

Case No. S.E. 4437

Applicant: Scott Armiger
t/a Orchard
Dev. Corp.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, and after hearing and considering argument from parties of record, that Application No. S.E. 4437, for a special exception for apartment housing for the elderly or physically handicapped on property described as approximately 15.86 acres of land in the R-R Zone, in the northwest part of the intersection of Adelphi Road and Cool Spring Road, about 450 feet north of MD 193, in Adelphi, is hereby:

DENIED, for the reasons stated in the findings of fact and conclusions of law attached as Exhibit A, which are hereby adopted as the basis for denial.

Ordered this 28th day of September, 2004, by the following vote:

In Favor: Council Members Knotts, Bland, Dean, Dernoga, Exum, Harrington and
Peters

Opposed: Council Member Hendershot

Abstained:

Absent:

Vote: 7-1

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Tony Knotts, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS

1. Subject Property. The property which is the subject of Application No. S.E. 4437 includes about 15.86 acres of unimproved land in the northwest part of the intersection of Adelphi Road and Cool Spring Road. It lies about 450 feet north of University Boulevard, MD 193, and is affected by State Highway Administration plans to widen Adelphi Road and University Boulevard and construct an interchange where they intersect. The property has frontage on both Adelphi and Cool Spring roads. Technical Staff Report, Exh. 10.

The property has rolling terrain, with areas of steep slopes (15 to 25% grade) and severe slopes (grades exceeding 25%), especially along northern and southern edges. A central feature of the property, nearly bisecting it from east to west, is a series of 100-year floodplain areas. The floodplain, in all about 2.35 acres, contains tributaries of the Northwest Branch and comprises part of the Anacostia River Watershed. Exh. 10; Chang Memorandum, Exh. 40, at 2.

2. Zoning History. The property has been in the R-R Zone since years prior to the most recent comprehensive rezoning, the Langley Park - College Park - Greenbelt Sectional Map Amendment, approved in 1990. The R-R Zone encompasses large parts of the zoned acreage in Prince George's County, and R-R regulations therefore include various special exception uses, added to the Zoning Ordinance to allow uses other than single-family residential. The R-R Zone remains a single-family residential zone, and no special exception uses may be approved without proof of compatibility with adjacent single-family residential development.

3. Master Plan and General Plan Recommendations. The 1989 Master Plan for Langley Park - College Park - Greenbelt recommends single-family residential uses for the subject property, at "Suburban" densities (2.7 to 3.5 units per acre). Plan, at 69; Exh. 40,

at 2. Because the property contains sizable environmentally sensitive areas, including steep and severe slopes and floodplain and wetland areas, the Master Plan recommends that the property be developed in a Comprehensive Design Zone. Densities in the R-S (Residential Suburban) Zone are recommended. CDZ development techniques and review processes, allowing modified development standards from those applicable in R-R, would permit residential uses at the recommended densities (2.7 to 3.5 units per acre) while minimizing adverse effects on sensitive areas. Plan, at 69; Exh. 40, at 3.

The Master Plan also recommends the upgrade of both Adelphi Road and University Boulevard to 4 to 6 lanes, with a "partial interchange" at their present intersection. Exh. 40, at 2. Construction of the interchange would affect the subject property.

The General Plan places the area including the subject property in the Developed Tier. There the General Plan recommends land use decisions which will strengthen existing neighborhoods and encourage infill uses compatible with development already in place. Exh. 40, at 2.

The Master Plan, at 42, places portions of the subject property in "Natural Reserve" and "Conditional Reserve areas:

- The Natural Reserve Area is composed of areas having physical features which exhibit severe constraints to development or which are important to sensitive ecological systems. Natural Reserve Areas must be preserved in their natural state. This does not pre-empt so much land from development as to be unduly restrictive. Natural Reserve Areas are those areas which, due to physiographic features, are generally prohibited from development under existing laws and ordinances. If the Natural Reserve designation does not apply, a property can be developed under County codes.
- The Natural Reserve Areas alone do not insure environmentally and aesthetically attractive development. Many areas have physical features which exhibit less severe constraints on development but would have an adverse environmental impact if developed without adequate precaution.
- Conditional Reserve Areas have moderate development constraints and some bearing on natural processes. Parts of the Conditional Reserve Areas are appropriate for active recreation facilities, and some portions

may bear limited development within prescribed guidelines. Development is permissible; but careful, innovative site planning is required to protect environmental assets and to meet environmental needs.

In the Living Areas Element of the Master Plan, at 66, the third recommendation concerns elderly housing:

- Housing for the Elderly – The percentage of the total population in the 65 or over age group in Prince George’s County increased from 4.0 percent to 5.5 percent between 1970 and 1980. Therefore, the housing demand for elderly people is on the rise. Housing for elderly people should be sited near public transportation, commercial services, medical services and other support services. Based on the above criteria, the Plan identifies the following possible sites and/or buildings suitable for senior citizen housing: the Green Hill on Van Buren Street in West Hyattsville, a 2.5-acre tract north of the Chillum Nursing Home on Truman Drive, and a five-acre site north of the North End School in Greenbelt.

(The subject property does not lie near any of the sites recommended for elderly housing in the Master Plan.) The first and second recommendations, Plan, at 65, 66, are also relevant:

- Infill Development – The predominantly residential character of the Planning Area is well established and will largely remain. However, there are approximately 70 undeveloped tracts ranging from an acre to 180 acres. The use of the Comprehensive Design Zone (CDZ) and cluster on many tracts is recommended. The CDZ and cluster allow for more diversity, lower cost for roads and public facilities, preservation of open space, and the Planning Board site plan review to ensure better site design. The Plan recommends residential densities compatible with existing densities to preserve acceptable levels of public facility service, primarily an adequate transportation system.
- Housing Mixture – In 1986 the Planning Areas’ housing mix consisted of 53 percent multifamily and 47 percent single-family units. With approximately 20 percent of the County’s multifamily units in 1970, they increased their share to 22 percent by 1986. The General Plan recommends that the County seek an increased ratio of single-family units to apartments to provide a basis for promoting attractive, stable residential areas. Therefore, the Plan recommends that all vacant multifamily-zoned land be rezoned except at three locations.

The Living Areas Element, Master Plan at 72-74, also has the following Guidelines:

- High-density housing should be located only in such a manner as to relate to, and maximize convenience to, public and private service facilities for the greatest number of people in the area, and only where

designated in the Plan. Sufficient space should be available for the provision of new or expanded supporting facilities in proportion to the expected population increase.

- The site planning of apartment projects should provide adequate open space at the perimeter to serve as a buffer between the project and adjacent lower density residential development.
- Multifamily development should have direct access to arterial or collector roads and should not have primary access through single-family residential streets.
- Existing living areas should be preserved and upgraded, where appropriate, through the use of conservation and rehabilitation programs; and any environmental deficiencies should be corrected either through rehabilitation or removal.
- All significant aspects of housing and neighborhood quality should be monitored to identify and counteract neighborhood decline within the Planning Areas.
- Future apartment development should be located within walking distance (usually a 1,500 foot radius) of public transportation access points.
- Housing shall be prohibited in unsafe areas such as wetlands, floodplains, and unstable soils, and should be designed and constructed to minimize stormwater runoff, erosion and sedimentation.
- Developers should be encouraged to preserve natural amenities (streams, floodplains, wooded areas) and to incorporate these natural features into the environmental pattern of residential areas to serve as open space and to define and/or link together the living areas.

4. Proposed Use. The applicant proposes a four-story, 65-foot high apartment building with 193 multifamily dwelling units, restricted to elderly families. (The applicant would not market the property to physically handicapped families, though some units will meet ADA requirements.) Under the Zoning Ordinance, § 27-337 (c), an "elderly . . . family" is one in which the head or a dependent is at least 62 years of age. By this definition, an elderly family may include children, adolescents, or young adults, though the project has no facilities for children or adolescents.

The apartment building would have 242 parking spaces, of which 160 are in surface lots on the property. The building itself would be one large four-wing structure including on its four floors about 280,000 square feet of gross floor area.

5. Neighborhood and Surrounding Uses. The neighborhood for a special exception includes all properties affecting and affected by the proposed use. A neighborhood will be self-contained, bounded by major highways or significant natural features like lakes or stream valleys, and will normally be found to have a certain "character." The character depends both on the neighborhood's natural features and its prevailing development, such as single-family residential, mixed commercial and industrial, mixed-density residential, and the like.

Neighborhood character is of particular importance in R-R Zone cases involving apartment buildings for elderly or handicapped. For approval of the use, the Zoning Ordinance requires a finding that the proposed building will not "adversely affect the character of the surrounding residential community." § 27-337 (b) (4) (B) (ii). For the R-R Zone, a single-family residential zone, the Ordinance presumes that all R-R neighborhoods will be residential in character, and the inquiry is therefore what the character is of the "surrounding residential community," that part of the residential neighborhood in the immediate vicinity of the subject property. An R-R neighborhood may or may not be exclusively single-family, may or may not have undeveloped areas or public lands, and may or may not have nonconforming uses or uses permitted by special exception. The surrounding residential community question concerns how a proposed apartment building affects residential properties which constitute the community within the neighborhood and near the subject property, in its vicinity. Where the community is exclusively single-family, with undeveloped and public lands, an apartment building applicant must make a strong

showing that the proposed use will not be adverse to the character of the surrounding residential area.

The neighborhood for the subject application includes properties within the following boundaries: Metzerott Road on the north, Adelphi Road on the east, University Boulevard on the south, and Riggs Road on the west. These neighborhood boundaries, all major highways separating uses on either side, were approved by staff and not seriously questioned at hearings on the application. (Where residents suggested a smaller neighborhood, with boundaries north and west lying closer to the subject property, they were discussing the property's "surrounding residential community" rather than its neighborhood.) The neighborhood does not include properties or development east of Adelphi Road or south of University Boulevard, two major transportation arteries which bound it, and it therefore does not include properties of the University of Maryland or indeed any near the subject property (in the surrounding residential community) which are not either unimproved or used for single-family residential purposes.

The character of the neighborhood is single-family residential, with "large areas . . . remaining undeveloped and wooded." Exh. 10, at 3. Staff also found that the Northwest Branch Stream Valley Park and the Adelphi Community Park cover "a significant portion of the area" and that there are commercial uses along University Boulevard in the neighborhood's west, toward Riggs Road, at the western edge. *Id.* The subject property is on the neighborhood's eastern edge, near its southern tip, where there are no special exception uses and none other than single-family residential. That is, the character of the residential community surrounding the subject property is exclusively single-family, with large undeveloped and wooded areas. Exh. 10.

6. Zoning Ordinance Requirements. Section 27-317 contains the requirements all special exception applicants must satisfy, and § 27-337 has the specific requirements for apartment buildings for the elderly or handicapped.

Section 27-317 (a) provides:

- (a) A Special Exception may be approved if:
 - (1) The proposed use and site plan are in harmony with the purpose of his Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
 - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
 - (6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

Section 27-337 provides:

- (a) Apartment housing and related facilities for elderly or physically handicapped families may be permitted within and on the property associated with an existing building, which was formerly used for a public school that has been declared surplus by the government entity which owns (owned) it (known as a surplus public school building), subject to the following:
 - (1) In addition to the requirements of Section 27-296(c), the site plan shall show the density, and the type and total number of dwelling units proposed;
 - (2) 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;
 - (3) Recreational and social amenities for the residents may be provided, if shown on the site plan and approved by the District Council; and
 - (4) The height, lot coverage, density, frontage, yard, and green area requirements, including restrictions on the location and height of accessory buildings, as specified for the zone in which the use is proposed, shall not apply to uses or structures provided for in this Section. The dimensions, percentages, and density shown on the approved site plan shall constitute the regulations for development under a given Special Exception.
- (b) Apartment housing and related facilities for elderly or physically handicapped families may be permitted within a building other than a surplus public school building, subject to the following:
 - (1) 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 or handicapped families for a fixed term of

not less than twenty (20) years. The covenants shall run to the benefit of the Maryland-National Capital Park and Planning Commission;

(2) In the R-18, R-18C, R-H, and R-10 Zones, the following shall apply:

(A) The owner shall be a private, nonprofit organization;

(B) In addition to the requirements of Section 27-296(c), the site plan shall show the density, type, and total number of dwelling units proposed. The minimum net lot area may be reduced and density may exceed that normally permitted in the applicable zone, provided that:

(i) The net lot area shall not be less than fifty percent (50%) of the minimum net lot area normally required in the zone; and

(ii) The density shall not be greater than twice that normally allowed in the zone;

(3) In the C-S-C Zone, the following shall apply:

(A) The subject property shall contain at least two (2) contiguous acres, and shall not contain more than forty-eight (48) dwelling units per acre of net lot area. The density may be increased by one (1) unit per acre for each one thousand (1,000) square feet of indoor space available for common use by the residents for social, recreational, or educational purposes. The indoor space shall be shown on the site plan;

(B) Not less than fifty percent (50%) of the net lot area shall be devoted to green area; and

(C) The District Council shall find that existing development and uses in the neighborhood (particularly on adjacent properties) will not adversely affect the proposed development;

(4) In the R-R, R-80, and R-55 Zones, the following shall apply:

(A) The requirements of paragraphs (1), (2), (3), and (4) of Subsection (a), above, shall be met;

(B) The District Council shall find that the proposed use:

(i) Will serve the needs of the retirement-aged community or physically handicapped families; and

(ii) Will not adversely affect the character of the surrounding residential community. The District Council shall consider the lot size, height of the building, lot coverage of all buildings on the property, setbacks from surrounding properties, street frontage, and sufficiency of green area when determining the proposed development's effect on surrounding residential communities.

(c) For the purposes of this Section, the term "elderly or physically handicapped family" means a family in which the head of the family, or his dependent, is at least sixty-two (62) years of age or is physically handicapped. A person shall be considered physically handicapped if he has a physical impairment which:

(1) Is expected to be of continued and indefinite duration;

(2) Substantially impedes the ability to live independently; and

(3) Is of a nature that the ability could be improved by more suitable housing conditions.

For all apartment housing for elderly or handicapped special exceptions,

§ 27-317 (a) incorporates the requirements of § 27-337, as it provides in (a) (2) that all

special exception applicants must show "conformance with all the applicable requirements

and regulations" of the Zoning Ordinance. Moreover, § 27-317 (a) (1) requires proof of "harmony" with Ordinance purposes, and an application which does not meet specific Ordinance or Master Plan requirements would for that reason alone not be in harmony with Zoning Ordinance purposes.

Section 27-317 (a) (3) requires proof that a special exception use will not "substantially impair" the integrity of an applicable Master Plan, or the General Plan. To meet this standard the applicant must show, at a minimum, general conformance to Master Plan recommendations, and more importantly that no Master Plan requirement or core recommendation is violated or ignored.

Sections 27-317 (a) (4) and (5) require showings that the proposed use will not adversely affect the "health, safety, or welfare of residents or workers in the area," and that the use will not "be detrimental to the use or development of adjacent properties or the general neighborhood." The "area" in (a) (4) and the "general neighborhood" in (a) (5) are in concept generally the same as the neighborhood defined in each special exception case, those properties whose uses affect and are affected by the use of the subject property.

Section 27-337 (b) (4) (B) (ii) incorporates the neighborhood concept in requiring proof that a proposed apartment building project for the elderly or handicapped will not "adversely affect the character of the surrounding residential community." This requirement applies only in the single-family zones where such apartment buildings are allowed, the R-55, R-80, and R-R zones. It does not apply in the commercial or multifamily zones. The section requires applicant proof that its project will not adversely affect the character of the surrounding residential community within the neighborhood, because of inappropriate (or out of scale) buildings, with out-of-character lot size or lot coverage or height, or inadequacy of setbacks, street frontage, or green area.

7. Technical Staff Recommendation. The Technical Staff, whose report, Exhibit 10, was prepared and filed prior to the hearing of testimony, recommended approval of the application with conditions. The staff's determinations as to effects on the character of the surrounding residential community, retirement-aged community needs, and Master Plan integrity will be reviewed below.

8. Hearing Examiner Decision. The Examiner also found that the applicant complied with all requirements in the Zoning Ordinance, and she did have the benefit of hearing the testimony and reviewing the exhibits in the record. The Examiner's decision is not evidence (as is the staff report) but rather a review of the evidence. But several of the Examiner's conclusions, particularly as to adverse effects on the character of the surrounding residential community, needs of the retirement-aged community, and Master Plan integrity, are central to the decision of this case, and they will be reviewed below.

9. Applicant Evidence. The applicant relied on the Technical Staff report, its corporate representatives, and opinion testimony from an architect and expert witnesses in the fields of land planning, traffic engineering, real estate appraisal, and civil engineering (hydrology). The proofs as to Zoning Ordinance compliance and the Master Plan were offered through land planner Linda Ryan of Greenhorne & O'Mara, Inc., and Orchard Development officers. They proffered site plans and other plans showing proposed lot layout (apartment building and parking compound), recreation facilities, setback and green areas, and other areas retained as woodland and stream valley. They stated that the applicant would meet Zoning Ordinance restrictions as to occupant eligibility and retention of the project's age restrictions (one person per family 62 years of age or older) for 20 years. They also stated that the project would meet the needs of the retirement-aged community and, with testimony from an architect, that the apartment building and related

development would not be adverse to the character of surrounding residences and the existing residential community.

10. Opposition Testimony. The opposition, residents of the neighborhood, most of whom live near the subject property, offered testimony about what the neighborhood was like, physically and in its activities, and what uses and properties were near the subject tract. Opposition witnesses included Kimberly Crews, a neighborhood resident and real estate agent; Carol Hurwitch, a neighborhood resident; Jon Robinson, Ph.D., a neighborhood resident and Sierra Club representative with knowledge of ecological modeling; Donna Henderson, a neighborhood resident; and Antonio Bruce, a neighborhood resident with knowledge of statistical analysis. The testimony of opposition witnesses collectively would support findings that the surrounding residential community is and has been for years exclusively single-family, at R-R (half-acre) densities, with substantial open space, woodland, and stream valley areas; that the proposed construction of a four-story, 65-foot high apartment building containing 193 one- and two-bedroom units and covering about 2.0 acres, with attendant parking covering substantially more, would have adverse effects, from storm runoff and community visibility, on living conditions within the residential community and on the steep and severe slopes, floodplain, and wetlands within and beyond the boundaries of the property; that, because it is not near public transportation facilities, medical resources, or commercial retail outlets, the project would not serve the needs of persons of retirement age; and that the apartment building, parking compound, and related facilities are out of keeping with the character of the surrounding residential community. Their testimony shows, even if the District Council cannot find that the proposed project will have substantial adverse effects on specific environmentally sensitive features or areas in the neighborhood, that greater adverse effects will be caused by the proposed use at the subject property than would occur at other R-R sites which do

not have environmentally sensitive areas. And their testimony does show, aside from adverse environmental effects, that the massive apartment building and parking compound which are proposed will have adverse effects on the character of the surrounding residential community, which is entirely single-family residential.

CONCLUSIONS

From the record, the District Council concludes as follows:

11. Summary. This special exception application for apartment housing for the elderly must be denied, as the applicant has not met Zoning Ordinance standards. The applicant did not sustain the burden of proof imposed by the Ordinance as to residential community character, needs of the retirement-aged community, and Master Plan integrity.

First, the applicant did not prove that its proposed apartment project would not adversely affect the character of the surrounding residential community, single-family residences at half-acre densities. The record shows the opposite, that the massive apartment building and parking compound proposed will have substantial adverse effects on the character of the community. Second, the applicant did not prove that, at this location, the apartment building and its facilities would serve the needs of the retirement-aged community. All or substantially all of the facilities would be suitable and serve equally well persons and families not of retirement age, and the transportation, medical, and shopping needs of retired persons are not fully addressed. Third, the applicant did not meet general Zoning Ordinance standards for all special exceptions, particularly as to Master Plan integrity. Because the applicant, in view of opposition testimony and evidence in the record, did not meet its burden of proof, the application will be denied.

12. Technical Staff Report. Staff findings as to a number of required proof elements were insufficiently supported by the evidence then in the record or admitted later at the hearings:

On page 4, Exh. 10, staff addresses the issue whether the proposed project will adversely affect the character of the surrounding residential community. The report states that the proposed apartment building will be "similar architecturally to many of the buildings found on the nearby college campus." Staff refers to development on the university campus which is outside the neighborhood that staff itself delineated, and certainly outside the "residential community" which surrounds the subject property. This error is repeated by applicant and staff in the record and accepted as proof by the Examiner.

On pages 4 and 5, Exh. 10, the report addresses the issue whether the project will serve the "needs" of the retirement-aged, or of physically handicapped families. Staff finds that it will, after considering property location and proposed facilities. The basis for the finding that needs of the retirement-aged will be met appears to be the applicant's proffers that all units will be wheelchair-accessible and that some will be in compliance with ADA requirements. There was nothing in the record, however, at the time of staff's finding or later, to show that the project is served by adequate public transportation, nearby medical services, or nearby retail outlets. Indeed the Examiner made it a condition of approval that the applicant provide in the building "a small convenience store as an accessory use," indicating that in fact, or as reflected in the record, there were insufficient nearby retail outlets for elderly families.

Staff's suggestion that the University of Maryland would offer services to the community, taken from the applicant's justification arguments, does not show that any are available to persons who are elderly (or physically handicapped) and not connected to the university. The proximity of the university -- even if it were in the defined neighborhood, as it is not -- does not demonstrate at all that the university will be willing or able to serve residents of this proposed apartment project. A major reason, indeed the only reason, that

the university is outside the neighborhood is that university properties are south of University Boulevard. That highway is a major barrier to any, particularly those with mobility impairments, who try to take themselves from the subject property onto the university campus.

On page 5, the report states, as suggested on page 4, that the project will "not adversely affect the character of the surrounding residential community." The basis for this statement is the finding that the building and structures on site will be "modestly sized" and will be screened by "forests, slopes, floodplain, adequate green space (75 percent), and sufficient building setbacks." But the record made at the hearing does not support this set of findings, even if they had some basis in the application file at the time the staff report was written. The record shows that the proposed apartment building – four stories and 65 feet high, containing 193 apartment units in wings with over 1.5 acres on each of the four floors, and with a parking compound of 160 spaces – will dwarf all nearby residential dwellings, and in fact will be larger in ground coverage than even a group of six or seven of the residences, and two to four times their height. By itself, as a factual matter, this apartment building will completely change the character of the southeastern corner of the defined neighborhood.

The staff concludes in its report that the applicant demonstrated compliance with all general special exception requirements in § 27-317 (a). These conclusions also are not supported by the record, closed after several days of hearing.

Staff's findings in the report will be further reviewed below.

13. Examiner Decision. The Zoning Hearing Examiner concluded that all special exception requirements had been met, relying heavily, as to the questions of effects on the surrounding residential community, needs or retirement-aged families, and Master Plan integrity, on applicant proffers and the staff report. As to effects of the proposed project on

the surrounding residential community and the needs of the retirement-aged community, the Examiner's decision follows and duplicates the staff report's errors.

As to architectural compatibility, addressed by the applicant's architect witness, the apartment building and parking compound would dwarf and be completely out of scale with surrounding single-family residences. Architectural similarities between the proposed project and the University of Maryland are not relevant. University properties are not within the neighborhood for the special exception, much less the surrounding community, and even if there were university facilities in the neighborhood, they could not be considered part of the "surrounding residential community." The Examiner erred in concluding that the surrounding residential community standard was met.

As to needs of the retirement-aged community, the Examiner, like staff, had no proofs that the proposed project would have numerous facilities to serve families of retirement age, and the applicant did not show that the location of the subject property was suitable, as to public transportation, medical services, or retail facilities.

And as to Master Plan integrity, the Examiner did not demonstrate in her decision that the proposed project met the Natural Reserve and Conditional Reserve recommendations of the plan, nor did she review correctly the many parts of the Master Plan concerning elderly housing and preservation of residential communities.

14. Character of the Surrounding Residential Community. The Zoning Ordinance imposed on the applicant the burden of proving that the proposed apartment building project would not "adversely affect the character of the surrounding residential community." § 27-337 (b) (4) (B) (ii).

To begin, the applicant proffered a definition of the neighborhood – something all special exception applicants must do – but then said very little about the "surrounding residential community" within that neighborhood. This was an essential element of the

applicant's case, a definition and description of the surrounding single-family community and an explanation, through sight line studies, graphic displays or renderings, and the like, why the proposed apartment project would not adversely affect residential community character. The applicant offered only the testimony of an architect, who spoke generally about design compatibility without discussing massing or scale, and an argument that the apartment building would be like the university buildings south of University Boulevard. The character of University of Maryland structures, even those closest to the subject property, has nothing to do with the character of the single-family residential community surrounding the subject property.

As to this element of its case, the applicant failed entirely to demonstrate that its apartment project would not adversely affect the character of the surrounding residential community. The proposed building and parking compound will be highly intrusive, particularly to residential properties directly across Cool Spring Lane, and cannot reasonably be described as consistent with the character of the surrounding residential community. The height of the apartment building, its enormous size, the large number of multifamily units, and the size and scale of both building and parking compound will certainly have effects on the character of the community, and the applicant did not show that the effects would not be adverse.

15. Needs of the Retirement-Aged Community. The Zoning Ordinance required the applicant to prove that the proposed project would "serve the needs of the retirement-aged community." § 27-337 (b) (4) (B) (i).

As to the needs of retired persons, the applicant was required to show that the location of its project, as well as facilities, services, and amenities to be offered on site, were appropriate and would actually help the retired meet their special needs. These needs include aids in transportation, as some retired persons do not drive but all require visits to

locations more than walking distance away; assistance with medical needs, including pharmacy and clinical services; and help with shopping for groceries, clothing, and other necessities.

It was suggested that the applicant might provide limited bus service to residents, and it was also stated that Metro and other buses drive by the subject property. The applicant also offered a bus shelter on its property. But there was no showing that public or limited private bus service would actually be of use to residents, that any inquiries or requests to Metro or the County had ever been made, or indeed where these buses would go, in their trips past the site. A bus shelter on the property will not help persons returning from a bus trip, as they would have to cross Adelphi Road (and perhaps others), a major highway, to get back on the subject property. There are no sidewalks along roads by the property, and no one walks to or from neighborhood residences now. Neither the location of the proposed project nor facilities or services to be offered on site, as stated and proffered by the applicant, meet the Zoning Ordinance requirement concerning the needs of persons of retirement age. The applicant's proofs, even as supplemented by the Technical Staff, did not satisfy this element of proof in the case.

16. Impairment of Master Plan Integrity. The Zoning Ordinance imposed on the applicant the burden of proving that the special exception use would “not substantially impair the integrity of [the applicable] Master Plan.” § 27-317 (a) (3).

This special exception application is inconsistent with the Master Plan – and substantially violates its integrity – because the proposed use, apartment housing for the elderly, will be located in the middle of an established single-family residential community, will not be in or near any location the Plan recommends for multifamily or elderly housing, is far too intense and dense a residential development, is well outside Plan

recommendations for the property and the area around it, is not consistent with Living Areas Element recommendations, and will compromise sensitive environmental areas.

The County's General Plan and the Langley Park – College Park – Greenbelt Master Plan of 1990 recommend preservation and enhancement of established single-family residential communities. Plan, at 61, 65, 66, 69; Exh. 40, at 2-3. Approval of this multifamily use on property abutting many single-family residences would be inconsistent with the Master Plan.

The proposed project will not be at a location the Plan recommends for new multifamily or elderly housing. Plan, at 65, 66, 69. The Plan states that housing for the elderly should be near public transportation, medical services, and retail commercial areas. Plan, at 66. The subject site potentially would have limited Metrobus service on Adelphi Road, where the applicant can construct a bus shelter, but it would be difficult for elderly persons returning to the project to cross Adelphi Road. Elderly access to medical services and retail outlets would also be restricted, because of transportation limitations and the absence of nearby commercial and retail facilities.

As the staff noted, the Master Plan recommends residential development at densities of 2.7 to 3.5 units per acre. Exh. 40, at 2. The Plan also recommends the use of Comprehensive Design Zone techniques, to ensure that residential development will be well-designed and compatible with existing residential uses. Exh. 40, at 3. While the Master Plan recommends at most about 50 residential units on the subject property (15.86 acres times 3.5 units per acre), the proposed project would have almost 200, with 160 parking spaces on surface lots. The applicant's project is far more dense and intense than the Master Plan recommends.

The Living Areas element of the Master Plan has recommendations for residential development, recommendations not followed by the proposed project. Along Cool Spring

Lane, the apartment building would be too close to the road, insufficiently screened, and too high, and it would not be compatible with existing residential development south of the road. Plan, at 65, 66, 69, 72; Exh. 40, at 3. The project would change and negatively affect the residential uses in the neighborhood and would not tend to preserve, upgrade, or enhance it. Plan, at 61. The project, high-density housing, would not relate to or maximize convenience to public and private service facilities, none of which exist in the eastern part of the neighborhood. Plan, at 72. The Plan does not recommend multifamily development on or near the subject site; it recommends only single-family housing and single-family communities. Exh. 40, at 2-3. This large, high-density project does not have existing or potential links to community facilities, transportation facilities, or other living areas, nor does it have convenient links or access to university properties below University Boulevard. Plan, at 73.

Finally, the Master Plan places parts of the subject property in Natural Reserve and Conditional Reserve areas, where development should be prohibited or strictly limited. The applicant's site plan shows that stream valley and woodland areas on the property will be preserved. The site plan also shows that only about 25% of the site area will be disturbed. But the area on which the apartment building and parking compound will be constructed will have over 3 acres of impervious surface and will increase storm runoff into the stream valley. Locating 300 or more residents (in 193 apartment units), with their various activities, including trips on and off the property, will also have negative effects on the stream valley and woodland areas.

As to Master Plan integrity and other general special exception requirements in § 27-317 (a), the applicant has not met the burden of proof. The proposed apartment building would negatively affect an existing residential community, would not meet the Plan's elderly housing recommendations, would not be placed near recommended locations for elderly

housing, would not meet multifamily residential development recommendations, would not be adequately served by public transportation and other needed services, would be far too dense and intense a development for this part of the neighborhood, and would negatively affect sensitive environmental resources.

Because the proposed project does not satisfy express requirements in § 27-337, it does not meet general special exception provisions requiring harmony with Zoning Ordinance purposes and conformance with Ordinance standards.

§§ 27-317 (a) (1), (2). The applicant has not shown that the project will not substantially impair the integrity of the Master Plan. § 27-317 (a) (3). And because of lack of compatibility – or insufficient applicant proof of compatibility – the application does not show that the project will not be detrimental to the use or development of adjacent properties or the general neighborhood. § 27-317 (a) (5).

For all of these reasons, the applicant did not meet the burden of proof, and Application No. S.E. 4437 must be denied.