, greater benefit would be provided to the residents of Westgate should a special exception be approved....

[S]ince nothing about the property will change, there's no reason to believe that the seven additional dwelling units will be detrimental to the use or development of adjacent properties, or the general neighborhood for that fact. Most of the neighborhood is built out and the site will remain residential as it is today....

This site was developed prior to the enactment of the Woodland Conservation Ordinance. The site would qualify for an exemption. For this reason, no TCP-2 is required for this application....

Based on my review, there are no regulated environmental features on the site .... It is not located in the Chesapeake Bay Critical Area....

[In m]y opinion, there is nothing about the additional seven dwelling units at this particular location that would have any adverse effects above and beyond those inherently associated with an apartment complex, irrespective of its location within the R-18 Zone....

(T. 41-42,44-49)

(17) The requested alteration, or extension of the certified nonconforming multifamily dwelling does not require any external construction, instead, applicant will only convert interior spaces. Applicant therefore avers there will be no change to any bulk regulations pertaining to the buildings (i.e., setbacks, given area, etc.).

(18) Floor plans were submitted that show each unit will be accessible from the exterior of the ground floor of the building and will consist of a living room, bedroom, bathroom, kitchen and closets. (Exhibit 19) Applicant's counsel proffered that each unit will be designed to comport with all applicable building code and other code provisions. (Exhibit 35)

### **Technical Staff/Agency Comment**

(19) The Historic Preservation Section of the Technical Staff noted the absence of any "known archeological resources " that would be impacted by the request since "[a] search of current and historic photographs, topographic and historic maps, and locations of currently known archeological sites indicates the probability of archeological sites within the subject property is low." (Exhibit 20, Backup p. 12)

(20) The Environmental Planning Section of the Technical Staff provided the following comment:

The site is located within the Environmental Strategy Area 2 (formerly the Developing Tier) of the Regulated Environmental Protection Areas Map, as

designated by [the 2014 General Plan} *Plan Prince George's 2035 ...* and the Established Communities of the General Plan Growth Policy....

The...2010 Approved Subregion 1 Master Plan...does not indicate any environmental issues associated with the property and its proposed use....

The majority of this property is located outside of the designated network of the *Countywide Green Infrastructure Plan of the Approved Prince George's County Resource Plan* (May 2017). A small strip of property located along the western corner of the site (approximately 190 feet in width and its widest) is mapped within the evaluation area portion of the network. This area of the site is wooded and will remain preserved with this application. Aerial imagery from PGAtlas shows that the rest of the site has been developed since 1977 with buildings, parking lots, and existing paving covering.

The site was cleared, graded, and developed prior to the enactment of the Woodland and Wildlife Habitat Conservation Ordinance (WCO)....

The site does not have an approved natural resources inventory (NRI) or equivalency letter (NRI-EL). Since the application is for internal modifications to existing buildings only, and not associated with any proposed grading permits, an NRI or NRI-EL is not required for review of this SE. No further information is required with this SE application regarding the existing site conditions...

The site is eligible for an exemption from the provisions of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO) because the property contains less than 10,000 square-feet of woodland and has no previous tree conservation plan (TCP) approvals. However, since no grading permits will be required with this SE application, no exemption letter is required.

No regulated environmental features (REF) or primary management area (PMA) are located on this property according to PGAtlas. This project is for interior [alterations] only to existing buildings. No further information is required....

No unsafe soils containing Marlboro clay or Christiana complexes have been identified on or within the immediate vicinity of this property. The Department of Permitting, Inspections and Enforcement (DPIE) may require a geotechnical report at later stages of review prior to permit....

No stormwater management plan was submitted with this application as this project will not be associated with a grading permit and therefore not subject to stormwater review....

(Exhibit 20, Backup pp. 19 and 20)

(21) The Transportation Planning Section of the Technical Staff provided the following comment:

The... application is to allow seven additional dwelling units to an existing multi-family apartment complex....



There are no prior conditions of approval on the subject property. However, the site was designated as a certified nonconforming use with permit #41302-2000-U for 206 dwelling units and a requirement of 258 parking spaces. Additionally, the applicant has submitted documentation [on] ERR-180 ... [which] approved the expansion of the number of dwelling units approved for the site from 206 to 218 and maintained that the 258 parking spaces were sufficient....

The subject property fronts Gorman Avenue (MD-198; MPOT Route ID #A-1) along its southern border. The MPOT recommends Gorman Avenue as a 4-lane arterial roadway constructed within 120-150 feet of right-of-way. The roadway also falls within the *2010 Subregion 1 Approved Master Plan and Sectional Map Amendment* which recommends similar improvements. No additional right-of-way dedication is sought along either of these roads....

The subject application conforms to MPOT and Sector Plan policies and goals by providing a sidewalk and landscaping within the right of way along the frontage of Gorman Avenue. Staff finds that the limited scope of the subject application does not warrant the need for additional off-site improvements as recommended in the MPOT. However, staff requests the applicant update plans to provide bicycle racks at locations convenient to the entrance of each apartment building. Additionally, staff requests the applicant update plans to provide crosswalks crossing all four points of vehicle entry along Gorman Avenue....

(Exhibit 20, Backup pp. 21 and 22)

(22 ) The Transportation Planning Section concluded that the approval of seven additional dwelling units would only generate an additional 4 AM peak hour trips and 4 PM peak hour trips – a de minimis amount that “will not have an adverse impact on the surrounding multi-modal transportation network.” (Exhibit 21, Backup p.23) The Transportation Planning Section also found the four points of access into the site acceptable, as these are right-in/right-out access points and the fourth is a four-legged intersection with a traffic signal. It concluded that parking and pedestrian circulation and facilities met all requirements:

The prior approval of a certified nonconforming use (Permit #41302-2000-U) as well as District Council approval of ERR-180 has resulted in a certification of 218 total dwelling units with a required 258 parking spaces. The applicant has provided a parking tabulation, which adds two additional parking spaces for each dwelling unit being sought with the subject application, which increases the total number of required parking spaces to 272 per the zoning ordinance. The latest site plan displays a total of 289 standard parking spaces which staff finds to be suitable to support the additional seven units proposed with the subject application.

Lastly, regarding pedestrian circulation and facilities, a sidewalk is located along the frontage of Gorman Avenue. Additional sidewalks are located along the frontage of each apartment building which provide sufficient on-site pedestrian movement. Staff’s previous request that bicycle parking be added to the plans at each apartment building and that crosswalks be displayed at all points of vehicle access will further aid in safe and adequate bicycle and pedestrian movement

Exhibit 20, Backup p.23)

(23) The Technical Staff recommended approval of the Application with conditions, nothing that the request conforms with the required Special Exception findings set forth in Sections 27-317 and 27-384 of the prior Prince George's County Zoning Ordinance:

Staff finds that the proposed development will not negatively impact the public. The additional seven dwelling units will be contained within the existing buildings. No exterior changes are proposed. The surrounding neighborhood that is within the City of Laurel's jurisdiction will not be impacted. The existing multifamily building will continue to be compatible with the surrounding residential, commercial, and business uses. The additional dwelling units will provide another housing option that is available for County residents....

[The policies of the General Plan] emphasize obtaining a balance between the pace of development and the demand for adequate roads and public facilities. Current and future residents of this development will have access to sufficient parking and public facilities. The special exception site plan shows a total of 289 parking spaces being provided compared to the 258 parking spaces required by the approved nonconforming use permit. In addition, conditions have been [recommended] to provide bicycle racks and crosswalks to safely facilitate circulation of bicycles and pedestrians throughout the site and surrounding neighborhoods....

A multifamily dwelling is a permitted use within the R-18 Zone. Regarding the development regulations, the subject property was certified as a nonconforming use through Permits 41032-2000-U and ERR-180. The application proposes to add seven dwelling units, increasing the total number of dwelling units from 218 to 225. The density will increase from 23.7 dwelling units per acre to 24.4 dwelling units per acre. The R-18 Zone development regulations that are not met are covered under the approved nonconforming use permit. Those regulations included the maximum percentage of two-bedroom units, maximum lot coverage, front yard setback, density, nonparallel parking space dimensions, number of parking spaces, and number of loading spaces. No changes to the building or site are proposed, as the additional seven dwelling units will be created within the existing building footprint. The proposed layout and floorplans have been provided by the applicant....

The increase in density for the apartment buildings will not substantially impair the 2010 *Approved Master Plan and Sectional Map Amendment for Subregion I (Planning Areas 60, 61, 62, and 64)*. The subject property is located within the Established Communities growth policy area. The master plan recommends medium- to high-density residential land uses on the subject property. Plan 2035 describes Established Communities as areas appropriate for context-sensitive infill and low- to medium-density development and recommends maintaining and enhancing existing public services, facilities, and infrastructure to ensure that the

needs of residents are met. The proposed increase in density by seven dwelling units will not substantially impair the integrity of the master plan because the proposed density is consistent with the master plan's recommendation of medium- to high-density residential land uses....

The development will continue to provide adequate parking and safe traffic circulation for current and future residents. The site was designated as a certified nonconforming use with Permit 41302-2000-U for 206 dwelling units and a requirement of 258 parking spaces. In addition, ERR-180, an application approved by the Zoning Hearing Examiner for validation of a permit issued in error, approved the expansion of the number of dwelling units approved for the site from 206 to 218 and maintained that the 258 parking spaces were sufficient. The special exception site plan shows a total of 289 parking spaces being provided. In addition, conditions have been added to provide bicycle racks and crosswalks to ensure the site provides safe and adequate bicycle and pedestrian movement. The site will also maintain its 4 points of vehicular access along MD 198.

Considering the seven additional units proposed with the subject application, transportation staff assumes that the new units will generate an additional four AM peak-hour trips and four PM peak-hour trips. Given the nominal number of new trips associated with the subject application, the proposal will not have an adverse impact on the surrounding multimodal transportation network.

Staff finds that the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area....

Based on the plans submitted, the regulated environmental features on the subject property have been preserved and/or restored to the fullest extent possible.

No regulated environmental features or primary management areas are located on the subject property. In addition, no unsafe soils containing Marlboro clay or Christiana complexes have been identified on or within the immediate vicinity of this property. The proposed development is for interior [alterations] to existing buildings only....

A special exception must be approved if the applicant satisfies the required criteria which are intended to address any distinctive adverse impacts associated with the use.

Based on the applicant's statement of justification, the analysis contained in the technical staff report, associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings, as set forth in Section 317 ... and Section 27-384 ... of the Prince George's County Zoning Ordinance. Staff finds the proposed application satisfies

the requirements for approval and finds the application will be in conformance with the Zoning Ordinance requirements....

(Exhibit 20, pp.6-8 and 13)

### **LAW APPLICABLE**

(1) A Nonconforming Use may be altered, extended, or enlarged upon grant of a Special Exception. In order to receive special exception approval, the Applicant must satisfy the provisions of Sections 27-317 and 27-384 of the Prince George's County Zoning Ordinance (2019 Edition).

(2) Section 27-317 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 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 27-384 provides as follows:

(a) The alteration, enlargement, extension, or reconstruction of any nonconforming building or structure, or certified nonconforming use (except those certified nonconforming uses not involving buildings, those within the Chesapeake Bay Critical Area Overlay Zones as specified in paragraph 7, below, unless otherwise provided, and except for outdoor advertising signs), may be permitted subject to the following:

- (1) A nonconforming building or structure, or a building or structure utilized in connection with a certified nonconforming use, may be enlarged in height or bulk, provided that the requirements of Part 11 are met with respect to the area of the enlargement.
  - (2) A certified nonconforming use may be extended throughout a building in which the use lawfully exists, or to the lot lines of the lot on which it is located, provided that:
    - (A) The lot is as it existed as a single lot under single ownership at the time the use became nonconforming; and
    - (B) The requirements of Part 11 are met with regard to the extended area.
  - (3) A certified nonconforming use may be reconstructed, provided that:
    - (A) The lot on which it is reconstructed is as it existed as a single lot under single ownership at the time the use became nonconforming;
    - (B) Either the nonconforming use is in continuous existence from the time the Special Exception application has been filed through final action on the application, or the building was destroyed by fire or other calamity more than one (1) calendar year prior to the filing date;
    - (C) The requirements of Part 11 are met with respect to the entire use; and
    - (D) The Special Exception shall terminate unless a building permit for the reconstruction is issued within one (1) calendar year from the date of Special Exception approval, construction in accordance with the building permit begins within six (6) months from the date of permit issuance (or lawful extension), and the construction proceeds to completion in a timely manner.
  - (4) When not otherwise allowed, a certified nonconforming use may be otherwise altered by the addition or relocation of improvements, such as fencing, landscaping, off-street parking and loading areas, and outdoor trash enclosures, or the relocation of buildings or other improvements within the boundary lines of the lot as it existed as a single lot under single ownership at the time the use became nonconforming.
  - (5) Any new, or any addition to, or alteration or relocation of an existing building or other improvement (which is either nonconforming or utilized in connection with a certified nonconforming use), shall conform to the building line, setback, yard, and height regulations of the zone in which the certified nonconforming use is located. The District Council may further restrict the location and bulk of the building or structure where the evidence so warrants. If the use is presently permitted by Special Exception in the zone, the new building, improvement, or addition shall conform to all of the physical requirements of the specific Special Exception use.
  - (6) The District Council may grant this Special Exception for property within a one hundred (100) year floodplain only after it has determined that the proposed enlargement, extension, reconstruction, or alteration will:
    - (A) Not require additional filling in the floodplain;
    - (B) Not result in an increase in elevation of the one hundred (100) year flood; and
    - (C) Conform with all other applicable requirements of this Subtitle and of Division 2 of Subtitle 4, "Building," of this Code, entitled "Construction or Changes in Floodplain Areas."
  - (7) In a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted where the existing lot coverage in the CBCA exceeds that allowed by Section 27-548.17, and which would result in a net increase in the existing lot coverage in the CBCA. In addition, a Special Exception shall not be granted which would result in converting a property which currently meets the lot coverage in the CBCA requirements of Section 27-548.17 to a nonconforming status regarding lot coverage in the CBCA, except if a finding of extenuating circumstances is made, such as the necessity to comply with other laws and regulations.
- (b) Applications for this Special Exception shall be accompanied by a copy of the Use and Occupancy Permit for the certified nonconforming use, as provided for in Section 27-241(b).

- (c) In a Chesapeake Bay Critical Area Overlay Zone, in order to permit the alteration, enlargement, extension, or reconstruction of any nonconforming building or structure or nonconforming use, the District Council shall find that:
- (1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Overlay Zone provisions would result in unwarranted hardship;
  - (2) A literal interpretation of the County's Critical Area Program regulations would deprive the Applicant of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area Overlay Zones;
  - (3) The granting of a Special Exception would not confer upon an Applicant any special privilege that would be denied by this Subtitle to other lands or structures within the Chesapeake Bay Critical Area Overlay Zones;
  - (4) The request for a Special Exception is not based upon conditions or circumstances which are the result of actions by the Applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property;
  - (5) The granting of a Special Exception would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Chesapeake Bay Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the applicable laws within the Chesapeake Bay Critical Area; and
  - (6) The application for a Special Exception has been made in writing to the District Council or Zoning Hearing Examiner, if applicable, with a copy provided to the Chesapeake Bay Critical Area Commission.
- (4) The use must further the specific purposes of the R-18 Zone, found in Section 27-436 (a), which provides as follows:

**Sec. 27-436. R-18 Zone (Multifamily Medium Density Residential).**

(a) **Purposes.**

- (1) The purposes of the R-18 Zone are:
  - (A) To make available suitable sites for multifamily developments of low and moderate density and building bulk;
  - (B) To provide for this type of development at locations recommended in a Master Plan, or at other locations which are found suitable by the District Council;
  - (C) To provide for this type of development at locations in the immediate vicinity of the moderate-sized commercial centers of the County; and
  - (D) To permit the development of moderately tall multifamily buildings, provided they are surrounded by sufficient open space in order to prevent detrimental effects on the use or development of other properties in the general vicinity.

**Special Exceptions**

- (5) Relevant Maryland caselaw makes clear that special exception uses are presumed to be compatible absent evidence to the contrary. Schultz v. Pritts, a seminal decision regarding special exceptions, provided the standard to be followed in reviewing such applications:

This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. The duties given the Board are to judge *whether the neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal....

(Schultz v. Pritts, 291 Md. 1, 11-12, 432 A.2d 1319 (1981), *citations omitted*.)

(6) In People's Counsel for Baltimore County v. Loyola College in Md., 406 Md. 54, 88-89, 94-96, 956 A.2d 166, 195-196 (2008), the Court of Appeals recognized that even courts have misunderstood the Schultz holding. It provided further guidance concerning approval/disapproval of Special Exceptions by noting:

The Schultz standard requires an analysis of the effects of a proposed use "irrespective of its location within the zone." "Irrespective of " is defined by WEBSTER'S COLLEGIATE DICTIONARY (10<sup>th</sup> ed. 1993) as "regardless of ." The same dictionary defines "regardless of" as "without taking into account." Petitioners' argument urges the opposite result. Petitioners contend that Schultz requires an applicant for a special exception to compare, and concomitantly the zoning body to consider, the adverse effects of the proposed use at the proposed location to, at least, a reasonable selection or representative sampling of other sites within the same zone throughout the district or jurisdiction, taking into account the particular characteristics of the areas surrounding those other test sites. The Schultz standard requires no such evidentiary burden be shouldered by an applicant nor analysis undertaken by the zoning decision-maker.

Schultz speaks pointedly to an individual case analysis focused on the particular locality involved around the proposed site [Citations omitted].... Thus, the Schultz standard ...

requires that the adverse effect “inherent” in a proposed use be determined without recourse to a comparative geographic analysis....

The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located.... That is why these uses are designated special exception uses, not permitted uses. The inherent effects notwithstanding, the legislative determination necessarily is that the uses conceptually are 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. With this understanding of the legislative process (the “presumptive finding”) in mind, [it’s clear that the *Schultz*] language is a backwards-looking reference to the legislative “presumptive finding” in the first instance made when the particular use was made a special exception use in the zoning ordinance. It is not a part of the required analysis to be made in the review process for each special exception application. It is a point of reference explication only.

### CONCLUSIONS OF LAW

- (1) The provisions of Section 27-384 of the Zoning Ordinance are satisfied since:
  - There is no request to enlarge any of the buildings in height or bulk (Section 27-384 (a)(1));
  - The lot is still a single lot under single ownership (Section 27-384 (a)(2)(A));
  - The parking will satisfy Part 11 for the seven additional dwelling units, since 258 spaces have been determined to be sufficient for the existing certified nonconforming 218 dwelling units, there are 289 parking spaces on site, and the new units are required to have two spaces per unit, well within the total number of spaces provided (Section 27-384 (a)(2)(B));
  - The certified nonconforming use is not being reconstructed (Section 27-384(a)(3));
  - The certified nonconforming use is not being altered by additions or relocation not otherwise allowed (Section 27-384 (a)(4));
  - There will be no improvement that does not conform to the building line, setback, yard or height regulations of the R-18 Zone (Section 27-384 (a)(5));
  - The property does not lie within a one hundred year floodplain (Section 27-384 (a)(6));
  - The property does not lie within a Chesapeake Bay Critical Area Overlay Zone (Sections 27-384 (a)(7) and (c)); and,
  - Applicant submitted a copy of the Use and Occupancy permit for the certified nonconforming use (Section 27-384 (b)).
- (2) The general purposes of the Zoning Ordinance are listed in Section 27-102(a) and the request is in harmony with the applicable purposes, for the following reasons:



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

Applicant requests to add a few apartment units to an apartment community that has successfully existed in the area for nearly sixty (60) years; thus Applicant is addressing certain housing needs of the public, thereby 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 2010 Subregion 1 Master Plan and Sectional Map Amendment supports medium-high density residential land use for the subject property and urges that a variety of residential housing for all income levels be incorporated within the Subregion. The 2014 General Plan supports infill and medium density development within the Established Communities. This purpose is met.

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

Staff noted that approval of the request will not adversely impact the transportation system or other public facilities in the area. Thus, this purpose is satisfied.

4. To provide adequate light, air, and privacy;

The Applicant's proposal is an expansion of an existing apartment community within the existing buildings. Applicant does not require any variances to the setback or height restrictions of the Zoning Ordinance. Thus, this purpose is met.

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

Again, Applicant is minimally renovating an existing development. No adverse impact will result from the requested use of the subject property.

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

The development will be in conformance with all County regulations, many of which are intended to protect the County from fire, flood, panic and other dangers. Accordingly, this purpose is met.

7. To encourage economic development activities that provide desirable employment and a broad protected tax base.

Renovation of the property will require workers and is a positive economic development activity that provides employment, continued use of the property , and broadens the tax base.

8. To prevent overcrowding of land;

The Site Plan notes no exterior changes to the buildings and all existing approved setbacks will remain. The existing parking will remain and no additional impervious surfaces added. The site is not overcrowded.

9. 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 is expected to attract 4 additional A.M. and P.M. vehicular trips - a de minimis amount. The Application therefore meets this purpose.

10. To insure the social and economic stability of all parts of the County;

By continuing the use that has successfully operated on site for many years and offering additional units for lease, Applicant is furthering the social and economic stability of Prince George's County. (Section 27-317(a)(1))

(3) The general purposes of the R-18 Zone are listed in Section 27-486 of the Zoning Ordinance and the Special Exception is in harmony with these purposes since it is a multifamily residential development and such use (and the minimal alteration requested herein) is consistent with the land recommendations of the Subregion I Master Plan and SMA.

(4) The proposed use and Site Plan) are in conformance with all 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))

(5) The proposed expansion of the apartments will not impair the integrity of the approved Master Plan since it recommends a medium-high density residential use for the subject property. (Section 27-317(a)(3))

(6) The proposed use of the subject property should not have any adverse impact on the health, safety and welfare of residents or workers in the area since no public facility will be adversely impacted by the addition of seven additional units. Moreover, no new construction will occur, nor will there be any changes to the exteriors of the buildings or the unimproved areas of the site, with the exception of needed bike racks. Thus, those residing or working in the area will probably be unaware of any change if the request is granted. (Section 27-317(a)(4)) For the same reasons, the use will not be detrimental to

the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(7) The internal changes to the subject property will not require any grading or exterior work, and there is no previously approved tree conservation plan. Accordingly the request is not subject to the Woodland and Wildlife Habitat Conservation Ordinance. (Section 27-317(a)(6))

(8) Again, no external development will occur; and no regulated environmental features have been identified on site. (Section 27-317(a)(7))

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

(10) The Application satisfies all criteria in the Zoning Ordinance concerning the Special Exception use and should only be denied if there is credible evidence adduced at the hearing that indicates the use would be incompatible due to adverse effects in the neighborhood of the application beyond those inherently associated with the use. 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, for reasons noted below, and with the conditions noted below.

### **DISPOSITION**

Special Exception 4852 is Approved subject to the following conditions:

1. Prior to the certification of the Special Exception, the Special Exception Site Plan shall be revised to:
  - a. Provide a general note indicating the gross floor area which existed on the property prior to January 1, 1990.
  - b. Provide a general note indicating that the number of individual dwelling units shall not be increased beyond the 225 approved herein unless a revision is sought and approved pursuant to applicable provisions of the Prince George’s County Zoning Ordinance.
  - c. Provide two bicycle racks and an associated detail sheet (inverted U-style or a similar bicycle rack model that provides two points of contact for a parked bicycle) at each apartment building, at a location convenient to the building entrances.
  - c. Provide crosswalks for all four points of vehicle entry along MD 198 (Gorman Avenue).

[Note: The Special Exception Site Plan is Exhibit 30]