

Case No.: S.E. 4501

Applicant: Phoenix Construction  
Company, Inc.

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

ZONING ORDINANCE NO. 6 - 2005

AN ORDINANCE to approve a special exception, with conditions.

WHEREAS, Application No. S.E. 4501 was filed for property next to the Marlton Plaza Shopping Center, described as approximately 2.496 acres of land in the R-80/R-P-C and C-1/R-P-C Zones, located on the east side of US 301, approximately 920 feet south of Fairhaven Avenue, identified as 9500 Crain Highway, Upper Marlboro, for approval of a special exception for apartment housing for the elderly, with alternative compliance; and

WHEREAS, the application was advertised and the property posted prior to public hearing, in accordance with all requirements of law; and

WHEREAS, the application was reviewed by the Technical Staff, which filed recommendations with the District Council; and

WHEREAS, a public hearing on the application was held before the Zoning Hearing Examiner; and

WHEREAS, the Zoning Hearing Examiner's recommendations were duly filed with and considered by the District Council; and

WHEREAS, having reviewed the record, the District Council has determined that the application should be approved; and

WHEREAS, to protect adjacent properties and the surrounding neighborhood, this special exception is granted subject to conditions; and

WHEREAS, as the basis for this action, the District Council adopts the findings and conclusions in Attachment A as its findings of fact and conclusions of law in this case:

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. The Zoning Map of the Maryland-Washington Regional District in Prince George's County, Maryland, is hereby amended to show an approved special exception for apartment housing for the elderly, with alternative compliance, on the property which is the subject of Application No. S.E. 4501. All development and use of the subject property under this special exception shall conform to the site plan filed in accordance with this decision.

SECTION 2. The special exception approved herein is subject to the following conditions:

1. All residents of the apartment complex must be at least 62 years of age.
2. The applicant shall amend the landscape plan to show at least 19 Leyland Cypress trees in the area abutting the rear lot lines of Lots 25 and 26, Section 1, Rosaryville Estates Subdivision. The trees shall be planted 9 feet on center and stand 10 to 12 feet high.

SECTION 3. This Ordinance shall take effect initially on the date of its enactment.

Enacted this 11th day of July, 2005, by the following vote:

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

Opposed:

Abstained:

Absent: Council Member Campos

Vote: 8-0

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: \_\_\_\_\_  
Samuel H. Dean, Chairman

ATTEST:

\_\_\_\_\_  
Redis C. Floyd  
Clerk of the Council

Attachment A

The District Council adopts the following as its findings of fact and conclusions of law in this case:

Description of the Subject Property

The subject property, with frontage on US 301 (Crain Highway), is currently vacant and wooded. Antioch Street, an interior subdivision street, terminates at the southern boundary of the property (Exh. 28), but the property cannot access Antioch Street.

Neighborhood and Surrounding Uses

The appropriate neighborhood for planning purposes is defined by the Pepco power lines on the northeast and east, by Old Indian Head and Duley Station Roads on the south, and by US 301 on the west. This is the same neighborhood adopted by the Technical Staff in its report (Exh. 25).

The subject property is bounded on the north by the Marlton Plaza Shopping Center, which is also zoned R-P-C, with an underlying C-1 classification. On the east it is bounded by the remainder of Outlot A and beyond Outlot A by the Brandywine Country subdivision, a single-family detached residential subdivision in the R-80 Zone. Immediately south of the property is a single-family residential subdivision known as Rosaryville Estates, zoned R-R. Across US 301 is a large undeveloped tract of land (Exhs. 3, 25).

### Proposed Development

The proposed senior multifamily building is "U" shaped, constructed around a circle, with parking generally in the front of the building and oriented toward US 301 (Exhs. 3, 25). The building will be 48-feet high, with 102 units on four floors. An outdoor plaza will be in front of the building, a small patio will be at the rear, and an asphalt path will be located along the perimeter of the site, to provide pedestrian access to the Marlton Plaza Shopping Center. The entire site will be landscaped (T. 23-24; Exh. 25).

Access to the Property will be provided by a 60-foot easement from the Marlton Plaza Shopping Center site, to the north. Access will be by a ramp off of northbound US 301, and from Fairhaven Avenue.

The proposed senior housing project will include various amenities, including an exercise room, a wellness room, a multipurpose room with kitchen, an activity room, a library, a laundromat, and a beauty parlor/barber shop (Exh. 3; T. 99-109).

### Nature of Request

As noted above, the major portion of the property is zoned R-P-C, with an underlying C-1 zoning classification. A small portion of the property (that portion of Outlot A included within the application) is zoned R-P-C with an R-80 underlying zoning classification. Senior housing (apartment housing for the elderly) is permitted in the C-1 and R-80 Zones pursuant to the grant of a special exception. The specific criteria governing the grant of a senior housing special exception are set forth within Section 27-337 of the Zoning Ordinance.

In addition, any special exception application must also comply with the requirements of Section 27-317, which govern the grant of special exceptions generally. In addition, in the R-P-C Zone, a detailed site plan is also required. In this case, the detailed site plan has also been filed and assigned the application number DSP-83054/04.

This special exception application was referred to various review agencies within Prince George's County, the Maryland-National Capital Park and Planning Commission ("M-NCPPC"), and the State Highway Administration. Each and every review agency special exception (Exhs. 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22). Ultimately, the Technical Staff prepared a detailed report analyzing the application and applying the applicable criteria of the Zoning Ordinance. The Technical Staff, in its report, recommends approval of the special exception application with conditions (Exh.25).

On June 10, 2004, the Prince George's County Planning Board convened a public hearing to consider the merits of this special exception application. At the same time, the Planning Board considered the merits of the accompanying detailed site plan (DSP-83054/04). At the conclusion of its hearing, the Planning Board, by a vote of 4-0<sup>4</sup>, recommended the approval of the special exception and approved the detailed site plan. The Planning Board's decision was set forth in a written Resolution (PGCPB No. 04-130), which was enacted on July 8, 2004 (Exh. 26).

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<sup>4</sup> Commissioner Vaughns was absent at this meeting.

This special exception application has also been fully supported by the Brandywine Country Homeowners Association and by the Subject Property (T. 67-68; Exh. 36).

#### HEARING BEFORE THE ZONING HEARING EXAMINER

On September 15, 2004, the ZHE convened a hearing to consider the merits of this special exception application. At the hearing before the ZHE, the applicants presented testimony from the following individuals.

Mr. Thomas Kieffer - Mr. Kieffer was accepted as an expert in the field of land planning and landscape architecture. His firm prepared the site plan, landscape plan and stormwater management plans. Mr. Kieffer described the general area and the surrounding uses. He also identified the neighborhood and described the improvements being proposed for the Subject Property on the site plan (T. 11-25). Mr. Kieffer explained how stormwater would be handled and how the site would be graded and landscaped. He noted that an 18-foot-deep double staggered row of evergreens will be planted along the rear of the Subject Property to screen the adjoining residence (T. 46-47). He also testified that the applicant had worked diligently with the Technical Staff and the Urban Design Division of M-NCPPC implementing several different design layouts for the Subject Property before settling upon the final site plan and landscape plan (Exhs. 28, 29, 30; T. 52-61). Mr. Kieffer noted that the staff report issued in this case is extremely detailed and contains substantial information confirming that this application meets and satisfies every Zoning Ordinance requirement for the grant of a special exception for elderly housing (T. 126; Exh. 25). Finally, it was Mr. Kieffer's expert opinion that this site plan and the proposed use comply with the recommendations of the Master Plan and the General Plan and satisfy each and every applicable Zoning Ordinance requirement, including all setback and buffer yard requirements (Sections 27-337 and 27-317) (T. 125-130).

Stewart Patz - Mr. Patz was accepted as an expert in the field of market and economic analysis (T. 93). Mr. Patz testified concerning his preliminary economic/needs study which was submitted at the time of the hearing before the Zoning Hearing Examiner (Exh. 39). Mr. Patz also testified that there is a definite need and demand for

this project and that this senior housing facility as proposed by the applicants will, in fact, serve the needs of the retirement aged community in this area (T. 93-98). Subsequent to the hearing before the ZHE, Mr. Patz submitted a more comprehensive and final economic analysis which continued to find that there is a strong, unmet need and demand for this elderly housing proposal (Exh. 51(b) ).

Logan Schutz - Mr. Schutz was qualified as an expert in the field of architecture (T. 99). Mr. Schutz testified that his firm had designed the building which the applicant proposes to construct and that he specializes in the design of senior housing facilities. It was his opinion that this facility will be state of the art and will incorporate the highest design qualities (T. 99-109).

Raul Fainbraun - Mr. Fainbraun testified he is the owner of both Phoenix and PSR. He has owned the Marlton Plaza Shopping Center for approximately 15 years and he has worked closely with the neighborhood. He proposes to build and operate this senior housing project if it is approved. He remains willing to work with all citizens in the area and he does not believe that the proposed elderly housing will have any adverse impact. To the contrary, he believes that it is a perfect use for the area, especially given the fact that it is proposed to be located contiguous to the Marlton Plaza Shopping Center (T. 113-123).

Charles Schilling - Mr. Schilling is a resident of the Brandywine Country Subdivision. Mr. Schilling indicated that he had previously filed a letter of support (Exh. 36). He indicated that he was providing supplementary testimony in support of the application. He testified that he has been actively involved in planning and zoning issues within his community for many years. He said that in his opinion, there was a definite need for senior housing in the Marlton area. He testified that he had worked with Mr. Fainbraun for many years and that Mr. Fainbraun was a good commercial neighbor. With respect to the Subject Property, he testified that he was aware of drug use within the wooded area where the senior housing is to be constructed and that three violent rapes had also occurred in that area. He testified that he would like to see the property developed with the senior housing as proposed by the applicant (T. 67-68).



### DECISION OF THE ZONING HEARING EXAMINER

In her decision, the Examiner takes no exception to any of the testimony or opinions proffered by the applicants' witnesses.

The Examiner also acknowledges that the Technical Staff and the Planning Board both recommended approval of the requested special exception, and she finds that the proposed use and requested special exception will meet the requirements of Section 27-337 of the Zoning Ordinance, governing special exceptions for apartment housing for the elderly. She also agrees that the requested use and special exception satisfy the purposes of commercial zones generally (Section 27-446 (a)), the C-S-C Zone (Section 27-454 (a)), and the R-P-C Zone (Section 27-538) of the Zoning Ordinance. The Examiner also agrees that the requested use and special exception meet all requirements in Section 27-317 of the Zoning Ordinance governing the grant of special exceptions generally. However, the Examiner denies the requested special exception based upon a potential adverse effect on residents in the area.